Expanding the Core: Blameworthy Harms,

International Law and State-Corporate Crimes

Ronald C. Kramer

Western Michigan University

An earlier version of this paper was presented at the Presidential Panel, "Reconsidering the Legal Definition of Crime," at the annual meeting of the American Society of Criminology, November 21, 2013, Atlanta.

Expanding the Core: Blameworthy Harms, International Law and State-Corporate Crimes

I want to thank President Robert Agnew for developing the series of Presidential Panels for the 2013 American Society of Criminology meetings in Atlanta. I share Bob's concern with "expanding the core" of criminology, the theme for the Atlanta meetings, and I think we agree that one of the most important ways to "expand the core" is to ensure the greater inclusion and increased analysis of state and corporate crimes. One major obstacle to criminological inquiry on state and corporate harms, however, has been the struggle over the legal definition of the concept of crime, the focus of the Presidential Panel where this paper was first presented.

Ever since Sutherland first introduced the term "white collar crime" in his 1939 American Sociological Society Presidential Address (1940), and provided a more formal definition in his 1949 book, *White Collar Crime*, there has been considerable controversy over how to define this important concept, and related terms such as occupational, organizational, corporate and state crimes. While some criminologists have grown weary of the larger debate over the definition of crime and the specific definitional controversy concerning the concept of white collar crime, these debates over "what is crime" are still important as Bob Agnew (2011: 13) has noted, for determining "the scope of the discipline; what is and is not studied." And as Don Gibbons (1977: 5-7) once pointed out, "The definitional task has priority over other tasks, for all succeeding steps in

criminological analysis hinge on clear and valid initial definitions of the phenomena of study."

Early in my career I addressed the larger debate over the definition of crime by arguing that there were two abstract, fundamental images of crime (paradigms) that guided criminological work: the *behavioral* paradigm and the *definitional* paradigm[i] (Kramer, 1982). One important point I tried to make in that paper is that within the behavioral paradigm, which presents an image of crime as a distinctive form of behavior, a variety of legal and social standards can be utilized to classify behavior as "criminal" for the purpose of scientific study. And with regard to *corporate and state crimes*, several colleagues and I have argued that one important set of "legal" standards that could be used to classify the blameworthy harms of corporations and states as criminal for the purpose of criminological work is *public international law*. In particular, this paper assesses the potential of using *Humanitarian Law*, *Human Rights Law* and *International Criminal Law* as reference points or epistemological frameworks for defining crime in general and increasing the visibility of state and corporate crimes more specifically.

THE DEBATE OVER THE LEGAL DEFINITION OF CRIME

Strongly influenced by the domain assumptions of the definitional or political labeling paradigm, my early work started with the premise that no behavior is inherently criminal. As labeling theorists such as Howard Becker (1963) argued, there is no act that is, in and of itself, criminal. Criminality is not a quality that resides within behavior or persons. If one accepts this presupposition, then it follows that in any arena we can identify (political or scholarly, for example), some definitional process must be used to establish the existence of "crime." Since criminal behavior is not preexistent, there must

be some procedure that can be used to identify acts that are to be considered "criminal" for the purpose at hand and acts that are not.

Most domestic political jurisdictions, for example, must develop some juridical process or legal mechanism to select out certain behaviors (and persons) to define as criminal and subject to formal social control. Thus, legislative bodies pass criminal laws (thereby "creating" crime or criminal labels). Police agencies enforce the laws and usually initiate the process of applying criminal labels to specific individuals by making arrests. Prosecutors bring charges against those arrested based on these laws and take accused offenders into criminal courts where they can be convicted (effectively "creating" criminals by applying the legal label to them). Judges interpret law and hand down sanctions. These laws and their supporting legal institutions are not "value free." They are instead rooted in the moral values and concrete interests of those who create them or of their political and economic supporters. It is this overall "criminalization" process that is the subject of much of the criminological work carried out within the definitional or political labeling paradigm (Hartjen, 1978; Kramer, 1982).

Just as state authorities follow a value and interest driven process to classify behavior as criminal for the purposes of formal social control, so too must criminologists who work within the behavioral paradigm follow a value and interest driven process to classify behavior as criminal for the purposes of scientific study. Criminologists possess no formal or value free mechanism to create these definitions of "crime." Thus, criminologists face a dilemma. They must choose which set of standards they are going to use or privilege to classify behavior as "criminal" for the purposes of criminological work. It is this dilemma within the behavioral paradigm that has generated the long-

standing debate over the definition of crime. And white collar crime in its various forms, has often been at the heart of that debate.

THE TRADITIONAL CRIMINAL LAW DEFINITION

Within the discipline of criminology, the traditional, and easiest way to resolve the dilemma over which standards or norms of conduct should be used to classify behavior as criminal for the purpose of study is to borrow the set of legal standards created by the state. Thus, most "mainstream" criminologists define crime as behavior that violates the criminal law. And there is usually no specification that this classification requires an actual enforcement action (arrest or conviction). Furthermore, this critical decision, which "determines the scope of the discipline" and "has a major effect on the content of the discipline as well," is usually "taken for granted" (Agnew, 2011: 13-14). Mainstream criminologists, Agnew (2011: 13-14) points out, "spend surprisingly little time discussing the actual definition of crime;" and he notes, "the legal definition…is so pervasive in mainstream criminology that it is no longer necessary to present or defend it."

"Critical" criminologists, of course, have long been critical of this approach to defining the concept of crime. In my earlier work I argued that by choosing the legal definition of crime, criminologists tacitly agree to use the moral values and interests (usually of dominant political and economic groups) that are encoded in state criminal law. To put it another way, the traditional criminal law contains a distinct class bias (Michalowski, 1985; Schwendinger and Schwendinger, 1977). This not only results in the greater criminalization of working/lower class individuals, but such a definition of crime also restricts criminologists from studying other types of socially harmful and morally blameworthy acts, especially those perpetrated by corporations and states. As Tifft and

Sullivan (1980: 6) have noted: “By assuming definitions of crime within the framework of law, by insisting on legal assumptions as sacred, criminologists comply in the concealment and distortion of the reality of social harms inflicted by persons with power.”

The proposition that the criminal law reflects the values and interests of dominant groups has, of course, generated much controversy over the years. After carefully reviewing the arguments and evidence for and against this proposition, Agnew (2011: 18) draws the cautious conclusion that even though “parts of the criminal law do appear to reflect the interests of all people,” at the same time, “many harmful acts are not defined as crime, and certain relatively harmless acts are defined as crimes.” He then goes on to support, what I think, is the most important point that critical criminologists make:

> If the criminal law partly reflects the interests and values of dominant groups, it follows that certain harmful behaviors may not be defined as crimes, particularly those behaviors that serve the interests of dominant groups. Those harmful acts committed by corporations and states figure prominently here (Agnew, 2011: 18).

For critical criminologists, this insight requires us to seek out and utilize alternative standards to define behavior as criminal for the purpose of criminological study. Before I examine some of the alternative standards to classify behavior as crime proposed by critical criminologists I want to briefly note the critiques of the traditional legal definition of crime that were offered by Thorsten Sellin and a number of early positivistic criminologists, and by Edwin Sutherland’s work on white collar crime.

CONDUCT NORMS AND WHITE COLLAR CRIME

The choice of the legal definition of crime implies a value judgment on the part of mainstream criminologists that it is more appropriate for state authorities to select the

behavior that criminologists will study than to allow criminologists to set up their own independent criteria. As Sellin (1938) pointed out, this results in a loss of "scientific autonomy" for the criminologist. The positivists who wished to develop a science of criminology rejected the legal definition of crime on the grounds that it was not suitable for scientific purposes (Kramer, 1982). Following in this tradition, Sellin (1938: 24) argued that to advance the quest for scientific knowledge in criminology, the criminologist "must rid himself (sic) of shackles which have been forged by the criminal law." Sellin went on to propose a social definition of crime based on the idea that there are universal "conduct norms" that should be used to classify behavior as criminal (deviant) for the purpose of scientific study.

While Sellin's argument for the use of conduct norms to define crime did not have much lasting influence on the discipline, Sutherland's attempt to redefine the concept of crime in his work on white collar crime had a much greater impact, particularly on future critical criminologists. Sutherland also came to reject the criminal law as the sole basis for defining the concept of crime, although his reasons were very different from Sellin's. Sutherland's rejection of the traditional criminal law definition of crime was not based on scientific or methodological criteria, but by his moral concern over the issue of white collar crime and his desire to reform the legal system (Geis and Goff, 1982; Kramer, 1982). In his attempt to bring the socially harmful and morally blameworthy behavior of businessman and corporations within the boundaries of criminology, Sutherland felt compelled to define white collar crime as "real crime" and to apply legal standards to such behavior. However, he argued that the conventional criminal law definition of crime must be supplemented. Sutherland (1940: 6) contended that, "Other agencies than the

criminal court must be included, for the criminal court is not the only agency which makes official decisions regarding violations of the criminal law." Note that Sutherland was relying on actual legal decisions (enforcement actions) here and not just the judgment of the criminologist as to whether the laws under examination apply to the behavior in question. He argued that criminal convictions must be supplemented by data on decisions against businessman and corporations rendered by civil courts and regulatory agencies. In his empirical study of the seventy largest corporations in the country, Sutherland found 779 civil and administrative decisions that he concluded were "crimes." To justify his conclusions concerning these civil and administrative actions, Sutherland (1949: 32) re-formulated the definition of crime as follows:

> The essential characteristic of crime is that it is behavior which is prohibited by the State as an injury to the State and against which the State may react, at least as a last resort, by punishment. The two abstract criteria generally regarded by legal scholars as necessary elements in a definition of crime are legal descriptions of an act as socially harmful and legal provision of a penalty for the act.

Note that this is still a state based "legal" definition of crime. But it is, of course, an expanded legal definition of crime, expanded to include civil and regulatory violations in addition to violations of the traditional criminal law. In this definition, however, Sutherland does not require that an actual legal decision be made. In his consideration of a set of standards to use to classify behavior as criminal for the purpose of study, Sutherland does not want to move outside of legal boundaries, but he does want to expand the nature of the legal standards that can be used. Sutherland was attacked for his attempt to expand the legal definition of crime, most notably by Paul Tappan (1947) in

his famous article, "Who is the Criminal?" Tappan, by the way, insisted that crime could only be defined in reference to an actual criminal court conviction. At the time, most mainstream criminologists remained unconvinced by either Sellin or Sutherland's attempts to expand the definition of crime outside the realm of criminal law. However, within the study of white collar crime, Sutherland's use of civil and regulatory law to classify behavior as crime eventually came to be widely accepted. In the landmark Wisconsin study, Clinard and Yeager (1980: 16) defined corporate crime as "any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil or criminal law." Many other criminologists who study white collar crime accept the idea that civil and regulatory law can be used to define crime for the purpose of study, often without the additional requirement that an actual legal decision be made or state punishment inflicted (Friedrichs, 2010).

HUMAN RIGHTS, ANALOGOUS INJURIES AND SOCIAL HARMS

With the rise of radical/critical criminology in the 1960s and 1970s came renewed attacks on the traditional legal definition of crime. Radical criminologists such as Herman and Julia Schwendinger (1977: 8) argued that: "Legal definitions of crime are ideological instrumentalities which shape and develop the language and objectives of science in such a way as to strengthen class domination." Radical criminologists pointed out that legal definitions confine the criminologists to study only those behaviors sanctioned by the state as criminal, while excluding other types of socially harmful behaviors from analysis, especially those committed by the state itself, and other powerful actors. Thus, Tony Platt (1974: 5) argued that: "A radical criminology requires a re-definition of subject matter, concerns and commitments…We need a definition of crime which reflects the reality of a

legal system based on power and privilege; to accept the legal definition of crime is to accept the fiction of neutral law."

The most noteworthy attempt to redefine crime from the perspective of radical criminology came from the Schwendingers (1970) who proposed a social definition of crime based on the existence of fundamental, historically determined human rights. They argued that, "All persons must be guaranteed the fundamental prerequisites for well being, including food, shelter, clothing, medical services, challenging work, and recreational experiences, as well as security from predatory individuals and repressive and imperialistic social elites (Schwendingers, 1970: 145). To the Schwendingers, these material requirements and basic services are not to be regarded as rewards or privileges, but as basic human rights whose deprivation is a crime. A human rights definition, they assert, would also allow criminologists to identify "criminal social systems" (Schwendingers, 1970: 148):

> It can be stated, in light of the previous argument, that individuals who deny these rights to others are criminal. Likewise, social relationships or social systems which regularly cause the abrogation of these rights are also criminal. If the terms imperialism, racism, sexism and poverty are abbreviated signs for theories of social relationships or social systems which cause the systematic abrogation of basic rights, then imperialism, racism, sexism, and poverty can be called crimes according to the logic of our argument.

As a brief aside, re-reading "Defenders of Order or Guardians of Human Rights" recently, I was struck by the fact that the Schwendingers did not make a single reference in the article to the United Nations Universal Declaration of Human Rights or Human

Rights Law more generally. Since 1948, individuals and organizations concerned about advancing human rights around the world have regarded the Declaration as "the moral anchor" for these efforts, a "secular bible" (Morsink, 1999: xii). And the Schwendingers also make only one brief dismissive comment on the idea of using Humanitarian Law (war tribunals and the concept of war criminals) to define crime. Clearly the Schwendingers were asserting that autonomous criminologists must make the judgment about what constitutes crime completely independent from any type of legal standard or decision. However, a few criminologists who saw themselves as following the Schwendingers down the path toward a human rights definition of crime did make explicit reference to specific forms of public international law in their work. John Galliher (1991: 2-3) for example, suggested that the essential human rights to be protected could be found in the United Nations Charter, the U.S. Declaration of Independence and in the Universal Declaration of Human Rights. Gregg Barak (1991: 8), concerned with gross human rights violations by the capitalist state, noted that, "higher criteria for establishing state criminality exist in various international treaties and laws." Kauzlarich, Kramer and Smith (1992) argued that to make the violence of states a more central focus of criminology we should use the standards found in both Humanitarian Law and Human Rights Law. I will return to an examination of this position in the next section.

In addition to the efforts of the Schwendingers and others to ground the concept of crime in some broad notion of human rights, there have been several other noteworthy attempts by critical criminologists to reformulate the definition of crime outside of legal boundaries. For example, in their discussion of defining the state as criminal, Green and

Ward use the term "organizational deviance" and stress the important role of various "social audiences." They define an act as deviant when, "there is a social audience that (1) accepts a certain rule as a standard of behavior, (2) interprets the act (or similar acts of which it is aware) as violating the rule and (3) is disposed to apply significant sanctions-that is significant from the point of view of the actor-to such violations" (Green and Ward, 2004: 4). This approach depends on the decisions and actions of social audiences such as social movement organizations, NGOs and other international bodies, not the judgments of criminologists per se. Green and Ward (2004: 4) point out that, "In many but not all violations of human rights all these elements are present," and according to them "the relevant rules are rules of international law, domestic law and social morality, as interpreted by [these] audiences."

Following in the wake of the Schwendingers, Ray Michalowski developed an important social definition of crime. In his consideration of "crimes of capital" (illegal or harmful acts that arise from the ownership or management of capital), Michalowski (1985: 317) included both acts prohibited under criminal and regulatory law as well as what he called, "analogous forms of social injury." "Analogous" social injuries refer to "legally permissible acts or sets of conditions whose consequences are similar to those of illegal acts." Thus, Michalowski's (1985: 317-318) examination of the crimes of capital focused on behaviors or conditions that "arise in connection with the process of capital accumulation and that, regardless of whether or not they are prohibited by law," result in:

1. Violent or untimely death
2. Illness or disease
3. Deprivation of adequate food, clothing, shelter, or medical care

4. Reduction or elimination of the opportunity for individuals to participate effectively in the political decision-making processes that affect their lives.

While Michalowski favors the concept of social injury, a number of other scholars have utilized the notion of "social harm" in their efforts to create a broader social definition of crime. Tifft and Sullivan (2001: 191) discuss a "needs based, social harms definition" that "extends our definition of crime to social conditions, social arrangements, or actions of intent or indifference that interfere with the fulfillment of fundamental needs and obstruct the spontaneous unfolding of human potential." This definition allows them to focus attention on social structural harms and structural forms of violence. Other criminologists have called for the abandonment of the concept of crime entirely in favor of something they call zemiology, the study of harm (Hillyard, et al., 2004; see also Matthews and Kauzlarich, 2007). Presser (2013) has also recently made a strong argument for theorizing harm instead of crime. And "green" criminologists are among those who argue that the legal definition of crime is unnecessarily restrictive and needs to be supplemented by a broader harms based approach. As Rob White (2011: 21) asserts: "A basic premise of green criminology is that we need to take environmental harm seriously, and in order to do this we need a conceptualization of harms that goes beyond conventional understandings."

Another recent effort that incorporates the concept of harm is Agnew's attempt to develop an "integrated" definition of crime. This effort combines norms of conduct, reactions of a social audience and enforcement actions. As Agnew (2011: 30) notes, while "The integrated definition assigns a central place to violations of the criminal law and street crimes…it also focuses on a range of harmful acts that are not legally defined

as crimes, including acts committed by states and corporations." According to Agnew (2011: 37), the three general characteristics that should be used to classify behavior as criminal are, "the extent to which they are (a) blameworthy harms; (b) condemned by the public; and (c) sanctioned by the state." Thus, he argues that (2011: 38), "any behavior classified as a blameworthy harm, subject to at least modest condemnation by a significant portion of the public, or classified as a crime or 'crime-like' civil violation by the state should be viewed as a proper part of the subject matter of criminology."

This integrated definition initially yields a list of "core crimes," which are mostly traditional forms of street crime. Mainstream criminologists generally confine themselves to the study of such behaviors. Among the other forms of crime that Agnew also discusses in relationship to the integrated definition of crime, the most important category in my view is "unrecognized blameworthy harms," a crucial distinction that allows him to incorporate much of the work of those who advocate for a social definition of crime. Unrecognized blameworthy harms are those blameworthy harms that are not strongly condemned by the public at large and not sanctioned at all by the state. According to Agnew (2011: 38): "Much state and corporate harm falls into this category, since the power of state and corporate actors makes it easier for them to justify and excuse harm, hide harm, hide blameworthiness, and prevent state sanction." Bringing these harms within the boundaries of criminology is an important step towards Agnew's goal of expanding the core of the discipline. Since these harms are often "unrecognized" by social audiences, bringing them within the boundaries of criminology requires that criminologists make an independent judgment or determination that these behaviors are morally blameworthy harms. Not only does Agnew think these unrecognized

blameworthy harms should be made part of the subject matter of criminology, he also thinks that criminologists, acting as public intellectuals, can provide an important service with regard to these crimes by bringing them to the attention of social audiences. As Agnew (2011: 38) argues: "In such cases, criminologists can play an important role in making the harm and/or blameworthiness apparent through their research and advocacy."

INTERNATIONAL LAW AND THE DEFINITION OF CRIME

Within the debate over which set of standards should be used to classify behavior as criminal for the purpose of study, I will argue that there is an option that incorporates features of both the traditional legal definition and the various social definitions based on human rights, the interpretations of social audiences, analogous injuries, and morally blameworthy social harms. This approach is to define crime as a violation of public international law, and more specifically, Humanitarian Law (HL) and Human Rights Law (HR). 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.

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: 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: 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.

As noted above, some 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; Kauzlarich, Kramer and Smith, 1992). As the study of state criminality has further developed, more criminologists have joined them (Hagan and Greer, 2002; Hagan, Rymond-Richmond and Parker, 2005; Rothe, 2009; Savelsberg, 2010). Support for this position has also come from Bill Chambliss (1995: 9), one of the pioneers of the study of state crime, who argued that: "In this changing world, criminologists must develop a disciplinary vision which defines crime as behavior that violates international agreements and principles

established in the courts and treaties of international bodies." In his discussion of blameworthy harm as a core characteristic of crime, Agnew (2011: 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: 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, I want to suggest that criminologists should take a closer look at these standards as one possible way to answer the definitional question within the discipline. I will start with a brief examination of some of the ways my colleagues and I have used various forms of international law in our work over the years.

THE SPACE BETWEEN LAWS: UN CODES OF CORPORATE CONDUCT

In 1987, Ray Michalowski and I published an article titled, "The Space Between Laws: The Problem of Corporate Crime in a Transnational Context" (Michalowski and Kramer, 1987; 2004). The "space" between laws refers to the fact that the domestic laws (criminal, civil or administrative) of different states are tremendously varied, and that in an era of increasing globalization transnational corporations exploit this uneven legal landscape and relocate corporate harms and hazards to states where there are no legal definitions of these harms and hazards as illegal or criminal and thus, no effective legal sanctions or regulation. As we noted, "TNCs at times engage in practices which, while they would be illegal in their home nations are legal in a number of host nations. The

ability of TNCs to have a significant influence on the legal climate in host countries further renders the particular laws of these nations an inadequate basis for the study of corporate crime" (Michalowski and Kramer, 1987: 34-35). Thus, we concluded that the laws of nation-states represented a theoretically inappropriate framework for the study of injurious actions by TNCs.

Our proposed resolution to this conceptual dilemma at the time was to argue that criminologists could use the United Nation's Draft Code of Conduct on Transnational Corporations and its Guidelines for Consumer Protection as a set of standards by which a variety of TNC harms could be classified as crimes and brought within the boundaries of criminology. These codes were primarily the product of the Commission on Transnational Corporations that had been created by the UN Economic and Social Council in 1974. The primary impulse behind the codes was the desire of the developing nations (called the Group of 77 at the time) to establish a "New Economic Order" and some mechanism for legal control over TNCs. It was a way to provide some specificity to the broader concept of human rights. While we also included "analogous social injuries" in our broad definition of "corporate transgressions" in the article, we were attracted to the idea of using these UN codes for several reasons.

First of all, we were responding to the criticism at the time that criminologists who used human rights or social injury definitions of crime were substituting their personal moral concerns for those contained in law. Susan Shapiro (1983: 307), for example, argued that corporate crime research that extended beyond the boundaries of what is illegal is inevitably flawed because it is suffused with the "moral agenda" of the observer. A more trenchant criticism came from John Braithwaite (1985: 18) who

suggested that: “Those who choose to study violations of ‘politically defined human rights’ or some other imaginative definition of deviance, will deserve to be ignored for indulging their personal moralities in a social science that has no relevance for those who do not share that morality.” Grounding the definition of corporate crime in international legal codes was a way of responding to these critiques through a form of what we called, following Habermas (1973), *critical reflexivity*. As we observed (1987: 47):

> The general principles outlined in the UN Codes, as well as the specific provisions under each, provide a conceptual framework which allows us to expand the scope of inquiry without the epistemological hazards of definitions derived from personal conceptions of human rights. The UN Codes represent the current stage of political struggle to refine the concept of human rights, and rights of national sovereignty, vis-à-vis large, transnational, corporate institutions. As such, they are the appropriate reference point for understanding what constitutes transgressions by these institutions.

In the article we also noted that the typical rejoinder to the kind of criticism offered by Shapiro and Braithwaite was to point out, as many of the participants in this debate do, that relying on law to define the boundaries of criminological inquiry is no less suffused with moral choice than is choosing a human rights definition. But we went on to argue that the UN codes in particular, and international law more generally, reflected a broader set of moral concerns than are typically found in domestic law, and that these values were arrived at through a somewhat different form of discourse. We observed that the definitions of corporate transgressions found in the UN codes and other forms of international law evolved at a world level through a process in which most members of

the world community participate, representing a type of expanded discourse. This expanded discourse offered greater possibilities for the development of critical reflexivity where injuries by TNCs are concerned then did the laws of individual nations. While the UN codes were not products of Habermas' ideal form of discourse, they represented concepts of blameworthy harm (crime) negotiated in a context freer of the political pressures and limitations on viewpoints that surround the more hegemonic processes of national legislation. They incorporated a broader range of voices and perspectives.

While the UN codes could be used as a set of legal standards to classify harmful TNC behavior as criminal for the purpose of criminological study, they had little or no impact in effecting any formal social control of these harms. As with most forms of international law, enforcement is difficult if not impossible under the current international political order. Lisa Hajjar (2005: 208) refers to this as the "gap problem." There is a huge gap between "law on the books" (which prohibits corporate and state crimes) and "law in action" (enforcing the laws and punishing the crimes). This means that there are very few "legal decisions" that are made with regard to corporate and state crimes in the international arena (decisions that might have been useful as behavioral definitions of crime by criminologists) and thus, little in the way of effective social control.

It is important to point out that the creation of international law, its enforcement or lack of enforcement, and its larger political consequences can also be important questions for criminological inquiry. As I noted in my early work on the definition of crime, and as Ray Michalowski and I pointed out in "The Space Between Laws," two paradigms or research domains exist (see also Blum-West and Carter, 1983). On the one hand, the UN codes could have been used to develop behavioral definitions of crime to

delimit the subject matter and identify cases for study. And on the other hand, the codes could be studied within the definitional or political labeling paradigm as a case study in the socio-political construction of legal definitions of corporate acts that cause social injury and why these legal definitions are so rarely enforced.

In both the original article and a later follow-up (Michalowski and Kramer, 2004), we offered an analysis of the socio-political construction process related to the UN codes. What we found was that the impetus behind the creation of a general and binding Code of Conduct for all TNCs lost much of its political momentum with the end of the Cold War and the unraveling of the Communist bloc in the late 1980s. The "new world order" that ensued was a far cry from the New Economic Order sought by the Group of 77 that had originally spearheaded the development of the Code in the 1970s. Freed from the need to mollify potential clients in the Global South as part of the their struggle with the Soviet Union, the United States and the other Organization for Economic Co-operation and Development (OECD) nations began to pursue a new strategy for global business relations called neo-liberalism or the "Washington Consensus." The central tenet of this strategy is that market forces, not political ones, should determine the operations of the global capitalist economy. In this neo-liberal environment, the UN codes languished and the Centre on Transnational Corporations at the UN ceased to exist.

THE 2003 INVASION OF IRAQ: THE "SUPREME INTERNATIONAL CRIME"

As a second example, 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, Michalowski and Rothe, 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, Michalowski and Rothe, 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, Michalowski and Rothe, 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, operating with the behavioral paradigm, 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 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 I think that 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 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 Paul 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; 2010b; Kramer and

Kauzlarich, 2011, Kramer and Smith, 2013). 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 other country in the course of its various imperial wars, including the first use of atomic weapons in 1945. 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 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 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, 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 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 sanctioned 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, 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. Jochnick and Normand (1994: 89) conclude that:

> In both World Wars the laws of war played analogous roles. In each conflict the law served as a powerful rhetorical device to reassure anxious publics that the

> conflict would be confined within just limitations. The First and Second World Wars both saw the law subverted to the dictates of battle, reduced to a propaganda battlefield where belligerents traded attacks and counterattacks. And in the end, the law ultimately failed to protect civilians from horrifying new weapons and tactics. The scope of permissible violence expanded under a flexible definition of military objective and military necessity that eventually, and predictably, justified relentless terror bombing campaigns.

The third reason for the failure of international law to prevent or control the state crime of bombing civilians since World War II is 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.” Gregg 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, Pickering and Alder, 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 (Donnelly, 2003; Schultz, 2003; Steiner and Alston, 2000). 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."

CONCLUSION

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 Ray 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? Some Marxist scholars dispute 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, at this time, no. International law may 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 state crimes will not come from the current structures of international law. Effective resistance 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 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 corporate and state crimes. And perhaps it can provide us with a reference point to analyze "unrecognized blameworthy harms" and bring them to the attention of various publics, so that perhaps in the future, political immunity and double standards will end, the idea of human rights will not be co-opted, effective enforcement will take place, and justice will be served for those whose most basic human rights have been violated by powerful states and corporations.

REFERENCES

Agnew, Robert. 2011. Toward a Unified Criminology: Integrating Assumptions About Crime, People, and Society. New York: New York University Press.

Becker, Howard. 1963. Outsiders: Studies in the Sociology of Deviance. New York: The Free Press.

Barak, Gregg. 1991. Crimes of the Capitalist State: An Introduction to State Criminality. Albany: State University of New York Press.

Barak, Gregg. 2008. Towards an integrated study of international crimes and state-corporate criminality: A reciprocal approach to gross human rights violations. In Supranational Criminology: Towards A Criminology of International Crimes, eds. Alette Smeulers and Roelof Haveman, Antwerp: Intersentia

Blau, Judith and Albert Moncada. 2007. It ought to be a crime: Criminalizing human rights violations. Sociological Forum 22: 364-371.

Blau, Judith and Albert Moncada. 2009. Human Rights: A Primer. Boulder, CO: Paradigm Publishers.

Blum-West, Steve and Timothy Carter. 1983. Bringing white-collar crime back in: An examination of crimes and torts. Social Problems 30: 545-554.

Braithwaite, John. 1985. White collar crime. Annual Review of Sociology 11: 1-25.

Cassese, Antonio. 2003. International Criminal Law. Oxford: Oxford University Press.

Chambliss, William. 1995. Commentary. Society for the Study of Social Problems (SSSP) Newsletter 26: 1: 9.

Clinard, Marshall and Peter Yeager. 1980. Corporate Crime. New York: The Free Press.

Donnelly, Jack. 2003. In defense of the Universal Declaration model. In International Human Rights in the 21st Century: Protecting the Rights of Groups, eds. Gene Lyons and James Mayall, New York: Rowman & Littlefield.

Eckberg, Douglas Lee and Lester Hill, Jr. 1979. The paradigm concept and sociology: A critical review. American Sociological Review 44: 925-937.

Friedrichs, David. 2010. Trusted Criminals: White Collar Crime in Contemporary Society. Fourth Edition. Belmont, CA: Wadsworth.

Galliher, John. 1991. Deviant Behavior and Human Rights. Englewood Cliffs, N.J.: Prentice Hall.

Geis, Gilbert and Colin Goff. 1982. Edwin H. Sutherland: A biographical and analytical commentary. In White-Collar and Economic Crime: Multidisciplinary and Cross-National Perspectives, eds. Peter Wickman and Timothy Dailey, Lexington, MA: Lexington Books.

Gibbons, Don C. 1977. Society, Crime, and Criminal Careers. Third Edition. Englewood Cliffs, N.J.: Prentice Hall.

Glendon, Mary Ann. 2001. A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights. New York: Random House.

Green, Penny and Tony Ward. 2004. State Crime: Governments, Violence and Corruption. London: Pluto Press.

Habermas, Jurgen. 1973. Legitimation Crisis. Boston Beacon Press.

Hajjar, Lisa. 2005. Toward a sociology of human rights: Critical globalization studies, international law, and the future of war. In Critical Globalization Studies, eds. Richard Applebaum and William Robinson, New York: Routledge.

Hagan, John and Scott Greer. 2002. Making war criminal. Criminology 40: 231-264.

Hagan, John, Wenona Rymond-Richmond and Patricia Parker. 2005. The criminology of genocide: The death and rape of Darfur. Criminology 43: 525-561.

Hardt, Michael and Antonio Negri. 2004. Multitude: War and Democracy in the Age of Empire. New York: Penguin.

Hartjen, Clayton. 1978. Crime and Criminalization. Second Edition. New York: Holt, Rinehart and Winston/Praeger.

Henkin, Louis. 1995. International Law: Politics and Values. Dordrecht, The Netherlands: Martinus Nijhoff.

Hillyard, Paddy, Christina Pantazis, Steve Tombs. and Dave Gordon. 2004. Beyond Criminology: Taking Harm Seriously. London: Pluto Press.

Hobsbawm, Eric. 1996. The Age of Extremes: A History of the World, 1914-1991. New York: Vintage Books.

Ishay, Micheline. 2004. The History of Human Rights: From Ancient Times to the Globalization Era. Berkeley: University of California Press.

Jensen, Robert. 2004. Citizens Of The Empire: The Struggle To Claim Our Humanity. San Francisco: City Lights Books.

Jochnick, Chris and Roger Normand. 1994. The legitimation of violence: A critical history of the laws of war. Harvard International Law Journal 35: 49-95.

Kauzlarich, David, Ronald C. Kramer and Brian Smith. 1992. Toward the study of governmental crime: Nuclear weapons, foreign intervention, and international law. Humanity and Society16: 543-63.

Kramer, Ronald C. 1982. The debate over the definition of crime: Paradigms, value judgments, and criminological work. In Ethics, Public Policy and Criminal Justice, eds. Frederick Elliston and Norman Bowie, Cambridge, MA: Oelgeschlager, Gunn, and Hain.

Kramer, Ronald C. 2010a. From Guernica to Hiroshima to Baghdad: The normalization of the terror bombing of civilian populations. In State Crime in the Global Age, eds. William Chambliss, Raymond J. Michalowski and Ronald C. Kramer, Cullompton: Willan Publishing.

Kramer, Ronald C. 2010b. Resisting the bombing of civilians: Challenges from a public criminology of state crime. Social Justice 36: 78-97.

Kramer, Ronald C. 2012. Curbing state crime by challenging empire. In Routledge Handbook of Critical Criminology, eds. Walter DeKeseredy and Molly Dragiewicz,

London: Routledge.

Kramer, Ronald C. and David Kauzlarich. 2011. Nuclear weapons, international law and the normalization of state crime. In State Crime: Current Perspectives, eds. Dawn L. Rothe and Christopher W. Mullins, New Brunswick, NJ: Rutgers University Press.

Kramer, Ronald C. and Raymond J. Michalowski. 2005. War, aggression, and state crime: A criminological analysis of the invasion and occupation of Iraq**.** British Journal of Criminology 45: 446-469.

Kramer Ronald C. and Raymond J. Michalowski. 2011. Empire and exceptionalism: The Bush administration's criminal war against Iraq. In State Crime: Current Perspectives, eds. Dawn L. Rothe and Christopher W. Mullins, New Brunswick, NJ: Rutgers University Press.

Kramer, Ronald C., Raymond J. Michalowski and Dawn L. Rothe. 2005. The supreme international crime: How the US war in Iraq threatens the rule of law. Social Justice 32: 52-81.

Kramer, Ronald C. and Amanda Smith. 2014. Death flies down: The bombing of civilians and the paradox of international law. In Towards A Victimology of State Crime, eds. Dawn L. Rothe and David Kauzlarich, London: Routledge.

Kennedy, Paul. 2006. The Parliament of Man: The Past, Present and Future of the United Nations. New York: Random House.

Kuhn, Thomas S. 1962. The Structure of Scientific Revolutions. Chicago: University of Chicago Press.

Lambert, Caroline, Sharon Pickering and Christine Alder. 2003. Critical Chatter: Women and Human Rights in South East Asia. Durham, N.C.: Carolina Academic Press.

Matthews, Rick A. and David Kauzlarich. 2007. State crimes and state harms: A tale of two definitional frameworks. Crime, Law and Social Change 48: 43-55.

Michalowski, Raymond J. 1985. Order, Law and Crime. New York: Random House.

Michalowski, Raymond J. 2010. In search of "state and crime" in state crime studies. In State Crime in the Global Age, eds. William Chambliss, Raymond J. Michalowski and Ronald C. Kramer, Cullompton: Willan Publishing.

Michalowski, Raymond J. 2013. The master's tools: Can supranational law confront crimes of powerful states? In State Crime and Resistance, eds. Elizabeth Stanley and Jude McCulloch, London: Routledge.

Michalowski, Raymond J. and Ronald C. Kramer. 1987. The space between laws: The problem of corporate crime in a transnational context. Social Problems 34: 34-53.

Michalowski, Raymond J. and Ronald C. Kramer. 2004. The space between laws revisited: Corporate crime in a transnational context. In Social Problems, Law, and Society, eds. A. Kathryn Stout, Richard A. Dello Buono, and William J. Chambliss, Lanham, MD: Rowman & Littlefield.

Mieville, China. 2006. Between Equal Rights: A Marxist Theory of International Law. Chicago: Haymarket Books.

Morsink, Johannes. 1999. The Universal Declaration of Human Rights: Origins, Drafting and Intent. Philadelphia: University of Pennsylvania Press.

Normand, Roger. 2003. Tearing Up The Rules: The Illegality of Invading Iraq. Brooklyn: The Center for Economic and Social Rights.

Otto, Diane. 1997. Rethinking the universality of "human rights" law. Columbia Human Rights Law Review 29: 1-46.

Peck, James. 2010. Ideal Illusions: How The US Government Co-Opted Human Rights. New York: Metropolitan Books.

Platt, Tony. 1974. Prospects for a radical criminology in the United States. Crime and Social Justice 1: 2-10.

Presser, Lois. 2013. Why We Harm. New Brunswick, N.J.: Rutgers University Press.

Ratner, Steven R. and Jason S. Abrams. 2001. Accountability For Human Rights Atrocities In International Law: Beyond the Nuremberg Legacy. Second Edition. Oxford: Oxford University Press.

Ritzer, George. 1975. Sociology: A Multiple Paradigm Science. Boston: Allyn and Bacon.

Rothe, Dawn L. 2009. State Criminality: The Crime of All Crimes. Lanham, MD: Lexington Books.

Rothe, Dawn L. and Christopher W. Mullins. 2006. Symbolic Gestures and the Generation of Global Social Control: The International Criminal Court. Lanham, MD: Rowman & Littlefield.

Roy, Arundhati. 2004. Public Power in the Age of Empire. New York: Seven Stories Press.

Savelsberg, Joachim J. 2010. Crime and Human Rights: Criminology of Genocide and Atrocities. Los Angeles: Sage

Schultz, William 2003. Tainted Legacy: 9/11 and the Ruin of Human Rights. New York: Nation Books.

Schwendinger, Herman and Julia Schwendinger. 1970. Defenders of order or guardians of human rights? Issues in Criminology 5: 123-157.

Schwendinger, Herman and Julia Schwendinger. 1977. Social class and the definition of crime. Crime and Social Justice 7: 4-13.

Sellin, Thorsten. 1938. Culture Conflict and Crime. New York: Social Science Research Council.

Shapiro, Susan. 1983. The new moral entrepreneurs: Corporate crime crusaders. Contemporary Sociology 12: 304-307.

Slomanson, William. 2003. Fundamental Perspectives on International Law. Fourth Edition. Belmont, California: Thomson/West.

Slye, Ronald C. and Beth Van Schaack. 2009. International Criminal Law: The Essentials. New York: Aspen Publishers.

Steiner, Henry J. and Phillip Alston. 2000. International Human Rights in Context: Law, Politics, Morals. Oxford: Oxford University Press.

Sutherland, Edwin H. 1940. White collar criminality. American Sociological Review 5: 1-12.

Sutherland, Edwin H. 1949. White Collar Crime. New York: Holt, Rinehart and Winston.

Tappan, Paul. 1947. Who is the criminal? American Sociological Review 12: 96-102.

Terry, Jay D. 1975. The Evolving Law of Aerial Warfare. Air University Review (November-December): 1-16.

Tift, Larry and Dennis Sullivan. 1980. The Struggle to Be Human: Crime, Criminology and Anarchism. Over The Water, Sanday, Orkney U.K.: Cienfuegos Press.

Tift, Larry L. and Dennis C. Sullivan. 2001. A needs based, social harms definition of crime. In What is Crime? Controversies over the Nature of Crime and What to Do about It, eds. Stuart Henry and Mark Lanier, Lanham, MD: Rowman & Littlefield Publishers.

Weeramantry, C.G. 2003. Armageddon or Brave New World? Reflections On The Hostilities In Iraq. Ratmalana, Sri Lanka: Sarvodaya Vishva Lekha.

White, Rob. 2011. Transnational Environmental Crime: Toward an Eco-Global Criminology. London: Routledge.

---

[i] The historian of science, Thomas Kuhn (1962) first advanced the general thesis that scientific disciplines are guided by a dominant *paradigm*: the entire constellation of beliefs, values and techniques shared by members of a scientific community. According to Kuhn, a paradigm serves as the guide for most theoretical and empirical work in a discipline during a period called normal science; and he went on to use the concept of a paradigm to analyze the structure of scientific revolutions in the natural and physical sciences. Although there was some controversy over what Kuhn meant by the term (Eckberg and Hill, 1979), many social scientists began to use the concept of a paradigm to analyze their own disciplines. In my effort to apply the concept to criminology (Kramer, 1982), I followed George Ritzer (1975) who had argued that sociology was a "multiple paradigm science." I found his definition of a paradigm to be most helpful to my efforts. According to Ritzer (1975: 7):

> A paradigm is a fundamental image of the subject matter within a science. It serves to define what should be studied, what questions should be asked, how they should be asked, and rules should be followed in interpreting the answers obtained. The paradigm is the broadest unit of consensus within a science and serves to differentiate one scientific community (or sub-community) from another. It subsumes, defines and interrelates the exemplars, theories, and methods, and instruments that exist within it.

Ritzer pointed out that various theoretical perspectives may be grouped or subsumed under one paradigm, and of course, from these perspectives or models more rigorous and specific systems of theoretical propositions may be developed and tested. The important point is that a paradigm is broader than a theoretical perspective or orientation, and it provides an abstract definition of the subject matter within a discipline. Ritzer (1975) contended that unlike many of the natural or physical sciences, sociology lacked a dominant paradigm and instead could be characterized as a multiple paradigm science.

Following Ritzer I argued that within criminology there are two major images of crime-the crime as behavior paradigm and the crime as social definition paradigm. The first paradigm focuses on the behavioral realities of crime. Crime is defined as specific acts or forms of behavior that have come to be designated as criminal, usually in reference to the criminal law. The phenomena of interest are the behaviors themself, whatever criteria are used to define those behaviors as criminal. Criminologists working within this paradigm describe the nature, extent and distribution of behaviors regarded as criminal, and most importantly explain the causes of these behaviors in order to predict and control crime. For most of its history, criminology has been guided by the behavioral paradigm. The definitional paradigm, on the other hand, defines crime as a social definition or political label. Crime is a social construction, the product of a definitional process. Within this framework, no behavior is considered inherently criminal. Criminality is not a quality that resides within the behavior or the person, it is an ascribed social status attached to social acts or actors in a process of social interaction. Criminologists working within the definitional paradigm attempt to describe and explain the "criminalization" process. Attention is shifted from criminals to the legal agents whose work creates the social reality of crime. This involves the study of how criminal laws are made, how legal categories and criminal labels get created, how these labels are applied to specific individuals by legal control agents such as police officers, prosecutors and judges, and what impact these labels have on subsequent behavior.