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Power crime

Vincenzo Ruggiero · Michael Welch

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Introduction

Despite making strides in scrutinizing crimes committed by economically and politically powerful actors, organizations, and even states, the field of criminology remains disproportionately preoccupied with socially vulnerable offenders involved in street crime. This observation is more than just a vague impression. Examinations of the major US and British journals of criminology and criminal justice reveal that a mere 3% of research articles focus on the criminal activities of corporations and governments [2]. This special issue offers more than just another round of discussion pertaining to so-called white collar criminals. By concentrating on what we call power crime, essays delve into the theoretical and conceptual underpinnings of grave breaches of domestic and international laws. So as to demonstrate the serious nature of those crimes, the contributors here point to empirical evidence of financial, political, and physical harm.

Establishing a common theme for this issue, we direct critical attention to the role of power in reproducing asymmetries between perpetrators and their victims. Indeed, such power is more than economic, as it draws heavily from political entities which shape rhetoric, definitions, and perceptions of wrongdoing; consequently, such criminality persists not only due to a lack of keen public consciousness about the severity of those activities but also to wide-scale impunity. What many of the authors in this issue bring to light is the presence of immunity which undermines effective strategies for detecting, prosecuting, and punishing those engaged in either financial crime or an array of human rights abuses. Those problems are compounded further by the realization that—even in the face of enormous evidence of significant harm—many perpetrators retain a sense of respectability, averting a fall from grace. Below,

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we would like to further specify the contours of the type of crimes we are addressing, the asymmetries they display between offenders and victims, and their place in the long catalogue of white collar criminality.

Recent contributions on white-collar and corporate crime have interpreted this type of illegitimate conduct as 'situated action', namely as behaviour resulting from interactions taking place in specific organised social settings. This perspective, which in the opinion of Vaughan [5] supersedes the structure-agency dichotomy, allows students of organizations to introduce the variable culture. Thus, white collar crime comes to be analysed as part of a facilitating set of cultural elements, of an organisational setting and, at the same time, as the result of subjective choice. Organizational culture, therefore, tends to 'naturalize' crime, in the sense that offences do not appear as such in the eyes of those who are entrenched in that culture. If we rigidly follow this analytical route, however, we are led to concede that small-scale embezzlers, secretaries and chauffeurs are also embedded in an organizational culture, and that therefore, despite their extremely limited social power, their criminality belongs to the large family of white collar criminality. In other words, the remark might be made that white collar crime is committed by a variety of individuals and that the social composition of white-collar offenders is not homogeneous, as it includes members endowed with varying degrees of power and respectability. Even upmarket-sounding crimes like insider dealing, we are told, may be committed by the company chauffeur or the company typist.

This special issue, instead, is based on the premise that white collar crime is not an equal opportunity crime, hence the necessity, for any study of the subject matter, to clearly delimit the terrain to which the study itself is to be referred. The definition we adopt, *power crime*, limits the terrain to offences committed by actors such as states, corporations, financial institutions, and other similarly powerful organisations. Perpetrators of *power crime* are offenders who possess an exorbitantly exceeding amount of material and symbolic resources when compared to those possessed by their victims [3].

Power crime should be located against the background of differentiated opportunities which are offered to social groups. Social inequalities determine varied degrees of freedom, whereby individuals are granted a specific number of choices and a specific range of potential actions they can carry out. Each degree of freedom offers an ability to act, to choose the objectives of one's action, and the means to make choices realistic. The greater the degree of freedom enjoyed, the wider the range of choices available, along with the potential decisions to be made and the possibility of realistically predicting their outcomes [1]. This asymmetric distribution of freedom makes some turn the acts performed by others into means for their own goals. We can argue, with respect to *power crimes*, that criminal designations are controversial and highly problematic, due to the higher degree of freedom enjoyed by perpetrators. The capacity to control the effects of their actions allows those who have more freedom to conceal (or negotiate) the criminal nature of their actions. If we translate the notion of freedom into that of resources, we can argue that those possessing a larger quantity and variety of them also have greater possibilities of attributing criminal definitions to others and repelling those that others attribute to them. They also have greater ability to control the effects of their criminal activity, and usually do not allow this to appear and be designated as such.

The notion of *power crime* is therefore referred to actors endowed with high degrees of freedom and resources, a notion that echoes Sutherland's variables 'high status and respectability'.

A different conceptualisation of *power crime* is found in recent criminological contributions from control balance theory. This theory takes as its organising theoretical variable the degree of control actors exercise in relation to the amount of control they experience. According to his formulation, control surpluses (an excess of control exercised relative to control experienced) give rise to autonomous forms of deviance, namely deviance aimed at extending the existing control surplus [4]. This includes offences which do not entail direct interaction with victims, ranging from acts of exploitation (corporate price-fixing, influence peddling by political figures) to acts of plunder (pollution, destruction of forests and animals), and a variety of forms of indirect predation.

Although perhaps still incomplete, the identification of *power crime* with crime committed by actors who enjoy an excess of freedom, resources and control may suffice for the purpose of distinguishing the types of illegalities dealt with in this special issue within the wide range of criminal conducts that the literature on white collar crime takes into account.

Setting the tone for this collection of works, Raymond Michalowski puts forth a far-reaching critique of empire. In capturing the essence of power contained in globalization, he unveils important historical developments which contribute to political and economic inequality. Michalowski identifies the pitfalls and limitation of orthodox criminology which appears to lack the conceptual tools in deciphering crimes of power. As an alternative, he introduces prospects for a criminology of empire. While much of his attention is fixed on the US invasion and occupation of Iraq, he points to a pattern of domination propelled by political, economic, and cultural forces. A criminology of empire reaches beyond legal formalism to expose the continued threat of hegemonic power as it produces serious injuries on victims in developing nations.

In a similar vein, the article by Alette Smeulers and Sander van Niekerk examines the atrocities committed by US military and intelligence officers at the Abu Ghraib prison in Iraq. Their criminological approach to the abuse and torture of detainees suggests that those offences were inevitable consequences of the war on terror. As the authors contend, the institutional and organizational framework established by the architects of American counterterrorism served as a catalyst for action, creating the opportunity and motivation for the infliction of injuries while securing an environment shrouded in secrecy from public scrutiny. Correspondingly, Michael Welch explores what he describes as fragmented power and state-corporate killings in his critique of Blackwater, a private military firm which has engaged in reckless violence against Iraqi civilians. While offering specific details of those incidents, the analysis elaborates on state-corporate crime by investigating the ways in which authority is dispersed to private military firms and their personnel. With a critical look at such outsourcing, the article considers how private military firms evade prosecution for war crimes and other human rights violations.

Shifting to another realm of power crime, Bob Tillman focuses on corporate malfeasance and on the prevailing theory used by economists to explain why more corporations do not engage in fraud. Such theory emphasises the role of board

members, auditors and banks in controlling corporate conduct and the “reputational penalties” that may be imposed on them if they fail to do so. In this view, beyond the formal sanctions imposed by criminal justice and regulatory agencies, these “control agents” are subject to extra-legal consequences for misconduct or failure to perform their duties. Consequences include diminished reputation for honesty and integrity and a decline of the value of the services provided in the marketplace. The “reputational penalty” theory has been challenged by recent work that asserts that these entities, far from controlling the behaviour of corporate insiders, may form networks of “reputational intermediaries” who collude with corporate executives to give legitimacy to their illegal schemes. In his paper, Tillman offers empirical support for the latter view through an analysis of a sample of 374 publicly traded firms that announced financial restatements between 1997 and 2002 and which were accused of securities fraud. The analysis shows that these schemes involved large numbers of board members, auditors, and bankers who aided and abetted senior managers in their attempts to deceive investors. The broader implication of this analysis is that, as perpetrators of corporate crime, collusive networks are much more powerful, resilient and resistant to interventions than are individual corporate actors.

The contribution by Leslie Holmes begins by providing examples of active corruption of state officials by transnational corporations, but also examples of corporations taking a stand against rent-seeking officials. Corporate conducts are then related to rational choice theories and neo-liberalism. Holmes argues that recent changes in corporate governance have made rational-choice models and simplistic neo-liberalism either questionable or redundant. Finally, the author attempts to demonstrate that globalisation and neo-liberalism encourage improper behaviour by corporations.

Antoinette Verhage and Paul Ponsaers look at the banking sector, which has recently developed what can be termed an internal compliance industry to tackle money laundering. The authors provide a comparative analysis of such industry, stressing how its aims are self-regulatory and preventive in nature. The philosophy inspiring the compliance industry, it is argued, is far from the punitive stance adopted in the penal law against conventional offenders. The authors, therefore, sketch the differential ways in which powerful criminals are treated.

Eric Wilson returns on the interrelated issues of war and corporate interests. His contribution undertakes a practical application of the work of Paul Virilio and Alain Joxe to the problem of power crime. Wilson’s primary concern is the role played by corporations in contemporary warfare, as exemplified by the phenomenon of private security firms. The main empirical focus of this contribution is the firm Custer Battles and its involvement in fraud and corruption. Primarily theoretical in its approach, this article suggests that some forms of power crime can be analysed through a contemporary variant of Critical Theory.

The concluding paper by Vincenzo Ruggiero is an excursion into the realm of classical economic thought, a thought which still provides a theoretical behavioural framework for entrepreneurial activity. Such a framework, Ruggiero remarks, contains boundaries which attempt to separate acceptable practices from unorthodox ones, thus indirectly formulating tentative definitions of crime and its control. The author considers some of the works produced by Adam Smith and John Stuart Mill, who from different perspectives discuss notions such as transgression, deviance,

conventional criminality as well as criminality by the elite. The author argues that the analysis of power crime may immensely benefit from an excavation into economics, for its concern about the creation and acquisition of wealth, the legitimacy of certain conducts as opposed to others, and ultimately the circumstances in which competition and enterprise may cause human and social harm.

Surely, when faced with the variety and harmfulness of crimes committed by powerful actors, students may be led to question traditional theories associating criminal conduct with marginalisation, poverty or material and cultural exclusion. On the contrary, the types of offending addressed in this special issue may suggest that political, economic and symbolic hegemony produce an array of crimes which are the result of, and perpetuate, hegemonic power itself.

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