

Powerless states and crimes of power: explorations into the new world of crimes of the powerful

Susanne Karstedt says that globalisation has led to increased opportunities for powerful elites to commit serious crimes.

Critical criminology and the tabloid press agree on very few issues, and perhaps only on one – that the powerful are generally inclined to numerous and large scale crimes, where they are more successful in evading prosecution, and if they don't succeed, sentences are rarely harsh.

At the core of this shared belief is the assumption that different functional elites are linked in a unified and coherent structure that comprises the state, the economy and the administration, and is based on the *identity of their interests*. Such a closely knit elite network is not only deemed conducive to elite crime but also seems to create the conditions for the failure to prosecute the powerful. At the core of this network is the state that backs and orchestrates or

economic and corporate crime, but it also applies to the crimes of the state and governments. These are: the exploitation of the differences in the legal regulation (and criminalisation) of economic and governmental action; in conjunction with this, the 'outsourcing' of production and tasks into other countries or to private sub-contractors, or both; and finally, a global competition towards the lowest common denominator in terms of legal regulation, human rights regimes, compliance with political and social human rights, or occupational and product safety in which the corporations or states involved transgress legally defined limits.

Outsourcing of production and services is by no means illegal in itself. However, the process creates new opportunities for economic crimes through

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is manipulated by it. Paradoxically, any appeal for criminalisation of the crimes of the powerful had to be directed to the state simultaneously as both implicated actor and potential accomplice. (Karstedt 2007).

However, it is doubtful whether such an identity of interests of powerful groups has ever been a correct account of interactions between politicians, business leaders and high-level bureaucrats. It certainly is not at the beginning of the 21st century. Contemporary elites have highly diversified interests and join forces in continuously changing coalitions. They are embedded in international elite networks and pursue global interests. New coalitions emerge in which the powerful North tries to impose norms on the dispossessed South in order to pursue its economic interests, and the criminalisation of crimes of the powerful, like corruption, has a decisive role in these inter-elite feuds. Globalisation has confined the notion of unified and powerful elites to the infamous 'dustbin of history'.

Outsourcing and the exploitation of the regulation gap opens up new opportunities for crimes of the powerful. It is their most striking characteristic that they reproduce the pattern of the three dominant global economic processes; this is obvious for

evasion of legal accountability or strict regulations. It did not take long until states and governments discovered the advantages of outsourcing for themselves, as an opportunity to circumvent national and international criminal law, human rights laws, and in particular to avoid the procedural rules of criminal justice. As in the economic sector, outsourcing legal accountability has decisive advantages. It provides new opportunities for cover-up and smokescreens that hide the routes of orders, contracts and products. Jamieson and McEvoy (2005) have termed such transactions as 'state crime by proxy' and the process aptly as 'obfuscation'.

These outsourcing strategies first became visible in the trial of the former Serbian president Milosevic at the International Criminal Tribunal for the Former Yugoslavia. Whilst the prosecution tried to provide evidence of relationships between the government in Belgrade and the para-military forces of Serbs in Croatia and Bosnia-Herzegovina, Milosevic denied any responsibility for their actions. Iraq became the testing ground for outsourcing and obfuscation. Notwithstanding their international obligations as one of the signatory powers of international

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conventions, the USA tried to circumvent the respective requirements by outsourcing military and general security tasks to private contractors.

Governments also have discovered the opportunities provided by enforcement gaps with regard to human rights, the rule of law and democratic controls of the criminal justice system. The most glaring examples are the recent secret transfers of suspects of terrorism and terrorist connections to prisons in Central and Eastern Europe and in the Near East, where they were treated with illegal methods of interrogation. These transfers took place with the knowledge and tacit approval of democratic governments and criminal justice agencies (Grey 2006). The states to which the prisoners were transferred were all characterised by a long tradition of state authoritarianism, and human rights abuses in criminal justice institutions and by their staff.

Western governments and multi-national corporations promote and even act as accomplices in widening the compliance and enforcement gaps that provide opportunities for outsourcing. The competition for resources, in particular energy, is a driving factor in this process. In complicity with corrupt governments, they prevent the building of local institutions and of security provisions that are in the interests of citizens as well as their well-being and safety.

As they moved away from clearly defined elites, the crimes of the powerful have shifted from predominantly white collar towards violence. This is most manifest in weak and failed states after serious ethnic conflicts and in situations of civil war. Small and often tribal groups, along with para-military forces, usurp state power and assume governmental authority and tasks. Such a context, where power is highly fluid and changes hands from one 'entrepreneur of violence' to the next, produces *crimes of power*, and not crimes of the powerful. Where the state is weak because it is just emerging, or where its institutions have collapsed, organised crime takes over, and markets of violence reign instead of governments.

Corruption and economic crimes and trafficking in people, drugs and weapons, up to large-scale environmental crimes, violent predation as well as extended 'turf wars', form distinct crime patterns at either side of the spectrum of functioning states. Failed states indeed hold the top positions in international corruption rankings. Sudan, Congo, Chad, Turkmenistan and Russia are ranked as either failing states or on the brink of failure, and they all have top-level corruption scores (Foreign Policy 2006).

It is not the strong state that is the natural accomplice of crimes of the powerful or that tacitly approves of them – if the government and its bodies are not involved themselves. It is the weak states which are seedbeds of crimes of power and the powerful, and, in addition, of the most dangerous violent crimes like genocide that are orchestrated

by those in power.

If the state is but one actor amongst many, and there is no 'natural' consensus and identity of interests amongst elites, new routes can open up to make the powerful accountable. When numerous arenas of action emerge, the arenas of legal action will not be exempt from this process. Penal law is not the last resort, but just one in a range of possible strategies.

During the last decade, NGOs have established themselves as influential actors at a national and international level, with both levels closely linked and re-enforcing each other. Corporations are sensitive to threats to their national and international reputation, and 'corporate naming and shaming' has been successful. Naming and shaming can affect a whole nation, as, for example, when the Corruption Index published by Transparency International instigates national discourse about elite crimes. International Codes of Good Practice are negotiated within industries, and codes of business ethics are developed in companies worldwide.

Globalisation has transformed the environment, the actors and the types of crimes of the powerful, and shifted these crimes into the direction of more dangerous and more violent crimes. However, these very transformations have also created more opportunities for prevention and prosecution, and they have redefined the role of criminal justice in curbing these crimes.

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