

Hess's Mafia, the Mosaic of Criminological Theory, and the Corporate Crime Wave

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The study of crime, particularly organized crime, has not had an easy road into the pantheon of scholarship. The U.S. criminologist Donald Cressey (1987) likened it to the struggle to get the accordion accepted into the academy's orchestra. Musicians who had worked hard to master the great symphonies apparently did not warmly welcome this upstart instrument, an aesthetic arriviste which had little literature and low status in the canon of classical sounds. Similarly, in the 18th and 19th centuries each of the social sciences had to claw its way past the disciplinary police guarding the gates of academe. And with due respect to Bentham and Beccaria, these disciplines were all well established by the time criminology came round to knock on the door.

Like the sister social sciences on which it draws, criminology had to establish its intellectual legitimacy. And like its sisters, to some degree criminology's legitimation entailed a politics of ingratiation: A tendency to commence theorizing from standpoint of the existing order and crime control (giving it utilitarian value for the powers that be); and an embrace of positivist methods like quantification (giving it the patina and hence some of the prestige afforded to an »objective science«). This was not unlike the accordionist auditioning to assure the conductor that her instrument could play Beethoven with the best of them.

Such an approach has generated considerable research funding and allowed the accumulation of a respectable body of empirical criminological research, but it also entailed disadvantages. Adopting the crime control standpoint as if it were somehow neutral or natural tends to lead us to see acts which violate the criminal law as a master status (Becker 1963), standing for the actors too completely and simplistically, setting them apart from the law-abiding as if criminals were a different species or came from a different gene pool. This tends to blind us to the many ways in which criminals and non-criminals do not exist in neat taxonomic categories, and thus to prevent us from recognizing the considerable overlap (Matza 1969) between criminal and conforming behaviors.

A related disadvantage is the tendency toward specialization and hypothesis testing, or what Kuhn (1970) called »normal science« – working to solve manageably sized, incremental puzzles defined by and located within a dominant paradigm. While this sort of work has an important place in the division of intellectual labor, it has a tendency toward theoretical fragmentation of the criminological subject. Most criminology journals privilege quantitative articles that test hypotheses, which are usually partial theories about why a class of individuals defined by their violation of certain laws engage in such violative behavior. Broad, comprehensive studies, whether historical-comparative or ethnographic, remain less often funded and published than those that »explain« even a small »percentage of the variance« in a statistical model. The historical and political-economic conditions under which a deviant phenomenon arose, the practical procedures by which it was defined as criminal, and the constraints and choices constituting the routes by which specific individuals ended up engaging in this type of criminal conduct are too rarely part of the analysis. Most of the sister social sciences share this tendency in so far as they adopt the natural science model.

But every once in a while a work of criminological scholarship comes along that is so deep and so rich that it rises above such limitations and transforms our understanding. Such works tend to be broadly integrative, taking into their analytic aperture so many of the elements of the context in which a criminal phenomenon is embedded that readers come to see how all the pieces fit together, from individual lived experience and family- or community-level variables to political-economy and social structure. Henner Hess's magisterial *Mafia and Mafiosi* ([1973] 1998) is such a book. In this essay I review some of its core themes and suggest links to a range of other important criminological work published before and after it. In the final section, I speculate that some aspects of Hess's explanation for the origins of mafia networks may help us understand the current corporate networks and their crimes.

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I. The Distribution of Dignity and the Culture of the *Uomo di Rispetto*

A 1992 essay on »The New Mafia« began by noting that »deadly feuds« between old mafia families and the rise of »new syndicates« of other ethnic groups based in the illegal drug industry had led to a decline of »the American Mafia as a whole«. Hess identified this trend twenty years earlier, but unlike Hess, the author characterized »the mafia« as a single, »once invincible« organization (Massing 1992: 6). In a recent article on agricultural change in Sicily, the *New York Times* similarly noted that for centuries, the »violent thugs« of »the Mafia« grew there like some kind of »crop«, as if the conditions giving rise to mafiosi were geographic in nature (Feuer 2004: A4). At least in the U.S., novels and films, as well as the news media continue to misunderstand »The Mafia«.

Even criminologists bought into the notion that the mafia was one grand entity. Donald Cressey was a highly regarded criminologist among whose books was a best-seller on the mafia, *Theft of a Nation* (1969). Yet in his »Foreword« to the English edition of Hess's *Mafia and Mafiosi*, Cressey noted that Hess had taught him that he had been wrong in characterizing »the Mafia« as one giant organization: »By using »the« we create more structure than we know exists. We transform organisation into an organisation« (1973: viii). Indeed, Hess begins his book by noting that the mafia »has to be understood as a plethora of small, independent criminal organisations rather than as the secret society of common belief ...« ([1973]1998: xi). Instead of the rigid, centralized organization of the stereotype with inducted membership and a hierarchy of offices, there are only common values, understandings, methods, and ways of life. Hess figured this out when others did not in part because of his judicious adoption of what David Matza (1969: 8-31) has called the »naturalistic« or »appreciative« stance toward officially deviant subjects, rather than the »correctional« stance of more conventional criminology.¹

Values, norms, and attitudes (roughly speaking, culture) are central to Hess's definition of mafia. Within its moral code, the »ability to defend one's own dignity at any price« is central. Hess writes that »The decisive point« in this »moral code, is the fact that a man of honour, a mafioso ... must avenge any violation of the integrity of his person ... by his own efforts, which mostly means resorting to violence« ([1973]1998: 11). This violence is not merely the means to material gain, although it is often that, too. By the strategic use of violence, while formally criminal behavior, a mafioso becomes an *uomo di rispetto*, a man of respect. Mafiosi do not live life on the run like the bandits and brigands once common to the hills of Sicily (cf., Hobsbaum [1969] 2000). Hess demonstrates that they are not just feared but respected citizens of their villages, for they live largely according to the subcultural values that operate in Sicilian society as a whole.

Hess's first chapter led me to view the maldistribution of dignity as a structural component of violence. For such a code of honor – defense of dignity at all costs – to be so highly developed and broadly shared, I thought, Sicilians must have had their dignity denied or assaulted often. Such an hypothesis is consistent with most criminological theory as well as common sense. Indeed, Hess goes on to show that this over-grown attention to respect and honor developed in the fertile soil of Sicilian history: »... Sicily never was the subject of its own history but invariably a colonially ruled territory« ([1973]1998: 16). During early Roman domination, a third to half the population of Sicily were slaves on big estates, whose owners subjected them to economic exploitation and arbitrary authority. From the 9th to the 12th century, Hess shows, Sicily was ruled by Arab-Berber elements, until the Normans and Hohenstaufens pushed them back. Large landowners lived as feudal barons, leaving most Sicilians impoverished tenant farmers or peasants without property well into the 19th century. Even after Garibaldi formally unified Italy's various regions into a modern nation state in the 19th Century, Sicilians suspected the outsiders from Rome were attempting to impose yet another form of foreign domination. This island in the middle of the Mediterranean, then, had a long history of domination, of repeated and largely unavenged humiliations under varying forms of alien rule, and virtually no experience of democratic self-determination under law.

At the level of the individual, Hess shows that most mafiosi come from the lowest social strata where the force of such domination had been most intense – landless peasants, often illiterate, most engaged in menial labor, some former goatherds. Not surprisingly, the model of human life held up as ideal by Sicilians was that of a *gentiluomo*, a gentleman who had achieved sufficient economic security that he did not need to engage in manual labor, which was »despised as inferior« or even »humiliating«, but rather could devote himself to more noble pursuits. Hess stresses that this ideal clashed with the harsh reality of life as impoverished peasants competing for tenant farmer plots, a world of *miseria* to which most Sicilians were resigned as if it was a fact of nature. Those who achieved better via

¹ As Matza notes, this was the approach to deviance and crime pioneered by the Chicago School sociologists (e.g., Anderson 1923; Shaw/McKay 1942; Sutherland 1949; Lemert 1951; Becker 1963). The term »appreciative« does not, of course, connote any moral approval of the violence and crime committed by mafiosi.

mafioso means generally were not viewed as alien by other Sicilians who shared this history and culture. The same may be said for many forms of crime among other subaltern groups.²

II. Mafia, Conformity, Mobility

Hess develops a sophisticated Marxian criminology in this book (although it is also Weberian and even Durkheimian). He shows the historical conditions under which this peculiar social formation arose, the position of Sicilians in the caste system of feudal Europe, their evolving relationship to the means of production, and how mafia power operated in Italian politics. In short, he situates mafia crime in its context.

Hess also builds into his analysis something that is often underdeveloped in Marxian theory, a historicized social psychology: The feelings that animate mafioso behavior, the moral code which ignites and channels them, and the cultural circumstances under which these arise and make phenomenological sense. This theoretical strategy stands much of conventional criminology on its head. Rather than theorize on the basis of the characteristics of offenders or offenses that appear to distinguish them as non-conforming, as is so often done, particularly in U.S. criminology, Hess stresses the conjuncture of political-economic, institutional, and cultural conditions under which criminal (mafioso) behavior can be understood as conformity to unique local norms rather than as a discrete form of deviance requiring special explanation.

Hess's analysis is so richly theorized that it is easy to see how other styles of theory can coexist within it. For example, in his hands the mafiosi provide a classic illustration of Robert Merton's (1938) anomie or strain theory, which was drawn from Durkheim and served as the seedbed for numerous other important works in American criminology.³ Merton argued that deviance is one type of adaptation to a conflict between widely shared ends (e.g., the life of a gentiluomo) and severely blocked means for achieving those ends. If all members of a society are socialized to seek the goal of material success but substantial segments of that society are denied access to the legitimate, institutional means for reaching that goal, some will gravitate toward alternative, sometimes disapproved means. Thus, instead of attributing deviance to »imperious biological drives« of the odd individuals who »are not adequately restrained by social control«, Merton's theory, like Hess's, shows how certain features of »social structure generate the circumstances in which infringement of social codes constitutes a »normal« response« (1938: 672). Like Merton, Hess shows that mafioso behavior was perhaps the only means available to most Sicilians for gaining an »increase in prestige and a steep rise up the social ladder« ([1973]1998: 132).

Daniel Bell is not a criminologist per se, but he was among the first U.S. sociologists to de-mythologize organized crime by showing how it functioned as a »ladder of social mobility« (1960: 127) for recurring waves of ethnic immigrants coming to the U.S. Like Merton, Bell noted that this was especially so for groups whose access to »legitimate« means of mobility was limited – Jews, Irish, Italians. Italian immigrants came to the U.S. a bit later and were more often »dispossessed agricultural laborers«, some fleeing the economic dead-end of Sicily for the allegedly open opportunity structure of the U.S. Ironically, many »found the more obvious big-city paths from rags to riches pre-empted« and so had to take jobs as »ditch diggers, on the railroads as section hands, along the docks ... [F]inding few open routes to wealth«, Bell noted, »some turned to illicit ways« (1960: 142-3).

In the 1950s, the U.S. launched a major investigation into organized crime, whose tentacles, many feared, reached deeply into America's institutions (like communism, the other demonic conspiratorial force that was made into an object of great fear in the U.S. in the 1950s). But Bell shows that the investigation by the Kefauver Committee (named after the Senator who chaired it) could not find »any real evidence that the mafia exists as a functioning organization« (1960: 139).

Hess opens his book by quoting a Sicilian mafioso denying in a court proceeding that he knows what »the Mafia« means. So widespread is the stereotype of The Mafia as a centralized, sinister cabal that most readers probably assume this man was being disingenuous, a »stand-up guy« who steadfastly refused to admit anything to authorities a la

² Ironically, the exercise of power by means of violence by relatively powerless people typically entails an affront to someone else's honor and therefore rebounds negatively upon the overall distribution of dignity. Like children bullied in the schoolyard, small shopkeepers intimidated into paying protection money to mafiosi experience an assault on their self-respect. Their emotional scars tend in turn to fuel the desire for vengeance, thus perpetuating the cycle. Understanding something of the origins of mafioso behavior does not imply forgetting that its consequences are often profoundly damaging and undemocratic.

³ For example, Cloward and Ohlin's *Delinquency and Opportunity*; for a useful review of other works that continue in this tradition, see Passas and Agnew (1997).

mafia mythology. But as noted above, one of the surprises in *Mafia and Mafiosi* is that a mafioso could make a sincere claim to know nothing of The Mafia.

Similarly, Bell reports that »nearly all the Italian gangsters« who were questioned by the Kefauver Committee »asserted that they didn't know about the Mafia« (1960: 139). This testimony, too, was widely disbelieved and so did not stand in the way of, and may have been seen as confirming, the story the Committee wanted to tell anyway. In its report the Committee concluded »There is a nationwide crime syndicate known as the Mafia.« Bell shows that the Committee »was taken in by its own myth of an omnipotent Mafia« in large part because it failed to understand that crime was »part of the inevitable process of ethnic succession«, or what he called »a queer ladder of social mobility« for immigrant groups who were structurally shut off from other opportunities (1960: 141).

While Bell's somewhat functionalist analysis of organized crime in the U.S. differs from Hess's more Marxian analysis of mafiosi in Sicily, both link the logic of behavior formally defined as criminal to social structures marked by blocked opportunity – arguably the most robust if not always the most fashionable finding in the history of criminology. Moreover, much like Hess's Sicilian mafioso, Bell sees that the U.S. gangster – like the hunter, the cowboy, and the soldier of American lore – »was a man with a gun, acquiring by personal merit what was denied him by complex orderings of stratified society« (1960: 129). By means of their complex renderings of mafioso behavior in situ, both Bell and Hess lay bare the more mundane, almost quotidian character of mafia crime. Their interpretations do not lend themselves to the construction of »The Mafia« as the grand conspiracy/external threat that is so functional for politicians and the media, but they do retain the virtue of sociological sense.

III. Strategic Violence and Reputation

Hess demonstrates that all mafiosi began their careers with acts of violence: »An act of force opens a man's road to power« ([1973]1998: 50). On the surface, such acts were about avenging affronts to one's honor, regaining respect, but they were not merely about that. Such violence symbolized to the community a mafioso's willingness to use violence, which in turn gave him what Hess calls a »halo of reputation«:

»A mafioso must be in a position to instill fear, and this must be matched by fear on the part of the subjected – otherwise he cannot succeed in exerting an influence on others, in discharging the functions which constitute his part, without having continually to apply physical coercion – and this would not be practicable« ([1973]1998: 56-7).

Herein lies a paradox of mafia power: Only by demonstrating one's willingness to use violence can one instill the fear in others that reduces the need to use violence in the future.⁴

Hess's subtle interpretation of mafia violence anticipated subsequent scholarship on similar forms of violence. For example, anthropologist Philippe Bourgois's (1996) path breaking ethnographic study of the crack cocaine economy in the Spanish Harlem neighborhood of New York City showed that some of the people there gravitated toward selling crack not just because it provided far more income than they could earn in the licit economy. Just as important was the fact that the low-end legal jobs available tended to be in office cultures which they experienced as continuously humiliating. Ironically, then, often the most industrious and talented young people from Spanish Harlem – Horatio Algiers of the demimonde – were drawn to crack selling as a step up, not only in income but in respect.

To succeed in this world, however, virtually required the strategic use of violence quite like that of the mafiosi described by Hess. Drug prohibition simultaneously creates the conditions for enormously profitable enterprises and prevents access to legal means of resolving disputes arising around those enterprises (e.g., Reinarmán/Levine 1997). Bourgois shows how his crack dealer respondents used violence to develop a »street rep« or reputation that would serve as a disincentive to those who might try to rip them off, horn in on sales turf, steal product or customers, or otherwise take advantage of them. Many were even reluctant about beating up or killing those who stole from or cheated them, but they felt constrained to do so in order to maintain their rep, which in turn would reduce the risk

⁴ A rough parallel may be found in E. P. Thompson's well known analysis of the moral economy of 18th century English crowds protesting exploitative prices. In one instance unearthed by Thompson there was a riot against excessive wheat prices, after which bags of flour were stolen and distributed. A few days later, the brother of the offending wheat dealer received an anonymous letter: »Sir, If you do not bring your Wheat into the Market, and sell it at a reasonable price, your Barns shall be pulled down.« Such riots, then, not only marked the moral boundary beyond which market practices could not safely stray; they gave substance to subsequent threats, which often resulted in lower prices *without* riots. As Thompson observed, »a thundering good riot in the next parish was more likely to oil the wheels of charity«, which also rendered rioting less necessary (1993: 244-246).

of future stealing or cheating that could require further violence and thus greater risk of retaliation and/or arrest. Like Hess's mafiosi, only by having the reputational capital that stems from the ruthless willingness to be violent could these crack dealers reduce their need to actually be violent.

IV. Lawlessness and Self Help

Hess's analysis of mafioso behavior invites us to rethink other taken for granted assumptions about crime and violence. By the customary standards of advanced European states, whose claim to a monopoly of the legitimate use of violence is »matched« by its actual capacity to use it to enforce laws, mafiosi might look like dysfunctional deviants or even sociopathic outlaws. But these standards did not fully apply in the Sicilian case,⁵ where the subcultural norms were in conflict with what were only the aspirations of the state:

»The Bourbon state did not succeed, any more than did the Italian state since 1860, in guaranteeing a truly effective protection of persons and property. This inability of the state's coercive power to discharge its order-maintaining function made private self-help an indispensable necessity« ([1973]1998: 147).

Hess shows that this self help sometimes took the form of »ruling functions« in which mafiosi joined in temporary alliance with local elites or conservative political parties to defend the interests of property owning classes against rebellious peasants, unions, or communists. But his notion of »private self-help« is broader than this. A mafioso uses the power he gains from his willingness to use violence for more than the aggregation of personal wealth. Members of his village frequently ask him to mediate or settle disputes, to protect the weak, to give advice ([1973]1998: 76).⁶ In this sense, mafiosi serve state-like functions under conditions marked by the absence of an effective state – after the collapse of the feudal order but before the institutional capacities of the modern Italian state were sufficient to succeed in enforcing its laws. Charles Tilly (1985) likened the early European states to »protection rackets«, i.e., insulating powerful clients against internal and external enemies. But in explaining the mafia, Hess inverts this analysis: »Instead of seeing protection rackets in the process of government, [we can] recognize government processes in protection rackets« ([1973]1998: 194). Surely it can be said that the mafia led to lawlessness, but it is also true that lawlessness led to the mafia.

This weak state/self-help argument, first made by Hess in the 1970 German edition of his book, prefigured the innovative approach to crime and law developed by Donald Black. In an article entitled »Crime as Social Control«, for example, Black argues that the »expression of a grievance by unilateral aggression such as personal violence« is often an odd form of social control, specifically »self-help« (1983: 34), which tends to occur when formal social control or law is unavailable. For example, most of the homicides in modern societies are responses to behaviors that the killers found deviant (provocations, affronts to honor, crimes against them). Sociologically if not legally, then, such homicides are a form of social control by means of self-help, their statutory definition notwithstanding. Assaults similarly arise most often in the context of a grievance or fight and in many cases are thought by the official perpetrators to be fully justified. Even what are often considered garden variety property crimes frequently entail a self-help dimension. Black shows that in about one in three burglaries and robberies, the victims and perpetrators knew each other and were often in some form of conflict over money (e.g., debt collection for those without legal recourse). The same may be said for an unknown but likely significant portion of what are thought to be random and senseless acts of vandalism, which in this view are often a form of retaliation or social control through self-help by relatively powerless youth.

Anthropologists have long noted such forms of self-help as social control in traditional tribal and stateless societies. But the development of states and formal legal systems in the developed world are typically assumed to have caused such self-help to atrophy. But like Hess showed for Sicily, Black demonstrates that »the state has only theoretically achieved a monopoly over the legitimate use of violence« because »In reality, violence flourishes ... and most of it involves ordinary citizens who seemingly view their conduct as a perfectly legitimate exercise of social control« (1983: 39). It follows that the extent to which law can deter is in part a function of the extent to which perpetrators

5 Gramsci made much the same point about Italy more generally when he noted »... the fact of there never having existed a »rule of law«, but only a politics characterised by absolute power and by cliques around individuals or groups.« ([1930] 1971: 275).

6 At least some films have represented this aspect of mafioso behavior accurately. For example, in Francis Ford Coppola's *The Godfather*, Don Corleone (Marlon Brando) is beseeched by less powerful family members and friends for help, advice, and various special favors that they believe only he has the power to grant. In return, they take on a moral obligation to reciprocate at some future point, if necessary. The current, award-winning television series about a mafia family in New Jersey, *The Sopranos*, also appears accurate in this way.

believe they are engaging in self-help/social control. Perhaps most important, Black shows that such »crimes of self-help are more likely where law is less available« as a means of redressing grievances or resolving conflicts, as it is, for example, among lower-status and oppressed groups in virtually all societies. »In all of these settings neglected by law, crimes of self-help are comparatively common. There are, so to speak, stateless locations ...« (1983: 41).

Like Hess, Black breaks from conventional criminology by means of his analytic disattention to the fact that the behaviors at issue are defined as criminal by the state. Both scholars know, of course, that crimes of self-help, whether by mafiosi or ordinary citizens, have victims, and that there are grave risks in vigilantism in the absence of state and law. But for the purposes of criminological theory, Hess was better able to understand how and why mafiosi behave as they do by paying attention to the other functions served by their behavior in a relatively stateless and lawless context. Similarly, Black was able to see something new about the nature and functions of ordinary crime by ignoring state definitions of criminal behavior that appear to make it distinct from non-criminal behavior.

V. The Weak State and Corporate Crime: A Hypothesis

Hess ends his book by tracing the decline of the old or *vecchio mafia* and the emergence of the new or *nuovo mafia*. The *vecchio mafia* arose from a specific Sicilian subculture in which it enjoyed significant popular legitimacy. This rise occurred in an agrarian society in which the traditional feudal order was disintegrating and the state was underdeveloped and ineffective. As Gramsci famously observed, »... the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear« ([1930] 1971: 276). In such a context, the end sought through violence for *vecchio mafiosi* was not merely money but power. They used it in part to serve legitimate social functions, and they treasured the respect they received in their villages. Hess quotes one *vecchio mafioso* on this point:

«Do you know why I became a uomo d'onore [man of honor or mafioso]? Because before I had been a nobody in Palermo and then afterwards where I went, heads bowed. You can't value that in money« (Scarpino 1992: 94; cited in Hess, 1998: 198).

The *nuovo mafia*, by contrast, especially those who emigrated to the U.S., developed in cities in a modern industrial society where a more fully developed state functioned comparatively well. Their violence has been more often entrepreneurial; its aim is profit rather than power. The *nuovo mafia* serves few if any social functions seen as legitimate by the community and enjoys little respect. The mafia, Hess suggests in conclusion, may have been reduced to mere organized crime. In short, as social structural conditions changed over time, so did the nature and functions of mafiosi.

Conditions have continued to change, of course, and I suggest that just as the traditional mafia morphed into modern organized crime, so have new conditions blurred the boundary between organized crime and modern corporate crime.

Corporate crime does differ in some respects from traditional mafia crime. The violence in corporate crime tends to be more mediated and/or camouflaged.⁷ The etiology of corporate crime is not about individual honor but bureaucratized avarice.⁸ Corporate crime originates in a context of extreme entitlement whereas mafia crime originated in a context of extreme deprivation. Corporate criminals are typically wealthy and powerful when they commit their crimes while mafiosi were typically poor and powerless at the start of their criminal careers. Unlike mafiosi, corporate criminals do not lack legitimate means to material success nor is their path to mobility blocked. While the mafia engaged in self-help, corporate criminals help themselves.⁹

Such differences aside, Hess's notion that a weak state was central to the rise of the mafia¹⁰ may also be used to help explain the recent corporate crime wave. From at least Hobbes onward, there has been a tendency to assume that the process of modernization inexorably leads to the development of strong, stable states. But the ferocious

7 For example, the predictable death and destruction from Union Carbide's poorly maintained chemical plant in Bhopal, India was framed as an unfortunate industrial »accident«; what amounts to the mass theft of old-age pension funds by means of stock market manipulations has been called »accounting irregularities«.

8 Alternatively, it may be that bureaucratized avarice is the form that individual honor takes among high-status executives who crave yet more status.

9 At least one common characteristic should be noted: Mafiosi and corporate criminals are almost universally male, which suggests the highly gendered nature of the behaviors in question. Traditional or hegemonic masculinity appears to be an essential feature of both mafia and corporate crime (cf. Connell 1995).

10 Hess's explanation has since received additional support. As the Italian state has grown stronger, an anti-Mafia movement has also developed, each appearing to embolden the other such that more mafiosi have been prosecuted and imprisoned than ever before (see, e.g., Schneider/Schneider 2003).

march of marketization across the globe, especially since the end of the Cold War, is beginning to make that assumption seem a quaint relic of Enlightenment discourse. It is now clear that there is no inexorable line of development of the state, but rather that the structure and organization of the state, as well as its institutional capacities and policy outputs, are all contingent political outcomes (see, e.g., Domhoff 1990). In the U.S. and to a lesser degree in most Western industrial democracies, both regulatory and social support functions of the state have been under attack from the corporate right for over two decades. One core consequence of this has been the systematic weakening of state power relative to that of the market (rendering the market closer to what Black called a »stateless location«). I suggest that this de-development of the state, particularly its regulatory functions, has facilitated the recent corporate crime wave.

Capitalist states have always been buffeted by the tensions between market forces and democratic politics, but in recent years there has been a marked increase in attacks on both the principle of state regulation of markets and the practical capacity of the state to regulate. Beginning with Reagan-era deregulation and privatization in 1981, the right has eroded if not eviscerated many of the business reforms passed in the Progressive Era prior to World War I, in the New Deal era of the Great Depression, and in the 1960s. From Reagan on, it has been a central axiom of Republican economic policies to »get government off the backs of business«, which they claimed would solve most of America's problems (see O'Connor 1973; Piven/Cloward 1982; Reinerman 1987: 1-12). The Bush I and Bush II administrations have continued the crusade of ideological delegitimation of the state, openly attempting to weaken if not eliminate the state's regulatory functions and capacities.¹¹ With only minor exceptions in the Clinton years (1992-2000), the corporate right has succeeded in reducing in the size and scope of state constraints on business, creating a weakened if not a weak state.

In the technology-driven economic boom of 1995-2000, the Clinton Administration eliminated the budget deficits created by the Reagan and Bush I administrations, but the surpluses that gave the state stronger fiscal capacities were quickly wiped out by Bush II and a right-wing Congress. On top of a massive tax cut, they reduced the ability of the Internal Revenue Service to audit corporate tax returns by 28 percent (Johnston 2003). Nearly two-thirds of U.S. corporations reported owing no taxes at all during the boom years of 1996-2000 (Browning 2004a), but between 2000 and 2004, the use of »abusive tax shelters« and »aggressive corporate lobbying« resulted in a further sharp decline in corporate taxes paid (Browning 2004b):

»[A]n independent analysis of new Internal Revenue Service data released today shows that tax enforcement has fallen steadily under President Bush, with fewer audits, fewer penalties, fewer prosecutions and virtually no effort to prosecute corporate tax crimes. The audit rate for the 11,200 largest corporations ... has fallen by almost half over the last decade.« (Johnston 2004: C1)

Beyond taxes, Bush II has openly appointed executives, lawyers, and lobbyists from affected industries to head the cabinet departments charged with regulating those industries (e.g., securities and banking, environmental protection, labor and workplace safety). The proverbial foxes have been put in charge of guarding the henhouses of the state. Until 2002, the Securities and Exchange Commission, which was designed to regulate stock and bond markets so as to prevent the sorts of speculative greed and fraud that caused the great crash in 1929, was run by a Wall Street insider and a similar board of directors so riddled with conflicts of interest that a government report found it to be »dysfunctional« (Labaton 2002).

This weakening of state regulatory capacity, I suggest, is a key precondition if not a direct cause of the unprecedented wave of corporate crime that began in the late 1990s in a wide array of industries.¹² Billions of dollars in fines have been paid to avoid prosecution, while dozens of top executives have been forced to resign and face criminal and civil court cases. Here are short summaries of only a few of the better known cases:

Tyco, a huge multinational conglomerate, was run by chief executive officer (CEO) Dennis Kozlowski who used accounting gimmicks to get the company to pay for his multi-million dollar New York apartment (replete with the now infamous \$14,000 shower curtain and \$6,000 umbrella stand) and a million dollar birthday party for his new wife on a Mediterranean island. He was later arrested for more systematically »looting« the company in a \$600 million-dollar fraud scheme, which he referred to as »financial engineering« (Sorkin 2002; Eichenwald

11 The exceptions being military, police, and what are now called homeland security agencies.

12 Sebastian Scheerer rightly points out that with corporate criminality, as with any form of crime or deviance, it is possible that what appears to be an increase in criminal behavior may instead be an increase in awareness and/or policing of such behavior. See Kitsuse and Cicourel (1963) on the distinction between »behavior producing processes« which lead to an actual increase in the behaviors in question and »rate producing processes« which lead to an increase in the number of officially documented cases or the rates of such behaviors. Because corporate criminals go to great lengths and have huge resources with which to conceal their activities, it is difficult to tell which type of process is operating. But the extraordinary number of cases discovered in a context marked by clearly declining regulatory and enforcement capacity tends to support the claim of a corporate crime wave.

2002b). After conviction for personal tax fraud, the corporate trial ended in a mistrial, but he is being re-tried in 2005.

Enron, once the world's biggest energy trader, was a Texas conglomerate whose executives were the largest contributors to George W. Bush's presidential campaign in 2000. Prosecutors determined that Enron had engaged in a series of major accounting frauds and market manipulations which, once uncovered, caused the entire company to collapse into bankruptcy. Millions of stockholders and pensioners suffered substantial losses as a result. A few mid-level executives have been convicted and are serving prison terms, but the top executives were still awaiting trial in 2005 (Eichenwald 2002a; Barboza 2002).

Worldcom, a telecommunications giant built up from a small local company by means of highly leveraged mergers and acquisitions, went bankrupt and its CEO, Bernard Ebbers, was forced to resign after the press discovered that he illegally »borrowed« \$408 million from the company to cover his stock speculations, using fraudulent accounting to prop up the price of the company's stock as collateral for those »loans« (Morgenson 2004). In 2005, he was convicted on dozens of charges.

Adelphia Communications, one of the largest U.S. cable television companies, was controlled by the Rigas family, several of whose members were recently convicted for a variety of fraud schemes in which they bilked billions of dollars from Adelphia in the form of »loans« for other personal investments, including a golf course development (Eichenwald 2004).

Riggs Bank, in Washington, DC, solicited, disguised, and then transferred to off-shore shell corporations illegal deposits from Augusto Pinochet, former Chilean dictator (\$200 million), and Teodoro Obiang, dictator of Equatorial Guinea (\$700 million). The bank also held some 150 similarly suspicious Saudi accounts (O'Brien 2004).

Citigroup, Credit Suisse First Boston, Merrill Lynch, and numerous other top financial firms paid over \$1 billion in fines for defrauding investors by issuing false research reports to bolster the stock price of companies that gave them investment banking business (Morgenson/McGeehan 2002). They have since been fined hundreds of millions more for other offenses discovered after that settlement.

These cases were followed by new scandals in the mutual fund industry for allowing »sweetheart« or corrupt »late trades«, and in the insurance industry where companies colluded to arrange fake bids to create the appearance that agents were acting in the clients' interests when they were being paid secret fees for steering business to those companies (Treaster 2004). Other large-scale corporate crimes discovered just since 2000 are too numerous to list here. While the above examples are drawn from the U.S., where the state may have been most weakened, similar scandals surrounding Parmalat in Italy and Ahold in the Netherlands suggest that this corporate crime wave may be spreading in the wake of globalization.

Hess described Italian mafia networks of the 19th and early 20th centuries as comprised of clientelistic, extra-legal, quid pro quo relations between mafia *capos* and political elites of a state that was still being developed. At least in the U.S., the late 20th, early 21st century corporate sector has developed networks comprised of clientelistic, extra-legal, quid pro quo relations between corporate *capos* and political elites of a state that is being de-developed.

The hypothesis is that global marketization will further weaken state regulatory capacities and thus encourage still more mafia-like behavior from increasingly state-less corporations. This hypothesis surely requires further specification and complication. But if criminological theory is to make sense of the serial scams by which corporate criminals recently have been pillaging the public, it will need to excavate their many layers – structural and cultural, institutional and individual – just as Hess did so brilliantly for mafia and mafiosi.

Literature

Anderson, Nels (1923): *The Hobo* University of Chicago Press, Chicago.

Barboza, David (2002): »Despite Denial, Enron Papers Show Big Profit on Price Bets«. In: *The New York Times*, December 12, p. A1.

Becker, Howard S. (1963): *Outsiders: Studies in the Sociology of Deviance*. Free Press, New York.

Bell, Daniel (1960): »Crime as an American Way of Life: A Queer Ladder of Social Mobility«. In: *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties*. Free Press, New York, pp. 127-150.

Black, Donald (1983): »Crime as Social Control«. In: *American Sociological Review*, 48, pp. 34-45.

Bourgois, Philippe (1996): *In Search of Respect: Selling Crack in El Barrio*. Cambridge University Press, New York.

Browning, Lynnley (2004) (a): »In Study, Most Companies Reported No Taxes«. In: *The New York Times*, April 6, p. C9.

- Browning, Lynnley (2004) (b): »Study Finds Accelerating Decline in Corporate Taxes«. In: *The New York Times*, September 23, p. C3.
- Cloward, Richard A./Ohlin, Lloyd E. (1960): *Delinquency and Opportunity*. Free Press, New York.
- Connell, R.W. (1995): *Masculinities*. University of California Press, Berkeley.
- Cressey, Donald R. (1969): *Theft of a Nation: The Structure and Operations of Organized Crime in America*. Harper and Row, New York.
- Cressey, Donald R. (1987): »Squeezing the Accordion into the Academy«. In: *The Criminologist*, 12(3), pp. 1-11.
- Domhoff, G. William (1990): *The Power Elite and the State*. Aldine de Gruyter, Chicago.
- Eichenwald, Kurt (2002)(a): »Flinging Billions to Acquire Assets That No One Else Would Touch«. In: *New York Times*, October 3, p. C4.
- Eichenwald, Kurt (2002)(b): »Pushing Accounting Rules to the Edge of the Envelope«. In: *The New York Times*, December 31, p. C1.
- Eichenwald, Kurt (2004): »Warning to Executives: Honest Is the Best Policy«. In: *The New York Times*, July 10, p. C1.
- Feuer, Alan (2004): »Corleone Journal: Sicilians Are Making a Blood-Soaked Desert Bloom«. In: *The New York Times*, June 3, p. A4.
- Hess, Henner (1973): *Mafia and Mafiosi: The Structure of Power*. Westmead, Eng: Saxon House, and Lexington. Lexington Books, MA.
- Hess, Henner ([1973] 1998): *Mafia and Mafiosi: Origin, Power, Myth*. Revised edition, New York University Press, New York.
- Hobsbaum, Eric J. (2000 [1969]): *Bandits*. The New Press, New York.
- Johnston, David Cay (2003): »Tax Inquiries Fall as Cheating Increases: Report Shows Shift of Burden from Corporations to Individuals«. In: *The New York Times*, April 14, p. A16.
- Johnston, David Cay (2004): »Corporate Risk of a Tax Audit Is Still Shrinking, IRS Data Show«. In: *The New York Times*, April 12, p. C1.
- Kitsuse, John. I./Cicourel, Aaron V.: »A Note on the Use of Official Statistics«. In: *Social Problems*, 11, pp. 131-139.
- Kuhn, Thomas (1970): *The Structure of Scientific Revolutions*. Second Ed., University of Chicago Press, Chicago.
- Labaton, Stephen (2002): »Government Report Details A Chaotic SEC Under Pitt«. In: *The New York Times*, December 20, p. A1.
- Lemert, Edwin (1951): *Social Pathology*. McGraw-Hill, New York.
- Massing, Michael (1992): »The New Mafia«. In: *New York Review of Books*, December 3, pp. 6-13.
- Matza, David (1969): *Becoming Deviant*. Prentice Hall, Englewood Cliffs, NJ.
- Merton, Robert (1938): »Social Structure and Anomie«. In: *American Sociological Review*, 3, pp. 672-682.
- Morgenson, Gretchen (2004): »3 Banks Had Early Concern On WorldCom«. In: *The New York Times*, March 17, p. A1.
- Morgenson, Gretchen/Patrick McGeehan (2002): »Wall Street Firms Are Ready to Pay \$1 Billion in Fines«. In: *The New York Times*, December 20, p. A1.
- O'Brien, Timothy (2004): »At Riggs Bank, A Tangled Path To a Scandal«. In: *The New York Times*, July 19, p. A1.
- O'Connor, James (1973): *The Fiscal Crisis of the State*. St. Martin's Press, New York.
- Passas, Nicos/Agnew, Robert (eds.) (1997): *The Future of Anomie Theory*. Northeastern University Press.
- Piven, Frances Fox/Cloward, Richard (1982): *The New Class War: Reagan's Attack on the Welfare State and Its Consequences*. Pantheon, New York.
- Reinarman, Craig (1987): *American States of Mind*. Yale University Press, New Haven, CT.
- Reinarman, Craig/Levine, Harry G. (1997): *Crack in America: Demon Drugs and Social Justice*. University of California Press, Berkeley.
- Scarpino, Roberto (1992): »Mafia e politica (Antonella Romana intervista Roberto Scarpinato)«. In: *Mafia: Anatomia di un regime*. Rome, pp. 89-112.
- Schneider, Jane C./Schneider, Peter T. (2003): *Reversible Destiny: Mafia, Antimafia, and the Struggle for Palermo*. University of California Press, Berkeley.
- Shaw, Clifford/McKay, Henry (1942): *Juvenile Delinquency in Urban Areas*. University of Chicago Press, Chicago.
- Sorkin, Andrew Ross (2002): »Tyco Details Lavish Lives of Executives: A \$2,200 Wastebasket For the Chief Executive«. In: *New York Times*, September 18, p. C1.
- Sutherland, Edwin (1949): *White Collar Crime*. Hold, Rinehart, and Winston, New York.
- Thompson, Edward P. (1993): »The Moral Economy of the English Crowd in the 18th Century«. In: Thompson, Edward P.: *Customs in Common: Studies in Traditional Popular Culture*. The New Press, New York, pp. 185-258.
- Tilly, Charles (1985): »War Making and State Making as Organized Crime«. In: Evans, P./Rueschmeyer, D./Skocpol, T. (eds.): *Bringing the State Back In*. Cambridge University Press, New York, pp. 169-191.
- Treaster, Joseph B. (2004): »Insurance: Spitzer's Lawsuits Could Lead to Big Changes«. In: *New York Times*, December 6, p. C13.

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am Rande der Gesellschaft

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