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STATE CRIME AND THE SOCIOLOGY OF HUMAN RIGHTS

EL CRIMEN DE ESTADO Y LA SOCIOLOGÍA DE LOS DERECHOS HUMANOS

Tony Ward
University of Hull, UK

ABSTRACT

This article explores the relation between normative and sociological conceptions of ‘human rights’, and their use in defining and analysing state crime. Drawing on the work of Bryan Turner and Georg Simmel, it argues that ‘human rights violations’ should not be understood primarily as infractions of specific legal norms, but rather as violations of the fundamental principle of human rights, which is that states must justify their coercive actions in terms which all those affected could accept as free and morally equal subjects. This principle is a basic postulate of post-traditional moral thought, a system of values with which the interpretive social sciences have an implicit affinity.

Key words: *state crime, definitions of crime, human rights, values, Simmel.*

RESUMEN

Este artículo explora la relación entre la normativa y las concepciones sociológicas de “derechos humanos”, y su uso para la definición y el análisis del crimen de estado. Basado en el trabajo de Bryan Turne y Georg Simmel, se sostiene que “las violaciones de derechos humanos” no deben ser entendidas primordialmente como infracciones a normas legales concretas, sino como violaciones al principio fundamental de los derechos humanos, que consiste en que los estados deben justificar sus acciones coercitivas en términos que sean aceptables para todos aquellos afectados, en tanto sujetos libres y moralmente iguales. Este principio es un postulado básico del pensamiento moral post-tradicional, un sistema de valores con el que las ciencias sociales interpretativas tienen una afinidad implícita. .

Palabras clave: *Crimen de Estado, definiciones de crimen, derechos humanos, valores, Simmel.*

1. Introduction

Definitions of crime or deviance are important, not because they precisely demarcate the boundaries of a discipline, but because of the questions that they prompt us to ask¹. Do we, for example, want to inquire into why people break laws, or how they negotiate the experience or risk of being labelled as deviant, or why they cause harm to others? If we define 'state crime' partly in terms of human rights, this should encourage us to raise some sociological and political questions about the nature of human rights and why people violate them. To date, however, state crime scholarship has not explored the sociology of human rights as thoroughly as it might have done. This article seeks to contribute to such exploration by examining, in particular, the sociology of human rights developed by Bryan S. Turner and the much earlier sociological analysis of rights by Georg Simmel.

The concept of 'crime' has both a descriptive and a normative element. Descriptively, it denotes behaviour that is liable to incur some significant form of social censure and sanction – typically through the formal judicial processes of a state. Normatively, it indicates that such censure is or would be appropriate according to some moral or legal norm. Although the term 'crime' may be used in a 'detached' way – to indicate an infringement of a norm that the speaker does not endorse – this is atypical both of ordinary speech and of criminological writing. When we call something a crime we generally imply that we disapprove of it.

The term 'deviance', in Anglo-American sociology, is different in that it tends to be used in an ostentatiously detached fashion (similar to the detached normative statements analysed by Raz 1999, pp. 171-6). Sociologists of deviance typically wish it to be understood that they are talking about things that others in their society 'label' as deviant (Becker, 1963), but without endorsing the label and often with the intention of criticising the labelling process. This difference between 'crime' and 'deviance' is reflected in the cumbersome name of the leading European association of critical criminologists: the forty-year-old European Group for the Study of Deviance and Social Control (www.europeangroup.org).

The application of the term 'deviance' by the sociologist still involves a normative judgment. Without this judgment there could be no such thing as 'secret deviance' – deviance that sociologists know about but which is concealed from those who would (probably, in the sociologists' judgment) label it in a disapproving way if they knew about it. To make such a judgment requires the sociologist to interpret and apply a social norm – but in a detached fashion, without endorsement of its negative connotations.

No sociologist or criminologist that I know of actually takes such a detached attitude to genocide, torture, systemic corruption or other major infractions committed by states, nor indeed those less obviously heinous acts that are sometimes labelled 'state crimes'. On the other hand, if 'crime' is to be a sociological category it should refer to some kind of social fact, not merely convey the sociologist's own disapproving attitude. In 2000, Penny Green and I proposed a definition of state crime which openly combines both descriptive and normative criteria: state crime is organizational deviance by state agencies involving the

¹ As Kris Lasslett puts it, the definition of state crime given below should be seen as 'a call to enquiry' (personal communication, 2013).

violation of human rights (Green & Ward 2000). This definition has been taken up by the International State Crime Initiative (ISCI, www.statecrime.org) and by some other criminologists (e.g. Faust & Carlson, 2011).

This definition has been criticized for its vagueness (Rothe 2009, p. 6). It is debatable whether definitions in terms of international law, which Rothe favours, are any less vague. More importantly, the search for precision in definitions of deviant behaviour is misguided, as Matza pointed out in his classic work:

Students of society must tolerate such ambiguity.... Whether the phenomenon personified, say, by a waitress in topless attire is deviant is a question that will yield a clear-cut answer if our concept of deviation is sufficiently rigorous and operational. But the clear-cut yes or no will be gained only by suppressing, and thus denying, the patent ambiguity of this novel phenomenon and the easily observable tentative, vacillating and shifty responses to it. (Matza 1969, p. 11)

The boundaries of state crime are inherently imprecise and contestable. A core of clear instances of torture, genocide, crimes against humanity and so on are undoubtedly criminal in both legal and moral senses. But as we can see at the time of writing (early June 2013) in Turkey, where the boundary lies between legitimate state authority and violent repression is a question on which opinions within a particular state can differ sharply.

The approach encapsulated into the proposed definition requires the scholar of state crime to consider three questions: (1) Is the putatively criminal behaviour deviant in the sense that some significant social audience condemns the behaviour and puts pressure on the state to desist (or would be likely to do so if it became aware of the behaviour)? In the case of Turkey, relevant audiences would include those taking part in mass protests, NGOs (non-governmental organizations) such as Amnesty International, and foreign governments. (2) Is the deviance organizational, i.e. carried out in pursuit of the organizational goals of a state agency such as a police force, rather than the behaviour of a few 'rogue' police officers or other officials? (3) Does the behaviour violate human rights?

Underlying the third question are two assumptions: that human rights are internationally recognized and socially important standards, and that the ethical basis of those standards (as opposed to any particular legal formulation of them) is one to which scholars of state crime are and should be committed. I shall argue that this third question should not be seen as a legalistic one about whether a state agency's action violates some specific right ratified by international law (although international law may well be relevant to question (1) above). I view it, rather, as a question about whether the action of the state agency is consistent with treating those affected in the way that human rights discourse demands they be treated: as formally free and equal subjects whose coercive treatment demands justification of a kind that those subjected to it could rationally accept.

The main purpose of this article is not to defend this view of human rights as a matter of political philosophy (though I shall draw on the philosophical arguments of others), but to argue that such a view can inform, and be informed by, a sociological analysis of rights. I begin by looking critically at possibly the most important attempt in the English-speaking world to develop a sociological theory of human rights, that of Bryan S. Turner. I shall argue that while Turner's contribution is valuable, particularly for drawing attention to the difference between human rights and rights tied to citizenship, his attempt to erect a

foundationalist ontology of human rights on a sociological basis is unconvincing.

I shall then look back more than a century to the pioneering work of Georg Simmel. As a sociologist who was also a neo-Kantian philosopher, Simmel had a subtle appreciation of the way in which moral judgments and social relationships were interwoven. In a previous essay (Ward, 2009) I argued for the continuing value of Simmel's work in approaching crimes that do not involve human rights violations but rather interfere with aspects of the material world which are held to be intrinsically valuable, such as antiquities and forests. Here I want to suggest that Simmel still has important things to teach us about the sociology of rights, and can indeed be seen to have anticipated the ISCI approach in one respect. I should make clear, however, that my enthusiasm for Simmel (and for certain strands of contemporary political philosophy) is a personal one, not necessarily shared by other state crime scholars.

2. Turner on rights, vulnerability and sympathy

Bryan Turner sees the sociology of human rights as a necessary complement to a sociology of citizenship. As he points out, the contrast between 'the imprescriptible rights of human beings and the exclusive rights of citizens of sovereign nation-states' is central to the politics of human rights (Turner, 2006, p. 2). We can see this, for example, in contemporary Burma, where the significant (albeit limited) gains in rights for citizens has done very little for the predominantly Muslim Rohingya people who are excluded from the definition of citizenship, nor indeed for other Muslims who though legally recognized as citizens are excluded from the national community in so far as it is defined as an essentially Buddhist entity. The opposition movement headed by Aung Sang Su Kyi, much lauded in the West for its apparent commitment to human rights and democracy, has so far done very little to defend the rights of Muslims who are excluded from this narrow vision of national identity (Green, 2013).

Turner does not merely point out the political importance of human rights but seeks to align sociology with the defence of such rights, rejecting the 'value free' political sociology of Weber which can all too easily place sociology at the service of the state (Turner, 2002). He seeks an ontological foundation for human rights in the sociology of the body, boldly suggesting that such a sociology 'could function discursively as a substitute for the ancient notion of natural law' (1993, p. 500). Drawing on the German sociologist Arnold Gehlen, Turner emphasizes the frailty of human life, particularly in youth, old age, and sickness, together with a lack of instinctual restraints which compels humans to construct their own institutions (Turner, 2006, p. 29). For these reasons, Turner argues, humans need rights – and, in an inversion of conventional liberal theory, what they need above all are social and economic rights, such as rights to family life, health care and a clean environment (*ibid.*, p. 9). Civil and political rights are valued largely for their contribution to creating conditions in which these economic rights will be respected (*ibid.*, p. 10).

Turner's recourse to universal truths about human vulnerability is somewhat reminiscent of the legal philosopher H. L. A. Hart's 'minimum content of natural law', the 'rules of conduct which any social organization must contain if it is to remain viable' (Hart, 1994 [1961], p. 193). These rules were required, Hart argued, because of certain 'truisms' about human beings: their vulnerability, approximate equality (in terms of ability to harm one another), scarcity of resources and limited altruism, understanding and strength of will. In a more

conventionally liberal fashion than Turner, Hart emphasized the need for protection against physical violence and of some form or property.

The point of Hart's 'minimum content', however, is not to provide a basis for human rights but, on the contrary, to show that even the most iniquitous legal system can be viable so long as it affords protection to the basic needs of some people:

neither law nor the accepted morality of societies need extend their protection to all within their scope, and often have not done so.... Huckleberry Finn, when asked if the explosion of a steamboat boiler had hurt anyone, replied: 'No'm: killed a nigger.' Aunt Sally's comment 'Well it's lucky because sometimes people do get hurt' sums up a whole morality which has often prevailed among men. When it does prevail, as Huck found to his cost, to extend to slaves the concern for others that is natural among members of the dominant group may well be looked upon as a grave moral offence, bringing with it all the sequelae of moral guilt. (Hart, 1994, p. 200, quoting Twain, [1884] 2010, p. 415)

The contrast between a universalist morality and local definitions of deviance could hardly more starkly expressed.

Turner's response to this problem is to appeal to the idea of sympathy. Aunt Sally's capacity for human sympathy extends only to her white fellow-citizens, not to black slaves. Such limited sympathies reflect, according to Turner, a defective moral education. Turner is well aware that there is nothing innate or natural about universal sympathy: as he points out, '[a]nthropological research suggests that pre-literate peoples did not have an expansive or comprehensive notion of humanity, but on the contrary, regarded themselves in exclusionary terms as "the People"' (Turner, 2006, p. 15). To explain why an expansive notion of humanity should be cultivated, he appeals to Aristotelian virtue ethics: universal sympathy for human beings is a virtue that should be instilled by moral education. Although his emphasis on sentimental education has much in common with the philosophy of Richard Rorty (1989), Turner rejects Rorty's epistemological relativism. He sees sympathy for human suffering not simply as a historically contingent sensibility, but as a foundation for moral knowledge.

Turner is undoubtedly correct to see human sympathy as important in *mobilizing support* for human rights. To think that sympathy can provide a *foundation* for human rights, however, seems fundamentally mistaken. If the idea of human rights means anything, it is that others have rights *regardless of how we feel about them*. Any student of penal law should recognise that to be committed to human rights is to be committed to defending the rights of people for whom one has no sympathy whatever. For example, even the most odious and obviously guilty war criminal or torturer has the right to a fair trial, and a right not to be subjected to the torture they may have inflicted on countless others. Whether we feel, or ought to feel, a shred of sympathy for them has nothing to do with their human rights.

Turner fails to distinguish between what Benhabib (2011, p. 69) calls the standpoint of the 'generalized other' and that of the 'concrete other'. The 'generalized other', regardless of his or her personal characteristics, has a 'moral dignity' based upon 'what we as speaking and acting and embodied beings, have in common. Our relation to the other is governed by the norms of *formal equality and reciprocity*....' By contrast, when we take the standpoint of the 'concrete other' we respond to the individual's personality, history and identity. Both these standpoints are essential to moral discourse, including rights discourse. Sympathy with the

concrete other is an important motive to defend her rights, and understanding the concrete other's point of view is essential in order to apply abstract rights to specific situations. In so far as human rights have a justificatory foundation, however, it is to be found in respect for the generalized other as a moral and political equal, rather than in sympathy for the suffering of the concrete other. Indeed, as Benhabib (2011, pp. 62-70) argues, the most plausible justification for human rights lies in the idea of political justification itself – in the idea that the exercise of coercive power is legitimate only if it is justified in terms which those subjected to it can accept as free and equal beings. I shall return to this point below, but first I want to consider the relevance of Georg Simmel's sociology of rights and values.

3. Simmel on values and rights

Like his contemporary Max Weber, Simmel struggled to find a middle ground between neo-Kantian philosophy and the historical relativism and perspectivism of Nietzsche (Loiskandl et al., 1991). Simmel sought to understand moral and aesthetic, as well as economic, values as possessing a kind of objectivity, but one that was not to be found in some transcendental realm but rather in the place they occupied within a system of social relations. As Natàlia Cantó Milà puts it,

His intention was not to make everything disappear into thin air or relativize all firm-looking pillars of belief. Rather he sought to show that what makes them stable is not 'their absolute position', but their relation to all other elements of the same system. There are only partial absolutes in Simmel's approach, never 'absolute absolutes'. (Cantó Milà, 2005, p. 43)

For Simmel, no object could have value except in relation to the value of some other object (2011, 64). Any attempt to find a foundation for values led to a vicious circle or infinite regress (letter quoted by Cantó Milà 2005, p. 115). But Simmel took seriously the phenomenology of value: the fact that people experience some values as absolute. Indeed, value for Simmel is central to the way that people structure their experience of the world: 'our whole life, from the point of view of consciousness, consists in experiencing and judging values, and ... acquires meaning and significance only from the fact that the mechanically unfolding elements of reality possess an infinite variety of values beyond their objective substance' (Simmel, 2011, p. 62). The distinctions we make between objects, and which objects are salient to us, reflect our values. The category of 'human being' – not a universal concept, as Turner points out – is already freighted with value.

Simmel clearly understood the emergence of the 'generalized other' - the human being conceived first and foremost as such, rather than as noble or commoner, Christian or heathen – as a product of the enlightenment:

By freeing individuality from every restriction and special determination, and hence by making perpetually identical individuality – man in the abstract – the ultimate substance of personality, this era simultaneously elevated this abstraction to the ultimate value of personality.... In the practical dimension, this concept of individuality obviously flows into *laissez faire, laissez aller*. (Simmel, 1971, p. 221)

For Simmel, the historically contingent value of something such as the abstract 'personality' is, in a sense, 'objective'. Objects or people have this kind of value when we sense that they

make a 'claim' on us; their value 'demands recognition' (Simmel, 2011, p. 70). We do not simply confer this value on objects or on people, nor is it a quality inherent in the object or person, rather it arises from the position that they have within a way of thinking (an 'ideal realm') that exists independently of any individual thinker (ibid, p. 71).

Similarly, in his chapter on 'The Poor' in *Soziologie* (1908), Simmel talks about a right as a 'claim or demand' which is accepted as valid by at least some of those to whom it is addressed. (For Simmel even inanimate objects and abstract concepts can make, or be sensed as making, such 'claims' – they do not depend upon a capacity for speech.) Simmel discusses the ambiguities and contradictions surrounding the right of the poor to subsistence. In some instances, the poor might think they had a 'right' to alms, but this would not be the view of most potential donors. Simmel thought that the outlook that probably 'on average, dominate[d] the moral consciousness' of his day (*die das sittliche Bewußtsein wohl durchschnittlich beherrscht*, 1908, p. 357), recognized a moral relation between the well-to-do and the poor, which accorded the latter some kind of right to subsistence, although as he thought was typical of 'human rights', the 'quantitative' meaning of the right was highly uncertain – and politically this tended to result in a 'lowest common denominator' approach.

The main point Simmel makes about the rights of the poor is that even where such rights meet with a degree of public acceptance, and the state acknowledges an obligation to prevent the poor from starving, it is not necessarily the case that the obligation is, as jurists and ethicists might suppose, a correlate of the right. The state, that is, does not necessarily accept the obligation because it recognizes the rights of the poor. On the contrary, states provide poor relief for utilitarian reasons – to prevent social disorder; to preserve existing social inequalities by mitigating their worst consequences; and to maintain an adequate level of fitness in potential workers. The state accepts an obligation to feed the poor but this is not an obligation it owes *to* the poor, but rather one it owes to society at large. In violation of Kantian ethics, the state regards the poor instrumentally, as means rather than ends. Yet despite the 'exclusion' of the poor from proper ethical concern, they are still 'citizens' and to this extent they do share the right of any citizen to expect that public resources will be used in a proper manner.

In contrast to Weber's 'value free' approach, Simmel mingles sociological analysis and ethical critique in such a way that it is not always easy to tell which is which. The critical thrust of his work, however, seems more concerned with showing up the ambiguities and contradictions of social morality than with advancing a view of his own. Despite some ambiguities and obscurities in Simmel's own account, I think there are several things we can learn from him.

First, rights for Simmel are not only ethical or legal abstractions; they are also real social relationships. However, the existence and extent of a right as a social relation is a question of degree; there is no simple test that defines whether a right has been violated or not. Rather, Simmel (1965) portrays a spectrum of rights claims, from those which are so generally recognized as to be an 'objective' feature of social reality, to those which are explicitly or implicitly asserted by their putative bearers (as when some beggars feel they have a right to alms) but recognized by few of those to whom such claims are addressed. Faced with these ambiguities the sociologist's choice to recognize or deny the existence of a right is at least in part an ethical one. Simmel's Kantian ethics, rather than his sociology, oblige him to recognize the poor as 'ends in themselves'.

At the same time, however, Simmel's distinction between treating the poor as bearers of rights and treating them as mere means to an end is a sociologically significant one, similar to Habermas's distinction between communicative (or, more broadly, normatively-regulated) and strategic action (Habermas, 1984, pp. 81-90). In one kind of action, the needs of one individual are translated into motives for action on the part of another because they are understood as giving rise to legitimate claims according to a mutually recognized system of norms (*ibid.*, p. 89). In the other, one individual aims to get the other to behave in a particular way; the other's needs are features of the situation to be taken into account pursuing this goal. Both Simmel and Habermas understand that state bureaucracies tend to act strategically, not in compliance with Kantian moral ideals.

Simmel's point that, sociologically speaking, obligations and rights are not necessarily correlative foreshadows the distinction between 'human rights violations' and 'deviance' in the way my colleagues and I conceptualize state crime. On our account, an action to be conceptualized as a state crime it must not only violate human rights, it must also be 'deviant', that is, it must be something that the individual or organization is under serious pressure not to do (Green & Ward, 2000). Such pressure will be reflected in the fact that, if found out, the action is likely to result in some kind of censure, some kind of formal or informal sanction, and in some cases, feelings of guilt, shame or 'cognitive dissonance' on the perpetrator's part. It is the desire to avoid these that leads individuals and organizations to engage in the form of denial or neutralization which the late Stan Cohen (2001) and others have made central to the criminological analysis of human rights violations. What is censured or sanctioned, however, is not necessarily the violation of human rights as such. It may be the breach of an obligation owed to someone other than the victim.

By way of illustration, consider some of the actions of British soldiers and police in the then colony of Kenya during the Mau Mau rebellion in the 1950s, for which the British Government has recently agreed to apologise and pay compensation. (The Mau Mau was an armed resistance movement among the Kikuyu ethnic group, which occasionally attacked white settlers but mainly killed Kikuyu 'loyalists'.) Some of the more blatant acts of violence and corrupt appropriation of property by colonial officials and their Kikuyu allies were not only illegal but were denounced, prosecuted and punished by some judges and military officers, as well as being condemned by sections of the press and civil society in England. It does not follow that a concern for the human rights of suspected members and supporters of the Mau Mau was their motive for attempting to repress these abuses. Rather, some officials saw such abuses as counterproductive in their counter-insurgency campaign, while those judges who took a stand against maltreatment saw it as their duty to uphold 'the rule of law' – an obligation to the imperial state rather than to the suspects themselves (Anderson, 2005).

The final point I take from Simmel is that he abandons the quest for an absolute, timeless foundation for morality while still recognising that some moral values are experienced as objective – we sense that some objects and people would be valuable even if no-one in fact valued them (Simmel, 2011, p. 70). Such values, Simmel argued, were neither reducible to mere emotional states on the part of individuals, nor were they inherent in the objects of valuation. Rather, the sense of an objective value arose from the position that these objects and people occupied within a system of thought that existed independently of any individual thinker – one which, unlike purely theoretical systems of thought such as geometry, was

experienced as making a claim or demand on those who thought in its terms.

My suggestion is that the basic presupposition of human rights – that every human being has a certain irreducible and equal value or dignity – is neither something inherent in human nature nor (as my students tend to think) a purely ‘subjective’ individual choice. Rather, this fundamental equality is an inescapable postulate of post-traditional moral thought; it is something we have to accept in order to engage in anything that can be recognized as a reasonable, secular moral argument at all. (By ‘secular’, I mean a way of thinking that, while not necessarily rejecting religious belief, does not treat religious obligations as the foundation of moral obligations.) This mode of moral thinking has no transcendental foundation: as Simmel saw, we cannot step outside the system of values in order to demonstrate that what it values is truly valuable. At the same time, from the point of view of the social sciences, the existence of this secular, post-traditional value system is an objective social fact. The philosopher Charles Larmore calls it a ‘form of life’ (1996, p. 58).

According to Larmore, the ‘form of life’ that is the ‘morals of modernity’ rests on a principle of ‘equal respect’, which stipulates that the use of coercion must be justifiable in terms that those coerced could reasonably accept. He writes:

I am inclined to regard the difficulty of finding any deeper principles that justify the ideal of equal respect as less a philosophical defect than a sign that this ideal has come to belong to our very sense of what we are as moral beings. It makes up...the form of life from which we draw our moral bearings. If we cannot see how to justify it, that is because it defines the framework of what we understand moral argument to be. (Larmore, 1996, p. 150).

I make no attempt here to resolve difficult meta-ethical issues which a position such as Larmore’s raises. All I am suggesting is that, as scholars of state crime or the sociology of human rights, we must be relativistic to the extent that we recognize that post-traditional morality is only one among several competing ‘forms of life’ in the modern world. Each rival form of life (including, for example, various brands of religious fundamentalism and authoritarianism) has its own inner rationality which, from a sociological perspective, we must try to understand, however categorically, as moral beings, we reject it. At the same time, we should be unapologetic about approaching the subject from within a form of life that presupposes fundamental human equality (which I take to be common ground between most varieties of liberalism, socialism and anarchism).

4. Ethnocentrism and hegemony

Some readers might well object that the position I have just sketched places state crime scholarship at the service of a hegemonic, western, conception of human rights. NGOs such as Amnesty International, Oxfam and Médecins sans Frontiers have been portrayed as

in effect (even if this is contrary to the intentions of their participants) some of the most powerful pacific weapons of the new world order – the charitable campaigns and the mendicant orders of Empire. These NGOs conduct ‘just wars’ without arms, without borders...[M]oral intervention has become a frontline force of imperial intervention (Hardt and Negri 2000, p. 36).

It would not be difficult to extend this line of argument to state crime scholarship, portraying

it as little more than a form of propaganda for this ‘frontline force’². In the final section of this article I shall briefly set out three lines of defence against objections of this kind to the ethnocentric or hegemonic nature of human-rights-oriented state crime scholarship.

The first line of argument is that which Rainer Forst (2010) deploys in defence of human rights. The fundamental principle underlying human rights, he argues (in a similar vein to Larmore, 1996, and Benhabib, 2011) is that they enforce ‘norms of mutual respect the violation of which cannot be justified between free and equal persons’ (Forst, 2010, p. 712). The charge of ‘ethnocentrism’, Forst argues, amounts to a charge of attempting unjustifiably to impose certain norms on non-western cultures in a way that fails to respect their members’ values. But this argument, Forst observes, itself appeals to the idea that norms must be justified in a way that is consistent with equal respect towards all those affected by them. It is not an argument against the principle of human rights, but rather an argument that the rights that flow from that principle must be interpreted to accord with particular cultural and religious traditions. Debates of this kind – such as are currently taking place over the drafting of the Tunisian constitution – may take place in accordance with the fundamental norm of equal respect and the right of all those affected to participate, giving rise to what Benhabib calls ‘democratic iterations’ of human rights; or they may become ‘jurispathic’, reinterpreting and qualifying rights in ways that are ‘unfair, exclusionary and illegitimate’ (Benhabib, 2011, p. 151).

The second line of argument is that state crime scholarship can and should advance a critical understanding of the use of human rights in maintaining the hegemony of western states. Hegemony can be understood, in a Gramscian sense, as the dissemination of a form of ‘common sense’ that makes domination acceptable and masks the interests it serves. By and large, as I have already argued, state agencies, like corporations, tend to act strategically. They have certain organizational goals that require them to get people to behave in certain ways, and they use whatever incentives or arguments will achieve that goal. There is no doubt that selective appeals to human rights are useful to the USA and its allies in seeking to justify the imposition of military and economic power in other parts of the world. What Green and I argue (Green and Ward 2004, pp. 192-3) is that it is the genuine universality of human rights – the fact that they really do have a basis in universal human needs – that makes their selective use so effective as a tool for governments and international organizations.

Neither should state crime scholarship involve any idealization of ‘civil society’. My ISCI colleagues and I are currently engaged in a large-scale comparative study of the resistance of civil society organizations to state crime in a range of states (Burma/Myanmar, Colombia, Kenya, Tunisia, Turkey and Papua New Guinea).³ While it is too soon to present any results from this work, it is clear that civil society organizations, in order to mobilize people effectively, often have to appeal to some sense of identity or solidarity, which may well have an ethnic or religious basis (e.g. Buddhism in Burma, Islamism or secularism in Tunisia and Turkey), and there is likely to be a tension between the politics of identity and the universalism of human rights (Green, 2013).

² Something like this was argued in an interesting critique of the state crime literature which I reviewed for a journal. To my regret, the article was not published, and I do not know who wrote it.

³ The research is funded by the Economic and Social Research Council, Grant no. ES/I030816/1. For further information see <http://statecrime.org/statecrimeresearch/esrc/>.

Finally, I want to suggest that the very practice of criminological or sociological research aligns us with the principle of human rights. Here I return to Simmel's insight that our perception of the world, the way in which certain objects stand out for us amid the flux of experience, is always informed by value. Social scientists are, in general, interested in human beings as active, speaking, vulnerable, embodied subjects. They regard all (or virtually all) human beings as sharing these characteristics of agency, vulnerability and capacity for speech. The ideal of objectivity in social science implies an impartial interest in what people have to say, how they act, and how they suffer, whatever their gender, ethnicity and so on. As I indicated in my discussion of Turner, I am sceptical about the idea that sociology can provide a *foundation* for human rights which can take the place of natural law. What I am suggesting, however, is that there is a strong *affinity* between the interpretive social sciences and post-traditional secular morality, and that it is better to acknowledge it than to hide behind a mask of value-neutrality.

5. Conclusion

This article has sought to defend and clarify the conceptual connection between state crime and human rights. The idea that state crime by definition 'violates human rights' is, I have argued, best interpreted as meaning that it violates, to a seriously harmful degree, the fundamental *principle* of human rights, rather than violating any specific legal formulation of those rights. That principle is a *principle of justification* (Forst, 2010): the principle that states must justify their use of coercive power to those affected by it, in a way that recognises those affected as free and morally equal human subjects. One of the characteristics of state crime is that it is behaviour that is not susceptible to any good-faith attempt at justification in those terms. It is therefore behaviour that treats those subjected to it with a particular kind of disrespect. Such disrespect may reflect an ideology that rejects the very idea of human freedom and equality, or subordinates it to some conception of the good life. It may reflect the exclusion of some human beings from the category of beings deemed worthy of moral concern (Fein, 1990). Or – perhaps most often – it may reflect the way in which the notional commitment of organizations to ethical norms is overridden in practice by strategic action in pursuit of political and economic goals.

In singling out this kind of disrespect as worthy of criminological attention, we are of course making a value judgment, one which accepts a basic postulate of post-traditional moral reasoning, a 'form of life' that is itself an important aspect of the social context of state crime.

REFERENCES

- Anderson, D. 2005. *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire*. London: Phoenix.
- Becker, H., 1963. *Outsiders*. New York: Free Press.
- Benhabib, S. 2011. *Dignity in Adversity: Human Rights in Troubled Times*. Cambridge: Polity Press.

- Cantó Milà, N. 2005. *A Sociological Theory of Value: Georg Simmel's Sociological Relationism*. Bielefeld: Transcript Verlag.
- Cohen, S. 2001. *States of Denial*. Cambridge: Polity.
- Faust, K.L. and Carlson, S.M. 2011. Devastation in the Aftermath of Hurricane Katrina as a State Crime: Social Audience Reactions. *Crime, Law and Social Change*, 55, pp. 33-51.
- Fein, H. 1990. Genocide: A Sociological Perspective. *Current Sociology*, 38, pp. 1-111.
- Forst, R. 2010. The Justification of Human Rights and the Right to Justification: A Reflexive Approach. *Ethics*, 120, pp. 711-740.
- Green, P. 2013. *Islamophobia: Myanmar's Racist Fault Line*. http://statecrime.org/online_article/islamophobia-myanmars-racist-fault-line/ (access: June 10th, 2013).
- Green, P. and Ward T., 2000. State Crime, Human Rights and the Limits of Criminology. *Social Justice* 27, no. 1, pp. 101-115.
- Green, P. and Ward, T. 2004. *State Crime: Governments, Violence and Corruption*. London: Pluto Press.
- Habermas, J. 1984. The Theory of Communicative Action, volume 1. *Reason and the Rationalization of Society*. London: Heinemann.
- Hardt, M. and Negri, A. 2000. *Empire*. Cambridge, MA: Harvard University Press.
- Hart, H.L.A. 1994. *The Concept of Law* (2nd edn.). Oxford: Oxford University Press.
- Larmore, C. 1996. *The Morals of Modernity*. Cambridge: Cambridge University Press.
- Loiskandl, H., Weinstein, D. and Weinstein, M. 1991. Introduction. In G. Simmel, *Schopenhauer and Nietzsche*, pp. xi-lii.
- Matza, D., 1969. *Becoming Deviant*. New York: Free Press.
- Raz, J. 1999. *Practical Reason and Norms* (2nd. ed.) Oxford: Oxford University Press.
- Rorty, R. 1989. *Contingency, Irony and Solidarity*. Cambridge: Cambridge University Press
- Rothe, D. L. 2009. *State Criminality*. Lanham, MD: Lexington Books.
- Simmel, G. 1908. *Soziologie*. Berlin: Duncker & Humblot. Text available at http://socio.ch/sim/soziologie/soz_7.htm (access: June 10, 2013).
- Simmel, G. 1965. The Poor. *Social Problems* 13, no. 2, pp. 118-140.
- Simmel, G. 1971. Freedom and the Individual, In *On Individuality and Social Forms*, pp. 216-226. Chicago: University of Chicago Press.
- Simmel, G. 2011. *The Philosophy of Money*. London: Routledge.
- Turner, B.S. 1993. Outline of a Theory of Human Rights. *Sociology* 27, pp. 489-512.
- Turner, B.S. 2002. The Problem of Cultural Relativism for the Sociology of Human Rights: Weber, Schmitt and Strauss. *Journal of Human Rights*, 1, no. 4, pp. 587-605.
- Turner, B.S. 2006. *Vulnerability and Human Rights*. University Park, PA: Pennsylvania State University Press.
- Twain, M., 2010. *The Complete Adventures of Tom Sawyer and Huckleberry Finn*.

Hustonville, KY: Golgotha Press.

Ward, T., 2009. Antiquities, Forests and Simmel's Sociology of Value. In: *Criminology and Archaeology: Studies in Looted Antiquities*, pp. 29-40. Oxford: Hart.