# LAW, THE STATE, AND THE DIALECTICS OF STATE CRIME

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Two notable features of Chambliss and Seidman's pioneering work *Law, Order and Power* (1971/1982) were its engagement with the literatures of jurisprudence and legal anthropology and its development, in the second edition, of a 'dialectical' account of law. The view of law they advocated was state-centred, with an explicit debt to legal positivism and American legal realism. Law, in societies with centralized states, was a body of norms distinguished from other norms by being state-made and state-enforced. The making and enforcement of law was a product of social conflict, which in the second edition – "not so much a revision as a new book" (Chambliss and Seidman 1982: ix) – was analysed on Marxist lines as a reflection of fundamental structural contradictions.

Studies of post-colonial societies have revealed the existence of complex and varied forms of law, normative orders and customary authority which cannot readily be accommodated within modern constitutionalism (Moore 1978). This article argues that a more pluralistic view of law, one that understands law to include forms of rule-making and adjudication not controlled by the state, can usefully be combined with a dialectical account of the kind Chambliss and Seidman advocated.

As well as his important contribution to sociology of law Chambliss made a seminal contribution to the study of state crime with his 1988 presidential address to the American Society of Criminology, "State-Organized Crime" (Chambliss 1993b). This article, in which Chambliss further developed his dialectical approach, has been an important influence on our

own research on state crime: in particular, on a study of civil society's resistance to state crime in six countries (Colombia, Tunisia, Kenya, Turkey, Burma/Myanmar and Papua New Guinea).[1] In the interviews that we and our colleagues conducted with staff and activists at civil society organizations (CSOs) in these countries, we have been struck by the range of legal frameworks that our respondents draw upon to critique and resist the state. These include international law (not only human rights law but international humanitarian law and international conventions including those on labour law and the rights if indigenous people); domestic law (especially constitutional law); Islamic and other religious law; customary law (especially important for indigenous people in Papua New Guinea); and what, as we argue below, can be considered as informal, infra-state legal orders.

In analysing this material we adopt an approach that is both legally pluralist and dialectical. We begin by discussing legal pluralism and illustrating it by some examples from our research, then move on to consider what is meant by a dialectical approach. Finally, we discuss how the pluralist and dialectical approaches can be combined in analysing civil society resistance to state crime.

**Legal Pluralism v. State-Centred views of law**.

On one level our advocacy of legal pluralism marks a disagreement with Chambliss and Seidman, but we concur with them when they argue that law has no platonic essence, no single correct definition, and that how the concept of law should be defined depends on what is most useful for the task at hand (Chambliss and Seidman 1971: 5-10; 1982: 2-6). Chambliss and Seidman's view was that for the purpose of a critical sociology of law, the term "law" was best confined to the laws made, adjudicated upon and/or enforced by the state. They gave two rather

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different reasons for this choice. One was that their study was "policy-oriented" and sought to "help in solving emerging social difficulties" (1982: 5-6). Law (including administrative decision-making) was, in their view, the chief means by which modern political communities attempted to resolve such difficulties. The second reason was that they wanted to debunk what they saw as widely-held myths about law: that it reflected a society-wide moral consensus; that the "law in the books" corresponded to official behaviour; and that the formal nature of legal rationality left little scope for discretion (1982: 6-7). To debunk these myths it was necessary to combine a sceptical understanding of legal rules (drawing on positivist and realist jurisprudence) with an empirical account of the working of state power. State-enacted, state-enforced law was the type of law to which the myths pertained and to which their project was relevant. Small, homogenous, stateless societies had dispute-settlement procedures which could be called "law", but they neither used law as a conscious mechanism of social change, nor did they have the same legal myths as modern states; law of this kind was therefore peripheral to Chambliss and Seidman's project (1971: 250-259). International law was another kind of law about which they had little to say, perhaps reflecting the fact that human rights law had nothing like its current political prominence before the late 1970s (Moyn, 2009). We can assume, however, that international legal standards applicable to state officials would fall within Chambliss and Seidman's concept of law.

We do not need to consider in detail the adequacy of Chambliss and Seidman's state-centred account of law for the general purposes of sociology of law. Suffice it to say that the rise of legal pluralism in the 1970s (that is, between the first and second editions of *Law, Order and Power),* significantly challenged the "legal centralism" that they appear to have taken for granted (Galanter, 1981). In particular, they could be accused of gravely underestimating the importance of negotiation and informal conflict resolution in dealing with "social difficulties" even in highly centralized states. We should also note the growing importance of legal

pluralism, in particular the recognition of the laws of indigenous peoples, as a way of modern constitutions to "recognise and accommodate cultural diversity" (Tully, 1995: 101). More relevant for our purposes, however, is the bearing of Chambliss and Seidman's approach on their discussion of police deviance (1971, Ch. 18).

In an analysis dismayingly relevant today, Chambliss and Seidman argue that police in the USA regularly violate due process requirements, but the breadth of police discretion, the unlikelihood that formal sanctions will be applied, and the lack of internalization of the relevant norms by the police subculture mean that this form of deviance meets with little in the way of effective social control. Of course, this was, and is, very largely correct. But by defining police deviance purely in terms of the "law in the books", and by considering only those sanctions imposed by formal legal and administrative processes, Chambliss and Seidman leave us wondering whether this was really deviant behaviour in any meaningful sense at all.

To understand what is truly deviant about police violence and racism seems to us to depend on taking account not merely of formal legal and administrative processes but also of informal sanctions such as adverse publicity, withdrawal of public co-operation, demonstrations and even riots (Green and Ward 2004). The police are deviant not only because they violate the rules to which they should be publicly and formally held to account, but because they violate what are loosely referred to as "community" norms of acceptable behaviour. Rather than refer to an amorphous "community", we find it more useful to focus on "civil society", meaning a range of non-state associations ranging from formal bodies such as civil liberties organizations and churches, to more transient and informal groups such as the participants in a hastily-organised protest march. But what gives the views of these associations any claim to constitute norms that apply to the police? One cannot sensibly describe police conduct as deviant merely because it violates norms subscribed to by its targets, especially if the target group is excluded from the community the police see themselves as representing. For

their conduct to be deviant it must violate norms which can plausibly claim to bind them. This suggests that civil society organizations will draw on two kinds of norms – those accepted by their own constituents, and those that they appeal to in order to convince wider audiences that the state has breached a norm that it ought to observe (Green and Ward 2001).

This, indeed, is what we find in our interviews with CSOs facing high levels of state crime. To reach audiences beyond their immediate constituenceies, they draw upon a range of normative resources, including domestic and international law, religious traditions, and moral norms which may be seen either as universal or of characteristic of a specific culture. Domestic and international law may be used for purposes of litigation, but that is not their only function. They are also rhetorical resources used to condemn the state. If what the state is doing can be plausibly shown to be unconstitutional or a breach of internationally recognised human rights, this can be important in mobilizing domestic and transnational opinion against it, even if there is little immediate prospect of a judicial remedy.

Once we recognise that the importance of state or international law is not limited to its formal application by courts, we may question whether the term "law" should be limited to the norms that those courts apply. This question is particularly apposite when we find that some of the non-state norms that play an important part in civil society rhetoric are "laws" in the ordinary sense of the word: specifically religious and customary law.

**Legal pluralism and the concept of law**

We agree with Chambliss and Seidman that it is futile to search for an "essence" of law, a single definition that is correct for all purposes (see Tamanaha, 2001). Law is best seen as a "family resemblance" concept (Wittgenstein, 2009, §67; Pirie, 2013: 8), covering phenomena linked by a network of similarities rather than a single defining characteristic. Law includes all those phenomena conventionally designated "law" in the sense that includes international law, Islamic law and customary law but not the law of averages or the law of the jungle. It also

includes phenomena to which the word "law" is not conventionally applied but which have so many features in common with conventionally recognised instances of law that using the word "law" helps to give a "perspicuous representation" of those phenomena (Wittgenstein quoted by Tully, 1995: 110-111); or as a later translation of Wittgenstein's phrase has it, a "surveyable representation", one which "produces precisely that kind of understanding which consists in 'seeing connections'" (Wittgenstein, 2009: §122).

For example, the Peace Community of San José de Apartadó in Colombia has a set of principles of conduct which in many respects resembles standard instances of law. There is a written *Reglamento* (which could be translated as "Regulations" or "Code of Conduct"), set out in a law-like fashion with numbered articles and paragraphs; a recognised procedure for responding to perceived breaches of the rules; and a system of sanctions culminating in expulsion from the community. The Community is in a state of "rupture" with the Colombian state and refuses to co-operate with it or any other armed actors; it is in practice a self-governing community. Although one member of the community told us that "we have our own laws" (interview, Nov. 2013), members usually referred to the Community's "principles" rather than laws or rules. Whatever the members' own terminology, we can "see the connections" between this and other legal phenomena if we speak of the law of the Peace Community (see MacManus and Ward 2015a, 2015b). We can also see that compared to typical examples of state law, but like other instances of informal law (Santos, 2002, Ch. 4) that of the Peace Community is relatively lacking in bureaucracy, procedural formality and violence.

As a "family resemblance" concept, law (like crime or the state) will have many marginal or borderline instances. As Tully (1995), following Wittgenstein, stresses, these borderline or intermediate cases are important for the "perspicuous representation" of phenomena. For example, Taussig (2003) vividly describes the "law" imposed by paramilitaries in a Colombian town. Their reign of terror resembled standard instances of law

inasmuch as it imposed order (quite effectively, according to Taussig) through a local monopoly of the organised use of force. On the other hand it was conspicuously lacking in any public procedure of adjudication (though presumably the paramilitaries had some kind of procedure to compile the death lists they carried around on their laptops). As Taussig's subtitle, *Law in a Lawless Land*, indicates, his account points up both the law-like and the law*less* characteristics of paramilitary rule, as well as their similarities to the practices of the Colombian state. By displaying law in this nightmarish form, Taussig helps us to see both that there is nothing inherently benign about legal pluralism (Santos, 2002: 90-95), and what it is that we value in the "rule of law" (MacManus and Ward, 2015a).

Recognising the heuristic value of borderline cases helps to defuse criticism of legal pluralism's failure to define the boundaries of law (e.g. Tamanaha 2009). As Chambliss and Seidman clearly saw, however, there is no point in a concept of "law" so broad that it applies to every kind of social norm – we might just has well refer to social norms and forget about law. The point is to distinguish between those norms or practices that significantly resemble undoubtedly legal rules or procedures and those that do not, while recognising that this contrast does not represent a sharp conceptual boundary.

In particular, we can see an important contrast in our interviews with civil society activists between normative statements that are cast in broadly law-like terms – classifying particular actions as conforming to or violating identifiable rules – and others which are cast in terms of values, virtues, and a broader conception of the good life. Much of the rhetorical power of human rights lies in their dual character as both rules to be enforced and ideals to be aspired to:

> The figure of human rights within society, not only Columbia, in the world, for me is really an expression of faith […] We're not talking about church or a specific religion, but more of a life project that each person has within them, maybe like a

> spirituality that inside each person – we could try to transcend to a better place, through the struggle for human rights.
>
> (Interview, Justicia y Paz, Colombia, 25 Nov 2013, local interpreter's translation).
>
> All of my mind, my vision, is to be a person who can make a society where humanity is being valued. That is where I am geared to, the humanity being valued.
>
> (Interview, Human Rights Officer, MUHURI, Kenya 11 Jan. 2014).

The day when we think that the things we believe in are really crimes, than we might think of ways to protect ourselves. As we think that our beliefs are not crimes, that they are for the benefits of people, they are for the protection of human rights, we don't feel the need of protection. (Interview Ahmet Andiç, 78 li'Ler, Diyarbakir 18 Feb. 2014)

Members of the Ruta Pacifica de las Mujeres (Peaceful Path of Women) organization in Colombia were explicit about drawing on both legal norms and "informal" norms derived from their experience:

> We take some of our norms from the national constitution, from international treaties and commitments that the Columbian government has made. So we have a kind of general human rights framework [… but] the norms we use are both formal and informal, because we understand that the formal norms or rules don't eradicate the subordination that women experience in their lives. Culturally they are not going to be the things that bring about a culture shift or changes, substantial changes that make that experience of subordination different.
>
> (Interview, Maria Cagellogo Zapata, 27 Nov. 2013.)

These are very clear examples of non-legal moral discourse but again there are borderline cases. Mazlum-Der an Islamic human rights organisation in Turkey, generally employs the norms of international and state law in its daily work, but also draws on a form of natural law, derived from religious and moral codes to inform its own norms and practice:

> Lawyers in our organization use written law to protect human rights. We use unwritten universal law to improve these rights and freedoms.
>
> (Abdurrahim Ay, Mazlum-Der, Diyarbakir [18 April 2014])

Although this is referred to as "law", it appears closer to what more secular groups (see the Turkish examples below) would refer to as universal moral values than to the formalized and systematic body of Islamic law invoked by some other religiously-based CSOs.

The same can be said of the Buddhist precepts sometime invoked in Burma. When Burmese activists say that "Buddhism teaches us to [be] kind to others, to love others; Buddhism does not allow us to torture others" (interview [Bo Kyi, [2nd March 2013 ]) or when the opposition leader Aung Sang Suu Kyi refers to the Buddhist teaching of the "ten duties of kings" (McCarthy, 2004), they are invoking something that could be called a higher law, but can be more simply described as ethical values or virtues. The "duties of kings" read more like a set of ethical virtues, such as just rectitude, gentleness and forbearance, than rules. The just king will make just decisions because he is a virtuous man, not because he can consult a rule that will tell him what justice requires.

This brings us to a point which comes as close as any to identifying an "essence" of law. Law is generally concerned in some way with adjudication. Even if some legal rules are very unlikely to be adjudicated upon in practice (Pirie, 2013), they could, at least hypothetically, provide guidance to a third party called upon to resolve a dispute. Even in the marginal case of the Colombian paramilitaries, the corpses on the streets convey the message that some inscrutable authority has passed judgment on victims' conduct and found it deserving of death. In the case of state crime, one of the factors that make it reasonable to use the word "crime" is that it is conduct which, from the perspective of those who censure it, merits holding the perpetrators to account and subjecting them to some kind of sanction. For example, several members of the Peace Community of San José, despite their complete lack of faith in the

existing system of Colombian justice, expressed the hope or wish that former President Uribe, whom they held ultimately responsible for many state and paramilitary crimes against the community, would one day be sent to prison.

Similarly interviews with Tunisian activists, particularly those persecuted for their religious piety, revealed a strong desire for justice and accountability in the form of prosecutions and imprisonment under state law. So while adherence to religious norms had often taken precedence over the law of Ben Ali's police state, it was to state law that most civil society activists turned when considering sanctions against state criminals. Ibtihel Abdellatif, President of the Tunisian Women's Association, said:

> Even if law made injustices to me [because of my religion], I'm a person who tends to abide themselves by the law. I believe in the authority of the law. But now after the revolution, we may change some laws, but by acting within the legal framework….we will not wait for transitional justice, because we don't really trust the outcome, or the process, so we'll take the initiative and start from now taking cases to court and suing and prosecuting … starting with the head of the state, to ministers.
>
> (Interview, Ibtihel Abdellatif,[3rd April, 2012, Tunis).

Even when the prospect of legal redress is purely hypothetical, it gives rise to a particular form of reasoning – what Pirie (2013) calls "legalism" and Santos (2002), following Kantorowicz (1958: 69), calls "casuistry". Casuistical reasoning interprets rules, principles or precedents, and describes and classifies facts, in such a way as to show that any impartial adjudicator would conclude that what has been done violated or conformed to the relevant norm. The importance of this kind of reasoning is by no means confined to actual adjudication (Galanter, 1981). The assignment of cases to categories is a way of conferring meaning on past

events (Pirie, 2013: 52-3). The application of criminal or crime-like categories ("torture", "corruption", "brutality") to official conduct is one way of attaching social meaning to it.

Ascriptions of deviance or criminality depend upon the relevant meaning be shared by some group to which the deviant belongs. Law is perhaps the most important source of such shared meanings, though it is not the only one: values ostensibly shared by the state and its critics, such as those of Buddhism in Burma can play the same role. To play this role law must fall within a broad reading of Chambliss and Seidman's definition (1982:6): "the normative order in which the state and its functionaries are involved, as lawmakers, law implementors, or merely as addressees of the rules". Interpreting this more broadly than Chambliss and Seidman, with their positivist view of law as a normative system resting on the state's monopoly of force (1982: 6), probably intended, it would embrace both domestic and international law, and might also include religious and customary laws "addressed" to functionaries who share the relevant religion or culture. In some instances, however, this kind of law is articulated with other kinds of law which inspire or justify resistance to the state. Here are some examples.

*Islamism and the law in Kenya*

Our research in Kenya was conducted 2013-14 in and around Mombasa, in the coastal strip which has a predominantly Muslim population in an otherwise Christian-dominated country.[2] Most Muslims who were involved in human rights activism had no difficulty in defending rights in secular rather than religious terms. The most prominent local NGO, Muslims for Human Rights (MUHURI), was a non-sectarian organization which included Christians among its staff and board members. For some of the more militant Islamists who formed a loosely organized group centred on two local mosques, the fact that "MUHURI …

[2] Since we left Kenya the level of sectarian tension in the coastal area has sharply increased. Any group with an Islamic identity risks being caught up in the state's crackdown on supposed supporters of terrorism, as has happened even to the eminently moderate MUHURI. One of the interviewees quoted below, Makaburi, has been murdered by anti-terrorist police. We cannot be sure how much of our account of civil society in 2013/14 remains accurate currently.

are not taking the laws, human rights from the holy Quran" was a problem, as was their support for "gender rights" (Interview, Sakina Mosque, Mombasa, Dec. 2013).)

The Islamic scholar known as Makaburi, who (unlike many local clerics) was viewed with respect by the militant youth, had a more subtle view. He invoked Islamic teaching to justify both acceptance of the democratic constitution and violent resistance to illegal state actions:

> We, living in a Christian country, are ready to obey the laws that are existing, but as long as the laws do not apply to us, then the only way forward for us is armed resistance. It's the same thing. But if the state gives us our rights, here in Kenya, we don't have a right to fight them. Even religiously, we don't have a right to fight them. […]
>
> Allah tells us, in [? retaliation 0:40:37.7] we have life, in revenge we have life.[3] Meaning if you revenge the one who has been wrongly murdered then people will start living, because people will stop killing, knowing that if they kill, they will be killed. But if you don't do that they will continue killing like the Kenyan government is continuing killing now. There is no accountability. This has to stop. Laws have to be obeyed.
>
> (Interview, Makaburi, January 2014, Kenya)

However questionable the practical wisdom of Makaburi's view – even some of his militant followers recognised that retaliation in kind for murder was likely to lead only more loss of innocent life (Ward, 2014) – it adroitly uses principles of Islamic law to justify sanctions for breaches of Kenyan law.

*Constitutionalism and Socialist Ideology in Turkey*

[3] 'There is life to you in retaliation', Quran 2: 179.

Our research in Turkey concentrated, though not exclusively, on the Kurdish south east which during the 1990's experienced intensely high levels of state crime including village destruction, massacres, extra judicial killings, disappearances, mass forced displacement and endemic torture. For Turkish civil society, much of which grew out of the Turkish state's campaign of violent repression against demands for Kurdish rights and freedoms, constitutionalism represents a fundamental challenge to the legal regime enshrined in the constitution, promulgated following the 1982 military coup (Keyder 1987), which entrenches deeply contentious principles of laicism and nationalism both of which have historically resulted in exclusion and repression.[4]

Issues of law, legitimacy and state crime in Turkey are complicated by the existence of a bifurcated or dual state – an ostensibly legitimate state (but one deeply implicated in violence against its own people) running parallel to, yet imbricated in, a 'deep' clandestine state, *derin devlet*, characterised by illegality, secrecy, corruption and brutal violence (Green 2000; Green and Ward 2004). The organisations we interviewed drew upon general principles of constitutionalism to demand reform of the "legal" state and eradication of the "deep" state:

> We have to combat all of these [human rights violations] and Turkey has to be transformed into a constitutional state. Rule of law, transparent, legal, like this. And also our state is not the only state. We have two states. One is the legal state that is seen. With its parliament and parties. But there is also a state that is what we call the deep state - adjacent to the legal state. This is the state that acts parallel and it is illegal or we can call it the parallel state. We also call it the counter

[4] For example the Turkish Constitution's principle of secularism has resulted in the prohibition of the head scarf and other visible signs of religious piety in all public institutions. An attempt in 2008 to amend the constitution in order to allow women to wear the headscarf was annulled by Turkey's Constitutional Court which ruled that removal of the ban would contradict the founding principles of the constitution. In this way sections of the community were excluded from higher education and employment in the public sector ( Elver 2012).

> guerrilla state. This is a serious danger for Turkey and it exists in Turkey. And this state has to be discharged and replaced with a constitutional state.
>
> (Interview, Celalettin Can, 78 'liler, April 2nd 2014, Istanbul)

Yavuz Onen, one of the founders of IHD, the Turkish Human Rights Foundation, used fundamental constitutional principles to criticise the Turkish state's reification of national unity and criminalization of dissent:

> The first peace has to be made between the citizens and the state. In Turkey, the citizens are potential criminals according to the state. Kurds, leftists, Alevis, Assyrians, they are all potential criminals. This has to change. It has to be a transparent, accountable and democratic state
>
> (Interview, IHD founder Yavuz Onen 1 Apr. 14, Ankara)

Organizations that sometimes behaved in ways the state regarded as "criminal" conformed to their own standards of legitimate peaceful dissent, rather than official definitions of legality:

> We don't evaluate things from a legal/illegal point of view. Our standing point is legitimacy, not legality. We have done what we have thought was right. For example, if it is necessary to visit Qandil mountain [where the PKK leadership is based], we go there. But this is officially illegal. Do you know what I mean? … I mean we didn't have a certain perspective in terms of staying in the legal circle. Of course we stay away from violence. Categorically we are far from violence. We stay away from criminality.'
>
> (Interview, Celattin Can, 78 'liler Istanbul 2.04.14)

78 'liler, an organization of former political prisoners and IHD, drew upon socialist principles to frame their struggles against state criminality. The founders of IHD, many of them lawyers, drew explicitly on socialist ideology in their interpretation of human rights norms:

> When I make a philosophical assessment on human rights I consider Marx's approach to human rights. I am still like this. When I interpret economic and social rights I don't interpret them like liberals. In my opinion the human rights texts are leftist text in macro-scale; they are at the side of oppressed people. If a person's rights are violated this person is oppressed regardless of his or her status. Defending the rights of this person is being leftist.
>
> (Interview Husnu Ondal IHD founder 31 March 2014 Ankara)

For 78 'liler and other left-wing human rights organisations socialist ideals thus sit side by side with demands for a constitutional state.

*Unofficial law and international law in Colombia*

We have argued that the Peace Community of San José possessed its own legal order. The Colombian state does not see it that way, even if in practice it acknowledges the community's autonomy, for example when officials ask permission to enter (Mason, 2010: 21). Members and supporters of the Peace Community interpret a series of decisions by the Inter-American Court of Human Rights as recognising the Community as being protected by international humanitarian law (interview, Fr Alberto Franco, November 22, 2013). In fact, the Court has refrained from according the Peace Community as a body any formal recognition, instead requiring the Colombian state to protect "a plurality of persons" who are identified by their membership of the Community (IACHR, 2002, para. 8). The Court's judgments are nevertheless an important source of legitimacy for the Community, and for the international volunteers whose presence alongside Community members increases the political costs of any attack. A number of other communities have made "creative use of international humanitarian law" (Burnyeat 2013: 439) to claim protected status for their "humanitarian zones", "zones of refuge", "areas of autonomous coming together" or "areas of diversity" (interview, Fr Franco; MacManus and Ward 2015b).

**Law and the dialectical approach**

In the second edition of *Law, Order and Power,* Chambliss and Seidman outlined a "dialectical" approach to the sociology of law. This was then further developed in Chambliss and Zatz's (1993) edited collection *Making Law,* which includes a version of Chambliss's 1988 address on state-organized crime (Chambliss 1993b). It is appropriate to reflect here on what is meant by a "dialectical" approach (see also Green and Ward, 2012).

A central feature of a dialectical approach is that it attaches explanatory importance to contradictions. In a literal sense, a contradiction exists between any two propositions that are logically incompatible, most importantly for criminological purposes between prescriptive propositions about what someone ought to do. So, to take one of Chambliss's historical examples of state-organized crime, there was a contradiction between the orders that Sir Francis Drake received to carry out acts of piracy and the law which prohibited acts of piracy on pain of death (Chambliss, 1993b: 293-4). In cases like this, state officials are caught between conflicting demands as they find themselves constrained by laws that interfere with other goals demanded of them by their roles or their perception of what is in the interest of the state. There is a contradiction, then, between the legal prescriptions and the agreed goals of state agencies. (Chambliss, 1993b: 309)

Chambliss (1993b: 310) argued that such "contradictory ideologies and demands are the very essence of state formations", because they reflect "structural contradictions" of the more fundamental sort identified by Marx. Marx's most important statement on the relation between such contradictions and law is literally lost in translation, as noted by Giddens (1979: 133). This is the passage in question:

> At a certain stage of their development, the material forces of production come in conflict [*Widerspruch,* contradiction] with the existing relations of

> production or – what is but a legal expression for the same thing – with the property relations within which they have been at work hitherto. (Marx, 1968: 181)

What occurs here is literally a contradiction in the legal or "ideological forms in which [people] become conscious of these conflicts [*Konflikten*] and fight them out" (Marx, 1968: 182; Marx, 1971: 8). The existing law prescribes that a certain set of relations between people and things ought to exist; the realization of the forces of production requires a different set of relations; the propositions that these two sets of relations ought to exist contradict one another. Marx, however, also refers to the underlying conflicts as the "contradictions [*Widersprüchen*] of material life" (1968: 182). We can understand "contradictions", then, to mean (1) literally contradictory propositions, which may be either descriptive or prescriptive, in legal or ideological representations of social life or in the consciousness of social actors, and (2) the conflicting structural tendencies which those contradictions reflect. Chambliss's dialectical theory holds that state crime results from contradictory prescriptions in sense (1) (which he calls "conflicts" or "dilemmas" rather than contradictions), and these in turn reflect underlying structural contradictions in sense (2). Specifically:

> The state must provide a climate and a set of international relations that facilitate [capital] accumulation if it is to succeed…. The laws of every nation-state inhibit officials from maximizing conditions conducive to capital accumulation at the same time as they facilitate the process. (Chambliss 1993b: 310.)

While we largely agree with Chambliss's argument, we think it needs to be modified in at least two respects, if it is to be applied to the kinds of countries included in our study.

First, as will already be apparent, we do not think the concept of state crime should be confined to the breaches by the state of its own criminal laws. Nor can it be assumed that criminal laws have any inhibitory effect on the state at all. For example, under the Myanmar Penal Code (a colonial relic which has changed little since 1860), anyone who "causes grievous

hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession" is liable to ten years imprisonment (art. 331). Whether this has any inhibitory effect on police torture is doubtful (Bo Kyi and Scott, 2011: 12). We have found no evidence of prosecutions against the torturers of the civil society activists we interviewed in Burma/Myanmar. The courts in Myanmar remain subservient to the administration, and the law has little practical significance in cases where it would theoretically check administrative power:

To the extent that officials are held accountable for their crimes, they are punished for disciplinary reasons, in accordance with principles aimed at ensuring the integrity and viability of state institutions. They are punished not because they have committed offences that in a rule-of-law framework are illegal but because they have in some way engaged in practices that undermine their responsibilities for the maintenance of law and order. (Cheesman, 2015: 280).

The dilemma faced by officials in such a system is not so much between obeying the law and furthering the interests of the state as between obeying the directives of state institutions (which for all practical purposes are the law) and, for want of a more precise term, common human decency, which may be all that, for example, motivates some prison guards to commit the "crime" of passing information about the identity and conditions of individual prisoners to the Assistance Association for Political Prisoners (interviews, Mae Sot, Thailand, 2013).

Our second caveat is that when we look at states like Myanmar/Burma, it is not at all clear that their "success" depends on capital accumulation. The military regime has succeeded in staying in power for half a century, and replenishing its senior members' offshore bank accounts, while much of the time pursuing policies that were quite inimical to the interests of capital accumulation (Turnell, 2011). The circumstances in which predatory elites are able to

rule in ways that advance the interests *neither* of capital *nor* of the mass of the population are an important area of inquiry for a political economy of state crime (see Green and Ward, 2004).

There is more to a dialectical approach than just an emphasis on contradictions. Equally important is the idea that "[o]pposites interpenetrate each other" (Chambliss and Seidman, 1982: 72). In other words, a dialectical approach is opposed to, or at least highly suspicious of, both sharp binary conceptual contrasts (legal and non-legal norms, the state and civil society, base and superstructure) and one-way deterministic causal explanations. Social change tends to occur through complex interactions between phenomena with vague and shifting boundaries. Law, for example, "interacts not only with [the] economic base, but with religion, philosophy, custom, tradition and ideology. Law simultaneously affects and is affected by each of these" (ibid.). Or as E.P. Thompson so eloquently put it:

> I found that law did not keep politely to a "level" but was at *every* bloody level; it was imbricated within the mode of production and productive relations themselves (as property-rights, definitions of agrarian practice) … it danced a cotillion with religion … it was an arm of politics and politics was one its arms … above all, it afforded an arena of class struggle, within which alternative notions of law were fought out. (Thompson, 1978: 96)

Thompson was referring to eighteenth-century England, but his remarks are no less of true of contemporary Kenya or Papua New Guinea.

**Dialectical legal pluralism**

The pluralist approach and the dialectical approach complement one another. One of the things that law does – and arguably the most important thing it does, from the point of view of Marxist theory – is to provide a representation of the existing relations of production, or prospective changes in those relations, that can be adjudicated upon and enforced by state institutions. Sometimes, however, the state either cannot (because it lacks sufficient control

over parts of its territory) or will not (because of the illegality of certain industries) enforce the relevant relations of ownership, contract, etc. In these situations, some other form of law, or some functional equivalent of law, is required. Though there is, to repeat, no uniquely correct way of using the word "law", it seems reasonable to use it for these forms of ordering – for example by the guerrillas and paramilitaries in Colombia – that are not enforced by states, or perhaps more accurately, not enforced by those states that accord one another legal recognition (MacManus and Ward, 2015a). Moreover, in those regions and economic sector that are effectively subject to the state law, there are, as Thompson noted, often conflicts between different conceptions of law; and while sometimes these competing conceptions give rise to different interpretations of the same law (e.g. socialist interpretations of human rights law in Turkey), in other instances contradictory representations of social relations are embodied in different *kinds* of law.

In Papua New Guinea, for example, there is, or at least is often perceived to be, a contradiction between the forms of collective land ownership implicit in customary law and the interests of capitalist development, particularly in the extractive industries (Weiner and Glaskin, 2007). The PNG state has attempted to deal with this by recognising customary ownership while creating legal arrangements to reshape it into something approximating to commodity ownership, which is quite different to the deep and enduring relationship between an area of land and a clan that is represented by customary law (described by two of our interviewees in terms of the land owning or employing the people, rather than the other way round). Around this contradiction between customary law and laws designed to facilitate development there has grown up, on the one hand, a web of corrupt and fraudulent state and corporate practices to circumvent such safeguards for customary owners as PNG law provides (Filer, 2011; Numapo, 2013); and on the other, a complex series of articulations between customary law and culture, environmentalism and environmental law, constitutional and

human rights law and, in some cases, an anti-capitalist ideology. Groups such as CELCOR (Centre for Environmental Law and Community Rights) combine environmental law with defence of customary rights, and are beginning to draw on human rights law to defend the property rights of indigenous peoples; while groups with a more radical edge, such as the Bismarck Ramu Group and Melanesian Solidarity, link customary law and Melanesian culture with an alternative, non-capitalist model of sustainable development.

Although no one organization appeared in 2013 to have put all these elements together in a single coherent package, we can perhaps see here the emergence, of a form of "subaltern cosmopolitanism" within a situation of "postmodern legal plurality" (Santos, 2002: 92, 180-2, 239). In other words, socially excluded groups (or victims of state crime) can construct counter-hegemonic transnational networks drawing on elements of a legal realm in which supra-state, state, and infra-state legal orders coexist. The Peace Community and similar "humanitarian zones" in Colombia, with their international supporters, offer clear evidence of the success of this kind of strategy.

The coexistence of these three levels of legal normativity is much more salient now than it was when Chambliss and Seidman were writing in the 1970s. We suggest that situating state crime within this multileveled legal space can help us to carry forward the dialectical understanding of state crime which Bill Chambliss pioneered.

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