Document generated on 09/18/2024 10:13 p.m.

Criminologie

Mega-crime, legitimacy, legality, and obedience
Le *mégacrime*, légitimité, légalité et obéissance
Megacrimen, legitimidad, legalidad y obedencia

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Special Issue, 2022

Prize winning articles from *Criminologie*

URI: https://id.erudit.org/iderudit/1092584ar
DOI: https://doi.org/10.7202/1092584ar

See table of contents

Publisher(s)

Les Presses de l'Université de Montréal

ISSN

0316-0041 (print)
1492-1367 (digital)

Explore this journal

Cite this article

Leman-Langlois, S. (2022). Mega-crime, legitimacy, legality, and obedience. *Criminologie*, 1–15. https://doi.org/10.7202/1092584ar

Article abstract

This paper reviews several current theories in criminology and evaluates their ability to account for "mega-crimes" (acts that lead to large-scale loss of human life and are widely acknowledged at the international level to be criminal). The exercise shows that criminology is incapable of explaining mega-crimes. It is not that such acts are outside its defined field of study – they, like common crimes, are voluntary, organized actions that cause damage to victims and lead to interaction with various judicial systems – but because of its narrow and persistent focus on purely individual conduct.

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Mega-crime, legitimacy, legality, and obedience

Stéphane Leman-Langlois

Abstract

This paper reviews several current theories in criminology and evaluates their ability to account for "mega-crimes" (acts that lead to large-scale loss of human life and are widely acknowledged at the international level to be criminal). The exercise shows that criminology is incapable of explaining mega-crimes. It is not that such acts are outside its defined field of study – they, like common crimes, are voluntary, organized actions that cause damage to victims and lead to interaction with various judicial systems – but because of its narrow and persistent focus on purely individual conduct.

Introduction[1]

Criminology seldom looks beyond the immediate preoccupations of the middle class in Western democracies. In Marxian terms, the discipline remains a science of what well-off consumers see as threats to their daily comforts. Notions such as war crimes, crimes against humanity, crimes against peace (categories in the Nuremberg Declaration) and state crimes in general are therefore seen as outside the scope of criminology. The same is true for terrorism. Consideration of these subjects on a micro level is usually left to psychologists and on a macro level to political specialists.

However, great crimes, or "mega-crimes", have repercussions even for peaceful societies. The consequences of extermination (by arms, famine, deportations), mass terrorism, large-scale violent repression, ethnic cleansing, mass rape, mass mutilation, war against civilians, etc. eventually affect us, often through immigration, individual or state provision of international

[1] Original article published in *Criminologie. Le crime de génocide : Construction d'un paradigme pour la criminologie, la philosophie et le droit pénal*, vol. 39, nº 2, Fall 2006. Leman-Langlois, S. (2006). Le *mégacrime*, légitimité, légalité et obéissance. *Criminologie*, *39*(2), 23–37. https://doi.org/10.7202/014426ar

assistance, or the safety of Canadians travelling overseas.

Criminologists who still seek "real," objectively recognizable crimes should not mistake these tangible consequences for proof that their Holy Grail is at last within reach. This paper uses megacrime simply as a placeholder, for lack of a better categorization. In reality, defining megacrimes will prove even more problematic than common crime. In the majority of mega-crimes, the criminologist cannot fall back on legal definitions or established sanctions to define such acts as crimes (see Brodeur and Ouellet, 2006). In what follows, I will approach the topic of mega-crimes from three angles, each of which follows a different theoretical paradigm. The first applies the classic idea that seeking profit and escaping suffering provides the actor's motivation. On this understanding of crime, the individual seizes criminal opportunities because an evaluation of consequences leads to belief in a personally satisfying conclusion. Second, I examine the group dynamic in organizations whose goal is the extermination of human beings. Last, I look at the thesis, popular at the International Criminal Tribunal for Rwanda, that media can bring about certain serious crimes as a result of the information they diffuse.

1. Orders, rationalities, and strategies

In classical penology, which was originated and refined during the Enlightenment by Montesquieu, Beccaria, and Bentham, human action is at the centre of an economic universe founded on the maximization of individual profit. In this universe, the perpetrator acts to achieve the approximate satisfaction of immediate or long-term desires (temporal range is often decided by individual psychology). By carrying out acts defined as crimes, the perpetrator demonstrates that he/she has not been convinced by either the state or the social environment that the cost in terms of official or informal sanctions is greater than the benefit achieved. This conception of criminality seems to go hand in hand with crimes aimed at acquiring goods or money (including, but not limited to, organized crime), but other authors (a classic example is Hirshi and Gottfredson, 1994; see also Cusson, 2005) have attempted to demonstrate that every crime, like every human action, is the result of an economic calculation.

Like any good German civil servant, Adolph Eichmann focused on advancement in a bureaucratic organization: in his case, the Gestapo. The results of his participation in the institution's general objectives and methods are well-known. A parallel might be attempted

between Eichmann's acts and a robbery. In general, robbery operates on a largely economic logic: if the robber commits violence, this violence is always a tool used to ensure the success of the economic operation that motivates the larger act. Eichmann (indirectly) committed certain violent acts in order to leverage his personal career (social advantages, salary, status, medals, etc.) and his advancement within the organization. The comparison, however, presents a number of problems: first, it is difficult to see how the usual criminological concept of opportunity can be accurately applied since advancement is a relatively hazy and unclear concept. In fact Eichmann did not continue to advance in the Gestapo and repeatedly complained that the overly specialized skills he had acquired in deporting millions of victims led to his being confined to subordinate jobs. Second, advancement within the Gestapo and the Reich Main Security Office (RSHA) did not require cooperation in genocide. Third, the difference between what the ordinary individual is prepared to do to obtain advancement and the two million victims that Eichmann sent to their deaths over the course of his career seems disproportionate. The other facet of the economic rationality is the escape from punishment: on this view, Eichmann was pushed to act as he did by threats from the general staff (whose own rationality would then remain unclear). However it has been shown that a Nazis who did not cooperate in Hitler's project did not incur any penalty (see Browning, 1992; Israël, 1992; Goldhagen, 1996).

Last, we must explore the possibility that a mega-crime is the result of a large-scale attempt to satisfy individual desires of domination, desires that might always present but are repressed by the law or other social controls. It might also proceed from what Hobbes characterized as a fear of violent death, which, as a kind of generalization of mob psychology (Buford, 1991), can lead to the worst (preemptive) excesses. From a classical point of view, this latter thesis seems to impose a rather hazardous bit of navigation between two intractable paradoxes – the Charybdis of *instinctual rationality*, that implies that rationality is no longer relevant (though it does resemble somewhat Bentham's early psychology of "rational" decisions), and Scylla, who, through all-powerful and apolitical law, utterly succeeds in repressing base human passions.

At the other extreme of the genocidal spectrum is the 1994 massacre of the Tutsis in Rwanda (Gourevitch, 1998; Hatzfeld, 2003). If the destruction of the European Jewish community reinforced powerful industrial and bureaucratic interests (Bauman, 1989), the mass

killings of the Tutsis more closely resembles Europe's pre-Hitler pogroms or the massacres between neighbours in former Yugoslavia. None of these cases can, however, be considered a perfect illustration of its category: not all the executioners in the Third Reich were calculating technocrats (Israël, 1992); and in Rwanda, the murderous chaos was not without some organization (Hagan, 2003). Elites inspired and channeled the violence. Many assailants who took part in the Rwandan massacres sought to appropriate the lands and goods of their victims. Others acted after being threatened with death if they did not participate. None of these reasons, rational as they may be, properly account for the extent of the mega-crime. At the same time, we readily accept that human action is intrinsically rational, under what Popper (1985) described as an axiomatic rationality principle – with the important caveat that the rationality being referenced is "limited," i.e. it is localized in a cultural context and limited by the actor's capabilities and the actions of others (Crozier & Freidberg, 1977). The rational actor develops in an already determined sociopolitical structure, evaluating and attempting to understand this culture using conceptual tools that are part of localized culture. The idea that the actor implicated in a mega-crime is rational is at odds with the common pathologizing perspective that views all Nazis, for example, as psychopaths or sadists and all terrorists as fanatics who have abandoned reason (among others, see Merari, 1990; Manoni, 2004). In a strict sense, a participant in a mega-crime chooses certain actions in order to achieve an objective in a particular context. However, recognizing this does little to further understanding of the thinking of such a person and even less to increase comprehension of why certain means are chosen over others.

2. Contexts, organizations, bureaucracies

Hannah Arendt, in her famous work *Origins of Totalitarianism* (Arendt, 1951), provides an initial description of the social environment that enabled the downward spiral towards large-scale criminality. Her model, put to the test during the historic trial of Adolph Eichmann (Arendt, 1963), explains how a perfectly ordinary German bureaucrat became a specialist in deportation to extermination camps. According to Arendt, social context, not simply a coercive hierarchy, encourages participation in large-scale programs. Like many other members of the Gestapo, Eichmann was not noted for his hatred of Jews or for his love for the Führer. In other words, his previous life seems to conflict with the thesis that an individual interested in certain activities, criminal or not, looks for peers who have the same objectives and socio-psychological

characteristics. Nor was the Nazi State hoping to convince millions of recalcitrant participants to join in actions against Jews – it was sufficient to create a world in which extermination was possible. According to Arendt, Eichmann found himself in a totalitarian context, not in the sense that orders were seen as imperative but where alternative, comparative or critical thought was becoming increasingly difficult. The primordial characteristic of a crime, that which makes it a forbidden temptation, was inverted and abandoning the Nazi project now became deviant. In passing, the idea of personal gain, so important to the classicists, actually added to the moral haziness: Eichmann was always revolted by the accusation that he had taken diamonds from the Jews he deported, claiming unblemished personal integrity.

The phenomenon that takes place in mega-crimes is more like the differential association described by Sutherland and Cressey (1966, and more recently by Akers, 1998), where each individual who is part of a group learns, little by little, to see reality in a certain way. As described by Arendt, members of the SS became progressively more isolated as part of their increasingly exclusive integration into the group. Sageman (2004) has described a similar integration and radicalisation of recruits in terrorist jihadists networks. Waller (2002), despite a short and unsuccessful shift into the field of evolutionary sociology (like Brannigan, 1998 or Ghigilieri, 1999), offers a more systematic view of this mechanism. Participation in actions previously judged to be immoral requires an actor who is integrated into a system of relatively specific beliefs, especially those that favour obedience to orders and respect for authority in general. These beliefs are developed much more effectively in the closed milieu of a totalitarian bureaucracy that is relatively isolated from the rest of the world. A similar sociopsychological interaction is often found among extremist factions (Casoni et Brunet, 2003). It is particularly useful here to recognize the relationship of this approach to the formation and maintenance of social identity (Jenkins, 1996), as it rules out artificial differentiations between the individual and the group. Criminologists will also recognise the neutralisation techniques observed by Matza (1964), which allow members of a group to believe in the specific morality of actions that conflict with the general morality of society, to which they continue to subscribe.

Many studies have concluded that orders and obedience are principal factors in mega-crimes, beginning with the idea of the authoritarian personality as described by Adorno (1969). More recently, social psychologists Kelman and Hamilton (1989) have touched on what they call

"sanctioned massacres", whose perpetrators are not actors but rather agents manipulated by those giving orders. The first problem here is that mega-crime means two entirely different things, one for those who do not commit it but order others to, and another to those who obey without fully comprehending their role in the project. In other words, far from accounting for the atrocities, this approach simply creates two new problems. In addition, this separation between the (rational) directors and the (manipulated) executors remains largely artificial. Pape (2005) shows that both executors and directors are animated by rational, if contrasting, motives. However, he unduly minimizes the influence of an actor's cultural context, rejecting, for example, the idea of indoctrination in cases of suicide that are accompanied by positive references to Islam and – a consequence of his particular choice of case studies. In opposing (with reason) those who see Islam as the ultimate cause of jihadist terrorism, he falls into the opposite error of failing to acknowledge that not only the strategies, but the very objectives pursued by extremists are contingent on cultural and contextual factors. But he does show that the choice of tactics, as the choice to follow and obey the leaders and the rest of the group are *rational*.

Another problem relating to authority, as shown by Breton and Wintrobe (1982; 1986), Goldhagen (1996), and Browning (1992), is that the successful execution of a mega-crime does not require orders. Breton and Wintrobe's analysis of the bureaucratic structure of the Reich reveals a relative absence of order and instruction. Instead there were "callouts" and a competition between bureaucrats to find ways to resolve identified problems. While certain crimes, such as many war crimes, can undoubtedly be traced back to those in authority, the conclusion that the normal human being only commits large-scale atrocities if under the orders of another is clearly untenable. It is necessary to rethink the notion of authority to include a vaguer idea of *authorization*: it is not the orders themselves that are necessary but a social, moral, and legal context that encourages and enables socially reprehensible acts.

One final problem relating to explanation by authority is that in order to accept it we must assume that the actors believe that their action is immoral and that the order goes against their will or better judgement, which is generally not the case. Many studies have shown that perpetrators of mega-crimes, such as terrorists, for example, are convinced of the morality of their actions. Their decision to participate had already been made when they received their orders. What we refer to as "authorized crimes" are the result of power games within a group in

which a particular culture has taken hold, a culture that morally neutralizes certain acts that would have been considered by its members to be crimes – immoral and punishable – before they joined the group.

Thinking about rationality more flexibly makes it possible to integrate extremely violent tactics into a more complex, although undoubtedly less elegant, model, one that has the advantage that it does not lead to discontinuity in the explanation. Merton and other theorists in the tension tradition have shown that delinquent behaviour originates when there is incompatibility between culturally celebrated personal objectives and access to socially acceptable ways of realizing them. The mega-crime, from this perspective, can be seen as a course of action that, while morally condemned, is nonetheless considered to be the only tool available to achieve an objective that its users consider absolutely essential. Like a consumer society that glorifies financial success and sees theft, extortion, and illegal trade multiply among those who do not have the necessary social capital to enrich themselves legally, a society in which the nation is believed to be threatened by imminent cataclysm may feel it is necessary to commit a mega-crime to protect it. In Foucauldian terms, the missing element in the latter society is a discourse that creates alternative morality and new social spaces, that identifies the cataclysm in question and suggests a radical solution

3. Discourse, propaganda, and participation

The widely held belief that the morality of those who take part in genocides has been either suspended or reversed (for example, Waller, 2002) is unsatisfying and relies on a relatively unscientific concept of absolute morality or at least on the idea of a universal morality that is nowhere observable. In fact, it is more useful to think of the mega-crime not as immoral but as excessively moral. It is the result of the deployment of an absolutist moral discourse that serves as justification and rationalization for extraordinary acts, just as ordinary moral discourses justify ordinary acts (Spector & Kitsuse, 2001: 85-95).

Julius Streicher, editor of the ultra-racist magazine *Der Stürmer* between 1923 and 1945, was sentenced to death and hanged at Nuremberg – not for having participated in genocide but for having persecuted Jews by means of the hate-filled texts in the publication which, according to the tribunal, constituted a crime against humanity (Avalon Project, 2006). Although *Stürmer*'s

revolting contents had been denounced by some members of the Nazi Party, Hitler had always supported Streicher, pointing out that this type of propaganda was useful in raising the cruder intellect of the masses. More recently, the International Criminal Tribunal for Rwanda (ICTR) sentenced two leading media figures to imprisonment for 35 years and for life, on the grounds that they had encouraged the massacres. Incitement is a crime in itself, but the prosecution argued that it actually caused the genocide.

The idea that public discourse can directly influence actors, to the extent that it makes them commit atrocities they would otherwise not have dreamed of participating in, is so widely accepted that few researchers have thought to test it – while others argue against it without empirically demonstrating its falsity (Waller, 2002), satisfied that the principle of theoretical economy it is on their side, maintaining that it is the positive hypothesis that must prove itself (Occam's famous razor). At the most basic level, there is an obvious, yet often forgotten, difference between the instrumentalization of the media, which was evident in, for example, Yugoslavia and Rwanda, and their actual effect on the targeted public (a distinction that escapes Kellow and Steeves, 1998). It is one thing to describe how broadcasters of hate speech took control of the media and public discourse; it is an entirely different project to demonstrate that this control enabled the authorities to radically affect the behaviour of the populations. Rigorous consideration of this question quickly shows that the information needed for this project is extremely difficult, if not impossible, to collect.

What is certain is that state-controled media were used extensively in both the Holocaust and the Rwanda genocide. The informational content was, of course, biased towards the governmental project. However, in both cases, the targeted public was already largely convinced: Germany did not suddenly become anti-semitic in 1933 and Rwanda's history is full of conflicts and genocides. From a post-structuralist perspective on discourse, the relation between media content and the conceptual universe that makes it possible to observe and to understand the world ("discourse" in the Foucauldian sense) is symbiotic. While we can instrumentalize the media, transforming them and integrating them into the genocidal project for example, we cannot do the same with general culture, at least not unless we are looking at a much longer-term project. To be effective, media content must be integrated into the larger culture and must share the same language.

Conclusion: Some research questions

Therefore, despite many attempts to account for various mega-crimes, the results remain unconvincing to the criminologist. The table below briefly summarizes the avenues pursued thus far.

TABLE 1
Conception of normativity according to various accounts for participation in mega-crimes

Account	Norms	Problems
Bureaucratic cover	Recognised as present but low or absent individual responsibility for executioners	The instincts are contradictory; it remains to be explained why some seem to occasionally dominate1) Assumes that existing norms ordinarily exclude recourse to violence 2) Assumes i) a differentiation of norms and ii) contexts among actors iii) that correspond to those of the researcher
Dehumanisation or "de-individualisation"	Present, but not held to apply to victims	
Crisis situation/immediate danger (resources, survival)	Absolute/intransigent	
Coercion (peers, orders, bureaucratic processes, the State)	Present but impossible to respect	

Many theoreticians interested in a multifactorial explanation (for example, Waller, 2002; Dutton et al., 2005) boldly attempt to amalgamate these various explanations, despite the fact that they rest on opposing conceptions of normalcy and actors' relationships to their own values. A certain number of other considerations also emerge: first, the question of state crimes must be situated not only within what counts as crime but also within contemporary analyses of the role of the state in matters of security. This role is fragmented, decentralized, and increasingly assigned to private, individual, or community actors. Criminology, which defines its object in relation to rules emanating from the state must, at least in part, reinvent itself to take on the subject of mega-crimes. The relatively widespread temptation to substitute international law for national law when dealing with crimes committed by the state is ultimately unproductive because of its evident circularity. The notion of "state crime" must also be reconsidered. For instance,

useful distinctions such as the contrast between "criminal regimes" and "regimes of criminals" (Rosenberg, 1991) or between "abusive power" and "abuse of power," that introduce a difference between concerted state action and the action of deviant individuals within the state, still hold the state to be a unified entity. Yet the state, its institutions and its agencies are, at their core, made of individual human beings; state action is the fruit of their decisions which, while they can certainly be considered within a systemic context, also reflect personal beliefs, preferences, conflicts, abilities, and goals.

Second, we must come to terms with the existence of the International Criminal Court (ICC), which seems to be an established part of contemporary society, despite its conceptual, political, and practical difficulties and the conflicts revealed by an increasingly large number of jurisdictions in which mega-crimes have been resolved in a non-criminal manner (notably in South Africa; see Leman-Langlois, 2000; 2002; 2003; 2005; Leman-Langlois and Shearing, 2004; 2007). The ICC replaces the responsibility of the state with that of those who manage it: the state machine is now seen as a collection of individual actors whose actions are more or less judicious and intentional (depending on who gives or receives the orders).

Third, the mega-crime, as shown by the Bali attacks or those of September 11, 2001, can be committed by non-state actors (Leman-Langlois and Brodeur, 2005). However, in contrast to political science, criminology is based on the study of actors at different levels of social power (especially those that are at the bottom of the ladder) and should be better equipped to compare the dynamics of action in different social contexts.

Fourth, defining this category of crime is difficult. Criminologists often work on subjects whose exact definition is unclear, but those who are interested in the process of definition and criminalization will find this subject fascinating. While it is unnecessary to revive the eternal question of the purpose of criminology or the traditional biases at the root of its definition, it is clear that a sociology of criminalization can learn much from phenomena where these definitions are essential issues involving multiple social actors.

Fifth, criminologists (especially students) concerned about the usefulness of studying megacrimes when thinking of their likely future careers need to understand that, even though the past guarantees the future and Canada therefore seems safe from impromptu incidents of

genocide, many aspects of this kind of phenomenon have consequences for Canadians. We have among us both victims and those who have participated in genocides and other mega-crimes. We send our soldiers, our policemen, and our civilians to parts of the world where they are faced with mega-crimes and must respond and prevent them as well as ensuring their own physical and psychological survival. Beyond these practical considerations there is also a theoretical aspect: can we understand crime without understanding mega-crime? Can we find explanations for murder while ignoring mass murders?

To conclude, and here we stray from criminology into a brief detour via political philosophy, the observation that mega-crime is a moral behaviour should not shock or lead to accusations of relativism, or even nihilism. Rather, it should make it clear that rights, security, and peace are not an inherent part of human existence, but are instead the artificial products of the will of citizens, and must therefore be continually cherished and protected.

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Le *mégacrime*, légitimité, légalité et obéissance

Résumé

Cet article passe en revue diverses théories criminologiques et les confronte à la réalité de ce que l'auteur appelle les « mégacrimes » (actes généralement criminalisés et produisant la perte de vies humaines à grande échelle). Il en ressort que les outils théoriques de la criminologie sont largement impuissants lorsqu'il s'agit de rendre compte de tels crimes. Non pas qu'ils soient à l'extérieur de son objet, il s'agit bien de conduites dommageables réfléchies, organisées, produisant des victimes et impliquant des systèmes de droit, après tout, mais bien que la discipline se soit surtout penchée sur les conduites purement individuelles.