

State Crime

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[See table of contents](#)

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REVIEW ESSAY

State Crime

Clutterbuck, Richard. *Drugs, Crime and Corruption. Thinking the Unthinkable*. Basingstoke, Hampshire and London: Macmillan, 1995.

Ross, Jeffrey Ian, ed. *Controlling State Crime. An Introduction*. New York and London: Garland, 1995.

These two books present a valuable nucleus of material to provide the reader with a comparative and contrasting approach to the subject of state crime. Clutterbuck provides ample facts and figures and specific examples of the various states and their "actors" who blatantly engage in such severe criminality as terrorism, murder, extortion, money laundering, corruption, and major drug trafficking. In contrast, *Controlling State Crime* is a series of essays where the state criminality is nonetheless harmful, but is subtle, less blatant and frequently hidden from public view by state authorities. Each book describes many thought provoking issues that describe the nature and extent of criminal behavior, perpetrated by a state or an individual. Also, they emphasize the need for public vigilance to prevent the states described by the authors in *Controlling State Crime* from reaching the level and severity of criminality as those described by Clutterbuck.

Richard Clutterbuck's *Drugs, Crime and Corruption* is a valuable and timely contribution to the debate facing societies as they attempt to cope with the problem of the ever increasing production, distribution and consumption of illegal drugs, with vast profits continuing to benefit organized crime.

The book is divided into VIII Parts. In Part I the author identifies the vast sums of money (\$500 billion a year) which are spent by the world's population on the purchase of illegal drugs on the streets and the extent to which their drug habits are funded by crime. He states that 50 percent of the 25,000 homicides each year in the United States are drug related. Consumption is increasing annually with added numbers of young people prepared to pay for the drugs the traffickers will continue to supply and add to their financial wealth. The author believes that alternative options and measures must be taken to more effectively deal with the escalating problem. He identifies four alternative proposals for change which should be seriously considered by drug policy planners in the consuming countries. He elaborates on these four proposals in Part VII.

The author states that although the United States spends billions of dollars each year to encourage or coerce the countries that produce the drugs to reduce their supplies, it has little or no effect on the overall supply and consumption. I would agree, although if conditions are suitable the US will undoubtedly continue to make a concerted effort to promote crop substitution. For example, in December 1995 a news report from Tocache, Peru stated that a crackdown on Colombia's Cali cocaine cartel and increased interdiction

of drug flights and dynamiting of clandestine airstrips by Peru's military disrupted the supply network carrying Peruvian paste to Colombian processing laboratories. The report states that with dwindling markets, coca leaf prices in Peru plunged from \$60 per 12 kilogram sack in April to less than \$5 in December. US officials and some experts see the time as being ripe for a crop substitution drive.

In Parts II and III Clutterbuck provides a historical overview of the production, handling and distribution of illegal drugs by countries such as Peru, Colombia and Bolivia and details the extent to which their economies and political structures are financed by the illicit drug trade. He provides ample proof to support the fact that these three countries are in the forefront of the world-wide distribution of illegal drugs. His study of Peru is the most detailed of the book, because he spent time there as an adviser to the police and military. He found that Peru best "illustrated the interplay between drug trafficking, corruption, terrorism, counter insurgency and crime." Clutterbuck emphasizes the importance of intelligence in combatting not only terrorism but drug trafficking. Indeed, intelligence acquired from a variety of contributors, properly collated, analyzed and shared is a prerequisite for a successful strategy against organized crime. Effective legislation must also be in place to support enforcement initiatives.

This chapter also contains an interesting account of events of major significance in Peru's political life and its position as a major illegal drug producing country. The author describes the rise of the *Sendero Luminoso* (SL) (Shining Path) political movement, led by the Maoist ideologue Dr Abimael Guzman. His power, influence and organizational strength became a major terrorist threat to the state of Peru. So much so that for over 20 years police intelligence targeted Guzman's Shining Path movement, which itself raised an estimated \$30 million a year by levying a five percent "revolutionary tax" on the coca paste sold to the traffickers who exported it to Colombia. Clutterbuck documents the extent of Shining Path's strength and points to the consistent warnings provided by police intelligence. Unfortunately, the warnings were largely ignored but "proved precisely accurate."

The author provides interesting police investigative techniques utilized to capture Abimael Guzman, including the implementation of the *Repentance Law*, whereby captured terrorists or supporters were "turned" in return for substantial rewards. In Peru and other jurisdictions this type of legislation afforded a successful method for dismantling terrorist movements.

Clutterbuck describes Colombia, the world's largest producer of coffee and a substantial gold and oil producer but, since the 1960s the "centre of the world's cocaine trade, refining and exporting some 75 percent of the world trade in the substance." The notorious Pablo Escobar gained and maintained power in Colombia through ruthless intimidation, threats, bribery and killings, with some 30,000 people being murdered every year. In 1988, the country recorded the highest murder rate in the world. Although military and police operations were stepped up and many courageous politicians supported the drive against the drug lords' tyranny, others were not so steadfast and surrendered to intimidation and threats of violence. He states that corruption is also rife in

Bolivia where at least two recent presidents were blatantly involved in corruption; yet the scale of violent crime and terrorism is not comparable with Colombia or Peru. As in other countries, the US government's attempts to control coca production by coercing the Bolivian government through economic sanctions or withdrawal of aid has been largely unsuccessful.

In Part IV Clutterbuck examines the production and distribution of heroin, cannabis and synthetics. He expresses the view that in the heroin market it is the individual business people who handle the money and make the profits from the illicit drugs, not the triads. No doubt there are many Chinese drug syndicates made up of people who have never been triad members, but I believe there are those secret triad members who are in the upper echelons of major organized crime syndicates, who make substantial profits from the work of the more visible triad members engaged in extortion, protection rackets, prostitution, loan shark collection and as mules for the international drug traffickers.

Part V describes the techniques of money laundering and the many diverse businesses involved in the washing of money emanating from criminal drug enterprises. The author covers the area from the cash operation of the lowest street dealer, through the small businesses that operate as individual entrepreneurs, to the larger corporations who move the money through a series of bank accounts, often to off shore "safe havens" in order to conceal both the origin and the ultimate destination of the drug profits. The author states that the campaign against money laundering must be directed at all organized crime, not just drug trafficking, because as he says, "they are intertwined." He believes that although there has been a mass of anti-drug legislation passed since 1986 and drug traffickers have changed their methods, it does not seem to have reduced the amount of trafficking. That observation is probably quite accurate, but I believe that given the substantial profits available to those involved in trafficking drugs, there will always be those prepared to take substantial risks.

There are now many jurisdictions that include money laundering as an integral part of legislation against all organized crime, not only drug trafficking. For example, the United States *Racketeering Influenced and Corrupt Organizations* Statute, commonly referred to as "*R.I.C.O.*" enacted in 1970, but infrequently used until the 1980s, creates new offenses and provides substantial criminal penalties, including mandatory forfeiture of assets acquired in violation of the Act. Individual US states also have comparable legislation. Canada's Proceeds of Crime legislation came into force in January 1989. It amended the *Criminal Code of Canada*, the *Food and Drug Act* and the *Narcotic Control Act*, and provided for new court order proceedings to seize, freeze and forfeit the proceeds of crime and created new offenses dealing with the laundering of such proceeds. Substantial seizures have been made in Canada under the new legislation. Also, new bilateral agreements, such as the one between the US and Canada provides for the sharing of asset proceeds when Canadian investigative work has assisted the American authorities in apprehensions and convictions.

I would add that many countries are becoming more sophisticated in detecting money laundering. For example, Australia's relatively new computerized financial transaction

reporting system by the Reports and Analysis Centre (AUSTRAC) has had good success in "following the money trail." Furthermore, some jurisdictions in the US and Canada have instituted civil forfeiture as another means of attacking the proceeds of crime.

Part VI is an examination of the consumer countries, particularly the United States and Eastern and Western Europe, with particular reference to the efforts undertaken in The Netherlands, where decriminalization of drugs has occurred. The Dutch method of enforcement, whereby drug users are directed to treatment centres and street dealers are surveilled to identify the import routes, might be considered more pragmatic than most other countries. This approach has caused uneasiness among other countries, including the US, and might be criticized because the cost saving is only at the dealer end, with the exporters still making their full profits. But, as Clutterbuck points out, there are fewer drug crimes committed and far fewer deaths by heroin overdose.

I would suggest that alternative approaches to the drug problem in the US appear to have little chance of success, given President Clinton's 1993 declaration that legalization or decriminalization would "foster America's self destruction as a nation." Indeed, successive US presidents have authorized vast amounts of money to continue the "war on drugs." US public opinion has also favored continued suppression. However, if that must remain a necessary ingredient then it should be undertaken in conjunction with a more sophisticated strategy against major traffickers. In this vein it is interesting to read a recent news report which indicates the Central Intelligence Agency (CIA) is now playing a growing role in anti-drug operations around the world. This additional mandate might not sit well with some political intelligence observers, but given the Agency's recognized capability it can only assist in raising the level of intelligence and subsequent enforcement attack on major importers and traffickers.

Alternative measures, such as those undertaken in The Netherlands, would probably not be acceptable in the US without a fundamental change in American politics and crime control policy. Throughout the 1980s and 1990s there has been the view, not only in US politics, but in Canada and other countries as well, that drug use challenges the established social order and moral foundation of authority.

Indeed, drug policies have consistently emphasized criminal penalties and deterrence over prevention and treatment as control mechanisms. Time and time again drug policies using deterrence strategies have not been successful in reducing drug use. Enforcement strategies, particularly at lower levels of the trafficking chain, have wasted valuable police and court resources, aggravated the health risk associated with drugs and increased levels of violence. This view was articulated in a 1994 study completed by the Chief Coroner of British Columbia, when he expressed the view that the drug problem cannot be altered through the criminal justice system, the police, the courts or the correction system. He said that broader social strategies must be adopted to deal with drug abuse.

Part VII is a four chapter study of illegal drug use and associated criminal activity in the United Kingdom. Clutterbuck suggests that Britain, because of its geographical location as an island may be a suitable test country to examine four alternative options, i.e.,

continued suppression with increased penalties for importers and traffickers, decriminalization, broader licensing of drugs for issue under government control and licensed legalization. He suggests that the discussion, debate and decision time is urgent. I notice from a recent report that at least one jurisdiction in Britain is taking action. The Merseyside Regional Health Authority recently authorized the prescribing and dispensing of a wide range of previously illicit drugs, including heroin. Already, reports state the Authority has recorded a decrease in drug-related acquisitive crime since the program commenced.

The second book, *Controlling State Crime*, is a collection of essays written as part of a series on the on-going study of crimes of the state within the framework of critical criminology and criminal justice. According to the editor, the project began in the fall of 1990, when he began organizing a series of books under the theme Comparative Approaches to Controlling State Crime, and organized a number of panels for the American Society of Criminology, the Academy of Criminal Justice Sciences and the Canadian Association for Security and Intelligence Studies. The contributors to this volume are from a broad range of disciplines, views and interests and this is confirmed by the diversity of their opinions on the subject of state crime.

One of the key elements and a common theme throughout these essays mentioned in the Foreword is that state crime is "evident and avoidable," and that particular harm can be identified as a result of actions by elements of the state, although the extent of criminality in some cases may vary. Furthermore, it is apparent in the essays that the action and behavior referred to as "state crime" by those in authority is intentionally hidden from public view, providing authorities with a continual cloak of secrecy surrounding their actions. In many cases media scrutiny and subsequent publicity has been the means by which the veil of secrecy has been lifted. Each essay provides a particular view of an element of state crime, whether committed by a military regime, a police force, an intelligence organization or by those agencies that less readily come to mind as offenders, such as the state supported educational institutions and crimes against the environment committed by the military during military operations.

The book has an international theme, with two essays having particular reference to the Canadian situation. A significant feature of the book is that not only are the problems of state crimes identified, but plausible and possible solutions are put forth in the latter four essays. The volume concludes with a thoughtful summary of possible solutions to the various forms of state crime. Each author tackles the subject matter with diligence and thoroughness and all provide excellent notes and references for those wishing to conduct further research. Time and space do not permit a review of each essay, but I will try to comment on the significant points as I see them in this collection.

In his introductory essay, Ross states that "Governments and States conceal their deviant behaviour as prudent measures to prevent their instability and downfall." He also points out that the principal state criminogenic actors who engage in state crimes are the military, national security organizations and police agencies. I would agree and the Canadian experience has particular examples in each area in the most recent past.

Sharansky's essay on the conduct of the national security forces in the State of Israel also provides a good example of the state engaging in criminal behavior by using "moderate physical pressure" during interrogations. Such tactics have been used by other regimes throughout history as a means of maintaining "law and order," and although Sharansky suggests that the majority of Israeli citizens support such behavior, surely the end does not justify the means. In his essay Friedrichs prefers the term "government crime" as opposed to the term "state crime," believing that the government sanctions most behavior. I am inclined to believe that often the "government in power" is unaware of what agents (police, intelligence agencies and the military) of the state may be engaged in. Gill's essay probably confirms that point. He writes about the need for control and oversight of security and intelligence agencies as a necessary condition for minimizing state crime, with standards and guidelines that will be public and provide greater ministerial direction. In fact, the Canadian example provides ample proof of criminal activity taking place without the knowledge and sanction of the government in power.

The Ross essay on state crimes by the military is particularly timely given the current inquiry into Canada's military role in Somalia. Ross draws a rather unusual parallel between "organized crime" and certain conduct by the military, which might seem a rather unusual combination, at least in some countries. Yet, I would suggest that testimony by Canadian senior commissioned officers at the recent Somalia enquiry tends to lend some support to Ross's analogy. It was stated that "secrecy and paranoia" had infected the military, with document alteration and destruction prevalent. Also, the practice of written comments on disposable stickers was preferred to written comments on documents.

In his essay Menzies believes that the attainment of "professionalism" was one of the key goals which police agencies should strive for, but the value of "responsible humanism" was also stressed to enable the police to more readily integrate into the mainstream of society. I would suggest that the current move by most police agencies in favor of "community policing" is making progressive steps toward meeting Menzies' suggestion of reducing the social isolation of the police. I believe that many major police agencies in Canada are utilizing the services of civilian professionals on a part-time/contract basis, while there are increasing academic/police relationships in many relevant disciplines, such as sociology, psychology, criminology and penology. Also, current police recruitment statistics show greater numbers of police officers with higher education in a variety of disciplines, not only at the Bachelor level, but also at the Masters level. Also, many police officers continue their academic studies during their police service career, which adds to their community involvement.

Cabrera argues that state crimes are committed by state-supported educational institutions by causing various types of social harm through minimizing individual life chances and preventing students from realizing their potential. I believe these are wrongful acts, transgressions and social harms, but I do not see them as criminal behavior. On the other hand, Tunnel argues for a more inclusive definition of "criminal" to include immoral social relationships and harmful processes, in which the state has failed to address the problems of working class men and women. He particularly makes the point that the state

does not always expand its democracy hand in hand with its foreign capital expansion, and there are few checks and balances on the attitude toward the worker in many developing countries.

Zilinsky's essay points to the severe environmental damage that frequently takes place during military operations. He makes particular reference to Iraq's military occupation of Kuwait and their ignition of about 150 Kuwaiti oil wells and the release of stored petroleum on land and sea. He stresses that the 1977 UN Convention of the Prohibition of Military or Any other Hostile Use of Environment Modification Techniques (ENMOD) needs to be strengthened and ratified by more countries.

Hurwitz points out the time consuming, bureaucratic and costly deficiencies in the European Commission on Human Rights and the European Court on Human Rights, but stresses that the organizations have "effective powers and legitimacy," especially in relation to those countries that accepted the jurisdiction of the Court. They successfully harmonize laws, standards and operating procedures across Europe. Likewise, Yarnold writes about the bilateral and multilateral problems in the International Court of Justice, but believes that an adequate framework is in place. He suggests that the power, authority and jurisdiction should be strengthened by member nation states. I believe that if the Court had criminal jurisdictions over states, as opposed to individuals and were prosecuted for criminal conduct, this might afford some new level of deterrence for aggressive states. I might add that at the recent Commonwealth Law Conference in Vancouver, British Columbia a draft statute prepared for the International Law Commission proposed an international criminal court to prosecute violations of international humanitarian law. It was stated that the possibility of establishing such a court "looks very real." On the other hand, there seemed to be less support for the creation of a permanent international war crimes tribunal.

Martin's essay provides a rather utopian view of abolishing the state to halt state crime, but this seems a rather unrealistic adventure in world politics today. I suspect the outcome might result in something akin to George Orwell's *Animal Farm*.

In his concluding essay on the future possibilities of controlling state crime Ross asks the question "Where do we go from here?" I am inclined to believe the impetus should be for a stronger international criminal court, with pressure and input from "public driven actions" to institute measurable changes. This would be a major progressive step toward the prosecution and punishment of criminogenic states.

Controlling State Crime will appeal to a broad range of readers, both academic and student alike. All the essays are very thoughtful and provide insight, stir debate and should encourage further research into the subject.

Clutterbuck's *Drugs, Crime and Corruption* is easy to read, contains a wealth of information on the subject and is packed with solid statistics, tables and facts. More importantly, it provides food for thoughtful debate on the urgent dilemma facing societies as they grapple with the problems created by the increasing consumption of illegal drugs

and the organized criminals who benefit from them. The book would appeal to a general broad range of readers.

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