ECONOMIC CRIME AND THE STATE IN THE TWENTIETH CENTURY: A GERMAN-AMERICAN COMPARISON

Workshop at the GHI Washington, April 14-16, 2011. Convener: Mario Daniels (GHI). Participants: David O. Friedrichs (University of Scranton), Karl Christian Führer (University of Hanover), Michael Levi (Cardiff University), Paul Maddrell (Aberystwyth University), Eurídice Márquez Sánchez (International Organization for Migration in Austria, Vienna), Atiba Pertilla (New York University), Cornelia Rauh (University of Hanover), Stefanie Werner (University of Hohenheim), Sarah Wilson (University of York).

In view of the widely reported cases of corruption and fraud in companies such as Volkswagen, Siemens, and Enron, as well as the public outrage that erupted in the wake of these scandals, it is surprising that economic crime has attracted so little scholarly interest among historians. Neighboring disciplines such as criminology, law, economics, political science, and sociology offer excellent approaches to the phenomenon of economic crime; however, they do not reflect much on the changing definitions and conceptions of illegal and immoral behavior in the business world since the late nineteenth century. This lacuna is even more conspicuous in so far as the relatively well-established field of corruption research has demonstrated that historicizing the terminology and thoroughly describing transformations in economic practices can produce far-reaching insights into historical societal forms, their structures, conflicts, and developmental processes.

The aim of the workshop “Economic Crime and the State in the Twentieth Century” was to fill this gap in knowledge. To this end, it brought together historians, law historians, criminologists, and economists who applied methods developed in their respective disciplines to a broad spectrum of individual phenomena subsumed under the rather diffuse term of “economic crime”; the term covers such diverse crimes as embezzlement, tax evasion, certain forms of corruption, investment and subsidy fraud, human trafficking, and industrial espionage. The workshop showed that analyzing states’ endeavors to prosecute these crimes and the political and ethical discussions surrounding these processes is a fruitful approach that yields a deeper understanding of economic and political practices in modern societies. Yet the fact that “economic crime” describes such a variety of offenses also underlined the need for the terms and
concepts employed to be differentiated and made more concrete. In this, the workshop proved the merits of interdisciplinary dialogue once again.

Transnationally oriented with an accent on German-American comparison, the workshop focused on the following issues: (1) Which actors and institutions in industrialized countries have developed an awareness of economic crime as a new problem? Since when? What are the moral, political, societal, and economic values governmental and social actors draw upon? How and why have concepts of what is considered morally and legally correct changed in the economic sphere? (2) What role have the media played in defining economic crime? Public scandals that both illuminate and transform the semantics of morality and the law were a central issue of analysis. (3) What means have political institutions as well as private and state businesses employed in response to economic crimes and the discourses surrounding them?

Sarah Wilson addressed all these questions in her presentation on economic crime in the British banking sector in the second half of the nineteenth century. According to Wilson, cases of fraud and embezzlement were so ubiquitous then that the financial system had a “criminogenic architecture”—a term borrowed from David O. Friedrichs’s study on the most recent financial crisis on Wall Street. Friedrichs defines “criminogenic conditions” as “conditions that tend to promote criminal activities and actions,” a definition which extends the notion of crime “beyond the strictly legalistic notion of violation of the criminal law.” Wilson presented examples of criminality within the British financial system that were not only made possible but actually fostered by the laws and rules and the obvious gaps and loopholes they provided. Because of the close personal and political connections between the political and the economic elites, it proved very difficult for the authorities to regulate the financial system effectively and lasting.

Following Wilson, who empirically demonstrated the complexities and difficulties of analyzing economic crime in modern societies, Mike Levi undertook to define different criminological concepts. His differentiation of the terms “white collar crime,” “economic crime,” and “corporate crime”; his reflections on the impact of scandals and the development of national and international awareness regarding economic crime; and his presentation of basic criminological models like the “crime triangle” provided useful tools for further discussions.
Levi’s presentation highlighted that the immense diversity of terms and concepts impedes productive research on economic crime in criminology, let alone in other disciplines.

Atiba Pertilla’s paper on the case of the U.S. Shipbuilding Corporation and subsequent legal proceedings in the first decades of the twentieth century followed. It showed the enormous value of an approach that combines in-depth analysis of economic and financial practices with a sophisticated application of cultural studies methods. Pertilla described the intricacies of big mergers and the resulting manifold opportunities for criminal activities, on the one hand, and for regulation, on the other, during this period. He also showed how much concepts of competitiveness and notions of masculinity shaped the discourse on economic crime. Pertilla illustrated the broad range of sources that can be used for historical analysis by including contemporary caricatures to reconstruct gender models.

In his case study on Günter Kaußen, Karl Christian Führer discussed the thin line between socially and morally questionable practices and criminal behavior according to the law. Kaußen made a large fortune by buying substandard apartment buildings and renting them out to immigrants at excessive prices. Kaußen capitalized on his tenants’ fear of filing a suit against a strong adversary although the law would have offered safeguards against such dubious practices. Even though Kaußen, who caused a string of scandals, was publicly disgraced as a “Miethai” (rent shark) and “slumlord” in West Germany and in the U.S., he was never convicted of any economic crime.

Eurídice Márquez Sánchez’s presentation also dealt with the prosecution of economic crimes, in her case illegal human trafficking. She offered an illuminating survey of the history of the international discussions on the phenomenon of trafficking in human beings, especially in the twentieth century. She also described the structures of this specific field of organized economic crime today and discussed the international and national efforts, particularly of NGOs, to fight it.

While Sánchez focused on the weak—particularly women forced into prostitution—as victims of economic crime, Paul Maddrell called for greater emphasis on the “crimes of the strong against the strong.” His presentation discussed states’ efforts to illegally gain economic, technological, political, and strategic advantages in a world of global competition. Maddrell presented abundant evidence to illustrate the
massive effort of Western intelligence services to collect information about the GDR’s economy between 1949 and 1961. The Cold War was not only an all-embracing competition between two ideological global systems; it was also, as Madrell illustrated, increasingly an economic conflict. Information about the adversary on the other side of the Iron Curtain was collected to strengthen one’s own economic system—on both sides. Eastern European spying on the West caused alarm particularly in the U.S. government.

In his talk, Mario Daniels then argued that the Reagan administration saw industrial espionage, usually referred to as “illegal technology transfer,” as a major threat to the economic and military position of the U.S. in the global competition for market shares and political influence. Consequently, the government launched a large campaign that aimed to control the global trade and exchange of information; it was also intended to prevent U.S. citizens from divulging trade secrets to foreign states and hinder intelligence services from acquiring economic and technological information. However, critics in business, science, and the press regarded the policy as a threat to the basic rules and values of liberal capitalism. Although industrial espionage was certainly an economic crime, efforts to thwart it threatened the interests it sought to protect. This case made plain that the perception and prosecution of crimes always depends on the legal interests of a society.

This was also the tenor of David O. Friedrichs’s paper on the “criminogenic architecture of Wall Street,” in which he showed how difficult it is to legally regulate economic practices that have a manifest negative effect on societies on a global scale. The meltdown of the financial market in 2008, Friedrichs argued, has highlighted the need for an intense and open discussion of specific economic practices and the lack of regulations. Friedrichs also called for the social costs of the crisis to be more justly dispersed, as well as for widely shared moral concepts and legal formalities to be more closely aligned.

Stefanie Werner, who concluded the workshop, addressed two questions in her presentation: why good people do bad things, and how widespread economic crime—or “business crime,” as she prefers to call it—has been in (West) Germany since World War II. In response to the first question, Werner presented findings from her application of the Rational Choice Theory, which weighs the expected gains from a crime against the possible negative consequences. The second question is more difficult to answer as no official statistics on
economic crime exist in Germany. Werner bypassed this problem by evaluating the German periodicals *Die Zeit* und *Der Spiegel* to gather her own statistics and thereby illustrate the potential of this method for quantitative analysis.

In sum, the workshop demonstrated the benefits of a multidisciplinary approach to the historical analysis of economic crime. As historical research in this field is still quite sparse, historians can gain a great deal from interacting with their colleagues in criminology, economy, and law to learn how the phenomenon of economic crime can be defined, described, and categorized. The workshop also underlined the enormous potential the historiography of economic crime holds for understanding the political, economic, and social challenges of our time.

Mario Daniels (GHI)