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Decriminalising Criminology^[1]

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Abstract

Poverty, malnutrition, pollution, medical negligence, state violence, corporate corruption and so on carry with them widespread and damaging consequences but are rarely if ever included in assessments of the 'crime problem'. Notions of 'crime' also seem to offer a peculiarly blinkered version of the range of misfortunes, dangers, harms, risks and injuries that are a routine part of everyday life. This paper revives an abolitionism imagination of the 1970s by exploring the potential for challenging and deepening criminological agendas when the concept of crime is subjugated to that of social harm and when the concept of crime control is subordinated to that of social justice.

Introduction

This paper explores the implications for criminology when its key referent - 'crime' - is subjected to a series of critical deconstructions. Historically such an endeavour is in its infancy - probably no longer than 30 years old. Two of its major initiatives have been to:

- Broaden the subject matter of criminology away from a sole reliance on those injurious acts defined as such by the criminal law - theft, burglary, criminal damage and so on - in order to establish that a vast range of *harms* - sexism, racism, imperialism, economic exploitation and so on - could and should be included as the focal concern of an area of study called criminology (Schwendinger and Schwendinger, 1970).
- Recognise that 'what is crime' rests crucially on the power to define and the power to police certain 'transgressions' whilst ignoring or giving little attention to others. The key problematic for criminology then becomes not crime or criminal behaviour, but social order and how that order is produced and struggled over (Shearing 1989).

Both approaches lead us to ask some quite fundamental questions: what things constitute the proper domain of criminology? Can criminology do these things and still remain distinctively criminological? Or, is it better conceived as a branch of sociology or political science?

Crime-ology

First we must consider how criminology reached this precarious state of affairs. Traditionally the discipline has defined itself around two rationalising discourses: the search for the causes of crime and the devising of methods and means for its control. Up to the 1960s positivism maintained that if we looked hard and long enough we would be able to 'discover' crime in a

range of physiological, psychological, economic, or structural predeterminants. The criminogenic condition could then be treated by designing interventions to alter individual behaviour either through medicine or psychiatry or by opening up new opportunities for community development. As Shearing (1989) has aptly described, this endeavour can best be described as one of *crime-ology*. However, these agendas were to come under sustained attack.

By the 1960s and 1970s an emergent radical criminology developed two key counter propositions:

- If criminology restricts itself to questions of cause/remedy it becomes an adjunct of government or at best a think tank to develop policy and advance the interests of particular political constituents. It needs to sever all such institutional ties if it is to have any independent academic credibility.
- Crime cannot be identified by simply focusing on known offenders. These are but one particular element of the 'problem of crime' and only capable of identification following a series of social constructions involving the power to formulate particular criminal laws, police targeting, court room discretion, media representations and so on. As such, crime has no independent existence. Rather what criminology can and should study are processes of criminalisation: how certain harmful acts/events come to be defined and recognised as 'crime' whilst others do not.

As a result it became commonplace in radical circles to assert that the end of criminology was imminent. A century of searching for the causes of crime and of devising methods for its control had seemingly come to a dead end. We were no nearer establishing causation than we were in effecting any reduction in crime rates. Nothing seemed to work. So the emergent wisdom of the 1970s urged us to concern ourselves more with new developments in social, political and legal theory, rather than being burdened with inconclusive empirical projects. However, this foundational critique took place against the political backdrop of a resurgence in popular law and order politics and authoritarianism. Its critical edge became lost within the resuscitation of criminology in a myriad of realist, reformist and reactionary guises. As law and order politics swept through the political landscape of the 1980s criminology was rejuvenated, focusing once more on untangling causes and formulating effective measures of crime management, rather than working to contest and disrupt its rationalising agenda.

A resurgent radical right revived a neo-classical vision of criminality as voluntaristic - a course of action willingly chosen by wicked, calculating individuals lacking in self-control. In policy circles a burgeoning administrative criminology argued that all that could be realistically hoped for was to implement pragmatic means aimed at reducing the opportunity for crime and to manage crime through situational preventative measures. Managerial efficiency (what works at some times in some places), cost effectiveness (what works cheaply) and pragmatic risk assessment have become its defining principles. Simultaneously, a left realism was convinced that the problem of crime was growing out of control and that once more its causes needed to be established and theorised. In tandem it was argued that a social justice programme needed to be initiated to tackle social and economic inequalities under the rubric of 'partnerships' and 'inclusive citizenship'. In these ways, by the 1980s, criminology's historic project to find cause and cure once more achieved an ascendancy that continues to be reflected in a host of new criminology departments in higher education, a succession of academic/practitioner conferences and a burgeoning academic press (Muncie et al, 1996). At the beginning of the 21st century criminology - as crime-ology - has never seemed so vital and flourishing. Where, however, does this leave the radical critique of the 1960s and 1970s: as an historical anomaly in the history of the discipline or as a vital point of resistance and theoretical renewal?

Beyond Legal Definitions of Crime

Contrary to many a criminological mentality, theoretical development has far from come to a standstill. There remains an important body of deconstructionist knowledge - originating in no small measure from a European school of abolitionism - which continues to move beyond the essentialist signifiers of crime, criminality and criminal justice in order to facilitate the production of new critical insights and alternative visions of justice (De Haan, 1990; Steinert, 1986; Bianchi, 1986; van Swaaningen, 1997). Nowhere is this most clearly seen than in the

telling reminder that realist and administrative criminologies are trapped within a legal definition of 'crime'. As abolitionists had established in the 1980s, if our concern with crime is driven by fears for social stability, personal safety and social justice, then we may be well advised to look beyond 'crime' to discover where the most dangerous threats and risks to our person and property lie.

Poverty, malnutrition, pollution, medical negligence, breaches of workplace health and safety laws, corporate corruption, state violence, genocide, human rights violations and so on all carry with them more widespread and damaging consequences than most of the behaviours and incidents that currently make up the 'problem of crime'. In the 1940s Sutherland's (1949) pathbreaking work on white-collar crime had introduced a definition of crime based on such concepts as '*injury to the state*' and as '*socially harmful*'. In the 1970s radical criminologists advocated a further deepening of the criminological agenda to include racism, sexism and economic exploitation. In many respects this important debate was foreclosed by the growing hegemony of realist approaches. But it is a debate that remains unfinished.

By the 1990s numerous harms had begun to circulate on the margins of criminological inquiry (Muncie and McLaughlin, 1996). Questions of human rights denial entered the agenda, not simply through extending conceptions of 'what is crime?' but by recognising the legal transgressions routinely employed by those wielding political and economic power and their ability to deny or conceal the harms they unleash under the protection of the law (Cohen, 1993). In a similar vein it has taken some twenty years of feminist enquiry to have it acknowledged that violence, danger and risk lie not just on the streets or in the corridors of power, but in the sanctity of the home. Recognising male violence and opening up the vexed question of 'violent masculinities' also carry with them the potential to disrupt the narrow and myopic concerns of much of what currently is understood to be the 'crime problem' (Segal, 1990; Campbell, 1993; Jefferson 1997).

In other areas too we can witness a partial emergence of 'hidden crime' onto a mainstream agenda. The murder of Stephen Lawrence and the unrelenting campaign by his family to expose police and judicial racism has catapulted racial violence and hate crime to the forefront of issues to be addressed by law enforcement and community safety agencies in the late 1990s. State crime in the form of illegal arms dealings, genocide and torture has been consistent front page news following successive wars in the Balkans and the establishment of the War Crimes Tribunal in the Hague. A long campaign against the transportation of live animals from Britain to Europe has drawn the issue of animal rights into a crime discourse, as has a recognition of the culpable negligence of tobacco and food companies in knowingly marketing unsafe and life threatening substances. It has also become increasingly likely to find numerous aspects of social policy (in particular housing policy and youth homelessness), environmental policy (in particular road building and pollution) and economic policy (in particular third world debt, the arms trade and corporate greed) being described within a crime discourse. In themselves these deepening of the criminological agenda have once more forced a re-conceptualisation of the constitution of 'crime' and thereby the proper domain of criminology.

A re-imagining of crime and criminology has also been made possible by the eventual arrival of postmodernist perspectives into criminological discourse and the insistence that a recognition of the limited and limiting nature of the discipline can only be overcome by constantly questioning and stretching established boundaries. In the early 1990s a postmodern criminological imagination - emanating to no small degree from feminism - had warned that criminology would remain forever narrow and self justifying unless it began to deconstruct its key taken-for-granted referents (crime, criminality, deviance and so on). Foucault's (1977) acknowledgement of a multiplicity of power relations and his questioning of the ability of any totalising or meta theory (Marxism, for example) to answer all questions was also pivotal. A growing disenchantment with apriori claims to the 'truth' cast doubt on all the rational and modernist intellectual movements of the past. As a result, postmodernist perspectives opened up a vital space in which reflexive knowledge of the entire criminological enterprise could be excavated (Smart, 1990). For some this has meant not only the abandonment of 'crime', but also a rejection of all grand theory and the prioritisation of a wide variety of disparate and subjective positions. As a result the sensitising concepts of difference, diversity and localism have slowly filtered into the margins of the criminological domain. It is through such deconstructionism that the possibility of subjugating the concept of crime to that of social harm has once more been raised.

Recoding Crime as Social Harm

In a harm-based discourse the concept of 'crime' remains important only in so far as it alerts us to relations of power embedded in social orders which generate a whole series of social problems for their populations but of which only a selected few are considered worthy of criminal sanction. A conception of crime without a conception of power is meaningless. The power to render certain harmful acts visible and define them as 'crime', whilst maintaining the invisibility of others (or defining them as beyond criminal sanction) lies at the heart of the problem of working within notions of 'the problem of crime'. Notions of 'crime' offer a peculiarly blinkered vision of the range of misfortunes, dangers, harms, risks and injuries that are a routine part of everyday life. If the criminological intent is to reveal such misfortunes, risks and harms then the concept of 'crime' has to be rejected as its sole justification and object of inquiry.

The first stage in decriminalising criminology (or to decentre crime) is to recognise that any number of damaging events are far more serious than those that make up the 'crime problem'. Moreover, many of these incidents (such as petty theft, shoplifting, recreational drug use, vandalism, brawls, anti-social behaviour) would not seem to score particularly high on a scale of serious harm. Despite this it is often these 'minor' events that take up much of the time and preoccupation of law enforcement agencies and the criminal justice system. Conversely, the risk of suffering many of those crimes defined by the state as 'serious', would seem negligible compared to such everyday risks as workplace injury and avoidable disease. As many textbooks conveniently remind us but then seemingly forget, the risk of homicide is far less than that of terminal disease or of being struck by lightning and we are more likely to suffer accidental injury than theft. Yet why are we generally more afraid of crime than other more pertinent threats to our personal safety?

Questions such as these were first raised by Sutherland (1949) and then by the Schwendingers (1970), but the concept of social harm has never seriously been incorporated into criminology. Steinert (1986) refers to 'troubles', Hulsman (1986) to 'problematic events', Pepinsky (1991) to the 'violent refusal of democratic behaviour' and whilst De Haan (1990) talks of crime as social harm he never closely interrogates the concept. He is ultimately persuaded to argue that there is no solution to the problem of defining crime. It will always carry with it a set of contestable, epistemological, moral and political assumptions (De Haan, 1990, p.154).

By the mid-1990s critical theorists in the US (Henry and Milovanovic 1994; 1996) had developed a *constitutive criminology* in which crime was defined as the 'power to deny others'. Crime was characterised as taking two major forms: harms of reduction and *harms of repression*. Harms of reduction refer to situations when an offended party experiences some *immediate* loss/injury because of the actions of others. Harms of repression refer to situations when power is used to restrict *future* human potential aspirations, and development. These concepts of harm are primarily used to bring a wide range of hidden crimes into the centre of the agenda and to reveal how certain harms far from being condemned, are legitimised through the activities of various legal and social institutions. This is particularly the case in those 'crimes' - sexual harassment, racial violence, hate crime and so on - which threaten human dignity (Tifft, 1995) and often seem to be lacking in legal status or traditionally have been given scant attention by law enforcement agencies. However, what has remained unclear is how far the recoding of crime as harm is capable of challenging and over-throwing legal definitions. As Nelken (1994) has argued, campaigns to extend the criminal label so that it includes new forms of injury, continually run the risk of reinforcing the concept of crime even when it is seemingly being attacked. On a different front Matthews and Young (1992) have maintained that such deconstructions are so relativist that they become inoperable. They also encourage nihilism and cynicism. Moreover they lament that by removing the principal object of criminology (crime) the subject is dissolved into larger *essentialist* disciplines such as sociology.

In response Henry and Lanier (1998) have put the case for an integrated definition of crime which recognises the legally defined and the legally ignored, the serious and the trivial, and the visible and the obscured within gradations of harm's seriousness. Using the analogy of light refracting through a prism they are also capable of recognising that what counts as crime is forever contingent and changing. Nevertheless such a model which integrates crime and harm still tends to depend on crime as its starting point. What would happen if instead we began our analysis with a deconstruction of the concept of social harm? The remainder of this

article attends to this task and a list of the 'new' discursive frames that would be opened up (to resuscitate a 'tired' discipline) is provided in Table 1.

	Discourse	Discursive Frame
Established	Crime	Criminal Justice
Emergent	Incivilities Malpractice/Negligence Risk Violation	Social Policy/Community Safety Regulation Risk Assessment/Management Human Rights
Absent/Marginal	Exclusion Loss/Damage Dispute Troubles Fear Powerlessness/Insecurity Injury/Pain/Hurt Grief/Loss of the past	Restoration/Inclusion Compensation Conflict Resolution/Mediation Redress Trust Empowerment Healing Reconciliation/Mourning/Memory
Recognising Pleasure		
Absent	Doing Difference Transgression Dis-respect Dis-order Resistance	'Wrong' Desire/Excitement Tolerance Transcendence/Escape Drama/Delight Carnival/Display Celebration

Table 1: Deconstructing Social Harm

Recoding Criminal Justice as Social Justice

The redefining of crime as harm opens up the possibility of dealing with pain, suffering and injury as conflicts and troubles deserving negotiation, mediation and arbitration rather than as criminal events deserving guilt, punishment and exclusion. As Bianchi (1986) argued, crime should be defined in terms of tort and dispute. Criminal law should be replaced by reparative law. Such a discourse is less concerned with controlling, preventing and punishing and more with enabling, empowering and restoration. Questions of crime control are subordinated to those of a wider social justice agenda in which governments and the wider community recognise disadvantage, difference and diversity and acknowledge that they have a responsibility for enhancing personal and social development. Whilst a concept of harm encourages conceptions of victimisation as ubiquitous it enables recognition of its most damaging forms beyond those which are currently recognised by media, law and the state. Perceptions of seriousness frequently reveal the differential placed on human life dependent on social status and position within the hierarchy of power. On this basis, for example, the death of Princess Diana and the TV presenter Jill Dando are somehow assumed to be more serious than the regular and continuing murders experienced by Nationalist and Loyalist communities in Northern Ireland. Moreover, a concept of harm enables injury to be addressed

by a wide variety of social responses and without necessarily evoking or extending the penetration of the criminal justice system.

De Haan captures much of this spirit in the concept of *redress*. The concept has an extensive set of formal definitions and meanings from 'to put right, repair, rectify something suffered or complained of' to 'correct, amend, reform or do away with a bad or faulty state of things' (cited by De Haan, 1990, p.158). For De Haan it opens the door to dealing with social problems or conflicts (such as crime) through neighbourhood rather than criminal courts and in pursuance of compensation or reconciliation, rather than retaliation or blame allocation.

'To claim redress is merely to assert that an undesirable event has taken place and that something needs to be done about it. It carries no implications of what sort of reaction would be appropriate; nor does it define reflexively the nature of the initial event.... It puts forth the claim for a procedure rather than a specific result. Punitive claims already implied in defining an event as a 'crime' are opened up to rational debate'. (De Haan, 1990, p.158)

The aim, as Cohen (1994) has also described, is to integrate, rather than exclude; to reduce, or if possible, abolish deliberately inflicted pain; to seek restoration rather than retribution.

Towards a Series of Multiple Replacement Discourses

To do justice to such visions the discipline may well need to (yet again) reconsider its connection to those self fulfilling and self justifying versions of criminology (particularly when they appear as criminal justice studies) that currently occupy the political and policy mainstream. Working within established discourses of crime and criminal justice necessarily closes the door to any imaginative rethinking. So it remains the case that important work will always need to be done in exposing the ways that these knowledges of 'crime', criminal justice and criminology are built and activated. However this should not preclude the search for a series of discursive frames that are capable of registering the fragmented complexities of our subject matter and of opening up the possibility of challenging alternatives (Muncie, 1998).

Harm can signify a host of material and emotive negativities - from notions of pain to fear, insecurity, violation, grief, powerlessness, dispute and transgression - as well as the prevailing discourse of crime. The task is to subject each of these signifiers to their own series of deconstructions. What we require now is not just a deconstruction of crime but a deconstruction of the concept social harm. The top of Table 1 lists the emergent and currently marginal discourses that may be employed to challenge the hegemony of 'crime' through a broader conception of social harm. In turn this may necessitate the development of a psycho-sociology of injury, a psycho-sociology of exclusion and so on, rather than something necessarily called *criminology*. It would force a recognition that our subject matter is inherently unstable. Whilst legal wrongs provide the clearest focus, already notions of incivility (anti-social behaviour), malpractice (corporate/political corruption), risk (likelihood of committing future crimes and extent of victimisation) and violation (of human rights) are circulating on the margins of criminal definition and policy formulation. In themselves these 'new' signifiers - emanating from all sides of the political spectrum - alert us to the ongoing struggle over what is the proper constitution of 'crime'. For those on the right the identification and control of 'incivility' is a clear priority whilst for those on the left the redefinition of corporate malpractice as crime would allow such perpetrators to face the same (or enhanced) criminal justice consequences as those endured by 'ordinary criminals'.

The danger of course, may be that the drawing of such 'non-crimes' into the centre of criminology will lead to the criminalisation of all 'undesirable behaviour' by the criminal justice mainstream and herald its further penetration into all matters of conflict resolution. For example, notions of community safety were first promoted as a means of liberalising crime prevention policy; now they have been appropriated by New Labour as a means of targeting the 'anti-social' and used to justify all manner of punitive interventions from curfews to custody. From an abolitionist perspective these emergent discourses do not challenge that of 'crime', but become incorporated by it because they continue to fail to recognise the multi-faceted nature of harm.

It should be noted, too, that whilst the concept of harm is clearly capable of broadening criminology's horizons and radically unsettling its traditional agenda, it continues to operate within a discursive frame of the negative. However, when we acknowledge that harm is not

only a source of fear, but also a source of *fascination, pleasure* and *entertainment* we are faced with a quite different set of possibilities. The bottom of Table 1 lists the potential discourses that might be employed when our discursive frame shifts from 'harm' to 'pleasure'. Any cursory glance at television programme listings, the contents of mass circulation newspapers or the shelves of fiction in bookshops will confirm the extent to which an audience perceives crime not just as a social problem but as a major source of amusement and diversion. The way we enjoy violence, humiliation and hurt casts doubt on the universal applicability of harm as always connoting trouble, fear, loss and so on. For participants, too, the pleasure in creating harm, or doing wrong or breaking boundaries is also part of the equation and needs to be thought through.

Part of such a task is already present in a *cultural criminology* which uses everyday existences, life histories, music, dance and performance as databases to discover how and why certain cultural forms become criminalised. The intention, as Ferrell and Sanders (1995) have argued, maybe to expand and enliven criminology but when pushed to its logical conclusion it is also quite capable of breaking the boundaries of the discipline. Much of this work is also in its infancy. Katz (1988) for example, has talked of the 'seduction of crime' in which disorder becomes in itself a 'delight' to be sought after and savoured. O'Malley and Mugford (1994) have argued that a new phenomenology of pleasure is needed if we are to recognise 'crime' as *transgression* from the impermissible and as *transcendence* from everyday mundanity. Presdee (2000) captures this sense of the inter-relationships between pleasure and pain through his notion of 'crime as carnival'. Carnival is a site where the pleasure of playing at the boundaries is clearly catered for. Festive excess, transgression, the mocking of the powerful, irrational behaviour and so on are all temporarily legitimated in the moment of carnival. Breaking rules is a source of joy, of humour, of celebration. Many acts that might otherwise be considered criminal are momentarily tolerated. In such acts as SM, raving, joyriding, computer hacking, recreational drug use, reclaim the streets parties, gang rituals and extreme sports, Presdee finds enduring fragments from the culture of the carnival. Moreover, as Thornton's (1995) study of 1990s youth club cultures found, there is a continual and shifting exchange between the boundaries of acceptability and illegality and between subcultural authenticity and media manufacture. Moral panics about deviancy no longer simply signify condemnation, but are something to be celebrated by the subcultural participants themselves.

All such instances suggest we need to push deeper and deeper to capture the full meaning of social harm. Certainly notions of crime have a place here but one subjugated to, and set against, a multiple series of replacement discourses incorporating transgression, dis-respect, dis-order, and resistance, as well as loss, injury, troubles and so on. Such discourses themselves may also suggest a new sociology of deviance based on difference and 'otherness' (van Swaaningen, 1999, p.23). Once more the discursive frame necessary to recognise these elements needs to shift not just from criminal justice to social justice, restoration, reconciliation and so on, but to delight, drama, tolerance, celebration, transcendence and the pursuit of *jouissance*.

Significantly too as we move from established discourses of harm to those that are absent, the constitution of the subject shifts from one of 'individual offender' to that of 'collective victim', whilst in a discourse of pleasure new visions of the subject as collective 'innovator or celebrator' are raised.

To date criminology's greatest and recurring limitation is that it allows state and legally defined conceptions of crime to run its agenda. This remains perhaps the biggest hurdle to be faced in the search for a series of self reflexive replacement discourses in which transgression might be understood without reference to crime, harm reduced without recourse to criminalisation and social justice achieved without recourse to criminal law. Yet such reconceptualisations and reframings remain important because they alone allow for a re-imagining of criminology which would enable it to break free of its obsession with legal wrongs and to prioritise such alternative goals as trust, redress, dialogue, tolerance, empowerment and celebration.

In 1890 Topinard, writing in the *Atheneum*, expressed his dislike for the term criminological anthropology to describe the then fledgling science of crime and criminality. He reluctantly suggested using the term criminology instead, 'until a better term can be found'. A century later that search seems even more urgent and necessary.

Notes

1 Apologies to Clifford Shearing for appropriating the title of this paper from his 1989 article published in the *Canadian Journal of Criminology*.

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