



THE RESOURCES OF CRITIQUE

AN INTRODUCTION TO SECTION B

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This section brings together six papers delivered at European Group conferences in the last forty years critically exploring the scope and application of the criminal law. The papers carry to the forefront of debate epistemological concerns regarding the foundations of ‘crime policies’ by the Capitalist State, whether they be around terrorism, political violence, pornography, or sexual violence. In their papers the authors highlight important questions such as *How has a social problem been formulated and defined? What is the knowledge base of criminologically informed interventions? Why has certain legislation been drafted and subsequently enacted?* and *What does the new law aim to achieve?* The papers collectively provide a powerful analysis of the limitations and misuse of scientific knowledges and remind us of the importance of asserting academic independence. Further they highlight ‘crime science’s’ role in maintaining and shaping ideology and culture and perhaps most importantly, deploying strategies that can be used to maintain the

power and legitimacy of the Capitalist State. *Critique* means more than being just 'critical'. For the authors showcased in this section, critical theory must be grounded within socio-economic and political contexts, linked with the work of grass roots social movements (or interpreting their interventions) and intended to facilitate emancipatory change.

In chapter thirteen Sebastian Scheerer questions the rationale behind the introduction of new laws to meet the challenges of terrorism and political violence. Drawing upon historical cases, Scheerer focuses on the response of the State to socialist inspired political violence. He suggests that given the extensive sheaf of already existing laws it cannot be plausibly argued that *new laws are necessary* to combat political violence, thus opening the debate for alternative explanations of law formation. Scheerer identifies that in an "ideological *state of siege*" anti-terrorism laws are presented in the 'national interest' to solidify existing moral boundaries and re-legitimize the State. This *state of siege* is likely to increase social polarisation, deepen intolerance of deviance and create new 'enemies within'. Yet paradoxically it may also act as a conduit to radicalise marginalised populations and reignite dormant utopian ideals. Scheerer's central argument is that the *state of siege* must be contextualised within an understanding not only of the perceived threat to the State but also the relative weakness and fragility of political legitimacy in western liberal democracies. Acknowledging that all political violence can potentially undermine the States monopoly of violence, Marxists and Anarchists are considered as presenting a particular danger. This is not because of the harm or instability wrought through their political violence – the State has legislative power enough to contain socialist activism - but rather because socialists offer to *fulfil the principles and values* of democracy, justice, freedom and equality. The Capitalist State is thus presented with a dilemma when dealing with socialist inspired political violence - anti-terrorist legislation may strengthen the internal powers of administrators and expand the remit of the penal apparatus of the Capitalist State but is unlikely to be effective

in its stated aim of controlling political violence. Further, to abandon entirely its commitment to democracy would only increase the potency of socialist critique and further exacerbate the legitimisation crises. Liberal democracies are therefore shackled by their need to offer at least lip service to the principles of democracy, thus leaving legal loopholes that can be exploited by pro-democracy campaigners. Indeed, the more repressive the interventions of the Capitalist State, the greater the attractiveness of socialisms and their critique of actually existing democracy.

Emma Bell explores the impact of neo-liberalism on the role, scope and application of the criminal law and welfare provision in Britain in chapter fourteen. Bell shows us that though there are continuities with an earlier interventionist social democratic 'welfare state' regarding the application of the criminal law – notably that it continues to target the 'crimes' of the poor whilst 'crimes' of the powerful are largely ignored – policies in neoliberal Britain have undoubtedly become more invasive and punitive. For Bell, we have not only witnessed a major expansion in the penal apparatus of the Capitalist State – new surveillance technologies, extensive regulatory powers and the rise of out-of-court penalties – but there has also been an extension of punishment through welfare. In short, in recent times a new 'security-industrial complex' has emerged. Representing a contemporary re-articulation of the Gramscian analysis of the Capitalist State, Bell argues that the increasing emphasis on authoritarian populist 'crime policies' must be located within the socio-economic and political contexts of the current historical conjuncture. Central is the relationship between neo-liberalism and State legitimacy. Neoliberalism, with its emphasis on the 'free market', has exacerbated social divisions and rendered the State impotent to intervene. This raises questions regarding the legitimate role of government for under the logic of neoliberalism: the Capitalist State can no longer intervene in the economy or promote progressive welfare interventions for those at the bottom of the social structure. Further, neo-liberalism has

also demanded massive public spending cuts and welfare retrenchment which are likely to undermine public support and exacerbate social divisions. This crisis of legitimacy has been accommodated on a number of levels. First, as indicated above, to appeal to the electorate increasing emphasis has focused on the control of criminals and immigrants. Second, there has been a shift towards a more 'managerial' approach; the reconstruction of welfare recipients as 'consumers' and a transformation of the State from provider to facilitator of social services. Consequently there has existed a 'correspondence of interests' between the neoliberal governments and the private sector which has led to the privileging of market solutions and increased emphasis on the privatisation of crime control. Yet accommodations to the neoliberal condition remain shot through with contradictions, erode civil liberties and fail to adequately address the most pressing social harms of our day. Rather than being effectively policed, the crisis is likely only to deepen.

In the chapter fifteen Dany Lacombe explores the co-option of 'critique' by coercive forces and agents of the Capitalist State. Lacombe is concerned with how the State uses moral arguments (as well as scientific research discussed further in following chapters) to construct social problems. Lacombe's central focus is an analysis of the Canadian State's decision in the mid 1980s to take pornography seriously. Lacombe explores the role civil society, especially feminist orientated interest groups, performed in the criminalisation of pornography and how support from below was orchestrated to increase State repression. In particular Lacombe emphasises how the debate was won and what lessons can be learned to resist similar interventions in the future. In so doing she highlights how pornography in Canada in the mid 1980s became contested terrain for ideological struggle. For Lacombe feminist anti-pornography activists performed a central role connecting women's lived experiences to the demands for criminalisation by a conservative patriarchal State. To illustrate her arguments Lacombe focuses upon the

Fraser Committee Report (1985). She explores how in this official report feminist arguments were re-shaped so that they became consistent with the 'legal structures of the present state'. Feminist arguments inconsistent with the interests and agenda of the Capitalist State – such as socialist feminism and anti-censorship feminists – were de-legitimated. Lacombe identifies how moral concerns informed official discourse and how the meanings of certain key aspects of the pornography debate, such as 'erotica', were redefined to reflect heteronormativity. Whilst the official discourse promoted the criminalisation of pornography as a means of facilitating great gender 'equality' what remained marginal were: considerations of the structural and political constraints on women's lives; the role of media in the construction of idealised femininity; and deeply engrained sexist attitudes towards women in wider culture. The anti-pornography position, feminists included, therefore ignored gendered power differentials and promoted criminal law interventions in the name of equality. Although she provides a critical account of the failure of feminism in this particular instance, for Lacombe understanding the role feminists performed in the criminalisation of pornography is crucial on at least two levels: it provides insights into (1) the boundaries and limitations of State power and (2) the important role interest groups perform in State policy formation. Both of these insights could inform and motivate future resistance and emphasise the potential of feminist analysis.

Ase Berge's explores the failure of male dominated social sciences to adequately understand men who perpetrate sexual abuse or acknowledge the gendered meanings and embodiment of victims of sexual violence in chapter sixteen. For Berge, malestream criminological knowledge of perpetrators is characterised by superficial masculinist explanations grounded in individual pathologies resulting in simplistic policy solutions. Berge argues that feminist analysis could offer a more sophisticated theoretical toolkit and help inform alternative and more progressive policy agendas. She starts her analysis with an exploration

of Sandra Harding's 'three levels of the gender concept': symbolism, structure and identity.⁹⁰ Significantly 'science' itself is conceived as an ideology rooted in patriarchal-androcentric gender-symbolism assumptions. Indeed the production of 'scientific knowledge' performs an integral role in maintaining and developing conceptions of 'femininity' and 'masculinity' in ideology and culture. Most notably Berge points to how the assumption that men's sexuality is an 'uncontrollable impulse' has heavily influenced 'scientific' research on sexual violence. This has 'made it possible that violence and power-relations in sexuality are kept largely invisible' or the harm and injury inflicted reinterpreted or downplayed. Berge reminds us that most [sexual] violence is perpetrated against partners or former partners. [Sexual] violence, in the main, is familial / relational and situational: the perpetrator is often intimately known by the victim, in a relationship with them or a family member; the perpetrator may only be violent to those he is sexually attracted. The 'paradoxical situation [is] that an offender may well be a 'normal', 'ordinary' man'. Masculinist scientific knowledge fails to take this into account, nor can it account for wider moral and political contexts. Feminist analysis can present a sophisticated understanding of the both the sexual and violent dimensions of 'sexual violence'; account for the normalcy of perpetrators; the distinct differentials in power between perpetrator and victim; problematise masculine sexuality and the difficulties it presents regarding identity and emotional adaptation and the conflicts it generates; and locate the treatment of victims of sexual violence by professionals within the wider structures of gender and power. For Berge, 'as researchers and in the interests of stopping and preventing all kinds of reactionary cries for strong prison sentences, it is a serious task to take responsibility for this state of affairs.'

Claus-Peter Behr, Dietlinde Gipsen, Sabine

Klien-Sconnefeld, Klaus Naffin and Heiner Zillmer follow up the previous critiques of the State and 'criminological knowledge' in chapter seventeen with an important analysis of the use 'scientific knowledge' to legitimate the State planning activities. The authors locate the 'misuse of science' by the State within its wider social and political contexts. Rather than focussing on the co-option and manipulation of individual researchers, Behr et al explore how the 'Interventionist State' carefully constructs its research projects and how the knowledge gleaned from them is then applied to maintain and extend State control. They illustrate their concerns through examining two inter-related case studies in Germany in the late 1970's – (1) the State initiated 'origins of terrorism' research project and (2) how the State utilised different sources of 'scientific knowledge' to inform the creation of new high security units for terrorists, latterly referred to as 'therapeutic individualisation'. In so doing the authors powerfully evidence the problems that may arise by bringing together separate research project findings on one particular aspect of policy. Their key concerns regard both *what* the researcher being asked to do and *how* the knowledge derived from their study is then used by the patron. Anticipating some important theoretical work on State bureaucracies in the late 1980s, Behr et al explore how State research agendas can be separated into a number of small projects but then collated holistically to be used by the State. Moving beyond a consideration of individualised research ethics or political orientation, Behr et al identify how those undertaking research for the State are merely tiny cogs in the State machine working towards a State orientated project. Whilst individual researchers may have some control over the research process itself, their independence is fatally undermined as they operate within the definitions of the State and have no control over how their findings may be used. Accepting State definitions of a given set of social circumstances rules in and rules out certain realities, thus shaping legitimate knowledge. Researchers are free to perform tasks, but not the tasks of their own choosing. Behr et al therefore remind us of the importance of reflecting

⁹⁰ Harding, *The Science Question in Feminism*

upon the ‘big picture’. The authors conclude by highlighting key values and principles for individual researchers – research findings should never be used against those on which the research has been undertaken; we must explore the research question independently, aim to uncover the truth and have solidarity with the researched; research must not be explored in isolation but located in its appropriate contexts; emancipatory knowledge and praxis should be the ultimate aim of the research rather than servicing the State machine.

Chapter eighteen takes the unifying theme of ‘critique’ further by exploring and problematising the very framing of social problems through the language of ‘crime’ and the meaning and scope of the discipline of criminology itself. Previous chapters have highlighted how ‘criminological knowledge’ has been co-opted to serve the interests of the State. With this problem in consideration, Paddy Hillyard presents us with the argument that we need to move *beyond criminology*. Whilst we continue to work within ‘criminology’ we will always be bound by the definitions of ‘crime’ and criminality dictated by the State. As a discipline criminology perpetuates myths about the nature and extent of ‘criminal conduct’; excludes many of the most harmful events; and provides legitimacy to existing power relations and the penal apparatus of the State. Hillyard argues that the only effective strategy to challenge the discursive power of ‘crime’ is to establish a new separate discipline grounded in the study of harm that would provide a new language or counter-discourse to that of criminology. Hillyard refers to this approach as zemiology, the name of which arose from discussions at the 1998 European Group Annual Conference, which would locate inequality, poverty, disadvantage, racism and sexism at the centre of its approach. Unlike ‘crime’, Hillyard maintain that ‘harms can be counted and have a material and ontological reality’. Hillyard’s main interests in this chapter are to chart the new disciplines progress in the last fifteen years and to explore the reception of zemiology by criminologists. In terms of the latter, Hillyard presents us with a ‘tongue-in-cheek topology’ of five different

reactions by criminologists to zemiology: Colonialists, Imperialists, Nationalists, Reluctant Nationalists, and Misguided Nationalists. He identifies how the reception of zemiology has been largely sympathetic but that the over-riding attempt has been to co-opt or incorporate harm into the discipline of criminology itself. Through his analysis of the five different types of reception Hillyard presents a robust counter-defence of zemiology against its criminological critics and reasserts the importance of this approach for conceptualising contemporary social problems.

Bibliography

Harding, S. *The Science Question in Feminism*. (Boston), 1986.