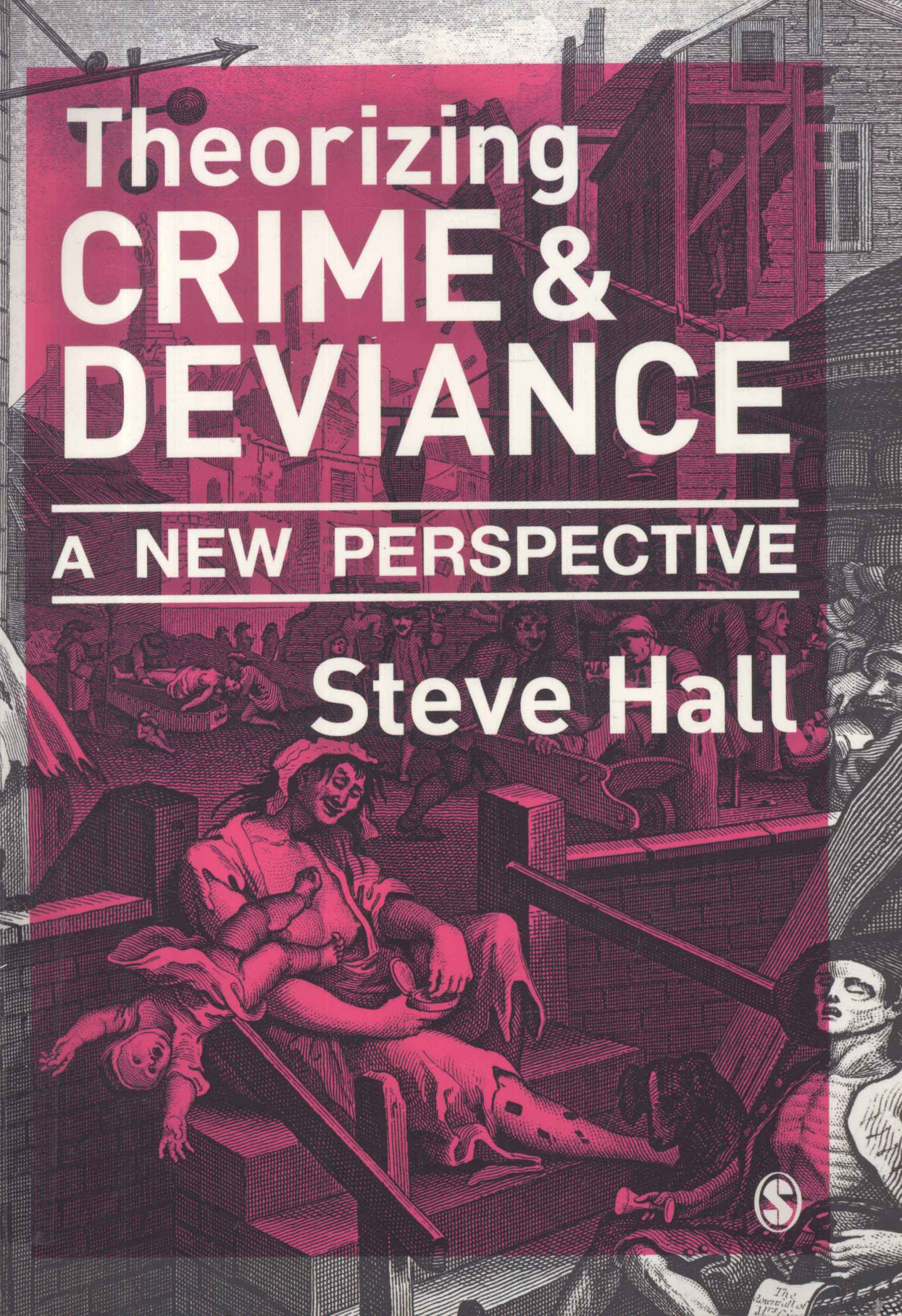




Theorizing CRIME & DEVIANCE

A NEW PERSPECTIVE

Steve Hall

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Every civilization which disavows its barbarian potential has already capitulated to barbarism.

Slavoj Žižek

There is a god of the marketplace, Eshu; he is a trickster, all mouth and balls.

(Yoruba saying)

ABOUT THE AUTHOR

Steve Hall is Professor of Criminology at Teesside University. In the 1970s he was a nomadic musician, general labourer and avid reader of anything political or philosophical. In the 1980s he worked with young offenders in the deindustrializing north-east of England, and he was active politically during the steelworks and mine closures in County Durham. In 1988 he returned to university, and after graduating began teaching, researching and publishing. He has published widely in the fields of criminology, sociology, history and radical philosophy. His recent book *Criminal Identities and Consumer Culture* (with Simon Winlow and Craig Ancrum) has been described as 'an important landmark in criminology'.

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INTRODUCTION

1

Since the 1980s criminological theory seems to have fallen into a condition of permanent crisis, unable to offer convincing explanations of the fundamental criminological question: why individuals or corporate bodies are willing to risk the infliction of harm on others in order to further their own instrumental or expressive interests. This book is an examination of that 'aetiological crisis' (Young, 1987), but from a perspective which raises the suspicion that the crisis was not a product of the discipline's entry into an entropic phase, but, on the contrary, to a large extent wilfully self-constructed. In this period Western criminological theory seemed to shift into its own customized mode of what Slavoj Žižek (2010a and *passim*) calls *fetishistic disavowal*, no longer wanting to know what creates the conditions in which rates of harmful crime increase to elicit the seemingly inevitable punitive reaction orchestrated by neoliberal governments. So resolute was the flight from aetiology that only a small number of approved explanations were allowed to remain in place as the foundations of non-conservative criminological thought.

These approved explanations will be examined as the book's argument unfolds. It will also investigate why, in this broad and enduring act of equivocation, various schools of criminological thought have systematically deselected specific theories and concepts that are, or could be, genuinely potent in their ability to explain criminogenic conditions and subjectivities and suggest specific anti-criminogenic forms of regulation or transformation at the deep level of economic and cultural practice. The result is that criminological theory is now largely anodyne, entropic, and politically ineffective. However, after recent events such as the financial crisis and the North African revolutions, it would appear that we are now entering a difficult phase of advanced capitalism where the restrictive intellectual current that has been dominant since the 1980s is running out of momentum. Many thinkers are now coming to the understanding that the visceral subject is far more than an effect of language and discourse, that history has not ended, that the economy is without doubt a major part of the bedrock of

human existence, and that politics are far from dead. Crime might have undergone a recent statistical drop in Britain and the USA, but there is little doubt that illegal markets, criminal trafficking, violence and intimidation are now normalized aspects of socio-economic activity in a socially divided and politico-economically insecure world whose subjects are increasingly drawn towards the impoverished culture of consumerism.

In this climate Reiner (2007) suggests that criminology should return to the investigation of motivation, as do Gadd and Jefferson, who argue for a new psychosocial criminology that shows 'a willingness to move beyond the rhetoric of folk devils and moral panics ... to address the question of who these folk devils really are, what they have done and why and to try to make sense of their motives' (2007: 186). This book is an attempt to construct the beginnings of what could be called a 'new' theoretical perspective, but, of course, 'new' only in the sense that the ideas it imports are reconfigured and synthesized in a marginally different way. Whether such synthesis produces originality is left to the reader to decide, but the purpose of the book is not to produce novelty, nor indeed closure, but an initial theoretical framework with at least some degree of explanatory power.

Before this attempt can be made, however, some sort of working definition of criminological theory's principal objects must be established. At a very basic level, in the Western industrialized nations upon which this book will focus, crime and social deviance are concepts used in everyday life and the social sciences to represent all social actions or utterances that transgress socially accepted behavioural norms and ethical standards. Whilst 'crime' is restricted to actions or signs that exist beyond boundaries set by law, 'social deviance' incorporates crime but also includes any legal action or sign deemed unacceptable by the social group. Sociology and criminology share a long intellectual history of dealing with the concepts of crime and social deviance; a history that, roughly speaking, moved through the layered phases of classicism, positivism/integrationism, pluralism, radicalism and postmodernism.

Before these paradigms became established, the concept tended to be wrapped up with that of sin, and was thus largely the preserve of theologians, philosophers and legal theorists. The classical phase came into being when liberal Enlightenment thinking distinguished crime fully from the broader religious concept of sin. In the eighteenth and nineteenth centuries classical liberal thought developed from this historical watershed with a burgeoning faith in a rationalized legal system constituted by the new 'like minds' of universal reason. However, perhaps in too much of a hurry to leave behind the notion of sin, it tended to conflate deviance with the legal category of crime. Thus the cultural contexts in which deviance is named

were absent from these early constitutional debates on law and punishment. Enthused by an ambitious transcendental conception of reason, liberalism also placed the autonomous rational and ethical individual at the centre of its discourse; thus crime and deviance were seen as the aetiological products of the individual's failure to exercise innate powers of will, reason and morality.

In Kant's intrinsicalist and deontological reasoning the deviant individual had failed to abide by the injunction of the categorical imperative (Kant, 1998). The refusal to conform to the demands of universal Reason as institutionalized in law was a wilful and punishable rejection of a gift from God. In the consequentialist logic of the British Utilitarians, crime and deviance were the products of the innately hedonistic individual's failure to act according to rational calculations of the harmful consequences of intended actions (Bentham, 1996). The line of demarcation between deviant acts that were to be criminalized and punished and those that should elicit mere disapproval and social censure was to be established by rational calculations of harm, but the tendency to think outside of socio-economic, political and cultural contexts meant that harm was conceptualized in individualistic terms and classified by a new bourgeois social elite, whose members tended to regard themselves, rather than the whole population, as the pioneers of transcendental Reason.

However, reducing disputes that might have had their origins in historical and structural conflicts between social groups to isolated conflicts between individuals did have a pacifying effect insofar as it atomized and therefore decreased the internal social and 'tribal' conflicts that had characterized pre-modern history, although by no means did it decrease the external 'tribal' conflicts between nation-states. In a way that to some extent echoed Freud (1979), Elias (1994) saw this as part of a broad Western 'civilizing process', the definitive aspect of modernity. However, the process itself has been characterized by a paradox. Within national territories social power relations remained distinctly unequal, yet extreme forms of violence diminished only to be somehow converted into a burgeoning assortment of less violent and largely acquisitive actions, some of which were criminalized more readily than others. At the same time, relations between nations were punctuated by increasingly destructive wars. This paradox and rather interesting conversion of 'criminal energy' casts doubt on the validity of the term 'civilizing', a question that will be addressed throughout this book.

Elias's theory, conceived and written just before the Second World War, emerged from a social-scientific movement that had been developing in Europe and the USA since the nineteenth century. During this early period

the problems of philosophical and legal atomism and the disappearance of socio-cultural contextualization in legal thought and practice became apparent. As the social sciences moved into the twentieth century, a range of theories proliferated in the attempt to relocate ethical, legal and psychological conceptions of crime and deviance in their social contexts. Many noteworthy social scientists, such as Durkheim (1970) and Weber (2007), became very aware of the tension between modernity's civilizing/liberating momentum and its 'anomic' and 'disenchanting' tendencies. However, despite the rapid development of social thought, the metaphysics of liberal individualism still remained dominant, which created a fault line between individualist and social theories that still exists today. Another associated fault line can be said to run through the history of the sociology of crime and deviance; that which demarcates integrationism and pluralism. The integrationist definition of deviance, based on the assumption that a society is an integrated whole, is the appearance in everyday social life of actions or signs from beyond a society's boundaries, which can disrupt the collective sense of ethics, solidarity, normality, stability and predictability that glues it together. Crime can be reduced by integrating marginal individuals into the social body, its ethical codes and its economic opportunities. The pluralist definition revolves around the idea of actions or signs that transgress the behavioural norms or ethical standards of any one of a huge diversity of legitimate cultural groups that constitute the broader social body, which is never fixed or harmonious but in constant flux. Crime can be reduced by encouraging recognition, tolerance and the political and socio-economic inclusion of marginalized groups in a society that should be both multicultural and formally equal; basically, an attempt to integrate formally equal but diverse cultural groups into society, economy and politics without insisting on integration in the sense of cultural homogenization.

The presence of a monolithic capitalist political economy, however, exposes fundamental problems in both integrationist and pluralist thought. The continuation of socio-economic inequality and both ethnic and social conflict casts doubt on the possibility of social integration under the current politico-economic regime of liberal capitalism, whose principle of formal equality has not lived up to its promise in the concrete world of everyday socio-economic relations; it has turned out to be, as Badiou (2007) reminds us, all formal liberty and equality but very little actual fraternity. Although nation-bound societies contain many different cultures and individuals, there is usually only one economic system and one closely associated governmental and legal system, which, when it comes down to politics, law and economic participation and redistribution, must cater for all in the vital dimensions of material life-support and social justice.

Cultural groups and individuals can be nominally 'recognized' and 'tolerated' in all their supposed diversity whilst simultaneously being marginalized in socio-economic reality; compulsory recognition and tolerance does not guarantee equitable economic participation and just outcomes, nor the presence of an uplifting and truthful hegemonic culture. In other words, there are inevitable clashes between the principle of cultural plurality and the unavoidable integrationist imperatives of law, political economy and hegemonic culture, especially where the politico-legal system and the mass media disproportionately represent the interests of the structural socio-economic elite. Whether the elite should be classified in class, gender or ethnic terms, and how these structural categories might intersect, is a central issue in the social sciences. The complexity of these intersections will be examined later, but for the moment suffice it to say that the legal system is in the unenviable position of arbitrating between conflicting interest-groups; in the absence of cultural consensus and socio-economic equality a society's lawmakers face extreme difficulty in reconciling individual and sociocultural conflicts in ways that satisfy everyone.

As Downes and Rock (2007) quite rightly remind us, when criminologists approach any criminological concept they immediately confront the Tower of Babel, a dizzying array of contradictory visions of individuals and the social order, with correspondingly varied definitions of crime and deviance. To many of today's social scientists, who regard integrationism as obsolete and assume a genuine pluralist democracy to be the bedrock of society and unequal social power relations to be its currently unacceptable structural condition, social deviance is regarded as an ineluctably 'contested' category. However, as we shall see in more detail later, the 'criminological question' forces a concession from pluralists. Most liberals and postmodernists agree that a core of consensual criminalized harms does exist (Henry & Milovanovic, 1996), but the demarcation line between the consensual core and the contested periphery is not drawn in a democratic manner. The powerful elite has the ability to protect its ethically questionable or harmful actions by preventing them from being shifted from the periphery to the core, or, where its sophistic arguments in the past have failed to prevent this shift, using its formidable power and influence to shield itself from the full force of the law.

A revived universalistic argument such as this is heavily dependent on broad agreement over a concept of harm as the unifying ontological category that underpins crime and deviance. The simple ethical corollary is that what is harmful to human beings and their multi-layered life-supporting environments should be criminalized. Where harm is considered to be less serious on a consensual scale, it should be subjected to initially condemnatory yet

eventually restorative social pressure, or, where it is very slight, possibly ignored. Current legal systems operate on a similar scale, but their categories of harm are heavily biased, and thus any such attempt to move towards a socially reconfigured universal and scalar conception of harm opens a rather large political can of worms. From conservatism's viewpoint the fundamental category of harm can be defined in a rather straightforward manner; actions or signs that offend the individual's person and property and also the universal values of a social order led by an inspiring and beneficent elite drawn from the upper echelons of business, politics and culture, whose status in the unfolding organic hierarchy is the 'natural' product of their successful application of those values to their everyday lives. The obvious flaws in this group-narcissistic 'wonderfulness of us' model have been exposed too often to repeat here, but the intention of this book is to move on from the standard critique of conservatism to criticize left-liberalism's claim that its alternative pluralistic and individualistic model presents on a plate the only progressive move out of this ideological straightjacket towards a future realm of justice and freedom. As we shall see, liberalism's struggle for progress and social justice has been less successful than it once promised to be.

This work will claim that although some concessions to situational relativism must always be made in the practice of criminal justice, the ethical naming of crime and deviance and the establishment of the line between 'core' and 'periphery' should once more become universal ontological issues, which should be at the heart of a broad left project that has no choice but to pull itself out of the quagmire of liberal-postmodernist relativism with the intentions of forging an alternative ideology and re-inventing itself as a genuine opposition to neoliberal capitalism. Such a return to universalistic ideology must be made in the light shed by an understanding of what stands in its way over and above the traditional opposition of conservatism. At the moment the most pressing problem for the broad left is that over the past fifty years or so its intellectual discourses have been colonized and paralysed by an accumulation of left-liberalism's compromises, products of a hangover from an immediate post-war period during which the possibility of the return of brutal totalitarian states was humanity's greatest concern. The 'New Left' constituted itself negatively and guiltily in its flight from totalitarianism, subsequently losing its ability to envision a positive sense of direction and falling in with liberalism's negative 'anywhere but that' political meandering.

The sclerosis of left-liberal criminology and the degeneracy of its research programmes (D'Amico, 1989; Lakatos, 1978), which now join conservatism in the position of being no longer capable of producing useful aetiological explanations of crime that reflect the times, is part of a broader

intellectual and political problem that pervades liberalism in general. Another main theme in this book is the extent to which liberalism's intellectual culture is languishing in the midst of its own reactive and pervasive 'politics of fear', which is replete with symbols of 'absolute evil' (Badiou, 2002), inversions of the pathological individual or menacing ethnic group once ideologically constructed by the racist-nationalist forces who used the authority of the state and the means of modern technology and organization to commit the industrialized genocide of specific individuals and cultural groups (Bauman, 1991). We are all aware that a complex configuration of ethnic purism, racial hatred, nationalism and extreme collective fear, generated in the midst of economic collapse or post-revolutionary tumult and paranoia, was used to construct potent ideological justifications for the Holocaust and the Gulag, probably history's greatest crimes. In a 'state of exception' created as the political solution to a perceived national emergency (Agamben, 2005), the industrialized genocide of 'impure' ethnic groups, political dissidents and the 'class enemy' was decriminalized. More Promethean violence was to follow in the Cultural Revolution in China and the 'killing fields' in Cambodia. However, the fear that racist-nationalist forces or vengeful representatives of the former subjugated class will one day return to plunge politics into an abyss of violence and terror haunts the liberal imagination to the extent that the slightest whiff of condemnation or intolerance, unless directed solely at the state or any vestigial racist-nationalist group, is vigilantly outlawed from a debate that has moved firmly in the direction of a post-political ethics of pure negativity and escapism. As Eagleton argues:

What one might loosely call post-structuralist or postmodern ethics reflects among other things a massive failure of political nerve on the part of a European intelligentsia confronted not only with the formidable power of global corporate capitalism, but still languishing guiltily in the long shadow of the Gulag and the gas chambers. (2009: 233)

The reader will certainly not find an argument here that the broad left should become complacent about the possibility of such a return, but simply that the overextension of liberal-postmodernism's inverted politics of fear has become an intellectually repressive and corrosive ethico-political panacea. In politics it all but destroyed the left's economic bargaining position and reduced the pressure for social-democratic regulations and reforms. In intellectual life it overwhelmed all other concerns and incapacitated any possible move towards a universal ethics of the Real that

could reconstitute the left in a unifying political condemnation of an uninhibited transnational elite, which continues to operate in loose association with corrupt corporate-state officials and ‘glocalized’ forms of criminal enterprise emerging from a global outcast class and a former industrial working class in political disarray. In the midst of these relations of corruption have arisen global networks of entrepreneurial crime that pervade the social structure and straddle the boundary between legality and illegality. Many individuals who enter criminal markets rather reluctantly – in a desperate search for income, status and identity as their socio-economic infrastructures are broken by market forces and neoliberal economic restructuring – commit only minor crimes and eschew violence. However, as this work unfolds we will see that many harmful and violent crimes are the products of a concentrated form of criminality that has become established in various crucial nodes of illegal markets, and which is energized by what we will come to understand later as capitalism’s ‘disavowed obscene Real’ and the individual’s demand for *special liberty*.

The liberal-dominated left’s failure of nerve and its subsequent ideological policing could be construed as extreme short-termism. When it destroyed itself in the post-war period in a convulsion of guilt, trepidation and fragmentation it created a vacuum in which a revitalized classical-liberal right was given so much free play that it crushed traditional one-nation conservatism, socialism and social democracy alike to establish neoliberalism as the dominant force in global political economy and culture (Harvey, 2007; Žižek, 2010). Now, with minimal protection, everything possible is governed by the unforgiving cyclical logic of the capitalist market. The likelihood of a return to politically institutionalized nationalist-racism is far greater in the conditions of socio-economic collapse that can follow the worst of the capitalist market’s cyclical downturns. Stabilizing measures, built into the financial system after the Second World War, have so far prevented a collapse quite as profound as that of the 1930s. However, recently there have been a couple of close calls, and whatever downturns we face in the near future will be compounded by permanent structural phenomena – jobless growth, unemployment, the global economic marginalization of youth, spatially differentiated overproduction and underproduction, the global shift of economic power towards the East, ethnic tensions and declining natural resources – looming on a horizon that appears to be moving closer every year. In other words what was once cyclical is now becoming permanent and socio-structurally bifurcated as capitalism moves towards a series of potential downturns that are not recoverable in ways that can increase the security of the vast majority of the world’s population. However, the transnational business elite and their

technical/administrative functionaries might, perversely, benefit and grow significantly richer and more powerful, hardening and widening already polarized social divisions. The West's inability to summon up the political energy for a significant change of course after the financial crash in 2008 was palpable. It teaches us that liberal-postmodernism's prevention of a move towards a politics energized by the universal ethical condemnation of the obscene forces that drive capitalism, and mobilized by the resolute attempt to construct an alternative ideology and subjectivity based on a different way of organizing economies, might well, in a long-term that now does not appear to be too far away, backfire badly should we encounter an abrupt worsening of underlying economic conditions. Nationalist racism thrives under the economic protectionism that the majority in many nations can come to regard with minimal persuasion as the sole available solution to extreme structural socio-economic problems.

Under such stringent short-term ideological policing, which originated in the influential exporter disciplines of philosophy and politics and eventually filtered through the wholesale outlet of sociology, the weaker importer discipline of criminology has suffered more relativization than most other social-scientific disciplines, simply because it exists at the forefront of the mechanics of ethical condemnation. Relativism does have its weak and strong variants, but some branches that have influenced criminology do incline quite sharply towards the strong version; ethno-methodologists and subculturalists would claim that meaning is purely a local achievement, and some postmodernists, including Foucauldians, would argue that the social world is little more than a loose network of discourses, which classify the world in various ways to produce diverse and conflicting 'regimes' of truth, knowledge and subjectivities. Beyond a very small core of violent harms, all these discourses produce their own shifting categories of crime and deviance; according to the relativists it's better to let these discursive subjects get on with it and adjust – and possibly fragment and localize – the criminal justice system's practices according to their diverse requests (T. Young, 1999).

As we shall see later, in the midst of this celebratory fragmentation the very principles of universal ethics and symbolic efficiency have become the villains; for Derrida there can be no enduring universal Good without the continuous inventive dissidence that will allow no order of signs to establish itself as a tradition to stabilize meaning, ethics and politics; only the constant transgression and destruction of authority is Good (Eagleton, 2009). For the new breed of liberal-postmodernist there can be no abhorrent form of marginality or transgression, and by extension the decriminalization of all such forms apart from those characterized by extreme brutality is the

way simultaneously to reduce crime and challenge institutional power. However, will it do to condemn universalism, affirm relativism and then conjure up a universal category when it suits, as Henry and Milovanovic (1996) do when they dismiss the search for the 'causes of crime' as 'futile' and in almost the same breath posit a single cause of 'domination'? Is there not a vast grey area between decriminalizable transgressions and extreme brutality, and how extreme does brutality have to be before it is criminalized as a real harm? Would the guaranteed statistical drop in crime that would follow further decriminalization be accompanied by a reduction of real harm, providing of course that liberal-postmodernists could agree on what it means? Would further decriminalization reduce the continuous stream of largely unacknowledged harms inflicted by corporate institutions or individuals on their victims, who are drawn largely from the working classes?

The ontological uncertainty that is the inevitable consequence of the decline of symbolic efficiency dumps every ethical decision that exists outside the nebulous core of 'extreme brutality' at the door of the individual, who now runs the risk of stumbling into the extreme condition of solipsism, where the pressure to construct some sort of coherent self and personal ethical code in the midst of radical indeterminacy permits the individual to see itself as the almost deified centre of the universe, in command of the construction of all moral categories and actions. Here, what the cultural critic Stanley Fish (2010) calls the 'dark side of liberalism' rears its head. Self-imposed isolation causes the individual to subscribe to a stubborn independence of mind that eschews all compromise and ethical guidance, but what seems like a noble existential 'inner directedness' can, in all but the most conspicuously harmful and incriminating cases, also exempt the individual from ethical injunctions to social, economic and physical responsibility for others and their life-sustaining environments.

In other words, do the direction and momentum of liberal-postmodernism, the 'official opposition' in criminological theory, play into the hands of right-wing libertarianism, which, as we shall see later, is the cultural hallucinogenic that acts as the seedbed for criminogenic subjectivity? Redirected like this, can neoliberalized versions of Deleuze and Guattari's (1987) rhizomatic 'lines of flight' lead anywhere but to Berlin's (1969) realm of 'negative liberty', where the individual can walk away guiltlessly from all social responsibility, a perversion of the 'positive liberty' to choose from the external social world of others that to which a compromise must be made? The extremity beyond even negative liberty is Agamben's (2005) 'state of exception', where the solipsistic individual can justify any harm that is required to clear the way for the gratification of their 'stupid pleasures', anxieties and