

# STATE CONTROL



## Criminal Justice Politics in Canada

R. S. Ratner and  
John L. McMullan

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edited by  
R. S. Ratner  
and  
John L. McMullan

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*dedicated to the memory of  
Geraldine McMullan  
and  
Joseph Ratner*

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## Preface

The reasons for this volume of essays are fourfold. First, the plethora of theories about crime and social control have thrown correctionalist policy into disarray. While this has inculcated a healthy scepticism towards the ascendancy of any particular theory or “remedial” approach, it has also underscored the need to identify a perspective offering theoretical cogency and practical relevance. Second, the current and much-deserved emphasis on the state as both analytic category and crucial locus of relations between politics, culture, and economy has begun to pave the way for inquiry into the nature of state control in contemporary capitalist society, despite the longstanding acknowledgment of state monopoly over legal violence. Third, the revival of Marxist theory in western scholarship calls for the evaluation and further development of previous seminal work showing how it is germane to a theory of the modern state. And fourth, the leading contributions of contemporary European state theorists must be assessed for their relevance to a theory of the Canadian State, especially in conjunction with the specific problems of social control.

Accordingly, we have adopted a conflict perspective as the conceptual fulcrum for generating new lines of inquiry leading to a theory of social control in the Canadian State. Groups in conflict are presumed to construct political strategies which reflect their specific interests. The state, too, is a creature of particular interests. The exercise of these interests is revealed through the manner in which the state performs its three cardinal functions: capital accumulation, legitimation, and coercion. In this text, we are mainly concerned with displaying the connections between the latter two, although we recognize the concrete inseparability of all three. Our particular focus on the state coercive apparatus is justified, we believe, by the increased capacity of modern states to dominate areas of civil society hitherto outside the compass of state control. State interventions can of course be beneficial and enhance public welfare, but they may also represent the victory of narrower private interests which come disguised in the form of the common weal. The meaning of “state control,” therefore, is inherently ambiguous and can be clarified only by analysis of the competing interests in the arena of “criminal justice politics”—hence the title of this book.

Our intention is to promote a reconceptualization of the study of crime and social control within the emerging theoretical paradigm of the sociology of the state and of the Canadian State in particular. Until recently, criminological inquiry has been conducted outside such a framework, yielding theoretically dubious and ahistorical accounts, which fail either to organize and reconcile the findings of discrete studies or to link them to important new developments in theorizing about the state. This has produced a void in the criminological literature which this text is designed in part to fill. In doing this, we start out with a topical focus on the problem of criminal justice reform in Canada, pointing to some of the integral ties between reform movements and state control. This is followed by theoretical and empirical analyses of the "relative autonomy thesis" as it applies to the Canadian criminal justice system, and then by an historical and theoretical reconceptualization of the Canadian State, focusing again on problems of social control.

Our hope is that this text will usher in a more sophisticated and culturally grounded Canadian criminology, aware of its history and ideological directions and thus more capable of promoting social justice in Canadian society. The interdisciplinary nature of the text, as well as the professional backgrounds of the contributors—academics with distinctly theoretical orientations and legal experts directly familiar with criminal justice issues—should make the volume attractive to students and scholars engaged in advanced study and research in the fields of criminology, sociology, law, political science, and Canadian Studies.

We wish to thank our contributors for their patience during the preparation of these complex materials. We also thank the editors of UBC Press for seeing our manuscript through to publication. The exercise of doing so provided us with an object lesson in the dialectical journey from the theoretical to the concrete.

R. S. Ratner and John L. McMullan  
1987

# Contents

<i>List of Contributors</i>	ix
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<i>Preface</i>	xi
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## INTRODUCTION

1. Rethinking the Sociology of Crime and Justice	3
R. S. RATNER	

## PART ONE - CRIMINAL JUSTICE REFORM

2. The State and Criminal Justice Reform	21
RICHARD V. ERICSON	
3. Reforming the Police and Policing Reform	38
MAEVE W. MCMAHON AND RICHARD V. ERICSON	
4. Ideological Biases in the Evaluation of Criminal Justice Reform	69
EZZAT A. FATTAH	

## PART TWO - STATE AND CRIMINAL JUSTICE

5. The Problem of Relative Autonomy and Criminal Justice in the Canadian State	85
R. S. RATNER, JOHN L. MCMULLAN, AND BRIAN E. BURTCH	
6. Social Control, State Autonomy, and Legal Reform: The Law Reform Commission of Canada	126
ROSS HASTINGS AND RONALD P. SAUNDERS	
7. "Relative Autonomy" and the Criminal Justice Apparatus	149
MICHAEL MANDEL	

## PART THREE - THE CANADIAN STATE

8. Canadian Civil Society, the Canadian State, and Criminal Justice Institutions: Theoretical Considerations	167
ROBERT GAUCHER	



9. Theorizing the Crisis in Canada	198
IAN TAYLOR	
10. Theorizing on the Canadian State and Social Formation	225
ELIZABETH COMACK	

## CONCLUSION

11. Epilogue: Law, Justice, and the State	243
JOHN L. MCMULLAN	

# INTRODUCTION



# Rethinking the Sociology of Crime and Justice

R. S. RATNER

## THE PRESENT IMPASSE

Interest in the regulation of conduct has always been an absorbing one, traceable back to antiquity. Any design for collective living requires the establishment of social norms or rules governing behaviour, and this in turn necessitates the imposition of sanctions or penalties for any violation of these norms. In the history of criminological thought, we encounter a wide range of theories about deviance and crime which advance and recede in prominence, nearly all showing still active descendants. One effect of the successive waves of academic popularity experienced by competing theories of social control is the erosion of public faith in the validity of any and all "scientific" claims of their proponents. Since the late 1960's, the dominant theoretical hegemony of liberalism has been in decline, leaving an unsettled ideological terrain in which explanations of deviance vie for supremacy and enjoin contradictory measures of crime control. The resurgence of interest in Marxist theory has yet to provide an agreed-upon direction out of this theoretical impasse, especially in view of the longstanding reluctance of mainstream western intellectuals to regard Marxism as within the limits of valid inquiry. (Gurney, 1981). Furthermore, the "problem of crime" has been accentuated by the apparent demise of liberalism in correctional policy (Ericson, 1977). Accelerating crime rates and increasing costs of crime control have inspired a "get tough" mentality amongst legislators and erstwhile reformers. "Law and order" policies are now very much in vogue and resonate with public insistences on increased protection from "street

crime.” But these mounting demands involve costly remedies, and they do not address the root causes of criminality. Sorely absent is a conception of social control that goes beyond the immediate response to social infractions, one capable of accounting for the wider origins of and reactions to deviant behaviour (Taylor, Walton, and Young, 1973). It is the argument of this book that such an approach is urgently required, and it must be developed in conjunction with a theory of the state, given the centrality of the state in post-industrial society. Unfortunately, this emphasis has been badly neglected in the era of liberal criminology which dominated much of the theoretical thinking until now. But the grounds for constructing a sociology of the state framework arise out of the very failures of previous “correctionalist” orientations which lacked the theoretical scope to isolate the actual sources of “crime.”

#### CHANGING PARADIGMS IN CRIMINOLOGY

Criminology has evolved from changing perspectives that represent crucial turning points in the understanding of crime and justice, perspectives which are associated historically with three major ideological camps: conservative, liberal, and radical criminology.

For conservative criminologists, the validity of the “social contract” is unquestioned. Individuals, not the existing social order, are the subjects of scrutiny and reproach. This image of deviance has two different forms, one in the Classical School of Criminal Law, and the other in Positivist Criminology.

The Classical School began, somewhat ironically, as a “liberal” reform, since it came as a reaction to the capricious and often barbarous manner in which justice was administered in Europe prior to the embodiment of Enlightenment doctrine. Classical reformers such as Cesare Beccaria in Italy and Jeremy Bentham in England sought to introduce a precise classification of offences and corresponding penalties that would rationalize and remove the arbitrariness of judicial action. Such reforms were based on the assumption that man “contracts” intellectually with his fellows and thus has the power to choose right from wrong (Beccaria, 1764, 1963). The task of lawmakers and penologists was to contrive a magnitude of punishment that would counterbalance the pleasure derived from illegal behaviour, in the expectation that rational man would usually choose to obey the law. While such reforms marked the beginning of a naturalistic approach to human behaviour (in contrast to the demonological beliefs of the Middle Ages) and helped to usher in an era of mitigation with respect to criminal justice, the “rule of paper” also produced stiff formalism and legalistic thinking.

Moreover, the avoidance of issues such as criminal motivation and the social circumstances surrounding the offence falsely isolated the criminal from social problems. Beccaria, for example, presumed the justice of the social contract and defended equality, but did not attack the omnipresent inequality in property and rank. Moreover, if it could be shown that there was no *a priori* consensus on the morality and permanence of the existing distribution of property, then the criminal act could be seen as authentically inspired and rational. But the basic assumptions of the Classical School precluded this insight.

Despite this uncertain foundation, the major outlines of current Anglo-Saxon criminal law are consistent with classical arguments. But persistent deviation by some individuals in the face of mounting sanctions led scholars to question whether the will was truly free. The growing popularity of the biological sciences and the ascendancy of scientific method triggered a search for causal factors operating within individuals but outside their conscious control. Accordingly, the last quarter of the nineteenth century gave witness to a second major development in criminological thought, one in which interest shifted from the offence and its punishment to the offender and his treatment. Although this positivist quest for the explanation of crime mainly attested to the excessive zeal of its advocates—from the early bio-anthropological “discoveries” of Lombroso (1876) to the current psychobiological theories of criminal aggression (Eysenck, 1970)—emphasis on the peculiarities of the offender did stimulate a new approach to penology. The aim was not merely to punish wrong-doing, as in the classical era, but to consider the nature and circumstances of the offender and devise measures to obviate the likelihood of further unacceptable behaviour, in order to ensure the future “protection of society.” These measures could range from reform or cure to incapacitation or even elimination. In focusing on the violations of criminal law, rather than on the legal system itself, the criminal question was depoliticized. The doctrine of free will was flatly rejected, but the neglect of sociocultural factors in the work of biological and psychological positivists again isolated the criminal from social context and led to an excessive correctional emphasis. In seeking the truth about crime in the behaviour of the offender rather than in the criminal law itself, criminology became almost exclusively concerned with the tendentious question of why certain individuals became criminals and what kinds of penal institutions might reform them. Although the futility of the approach was evident in subsequent failures to reduce recidivism, proponents of the perspective resisted change.

While European studies into the causes of crime were biologically oriented, by the turn of this century interest in the United States centered on the sociological or psychiatric points of view. American social scientists

eschewed the biological notions introduced by Lombroso, preferring to stress the theme of conflict or disorganization, either cultural or emotional. Psychiatrists focused on the "rejected personality," while the sociologists addressed problems of the "socially maladjusted individual" dramatised by the New World immigrants searching for cultural stability in a changing urban milieu. This more distinct sociological orientation represented a third turning point in criminological theory and research. A strong correctional emphasis was maintained, but the social order was now implicated in criminality to some extent through the concepts of ecological plague areas (Shaw and McKay, 1942), anomic breakdown of social order (Merton, 1938), differential association (Sutherland, 1924), and deviancy amplification via societal reaction (Becker, 1963).

In all of these approaches, structural pressures toward norm-violation were conceded, but social mobility and cultural assimilation were still viewed as attainable, bolstered by measures such as decriminalization and guaranteed opportunity. Therefore, an amalgam of piecemeal social and legal reforms were undertaken in the context of the unchallenged institutional framework of a society in which crime was seen as more or less "normal," an inevitable by-product of social diversity. Thus while the primacy of individualism was no longer underscored (as in conservative criminology), state definitions of crime were rarely questioned, and continued attention to individual offenders served to deflect criticism of social structure. Despite cynicism about outcomes, reformism through the extension of welfare state capitalism was the chosen vehicle for rehabilitating offenders and ameliorating social problems.

The major shortcoming in all of the above variants of liberal criminology was the reluctance to extend notions of causality into a fully social analysis of deviance involving a radical critique of power and inequality. None of these liberal theories could substantiate a pluralistic conception of social control against the class-dominated practices of the capitalist state. Even the societal reaction (or "labelling") approach lacked a concrete analysis of the indispensable relationship between class power and state enforcement (Manders, 1975). Growing recognition of this inadequacy led to another major change in perspective, introducing the "conflict" approach to criminological theory (Vold, 1958; Turk, 1969). The liberal tendency to refer abstractly to the interests of society was rejected by a new school of thinkers who focused on particular and conflicting interests *within* society and who acknowledged the role of value choices, political strategies, and the exercise of power in the control of deviant behaviour and the shaping of criminal justice. Criminologists could no longer limit their concerns to examining criminals and crime, to formal aspects of criminal law, or to insular and partial analyses of social disorganization. Rather, they had to consider the

total political process, if only to demonstrate the applicability of their work to those who administered the system. This entailed a thorough debunking of “social adjustment” strategies and corresponding modes of rehabilitation. Individual deficits were now traced to structural inequalities which spawned the behaviours that contravened legal statutes. Consequently, the theoretical emphasis shifted to the interplay of political economy and law as they influenced both the creation of the behavioural category of crime and the application of criminal labels and sanctions. Consensus (or “pluralist”) theoreticians tended to conceive of law as legitimate authority, of conflict as unnecessary struggle, and of the state as a neutral mediator. However, conflict (or “coercion”) theorists now perceived law as the exercise of official power, conflict as ubiquitous struggle, and social order as the dynamic equilibrium resulting from a balance of power (Turk, 1976). These observations of conflict theorists foreshadowed a criminology which focused on the relation of justice and the wider political economy, an emphasis articulated in the “new criminology” (Taylor, Walton, and Young, 1973, 1975) and further developed in Marxist criminology, with its more explicit materialist analysis of crime (Greenberg, 1980).

In sum, radical criminologists, unlike their conservative or liberal counterparts, adopt a more macrosociological approach to criminality. They reject state definitions of crime and view the reduction of crime as possible only through a more equitable distribution of wealth and power. Crime is not seen as normal or necessary to social order, but its abolition requires a dramatic change in present economic and political arrangements. Both deviance and conformity are seen as problematic, and it is argued that criminological inquiry should focus on the agents of social control, on the processes by which laws come to be formulated and enforced, and on the larger political and economic crimes of the elites or ruling classes of bourgeois democracies, rather than on the relatively trivial personal and property crimes of lower class deviants. Conservative and liberal criminologists are viewed as blocking social change and preventing the wider realization of social justice, since they divert political opposition and help to implement repressive government policies. The proper role of the criminologist is to seek a comprehensive understanding of the larger political economy in order to promote a revolutionary transformation of society, one that would eliminate the structural causes of deprivation, greed, and misery.

Of course, we must be cautious about the chronology of this account. The various intellectual themes in criminology intersect at so many points throughout its development and have such active descendants that use of any straight-line evolutionary model in cataloguing its history inevitably distorts. This poses the question of whether the different frames of reference are simply incommensurable (Kuhn, 1970), or whether some notion of progress





in criminological theory may be sustained, providing methodological grounds for the assessment of theoretical adequacy (Lakatos, 1970), even allowing us to judge whether perspectival changes in criminology represent “progressive problemshifts” (Downes, 1978). This problem of specifying relevant epistemological criteria is obviously crucial to an evaluation of the current interest in the Marxist paradigm.

#### END OF ETIOLOGY

Recent advances in radical criminology have been blunted to some extent by the repressive impact of economic crisis on crime control. The economic stagnation of the 1970's meant declining surplus revenues, which, in turn, meant fewer social programmes for the rehabilitation of offenders. Rehabilitation seemed pointless anyway, since a faltering economy could not absorb those who might have reformed. With Keynesian policies apparently bankrupt, domestic austerity policies were introduced, along with ideologically congruent strategies of crime control. The significance of ordinary street crimes was exaggerated, fostering “moral panics” that served to legitimate more coercive forms of class rule (Hall et al., 198). This led to a rejection of the “rehabilitative ideal” that had dominated correctionalism in the 1950's and 1960's, on the dubious claim that “nothing works” (Martinson, 1974). This change ignited a fundamentalist revival in criminal justice predicated on the assumption that “wicked people exist” (Wilson, 1975). A justice model of sentencing and corrections, with appeal to liberals and conservatives, was devised to replace the ideologically obsolete rehabilitative model (Fogel, 1979). This new model revitalized the ideas of rationalism and utilitarianism associated with the classical school of criminology of the late eighteenth century. It defended the utility of deterrence and incapacitation, advocated a general hardening of penalties, stressed individual responsibility, and shifted concern from the plight of incarcerated offenders to the rights of victims (van den Haag, 1975). Approving liberals believed that the justice model would eliminate the discretionary excesses of sentencing and parole; conservatives envisioned harsher sentences and swift retaliation by the state against those whose acquiescence under the yoke of increased austerity was more uncertain.

This advocacy of punitive control was rationalized by academic criminologists as a result of the alleged failure of the “root causes” approach. Since competing theories of crime causation did not point to any singularly relevant interpretation, and since government was not inclined to rectify the structural conditions generating crime, the neo-classical theorists abandoned the search for etiology and narrowed inquiry to “practical”