RADICAL ISSUES IN CRIMINOLOGY

Edited by Pat Carlen & Mike Collison

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Introduction

Pat Carlen

Criminology, whether old or new (and with the exception of Durkheim), has consistently been premissed on a promise, the promise of future good triumphing over present evil. The old criminology (still very much with us) is imbued with a faith in the scientific control of criminality; the newer criminology is presently imbued with a faith in the eventual advent of a 'socialist legality'. *Radical Issues in Criminology*, by contrast, is concerned not with future idylls but with current issues. Moreover, these issues have not been designated 'radical' in celebration of any radical political space jointly tenanted by the authors of the articles. The issues are radical in terms of the questions and contradictions that they raise, but no generalized 'radical' solutions are offered. For most of the questions raised in this book are posed in awkward recognition of the dysymmetry between the theory and politics of penal practice and the theory and practice of the criminal law. In other words, strategies of intervention into penal politics cannot be read off from global theories of either crime or law – whether those theories be marxist, feminist or whatever. Therefore, instead of promising either the 'good society' or any socialist nirvana, we limit our analyses to the penal politics of specific issues.

The four chapters in Part One discuss law, rights and penal politics. But this first half of the book is also designed to exemplify the different types of knowledge that can be useful to radicals seeking to intervene in penal issues. Thus, in addition to the opening essay, which reviews the radical traditions in criminology, and in great contrast to Paul Hirst's major and lengthy theoretical contribution, we also include in the first part one chapter that is a legalistic account of police powers, and another that is a straight report and commentary on an important

case concerning prisoners' rights. This juxtaposition of four very different articles is deliberate. It signifies our disagreement with those who disdain to take seriously both legal procedure and exposé criminology. As I write (September 1979) a criminal trial is in progress with a jury whose members were vetted (without their knowledge) by the police. A national newspaper has been criticized by a judge for revealing the details of the jury vetting. At this same time the publishers of a weekly journal are threatened with prosecution for alleged contempt of court as a result of a post-trial interview with a juror who served at a recent trial. Maybe journalists have a sharper sense of political relevance than do academic crime theorists. But the point is made. The critique of legal reasoning can no more be left to lawyers and judges than can the monitoring of the criminal justice system be left to the Home Office Research Unit – or, for that matter, to any number of government commissions or inquiries.

Chapter 1, in briefly outlining criminology's radical traditions, also introduces two of the book's major and recurring themes: the plea for specific, rather than global, analyses; and the insistence upon the dysymmetrical conditions and effects of the many discourses that, unevenly and discontinuously, constitute penal politics. The second half of this first essay discusses the relationships between criminalization, subjectivity and the 'rule of law' and then the three other chapters in Part One take up different aspects of this 'rule of law' (or not!) debate.

In Chapter 2, Laurie Taylor pursues the question of left intervention into issues of civil liberty. Detailing the progress of the successful appeal of a number of prisoners against the punitive 'awards' made by the Board of Visitors after the riot that took place at Hull prison in 1976, Taylor argues that test cases of this kind can, independently of their long-term legal effects, have the immediate effect of bringing to public scrutiny issues that are usually shrouded in institutional secrecy. However, the reader who agrees with Taylor's arguments that we can entertain a reserved optimism about the effectiveness of at least *some* civil liberties campaigns will not be heartened by Donald Thompson's essay on 'Civil Liberties and Public Order'. Writing as a lawyer, Thompson demonstrates that, whatever rights people may think they have, the actual enshrinement of those rights in law is very precarious indeed. And Thompson is not merely talking about a 'gap' between legal prescription and police practice; he is talking about the apparent reluctance of the judiciary to give clear guidance as to what

the 'rule of law' has ever meant in relation to police powers. This will not surprise lawyers (or the police!) but it should at least dampen the ardour of those who still *unequivocally* invoke the 'rule of law' as a condition of civil liberty. It also highlights the need for wider and more precise knowledge about what this elusive 'rule of law' *is*.

In the final chapter in Part One, Paul Hirst argues (in direct opposition to recent anarchistic and libertarian trends) that the legal regulation of conduct is essential. At the same time, he also provides detailed arguments and examples as to why the 'notions of proprietorial subject and "rights" are problematic in any legal system'. In putting forward these arguments Hirst challenges the 'rights' theses of both Pashukanis and Dworkin and rejects as absurd Foucault's *Discipline and Punish* thesis that the 'disciplinary society' is an emanation of 'capitalism'. But Hirst does not merely question the theories that imply that problems of social regulation are peculiar *either* to capitalism *or* to socialism. In the final section of the paper he illustrates, with reference to abortion legislation, his arguments that socialist states can encounter problems of regulation that are 'in no way different to "capitalist" ones'.

In Part Two we turn to contemporary issues that have either been altogether avoided by radical theorists (the glaring example being the continuing public concern with criminal violence) or have been incorporated into generalized-feminist or utopian–marxist rhetorics (the examples here being the legal control of women and social work interventions into juvenile justice). In Chapter 5, Mark Cousins questions recent attempts to establish a 'feminist' criminology and an argument is made for more specific analyses of the heterogeneous effects that law has on the organization of sexual difference. Chapters 6 and 7 discuss criminal violence and juvenile delinquency. In 'Questions of Violence' Frank Burton deconstructs the disparate discourses that, both together and separately, endow 'violence' with its relevance for party political criminology. Then, in 'Questions of Juvenile Justice' Mike Collison elucidates the conditions under which welfarism displaced on to the 'family' the major responsibility for lawbreaking by juveniles. The contradictions that were either preconditional or consequential to this displacement have been managed by the agencies of social work. In the final chapter, therefore, John Clarke, Mary Langan and Phil Lee discuss the political significance of the present contradictions within social work itself.

To summarize, the overall aim of this book is twofold: to examine

the discourses within which penal politics are presently constituted, and to stimulate discussion of the possible discourses within which socialist forms of regulation can be constructed.

PART ONE

Law, Rights and Penal Politics

CHAPTER 1

Radical Criminology, Penal Politics and the Rule of Law

Pat Carlen

INTRODUCTION

This opening chapter serves the triple aim of exposition, argument and illustration. The first half presents a brief exposition of criminology's radical traditions. The second half examines a theoretically specified and ideologically effective relation between crime, politics and civil liberties: the ideological instance that contradictorily presents the law–crime couplet as the condition of both individual liberty and social regulation. The critical argument that informs both parts rejects global and empiricist theories which relate crime unproblematically and in symmetrical fashion either to questions of individual psychology, on the one hand, or to the history, practice or form of the criminal law, on the other. Instead, the argument calls for analyses of individualized and theoretically specified instances within criminal and penal politics. As an illustration of that type of analysis, the second half of the chapter theorizes the effects of that dominant discourse wherein the political economy of crime is conflated with the political economy of right. The practical question concerns the grounds upon which it could be argued that struggles to maintain and increase civil rights may be progressive rather than reformist.

The Radical Traditions

Since the early 1960s there have been four strands of radicalism in criminological discourse: (1) a generalized and radical sociological criminology which has engaged in an enthusiastic but theoretically uneven debate with various existential and marxist positions; (2) a more theoretically specific body of work emanating from the Birmingham Centre for Contemporary Cultural Studies and analysing the ideological conditions particular to different forms of criminalization; (3) a historical criminology centring on the works of E. P. Thompson in England and Michel Foucault in France; (4) marxist critiques of law – included for discussion here because the best of them have little to say about *criminal* law and the worst of them often imply that theoretical problems relating to crime can be seen as mere epiphenomena of the problems that arise in conceptualizing law. (But see Hirst, 1979b, for a new approach.)

Sociological Criminology

Sociological criminology became 'radicalized' in the early 1960s when it was renamed the 'sociology of deviance', a name serving to distinguish it from the 'old' positivistic criminology. By the time *The New Criminology* (Taylor, Walton and Young, 1973) appeared in 1973, however, the criminological revolution was complete, the National Deviancy Symposium which had nursed it was fragmenting, and both in Britain and the United States there were two main currents of radical criminology. Symbolic–interactionist and phenomenological–existential perspectives still had a large following in the United States (and a smaller, though influential, following in Britain), but most 'radical' criminologists were by then seeking to develop more politicized perspectives on crime (Taylor and Taylor, 1973), and the search for a 'marxist' theory of crime (or not) had begun (Quinney, 1974).

The 'marxist theory of crime?' debate received its greatest impetus from the writings (and ensuing critiques of them) of Ian Taylor, Paul Walton and Jock Young (1973, 1975), though, as these authors were themselves quick to point out, the utopianism of their *New Criminology* was difficult to reconcile with any coherent marxism and even with their own concern to develop a 'fully social' theory of crime. While Taylor and Young continued to hammer out the elements of a

politicized theory of crime (Taylor and Young, 1979), both they and other writers (P. Q. Hirst, 1975 notwithstanding!) debated the theoretical prerequisites for a marxist theory of crime. This determination to displace the *New Criminology*'s sociologism within a marxist problematic led to debates with the Conference of Socialist Economists' Law and State Group and to the recently published book, *Capitalism and The Rule of Law* (Fine *et al.*, 1979). (This book completely breaks with sociological criminology and will be referred to in later sections of this article.) Not all radical theorists were as resolute in turning their backs on sociology. Some, like Richard Quinney, attempted to 'marxicologize' criminology. Others wanted to ask questions about 'deviant consciousness', guilt and tolerance, questions that they did not believe it possible to pose from a traditional marxist perspective. The products of these radical labours have recently been presented in two books: *Class, State and Crime* (Quinney, 1977) and *Deviant Interpretations* (Downes and Rock, 1979).

Richard Quinney's book is rhetorical, economistic and moralistic, but it does read as a serious criminology. In an attempt to develop a political economy of criminal justice, Quinney argues for marxist analyses of class and state as prerequisites to a marxist analysis of the meanings of the 'crimes' and types of 'criminal justice' specific to late capitalism. Further, in denying the possibility of a generalized and formal explanation of crime he does himself combine an analysis of the ideological effectivity of different fractions within classes, with a conception of crime as a representation of an ideological relation, an ideological relation which, Quinney suggests, is materially transcripted as the welfare mode of control. This mode is remarkable for its simultaneous conversion of citizens into clients *and* their interpellation as contradictory citizens/clients, always–already both with and without rights. But this is as far as (and most probably further than) Quinney goes. A reserved economism and a reserved idealism are implicit in his arguments. Ultimately he is less concerned with rigorous analyses of the historical forms and functions of lawbreaking and criminalization than with the idealist search for the 'good' life.

A concern with the good life is a dominant theme of *Deviant Interpretations* (Downes and Rock, 1979), though it is to be a good life conceived in intersubjective tolerance, rectitude and liberal common sense rather than in the changing conditions of production. Stanley Cohen's (1979) article on 'Guilt, Justice and Tolerance' is none the less worth commenting on: first, because it is an excellent

example of how common-sense conceptions of crime are so often conflated in discourses that have no clearly defined theoretical object at all; second, because its appeal is dependent upon the ideological effects of that same discourse of right that this article is attempting to deconstruct and elaborate.

Cohen's major argument is that radical criminologists have been silent about both the grounds on which individuals can be held responsible for their actions and the grounds upon which the state is (or could be) justified in punishing them. 'It is punishment', writes Cohen, 'which is at the core of criminal politics and always has been' (Cohen, 1979, p. 25). This is the traditional view of criminal politics. It is the criminal politics of Bentham and of Durkheim (1964), who see crime contradictorily as being both the condition of social regulation and the condition of individual liberty; it is, too, the criminal politics of symbolic interactionists, who see crime as a transaction between law-breakers and law-enforcers (Becker, 1963); it is indeed the criminal politics of sociologists of law, who imply that theories of crime can be read off from theories of criminal law (Kamenka *et al.*, 1978). It is a common-sense conception of criminal politics. It needs to be taken seriously because it has ideological effects; for that reason, too, it also calls for theoretical deconstruction and elaboration. The form and substance of Cohen's argument is particularly important for the purposes of this chapter because it exemplifies the ideological site where left, right and centre politicians and theorists meet under the auspices of a most tenacious and historically effective conception of law and crime: the prehistorical and ahistorical conception of the 'rule of law' as a necessarily effective and unitary condition of humanity and democracy.

One of the major obstacles to effective and radical intervention in criminal politics, to attempts to change the common-sense conception that criminal justice is solely to do with punishing the guilty in order to establish the 'good society', is that the history of common-sense criminology has always represented the law–crime (or rule–deviance) couplet as being *the* condition of individual liberty, of human personality. And this conception of law as the condition of human personality (difference and unity balanced in an equivalence known as freedom) is based upon a chronic méconnaissance of the sources of value and power (Foucault, 1979, pp. 85–91), upon an imaginary human nature entrapped in the laws of its own self-knowledge, terrified to say 'No' to the conditions of its own existence.

While law is seen thus as being the condition of human freedom, questions of crime are dispersed in a variety of discourses and are not inscribed solely in penology. Rooted in a morality both assumed and unspecified, common sense repeatedly demands a general theory of crime wherein law-breakers and the criminalization processes of the state always–already balance in a symmetry of already known relationships designated (variously) as 'capitalist justice', 'socialist legality' (Taylor, Walton, Young, 1973) or 'the good society' (Rawls, 1972; Dworkin, 1977; Cohen, 1979).

Common-sense conceptions of crime, however, whether incorporated into marxist discourse or whether the constituent elements of bourgeois–liberal discourse, none the less inseminate ideologically effective representations of criminal politics. To that extent Stanley Cohen is correct in implying that theoretical work should not result in a refusal to recognize that common-sense conceptions of crime have ideological effects. Where Cohen is wrong is in his assumption that the common-sense categories of 'guilt', 'justice' and 'tolerance' can be used uncritically as constitutive elements of a theoretical discourse (cf. Engels, 1970, pp. 365–6). Theoretical discourse on crime needs both to change common-sense conceptions of crime (a political task) and to calculate theoretically why contemporary discourse on crime takes the form it does (a theoretico-political task). We can refuse Cohen's challenge to attempt theoretical legislation of the modes of subjectivity and representation that will exist under communism and socialism, but we should take seriously (i.e. theoretically and in the fullness of their contradictions) the preconditions and effectivity of modes of representation available to subjects *now*. One such mode concerns the relations between criminal law, human rights and civil liberty. Exactly *why* and *how* are questions of crime and punishment so quickly transformed into questions of human rights and civil liberties?

To attempt both the deconstruction of an ideological representation and the calculation of its effects is to work within a contradiction. But to understand the politics of crime, it is not enough to follow Marx, Althusser (1971), Balbus (1977), Pashukanus (1978) and others and merely to repeat after them that law resides in some place other than the site of its authoritative representation. Such theoretical work is a necessary but insufficient condition for change. Law as an ideological representation has to be confronted in the awkwardness of its dispersions and contradictions. *Because* law is successfully presented as *the*