Raising the possibility of abolishing jails and prisons as the institutionalized and normalized means of addressing social problems in an era of migrating corporations, unemployment and homelessness, and collapsing public services, from health care to education, can hopefully help to interrupt the current law-and-order discourse that has such a grip on the collective imagination, facilitated as it is by deep and hidden influences of racism. This late-twentieth-century 'abolitionism,' with its nineteenth-century resonances, may also lead to a historical recontextualization of the practice of imprisonment. With the passage of the Thirteenth Amendment, slavery was abolished for all except convicts – and in a sense the exclusion from citizenship accomplished by the slave system has persisted within the U.S. prison system. Only three states allow prisoners to vote, and approximately 4 million people are denied the right to vote because of their present or past incarceration. A radical strategy to abolish jails and prisons as the normal way of dealing with the social problems of late capitalism is not a strategy for abstract abolition. It is designed to force a rethinking of the increasingly repressive role of the state during this era of late capitalism and to carve out a space for resistance.

NOTES

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2 Ibid.
3 Marc Mauer, 'Young Black Men and the Criminal Justice System: A Growing National Problem,' Washington, D.C.: The Sentencing Project, February 1990.
4 Alexander Cockburn, *Philadelphia Inquirer*, August 29, 1994.
5 Marc Mauer and Tracy Huling, 'Young Black Americans and the Criminal Justice System: Five Years Later,' Washington, D.C.: The Sentencing Project, October 1995.
6 Ibid., 18.
7 *See* Cockburn.
8 *See* Lubiano's essay ... as well as 'Black Ladies, Welfare Queens, and State Minstrels: Ideological War by Narrative Means,' in *Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality*, ed. Toni Morrison (New York: Pantheon, 1992), 323–63.
9 Unpublished essay, 'Modern Slavery American Style,' 1995.
10 I wish to acknowledge Julie Brown, who acquired this brochure from the California Department of Correction in the course of researching the role of convict labor.
11 *Wall Street Journal*, May 12, 1994.
12 Lawrence Rence, A. Greenfield, Stephanie Minor-Harper, *Women in Prison* (Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Statistics, 1991).
13 Mauer and Huling, 'Young Black Americans,' 19.
14 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1979), 395.

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Critical criminology and the concept of crime

Louk H.C. Hulsman

ARE CRIMINAL EVENTS EXCEPTIONAL? PROBLEMATIZING THE NORMAL OUTLOOK ON CRIME

[...]

People who are involved in 'criminal' events do not appear in themselves to form a special category of people. Those who are officially recorded as 'criminal' constitute only a small part of those involved in events that legally are considered to require criminalization. Among them young men from the most disadvantaged sections of the population are heavily over-represented.

Within the concept of criminality a broad range of situations are linked together. Most of these, however, have separate properties and no common denominator: violence within the family, violence in an anonymous context in the streets, breaking into private dwellings, completely divergent ways of illegal receiving of goods, different types of conduct in traffic, pollution of the environment, some forms of political activities. Neither in the motivation of those who are involved in such events, nor in the nature of the consequences or in the possibilities of dealing with them (be it in a preventive sense, or in the sense of the control of the conflict) is there any common structure to be discovered. All [that] these events have in common is that the CJS [criminal justice system] is authorized to take action against them. Some of these events cause considerable suffering to those involved, quite often affecting both perpetrator and victim. Consider for example traffic accidents and violence within the family. The vast majority of the events which are dealt with within the CJS in the sphere of crime, however, would not score particularly high on an imaginary scale of personal hardship. Matrimonial difficulties, difficulties between

parents and children, serious difficulties at work and housing problems will, as a rule, be experienced as more serious both as to degree and duration. If we compare 'criminal events' with other events, there is – on the level of those directly involved – nothing which distinguishes those 'criminal' events intrinsically from other difficult or unpleasant situations. Nor are they singled out as a rule by those directly involved themselves to be dealt with in a way differing radically from the way other events are dealt with. Last, not least, some of these events are considered by those directly involved (and sometimes also by 'observers') as positive and harmless.

It is therefore not surprising that a considerable proportion of the events which would be defined as serious crime within the context of the CJS remain completely outside that system. They are settled within the social context in which they take place (the family, the trade union, the professional association, the circle of friends, the workplace, the neighbourhood) in a similar way as other non-criminal trouble.

All this means that there is no 'ontological reality' of crime.

CRITICAL CRIMINOLOGY AND THE CONCEPT OF CRIME: WHAT HAS BEEN PROBLEMATIZED AND WHAT NOT?

Critical criminology has naturally problematized and criticized many of the 'normal' notions about crime [...]. The contribution to this form of 'debunking' varies according to the different perspectives of the stream of critical criminology involved. In a certain period, Marxist criminology predominantly took the stand that 'crime' was a product of the capitalistic system, and that crime would disappear if a new society took birth. In this perspective the disappearance of 'crime' was seen as a disappearance of the 'problematic situations' which are supposed to trigger the criminalization processes. Disappearance of crime was not seen as 'the disappearance of criminalization processes *as an answer* to problematic situations'. In a later stage, critical criminology problematized the class-biased and 'irrational' aspects of the processes of primary and secondary criminalization. In those endeavours the 'functionality' as well as the 'legal equality principle', which are so often invoked as legitimation of processes of primary criminalization, were de-mystified. On the basis of such a de-mystification, critical criminology has argued for partial decriminalization, a more restrictive policy with respect to recourse to criminal law, radical non-intervention with respect to certain crimes and certain criminals. It has pointed to the far more weighty crimes of the powerful and asked for a change in criminal justice activities from the weak and the working class towards 'white-collar crime'. It has pictured the war against crime as a sidetrack from the class struggle, at best an illusion invented to sell news, at worst an attempt to make the poor scapegoats. With very few exceptions, however, the concept of crime as such, the ontological reality of crime, has not been challenged. [...]

WHAT DOES IT MEAN WHEN WE DO NOT PROBLEMATIZE (AND REJECT) THE CONCEPT OF CRIME?

When we do not problematize (and reject) the concept of crime it means that we are stuck in a catascopic view on society in which our informational base (as well the 'facts' as their 'interpretational frame') depends mainly on the institutional framework of criminal justice. It means therefore that we do not take effectively into account the critical analyses of this institutional framework by 'critical criminology'. [...] [C]ritical criminology has to abandon a catascopic view on social reality, based on the definitional activities of the system which is the subject of its study, and has instead to take an anascopic stance towards social reality. This makes it necessary to abandon as a tool in the conceptual frame of criminology the notion of 'crime'. Crime has no ontological reality. Crime is not the *object* but the *product* of criminal policy. Criminalization is one of the many ways to construct social reality. In other words, when someone (person or organization) wants to criminalize, this implies that he:

1   deems a certain 'occurrence' or 'situation' as undesirable;

2   attributes that undesirable occurrence to an individual;

3   approaches this particular kind of individual behaviour with a specific style of social control: the style of punishment;

4   applies a very particular style of punishment which is developed in a particular (legal) professional context and which is based on a 'scholastic' (last-judgement) perspective on the world. In this sense the style of punishment used in criminal justice differs profoundly from the styles of punishment in other social contexts;

5   wants to work in a special organizational setting – criminal justice. This organizational setting is characterized by a very developed division of labour, a lack of accountability for the process as a whole and a lack of influence of those directly involved in the 'criminalized' event on the outcome of the process.

[...]

DEVELOPING AN ANASCOPIC VIEW

Defining and dealing with trouble outside a formal context
[...]

The meanings which those directly involved (and observers) bestow upon situations influence how they will deal with them. Laura Nader (1980) distinguishes the following procedures people use in dealing with trouble:

- *Lumping it.* The issue or problem that gave rise to a disagreement is simply ignored and the relationship with the person who is part of the disagreement is continued.

- *Avoidance or exit.* This option entails withdrawing from a situation or curtailing or terminating a relationship by leaving.

- *Coercion.* This involves unilateral action.

- *Negotiation.* The two principal parties are the decision makers, and the settlement of the matter is one to which both parties agree, without the aid of a third party. They do not seek a solution in terms of rules, but try to create the rules by which they can organize their relationship with one another.

- *Mediation.* Mediation, in contrast, involves a third party who intervenes in a dispute to aid the principals in reaching an agreement.

- Other procedural modes that are used in attempts to handle trouble are *arbitration* and *adjudication*. In *arbitration* both principals consent to the intervention of a third party whose judgement they must agree to accept beforehand. When we speak about *adjudication* we refer to the presence of a third party who has the authority to intervene in a dispute whether or not the principals wish it.

The list of ways of dealing with trouble which Nader gives is by no means exhaustive. People can address themselves for help to different professional or nonprofessional settings. They may engage in a 'ritual of reordering' which does not involve the other person earlier implied in the problematic situation (Pfohl, 1981).

People may also engage in collective action to bring about a structural change in the situations which cause them trouble (Abel, 1982).

Which of these many courses of action will an involved person choose?

The meaning which a directly involved person bestows upon a situation will influence […] his course of action. That course of action will also be influenced by the degree to which different strategies to deal with trouble are available and accessible for him; in other words, the degree to which he has a real possibility of choice. This degree of choice is largely influenced by his place in the network of power which shapes his environment and by his practical possibilities to change the 'tribes' of which he is a part for other ones.

Formal and informal ways of defining trouble and dealing with it compared

The process of bestowing meaning on what is going on in life is flexible in face to face relations in so far as those involved in this process feel relatively 'free' towards each other as equal human beings. In other words, if they feel not constrained by the requirements of organizational or professional roles, and [if] they are not caught in a power relation which prevents some of the parties [from fully

taking part] in this process. This flexibility has many advantages. It increases the possibilities to reach by negotiation a common meaning of problematic situations. It provides also possibilities for learning. Experience can teach people that the application of a certain frame of interpretation and a certain focus does not lead very far in certain sectors of life.

This flexibility is often lacking when situations are defined and dealt with in a highly formalized context. The more such a context is specialized, the more the freedom of definition – and thus of reaction – is limited by a high degree of division of labour or by a high degree of professionalization. In such a case it depends on the type of institution which has – fortuitously – taken the case up which definition and which answer will be given. It is improbable that a definition and a reaction provided for in such a context [will correspond] with the definition and reactions of [those directly] involved.

There are, however, important differences in the degree of flexibility which formal institutions involved in a problematic situation show. In many countries we find a high degree of flexibility in parts of the police organization, e.g. the neighbourhood police. The same may be true of the first echelons of the health and social work system. Of all formalized control systems the criminal justice system seems the most inflexible. The organizational context (high division of labour) and the internal logic of its specific frame of interpretation (peculiar style of punishment in which a gravity scale modelled according to the 'last judgement' plays an overriding role) both contribute to this inflexibility. Another factor in the particularly alienating effect of criminal justice involvement in problematic situations is its extremely narrow focus: only very specific events modelled in accordance with a legal incrimination may be taken into account and these may only be considered as they were supposed to be [at] a certain moment in time. The dynamic side of constructing reality [is lacking] completely in this particular system. Thus the construction of reality as it is pursued in criminal justice will practically never coincide with the dynamics of the construction of reality of [those directly] involved. In criminal justice one is generally deciding on a reality which exists only within the system and seldom finds a counterpart in the outside world. [...]

CONCLUSION

What would be the task of a critical criminology which has abandoned, according to the view developed above, 'crime' as a conceptual tool? The main tasks of such a critical criminology can be summarized as follows:

1   Continue to describe, explain and demystify the activities of criminal justice and its adverse social effects. This activity should, however, be more directed than up till now to the defining activities of this system. To do that, it would be necessary to compare in concrete fields of human life the activities of criminal justice (and their social effects) with those of other formal control systems (legal ones, like the civil justice system, and non-legal ones, like the medical and social work systems). The activities of those formal control systems with respect to a

certain area of life should be at the same time compared with informal ways of dealing with such an area of life. In such a task, critical criminology can be stimulated by the develop-ments in (legal) anthropology and in a more general way by sociology in an interpretative paradigm. This implies abandoning 'behaviour' and deviance as a starting-point for analy-sis and adopting instead a situation-oriented approach, micro and macro.

2 Illustrate – but only as a way of example without pretending to be a 'science of problematic situations' – how in a specific field problematic situations could be addressed at different levels of the societal organization without having recourse to criminal justice.

3 Study strategies [on] how to abolish criminal justice; in other words, how to liberate organi-zations like the police and the courts [from] a system of reference which turns them away [from] the variety of life and the needs of those directly involved.

4 One of these strategies ought to be to contribute to the development of another overall language in which questions related to criminal justice and to public problems which gener-ate claims to criminalization can be discussed without the bias (Cohen, 1985) of the present 'control babble'.

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The need for a radical realism

Jock Young

[…]

A silent revolution has occurred in conventional criminology in the United States and in Great Britain. The demise of positivism and social democratic ways of reforming crime has been rapid. A few perceptive commentators have noted the sea-change in the orthodox centre of criminology but the extent of the paradigm shift has been scarcely analysed, or its likely impact understood.

The first sighting of realignment in Western criminology was in a perceptive article written in 1977 by Tony Platt and Paul Takagi entitled 'Intellectuals for law and order' (Platt and Takagi, 1981). They grouped together writers such as Ernest van den Haag, James Q. Wilson and Norval Morris and noted how they represented the demise of 'liberal', social democratic ways of understanding crime and prisons in the United States. 'Intellectuals for law and order are not a criminological fad', they write, but 'a decisive influence in criminology' (Platt and Takagi, 1981: 54). Developing this line of argument, Donald Cressey writes:

> The tragedy is in the tendency of modern criminologists to drop the search for causes and to join the politicians rather than develop better ideas about why crime flourishes, for example, these criminologists Wilson, and van den Haag, Ehrlich, Fogel, Morris and Hawkins – and hundreds of others – seem satisfied with a technological criminology whose main concern is for showing policy-makers how to repress criminals and criminal justice work more efficiently, [and he adds:] If more and more criminologists respond – and they seem to be doing so – criminology will eventually have only 'handcuffs la' orientation. (Cressey, 1978)

There is an unfortunate tendency to conflate these various thinkers together as if they were politically similar. But van den Haag is very much a traditional

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