

## Being Critical in Conservative Times: Editors' Introduction

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As part of the team teaching criminology and police studies at the University of Tasmania, we were very pleased to host the sixth critical criminology conference in July 2012, and particularly for the opportunity to edit these proceedings. We would like to thank the authors of the fourteen papers published for taking the time to submit their work, and for making revisions following the suggestions of reviewers. We were particularly pleased that this year there were a large number of papers by postgraduate students, indicating that this is one of the friendlier criminology conferences around. This is partly because this is a relatively small conference, with about an hundred people attending each year, and there is no registration fee. We would also like to think that the conference has an egalitarian character. These proceedings are a means of sharing findings and ideas from the conference, relatively quickly, to a growing network that shares similar progressive values. This conference and related publications are a platform for researchers of all levels and undergraduates taking criminology courses to engage critically with each others' thoughts.

Although we were not planning to write an editorial introduction, the necessity to do so in 2012 emerged in light of the various papers submitted by conference participants. To put matters bluntly, it became clear to us during the conference, and in reading these papers, that relatively few are critical either in the sense of engaging with the existing literature in the critical tradition (for a discussion of this issue, see Anthony & Cunneen, 2008), or in advancing developed arguments in relation to critical concepts or themes. This is not, however, intended as a criticism of the papers (which includes our own contributions), since there are good reasons why, at the present time, the critical criminologist has to work within existing institutional structures, and ways of thinking, rather than as in the past, advancing a politically radical, alternative view of crime and criminal justice.

The best known theorists associated with critical criminology recognise this problem, and most have reached some kind of accommodation with the mainstream discipline. Pat Carlen (2011) has, for example, argued that the distinctions between critical and mainstream criminology no longer matter since any rigorous work with a scientific purpose is critical. Jock Young was critical towards prevailing trends in criminal justice when he accepted an award at the 2012 annual conference of the British Society of Criminology. However, as reported in the ANZSOC newsletter he "gracefully" accepted the award (Halsey 2012). It should be remembered that Young and others founded the National Deviancy Conference in the early 1970s to protest against the treatment of subordinate groups in the criminal justice system.<sup>1</sup> They saw working class crime as a healthy and understandable response to social and economic inequality. They also hoped to establish a new intellectual movement that might lead to a transformation of the criminal justice system.

While there is room for debate, we would argue that this transformation has not taken place. At least in the English speaking world, there is even greater inequality than during the 1960s. The criminal justice system has become considerably more punitive in that more people are imprisoned (still mainly from lower class backgrounds).<sup>2</sup> White, Haines and Asquith (2012, p.275) argue that a critical criminology perspective is essential as a means of recognising and understanding increasing social diversification and marginalisation in the criminal justice system. Bartkowiak-Théron and Asquith's study (2012) of the operationalisation of vulnerability advances a similar view. In this introduction, we hope to show that the critical tradition offers a distinctive theoretical and political position that cannot easily be incorporated within or made compatible with mainstream or administrative criminology. We will also demonstrate, without going into great detail, that it is possible to strengthen the argument in each paper through drawing on a wider literature and set of ideas in

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1 For an interesting review that is sensitive towards the tensions between radicalism and reformism within critical criminology as an intellectual movement, see Downes and Rock (2007).

2 For a review of these developments in the USA and Europe, see Wacquant (2009). Further comprehensive critical study about rising rates of imprisonment or other control measures in Australia. For discussion of rising rates of imprisonment and other control measures in Australia, see White, Haines and Asquith (2012).

critical criminology. In the conclusion, we will offer a personal view on what it means to be critical in conservative times.

## The Critical Tradition

There have been a few interesting discussions about critical criminology in recent years. For an overview, we would recommend Walter DeKeserdy and Molly Dragiewicz's introduction to the (2012) *Handbook of Critical Criminology*. They start by quoting David Friedrichs:

"The unequal distribution of power and material resources within contemporary societies provides a point of departure for all strains of critical criminology" (Friedrichs 2009, p.210).

From the perspective of critical criminology, crime is not "a manifestation of individual deviancy", but arises from "hierarchical social stratification and inequality along class, racial/ethnic, and gender lines" (DeKeserdy and Dragiewicz 2012, p.1). It follows that critical criminologists advance a distinctive view in researching the criminal justice system:

"Another common feature that critical criminologists share is the rejection of policies and practices such as 'zero tolerance' policing (eg. criminalizing begging on the street), 'three strikes, you're out' sentencing, private prisons, coercive counselling therapy, and other punitive approaches that view crime as a manifestation of individual deviancy. Rather, critical criminologists regard major structural and cultural changes within society as essential to reducing crime and facilitating social justice" (DeKeserdy and Dragiewicz 2012, p.1).

There is some degree of equivocation or ambiguity in this paragraph that is characteristic of many statements by critical criminologists in recent times. It gives the impression that critical criminologists object to the most punitive aspects of criminal justice such as "three strikes, you're out" in sentencing (practices which 'continue the 'subjugation of lower classes', White, Haines & Asquith, p263), but accept the existence of institutions such as the police or prisons when they are not being unduly punitive. This also means that critical criminologists welcome humanitarian reform movements such as restorative justice and therapeutic jurisprudence, and applaud the efforts of those campaigning for better resourced rehabilitative programmes in prisons informed by the 'rhetoric [of] social justice' and 'recognising the importance of empowering the less powerful' (White, Haines & Asquith, 2012, p.261). Clearly, anyone interested in social justice will support such initiatives. But there is more to being a critical criminologist than this, as indicated in the last part of the quotation. Critical criminologists do not understand crime as a "manifestation of individual deviancy", whereas the underlying assumption informing most rehabilitative programmes is that individuals are to blame, even though their offending can to some extent be attributed to social causes.<sup>3</sup> Instead, critical criminologists see crime as arising from social structures of inequality that can only be addressed through "major structural and cultural changes within society".<sup>4</sup> We would argue that most papers in these proceedings recognise the underlying causes of crime in inequality, and for this reason belong to the critical tradition. There is, however, usually no explicit engagement with the history of critical criminology as an intellectual movement, or in developing a political programme that goes beyond reform.

## The papers

The proceedings could be organised into four sections (which are the editors' own partitioning of the contributions): humanitarian initiatives; social divisions; law reform; and researching from a critical perspective.

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<sup>3</sup> Whatever the underlying assumptions, rehabilitative programmes and initiatives such as therapeutic jurisprudence, attempt to assist individuals rather than reducing inequality. This might be contrasted to the approach of governments during the Keynesian era when the reduction of inequality was a central objective in social and economic policy. For discussion of this shift in thinking about crime and society, see Garland (2001).

<sup>4</sup> Unfortunately, as is common in critical texts, little detail is given on the structural and cultural changes required to create a more equal society, or how to achieve these in a political programme. These have always been the big questions for the critical tradition.

### *Humanitarian issues*

In this section, we have put papers that are concerned with humanitarian, rights based reform in different areas of the criminal justice system. Angela Dwyer and Mathew Ball look at liaison services established in Victoria to assist gay and lesbian people in contact with the police. They note that police officers have been reluctant to assist, or intervene in families, but that these initiatives promise more effective protection. Their paper resonates strongly with Bianca Fileborne's on similar vulnerability issues. Julie Toohey also looks at the treatment of prisoners, but also the effect of imprisonment on families. She makes a case for funding rehabilitative programmes that allow prisoners to have contact with their children. Hannah Graham considers the changing nature of work in drug rehabilitation, and the effect on job satisfaction and service delivery of government initiatives intended to promote competition and efficiency in the public sector. Isabelle Bartkowiak-Theron, Max Travers and Jeremy Prichard argue that more resources (or better shared resources and information) should be expended on initiatives to assist vulnerable defendants on bail. Instead of setting defendants up to fail, and increasing the remand prison population, bail offers an opportunity for a whole of government approach that can address the social conditions that cause crime.

### *Social divisions*

The second group of papers are all concerned with social divisions that result in crime. David Adair argues that all working class people are victims of crime in the sense that the capitalist system inflicts unnecessary suffering and deprivation across large populations. This paper is, perhaps, closest in spirit to the National Deviancy Conference. Bianca Fileborn and Mary Stathopoulos' paper is concerned with initiatives to assist those women sent to prison who are victims of domestic violence. They also argue, perhaps controversially, that there is a large, unrecognised problem of sexual abuse that results from and reflects a patriarchal society.

There are two papers about the experiences of Indigenous defendants. Mary Spiers Williams offers an analysis of legislation in the Northern Territory that seeks to criminalise customary practices of punishment such as spearing. Bruno Van Aaken considers how, as a non-Indigenous researcher, it might be possible to research Indigenous experiences respectfully. We would argue that, although this paper hardly addresses crime or criminal justice as topics, it raises issues that should be considered by anyone working in the critical tradition. We are concerned not only with criminal justice institutions, but with subordinate groups who have distinctive experiences and viewpoints. These often disappear even in studies by critical researchers, without this being recognised as a theoretical or political problem.

### *Law reform*

The next section contains two papers concerned with potentially oppressive or discriminatory law. Elyse Methven considers a statute in New South Wales that criminalises abusive language. She argues that this is particularly directed against working class defendants. It is an additional power used by police in managing difficult populations. Nicholas Vergenis looks at laws in Victoria that make it possible for medical practitioners to monitor those who have committed sex crimes after release. Through examining an appeal, he shows how this can lead to injustice especially since most offenders do not have access to legal representation.

### *Researching from a critical perspective*

The final section contains papers that raise issues on how to conduct research from a critical perspective, although none of these papers align themselves directly with the critical tradition. Max Travers considers the arguments made about qualitative method by cultural criminologists, and explores how they are relevant to his research project about children's courts. Corkhill & Doole consider the importance of security as a problem for governments. They see some value in the work of the security services, although this paper makes one think about whether there are sufficient safeguards to protect civil liberties. George Dertadian looks at the illegal use of pain reducing drugs that can be obtained on prescription. This is an example of everyday deviance and suggests that there are many varieties that could be studied. Finally, in a jurisprudential paper, Tyron Kirchengast argues in favour of a new paradigm for law courts in which inquisitorial practices, such as those employed in restorative justice, replace the traditional adversarial contest.

## Being Critical: Current Challenges

At the start of this introduction, we suggested that some of these papers submitted to these proceedings do not engage with literature in the critical tradition, or advance developed critical ideas or arguments. If you think this is a harsh assessment, it is worth considering the distinction made in the introduction to the *Handbook of Critical Criminology* between advocating reform within the existing system, and addressing the underlying causes of crime in different types of inequality. Many of these papers advocate reform. Such proposals for reform are rooted in the deep understanding of the historical *change* that led to critical criminology, such as profound social and political restructuring worldwide post 1980s, and the surfacing of those who 'had not previously been heard' (White, Haines & Asquith, 2012, p.249) and the multiplication of 'newly discovered' social categories and subgroups in the past 20 years (Bartkowiak-Théron & Asquith, 2012).

The papers in these proceedings argue for a humanitarian criminal justice system, with more emphasis on welfare measures, and in some cases rights for subordinate groups. Some contributors believe, like mainstream criminologists, that things are getting better through these initiatives

By contrast, the critical tradition has argued that crime is a myth that serves the interests of the economically dominant class, and that the main purpose of the police and courts, but also social workers, is to control and stigmatise subordinate groups. From this perspective, the criminal justice system will continue to expand as social divisions widen. Humanitarian initiatives such as restorative conferencing make little difference to how the system operates. It is no accident that the prison population has grown, and continues to grow dramatically, alongside such humanitarian initiatives.

Some papers in these proceedings advance a critical viewpoint, and reference the large critical literature in criminology and elsewhere on different dimensions of inequality. Most of the papers seem to place their hopes in liberal reforms rather than seeking more radical changes. This interest in reform, and willingness to work with mainstream institutions, is by no means unusual among critical researchers in recent times. The introduction to the *Handbook of Critical Criminology* offers this explanation, drawing on Messerschmidt (1986):

"critical criminologists regard major structural and cultural changes within society as essential to reducing crime and facilitating social justice. However, especially in the current neo-conservative era, critical scholars know that major economic, political and social transformations will not soon occur in patriarchal capitalist societies. Hence, they propose a range of short-term progressive initiatives designed to 'chip away' at the iniquitous status quo" (DeKeserdy and Dragiewicz 2012, p.1).

It is again worth noting, critically, that these critical criminologists provide no analysis on why we are currently in a neo-conservative era (what makes it conservative in relation to preceding decades?), and what forces might lead to a change. The relationship between different dimensions of subordination (class, race, gender and sexuality), that has always raised conceptual and political problems for critical criminologists, also remains unclear. This said, the clear and constant compartmentalisation of social sub-groups has been proven as nothing but a utilitarian exercise by those in charge of justice operations and social commentary. The opportunities created and damage caused by such an exercise have been explored elsewhere (Bartkowiak-Théron & Asquith, 2012; Richardson, 2013; White, Haines & Asquith, 2012). So, there is much theoretical work to be done, not only in Australia, in renewing and taking forward the critical project, in addition to describing different dimensions of inequality and injustice. We hope that the papers published in these proceedings, and these introductory remarks, will stimulate discussion about how to be critical in these conservative times.

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