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Whose Law? What Order? Historicist Interventions in the 'War Against Crime'

Christopher L. Tomlins

Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales by Michael Sturma
St Lucia: University of Queensland Press, 1983. 224pp.

Hooligan: A History of Respectable Fears by Geoffrey Pearson
London: Macmillan, 1983. 283pp.

The Prison Struggle: Changing Australia's Penal System
by George Zdenkowski and David Brown
Ringwood, Victoria: Penguin Books, 1982. 440pp.

Law and Order: Arguments for Socialism by Ian Taylor
Melbourne: Macmillan, 1983. Australian edn. xxii + 234pp.

Once again the hearts and minds of the Australian public have been targeted by the advocates of a war. On this occasion, to be sure, the war is against 'crime' rather than against nations, but the necessary institutional sacrifices which its proponents foreshadow are not qualitatively dissimilar from those demanded in bloodier conflicts. For we live, we are told, 'in special times'. A decade of royal commissions has 'shattered our innocence' about organised crime. 'Unstructured' crime, too, is out of control. Indeed, society itself is under threat, its 'basic building block', the family, disintegrating in the face of a juvenile population lacking the elementary self-discipline 'fundamental to an ordered, law-abiding society'. The mooted responses? A Crimes Commission; greatly-expanded police powers of arrest and interrogation; diminution of the rights of the accused; abolition of jury trials. Society must accept that the rights of the individual must suffer if 'its own peace of mind, its sense of security' is to be preserved (Gawenda, 1985).

Neither the imagery of impending social chaos nor the rhetoric of 'law and order' and containment with which conservatives have responded to it is peculiar to the 1980s. Yet until recently, criminologists paid little attention to the historical contexts within which societies attributed criminality to specific forms of behaviour. Gripped by a 'tyranny of the present', the

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product of criminology's professional and disciplinary commitment to the formulation of correctional policy, criminologists instead tended to inhabit a timeless zone where those who would destroy society engaged in unceasing battle with those protecting it. In this zone, crime-control crises, even if historically recurrent, were 'always uniquely contemporary' (Carson and Ditton, 1978:3).

The last fifteen years have witnessed a profound alteration in this position. Criminology is no longer an ahistorical 'applied science'. As in law and the social sciences generally, historicism—by which I mean the perspective that the meanings of words and actions are to some degree dependent on the particular historical and social conditions in which they occur—and historical method are playing an increasingly important role in criminological discourse.

The new historicism of criminological scholarship has its origins in developments of considerable importance which have been taking place within the discipline of criminology itself. Beginning in the mid-1960s, developments in the sociology of deviance precipitated a pronounced movement amongst criminologists away from correctionalism, with its emphasis upon servicing 'the administrative technology' of crime control, in search of a new and very different perspective on criminal behaviour—one founded upon an explicit critique of the normative order of Western capitalist society (Cohen, 1974; Taylor, Walton and Young, 1973, 1975:2). Initially this alternative criminology demonstrated no more of an historical consciousness than the positivist mainstream which it criticised. Perhaps as a result, the intellectual revolution to which its proponents had committed themselves tended (as with 'new left' intellectual endeavour in general) to end up as little more than a normative inversion of the mainstream. Thus, where mainstreamers stressed the threat which crime posed to social order, radicals trivialised or romanticised crime. They argued, for example, that the processes by which the state attributed criminality to particular categories of behaviour were irremediably class-biased; that the residue of behaviour which constituted 'real' or 'core' criminal activity was simply not the serious social problem that it was represented to be by the media; and that such behaviour was in any case excusable, or justifiable, or even laudable (Platt, 1973; Kelman, 1982).

These early forays against mainstream criminology proved analytically unconvincing. Radicals might contest mainstream *explanations* of crime and interpersonal violence, but they had to accept that these were real social phenomena, not ruling class tricks or media inventions. To ignore this was to risk their own marginalisation in both academic and popular debates. As Mark Kelman recently put it, 'a critical commentator,

here and now in the 1980s can [not] seriously expect people to be interested in his work if he explains much about the contemporary problem of crime by telling street-terrified urban dwellers that the definition of crime is socially contingent', or that they were being 'duped' into worrying about it, or that criminal activity somehow signified the awakening of a politically progressive self-consciousness on the part of its perpetrators (Kelman, 1982:221). Yet for radicals simply to pledge to 'take crime more seriously' was not an option, for this would have placed them in the invidious position of having the object of their analysis—'crime'—specified for them by that same mainstream criminology which they were trying to refute. The upshot of the rejection of romanticism, therefore, was the beginning of a more serious attempt to expose the priorities and categories of mainstream criminological discourse and to produce a totally new specification of the proper objects and purposes of criminology. It was in the course of mounting this project that radical criminologists turned increasingly towards history.

By itself a turn towards history was not revolutionary. Even if only by implication, mainstream criminology's account of itself and its objects had always possessed an historical aspect, as indeed had that of every branch of the social and physical sciences (Radzinowicz, 1966; Kuhn, 1970). Where the crucial difference lay was not, therefore, in the resort to history *per se*. Rather it was in the nature of the relationship between history and criminology which radicals envisaged. As Morton Horwitz has put it in a similar connection, the new historicism was to alter that relationship from one in which history played an 'apologetic' role to one in which it would be 'essentially destabilising and subversive' (Horwitz, 1981:1057).

In criminology, history's traditional apologetic role can be illustrated by reference to the scholarship of Leon Radzinowicz. Constructed from a quintessentially progressive perspective, Radzinowicz's work represented the relationship between crime, the state and material life as an uncomplicated (though lengthy) story of the triumph of reformers—Beccaria, Bentham, Peel, Chadwick, et al.—over reactionary vested interests; and of the resultant adoption of modern systems of judicial administration, punishment and police in place of the capricious and irrational courts, savage penalties and unprofessional enforcers of the 18th century (Radzinowicz, 1948:68). No less important than its account of events—although perhaps less obvious—was the professional function which Radzinowicz's work performed. As David Philips has pointed out, Radzinowicz wrote 'as a modern criminologist interested in how the modern English legal, penal and police systems had developed'. That is to say, his work was not simply an attempt at authoritative descriptive history; it was also an attempt to provide positivist criminology with a 'usable past'—a representation of its

social role and intellectual provenance charting and justifying 'the route which leads to where we are' (Philips, 1983:51; Carson and Ditton, 1978:2).

In each of these dual ideological functions performed by history—as explicator of past events to a public under whose gaze policy is made, and as justifier of criminology's professional 'project'—historicism has induced a pronounced paradigm shift. Thus the flood of revisionist history of crime and criminal behaviour appearing since the early 1970s has totally undermined Radzinowicz's Whig-Progressive approach, replacing teleology with a convincing demonstration of the essential contingency of the normative order within which crime and the criminal justice system are constructed. Simultaneously criminologists have begun to rewrite the intellectual history of their own discipline, affirming in the process their realisation of historicism's subversive potential. In 1974, for example, Ian Taylor, Paul Walton and Jock Young produced a compelling analysis of the relationship between criminology and the social sciences which was at one and the same time not only 'the first truly comprehensive critique that we have ever had of the totality, of past and contemporary, of European and American, studies of crime and deviance' (Gouldner, 1973:ix), but also an explicitly historicist prolegomenon to the development of a new criminology, one committed to addressing the political economy of criminal action and of the social reaction to crime. Throughout, *The New Criminology* stressed the potential of 'a sense of history' to unite the many different explanations of crime, deviance and control which 'new' criminologists were developing in one overarching 'new' criminological theory (Taylor, Walton and Young, 1973:268-82).

The interconnectedness of these two paradigm shifts and the enormous potential for interaction between them has been indicated on numerous occasions since the early 1970s by the considerable interest which both historians and criminologists have shown in taking advantage of each other's empirical and methodological work. Criminological scholarship influenced by labelling theory, the sociology of deviance and related concepts of moral 'entrepreneurship' and 'panic' has gained a ready audience amongst historians of crime 'who had found standard criminology useless as an aid to historical analysis'. Underlining the essential historicist point 'that "crime" was not a given and constant phenomenon, the same in all societies and at all times', but rather something defined by those who made and enforced the law, 'these theories reinforced historians in their inclinations to turn away from "official definitions and statistics" [to] make the makers and enforcers of the law proper objects of study along with the breakers of the law' (Philips, 1983:58). Just as enthusiastically, criminologists cited 'history from below'—the revitalised social history of the

material experience of common people championed by Hill, Hobsbawm, Williams and Thompson—as ‘a body of work which challenges criminology to shake itself out of its ahistorical slumbers, to come to a new understanding of what crime is, an understanding which is concretely situated in real historical time’ (Pearson, 1978:119). According to Geoffrey Pearson, historicising crime in this fashion would enable the criminologist for the first time truly to apprehend the layers of social, political and cultural meaning in which crime and perceptions of criminal behaviour were embedded.

Differing markedly in subject, scope and goals as they do, the books here under review collectively attest to the impact of the paradigm shifts brought about by this confluence of history and criminology. In addition, through their focus on detailed explanation of actual empirical cases, they contribute, although in varying degrees, to the further infusion of a ‘sense of history’ into criminology which Taylor et al. sought ten years ago. Their appearance in close order over the last four years therefore affords us an important opportunity to assess the contribution of historicism to criminological scholarship. It also enables us to point to possible tensions and limitations which the proponents of the turn towards history may not have foreseen.

HISTORY REVEALS: VICE AND HOOLIGANS

Vice in a Vicious Society is an investigation of the incidence of criminality in mid-19th century New South Wales and of that society’s perceptions of crime and convictism. Like other recent revisionist historians, Sturma finds that ‘the degree of criminality and vice in the community [was] exaggerated and misunderstood’ (xi) by contemporaries, and later misrepresented by modern scholars led astray by contemporary assumptions and fears or by the prejudices of their own time. Employing concepts drawn from the sociology of deviance to supplement his thorough statistical investigation, Sturma constructs an explanation of the divergence of perception from statistical reality which sheds considerable light on the social role of crime and crime waves in the maturation of the colony’s moral and political order.

According to Sturma, the widespread belief that New South Wales was a vicious and disorderly society (accorded official imprimatur by the Molesworth Committee in 1838) reflected two assumptions all-pervasive in 19th-century attitudes towards criminality. First, the occurrence of crime was to be explained by reference to the activities of members of a distinct social group—a criminal subculture—which lived wholly by

crime. Second, criminality was contagious: criminals could contaminate non-criminals and could also pass criminal traits to their offspring. Both assumptions indicated that the incidence of crime in a society would be largely determined by the extent of that society's success in quarantining its criminals. Hence the British policy of transportation. By the same token, however, the proximity of the free population of New South Wales to the transported convicts rendered their contamination virtually inevitable. The penetration of convict habits and values deep into the culture would compromise all attempts to establish a viable and orderly society. Historians have agreed, seeing early New South Wales, in the words of a recent writer, as 'a society whose cohesion rested mainly on vice', one which 'warp[ed] all those who went there' leaving 'deep and disfiguring scars' (O'Farrell, 1968:10, 16).

Statistics, however, provide little basis for attempts to explain either the occurrence or the incidence of crime in terms of the spread of a depraved convictism. Environmental factors are far more persuasive: the preponderance of males in the population; prevailing economic conditions; the dispersion of the population by the expansion of pastoralism, affecting both opportunity to commit offences and the incidence of prosecutions in isolated areas; a tradition of interpersonal violence encouraged by relations with the Aborigines. In light of this, Sturma concludes that contemporary explanations of crime should be treated as primarily of ideological significance, the product of struggles to reassure metropolitan opinion and colonial elites of the propriety of colonial society by establishing a hegemonic middle-class moral order in New South Wales which would stigmatise nonconformity.

Sturma does not engage in explicit theorising, and his encounters with criminological concepts are relatively brief and uncritical. Nonetheless, his commitment to treat crime in colonial New South Wales as a social process occurring within a community, rather than as the accretion of individual violations of a static legal code, leads him to an interactionist perspective and a language of labelling, moral entrepreneurship and social control. The latter concept, unfortunately, is used too loosely to be of much help: in his otherwise useful chapter on the police and public order, for example, Sturma invokes, without explanation, the existence in New South Wales of 'a *network* of social control, which ranges from religious organisations to recreational facilities' (163, my emphasis), of which the police are a part. Concepts of labelling and moral entrepreneurship, however, prove more enlightening, and enable the author to deal very suggestively with the circumstances of the 'crime waves' of 1835 and 1844 and of the anti-transportation movement of 1849.

Sturma's statistics show that the actual occurrence of major alterations in the incidence of crime at these times is highly dubious. Instead he attributes sudden outpourings of community concern about crime and convictism to more diffuse social and political factors: specifically, conflicts between emancipist and exclusive factions, between colonial elites and royal governors, and between different segments of the colonial elite. In the 1830s, for example, Governor Bourke's attempts at ameliorative reform threatened to dilute the ideology of criminality and contagion and thereby enhance emancipist political power. The panic of 1835 helped re-establish the identification of crime with contamination and contamination with convicts. Nine years later, at a time when the large landholders' initiative in defining moral and political issues was beginning to be contested by the urban middle classes and by radical free workers, the 1844 'crime wave' provided a focus around which an otherwise fragmented community could unite against Governor Gipps and his land regulations. Another five years, and we find the language of contamination and convictism dominating much of the struggle over the resumption of penal transportation, an issue fraught with contradictory economic, social and political implications for the different segments of colonial society. Finally, with the gold rushes, crime became identified 'with the menace of an independent working class and democratic reform'.

Throughout, Sturma concludes, 'criminality' was largely a conferred status which depended only in part on the commission of a criminal offence. Much more important were the fears and hopes of the colony's elites, who bound up the attribution of criminality with their own quest for recognition and respectability:

In its crudest form, respectability was a synonym for upper-middle class pretensions to moral superiority and power. At a more subtle level, respectability entailed a 'competitive struggle' for status by persons anxious to confirm their place in a new and rapidly changing social environment (187).

But whatever the goal, whether power or status, the means was the identification of other persons as disreputable.

Vice in a Vicious Society is a book by an historian written principally for other historians. It is a conventional historical monograph, which is to say that Sturma defines his area of inquiry relatively narrowly, analyses the relevant data vigorously, integrates the product of that analysis with a more general narrative account of salient features of colonial New South Wales' history, and draws what seem to be the appropriate conclusions about the relationship between the particular subject of vice and the general course of that history as interpreted by other historians. But in con-

structuring his convincing revision of an outworn historiography, Sturma touches on issues of wider moment. Hints in his narrative suggest, for example, the utility for criminologists of focusing on the relationship between 'crime waves' and changes in the structure of the labour market. Clearly such a change is a central environmental feature of Sturma's period: throughout, after all, New South Wales was negotiating a transition from a predominantly bound to a free labour force. In this context, the deployment of the ideology of criminality and propriety to bring the newly independent working class of the 1850s and its aspirations towards democratic participation in the colonial polity within the realm of vice and disorder redolent of earlier convict days is of considerable significance. Sturma shows that drunkenness—the colony's 'prevailing vice'—earned particularly intense and persistent attention from the magistracy. Useful as a symbol of general working-class immorality, it was also repeatedly invoked to condemn high wages, labour mobility, and casual and un-supervised labour. Tentatively, then, we may suggest that expressions of concern at a growing threat of crime and social chaos may also serve the function of enabling elites to police destabilising transformations in the social structure of work and accumulation, transformations which might otherwise follow paths incompatible with their own interests.

Hooligan, Geoffrey Pearson's chronicle of 'respectable fears', provides additional evidence for this hypothesis, for it reveals a persistent relationship across two centuries of British history between waves of concern about crime and successive transformations of the structure of British politics. Explication of this relationship, however, is not Pearson's primary goal. His aim is to debunk the contemporary Tory myth that a 'British way of life' characterised by centuries of domestic peace and harmony is now on the brink of disintegration through the depredations of legions of alien black muggers and uncontrollable youth. Pearson seeks to show 'that the real traditions are quite different: that for generations Britain has been plagued by the same fears and problems as today; and that this is something which should require us to reassess the shape of our present difficulties and the prospects for the future' (xi).

This debunking mission preoccupies Pearson for four-fifths of the book. Each generation, he finds, has perceived itself to be threatened by a rising tide of crime and youthful street violence. Each successively has invoked a contrasting vision of a recent crime-free past of stability and peace. On closer examination, however, the actuality of public order in that mythic past era turns out to be a close approximation of the turbulent present. In this fashion, Pearson accumulates a patchwork of disorder stretching back to the 17th century, whereupon he concludes that a new appreciation of the reality of 'the British way of life' is called for. 'Usually

we think of disturbances such as these as a break with tradition; but perhaps they are more usefully understood as tradition itself' (202).

Unlike Sturma, Pearson has set out not to write a narrowly-focused monograph but to illustrate a theory. The result is an undisciplined book, at once perceptive and superficial. Pearson's method—to explore the rhetoric of an era, determine the approximate temporal location of its golden age, then move backward in time to examine the reality and rhetoric of *that* period, find *its* golden age and so on—is initially entertaining. But repetition quickly becomes tedious. Pearson's evidence, further, is almost invariably impressionistic, and the interpretations placed upon it are often questionable. In discussing communal traditions of riot and misrule, for example, Pearson annexes them firmly to his unbroken tradition of disturbance and disorder: they exhibited 'an unhealthy spirit of insubordination' (196). But this ignores the intricacy of the relationship between social order and disorder—whether at the level of riot, role reversal or personal display—explored by historians such as Edward Thompson and, more recently, Rhys Isaac. To hypothesise an unbroken tradition of disturbance and disorder connecting 1680 and 1980 brings us no closer to an understanding of the different sociological and cultural meanings of superficially similar forms of behaviour than did the former paradigm of stability (see, for example, Thompson, 1971; Isaac, 1982).

Pearson partially redeems himself in a fine concluding chapter in which he attempts to 'make sense' of the perennial myth of an orderly past. Each era, he argues, perceives itself to be standing at a point of radical discontinuity with the past. Its current preoccupation with lawlessness is thus enclosed within an historical idiom of change. The result is the familiar jeremiad. Once recast as continuities, however, the facts of crime and disorder, and their causes, can be analysed. Patterns begin to emerge, specifically a pattern of popular response to periodic crises in the British polity. Thus, at particular moments, 'the fixed vocabulary of complaint [which] rumbles on through British history almost without interruption . . . comes into a sharp crystallising focus'. These, Pearson finds, are moments of widespread social tension over the course of political democratisation: the 1840s (Chartism), the 1860s (the electoral reform bill), the 1890s (the rise of labour), and so on. On each occasion reactionaries emerge to contest the advance of democracy, arguing 'that "things have gone too far", that the "common people have gained too much freedom" and that the reins of government must be held more firmly'. Reformers defend rule-by-consent but simultaneously seek the implantation of 'new forms of discipline in the hearts and minds of the labouring classes', forms 'compatible with democratic rule'. On either side, the general preoccupation with law-

lessness becomes a specific preoccupation with 'the production and reproduction of consent and social discipline among the working class' (230–31).

There is much of importance here. Pearson's detection of a cyclic pattern of concern at crime and disorder, beginning some time in the late 18th century, and his attempt to link that cycle to successive crises in liberal democracy and the attendant transformations in the structure of the British polity both have very clear links with Sturma's account of the ideological significance of crime waves during one such 'moment' of transformation in New South Wales. Even more important, Pearson alludes to the possibility of a causal relationship between these recurrent crises in the British polity and 'the inescapable reality of the social reproduction of an underclass of the most poor and dispossessed' (236). The suggestion, however, is not developed in any systematic way. As a result, his claim of relationship between crime, material life and political crisis never achieves more than anecdotal significance.

Pearson's lack of interest in systematic analysis of this relationship exposes a crucial limitation in his perception of the confluence of history and criminology. For all his advocacy, Pearson's resort to history is essentially dilettantish; the 'repossession of the past' is but an overture to present struggles. Its role is to furnish apt metaphors for those active in the unceasing conflict over the shape of the future. Thus his 'history of respectable fears' is addressed very specifically to the *contemporary* crisis of liberal capitalism, and its conclusions are explicitly present-minded. On the question whether historical analysis can make any major intellectual contribution to the development of a more sophisticated comprehension of capitalist crises in general, Pearson has nothing to say.

It would, of course, be absurd to suggest that professional qualification is a *sine qua non* of successful historicist criticism, or that present-mindedness and normative content is absent from contemporary historical scholarship. Nevertheless, it may transpire that there is a tension between the projects of historians and criminologists which the proponents of an historicised criminology—amongst whom Pearson counts himself—have not taken into account. For history's greatest potential lies not in metaphor but in synthesis: the construction of empirically-grounded generalisable explanations of social-economic change with which criminological concepts and concerns may be integrated. The sort of explicit present-mindedness and casual anecdotalism upon which *Hooligan* relies regrettably realises little of this potential.

HISTORY EMPOWERS: PRISONS AND SOCIALISM

To Geoffrey Pearson the use of history lies in its assumed capacity to furnish apt metaphors which help to illustrate our theories about the present. George Zdenkowski and David Brown adopt essentially the same approach but have wider ambitions for it. Prisons, they tell us, generate struggles. The form, object and content of those struggles vary over time. 'In particular periods, a coalescence of social forces creates the material conditions for a heightened struggle and a stronger resistance movement.' One of the most important of these forces is a knowledge or consciousness of past struggles. 'If the history of struggles—its processes and outcomes, its victories, defeats, gains, reversals—is allowed to fade, or is denied, suppressed or rewritten, progressive forces are disarmed. Without such a history, without such a consciousness, progressive political struggle is more easily cast adrift in a sea of single instances' (xv-xvi). History, in other words, does not simply demystify. It can also empower.

Zdenkowski and Brown aspire to write precisely this sort of empowering 'movement history'. Thus, although they disavow new left romanticism, the consciousness they describe is nonetheless indubitably heroic, a consciousness 'writ high in flames and smoke, in acts of individual heroism under fire, in battered and bullet-ridden bodies' (xvi). Unfortunately, however, the substantive core of *The Prison Struggle* upon which this characterisation is based—an analysis of the Bathurst Gaol riot of 1974, of the 1976 Royal Commission into New South Wales prisons, and of the aftermath of that Commission—exists in an historical vacuum which leaves the origins of the prison struggle shrouded in mystery. True, historical method is invoked in the course of the authors' brief introductory exploration of relevant social theory: specifically Foucault on prisons, E. P. Thompson on the rule of law, and a scattering of work on the social history of crime. But so far as historical analysis of the development of the prison system, of the form of bourgeois punishment, even of the role of the state in *Australia* are concerned, 'this task awaits others' (16). Nor do the authors attempt to relate their somewhat idiosyncratic discussion of the historiography of crime and punishment to the circumstances of the specific conflict with which they are concerned. This means that their history of the Bathurst riot and its aftermath emerges in a theoretically unformed manner: it becomes a history of *a* struggle, a chronicle of events.

Despite these severe limitations, *The Prison Struggle* is still an important work, for what it lacks in explanatory capacity it makes up in attention to the detail of the events which it chronicles. Its major contribution lies in its attempt to analyse the process of struggle within the prison itself by tracing 'the efforts of prisoners and their supporters to transform the coer-

cive institution that is the prison, and the official resistance to these efforts' (55). To this end the authors devote considerable attention to prisoner and prisoner-support organisations and their activities; to attempts to introduce procedural innovations mediating relations between inmates and prison government, and the limitations of those innovations; to the formal and informal structures of power through which prisons are governed; and to the response of prison officialdom and the media to prison agitation and prison reform. They employ the Bathurst riot and its aftermath as a case study to throw into sharp relief these more general themes. The highlight of the book is its demonstration of the 'double standards of justice', the processes which the state routinely uses to condone its own illegal behaviour *vis-à-vis* prisoners while simultaneously reaffirming the illegality of the prisoners' protests.

The achievements of *The Prison Struggle* are thus descriptive rather than analytic. Even here, however, there are shortcomings, in the shape of major empirical gaps. Prison officers, for example, remain throughout little more than 'uniformed thugs', ever-present and ever-menacing but faceless. The authors make no real attempt to address in any detail the phenomenon of prison officer organisation and its impact on prison administration and internal power structure. We discover little about prison officer recruitment, career structure and grievances.

Overall, *The Prison Struggle's* flaws outweigh its strengths. The authors' narrow focus on recent events in one state's prison system and their theoretical shortcomings impair the book's capacity to sustain informed generalisations or causal statements applicable to prison struggles as a whole. Useful as a supplier of dramatic metaphors for the present, the book suffers from the same problem that plagued *Hooligan*: its authors enthusiastically endorse the suggestion that a 'sense of history' has a crucial role in their vision of a reconstituted criminology, but the book itself does next to nothing to show what the true potential of that role might be.

A clearer indication of that potential emerges from the pages of Ian Taylor's *Law and Order: Arguments for Socialism*. Here Taylor attempts to transcend the eclecticism of *The New Criminology* by presenting a program for the creation of a specifically socialist criminology and for the transformation of contemporary British society. The presentation is made and the program justified, however, in the manner suggested in the earlier work: that is, through the development of an historical analysis of the course of mainstream British criminology and its relationship to the state. Here, finally, we leave anecdote behind; here we begin to see historicism acting as that 'subversive' intellectual force to which Morton Horwitz alluded.

Taylor's core argument is relatively straightforward. Crime and violence are the products of states of chronic disorder in interpersonal relations. These states of disorder are in turn the outcome of the social and economic inequalities bred by capitalism. Mainstream criminology's professional commitment to the reformist social welfarism of the post-war period and to an ideology of correctionalism has obscured the relationship between social disorder and capitalism. A socialist criminology is one which reaffirms that relationship and which constructs a socialist strategy for the elimination of capitalism's inequalities.

The essential significance of a very high rate of interpersonal and property violence in a society is that it expresses the lack of socialism in the personal and social relations of that society. And we can define the absent socialism . . . as a political and social formation which guarantees equality of life-chances and mutual regard between people, irrespective of race, age and sex. It is the obverse, therefore, of the conditions that exist in an unreformed class society like Britain today (xv-xvi).

Taylor's analysis of the current crisis is premised upon an account of the rapid degeneration after World War Two of British social democracy. In place of Labour's reconstructionist promise of real social justice in the distribution of economic resources and rewards, there had appeared by 1950 a politics of consensual social democratic conservatism ('Butskellism') and a state welfarism dominated by 'an essentially middle-class and unaccountable liberal professionalism' (41). Thus transformed, the project of social democracy was rewritten to emphasise economic efficiency and institutional 'modernisation' rather than fundamental reform of prevailing capitalist and patriarchal social relations. The promise of social justice degenerated into a commitment to address the consequences of the *absence* of any real reconstruction of social relations through regimes of treatment and rehabilitation. Thus, in the realm of criminology, 'delinquency and criminality were increasingly disconnected from the broader social contexts of the economy and the broader structure of class and power and increasingly relocated into a psychodynamic theory of maladjustment' (73-74).

The proliferation of treatment and social control agencies suffused by an ideology of rehabilitation had profound consequences. First, by working within and through the state *on behalf of* the people, social democracy became clearly associated with the apparatus of an intrusive state. As Taylor shows, it 'increasingly justified its own elaboration of treatment and social control in the rhetoric of the state and of "authority"' (74). Second, the unresolved crisis of unreformed social relations—by the late 1970s a full-fledged 'crisis of social reproduction' brought about by the progressive decay over the previous decade of the economic base which underpinned

the post-war consensus—brought a growing popular rejection of that intrusive state. Increasingly, state-centred strategies of rehabilitation and social control became identified in public opinion as the causes of the disorder they purported to treat.

To date, in Britain as in most countries, this comprehensive failure of the liberal state has been exploited by the right. In criminology this is manifested in the growing influence of theories locating the origins of the current crisis of social relations in the fragmentation—political, demographic, racial—of a traditional and cohesive unitary culture. ‘By clear implication, the true corrective to the social disorder experienced by the citizenry is the *reimposition* of traditional culture’ (8). These theories, however, are demonstrably flawed. They are ahistorical in that they ignore or deny that the reality of ‘traditional culture’ has not been unity at all, but class inequality and sexual and racial domination. They are also internally contradictory in that what they represent as the reality of traditional culture has no relevance to the lived reality of the economic and social relationships which are in crisis. In other words, right-wing responses to the current crisis make as little sense as those of reformist social welfarism: neither addresses the causal relationship between capitalism and social disorder; both seek to recreate order by buttressing social relationships which are inherently disorderly, the one by ‘treatment’, the other by moral exhortation, blatant fabrication and coercion. But whereas social welfarism is largely discredited, the right, as yet, is not. In any epoch, as Pearson has shown, the invocation of an orderly past has enjoyed considerable resonance in contemporary culture, and there is no doubt that New Right demands for a return to ‘traditional methods’ in law and order, in the school and in the home have a considerable popular appeal, particularly to a working class beset by all the dislocation and rapid social change of the contemporary ‘crisis of social reproduction’ adverted to above. In identifying the real causes of disorder, therefore, it is incumbent upon the left also to demonstrate the incapacity of right-wing programs to resolve that disorder.

The Left must . . . [identify] Thatcherism and right-wing populism as *ineffective as social and penal policy*. In so doing, socialists will increasingly be able to reassert older and more fundamental connections than was allowed within the liberalism and social democracy I have discussed in this book: it will be possible to show how the social relations of capitalist societies as such, whether in health or in decay, must divide human beings from human beings, and therefore produce a variety of acts of crime and violence, in the very nature of the form that social organisation must assume. The freeing of ‘the market’ (that is, of capitalists) from the regulation of the state cannot usher in a new era of interpersonal responsibility and self-discipline, as the New Right believes, and neither can the economics of the market-place repair the dislocation of fractured

urban communities. Human beings' responsibility to each other and their cultivation of social and interpersonal 'discipline' depend not on the anarchy of the struggle for survival or profit, but on the creation of a genuine community of interest of all citizens (211, emphasis in original).

On this basis, Taylor argues, the left can pioneer a programmatic reconstruction of social policy which addresses real popular concerns for the establishment of social order, but in a manner which avoids the statism of the post-war period. 'A public and popular socialist criminology has to be constructed in practice, through the different fragments [i.e. community and local special interest organisations] that are working towards explicitly socialist goals and also within established institutions of the class.' In this manner, Taylor predicts, the left can give the lie to the right-wing assumption that 'the crime question' is one which belongs by nature to the right. Instead, it should be able to point up a different conclusion: 'that the obverse of socialism is barbarism' (211–12).

The relevance of Taylor's work to the relationship of history and criminology is threefold. First, the materials from which Taylor's normative stance—and its precise programmatic substance—is fashioned are derived from an historical account of mainstream criminology's technocratic role within the post-war state. Second, by situating that account within the framework of a more general analysis of the creation of the post-war social democratic consensus and its subsequent decomposition, Taylor moves far beyond metaphor and towards an integration of criminology with an explicit theory of historical development. Finally, in emphasising the considerable opportunities for radical reconstruction which have opened up at the moment of the contemporary social structure's degeneration, Taylor conclusively underlines historicist criticism of the evolutionary functionalism of mainstream history and affirms the essential contingency of that (and any) social structure. To a considerable extent, then, Taylor manages that elusive conjunction of historicised analysis and explicit normative commitment which radicals advocating the transformation of criminology have preached, but which few have realised in practice.

HISTORY CORRODES

This discussion of four recent attempts to employ (in varying degrees) an historical perspective on the study of crime and social disorder has concentrated on the question of how criminology's turn towards history might work out in practice. Thus I have shown how an historical perspective has been employed in attempts to demystify the past, to empower the present

and to inform future choices. I have also shown how historicism has enabled criminologists to address themselves explicitly to the contingency of the phenomena which they study and, in particular, to the contingency of their own discipline and its mode of practice. Finally, I have demonstrated some of the risks of an anecdotal use of history.

Our conclusion from this exercise should be that because neither crime nor criminological discourse is immanent, one can clearly come to a better understanding of both, and of their interrelationship, by situating each historically. To be able to do so in a manner which can support meaningful generalisations without falling into the evolutionist and functionalist patterns of mainstream history, however, requires more attention to the development of theories of historical change than has been shown by the majority of these authors. Having enhanced our understanding of particular events, historicism in criminological scholarship must begin to enhance our understanding of social processes.

It might, as E. P. Thompson once put it, be wise to end here. But there remain a couple of points to be dealt with. In particular we need to consider the question of tension, already adverted to, between the projects of history and of a radicalised criminology. Radical criminologists profess a commitment to the total transformation of their discipline and the creation of a criminological discourse whose cardinal feature, as we have seen, is to be its capacity to articulate a clear normative position not simply at a theoretical or scholastic level but also, especially, on the street. Thus for Zdenkowski and Brown, and for Taylor, the rejection of a merely scholastic discourse is part and parcel of the redefinition of criminology. Their criminology will not only explain the past, but also participate actively in the transformation of the present. To them, to engage in radical criminology means 'not simply to describe "the defences of the weak" but to organise them'. Most historians, similarly, define 'history' as an activity rather than as an approach. But there the resemblance ends, history being an essentially pluralistic and scholastic activity totally lacking the 'street' level of engagement to which radical criminologists are committed. Radicals may find that the ambiguities bred by history's professional eclecticism are actually a hindrance at that point of engagement in the street where their desire to distinguish themselves from their predecessors most demands a clarity of choices.

The tension is likely, furthermore, to persist. Failing an anti-pluralist, anti-scholastic revolution in history's project, historians will continue to do as they always have done, to constitute a veritable anarchy of 'usable pasts' suitable to a wide variety of ideologies (Matthews, 1985). Historicising criminologists seeking guidance from that plethora of pasts will need

to be aware that, to adapt Horwitz, one person's subversion is just as often the next's apology. In itself this suggests no more than the obvious conclusion that criminologists turning to history should concentrate on looking for that history which most closely reflects their own methodological, political and ideological perspectives. But this in turn underlines the ambiguity of history: to turn to history is to turn to contingency with a vengeance. The plurality of available histories opens all conclusions to subversion. From this perspective, the 'sense of history' to which radicals look to infuse their criminology with new meaning is no less vulnerable to historicist corrosion than the 'sense of history' propagated by Radzinowicz. Each is simply a 'usable past', furnishing no more than 'helpful insights or ways of organising thinking about the world' (Gordon, 1982:290).

If radicals see in history a means to establish *empirically* the superiority or necessity of their version of moral and political order, therefore, they are bound to be disappointed. Indeed, by stripping bare the pretensions of established or proposed 'orders' and exposing the contradictions within them, historicism tends rather to corrode the notion of 'order' itself, revealing instead a world in which order and disorder exist in permanent apposition, each reliant upon the other for existence and meaning. In this world the achievement of order *is* the creation of disorder, whether it be the disorder of alternative normative orders condemned to opposition or the disorder of normative expectations raised but unfulfillable.

Historicism, in short, commits us to relativism: all normative orders are composed of contradictions which disorder them.¹ This is not a relativism so disabling to imply that there is no means of distinguishing amongst competing 'orders' (Matthews, 1985), but it does imply that alone history can provide no pressing reasons for choosing one way rather than another. In the final analysis, that is, historicism returns criminologists to a familiar terrain: choice amongst competing normative orders is ultimately a matter of morals and politics, not of history.

1. John A. Meyer has commented of structural-functionalism that 'the functionalist-structuralist approach tends to assume that there is a society that is functioning or attempting to gain equilibrium. But if society is composed of numerous subgroups, each of whom pursues different ends and has different values, then disequilibrium would be the normal state of society, as there would always be at least one group, and usually several, for whom society worked in a dysfunctional manner and who would actively be in pursuit of a different social equilibrium from that which other groups desired' (Meyer, 1983: 35-36). Presumably this would be as true of a 'deviant' English bourgeoisie reacting to Ian Taylor's transitional program as it has been of the English working class in earlier epochs.

REFERENCES

- Carson, W. G. and J. Ditton (1978) 'The Tyranny of the Present: Post-War British Criminology, the Rediscovery of the Past, and the "Dinosaur" Theory of History'. Unpublished paper.
- Cohen, S. (1974) 'Criminology and the Sociology of Deviance in Britain', in P. Rock and M. McIntosh (eds), *Deviance and Social Control*. London: Tavistock.
- Gawenda, M. (1985) 'The Power Behind the Police', *The Age* (13 June) 11.
- Gordon, R. W. (1982) 'New Developments in Legal Theory', in D. Kairys (ed.), *The Politics of Law: A Progressive Critique*. New York: Pantheon.
- Gouldner, A. W. (1973) 'Foreword', in I. Taylor, P. Walton and J. Young, *The New Criminology: For a Social Theory of Deviance*. London: Routledge & Kegan Paul.
- Horwitz, M. J. (1981) 'The Historical Contingency of the Role of History', 90 *Yale Law Journal* 1057.
- Isaac, R. (1982) *The Transformation of Virginia, 1740–1790*. Chapel Hill: University of North Carolina Press.
- Kelman, M. 'The Origins of Crime and Criminal Violence', in D. Kairys (ed.), *The Politics of Law*.
- Kuhn T. S. (1970) *The Structure of Scientific Revolutions*. 2nd edn. Chicago: Chicago University Press.
- Matthews, F. (1985) '"Hobbesian Populism": Interpretive Paradigms and Moral Vision in American Historiography', 72 *Journal of American History* 92.
- Meyer, J. A. (1983) 'Notes toward a Working Definition of Social Control in Historical Analysis', in S. Cohen and A. Scull (eds), *Social Control and the State: Historical and Comparative Essays*. Oxford: Martin Robertson.
- O'Farrell, P. (1968) *The Catholic Church in Australia. A Short History: 1788–1967*. Melbourne: Thomas Nelson.
- Pearson, G. (1978) 'Goths and Vandals—Crime in History', 2 *Contemporary Crises* 119.
- Philips, D. (1983) '"A Just Measure of Crime, Authority, Hunters and Blue Locusts": The "Revisionist" Social History of Crime and the Law in Britain, 1780–1850', in S. Cohen and A. Scull (eds), *Social Control and the State*.
- Platt, T. (1973) 'Prospects for a Radical Criminology in the USA', in I. Taylor, P. Walton and J. Young, *Critical Criminology*. London: Routledge & Kegan Paul (1975).
- Radzinowicz, L. (1948–68) *A History of English Criminal Law and its Administration from 1750*. 4 vols. London: Stevens.
- (1966) *Ideology and Crime: A Study of Crime in its Social and Historical Context*. London: Heinemann.
- Taylor, I., P. Walton and J. Young (1973) *The New Criminology: For a Social Theory of Deviance*. London: Routledge & Kegan Paul.
- (1975) *Critical Criminology*. London: Routledge & Kegan Paul.
- Thompson, E. P. (1971) 'The Moral Economy of the English Crowd in the Eighteenth Century', 50 *Past and Present* 76.