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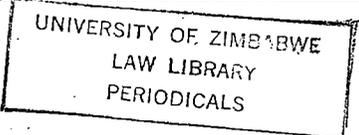
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Focus on Criminal Law in Southern Africa



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EXPLAINING CRIME : A MARRIST PERSPECTIVE

LEONARD P. SHAIIDI*

"The scholar's or scientist's way of becoming partially blind is, inadvertently perhaps, to structure fields of enquiry in such a way as to obscure obvious connections or take the connections for granted and leave the matter at that. The great task of disconnection ... fell to the positive school of criminology. Amongst their notable accomplishments, the criminological positivists succeeded in what would seem the impossible. They separated the study from the workings and the theory of state. 1 "

1. INTRODUCTION

In Britain, the late sixties and early seventies witnessed a radical departure from conventional or orthodox criminology with its positivistic outlook to more radical approaches to the study of crime and delinquency. The publication of The New Criminology by Ian Taylor, Paul Walton and Jock Young in 1973² was of particular significance during this period, not so much because of producing a 'new' criminology but because it set in motion the whole debate on the relevance of Marxism to criminology. Although the book is sub-titled "For a Social Theory of Deviancy", no such theory is propounded in the text. It was primarily intended as a critique of orthodox criminology, even though in its latter objective it is also inadequate. The numerous critiques which followed the publication of this book clearly point to the problems of developing a Marxist criminology.

The post-'new' criminology period has not been characterized by a coherent theoretical development of new criminology theories. This is partly because the new criminology movement was founded on very shaky foundations theoretically. The founders of the movement brought together people committed to varying degrees of neo-marxism who can better be described as radicals rather than Marxists. This problem

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1. Matza, D. (1969) Becoming Deviant, Englewood Cliffs, N.J., Prentice-Hall p. 143.
2. (1973) London, Routledge and Kegan Paul.

was aggravated by the absence of any detailed analysis of crime and deviance in Marx and Engels' original works. Their (Taylor et al.) wish to create an immediate Marxist theory of deviance was thus bound to face serious problems. It has now been abundantly clear that one cannot develop a Marxist theory of deviance simply by writing a critique of orthodox criminological theories of deviance. At its best, we can accept the view that *The New Criminology* is "an exercise in radical critique in a way that crucially distinguishes it from conservative and liberal texts in the same area of discussion." ³

One of the biggest flaws of *The New Criminology* has been its romanticisation of crime. Deviance is seen as a normal and rational behaviour reflecting human diversity. Even in an interview published a year after the publication of their book the authors still held that "we see crime as an authentic form of consciousness." ⁴ This, naturally leads them to the conclusion that "such manifestations of human diversity whether personal, organic, or social should not be criminalized." ⁵ This is a gross mixing up of all forms of criminal behaviour from offences against property, against person to political offences. Currie correctly observes that "an approach to deviance that cannot distinguish between politically progressive and politically retrogressive forms of deviance does not provide much of a basis for real understanding or political action." ⁶ As Ainlay further points out:

"What is most urgently needed is a substantive critical theory that would squarely face the fundamental questions as to the meaning and significance of crime in the contemporary historical context of advanced monopoly capitalism. Questions like: To what extent is crime best understood as a form of individual, self preservative adaptation to the oppressive and exploitative conditions of capitalism? And when does it mainly express or reflect those conditions? To what extent and in what instances does crime represent a revolt against these conditions, or some form of opposition to established authority? And similarly, when does increasing crime manifest or augment an intensification of the crisis of legitimacy? Finally, when - if ever - might crime somehow prefigure a revolutionary transformation of society?" ⁷

The whole question as to whether we can develop a general Marxist theory of crime is the primary focus of this paper. It is argued that although basic Marxist theories of modern production,

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3. Taylor I., Walton P. & Young J. (1975) Critical Criminology: London: Routledge and Kegan Paul p. 20.
 4. Mintz R. (1974), "Interview with Ian Taylor, Paul Walton and Jock Young" Issues in Criminology Vol. 9 No. 1, p. 39.
 5. Taylor I. et al. op cit. p. 282.
 6. Currie E. (1976) "Beyond Criminology" Issues in Criminology, Vol. 9 No. 1, p. 139.
 7. Ainlay J. (1976) "Book Review: The New Criminology" Telos No. 26 p. 225.

states, class struggle and the like are relevant to criminology, no general theory of crime equivalent to general Marxist theories can be developed as such. In other words, criminology cannot be developed into a general theory of understanding society. The relevance of Marxism is, therefore, limited to understanding and explaining specific forms of conduct, whether by an individual, a class or the state. The extent to which basic Marxist concepts can meaningfully be employed in this connection is discussed.

2. RELEVANCE OF MARXISM

Is Marxism relevant to criminology? This question has been answered both positively and negatively by people who profess Marxism. However, on a closer examination of different positions taken, one soon discovers that the whole debate is reduced to semantics rather than real differences in fundamental issues. One argument is that Marxist theories are central to the understanding and changing of the society. Since the study of crime is not central to the understanding and changing of the society, then we cannot have a Marxist theory of crime. Let us examine in detail some of the statements supporting this view:

"There is no 'Marxist theory of deviance' either in existence or which can be developed within orthodox Marxism ... The objects of Marxist theory are specified by its own concepts: the mode of production, the class struggle, the state, ideology, etc. Any attempt to apply Marxism to this pre-given field of sociology is therefore a more or less 'revisionist' activity in respect of Marxism; it must modify and distort Marxist concepts to suit its own pre-Marxist purpose ... The objects of Historical Materialism are the objects specified by its concepts and ... Marxism is not a 'theory of society' which can be applied to any given range of phenomena within 'society' ... Historical Materialism is first and foremost a scientific general theory of modes of production. It cannot, therefore, be a theory the 'only object' of which is a specific form of political practice in a specific social formation." 8

This is the same position taken later by Bankowski et al:

"Criminology and crime are not areas or resources worthy of study for a radical analysis of present (capitalistic) social arrangements; ... as the social scientist does become concerned with the objects (mode of production, etc.) that will allow a radical analysis, then crime and criminology become peripheral and marginal ... Further we contend that the relationship

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8. Hirst P.Q. "Marx and Engels on Law, Crime and Morality" in Critical Criminology ed. by Taylor I. et al. op. cit. p. 204. See also Hirst P.Q. "Radical Deviancy Theory and Marxism: A Reply to Taylor and Walton" in Critical Criminology, op. cit. p. 241.

between objects and epistemology within the Marxist concept of knowledge is one internal to its foundations. If this relationship is internal and if crime is empirically subsidiary, then criminology cannot have the episodically independence entailed in the notion of a radical criminology claiming to ground itself in Marxism".⁹

The arguments reproduced above were given in reaction to the position developed by Taylor, et al. in both The New Criminology and Critical Criminology where they advocated, first, the development of a Marxist theory of deviance, and secondly, positive action by criminologists towards the realization of a more egalitarian society. The position taken by Bankowski et al. and Hirst is acceptable to the extent that we cannot develop a Marxist theory of deviance independent of, or parallel to basic Marxist theories of modes of production, or state and law or base and superstructure. If this is accepted, then it becomes obvious that the study of crime and delinquency is not central to the understanding and changing of society. But this is not to say that Marxism is irrelevant to the study of crime and deviance, (or that crime and deviance are irrelevant to Marxist analysis). Any position which would accommodate the latter would simply be taking a very dogmatic view of Marxism. Marxism is by its very nature and development dialectical, as has been clearly illustrated by Lenin's writings during the era of a fully fledged imperialism. Any Marxist analysis concerned with crime and deviance should have, therefore, as its point of departure, a Marxist position, and this calls for a thorough understanding of historical materialism for any such proper location. If it is contended that some analyses can be made independent of the basic Marxist concepts, then this should be clearly shown. But even in such a case, it will be assumed that the protagonist of such a discourse is conversant with basic Marxist concepts. As Melossi observes:

It is probably semantically correct to reject expressions, such as 'Marxist theory of deviance', but the problem is restricted to the word 'theory' only. Instead we could say, for instance, a working class (or a Marxist) point of view on deviance. I do not believe that the New Criminology theorists wanted to build a complete definite theory ... Our task is to widen the hegemony of Marxism and its unique social scientific theory on the whole array of objects of the so-called 'social sciences'.¹⁰ (My emphasis).

If criminology is to be scientifically analysed, we should adopt an interdisciplinary approach. Anthropology, history, economics, political science, sociology, law etc. are all relevant for a well articulated criminology. What relevance has this got for a Marxist Criminology? In other words what central position can we take to accommodate these subjects? Bankowski et al. rightly argue that if we want to use Marxism or claim our analysis to be Marxist we should

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9. Bankowski Z., Mungham G., & Young P. (1977) "Radical Criminology or Radical Criminologist" Contemporary Crises, Vol.1 pp. 45-46.
10. Melossi D. (1976) "The Penal Question in Capital" Crime and Social Justice op. cit. p. 31.

"logically, argue for the internality of the relationship between epistemology and objects and so abolish criminology as an area of independent study." 11

3. THE HISTORICAL CHARACTER OF CRIME AND DEVIANCE

First, a Marxist analysis of deviance must commence with an understanding of 'deviance' within an historical materialist viewpoint. It will have to reject the concept of deviance or crime as an inherently 'bad' behaviour. Briefly, as outlined by Sumner

"Marxism can encompass previous ideas within its own more precise and far-reaching notion that deviance is constituted by a social censure, an historically specific, ideological formation, extent with determinated social practices." 12

He clarifies this as follows:

"In the Marxian conception proposed here, the 'deviance-ness' of deviance lies in the social censure, not in the 'behaviour' to which it is 'applied'. There is nothing intrinsically 'deviant' in censured social practices - They acquire their stigma only from the emergence and application of their social censure ... Different social practices are censured, formally or informally, at different times in history, and within the same society the same practice may not be equally censured depending on factors such as the class of the person, his age, sex, neighbourhood of arrest, etc". (ibid.).

Even the orthodox categorization of offences into mala in se and mala prohibita does not give an answer to this problem. This categorization assumes the existence of a uniform morality in the society - which is simply not possible in any class society unless we deny the very existence of classes. So what may indeed be mala in se to some individuals within the same society may not be regarded as such by others. Similarly what may be regarded as mala in se at one historical period may not be regarded as such in a different historical epoch. As one eminent criminal law professor put it: "Ethical reprobation of homicide, homosexuality, libel, adultery, bigamy and slave-trading, to take a few examples, is not the same in all countries, and indeed may vary from section to section of the people in the same country." 13

An historical materialist analysis should therefore unveil the social processes by which certain forms of behaviour were censured and why others were not. The logical point of departure for such an analysis would be the primitive communal mode of production. The primitive communal formation is the only historical formation we can get in which we had to a large extent a high degree of consensus,

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11. Op Cit. p. 46.
 12. Sumner C. (1976) "Marxism and Deviancy Theory" in The Sociology of Crime and Delinquency in Britain Vol.2 ed. by Wiles, P, London, Martin Roberts, p. 167.
 13. Turner J.W.C. (1966) Kenny's Outlines of Criminal Law 19th Edition, Cambridge, University Press, p. 28.

hence, what can rightly be called a 'social' censure, i.e. a genuinely societal reaction against some form of behaviour though not necessarily in a punitive manner.

We have to acknowledge, though, that in class societies the concept of censure becomes a very complex matter as we shall see later. This is where historical studies become very essential. For example, in Britain one can hardly ignore contributions made to criminology by historians like Christopher Hill, E.P. Thompson, Eric Hobsbawm and others.¹⁴ With such contributions we can manage to shake criminology out of its historical slumbers. Enlightened historians are trying to look back and correct some of the anomalies of our current history. In Africa, examples abound of acts which were criminalized by colonial powers, some to the extent of carrying a death penalty, but immediately after independence, some perpetrators of such acts, became national heroes. In England a brilliant illustration is Pearson's analysis of machines' destruction by English workers in the eighteenth and nineteenth centuries.¹⁵ While the ruling class considered such workers as "goths and vandals" or "irrational men", such acts could be better understood if viewed from the workers' viewpoint. In striking at the machines they were striking out against the oppression within the developing system of factory labour, which on top of exploiting them, also ruined their small scale handicraft production. His analysis justifies his conclusion that: "It is necessary ... to reconnect the fractured political and historical context of criminology where it is customary to make an unnecessarily severe distinction between 'crime' on the one hand and 'politics' on the other." History is full of examples of the criminalization of different forms of workers' and peasants' resistance to their oppression and exploitation. The state would label as 'criminal' what the workers would consider 'political'. I may hasten to add that by 'political' it is not meant that such actions were necessarily 'revolutionary' or 'progressive'. The point is that viewed from their class position such actions are fairly rational and there is nothing inherently 'deviant' in such conduct other than the censure applied to it by the state.

On the other hand, the state having criminalized such behaviour, with the inevitable support of its ideological apparatuses, manages to attach some stigma to such conduct, so that in due course even the actors themselves would act much more as 'criminals' than as 'political rebels'. Thompson notes in connection with the 'Blacks'¹⁶ of eighteenth century England that having been defined by the

14. See, for example, Christopher Hill's (1973) World Upside Down, Harmondsworth, Penguin or E.P. Thompson's (1975) Whigs and Hunters, London, Allen Lane, or Eric Hobsbawm's (1972) Bandits, Harmondsworth, Penguin etc.

15. Pearson G. (1978) "Goths and Vandals - Crime in History" Contemporary Crises, Vol.2 p. 119.

16. People who went around armed and 'blackened-up' in disguise hunting deer, attacking game keepers, felling forest trees, cutting turf and breaking fish ponds although the term 'blacks' was subsequently expanded to incorporate people committing any of a list of about fifty capital offences. The 'blacks' were essentially struggling against the enclosure system.

state as notorious criminals helped to persuade them to act as such:

"And in most practically persuasive ways: thus, with spies around, with blood-money hanging over their heads, and with the constant knowledge that the information of a colleague could bring them to the gallows, they are likely to have been driven into an ungentle underground of violence and blackmail which it is easy to tidy up and categorize as 'a criminal sub-culture'.¹⁷

Secondly, we must accept the reality that even in class societies, there are some areas of consensus and shared morality. Some forms of behaviour are as harmful to the subordinate classes as they are to the ruling class although the very existence of such forms of behaviour may be a natural outcome of a class society. It would be very unscientific; (hence un-Marxist) to lump together all censured behaviour under the label of 'deviance' or 'criminal' in order to formulate a 'general' Marxist theory. Such an endeavour would be a 'non-starter'. As pointed out by Sumner in respect of the search for common explanatory variables (e.g. by the early attempts of criminologists to fix particular variables such as age, sex and class): "there were always problems because of the diversity of censured practices and the result was an inevitable escalation into multi-factorial analysis."¹⁸

Thirdly, an historical materialist approach should enable us to study or understand certain forms of behaviour within their historical, socio-economic context. Why, for example, should vagrancy emerge with capitalism; why should prostitution and homosexuality become pronounced in most parts of Africa during and after colonization? Socio-economic changes in the society gives rise to some new forms of behaviour which the ruling class may wish to criminalize. In the same way the replacement of capitalism by socialism would of necessity give rise to some new forms of behaviour which may be criminalized, even within a genuine socialist setting where state power is in the hands of the proletariat. It may also mean decriminalizing some acts and omissions. Such proletarian power would need consolidation and protection and this can partly be done through law. After all, the emergence of socialism does not put to an end the division of society into classes. The main qualitative change is the assumption of power by the proletariat who comprise the majority of the people and who are expected to apply Marxist principles in an effort to build a classless or communist society, relying on the socialist revolution only as a transition from socialism to communism. Since the major means of production would be owned by the state or 'collectives' in various forms, such ownership would also need legal protection just as in the case of private property, although emphasis would definitely be on the former. With such an understanding, one would find it difficult to accept the simplistic submission made by Taylor et al. that the present task in imperialist Britain "is to create a society in which the facts of human diversity, whether personal, organic or social, are not subject

17. Thompson, E.P. (1975) op cit. p. 193.

18. Sumner, C. (1976) op cit. p. 169.

to the power to criminalize." 19 As we have seen this strange position arises from their treatment of crime as merely "human diversity". As Hirst puts it:

"This 'social psychology' which the authors see as so essential to the completion of Marx's work is nothing but an attempt to dissolve Marxism, to make it compatible with the theories of action of modern sociology ... These revisions stem from their desire to apply Marxism within the existing parameters of deviancy studies and to make it compatible with their own libertatian ideology." 20

4. CLASS PATTERNS OF CRIME AND DEVIANCE

Marxist criminology must strive not only to look at political aspects of some crimes, but must also make a thorough analysis of class patterns of crime and deviance. For example there may be some forms of behaviour which may be identified with a particular class or section of class, like vagrancy in relation to the lumpen proletariat. It would be useful to make an assessment whether certain forms of conduct serves the purpose of liberating the class or a section of the class or just makes it play into the hands of the ruling class. In other words, it is imperative to understand such practices in relation to the whole process of production to see whether they are functional or disfunctional to the system; and this has more to do with 'economics' of crime than 'politics' of crime. In other words there is a need to go beyond the form or appearance into the underlying causes and effects of some forms of behaviour.

Marx and Engels never treated this area coherently. While in some texts they link crime with the lumpen proletariat, in others they refer to the proletariat in general. In The Conditions of the Working Class in England (in 1844) Engels sees the proletariat resorting to crime because of demoralization: "if the influences demoralizing to the working man act more powerfully, more concentratedly than usual, he becomes an offender as certainly as water abandons the fluid for the vaporous state at 80 Reaumur." 21 Here we see an analysis which looks at some forms of crimes as committed through necessity or desperation. They are not committed with any political or far-sighted calculation other than the satisfaction of an immediate need or a reaction to an immediate impulse. Nevertheless, we can take the point that he sees crime here as a direct product of the socio-economic conditions existing in England at this time.

But Engels did not absolve the bourgeoisie from committing crimes. He singled out competition as one of the immediate factors which would push people into committing crime. Looking at the unlimited opportunity to compete and amass wealth, he observed:

19. Taylor I. et al. (1973) op cit. p. 282.

20. Hirst P.Q. (1973) "The Marxism of the 'New Criminology'" British Journal of Criminology Vol.13 p. 397.

21. Engels F. (1969) The Condition of the Working Class in England in 1844 Harmondsworth, Penguin p. 163.

Competition has penetrated all the relationships of our life and completed the reciprocal bondage in which men now hold themselves ... Anyone who has any knowledge of the statistics of crime must have been struck by the peculiar regularity with which crime advances year by year and with which certain causes produce certain crimes ... This regularity proves that crime, too, is governed by competition; that society creates demand for crime which is met by a corresponding supply. 22

It is clear from Engels that where crimes are committed as part and parcel of the competitive socio-economic structure, they are committed primarily for economic reasons. Politics can only be involved indirectly or unconsciously if we are to view the behaviour from the actor's point of view.

Engels had more negative remarks for the lumpen proletariat, who, in capitalism have been identified with the bulk of the crime, (blue-collar crime):

"The lumpen proletariat, this scum of the depraved elements of all classes, which establishes its headquarters in the big cities, is the worst of all possible allies. This rabble is absolutely venal and absolutely brazen ... every leader of the workers who uses these scoundrels as guards or relies on them for support proves himself by this action a traitor to the movement".²³

This compares well with Marx's characterization of the lumpen proletariat in the following passage:

"Alongside decayed rouses with dubious means of subsistence and dubious origins, alongside ruined and adventurous off-shoots of the bourgeoisie, were vagabonds, discharged soldiers, discharged jailbirds, escaped galley slaves, swindlers, mountebanks, lazzaroni, pick-pockets, tricksters, gamblers, maque reaus, brothel keepers, porters, liberati, organ grinders, ragpickers, knife-grinders, tinkers, beggars, - in short, the whole indefinite, disintegrated mass thrown hither and thither, which the French term la boheme".²⁴

Elsewhere, Marx characterizes the lumpen proletariat as:

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22. Engels F. (1979) "Outlines of a Critique of Political Economy" in Marx and Engels on Law ed. by Cain M. & Hunt A., London, Academic Press pp. 175-176.
 23. Engels F. (1968) "Preface to the Peasant War in Germany" in Selected Works in one Volume by Marx K. & Engels F., London, Lawrence & Wishart p. 240.
 24. Marx K. (1968) "The Eighteenth Brumaire of Louis Bonaparte" in Selected Works in One Volume by Marx K. & Engels F., London, Lawrence & Wishart p. 240.

"The 'dangerous class', the social scum, the passively rotting mass thrown off by the lowest layers of the old society, may here and there, be swept into the movement by a proletarian revolution, its conditions of life, however, prepare it more for the part of a bribed tool of reactionary intrigue".²⁵

Marx and Engels never treated common crime, (or people involved in common crime) as an effective form of political rebellion against capitalism. The bourgeois forms of crime, and the bulk of proletarian crime are committed in accommodation rather than in liberation from capitalism. Supporting this 'orthodox' Marxist view, Hirst adds:

"The romanticization of crime, the recognition in the criminal of a rebel 'alienated' from society is, for Marxism, a dangerous political ideology. It leads inevitably, since the 'criminal' is an individualist abstraction of a class position, to the estimation of the lumpen proletariat as a revolutionary force".²⁶

Hirst has very convincing reasons for thinking that lumpen proletarian crime is a form of reactionary accommodation to the status quo. First, he sees the lumpen proletariat as "a parasitic class; living off productive labour by theft, extortion and beggary, or providing 'services' such as prostitution and gambling".

Secondly, he sees the class interests of the lumpen proletariat as diametrically opposed to those of the proletariat, who are supposed to be the most 'conscious' class and the spearhead of the struggle against capitalism. Thirdly, as Marx and Engels put it, the lumpen proletariat is open to bribery by the reactionary forces "as police informers and armed elements of reactionary bands".²⁷ The proletariat proper would not be tainted with these weaknesses because of its direct antagonistic relationship with capital. The proletariat gets involved in organized 'political' forms of social protest rather than 'criminal' forms of social protest. An organized labour movement can be a formidable political weapon for the proletariat although the state will usually respond by criminalizing some of its activities to make it less effective.

The shortcomings of accepting the above position intact as put by Marx and Engels in the nineteenth century are:

First, it implies only the acceptance of the concept of crime and deviance as static categories, but accepting them as defined by the ruling class. This is crucial since the ruling class is likely to criminalize most manifestations of class struggle by the subordinate classes like demonstrations and strikes. Secondly, in connection with

25. Marx K. and Engels F. (1950) Selected Works Vol.1 London, Lawrence & Wishart p. 44.

26. Hirst P.Q. (1975) op cit. p. 218.

27. Ibid. p. 216.

the above, the tendency to lump together different forms of behaviour with different immediate causes and motivations in a uniform way and generalizing therefrom is a very simplistic and escapist way of analysing social problems. For example, rape is qualitatively different from riot and unlawful assembly. To lump them together in order to find a common explanation is to miss the point. Thirdly, rigid application of the concept of classes as conceptualized a century ago is counter-productive bearing in mind the complex nature of class formation in the present century. All these points should inspire us to develop a more up to date analysis of not only the different acts of the lumpen proletariat but to understand the lumpen proletariat in the present context. Surely the late twentieth century lumpen proletariat of advanced capitalist countries or of the third world countries cannot be defined as "the passively rotting mass thrown off by the lowest layers of the old society". It is important to note that Marx himself attempted to draw a distinction between the ordinary unemployed people (i.e. the relative surplus-population) and what he called the "dangerous" class, including "vagabonds, criminals, prostitutes" and the like. 28. He identified three categories of the relative surplus-population: "the floating" - those employed and unemployed at different times in the centres of modern industry; "the latent" - that part of the agricultural population on the point of passing over into an urban or manufacturing proletariat as a result of the penetration of capital in agricultural production; and "the stagnant" - the relative surplus-population with extremely irregular employment. Marx conceded that the conditions of life of the latter category (i.e. the stagnant) "sink below the average normal level of the working class."

Marx's formulation should not be a historically applied. Each given social formation has to be concretely analysed. As subsequent analyses will show, it may not always be easy to make a distinction between the lumpen proletariat and the relative surplus-population. Even in Capital this distinction is sometimes obscured. In the contemporary period this issue is more problematic especially when we consider, for example, the fact that Western Europe managed to attain a level of full employment in post second world war period up to the sixties. This problem has led some analysts to use the phrase "sub-proletariat" instead of "lumpen proletariat"; although even this is not free from problems of analysis as to the composition of the supposed "sub-proletariat".

A limited contribution to the updating of this concept in analysing crime has been made by authors of Policing the Crisis. 29 It is a limited contribution because the authors were more concerned with the black 'lumpen proletariat' in England rather than an overall interracial analysis of this class. They portray the blacks of all classes from 'hustlers' to the petty bourgeoisie as involved in some forms of struggle against British imperialism. But comparing the blacks struggle with that of women, they concede that both present problems of strategy in aligning sectoral struggle with a more general class struggle. They are also conscious of the fact that this may have

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28. Marx K. (1954) Capital Vol.1 London, Lawrence & Wishart pp. 600-603.
29. Hall, S., Critcher C., Jefferson T., Clarke J. and Roberts B. (1978) Policing the Crises London, Macmillan Press.

something to do with the fact that both occupy a structurally segmentary position, or are related to capitalist exploitation through a 'double structure' - the sexual division within class relations in the case of women and the racial division within class relations in the case of blacks. In respect of the blacks, this conscious realization of their desperate position in the society tends to make their behaviour 'political' and 'calculated' rather than purely blind reactions to their problems. In this light the rejection of menial wage labour ('shit' work) by black youths, and a conscious adoption of 'hustling' as an alternative is viewed as striking against capital. This is an exceptional situation which makes the black 'lumpen proletariat' conscious of their miserable position in the production process, but the immediate factor which contributes to this consciousness, it should be emphasized, is race and not production relations. The latter is realized through the former. Admittedly, this section of the 'lumpen proletariat' cannot be equated to Marx and Engels' Victorian lumpen proletariat. However, their political struggles are still marginalized, and any meaningful achievement is still dependent to a large extent on the mobilization of that class (or section) which is central to capitalist production relations, i.e. the 'productive' proletariat.

The lumpen proletariat of third world countries is also far from being Marx's "passively rotting mass thrown off by the lowest layers of the old society". Studies have shown that with the petty bourgeoisie of these countries imitating western bourgeois culture due to their connections with international capital, some sections of the 'lumpen proletariat' have espoused a very lively authentic 'national' culture.³⁰ From Latin America, the Caribbean, to Africa this class has participated effectively in both liberation struggles and other forms of revolutionary activities. Their position is even more crucial when one considers the absence of a real 'proletariat' in the orthodox sense. Bujra feels that in Nairobi migrant labour (or what she calls the semi-proletariat) predominates over a permanent proletariat.³¹ In politically volatile societies like the fascist, apartheid South Africa, the urban dispossessed Africans form one of the most formidable threats to the regime by their readiness to resort to armed struggle; they have nothing to lose - we may add - "except their chains". In Kenya, while it is true that some prostitutes became informers to the colonial government on the activities of the Mau Mau guerrilla struggle for independence, some shielded the Mau Mau guerrillas from the authorities;- their alliances with petty bourgeois elements took more the form of patron-client relations than of class affiliations.³²

We can conclude this part by observing that in the contemporary stage of capitalism we have more complex class formations both in the third world and developed countries, and we cannot single out a cohesive 'lumpen proletariat' equivalent to that existing in the Victorian England. The phenomenon of crime and deviance is both

30. Ibid. p. 373.

31. Bujra J.M. (1981) "Women 'Entrepreneurs' of Early Nairobi: Postscript on Prostitution, Class and State" in Crime, Justice and Underdevelopment ed. by Sumner C., London, Heinemann.

32. Ibid.

inter-class and intra-class and the concept of political consciousness is not solely and mechanically determined by class positions of individuals. Marx and Engels' concept of classes and class struggle offers an extremely useful and relevant means of further dialectical analysis, and should not be used in the contemporary period unrefined. In other words the concept of classes is relevant as an historical method not a dogma.

Loosely connected with the concept of lumpen proletariat is the concept of productive and unproductive labour. The concept of productive and unproductive labour in Marxism is far from being straightforward especially in the present complex production relations. It is difficult to apply this concept without being a historical since this concept necessarily arises with commodity production. Stated simply, the concept asserts that productive labour creates surplus value while unproductive labour is supported out of surplus value. As Marx put it in his Theories of Surplus Value Part 2:

"For the worker it is equally consoling that because of the growth in the net product more spheres are opened up for unproductive workers, who live on his product and whose interest in his exploitation coincides more or less with that of the directly exploiting classes". 33

Marx considers unproductive workers as "a burden weighing heavily on the working base." (*ibid.*) This begs the question as to who is a productive labourer? In Volume I of Capital this question is answered:

"That labourer alone is productive, who produces surplus value for the capitalist, and who thus works for the self-expansion of capital ... Hence the notion of a productive labourer implies not merely a relation between work and useful effect, between labour and product of labour but also a specific social relation of product, a relation that has sprung up historically and stamps the labourer as the direct means of creating surplus value". 34

This statement is backed in Part I of the Theories of Surplus Value where Marx says "only labour which is directly transformed into capital is productive." 35

Labour which is not covered in the above enumeration is unproductive labour. This would include the simple purchase of labour services with money. Therefore, the distinction between productive and unproductive labour depends entirely on whether the labour is exchanged for money as money or for money as capital. To put it in Marx's own words:

"Labour which is to produce commodities must be useful labour; it must produce a use value ... And consequently only labour which manifests itself in commodities, that is in use values is

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33. Marx K. (1968) Theories of Surplus Value Part 2 Moscow, Progress Publishers p. 571.
34. Marx K. (1954) op cit. p. 477.
35. Marx K. (1969) Theories of Surplus Value Part 1 Moscow, Progress Publishers p. 393.

labour for which capital is exchanged." 36

And on unproductive labour he has this to say:

"It is labour which is not exchanged with capital, but directly with revenue, that is wages or profits (including of course the various categories of those who share as co-partners in the capitalist profit, such as interest and rent)". 37

The fact that labour is unproductive does not necessarily mean that it is not socially necessary. Teachers, doctors and many state employees for example are unproductive in this sense but their labour is socially necessary. Similarly labour may be productive without being socially useful or necessary, for example businesses dealing with drugs and pornography.

However, when we talk in terms of 'the proletariat', the distinction between productive and unproductive labour becomes unimportant, much so in the twentieth century than in the last century. This is so because the process of 'proletarianization' has much to do with wage labour per se than whether such labour is for the provision of services or production of commodities. Following the above analysis, one would also find that independent handicraftsmen and peasants are neither productive labourers nor unproductive labourers. They produce and sell commodities, but they do not sell their labour. Their form of production is not a central feature of capitalism; it is peripheral to it and represents a form of pre-capitalist production.

When Marx talks of the revolutionary potential of the workers, he has the wider meaning of 'the proletariat', including both productive and unproductive workers, although he had more faith on the former because of their direct antagonistic relations with capital. Current struggles in the developing and developed countries clearly show that it is counterproductive to categorize workers into productive and unproductive sections because such a move would only frustrate their unity.

What conclusions can we draw when we apply this analysis to the phenomenon of crime? Hirst's contention that most forms of property crime are merely redistributive seems a logical conclusion that: "Theft, whatever its source or function for the thief, always merely redistributes the existing material production or wealth and adds nothing to the stock of material production or wealth". 38

Hence those who make a living out of theft must be "parasitic class, living off productive labour by theft, extortion and

36. Ibid. p. 400.

37. Ibid. p. 157.

38. Hirst P.Q. (1975) op cit. p. 225.

beggary..." 39 Hirst also sees prostitution and gambling as merely concerned with the provision of 'services', hence cannot be regarded as productive labour. But he makes the following qualifications:

"The prostitute who sells for his/her personal support is an unproductive labourer like the tutor or the lawyer who works on his own behalf. The prostitute who provides the same services for a wage in order to make money for an entrepreneur is a productive labourer, like the singer whose performances enrich a theatre-owner, both produce surplus value which function as capital." 40

A rather different assessment of prostitution is given by Bujra (1981). In her analysis on prostitution in Pumwani, Nairobi, she sees the prostitutes as independent commodity producers. Like independent handicraftsmen, they retain their labour power, and unlike the proletariat they retain the ownership of their means of production, but unlike subsistence producers, they heavily depend on the 'market'. Therefore it would be difficult to categorize them as unproductive labourers as Hirst does. Therefore, in Bujra's study, we can view this form of prostitution not as a capitalist relations pre-existing capitalist social formation (as Hirst does), but as a pre-capitalist relation surviving and expanding in capitalism. Capitalism does not necessarily destroy all pre-capitalist activities, and their survival is more evident in the periphery.

However, we can accept Hirst's conclusion on unproductive labour with respect to other forms of crime including gambling and racketeering. It is also true that criminal forms of production like pornography and drugs have severe legal restraints which restrict the expansion of such enterprises. Any criminal involved in any such enterprise "does not enjoy the protection of the state, he is unable to defend his interests politically, and he is open to immediate state closure and appropriation." Criminality is therefore marginal to the productive life and capitalist social formations in general. Criminality becomes marginalised by the state historically as a necessary strategy for the survival of the ruling class.

5. CRIME, CRIMINAL LAW AND THE STATE

Central to the understanding of crime and social control is a thorough analysis of the state from its composition to its function. Contrary to what bourgeois idealists say, the state does not emerge as an organ of the reconciliation of classes, but as an organ of class rule. The economically dominant class emerges as the ruling class, consolidating its power through oppressing and exploiting the weaker classes. Law emerges as an indispensable feature of this class rule. The exploitative class relations are legalized, maintained and reproduced through legal protection. The dominant class, however, does not

39. Ibid. p. 216.

40. Ibid. p. 227.

41. Hirst (1975) p. 288

maintain itself through coercion only. It equally relies on state ideological apparatuses in building the image of a state 'above' class interests. However, when it comes to the use of coercive measures in order to maintain itself in power, this is legitimized through criminal law. Crudely put, the state defines and imposes sanctions on forms of behaviour which threaten its reproduction, monopolizing the use of force for the suppression of such forms of behaviour. It is important to note here that although coercive power exists in every human society including both in the tribal structure and even in the family, the distinguishing feature of the state is the existence of a separate class of people in whose hands power is concentrated.

This has been true of all class societies beginning with the epoch of slavery. The state in the slave and feudal modes of production often applied brutal naked force in the maintenance of its class rule. Although state ideological apparatuses existed like the church and the schools, there was little effort to make use of them for the purpose of winning the 'consensus' of the governed. Compared to the capitalist mode of production one can assert that the process of legitimation was still fairly underdeveloped, if we take Turkel's definition of legitimation as "that constellation of reasons and beliefs which social members willingly affirm in their support for the social order".⁴² However, in the capitalist mode of production the state started to rely on a great deal on its ideological apparatuses in its attempt to win and maintain the cooperation of the subordinate classes in maintaining the status quo. But it is impossible in any class society for the ruling class to maintain itself in power without relying also on coercion. It is not in the interests of the state for such coercion to be arbitrarily used, so the state which claims to be above society, hence, above class interests is seen as the mediator of conflicting class interests. It defines with a certain degree of certainty what is regarded as behaviour dangerous or unacceptable to the 'society', and intervenes on behalf of the 'society' to suppress such behaviour. Is it not obvious, as we pointed out earlier, that this ideal role of the state could only exist in a society where there is general consensus of what is right and wrong. However, even the state itself will be irrelevant in such a society.

Pearce correctly observes:

"The criterion of state intervention is the extent to which activities undermine the social order. The conventional presentation of this social order is ideological - in the sense that it describes, in a particular manner, the workings of the society whilst at the same time masking the 'real' nature of the social order. A recognition of the distinction between the imaginary and the real social order is fundamental to understanding the actual modus operandi of the repressive apparatus".⁴³

42. Turkel G. (1980) "Legitimation, Authority and Consensus Formation" International Journal of Sociology of Law Vol.8 p. 19.

43. Pearce F. (1976) Crimes of the Powerful London, Pluto Press.

The state regulates the daily life of individuals in ways which are compatible with the reproduction of existing social relations. It has the monopoly of not only determining what is appropriate behaviour, but also the extent to which inappropriate behaviour should be sanctioned. The biggest achievement of bourgeois states in this field has been the ability to mask the real contradictions in a capitalist society and to make the 'criminal' feel responsible for his actions and deserving of punishment. The application of coercion on a rational human being serves the ideological function of portraying him as an irrational brute. His rational behaviour becomes irrational, and he is compelled to consider himself thus.

As in all class societies, the dominant ideas are those of the people/classes who control the means of production. They would easily 'dehumanize' what they considered deviant so that deviance could be seen as a disease and 'deviants' as lacking in humanity. It was no exaggeration when Marx pointed out that:

"The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas; hence of the relationships which make the one class the ruling one, therefore, the ideas of its dominance". 44

It would be presumptuous to argue that every piece of legislation in a capitalist society is aimed at protecting the interest of the ruling class. We have to make a distinction between the general structure of the laws and the objective reality of different pieces of legislation. A capitalist society cannot afford not having enforceable traffic regulations simply because such regulations may sometimes work against personal interests of some members of the ruling class. Similarly, laws aimed at protecting the economy may work against the short-term interests of some individual members or class factions of the ruling class, but the overall aim is to protect the capitalist state. We must consider the interests of the ruling class as a whole rather than interests of particular sections of the ruling class. Weitzer nicely elaborates the point:

"I want to suggest that advanced capitalism contains capitalist legal institutions which selectively and relatively autonomously ensure legal outcomes favourable to the reproduction of capitalism. Capitalist legal apparatuses are not simple manipulable institutions within a capitalist context. They operate independently to secure the common interests of capital by (1) juridicially organizing and unifying the interests of isolated capitalist units such as, for instance, disciplining wayward capitalists by commanding conformity to the dictates of a rationalized, predictable formal legal procedure ... and (2) organizing class struggle in such a way that general capitalist interests are protected from threatening antagonistic interests

44. Marx K. (1970) The German Ideology London, Lawrence & Wishart p. 64.

via mechanisms of legal repression, mystification, displacement, and exclusion, all of which restrict the scope of possible events within legal channels".⁴⁵

Sometimes it is in the interest of the bourgeois state to be reformist and champion some causes of the subordinate classes to enhance its claimed 'impartial' image and thereby secure some form of acceptability by such classes. Contrary to what some people may believe, such manoeuvres never really amount to equalizing and mediating class interest to a real extent. Inaction on the part of the subordinate classes may be caused by several factors and not their conscious acceptance of their subordinate position which the ruling class would present as inevitable. For example, whereas the colonial regimes were able to maintain a reasonable degree of 'law and order' in most colonies, this by no means meant that such regimes succeeded in equalizing and mediating class interests to a real extent.

It is in the interest of the ruling class to work towards a certain form of 'consensus', or put differently, it is in the interest of the ruling class to win the 'consent' of the subordinate classes instead of embarking on a naked confrontation only. But at the same time, the necessity of maintaining coercive apparatuses is a clear manifestation of the absence of a popular and genuine consensus. In areas where force is used, the state has to legitimized such use of force, again, trying to win the subordinate classes to the idea that coercive measures are necessary in certain circumstances; although at the end of the day, as Rousseau once put it, "to yield to force is an act of necessity, not of will - at most an act of prudence."⁴⁶

The question is not whether law is an instrument of class rule, but rather, how law is used as an instrument of class rule. Looking back at the feudal mode of production, even bourgeois scholars agree that law was clearly used by the feudal lords and the clergy to serve their class interests as against the serfs. Indeed, the bourgeois revolutionaries of the eighteenth and nineteenth centuries advocated freedom and equality before the law precisely because of the landlords' control over the law. But the consolidation of bourgeois class rule clearly revealed that the hitherto serfs had obtained for themselves only the freedom to sell their labour power. It is an impossible task to try to argue for the possibility of achieving legal equality in an economically unequal situation. The full realization of the former is dependent on the full realization of the latter. In actual fact, the right to be equal under the law has the effect of reinforcing the unequal relations of production. It purports to 'de-classify' an already 'classified' society. It produces a fetishism of law. The relative autonomy of law does not make it 'neutral', in other words autonomy is not synonymous with neutrality. As Clarke put it, "to succeed in its ideological function (that is to give the appearance

45. Weitzer R. (1980) "Law and Legal Ideology: Contribution to the Genesis and Reproduction of Capitalism" Berkeley Journal of Sociology, Vol.24-25 p. 148.

46. Rousseau J.J. (1960) The Social Contract in the European Philosophers from Descartes to Nietzsche ed. by Beardsley M.C. New York, The Modern Library, p. 324.

of neutrality the 'rule of law'), the legal system must transcend crude class interests".⁴⁷ This problem was fully realized by Engels in a letter to Schmidt, in 1980:

"In a modern state, law must not only correspond to the general economic conditions and be its expression, but it must also be an internally coherent expression which does not, owing to inner contradictions, reduce itself to nought. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly. All the more so, the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class - this in itself would offend the 'conception of right'.⁴⁸

Capitalist production relations, though no doubt superior and progressive compared to the feudal production relations, further weakened the proletariat through "the creation and maintenance of individuals as economic and legal subjects, the bearers of verified property rights".⁴⁹ This has made it very difficult for the proletariat to unite as a formidable political force. With a blind acceptance of the so-called 'equality of opportunity', the proletariat falls victim to what Young calls "competitive individualism".⁵⁰ This partly explains why "the majority of the working class crime is intra and not inter-class, in its choice of target, area of activity and distribution". (ibid.). For these reasons the proletariat seems to have an interest in the maintenance of 'law and order'. Even the state is seen as an entity divorced from other entities, rather than as an outgrowth of class struggles. When viewed this way, the real nature and function of the state tends to be obscured, and this in turn obscures and defuses class struggles by categorizing all the people, both the bourgeoisie and the proletariat as 'the public'. Thus it is not surprising that the ruling class hegemony has succeeded in artificially dividing the proletariat 'law abiding' and 'criminals'. Law, and in particular criminal law, would then appear as an 'impartial' instrument for the protection of the people both powerful and powerless.

The nature of the state is also connected with what has been loosely referred to by neo-Marxists as 'economic determinism'. IN Marx's and Engels' major writings, they see the economic base as the primary determinant (the real foundation) of all superstructural formations. Crudely put, changes in the economic base will produce corresponding superstructural changes. But even Marx himself fully realized that even in situations where we have identical economic bases, e.g. capitalist, this would not necessarily entail identical

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47. Clarke D.H. (1978) "Marxism, Justice and the Justice Model" Contemporary Crises Vol. 2 pp. 37-8.
48. Engels F. (1968) "Letter to Schmidt" in Selected Works in One Volume op cit. pp. 686-7.
49. Picciotto S. (1979) "The Theory of the State, Class Struggle and the Rule of Law in Capitalism and the Rule of Law ed. by Fine B. et al. London, Hutchinson p. 171.
50. Young J. (1975) "Working Class Criminology" in Critical Criminology op cit. p. 79.

superstructural formations whether legal or political; and this cannot be attributed solely to different stages of capitalism. So we may have amongst capitalist states fascists and racists like South Africa, monarchs like Britain, republics like France, etc. In some, religion may play a very significant ideological role while in others it may be negligible. Yet in some like Japan culture may be of a very strong hegemonic influence, while in others like the United States, one can hardly talk of a 'national culture'. In the United States this vacuum is filled by cold war politics which as Chomsky⁵¹ argues, is "a marvelous device by means of which the domestic population could be mobilized" behind the policies of the state.

Therefore, this determination is not mechanical. Engels himself corrected this impression by saying that it was wrong to take this concept as a "hollow abstraction". "Such Metaphysical polar opposites exist in the real world only during crises."⁵² He insisted that it is equally important to study and understand superstructural interactions. In a letter to Borgius in 1894 he writes:

"It is not that the economic situation is cause, solely active, while everything else is only passive effect. There is, rather, interaction on the basis of economic necessity, which ultimately always asserts itself... so it is not, as people try here and there conveniently to imagine, that the economic situation produces an automatic effect. No men make their history themselves, only they do so in a given environment, which conditions it, and on the basis of actual relations already existing, among which the economic relations, however much they may be influenced by the other - the political and ideological relations, are still ultimately the decisive ones, forming the keynote which runs through them and alone leads to understanding."⁵³

Clearly Engels sees the economic situation only as the basis or decisive but surely not the only determining one. The various elements of the superstructure like the political forms of the class struggle and its results, the juridical forms, the philosophical theories, religion, etc. all exercise their influence upon the course of historical struggles and in many cases preponderate in determining their form.

Hall correctly argues that the dominant role played by some superstructures does not mean that in the final analysis they are also determining.⁵⁴ The crucial question is how a given society's base corresponds with its superstructure (i.e. the relationship between the base and the superstructure), and not whether or not a given superstructure is determined by the base. "When we leave the terrain of

51. The Guardian Weekly, 21 June 1981.

52. Engels F. (1968) "Letter to F. Mehring" in Selected Works in One Volume op cit. p. 689.

53. Engels F. (1968) "Letter to W. Borgius" in Selected Works in One Volume ibid. p. 694.

54. Hall S. (1977) "Rethinking the 'Base-and-Superstructure; Metaphor" in Class, Hegemony and Party ed. by Bloomfield J. London, Lawrence & Wishart.

'determinations' we desert, not just this or that stage in Marx's thought, but his whole problematic". 55

This exposition by no means rules out interactions within the superstructure which may not directly be reduced to the base.

For our purpose we may conclude that a strong economic base will generally portray a relatively stable socio-political superstructure. The converse is also true. The transition from feudalism to capitalism in Western Europe witnessed a very authoritarian system trying to assert its authority. The more the capitalist economy grew in strength, the more the movement away from authoritarianism. Indeed, as authors of Albion's Fatal Tree notes:

"From one aspect it appears as if 'crime' multiplied in this century ... From another aspect it appears as it is not just a matter of 'crime' enlarging but equally of a property conscious oligarchy redefining, through its legislative power, activities, use-rights in common or woods, perquisites in industry, as thefts or offences. For as statutes ... which define hitherto innocent or venial activities (such as some forms of poaching, wood theft, anonymous letter writing) as crimes". 56

The entrenchment of capitalism in the colonies underwent the same process of authoritarian legislation, but once the supremacy of capitalism over the pre-capitalist social formations was achieved, authoritarianism was considerably lessened. But the neo-colonial states, forming the weakest chain of capitalism still manifest more authoritarian class rule than developed capitalist states.

6. CONCLUSION

"[Marxism] is not a complete, finished theory. As history unfolds, as we gather more experience and understanding, or the world changes and develops, Marxism must be re-evaluated, developed and re-applied; it is an analytical tool to use in order to understand the world, not a dogma which declares how it must be understood". 57

It is not easy to draw a conclusion on a chapter touching on a number of different issues as this one. However, if we may end as we started, i.e. assessing the prospects of a Marxist criminology, we may come to the following conclusion: A scientific knowledge of the phenomenon of crime entails a scientific knowledge of the society. This implies a thorough understanding of its socio-economic structure. This in turn entails an historical materialist conception of society. Marxist concepts of modes of production, state, class

55. Ibid.

56. Hay D., et al (1975) Albions Fatal Tree. London, Allen Lane p. 13.

57. Brown D. and Boehringer G. (1978) Critique of Law: A Marxist Analysis, UNSW, Australia p. 8.

struggle and the like, are central to the development of Marxist-criminology. Just like history, political science or sociology, for example, criminology is peripheral to the fundamental theories of Marxism. But being peripheral does not mean that it should not be the concern for Marxists to develop this area from general Marxist concepts and not independent of such concepts. This merely reflects the interdisciplinary nature of Marxism. Criminology cannot be developed into a central theory of understanding society but it will remain peripheral to Marxist theories of state; and a Marxist criminology can only be 'Marxist' by applying Marxist concepts as tools of its analysis; otherwise it will become a hybrid with residual labels such as 'radical', 'leftwing', or 'working class' criminology. These labels manifest, as we have seen, a high level of confusion, anarchism and a gross distortion of Marxism.

This analysis implies that we can never develop a general theory of crime. Those who are searching for a general theory of crime for changing the society are searching for something which does not exist. The highest manifestation of a Marxist criminology will take the form of 'expose' criminology. By exposing both the real nature and function of law, and the state, criminology can only contribute to raising the consciousness of the oppressed classes. There are no exclusive programmes which can be carried within criminology at present or in the future which can effectively lead towards the emergence of a new social order. This will remain largely an are of broad-based Marxism which should analyse capitalism as a world system, and its effects in different nations of the world.



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