CHAPTER 1. For Pragmatism and Politics: crime, social harm and zemiology – Steve Tombs

Bio

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Abstract

What does it mean to go 'beyond criminology'? This chapter seeks to tease out some of the issues at stake in the relationships between critical criminology, social harm and zemiology. In so doing, I engage in both personal reflection as well as critical considerations of some of the responses to *Beyond Criminology*, and on these bases suggest that there are a number of theoretical differences between critical criminology, social harm, and zemiology. These, in turn, pertain to the question of whether zemiology should be considered as a separate discipline or simply a branch of critical criminology, perhaps with a social-harm-approach twist. In conclusion, I argue that whether one embraces a rights or needs-based approach to addressing social harm it is ultimately a political commitment – albeit one about which we need to be clear.

Introduction

In the late 1990s a group of academics began a series of conversations about how a concept of social harm could be more progressively developed as an alternative to crime. It is at once important to emphasise that the motivations, or routes via which, individuals joined these conversations were various. Some were pursuing long-standing struggles to operationalise a concept of crime in their respective areas of work. Others approached this enterprise on the basis of a concern with the marked expansion of criminology as a discipline and the concomitant increase in the number of degree courses in British and Irish universities, while older subjects, such as social policy and sociology, were declining. Others still felt that the

notion of social harm could be developed at the margins of criminology, through challenging the discursive power of concepts of crime, 'criminal' and 'criminal justice'. But for some, given the integral nature of these latter concepts to the discipline of criminology itself, any sustained focus on social harm could only be achieved within a new and separate discipline, soon-to-be-named 'zemiology'.

The most tangible outcome of these conversations was an edited collection, *Beyond Criminology: Taking Harm Seriously* (Hillyard et al. 2004). The range of areas covered in, and the diversity of disciplines contributing to, the edited collection was notable. *Beyond Criminology* was an eclectic, somewhat contradictory work reflecting such a wide variety of contributors, theoretical positions, and levels and objects of analysis. It should also be noted that the content – and indeed the title – of the book was deliberately provocative, as well as indicating arguments which were bold (far too bold, as some might say): in other words, many of the book's contributions were couched within the frame not simply of taking social harm seriously, but in terms of abandoning criminology for a new discipline, zemiology. Yet, we were clear within the book that the shift to social harm from criminology was not one endorsed by all of the authors, nor indeed editors. The book was *designed to generate debate* – and indeed it has done so (Hillyard and Tombs 2017).

This chapter returns to some of the issues raised in and by *Beyond Criminology*, albeit from a personal standpoint. I embraced some notion of social harm, and continue to do so, because it allows me to document empirically, to analyse and to theorise forms of corporate activity for which criminology has historically struggled to account. That said, it remains unclear what is meant by a social harm approach. Moreover, is this synonymous with a zemiological approach? If not, what is the latter? And, however one answers these previous questions, must one be a critical criminologist *or* someone utilising a social harm approach *or* a zemiologist? If so, or indeed if not - to what ends?

From Crime to Social Harm

I came to the social harm conversation through my long-standing academic and campaigning interest in corporate crime. More specifically, workplace death, injury and illness are phenomena which are undoubtedly equated with a great deal of harm, harm with economic, physical, financial, emotional, and psychological dimensions.

Notwithstanding that these harms obviously represented a significant social problem, in an attempt to pursue this work within and around the discipline of criminology, I had long struggled to represent these as a *crime* problem, and in so doing had engaged in a number of (entirely unoriginal) strategies, which included, but were not restricted to:

- expanding the use of the term crime to cover violations of non-criminal law (Pearce and Tombs 1998);

- using Sutherland's distinction between what is punished and what is punishable to expand the ambit of 'crime' and thus criminology (Tombs and Whyte 2009);

- reconstructing specific incidents and groups of incidents to indicate how the essential ingredients of 'real' crime were clearly present therein (Pearce and Tombs 2012), and thus making invisible crimes visible (Tombs 1999);

- challenging and re-constructing some of the assumptions within popular, political academic and legal constructions of 'real' crime either to indicate how these were logically or conceptually unsustainable, or could in fact be applied to corporate activity which produces death, injury and illness or, indeed, both (Tombs 2007).

In these ways, and through what felt like a series of intellectual gymnastics, I was constantly seeking to legitimate the area of harm-producing social life with which I was concerned as the proper stuff for criminology and, indeed, for the criminal justice system. At the same time, at least in the latter context, we sought to be cognizant of the contradictions and dangers of so

doing (see Alvesalo and Tombs 2002), and always to challenge the "illusions of law" (Tombs 2004). In these contexts, the idea of 'social harm' felt liberating, and had progressive potential.

In not dissimilar ways, contributors to *Beyond Criminology*, and those working in a similar vein since its publication, minimally urged that we go at least beyond 'crime' if not beyond criminology. This might be a relatively short or somewhat long journey, and I wish here to indicate the range of intellectual distance that a commitment to going 'beyond' might, and does, take us – some of which guided the 'intellectual gymnastics' to which I have summarised in bullet-points above. I wish here to suggest several ways in which criminologists can or do go 'beyond' crime and criminology, albeit that these are certainly not mutually exclusive.

One most obvious resort to moving beyond crime is to focus upon violations of law other than the criminal law. Without entering into the a definitional debate here regarding the appropriate use of the term 'crime' (one which has been tirelessly rehearsed since the exchanges between Sutherland and Tappan over seventy years ago), it has become common-place to use the term 'crime' to encompass violations of law other than criminal law, notably civil, administrative and regulatory law (Pearce and Tombs 1998). Indeed, if perhaps more latterly, 'crime' has also been used to refer to violations of soft law such as 'standards' or 'codes of conduct' (typically as these apply to corporate actors, not least in their multinational forms; Bittle and Snider 2013). Such efforts have considerable legitimacy, at least in critical criminological circles.

Moving slightly further are those who wish to embrace within their intellectual ambit those harms which are punish*able* but not punish*ed*. This commitment can, again, be traced back notably to the work of Edwin Sutherland, who sought to bring to centre-stage those acts and omissions by corporations and their senior executives which could and should in principle be incorporated within criminal justice processes and within the discipline of criminology - but

which remain at best relatively marginal, at worst absent. Thus, in terms of the Criminal Justice System, he argued that most such violations of law remained non-criminalised, whilst his work during the 1940s was a 'call to arms' to criminologists to focus not simply on the crimes and incivilities of the relatively powerless, but equally to shift their gaze upwards, to focus on the crimes committed by the powerful, within corporate contexts (Tombs and Whyte 2009).

A somewhat different approach to incorporating harms within the criminological purview is represented by longstanding and heterogeneous attempts to focus upon the harms produced by the activities of the Criminal Justice System (CJS) itself or, indeed, in a related variation, upon the harms associated with non-criminalisation, that is, the omissions of the CJS. The latter is increasingly signalled by the use of the phrase 'crime *and harm*' (Corteen et al. 2016; Quality Assurance Agency 2014). Somewhat differently, it involves substituting the term 'social harm' for crime completely to encompass the legal and illegal (Ruggiero 2015), or via an implicit or explicit reference to immorality, that is, that which is self-evidently harmful if not proscribed by law (Monaghan and Prideaux 2016). The general aim of such efforts is to render invisible crimes visible (typified in Davies, Francis, and Wyatt 2014), or to name 'new' forms of crime –notable examples here being the emergence of hate- (Jenness and Grattet 2004) and eco- (Ellefsen, Sollund, and Larsen 2012) crimes. Characterising much of what have become known as 'critical criminologies', the over-arching focus tends to be on the harms associated with a variety of processes of non/criminalisation, usually in ways which emphasise the maintenance or exacerbation of existing structures of power, whether these be viewed through the lens of class, gender and/or secularity, ethnicity and race, age or, indeed, via some form of intersectionality. Generally, such attempts are couched in a version of equity or social justice or both, albeit the bases for either of both claims vary significantly, and may be well or barely articulated.

A further, distinct approach to embracing the production of 'harm' within criminology has been a focus upon the generation of harms through legitimate markets which, through the goods or services produced therein, are associated with consequences resembling those produced through acts or omissions which are in fact criminalised. Here, I have particularly in mind the edited collections of Hils (1987), Freudenberg (2014), and Passas and Goodwin (2004) as exemplars. Each of these collections describes a series of markets - created and maintained by the state, not least through law – for essentially legal products despite the fact that they are either designed to, or necessarily generate in their use, wide scale social harms, including, typically, agro-chemicals, arms, food, gambling, pharmaceuticals, and tobacco (see also Tombs and Hillyard 2004, 44-51).

To be clear, to say that the production, distribution and sale of these goods is legal is not to claim that criminal law in particular, and legal regulation in general, does not intervene in such markets. If we take the international arms trade, for example, it is clear that the market in such goods is regulated by international agreements and national states themselves. Moreover, while these are market regulations, it is also clear that this is a context in which criminal law, both nationally and internationally, can and occasionally does intervene – whether this is in the case of bribery and/or corruption to secure contracts, or as a result of use outside of internationally agreed conventions which results in actual or potential violations of international human rights standards. So this is not a sphere from which law, let alone criminal law, is absent – yet it is a sphere which is relatively far removed from the concerns of much of what passes for criminology.

From Social Harm to Zemiology?

By the point reached at the end of the previous section, the journey from crime to social harm has become a lengthy and significant one – albeit each of the specific steps 'beyond' criminology are, I suspect, quite familiar to readers. And, I would go further: each seems to me

to be a perfectly defensible, plausible and indeed productive way in which we can move from 'crime' to 'social harm'. But for some, not least some of the contributors to *Beyond Criminology*, the journey should not and does not stop here.

By way of shorthand, each of the above shifts revolves around the issues of the existence or level of criminalisation or non-criminalisation. But *Beyond Criminology* encompassed a series of harms associated with phenomena far from criminological and criminal justice agendas - including poverty, childhood, inequality, heterosexism, migration, gender, unemployment - and it is here I think that a new discipline of zemiology, the study of social harms *per se*, was being broached, however unconsciously in some specific cases. This is not to deny that many of these phenomena are relevant in understanding the definition and distribution of 'crime' and 'criminalisation', but it *is* to emphasise that many of the considerations around these in *Beyond Criminology* were not much or even at all about such issues. Criminology had, effectively, been abandoned.

By way of illustration of the distinction being drawn here, a useful reference point is some data, which Paddy Hillyard and I recently presented on a range of social harms (Hillyard and Tombs 2017). Alongside data of work-related deaths and food poisoning, we addressed what are rather prosaically labelled 'Excess Winter Deaths'. Each year, the UK's Office for National Statistics calculates the number of such deaths – namely, the additional number of deaths, in England and Wales, occurring from December to March compared with the average number of deaths occurring in the preceding and following four month periods. The most recently (November 2015) published figure estimates 43,900 such deaths occurred in 2014/15, the highest number since 1999/2000. Most of these (36,000) occurred among those 75 and over, with 7,700 deaths of people aged under 75 (Office for National Statistics 2015).

Now, both work-related deaths and deaths associated with food poisoning have proximate relationships to 'crime', criminalisation and criminal justice processes, in that they

are regulated by criminal law, are subject to enforcement (albeit by regulatory bodies rather than, for the most part, police forces) and in any one year attract a number of criminal prosecutions; moreover, the offences so prosecuted may revolve around intent or negligence or both, thus meeting standards of guilt in criminal law. Finally, it is worth noting that there are existent if small literatures around each in criminology.

Excess winter deaths are quite distinct in all of these respects. These are not people killed by the cold *per se* - countries with very low winter temperatures in Scandinavia and Northern Europe have very low rates of such deaths. Instead, most deaths result from lack of access to affordable heating, or suitably insulated, warm and dry accommodation, or most likely both (Office for National Statistics 2015). In other words, their routine occurrence is a product of generations of decisions, actions and omissions regarding housing, energy, welfare and social services, healthcare and probably pensions policy, at the very least. Moreover, while each occurrence – a death – is an event, this event can only be understood in the context of the combination of a series of long-term *processes*. Little or none of these characteristics, and their inter-relationships, of what clearly amounts to a significant form of social harm, is *or can be* at all explicable via reference to criminal law – albeit some are clearly affected by regulatory law, not least in the creation then maintenance through and by states of complex markets in energy supply as well as in the regulation of some aspects of private provision of housing, some welfare services and pension provision.

Thus, harms such as excess winter deaths are nowhere near the terrain of crime, nor mainstream criminology, nor encountered on the journey from 'crime' to 'social harm' as sketched out above. They are neither explicable nor preventable through criminal law, which seeks to view or reduce harm to intention, to the inter-personal, to the one or series of discrete events, to victim-offender relationships which have some proximity in time and space (Hillyard

and Tombs 2017). A focus on excess winter deaths takes us far beyond crime, criminalisation and criminal justice, far from criminal law and the orbit of mainstream criminology.

It is at this point that it seems to me the epistemological and ontological break with criminology is made – albeit a break that I have only illustrated rather than attempted to theorise. And it is here at which the terrain is crossed into a new discipline. Of course, whether this discipline can be something called 'zemiology' is a moot point. I shall return to that question shortly. But, for now, the above is enough to outline a claim, at least, that zemiology is or should be seen as something distinct from a 'social harm' perspective or approach – a claim never clearly asserted let alone established in *Beyond Criminology* nor, indeed, in some of the work which has followed and which has explicitly sought to develop the epistemological and ontological terrain very sketchily suggested in parts of that text.

The lacunae, tensions and indeed disagreements across the contributions to *Beyond Criminology* may do much to explain why an increasing number of criminological texts make explicit reference to the term 'zemiology' as simply synonymous with 'social harm' – the latter being a concept which has long been part of criminology, albeit one which has recently received greater attention (Muncie 2013). Hence, the term zemiology has been happily embraced by some in the discipline as "The branch of criminology studying the social harm caused by actions" (Gooch and Williams 2007, 391) rather than the impetus for a separate discipline. The first two editions of *The Sage Dictionary of Criminology* (2001, 2006) each had entries for 'Social Harm', albeit neither contained any reference to the work associated with editors nor contributors to *Beyond Criminology,* a fact which changed in the third edition with an expanded definition of 'Social Harm' which appeared therein. That most recent edition also contained an entry for 'Zemiology', which reads thus: "See: Social harm" (McLaughlin and Muncie 2013, 496). More generally, the embrace of 'social harm' has been identified in the context of 'critical' criminology. For example, the second edition of *Introduction to*

Criminological Theory by Hopkins Burke contains the section 'Critical Criminology and the Challenge of Zemiology', which makes no references to the origins of or debates around the term, but simply begins, "A significant and fast expanding contemporary variant of critical criminology has been Zemiology or the study of social harm" (Hopkins Burke 2005, 179; see also Hil and Robertson 2003). Tim Newburn's *Criminology* includes 'Zemiology' as a short sub-section within a chapter constituting a whistle-stop tour of 'Radical and critical criminology' (Newburn 2007, 258).

Such claims merely reproduce, perhaps exacerbate, the contradictions, confusions, and disagreements that were present in *Beyond Criminology*. It is absolutely clear that in that collection, there was neither agreement on abandoning criminology for zemiology, nor what this might entail or might look like, nor on the relationship between criminology, zemiology and a focus on 'social harm'. For example Paddy Hillyard and myself proposed at least the consideration of abandoning the discipline in favour of zemiology – even though we took different positions on this consideration. For Paddy, I am fairly clear that he viewed the study of social harms as an independent set of phenomena, whatever their relationships to crime, criminal justice or criminology – that is, as a new, if not 'replacement', discourse, to be conducted within the rubric of zemiology. My own position, as reflected in my work if not the statements of social harm and zemiology, has been much more ambivalent – a point discussed earlier and to which I shall return briefly, below.

If at best we set out some of the possible epistemological, theoretical and substantive commitments of zemiology as an alternative discipline, we did not attempt to set out in detail what that discipline might look like - a point which has been rehearsed in critical commentaries of *Beyond Criminology*. Thus, for example, Loader and Sparks (2011) argue that we spend too long critiquing criminology and not enough time describing what will replace it. Hughes (2007, 198) concludes that we fail to offer "a viable critical project for criminology, intellectually or

politically". Reiman, in particular, notes that taking "the next step … from a provocative kaleidoscope to a coherent disciplinary perspective", entails at least two tasks: first, being "clear on the harm perspective's relationship to criminology" (Reiman 2006, 363); and, second, since "so much of the harm discussed in *Beyond Criminology* is attributed to social groups or structures, the harm perspective will need to spell out a plausible doctrine of social or structural responsibility" (Reiman 2006, 364). These points are well made, and represent a significant challenge to those who would either develop a social harm perspective or an alternative discipline of zemiology.

From Rights to Needs?

Thus I want to suggest that there are a number of theoretical differences between critical criminology, social harm, and zemiology, which pertain to the question of whether zemiology should be considered as a separate discipline or simply a branch of critical criminology, perhaps with a social-harm-approach twist.

One of the central, indeed motivating, concerns for some of those involved in *Beyond Criminology* was the observation that criminology, and in particular critical criminology, has long struggled over the boundaries of the discipline in an attempt to shake off the limitations of the straightjacket of the legal definitions of crime in order to expand the discipline to study a whole range of harms not captured by the criminal law. And within these efforts, a significant body of literature has emerged which encompasses a range of criminaliseable harms, from ethnic and religious intolerance to ecocide and genocide.

Conceptually, within the vast terrain of critical criminological work, conduct norms, social aberrance, social deviance, social injury *and* social harm are just a few of the intellectual attempts to mark out a more inclusive set of harmful behaviours. Kramer (2013) provides a comprehensive overview of these attempts and argues that "international law in all of its forms can still provide a rhetorical touchstone for criminologists to frame judgments about what is

and is not criminal. It can allow us to 'expand the core' of the discipline to better take into account corporate and state crimes" (Kramer 2013, 33). This is a claim rather similar to that famously made by the Schwendingers (1970) some four decades ago. For some of the contributors to *Beyond Criminology*, the "expanding … core" of the discipline was the very problem that produced their motivation for engaging with the project – not part of any solution to the deleterious effects of a discipline organised around a concept of 'crime'.

Somewhat differently, Yar (2012, 59), in a thoughtful analysis of the potential of zemiology, argues that "the lack of specificity in our analysis leaves the concept of harm lacking the very same ontological reality that is postulated as grounds for rejecting the concept of crime". In short, we fail to define what makes something 'a harm' or harmful and how harmful acts differ from non-harmful ones. He suggests that the concept of 'recognition' can deal with this deficit in our theorization and that it is possible to establish the basic needs that form human integrity and well-being. Harm occurs when there is no recognition of these basic needs. Harms, in this sense, reflect disrespect. While acknowledging that the criminal law can be conceived as 'a coercive instrument legitimated by the power of the capitalist state', Yar argues that it is possible to adopt a different view of the law using a recognition theoretical standpoint. From this position, law's attempt, however 'partial, flawed or misguided', to enshrine formal codes and prohibitions to protect people from harm assists in securing their basic rights.

Yar, then, concludes with a clear appeal to the law in defining harm. On this basis he considers zemiology as a promising orientation but one to be pursued within critical criminology. Similarly, much critical criminology, for all of its significance, originality and sophistication, ends up in attempts to redefine the legitimate area of criminology and is based in an implicit or explicit call for law, not least criminal law, to be more effectively developed

or enforced, in ways that promote greater social justice through criminal justice, and in ways that uphold or extend various rights.[1]

In short, much critical criminological work, whether it appeals to social harm or not, proceeds, at least implicitly, on the basis of a rights-based framework. Indeed, protecting or furthering such rights is often central to the social justice orientation of such work. But for me this focus on rights is ultimately problematic (see Hillyard and Tombs 2017). Notwithstanding that some people may secure their basic rights through the criminal law and that many more will buy into the notion of the idea of justice, even define this, in terms of the recognition of such rights, either substantively or procedurally, the majority of those affected by social harms will have little or no recognition by the legal system, particularly those victims of harms, which are not captured by the criminal law. In other words, for many of the social harms upon which we and others have focussed, law and rights, and the definitions of procedural and substantive justice which they imply, are likely to be of very little relevance at all. This is one of the key ways in which we can locate the relationships between critical criminology, social harm and zemiology. It is only the latter which potentially breaks from (actual or potential) legal definitions of harm, not least those linked to apparently progressive - but ultimately flawed (Fudge and Glasbeek 1992) – rights-based frameworks.

In a somewhat analogous way, Copson (2011, 2012) has analysed the fundamental differences which exist between the conceptualisation of harm within criminology, critical criminology and zemiology, reflecting different ideas and assumptions around issues of justice and liberty in the context of the fulfilment of human need. Criminology, she argues, deploys a liberal individualistic notion of harm as embraced by conventional jurisprudence. In contrast, zemiology situates harm in the context of human needs. Thus harm occurs when people are prevented by either the social structures or individual actions to meet their needs (see Tifft and

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[1] Including much of my own work; though, see Alvesalo and Tombs 2002.

Sullivan 2001). Harm, in this sense is linked to positive liberty in contrast to the negative liberties, which law claims to protect and to which all forms of criminology are inevitably drawn. Critical criminology's notion of harm, she suggests, falls somewhere between the two positions. While increasingly recognising socially structured harm, nevertheless, it continues to embrace individualistic notions of harms articulated in rights or conventional jurisprudence.

On the distinction between social harm and zemiology, Pemberton has sought to provide some clarity. "The existing literature", he writes, "confusingly makes reference to both social harm and zemiology, and at times these terms have been used interchangeably. For some, including myself, social harm represents the study of socially mediated harms, whereas zemiology, derived from the Greek *xemia* for harm, denotes the study of harm" (Pemberton 2015, 6). This is, he continues:

> more than an issue of semantics. Zemiology is preferable, insofar as a by-product of
> *Beyond criminology* has been the co-option of the language of social harm into
> criminological discourse ... Thus, zemiology would serve to demarcate those critical
> scholars whose interest lies 'beyond criminology' from criminologists using the notion
> of social harm, to establish an alternative field of study. Social harm therefore becomes
> the organising concept for zemiology as a field of study. When these distinctions are
> drawn, the emergent characteristics of zemiology can be more clearly articulated
> (Pemberton 2015, 6-7).

Thus he goes on to note five such "emergent characteristics". First, following Hillyard and Tombs (2004), he notes that zemiology seeks "to provide an alternative 'lens' that captures the vicissitudes of contemporary life". Second, it requires a shift in emphasis from "individual level harms" to those associated with states and corporations (7); third is a recognition that most widespread social harms "are not caused by intentional acts, but rather, result from the omission to act or societal indifference to suffering" (8), and, fourth, that such harms are

preventable, that is, products of social and economic organisation. This leads him, finally, to espouse for zemiology a reformist commitment to identifying "less harmful forms of capitalism" (Pemberton 2015, 8).

This still begs the question, of course, of what is to be the basis for identifying a phenomenon as "harmful" or a "social harm", and thus falling within the legitimate ambit of zemiology? For Pemberton, the answer is to be found in a theory of human needs. Using Doyal and Gough's (1991) classic work, Pemberton (2007) and Pantazis and Pemberton (2009) argue that harm is perpetuated when specified needs are not fulfilled. It is not clear, however, how invoking a theory of 'needs' gets potential zemiologists out of the theoretical woods. While personally I am sympathetic to Doyal and Gough's conceptualisation of needs, it is hardly unproblematic. Indeed, one of the oft-raised objections to any attempt to identify a theory of human need is that once this shifts from the most abstract universal statements to the level of adding greater specificity to identifying such needs, then any such exercise almost inevitably descends into relativism. This was one of the central topics of the celebrated exchange between Kate Soper in response to Doyal and Gough's formulation (Soper 1993; Doyal 1993), it was also raised more recently by Lasslett (2010) in response to Pemberton's (and others') centring of a theory of social harm or zemiology around needs.

Subsequently, Pemberton (2015) attempted to operationalise a needs approach to harm. While in so doing he provides insightful and persuasive analyses of the performance of a number of selected states and regimes in relation to a range of harms, the theoretical work of grounding the latter in the context of needs is rather over-looked. There is no doubt that he advances our empirical understanding of the distribution of social harm considerably, while the text demonstrates the potential of a paradigm within which social harm is central but which is neither linked to, nor reliant upon, law, jurisprudence or some other legal framework. But at

the same time his work underscores the fact that a *zemiology* of social harm is very much in its infancy, a work in progress at best (Tombs 2015).

In this respect, the challenge indicated by Richard Garside, in one of the more careful and critical analyses of the ideas within *Beyond Criminology* to date, remains to be taken up:

> A critical challenge for social harm scholarship is to apply its insights on the social and relational nature of social harm – the fact that its mediations are concrete and material, not natural nor merely political or ideological – and its connection to human need, through the development of a clear and coherent understanding of the social production and reproduction of harm in the material processes of capital accumulation (Garside 2013, 257).

For Pragmatism and for Politics

In a thoughtful, critical response to *Beyond Criminology*, John Muncie commented that, "the abandonment of crime in favour of 'harm' is ultimately a political project" (Muncie 2005, 201). In very similar fashion, Paddy Hillyard and myself had concluded one of the contributions to that book thus:

> whether or not a new disciplinary focus is to emerge, we must accept that raising issues of social harm does not entail making a simple, once-and-for-all choice between representing these as *either* crimes *or* harms; each may form part of an effective political strategy. What we would add is that it is crucial that whether /when we speak of crime or harm, we must be clear about which we are speaking on particular occasions, that is, description and analysis must not slide between the two … (Hillyard and Tombs 2004, 29).

For my part, these comments are as valid (or otherwise) as they were over a decade ago. Two elaborations follow, which are a fitting way to conclude the considerations of this chapter.

First, there is no necessary "antagonism" (Lasslett 2010) nor "innate duality" between 'crime' and 'harm' (Boukli and Kotzé this volume), and we should avoid the false alternative of a commitment to one or the other (ibid.). It seems at least reasonable to assert that since law attempts to define a subset of harms as crimes, however contestable specific definitions of such may be (for example, Weait 2005), then 'crime' and 'social harm' may often exist on a logically connected ontological terrain as, indeed, some of the earlier sections of this chapter have claimed.

That said, it remains the case that what social harm *is*, what zemiology might be, and in what relationships each exists to critical criminology are issues that require a great deal of theoretical, conceptual and empirical labour, to which I expect this present volume to make a significant contribution. Moreover, as indicated in the quotation above, even on the part of those of us who might eschew such sustained labour, then greater conceptual clarity will be achieved if those of us who use the terms 'social harm' and 'zemiology' provide some context-specific clarity or clarification of such usage – recognising, at least, that these terms are hardly unproblematic.

Second, it matters politically whether we speak of crime or harm – which takes me back to how I initially came to the conversation about social harm. One of the common themes of my academic career has been to work with victims of corporate crime, most notably those who have been bereaved by workplace death, and, more recently, by deaths at the hand of the state. Notwithstanding variations in their experiences, typically such victims experience what has been commonly referred to as 'double-victimisation' – first, the avoidable death of a loved one at the hands of an employing organisation or state institution and, second, the consistent inabilities of the criminal justice system to treat, which generally means adequately investigate let alone consider any formal response to, such a death as if it were potentially analogous to a 'real' killing, and in so doing deny the dead and the bereaved their status as actual or potential

victims (Snell and Tombs 2011). In their campaigns, organisations such as *Families Against Corporate Killers* (FACK)[2] seek not vengeance, but rather, and of course to generalise, they want an investigation of the circumstances of their loved ones' deaths, recognition – if appropriate - that their loved one has died as a result of legal violation, and then for an appropriate formal sanction to be imposed following due process – in short, and following other organisations which campaign against corporate and state injustice, they seek 'truth, justice and accountability',[3] where the law, criminal justice and judicial systems legitimate themselves on promises for such.

In a society which uses the discursive and material power of 'crime' and the criminal justice system to denote the seriousness of certain categories of harms over others, these seem understandable and modest aims. Far from challenging, I have actively supported such families, such as I can, and will continue to do so – a very non-social harm, non-zemiological position. Yet at the same time, however, it seems absolutely obvious to me that a criminal justice response to work-related deaths, injuries or illness, or other forms of corporate and state crimes will not and cannot significantly mitigate their relentless toll in terms of lives lost and lives devastated. Indeed, this much is painfully obvious to the families such as those who constitute FACK. For while the criminal law may (albeit very rarely) provide them with a formal recognition of a criminally-defined harm against their loved one, this does not begin to touch the harm to which they are subject as a result of the death. This harm might include a loss of income; mental health problems which manifest themselves in a variety of ways; the loss of friends, who do not know how to speak about or deal with the death; problems of alcohol or drug dependency, in turn creating problems for gaining or seeking employment, or parenting, or of maintaining relationships – many of which, in turn, generate significant costs

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[2] http://www.hazardscampaign.org.uk/fack/about/index.htm
[3] The 'strapline' of INQUEST; see http://www.inquest.org.uk/

for society. These, then, are matters of social and public policy well beyond the criminal law or criminal justice system. They are harms associated with a crime. This implies, again, that harm and crime are not located in an antagonistic dualism.

Meanwhile, we need to be clear that ultimately addressing corporate and state crime requires far more radical, even utopian (Tombs 2015; Tombs and Whyte 2015) solutions, far beyond the realms of the criminal justice system. But if political and academic work can and must be seen as mutually supportive, rather than alternative, paths which critical social scientists might pursue, then so too must be our use and deployment of crime and harm. Only on the basis of a politics of context-specific pragmatism, can we challenge power and domination as it confronts us, whilst keeping in sight the vision of less harmful ways of organising social life – a post-imperial, post-patriarchal, post-capitalist society of equality and social justice.

References

Alvesalo, Anne., and Steve Tombs. 2002. 'Working for Criminalisation of Economic Offending: contradictions for critical criminology?' *Critical Criminology: an international journal* 11:21-40.

Bittle, Steven., and Laureen Snider. 2013. 'Examining the Ruggie Report: Can Voluntary Guidelines Tame Global Capitalism?' *Critical Criminology* 21:177–192.

Copson, Lynne. 2011. *Archaeologies of Harm: Criminology, Critical Criminology, Zemiology*. Unpublished PhD Thesis, Faculty of Social Sciences and Law, School of Sociology, University of Bristol.

———. 2012. 'Zemiology: at the Edge of Criminology or Beyond its Borders?' Paper presented at the British Society of Criminology Annual Conference, University of Portsmouth.

Corteen, Karen., Sharon Morley, Paul Taylor, and Joanne Turner. Eds. 2016. *A Companion to Crime, Harm and Victimisation*. Bristol: Policy Press.

Davies, Pamela., Peter Francis, and Tanya Wyatt. Eds. 2014. *Invisible Crimes and Social Harms*. Basingstoke: Palgrave Macmillan.

Doyal, Len. 1993. 'Thinking About Human Need'. *New Left Review*, I/201, September-October:113-128.

Doyal, Len., and Ian Gough. 1991. *A Theory of Human Need*. Basingstoke: Palgrave Macmillan.

Ellefsen, Rune., Ragnhild Sollund, and Guri Larsen. Eds. 2012. *Eco-global Crimes: Contemporary Problems and Future Challenges.* London: Routledge.

Freudenberg, Nicholas. 2014. *Lethal but Legal: Corporations, Consumption, and Protecting Public Health*. Oxford: Oxford University Press.

Fudge, Judy., and Harry Glasbeek. 1992. 'The Politics of Rights: a politics with little class'. *Social & Legal Studies* 1:45-70.

Garside, Richard. 2013. 'Addressing Social Harm: Better Regulation versus Social Transformation'. *Revista Crítica Penal y Poder* 5:247-265.

Gooch, Graham., and Michael Williams. 2007. *A Dictionary of Law Enforcement*. Oxford: Oxford University Press.

Hil, Richard., and Rob Robertson. 2003. 'What sort of Future for Critical Criminology'. *Crime, Law and Social Change* 39:91-115.

Hillyard, Paddy., Christina Pantazis, Steve Tombs, and Dave Gordon. Eds. 2004. *Beyond Criminology: Taking Harm Seriously*. London: Pluto Press.

Hillyard, Paddy., and Steve Tombs. 2017. 'Social Harm and Zemiology'. In *The Oxford Handbook of Criminology*, 6th Edition, edited by Alison Liebling, Shadd Maruna, and Lesley McAra, 284-305. Oxford: Oxford University Press.

———. 2004. 'Beyond Criminology?' In *Beyond Criminology: Taking Harm Seriously*, edited by Paddy Hillyard, Christina Pantazis, Steve Tombs, and Dave Gordon, 10-29. London: Pluto Press.

Hills, Stuart L. Ed. 1987. *Corporate Violence: Injury and death for profit*. New Jersey: Rowman & Littlefield.

Hopkins Burke, Roger. 2005. *An Introduction to Criminological Theory*. Cullompton: Willan Publishing.

Hughes, Gordon. 2007. *The Politics of Crime and Community*. London: Palgrave Macmillan.

Jenness, Valerie., and Ryken Grattet. 2004. *Making Hate a Crime: From social movement to law enforcement*. New York: Russell Sage Foundation.

Kramer, Ronald C. 2013. 'Expanding the Core: Blameworthy Harms, International Law and State-Corporate Crimes'. Paper presented at the Presidential Panel, "Reconsidering the Legal Definition of Crime," at the annual meeting of the American Society of Criminology, Atlanta, November 21.

Lasslett, Kristian. 2010. 'Crime or social harm? A dialectical perspective'. *Crime, Law and Social Change* 54:1-19.

Loader, Ian., and Richard Sparks. 2011. *Public Criminology?* London: Routledge.

McLaughlin, Eugene., and John Muncie. Eds. 2001. *The SAGE Dictionary of Criminology*. London: Sage.

———. 2006. *The SAGE Dictionary of Criminology*, 2nd Ed. London: Sage.

———. 2013. *The SAGE Dictionary of Criminology*, 3rd Ed. London: Sage.

Monaghan, Mark., and Simon Prideaux. 2016. *State Crime and Immorality: The corrupting influence of the powerful*. Bristol: Policy Press.

Muncie, John. 2013. 'Social Harm'. In *The Sage Dictionary of Criminology*, 3rd Edition, edited by Eugene McLaughlin, and John Muncie, 430-432. London: Sage.

———. 2005. 'Book review of *Beyond Criminology: Taking Harm Seriously'. Crime, Law and Social Change* 43:199-201.

Newburn, Tim. 2007. *Criminology*. Cullompton: Willan Publishing.

Office for National Statistics. 2015. *Excess Winter Mortality in England and Wales 2014/15 (Provisional) and 2013/14 (Final)*. London: Office for National Statistics.

Pantazis, Christina., and Simon Pemberton. 2009. 'Nation States and the Production of Social Harm: Resisting the Hegemony of 'TINA''. In *State, Crime, Power*, edited by Roy Coleman, Joe Sim, Steve Tombs, and David Whyte, 214-233. London: Sage.

Passas, Nikos., and Neva Goodwin. Eds. 2004. *It's Legal but it ain't Right: harmful social consequences of legal industries*. Michigan: University of Michigan Press.

Pearce, Frank., and Steve Tombs. 1998. *Toxic Capitalism: corporate crime and the chemical industry*. Aldershot: Ashgate.

———. 2012. *Bhopal: Flowers at the altar of profit and power.* North Somercotes: CrimeTalk Books.

Pemberton, Simon. 2007. 'Social Harm Future(s): Exploring the Potential of the Social Harm Approach'. *Crime, Law and Social Change* 48:27-41.

———. 2015. *Harmful Societies*. Bristol: Policy Press.

Phillips, Coretta., and Shadd Maruna. 2013. 'Expert Witness for the Defence in the Mock Trial of Criminology'. *British Society of Criminology*, Wolverhampton.

Quality Assurance Agency. 2014. 'Subject Benchmark Statement, Criminology'. Accessed 30.08.2017. http://www.qaa.ac.uk/en/Publications/Documents/SBS-criminology-14.pdf

Reiman, Jeffrey. 2006. 'Book Review of *Beyond Criminology: Taking Harm Seriously*'. *British Journal of Criminology* 46:362-364.

Ruggiero, Vincenzo. 2015. 'Social harm and the vagaries of financial regulation in the UK'. *International Journal for Crime, Justice and Social Democracy* 4:91-105.

Schwendinger, Herman., and Julia Schwendinger. 1970. 'Defenders of Order or Guardians of Human Rights?' *Issues in Criminology* 5:123-157.

Snell, Katy., and Steve Tombs. 2011. ''How Do You Get Your Voice Heard When No-One Will Let You?' Victimisation at work'. *Criminology & Criminal Justice* 11:207–223.

Soper, Kate. 1993. 'A Theory of Human Need'. *New Left Review* 1/197:113-128.

Tifft, Larry L., and Dennis C. Sullivan. 2001. 'A Needs-Based, Social Harms Definition of Crime'. In *What is Crime? Controversies over the Nature of Crime and What to do About It*, edited by Stuart Henry, and Mark M. Lanier, 179-203. Lanham: Rowman and Littlefield Publishers, Inc.

Tombs, Steve. 2015. 'Harmful Societies'. *Criminal Justice Matters* 101:36-37.

———. 2007. ''Violence', Safety Crimes and Criminology'. *British Journal of Criminology* 47:531-550.

———. 2004. 'Workplace injury and death: social harm and the illusions of law'. In *Beyond Criminology: Taking Harm Seriously*, edited by Paddy Hillyard, Christina Pantazis, Steve Tombs, and Dave Gordon, 156-177. London: Pluto.

———. 1999. 'Health and Safety Crimes: (in)visibility and the problems of 'knowing''. In *Invisible Crimes: their victims and their regulation*, edited by Pamela Davies, Peter Francis, and Victor Jupp, 77-104. London: Macmillan.

Tombs, Steve., and Paddy Hillyard. 2004. 'Towards a Political Economy of Harm: states, corporations and the production of inequality'. In *Beyond Criminology: Taking Harm Seriously*, edited by Paddy Hillyard, Christina Pantazis, Steve Tombs, and Dave Gordon, 30-54. London: Pluto Press.

Tombs, Steve., and David Whyte. 2009. 'Crime, Harm and Corporate Power'. In *Crime: Local and Global*, edited by John Muncie, Deborah Talbot, and Reece Walters, 137-172. Cullompton: Willan Publishing.

———. 2002. 'Unmasking the Crimes of the Powerful'. *Critical Criminology: an international journal* 11:217-236.

———. 2015. *The Corporate Criminal: Why Corporations Must be Abolished.* London: Routledge.

Weait, Matthew. 2005. 'Harm, Consent and the Limits of Privacy'. *Feminist Legal Studies* 13:97-122.

Winlow, Simon., Steve Hall, James Treadwell, and Daniel Briggs. 2015. *Riots and Political Protest: Notes from the Post-Political Present*. London: Routledge.

Yar, Majid. 2012. 'Critical Criminology, Critical Theory and Social Harm'. In *New Directions in Criminological Theory*, edited by Steve Hall, and Simon Winlow, 52-65. London: Routledge.