



FREEDOM RESPONSIBILITY AND JUSTICE: THE CRIMINOLOGY OF THE 'NEW RIGHT'



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FOR LIFE, LIBERTY AND PROPERTY



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I: Introduction

The term "New Right" is a label that has, in the last few decades, been applied to intellectual and political movements ranging from racism, fascism, socio-biology, the "moral majority" and Christian fundamentalists and the like to any expression of anti-socialism, and to the revivals of both classical liberalism and traditionalist conservatism.

Indeed, it is hard to see the logic behind the customary categorization of "left" and "right". Why are, for example, are collectivist, anti-individualist and anti-capitalist exponents of racism, anti-semitism, national socialism/fascism lumped together with anti-collectivist, pro-individualist exponents of free markets and individual liberty as being on something called "the right"? The moral, political and economic premises, and indeed the practices, of fascists and national socialists are virtually identical to those of Marxist and Socialist collectivists.¹ This use of the left-right spectrum appears to be a result of, at best, ignorance or confusion, or, at worst, partisan and propagandistic obfuscation.

Unfortunately, the term "New Right" has of late been once more applied to a very real phenomenon, the rise of schools of thought and writers whose common characteristic is a rejection of, or critical stance toward, the dominant world view of socialism/Marxism in myriad forms, of doctrines of social determinism and social engineering, and of state interventionism in personal, political and economic life. Since it is hard to of established usage, no matter how misleading, what is understood by the term "New Right" in this essay is essentially the broad phenomenon of a school, or rather, schools, of thought whose primary analytical, and normative, orientation, is to the concepts of freedom, justice and responsibility.

Within criminology the established paradigm, albeit with some variations, is, to put it crudely, arguably one characterized by an anti-punitive ethics and jurisprudence and a determinist model of the causes of crime and of criminal responsibility. The "New Right" as it is understood herein represents a rejection, albeit not a totally unified one, of this paradigm. It can largely be seen as consisting of four major streams of thought, namely:

- (i) A radical restatement of natural rights classical liberalism, or libertarianism
- (ii) A vigorous application of the conceptual tools of liberal, free market economics
- (iii) An restatement of "traditionalist" conservatism
- (iv) An empiricist, primarily "wertfrei" (value free) critique of the failure of the established policies.

I shall deal with each of these four streams of thought in turn.

II: The Natural Rights Libertarians

Although frequently called the "New Right"² a more appropriate description of this school of thought would be the "New Liberalism" or, as I have argued elsewhere, the "New Enlightenment".³ It is a revival of 19th century "classical" liberalism, the revolutionary rationalist radicalism of the major Enlighten-

ment figures.⁴ Because of a strange linguistic evolution in America, whereby the term "liberal" is applied to doctrines of state interventionism, in contradiction to its historical (and elsewhere, contemporary) usage, most adherents of this approach now favour the term "libertarian".

The major school of libertarian thought is a reassertion of Aristotelian, natural rights/natural law philosophy. On the basis of an analysis of the nature of man as a volitional and rational entity it develops an egoistic/self-actualization moral philosophy of "life, liberty and property". Individual freedom should be limited only by the duty not to initiate force against others (what Herbert Spencer in the 19th century termed the "law of equal freedom"). The primary source of this radical Aristotelianism has been the work of the Russian born philosopher and novelist Ayn Rand, which has been applied and extended by writers like Tibor Machan, Eric Mack, John Hospers, Murray Rothbard, Leonard Peikoff, and David Kelley amongst others.⁵

The relevance of this approach to both criminology and legal philosophy is obvious. In the words of Murray Rothbard:

The key to the theory of liberty is the establishment of the rights of private property, for each individual's justified sphere of free action can only be set forth if his rights of property are analysed and established. 'Crime' can be defined and properly analysed as a violent invasion or aggression against the property of another individual (including his property in his own person). The positive theory of liberty then becomes an analysis of *what* can be called property rights and therefore *what* can be considered crimes ... Since questions of property and crime are essentially *legal* questions, our theory of liberty necessarily sets forth an ethical theory of what law concretely *should* be.⁶

Thus libertarians reject the whole panoply of "victimless crimes" as not really crimes, and the subsequent criminalization and stigmatization of individuals engaged in acts which in reality range from foolish or self-destructive, perhaps personally immoral, to the completely legitimate and productive.

In 1977 well over five million Americans were arrested not for attacks upon the other people or property, but for victimless crimes, acts which the government violently (although very selectively) disapproves of, but which do not violate any ones rights; drunkenness, possession of drugs, prostitution, homosexuality, vagrancy, loitering, pornography, and the like ... In order to police the morals of America and 'protect' these men, women and children from themselves, many will be forcibly separated from their homes, families and jobs and thrust into a brutal sub-human prison environment, from which they will emerge as real threats to others, rather than simply the imagined threats that they were to, themselves before incarceration.⁷

Indeed, it is the State itself which is seen as the major perpetrator of criminal acts, by its criminalizing of non criminal behaviour, and by such coercive acts as conscription, taxation, regulation of the economy, censorship and the like. "The disgraceful reality", writes Jarrett Wollstein, "is that justice in America today is more often than not injustice; that the ag-

gressions committed by police, judges, juries and jailers are vastly greater than all private American violence; and that the American 'justice' system produces more wholesale destruction and carnage than it even remotely begins to prevent."⁸

Some English and American libertarians have attempted to trace in details the historical genesis of "victimless crimes", for example, the criminalization of sexual "immorality" as result of medical paternalism, coercive preventive medicine and various forms of "right wing" and "left wing" Social Darwinism, bureaucratic statism, moral purity movements (in conservative and feminist guises), and paternalist health crusades.⁹ Libertarians also vehemently reject the assertions of both authoritarian conservatives and socialist feminists that pornography "causes" rape or violent behaviour. Such claims are not only refuted by the existence of free will, but the alleged scientific studies sometimes cited have been shown to be utterly bogus or misleading.¹⁰

The most prolific writer in regard to the stigmatization of the innocent has been the psychologist Thomas Szasz. The core of his critique has been the concept of free will and its negation by concepts of mental illness. In his view, with a very few exceptions of physically caused pathologies, "mental illness" (although he rejects even the term itself) is a largely volitional process over time. Individuals are responsible for their actions, and not determined by inner or outer forces. The consequence of doctrines of mental illness has been "to conceal conflict as illness and to justify coercion as treatment".¹¹ In both the East and the West unpopular minorities of every sort, whether sexual or political, have been labelled as mentally ill. The language of orthodox psychiatric diagnosis rejected as either meaningless, fallacious and always "used to stigmatize, dehumanize, imprison, and torture those to whom they are applied".¹²

Moreover, the harmful consequences of psychiatric degradation of individualism are twofold. On the one hand it destroys the civil liberties of "offenders", real ones as well as the perpetrators of "victimless crimes". "The thesis that the criminal is a sick individual in need of treatment ... is false. Indeed, it is hardly more than a refurbishing, with new terms, of the main ideas and techniques of the inquisitorial process."¹³

But the discrediting of the individual as a "self-responsible human being" also exposes society to the depredations of the truly wicked and coercive.

The American government is now a threat to the freedom of its own people not because it punishes the innocent, nor because its punishments are too harsh, but rather because it does not punish the guilty. One result is an ever increasing army of thieves and thugs, muggers and murderers, abroad in the land, preying on a people unprotected by their own police and judiciary. Another result is an ever-increasing tendency not to punish those who are evil and who commit evil acts but instead to treat them for nonexistent illnesses.¹⁴

The rejection of the idea of individual responsibility and free will has led to an unwillingness "to shoulder the responsibilities for punishing men, women and children who deprive other individuals of their life, liberty and property."¹⁵ Of course, in reality no real "rehabilitation" or "treatment" goes on in prisons, which, in the USA especially, have become nightmare realms of violence and instruction in crime, governed by inmates. Nevertheless, in plea bargaining, absurd rules of evidence and procedure, and lax sentencing and parole, punishment is minimised.

In Szasz's view, then, the remedy for crime is to

re-embrace the ethic of a truly dignified system of criminal sanctions consisting of minimal but fitting punishments meted out as inexorably and as fairly as possible. In pro-

portion as a decent punitive penology would be realized, people would be safe from crime.¹⁶

The attack on orthodox criminology becomes even more vigorous in the work of Robert James Bidinotto. Demonstrating that a real "crime explosion" *has* occurred, he argues that this is primarily a result of the "excuse-making industry", the social-science establishment as a whole, philosophers, psychologists, political scientists, legal scholars, sociologists, and criminologists alike. The legal system has increasingly embodied a view that criminals are not to blame for their own actions, that they are determined by environment, poverty, injustice, or by psychological forces beyond personal control, or by alleged socio-biological drives. Punishment, in the orthodox view, is seen as unjust and immoral, deterrence doesn't work, and "rehabilitation", "treatment" or large scale social reform (of a collectivist nature) are the only rational answers to crime. It is this ideology, in Bidinotto's view, that has undermined the legal system:

The issue of free will versus determinism is *the* key to resolving any argument about the causes and cures of crime ... By not taking into account the free will of the criminal, it's ignoring the very factor which is *decisive* to his criminality: his responsibility for his actions. Instead, it has shaped the institutions of law to excuse him from justice.¹⁷

Whilst not denying that individuals are influenced by social "forces" and the social environment, nothing can remove freedom of will. "To excuse criminals because of poor social environments leaves unexplained the crimes of those from good social environments. And the sociological excuse is an insult to millions of others from the poor backgrounds, who have *not* turned to crime."¹⁸ Ironically, the culture of excuses, constitutes exactly the sort of environment which encourages crime. Against those who assert "the crime of punishment", Bidinotto sees the victims of crime as the "forgotten people", whose "cries for justice must be heard".¹⁹

What sort of solutions do the libertarians offer to the problem of crime?

On the one hand, the traditional concept and practice of incarceration is defended. It serves the "goals of retribution, deterrence, incapacitation, and punishment".²⁰ The removal of the criminal "from free association with a large segment of society", whether in prisons or some sort of geographical "exile", is not seen as either "old-fashioned" or irrelevant. And even if it served no deterrent function, punishment is seen as a good in itself, an inherent part of justice as retribution.²¹ Capital punishment is also generally defended on primarily moral grounds, although its clash with the possibility of extracting material restitution to heirs and dependents tends to downgrade it as a mandatory punishment.²²

A more radical aspect of the libertarian approach, however, is its emphasis on the importance of enforcing restitution upon the criminal. With the rise of the nation state and doctrines of statism, (both in the "King's peace" or "debt to society" form) the older, allegedly more "primitive" common law view of crime as an act whereby the criminal incurred a debt to the victim (or his heirs and dependents) was superseded. Libertarians favour the reversal of this development. A central concern of law should, then, be the attempt to ensure the proper restitution by the aggressor to the victim.

It is worth noting that a minor dispute does occur here between pure restitutionists, like Barnett and Hagemel,²³ and those like Rothbard, J. Roger Lee and others, representing the mainstream of libertarian thought, who see restitution as an essential, but not exhaustive, function of law.²⁴

Insofar as the state can have any rightful powers (a premise attacked by the anarcho-capitalist wing of libertarianism) they

can only be derived from the rights of individuals, and certainly do not deprive them of right to exercise them individually. Libertarians have defended not only the morality but effectiveness and value of private law enforcement, detection agencies and "vigilance societies".²⁵ The radical anarchist wing of libertarianism argues that ultimately only a fully privatised system of market anarchism can fully preserve freedom and prosperity. The feasibility of such a system is defended and outlined in a growing body of literature.²⁶

Similarly, the private ownership of firearms is vigorously defended. Contrary to popular belief the evidence demonstrates that ownership of firearms exercises an effective deterrence against aggression and that "gun control" (in practice, the disarming of the victims but not the aggressors) is both undesirable and ineffective. Women, minorities and "lower class" individuals are especially harmed by gun control measures, it is argued.²⁷ The broader issue of a disarmed citizenry facing ever more mighty state power also lies behind the libertarian defense of the desirability of an "armed citizenry".²⁸

Even libertarian exponents of limited (rather than no) state position have sceptical attitude towards the efficacy and honesty of state police forces. Private sector response to rising crime, in form of private security, private patrols, voluntary neighbourhood watches and initiatives like the Guardian Angels have been widely welcomed.²⁹ Groups like the influential Adam Smith Institute in London have thus called for the encouragement, rather than discouragement or persecution, of such private initiatives. Similarly, the privatization of "public" space, housing estates, and streets is favoured in itself and as it lends itself to the extension of effective private security.³⁰

The more militant forms of socialist criminology, which see "capitalism as the cause of crime", and no fundamental solution outside of a broader radical social transformation, also find their polar opposite in the libertarian position. For the libertarians it is not only the determinist premises that underlay most variants of collectivism and statism that cause crime, but all the ramifications of collectivist economic, social and political policies.

In a historic and comparative account Professor Christie Davies has described the remarkable achievement of what he calls "Respectable Britain" in the 19th century, a close approximation of a crime free society, insofar as that is humanly possible. That condition was attained, in his view, by a "moralizing of society" along very specific lines, the rise to predominance of a morality rooted in individualism and free market values, and in an ethos of personal responsibility and self control.

The decline of Respectable Britain, the eclipse of the era of the law-abiding British, can ultimately be traced to the ever-increasing bureaucratic centralization of British society in the twentieth century and the linked, but independent, rise of a corrosive ethic of socialist egalitarianism. Both these changes undermined the moral fabric of Respectable Britain and eroded its central belief in individual personal responsibility.³¹

The rise of crime is seen as essentially the result of what libertarians generally see as the victory of the state in the never-ending conflict between state power and "social power", between imposed "order" and control spontaneous order and social control. In the words of Christie Davies:

The state has been pitted against society and the liberty of the ordinary citizen constrained by the 'liberation' of violent and anti-social elements ... disciplined freedom has been replaced by anomie liberated delinquency.³²

The return to a market based order, and the promulgation of a similar morality of autonomy and individualism is the ultimate

social route to the minimization, if not total eradication, of crime.

This analysis in fact links up with the broader libertarian analysis of the problem of what has become called the "underclass". This is a restatement of the problem of the phenomenon the 19th century liberals termed "pauperization".³³ The effect of indiscriminate welfare provision on a small but significant group in the "working class", is to elicit a quite rational response from individuals who already share a "high time preference" (ie, unwillingness to defer gratification), and value system best characterized as a "culture of poverty". A moral ethos of irresponsibility, passivity, family breakdown, and crime is nurtured and subsidised. When combined with a reduced risk of arrest and punishment the effects are exactly what we observe in Britain and America, and anywhere else such policies are adopted.

Ironically, it is the "honest poor" and the working classes who are the first and worst victims of pauperization, which, in the words of Charles Murray, represents "an extraordinary range of transfers from the most capable poor to the least capable, from the most law-abiding to the least law abiding, and from the most respectable to the least respectable".³⁴

It should be noted that there are some, albeit a minority of, libertarians who take a different view from that outlined above. A notable example is the Australian social psychologist John Ray. Accepting a utilitarian ethic he argues that "the protection of the community be the sole criterion of what is done with any convicted criminal" and that "whenever a criminal is caught, he never be released unless there is good reason to believe that he will in future abstain from crime".³⁵

III: The Economic Liberals

At same time as the revival of classical liberal political and moral philosophy was occurring, an even more widespread revival of "classical", free market economics has taken place. The work of the countless adherents of the "Chicago School" of Milton Friedman and his colleagues has established itself as a cutting edge within the discipline of economics. The "Austrian School" of free market economics of Ludwig Von Mises and Friedrich Hayek has had a lesser, but no means insignificant impact.³⁶

One of the demonstrations of the vigour of this revival has been the phenomenon of "economic imperialism", as it has been jocularly labelled.³⁷ The "Chicago School" has attempted to apply economic analysis to problems and issues customarily conceived as being outside its traditional subject matter and scope. Social and political institutions, politics as a whole, how we treat our bodies, sexual behaviour, love and marriage, and crime and honesty have become part of the "new world of economics".

Not surprisingly, since the characteristics of economic reasoning are its analysis of purposeful individual and institutional behaviour, of rational action related to objectives to be achieved, and the concepts of choice, price, alternatives, and trade-offs, criminality is seen in a very different light from the orthodox criminological view.³⁸ The criminal is seen as no less a rational utility maximiser, responsive to incentives and disincentives, than any other human being.

Crime, far from being the result of a sickness or mental disorder, in most cases is simply a business oriented economic activity which is undertaken for much the same reasons as other types of economic activity.³⁹

By applying economic analysis, it is argued, "the amount of crime actually committed can be determined in the same manner as is the amount of any other activity".⁴⁰ Moreover, in it appears "that professional criminals seem to have made sensible career choices. In other words, crime pays."⁴¹

The economists have devoted considerable efforts to analysing the issue of deterrence. They have examined the existing 'anti-deterrent' sociological research and judged it "very inferior work".⁴² More recent research, especially when inspired by economic perspectives, Gordon Tullock argues, arrives at a more favourable view, although its writers have difficulty in getting it "accepted in the more conventional sociological journals".⁴³ Such findings are, for the economists, hardly surprising (the reverse would be) since "The deterrence theory of punishment is, after all, simply a special version of the general economic principle that raising the price of something will reduce the amount purchased."⁴⁴

Although many of the economists are also favour libertarian policies on moral grounds, their economic analysis alone also lead to the advocacy of the decriminalization of "victimless crime" laws. The "considerations of expediency", as Milton Friedman has put, attest to the counter-productive effect of any act of prohibition, its worsening of the situation for addict and non-addict alike, and its corrupting effect on all institutions of law enforcement.⁴⁵ Along with the libertarians the free market economists now constitute the strongest lobby for drug legalization and have produced a large body of literature on the issue.⁴⁶

Economic analysis has also produced some unusual perspectives on the nature of crime. On the one hand, Godfather-fed visions of the prevalence of "organized crime" seem to be misled. "Organized crime" appears not extensive, and the market structure of criminal enterprise tends to small and relatively ephemeral enterprises.⁴⁷ Ironically, this may not be a good thing. From society's point of view "organized", and consequently monopolized crime, would be better than disorganized crime. Monopoly results in the restriction of output. While we do not favour restriction in the supply of goods, we certainly do favour restriction in the supply of "bads".⁴⁸

It should also be noted that application of economics to law has a much wider scope than that of criminology. In such works as the seminal *Economic Analysis of Law*, by Richard A. Posner,⁴⁹ and a growing body of literature, legal doctrines and procedural rules can be given explanations, rationalizations and improvement in the light of economic analysis. There are also interesting disputes between what we might term "economic efficiency" theorists (adhering to a utilitarian or pragmatic ethic) and natural rights based analysts.⁵⁰

The Economists' arguments have not been without effect upon sociologists. In their work *The Honest Politician's Guide to Crime Control*,⁵¹ Norvall Morris and Gordon Hawkins accept a large part of the economic critique, albeit in somewhat less rigorous form. The limitations of mental illness as a legitimate plea, the general efficacy of deterrence, and the disastrous nature of victimless crime laws are all highlighted. It is the latter area, however, in which their advocacy is most spirited and clear:

The prime function of the criminal law is to protect our persons and property; these purposes are now engulfed in a mass of other distracting, inefficiently performed, legislative duties. When the criminal law invades the spheres of private morality and social welfare, it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective, and criminogenic."⁵²

IV: The Traditionalist Conservatives

In Europe Conservatism was ideologically a collectivist movement, sharing with the socialism an opposition to the individualistic, allegedly "atomised" society of capitalism. The radical rationalism and individualism of capitalism was rejected in favour of the "organic society" and the alleged wisdom of tradition.⁵³ Anglo-American conservatism has been rather a differ-

ent creature, symbolized by the ambiguities in its founder, Edmund Burke, between his acceptance of Adam Smith's liberal economics and his own endorsement of certain illiberal social values. Anglo-American Conservatism has largely eschewed extreme and mystical forms of anti-rationalism and traditionalism, favouring instead a more defensible view of spontaneous order akin to that held by liberals. While rejecting a consistent libertarianism or individualism, it has, in the face of such enemies as Fascism and Marxism, been increasingly driven to an orientation toward liberty, albeit not without ambiguities.

Not surprisingly there are many similarities between post-War Conservative thought on crime and that of the Libertarians.

Much of the work of the leading Conservative writer on these issues, Ernest van den Hague, has this been characterized by a defence of the efficacy of deterrence and a reaffirmation of the existence of individual free will and responsibility.⁵⁴

In line with the greater emphasis on "social order" generally found in conservative rhetoric there tends to be a greater emphasis in conservative writing on the role of punishment as a broader sanction of social mores, its symbolic effect in establishing "moral solidarity" and stigmatising of criminal behaviour.

Because most offenders are not significantly different from the rest of the population, society must reinforce resistance to temptation by punishment and by stigmatizing crime as odious, so that most people will not yield to the temptation no society can eliminate.⁵⁵

Capital punishment is vigorously defended. Its abolition, van den Haag argues, is

perceived symbolically as a loss of nerve: social authority no longer willing to pass an irrevocable judgment on anyone. Murder is no longer thought grave enough to take the murderer's life. Respect for life itself is diminished, as the price for taking it is. Life becomes cheaper as we become kinder to those who wantonly take it.⁵⁶

The Conservatives also tend to emphasise the moral crisis involved in the widespread (especially amongst intellectuals generally, and criminologists specifically) manifestation of sympathy for criminals beyond that shown (if at all) for victims. In the words of Walter Berns, "compassion is felt for the criminal and ... anger is directed at society".⁵⁷ (Although libertarians have also noted and criticised what it sees as an anti-life transvaluation of values at work in sympathy with criminality.) "A just society", the Conservatives very vigorously proclaim, "is one where everyone gets what he deserves, and the wicked deserve to be punished — they deserve 'many sorrows', as the Psalmist says — and the righteous deserve to be joyous."⁵⁸

However, it should not be assumed that the Conservatives are merely embodiments of an excessively punitive tough-mindedness, as some opponents would like to portray them. The determinist and rehabilitationist approach is also seen by the Conservatives, as by the Libertarians, as a real threat to justice and liberty.

For example, writing about the Children and Young Persons Act of 1969 in Britain, which lays out the "treatment" of juvenile delinquency, Colin Brewer makes two points. "Treatment" programmes have been demonstrated to be ineffective.

The old fashioned approach was much more effective than giving the child to the care of social workers, in terms of reducing both truancy and associated crime.⁵⁹

Moreover, the system is horrendously *unjust*. The allegedly humanitarian decriminalisation of juvenile offences, the granting of impunity to crime, has actually provided a total mandate for potentially unlimited intervention into the lives of children and parents. Children can be imprisoned (although it is not called

that) as result of non-judicial kangaroo courts, on evidential basis that would not convict an adult. “Compulsory measures of care” as the Act’s terminology would have it appear as euphemistic as the “treatment” for political dissidents in the Soviet Union. Indeed, the two juvenile Acts in Britain are, as Patricia Morgan puts it, “examples of the tendencies of rehabilitative systems to destroy legal rights and spawn injustices, while essentially segregating a large measure of society’s crime into realms of impunity”.⁶⁰

In reality the extravagant claims regarding rehabilitation and therapy are fanciful. Social work practice is generally characterized by “tolerance of unhelpful behaviour as part of the diagnostic and healing process”. The evidence regarding rehabilitative endeavours, it is argued, demonstrates that “none are more effective than traditional penalties in reducing recidivism”.⁶¹

Similarly, regarding adults, the parole system rests upon positivist assumptions, sanctioning an indeterminacy of sentencing which is “predicated upon an acceptance of executive justice that is inconsistent with a concept of open justice” and more consistent with totalitarian states.⁶²

The key to understanding both the cause and cure of crime lies for the Conservatives in undermining of moral values by the myriad forms of socialism and interventionist statism. In Patricia Morgan’s words, the “quasi-moral distaste for the imposition of norms”⁶³ characterises theory and practice in much sociology, criminology and jurisprudence, as well as in the welfare and administrative practice of the contemporary state. The result has been a massive failure of civilized socialization moral, the toleration of a “new barbarism”, the endorsement of moral relativism and the unwillingness to publicly affirm real moral values in the face of aggression and insulting behaviour.

In Morgan’s view it is especially ironic that many sociologists and criminologists seem to view crime and violence as revolutionary expressions of the “working class”. In reality, it is the “working class” which suffers first and worst. The elements romanticised by some writers are not the real working class, characterized by an ethos of productiveness, but the underclass of petty criminals, thugs and parasites on the labour of others.

The answer to this moral crisis can only be, in the words of David Marsland, “at least a degree of re-moralisation of social life”.⁶⁴ “We have to challenge immoralist permissivism with beliefs and values to which young people can commit themselves positively and actively.”⁶⁵

Although there is clearly much common ground between the Libertarians and the Conservatives, there are clearly differences. In van den Haag’s work there is a clear willingness to accept the use of law to attain ends other than justice. “Thus”, he declares, “justice may be impaired to preserve or enhance another value, or the social order as a whole.”⁶⁶ Elsewhere he has explicitly rejected the concept of natural rights, has endorsed censorship of pornography, and called for the death penalty for drug pushers. However, in this latter area is it interesting that he has more recently, in company with a growing number of prominent Conservatives, recognized that the “war on drugs” has been lost, and prohibitionist policies proved both futile and disastrous. He has accepted the pragmatic case made by the Libertarians and the Economists.⁶⁷

Although Libertarians would accept much of the argument made by the Conservatives for a “re-moralization” of society, one suspects that there would be some disputes as to what constitutes morality in certain areas (especially relating to sexual behaviour). Moreover, the Libertarians adhere to a stronger belief in the beneficence of spontaneous order. In the absence of the perverse incentives and disincentives established by state interventionism, Libertarians would have confidence in the evolution of socially beneficial and harmonious practices. Amongst Conservatives, however, there is a tendency toward a

more activist support for particular practices. This is manifest in Patricia Morgan’s endorsement, for example, of stricter laws concerning divorce.⁶⁸

V: The New Realists

While both the Libertarians and the Conservatives started out from a clear commitment to particular rival values, and the Economists did so with a conceptual apparatus already methodologically at variance with determinism, another group of writers arrived at a similar critique of the reigning paradigm from a very different starting point.

In his model of paradigm change Thomas Kuhn argues that at a certain time any established paradigm will begin to confront “anomalies” that cannot be explained in its own terms. What happened in the 1960s in America was precisely the emergence of such anomalies in the Great Society/interventionist/statist model. Quite simply it became obvious that interventionist policies were not working as they were supposed to.

A growing number of scholars and writers who had previously accepted the ruling assumptions became increasingly critical of them. These were individuals whose criticisms of the established paradigm came not from the premises of a rival system but largely or entirely from an empirical and pragmatic observation of the failures of the former. Subsequently, some of these writers have been termed “neo-Conservatives” (some of the accepting the label, some of them not). A better term, in my view, would be “New Realists”. Although some have come to endorse a rival ideology many still share the basic assumptions of interventionist statism. What they reject are the specific policies favoured by orthodox interventionists.

Who are these writers? They include individuals like Martin Anderson, Norman Podhoretz, Irving Kristol, Daniel P. Moynihan, Edward Banfield, Jay Forrester, Theodore Lowi, James Q. Wilson and Jane Jacobs, amongst others. In relation to criminology the most relevant are Jacobs, Banfield and Wilson.

In her work *The Life and Death of Great American Cities*,⁶⁹ Jacobs demonstrated the counter-productive role of planning and regulation. As well as being economically detrimental such planning had a directly crime-creating result by its destruction of natural social controls exercised in natural neighbourhoods. Similar observations on the crimogenic consequences of high rise municipal housing were made in Britain by Alice Coleman.⁷⁰

In *The Unheavenly City*,⁷¹ Edward Banfield outlined an analysis of the problems created by the “lower class” value system (ie, a culture of poverty), of the pauperizing effects of welfare, and the rational effects of incentives and disincentives to crime (ie, the reality of deterrence).

By far the most significant writer in relation to criminology, however, was James Q. Wilson. Certainly no Libertarian, he explicitly accepted paternalist and welfarist duties by the state, opposes individual ownership of firearms, and still supports the criminalization of drugs to this day. Neither were Conservative values obviously prominent in his work.

Nevertheless, his empirical observations fully support the criticisms offered by both Libertarians, Economists and Conservatives. Poverty does not cause crime, he declared in *Thinking About Crime*.⁷² Indeed, crime has risen with increasing affluence. Instead, crime is seen as resulting from the breakdown of civic socialization of young people, a “failure of community”, and by family disorganization. The “subjective forces — ideas, attitudes, values”⁷³ must also be taken into account. The orthodox view of the inefficacy of deterrence is rejected, and is not borne out, in his view, even by the scholarly work of the orthodox themselves.⁷⁴

Wilson thus concludes his work:

Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent, and encouraged the calculators. Justice suffers, and so do we all.⁷⁵

Although from within psychology and psychotherapy a whole new wave of anti-determinist thinkers has arisen since the war (like Abraham Maslow and Carl Rogers, and myriad forms of “humanistic”, “third force”, existentialist, self-actualization and “human potential” schools) very few devoted any attention to criminological issues.

The one major exception to this consists of the work of Samuel Yochelson and Stanton Samenow in their two volume study *The Criminal Personality* (1976/77), and the one volume popularization by Samenow, *Inside the Criminal Mind*.⁷⁶ Both started as orthodox Freudians, committed to the mental illness theory of criminality and to their work in the “rehabilitation” of prisoners. As a result, however, of their decades of work inside prisons, both became what they termed “reluctant converts” to a philosophy of autonomy and non-determinism.

In Samenow’s own words:

... criminals choose to commit crimes. Crime resides within the person and is ‘caused’ by the way he thinks, not by his environment. Criminals think differently from responsible people. From regarding criminals as victims we saw that instead they were victimisers who had freely chosen their way of life ... Criminals cause crime — not bad neighbourhoods, inadequate parents, television, schools, drugs, or unemployment. Crime resides within the minds of human beings and is not caused by social conditions.⁷⁷

Habits are not compulsions, there are no over-powering forces, within or without him, that causes him to act. What causes criminal activity is simply the freely chosen actions of individuals, and the ideas they develop about themselves, others and the world at large. The criminal mind is characterized by ideas which are coercive, self-delusory, irrational and irresponsible.

VI: Conclusion

Although, as I have demonstrated above, there are differences in analytical emphasis and moral orientation amongst Libertarians, Economists, Conservatives and New Realists, I hope I have demonstrated sufficient common ground amongst all three to justify gathering them under one label. Whether their shared critique of the existing paradigm in criminology is found convincing, and whether it will be more fully developed and refined is yet to be seen.

NOTES

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14. Szasz, “Psychiatric Diversion in the Criminal Justice System: A Critique”, in Barnett and Hagel, *op. cit.*, p. 119.
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19. *Ibid.*, p. 1.
20. *Ibid.*, p. 28.
21. See J. Roger Lee, “Reflections on Punishment”, in Tibor Machan, ed., *The Libertarian Alternative: Essays in Social and Political Philosophy*, Nelson-Hall, Chicago, 1974.
22. See Murray Rothbard, “The Capital Punishment Question”, *Libertarian Review*, 7(5), June 1978.
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