

What Is In A Name: Lessons Learned (and Missed) In 25 Years of the Common Study Programme

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The recent twenty-fifth Common Session of the Common Study Programme in Critical Criminology was a cause for considerable reminiscing about the history of the Programme and also its future. Those in attendance will certainly recall the endless debates about all manner of topics, from the theme, ‘What is Critical’, to what is the appropriate role for Critical Criminologists. Another debate, which has been bubbling just below the surface for far longer than I have been involved, raged on as well though just out of earshot (of the students at least). That is, what should we call this criminology conference (congress)? For some, the term Common Study Programme is a bit of an anachronism, given that the common instructional framework was dropped long ago. More troublingly, there seems to be as many names for the Programme floating around, as there are participants. As the *de facto* Webmaster for the Common Study Programme I have had an opportunity to see the various terms people use to search for the website. Any given day the list includes the Common Session Programme, Erasmus Common Sessions, European Common Study Programme (which may mask a protest of the growing Anglo-American presence), and more explicitly, the Common Study Programme in Critical Criminology and Critical Criminal Justice. It is this last name that I am most interested in. Now to be clear, I have little interest in returning to this tongue twister of a title, what I am interested in is the portion that has been recently dropped—critical criminal justice. While the title may well have been pared down for the sake of brevity I have little doubt that it also involved a fair bit of ideological maneuvering. In this short article I want to argue that by surrendering the discipline of criminal justice to policy junkies and practitioners critical criminologists fundamentally misunderstand the boundary between criminology and criminal justice and consequently have ignored an important critical potential of the discipline of criminal justice and even its most ardent adherents—practitioners. Rather than turning our collective backs and allowing orthodox criminal justice to further insulate itself from rigorous intellectual scrutiny, we must as a matter of great urgency hold our noses and take on orthodox criminal justice from within rather than from without.

In the remainder of this article I will briefly attempt to re-draw the boundary between criminology and criminal justice before putting forward my call to arms to recapture the term

criminal justice so as to reorient the entire discipline. To begin I encourage you to ponder where you would draw the line between criminology and criminal justice. For most criminology is likely seen as the theoretical end of the disciplinary spectrum while criminal justice is likely seen as the *atheoretical*, or unapologetically practical, end. The question then that I pose to you is, why? If we return to the term *crimin-ology* we see ‘the study of crime’, or as I will argue, ‘the why of crime’. Criminology, as it is traditionally understood, is concerned with both *law making* and *law breaking*; however, these make rather odd bedfellows for most theories focus on one aspect while largely ignoring the other.

For the purposes of this paper, I argue that we should reconsider how we divide the discipline. I submit that criminology should be primarily concerned with attempting to understand and explain the etiology of law breaking, while criminal justice is (and should be) primarily concerned with understanding and explaining the state’s response—law making. So, to put it another way, criminology is interested in ‘*the why of crime*’, criminal justice is interested in ‘*the why of the state’s response*’. Thought about in this way, much of what is currently awkwardly lumped under the rubric of criminological theory should actually be reconceptualized as *criminal justice theory*. For instance, Classicism can be usefully thought of as criminal justice theory. Similarly, many of the criminological approaches and theories popularized in turbulent 1960s and 1970s, for example, the Labeling perspective, Marxist criminology, and more broadly critical criminology are all primarily concerned with the inequalities of the law making. Law breaking when it is even addressed is treated as little more than an unsurprising reaction to the inequalities of law making rather than the other way around.

Once we re-draw the boundary between criminology and criminal justice along this more theoretically tenable division we find quite surprisingly that it is criminal justice not criminology that is actually more suited for critical scholarship. Now I must confess, this perspective is not particularly novel, in fact, Pete Kraska (2004; 2006; Forthcoming) and others (Bernard & Engel 2001; Duffee & McGuire 2007; Marenin & Worrall 1998; Hagan 1989) have been attempting to make exactly this point for most of the past decade. Kraska (2004), for instance, offers something of a revisionist history regrouping a vast array of extant literature theorizing about ‘the why of the state’s response’ under eight headings. These ‘eight essential orientations’ are not theories per se but ‘orientations’ or approaches that have been used to make sense of the constitution of and rationale for the criminal justice system: rational-legal approaches, systems approaches, crime control vs. due process approaches, political approaches, social constructionist approaches, growth complex

approaches, oppression/conflict approaches, and finally late-modern approaches. Rather than offer one umbrella criminal justice theory, Kraska's illustrates that there is nothing particularly novel about criminal justice theory other than the name. Kraska's clarion call can be taken two ways, first it can be (mis)used by orthodox criminal justice scholars or practitioners to legitimate what they do by wrapping it in the scholasticism of theory. Second, Kraska's call to arms can be answered by critical scholars to illustrate the inherently critical dialogue that many of these orientations presuppose. It is this second option and the theoretical 'colonization' that it suggests that I am advocating.

What I am calling for is nothing short of a linguistic liberation, whereby critical scholars recapture and re-appropriate the term criminal justice. One need only look to Queer Theory for a classic case in point. Borrowing a play from African-American comedian Richard Pryor, critical scholars concerned with gender and sexuality reclaimed the homophobic slur 'queer' to directly challenge the traditional orthodoxies underpinning traditional binary understandings of gender and sexuality. In doing so queer theorists have not only carved out a disciplinary space for like-minded scholars they have also launched a loosely coordinated attack on traditional scholarship that deliberately or inadvertently treats the traditional gender binaries and sexualities as 'natural' categorical variables. Now I am certainly not doing justice to the depth and complexity of Queer Theory as originally set out by de Laurentis, Butler and others. Rather than give a historical survey of the ebb and flow of Queer Theory I offer it simply as an analogical comparison.

Keeping with the comparisons, what about Richard Pryors' use of the 'n-word'? Re-appropriating terminology is not without some risk. Not only is there little consensus about whether it is ever appropriate to use such a derogatory term—even if referring to oneself or one's own ethnicity—there is a concern that re-appropriation plays right into the hands of those who use the term in a more traditional, or in this case, racist sense. In the context of criminal justice the risks are certainly less emotive, unless of course you happen to be caught up in the widening net of the criminal justice apparatus. The risks, as noted above, are similar in that by re-appropriating the term we also effectively acknowledge and condone its use by those for whom we may vehemently disagree. Like Louk Hulsman's abolitionist concern that even our use of the term 'crime' presupposes and legitimates the existence of a criminal justice system, we might rightfully be concerned that our critical colonization may actually strengthen the criminal justice empire. Those rhetorical concerns aside we might again take Louk's lead and attempt to work from within the system to expose the growing cracks that others might mindlessly plaster over.

What then would a ‘re-appropriated’ version of criminal justice look like? Would it necessarily be something of a wolf in a sheep suit? Well, yes and no. It could be as minor a change as simply subdividing criminological theory while fitting the two new brands of theory into the same orthodox institutional framework. While this may be the most achievable in the short-term, it risks subverting any critical potential contained within such a move. Beyond simply expanding the traditional theory offerings at our respective Universities it is also necessary to reconsider the way we attempt to encourage our students to engage with critical perspectives. Simply lambasting the police and the ‘State’ as bad or oppressive, as some critical discussions occasionally devolve into, only serves to alienate and distance those at the opposite end of the ideological spectrum without offering any emancipatory alternative. Engaging students (especially, non-traditional, mature students already employed in the criminal justice system) to think of theory less as something to simply memorize but as lenses to view their surroundings it is possible to develop the critical capacity we hold so dear. As Kraska (forthcoming) illustrates even serving police officers and police administrators can easily appreciate critical perspectives like the ‘growth complex’ approach that argues that the criminal justice system like other bureaucracies begin to serve their own institutional purposes which often results in near-continuous growth—for which we all suffer. If we look to popular culture for an example, albeit a fictional one, we need only look to ‘Major Colvin’ from the critically acclaimed HBO series *The Wire* (Simon, 2005) to see an example of the critical potential of practitioners who have the means to affect meaningful change even if it is short-lived. So rather than content ourselves to sit comfortably beyond the increasingly robust walls of orthodox criminal justice lobbying occasional tirades at those within we should, we must, work from within to win the minds and ultimately the hearts of those for whom this is not simply an academic exercise.

I leave you with one final tactical analogy to illustrate how one might engage those hearts and minds—that of the famous Trojan Horse. For this I again recall the work of one of the founders of the Common Study Programme, Louk Hulsman. Louk took a novel approach when teaching courses on motor vehicle traffic regulation. Now anyone familiar with Louk’s penal abolitionist writings and his staunch human rights campaigning, having experienced the horrors of the Second World War, might find his interest in mundane traffic regulations puzzling. Traffic regulations, however, served (among other things) as a very clever metaphor for him to illustrate how the State regularly interjects itself into normal human affairs under good presumably utilitarian pretences, such as regulating the flow of traffic. However, State intervention is not fundamentally necessary given the fact that people can

work out systems and customs themselves to allow themselves to navigate cross country without any codified rules or institutions. More to the point, it is not the absence of State intervention that causes the massive traffic pile-ups we all fear it is the sudden breakdown or failure of the State interventions (i.e. the traffic lights suddenly going dark). The moral of his story being, we have become so reliant on the State's hand that we do not question the faith we have placed in the State when we find problems the State itself has created; rather, we simply call for more exacting and more robust State interventions. We need not dilute the message to disseminate it appropriately. Rather, we simply need to find the 'Major Colvins' (Simon 2005) out there and awaken their critical potential. In doing so we might just save ourselves as we save 'criminal justice' from itself.

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