



PALGRAVE CRITICAL STUDIES IN HUMAN RIGHTS  
AND CRIMINOLOGY

# A Research Agenda for a Human Rights Centred Criminology

*Edited by*  
Leanne Weber · Marinella Marmo

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# Palgrave Critical Studies in Human Rights and Criminology

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Leanne Weber · Marinella Marmo  
Editors

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*Injustice anywhere is a threat to justice everywhere.*

*Martin Luther King, African–American civil rights activist*

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# 1

## Towards a Human Rights Centred Criminology

Leanne Weber and Marinella Marmo

### Criminology and Human Rights

Human rights undertakings by governments seldom translate seamlessly into human rights compliance. In the worst-case scenario, governments may have little or no intention of upholding human rights standards to which they have publicly committed and can use their ratification of international instruments and domestic implementation as a veneer to obscure or even legitimise continuing abuses. Even in the best-case scenario, local implementation of international human rights agreements may be patchy, overlook the needs of diverse population groups or give rise to unforeseen consequences. The criminal justice system and related

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areas of crime, harm and law enforcement are key sites for the exercise and contestation of state-corporate and personal power. Critical criminological research, therefore, has a significant role to play in identifying whether state and state-corporate power is exercised in ways that align with human rights law and principles, and, more fundamentally, whether human rights undertakings reflect the best interests of the populations they purport to protect. And yet, the discipline as a whole has been slow to advance this critical agenda.<sup>1</sup>

The aim of this edited collection is to articulate a future direction for research at the nexus of criminology and human rights by bringing together experts from different subject areas who, while they may be sceptical about certain aspects of human rights theory, law or practice, share an interest in realising many of the objectives set out in human rights instruments. As we have argued elsewhere (Weber et al. 2014, p. 83), '[c]riminologists who engage actively with human rights, while they may vary in many other respects, all see the pursuit of human well-being rather than the smooth functioning of state institutions as the key objective of criminological enquiry'.

It is now more than half a century since US scholars Schwendinger and Schwendinger (1970, p. 77) urged criminologists to 'redefine themselves, no longer to be the defenders of order, but rather the defenders of human rights'. This began what Stanley (2011, p. 168) calls a 'criminological shift' in some parts of the discipline that directed attention towards the international, and purportedly universal, norms of human rights. This shift has included sustained questioning of how crime is defined and constructed by state actors, and critiquing of the role of governments as both protectors and violators of human rights. Criminological scholarship in this vein has sometimes applied the language and concepts of human rights (Cohen 1993), but has also developed through the lens of social harms and social justice (Canning and Tombs 2021) and the emergence of the cognate study of state and state-corporate crime (Michalowski and Kramer 2006; Chambliss and Michalowski 2010; Stanley and McCulloch 2012). Whatever the focus, the primary contribution for human rights conscious criminologists has been overwhelmingly empirical, intended to 'unpack the involvement of various powerful actors in violations' (Stanley 2011, p. 175).

These steps towards a criminology with a critical perspective on the state have coincided with a growing preoccupation with transnational crime and the operation of power on a global scale. As Stanley (2011, p. 176) has noted, this requires moving away from 'a strict individualist model of criminal responsibility to consider the collaborative power arrangements that exist at local, national and global levels'. This, in turn, opens the way for new normative frameworks, as we have argued previously: 'A perspective that stretches beyond the narrow confines of state-based law and criminal justice institutions is needed to address this extra-territorial research agenda, and criminologists are turning increasingly to human rights to provide a supra-national normative framework' (Weber et al. 2014, p. 82). A critical, human rights-centred criminology will not take the normative claims of governments at face value, but will seek to uncover where the language, and sometimes the practice, of human rights is deployed to sustain global inequalities. For example, Katja Franko (2019) has argued that European governments have sought to maintain an illusory commitment to human rights, while exercising harsh exclusionary controls over those they define as 'crimmigrant others', thereby sustaining global inequalities.

Empirical criminological research holds the promise of grounding otherwise abstract notions of human rights in practice; extending our understanding of the operation of human rights in particular contexts, taking into consideration broader relations of power; and supporting calls for the accountable exercise of power (Marmo and Fishwick 2022). Overall, much of what has been published at the nexus of criminology and human rights could be said to reflect a concern with developing a criminology that works *for* human rights, but not necessarily *through* them. In other words, while legal scholars may focus on the international human rights framework itself as a *process* for achieving change, the focus for critical criminologists is generally on achieving human rights goals as an *outcome*, by revealing the failure of governments and other actors to meet these standards in practice and drawing on a wider range of political, legal and social interventions to ameliorate and prevent them. The knowledge produced by a human rights-centred criminology therefore supplements the focus on legal process often adopted by scholars of international law.

In a previous publication (Weber et al. 2014, p. 3), we invited criminologists to engage more closely and critically with the actual content and practice of human rights and avoid using the term merely as a slogan. This is because, in order to undertake applied research that defends human rights, it is important to have a sound understanding of the substance of international human rights law: ‘To defend human rights, criminologists must be able to sufficiently identify the violations of these rights – by whom and against whom; how and why’ (Schwendinger and Schwendinger 1970, p. 146). Yet, many criminology undergraduate and postgraduate studies worldwide do not offer an adequate education in human rights. And, on the increasing occasions when human rights are invoked in academic writings, this is mostly cursory. This is inadequate to implement—or even critique—human rights concepts and practices in an adaptable and effective way, since they provide key advocacy tools, shared across cognate disciplines and political institutions and processes (Marmo and Fishwick 2022).

Just as there are many approaches to criminological scholarship, there are contrasting perspectives that can be taken to the study of human rights. Dembour (2012) has identified four schools of human rights thinking which she sets out as ‘ideal types’. What she calls the *natural* school takes universal human rights as a ‘given’, embodied in law without the need for further justification, and by definition universal. In contrast, the *deliberative* school of thought is more mindful of the contingent and socially constructed nature of human rights, while recognising the potential to achieve universality in human rights law through consensus building. The *protest* school depicts the contest over human rights in more combative terms, recognising that extant human rights law often falls short of alleviating human suffering and must therefore be a site of perpetual political struggle. Most sceptical of all is the *discursive* school which sees the supposed universality of human rights as a pretence that enables governments and other authorities to couch their actions in human rights language, irrespective of their compliance with human rights law. Dembour describes this position as being ‘nihilistic’ with respect to human rights.

We have previously attempted to map these contrasting perspectives onto the discipline of criminology, noting that individual criminologists or schools of criminological thought might combine elements of more than one (Weber et al. 2014). Broadly speaking, we speculated that more legalistic approaches and perhaps positivist empirical approaches such as crime science, might approximate a *natural* position that applied human rights norms without seeking to problematise them. We proposed that branches of applied criminology that aspire to consensus building such as peacekeeping criminology, transitional and restorative justice might share at least some methodological similarities with the *deliberative* human rights school, drawing on human rights norms and concepts as a *lingua franca* in community deliberations over standard setting. Critical criminologists who are preoccupied with the critique of power in relation to crimes of the powerful, state crimes, colonialism and other systemic forms of discrimination and oppression might feel most at home in the *protest* school, deploying human rights claims as demands for accountability. While Foucauldian, radical feminist, and possibly Marxist scholars might be the most inclined to dismiss human rights norms as merely *discursive* tools, albeit for quite different reasons. Despite these disparities, we concluded that '[h]uman rights frameworks can potentially be accommodated within any criminological approach that eschews empiricism and the purely technical approaches to criminal justice and crime control associated with much of mainstream criminology' (Weber et al. 2014, p. 75).

One fundamental tension that must be acknowledged when seeking to integrate human rights and criminology is the difficulty of squaring human rights concepts with critical structural analysis. As early as 1970, Schwendinger and Schwendinger called for both individuals *and systems* that deny the basic human rights essential for human flourishing to be identified as criminal (cited in Weber et al. 2014, p. 77). However, human rights frameworks on their own are often viewed as too individualistic and too focused on civil and political rights to address the full range of structural harms and inequalities that threaten human flourishing:

Human rights discourse is useful in terms of couching claims as agreed 'social wrongs' (Smart 1989: 143); however, if we want to challenge the wider harms that cause death and suffering, we sometimes need to look beyond the current hierarchy of human rights that elevates individualism and legal responses. Research has to understand local and personal 'troubles' in terms of histories, ideologies, relations and structures at a global level. (Stanley 2011, p. 177)

This is a call for an active engagement with social, economic and cultural rights, alongside the incorporation of structural frameworks, such as counter-colonialism, feminism, critical race theory or anti-capitalism. This follows from our earlier writing on criminology and human rights where we noted that:

Scholars working from radical perspectives often advocate fundamental structural change that goes beyond the enforcement of minimum standards set out in human rights instruments, reject the abstraction and assertions of universalism of orthodox conceptions of human rights, and consider that existing human rights institutions are incapable of delivering on social justice goals in the face of state imperialism and growing corporate power. (Weber et al. 2014, p. 78)

Despite legitimate misgivings about the ability of human rights instruments to address structurally entrenched harms, Murphy and Whitty (2013, p. 574), in an assessment of criminological engagement with human rights conducted a decade ago, noted that at least some strands of critical criminology have recognised rights pragmatically as 'potential tools' for working towards broader social justice goals. Even criminologists who are mindful of the *discursive* potential of human rights to obfuscate state responsibility and legitimate harmful state or corporate practices, may choose not to abandon reference to human rights entirely, but rather to use human rights frameworks as a reference point within broader analyses that integrate multiple critical perspectives to hold governments to account. As Stanley (2011, p. 189) concludes: 'Criminology, therefore, needs to be attentive to the ways in which civil and political human rights approaches, by powerful nations and bodies, can be used as a cover to pursue individual geographic, political, social or economic interests'.

## Rationale for Collection: New Thinking and Future Research Agenda for a Human Rights Centred Criminology

### New Thinking About Criminology and Human Rights

Contributors to this volume display varying dispositions towards human rights that reflect the diverse ‘schools’ of human rights thinking outlined above. Not surprisingly, given their positioning as critical criminologists, a predilection for the more politicised (*protest*) and sceptical (*discursive*) approaches, and often a combination of the two, is readily apparent. As Dembour herself noted, individuals may align themselves strategically—whether consciously or otherwise—with elements of more than one of the ideal types, depending on the purpose of their analysis. We contend that there is no inherent contradiction, for example, in deploying extant human rights norms as an analytical tool to compare with actual criminal justice practice (adopting elements of a *deliberative* or *protest* position viz-a-viz human rights), while also pointing out the state capture of human rights *discourse* to legitimate abusive practices and identifying shortcomings in the construction of the human rights framework itself.

The contributions vary in the extent to which they engage with the specific content of human rights instruments and concepts, but together they span a range of civil, political, social and economic rights from the right to life and personal integrity, to protest, to health and an adequate standard of living, to freedom of identity and expression and the right to be free from arbitrary detention and cruel, inhuman or degrading treatment. This breadth, and the focus on human rights violations arising from structural harms, acknowledges that human beings may experience a ‘continuum of violations’, as was argued by Stanley (2011) more than a decade ago. Because of this breadth of vision, all contributors integrate critical analytical frameworks into their human rights discussions. For some authors, their contribution represents a relatively new engagement with human rights law and concepts, while for others it is the culmination of many years of scholarship at the nexus of criminology and human rights. In each case, their chapters present new and critical



thinking that enriches our understanding of both the value and limits of human rights in real-world contexts, while extending the boundaries of the criminology discipline.

The volume opens with a thought-provoking contribution by Elizabeth Stanley who reflects on the challenges of developing a criminology for human rights, building on her earlier work (Stanley 2011). She opens provocatively with the observation that '[i]t can sometimes be hard to get behind human rights', noting that political, economic and technological structures globally, including institutions charged with managing crime and criminal justice, are organised in ways that actively promote mass human rights abuses. This is facilitated by processes of normalisation and distancing that disguise underlying systems of inequality and sustained by ineffectual accountability mechanisms in systems that affirm the power and primacy of the state. But rather than abandon any engagement with human rights, Stanley sees a crucial role for criminologists—discussed further in the next section—as human rights champions.

In her chapter on 'governing through rights', socio-legal scholar Claire Hamilton notes the ease with which human rights regimes have accommodated authoritarian securitisation measures following the 9/11 terror attacks, while at the same time claiming to 'emancipate and protect often vulnerable lives'. Adopting a Foucauldian lens, she presents two security case studies operating at the international and national level, respectively, in which human rights became a legitimising force to pursue draconian policies in the name of national and global security. Despite this excoriating critique of human rights practice, Hamilton maintains that human rights law cannot be dismissed as entirely ineffectual or as merely a legitimisation device but has also been successfully applied to force some constraints on sweeping security laws in the United Kingdom.

Will Jackson's chapter is a call to radically overhaul policing research, much of which continues to be conducted *with* and *for* police. Jackson charts major milestones in the public exposure of abuses of power by UK police, while noting that relationships between police organisations and mainstream policing researchers have become closer over the same period, often diminishing the critical edge of the research. Jackson argues that human rights focused criminologists should conduct research *on*,