

CRITICAL CRIMINOLOGY IN SOUTH AFRICA: DEVELOPING  
PARADIGMS AND THEORETICAL MODELS.

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"...realism does not view legal constraints as the major bulwark against crime."

- Jock Young and Roger Matthews

Questioning left realism p 4

from Issues in Realist Criminology

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## INTRODUCTION.

The unmasking of apartheid and the unmasking of the state run together in an analysis of the legacy of social engineering. The integration of macro and micro levels of analysis offer a complex challenge to social theorists, and this in conjunction with the demands of analysing a racially divided society undergoing extreme forms of crisis and change, require a sophisticated level of theorizing which is informed by the practical experiences which constitute the social relations of the society.(1) The perspectives that can be offered in the fields of crime, crime control and the social consequences of economic and social interaction cannot be complete without considering the political framework within which the competing demands for power, influence and wealth are taking place. These structures have undergone radical ideological transformations in the recent past, which have been linked to the radical consequences of the end of the 'Cold War' and the apparent era of demilitarising international relations between powerful states . The issues which will cloud the judgements made in the field of Criminology are linked to these broader matters of international relations, and geo-political issues, because the political struggle in South Africa has been utilized in terms of this debate, and the the achievement of the democratic demands has become foreseeable and realistic because of changes taking place at international level.

It is always difficult to deal with cultural and ideological

issues, like apartheid, without falling victim to oversimplification. It is however no exaggeration that the 'vision' of apartheid foresaw the complete and absolute separation of the social and sexual lives of South Africans, where their racial identities had become defined as differing. This involved a particular kind of subordination of people classified as black, in its various modes of racial types. The rhetorical vision of apartheid did not explain how the economic realities of labour and resources, of housing and social justice was going to unfold. The impact of the master-servant culture which can be seen as typifying the colonial and neo-colonial lifestyle has been crucial in shaping the social and political institutions of the South African society. It is also possible to trace how the patterns of political power, social domination and property ownership have contributed to the crisis which is summed up in the word apartheid. Landownership, access to political, educational and business opportunities, cultural and sub-cultural values and social frameworks, all of these factors which create the social reality in which people live, and provide the ideological tools for analysing and understanding the social formation in which one lives, have been implicated in the radical process of racial domination which came to be constitutional mission and social goal. All aspects of state policy came to be subject to this process and the legal, social order, urban planning, educational authorities found themselves in the front row of enforcing the political

demands of a racially defined political minority. That most chose to do so with zeal shows that not only that the state could (at first) easily claim loyalty , but also that many individuals and groups saw in the apartheid policy a solution, a radical but convincing solution to the social and political problems of the country. As time went by, it became clearer that this solution had become a huge problem - made plain by international isolation, trade boycotts and cultural estrangement.

The question which must be asked by criminology should give a response (even if it cannot be an answer) as to the link between crime and apartheid. This not least because apartheid has itself been designated a crime.(2) The question must be asked because if apartheid is criminogenic, and the state had as its goal the implementation of the form of racial domination, then the social practices and cultural values which it had fostered in its educational structures and the ideas and policies of its forces of law and order must be considered as social practices which have made a contribution to the level of social crisis, political violence and added to the figures understood as 'crime'.

The debate concerning the definition of crime may appear esoteric and the response of Mrs Thatcher - " a crime is a crime is a crime" (3) seems to have captured the general mood of popular law and order politics in the western democracies during the 1980's, but such a 'common sense' position (4) [as it would like to project itself] cannot even begin to capture

the nature of the debate in criminology. In fact, it is evidence of the reverse: it seeks to produce an end to the debate around crime, its constituents and the debate around the responses which are appropriate in dealing with social problems and social control.

The claim of the discipline of criminology to academic status lies in its attempt to provide an accurate picture of the issues arising out of the experience of crime, crime control and the nature of the censure which marks the point at which social disapproval becomes an issue where the state is understood to have a duty to intervene. This discipline has however been understood as the body of knowledge prescribing how best to subdue the recalcitrant and silence voices of dissent: How to achieve the aims of the criminal justice system, without questioning the goals of that system, and place into question the ideas, values and ideologies which are embodied by the organs and institutions of the state.

For a criminologist to document the nature and theory of state is a risky path, because it appears to lead away from the certainties of crime statistics, the search for the mythical 'cause' of crime and perhaps the approval of funding bodies who need practical results. The criminological enterprise has been bound up with theories of positivism and science, and the tenuous link (or at least philosophically debatable connection) between social reality and scientific knowledge has been left out of discussion. The existence of a

paradigm of knowledge does not guarantee the certainty of its findings and the validity of its suppositions. To understand the process of knowledge it is necessary to go outside the confines of the science itself and look at how it changes in response to its context, under which circumstances and following which ideals did the discipline develop. The role of a discipline in its society also raises the question of its accountability. The authority and validity of knowledge are linked to the institutions and social practices which support those who engage in the research, and the mechanisms of recognition for the ideas and values, which constitute the intellectual force of the work are as important in explaining the epistemology of a science as the object of knowledge itself.

It is not possible to address issues of epistemology and philosophy comprehensively in this paper, because even covering a fragment of each of these fields can be a life time's work. The existence and operation of a criminal justice system, and the reality of social control through education, policing and the fact of imprisonment, all of which are the ideological and practical mechanisms which define and manage society, all demand that as much care as possible is taken in developing a body of knowledge which describes, assesses and gives direction to these structures and functions which operate in social formations. To the extent that normative questions need to be answered, the

philosophies and structures of knowledge which construct and maintain the functions of social control, must be placed under scrutiny. Every person in society is affected by law and by the state formation in which they find themselves. The role of the criminal law and the dichotomy of guilty-innocent which with it operates are aspects of the complex cultural and social forces which make up society. The extent to which the taints of conviction and imprisonment are woven into the fabric of social norms and are part of the complex process of discipline and socialisation are often understood to be an indication of the extent to which the law answers the needs and aspirations of members of a community. This is not a simple equation, for one of the most important elements of the modern state lies in the extent which it guarantees the privilege of individuals to assert their needs and expectation against the public morality without falling victim to sanction, and allows these freedoms to be enshrined as "rights", which can be asserted with full legal protection of the state. Of course, the reality of pursuing a lifestyle against the grain of popular values, even in societies which are understood to have a tradition of individual rights, may be very different from the idealised version of legal textbooks. South Africa is not one of these societies, and the political and legal discourses consist of ethnic identities. racial domination, inequality and group concerns. The identity of these groups are intensely

controversial, and had been the focus of extensive state resources and political ideology - all employed within a strict understanding of the hierarchy of white superiority. These social factors and political decisions by governments of the past all bear consequences, many of which are considered causes of political violence in the country. Since it is impossible to separate political violence from ordinary and supposedly criminal violence, at the geographical reality of its occurrence, these elements of social policy and the combination of its consequences seem to offer a deeply engrained, and relentless violence in the social body. The concepts of right and wrong, wicked and just, the world of ideas in which the social and political world is expressed seems to be so bound up with the struggles for identity and power, that the task of separating the political struggle from the destructive violence which has been generated by forces in the society appears to be a lost cause. The traditional notion that the state should act in defence of individual rights is compromised (hopelessly, if one assumes a pessimistic stance) by the fact that the state acted against the individuals rights of many of its citizens for many years. Trust is one of the things that cannot be commanded, but must be freely given. For a criminology perspective which chooses to ignore the conditions of distrust and the legislated discrimination of the past, as well as the vast economic differences which are in part the consequences of the government policies of the past, the

answer to crime may seem much easier or clear than the one offered by this analysis. But such clarity would be closer to blindness than to a realistic position on crime.

Just as a definitive statement on the nature of knowledge will elude philosophers, the participants in the social world will have to make do with preliminary understanding of their lives, of their civic duties and of the moral-legal compulsions which they must respond to. Although it is possible to point out acts which seem to be universally considered as unacceptable, many aspects of the criminal law deals with issues that are not clearcut at all. The fact that there are competing values, and disagreements on the importance of moral philosophies, make the framing of the criminal law very difficult - the real moral dilemmas are compounded by the fact a legal order must (in order to correspond to demand of "legality") be able to frame its demands prior to the events, and that these texts are subject to interpretation, through institutions which have been invested with this power of interpretation by the legal and state structure. Law is therefore not as certain nor as clear as many of the "common sense" philosophies would have one believe.

What is called crime is in fact a compromise on the boundaries of social, political and economic life, and seeks to delimit the point at which an activity or an act, or the

consequences of them need to fall within the control of the state apparatus to achieve the socially acceptable norms. It is further to be noted that this is an imaginary boundary, because it is simply not feasible that all such acts or consequences can really fall within the ambit of the state apparatus. Enforcing conduct and standards of behaviour does not depend on the operation of the criminal justice system, but only on its interaction with the other norms of conduct and the potential threat of public disgrace which a conviction will bring. This position implies that there is no simple definition of deviance and certainly no law-and-order campaign is feasible which can deliver on its promise to 'solve the crime problem'.

This paper will argue for a destructuring and questioning role for criminology, because as a body of knowledge it should not play a role subservient to **status quo** demands and a blindly supportive function to the interests of central government.

Gouldner, in his introduction to the key work, *Critical Criminology* of Taylor, Walton and Young, acknowledged the vulnerability of social scientists to pressures, because they are 'exposed' to the 'failures' of the state, its agencies and reformist policies in coping with social problems.(5) His own position has been summed up as :

"Gouldner was committed to rescuing the rational and

liberative kernel of applied social science " (6)

This places the focus of research on the potential for radical transformation. For Gordon, Scraton and Sim (7) is is "...to think beyond reform to the very organisation, indeed reorganisation, of society itself."

In the case of South Africa, where the social conditions are in a state no less serious than crisis, and the demand for a fundamental change are widespread and urgent, the social theorist working in the field of criminology has to draw on sources which will enable him or her to theorize the extent of the crisis and write contributions which will structure the debate for change.

As an example of this kind of re-thinking, Gordon, Scraton and Sim hold up a summary by Thomas Mathiesen:

"We need visions of how society could be alternatively structured. Such visions are part of what sociologists might contribute to political movements, although few sociologists have recently made such contributions. We need ideas of how human relationships might be alternatively organized so that conflicts are resolved in new and socially acceptable ways. In short, we need images of society or structures within society, formulated as ideologies in a positive sense of that word, to work for. To me, a most important part of such a vision must necessarily be that of developing the conditions fostering and nurturing anti-authoritarian

features of human relationships. It will therefore be essential to provide maximum support for the anti-authoritarian components, find where they are today, develop the conditions for strengthening them further and provide support for giving them hegemony." (8)

In the past decade there have been apparently dramatic changes in the world of global and macro politics, and the pressures for transformation of the South African social and political conditions reflect these changes, but the role of the state is only partially to be read from the international context. The impact of and mediation of the struggles within a society make up the forces which shape, deflect, resist and succumb to the state. This paper works within a framework which holds that knowledge of a society and the state formation cannot be an innocent knowledge. Following from this that the task of understanding a social formation and the operation of its constituent processes requires an openness to challenges to be made against the common sense assumptions. These often hide an enormous ideological baggage, and it is not surprising that the new Right, the darlings of power in the West during the eighties ( which certainly had their impact on the dramatic changes in Eastern Europe, which in turn had political consequences for Africa as the cold war thawed) employs concepts at this level. The inevitability and 'natural' course of events, the way things are, is rationalized, justified and often this must be

scrutinised for the legitimation which it seeks to accord to the distribution of power and control of a status quo.

All attempts to state definitively what society really is all about, will fail from its partiality, but there are basic assumptions which crucially direct the nature and form of analysis, and this study considers the proposition that conflict lies at the basis of society as one of its directing theoretical assumptions. This cannot be proved or disproved, but where theory and practice points to the validity of this position, it will be utilised. Knowledge not only cannot be innocent, but is not value free. The theoretical structure will consider the limitations of a position which asserts that neutrality and objectivity are ends in themselves, and question the applicability of positivist scientific methodology in criminology.

There are a myriad ways in which crime and criminology can be approached, ranging from tabloid sensationalism and its sustaining reactionary law-and-order position all the way through to highly abstract theoretical models, drawing on the dialectic. The level at which one enters the debate will show a political commitment and involve a theoretical and moral position. Debates around which form of knowledge is true, or the most moral or produces the most good or utility normally involves the stating of positions, and is seldom worthy of the title debate. Entering the discussion in a

form which draws from the basis of critical theory seems appropriate, because at least in its stated intention, the link between practice and theory is a focal issue: For criminology, as a critical enterprise, one of the fundamental contributions have been the *The New Criminology* of 1973, edited by Taylor, Walton and Young. Although many of its aims and claims have subsequently been challenged or discarded, even by its authors, it is generally accepted to mark a decisive shift in British criminology. In his introduction, Gouldner framed the intent in these terms:

"What becomes increasingly necessary is a theoretical position that accepts the reality of deviance, that has the capacity to explore the *Lebenswelt*, without becoming the technicians of the Welfare State and its zoo keepers of deviance... that can rescue the liberative dimension in both Marxism and Meadianism .... [that] works towards a larger theoretical construction without patronizing the concrete and smaller worlds without using them simply as 'examples' or 'points of departure'." (9)

For Sim, Scraton and Gordon,(10) this approach must be understood as a move towards critical analysis which takes into account for its explanations of social issues, the nature and role of advanced capitalist exploitation, but in the attempt to draw on the legacy of Marx, the extremely complex debate around the acceptance of the marxian legacy is

sparked off. Hirst attacked the notion that crime as such can be understood in terms of Marxist analysis,(11) and what Gouldner was calling for was not the wholesale locking into Marxist theory of Criminology as a discipline, but linking the insights of interactionism with the advances made in understanding society in terms of its division of labour, wealth and employment opportunities, which is a focal point of the process of socialisation and that of government. Further, in the specific case of South Africa, it is important for an effective criminology, to consider the impact of the history of colonial conquest and imperialist expansion. Even where research cannot delve into theory of history, it is important to consider that the present patterns of ownership, of population distribution, the nature housing and urbanisation, and the cultural values through which people make sense of their lives are the consequences of the historical processes, and that the economic forces which have shaped the migration of labour must be considered in a society where the social dislocation and localised institutions and patterns of power are part of the web of apartheid urban development, and where these aspects of urban development have come to play a decisive role in the patterns of crime, violence and political struggle.

For a critical criminology, the role of the state, and the major impact of economic development and decline must be added to the considerations of the individual and families

who make ideological responses to their social conditions, and whose actions may become defined as crime by the operation of the state apparatus. Many may lose their lives in the political turmoil which has become one of the fundamental characteristics of the apartheid-sourced social formation. The role of the state in the maintenance of order is particularly controversial, because it is not possible to talk about the state as being a single entity of power, but rather a collection of institutions and organisational cultures which operate with differing agendas. According to newspaper and opposition reports, it has split into factions, some of which act secretly and apparently outside the legal framework of government, or even the effective control of the government.(11) South African criminologists cannot simply adopt the debate around the masked malevolence of the welfare state, because the social formation which we are attempting to describe is characterised by a destructive secrecy, undemocratic and racist power structures and the potential of a violent civil war.

#### CHAPTER 1 THEORY: LANGUAGE FOR THE SOCIAL CONTEXT.

The focus of political and social action during the three decades of the South African republic was on the struggle for control of the government. The role of government, the goals of the state apparatus and the ideological driving forces of the settler culture became defined in a sense of **Total War**, a response to the **Total Onslaught**, the nefarious threat from

forces which were identified as communist. The first decade after the apartheid state had achieved the dearly held aim of an independent republic for whites/ boers and this period can be seen as a triumphant era: The political demands of the black majority, voiced through the ANC and PAC had been silenced through banning and criminal legal action against the leaders. The liberation struggle had been effectively suppressed in the sixties, and the country was about to go through a period of succesful and high economic growth.(13) This apparent victory for white South Africa in its quest for seperation and racial exclusivity - starting hierarchically with white government, through housing, education, health, transport all the way down to seperate public amenities (written into the law) was understood as a vast programme of social engineering and involved the deployment of all the professional knowledge at the disposal of the government, Political theorists, moral philosophers, lawyers, even criminologists explained their field of study in terms of racial differences, and given the meticulous obsession with which all South Africans were classified into racial categories, it is still dificult to write about South Africa without being forced to use these racial categories. Where one would prefer not to get involved in such practices, it is usually found that the social consequences of the classification is of such an extensive nature that in merely accurately describing how people live, where they live and what skills and opportunities they have, one is already

writing in the shadow of the racial classification. Where the attitudes of people are assessed, any qualitative methodology can be expected to show that racial stereotypes and perceived differences are common cultural currency.

The tradition of liberal values, and the jurisprudence of equality, with its values of habeas corpus and freedom of speech never had a strong foothold in South Africa, and the period of intensifying repression during the nineteen sixties brought to an end any perceived vestiges of this tradition. The history of this period and the consequences of the ambitions of the apartheid visionaries has brought a painful and enduring legacy, and one of the compelling reasons to bring an effective critical theory to bear on analysing these conditions, stems from the need not only to understand the impact of social policy on a social formation, but also to give effective structure to the methods of questioning, to enable the body of knowledge to give an accurate description of the conditions in a society, as well as giving it the potential of asking probing questions which will clarify the reality of the past and allow a restructuring of the present.

The extent to which it is possible or desirable for social scientists to express the needs of a community, or sections of a social formation leads directly to the debate around value free science, objectivity and neutrality. It is important to stress at this point that this paper cannot

offer anything like a solution to this enduring debate, since it is located at the heart of the philosophical struggle to make sense of the world and ourselves. It spans the fields of epistemology, ontology, up to and including the meaning of life. These broad questions tend however to be ignored by pragmatists and those who see their task as running the criminal justice system efficiently. The questions around the role of the subject, the manner of existence and the impact of alienation and the circulation of commodities may seem little more than esoteric indulgence. Despite this pressure of organisational bureaucracy, and the problems of underfunding and understaffing which can be seen in most crime justice systems, it is not possible to escape the consequences which a prosecution or conviction has on the individual accused, his or her family and the social formation in which both the accused and the victim live. It is never possible to take into account all perspectives, or even wise to try, but the rôle of criminology should be to theorize the possibility and difficulties of balancing the various interests and needs arising from the issue of social control. A critical theory will attempt to elicit answers to the question of power. The role of the state is a contested one, and the power of the government is the focus of intense rivalry, particularly in a society which has not yet succeeded in establishing legitimate democratic structures. A critical criminology must consider who benefits from the operation of the criminal justice-system, and question the

philosophies and values, and ideological goals of the debate around crime.

This line of argument suggests that it is possible to expose a level of partisanship within the theory and the practice of criminal justice, which goes against the grain of a neutral, fact finding, value free social science. In the matters of knowledge, it is important to be open to persuasion, and the goal of this paper is to reassess aspects of the social theory tradition in order to reflect on the role of criminology in South Africa. This is important, because the history of colonialism, the decades of white supremacy, and its descent into the myth of total onslaught-total war and the difficulties of creating a really new South Africa pose intense challenges to the integrity and operation of the social sciences. At this point, witnessing the slow end of apartheid and the protracted and painful birth of a different, and hopefully better society, the theorists of social control and deviance, and the criminal justice system must offer clarity and perception which can contribute to positive changes. In a climate of violence, suspicion, and clamour for power, voices of reason are crucial in directing the debate.

The turmoil in the townships, from which the white and middle classes are shielded because of the apartheid geography, is at the basis of some of the fear of South

African parliamentary voters. It is ironic that one of the real consequences of the apartheid vision, is that the 'invisibility' of black urban and rural life leave the white minority governing class uninformed as to the real nature of the problems which the country is facing.

Governing is more than just control, it is based on a form of administrative knowledge. The complete division with which South Africans have grown up, has created an experience of different realities for white and black, oppressor and oppressed. The suppression of black and democratic dissent in the sixties created the conditions in which a much more militant political struggle for rights and democratic power came to dominate the social agenda. The militarized response of the state to open challenges to its racially circumscribed power base, as justified through successive states of emergency, added a sense real war to the inflated rhetoric of total war-total onslaught. The dichotomy legal - illegal which forms such a fundamental part of the criminal law discourse, has played a formative role in the proscribing of people in the country of their birth, through the Land Act of 1913 and the Urban Areas Act of 1945, with their various amendments and insertion into the homeland policy. The result of this process of declaring black people illegal entrants on the basis of skin colour, and the administrative and legal procedures which processed millions of people on the basis of these classifications (14) was to entrench the ideas of racially exclusive neighbourhoods within

the discourse of criminal law, turning people into criminals purely on the basis of the colour of their skin. Further evidence of the failure of the liberal tradition lies in the fact that the Urban Areas act shifted the burden of proof on to the accused - where a black person was questioned, it was up to them to prove to the authorities that they had not been in the proscribed area for longer than 72 hours, or that they had acquired the rights to be there according to the act - section 10 rights.(15) These specifically criminal law aspects of population control had been replaced during the era of limited reform under Botha, but the question must arise of what damage was inflicted on the operation of the law, and to what extent the failure to see justice being done has contributed to the erosion of respect for the operation of the law.

For a theoretical model to describe the reality of a social formation, or engage in the debate around the questions of the nature of the reality which people know, it has to offer descriptive tools and explore the concepts which can be used. It is generally unpopular to suggest that life and society consists of competing and conflicting perceptions and impressions, which can ultimately not be reconciled. Opposition to philosophical positions which seek to explore or to celebrate such a plurality are attacked from all sides of the political spectrum - materialists, and dialecticians who seek to ground their analysis of society in the certainty

of the processes of economic exploitation and the reality of the lived experiences of oppressed people, see a risk in the suggestion of an insoluble competition for meaning and power: Although such a perspective can be utilized to oppose the certainties of those who wield power in society, it is argued that such a position does not enable one to develop a interlinked theory and praxis which can successfully strive for the liberation which many people seek in radical social theory.

The factions declared as right wing, and particularly the New Right with its Thatcher style rhetoric of free markets and choice, where there is no 'society' and the government cannot intervene, utilises the ideology of common sense, and has been analysed as being opposed plurality. This involves explaining that the concept of 'choice' is an illusion, and the in the operation of market principles it actually reduces the quality of choice available to people. At the same time the New Right has also been identified with the Victorian values of family, family responsibility and responsible individuals who accept the roles offered by this stabilising structure. The certainties offered by this ideology seem to have little in common with the practice of the market, and where one gathers the full picture of Victorian England(whether from social history or the pages of Dickens), the stability of the family was certainly not one of the concerns of the *laissez-faire* marketeers. The South African case is not easily defineable in terms of

this debate, because although aspects of state policy have adopted the notions of free enterprise, and the privatising of the the state industries and semi-state services, the tradition of intervention lies at the heart of the South Africa state and its history. The analysis of how the labour market and the social conditions have been affected by the ideas and practices of privatisation, as practised by the South African government is only peripheral to this paper, although very important, because at the hand of this process it should be possible to trace how ideas and ideologies are transplanted, and how the notions of government and state are linked on an international basis.

It is also possible that this process may well be part of a political response to the impending end of the interventionist apartheid state, and that the government may be attempting to change the nature of government before it compromises with a perceived radical majority. The extent to which the debate involving notions of social control and crime is affected by the policies and goals of a government, is another debate in itself. The task of a critical theory is to enable people to read behind the lines, and to assess the political demands of the formations competing for power.

There are many examples of how the politics of apartheid were the politics of euphemism, (16) and a healthy scepticism in approaching the output of government departments, social control agencies and political bodies will enable researchers to remain aware of the role of language in covering up and

creating diversions. Where one is questioning the form and meaning of social actions in a society, and probing the meaning of the society itself, taking into account what the spokespersons and individuals say about their society and institutions and themselves. How much autonomy one ascribes to language and the role it plays as mediator between people and the world they live in, is one of the many assumptions made about the nature of reality. Precepts of culture, ideas and all the words through which people attempt to encompass the world they live in, conform to some degree to the demands of linguistical performance and the shared values and forms which make a language. Where the tenets of a social theory points towards a process of conflict at the basis of society, rather than cooperation and agreement, this must be considered in the light of the essential consensus which much exist within languages to allow a practical level of semantic interaction to take place between people.

It is submitted that language is a forum for intense struggle: struggle for meaning, as well as struggle for ideological privilege and, ultimately ideological control. The role of quasi-euphism in apartheid language is worthy of its own study, but one example of the ideological usage of language is the concept of democracy. Many of the privileged white community, considered by some to be a form of oligarchy (17), have accepted the idea that their rule is in fact a democracy. This usage of the concept democracy is one

of the key constitutional and legal ideas employed in the vision of separate development, and has played a part in bolstering the the intransigence of the voting population in regard to serious political reform.

According to the novelist Damon Galgut, language is distorted in South Africa, in the interests of power and the level reached is the "nearly total devaluation of language." (18) Before it is possible to fully assent to Galgut's concept of the devaluation of language, it is necessary to consider whether languages have an existence of their own, and an essential form which can be corrupted by the exercise of power and the experience of being utilised in communities where the fabrication of consent had become clearly linked to the use of force in suppressing ideas, political strategies and people.

Even where one is loath to extend to language this possibility of a 'purer' existence, the South African political and legal discourses are known for their forms of new-speak and oppressive mechanisms.

The concern of critical theory to lay claim to democratic credentials can be considered part of the reaction to the stance of objectivity and neutrality, which in effect denies its biases and fails to question the gap between state rhetoric and social reality. A new criminology which speaks the language of the government, the state or uses the

discourse of law-and-order, without creating the possibility for questions to be asked concerning the quality of the government, the form of the state or the nature of the order imposed by law, is asserting the legitimacy of the structures without investigation. Truth and justice are not a foregone conclusion where the exercise of state power is concerned - the process of government is a struggle for values and power which produces acceptable results only where the mechanisms of the political order can embody the will of the people. There is no easy, or uncontroversial way in which to assess whether an intention of the body politic has been expressed, and for that reason political and social life involve the continuous discussion and reflection on the rules of its discourse. Where the government expends its energies stifling and controlling debate, the public debate can reach a level of unreality, and in this sense one experiences the 'devaluation of language', explored by Galgut. Many readers will experience a sense of alienation when coming across the views of Dippenaar, in his 1988 book on the South African police: "The Government of the Republic which had been democratically elected by the inhabitants of the country, decided to stand by its decision [regarding the declared national state of emergency] despite the fact that this would inevitably lead to international isolation, a weakened economy and the inevitable car bomb attacks. The SA Police understood and supported the

views of the Government." (19)

The opinion that South Africa had a democratic government, whether genuinely held or expressed as part of an obfuscatory ideology, operates as a framework in which the immense powers allowed by the declared state of emergency (20) can be justified, and in which the political and economic consequences of the racist policies and repressive social control can be reinterpreted as unreasonable consequences following on from opposition to the just legal order of the South African republic.

One of the few things on which people agree, is that South Africa is going through a period of crisis, but the agreement breaks down even as to the nature of this crisis. The ruling party and its government apparatus are not threatened by overthrow, but the political responses of legalized repression so successful in the early sixties and seventies were challenged by the civil disturbances of 1976, and the growing disputes in the body of labour. The protest which became widespread in the early eighties and engulfed the country by 1985 made it clear to analysts that the status quo could not continue. The policy of repression, under which movements like the African National Congress and the Pan Africanist Congress were banned, could not ensure the stability of the country, and the outrage against the racial discrimination and other state practices marked every feature of South African life during the period of the eighties. This was in part remarkable, because the government under

President Botha had adopted the slogan "adapt or die". In many ways it seemed that the tri-cameral parliament which accompanied this apparent policy of change only succeeded in focusing the anger and directing the protest movements.

The resounding rejection of this reform which, although it extended the right to vote, also elevated racial discrimination from the law into a cornerstone of the constitutional mechanism, took the form of a widespread rebellion and thrust the resistance struggle on to the top of the agenda. The consciousness of the demands of a democracy spread, and the political action ranging from consumer boycotts to open violence against state targets changed the lives of South Africans. The impact of what took the form of a nascent civil war, on the lives of people, can also be read from the experience of crime - this ranging from the efforts of the state to criminalize political activities, and the extreme inroads made on the remaining civil liberties through the states of emergency. (through the vestiges of the 1960 emergency powers which became law, and the new emergency powers under the PSA) and the disorder resulting from the social reaction to the widespread use of force and detention without trial. The forces which in any society fuel the activities labelled as crime (ordinary, as opposed to the actions which are blessed with the tag "unrest" in South Africa speak) also seemed to have benefitted from the social

discord, and the crime figures showed an alarming increase. It is no exaggeration to talk about a climate of fear, and although one has to make allowances for differing experiences and different kinds of fears depending on the neighbourhood, (21) the levels of house breaking, assault, armed robbery, murder and politically inspired deaths [assassinations and mob killings (22)] have reached endemic heights. (23) To theorize these issues pose a specific problem for critical criminology, because in the form of its original framers (The New Criminology, 1973) (24) the focus was largely, if not exclusively on the economic and state structural forces which shaped the potential for criminality, and only in later contributions, which this paper will turn to, (25) did the focus extend to include the attempt to deal with the experiences of the victims of crime, and those who live in fear of becoming victims. According to the judge who chairs the South African Law Commission, " ... a human rights tragedy is taking place in our country. A flood of carnage, violence, corruption and dishonesty washes over us and it seems the maintenance of law and order has collapsed. Seemingly, at the end of the process of liberation, daily violations of citizens' rights by other citizens are making a mockery of human rights idealism." (26)

The search for the 'cause' of crime is a perennial one, but as versions of criminology point out, this is a misplaced

endeavour if one is setting out to find the prime moving factor, and then prescribe a cure. Crime does not consist of a behaviour or an action which can so readily be circumscribed and solved, and the failure of the type of criminology which aims to do so is obvious: What ever causes have been identified and addressed, crime is with us, and in countries of widely differing levels of economic distribution it appears to be higher than in countries with a different social profile. This last observation does not mean that the causes of crime are then only to be found in economic inequality, but it is pertinent to note that those who suggest no link between economic opportunity and crime (who would seek to locate the source of wrongdoing within the freely choosing individual ) have also not been able to disprove the possibility of a connection between poverty and crime.

The divisions within South African society, no matter in which form one may choose to describe them, are deep: Those who operate at the level of tribe, culture or race, will consider this obvious, and for an analysis which works with the ideological certainties of ethnicity, the level of violence of the politicised struggle of the eighties and the ever increasing death toll of the vigilante actions and political turmoil of the early years of the nineties can be explained in terms of the incompatibility of different groups. Such an approach is a central part of the baggage

of apartheid, and the political discourse in which ethnicity has been reified to an absurd level serves so little explanatory purpose that it cannot operate as an effective theoretical model. This does not mean that the empirical evidence of social actions expressing terms of ethnicity and culture can be ignored. The persistence of ethnic struggles, communal violence and the wars of nationalist expansion in so many societies show that these destructive realities are in need of explanation which go beyond the mere assertion of tribal differences. The analyses which find in the forms of ethnic identities an already formed explanation of social actions, are in fact asserting that there are no ideological factors which would utilise, or even reinvent concepts of belonging. Taking appearances, which are deeply embedded in economic structures, linked to political forces shaped by historical experiences, which are all communicated through forms of language to the psychological reality of individuals, at face value, is assuming that this value is the only possible meaning that can be attached to culture and lives.

Those who hold that a crime is a crime ( and that things are always getting worse) are often portrayed as the voice of public opinion, and common sense, but it is in fact nonsensical to deal with such a tautology: There are always reasons behind actions, and complex webs of relations which motivate actions. To hold that tribal identity and social actions need not be explained in terms of the broader social

forces which they represent, is to say that everything which is not immediately open to perception cannot be relevant and therefore is of no consequence. This is the very opposite of a sceptical and enquiring position. The questions raised by a critical theory is likely to challenge comfortable positions endorsed by lay discourses on crime, and the positions challenged by a critical criminology are those which condone present practices and support the values which emphasize the administration and bureaucracy above the needs of the individuals processed by the criminal justice system, and the communities from which they come.

## CHAPTER 2 THE DISCOURSE OF CRIMINOLOGY.

The extent to which criminology can assert its professional discourse and insist on the status of a profession are both matters of debate, which is linked to the same problem which Hirst (27) found in the attempt of the New Criminology to claim a Marxist sourced analytical model: The concepts of crime, deviance, social control are descriptions which cover such a wide ranging level of activities and attitudes that it is too early to claim agreement on the standards of practice and the the methodological frameworks cannot offer data which is compatible with and equivalent to other professional discourses. For Hirst, these categories did not conform to the rigours of a scientific Marxist analysis. The status of criminology within the social sciences has not reached the level of integration of its practitioners which will allow the kind of professional control which other discourses have

achieved at the level of 'clinical' practice. This question of the professional status of practitioners of criminology is not the focus of this paper, but to the extent that the questions around the scientific status of a critical theory is discussed, and the debate between a self consciously critical criminology and a the more traditional positivist stance of main stream criminology becomes an issue, the conclusions will aim at addressing some of the epistemological criteria of a theory of criminology, and the relation of this theory to the practice of the discipline. The status which criminological opinions can claim to have is more likely to be shaped by a debate with the clinical social sciences and the level of acceptance which these opinions find in the legal system. It is to be hoped that a discussion of a critical theory can contribute to this.

There is however no monolithic position of any kind within social science discourses, and disciplines often consist of the debates and personalities of the disagreements of matters of theory. The operation of the criminal justice system is subject to demands of bureaucracy, central administration, no doubt even political pressure, all of which must be mediated through the application of legal doctrines and the interpretation of acts and statutes in terms of these doctrines. In this cauldron of opinion and intellectual endeavour, criminology operates as a player, and it is caught between staying within the framework and categories of the

criminal law, and achieving a hearing through the compatibility that this form of the discipline offers, or of branching out and staking its claim as an independent discipline, working in an inter-disciplinary forum with a conceptual framework which is independent of law and sourced in social theory and political economy. The demands of a critical theory which aims to be more open about the values which it supports and opposes the visage of neutrality which is often employed very successfully by other disciplines and professional discourses, need to be very clearly developed and explained. The call for accountability within an academic context always runs the risk of becoming partisan or of being utilised in a partisan and political way. The concept of academic pursuit, and the role of social scientific disciplines are to be of utility to the society in which they operate, but knowledge is already at the call of powerful lobbies and forces and a committed social theory which takes accountability as one of its important social strands cannot be structurally tied to political movements without losing an element of its academic aura. Both this quality of an academic aura, as well as the role of social theoretical knowledge in the establishment of professions and professional bodies need to be carefully evaluated, because while intellectuals may scrutinise the world and its social relations, they themselves are important players in the field of social relations. The resources which they demand, and the value attached to their work and influence show the

importance which societies attach to knowledge. The growing influence of the New Right, and the legacy of their thought which is likely to remain long after they have become part of the 'old right' is a rethinking of public funding of crucial aspects of social life. The notion of 'public' is under pressure, especially where the state is expected to fund this. Universities have found it more and more difficult in the 1980's to maintain the level of state funding of earlier ideologies, both in Britain and South Africa. The question of accountability of a discipline raises interesting problems in the field of criminology, because not only does it cover a field of social activity which is extensively covered in popular discourses, but also every single individual has his or her own discourse concerning crime and what ought to be done about it. There is a possibility of an estrangement between the sentiments of the public (although it must be said that an investigation into how this popular discourse is settled is also an important method of investigating the operation of ideology) and the work and opinion of criminologists. This was certainly the case with the radical theories which marked the study of critical criminology. Critical theory itself has a much older tradition and to build up a profile of what a critical criminology can be under present circumstances it is necessary to investigate both these traditions. The relationship of criminology with law, one from which it may strive to escape, but always seem to return to, places the discipline in contact with a

tradition of social thought and social theory which still bears the fingerprints of the Enlightenment. This tradition which holds the individual responsible for the acts he had willed shows how the vision of Man (as he was then ) held by the influential figures in a society become fixed in the social and political relations of the social formation, and how these ideas can retain influence as long as bodies of professional knowledge and the structures which they staff maintain the tradition. Thus, full knowledge, equality and responsibility are brought to bear on the guilty individual. The demands of later theories which conflicted with this construction of personhood has had an effect, and ideas which mediate the absolutist position of the individual in law has come into play, creating the space for mitigation and consideration of social circumstances. The role of criminology, sourced in social theory, can be to trace the intellectual and social origins of the conceptual baggage which makes up many of our perceptions of the world of deviance and social control, and in this way deliver an explanation of law and society.

In an influential study, Hall (28) makes the point that:

"The obvious but frequently neglected point is that crime is differently defined (in both official and lay ideologies) at different periods and this reflects not only the changing attitudes amongst different sectors of the population, as well as real historical changes

in the social organization of criminal activity but also a shifting application of the category itself, but the governing classes to different groups and activities in the course of, - and sometimes for the purpose of providing the ground for - the exercise of legal restraint and political control."

When describing a theory which encompasses a wider ambit than the bureaucratic-legal aspects of criminology, the construction of models of society cannot simply be drawn from abstraction - the adequacy of a theory is related to the efficacy of its methodologies and the extent to which it is convincing as an expression of 'truth', although this in itself is one of the most problematic features of social science.

To show that crime and social action are linked to political ideologies and economic factors, which is something that critical theory postulates, it is essential that research projects are based in empirical work, without however raising the requirement of empiricism as a cover to silence questions around theory. Traditional Marxist theory has privileged certain classes (defined in terms of the structural relation between capital and labour) and ascribed progressive values and transformative cultural values to the members of these classes. In some forms, now considered 'reductionist' in many circles, these classes were the bearers of progressive values

and were the voluntarist actors which would set into motion the inevitable and fixed advance of history through the scientifically predictable phases which would then culminate in the end of pre-history and the origin of true history. (29)

In retrospect these and other hypothesis of dialectical materialism seem hopelessly incorrect, and particularly at the beginning of the 1990's when the states of Eastern Europe proclaiming 'real existierende Sozialismus' had been transformed through popular protest and direct political action. It is interesting to note the opinion of Habermas, expressed prior to the political challenge which transformed these states: "...er [Max Weber] hat mit seiner Prognose dass die Abschaffung des Privatkapitalismus keineswegs ein Zerbrechen des stählernen Gehäuses der modernen gewerblichen Arbeit bedeutet würde, recht behalten. Im 'real existierende Sozialismus' hat der Versuch, die Bürgerliche in die politische Gesellschaft aufzulösen, tatsächlich nur deren Bürokratisierung zur Folge gehabt, er hat den ökonomischen Zwang zu einer alle Lebensbereiche durchdringenden administrativen Kontrolle nur erweitert." (30)

It has often been stressed that there was little in common between the East European states, and the Soviet Union state form, and the goals of Marxism, but the demise of the Communist parties in the countries where they had access to

state power has become part of the complex history of ideas which has shaped much of the past one and a half century of debate in social theory.

The curious twist in the story is that the South African Communist party was 'unbanned' at the same time as the Russia government declared illegal the Soviet Communist party. It will be for historians to write an definitive account of this period of change, but the development of critical and Marxist sourced social theory had parted ways with the official Communist parties a long time ago, and it is submitted that these geo-political changes will only affect social theoretical models in an indirect manner.

The sweeping changes in Eastern Europe had been interpreted by some commentators as a 'victory' for capitalism and an end not only to ideology but even to social theory.(31) This position still needs more evidence, and particularly the evidence of time to show its accuracy. A book on the History of Communism, assesses the future of the doctrine in the following terms:

"One thing however is certain: wherever there is perceived injustice, oppression, exploitation and abuse of power there will still be a need for an organisation of political protest armed with an emotionally reassuring set of action-based theories." (32)

It has been suggested that this period of history was the achievement of an economic liberalism, but in the South African context the perspective is very different. These

macro-political changes and the end of the cold war have certainly played an immense part in breaking the deadlock between the Nationalist government and the African National Congress.

These forces at work and their political consequences will change the nature of the apartheid society, even if it is too early at this stage to describe what it will produce. This transformation will make new demands on social theory, and position on crime and the role of the state will have to be developed to keep pace with the society. The role of a critical criminology includes addressing the demands of theoretical clarity. The feeling that one can never achieve more than a provisional understanding of theoretical questions appears to be at odds with the certainty that people have come to expect of a scientific discourse, but for a theoretical model in which questioning the assumptions of itself is paramount, the issue of projecting certainty onto a field of study, rather than finding it there must be of concern. The same scepticism must be applied to the methodology and results of research done in this tradition. This is not to devalue the contribution of critical theory, but in fact the opposite - only where the methods and aims of research are continually under review can results be delivered which corresponds to high standards. The conflict between positivism, hermeneutics, idealism and historical materialism is only easily explained at a superficial level. The changes and developments within traditions of theory take

place in response to many factors and in terms of the discourses and insights available to those debating the topics within their societies. The tension between holistic and particularistic theories are replayed within the theoretical models: linking the general with the particular has implications for both, and the validity of a theory depends on whether these different levels can be related to each other in fashion convincing to those who pronounce on the validity of theories.

This last aspect forms a separate and intense debate within the scientific world, and the criteria for social science and natural sciences differ, but with no final answer given on which requirements are necessary for either. The nature of the relation between the evidence, the object of study and how this produces the conclusion forms part of this debate. Relativism is normally used as a pejorative within research communities, but the attempts to describe adequately (for whom?) the epistemological form of the nature of aspect of the world continues to pose difficult questions around the limitations of our methodologies and philosophical insights. Runciman (33) offers the following opinion on this topic:

"To deny that universal validity attached to any claim to knowledge advanced by members of a 'scientific' culture is not to be committed to a claim that this proposition itself is universally true.

But it is to deprive all academic enquiry of its (self set) purpose. There is in practice no escape for either

the natural or social scientist from a correspondence conception of truth."

There are other opinions which challenge this assertion. In a field of social theory like criminology, the problem has not only been the difficulties of assessing the epistemological demands made on the discipline, but also the intrusion of moral and political value judgements. Runciman sees a risk in that researchers could be tempted into introducing untestable evaluative presuppositions instead of developing a genuinely explanatory theory. (34) The great names in the history of social science have wrestled with the demands of neutrality and objective science in the study of social subjects and interaction. There is a sense in which all such efforts, no matter how thorough or broad they were, or even how they consumed the lives of the researchers, their work still failed to answer the object of their attempt.

In a critical theory, the effort of applying method result from the tension between the economic abstractions on the one side and the attempt to do justice in the analysis to the subjective meaning attached by the people to those life experiences. Runciman suggests that concepts normally understood as the vocabulary of 'left wing sociologists', like "crisis" and "contradiction" can be used in

"...the framing of a theory which does provide adequate grounding for the initial hypothesis of the cause of the reported change, or lack of it, in the institutions and

practices of the society under study..."

provided that it conforms to the standards demanded for scientific knowledge:

"... it has to be shown to do so by the strength of its resistance to attempted invalidation." (35)

The social sciences have seen the debate on theory and method develop in a direction where the empiricism and method according to the definition by Runciman are challenged. The investigation by Kuhn (36) and Feyerabend (37) into the nature of advances in the scientific world focussed attention on the nature and mechanisms of changes in scientific theories and paradigms. The jump from 'crime' to 'paradigm' may appear large and even esoteric, and yet even in assessing our everyday life, and in the reception of complex scientific work into day-to-day discourse, many of the strategies and methods of scientific discourse analysis are employed. The efficacy of methodologies and the veracity of their conclusions do have an impact on everyday life, even if this is because of the dependence of modern culture on the scientific discourses to explain the world and its reality.

Using theory, or theoretical concepts consciously is more remote from people's experiences, and specifically in an Anglo-Saxon culture where even academia is notoriously 'pragmatic' and anti-theoretical, expressing social action and social structures in theoretical terms can be seen as

problematic . Given the fact that criminology has not with all the power and institutional practices which that involves, the theoretical assumptions and explanatory categories used by a critical theory do not find a high level of public recognition and acceptance. Framing one's life in terms of radical theoretical concepts is simply not how people understand their lives.

Keith Devlin describes the experience in this way: In the process of being educated and becoming an active member of society, one has "...already absorbed a great number of theories .... For it is in terms of theories that we encounter and deal with the world we live in... Indeed, the true mark of success of any theory is that it becomes so 'obvious' that no one regards it as a theory anymore. Yesterday's new theory becomes today's commonplace." (38)

If it is accepted that a correspondence theory of truth is the only acceptable form which a philosophy of knowledge can take, it may seem that many of the problems of radical and post-modernist theorising are not really problems at all: The theory produces results that are convincing in the eyes of the professional and lay communities and ultimately this theoretical truth, as demonstrated by the empirical work, achieves acceptance - either as an accepted theoretical position or as a commonplace. If however, the sceptics of the scientific method are correct, and the validity and

acceptance of a theory and its model of the world can depend on factors outside the elements accorded recognition within the strict scientific model, it is perfectly possible that the common places in which society is understood could be nothing more than ideology, even for those who consider the meaning of ideology pejoratively, as a distortion.

Marx, in some of his writings goes further by suggesting that the ideas of every epoch are the ideas of the ruling class. (39) This can (but does not necessarily have to) be read as saying that what is believed about society's values, even its philosophy and ethics are linked, or in reductionist form, reflective of the dominant economic class position.

Such an interpretation would be considered vulgar and a functional expediency by many theorists, and the tradition of critical theory consists of the effort to develop the materialist thesis into a theoretical model which does not remain trapped in analysis which uses simplistic forms of power and identity. To suggest a complete functional expediency between beliefs and interests depends on a clear relationship between power and knowledge, and there is an insufficient amount of evidence which can show that economic interests are necessarily reflected in the cultural, ideological and ethical values of a social formation. What has however been shown through historical analysis is the tendency of the values of the dominant social and political forces to carry far more weight than competing values, of

less powerful groups and individuals. Here the work of Marx on the Woodcutting laws in the Rhineland (40), E.P. Thompson's analysis of the Black Acts of 17th century England (41) and the work collected in the volume Albion's Fatal Tree. (42) can be considered as the examples to follow.

The attempt to discuss social theory without addressing the marxian and Marxist legacy is very alluring because the rigour and complexity of this holistic, systematic and 'scientific' approach tends to dominate any text or analysis to the exclusion of other aspects. For researchers new to the field, the maze of arguments about Marxism, against Marxism and particularly the disagreements between conflicting variations of Marxism can appear overwhelming. The latest twist in the debate, which follows the war of words between the Post-Marxists and the changing Marxists, come at the end of a long and intense debate. The extensive legacy of Marx's own writing, and Engels, followed by the various orthodoxies and their opponents already make an exhausting reading list, and the tradition of critical theory originated in the debate around the second international and the increasing unpleasant spectre of Stalinism. In the response to this, various positions came about: The Frankfurt School, the existentialism of Satre and his opponent Merleau-Ponty, the work of Althusser and in response to this, the discourse-analysis and Post-Marxist positions. There are major theorists like Foucault, who has been classified as Marxist,

Anti-Marxist and structuralist, and wherever he really fits in, has had a crucial impact on the debate around social theory, government and law.(43)

The concerns raised by the expressions of competing and conflicting theories mirror the conflicting demands made by participants on a social formation, competing for its resources and the recognition of their demands. This is seldom expressed or experienced in these terms, and these activities are constructed through values, ideas and traditions of the social formation. The resolution of these conflicts are the life-experiences of people and societies, and the role of social theory can be understood as adding to the knowledge through which these experiences are understood. This concept of knowledge must be approached with care, because like concepts of the life-experience, the possibility of implicit ideological values and the privileging of social groups through their access to language is always a reality.

A working hypothesis of a correspondence between the languages and concepts used in a society and the perceptions validated by the forms of knowledge of that social formation lies at the basis of considering the impact of ideology on the analysis of social action, like crime.

If one could know what is true and be certain of an 'correct' understanding of society, it would not be necessary to

concern oneself with the existence of meaning in society and the forces that shape the possibilities of knowledge. The extent to which a person is held responsible for what he or she knows finds a measure in the concept of guilt used in the criminal justice system. In a traditional criminology which does not problematize the the nature of society and seek to understand the social relations in terms of their wider impact, it is possible to hold a position that it is not difficult to know what a crime is. Where more rigorous demands are placed on the input of social theory and philosophy in the criminology, then the use of concepts like the state, law, order and crime cannot be separated from the consequences of the fact that they are embedded in the values of those who operationalise the structures of the state and the economic implications of the distribution of power in the social formation.

According to T.J. Van Heerden, in a paper on Ideological Violence in South Africa, ideologies contemplating a change of the state, drawing on a conception of an utopian state, tends to be: "...speculative, unpractical, or farfetched, in so far as they cannot be plausibly accommodated without seriously disrupting the peaceful and harmonious course of things." (44)

What is intriguing about this statement is not that utopian ideals may be unreal, but that the present state is assumed to be peaceful or harmonious. Having defined the state as in

service of the people (45) and the 'ideologist' utopian strategy for "...creating an atmosphere which would be suitable for a total onslaught." (46), he concludes that the suppression of all forms of ideological violence is the task of all, and "Without [this coordinated action] no state would be able to maintain its integrity, the good life, and harmonious co-existence." (45)

The fact that a large number of activities covered by this nebulous concept (like political slogans, social action by political groups, and seeking information - 'rumourmongering' in Van Heerden heavily ideologised language), are all basic civil rights which ought to be protected by the state, not suppressed, does not seem to form part of Van Heerden's perspective.

That there is an intense debate about the nature of the state cannot be hidden from view by the platitudes of the government spokespersons, but this does not mean that they do not try. An example of this comes in to opinion of a previous Minister of Law and Order who has said:

"... it can only justly be claimed that the [Police] Force has...always maintained Christian norms and civilised standards. ....ensured the inviolability of freedom in our country... at all times ensured the independence of the judiciary and equality in the eyes of the law as well as maintaining law and order and promoted the spiritual and material prosperity of all its people. (Vlok, cited in Dippenaar, 1988)" (48)

Against such opinion - at odds with the experiences of thousands of people - , it is important even to be able to explain how such widely differing versions of reality are possible. The role of a critical theory is to attempt that explanation, and to produce a close reading of the discourses in a society, which should bring one closer to having a collection of sets of knowledge which make up the experiences of the members of a society.

Turning to the tradition of critical theory to explain society, does not easily solve the difficulties of determining how one knows the truth, or how one has access to the meaningful real existence of people. Critical theory offers a tradition of being concerned with these matters, and takes it's form and discourses from debating these issues. By accessing the tradition of thought which draws on the Marxian legacy, the extent of the debates and the complexity of some of the formulations and concepts are bewildering, and in working one's way through the various traditions, it is useful to consider the opinion of Sorel:

"Marx's language frequently lacks precision because he tries to embrace in a single expression the totality of a historical movement, and to think it in all its complexity. The [human] intelligence does not have the means to express such a synthesis." in Hughes (49)

Hughes further explores the link between Croce and Sorel, who both believed that Marx had offered what had to be

considered a necessarily partial view of social reality.

Sorel held that "Marx was right....in not sticking to empirical description of social complexity and in presenting the great conflict... in the form of struggles ...between antagonistic partners." (50)

Other theorists might well disagree with the idea that Marx did not stick to an empirical description, but the broad Hegelian sweep of the dialectic brings into the analysis a form of speculation that is not readily reconcilable with either a science of history or a scientific political economy.

In analysing the paradigm of social theory discourse, it is useful to dissect the naturalist, and anti-naturalist strains and the scientific components from the metaphysical. This does not imply clear choices, for Marx or against critical theory, but is an acknowledgement of the intellectual history and development of a discourse. Sorel held marxian socialism to be a "...grab-bag of novelties that required a painstaking sorting out; half nineteenth century scientist half twentieth-century prophet,.." (51)

Using social theory to deal with the phenomenon of crime, while moving towards the 21st century, in a world apparently unable to conceive of practical alternatives to capitalism, will require deep and thoughtful study. Describing the transformation of an imperial colony into a quasi-nation state engaged in a violent social struggle between privilege

and democracy needs empirical research based in theoretical models which come closer to describing the reality of that social formation than theories that can only account for conflict as pathological. Added to this, the discourse of criminology will have to focus on effective communication outside its community of scholars, and to engage at all levels of society in the debate of what it means to define and control crime.

### CHAPTER 3 SOUTH AFRICAN CRIMINOLOGY.

The origins and colonial-racist nature of South African criminology has been researched and commented on in the paper 'Adopting and adapting Criminological Ideas - Criminology and Afrikaner Nationalism in South Africa', by Prof D Van Zyl Smit.(1) In this paper he assesses the relation between academic criminology and the political rise of Afrikaner nationalism, including the impact of the Nationalist Government since 1948. Neither the nature of the South African state nor the rôle of academic Criminology in South Africa can be properly understood without giving consideration to the role of Afrikanerdom in South African politics. The manner in which the National Party used its control of the government to further the interests of its constituents (often at the expense of those who weren't constituents at all) cannot be separated from the economic and social struggle in which the links between race and power were cemented in terms of an Afrikaner/White ideology, and subservience, powerlessness and economic infantilization for those who did not fall within the racially exclusive categories of white supremacy.

The founders of academic criminology had drawn on sophisticated European theories, including the Dutch Marxist criminologist Bongers (2), but this had become reinterpreted within the context of Afrikaner Nationalism, and the focus on

the subject narrowed to a racially defined ethnic group. This history of ideas came to have a powerful influence on the South African criminal justice system, since after the change of governing party in 1948, the official discourse of criminal and penal policies, which had until then been framed in a mixture of classicism and scientific positivism, were heavily influenced by the ideologies of race and their specific interpretation by an interventionist government.(3)

As Van Zyl Smit points out, the earlier discourses were not free of racism: "The very detailed Annual Reports of the Prisons Department drew to the attention of the white middle classes an additional aspect of the 'white man's burden', i.e. the 'dangerously' high rate of crime amongst the African population. The message was that all whites should stand together in the face of a common enemy." (4)

This call for the whites stand together can clearly be seen echoed in the call by Van Heerden (5), for everyone to stand together against the total onslaught, during the 1980's. The racism had become less open, but the very clear implication of the total war ideology was that an ill defined group of blacks (perhaps those who engaged in some of the forms of so-called ideological violence?) were the enemy. The divisions of race had been part of the entire South African history, but had become part of the grand ideological theme of apartheid, and through this process the tensions within the

country had become exacerbated.

The work of Prof G Cronje of Pretoria University came to be seen as the 'important and comprehensive intellectual justification for racial apartheid. (6) Retaining the perspective that capitalist forces constitute the cause of crime (which Cronje had accepted from his mentor Bongers) but seeing these forces "...in combination with the threat from liberals and communists who denied the national distinctions. " (7)

The aim of social policy and the role of a criminal justice system ought to be one in which the 'volk' (the people) was paramount. For Cronje, and the other Afrikaner nationalist criminologists the wellbeing of the 'volk' was the key, and the "individual is a subordinate part", of the people.(8)

This perspective depends on placing the different 'people' within the geographic South Africa in a hierarchy, Afrikaners (Boers) first, then the English and other foreigners, followed in a fundamentally subordinate position to the Whites, the Asian, so-called Coloureds and the Black Africans. One of the curious aspects of apartheid is how the divisions into ethnic groups had been legitimated, and the vast extent of the impossibility of making such classification stick as legal categories: The curious practice of people officially changing their 'racial category' was an ongoing feature of South African life, although it may seem bizarre to

outsiders, the fact that all rights, of voting, education, residence, economic opportunities, everything single aspect of one's life in South Africa was to become determined by the racial classification. This exceeds the ordinary (if no less objectionable racial prejudices ) forms of discrimination which structure social interaction in many societies because of the devastating effect of the legal and civil consequences of racism as official state doctrine and background to all policies, backbone to many.

The political ideals, ideas and the role of the state were all understood in terms of the importance of Afrikaner Nationalism and its Neo-Fichtean concepts of 'volk' and sovereignty. (9) This was essentially based on the notions of purity of a 'people' and imbedded in a discourse which accepted the intellectual and cultural inferiority of the "Natives".

Already in 1933 Willemsse and Rademeyer had written in their 'Kriminologie' (10):

"Personally we are quite convinced that the Natives will eventually be moved to our North-Eastern borders; so that they will not continue to exist like indigestible stones in one's stomach as economically and communally inorganic objects in our society. It will be the best for us and the Natives: for we whites shall fight to the bitter end for the purity of our blood and mores. "

Such sentiments are shocking and offensive to researchers and

activists committed to the values of non-racialism, but it brings two questions to the fore: Firstly, these views are in accordance with the official policies which structured the South African state for more than four decades, and the legacy lies heavily on the urban development, and demographics of the country. Not only are the attempts to achieve this physical separation still scoured into the South African landscape, but these views, this ideology of white supremacy is still deeply carved in the social practices and ideological position of many white South Africans, and the practices of racism, discrimination and the commitment to ethnicity as a political tool for power and an expression of social identity is represented in all communities.

Secondly, the process through which academics and researchers express their commitment to values and ethical standards in their work is a controversial practice. The fact that the early years of 'liberalism' and scientific positivism had laid the basis for a racially divided criminal justice system shows that a commitment to objectivity and neutrality privileges the 'common places' (11), the theories of society which have gained popular acceptance with the decision makers and wielders of power, and that the distance, which is to ensure truth, becomes a paralysing chasm that can serve the forces in power, whether their rule is legitimate or tyrannical. The committed social theorist, who may choose to draw on a critical paradigm seeks to ensure that the

values represented in the study are made accessible, and thus open to scrutiny. This process of scrutiny, a critical theorist would submit is more likely to serve the interests of truth than a false objectivity which distorts the perspective by allowing a relation of power to appear as a natural and justified given. Thus, objectivity is as much an ideology as the committed works it seeks to criticise.

Where ideas and values are accepted as either commonplace, or where they are intertwined with the social and political identities of groups and people addressed by a text or a piece of research work, they will not be experienced as values which need to be defended or explained. In retrospect the work of Willemsse and Rademeyer (10) is remarkable for its crude analogies, although it cannot be said that the values expressed have disappeared from South African culture.

What certainly has changed, is the failure of the attempt at implementing the systematic and ostensibly 'scientific' policy of apartheid. The intervening years saw close links between the police, the prison service and the department of Criminology founded at the University of Pretoria. (12) These links meant that policy and administration of extensive aspects of the criminal justice system came to be influenced by the Afrikaner Nationalist style criminology.

The work of Prof Van Zyl Smit has also shown the impact of

these ideas within the framing of the discipline of Criminology at various universities in South Africa:

"To an outsider, this criminology seems strange and out of touch with reality.... it is the product of a specific combination of intellectual and national movements. It has become embedded not only in a large part of the South African university system, but also in the discourse of powerful bureaucracies: viz the prison service, the police force and a large part of the social work profession." (13)

The social crisis in South Africa seems to be summed up in the phrase - 'out of touch with reality'. The political reality of apartheid with its resettlement camps, corruption, bureaucracy, the ideologically motivated 'make believe' states with widespread poverty, and excess by the usually dictatorial leaders, the overwhelming housing crisis in urban areas with resulting overcrowding and homelessness - all of this is so far removed from the rhetoric of separate nations and the phony ideal of 'freedom for groups' through self-determination that there is a real difficulty in bridging the language gaps created by the apartheid euphemisms, that significant parts of the white population may find it impossible to visualise and understand the nature and extent of the social crisis in South Africa. The directness of the 1930's racism has given way to a sanitized language in which the intention of government policy is never equated with the

racist and discriminatory practices which their enforcement entailed. The progress of the attempted creation of a separation between the ethnic groups (13) runs in parallel to the rise of euphemism and the denial of racist intent. The debate around social theory and truth must consider and explain the fact that a contentious position may be accepted as undeniably true within certain sections of the community, and flatly contradicted by others. The possibility that a social scientific discourse, or an intellectual discourse may be fundamentally unable to supply a definitive answer in matters of social dispute must be considered, but also that in formulating an answer to such a proposal the potential limitations of a discipline may be defined.

Van Zyl Smit judges the success of the Afrikaner Nationalist criminology as one of the factors contributing to its intellectual stagnation. (14) The 'cosy cohabitation' with the bureaucracy and centres of power has made it vulnerable to the decline and [potential] fall of the apartheid state. The battle for power and control is still in full swing, and it has been suggested that the radical reforms of the nineties have been forced onto a governing class which has begun to feel threatened by the threadbare legitimacy of its position. The exact nature of the negotiations taking place at this point will only become clearer when the documents containing the actual positions taken by the participants become available, and they can be assessed against the

background of other historical evidence. This period of continuing economic and political crisis has taken its toll on the remaining aspects of the Verwoerdian vision, but a real threat to the dominant social, political and economic position of the racially defined ruling class has not truly materialised.

It is interesting to note what Hans Magnus Enzensberger has said, in agreement with Marx:

"No ruling class will simply go away due to a sudden illumination of its moral quality." (15)

Between 1960 and 1990, the message from the governing Party did not change - white political control is not up for negotiation. The manner of the message changed, and the style altered radically, moving through the stage of 'Apartheid is Dead' (16) and 'Adapt or Die'. (17) These positions of Koornhof and Botha were always fiercely debated, as to whether they could be taken as signals of fundamental change or were merely part of the continuing smokescreen and disinformation put out by a cunning government. The state resources, bureaucracy, social control apparatus, including the criminal justice system were put to use in a 'law and order' policy, meaning not only that the powers of the police were extended, but also that the military and intelligence sections of the government would act in defence of white political domination and the racial exclusivity of state power. The questions which a critical theory of crime must

bring to the fore, can be expected to cover issues concerning the accountability of state spending, the implications for citizenship of the activities of the secret government agencies, because all of these forces were acting in defence of 'law and order', and the interests and values of this form of policy could not be condoned or rejected by a significant majority of the population. The theme of law and order runs through criminological concern because of its prevalence as a justification for actions by officials on behalf of the state. Its ideological nature (either as a perspective amongst other possibilities or its nature as a distortion of truth and reality) is usually denied by spokespersons for the state and by those holding social theoretical and jurisprudential positions which analyses social formations in a form which seeks to impose ahistorical and idealist perspectives on social action.

In an address to a National Criminological Symposium on Crime Prevention (28 -31 August 1972, the Deputy Minister of Police, the Interior and Social Welfare and Pensions) J.T. Kruger stressed the role of government, then in terms of the 1961 Constitution: (18)

"The State's duty expressly declared that it is convinced of the necessity to stand united and to secure the maintenance of law and order and to further the contentment and the spiritual and material welfare of all in our midst."

This is very similar to the description of the police force given by Minister Vlok in 1988 (19)

In the earlier ministerial speech, Kruger expressly committed himself to an idealist and ahistorical concept of crime, in commenting on the role of criminology and sociology:

"What is more any definition of a crime which would, as some definitions would seem to suggest, be subject to constant change, must for obvious reasons be unacceptable." (20)

This opinion goes against the intellectual heritage of the early Afrikaner Nationalist criminology, which although flawed in terms of racism and ascribing privileged status to a particular definition of an ethnic and cultural group, did attempt to take the interaction between social forces and individual action into account, and considered the impact of economic conditions on crime and law enforcement. It is ironic therefore that the book of these conference papers is dedicated to Prof. Cronje.

Van Zyl Smit has suggested that this atheoretical approach is a consequence of the intellectual stagnation brought about by the proximity of this form of criminology to the centre of power.(21) The newer editions of the traditional textbooks of this tradition appear with the more blatant racism excised, but according to Van Zyl Smit, the euphemism which accompanied the government's efforts to achieve the metamorphosis of racist apartheid into 'seperate

development', seems to have led to a silencing of the theoretical perspective in the official brand of Criminology:

"[this mainstream criminology]... has been unable to fill the theoretical void which has come about with the crumbling of its intellectual base." (22)

He goes on to suggest that the result of this is a diluted version of the Cronje Criminology - neutered and akin to pragmatic, atheoretical work. The consequence of this intellectual cohabitation with power has brought on a stagnation, leaving a social theory which can offer no real insights, into the nature of crime or develop a perspective which can act as an intellectual force in discussing the issues of deviance and social control, particularly in a time which can be seen as the "...struggle for the survival of the South African state in its 'reformist' phase." (23)

Despite the official doctrines of criminology and apartheid coinciding in this form, and the former acting as an intellectual justification for the latter, the political and social struggles of people do not conform to the demands of the institutional discourses without putting up a resistance. The policies of colonialism and apartheid have engendered forms of resistance, and many of the actions which Van Heerden (24) would consider 'ideological violence' are the mechanisms of expressing this resistance. In a case like South Africa where the social conditions were commonly understood to be moving towards a civil war, a theoretical

discourse finds it difficult to maintain a position without being utilised by the various factions, contesting the arena of power. A social theory needs to be able to encompass political activity and movements within the ambit of its explanation, and be able to account for the formulation and control of dissent to the *status quo*. The approach taken by criminology would appear to be more restricted than that available to sociology, because in its traditional form it is linked or limited to the definition of crime formulated by the criminal law. Van der Westhuizen considers this definition of crime as the 'classical definition' and this means that crime is: "an act or omission forbidden by law under the pain of punishment." (26)

This position is more accurately described as a description of the language used in the official discourse of social control, and does not add explanatory knowledge to the concept of crime. Where the concept of the state is not considered as part of the explanandum, the result of such an inquiry remains at what is considered a micro-level of research, and where the values of the official bureaucracy and the signification of meaning by social actors at an institutional level have important consequences at the micro-level, then the perspective cannot be considered sufficiently descriptive, but must be seen as limited.

The delegitimation of the state becomes a constant feature of the social structure in an unstable political system,

particularly where the limits placed on access to the processes of political power, are compounded by levels of poverty and social deprivation accompanying the political powerlessness. The undemocratic political system in South Africa, which the legacy of its racist categorisation, has clearly become untenable and has been rejected by the majority of the population. This point has been denied by the government in the past in an attempt to to claim legitimacy for its rule. The philosophical and political consequences of 'grand apartheid' and the collection of independent homelands were to supply the international and national respectability of the policy of segregation, and this has clearly failed. The solution to the problems of colonial rule, and as the apartheid policies have added to them, lies in the fashioning of a legitimate and democratic form of government. The level of social crisis and violence which has accompanied the political and social turmoil now pose intensely serious questions to a discipline like criminology which is concerned with addressing the issues of crime and deviance: There is no foreseeable solution to the issues of political power and democratic government, although the hope for negotiation remains. The political instability tends to exacerbate social problems, and the simultaneously damages the economic prospects, turning into a cycle of violence and increasing unemployment. Assumptions that society is a harmonious, functioning organ are not borne out by the conflict ridden reality, and theoretically the assumptions which do not

question the role of the state and the social and economic structures in shaping the nature of deviance, produce explanations which tend to satisfy the ideological expectations of those who frame them.

Commenting on the requirements of a theoretical position, Norman Geras says:

"No theory of crime or crime prevention or justice or punishment is intellectually feasible without a clear exposition of the social context or an investigation into implicit assumptions about the social context. This position demands a response to talk of crime, solution to crime and how to deal with the criminal element, talk which is characterised by its rhetorical clarity which bears little resemblance to the social reality it is attempting to describe.

To be blunt about a serious criminological problem: it is a rejection of the simplistic law and order ideology, the banner of government raised to conquer the spectre of crime. " (27)

The accusations against the South African government concerning its defence of the state go further than just the use of the law and order ideology to deal with crime, presented in an atheoretical fashion. The legal system and the criminal justice structures can be said to have been utilised against political opponents, and added to this the military and secret sections of the police have acted

beyond the scope of the law in an attempt to safeguard the unstable political structure. This is undertaken in terms of the maxim, *salus republicae suprema lex*, the running mate of the law and order ideology. In answering the question why the state would turn to criminal trials against its political opponents, Kirchheimer offers the following opinion:

"Judicial proceedings serve to authenticate and thus to limit political action. Power holders may have an infinite number of security interests. Some of them, though perhaps far-fetched, are arrived at rationally; others are the product of imagination. By agreeing to a yardstick, however nebulous or refined, to cut down the number of occasions for the elimination of actual or potential foes, those in power stand to gain as much as their subjects. Authentication removes the fear of reprisals or liquidation from multitudes of possible victims, and encourages a friendly and understanding disposition towards the security needs of the power holders on the part of their subjects. The more elaborate the paraphernalia of authentication, the greater the chance of popular participation in its conundrums... In the proceedings to which the public has some access, authentication, the regularising of the extraordinary, may under favourable circumstances be transformed into a deeper popular understanding and political participation." (28)

Commenting on this position, Dennis Davis says that :

"...political justice serves to extend the range of political options open to the regime, by enlisting the services of the courts on behalf of political goals, Using these means, a government attempts to secure the enforceable submission of group and individual action to court scrutiny so that those who wield power can strengthen their own position and at the same time weaken that of their political enemies." (29)

In the legal and political history of South Africa the most famous trial of this nature was the Rivonia trial, against Mandela, Sisulu and others. In a book on the case, Mr Justice Quartus de Wet encapsulates the legal procedure in the maxim Salus Republicae Suprema Lex. (30) The subsequent history raises many questions for the jurisprudence and criminology, because the development from convicted criminal to world figure and symbol, and statesman clearly indicates the changeable nature of the concept of crime, and the disputable content of the decisions made in court.

The institutions in society which constitute the public expression of what is legal and illegal are identifiable, in their social relations and the political nature of their ideas, although the legal process requires of itself and its participants to accept the creation of a distance between its process and the world of politics. The conviction of someone for a crime in a court of law, is a process which

is woven into the complex web of ideas, institutions and social relations which make up the perspective of legality. This is a mixture of morality, judgement and a certain amount of confusion and estrangement - certainly most participants who find themselves in the criminal justice process will find many aspects of it, let alone the decision, very alien. The perceived legitimacy of the process depends on the extent that the political context is understood to have been displaced by the language and procedure of the legal discourse: individualization, admission of evidence, and the dichotomy of guilt and innocence.

The power of judgement is estranged from the people or the community, and is held by the judiciary on account of the history of the state and the development of law. This combination would in all modern societies have created the definition of merit and position which produces the judiciary. The comments on the legal system and the analysis of its operation from outside the legal communities which find their places in the system seldom has a direct bearing and influence on the legal process, but this is normally understood to be a positive recommendation rather than a critical comment. (31) And yet, identifying the underlying ideas of the system and describing the interests which are served by the criminal law give us clues and explanations to the questions of government and the effects of the values and identities of a society on its participants.

#### CHAPTER 4. PHILOSOPHY AND PARADIGMS.

In his paper on South African Criminology Prof Van Zyl Smit refers to an alternative and competing form of criminology which: "...has begun ... to develop an alternative vision

which looks beyond the assumptions of the pragmatists to a society in which true equality will be the norm." (1)

This approach questions the role of the law and order ideology and challenges the notion that criminology is a science which offers

"...neutral techniques of crime control." (2)

The debate around what the state is, and an exploration of state theory cannot be ignored in a critical theory, because as soon as the concept of the neutrality of the state is placed in question as part of an analysis, an adequate theoretical perspective is required to justify the position. Those who are in power and the criminologists who act as their 'technicians' keep the system running, often at what they themselves consider at 'all costs' and this requires a return to the notion of order, without placing into debate the nature of that order. For social scientists an approach compatible with the status quo, at both the levels of theory and practice, it is inevitable that their assumptions must include an element of consensus. Where however a theory includes in its assumptions the idea that a social formation consists of groupings, individuals and structural relations which compete in a form which does not necessarily contain a resolution of the conflict, the perspective on the nature

of deviant actions and contradictory demands will be changed. The same actions viewed from a perspective which considers the society a harmonious structure, will inevitably ascribe a negative meaning to these social actions. If the competition between social actors is seen as excluding conflict, then all social actions which challenge the accepted norms, or stand for values in opposition to the expression of consensus through which the dominant social forces express the form of the community, is by definition deviant and correctly subject to censure. This disapproval can readily be given official recognition and change to criminalisation. Actions which do not support the values of such a consensus are denied all social and political validity, and through this the hypothesis of the consensual nature of society becomes the presumption of order. This points to the limitations of the structural functionalist approach to social theory, and the conservative bias that such a theory gives to criminology. Where the interactive nature of norm creation and the socially determined context of legal categories are not considered in the explanation of society, the analysis is liable to statically reproduce the ideological forms of the state, and present a reified picture of deviance and law enforcement.

In one collection of essays on South African criminology, which is identified with the search for a critical perspective, Dennis Davis links the ideas of Kuhn on paradigm

with the change from a 'structural-functionalist' theory of society, to the questioning of value-neutrality and the emergence of a critical perspective. The development of this critical method was in response to the limitations of the theory, which held that

"...the equilibrium of a society... was maintained through the functional integration of the major social institutions." (3)

The limitations lie in the inadequacy of this model to take into account the true complexity of the phenomena it sought to explain. Neither the stability nor the integration could be demonstrated without asserting the assumptions as evidence. The form of criminology closely linked with the state apparatus, which had clearly shown its Afrikaner Nationalist colours and socially determined modes of explanation has in the past twenty year cut down the extent of its theoretical involvement with poverty and other social factors associated with crime, and appears to be turning towards the apparent 'neutrality' of the consensual paradigm. This is ironic when the level of violence and crime located in a social experience of deprivation and political turmoil have increased dramatically in the past two decades. Davis concluded his paper by expressing the need for a new paradigm within which South African criminology can operate. (4) On this point he quotes Kuhn:

"Scientific revolutions are inaugurated by a growing sense ... that the existing paradigm has ceased to

function adequately in the exploration of an aspect of nature to which that paradigm itself had previously led the way." (5)

Davis argues not only for a successor of a paradigm that postulates society as a cohesive and integrated unit, a system which incorporates the values and interests of different social groups, but for a successor which attempts to deal with the economic forces which structure society and gives recognition to a search for meaning in social action. (6)

The reality of the criminological practice of those who choose to associate themselves with the critical theory project is not one of clear paradigmatic shifts. Van Zyl Smit acknowledges this: (7)

"The notion that South African criminology has undergone clear shifts of paradigm has rightly been criticised as exaggerated (Unterhalter 1985). Secondly, when discussing criminological thought in South Africa in particular, one is often dealing with a form of practical reasoning in which theoretical approaches are used in a somewhat eclectic and pragmatic manner in order to justify or make sense of current practices."

The critique by Unterhalter of the collection Crime and Power in South Africa goes far deeper than merely commenting on the limited amount of scholarly empirical research offered in the

volume (8), it seems to suggest that there are difficulties with the entire notion of a critical criminology, and that any marxist based analysis is likely to be caught up in the technical difficulties of Historical Materialism. Unterhalter dismisses the notion of a Kuhnian shift in the theory by saying that "...an account of social and moral theory which laid claim to the laurels of paradigmatic status would be extravagant to the point of whimsey." (9)

Unterhalter understands the aims of a critical criminology as being the ambition to

"...reconstruct the theoretical foundations of criminology, and fashion these foundations within that tradition which is Marx's legacy to intellectual history, historical materialism." (10)

He goes on to challenge the feasibility of the intention stated by Davis,

"...to develop a coherent and critical theory for criminology..." (11)

because of the obstacles resulting from the notions of historical materialism. Unterhalter seems here to echo the critique of Hirst, when he suggests that the nature of historical materialism is such that it

"...was never simply a question of conquering another domain for Marxist analysis."

Crime and criminals are not elements found in the explanatory vocabulary of Marx, at least not in the technical terminology and definitions of the the process of capital. Whether this

fundamentally prevents it from being utilized as the basis for a criminology remains a matter of debate. The incompatibility of categories tends towards an anti-criminology.

The apparent coincidence between Unterhalter and Hirst is in fact nothing more than appearance, because the fundamental conclusions reached by Unterhalter is that Criminology is restrained, not by the categories and analysis of materialism, but rather by the nature of the law. He considers criminology to be an intellectual enterprise which is in some way shackled by the austerity of legal method.(12) The attempt of a critical criminology to

"...locate the explanation of crime within the history of particular societies..."

leads the analysis to consider the role of the state in its historical role. On this, Unterhalter points to the

"...importance of the state in the creation and enforcement of law, as a means of maintaining social control, and the ideological dimensions of legality in reproducing the prevailing order." (13)

This is considered crucial in a critical perspective, but Unterhalter warns of the risks inherent in an attempt to develop such an analysis: the threat of failing to achieve a thorough analysis of these concepts will produce research and conclusions which are not up to standards of adequacy which social science demands, and which a critical perspective may expect of itself.

On the volume Crime and Power in South Africa itself, Unterhalter is quite scathing. He suggests that its contributions raise questions concerning the dimensions and extensiveness of the State's authority, and its link with ideological and coercive forces, without successfully answering them. In proposing an agenda which it did not succeed in fulfilling, it fails through superficiality with "...compressed passages which invoke but do not explain let alone dissect problematic concepts. (14)

These are harsh words and since the volume was offered as first steps [ "...a modest contribution, aiming to break the mould of traditional scholarship." (15)] it does not quite fit the work and comes down hard on the critical perspective. A project for an adequate critical criminology does not fail because it has an infancy, but will be seen to do so when this cannot be outgrown. It has to be conceded that the 1985 volume was introductory in many ways, and did not set out to achieve theoretical sophistication. If a critical perspective intends to break the mould of traditional scholarship, it will have to aspire to such sophistication and set out to achieve it.

At the level of epistemology, the questions facing a critical theory will probe not only the standard of the analysis, but also whether the discipline can make a contribution of value at the paradigmatic level. Unterhalter suggests that when questions of historicism, state and ideology have been

brought into play

"... persuasive answers are by no means self evident, nor may such answers simply be read off any version of historical materialism, canonical or otherwise." (16)

This discussion can generate a vast array of possible focal points, because it not only challenges the notion that a paradigmatic shift has begun to take place in South African criminology, but also questions whether such a shift is necessary or possible. Any change in the nature of a discipline or the functioning of its paradigm leads into the heart of the debate on knowledge.

The 1962 book *The Structure of Scientific Revolutions* by Kuhn asserted "...the existence of significant limits to what the proponents of different theories can communicate to one another." (17)

Discussing this point in a later article, Kuhn explains that the existence of these significant limits in 'translating' from one theory to another makes it impossible for an individual to hold both theories in mind together and compare them. (18) This comparison of theoretical positions, and the difficulties associated with the epistemology of conflicting models also becomes more complex where it is applied to theoretical debates in social science. In terms of traditional science the experimental and empirical methods seems to offer more scope for achieving agreement on data, than is possible to conceive within the forms of knowledge of

human activities.

Kuhn's structure of scientific revolutions operates on the basis of impressive concrete results delivered by a new theory, thereby posing a challenge to members of the research community, It is clear that in social sciences neither the existence of such a research community nor the behaviour of the object of study can be conceived of in such a definitive manner, and it has been suggested that even within the structures of natural science that these concepts cannot be utilized without further clarification and sophistication.

For Kuhn, those who hold differing or competing theoretical positions, when confronted with compelling results from the rival theoretical model may endeavour to find out how these were achieved. (19) Having cast them into limits separated by communication difficulties, Kuhn's model provides for a mechanism [albeit only a metaphor] through which communication is achieved:

At first there will be a process of translation between different theories, and this opens the possibility of adjustments and equivalent results:

"...if the new theory is to survive [researchers] will find that at some point in the language-learning process they have ceased to translate and begun instead to speak the language. " (20)

Although it may be possible to show that the major changes in

the scientific world do not correspond to the Kuhnian model, the many questions raised by his model find no answer in reasserting a 'scientific' model of knowledge which does not take into account the effect of forces which are understood as located outside the rationality of the scientific drive.

Kuhn's model is hampered by the ambiguity of the word paradigm, and since this is a key concept the effect of this is felt throughout the analysis. (21) According to Laudan it is possible to construct various definitions for a paradigm. Firstly it is a conceptual framework for classifying and explaining, which entails making certain claims about natural objects in the world. These are ontological claims which mark a paradigm off from other paradigms. (22)

In the second place a paradigm will specify the appropriate techniques and methods for studying, and thirdly, in the Kuhnian model, proponents of different paradigms will espouse different sets of cognitive goals or ideals. (23)

Working within a paradigm can therefore be understood as subscribing to a complex of cognitive values which will separate the supporters of one paradigm from others. A paradigmatic shift, is thus to be understood as a change of great magnitude, because it will involve changes at the three levels identified above in Laudan's analysis. Where one

ontology is given up for another, the methodology substituted and a set of cognitive goals are abandoned in favour of another, and this takes place simultaneously, rather than sequentially, it is possible to talk about a decisive paradigmatic shift. (24) This follows from taking the position that the paradigm consists of the interaction of these three levels.

It has to be said that Laudan seems to demand an empirical correspondence to the model explanation and his criticism of the holist picture of scientific change appears to be based on a defence of empiricism. Kuhn's theory is perhaps better understood as an 'ideal type', which offers an alternative view, without laying down actual conditions. In the Kuhnian model scientific theory is advanced only through the immanent validity of its conclusions.

In particular the nature of social science and the scope of its investigation makes it impossible to arrive at conclusions which have the cast iron solidity which seem to attach to some natural sciences. Where Kuhn addresses the question of motivation, the reasons for dealing with particular issues or specific research projects, he appears to express the kind of scientific, (theoretical or epistemological) problems which are acutely felt in a discipline like criminology:

"Scientific controversies between the advocates of rival paradigms involve the question: Which problems is it

more significant to have solved?" (25)

This brings in the very questions excluded by a 'rigorous' scientific method - the values and commitment of the researcher and the ideological framework of his or her work. The traditional answer would prefer to develop a neutral method and an objective discipline, which could then be applied to problems and issues in a society, and the application of values and the support for particular interests could then be perceived as 'scientifically' sound. The position of a critical theory would be that this constitutes an attempt to deny the ideological impact of the the scope of the discipline and the implication that method is somehow seperated from issues arising out of the ontology of the field of study and the epistemology of its time.

Critics of Kuhn are very concerned about the impact of including what has been pre-defined as 'non-scientific' criteria in a theory of scientific change. Laudan writes:

"The clear implication ... in Kuhn's criticism is that interparadigmatic debate is necessarily inconclusive and thus can never be brought to a rational closure. When closure does occur it must therefore be imposed on the situation by such external factors as the demise of the participants or the manipulation of the levers of power and reward within the institutional structure of the scientific community."

For Laudan, this is a real tragedy: "...this confutes what philosophers have been at pains for two millenia to establish: that scientific disputes are in principle open to rational classification and resolution." (26)

The key question posed in this debate is that of scientific rationality. The positions taken by commentators like Laudan is that a theory of knowledge which is open to more than just the bare boned essentials is a threat to knowledge and a betrayal of philosophy. Others argue for the recognition of the complex range of factors which influence scientific theory : In an article on the Piltdown Skull fraud, Phillip Tobias list seven scientific discoveries, ranging from the Taung skull, penicillin, DNA and the work of Mendel which experienced lengthy delays before being accepted -

"It is almost as though discoveries treated in this way were premature, ahead of their time, unable to be accommodated in the mindset of the day." (27)

Focusing on the impact of preconceived theory or expectation which allowed a fraud to gain acceptance at the expense of what is now considered the 'true' explanation, Tobias does not accept the Kuhnian model. On the problems of replacing a paradigm he says: "Although Thomas Kuhn has argued strongly for the relatively non-rational basis of such revolutions in scientific thought, the Piltdown history shows that it was the sheer weight of newly-discovered evidence that made it utterly impossible to sustain the Piltdown paradigm after 1950 and led to its

replacement." (28)

Whether a discipline caught up in ideological battles and involved in questioning the role of the state could ever expect to work with evidence which has 'sheer' weight remains an unresolved matter.

Whether a full exposition and explanation of the phenomena under investigation is served by an epistemology closed off to the reality of the power and influence of its categories (29) and the structural and individualistic forces at work in its community of scholars is an unlikely scenario: Rationality, understood as an ideal form or even a modernist ideology must clearly be served by efforts to limit the impact of emotional demands and unsubstantiated opinion on research, but where a form of thinking operates under the banner of rationality by ignoring the reality of partisanship, and not truly excluding it, those very forces of 'irrationality' are served by the method and the theory. There are no clear cut boundaries which enable one to categorise theorists and philosophers without doing them and the reader an injustice. Rorty links the work of pragmatists who oppose the correspondence theory of truth, which the positivists, in the sense that they share "...the Baconian and Hobbesian notion that

knowledge is power, a tool for coping with reality"(30)

Rorty uses the holism of Davidson to show the possibility of a philosophy without the central presupposition which divides true sentences into two categories: the higher in which sentences correspond to something and the other, in which

they are 'true' only by courtesy or convention. (31)

How we perceive the validity of theory is likely to go a long way in shaping the expectations placed on the discourses generated by that theory, and the responses made to the conclusions arrived at in terms of the methodology and practices. Insofar as pragmatism and relativism deny a transcendental truth it challenges the *Weltanschauung* of traditional philosophy and social theory. This poses a threat to values and the culture of modern society. The whole question of modernity and post-modernism is dominating both professional and popular philosophy at the present time, and a mature critical theory will have to take this debate into account. Putnam points out (32) that anti-realists use the concept of truth 'intra-theoretically' - when going beyond the determined and determinable boundaries of a theory, Putnam suggests that one can fall back on what Dewey had termed "warranted assertability".

This approach implies a world within the confines of discourses and paradigms, in which there is no possibility of absolutes and the discovery of a rational truth. The theorists of language have attempted to describe the relation between language and the world without being able to produce a description of the process, which raises difficult questions concerning the certainty of meaning and the nature of truth. Kripke and Dummett hold that the philosopher Wittgenstein was wrong in accepting the notion that meaning

determines reference. Meaning, understood as something determined by the intention of the user of a word, does not determine reference, that which is picked out in the world by the word. (33)

The extent to which one is open to concede that the nature of knowledge is determined by the process of knowing, and that the meaning-reference dilemma posed by language acts as a barrier between knowledge and reality, will determine whether one is prepared to acknowledge the post-modern limits to knowledge. One of the problems for a critical theory is that it becomes overstretched if it attempts to draw on the economic insights of Marx, and the input of the philosophers of language and the theories of linguistics and semantics. The tension between materialism and post-modernism is acute, since it is already difficult to reconcile political economy and symbolic interactionism. Marxist theory can be read as a positivist theory, in which an empirical philosophy aimed at the explanation of reality in terms of truth and its correspondence to that reality. (34)

A Critical Criminology is faced with the question of resolving the correspondence issue, without losing contact with the material and economic concerns of the social formation. Pragmatists who utilize knowledge as a tool in dealing with 'reality', have dropped

"...the notion of truth as correspondence with reality altogether and say that modern science does not enable

us to cope because it corresponds, it just plain enables us to cope." (35)

Whether this is as serious a loss as suggested by Lauden (36), or whether it is merely saying that 'a rose is a rose' without retaining the full swing of the science metaphor is a matter of dispute. Rorty explains that for the pragmatic (37) perspective "...the notion of "truth" as something

"objective" is just a confusion between two statements:" These two statements are, firstly, most of the world is as it is whatever we think about it. What we believe has very limited causal efficacy. Secondly, there is something out there, in addition to the world, called "the truth about the world". Pragmatists in the Rorty mould reject the second statement as non-sensical, whereas realists explain it with another proposition:

" (III) The truth about the world consists in a relation of 'correspondence' between certain sentences and the world itself." (38)

The fundamental concept which pragmatists reject in science, is the idea that science discovered the language which nature itself uses. (39) Since a commitment to critical studies encompasses realists and anti-realists, it is on this point that the two groups of theorists part company.

The practical and descriptive nature of many criminology projects means that theoretical sophistication and philosophical underpinning do not lie at the top of the

agenda for every student of criminology. The self-conscious attempt of a critical criminology to explore the social context and economic implication of the debate around crime, means that it is taking on the responsibility to defend its methods, theories and findings, particularly where questions arise concerning the paradigm of its forms of knowledge. Where the categories of its analysis and the subjects under study challenge the commonplaces of the debate on crime, and the conclusions involve rejecting traditional concepts and express a social critique, the entire issue of the nature of the discipline has been entered as a contestant in the debate. This necessitates an adequate methodology, able to defend its credibility, even where opposed to traditional epistemologies. Since the dominance of the scientific and naturalistic paradigm holds sway over large areas of social science, the dedication of research which questions the causal mode of argument will be challenged because it cannot easily compete with the efficacy in producing results which is characteristic of a rigorous 'scientific' model. Particularly because a critical theory would challenge the meaning and the implications of such 'results', it would require of its theory and method to include a discussion of the power structures in the social formation, including the role of research in this process, and the role of ideas in shaping the priorities of research. Even where a critical theory does not aspire to paradigmatic status, the demands of challenging the received wisdoms in any field of study is

high. The added difficulty within the tradition of critical theory lies in its internal debate concerning the philosophical ideas which structure its existence - the commitment to explaining society in its economic form brings with it the problems of how to analyse the interrelation between people and their life world, and the forces of economic production which shape the possibilities of wealth in a social formation. The origin of Marxism in 19th century positivism has imported into the critical theory debate the difficulties of the rejection of 'scientism' and the reassessment of the role of political economy. Some strands of the debate attract the interest of pragmatists and post-modernists, which oppose the marxian scientific base and seek to change the perspective on truth. The rejection of an essentialist marxian tradition is a hallmark of critical theory, but the form and extent of this rejection are the coordinates of the debate within the critical tradition.

Pragmatists, according to Rorty, work with the notion of truth intra-theoretically, (40) and it is feasible for critical theorists to base their work in frameworks which shy away from agreeing to a fully anti-realist position. Hamilton (41) reminds us that the original critical theorist Horkheimer formulated his programme as anti-relativistic.

In setting out his task, Horkheimer called for people to  
"...learn to look behind the facts... to distinguish the

superficial from the essential without minimizing the importance of either." (42)

The work of a critical theory as understood by Horkheimer at the time of the Frankfurt school is based on understanding

"...the social function of philosophy..." as lying in the "...criticism of what is prevalent." (43)

and where this is properly seen as

"The task .....to penetrate the world of things to show the underlying relations between persons. The appearance of capitalist social intercourse is that of equal exchange between things. It is the task of critical theory to see the human bottom of non-human things and to demystify the surface forms of equality." (44)

Aronowitz assesses this as a call for dialectical thinking as the pre-condition for the achievement of a rational community. (45) Here those who seek to work in a critical tradition must consider whether these values of rationalism and the methodology of the dialectic can still be considered the focal point of the tradition and to what extent compromises must be made with the emerging post-modern paradigm or even the traditional liberal framework, given the apparent 'victory for capitalism' in the Cold War.

Hamilton finds strong Hegelian influence in Horkheimer's critical theory, particularly to be seen in the way the issue of natural science method tackled: Critical theory in this form opposed the mode of cognition of natural science on the

grounds that it was temporal and relying only on discursive logic. (46) The role of Hegelian thought within the radical tradition is not without its critics: According to Hughes: "... a number of peripheral - or even accidental features .., began to reveal themselves as unessential encumbrances. Their Hegelian structure could plausibly be dismissed as the time-bound product of Marx's philosophical instruction in Berlin in the 1830's. It accounted for a good deal that was cumbersome about his theories : even the dialectical method - ostensibly the priceless jewel in the Hegelian inheritance - proved to be far less impressive when applied to concrete social situations than when merely talked about." (47)

If this is seen as a rejection of Hegel, the opinion of Schopenhauer [and Karl Popper] on Hegel devastates:

"Hegel, installed from above by the powers that be, as the certified Great Philosopher, was a flat-headed, insipid, nauseating, illiterate charlatan, who reached the pinnacle of audacity in scribbling together and dishing up the craziest mystifying nonsense. This nonsense has been noisily proclaimed as immortal wisdom by mercenary followers and readily accepted as such by fools, who have joined into as perfect a chorus of admiration as had ever been heard before. The extensive field of spiritual influence with which Hegel was furnished by those in power has enabled him to achieve the intellectual corruption of a whole generation." (48)

Even where the angry denunciation by Schopenhauer in 1888 is not our beacon for a perspective on Hegel, it is important to take note that many aspects of his work , and the subsequent influence on Marxism are now seriously questioned. In critical theory importance is placed on the concept of humanity in which the person was credited with an active role in the creation of historical reality -

"...a being capable of comparing what is with what could be." (49)

The question of a history of ideas and the extent to which societies are bound by the values, concepts and anthropologies of its cultural world goes far beyond what can be covered in this paper, but it does mean that in the debate which constitutes the intellectual world, these elements will be utilised by all sides to gain the upper hand in the discussion.

The theories of the Frankfurt School, and Horkheimer's critical approach drew extensively on the work of Lukacs. Following these ideas, the critical theorists strove to break from a bourgeois form of knowledge, and hoped to use the critical analysis as "...a mode of cognition to a determinate structural location..." - in other words the proletariat. (50)

Aronowitz (51) understands the development of the Frankfurt form of critical theory as a response to bourgeois thought, in which the elements of positivism and metaphysics were

linked. This united form of positivist and idealist thinking functioned as the world view of the bourgeoisie, and in being linked to a specific class position furthered the interests of that class and the oppression of those with which it stood in structural conflict.

In terms of this analysis, positivism is understood as denying the relevance of universals, through asserting the rationality of the given surface reality and through documenting its permutations. (52)

This method, described as asserting facts and denying the relevance of transcending universal values, is juxtaposed to metaphysics, which although it is searching for a teleology to give meaning to existence, it is divorced from reality because of its idealism. This method cannot offer a realistic answer to issues of social domination and economic exploitation, which critical theorists understood as characteristics of the social formation, because of this separation of knowledge and reality. This makes it plain that the theorists of the Frankfurt school worked within a framework where bridging the gap between knowledge and reality was seen as a achievable goal of the theoretical model. Later works which question the assumptions of modernity, and those philosophers who work in the tradition of Nietzsche have come to question the viability of theories asserting such a possibility.

For Aronowitz "Metaphysics is the other side of positivist

nominalism. Its universals are abstract." (52)

Thus, whereas 'bourgeois knowledge' used positivist analysis to distort the truth and covered up this flaw with the teleology of the idealist metaphysics, the task conceived for this early form of critical theory was to break free of such ideological distortions by asserting the historical truth about class relations and class exploitation. The Frankfurt school still demanded a form of rationality, but not within the class based limitations of 'positivism'. The debate around the class essentialism of Lukacs has been extensively covered by other writers, and this approach is now seen to belong to a reductionism to which Marxist theories tended. The demands around rationality, and the possibilities of countering this with the discourse and text based analyses of a developing post-modernism form the focus of philosophical debates of the late eighties and of the present. There are now philosophers and theorists who question the value of seeking the certainties of class based forms of knowledge, when the very existence of such forms of knowing can be doubted. If there is no truth, then it is certainly not possible to produce the truth of the class experiences of reality. As Brand points out

"The most general effect of the 'Kuhnian turn' in sociology is the by now widespread conviction of the relativity of all knowledge and the (somewhat less widespread) belief in the untenability of the concept of truth." (53)

The fact that forms of knowledge experience periods during which they are accorded privileged status, depends, as the Kuhnian revolution has shown, not on matters of logic or science, but on the 'sociologisation' and 'historisation' of knowledge, and Brand suggests that these factors place the whole question of rationality into the debate. (54)

To answer this question, he follows the work of Habermas, who has discussed the paradox that Reason has led to the acknowledgement of the historical and social limitations of knowledge, and now falls victim these limitations itself.(55) Reason can no longer be a

"...privileged subject: be it the 'transcendental', unhistorical subject of Kant's 'pure reason' or the global subject behind Hegel's picture of Reason's 'externalisation' and reabsorption in history, or the privileged historical subject (the working class) of Marxist thought. Reason..., is not to be situated in any one particular subject at all but rather in subject-subject relations. ...it is the intersubjectivity of shared understanding which now becomes the core phenomenon." (55)

These challenges to the accepted forms of knowledge, both the atheoretical perspective on society, as well as the orthodoxy of radical Marxist theory show that the struggle for meaning in language and society is an ongoing process.

Aronowitz suggests that forms of pragmatism can be related to

the impact of the positivist doctrine. The abandonment of the correspondence principle of truth, through asserting no correspondence of generalisations of experience with reality, poses a threat to traditional Marxist theories as well, and this places the debate around pragmatism and relativism within the concerns of critical theory. The test of truth which Horkheimer had attempted to locate within a knowledge of reality, operating as an evaluation of rational social organization, is demoted to an assessment of the practical value for the achievement of human ends by this kind of pragmatic thinking. (56)

In asserting that there is no difference between value and truth, pragmatism can be perceived as running the risk of leaving no transcending criteria for human action (57), thereby displacing the critical role of social theory.

For Horkheimer, an epistemological premise of objective truth is essential to give analysis its ability to construct

"...the unfolding picture of the whole existential judgement contained in history." (58)

Truth is objective in this sense, but also grounded historically. For this position to be sustained, newer versions of critical theory must take into account the limitations now understood to be placed on forms of knowledge and social action. These limitations are expressed in terms of the limits placed on our perspective on the world through

the operation of language and the generation of meaning through discourses, which would oppose the Hegelian sourced certainty that we can have a theory of everything, which places things known under our control. The attempt to base forms of knowledge in the structured social and economic relations, which would enable the economic basis to control the elements of the cultural superstructure, and allow the roles and consciousness of social actors to be defined and explained by the the economic forces of the society, has met with fierce resistance. The opposing argument, ie that the economic structures cannot influence or determine in any way, the social and cultural values held by people is in no way proved by the rejection of the reductionist assumptions underlying the kind of class analysis which is now rejected by most social theorists. The method which talked about 'bourgeois science' and 'proletarian consciousness' without showing the concrete historical evidence of such structurally determining forces can now rightly be considered as reductionist and voluntaristic. Defining ideas within rigid compartments of class structure has led criminologists to produce analyses of crime where all acts of deviance by the proletarian class were interpreted as proto-revolutionary acts of resistance, which does not square with the realities and experiences of those who may feel aggrieved by these activities. This problem has been addressed by forms of criminology which have self-consciously proclaimed a left-realist position, and will be discussed in the last chapter.

The introduction to the translation of Habermas's (59) *Legitimation Crisis*, explains the different conditions faced by Marx and the critical theorists of the Frankfurt school: Marx was writing in an age of idealist philosophy, and at the time it was the paradigm of natural science which was producing results in practice. His goal was to overcome the idealist limitations of philosophy, which produced visions and new worlds of the mind, but which had little impact on the conditions of existence.

By the time Horkheimer and Adorno were writing, conditions were very much the contrary:

"...the critique of scientism was the precondition of restoring Marxist theory as critique." (60)

The positivistic materialism had, in the eyes of members of the Frankfurt school become the chief enemy of critical thought, and in their perception the ideals of reason and freedom were kept alive (even if distorted) in the realm of the philosophies of idealism. (61)

It is important to bear in mind that not only did the world of perceived reality and its accompanying ideals change extensively between the times of Marx and Horkheimer, but that this interaction is constantly changing. Since the original critical theorists who used their perspective to look behind the images and ideas, look into what makes the structures of power and state work, much of the legacy of Marx has been challenged. The broad aim of Marx to predict

the changes in history and give direction to the forces which shape the history, now seems unrealistic, but the demand to understand the complex linkages between the economic forces and the legal and social expression of life and work, appear as urgent as ever before. Each expression of theory is an attempt to explain the social formation, and although the forms in which knowledge is accessible to people, often seem flawed at some level - either in excessive partisanship, or cold abstraction, or at the levels of coherence or completeness - but in using the tools of a method to communicate the demands, needs, expectations and achievements of a social formation, the purpose of society is examined and discussed.

A critical theory of criminology need not aim at grand narrative quality, because the forms of analyses which have sought to be a Theory of Everything have failed as much as any other perspective, but failed deeply on their own terms. Working in the tradition of critical theory, Habermas has not felt constrained by his precursors, and he has rejected concepts and formulation which were understood to be basic tools of Marxist theory: Hamilton lists the breaks Habermas's work has made with the past, through which the analysis is distanced from the original formulations of both Marx and Critical Theory - 'Scientific Marxism' has been fundamentally questioned. and he has argued against Marxist theory of class struggle. (62)

The focus of his analysis is on late capitalist societies,

and Habermas has asserted that in these social formations technology and science have become the primary production forces, and thus leaving class struggle as an insufficient explanatory tool. These developments and changes in the economic world also mean that the labour theory of value is in urgent need of an overhaul. (63)

His work continues as a critical theory, because of its opposition to the positivist tradition of Western social science, formulated in a debate around the concept of 'Reason', not located in a subject, but in subject-subject relations. (64) It is important to note that although no modern society can be free from the international relations of capitalism, the actual social and economic conditions found in a particular society cannot be assumed to be similar or directly comparable to those in the first world states, and in applying any analysis derived from such theories, the framework of thinking must be scrutinised in case it blinds its users to the actual conditions in the social formation under investigation.

Marxist-based analysis in Western Europe has always stood in a difficult relationship with the Communist dictatorships of Eastern Europe, and the radical collapse of those systems will have an effect on scholarship drawing on the critical and marxian legacies - in some senses it should free investigations from the ideological tensions of the Cold War, and allow for a dynamic social theory and critical

commentary. As Habermas has argued, the changes within late capitalist Western societies have also made extensive demands on the flexibility of radical theory - and perhaps the theoretical frameworks have not been equal to the task.

The history, social development and economic nature of South Africa have created a social formation which has now been in a state of crisis for almost three decades - so much so that this crisis has become part of daily life: The measures of the 1960 State of Emergency quickly found their way into the 'ordinary' law of the land.(65) The task to which a critical criminology in South Africa must be equal includes the crisis of legitimacy, the ideological and power struggles and the immensity of the social crisis, in which the pure horror of violence, death and traumatic life experiences can never be truly expressed in an academic form of discourse.(66) What a critical criminology can aim to achieve, is to analyse - describe and explain - and produce questions which allows the perspectives and voices which have been silent and silenced in other discourses to find the words in which to express the realities of the social formation. This is a commitment to opening up and giving voice to positions, values, experiences and communities which have in the past been stigmatised and silenced through social norms and whose values have contradicted the 'official versions'. Thus a position of questioning the state, and the power of the ideas and the values which are dominant is located in the hermeneutics of

suspicion, and the broad concerns with questioning the role of power. To make such research valid, the focus cannot remain abstract and theoretical, and the debate must be placed within the historical context of the social formation. Whether such historicism wishes to draw on the 'objective truth' which Horkheimer had seen as a bedrock of critical theory, or whether the collage of perspectives and competing discourses, characteristic of the end of modernity, is accepted will depend on which example of critical analysis is held up as the example to follow. The risks of questioning the scientific foundation of social sciences include the danger of being called 'ideological', and 'unscientific', but even a pragmatist will find utility in many of the methodological and procedural aspects of science, and accuracy of evidence and the objects of study does not come as either/or, but within levels of certainty and public acceptance. Thus even where critical theorists do not agree on the role of rationality, a common ground of historically oriented, empirically based and theoretically justifiable questions and answers on the forces at work within the social formation remain possible. The community of scholars or experts must consider whether they function in the way Kuhn describes them, whether science can still operate with the certainties of its objectivity and neutrality, or whether a compromise position is possible. In drawing on Marx, critical theorists engage with the positivist scientism of the Victorian age, and its successors, but in developing the

tradition of a critical perspective many of these certainties have become questionable. In seeking the human relations underlying objects, and questioning the reification of materialist forms, the purpose of liberation is served. It can lead to a debate on the nature of freedom, which in a climate of oppression, fear and a struggle for political power will bring a perspective on what the new society should be, which ought to arise at the end of the apartheid era. The role of a questioning criminology can be followed in the publications which have followed on the 1985 volume (67) and the range of topics covered by later works in a radical mould includes torture and detention, (68) the nature and history of apartheid policing (69) vigilante activities, death squads and the complexities of the military hold on the state apparatus during the 1980's, the role of expert evidence in cases of collective violence, the nature of punishment and what this means for the state formation and community responses to the crisis, in their relations to the state and their collective actions at a social and economic level. (70)

These concerns have only been modified by the political changes which have taken place since 'unbanning' of the opposition movements and the negotiations for a democracy, and the task of continuing the scrutiny of the nature of the mechanisms of social control and the analysis of the social conditions in which law operates still falls to the lawyers, sociologists and criminologists who are concerned about

liberation and the quality of the life experiences which make up the social formation.

The importance of social theories which base their perspectives on the existence of conflict in society and attempt to look behind the facades of legality and deconstruct the discourses of the powerful, lie in their ability to counter the superficial nature of the apparent social debate perpetrated by much of the political power wrangling. To expose the ideologies and ideas which are used in constructing the forms of social cohesion and political hegemony can also be to describe the interests served by these blocs of agreement. The difficulty lies in not attempting to usurp the political role, but to facilitate the process of debate concerning social issues and the values and norms which the state should bolster through legal process. During a period of open, and politicised conflict the academic role will be perilous, and the lines between politics and teaching can easily blur. Unlike theories which posit consensus at the basis of a social formation, and then run into difficulty in explaining the meaning and function of violence in the society (normally blaming individual pathology or outside interference, or both) a critical perspective has at its disposal the tools of analysis which can give deviant actions, expressions of aggression and violence a realistic explanation. There is the risk of being understood as supporting deviance and disorder

in this attempt to explain it, but the issue is rather: (71)

"Which problems is it more significant to have solved."

Whether or not one accepts the claim of or need for a paradigmatic shift in South African Criminology, the issues at hand are difficult and demanding. André Du Toit writes in Die Suid-Afrikaan: "Die honeymoon van die post-apartheids-politiek is verby; die euforie oor die nuwe Suid-Afrika moes plek maak vir konfrontasie met die onverbiddelike werklikhede van die ware Suid Afrika." (72)

These involve the escalating violence in the townships, and what Du Toit calls president De Klerk's apparent inability to intervene in the security forces. On the other hand the main opposition movement is turning to mass political action to strengthen its political demands, but running the risk of instead favouring those elements in the state, and their counterparts outside the state which still hopes to cling to the apartheid or power through force. This means that a reimposition of a state of emergency, or an interim government with emergency or martial law powers remains a possibility, seen from the perspective at the time of writing. (73)

Such a scenario would dramatically alter the possibilities of a critical criminology, but also make it a crucial function to defend.

The political agenda has shaped much of the debate around criminology, and it is disconcerting to note critical criminology has not countered the marginalization of women.

## CHAPTER 5 FEMINIST CRIMINOLOGY.

Apart from the research work of Hall on the definition of rape in South African law (74) there has been little focus on the issues of patriarchy and there remains a tendency to marginalize issues which constitute an exploration of women's voices in the field of crime. Discrimination on the basis of gender has been described as part of the culture of most South African men, black and white, and Dr Ramphela has quoted Albie Sachs as saying "The only non-racial institution in South Africa is sexism." (75)

The University of Cape Town led the way in appointing a committee of inquiry into sexual harassment, indicating that there are efforts to address the issues of women's rights and direct the debate on social issues to include feminism. This has not yet come to be reflected in the published field around critical criminology in South Africa, although discussed in seminars and lectures. In a review of *Towards Justice?* (76), Eve Grant writes that the collection traces the theoretical framework within which the criminal justice system operates, and how this is rooted in the political ideology or ideologies of the time. (77)

Critical criminology has made a contribution towards understanding the era of 'total strategy', in describing the role of militarization, police sub-culture and the complexities of the link between community, punishment and evidence through this collection, and it is possible to associate oneself with the judgement that

"...the value of this book lies not only in its exposure of the ideologies which underpin the criminal justice system but also in the contribution it makes on a methodological and practical level to the development of a criminology for a future South Africa." (78)

The absence of a discussion of patriarchy and feminism is a significant omission, because it implies that social and political liberation and a more just criminal law system does not depend on the inclusion of perspectives on gender discrimination.(79) The challenge to a critical theory based in materialism and economic explanations is to consider the plurality of interests and realities which is implied by analyses which seem to cut across class relations and alliances, even where this is the result political activity and conscientizing. For Hall, in the discussion on the law dealing with rape, importance must be attached to the cultural forms which do not directly relate to economic interests - " Mythology provides the conceptual machinery to maintain the dominant symbolic universe." (80)

which can be internalized to such an extent that it functions like a powerful but unseen force, shaping perceptions and influencing the meanings attached to experiences.

Whether this dominant symbolic universe is one of masculine values and patriarchal domination, and how feminist theory can counter this is part of a complex debate which impacts on criminology because the perception of who and what a 'woman' is and how the forces of social control and criminal justice

respond and should respond to the demands of equality and recognition of material differences, is as much part of the criminology for a new South Africa, as the issues of racism and poverty. Discrimination in terms of gender and race often coincides and lies at the root of poverty and hardship.

In a book review, Colker concludes that the

"...goal of feminist theory...is to convince people that the agreed-upon description of reality is wrong.

...it has the name subordination. It is at this point that I would argue that feminist theory necessarily must turn to a set of objective ethics or aspirations to be successful. Only by showing how this present reality stands in conflict with our agreed upon ethical standards (a sense of 'justice') can we convince society that that reality is wrong." (81)

This call for an objective measure seeks to refute the stance of Eisenstein, in the book **The Female Body and the Law**, which claims to rely on a critical perspective and adopts a vision of reality that is "neither subjective nor objective." (82)

The common criticism of this approach to critical theory is that one is left with relativism, which undermines the potential critique of any analysis, but Eisenstein rejects this: "It is only within a standpoint that privileges

objectivity and absolutes that relativism and pluralism present a problem. Plurality does not mean that all truths are equal, it merely uncovers the role of power

in defining truth." (82)

Colker finds it implausible that there can be no transhistorical, fixed truth, because the statement that there is no objectivity asserts such a 'truth':

"The statement is circular,... if her assertion is accurate then her statement is wrong." (83)

This dilemma produces a lot of ink, but not much insight. The choice within critical theory of an anti-foundational stance is possible, but neither that nor feminist theory can escape from its philosophical and theoretical controversy.

Eisenstein asserts that

"The assumption of plurality does... keep me from bringing closure to the meaning of the pregnant body in terms of sameness or difference or equality. We must leave meanings open at the same time that we act on them." (84)

Although Colker would prefer feminism to remain committed to objective ethics, she does concede that descriptions of reality remain a complex problem:

"Reality as it is presently constituted cannot be objective because it must be historically specific rather than transhistorical. We can only describe reality from a particular perspective such as from that of the condition of woman, making it difficult for a description of reality to be universally shared." (85)

The focus of feminist critique falls on the inability of some discourses to acknowledge that such a perspective is not only

possible, but also constitutes a form of knowledge. Simone de Beauvoir puts it in this way:

"He is the Subject, He is the Absolute...She is the Other. " (86)

This state of 'otherness' to which women have been consigned is considered to be the consequence of patriarchy, defined in the following terms:

"...the systematic domination of women by men both in the public and private spheres, [embodying] more than material and physical processes of power. It legitimates its rule, its politics, its universalism through knowledge forms based on 'themes, assumptions, metaphors and images'" (87)

This domination is universal and structural, and the marginalization of women take many forms in the economic and social spheres. According to MacKinnon, state institutions

"...coercively and authoritatively constitute the social order in the interest of men as a gender." (88)

and the impact of this in the field of criminology had been noted by Carol Smart in 1976:

"...the wider moral, political economic and sexual spheres which influence women's status and position in society has been neglected or seen as irrelevant to the priority of studying men and crime." (89)

The growing number of criminologists who are working to rectify this balance in British and American criminology include the voices of Gelsthorpe and Morris, who criticise

the exclusion of women from research and analysis, and even theoretical positions. Already in 1977, Firestone challenged the traditional critical analysis by proposing that 'sex-class' was as or more significant than 'economic-class'.(90)

This leads Scraton and Chadwick to conclude that

"If the new, critical version of criminology was to read any differently from its predecessors then it had to consider all structural forms of oppression: their interrelation and mutual dependency. For questions of power, legitimacy, marginalization and criminalization could only be addressed with reference to the structural relations of production, reproduction and neocolonialism as the primary determining contexts." (91)

The exact nature of these determining contexts has become the focus of intense disagreement within the circles which consider themselves critical criminologists, and constitutes the monologues classified as the left idealist-left realist debate. Matthews and Young consider 'feminist criminology' a somewhat uncertain category, although there can be no doubt that in the United Kingdom, United States and Europe that a growing body of knowledge concerned with women and crime has been established, dealing with issues at the levels of theory, strategy, method and politics. (92)

They follow the classification made by Harding, dividing the feminist contributions into three groups, at an epistemological level: Postmodernist, standpoint feminist and

empiricist. (93) The three strands divide on issues like objectivism and essentialism, which have consequences for the possibilities of the discipline within political and state structures . The debate around the issue of post-modernism influences feminist theory because of the questions dealing with the authenticity of women's experiences. For standpoint feminists knowledge is a function of the location of the subjects, requiring that policies and experiences be evaluated from the standpoint of the group with which there is an identification by the commentator. (94) For this position, Maureen Cain argues

"...knowing from a feminist standpoint is not the same and indeed precludes knowing from a working class or black standpoint." (95)

Matthews and Young question this position, because it seems to claim that the relationship between knowledge and interests is not unmediated, and they conclude that the standpoint position is more concerned with constructing feminism than criminology. (96) Eisenstein's position (discussed above) seems to be a 'standpoint' position threatening to dissolve into post-modernism, but opposition to relativism comes from other feminists and the community of scholars that make up social theorists. The question would appear to be whether science, with its values of objectivity and commitment to rationality has been sufficiently problematized within the modernist tradition itself, leaving post-modernism as the shadow of its opponent. (97) The

criminologists of the realist position find themselves committed to a qualified modernism because

"It maintains that the processes of reasoned and rational debate are a necessary feature of any democratic social system, expresses a commitment to progress and in particular, argues that the delivery of services on which the poor and powerless depend can, and should be improved."(98)

This position indicates the differences which exist within the criminology discourse. On the one hand it can be countered by questioning the role of social science in consolidating the state and social structures:

"Indeed, as Stan Cohen pointed out, reformist politics not only faced the danger of co-option but by arguing for positive reforms criminologists were allowing society to present itself as more just and legitimate than it is." (99)

Apart from the concern about playing into the hands of the state, the questions which Foucault has raised about the role of knowledge and scientific discourses must also be taken into account. For him, 'rationalization' is dangerous (100), and a series of oppositions which have developed must be considered as the struggle in which people are engaged:

"..opposition to the power of men over women, of parents over children, of psychiatry over the mentally ill,.. of administration over ways people live.

What is questioned is the way in which knowledge

circulates and functions its relation to power. In short, the *regime du savoir*." (101)

For his analysis, the main objective of these struggles is the attack on these 'techniques', this form of power.

The left realist criminology finds itself most at home in the company of the 'empiricist' feminism, because it is opposed to the kinds of anti-criminology it perceives in the standpoint and post-modern perspectives. Matthews and Young agree with Carlen who holds that the latter

"...are reminiscent of some of the Marxist-influenced radical criminologies which were around in the 1970s and which aimed to dissolve criminology into the class struggle." (102)

Such a conceptual analysis of epistemology and of the state is unacceptable in criminology when dealing with issues of gender and of class, according to the perspective which sees a role for criminology in fashioning better theoretical interventions which can have an impact in the real lives of people, struggling in a world of class and gender discrimination. This is sharply rejected by radical criminologists who, although they deny the label of left idealism, still work in a framework where the resolution of the class struggle is an essential ingredient of a true reduction in crime. This kind of empirical feminist criminology is therefore dismissed because they

"...continue to operate within an androcentric paradigm

which takes men ('malestream') as the norm and relies on common ('co-man') sense." (103)

The South African scenario is complicated not only by the political agenda, in which the transfer of power to a democratic government dominates political action, but also by the legacy of structured racial discrimination in which many women have been left in an economically vulnerable position. The impact of the migrant labour system, the influx control mechanisms, the homelands policies and the combination of economic need and limited education possibilities have had serious consequences for the role of women in the society. The added stresses of the struggle for democracy, including school boycotts and the exceptionally high level of violence which has been generated by the state control and vigilante actions in the townships has brought people to a level of social crisis which has not been theorized from feminist criminological perspective in a published form. (104) The extent to which apartheid has been a form of patriarchy, and relate to forms of deviancy and crime which are specifically concerned with women (although such authenticity remains a matter of dispute) still requires attention, and if critical criminology hopes to be a discipline which will assist in the positive restructuring of the South African criminal justice system, this lack will have to be addressed. South African criminology, even its radical component has never held theorizing itself up as a solution, and according

to Van Zyl Smit, eclectically drawn on paradigms (105) and practices to describe issues and explain problems. This attitude has been useful to avoid abstraction which serves no purpose other than theory building, because theories should be explanatory tools not intellectual jigsaw puzzles. It is however not possible to avoid theorizing, which like ideology is at its most dangerous where it is passed off as common place, and utilized unthinkingly. For critical theorists, there is no way out of considering the complex legacy of marxian social thought, ultimately because the understanding that economic forces have exceptional impact on social, cultural and political issues has itself become such a commonplace. The role and experiences of women within this state formation, particularly with its rhetoric of war and extensive patterns of violence has not been definitively addressed. and before critical criminology can claim to prepare for a new South Africa, this must be addressed. Habermas holds the view that

"...the laws of the economic system are no longer identical to those analyzed by Marx,[because of] interference from the political system"

and this has created the need for a new theory of the

"...interaction of economics, politics, and culture."(106)

A South African critical criminology will be a component of such an ambition.

CHAPTER 6 CRITICAL CRIMINOLOGY AND LEFT REALISM.

According to Fitzpatrick, the notion of society must be understood in the following terms:

"The social formation is constituted by the interaction of the mode of production (economic level) and the related legal-political and ideological levels... all concretely combined in a totality that is often,.. rendered in terms of a geographically located 'society' or country." (1)

Even where one is not comfortable with the talk in marxian terms of mode of production, it goes without argument that the economic lifeblood of a society is crucial for its existence and renewal. The links between country, society economy and state are clear in superficial terms, but the disagreements, politically and theoretically come where the nature of this interaction is described, and the qualities of competing forms embodying these processes are discussed.

In a critical criminology the nature of the state is placed in question, and 'crime' and all forms of deviance and social control cannot be discussed without considering the background of the social formation. This can be interpreted by both supporters and detractors to mean that the blame for harm which is exhibited in a social formation, falls not on the actors, but on the social structures which make up the society. This is an unwelcome simplification, because it conflates the issues of understanding deviance, apportioning

blame, defining the goals and aims of the government of the day, as well as suggesting that the solution of these issues can only be addressed at the macro-level of the state.

This approach suggests that there is something 'wrong' with the state, and suggests a political solution, without explaining why there needs to be a continual rethinking of the state form, and the implications of this for issues like civil liberties and law enforcement.

For Marx, the state was something dependent on the society, and the concepts of mode of production, class formation and class struggle are seen as explaining the forms of State power. The state, with its widely acknowledged monopoly on violence, is thus an institution of coercion within society, responding to the rising social violence between classes (2)

Here one can also refer to the opinion of Giddens, concerning the 'internal pacification' of societies by the nation state, which is the form of state dominant in the first world, and models of which have been imposed or taken on by the developing world. (3)

In the case of South Africa, the origin of the state lies clearly in the era of colonial domination, with its ideological baggage of conquest, domination, subjugation and, despite all of the above, the belief in the civilising role of the settler class.

The power of the colonial dimension came from its military might, (which it did not flinch from using), technological

powers, traditionally explained as advantages, and the fact that it carried with it (or was driven by, according to radical social theory) the mode of production which has come to be the economic force at the centre of international, national and communal relations. Researchers and readers will bring their own normative framework to any reading of history, but it is suggested that one of the conclusions which can be drawn from the unfolding of history, is the practical impossibility of escaping the tensions and demands of the capitalist economic life. Communities, social groups, individuals, and the broad social formations which make up countries are all apparently caught up in a web of interactions which constitute the attempts to supply the needs of sustaining life - the production and distribution of these resources, which can be as much cultural as economic, and this cannot be done without linking into the world capitalist markets. Social formations which do not attempt or succeed at this, are considered poor, and in need of development.

This is also an ongoing, historically complex process, which defies concise and precise description, and the theorising of which has been at the heart of intense intellectual and popular debate.

The theoretical position which seeks to link concerns of political economy with that of theft, violence, fraud, assault, also produces and controversies by problematising so many aspects which it is unable to resolve, or at least

deliver solutions to that satisfy at a common sense, popular level. A critical theory will have to consider the problem at the level of epistemology, but also in the field of the popular consciousness and trace the considerations of ideology and cultural values. The discourses of justice and legality play an important role in the values of a social formation, and critical theorists in the past are thought to have lost the awareness of this. By posing questions concerning the role of the state in supporting the economic status quo, the legitimacy of the division of property and the utilisation of resources, a critical theory can be used to show up the reification of relations of production of a society, and to dissect concrete instances of power. In the past it has been considered sufficient for a critical approach to show that justice is the abstraction of class rule, and that the interests protected by law are linked to property, but in approaching the end of the 20th century analyses are required to compete in social scientific world far more interested in quantitative method and research results which are useful within the discourses of social control and welfare, than in broad, politicised perspectives. The fact that the years of apartheid rule has politicised education and students have been in the forefront of the political struggle for democracy, is also placing particular demands on the academic professions, which cannot be equated with conditions in the UK, which is the source of a lot of the critical criminology used as examples for methodology and

theory.

Schwendinger and Schwendinger places the issue of elitism and social structures on the agenda for a radical criminology by noting: "Perhaps there are no statements more repugnant to traditional legal scholars than those which define social systems as criminal." (4)

The state ideologues, and academics sympathetic or in support of the racial separation which characterises so much of South Africa's social life had in the past resisted attacks on the policies of apartheid and on the discriminatory nature of the state by supporting sweeping measures restricting the rights of individuals to express themselves, act in concert with their beliefs and live their lives according to their own desires, rather than the prescriptions of the government of the day. The consequences of these policies, and the effects of the limits placed on individual freedom and the emphasis placed on ethnic identities have delivered a dangerous mixture of poverty, racism, ethnic pride and intolerance. To call the nature of apartheid criminal, may appear out of place in an academic paper, but the social consequences of the grandiose schemes of social engineering which deliberately denied the equality of black people and placed obstacles in their social mobility and economic opportunities must be considered acts of intentional harm. The resulting political turmoil has laid the foundation of a disrupted educational system and the cost in lives, and in lost potential of people is a tragedy which is now crying out for

remedial efforts. The difficulties posed for a criminology lie in the fact that the violence and social disorder which may be tracable in origin to the intentional acts of harm by the state in its policies against many of its own citizens, are continuing the chain of violence and tragedy, often against people who also had suffered discrimination and blocked opportunities because of the flawed political system.

The political ideals which are shaping the discourses on which South Africans must build the hope for our future, draw in part on values of community and egalitarianism, but opposing them are the justifications of inequality, but also the liberal doctrines of equality, which are measured in terms of ownership and private property. It is not the task of criminologists to resolve the political crises, but the discipline of criminology must be intellectually prepared to express and debate the implications which many of these values will have for the operation of the criminal justice system.

For the Schwendingers (5)

"... there is no universal moral rule which makes social inequality a functional necessity. Above all, there is no valid moral or empirical justification for the outstanding forms of social inequality in existence today, including economic, racial and sexual inequality."

The difficulties with the ideals of equality and the desire

to put an end to elitism, are that the the distribution of resources within a social formation is linked to the economic forces and the cultural modes of understanding society, and that such forces are not amenable to voluntarism, but subject to the existence of power.

For Alan Hunt, there is a fundamental problem with the responses of those understood to be on the 'left':

"... they manifest themselves as deductions or derivations from general theories of law and the state .  
..[and show] a reluctance to deal with concrete issues."

Because this involves the simple application of the general theory, it is most likely to produce a result which points to the class nature of law, and

"The result is a complacency of circularity, in which the general theory is celebrated and the concrete is presented as its proof." (6)

There is therefore a need for empirical work which brings about the unity of theory and praxis, which although it was always held up to be the goal of critical theory, was seldom attempted in research projects. This was not all that surprising since the radical agenda consisted to a large degree in perspectives which considered the failures and the political and ideological implications of the criminal justice system so negatively that abolition or a revolution in civil society which would remove the need for such institutions were seen as the only true radical options. Matthews and Young consider the integration of theory and

practice as one of the areas where the new style left realists and the older style radicals, now dubbed idealists have in common, but that ideas do not arise in a theoretical test tube without a political context, and that

"Much of the best work which has come out of the radical criminological tradition has arisen from practical involvement and from attempts to devise workable and progressive policies. (7)

They are arguing in support of a radical tradition of criminology which does not stand aloof from the realities of power and policy, but always runs the risk of being implicated in the social control which it seeks to criticise. Radicals have expressed their role as opposing the power of the state, and Platt puts it in this way:

"We need a definition of crime which reflects the reality of a legal system based on power and privilege; to accept the legal definition of crime is to accept the fiction of neutral law. The State and legal apparatus, rather than directing our investigations, should be a central focus of investigation as a criminogenic institution, involved in corruption, deception and crimes of genocide." (8)

The crisis position in South Africa in which allegations of state involvement in death squad activities, added to the open repression and limits on civil liberties during the previous decades have created a culture of suspicion towards the state, all tend towards indicating care to be taken in

dealing with the state. In the period of transition, where the stance of non-participation and fundamental opposition has been partially modified, it is not yet clear how to best move from opposing the state, to involvement in its structures, without becoming implicated in the repressive qualities of the state. This poses a particular dilemma for radical South African criminologists, and is part of the range of difficulties which will have to be solved if critical criminology is to play a role in shaping the criminal justice system of the future. Bearing in mind the strictures of the radical criminology of the past will not solve this:

"The radical criminologist's task ...is not to help the courts to work, nor to design better prisons.

Radical... strategy is not to argue for legality, and the rule of law, but it is to show up the law in its true colour as the instrument of a ruling class and **tactically** to demonstrate that the State will break its own laws, that legitimacy is a sham, and that the rule-makers are also the greatest rule breakers." (9)

This position allows the criminologist to clear his or her mind of some of the illusions which law allows (or needs?) to generate around its operation, but it does not provide a strategy or direction for a democratic struggle which needs to be aware of the limitations of the goal of democracy, but nevertheless strive towards making its achievement as effective and just as possible.

Young sets out his approach to law as:

"The law may be used where there are advantages in doing so, without succumbing to the notion that the law can universally be so useful. For it is precisely the nature of law to conceal particular interests behind universalistic ideology and rhetoric. The task is not to romanticize illegality: it is, as Lukács suggests, to judge deviant action in terms of its relationship to the struggle, ignoring the classifications of legality and illegality created by the powerful, in their struggle against the powerless." (10)

In the intervening years some radical criminologists have started to question whether this 'law as class weapon' approach is sophisticated enough to be used as an analytical concept, holding that it is rather a blunt instrument which in its crudity falsifies the truth which it may refer to. Although the risk of re-legitimizing the criminal justice system should be borne in mind by those who consider the 'realist' position, particularly in South Africa where the road towards a representative and democratic state form has only recently become a possible way, some of their arguments seem to carry a lot of force:

"...as left realists have argued, the categories of crime are neither arbitrary nor accidental. They arise from definite social and historical relations and it is erroneous to 'assume that the state can create definitions and categories "at will" quite independently

of those established by popular social communication.  
(Lea, 1987, 1990) This does not mean that one should  
treat such categories uncritically but to emphasize that  
they have a social base and cannot be defined away."

(11)

To speak out on the nature of such a popular social  
communication and to describe the nature of the social base  
which is communicating these values will only be possible  
through a context based, case and social study of the actions  
involved - anything else can only be abstraction and theory  
in a vacuum. Not all radical criminologists are convinced  
that the way indicated by the self-styled realists is the  
correct direction in which criminology should be developing.  
The changes in Jock Young's approach through the years are  
treated in the following manner by Sim, Scraton and Gordon:

"The recent debates around the state and the rule of law  
have ranged from important contributions on left  
idealism [Young 1975] to naive, schematic and crude  
misinterpretations of the 'Marxist' model. [Kinsey and  
Young 1982] " (12)

The interpretation of Marx has taken so many forms and  
arguments that the post-modern argument concerning  
irreconcilable discourses which overlap, contradict and  
simply generate more of the same appears to be applicable.  
According to Marx, in **The Holy Family**

"The recognition of the rights of man by the modern state  
means nothing more than the recognition of slavery by

the State of Old." (13)

This dismissal of the notion of rights and the perspective on the state as an instrument of oppression must be seen against the background of struggles for liberty and justice which have utilised the language of rights and the instruments and apparatus of the state. Maureen Cain argues that the explanations of a Marxist theory which follows a mechanistic class mode in expressing the social interactions, or an economic reductionist argument, cannot do justice to the complexity and potential of Marxist thought. (14)

Cain holds that opinions which suggest (like those of Lloyd) that for Marx

"Law was nothing but a coercive system devised to maintain the privileges of the property owning class... Law was distilled out of the economic order which gave rise to it and was an institutionalized form of the prevailing ideology whereby the dominant sector of society coerced the masses into obedience." (15)

are dangerous oversimplifications. Not only has law not been defined in the *oeuvre* of Marx, but that the scope and aim of the works of Marx and Engels were at a very different level: Law does not feature as a privileged concept, and crime and criminal justice are only analysed in terms of the economic debate which they were framing. The scope of this debate involves social organisation of the means of life and focusses on forces and relations of production. (16)

As Hirst pointed out in his discussion of radical criminology, the concepts and focus of political economy do not consider 'crime' as something to be explained in its own terms, and according to Cain, law is dealt with by Marx and Engels as 'an objectified ideological form.' (17)

It has been a matter of debate whether a commitment to a marxist social theory must necessarily lead to a rejection of the operation of the law, and in particular the criminal justice system. The latter is the coercive element of the state formation, and it can be shown that political and ideological factors have throughout its history shaped its operation and determined the values which controlled the decision making process.

This problem is famously expressed in the work of the British historian E.P. Thompson. (18)

"The essential precondition for the effectiveness of law in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. Its own logic and criteria must be upheld. In the case of an ancient historical formulation, like law, a discipline which requires years of exacting study to master, there will always be some men who actively believe in their own procedures and in the logic of justice... The law may be rhetorical but it need not be empty rhetoric."

The argument against the economistic analysis of legal values

and structures lie not in disputing the formative power of the economic forces, but in a rejection of the idealism which obscures the real social relations by ignoring the historical context and concentrating on the theoretical model and refusing to acknowledge the experiences and struggles of people as concrete examples of progressive politics.

For Thompson, "The rhetoric and rules of a society are something a great deal more than sham. In the same moment they may modify in profound ways the behaviour of the powerful and mystify the powerless. They may disguise the true realities of power, but at the same time they may curb that power and check its intrusions. And it is often from within that very rhetoric that a radical critique of the practice of the society is developed." (19)

The question is what a discussion concerning crime should aim to achieve. The benchmark of critical criminology answered thus: "Materialist criminology must set about the task of seeking to explain the continuance, the innovation or the abolition of legal and social norms in terms of the interests they support, the functions they serve to particular material arrangements or property." (20)

and to "...abolish the distinction between the study of human deviation and the study of the functioning of states and ruling class ideologies as a whole." (21)

O'Malley supports the notion that this form of the discipline is in fact an anti-criminology (like standpoint feminism and

post modernism) because it seem like a

"...disaggregation of criminology into conceptual categories of Marxist theory." (22)

With Frankel, the question is posed whether at the level of theory and practice, marxists need not seriously to question the utility of the concept of the state, and

"...of the practice of regarding the state, the economy and civil society as the holy trinity of marxist theory." (23)

O'Malley's scepticism is captured in the comment

"Perhaps the only mystery is why the myth of marxist criminology persists" (24)

The collapse of Eastern Europe and the end of the Cold war has meant a radical rethink for the surviving Communist Parties, and the rejection of the concepts of rights by Marx can be contrasted with the opinion of Joe Slovo in 1990, when he was the leader of the South African Communist Party. Not only did he concede that the 'dictatorship of the proletariat' had come to signify the dictatorship of the party bureaucracy, and that the concept of the single party state is not part of classical Marxist theory, but also that

"The SACP was committed to a post-apartheid state which would guarantee all citizens the basic rights, and freedoms of organization, speech, thought, press movement, residence, conscience and religion, full trade-union rights for all workers, including the right to strike, and one person one vote in free and

democratic elections." (25)

This commitment to 'rights' must in all likelihood be interpreted in a framework which acknowledges the debate around the commodity form, and the oppression which is entailed in a facade of equality when individuals and groups live with the consequences of inequality, but is nonetheless an interesting development in the debate around 'democratic socialism'.

The support which the concept of a 'rights culture' has gained, apparently even from the Marxist left, is in contrast to the social and legal reality of South Africa. The racism of the separate development ideology, and the repressive measures which followed the protests against this denial of rights further eroded the rights of the individual under South African law. Dennis Davis has linked the absence of a political tradition to the culture of lawlessness which has taken hold of the social formation.

"As a consequence of a dearth of political tradition the law has lacked real tradition in South Africa. In other words, the law can only operate within the context of a tradition of politics in which argument exists about the nature and purpose of society, and in which that tradition is recognized by the majority to be essential to the reproduction of that society,

In South Africa we have no such tradition. And if there is no such tradition then there is no law. Repression, killing, assassination become the order of the political

day rather than argument, and debate about the pursuit of societal good." (26)

This ties in the analysis of E.P. Thompson, where the struggle of people within the framework of law, can produce a social formation where interests and ideals of the community receives a measure of protection through the law, even where the legislation is made at the behest of the powerful. For criminal law, where the process of criminalization will result from influential bodies and people exercising their power on the criminal justice process, the argument is that through the limits placed on the process by the values of the law and the influence which debate in the society has on the exercise of power, the interests of justice can be served even by a flawed system. This however presupposes the possibility of a form of community, in which rights can arise within the context of accepted and 'rule-governed social practices'. (27)

For Davis, an impasse has been reached in South Africa:

"Rights can exist only within the context of a shared, social practice, which in turn presupposes a form of community.

South Africa is characterized by a lack of national community ... Indeed, the very purpose of apartheid was to prevent such a national community from being established."

The future of law is thus predicated on the establishment of such social practices and a community, which requires a

transformation of the South African society,

"...by redressing the product of almost a century of racist politics and economics." (28)

Critical criminology needs to intervene in this impasse, and structure its contributions on crime in a way that furthers the process of debate on what values society ought to protect, and how this is to be achieved within the limitations of the state form and the economic system.

The radical and realists in the field of criminology disagree on what these limitations are, but through placing these structural elements within the debate, they oppose the other forms of criminology which emphasize individual pathology, or the failure of the 'family' to socialize the child.

Particularly in the face of homelessness,(29) and the separation of families through migrant labour, including domestic labour which can be linked not only to economic structuration but also to state policies of the past the uncritical use of family and individualism in explanatory concepts operate as a denial of the reality of enforced ethnic separation and a form of labour which can be called nothing else but exploitative.

Scruton and Chadwick define the role of critical criminology thus: "While 'power', 'regulation', or 'control' can be identified in personal action and social reaction as part and parcel of the daily routine of agency, critical analysis seeks to bring to the fore structural relations

involving the economy, the state and ideology, in explaining the significance of the power-knowledge axis, and relating it to the processes by which dominant ideas gain legitimacy. Discrimination on the basis of class, gender, sexuality and perceived ethnicity clearly operates at the level of attitude, on the street, in the home, at the work place or at social venues. Once institutionalized, however, classicism, sexism, heterosexism and racism become systematic and structured.

Through the process of institutionalization, relations of dominance and subjugation achieve structural significance. Critical analysis of crime and the criminal justice process must be grounded in these theoretical imperatives." (30)

The warning of Hunt must however not be forgotten - there is the risk of using these concepts in a circular fashion, and research must not make deductions from the general theory without reference to the concrete reality. The nature of this evidence gathering places an emphasis on methodology, and leads back into the debate on the nature of a science.

Without holding to the method preached by traditional positivism, critical research must engage in the process of deciding what has meaning within a social formation, and this means taking care with language, concepts and arguments.

Questioning the validity of positivist method, does not mean lower standards or less concern with establishing what is

true. It draws on the concern that rigidly 'scientific' method can operate as a mystifier, and a distortion by refusing to acknowledge to impact of values and perception in its gathering and interpreting of evidence.

The agenda of the left realists in British criminology offers a lot of guidance for the possibilities for criminology theory and research. This is true, even where radical criminologists still carry doubt concerning the willingness of the realists to consider options within the political framework as it stands. In the British case, Young and Matthews (31) theorize the debate on the 'left' as having turned increasingly towards

"...improving the quality and the level of services while minimizing the repressive aspects of the state. The political challenge was to develop those state forms which would increase people's collective level of security but did not unduly restrict their freedom."

Radicals may balk at the notion of the unrepressive state, but in that case they need to explain why the struggle for democracy is a political one, aimed at taking control of the state. After Foucault, it is no longer possible to consider all power as negative, and to maintain the illusion that there is somehow a return to a socialist Garden of Eden where no one will wield power, and all will be free.

The abolition of the criminal justice system is a theoretical position which is not sufficiently considered in many ways,

but will only be viable where its arguments are convincing enough to produce a significant social and political movement which can act on these demands.

Matthews and Young on what it is that criminologists should do "The role of criminologists is to debate with the public over crime priorities: it is neither to reflect or bestow public problems. The role of realism is to situate the problem of crime within its social context."

(32)

The agenda of the left realists by their own admission, does not involve an 'abrupt hiatus with the past' of critical criminology because it does not deny the validity of many of the explanations and positions. The difference lies in considering the 'old' radical criminologies as attempting

"...to explain the reality of crime by focusing on only part of the phenomenon." (33)

The major explanatory innovation of the realists is the use of the square: The partiality of the earlier forms is overcome by extending the focus of the discipline to include the four aspects of crime which in the past had dominated different paradigms. Matthews and Young consider the aspects to be:

"the state (as in labelling theory, neo-classicism), the public (as in control theory), the offender (as in positivism), or the victim, (as in victimology.)" (34)

For criminology it is the shorthand to point out the limitations of perspectives which only focus on the offender

and the victim, to the exclusion of the state and public opinion, as well as the left idealist positions which focus of the process of criminalization as something entirely generated by the state.

Jock Young argues that this method of explanation acknowledges the nature of crime, and this supports the principle of naturalism which lies at the heart of the left realist agenda. In being faithful to the nature of a crime,

"it should acknowledge the **form** of crime, the **social context** of crime, the **shape** of crime, its trajectory through **time** and its enactment in **space**." (35)

This position would be at odds with the class-based analysis which considers the economic form to be the dominant aspect in the causation of crime, as well as the discourse analytical positions which question the certainties and reality perception of modernism.

Young specifically rejects these positions and holds that the **square** of crime is made up of the following:

"The form consists of two dyads, a **victim** and an **offender**, and of **actions** and **reactions**: of crime and its control. This deconstruction gives us four definitional elements of crime: a victim, an offender, formal control and informal control. Realism, then, points to a square of crime involving the interaction between the police and other agencies of social control, the public, the offender and the victim." (36)

The question which arise, is whether this description of the

state and its agencies fall within a macro, or middle level of theorizing. In moving the perspective onto the crime, and attempting to reflect its reality, the risk arises, particularly in applying left realism to the South African conditions, that the discourse becomes amenable to the explanatory powers and ideological influence of the state.

(37) Young's analysis seeks to avoid becoming an uncritical reflection of the structural positions of these four corners of the square, by stressing that the crime rates

"...are generated not merely by the interplay of these four factors, but as **social relationships** between each point on the square." (38)

The goal of realist criminology is not to limit research to particular levels of theorizing:

"And central to realist criminology is that all parts of the square of crime must be linked up from the micro-level of interaction, to the mezzo-level (such as the nature of police bureaucracies or the informal economy in burgled goods) to the macro-level." (39)

David Matza pointed out more than two decades ago that the positivism attempted the impossible in the field of criminal justice: separating the study of the state from the study of crime. (40) Matthews and Young emphasize how the debate between sociological positivism and labelling theory, as well as the older debate between individual positivism and neoclassicism centres on the dyad of action/social reaction.

In both cases, the positivists concentrate on why people commit crimes, and their opponents focusing on the reaction to crime. (41) The realist agenda requires far more from criminological research:

"...criminology must problematize both why people commit crimes and why certain actions are criminalized. And of course, it must do more than this: it must examine the interaction between actors and those reacting against them, the interplay between crime and 'non-criminalized behaviour', and social censure and approval." (42)

The labelling theorist who takes sides with the deviant, lead by the social constructionist argument, is focusing only on part of the phenomenon. The fact that the researcher has made the value framework plain is not the problem, it is the partial explanation of the factors involved that limits the perspective.

Realism also aligns itself with the sub-cultural tradition in social theory, because this perspective

"... has recognized the need to understand the nature of human praxis in changing determinate circumstances, of the necessity of coupling micro- with macro-analyses of society, of the relationship between consensus and diversity ..." (43)

The rejection of positivism lies in the view of crime as a product of behaviour and social definition, while left realism also criticises what it considers to be manifestations of idealism, which in focusing on the social

reaction to crime, does not fulfil the role of criminology:

"...the need to explain criminal behaviour." (45)

Aetiology has been described as one of the dimensions of the crisis in criminological theory. (46) The radical approach had in the past located causality in the criminogenic nature of capitalism, thereby exhausting the explanatory power of the analysis. Others have searched for it in the defective personality or body of the stigmatized criminal, leading to a different kind of circular argument, but one with no less sterile consequences for research. The development of the new right in western Europe and North America has taken place in a period during which social determinism had become the social theory out of favour with the dominant political culture, and the notion of causality or blame for the apparently inexorable crime rate increase being located in the social structures and the economic system was rejected as old fashioned socialism. This has meant that criminology has made a

"...retreat from a discussion of wider social causes of offending." (47)

Jock Young utilizes the concept of the square of crime, to suggest that crime rates involve a fourfold aetiology:

"It involves the causes of offending (the traditional focus of criminology), the factors which make victims vulnerable,...the social conditions which affect public levels of control and tolerance, and the social forces

which propel the formal agencies such as the police."

(48)

All the factors identified as influencing the crime rate can be found in the South African context, and all seem to present in forms which lead one to expect increasing levels of crime. The traditional focus on individual pathology for the commission of crime has tended to shift towards a psychological model of wrongdoing, and the perception that people with low self esteem, or a negative self image are more likely to commit crime, has become popular. In a society of exceptionally high illiteracy, figures suggest it almost approaches a level of 50% in the adult population (49), and mass unemployment, producing exceptional poverty, added to a housing and educational crisis means that the social psychology of the country is likely to profile problems of identity and belonging. Even where a mechanistic link between poverty and crime is not suggested, the social and economic ills, are factors adding to problems of self esteem and personal validation. The utility of a realist theory, lies in its ability to retain the concern with the individual without losing sight of the broader issues. The limits of traditional aetiology are overcome by considering the other aspects of the 'square' of crime.

Victimology in itself can be a problematic approach to crime, because in isolating the relationship between the offender and the victim, it is possible that an a-contextual analysis

can serve the agenda of the 'law-and-order' brigade by demonizing the actor, and portraying victims as passive and helpless, supporting the framework of thinking which argues that only through more and more power in the hands of the social control agencies, and through restricting the civil rights of all, can law prevail. By emphasizing the four different elements of crime, and investigating the social relations between these forces, realist criminology hopes to offer a perspective which considers the 'real' experiences of those who come to harm, but retaining the awareness of social issues and the role of ideological forces which seek to utilize the debate around crime to serve particular statist or populist causes.

Left realism is accused of being a kind of populism (50), and in more radical quarters there is extensive suspicion of the crime surveys (Merseyside, Islington, Edinburgh) which have in some ways become the hallmark of the new kind of criminology in the UK.

Dennis Davis has pointed to the lack of a political tradition and the absence of a sense of community in the South African social formation, which for his analysis poses a serious threat to the existence of law. (51) The concern of a radical criminology to take into account

"...the social conditions which affect public levels of control and tolerance,..". (50)

runs into the difficulties of intractable violence and social

tensions which turn into violence and death with frightening regularity. The death toll from the townships sounds like figures of war casualties (53), and the state and criminal justice system appears unable to stem this tide of destruction. At this stage, criminology can only hope to offer insights into the extent and nature of the calamity, because 'solutions' to such politicised anger and intolerance appear in books only, not on the ground.

Even if research can only point to the roots of intolerance and strengthen the possibilities of building communities, the purpose of radical criminology will be served: to work within a discipline which aims to support a more just and equitable society where harm is minimized. Social conditions must be studied from a critical perspective which looks behind the images which social actors hold up to themselves and others, and whether one hopes to find there a true and essential reality of human existence, or whether one can be content to deconstruct the discourses and the signs which make the collage of meaning for the social formation, a critical perspective contributes to a fuller understanding of life.

The role of the state, as a relation between economic, ideological and social forces remains of aetiological concern to left realists, although the radicals would see the multiplication of aetiology as a kind of betrayal. The realist position has been developed in the European debate in

which the role of Marxism, and historical materialist analysis had been diminished through changes in the political and intellectual spheres. Matthews and Young talk about the influence of Marxism on social thought receding, and point to the decline, and fall of parties on the far left. (54)

The experience in South Africa has been very different - starting with the Suppression of Communism Act, of 1950, and the decision of the government to maintain the severest possible repression within the ambit of the law against all doctrines associated (even vaguely) with Communism. This exceptional regime of interference with the freedom of thought, information and association constituted the end of the era of liberalism, and the marked the start of the attempt by the state to control large sectors of the civil society quite openly in terms of its ideologies. The long term impact of these policies must still be researched, and it is still too early to accurately judge the consequences of the unbanning of the liberation movements and the Communist Party - even at the political level, let alone the full impact it is going to have on the world of ideas and the intellectual community.

This means that the political demands which will be made on the criminal justice, and the ideas which will constitute the raw material for criminology debates will in part draw on perspectives which have failed to maintain a political impact in Europe. This does not mean that they are not relevant to the conditions in South Africa, and the intensity of the

debate will not be resolved with reference to what happened elsewhere in the world. The debate on democratic socialism has however shifted, if the opinions of Slovo (55) is anything to go by, and the restoration of the freedom to express and consider views and alternatives which had been proscribed in the past can, if one believes in rationality, (or at least that knowledge is a tool allowing us to cope) only augur well for the intellectual freedom and well-being of South Africans.

### Conclusions.

The answer to society's problems does not lie in theory, but solutions will not be found without perspectives which cannot exist in paradigms without theoretical input.

The editors of a volume on crime and state control in South Africa expressed the fervent hope that the analyses will make a contribution towards justice, and the commitment to a critical criminology includes the hope of living in a society which is moving in the direction of equality, and support for the members of the community who are at a disadvantage.

Understanding the phenomenon of crime in its complexity can enable all members of a community to argue against the simplistic concepts of more and more power to the controllers as well as creating the intellectual space for debate on the values which need public support. Where the members of a social formation have at their disposal the tools of debate, they can be enabled to live and express their needs and fears through the membership of a community. This is not to advance the notion that communities exist free from conflict, but to recognize that while living in conflict, structures for resolving the competing demands can enhance the quality of life. The choices which are made in the state and legal discourses, deciding for criminalization and repression, cannot be made without involving power, but where the needs and expectations of people are expressed and debated in an informed manner, the policies of government can constitute

a consensus which although oppressive in some form, also plays an enabling role in the social formation.

The role of political hegemony in the creation of such consensus, even where it is done through democratic structures should prevent social theorists from posing specific state forms as idealist solutions to real problems: Throughout history groups or individuals whose values and interests conflict with the political majority (democratic or otherwise) have fallen victim to repression and legal sanction. The effect of patriarchal thinking has shaped the perception and roles of women for centuries, and the struggle for recognition of identities which are not part of the hegemonic power brokering alliances is a continuing feature of societal forms. Thus women, ethnic minorities, racially stigmatised groups, the homeless, gay and lesbian people, the working class, even the aged and the young are people in categories which are more likely to suffer repression at the hands of state and power discourses, than other social groupings. The call for political action by people in such categories, and on behalf of them, makes up the efforts to compete more fairly in the debate concerning the values and ideas which should be recognized by the state form. The difficulties in constructing their political identities without turning towards essentialism in defining their anthropology, have not been resolved in social theory. The reifying of classes, or womanhood, or whatever the unifying

factor in the category may be, means that the ideology starts to lose contact with the lived experiences of people, and dogma replaces reality as the focus of study or political action. In the face of these risks, deconstruction offers an intellectual tool which can retain a critical, cutting edge. The philosophical nature of 'reality' and the demands that social theory must accept the constraint of a correspondence theory of truth are part of the modernist perspective on social experience, and this has become the focus of intense debate. The competing demands of feminists, and other political groupings on the recognition by the legal system of their interests, problematizes the existence of 'law'. Peter Fitzpatrick has argued

"...that law is constituted by a plurality of contradictory social forms. The impossibility within a social formation of bridging the gap between (the concept and practice of) law and other social forms (the prison-system versus rules of law-legitimacy is an example) whilst the legal form remains dependent on the persistence of both, can be interpreted as a necessary precondition for an operational legal form: ..." (54) In

Fitzpatrick's own words -

"Law depends on opposed social forms. It depends integrally on what is contrary to it. The gap is set. There is not in the gap some vague but remediable derogation from the efficacy of law, rather there is something constitutive of law itself." (55)

The difficulties which result when the social forms depend on the subjugation of each other, can be seen in the destructive consequences of civil war. The role of critical theory in South Africa has been to deconstruct the falsehoods and euphisms on which apartheid depended, and to investigate the reality behind the actions of the state apparatus. This has been done through good old fashioned expose, and a combination of liberal and marxist based theoretical implosion of the untenable doctrines of the apartheid state. The extensive nature and form of the crisis has meant that natural foes like Marx and Locke, could join with Horkheimer Foucault and Derrida in unmasking the state and the implications of its laws, but the philosophical contradictions between these traditions cannot be denied or hidden, and the restructuring of the South African political terrain has come to show that not all liberals are 'marxists', (as the National Party would have us believe in the sixties) and that the Deconstruction is not just deconstructing.

The implications for critical criminology are numerous: The time to think about how a democratic justice system should be structured is at hand, and even the abolitionists should be putting forward ideas of how not to do it. The debate between policy-making left realists and the abstentionist radicals is likely to become fierce, and the invisibility of women, ecological concerns and gay and lesbian issues will increasingly be challenged. The deconstruction of the

apartheid state is going to take a long time, because the relations which have made up this social formation are deeply embedded in the property distribution, legal culture, state apparatus and personal lives of millions of people. The basis of the economy is located in what can be considered black labour, and the overwhelming measure of ownership of the productive facilities is in white or foreign hands. The ideologies through which people make sense of their lives and the social practices which constitute the South African reality are still steeped in racial separation - the images of television advertisements notwithstanding. Violence, theft, car accidents are commonly experienced as the interactions between people where racial exclusivity is breached, regardless of whether this is borne out in practice, and until the political process develops sufficiently to enable positive social interaction to become the norm rather than the politicized exception, crime in South Africa will remain a point at which racial fear and distrust meet with social forces - economic, political, ideological and personal. This focuses attention on the important role that a critical criminology still can play in the long and complex unpacking of racism which will be required, but also become possible, during the period of reconstruction which will mark the true end of apartheid.

The criminology of the left realists in the UK locates itself in qualified reaffirmation of modernism.(57) The shifts in

world history encompassing such vast era's and fundamental changes in the nature of society cannot readily be linked to acts of crime and social control, but the paradigms in which ethics, state functions and the role of individuals in societies are considered draw on the philosophies which attempt to make sense of the broad sweep of time and history. Matthews and Young take issue with Cohen for suggesting that every critical theorist is somewhat of a deconstructionist (58), because this term is linked closely with the emergence of postmodernism. The disagreement results from the choice which modern philosophy suggests we are faced with: the modernists hold progress and rationality as possible, and this allows explanations of theory, society and meaning to fit into larger patterns and structures. Holding that it is possible to know the origins of society and to guide its development through rational debate and predictable results drawn from the paradigms of theory, modernism is seen as the confident expression of a belief in the human ability to conquer the future. Opposing this, postmodernists feel that it is indulging in 'Grand Narratives' and building illusions of progress and certainty on the shifting sands of self-serving discourses of power. The goal of theory should not be to serve this false image of the progress of humanity, but to cultivate local resistance to the institutions, techniques and the discourses of social control. (59)

In criminological circles, the fear is expressed that the

postmodern perspective does not acknowledge the gains that have been made in terms of social justice, and by deconstructing concepts and values, the consequence is the nihilistic denial of the role of social practices in protecting the gains made in the struggle for democracy, equality of race and gender, and other social struggles. Questioning the existence of a form of knowledge can be part of the process of securing the values and objectives of the discipline, but there is a concern that denying rationality leaves society vulnerable to cynicism, and reactionary self interest.

Matthews and Young conclude that post-modernism, and its attack on grand theory is a pseudo-radicalism, because it leaves in place no sense of community, but a depoliticised individualism. On the basis of this argument, they commit their project of realist critical criminology to modernism, which despite its failings is better equipped to offer direction for social change and considers the goal of emancipation of the human condition as important. (60)

The failure of apartheid is in part the failure of grand theory, and the questionable goal of imposing 'Grand Narratives' through state apparatus. The question of why this failure was allowed to structure our lives and social formation for so long, will require a perspective on the sites of knowledge in society. On the one hand, the postmodernist emphasis on the failures of rationality and the

importance of localized resistance to 'totalizing' discourse offer an explanation of the mechanisms of resistance, but the efforts of political action and conscientizing, which are still drawing on the theories and values of modernism have played their role in challenging the state in its pursuit of racial hegemony.

For a provisional conclusion, one can turn to Habermas who holds that "Postmodernism thus appears at best as a compensatory strategy representing the 'dark side' of the modernist project. " (61)

With Gouldner, the goal of critical criminology is to use the rational and liberative kernel of social science, and to work for the restructuring of society in the interests of this emancipation. The choice for rationality is as much in need of explanation and defence as a choice against it, and a commitment to the analysis of the ideas and ideologies which constitute the economic, political and social levels of the country must be made in order to produce the most extensive and adequate explanations of social phenomena.

1. The issue of the social divisions within a society is a very complex one: For historians and researchers like Rosalind Miles who hold the form of patriarchy as a basic tool of analysis in all societies, the discrimination comes in forms other than race:

"In the first and greatest act of discrimination, of deliberate **apartheid** in human history, women were made into **untermenschen**, a separate and inferior order of beings." p102

2. Snyman p 4

3. Stenson p 162

4. Marx on common sense: "It is characteristic of the entire crudeness of 'common sense' which takes its rise from the full life and does not cripple its natural features by philosophical or other studies that it where it succeeds in seeing a distinction it fails to see a unity and where it sees a unity it fails to see a distinction. If 'common sense' establishes distinct determinations they immediately petrify surreptitiously and it is considered the most reprehensible sophistry to rub together these conceptual blocks in such a way that they catch fire." in Lorraine p65

5. Taylor Introduction p 3

6. Gordon, Scraton & Sim p38

7. op. cit.

8. op .cit p 86

9. Taylor Introduction

10. Sim, Scraton & Gordon p 5

11. Hirst p205

12. Slovo The Star 17 August 1992 p10

"There cannot be a shadow of doubt that those who act as catalysts for the current spate of violence do so as a way of influencing the transformations process. I use the word "catalysts" advisedly, because in times of change, it is usually sufficient merely to provide the spark. The rest can be left to retaliation or apartheid's legacy including ethnicity, political intolerance, racism and a general disregard for human life. ...An accumulation of evidence established in judicial proceedings, government commissions and uncontradicted media reports leads to the irresistible conclusion that President De Klerk has been fully aware that levels of his state apparatus have been connected with the orchestration of much of the violence."

13. The Star 12 Aug 1992 Dr Stals quoted by Welsh,D

14. According to figures published there were more than 12 million convictions for pass law offences between 1948 and 1984.

15. Readers Digest History p424

16. Among the many examples are the Extension of University

Education Act 1959, which excluded blacks from the main (white) universities.

17. Thompson & Prior p128

18. Galgut, Damon The Star Tonight Aug 12 1992

The fuller version of what he said: "But as is so often the case in this country, things are not always what they seem. The most severe damage that a nation can suffer is ultimately inflicted not on its flesh alone, but on its spirit. One of the most powerful and yet intangible destructions to have taken place in South Africa is the nearly total devaluation of language. Words have been used in the service of power for so long that they have lost all power of their own. Words have been used to tell lies - not just blatant lies (though there have been enough of those) but the more insidious lies that are double-speak, propaganda, rhetoric. Language had been harnessed by conflicting ideologies that had whittled it down and bent it in order to subdue innate aspirations which it might have had. We have reached a point now where there is no longer a distinction between language and reality. Because words have failed, we have had to evolve a different and hideous language. It is customary to speak of a culture of violence. But it seems to me it would be more appropriate to talk of violence in South Africa as a language. It is absolutely physical and thus absolutely real. Its syllables are blows, its syntax its fire. It conveys a terrible meaning."

19. Vander Spuy(1990) p 99

20. Both 1985 and 1986, in terms of the Public Safety Act of 1957

21. Which in true South African tradition is a description making a racial distinction, even where one would rather choose not to support this.

22. The Human Rights Commission (HRC) reported 6 229 deaths in incidences of political violence between July 1990 and August 1992 (**Business Day**, Friday August 28 1992)

23. In regard to this, it is interesting to note remarks made by the Witwatersrand Attorney-General Klaus von Lieres und Wilkau, at a conference of the SA Security Association, reported in the Business Day, Friday August 28 1992:

"The criminal justice system was unable to deal adequately with rising crime levels... Intimidation of witnesses and delays in summoning the police resulted in insufficient evidence to charge criminals. As a result, more than 1 000 politically related killings in the East Rand region had gone unsolved during the past year."

In reference to the prominence of 'people's courts', he said "...the criminal justice system faced a crisis of legitimacy. If this problem is not dealt with, then we will be on the slippery slide to anarchy."

The extent of the crisis is clear, but not everyone would



44. Van der Westhuisen(ed) p195
45. op. cit. p194
46. op. cit. p208
47. op. cit.
48. Van der Spuy p103
49. Hughes p 93
50. ibid.
51. op. cit. p 73

FOOTNOTES p52 - p70

1. Van Zyl Smit
2. op. cit. p20
3. op. cit. p 4
4. ibid.
5. See discussion earlier, in previous chapter p 48
6. Van Zyl Smit p 27
7. op. cit. p 29
8. op. cit. p 32
9. op. cit. p34
10. op. cit. p 36 The translation is by the author, from the work Kriminologie 1933:104, by Willemse and Rademeyer.
11. op. cit. p36
12. op. cit. p45
13. This seperation taking place within the framework of the racial classification act and the hierarchy of racial groups and colour divisions
14. Van Zyl Smit p46
15. Enzensberger p46 Marxism Today Dec/Jan 1992
16. Minister Piet Koornhof was mercilessly satirised for this
17. Pieter-Dirk Uys used this for a satirical revue title
18. Kruger, JT Misdaad in die Gemeenskap UNISA 1978 p458
19. The quote from Vlok; in Van der Spuy 1990:103 is:  
"..the Force...at all times ensured the independence of the judiciary and equality in the eyes of the law as well as maintaining law and order and promoted the spiritual and material prosperity of all its people."
20. Kruger, JT p458
21. Van Zyl Smit p 46
22. op. cit. p47
23. op. cit. p48
24. see fotenote 5.
26. Vander Westhuizen p 9
27. Geras p 36
28. Kircheimer p 6
29. Davis p35
30. De Wet p142
31. Jurisprudence in the tradition of Kelsen prefers to emphasize the epistemological distance between pure law and sociology.

FOOTNOTES p70 - 116

1. Van Zyl Smit p48
2. ibid.
3. Davis p 1
4. op. cit. p14
5. ibid.
6. op. cit. p 3
7. Van Zyl Smit p 1
8. Unterhalter p287
9. op. cit. p284
10. op. cit. p285
11. Davis p 2
12. Unterhalter p287
13. op. cit. p285
14. op. cit. p286
15. Davis p 14
16. Unterhalter p286
17. Kuhn p110
18. Kourang(Ed) p207
19. ibid.
20. ibid.
21. op. cit. p276
22. ibid.
23. ibid.
24. op. cit. p277
25. Kuhn p110
26. Kourang(Ed) p279
27. Tobias p 5
28. Tobias (partII) p 11
29. Whether one chooses to call this ideological or not depends on whether this is understood as category of analysis or a distortion of the truth.
30. Rorty pxvii
31. op. cit. pxxiv
32. ibid.
33. ibid.
34. op. cit. pxvi
35. ibid.
36. Kourang(Ed) p279
37. Rorty p191
38. ibid.
39. ibid.
40. op. cit. p196
41. Hamilton p 57
42. Horkheimer pxiv
43. op. cit. pxiii
44. ibid.
45. ibid.
46. op. cit. p 57
47. Hughes p 69
48. Popper p 36
49. Hamilton p 57
50. ibid.
51. Horkheimer pxv
52. op. cit. pxvi

53. Brand p 9
54. *ibid.*
55. *op. cit.* p 10
56. Hamilton p 58
57. Aronowitz pxvi
58. Hamilton p 58
59. Habermas p iv
60. *ibid.*
61. Hamilton p 62
62. *ibid.*
63. *ibid.*
64. Brand p 10
65. Davis (1985) p 39
66. The difficulties of describing and explaining crime in the South African scenario is that so much of the destructive and violent activity of the past three decades was undertaken by the state, through its policies of racism and large scale population control, which in turn lead to an intensifying political struggle by organisations on behalf of the dispossessed and discriminated. Much work has been done to describe the nature and extent of the state response to the 'armed struggle' and the insurrections against the power of the state - and the evidence has been mounting that assassinations, harrassment, death squads and large scale secret operations have taken place. It is to be expected that much of this has been disputed, leaving people without accurate information on the extent of the activities, the extent of official state involvement and those who have claimed to be in possession of information on these 'secret activities have in turn been threatened with assasination, or have been killed. Under such circumstances the role of critical theorists often consists of being able to provide nothing more than information. Van Zyl Smit comments on this aspect of radical criminology: Exposing abuses of power is a vital part of any critical South African criminology - "The gibe that a piece of researh is mere descriptive journalism has no place in a society in which the press is subject to restrictions and where normal checks and balances of the democratic process are absent." Van Zyl Smit p 10
- Apart from the problems of information as to who is killing where, and which groups are benefitting from this carnage, there is the further issue that the level of social crisis and distress in what is nothing less than a war zone cannot truly be communicated. A report in *The Economist* (15 February 1992) describing a case of social distress notes: "But South Africa's wounds are too severe to be healed by politicians alone, just as its ailments are too complicated to be desribed by journalists... To do justice to tales like this requires the novelist's skills." p 74
67. Davis & Slabbert Crime and Power in South Africa
68. Foster, Davis & Sandler Detention and Torture in South Africa: Psychological, Legal

and Historical Studies.

69. Institute of Criminology, UCT Policing and the Law
70. Hannson & Van Zyl Smit Towards Justice? Crime and State Control in South Africa.
71. Kuhn p110
72. Du Toit Die Suid-Afrikaan No 40 Augustus/September 1992 p8  
(Translation) The honeymoon of the post-apartheid politics is over; the euphoria about the new South Africa had to make way for confrontation with the relentless actuality of the real South Africa.
73. op. cit. p 9
74. Vergnani Die Suid-Afrikaan No 39 Junie/Julie 1992 p34
75. Hall LLM Dissertation
76. see note 70
77. Grant SALJ 108 May 1991 p373
78. op. cit. p376
79. Women feature as respondents to community questionnaires, as exempted from whipping, even as accused in public violence trials without specific theoretical focus on the reasons and theoretical background of their occasional appearance and virtual invisibility.
80. Hall p 30
81. Colker p164
82. op. cit. p161
83. op. cit. p162
84. ibid.
85. op. cit. p164
86. Stenson p177
87. ibid.
88. op. cit. p178
89. ibid.
90. op. cit. p166
91. ibid.
92. Matthews & Young(1992) p14
93. ibid.
94. op. cit. p 15
95. ibid.
96. ibid.
97. op. cit. p 14
98. ibid.
99. Sim, Scraton & Gordon p 17
100. Dreyfus & Rabinow p210
101. op. cit. p212
102. Matthews & Young p 16
103. ibid.
104. There is an unpublished Ph.D dissertation 'Reformatories and Industrial Schools in South Africa: A Study in Class, Colour and Gender 1882 - 1932' by Chisholm  
The other work focuses on rape, rather than a general feminist theory of criminology:  
Van Zyl, M Rape Mythology Patriarchal Society  
Institute of Criminology UCT 1977  
Hall, C Rape: The Politics of Definition

105. Hansson & Van Zyl Smit p 1

106. O'Connor p134

Habermas conceives of the problem in the following manner: "Because Hegelian-Marxist social theory, developed in categories of totality, has decomposed into its parts, namely, action theory and systems theory, the present task now consists of combining these two paradigms in a non-trivial fashion" in Honneth, A The dialectics of rationalization: an interview with Jürgen Habermas *Telos*, 49 (Fall 1981), 13 in O'Connor p134 footnote 52

Footnotes p 116 - 153

1. Sugarman p164
2. Creighton & Shaw p 5
3. Giddens (1985)
4. Schwendinger p135
5. op. cit. p133
6. Hunt p 6
7. Matthews & Young(1992) p10
8. Platt p103
9. Young(1975) p 89
10. Matthews & Young p 12
11. op.cit.
12. Sim, Scraton & Gordon p 62
13. Burn & Quinney p 61
14. op. cit. p 63
15. op. cit. p 65
16. ibid.
17. ibid.
18. Thompson p264
19. op. cit. p265
20. Taylor, Walton & Young p 56
21. op. cit. p234
22. O'Malley p 71
23. op. cit. p 75
24. ibid.
25. Davis SALJ August 1991 p458
26. op. cit. p454
27. op. cit. p460
28. ibid.
29. The imposition of the 1913 Land act, and the various acts dealing with urban development, in conjunction with the efforts of the state to enforce racial separation is said to have caused the relocation of more than three million people, and the decisions on housing in terms of these policies have contributed to the massive housing crisis which means that thousands of South Africans are without the basic necessities of water, shelter and hope for a better future.
30. Stenson & Cowell p168
31. Young & Matthews (Rethinking) p 7
32. op. cit. p 18
33. Matthews & Young (Issues) p 2
34. Young & Matthews (Rethinking) p 20
35. op. cit. p 26
36. op. cit. p 27
37. The concept of illegality, and the process of criminalization has in the past been used by the South African government to control the political debate and to undermine threats to the hegemony of power held by the National Party, and its allies. The electronic media is still under state control, and although their spokespersons vehemently deny partiality or bias, opposition groups and media analysts have questioned this.
38. Matthews & Young p 27
39. op. cit. p 65
40. Matthews & Young (Issues) p 2

41. *ibid.*
42. *ibid.*
43. *op. cit.* p 3
44. *op. cit.* p 7
45. Young & Matthews (Rethinking) p 3
46. *ibid.*
47. *op. cit.* p 30
48. *ibid.*
49. Illiteracy rates have been compared to Zambia, at about 50%, and according Newsweek magazine, 6 out of 10 Black South Africans are functionally illiterate. July 20 1992 p 34
50. Mugford & O'Malley, 1991, quoted in Matthews & Young (Issues) p 15
51. Davis cf note 25
52. Young & Matthews (Rethinking) p 30
53. According to the Human Rights Commission 2649 people died in political violence between September 1990 and August 1991, and despite the signing of the National Peace Accord the death toll has risen by 28,5% to 3400 in the past year. According to police figures more than 22 000 people have died violent deaths the past three years. The Star September 14 1992
54. Young & Matthews (Rethinking) p 7
55. Raes p203
56. Raes p204  
From Fitzpatrick Law and Societies (1984) Osgoode  
Hall Law Journal p115
57. Young & Matthews (Rethinking) p 10
58. *ibid.*
59. *op. cit.* p11
60. *op. cit.* p13
61. *ibid.*

BIBLIOGRAPHY.

- Allison, J In search of Revolutionary Justice in South Africa Int Journal of the Sociology of Law Vol 18 1990 p409
- Althusser, L LENIN AND PHILOSOPHY AND OTHER ESSAYS NLB London 1978
- Barthes, R MYTHOLOGIES Paladin Books London 1973;1989
- Brand, A THE FORCE OF REASON An introduction to Habermas' Theory of Communicative Action Allen & Unwin Sydney 1990
- Breisach, E INTRODUCTION TO MODERN EXISTENTIALISM Grove Press Inc New York 1962
- Callinicos, A IS THERE A FUTURE FOR MARXISM? MacMillan Press London 1982
- Carty, A POST-MODERN LAW Enlightenment, Revolution and the Death of Man Edinburgh University Press Edinburgh 1990
- Chambliss, W & Seidman, R LAW, ORDER AND POWER Addison Wesley Reading, Mass 1971
- CIIR SOUTH AFRICA IN THE 1980's State of Emergency Catholic Institute for International Relations London 1986
- Cohen, S VISIONS OF SOCIAL CONTROL Crime, Punishment and Classification Polity Press Cambridge 1985
- Cohen, S The Critical Discourse on "Social Control" Notes on the Concept as a Hammer Int Journal of the Sociology of Law Vol 17 No 3 August 1989 p347
- Colker, R Book Review: Eisenstein, Z THE FEMALE BODY AND THE LAW Yale Law Journal Vol 99 1990 p1159
- Corder, H (Ed) ESSAYS ON LAW AND SOCIAL PRACTICE IN SOUTH AFRICA Juta Cape Town 1988
- Creighton & Shaw THE SOCIOLOGY OF WAR Hutchinson London 1978
- Dahrendorf, R LAW AND ORDER The Hamlyn Lectures 37th Series Stevens & Sons London 1985
- Davis, D & Slabbert, M (Ed) CRIME AND POWER IN SOUTH AFRICA Critical studies in Criminology David Philip Cape Town 1985
- Davis, D Social Power and Civil Rights: Towards a new jurisprudence for a future new South Africa SALJ August 1991 p453
- De Wet, Q The Rivonia Trial 1964
- Dreyfus, H & Rabinow, P MICHEL FOUCAULT Beyond Structuralism and Hermeneutics Harvester Wheatsheaf New York 1982



- Hall, S Africa UCT Thesis April 1987  
POLICING THE CRISIS  
1978
- Hamilton, P KNOWLEDGE AND SOCIAL STRUCTURE  
An introduction to the classical  
argument in the sociology of  
knowledge Routledge & Kegan Paul  
London 1974
- Hansson, D & Van Zyl Smit, D (Ed) TOWARDS JUSTICE? Crime and  
State Control in South Africa Oxford  
University Press Cape Town 1990
- Hay, D ALBIONS FATAL TREE  
1975
- Horkheimer, Max CRITICAL THEORY Selected Essays  
Continuum Books The Seabury Press  
New York 1972
- Hughes, H CONSCIOUSNESS & SOCIETY The  
reorientation of European Social  
Thought 1890 - 1930 The Harvester  
Press London 1979
- Hudson, P Causality and the Subject in a  
"Discourse-Theoretical" Approach to  
Marxism Studies in Marxisme No 7  
Desember 1986 p 1 US
- James, W THE STATE OF APARTHEID  
Lynne Rienner Publishers Boulder,  
Colorado 1987
- Jessop, B THE CAPITALIST STATE Marxist  
Theories and Methods Martin  
Robertson Oxford 1982
- Jessop, B STATE THEORY Putting the Capitalist  
State in its Place Polity Press  
Cambridge 1990
- Kairys, D (Ed) THE POLITICS OF LAW A Progressive  
Critique Pantheon Books New York  
1982
- Kirsten, J Kritiese teorie in wording  
Studies in Marxisme No 4 Junie 1985  
Universiteit van Stellenbosch
- Kourang (Ed) THE METHODOLOGY OF SOCIAL THEORY  
Cambridge University Press 1983
- Kuhn, T THE STRUCTURE OF SCIENTIFIC  
REVOLUTIONS 2nd Edition University  
of Chicago Press 1970
- Larrain, J THE CONCEPT OF IDEOLOGY  
Hutchinson London
- Marks, S THE AMBIGUITIES OF DEPENDENCE IN  
SOUTH AFRICA: Class, Nationalism and  
the State in Twentieth Century Natal  
The Johns Hopkins University Press  
Baltimore & London 1986
- Matthews, R & Young, J (Ed) ISSUES IN REALIST CRIMINOLOGY  
Sage Publications London 1992
- Matthiesen, T THE POLITICS OF ABOLITION  
Martin Robertson Universitetforlaget

- Oslo & London 1974
- McKendrick, B & Hoffmann, W PEOPLE AND VIOLENCE IN SOUTH AFRICA Oxford University Press Cape Town 1990
- Miles, R THE WOMEN'S HISTORY OF THE WORLD Paladin Grafton Books London 1989
- Miliband, R CLASS POWER & STATE POWER Political Essays Verso London 1983
- Moss, G & Obery, I (Ed) SOUTH AFRICA: CONTEMPORARY ANALYSIS South African Review 5 Hans Zell 1990
- National Deviancy Conference CAPITALISM AND THE RULE OF LAW From Deviancy Theory to Marxism Hutchinson London 1979
- O'Connor, J THE MEANING OF CRISIS A Theoretical Introduction Basil Blackwell Oxford 1987
- O'Malley, P The purpose of knowledge: pragmatism and the praxis of marxist criminology Contemporary Crises No 12 1988 p 65
- Platt & Takagi CRIME AND SOCIAL JUSTICE 1981
- Politics and Power 4 LAW, POLITICS AND JUSTICE Routledge & Kegan Paul London 1981
- Popper, K THE OPEN SOCIETY AND ITS ENEMIES vol 2 Hegel & Marx Routledge & Kegan Paul London 1986
- Poulantzas, N STATE POWER SOCIALISM Verso London 1980
- Raes, K Legalisation, Communication and Strategy: A critique of Habermas' approach to Law Journal of Law and Society Vol 13 No 3 Summer 1986
- Rock, P (Ed) A HISTORY OF BRITISH CRIMINOLOGY Clarendon Press Oxford 1988
- Rorty, R CONSEQUENCES OF PRAGMATISM Essays 1972 - 1980 The Harvester Press Brighton 1982
- Runcimann, W THE METHODOLOGY OF SOCIAL THEORY Cambridge University Press 1983
- Sachs, A JUSTICE IN SOUTH AFRICA Chatto - Heinemann 1973
- Sampford, C THE DISORDER OF LAW A Critique of Legal Theory Basil Blackwell Oxford 1989
- Scaton, P & Gordon & Sim LAW, ORDER AND THE AUTHORITARIAN STATE Readings in Critical Criminology The Open University Press 1987
- Sassoon, A GRAMSCI'S POLITICS 2nd Edition Heineman London 1987
- Snyman, C STRAFREG Tweede Uitgawe Butterworth Durban 1986



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