Criminal Policy Between Theory and Practice

Crime has a ceaseless power to fascinate. So, apparently, does the discourse of crime in modern Europe. Since Richard Wetzell’s and Peter Becker’s pathbreaking work on the emergence of criminology in Germany, a wave of books has appeared on the science of crime and its relationship to criminal policy. This collection of twelve essays by mostly young, mostly German scholars demonstrates that the wave will not be ebbing any time soon. In their introductory essay, editors Désirée Schauz and Sabine Freitag fault previous historians for ignoring the institutional contexts that shaped criminological debates. The focus upon a “narrow circle” of psychiatrists and legal theorists, they argue, reproduces the nineteenth-century perspective of science as autonomous from other forms of discourse. These essays, by contrast, explore how a range of criminal justice professionals and amateur social reformers helped revise the image of the criminal and reinvent strategies of social control. By broadening the definition of “experts,” the authors seek to provide a richer genealogy of modern criminal policy and explain how criminology was invested with scientific authority.

While only a few of these authors explore the everyday practice of criminal justice, almost all are interested in the practitioner’s aspirations and experience. Lars Hendrik Riemer argues that prison wardens in the mid nineteenth century became increasingly active in publishing and public advocacy in order to enhance their professional status. In his case study of prisons in Saxony, Falk Breitschneider describes how many wardens sought to make their prisons into laboratories for clinical research. This striving for authority is also a central theme in Jens Jäger’s essay on the police’s construction of the international criminal. According to Jaeger, the concept of the dangerous, sophisticated, transnational criminal helped justify proposals for more police training, resources, and power.

A recurring theme in the essays is the importance of penology in shaping modern perspectives on crime. Martina Henze describes the rise of penology in the nineteenth century as an international, interdisciplinary movement that pushed prison reformers to think more broadly about the origins of crime and the nature of punishment. Though it never became an established academic discipline, penology found a prominent home in the International Prison Congresses that brought together scholars and practitioners on a regular basis from the 1820s onward. The congresses highlighted the links between crime and other social ills and promoted social measures like parole and probation, welfare supervision, and prisoner education. The penologists’ concept of a comprehensive “criminal policy,” argues Sylvia Kesper-Biermann, was a major influence upon the Internationale Kriminalistische Vereinigung, the leading criminal law reform organization of the fin-de-siècle. In an essay on welfare for criminal offenders, Schauz also notes that nineteenth-century prison reformers, in spite of their moral and religious assumptions, left a powerful imprint.
Upon the scientific criminology of the Wilhelmine era.

Underlying the new perspectives on crime in the nineteenth century was a growing awareness of crime statistics. Drawing upon the work of Francois Ewald, Andreas Fleiter suggests that statistics made crime into a natural and more or less predictable phenomenon, like floods and epidemics, that could be managed through active and careful governance. German statistics underscored the threat from repeat offenders in particular, Fleiter asserts, and inspired criminologists to search for the underlying somatic and psychological signs of the criminal’s essential difference. In an essay on English penal reformers, Freitag argues that crime statistics undermined traditional ideologies of individual freedom and responsibility and demonstrated the social causes of crime. In contrast to their counterparts on the Continent, Freitag claims, British reformers saw punishment as a subset of social policy and statistics as, first and foremost, a tool of social intervention.

While few of the contributions mention gender, three essays focus centrally upon the perception of male/female difference and its impact on criminal reform discourse. Karsten Uhl argues that the origins of modern criminology—”the science of the dangerous individual”—can be found in the efforts of nineteenth-century forensic doctors to come to terms with women criminals, whom they saw as both threats to society and helpless victims of social and biological forces. Sandra Leukel demonstrates that prison reformers in Baden sought to introduce special measures for women criminals that would protect them from degenerative forces and prepare them for lives as housewives and mothers. Thomas Kailer finds that criminal biological reports in the Weimar and National Socialist eras likewise stressed the fragile, unstable qualities of women criminals. Even as criminologists increasingly demonized female offenders, Kailer writes, case workers held on to traditional assumptions about women’s essential weakness and vulnerability and were frequently surprisingly sympathetic to their subjects. For Kailer, the persistence of gender stereotypes in criminal biological investigations demonstrates the limits of ”scientific diffusion” as a top-down process.

The absence of more essays exploring the everyday practice of criminal justice may be a reflection of the limits of source material in German archives. Interestingly, the chapter most grounded in the details of everyday experience is set in German–speaking Switzerland. Urs Germann examines why judges in late-nineteenth- and early-twentieth-century Bern increasingly turned to psychiatrists to investigate the psychological well-being of defendants. According to Germann, courts looked for evidence of psychological defects that suggested a reduced level of guilt but a greater threat to society. Swiss law empowered judges to order medical confinement of accused criminals even in minor cases and even after an acquittal. Germann argues that the pressure to introduce psychiatric examinations came not from psychiatrists or medical authorities, but from the judges themselves, who frequently based their decisions on the statements of families and coworkers of the defendants. Judges, Germann argues, were responding to a growing ”crisis of legitimacy” for juridical norms and processes.

Collectively, these essays create a portrait of criminal reform discourse in the long nineteenth century that is more eclectic and indeterminate than most recent histories of criminology suggest. They demonstrate that prison workers and officials, amateur reformers, policemen, and clergy played vital roles in reinventing the criminal and rethinking the strategies of criminal policy. The essays thus challenge historical accounts, like Peter Becker’s, that privilege the role of scientific experts and describe the declining authority of practitioners in the Wilhelmine era. Becker may be correct that a narrative of criminals as biologically ”impaired men” ultimately displaced a traditional narrative of criminals as morally “fallen men.” But the origins of any such ”discursive shift,” these authors suggest, were deeply intertwined with the history of institutional change and practice. No internal history of the discipline of criminology can adequately describe this cultural transformation.

While the authors broaden our understanding of modern criminal reform, a surprising number of essays still reinforce the bleak view of the Wilhelmine era that prevails in recent histories of criminology. Andreas Fleiter echoes Richard Wetzell’s claim that leading Wilhelmine criminologists dismissed social reform efforts as ”utopian.” Freitag contrasts the British criminal reformers’ persistent faith in social amelioration with continental reformers’ supposedly more pessimistic view of human nature. Schauz asserts that prisoner benevolent societies in Wilhelmine Germany embraced biological paradigms of incorrigibility in order to justify their own failures at rehabilitating criminals. A number of contributors refer ominously to proposals for the indefinite confinement of habitual criminals and medical controls upon ”mentally inferior” offenders. Though none of the essays deal at any length with the Third Reich, Adolf Hitler often seems to be lurking in the shadows.
This emphasis upon the repressive potential of Wilhelmine discourse tends to overshadow any discussion of the emancipatory side of the “Janus-faced” reform movement. After reading this collection, one might be surprised to learn that citizens gained greater legal protections, German prisons became less brutal and degrading, and German courts handed down sentences which were, by almost any measure, milder. The explosive growth of welfare associations for prisoners and released convicts and a vast, “diversified” infrastructure for welfare supervision in lieu of incarceration during the 1890s and 1900s is here literally just a footnote. For the editors in particular, the main story in the Wilhelmine era is still the “failure” of social reform ideals and the triumph of biomedical models.

Apart from this one-sided treatment of Wilhelmine reform, however, the collection does an exemplary job of bringing diverse and underappreciated source material into the historiographical mix. The essays are almost uniformly clear, lively, and carefully argued. Overall, the book will be immensely useful for anyone concerned with the history of European criminal policy, social reform, biopolitics, and the history of science.

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