

# **MORAL AMBIGUITY, THE SCHIZOPHRENIA OF CRIME AND COMMUNITY JUSTICE**

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## **Introduction**

In his editorial to the inaugural edition of the *British Journal of Community Justice* Brian Williams professes the aims of the journal 'to encourage debate about the contested meanings of the concept of community justice, with a view to clarifying the issues policy-makers, practitioners and academics alike' (Williams, 2004:1). This paper enters that debate with the suggestion that the parameters of discussion be extended to encompass observations about the nature of community, crime and criminology in contemporary fragmented societies.

Discussions about the concept of community justice note the political nature of the debate and conflict between the conservative and liberal approaches (Altschuler, 2001) and democratic and authoritarian models (Wright, 2000) but all discussants appear aware of the obvious links to communitarianism. The latter emerged in the USA during the 1980s as a response to what its proponents perceived to be the limits of liberal theory and practice and significantly incorporate diverse strands in social, political and moral thought from very different locations on the political spectrum such as Marxism (Ross, 2003) and traditional 'one-nation' conservatism (Scruton, 2001). Its dominant themes are that the individual rights vigorously promoted by traditional liberals need to be balanced with social responsibilities, and that, moreover, autonomous individual selves do not exist in isolation but are shaped by the values and culture of communities.

All variants of communitarianism seem to share a conception of community with its theoretical foundations in the nineteenth century German sociology of Ferdinand Tönnies who differentiated between the notion of *Gemeinschaft* or close knit community relationships which were said to characterise a more simple pre-urban existence and which are widely perceived idyllic and *Gesellschaft* which distinguishes more fragmented contemporary industrial or post industrial societies from their predecessors and which followers of this perspective consider to be superficial, negative and absent of any meaningful relationships among its citizenry (Tönnies, 1957). It is this notion of community with widespread popular, political and academic rejoinders to rediscover it

that dominates conceptions of what it is. Yet, E.P. Thompson cited by Williams (2004) rightly recognises the negative aspects of traditional notions of community in its promotion of and maintenance of colonialism, while its survival is also be closely-linked to pervasive and invisible child abuse (Hopkins Burke, 1996) and hate crime proliferation (Hopkins Burke and Pollock, 2004) among other negative social factors. This paper is founded on a rather different variant of the notion of community to be found in the work of the French sociologist Emile Durkheim.

Most introductory sociology textbooks consider the notion of community found in the work of Durkheim to be very similar to that promoted by Tönnies, simply substitute *mechanical solidarity for gemeinschaft* and *organic solidarity for gesellschaft*. But this interpretation of Durkheim is quite simply wrong as I have argued elsewhere (Hopkins Burke, 2005). Durkheim (1933) explains that societies with high levels of mechanical solidarity are characterised by the conformity of the group. There is a likeness and a similarity between individuals and they hold common attitudes and beliefs that bind one person to another. Now he agrees that this is a form of social solidarity that may at first sight appear attractive – suggesting the popular notions of the close-knit community alluded to above – but at the same time recognises that such societies place severe restrictions on the ability of an individual to develop any sense of personal identity or uniqueness. Thus, co-operation between individual members of the group is restricted to what can be achieved through the close conformity of each member to a single stereotype.

Durkheim argues that with greater industrialisation societies develop greater levels of organic solidarity, there is a more developed division of labour and different groups become inter-dependent on each other for their existence. Social solidarity is now less dependent on the maintenance of uniformity between individuals, and more on the management of the diverse functions of different groups. For Ferdinand Tönnies, it was precisely this increasing fragmentation of communal beliefs and values that is the problem. Thus, the proposed solution for the proponents of that perspective lies in re-establishing the moral certainties of a society with high levels of mechanical solidarity. In contrast, for Durkheim, the division of labour is a progressive phenomenon. Its appearance signals not the inevitable collapse of morality, but the emergence of a new *content* for the collective conscience. The focus is now on the obligation of society to the individual person whereas previously with mechanical solidarity the emphasis had been on the obligation of the individual to society.

Now to give the maximum possible encouragement to individual rights does not mean that altruism – that is, self-sacrifice for others – will disappear. On the contrary, moral individualism is *not* unregulated self-interest but the imposition of a set of reciprocal obligations binding individuals together (Durkheim, 1933). Here lies the essential originality of Durkheim's interpretation of the division of labour. It is a progressive phenomenon and provides us with of a contemporary perception of community and criminality to which we will return in the discussion at the end of this paper which considers the present state of criminality, criminology, the future of both and the wider fragmented socio-political world they inhabit.

This is without doubt a problematic enterprise. The world of practical and academic criminology is as fragmented and diverse as contemporary society itself with different disciplines and schools of thought that not just have their own perspective on the criminological enterprise but invariably profess theirs to be the own true crime discourse and others mere pretenders.

It is a situation that sometimes appears practically motivated with the intention of promoting a particular discipline in order to get a professional snout into the burgeoning trough of government crime prevention funds. Thus, one finds a whole range of disciplines - from accountancy to zoology via computer science - on occasion promoting their group or body as having *the* solution to the crime problem often unaware not just of other crime discourses but of academic criminology itself.

Sometimes, the situation is theoretically - or even politically - motivated, thus for example, zemiologists will argue that crime is only one, relatively unimportant, social harm confronting humanity and the criminological enterprise should be expanded to encompass these far more pressing concerns. Promoters of this perspective – and others for that matter - invariably propose that only politics and sometimes sociology can offer a legitimate and successful solution.

Sometimes, practical and theoretical/political motivations are blurred. Thus, one reviewer of the first edition of 'An Introduction to Criminological Theory' (Hopkins Burke, 2005) - a member of an eminent academic criminological institute with an impressive record of obtaining government crime prevention grants – was sneeringly dismissive of much of the book on the grounds that these many different ways of conceptualising crime and criminality have all been theoretically superseded by situational crime prevention. Others, who consider themselves to be critical criminologists refer to 'practical' crime prevention as administrative criminology and can barely bring themselves to mention the word *administrative* without pronouncing it with a perceptible hissing sound.

Others, well this author for a start and - in my view at least - any self-respecting moral ambigutarian, recognise not just the complex nature of a fragmented social world and a parallel equally divided and sometimes divisive criminological enterprise, and propose that most if not all of these different disciplines have at the appropriate time and place sometime legitimate to say about the morally ambiguous social condition that has come to be called 'the crime problem'.

This paper thus considers recent developments in criminological theory that offer us enlightenment on the complexities of contemporary criminality, actual and proposed criminal justice interventions mooted as solutions to this ambiguous social condition and concludes with a proposal that any legitimate community justice needs to be located in the context of a wider 'new liberalism' which considers equally both the rights and responsibilities of individuals and societies: a neo-communitarianism with its foundations in the work of the aforesaid Emile Durkheim. The discussion commences with a

consideration of the issue of moral ambiguity in the context of what some have termed the postmodern condition.

### **Moral Ambiguity and the Postmodern Condition**

Notions of moral ambiguity and the postmodern condition are closely associated. Modern society had been mass society characterised by mass production and consumption, corporate capital and organised labour; economically organising interventionist states with aspirations to full employment, demand management and public investment in health education and welfare (Harvey, 1989; Hopkins Burke, 1998). In such societies different political groups – conservatives, liberals, socialists, all in their different variants and mutations - had sought to develop programmes to satisfy different group or social class interests. This had been at least partially achieved through the facilitation of economic conditions to enhance the reproduction of capitalist development while at the same time providing ‘cradle to grave’ welfare provisions for the workers.

The period of high modernity – approximately between 1945 and 1975 – had been characterised by moral certainty: there was thus confidence and belief in the superiority and infallibility of natural science that had filtered through into the social sciences, a confidence in the explanatory power of grand explanatory theories to solve the problems of humanity, and while there may have been competing theories the devotees of each had confidence in the fundamental capacity of their doctrine to solve essential social problems.

In the last decades of the twentieth century there came increasing doubts about the sustainability of the modernist project in an increasingly fragmented and diverse social world with the traditional political groupings of the ‘left’ and ‘right’ proving increasingly inadequate to the task of representing myriad interest groups as diverse as major industrialists and financiers, small business proprietors, the unemployed and dispossessed, wide ranging gender and sexual preference interests, environmentalists, the homeless and the socially excluded (Giddens, 1994). It is a situation that some influential scholars have termed the postmodern condition (See Lyotard, 1984; but also Baudrillard 1988; Bauman, 1989, 1991, 1993).<sup>1</sup>

Three significant characteristics can be identified that distinguish the postmodern condition from the self-confident moral certainty of high modernism. First, there was an increasing aversion to the grand self-legitimizing theories closely linked with the intellectual sterility and political oppression of the twentieth century. Second, there was a growing awareness of the indeterminacy of knowledge and the impossibility of absolute objective truth. Third, there was increasing celebration of eclecticism and difference. In short, the postmodern condition has involved substantial challenges to the legitimacy of the modernist project (Hopkins Burke, 1998).

Societies permeated with the postmodern condition are thus characterised by moral ambiguity and an effectively terminal loss of certainty. Such societies are complex and

fragmented with a range of different discourses that are legitimate and hence right for different people, at different times, in different contexts. It is therefore a perspective founded on cultural relativism, the notion that there are a series of legitimate discourses on a particular issue and that it is difficult, if not impossible, to objectively choose between them. In short, the objective truth, or competing objective realities of high modernity, has been replaced by multiple realities and moral ambiguities. This ambiguity is no more apparent than in our varied and contradictory perceptions of the varied discourses that in their totality have come to constitute the 'crime problem'. A good starting point for understanding moral ambiguity in the context of contemporary criminality is the notion of 'the schizophrenia of crime' (Hopkins Burke, 2005).

### **The Schizophrenia of Crime**

I have conceived the term 'the schizophrenia of crime' to refer to the apparently contradictory duality of attitude to criminal behaviour that has become endemic in contemporary societies characterised by the postmodern condition. Thus, on the one hand, it is possible to observe widespread public demand for a rigorous intervention against criminality that has made the 'war against crime' a major political issue. Indeed, it is in this context that we can observe an extensive expansion in situational crime prevention strategies epitomised by the ubiquitous existence of closed-circuit television cameras (Hopkins Burke, 2004b), a whole raft of crime control legislation that has placed increasing restrictions on our civil liberties and human rights (Hopkins Burke, 2004c), and the introduction of rigorous 'zero-tolerance-style' policing interventions (see Hopkins Burke, 1998; 2002, 2004a) that have occurred not, as I have observed elsewhere (Hopkins Burke, 2004b, 2005), as the outcome of the coercive strategies of a totalitarian regime but in response to overwhelming public demand in a liberal democratic society. *We want it, we demand it, and we get it* (Hopkins Burke, 2005) even though we as individuals are invariably unaware of the ultimate implications for our freedom. I have also developed elsewhere a left realist historical perspective to incorporate both the embourgeoisement thesis of John Goldthorpe (1968-9) and the 'civilising process' of Norbert Elias (1978, 1982) in order to explain how increasing demands for improved social conditions and material rewards among the respectable working classes – or more recently the new middle-classes - have occurred alongside a fast declining tolerance for the very visible criminality and incivilities in our midst.

On the other hand, criminality has become widespread to the virtual point of universality. Many people have consequently committed criminal offences at some stage in their life and a great many continue to do so. There is increasing empirical evidence to show that white-collar, corporate and business crime is extremely widespread (see Clinard and Yeager, 1980; Braithwaite, 1984; Kramer, 1984; Croall, 1992, 2001) and when one considers, for example, recreational drug use (far from the sole prerogative of an unemployed underclass) (see Winlow and Hall, 2006), crimes of disorder and incivility associated with alcohol use (extremely extensive in any location urban or rural in the UK, particularly during weekend evenings) (Hobbs, Hadfield, Lister and Winlow, 2000; Hobbs, Winlow, Lister and Hadfield, 2005) and driving cars beyond the legal speed limit (virtually compulsory through peer

group pressure on motorways) (Hopkins Burke, 2005) the notion of the virtual universality of criminality is not as implausible as it may at first seem<sup>2</sup>.

There are a wide range of criminal offences with murder at one end of a spectrum of seriousness and parking in a prohibited area, for example, at the other end. Surely, it is inappropriate you might think to compare such disparate acts in terms of equity. Murder and inconsiderate parking are without doubt very different actions and the motivations for undertaking them must be so very different and thus incomparable. Yet even with these two apparently extreme examples there are crucial similarities. Thus, murder and improper parking can both be impetuous or even careless yet can also be the outcome of rational calculation. In those areas of the UK where it is possible to hire a contract killer for £50 the perpetrators might well consider this to be a simple straightforward and not to important an event, not requiring much more forethought than parking your car. Not convinced?

It is not the purpose of this paper to discuss this point at length but we might observe that both biological and psychological positivists have sought to establish that criminals are different to non criminals. We thus have had different and increasingly sophisticated variants of this thesis proposing that some predisposing factor – whether, biological or psychological – has propelled the individual into criminality (see Hopkins Burke, 2005). Two crucial arguments have nevertheless terminally damaged that proposition. First, there is the law is a social construction argument and second - and this is far more interesting in the context of this paper – the ‘what exactly is the factor supposed to be’ argument. Thus, for example, Eysenck (1959; 1963; 1970; 1977) famously measured personality factors such as neuroticism, extrovertism and aggression that do not appear properly defined in a criminological context. Thus, what exactly is aggression and how does it cause – or contribute to – criminality and in what circumstances? The answer given is that it is some – again biological or psychological – predisposition that is actualised in very different ways depending on the differential socialisation and environmental experiences of the individual. Various sociologically-based criminological theories - most usefully subcultural theories (see Hopkins Burke and Sunley, 1996; 1998) and latterly social control theories (see Hopkins Burke, 2005) - have discussed those differential experiences at length while socio-biological theories have brought together the different criminological traditions into a singular explanatory model (Jeffery, 1979; Mednick, 1977; Wilson and Herrnstein, 1985). Thus, the predisposing factors that encourage a person to park their car illegally – even though they might clearly be contributing to a dangerous situation while doing so – might help initiate a very different behaviour if that person had experienced a different socialisation or more recent re-socialisation.

In short, there is - as Jock Young (1999, 2001) has observed - a considerable ‘blurring of boundaries’ between the criminal and the legal and, significantly, in our perceptions of these supposedly polarised opposite behaviours that enable us to make some sense of ‘the schizophrenia of crime’.

The 'carnival of crime' – a cornerstone of recent cultural criminology – is a further useful explanatory concept. Mikhail Bakhtin (1984) had previously observed that the very structure and imagery of the traditional carnival sought to legitimate the behaviour of its participants making it a period of 'licensed' misrule. An essential characteristic of such misbehaviour was open defiance of dominant authority and its values thus putting the transgressor in a position of unaccustomed power. Carnival was thus a periodic and seriously time-limited cathartic release from the prevailing harsh authoritarianism and brutal social inequality. Cultural criminologists – such as Jack Katz (1988) and Mike Presdee (2000) – have reconsidered these notions and examined the pleasures and moral ambiguities to be enjoyed from engaging in deviant and criminal activities and propose that carnival functions as a playful and pleasurable resistance to authority where those normally excluded from the exercise of power celebrate their anger at this exclusion. Presdee (2000) argues that the outcome of living in a world dominated by scientific rationality and social control has been the fragmentation of organised carnival with its fragments distributed far and wide in acts of transgression and crime. Lyng (1990) describes such performances as 'edgework', that is, intense and often ritualised moments of pleasure and excitement which accompany the risk, danger and skill of transgression and which come to play a key part in the construction of shared subcultural meaning.

Cultural criminologists thus propose that many pleasurable activities such as rave culture, drug taking, body modification, Internet use, joy riding, and sado-masochist activities contain many elements of the carnivalesque and crime; not least, we might observe, the much reported and discussed deviant activity of the past thirty years, football hooliganism. From a cultural criminological perspective involvement is simply pleasurable fun. There are numerous often best selling memoirs by ex-'hoolies' which provide nostalgic testimonies to the pleasures of a 'ruck' on a Saturday afternoon with other consenting adults.

A cultural criminology concept virtually synonymous with the carnival of crime - and particularly useful in helping to explain the schizophrenia of crime - is that of 'second lives' (Presdee, 2000). Thus, those of us who belong often precariously to the 'central core' (Young, 1999) of the population enjoying full-time work, career structures, apparently secure lives and social commitments embedded in the social fabric of respectability, on the one hand, demand protection for ourselves and families from the criminal and uncivil, but are otherwise attracted to the activities and the pleasures provided by the deviant and illicit even though that enjoyment may only be experienced through the surrogate media of film or rap music. Thus, again the boundaries between respectability and non respectability are blurred. Members of the core group in society can therefore enjoy 'second lives' where in order to escape the sterility of scientific rationality – or the stultifying boredom of what Max Weber (1975) refers to as the rule-bound 'iron cage of bureaucracy' that governs and controls their normal existence - they may engage in a whole variety of deviant activities ranging from excess binge alcohol consumption, to recreational illegal drug use to a good ruck with a rival football 'firm', and beyond. It seems that these activities are common throughout the social structure and leave no occupation group untouched.

Thus, Robinson and Zaitzow (1999) conducted a self-report study of criminologists and criminal justice practitioners and found 66 per cent reported driving under the influence of alcohol at some time with 35 per cent during the previous twelve months. Sixty per cent admitted to the use of illegal drugs at some time, with 27 per cent reporting recent use; one-third had bought drugs and 11 per cent admitted to selling them. From the cultural criminology perspective, crime is simply normal and non pathological.

### **Crime as Normal and non Pathological**

For many years the crime-rate rose ever upwards, although it has come down recently in the UK, and more so in the USA, but that fall has been from unprecedented high levels and crime rates remain historically high. These recent reductions are nonetheless significant and will be revisited later in this paper. The issue here – as David Garland (1996) has observed – is that as crime came to be more frequent it ceased to be an exceptional or pathological event and became a standard, normal, background feature of our lives.

This increasing blurring of boundaries has become no more apparent than in the realms of organised crime, corporate crime and legitimate business. As Ruggiero (2000) observes, organised crime has become a branch of big business and is simply the illegal sector of capital. Castells (1998) notes that by the middle of the 1990s the ‘gross criminal product’ of organised crime made it the 20th richest organisation in the world and richer than 150 sovereign states; while De Brie (2000) notes the total world gross criminal product is estimated at 20 per cent of world trade.

Carter (1997) proposes that the structure of criminal enterprise is no-longer characterised by archaic forms of ‘family’ organisation typified by the old Sicilian Mafia and observes that newer flexible forms of ‘entrepreneurial’ criminal organisation and methods of operation are highly adaptive to fast moving global networks and achieve increasing integration into the legitimate economy through sophisticated money laundering techniques. The use of encrypted electronic mail, anonymous Web sites and the myriad of instantaneous transactions which constitute the Internet in general and financial markets in particular, render the legal and the illegal increasingly indistinguishable and where distinguished, beyond the reach of national law enforcement agencies. As both van Duyne (1997) and Castells (1998) note criminality is thus normalised by these networks.

Ruggiero (1997) further observes that legitimate business both actively seeks relations with criminal organisations and adopts methods akin to those of organised crime. Thus, immigrant smuggling eases labour supply problems in a variety of manufacturing sectors such as clothing and food, construction and agriculture and in ‘dirty economies’ where semi-legal employment is interspersed with employment in more directly criminal activity. Moreover, as De Brie (2000) notes, the global sphere of multinational corporations enables the export of the most brutal aspects of cheap labour to convenient locations in the southern hemisphere.



Meanwhile, the legal financial sector may go out of its way to attract criminal investments. Kochan and Whittington (1991) note that the closure of the Bank of Credit and Commerce International in 1991 showed how private banks and investment traders openly tout for legal and illegal funds without being too concerned about the distinction between the two. Moreover, legitimate capital has started to use the same tactics as organised crime: thus, while drugs cartels launder their profits through 'offshore' banking facilities, legitimate capital enhances its power over governments to reduce tax burdens not only with the threat to relocate employment but also by adopting some of the tactics and resources of organised crime (Shelley, 1998). At the same time, for many states criminality acts as a buffer against poverty and economic collapse. Cocaine production, for example, acts as a counter to the impoverishment of thousands of Latin American peasant farmers, reducing the impact of falling world prices for agricultural products and raw materials in these areas. Thus, in a world where the boundaries between criminals and non criminals and legal and illegal activities become increasingly difficult to disentangle, the classic crime control methods of modernity become increasingly more problematic and new modes of governance are developed.

### **New Modes of Governance**

For most of the twentieth century crime control was dominated by the 'treatment model' - prescribed by the pre-destined actor model of crime and criminal behaviour (Hopkins Burke, 2005) - and was closely aligned to the powerful and benevolent state which was obliged to intervene in the lives of individual offenders and seek to diagnose and cure their criminal behaviour. It was the apparent failure of that interventionist modernist project epitomised by chronically high crime rates and the failure of criminal justice intervention that led to new modes of governance.

This new governmental style is organised around economic forms of reasoning and is reflected in those contemporary rational actor theories which view crime as a matter of opportunity and involvement requires no special disposition or abnormality. The outcome has thus been a shift in policies directed at the individual offender to those directed at 'criminogenic situations' which include – to quote Garland (1999: 19) - 'unsupervised car parks, town squares late at night, deserted neighbourhoods, poorly lit streets, shopping malls, football games, bus stops, subway stations and so on'.

Feeley and Simon (1994) have influentially proposed these changes to be part of a paradigm shift in the criminal process from the 'old penology' with its central concern of identifying the individual criminal for the purpose of ascribing guilt and blame, the imposition of punishment and treatment; to the to the 'new penology' and concerns with developing techniques for identifying, classifying and managing groups assorted by levels of dangerousness based not on individualised suspicion, but on the probability that an individual may be an offender. Feeley and Simon observe that justice is thus becoming 'actuarial', its interventions increasingly based on risk assessment, rather than the identification of specific criminal behaviour. We are therefore witnessing an increase in -

and the legal sanction of - such actuarial practices as preventive detention, offender profiling and mass surveillance (Norris and Armstrong, 1999).

The past twenty years has witnessed an ever-increasing use of surveillance technologies designed to regulate groups as a part of a strategy of managing danger. These strategies include the ubiquitous city centre surveillance systems referred to above, testing employees for the use of drugs (Gilliom, 1993) and the introduction of the blanket DNA testing of entire communities (Nelken and Andrews, 1999). The introduction of these new technologies often tends to be justified in terms of their ability to monitor 'risk' groups who pose a serious threat to society; however, once introduced, the concept of dangerousness is broadened to include a much wider range of offenders and suspects (see Pratt, 1999). Thus, the National DNA Database was originally established in the UK as a forensic source to help identify those involved in serious crimes, such as, murder and rape, but an amendment to the Criminal Justice and Public Order Act 1994 allows samples to be taken without consent from any person convicted or suspected of a recordable offence (Home Office, 1999).

For some – following Ulric Beck (1992) - these trends are indicative of a broader transition in structural formation from industrial society towards risk society. Ericson and Haggerty (1997) accordingly argue that in the sphere of criminal justice we are witnessing a transformation of legal forms and policing strategies that reflect the transition to the latter social formation.

In these circumstances, policing becomes increasingly more proactive rather than reactive and, given that risk assessment is probabilistic rather than determinist, it requires the assignment of individuals and events to classificatory schemes which provide differentiated assessment of risk and calls for management strategies. Returning to the predestined actor model tradition established by Lombroso and his acolytes, offenders are now classified as 'prolific' rather than merely opportunistic; and once having been designated as prolific, the individual becomes a candidate for targeting by more intensive forms of surveillance. The emphasis on risk makes everyone a legitimate target for surveillance and - as Norris and Armstrong (1999) pithily observe - 'everyone is assumed guilty until the risk profile assumes otherwise'.

Developments in the contemporary youth justice system reflect these wider trends. Social policy thus focuses on children 'at risk' and the management of that risk pervades every sphere of activity within the contemporary youth justice system. The commencement of intervention itself is regulated through a detailed assessment of risk through the Asset profile form, which contains a scoring system that predicts the likelihood of offending and will determine the level of intervention and surveillance the young person will experience (Youth Justice Board, 2002).

Significantly, many of the programmes of practical action which flow from strategies of 'risk management' are increasingly addressed not by central-state agencies such as the

police, but to quote Garland (1996: 451) 'beyond the state apparatus, to the organisations, institutions and individuals in civil society' (see also O'Malley, 1992, Fyfe, 1995). Thus, following the demise of the interventionist welfare state that had been the cornerstone of high modernity (Hopkins Burke, 1999a), there was to be an emphasis on individuals managing their own risk and this approach was to find converts from all parts of the political spectrum (Barry, Osborne and Rose, 1996).

Pat O'Malley (1992) thus observes the emergence of a new form of 'prudentialism' where insurance against future risks becomes a private obligation of the active citizen. Responsibilisation strategies are also designed to off-load the responsibility for risk management from central government on to the local state and non-state agencies, hence the increasing emphasis on public/private partnerships, inter-agency co-operation, inter-governmental forums and the rapid growth of non-elected government agencies. The composition of such networks allows the state to 'govern-at-a-distance' – to utilise the norms and control strategies of those formerly autonomous institutions identified by Foucault (1971, 1976) - while leaving, to quote Garland (1996: 454) 'the centralised state machine more powerful than before, with an extended capacity for action and influence'.

I have previously drawn attention not only to the increasing pervasiveness of policing in its various disguises in society but also significantly to our own contribution to the legitimisation of this state of affairs (Hopkins Burke, 2004). The theoretical perspective that linked the contributions to *Hard Cop/Soft Cop* was a neo-Foucauldian left realist variation on the carceral surveillance society debate (see: Foucault, 1980; Donzelot, 1978; Cohen, 1985; Garland, 2001) which, while recognising, in line with Foucauldian orthodoxy, that particular areas of the social world are colonised and defined by the norms and control strategies devised by a variety of institutions and experts who are often completely unaware of the totality of the power matrix to which they are contributing, nevertheless, went beyond that theme and proposed that in our complex fragmented and dangerous society it is we the general public - regardless of class location, gender or ethnic origin – that have a material interest in the development of that surveillance matrix.

There is indeed no greater manifestation of the 'schizophrenia of crime' than in the constant tension between, on the one hand, a demand for human rights - and in many cases this stretches from, on one hand, a requirement for minimal intervention in our often hedonistic and sometimes, at least technically in the case of recreational drug-use, criminal lifestyles and, on the other hand, a demand for a peaceful and secure existence which we expect governments and their agents to deliver. It is clear that these two demands cannot be easily reconciled. What does become increasingly clear, however, is that the incremental development of pervasive generic policing throughout society – with an oft confused ambiguity between 'hard' and 'soft' multi-agency policing strategies - has come about with at least our implicit agreement.

I have again previously outlined a whole raft of legislation introduced in recent years that has individually impacted considerably on our freedoms of action (Hopkins Burke, 2004).

It was legislation that significantly received not only widespread public support on its introduction but which it seemed difficult for 'any right-thinking' person to oppose at the time of implementation. Consider the following two examples.

First, the Football (Disorder) Act 2000 was passed as an almost immediate response to the violence seen during the Euro 2000 football tournament in Holland and Belgium and received virtually universal support. Matthew Robb (2003) of the civil liberties watchdog Magnacartapulus nevertheless observes that the legislation which allows for the withdrawal of passports from hooligans represents a significant restriction of the civil liberties of *all* citizens. He argues that it fails to draw an appropriate balance between law and order and civil liberties, it is rushed, reactive legislation that has used blunt legislative tools and failed to consider other, less draconian options and uses the 'demonisation' of a group – that is, football supporters - to justify powers that would not normally be accorded to the State.

Second, mental health legislation published by the government in 2003 allowed for hundreds of people with dangerous, incurable personality disorders to be locked up indefinitely in secure mental hospitals, without the need for evidence that they have committed a crime. Jacqui Smith, the health minister at the time, said that the legislation would remove a loophole that allowed up to 600 people with dangerous and severe personality disorders to avoid treatment by arguing that they received no benefit from it. The legislation would also permit the compulsory treatment of mentally ill people being cared for in the community and under new powers they could be made to take medication.

Again this plan for the detention of psychopaths who have not committed a crime received considerable public support following outrage at the murder by Michael Stone of Lin Russell and her six-year-old daughter Megan in Kent in 1996. Stone had been left free to commit the crime because his severe personality disorder was considered untreatable and he could not be detained under the Mental Health Act. There are said to be between 2,100 and 2,400 people in the UK with severe personality disorders. The vast majority are in prison or a secure mental hospital, but between 300 and 600 live in the community (Hogg, 2002). Critics nevertheless question the human rights implications of incarcerating people who have committed no criminal offence.

The left realist variation on the panopticon/carceral surveillance society thesis that provides the theoretical underpinnings of 'Hard Cop/Soft Cop' thus proposes that in a complex fragmented contemporary society we all have interests in – or an enthusiasm for – constraints placed on certain activities that restrict the civil liberties or human rights of some individuals or groups as part of the need to manage risk in our lives. Taken together collectively these many individual restrictions constitute the complex social control matrix that constrains us all.

Major military or terrorist assaults on the sovereignty of our particular societies 'and our way' of life, return us to a less complicated more polarised world where moral certainty or

more accurately competing moral certainties return to the foreground. The events of 11th September 2003 when the terrorist group al-Qaeda carried out attacks on the World Trade Center in New York and the Pentagon in Washington causing thousands of casualties provided an inevitable widespread public support for what was to be an extensive authoritarian assault on civil liberties and human rights both in the USA and the UK. Further terrorist attacks on the allies of the USA again involving large numbers of casualties - including those in Bali on 12th October 2002, in Turkey on 20th November 2003 and the UK on the 7th July 2005 – and the almost constant warnings by government of failed attempts and successful interventions by the security forces against terrorists living in our midst has strengthened support for measures to protect society from such attacks. At the same time, there has been considerable popular opposition to such measures and, in particular, military intervention in both Afghanistan and Iraq. The US and UK governments have nonetheless stood firm in what they have termed the ‘war on terrorism’ while at the same time ‘softer’ policing measures have tended to fade into the background as an unambiguously ‘harder’ policing stance has taken precedence with predictable objections from civil liberties and human rights groups.

I have previously speculated on the preconditions necessary to ensure public support for the kind of draconian government measures necessary to successfully fight a war against global warming, noting the impossibility of such a political programme in society as currently constituted (2004c). It was observed in *Hard Cop/Soft Cop* that a major terrorist attack would provide widespread support for any proposed measure. Thus, on the 22nd July 2005 – the day following the failure of terrorists to detonate bombs they were carrying on the London metro system – the police shot dead an innocent Brazilian citizen at Stockwell Underground Station who they had mistaken for a terrorist bomber. An opinion poll conducted almost immediately following the announcement that the man shot had been entirely innocent found that ninety per cent of the public continued to support the police. Now over a year after the event there appears little *widespread* complaint among the general public criticising the police action, Morality seems to be becoming increasingly less ambiguous in such conditions although a new legitimate moral certainty seems to remain a distant and far from welcomed project.

## **Discussion**

It has been observed in this paper that a contemporary fragmented criminological enterprise is located very much in the context of an equally divided social formation. A competitive and divisive criminology is not a necessarily healthy or constructive enterprise but understandable in a situation where it has become impossible to legitimately address the range of complex morally ambiguous activities and behaviours that have come to constitute the crime problem from one criminological perspective. Even the most sophisticated integrated theories have failed to do any such thing (Hopkins Burke, 2005). The postmodern condition is also a deeply flawed state of being and I have observed elsewhere the implausibility of a legitimate postmodern project post 9/11 where all constituent plural groupings are able to co-exist peacefully in social harmony while in a state of moral ambiguity (Hopkins Burke, 2005). Tolerance of others and their way of life

and belief systems has to be reciprocal for genuine and legitimate peaceful plural coexistence. This situation does not exist at this point in time and looks increasingly unlikely for the foreseeable future.

There is nevertheless no legitimate case for a return to the moral certainties and monoculturalism of high modernity. We who might consider ourselves social progressives recognise clearly the need to embrace the considerable positives of difference and eclecticism that contemporary fragmented societies have brought us and, consequently at first sight, there lies the inevitable appeal of postmodernity. Yet, a state of moral ambiguity can never be the basis for a peaceful social solidarity.

I earlier drew attention earlier to the work of Emile Durkheim and the significance of his thinking on fragmented industrialised societies. It is his fundamental proposition that successful organic societies need to be founded on interdependent relationships between plural interests although as I have observed elsewhere, these complex social formations contain intense surviving or indeed relatively recently created mezzo or micro mechanical solidarities (see Hopkins Burke and Pollock, 2004; Hopkins Burke, 2005).<sup>3</sup> He further significantly acknowledges that such social configurations can only be legitimate and successful in the absence of widespread inequality or to use the current buzz-term, 'social exclusion'. Durkheim of course uses the term 'forced division of labour' and indeed much criminality in contemporary society can be at least partially explained by his concept of anomie or the normlessness that occurs with rapid social change and the breakdown of existing social norms and relationships. Indeed, it is the crucial component of his argument that the contractual arrangements of interdependency are essentially bound together by a moral component. Refusing to victimise those with whom one has a close moral interdependency - family, friends, neighbours, or simply anyone with whom you can identify - explains this Durkheimian concept in a criminological context. Identification and interdependency are thus crucial components of any successful contemporary manifestation of organic solidarity.

It is the work of Durkheim and his observations on the moral component of the division of labour in society that provides the foundations of a 'new' liberalism which provides the basis of a legitimate social context for community: that is, a political vision which actively promotes both the rights and responsibilities of both individuals and communities *but in the context of an equal division of labour*. It is this latter element of the thesis that deviates significantly from the moral communitarianism promoted by Amitai Etzioni and embraced in the UK New Labour. The latter nevertheless deviate from the teachings of the former although they say otherwise.

Thus, Tony Blair and his sociological guru Anthony Giddens (1998) invoke the communitarian notion of community very deliberately as residing in *civil society*: in lived social relations, and in 'commonsense' notions of our civic obligations. This *Third Way* political thinking is presented as avoiding what its proponents see as the full-on atomistic egotistical individualism entailed by the Thatcherite maxim that 'there is no such thing as

society', and on the other hand the traditional social-democratic recourse to a strong state as the tool by which to realise the aims of social justice, most notably that of economic equality. For Blair, 'the grievous 20th century error of the fundamentalist Left was the belief that the state could replace civil society and thereby advance freedom' (Blair, 1998: 4). The state has a role to play, certainly, but as facilitator, rather than guarantor, of a flourishing community life.

Dissenters nevertheless note that the implementation of the New Labour agenda has in fact taken a rather different course. Its character appears rather more authoritarian - and thus, centred more on the usage of the state apparatus to deliver particular outcomes - than is suggested by the rhetorical appeal to the relatively autonomous powers of civil society to deliver progress and fruition by itself (see Driver and Martell, 1997; Jordan, 1998).

The left realist criminological agenda - which in short, proposes a balance of intervention challenging both criminal behaviour and the conditions which facilitate and nurture it (Hopkins Burke, 2005) - is very much in accordance with the propositions of 'new' liberalism. The theoretical foundations of left realism are of course firmly located in the modernist tradition and as such opposed to the virtual chaos of postmodernism. The construction of a new moral certainty - or even a new teleological project for that matter - would therefore be a satisfactory long-term ambition for many a self respecting left realist. In reality, that ambition is never going to be reached. Outside of a coercively enforced moral certainty instigated by the advent of a major social ruction such as a major terrorist atrocity and the implementation of a subsequent new authoritarianism (Hopkins Burke, 2004c), the best we can hope for in a fragmented social formation is a relatively healthy location on a spectrum somewhere between moral certainty and ambiguity.

This condition of moral *uncertainty* is one of continuous reflection and reconsideration and while there will be inevitable attempts to rediscover the moral certainties of the past this situation is extremely unlikely to be achieved. From this essentially social constructionist standpoint there can never be any permanently objective truth merely 'truths of transition' around which a shifting moral consensus and a legitimate and widely acceptable interdependent division of labour can be built. But these 'truths' will be inevitably transformed with changed circumstances, new information and recognition of the unintended consequences of previous social action.

The baseline for this new social solidarity will essentially involve a substantial reduction in socio-economic inequality and, at the same time, recognition and celebration of the diversity of the postmodern condition; but not the apparent uncontrollable anarchy and unacceptable inequalities of moral ambiguity or, for that matter, the rigid authoritarianism and brutalities of neo-conservatism and the right realist agenda that has been so influential in the criminal justice sphere in recent years, not least in the USA.

It is the central proposition of the right realist/neo-conservative thesis that crime is the result of individual choice and can be prevented or contained by pragmatic means which make the choice of criminal behaviour less likely: reducing the opportunity, increasing the chances of detection, increasing perceptions of detection partly through rigorous policing, especially of disorder, but *most* importantly, unambiguous punishment; the threat of severe, certain and swiftly imposed *punishment*. Imprisonment is seen to be particularly effective in neutralising or incapacitating offenders and frightening others into adopting law abiding lifestyles. And it works, yes prison works.

Incapacitation has had a substantial impact in the USA with the prison population doubling in ten years to two million people in 2002; the biggest prison population in the world with the highest number of inmates as a proportion of its population; bigger even than in the old Soviet Union during the Stalinist era, a situation termed by Jock Young (1999) 'Gulag USA'. One in every 142 people living in the USA is in prison. The inherent forced division of labour in that society is reflected in the ethnic imbalance of the prison population. A report from the US Justice Department has estimated that 12 per cent of black men in their 20s and early 30s were in prison, but only 1.6 per cent of white males in the same age group (BBC News, 2003). Penal incapacitation is nevertheless not restricted to the USA: on 30 January 2004 the prison population in England and Wales stood at 73,688 an increase of approximately 50% over the previous ten years (Prison Reform Trust, 2004).

I did say earlier in this paper that we would revisit the issue of recent falls in the crime figures in both the USA and the UK but instead the incarceration figures will be allowed to speak for themselves. Prison is working in the sense that a substantial number of motivated offenders have been removed, often long-term, from the street. But incapacitation is an extremely expensive criminal justice strategy with both excessive humanitarian and financial costs. There is clearly a case for the rehabilitation - not just of the treatment model - but also some of the more radical variants of the victimised actor model of crime and criminal behaviour. More sophisticated criminal justice policies do appear overdue.

Left realism *implicitly* welcomes as a criminological explanatory project the postmodern abandonment of grand theoretical solutions while *explicitly* welcoming diverse explanatory components. It is thus recognised that most - if not [and lets be a little radical here] *all* - criminological theories have *something* legitimate to say about *some* forms of crime and criminal behaviour in the *appropriate* circumstances. Moreover, a whole range of disciplines and criminological perspectives can make legitimate observations about - and provide the basis of appropriate interventions against - a whole range of activities deemed criminal whether these are at the extra-macro level of the zemologists or the micro level of the potential or actual crime scene of the crime scientists. Individual crimes need detection, property and lives need protecting but the socio-economic context of criminality requires primary criminological consideration. Let us consider two recent phenomena that illustrate this point clearly.



First, there has been the rise of the new criminal families. Carter (1997) – and cited above - observes that the structure of criminal enterprise is no-longer characterised by archaic forms of ‘family’ organisation but this is not true. He rightly identifies newer flexible forms of ‘entrepreneurial’ criminal organisation and methods of operation but at the same time fails to recognise the rise of a new more traditional form of crime family – little more than welfare cheats, council estate bullies and football hooligans a generation ago, third generation underclass [if you will excuse the pejorative term] - that have emerged from the outer estates of the UK to become major, extremely violent, players in the fast expanding illegal drug markets. Second, - and this point is closely linked to the previous one - there has been the widespread extensive dependency on Class A drugs that has occurred in recent years with the resulting major impact on moral interdependency. Bennett et al (2001), for example, influentially found in a study conducted for the Home Office, that those who used both heroin and crack cocaine regularly spent on average £290 a week or £15,000 a year, were rarely employed and invariably needed to steal to fund their habit. Moral interdependency tends to take a backseat when there is the ‘monkey on the back’ of drugs dependency, in such cases, family, friends, neighbours and simply anyone encountered is a potential legitimate victim and not someone to identify with.

A multitude of criminological perspectives – from, for example, Merton (societal adaptations), to Cloward and Ohlin (criminal opportunity structures), via biological positivism (altered biological states); cognitive learning behaviour to whole raft of early, neo-Marxist and postmodern subculture theories (see Hopkins Burke and Sunley, 1996; 1998) – all shine useful explanatory light on the above two closely interlinked phenomena. These all nonetheless make most sense when located in the context of Durkheim’s anomie or normlessness thesis.

## **Conclusion**

This paper has entered the debate about the contested meanings of the concept of community justice by proposing that the parameters of discussion be extended to encompass observations about the nature of community, crime and criminology in contemporary society. The complexities and ambiguities of criminality and modes of criminological governance in the context of a society permeated with the postmodern condition have been observed and discussed. It has been observed that all criminological theories and perspectives can have something legitimate to say in the appropriate context but essential to this legitimacy is nonetheless the existence of properly socially integrated division of labour in society built on equality and strong moral foundations. Without that fundamental socio-political cornerstone all is lost and the ‘schizophrenia of crime’ is a fully comprehensible phenomena

## End Notes

1. We should note at this juncture that many influential social scientists deny the notion of postmodern society - which for such a social formation to exist would require some substantive rupture with the modernist social formation – and thus emphasising the continuities and following the influential social theorist Anthony Giddens (1990, 1991) use the term late modernity. The term postmodern condition is thus used in this paper, although we might note that the equally distinguished social theorist Norbert Elias (1978, 1982) had previously observed that we live in a period of late barbarism.
  
2. Those many people who consider driving at excess speeds on our roads to be a minor issue and that the police should concentrate their efforts on pursuing ‘proper criminals’ might like to reflect on the following. Figures collated by the Department for Transport show that 3,508 people died in road accidents in England and Wales during 2003 with speed implicated in many cases (BBC, 2004). If one considers the immense and intense moral outrage at terrorist atrocities such as 9/11 (the attacks on the World Trade Centre in New York City in 2001)) and 7/7 (the attacks on the London transport system in 2005) its seems quite remarkable that so many die on our roads each year with in many cases some form of criminal behaviour implicated without barely a murmur of collective public outrage.
  
3. I have adopted in my recent work (see Hopkins Burke, 2004, 2005; Hopkins Burke and Pollock, 2004) a reconstituted methodological individualist reading of Durkheim - courtesy of Raymond Boudon [1980] - which enables us to avoid some of the predicaments posed by the usual methodological collectivist and functionalist interpretations of his work.

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