Theorizing
CRIME &
DEVIANCE

A NEW PERSPECTIVE

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The book is dedicated to Christine, Christopher and Alexandra

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Every civilization which disavows its barbarian potential has already capitulated to barbarism.

Slavoj Žižek

There is a god of the marketplace, Eshu; he is a trickster, all mouth and balls.

(Yoruba saying)

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ABOUT THE AUTHOR

Steve Hall is Professor of Criminology at Teesside University. In the 1970s he was a nomadic musician, general labourer and avid reader of anything political or philosophical. In the 1980s he worked with young offenders in the deindustrializing north-east of England, and he was active politically during the steelworks and mine closures in County Durham. In 1988 he returned to university, and after graduating began teaching, researching and publishing. He has published widely in the fields of criminology, sociology, history and radical philosophy. His recent book *Criminal Identities and Consumer Culture* (with Simon Winlow and Craig Ancrum) has been described as 'an important landmark in criminology'.

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INTRODUCTION

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Since the 1980s criminological theory seems to have fallen into a condition of permanent crisis, unable to offer convincing explanations of the fundamental criminological question: why individuals or corporate bodies are willing to risk the infliction of harm on others in order to further their own instrumental or expressive interests. This book is an examination of that 'aetiological crisis' (Young, 1987), but from a perspective which raises the suspicion that the crisis was not a product of the discipline's entry into an entropic phase, but, on the contrary, to a large extent wilfully self-constructed. In this period Western criminological theory seemed to shift into its own customized mode of what Slavoj Žižek (2010a and *passim*) calls *fetishistic disavowal*, no longer wanting to know what creates the conditions in which rates of harmful crime increase to elicit the seemingly inevitable punitive reaction orchestrated by neoliberal governments. So resolute was the flight from aetiology that only a small number of approved explanations were allowed to remain in place as the foundations of non-conservative criminological thought.

These approved explanations will be examined as the book's argument unfolds. It will also investigate why, in this broad and enduring act of equivocation, various schools of criminological thought have systematically deselected specific theories and concepts that are, or could be, genuinely potent in their ability to explain criminogenic conditions and subjectivities and suggest specific anti-criminogenic forms of regulation or transformation at the deep level of economic and cultural practice. The result is that criminological theory is now largely anodyne, entropic, and politically ineffective. However, after recent events such as the financial crisis and the North African revolutions, it would appear that we are now entering a difficult phase of advanced capitalism where the restrictive intellectual current that has been dominant since the 1980s is running out of momentum. Many thinkers are now coming to the understanding that the visceral subject is far more than an effect of language and discourse, that history has not ended, that the economy is without doubt a major part of the bedrock of

human existence, and that politics are far from dead. Crime might have undergone a recent statistical drop in Britain and the USA, but there is little doubt that illegal markets, criminal trafficking, violence and intimidation are now normalized aspects of socio-economic activity in a socially divided and politico-economically insecure world whose subjects are increasingly drawn towards the impoverished culture of consumerism.

In this climate Reiner (2007) suggests that criminology should return to the investigation of motivation, as do Gadd and Jefferson, who argue for a new psychosocial criminology that shows 'a willingness to move beyond the rhetoric of folk devils and moral panics … to address the question of who these folk devils really are, what they have done and why and to try to make sense of their motives' (2007: 186). This book is an attempt to construct the beginnings of what could be called a 'new' theoretical perspective, but, of course, 'new' only in the sense that the ideas it imports are reconfigured and synthesized in a marginally different way. Whether such synthesis produces originality is left to the reader to decide, but the purpose of the book is not to produce novelty, nor indeed closure, but an initial theoretical framework with at least some degree of explanatory power.

Before this attempt can be made, however, some sort of working definition of criminological theory's principal objects must be established. At a very basic level, in the Western industrialized nations upon which this book will focus, crime and social deviance are concepts used in everyday life and the social sciences to represent all social actions or utterances that transgress socially accepted behavioural norms and ethical standards. Whilst 'crime' is restricted to actions or signs that exist beyond boundaries set by law, 'social deviance' incorporates crime but also includes any legal action or sign deemed unacceptable by the social group. Sociology and criminology share a long intellectual history of dealing with the concepts of crime and social deviance; a history that, roughly speaking, moved through the layered phases of classicism, positivism/integrationism, pluralism, radicalism and postmodernism.

Before these paradigms became established, the concept tended to be wrapped up with that of sin, and was thus largely the preserve of theologians, philosophers and legal theorists. The classical phase came into being when liberal Enlightenment thinking distinguished crime fully from the broader religious concept of sin. In the eighteenth and nineteenth centuries classical liberal thought developed from this historical watershed with a burgeoning faith in a rationalized legal system constituted by the new 'like minds' of universal reason. However, perhaps in too much of a hurry to leave behind the notion of sin, it tended to conflate deviance with the legal category of crime. Thus the cultural contexts in which deviance is named

were absent from these early constitutional debates on law and punishment. Enthused by an ambitious transcendental conception of reason, liberalism also placed the autonomous rational and ethical individual at the centre of its discourse; thus crime and deviance were seen as the aetiological products of the individual's failure to exercise innate powers of will, reason and morality.

In Kant's intrinsicalist and deontological reasoning the deviant individual had failed to abide by the injunction of the categorical imperative (Kant, 1998). The refusal to conform to the demands of universal Reason as institutionalized in law was a wilful and punishable rejection of a gift from God. In the consequentialist logic of the British Utilitarians, crime and deviance were the products of the innately hedonistic individual's failure to act according to rational calculations of the harmful consequences of intended actions (Bentham, 1996). The line of demarcation between deviant acts that were to be criminalized and punished and those that should elicit mere disapproval and social censure was to be established by rational calculations of harm, but the tendency to think outside of socio-economic, political and cultural contexts meant that harm was conceptualized in individualistic terms and classified by a new bourgeois social elite, whose members tended to regard themselves, rather than the whole population, as the pioneers of transcendental Reason.

However, reducing disputes that might have had their origins in historical and structural conflicts between social groups to isolated conflicts between individuals did have a pacifying effect insofar as it atomized and therefore decreased the internal social and 'tribal' conflicts that had characterized pre-modern history, although by no means did it decrease the external 'tribal' conflicts between nation-states. In a way that to some extent echoed Freud (1979), Elias (1994) saw this as part of a broad Western 'civilizing process', the definitive aspect of modernity. However, the process itself has been characterized by a paradox. Within national territories social power relations remained distinctly unequal, yet extreme forms of violence diminished only to be somehow converted into a burgeoning assortment of less violent and largely acquisitive actions, some of which were criminalized more readily than others. At the same time, relations between nations were punctuated by increasingly destructive wars. This paradox and rather interesting conversion of 'criminal energy' casts doubt on the validity of the term 'civilizing', a question that will be addressed throughout this book.

Elias's theory, conceived and written just before the Second World War, emerged from a social-scientific movement that had been developing in Europe and the USA since the nineteenth century. During this early period

the problems of philosophical and legal atomism and the disappearance of socio-cultural contextualization in legal thought and practice became apparent. As the social sciences moved into the twentieth century, a range of theories proliferated in the attempt to relocate ethical, legal and psychological conceptions of crime and deviance in their social contexts. Many noteworthy social scientists, such as Durkheim (1970) and Weber (2007), became very aware of the tension between modernity's civilizing/liberating momentum and its 'anomic' and 'disenchanting' tendencies. However, despite the rapid development of social thought, the metaphysics of liberal individualism still remained dominant, which created a fault line between individualist and social theories that still exists today. Another associated fault line can be said to run through the history of the sociology of crime and deviance; that which demarcates integrationism and pluralism. The integrationist definition of deviance, based on the assumption that a society is an integrated whole, is the appearance in everyday social life of actions or signs from beyond a society's boundaries, which can disrupt the collective sense of ethics, solidarity, normality, stability and predictability that glues it together. Crime can be reduced by integrating marginal individuals into the social body, its ethical codes and its economic opportunities. The pluralist definition revolves around the idea of actions or signs that transgress the behavioural norms or ethical standards of any one of a huge diversity of legitimate cultural groups that constitute the broader social body, which is never fixed or harmonious but in constant flux. Crime can be reduced by encouraging recognition, tolerance and the political and socio-economic inclusion of marginalized groups in a society that should be both multicultural and formally equal; basically, an attempt to integrate formally equal but diverse cultural groups into society, economy and politics without insisting on integration in the sense of cultural homogenization.

    The presence of a monolithic capitalist political economy, however, exposes fundamental problems in both integrationist and pluralist thought. The continuation of socio-economic inequality and both ethnic and social conflict casts doubt on the possibility of social integration under the current politico-economic regime of liberal capitalism, whose principle of formal equality has not lived up to its promise in the concrete world of everyday socio-economic relations; it has turned out to be, as Badiou (2007) reminds us, all formal liberty and equality but very little actual fraternity. Although nation-bound societies contain many different cultures and individuals, there is usually only one economic system and one closely associated governmental and legal system, which, when it comes down to politics, law and economic participation and redistribution, must cater for all in the vital dimensions of material life-support and social justice.

Cultural groups and individuals can be nominally 'recognized' and 'tolerated' in all their supposed diversity whilst simultaneously being marginalized in socio-economic reality; compulsory recognition and tolerance does not guarantee equitable economic participation and just outcomes, nor the presence of an uplifting and truthful hegemonic culture. In other words, there are inevitable clashes between the principle of cultural plurality and the unavoidable integrationist imperatives of law, political economy and hegemonic culture, especially where the politico-legal system and the mass media disproportionately represent the interests of the structural socio-economic elite. Whether the elite should be classified in class, gender or ethnic terms, and how these structural categories might intersect, is a central issue in the social sciences. The complexity of these intersections will be examined later, but for the moment suffice it to say that the legal system is in the unenviable position of arbitrating between conflicting interest-groups; in the absence of cultural consensus and socio-economic equality a society's lawmakers face extreme difficulty in reconciling individual and sociocultural conflicts in ways that satisfy everyone.

As Downes and Rock (2007) quite rightly remind us, when criminologists approach any criminological concept they immediately confront the Tower of Babel, a dizzying array of contradictory visions of individuals and the social order, with correspondingly varied definitions of crime and deviance. To many of today's social scientists, who regard integrationism as obsolete and assume a genuine pluralist democracy to be the bedrock of society and unequal social power relations to be its currently unacceptable structural condition, social deviance is regarded as an ineluctably 'contested' category. However, as we shall see in more detail later, the 'criminological question' forces a concession from pluralists. Most liberals and postmodernists agree that a core of consensual criminalized harms does exist (Henry & Milovanovic, 1996), but the demarcation line between the consensual core and the contested periphery is not drawn in a democratic manner. The powerful elite has the ability to protect its ethically questionable or harmful actions by preventing them from being shifted from the periphery to the core, or, where its sophistic arguments in the past have failed to prevent this shift, using its formidable power and influence to shield itself from the full force of the law.

A revived universalistic argument such as this is heavily dependent on broad agreement over a concept of harm as the unifying ontological category that underpins crime and deviance. The simple ethical corollary is that what is harmful to human beings and their multi-layered life-supporting environments should be criminalized. Where harm is considered to be less serious on a consensual scale, it should be subjected to initially condemnatory yet

eventually restorative social pressure, or, where it is very slight, possibly ignored. Current legal systems operate on a similar scale, but their categories of harm are heavily biased, and thus any such attempt to move towards a socially reconfigured universal and scalar conception of harm opens a rather large political can of worms. From conservatism's viewpoint the fundamental category of harm can be defined in a rather straightforward manner; actions or signs that offend the individual's person and property and also the universal values of a social order led by an inspiring and beneficent elite drawn from the upper echelons of business, politics and culture, whose status in the unfolding organic hierarchy is the 'natural' product of their successful application of those values to their everyday lives. The obvious flaws in this group-narcissistic 'wonderfulness of us' model have been exposed too often to repeat here, but the intention of this book is to move on from the standard critique of conservatism to criticize left-liberalism's claim that its alternative pluralistic and individualistic model presents on a plate the only progressive move out of this ideological straightjacket towards a future realm of justice and freedom. As we shall see, liberalism's struggle for progress and social justice has been less successful than it once promised to be.

This work will claim that although some concessions to situational relativism must always be made in the practice of criminal justice, the ethical naming of crime and deviance and the establishment of the line between 'core' and 'periphery' should once more become universal ontological issues, which should be at the heart of a broad left project that has no choice but to pull itself out of the quagmire of liberal-postmodernist relativism with the intentions of forging an alternative ideology and re-inventing itself as a genuine opposition to neoliberal capitalism. Such a return to universal-istic ideology must be made in the light shed by an understanding of what stands in its way over and above the traditional opposition of conservatism. At the moment the most pressing problem for the broad left is that over the past fifty years or so its intellectual discourses have been colonized and paralysed by an accumulation of left-liberalism's compromises, products of a hangover from an immediate post-war period during which the possibility of the return of brutal totalitarian states was humanity's greatest concern. The 'New Left' constituted itself negatively and guiltily in its flight from totalitarianism, subsequently losing its ability to envision a positive sense of direction and falling in with liberalism's negative 'anywhere but that' polit-ical meandering.

The sclerosis of left-liberal criminology and the degeneracy of its research programmes (D'Amico, 1989; Lakatos, 1978), which now join conservatism in the position of being no longer capable of producing useful aetiological explanations of crime that reflect the times, is part of a broader

intellectual and political problem that pervades liberalism in general. Another main theme in this book is the extent to which liberalism's intellectual culture is languishing in the midst of its own reactive and pervasive 'politics of fear', which is replete with symbols of 'absolute evil' (Badiou, 2002), inversions of the pathological individual or menacing ethnic group once ideologically constructed by the racist-nationalist forces who used the authority of the state and the means of modern technology and organization to commit the industrialized genocide of specific individuals and cultural groups (Bauman, 1991). We are all aware that a complex configuration of ethnic purism, racial hatred, nationalism and extreme collective fear, generated in the midst of economic collapse or post-revolutionary tumult and paranoia, was used to construct potent ideological justifications for the Holocaust and the Gulag, probably history's greatest crimes. In a 'state of exception' created as the political solution to a perceived national emergency (Agamben, 2005), the industrialized genocide of 'impure' ethnic groups, political dissidents and the 'class enemy' was decriminalized. More Promethean violence was to follow in the Cultural Revolution in China and the 'killing fields' in Cambodia. However, the fear that racist-nationalist forces or vengeful representatives of the former subjugated class will one day return to plunge politics into an abyss of violence and terror haunts the liberal imagination to the extent that the slightest whiff of condemnation or intolerance, unless directed solely at the state or any vestigial racist-nationalist group, is vigilantly outlawed from a debate that has moved firmly in the direction of a post-political ethics of pure negativity and escapism. As Eagleton argues:

> What one might loosely call post-structuralist or postmodern ethics reflects among other things a massive failure of political nerve on the part of a European intelligentsia confronted not only with the formidable power of global corporate capitalism, but still languishing guiltily in the long shadow of the Gulag and the gas chambers. (2009: 233)

The reader will certainly not find an argument here that the broad left should become complacent about the possibility of such a return, but simply that the overextension of liberal-postmodernism's inverted politics of fear has become an intellectually repressive and corrosive ethico-political panacea. In politics it all but destroyed the left's economic bargaining position and reduced the pressure for social-democratic regulations and reforms. In intellectual life it overwhelmed all other concerns and incapacitated any possible move towards a universal ethics of the Real that

could reconstitute the left in a unifying political condemnation of an unin-
hibited transnational elite, which continues to operate in loose association
with corrupt corporate-state officials and 'glocalized' forms of criminal
enterprise emerging from a global outcast class and a former industrial
working class in political disarray. In the midst of these relations of corrup-
tion have arisen global networks of entrepreneurial crime that pervade the
social structure and straddle the boundary between legality and illegality.
Many individuals who enter criminal markets rather reluctantly – in a des-
perate search for income, status and identity as their socio-economic infra-
structures are broken by market forces and neoliberal economic
restructuring – commit only minor crimes and eschew violence. However,
as this work unfolds we will see that many harmful and violent crimes are
the products of a concentrated form of criminality that has become estab-
lished in various crucial nodes of illegal markets, and which is energized by
what we will come to understand later as capitalism's 'disavowed obscene
Real' and the individual's demand for *special liberty*.

   The liberal-dominated left's failure of nerve and its subsequent ideo-
logical policing could be construed as extreme short-termism. When it
destroyed itself in the post-war period in a convulsion of guilt, trepidation
and fragmentation it created a vacuum in which a revitalized classical-
liberal right was given so much free play that it crushed traditional one-
nation conservatism, socialism and social democracy alike to establish
neoliberalism as the dominant force in global political economy and culture
(Harvey, 2007; Žižek, 2010). Now, with minimal protection, everything
possible is governed by the unforgiving cyclical logic of the capitalist mar-
ket. The likelihood of a return to politically institutionalized nationalist-
racism is far greater in the conditions of socio-economic collapse that can
follow the worst of the capitalist market's cyclical downturns. Stabilizing
measures, built into the financial system after the Second World War, have
so far prevented a collapse quite as profound as that of the 1930s. However,
recently there have been a couple of close calls, and whatever downturns
we face in the near future will be compounded by permanent structural
phenomena – jobless growth, unemployment, the global economic margin-
alization of youth, spatially differentiated overproduction and underpro-
duction, the global shift of economic power towards the East, ethnic
tensions and declining natural resources – looming on a horizon that
appears to be moving closer every year. In other words what was once
cyclical is now becoming permanent and socio-structurally bifurcated as
capitalism moves towards a series of potential downturns that are not
recoverable in ways that can increase the security of the vast majority of the
world's population. However, the transnational business elite and their

technical/administrative functionaries might, perversely, benefit and grow significantly richer and more powerful, hardening and widening already polarized social divisions. The West's inability to summon up the political energy for a significant change of course after the financial crash in 2008 was palpable. It teaches us that liberal-postmodernism's prevention of a move towards a politics energized by the universal ethical condemnation of the obscene forces that drive capitalism, and mobilized by the resolute attempt to construct an alternative ideology and subjectivity based on a different way of organizing economies, might well, in a long-term that now does not appear to be too far away, backfire badly should we encounter an abrupt worsening of underlying economic conditions. Nationalist racism thrives under the economic protectionism that the majority in many nations can come to regard with minimal persuasion as the sole available solution to extreme structural socio-economic problems.

Under such stringent short-term ideological policing, which originated in the influential exporter disciplines of philosophy and politics and eventually filtered through the wholesale outlet of sociology, the weaker importer discipline of criminology has suffered more relativization than most other social-scientific disciplines, simply because it exists at the forefront of the mechanics of ethical condemnation. Relativism does have its weak and strong variants, but some branches that have influenced criminology do incline quite sharply towards the strong version; ethno-methodologists and subculturalists would claim that meaning is purely a local achievement, and some postmodernists, including Foucauldians, would argue that the social world is little more than a loose network of discourses, which classify the world in various ways to produce diverse and conflicting 'regimes' of truth, knowledge and subjectivities. Beyond a very small core of violent harms, all these discourses produce their own shifting categories of crime and deviance; according to the relativists it's better to let these discursive subjects get on with it and adjust – and possibly fragment and localize – the criminal justice system's practices according to their diverse requests (T. Young, 1999).

As we shall see later, in the midst of this celebratory fragmentation the very principles of universal ethics and symbolic efficiency have become the villains; for Derrida there can be no enduring universal Good without the continuous inventive dissidence that will allow no order of signs to establish itself as a tradition to stabilize meaning, ethics and politics; only the constant transgression and destruction of authority is Good (Eagleton, 2009). For the new breed of liberal-postmodernist there can be no abhorrent form of marginality or transgression, and by extension the decriminalization of all such forms apart from those characterized by extreme brutality is the

way simultaneously to reduce crime and challenge institutional power. However, will it do to condemn universalism, affirm relativism and then conjure up a universal category when it suits, as Henry and Milovanovic (1996) do when they dismiss the search for the 'causes of crime' as 'futile' and in almost the same breath posit a single cause of 'domination'? Is there not a vast grey area between decriminalizable transgressions and extreme brutality, and how extreme does brutality have to be before it is criminalized as a real harm? Would the guaranteed statistical drop in crime that would follow further decriminalization be accompanied by a reduction of real harm, providing of course that liberal-postmodernists could agree on what it means? Would further decriminalization reduce the continuous stream of largely unacknowledged harms inflicted by corporate institutions or individuals on their victims, who are drawn largely from the working classes?

The ontological uncertainty that is the inevitable consequence of the decline of symbolic efficiency dumps every ethical decision that exists outside the nebulous core of 'extreme brutality' at the door of the individual, who now runs the risk of stumbling into the extreme condition of solipsism, where the pressure to construct some sort of coherent self and personal ethical code in the midst of radical indeterminacy permits the individual to see itself as the almost deified centre of the universe, in command of the construction of all moral categories and actions. Here, what the cultural critic Stanley Fish (2010) calls the 'dark side of liberalism' rears its head. Self-imposed isolation causes the individual to subscribe to a stubborn independence of mind that eschews all compromise and ethical guidance, but what seems like a noble existential 'inner directedness' can, in all but the most conspicuously harmful and incriminating cases, also exempt the individual from ethical injunctions to social, economic and physical responsibility for others and their life-sustaining environments.

In other words, do the direction and momentum of liberal-postmodernism, the 'official opposition' in criminological theory, play into the hands of right-wing libertarianism, which, as we shall see later, is the cultural hallucinogenic that acts as the seedbed for criminogenic subjectivity? Redirected like this, can neoliberalized versions of Deleuze and Guattari's (1987) rhizomatic 'lines of flight' lead anywhere but to Berlin's (1969) realm of 'negative liberty', where the individual can walk away guiltlessly from all social responsibility, a perversion of the 'positive liberty' to choose from the external social world of others that to which a compromise must be made? The extremity beyond even negative liberty is Agamben's (2005) 'state of exception', where the solipsistic individual can justify any harm that is required to clear the way for the gratification of their 'stupid pleasures', anxieties and

prejudices (Žižek, 2008a), a realm of what we might call 'special liberty', where the obscene Real – the combined forces of envy, greed and so on that drive capitalism's subjectivity but remain unspoken in everyday discourse – is given the longest of leashes. If indeed we are headed towards this supra-social realm, with our libertarian pioneers in the lead, the formerly social categories of crime and deviance will be increasingly subjected to the whim of each individual, with potentially chaotic consequences, because, of course, these realms don't really exist, and those who imagine themselves to be the inhabitants still share a reality with those whose lives are affected by the consequences that follow the execution of these whims. This work will offer at least some evidence and argumentation that might help to inform decisions about whether such speculation is grounded in the reality of our times.

Partly in response to some of the excesses of postmodernist sociology, the concepts of consensus and progress, and therefore the possibility of working towards universal notions of deviance and crime grounded in an ontological conception of harm, have returned to the sociological agenda. Beck's (1992) solution to the problem of harm revolved around a concept of social risk calculation, by means of which the potentially deleterious effects of human actions in advanced capitalism can be foreseen, regulated and possibly avoided or minimized. This precautionary principle, emanating from the European social-democratic mainstream, has been taken on board quite seriously by contemporary criminologists and sociologists. For instance, individuals should be aware that their desire to pursue leisure activities at night might result in encounters with the well-known relationship between alcohol and violence, but at the same time businesses and policing organizations should also be aware that their own practices can help to minimize risk. Similarly, individuals should understand that the desire to drive an attractive open-top car might increase the risk of theft, but car manufacturers and police should also shoulder some of the responsibility. Thus risk is simultaneously individual and social, which slightly extends the minimized notion of social and governmental responsibility advocated by classical liberalism and libertarianism.

However, in the hands of those criminologists who have never quite managed to extract themselves from administrative pragmatism, this position has inspired theories and practices of risk management, which could be seen as rather defeatist because by default they accept crime and deviance as inevitable risks to be managed rather than universal emergent problems to be reduced by diminishing or transforming their motivations and generative contexts. In other words, we must ask the question of whether risk theory distracts us from the deeper issue of motivations and the underlying conditions that foster them. Combined with crude anti-aetiological

'moral panic' theories and the onward march of predictable Foucauldian theories that posit most crimes as categories discursively constructed as mythical objects to justify new forms of 'governmentality', the adoption of risk theory also helps to avert our intellectual curiosity from the obscene Real.

However, the concept of risk is underpinned by the accompanying concept of harm, which, as we flounder in liberal-postmodernism's sea of relativism, at least throws us a flimsy lifeline insofar as it is more ontologically grounded than 'crime' or 'deviance', but still a broad and rather nebulous term that could cover any event ranging from a minor individual inconvenience to an illegal military invasion or a large-scale environmental catastrophe with the potential to jeopardize the lives of millions. To guide us in the consideration of our potentially harmful actions, and to prevent brutal conflict erupting in the real world between seemingly irreconcilable differences, liberal philosophers such as Levinas (1999) suggest a default ethical universalism that avoids strong relativism and solipsism by tethering ethical diversity to the injunction to construct the self in empathy with the suffering of the Other, which of course has obvious connotations for criminology. However, hidden underneath transcendental idealism's deontological angst is a tacit presupposition that in the reality of competitive socio-economic relations and practices, and under the everyday pressure of dealing with market imperatives, which either tempt or compel even the most beautiful soul to overstep its self-imposed limits, the individual should perform some sort of utilitarian harm-calculation of the other's potential suffering before any act is committed. In the hurly-burly of everyday life in the ubiquitous capitalist marketplace, where, should important things not get done, the individual or indeed the whole nation can fall through a hole in the bottom into relative poverty and insignificance, strict deontological and empathetic ambitions regularly collapse into evasive and compromised felicific calculations.

In the everyday reality of uncompromising comparative advantage, *realpolitik* and structurally imbalanced power relations, where concepts of crime and deviance are constituted and reproduced, and where perpetrators are regularly caught and punished, legitimate definitions of 'harm' are not wholly constructed by an ethics of universal empathy, but, where it really matters, by the interests of the neoliberal elite (Hillyard et al., 2004). The elite certainly sanction the suspension of empathy towards those whose harms threaten their property and the flow of their entrepreneurial activities. Wherever possible, the elite, because they believe that we are all dependent on the success of their enterprises, insist that sympathy should be extended to those amongst their own kind who perpetrate what are

often officially portrayed as unintentional harms in the course of maximizing profitability; thus these 'special harms', committed by those who have granted themselves the 'special liberty' to commit them, are rarely dragged into the inner core of criminalization and punishment. The influence of the elite does seem to have a profound effect on both legal and cultural definitions of crime and deviance and their modes of punishment, and the empathetic injunction, although still active in the criminalization of traditional interpersonal harms, seems to be no match for such concentrated power in the complex realm of social harm. Punishment is also a major harm, and the authority to punish those lower down the pecking order whose interpersonal harms are often the products of abject desperation, or who lack the means and ideological capacity to shield their ruthless activities from public condemnation, provides the neoliberal elite with a circus of scapegoats to distract the public's attention.

If the neoliberal elite thrive in an environment evacuated of traditional class politics, it could be argued that Levinas contributes to this evacuation with his reintroduction of the ethical as a safe and ultimately undemanding substitute for the political (Dews, 2008; Eagleton, 2009). The same can be said for Derrida, Foucault and most other liberal-postmodernist thinkers (Žižek, 2000; 2003). In his later work Foucault (1988) provided a spiced-up alternative to Levinas's perpetually but indiscriminately bleeding heart in his more hedonistic form of the 'care of the self', but the same distaste for the political is there for all to see. One has to try very hard not to see how this flight from the political has created a space for the free operation of neoliberalism's exploitative exchange relation and socially destructive economic dynamism, which create the fractious and unstable underlying conditions under which harms ranging from chronic structural unemployment to fraud and violence are more likely to occur, whether they are criminalized or not. It also expands opportunities for the 'special liberty' of the narcissistic subjectivity at neoliberalism's helm, which operates in different forms throughout the social structure (Hall et al., 2008). Neither liberal-postmodernism nor risk theory can deal with the ontology or the politics of social harm. Thus, it is unsurprising that in today's volatile economic climate where objective fears and harms multiply we should see the rejection of liberal-postmodernism, a growing critique of risk theory and the return of critical theory at the cutting edge of philosophy and politics (Douzinas & Žižek, 2010).

After the infamous Sokal affair, which demonstrated the fraudulence and vacuity at the heart of postmodernist thinking (Sokal & Bricmont, 1998), the term postmodernism has almost dropped out of circulation. After the Credit Crunch, the hope that major risks could be regulated and social

harms avoided within the parameters of current political arrangements took a thumping body-blow. Over the past twenty years or so selected ideas from classical thinkers such as Hegel, Marx, Adorno and Lacan have been returning. In the hybridized classical thought of the Frankfurt School, human freedom is not a product of will, choice, rights, rational calculation or the unrelenting theatre of minor transgressions, but possible only in a social totality that nurtures it. History is not taking us to the realm of freedom with its own forward movement of the Hegelian Spirit. It is a struggle, as Marx and Freud claimed, for the difficult combination of self-realization and community against the forces of domination and narcissism. This leaves us with a fundamental problem. Are the forces of domination and narcissism inscribed and reproduced in systemic social institutions, social relations and cultural currents, or, at bottom, are they the products of the agency of ruthless individuals? When Hume (1967) complained about the state, the problem was, in a sense that presaged Agamben (2005) and Žižek (2000), the extent of its ability to act as a collection of institutions that allowed privileged individuals to maintain themselves in a position of unrestrained freedom; of interests, thought, choice, action, passion, prejudice and hate. The modern state has acted as a vehicle for the 'special liberty' of the bourgeois elite since its wellspring in Renaissance Italy (Hall & Winlow, 2003); nobody had more executive freedom than the Feudal aristocracy before them, or the Nazi or Soviet political elite, but it was secured by deception and the subjugation and exploitation of others (Žižek, 2008a). This 'special liberty' is beyond even the social irresponsibility of Berlin's 'negative liberty' to what we might call multi-dimensional executive hedonism, the free play of drive and desire in a supra-social realm established by exploitation, reproduced by money-power and protected by the bourgeois state and the secret codes of the international banking system. Whether the liberal left like it or not, this is a realm of *criminal sovereignty*, what the dream of freedom has come to mean for a large number of aspiring individuals recruited from all locations in the social structure by neoliberalism's libertarian ideology and mass-mediated culture. In reality few achieve it, but it energizes many.

Poised in opposition to this is the idea that ultimate freedom is not to be attained by way of existential choice, self-construction and permanent dissidence – which after a while becomes compulsory, predictable and therefore incorporable and capable of being pre-emptively manufactured (Frank, 1997; Hall et al., 2008) – but the ability to move beyond Berlin's preferred 'positive liberty' of choosing one's own ethical master, but away from negative liberty and special liberty in the opposite direction to rediscover a politicized landscape on which an informed, unaffected and democratically

organized majority bestow upon themselves the authority to change the coordinates and conditions of existence in which they live. The main intention of this book is, following recent developments in Continental philosophy, to persuade the reader that we cannot separate today's forms of aspirant subjective freedom from the socio-economic totality, its relations of domination, its perverted variant of liberty and the willingness of prominent subjects to do harm to others to further their own interests. Following this philosophical revival, the principle of universalist ethics and politics should find its way into criminological theory, which, whilst avoiding a return to obsolete forms of integrationism, can make way for these intellectual developments with a firm rejection of liberal-postmodernism and risk theory.

However, if the argument that follows in support of this claim is to make any sense we must settle on a clear definition of harm. The new movement of zemiology aspires to displace legal conceptions of crime and cultural conceptions of deviance with the overarching concept of harm (Hillyard et al., 2004). The meaning of this term relates directly, through exploitation and irresponsibility towards the fate of others and their environments, to practices of domination in social, economic, cultural and technological practices, all of which leave some others in conditions worse than those in which they are found. Harm can be physical, social, psychological or environmental, and examples can include everything from street-crime and domestic violence to irresponsibly sold endowment mortgages and the negligent practices that allow deaths at work to occur or hospital super-bugs to thrive (ibid.). On this ontological basis, zemiology's ambition is to move away from narrow legalistic definitions of 'crime' because the diverse harms experienced by individuals across their life-courses are unevenly and ideologically criminalized. The legal system to which administrative criminology is a servitor brackets off many harms whilst criminalizing those that offend the prevailing ideology and cultural values, which are prone to giving maximum leeway to both corporate and individual entrepreneurs.

Zemiology's broad concept of harm was subjected to a predictable critique from the liberal left. Ericson (2006), for instance, argued that the inclusion of more 'harms' in the legal remit would simply expand the role of the criminal justice system and the scope of 'governmentality' rather than bring the pressure of social movements to bear on underlying political, moral, social and economic structures. Is this a valid concern, or is it simply the liberal left's mistrust of collective authority and restored symbolic efficiency knee-jerking into action? The continuing power of neoliberalism and its transnational corporations, and indeed the hapless stumble into the recent financial crisis, military interventions and austerity cuts that will

further disrupt the already broken communities of the politically disunited working class, tend to suggest that, so far at least, the sum total of the pressure that social movements have brought to bear on deep political and socio-economic processes, and the concentrated power that presides over them, doesn't amount to much. Pressure groups such as 38 Degrees can cause British governments to think twice about peripheral policies, but such civil protest did not prevent Murdoch's monopolistic takeover of satellite TV – in fact it took a national scandal, a public inquiry, legal action and a share buyback to put even a dent in his transnational corporate juggernaut – or the austerity cuts, and nothing can touch the City of London and its power to make vitally important decisions about the global distribution of investment capital. These exercises of politico-economic power have caused and will continue to cause a multitude of harms in various dimensions. Perhaps the embrace of harm might allow criminology to shift its gaze onto more appropriate targets, restore some of the ontological cohesion around 'core harms' that has been skewed and twisted out of shape by conservatism and all but dissolved to a miniscule kernel by liberal-postmodernism, and even provide a modest contribution to the restoration of collective politics with the legislative authority to actually have some real effects on the system's remorseless 'deep logic'.

    The redefinition of harm that should be addressed by the criminal justice system and, more importantly, by the political forces of change, is quite an exciting prospect, which would certainly prevent zemiology from collapsing into the standard utilitarian harm-prevention discourse that underpins risk theory and risk-management. The achievement of a workable degree of ontological and ethical cohesion from the diverse harms that can occur in the physical, financial/economic, socio-cultural, emotional and psychological realms requires persistent, inclusive, transparent and reflexive discussion, but it also needs some sort of initial grounding as a platform on which the discussions can take place. For Yar (2012), the current harms delineated by zemiologists remain heterogeneous and rather disconnected because the specificity of a founding ethical concept has not been achieved. He suggests that we ground harm in Axel Honneth's (1996) revival of Hegelian recognition, immanent in Hegel's famous theory of the master-slave relation; subjects and their identities are not entirely autonomous but always socially interdependent, thus the dominant are always reliant on the recognition of the subjugated, which compromises the master's autonomy and dominance. This ineluctable need for recognition is that which prevents the master, or what the master represents, from achieving 'special liberty' by means of the total subjugation of the slaves. The protection of social recognition is therefore essential as an initial step in exploiting the weakness of the dominant

and making the subjugated aware of this weakness as their strength, thus providing initial impetus to the political project of *structurally* emancipating the subjugated. As Yar puts it:

> The theory of recognition can ground a theory of social harms, firstly, because it seeks to establish at a fundamental anthropological level the 'basic needs' that comprise the conditions of human integrity and well-being (what Aristotelians call 'flourishing'). The theory, as already noted, identifies a differentiated order of such needs through the categories of 'love', 'rights' and 'esteem' (Honneth, 1996: 131–9) … [A]ctions such as inter-personal physical, sexual and emotional violence within the family acquire their specifically *harmful* character because they violate the necessary conditions for a person to establish basic self-confidence through the experience of love. Public (including state sanctioned) practices of torture and abuse, theft and appropriation, amounts to a denial of those rights that meet the need for dignity and equality amongst others as citizens. Practices such as market discrimination or symbolic denigration on the basis of gender, ethnicity, sexual orientation and suchlike are properly harms in that they deny those subject to them the experience of self-esteem or recognition of the distinctive worth of their identities and ways of life. Thus for each of the many forms of harm that may be adduced as social problems, we find a corresponding basis in the refusal of that recognition which is the basis of human self-realisation. (Yar, 2012)

So far so good; the central problem is the refusal of social recognition in the denial of love, rights and esteem, which clears a huge space for the practice and justification of the full spectrum of harms. Will the restoration of recognition, as Honneth suggests, translate into social solidarity and progressive political change after its mediation through legal rights? Doubtless it would, but Honneth's theory, perhaps too faithful to a Hegelian conception of social relations put forward in a superseded era, ignores the severed social class relation in neoliberal capitalism. In an economically grounded social relation the master needed his slaves, but today's capitalists, benefiting from advanced technology, the mobility of capital and the precedence of finance capital, no longer need labour – at least not in the numbers and the grounded communities it once did – and the assumption that a democracy that retains political links between the classes still exists in anything other than a tokenistic form is an overestimation of the social functionality

of the current democratic form. In the advanced capitalist era the major obstacle to the restoration of recognition is the masters' ability to extract themselves from any social relation and reject entirely the slave's judgement, replacing it with narcissistic self-affirmation. The masters have escaped responsibility to the extent that they have reached a position beyond even their traditional need to coerce the slaves into respecting them, which Kojève (1969) saw in Hegelian thought as the root of the master's tragedy and the slaves' resentment and latent power. Self-affirmation becomes one amongst the neoliberal elite's 'special liberties' – more powerful than most because it can be justified by performative market logic – and thus they elevate themselves in a historically unprecedented position where they alone have the right to grant recognition, which severs the social relation and suspends dialectical movement.

Until the business class can be moved to a position where they are forced to seek legitimizing rights from the majority before they embark on their potentially disruptive and harmful socio-economic undertakings, and the majority are restored to a position where what they say must be acknowledged by the elite, the mutual recognition that Honneth and Yar seek cannot be realized. Both thinkers prematurely assume an extant democracy and socio-economic interdependency in a neoliberal world that is rapidly assuming the shape of a global plutocracy, whose plutocrats are far less dependent on labour – and thus also less dependent on their legitimizing recognition – than they used to be in the era of high industrialism. Making even a first move towards mutuality requires a pre-emptive political move that shifts power and authority to an ideologically unaffected and fully informed majority who can grant conditional rights and legitimation on their own terms. It is only one step beyond this to a position where the majority can refuse to grant all rights and legitimation, a structural refusal that Žižek (2008a) suggests is the first step towards systemic social change.

The current return in radical philosophy to politics, ideology and subjectivity is an attempt to envision a way to construct deep democratic freedom and equality, a workable form of which Honneth seems to think already exists. Criminological theory must work towards an ontological conception of harm, but one that acknowledges not the ideal but the current real condition of ethics, socio-economic relations, ideology and subjectivity. In all such fields, neoliberalism won a resounding victory in the 1980s, which means that we have very little to work with and everything to work towards. The elite's position is not impregnable – it is never impregnable – but it has elevated itself to a protected realm of special liberty, of vast global power and influence so well insulated from responsibility to any specific territorial population that it no longer requires the

affirmation of the subjugated. This situation, as we shall see, is cultivating types of dominant and domineering subjectivity throughout the social order, which are hostile to Honneth's desire for systemically active forms of mutual recognition, rights, esteem and love. It is the nature of this harmful subjectivity and its constitutive and reproductive contexts that criminological theory must drag itself out of its fearful shell to investigate; a subject motivated to inflict various degrees and forms of harm on others whenever it is deemed necessary to further the interests of the self.

This book covers a lot of ground, but a lot of ground needs to be covered to draw from a variety of fields in an effort to make a first step in this direction. It is organized as follows. Chapters 2 and 3 will explore the major patterns of practicing harm and its criminalization across the history of capitalism in England as they have evolved and diffused across the globe in the current neoliberal era, a shift from the *somewhere* of violent brigandage and the acquisition of land and treasure, through the *elsewhere* of sublimated social competition in the global economy to the *nowhere* of new criminal markets and money-hoarding in the orbital financial economy. On the way, we will ask why important dualistic theorists have been rejected as useful providers of explanations for these criminological patterns. Chapters 4, 5 and 6 will explore the liberal narrative that has filtered through sociology to dominate the approved canon of non-conservative criminological theories, and assess what appears to be the aetiological failure of this canon and the drift into degenerate research programmes. Chapters 7, 8 and 9 present the beginnings of a newly synthesized theoretical approach to crime and harm, using a combination of revised dialectical theory, transcendental materialist philosophy and a dualistic theory of historical process called *pseudo-pacification*. The Conclusion will simply sum up the argument and emphasize the vital need for new theories and political renewal in a neoliberal age creating unprecedented forms of social division and anti-social subjectivity.

HISTORICAL PATTERNS OF CRIME IN ENGLAND 2

If the motivation to misrecognize and do harm to others in the interests of the self is to be established as a basic ontological principle at the root of a criminological metatheory, it's essential to have at least a rough idea of how human beings have practiced this type of harm across time and space. A cross-cultural world history of harm in all its practical and symbolic variants is far beyond the scope of any single book, but because one of the vital principles behind the perspective this work presents is *diffusion*, it's important to pinpoint a specific shift in the practice of harm that occurred early in the modern history of England, which was to become the world's first fully industrialized capitalist nation and later export its business practices and mentalities worldwide. The purpose of this chapter is simply to provide some details and initial analyses, which together will constitute some sort of empirical backbone for the theory that follows.

After the Norman Conquest, righteousness and justice were established by might; victory in war and the ability to maintain some semblance of security were the main legitimizing factors. Throughout the twelfth and thirteenth centuries, a period in which the violent governance of the Norman rulers had failed to restore order, gangs of brigands periodically exercised control over whole towns and rural areas, a practice that continued in remote northern areas well into the sixteenth century. Gang rule was not simply about power and domination but also practical economic concerns, such as monopolizing import and export nodes, confiscating gold and silver and counterfeiting money. Kidnapping for large ransoms was common, along with violence and torture. These early brigands concentrated on the control of precious metals, money and trade, and had very little interest in politics, culture or agricultural and craft production. Under the misgovernment of Henry III, which allowed instability and civil war to blight the nation, violent gangs proliferated and enjoyed significant economic success, running all major trade in the port of Bristol, for instance, for a number of years and even managing to break into the Royal Treasury at Westminster. In an effort to restore law and order, Edward I,