

Before the Law: Criminalization, Accusation and Justice

Lindsay Farmer. *Making the modern criminal law: Criminalization and civil order* (Oxford: Oxford University Press, 2016).

Nicola Lacey. *In search of criminal responsibility: Ideas, interests, and institutions* (Oxford: Oxford University Press, 2017).

Alan Norrie. *Justice and the slaughter bench: Essays on law's broken dialectic* (New York: Routledge, 2016).

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Published online: 13 September 2017

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Abstract This review essay critically engages three socio-legal books directed to the changing bases of criminalization; namely, Lacey (*In search of criminal responsibility: ideas, interests, and institutions*, Oxford University Press, Oxford, 2017); Farmer (*Making the modern criminal law: criminalization and civil order*, Oxford University Press, Oxford, 2016); and Norrie, *Justice and the slaughter bench: essays on law's broken dialectic*, Routledge, New York, 2016). The texts explore how modern (largely English) institutions of criminal law proscribe, assign responsibility and appear through contradictory socio-political 'constellations'. They variously reference criminal law's expanding punitiveness as it: embraces revived character-based ways of attributing responsibility via ideas of risk; drifts away from a social function of creating civil order; and, works through a 'broken dialectic' that fails to recognize its ethico-political auspices. The ensuing 'overcriminalization' is referenced variously, but this review questions a tendency to work off legal lexicons, with consequent limitations placed on the scope of social analysis. Referring to Roman and Cape colonial forms of criminalization, this review highlights processes of accusation that call subjects to account as criminals, thereby signalling an initiating socio-political layer upon which unequal forms of overcriminalization rest.

Keywords Civil order · Criminal accusation · Criminal responsibility · Criminalization · Ethics and criminal law · Overcriminalization

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The history of crime control is one of staggered trends, exemplars and diverse promises to secure law and social order. The rising fortunes of Bentham's panopticon in the early nineteenth century, for example, prevailed as a favoured approach to normalize delinquents and societies through 'all seeing' disciplinary powers (Foucault 1995). Alongside juridical interventions, as is well-known, his political technologies of surveillance, correction and rational punishment inspired architectures within and beyond the walls of modern penitentiaries. Yet in the residues of disciplinary rehabilitation, with its obscured normalizing gazes, a self-proclaimed 'Palantir' has subsequently positioned itself as a rival governmental approach. Imagined as a 'giant digital eye', it promises to neutralize disordering individuals and thus facilitate crime-resilient social futures (Peretti 2017). This figurative eye claims to 'see' through lenses fashioned from software algorithms that pixelate predictive models, recovered from biased forays into immense flows of digital information. Virtually 'seeing from afar', it depends on super-computing technologies that promise actuarial solutions to crime and social disorder. It envisions pre-crime algorithms, promising to profile, predict, prevent and manage criminal risks—expunging crime before it happens. Whether such promises are even vaguely tenable, they add new technologies to vast criminalizing fields, placing risk management alongside sovereign and disciplinary powers (O'Malley 2010; Pavlich and Unger 2017).

Critical socio-legal approaches that address such historical imaginations tend to do so by considering criminalization historically. Crime is then approached via the changing social processes that form it. The three books reviewed by this paper sail related tacks in their analyses of criminal responsibility (Lacey 2017), modern law's institutions of criminalization and civil order (Farmer 2016), and law's 'broken dialectic' (Norrie 2016). They approach criminalization and law by questioning jurisprudence and legal philosophies that approach law, wrong and crime as having more or less fixed natures. Exemplifying the latter, Tadros (2017, p. 4) notes that key 'debates in the philosophy of criminalization revolve around principles that would restrict the scope of the criminal law, or provide reasons to criminalize conduct', which in his view requires us to 'understand the nature and sources of wrongdoing'.

Although Lacey, Farmer and Norrie may agree with limiting criminalization, they question a tendency within a *Criminalization* Book Series (to which Farmer's book also contributes) that summons metaphysics, doctrinal rules, or unyielding moral 'principles' to the task. Their socio-legal quests lead them instead to engage political, ethical, social, and legal ideas that generate criminalization. In so doing, they refuse a philosophical blackmail requiring one to pursue an unchanging nature to criminal law, crime and criminalization, or else renounce claims to scholarship. By contrast, they explore contingent, institutional processes that criminalize, focusing on how modern (mostly English) patterns of criminalization, responsibility attribution and criminal-legal 'constellations' change over time. Under broad neoliberal conditions, criminal law's increasingly punitive and authoritarian institutions are said to have shaped an explosive growth of criminal justice institutions. On this point, they concur with Husak's well known sense that,

the most pressing problem with the criminal law today is that we have too much of it. My ultimate ambition is to formulate a theory of criminalization: a normative framework to distinguish those criminal laws that are justified from those that are not. (Husak 2009, p. 3)

They may even agree with his further assessment that the resulting ‘overcriminalization is objectionable mainly because it produces too much punishment...’ and that ‘a substantial amount of contemporary punishments are unjust because they are inflicted for conduct that should not have been criminalized at all’ (*op cit*). However, the reviewed authors reject his calls for a ‘principled basis’ to reverse a ‘trend toward enacting too many criminal laws’ (*op cit*), searching instead for socio-legal theories to illuminate the tension-riddled institutional, political and ethical background by which criminal law criminalizes.

The critique that follows my interpretation of the significant themes outlined in these books will question their tendency—in various degrees—to accept criminal law’s claims exclusively to define crime. It will also challenge how they, at times, reference law’s socio-political auspices through that assumption, and so limit thinking about how to engage the mushrooming consequences of modern criminalization. Referring to Roman and Cape colonial forms of criminalization, I shall point to accusation as occasioning diverse social processes that call subjects to account as criminals, providing an initiating socio-political layer upon which criminalization rests. The potential effects for thinking about overcriminalization are then indicated.

Contingent ‘Patterns’ that Attribute Criminal Responsibility

Lacey’s *In search of criminal responsibility: Ideas, interests and institutions* includes and develops some of her previous work on criminal responsibility (e.g., 2008). In so doing, it addresses a basic question: ‘what makes someone responsible for a crime and therefore liable to punishment under criminal law?’ (cover description). She resists clear-cut answers, examining how contested ideas, interests and institutions have, since the eighteenth century, shaped criminal law’s visions of who might be held criminally responsible. Her ‘case study of methodology in legal scholarship’ (p. viii) outlines legal framings of criminal responsibility over time, pointing to the interests and institutions that facilitate such ideas. The resulting socio-legal approach ‘moves away’ from absolute formulations of criminal law found in ‘analytic philosophy’ (e.g., Gardner 2003) or ‘legal doctrine’ (p. viii), abjuring notions of law as a timeless, universal and essential being (see pp. 193–195). She even challenges Raz’s positivist, social formulation because it assigns to law an ‘analytic given or unchanging quality’ independent of its ‘changing social functions or institutional structure’ (p. 195).

In other words, while criminal law may have some specificity, to hypostatize that specificity is to ignore how criminal law ‘translates’ the ‘interference’ of its institutional and interest-based environment (p. 23). The ‘unfortunate result’ is that such theorists of criminal law often end up ‘writing about a small proportion of

criminal law', which is 'seriously at odds' with her attempts to examine its changing visions of criminal, as reflected through law's changing, interest-based, institutions (p. 179). Even so, the book initially claims to construct 'a dialogue' between analytic philosophy, criminal law doctrine and socio-legal studies (p. viii); but by its end, we are told that 'approaches to legal scholarship that place emphasis on the autonomy of law are fundamentally misconceived' (p. 135). Lacey instead argues that while legal doctrines may have a 'certain independent force', they are curtailed by (yet not reducible to) a 'larger intellectual, institutional and interest-based environment' that 'has a decisive bearing on the changing shape of legal concepts over time' (p. 135). Although I will return to this point, one might surely then question the emphasis she places on 'particular areas of legal doctrine' to 'illustrate and provide evidence for my interpretive claims' and the analytical framework developed (p. 23).

In any case, Lacey's 'broad socio-theoretic framework' (p. viii) is directed specifically to: 'conceptual' schemas behind legal doctrines of criminal responsibility in the UK; institutions that shape criminal law's fluid interpretations of responsibility; the 'interests which have shaped both doctrine and institutions'; and 'the substantive social function which criminal law and punishment have been expected to perform at different points in history' (p. viii). That framework unfolds from three 'core assumptions' about criminal responsibility. Between the title and the opening sentence of the relevant section (p. 13), however, these 'assumptions' are oddly transcribed as 'key conclusions'—signalling perhaps Lacey's use of previous work (some of it republished here) as assumptions for the present analysis. Regardless, the first assumption conceives of criminal responsibility as historical, relatively discrete, and heterogeneous 'ideational frameworks' (p. 25). Despite their variation, these frameworks play 'structural roles in legitimating and coordinating patterns and practices of criminalization' (p. 13, emphasis in the original).

A second supposition understands historical attributions of criminal responsibility in law to be part of wider normative systems, 'nested' within other forms of regulation. For her, law's attributions of criminal responsibility play out in a 'regulatory space' that depends on material and symbolic resources, and is populated by 'distinctive regulatory actors'—these include, 'legislatures, courts, governments, regulatory agencies, formal criminal justice agencies' (such as police, prosecution, probation, prisons, etc.), multiple non-governmental agents, pressure groups and 'individual members of society' (p. 16). Such diverse agents are simultaneously 'coordinated and fragmented,' but they deploy legal patterns of criminal responsibility through 'regulatory modalities' and 'tasks'—like setting normative standards, monitoring, and enforcement (p. 16). Here, Lacey considers patterns of responsibility, 'as part of more general patterns and practices of criminalization' (p. 14).

This leads to a third assumption that references Fletcher's (2000) comparative historical analysis of theft in common criminal law. His work premises criminal liability on historically blended 'patterns of criminality', which Lacey mobilizes to develop ideas about criminal law's responsibility attributions (pp. 93–99). For instance, she associates Fletcher's 'patterns of manifest criminality' with responsibility derived from 'manifest' threats to a community; his patterns of 'subjective criminality' signal notions of criminal responsibility premised on offenders'

intentions, ‘subjective states of mind’ (p. 21), or notions of *mens rea* (p. 96). While agreeing with his insight that such plural patterns of criminality co-exist over time, Lacey tempers Fletcher’s somewhat restricted legal-doctrinal approach by examining social, economic, cultural and political influences on criminal law’s approaches to responsibility.

Working with these assumptions, Lacey articulates a basic premise: over the past two and a half centuries, English criminal law has generated four influential, co-existing versions (‘patterns’) of criminal responsibility, comprising legal ideas framed by interests and institutions. First, criminal responsibility tended to focus on the criminally accused’s capacity to commit particular crimes. Born in the wake of enlightenment social philosophies, such ‘ideational frameworks’ predicated legal ideas about criminal responsibility on a subject’s capacity, or individual choice, to commit specific offences. Only those who freely chose to commit offences could be held responsible as criminals. Secondly, and descending from Blackstone’s *Commentaries*, eighteenth-century ideas tied criminal responsibility to character. Subjects with (habitually) ‘bad characters’ could be held responsible for criminal actions on the strength of evidence presented around their socially presumed ‘character and reputation’ (p. 38). In other words, ‘mid-eighteenth-century criminal process was geared to identifying, holding responsible, and punishing those whom the local community regarded as of bad character’ (p. 38).

Third, consequentialist ideas focused criminal law’s gaze on prohibited outcomes, attributing criminal responsibility to those who caused legally prohibited harms, regardless of character or state of mind. Strict liability offences, for example, targeted collective harm-reduction, assigning responsibility to those who—regardless of intent—cause negative outcomes. Finally, Lacey describes criminal law’s reliance on a view of criminal responsibility—intersecting with character and outcome approaches—that defers to clinical or actuarial calculations of risk. Born from a ‘politicization of law’, this ‘pattern of risk-based responsibility-attribution is...particularly evident in practices of preventive criminalization which have arguably enjoyed a distinctive manifestation in the late twentieth and early twenty-first century’ (p. 48).

These shifting patterns of criminal responsibility—based variously on capacity, character, outcome, and risk—do not follow chronologically. Rather, referring to rules of evidence, pre-trial procedures, incapacity defences, and post-conviction practices in criminal law, she shows that their emergence and changing forms coincided with institutional reforms.

To reference one example of many, Lacey notes how from the eighteenth century,

pretrial processes shifted from a system dominated by lay voices in the form of grand juries and justices, sometimes operating from their own homes, to a system dominated by lawyers and police officers operating in police stations and magistrates’ courts. (p. 107)

Trials were cursory, but made assumptions about the accused’s character. The professionalization of these institutions through the nineteenth century facilitated the growth and autonomy of legal institutions, which in turn favoured the rise of

criminal law centred around ‘capacity and outcome responsibility’ (p. 117). In short, one can identify ‘eras’ where one or other of these forms of responsibility attribution dominated criminal law’s regulatory spaces, starting in the eighteenth century where a focus on character presumed capacity and marginally accepted notions of outcome. Diagnosing our present situation, she detects a ‘resurgence of character’ that has disrupted a previous ‘dual’ focus on capacity and outcome, and led to ‘a new discourse of responsibility founded in the presentation of risk’ that frames responsibility through a ‘new sense of bad character’ as people deemed to harbour a criminal risk (p. 147).

So, one might say that she approaches criminalization via criminal law’s historical ways of attributing responsibility, with power and interests privileging certain patterns in different contexts. If neo-Marxist theories of law usefully alluded to such interests, Lacey rejects their tendency to reduce ideas to economic interest, since criminal responsibility is ‘mediated by institutional structures and realized and rationalized in terms of ideas’ (p. 81). Even so, she acknowledges that, ‘the conceptual’ and ‘material contours of criminalization have tracked the changing interests of a capitalist economy to a remarkable degree’ (p. 99). But readers might here note more embedded overtones of Weberian thought that focuses her work on the interactions between economic, professional, symbolic and political forms of power through which criminal responsibility emerges in local regulatory contexts.

What is the upshot of all this? In short, criminal law’s contingent responsibility attributions surface ‘as a complex and shifting alignment of apparently competing principles, which coalesce, more or less successfully, to legitimate and coordinate criminal judgement under specific social conditions’ (p. 162).

Moreover, current attributions of criminal responsibility in criminal law have produced a new alignment between ‘bad character’ and risk, alongside the shifting institutional priorities that decarceration and privatization yield. Such shifts enable overcriminalization ‘through a new degree of pluralization in the range of practices of responsibility-attribution’ (p. 99), and through an expansion of the ‘scope of criminal law on the statute book’ that has ‘accelerated since at least 1990’ (p. 102). That overcriminalization is ‘a symptom, as well as a cause, of growing social polarization in a world in which a significant minority of people are being defined as outsiders to the scope of full civil rights and freedoms’ (p. 106).

The value of the last point is perhaps overshadowed by a concluding defence of her argument against possible onslaughts from both ‘specific’ and ‘general’ jurisprudence, while showing its implications for both. Concluding on a rather defensive note limits discussion of her argument’s—in my view more significant—consequences for social theory and (over)criminalization. Lacey’s claim to elevate conceptualization, for instance, as a method over legal philosophy’s focus on taxonomic classification is extremely insightful. Again, this implies to me a somewhat subterranean Weberian commitment to flexible ‘ideal types’ that mobilizes concepts to address changing social forms rather than relying on taxonomic assertions of presumed metaphysical absolutes. Even so, I consider the most consequential upshot of her analytic framework to lie in a parallel story to which she alludes: the role that revived character-based visions of criminal responsibility play in expanding vast criminal justice systems whose ideas, interests

and institutions are obsessed with creating and controlling social divisions through criminalization. Exploring the full ramifications of this theme is hampered by constant turns to ratios and philosophies of criminal law. However, this reader was left wondering how it may be possible to resist overcriminalization when criminal responsibility is framed through patterns of criminal law—social ‘drivers’ appear in relatively strict relation to such law. Caught between deciding on the autonomy of law and its socio-political, cultural and economic auspices, the book ends up elevating discourses within criminal law and viewing its social auspices—interests and institutions—as a circumscribing environment which it translates. That leaves limited scope for engaging the socio-political forces behind criminal law’s current attributions of responsibility on their own terms; in turn, this glosses over the unequal forces that shape criminal law, its visions of responsibility and the social ‘polarities’ that overcriminalization spawns.

Forging Civil Order Through Criminalization

Farmer’s *Making the modern law: Criminalization and civil order* engages allied ‘intellectual ambitions’ of Lacey’s approach to criminalization, criminal law, and responsibility. As Lacey notes,

Probably the most important difference between our books, however, is the fact that I try to provide a thesis about the political-economic and social drivers of our shifting patterns of responsibility attribution in criminal law over time, building interests as well as ideas into my model. In so doing, I provide an account which is necessarily more speculative than Farmer’s systematic historical analysis. (pp. 23, 24)

Specifically, Farmer’s analysis details the rise of modern, English, criminal law as an institution that arose from around the eighteenth century. As with other books in the *Criminalization Series*, he is interested in exploring the ‘proper scope of criminal law’, outlining socio-historically informed possibilities for limitations thereof. More specifically, ‘[t]his book is about criminalization—what and who should be treated as criminal under the law and the ways this can be justified. It is thus about making criminal law in a conventional sense’ (p. 1).

However, like Lacey, and unlike other contributors to that Series, he does not think that moral principles, or doctrinal analysis, could prescribe absolute limits to criminalization. Consequently, he focuses on a prior ‘question of criminalization’ that belies moral attempts to limit its scope (p. 1); namely, the ‘institutional conditions’ of criminal law suggest normative insights into how law might limit criminalization. Though at times presented in convoluted ways, the basic argument seems to be this: by understanding how modern criminal law surfaced in the eighteenth century (its ‘making’) as a unified institution to secure civil order, we can better comprehend the overall (and continued) purposes of criminalization. In turn, this enables a socio-legal or historical (rather than moral) way to decide on ‘proper’ limits to the scope of criminalization as a purveyor of civil order. Grasping modern criminal law’s founding historical purpose, that is, allows us to understand the

imagined aims and social functions of criminal law's 'broad normative framework', and so to grasp the 'ideal or social imaginary of modern law' (p. 6).

Consequently, a theory of criminalization is necessarily predicated upon 'both a prior understanding of the existence of criminal law as a distinct area of law with a discrete area of application (or jurisdiction) and an understanding of "crime" as the object to be regulated' (p. 5).

Yet, like Lacey, his contingent view of criminal law as a modern development does 'not have a single defining characteristic', and moreover the norms in criminal law and ... the range of conduct regulated, the scope of wrongs that have been criminalized and so on, have changed over time' (p. 33).

Behind such changes, however, lies the order-generating social purposes of criminal law as an institution. Building 'on the methodological foundations' (p. 27) of MacCormick's (2007) institutional theory of criminalization, Farmer seeks to 'correct' the moral focus of political or legal philosophy when defining the 'proper scope and limits of the criminal law' (p. 33). In so doing, he argues that English crime and criminalization became possible only once modern criminal law surfaced as a unified body of rules within a discrete institution whose social function was to deploy a normative, rule-governed, civil order. That function looms large in his account, for it is here that he identifies possible limits to the scope of criminalization.

Farmer agrees then with Husak's previously mentioned notion that understanding 'overcriminalization' today requires us to understand the workings of criminal law. However, he disputes Husak's claim that theories of the liberal 'state-citizen' provide a way to limit criminalization, because these imaginings fail to conceptualize the broader 'nature or purpose' of criminal law (p. 14). Somewhat in contrast to his strong view of English criminal law as the basis for crime 'as we know it', he appears here to acknowledge that law is variously institutionalized, but reiterates that the 'dominant form is through state law' conditioned by a quest for civil order (p. 23). So intimate is the connection between criminal law and civil order (civilized actions, civil society) that to understand the scope of modern criminalization, for Farmer, requires a close appreciation of how both were made in modern English society (p. 7).

But how exactly does the civil-ordering purpose of modern criminal law help us to approach normative limits to criminalization? To answer this, he distinguishes quests for civil order from those fixated on security, or in defence of society (which for him includes 'market, contract, community, state') (p. 39). Civil order is cast as a special type of social order, differentiated by its constitutive dependence on legal institutions authorized by state forms. Thus, criminal law did not emerge from private revenge, as is sometimes suggested, but from centralizing state institutions in pursuit of civil order. As criminal law asserted a monopoly over violence, in the name of sovereign states, it also claimed unique jurisdiction over the formalization and codification of 'norms of conduct', and a capacity to define legal persons as well as the 'conditions under which individuals are deemed capable of responding to rules' (p. 44). Here modern law traced various versions of civilization and civility through 'particular configurations of selfhood, violence, and law' (p. 55). In turn, 'the normative question of what the criminal law should regulate, or the 'proper'

scope of criminal law...is fundamentally linked to the question of civility and the modern understanding of the social' (p. 57).

In other words, law should strive not just to secure any order, but to serve normative ideals of civil order (p. 301). So while civil remedies are often seen as alternatives to criminal sanction, Farmer incisively shows that civil and criminal law 'are bound together historically, arguably also conceptually, in much more complex ways' (p. 60).

This perspective emphasizes the rise of criminal law as a somewhat unified institution in modern England from the later part of the eighteenth century. Focusing on what was then criminalized (and why), the scope and social function of criminal law, and the pursuit of civil order(s), he highlights four 'moments' in the institutionalization of criminalization: late eighteenth-century patterns centred on public wrongs (e.g., Blackstone); a mid-Victorian formation of centralized state legislatures, with criminal law positioned as part of a wider civilizing mission (e.g., James Fitzjames Stephen); the social defence of 'penal welfarism'; and the 'new retributivism' of 'neo-classical' crime control with its increasingly punitive form (partly in his view because criminal law now recognizes the moral rights of victims and those 'vulnerable' to criminal action, thus seeking to prevent crime by managing putative risks) (p. 106). This new retributivism produces overcriminalization by failing to approach criminal law 'as part of a wider set of fundamental questions about the nature of social and civil order and the role of government and state in building that order' (p. 117).

With a slight jig that follows this important account, Farmer turns to how criminal law became a 'unified conceptual structure' (p. 202) through jurisdictional assertions, codification, knowledge, and—echoing Lacey—visions of responsibility and the 'punishable subject'. Criminalization took, for example, various forms in property offences, offences against the person, and sexual offences. In each case, institutionalized prohibitions had the effect of defining and creating specific kinds of offences, subjects and orders.

Reading this book, I was struck by the sheer breadth of Farmer's assiduous, convincing and intriguing legal history. But I also question his readiness to accept criminal law's formulations as definitive of crime as we today understand it—especially when one thinks of the overcriminalizing consequences thereof. It is of course useful to grasp how criminal law criminalizes in specific contexts, but that is quite a different matter from suggesting that critical, socio-legal thought frame (normative) limits to such criminalization by deferring to criminal law's quest for civil order. We should not forget that diverse community, restorative and indigenous versions of justice contest precisely this legacy of modern English criminal law—because of its expanding, coercive determinations of 'civilized' and 'civil' orders, and jurisdictional impositions that sought to monopolize legitimate claims to law (e.g., Harring 1998). His argument seems rather too quick to embrace modern criminal law's self-definitions, ratios and institutional functions as a prism for an institutional analysis.

Perhaps it is useful to recall the pain and bloodshed left in the wake of criminal law's efforts to monopolize definitions of crime through force, even if trotted out in the terms of codification, jurisdiction and precedent—both in Britain and in colonial

contexts (McBride 2016). Using the singular form of ‘the modern criminal law’ in the book’s title also seems incongruous; are we thereby to take English criminal law as a unified source for defining crime? Clearly this would rescind the legal pluralism marking historical formations of criminal law and contested kinds of criminalization, whether colonial or imperial in form. Even so, Farmer rightly emphasizes contingent social institutions over abstracted moral questions, and astutely points us to the dangerous ‘paradox of the modern criminal law’: ‘despite being shaped by a liberal sensibility about the scope of state power and the desire to respect individual rights and liberties, it has expanded in scope, more or less continually, since the late eighteenth century’ (p. 298).

I doubt whether the resultant overcriminalization could be limited by returning law to its civil order-creating functions; it may even be that pursuing civil orders by criminalizing subjects in unequal social contexts is bound to exclude, marginalize and sever social ties.

In teasing out the ‘normative implications’ (p. 9) of his argument, Farmer concludes rather modestly,

My thesis that the aim of securing civil order is what makes the criminal law intelligible does not produce a definition of crime or criminal law[sic], and is not prescriptive. It does not offer neat solutions to normative questions. It cannot be used to answer the question of whether or not the use of the criminal law is appropriate, identify ‘core’ wrongs, or specific universal characteristics of criminal law. (p. 302)

His resulting plea is for us to confront this matter: ‘talking about criminalization requires a different sort of language and approach which reconnects with a more historical and political understanding of the practice and aims of the criminal law’ (p. 303).

I agree with this clear statement; but it requires, in my view, that we understand the socio-political forces that deploy criminal law’s contingent lexicons on their own terms—especially if we are to apprehend the overcriminalization that law’s institutions have yielded.

The Language of Law’s Irresolution

Framing a different language with which to approach law more generally, but also referencing criminal responsibility and criminalization, is precisely the philosophical challenge accepted by Norrie’s previously published collection of essays in *Justice and the slaughter bench*. The title plays off Hegel’s claims that a passion-filled history produces a ‘slaughter bench,’ which kills collective happiness, state prudence and individual virtue. If Hegel’s insinuation here is that a reason-inspired dialectics would enable a justice to come, Norrie is not sanguine about the prospects for law’s capacity to broker unequivocal moral triumphs. Instead, law emerges historically out of an irresolvable, ‘broken dialectic’. His book tackles head-on what the previous texts more loosely see as criminal law’s contingency and conditioned autonomy. For Norrie, law appears ‘as if’ it was a unified specificity, but that fiction

betrays its constitutive relation to externally enabling ethical, social and political relations—the absences that make its presence, or ‘specificity’, possible.

As such,

The central methodological issue is how we grasp law’s specificity while seeing it constructed out of what it is not. To be a lawyer is to walk a line between the need to see law as sufficient unto itself and the fact that law expresses social relations that are not it. (p. xi)

Law’s formal claims to ontological independence are sustained by legal fictions, but Norrie dismisses neither the contributions of internal legal discourse, nor philosophical, historical, moral and political discussions of law. He argues instead that these perspectives are limited, and that a ‘fuller understanding of the nature of law, its self-understanding and its account of responsibility’ (p. 4) is possible only when law is considered as forming at the intersection of moral, political and social fields. Yet the law is not reducible to any of these fields, meaning that its specificity is simultaneously shaped by the ‘socio-legal, politico-juridical and ethico-legal’—a mutual constitution underpinned by the ‘figure’ of the ‘abstract universal figure of the legal subject’ (p. 4). His avowed approach is critical and sociological, or socio-legal; it engages selected (Kantian and Hegelian) precepts of ethical critique and a version of Bhaskar’s critical realism (pp. 88–193).

From Norrie’s vantage, law—criminal or other—asserts ‘its autonomy in a situation of heterogeneous dependence on forces beyond itself (the social, the political, the ethical)’ (p. 5). This paradoxical foundation signals law’s ‘architectonic’, a concept that revises Kant’s use of the term to approach philosophical knowledge as a systematic linking of metaphysical concepts (p. 5). Norrie’s scheme transposes this idea to capture law’s internal unity as a fiction that—analogueous to a building—is ‘shaped and structured by’ surrounding areas of life (p. 5). The tensions created by law’s historically changing architectonic reflects conflicted social and political struggles, as well as contested ethical claims. Correspondingly, ‘legal categories’ emerge as ‘conflicted, contradictory and antinomial’ (p. 7), and criminal law ‘adjusts’ to such tensions by appealing to universal abstractions while clinging to notions of the ‘responsible legal subject’ that ‘lies at the core of the criminal justice architectonic’ (p. 6).

Allied with Lacey’s and Farmer’s diagnoses, Norrie describes the ‘historical evolution’ of criminal law’s architectonic as increasingly coercive, responding to wider political forces (Chapter 2). Post-war forms of social, civil and political citizenship have witnessed a shift from ‘social democracy and welfare to neoliberalism’ (p. 33); in turn, these have created new priorities for criminal law that spark increasingly authoritarian regulations, patterns of responsibility attribution and visions of dangerousness. Like the previous texts, he thinks liberal legal restraints are inadequate to withstand this authoritarianism. Indeed, his commentary on the antinomies of the role of intention in law reforms to murder and manslaughter legislation (in England and Wales) highlights law-ethics relations that bring criminal law into conflict with political demands that assign murder a unique symbolic place amongst crimes. As well, the emphasis on one form of culpability (intention, *mens rea*) in such contexts pits moral against psychological

discourses, and overlooks the possibility that a more complex ethico-legal approach could offer new ways to consider such laws.

Revising Kant's (and Hegel's) ideas further, Norrie considers *social* conflicts as the basis of law's architectonic. At its core is antinomy, a kind of 'self-contradiction in which two one-sided elements in an opposition are both required and inadequate to address a problem...they are two halves that cannot make a whole' (p. 7).

This ruptured condition renders legal judgements rife with internal and external ethical contradictions (law's 'constellations'). For example, juxtapositions that surface in specific cases of 'mistaken self-defence'—where subjects who make an honest mistake are sheltered from liability (Chapter 4)—reveal a 'normative chiasmus'. The latter captures the 'reversals' of law's judgements in cases that take the form of, for instance, 'doing the right thing for the wrong reason' versus 'doing the wrong thing for the right reasons' (p. 67). Through such reversals, he highlights antinomies in legal judgements, which appear in other areas of law, including contradictory juridical decisions on euthanasia, and assisted suicide (Chapter 5).

Norrie focuses his arguments around two matters: 'how law judges', and 'how law should be judged'. He thereby shifts from exploring law's internal 'specificity' to its emergence as part of a 'constellation' of wider social, political and ethical fields. By 'constellation' he means a 'sense of the place of the part in the whole', of the way that 'things that are different and distinct nevertheless "stand together"' (p. 15). Here a 'structural gap' between 'law's judgment and judgement of the law in a wider setting' (p. 16) is referenced as a problem that Kant and Hegel worried about; namely, the ongoing situation of law having to decide on 'just deserts in an unjust society' (p. 16).

Pursuing that problem through a fascinating reading of the 'homologous' problem framed in letters written by Arendt and Jaspers around 'war guilt', Norrie confronts the limits of, and prospects for, a 'non-reductive' international law. He focuses especially on situations where individual culpability is overshadowed by a 'systematic gulf in the understanding of right and wrong' (p. 16). Here, the guilt and response of existing legal forms seems impossible to conceive (p. 118), a point that Arendt confronted in her famous account of Eichmann's trial. Indeed, she understood the scale of Nazi atrocities as indicative of a society that had 'given itself up to the slaughter bench' (p. 118 at note 2). Through an 'immanent critique' of the correspondence between her and Jaspers, Norrie highlights contested relations between 'legal and ethical justice in the area of international justice' (p. 119). The book returns to related themes of responsibility as presented through Primo Levi's reflections on 'survivor guilt' (Chapter 10). Here, however, he differentiates Jaspers' most basic form of 'metaphysical guilt' (as opposed to criminal, political and legal guilt) from a certain 'collective guilt' that encourages people to face the indeterminacy through which determinations of guilt surface (pp. 135–138). These discussions note the contradictions between law's architectonic and its socio-historical constellations, suggesting possibilities for assessing guilt within and without law.

The analysis leads Norrie to a Derridean and/or dialectical call to recognize in discussions of justice an irresolvable nexus between conditional and unconditional guilt, between the 'actual' and Jaspers' 'ideal' metaphysical guilt (p. 145). The way

to deal with such contradictions is through an ‘immanent critique’ (receptive to elements of deconstruction) that recognizes the sheer messiness of history without falling prey to cynicism, or pessimism. Such critique is framed by both violence and justice, and where ‘splits, antinomies, “broken” forms of justice are the order of the day’ (p. 150). He thus cautions us against Arendt’s somewhat one-sided assessment, noting that modernity has also enabled laudable social forms: ‘To describe modern history as a “slaughter bench” is to recognize only one aspect, and to ignore those other developments that are equally embedded in our understanding of modernity’ (p. 149).

Related to this discussion, Norrie reads notions of good and evil as framed through internal criminal justice discourses and against wider ethical judgments. Referring to Bhaskar, he calls on law to become ethically and critically engaged, to recognize elements of its constellation that enhance judgments and commitments to justice. The penultimate essay calls thus for a kind of ‘historical phenomenology’ of law to work through the inherent contradictions between ‘the ideal, the actual and the real’, exploring relations between the social and ethical being. Extreme examples, such as Nazi killings, or the James Bulgar case (pp. 179–181), ‘pivot’ around ‘key ethical notions of good and evil, and behind them, of freedom and solidarity’ (p. 187). His analysis engages a ‘realist ethics of freedom and solidarity’ to secure universal ‘eudaimonic conditions’ that extend beyond modern social thinking—perhaps by developing ‘a modern phenomenology of the ethical forms available to us, their limits and what lies within and beyond them’ (p. 187).

As a collection of previously published essays, Norrie’s book covers diverse themes, some clearly formulated, others requiring more work on the part of readers. At times, I confess to having lost sight of the forest for the argument’s trees, forcing re-reads of passages to assemble unfolding positions. That signposts in the introduction sometimes default to detail has the unfortunate effect of burying the significance, and indeed creative thoughtfulness, of an overarching quest to ‘address an unresolved split between legal and ethical judgement in the modern legal system’ (p. 21). That ‘split’ forms because the law has emerged in socio-historical contexts as unduly abstract and formal, placing its ‘architectonic’ in tension with the ‘social, political and ethical’ constellation from which it emerges. Historical resolutions of that split happen through legal judgements that reveal the ‘opposition and antinomy inside law’s form’, but the split—contra Hegel—is never finally resolvable through rational synthesis. The latter ‘remains unachieved’, leaving us to recognize the complexity of the ‘ideal and the actual’ and repeatedly to confront ‘law’s broken dialectic’ (p. 2). The conceptual language Norrie produces from his careful, critical work bristles with possibilities for further socio-legal scholarship. The keen insights in the parts of the book that ‘judge law’ (as opposed to judgements in law) show the value of moving outside of its current ratios when considering the irrepressible contradictions by which criminal law criminalizes and holds certain people to account as criminal subjects. In the critique below, I will offer an allied slant to Norrie’s later focus on ‘judging the law’ through an analysis of its ‘broken’ dialectic.

Criminalization, Overcriminalization, and Criminal Accusation

In different ways, the three books provide exhilarating discursive journeys through the history of (largely) English criminal law, and its ideas, institutions, interests, contradictions and antinomies. Their socio-legal conceptualizations are grounded in juridical ratios and legal fictions by which criminal law criminalizes subjects in diverse contexts. Collectively, they point to criminal law's fluid historical forms as responses to wider institutional, political and social forces, thereby highlighting changing forms of criminalization. The books diagnose from the present a massive expansion of criminal justice that overcriminalizes through, first, a resurgence of risk-based character attributions of criminal responsibility embedded in punitive control cultures that expand criminal law's capacity to criminalize. Second, overcriminalization appears as a function of criminal law's institutional shifts away from an earlier social purpose to secure civil order, resulting in a 'new retributivism' pursuing actuarially framed security. Finally, expansive criminalization surfaces as a contradictory offshoot of criminal law's dialectical relation to authoritarian, neo-liberal political horizons. Such outcomes reflect significant contributions to debates on criminalization, despite their, at times, Delphic styles of presentation in pursuit of lexicons beyond those of analytic jurisprudence. The scholarly upshot is consequential, as they situate criminalization within complex, contradictory and never fully determined terrains of social history. They also recognize criminal law as contingently driven by changing social environments, and may even agree that its local determinations are framed through indeterminate promises of justice (see Fitzpatrick 2001). While the resulting irresolutions may be unpalatable to those seeking absolute certainty or narrow metaphysical closures, the three books demonstrate the sheer value of exploring criminal law's criminalizing endeavours socio-legally.

That said, I wish to signal a disquiet with a seeming readiness to defer to criminal law's ratios and decisions, even when exploring the social dimensions of criminalization (that part of Norrie's book that 'judges law' notwithstanding). I will also propose that there is value to adding an accusatorial layer to socio-legal understandings of criminalization and overcriminalization. Before delving into these matters, though, I did wonder about the argumentative value of positioning their approaches against doctrinal and philosophical analyses of law, rather than say engaging more fully with critical work directed at the powers behind, and social costs of, overcriminalization (e.g., Alexander 2010; Wacquant 2009; Simon 2014). I grant that comparative concept sharpening may be useful, but it comes at a price. For instance, as noted, Lacey devotes part of a concluding chapter to drawing out implications for a rather indifferent 'specific' and 'general' jurisprudence. But the logic of her argument seems to invite more sustained reflections on, say, what a socio-legal framing of criminal responsibility might mean for politically resisting the socio-political forces behind overcriminalization. This is more than a banal call to engage concerns of, say, restorative, community, or transformative justice in search of alternatives to criminal justice (Zehr 2015), or even of abolitionists who seek to eradicate criminalization and punishment (e.g., Ruggiero 2010; Mathiesen

1974; Davis 2003)—though I think these might have made for less dismissive interlocutors. The point is rather that by presenting social histories of criminal responsibility and criminalization against the often-incommensurable assumptions of doctrinal and analytic jurisprudence, one skews the analysis too much as a response to the latter's somewhat mordant criticisms of contingently orientated social theory. Regardless, this reader would have appreciated more systematic discussion of how socio-legal theory could intervene to erode overcriminalization and the authoritarian contexts that produce it.

Turning, however, to the first of my substantive concerns, even as the authors critically reflect on criminal law's contingent foundations, they tend to privilege its ratios as building blocks for sociologically-orientated theories. Despite claims to the contrary, the texts mostly regard criminal law's ratios as the basis for conceptualizing responsibility, civil order, and even dialectics. In other words, the social, political, institutional and ethical environments that supposedly drive law are mostly viewed through lenses that assume criminal law's ratios and formulations of crime. For example, Farmer argues that the 'history of criminal law begins only in the modern period' (p. 63), and that criminalization was possible only after modern criminal law emerged as a unified institution. Thus, the 'Making *the* Modern Criminal Law' is portrayed as the basis of crime, and shifting institutions or techniques appear in his narrative in relation to that assumption. In other words, his discussion restricts institutional analysis to how specific institutions may be traced through legal notions of crime and responsibility—the latter are here defined by referencing case, ratio, statute or doctrinal analysis of criminal law. Such discourses may well dominate modern forms of criminalization, but this is less because of their internal integrity than the diverse legal and non-legal powers that enable that privilege in the first place.

The problem may be stated in another way. If criminal law both shapes and is shaped by surrounding social processes (institutional, interest-based, ethico-political) and its 'patterns of responsibility', and so are only *relatively* autonomous, then such processes are surely as invested in criminalization as lexicons of criminal law may be—a view that is there, without Procrustean ascription, in all three texts. But then one might wonder why the discussions of the social drivers of law are often subordinated to analyses that assume modern criminal law's delineations of crime, responsibility, and its monopolistic claims to jurisdiction. Why is criminal law so frequently used as a prism through which to view underlying social processes, rather than the other way around, and with what consequences? Of course, this question recalls critical criminology's early neo-Marxist, new left, and Frankfurt school arguments that criminal law's definitions of crime ultimately serve bourgeois interests, thus perpetuating inherently unequal capitalist social forms (Taylor et al. 1975; Carson 1981; van Swaaningen 1997). To be sure, Lacey and Norrie are right to question neo-Marxist reductions of (ideas in) law to economics, but equally one might worry about restricting the analysis of social forces (that forge criminalization) to modern criminal law's ratios and definitions. Accepting criminal law's current hegemony narrows how we might envisage the diverse social forces that drive a cultural obsession with crime that, in turn, fuels overcriminalization. I think

it is important to think further through the diverse social forces that generate the unequal populations upon which criminal law's decisions unequally rest.

My disquiet about conceptually favouring criminal law's definitions of crime in socio-legal theory may lead one beyond modern (English) criminal law's capacity to limit criminalization, crime, and criminal responsibility. To consider what is at stake here, it may be helpful to look to forms of criminalization at spatial-temporal distance from modern English criminal law. For instance, exploring how processes of accusation determine analogous kinds of 'crime' in the late Roman Republic, Riggsby (1999) points to an important social driver of criminalization beyond modern criminal law. Indeed, Roman culture of that time was indifferent to abstracted legal notions of criminality, and relied upon communal and rhetorical framings of accusations (Rutledge 1999). These accusations were subsequently submitted to juridical institutions, but not before social forces shaped the kind of criminality at stake. In this way, social processes of accusation both initiated and shaped the course of criminalization:

The law on 'crime' was defined in terms not of a hierarchy of offences but of the nature of the accusations that could be brought and the procedural and penal consequences of so doing for both accuser and accused. The Romans therefore did have a vocabulary for what might be termed 'crime' in a moral sense but there was no one word for 'crime' in Roman law. Instead, the procedure, through public accusation, served as a signal as to the nature of the offence. The 'accuser' asked the public, through its courts, to hold the accused to account. (Harries 2007, p. 5)

If this focuses our attention on the pre-legal, social processes of accusation that shaped Roman legal remedies, it also suggests a legacy that muddies modern, legal definitions of crime. Roman contexts remind us that social relations play a foundational, if overlooked, part in decisions on whether, how and which subjects to call to account as 'criminals'. Accusatorial social processes lie at the source of criminalization in that they are centrally involved in decisions about what is to be socio-historically criminalized (Pavlich 2018). As such, accusatorial processes form social supports for what may or may not appear as crime; they also reflect social complex relations that make sense of given circumstances even before the law, or crime, appears as an option to pursue. To work off criminal law's asserted claims to define all legitimate forms of criminality is to overlook this basic point. As the Roman example suggests, then, crime is a product of accusations that call people to account as potential criminals in law; but the auspices of that justice lie fundamentally in a longstanding lore (rather than law) of accusation that helps to initiate criminalization through socio-cultural processes (Pavlich 2006, 2009).

Working with the socio-legal dimensions of crime, then, seems to me to require more emphasis on social processes outside of criminal law's stories of criminalization that so often justify their institutional expansion. Unduly privileging the legal fictions and institutions of criminal law may lead one to eclipse the power relations that initiate local accusations, and call persons to account as potential criminals in ways that reflect wider inequalities (i.e., based on, say, class, race and gender) (Alexander 2010). This is more than an 'interference' or incursion by socio-

political relations; rather it is the very basis upon which criminal law's later, abstracted, translation of social complexities rests. Thus, the unequal social dimensions of criminalizing processes form foundations for what subsequently appears as a unified, even autonomous, criminal law. As indicated by Norrie's discussion of 'just deserts in an unjust society' problem (p. 16), criminal law is a 'broken', contradictory political reaction to the social inequity to which it is born. Such inequality exceeds what lexicons of criminal can define.

With this in mind, theories that approach social auspices through criminal law's lenses tend to obscure the powers that shape criminal accusations outside of, and yet feed, criminal justice. For example, what is missed when we simply accept modern (English) criminal law's claim to monopolize the framing of 'crime' can also be gleaned from its jurisdictional expansions over, for example, the late eighteenth-century Cape of Good Hope (Pavlich 2011). Here, the purposes of modern criminalization went beyond the civilizing missions to which Farmer refers; but, as importantly, criminal law used accusations of crime to stifle dissent, to entrench local gubernatorial power, and so to help define (not simply implement) the colonial sovereign's capacity to inflict pain on those who overstepped its formulations of wrong (Pavlich 2013, 2011). This socio-political function may signal criminal law's role in producing authoritarian sovereignty formations, and this might underlie its hegemonic claims to being *the* legitimate holder of what is to count as criminal. Regardless, the institutionalization of such purposes in colonial contexts points less to modern criminalization's potential for limiting crime-creation by forging civil(ized) orders, and more to its dangerous ability to unleash massively expanding processes over more and more areas of society, with silencing effects over rival indigenous and other claims to criminal justice. It is in my view questionable to limit discussions of criminalization to the self-perceptions of the institutions that helped usher overcriminalization into historical being, and that sustain its expansive institutional forms. As I see it, social theory might instead focus directly on the socio-historical forces that mobilize criminal law to secure order, thus understanding more fully the sovereignty-forging politics that criminalization serves.

A similar call may be made with respect to ascriptions of criminal responsibility in this colonial context. Not long after occupying the Cape in 1795, the Commander Craig sent a letter to the judges of the Council of Justice requesting that they eliminate the 'torture' of blacks, by which he meant the practice of executing people of bondage (slaves) slowly and ruthlessly (Pavlich 2014). One can only imagine the horrific cries of pain that disturbed Craig, but in refusing his request, the judges offered a justification that different punishments were required for various 'distinctions of person' (e.g., 'slave', 'Khoi', 'burgher', company official). The judges held that each so-called stratum was—by its putatively varying characters (natures)—capable of being held to account criminally to different degrees; each was responsive to malleable intensities of punishment that could supposedly deter only when appropriately calibrated (note that 'being held to account' forms part of the etymology of the term 'accusation'). The judges claimed thus to justify different kinds of responsibility and punishment for the diverse types of 'persons' imagined, seeking thereby to preserve perceived social hierarchies of the day. Their unequal attributions of criminal responsibility no doubt reflected foundations for an

apartheid system to come, but did not simply flow from patterns of criminalization; rather the judges used crime-focused law as a pretext for extending their prior social prejudices, and for perpetuating a social hierarchy that braced their privilege. In my view, this reasoning confirms the value of Lacey's search for social, political and economic bases for responsibility attribution, but it also suggests why one might engage them beyond Fletcher's 'patterns of criminalization' recovered from modern criminal law. This colonial example indicates further that criminal responsibility attribution has roots beyond legal notions of capacity, character, outcome and revised risky characters—the very unequal idea of 'distinctions of person' served as a prior social canvas over which criminal law's responsabilizing patterns were sketched. But my critique does not so much repudiate Lacey's consequential arguments as point to unequal social layers beneath them. It also suggests possibilities for socio-legal analysis focused on how a social process—accusation—shapes the unequal overcriminalization of certain groups of people who populate prisons across the globe.

What to do about such overcriminalization is a complex matter that requires further thought. But as indicated, the reviewed texts could be said to conceptualize this issue as the result of criminalization that: (a) departs institutionally from criminal law's purpose of creating civil order; (b) relies on a resurgence of character-based criminal responsibility around risk alongside notions of capacity, and outcome; and (c), accompanies authoritarian political forms that defer to crime as part of their ruling arsenal. Yet how precisely might one resist such overcriminalization? Norrie's broad idea of a 'broken dialectic' offers possibilities for challenging an expanded criminal law in the name of justice that pursues freedom and solidarity through immanent critique, just as Farmer's approach returns criminal law to civil order, and Lacey's arguments presumably lead us to reverse criminal law's character-based risk profiles. As important as such findings undoubtedly are, conceptualizing criminalization (overcriminalization and even decriminalization) through criminal law's lenses limits discussions of a wider politics of criminalization. As Norrie suggests, the contradictory structural restraints faced by law internally (in its specificity) limits its potential to bring about socio-historical change. To be sure, the sheer dominance of criminal justice thinking, institutions and power may yield an obsession with controlling via notions of crime, making it difficult to think beyond legally framed languages. The texts clearly contribute to creating new languages to understand the terrain at hand; but other genres of critique refer us to the governing auspices of criminal law, and the politics that sustain its forms of criminalization (see Pavlich 2001). What politics could rescind a widespread, ruling reflex to border and order social formations through criminalization?

For such a political task, I do not think criminal justice institutions are likely to oversee their own consequential abolition. The thorny issue of overcriminalization has pushed me to a wider social view of how criminalization, over millennia, has been predicated upon prior notions of accusation. Indeed, the Latin *crimen*, from whence the term 'crime' derives, connoted judicial judgment but also the manner of 'calling subjects to account' (Pavlich 2006). The point is thus: rather than focussing discussions so closely on how law criminalizes, one might also focus attention on how socio-culturally formed accusations call subjects to account for actions that are

contextually understood as potentially ‘criminal’. This focuses attention on the prior social processes of accusation that serve as gateways to criminal justice, and which preface criminal law’s subsequent decisions. From this vantage, reducing criminalization (to rescind overcriminalization) might require a turn to the politics of the socially framed accusations that funnel subjects into criminal law’s processes as legal persons.

The outlines for such an approach have been articulated elsewhere (e.g., Pavlich 2009; Pavlich and Unger 2017), but its basic idea is this: since processes of criminal accusation initiate criminalization, how they ‘call subjects to account’ for putative crimes shapes directly the vast, unequal and expanding criminal justice institutions that are thereby populated. The resulting overcriminalization referenced by all three books could be radically constrained by reducing the scope of social processes that accuse individuals of crime, thus resisting the political rationales and technologies that serve as social gateways to criminal law. The promise is precisely to reduce vast population flows into criminal justice institutions by constricting the socio-political source. To be sure this would require that we focus more attention on how to limit the number and historical kinds of subjects called to account as accused criminals, but it may also require us to reconsider the ideas and practices of accusation, upon which overcriminalization depends. For instance, the predominance of *individually* conceived accusations of crime could be framed anew by calling not individuals, but tension-filled social configurations, to account for their role in forging unequal patterns of criminalization and responsibility attribution. That way, processes of accusation could potentially be redirected to accusing unequal social forces behind what is criminalized, rather than replicating today’s emphasis on accusing individuals. This sort of social justice would likely pursue not civil order, but structures that enhance, rather than destroy, social attachments and the unequal social exclusions that so often follow individual forms of criminalization.

Though such differences may be matters of emphasis granted to criminal law, they are not meant to undermine the reviewed books’ significant, at times groundbreaking, achievements. They do, however, suggest an accusatorial layer that may augment socio-legal thinking around criminalization so luminously portrayed in these works. They left this reader with an optimistic impression that socio-legal analysis has marked out significant lines of socio-historical and theoretical inquiry into the complexities of criminalization, and made inroads into redressing the excruciating overcriminalization of our times. Whether such an endeavour is to be tackled before or through criminal law, or both, serves as a sincere recommendation to read these three resplendent texts.

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