

Critical criminology and the concept of crime

LOUK H.C. HULSMAN

Erasmus University, Rotterdam, The Netherlands

1. Are criminal events exceptional?: Problematising the normal outlook on crime

Traditionally we are accustomed to regard criminal law and criminal justice systems, as systems which have been devised by man (society) and are under his (its) control. We are inclined to consider 'criminal events' as exceptional, events which differ to an important extent from other events which are not defined as criminal. In the conventional image, criminal conduct is considered as the most important cause of these events. Criminals are - in this view - a special category of people, and the exceptional nature of criminal conduct, and/or of the criminal, justify the special nature of the reaction against it. The public debate about the criminal justice system (c.j.s.) and its possible reform, almost always takes place in our (Western) type of society, within this limited framework. Proposals for reform take for granted that the c.j.s. must become better equipped to deal with social problems which are defined as offences. Furthermore, one should minimize as much as possible the social costs of this method and distribute them as justly as possible. In addition, the impression exists among many people that the development of the criminal law is one of slowly progressing humanisation.

The scope of the debate is further restricted by the view that reform has to remain within the limits of what is acceptable to 'public opinion'. Public opinion is understood in this view not so much as construct - largely reflecting the visible part of the c.j.s. practice - but as a representation of attitudes existing independently of this practice.

This picture of the reality of criminal justice appears untenable, on the basis of the direct experiences of those participating in face-to-face relationships with and within the system, as well as on the basis of scientific research.

The special form of cooperation between the police, the courts, the prison system, the ministry of justice, other departments and Parliament which we describe as the criminal justice system, is extremely difficult to control. Attempts at reform, as even the most recent history shows, often have completely different results from those intended.¹

In one of the preparatory papers of the United Nations Secretariat (1975) for the 5th United Nations Congress on Crime Prevention and the Treatment of Offenders in Geneva, the following statement was made:

One of the problems is that it is taken for granted that such a complex structure (the criminal justice system) indeed works as a system, that the several sub-systems share a set of common goals, that they relate to each other in a consistent manner and that the interrelationship constitute the particular structure of the system enabling it to function as a whole with a certain degree of continuity and within certain limitations. However, in countries where researchers and policy makers have undertaken a critical examination of the structure of their criminal justice systems, they have found that there are few common aims, that there is considerable diffusion of duties and responsibilities and little or no co-ordination between the sub-systems and that there are often differing views regarding the role of each part of the system. In short, they have found a serious lack of cohesion within the system. Yet, when people talk about the criminal justice system as a whole they implicitly and explicitly assume that the system functions well and is effectively controlled. They also assume that it is a system oriented toward goals that are designed to meet the needs of the community. (p. 16)

The uncontrollability of the c.j.s. is of course not an exclusive property of that system. It is one of the big problems of our type of society that through the increase in the size of organisations, division of labour, professionalisation, and the interdependence of larger units, man is losing his grip on, and contact with, the environment and is alienated from it. It is however certainly a fact that this process manifests itself most clearly in the present day c.j.s. This is particularly alarming, since the typical products of the system are the infliction of suffering and stigmatisation.

One of the most important causes of the difficulty in controlling the c.j.s. is that there is hardly any feedback of information which is relevant to the way that those directly involved have experienced the event. This is inherent in the structure of the system. Conflicts which occur in society between persons or groups are defined in the penal system not in terms of the parties involved, but rather in terms of the regulations (criminal legislation) and the organisational requirements of the system itself. The parties directly involved in a conflict can exert little influence on the further course of events once a matter has been defined as criminal and as such has been taken up by the system. We shall return to this aspect of the c.j.s. later.

The idea that the development of the criminal laws is one of slowly progressing humanisation deserves also a critical note. Quantitatively the impression is certainly not accurate. The number of convicted people per 100,000 population shows a strong cyclic movement. This cycle of the number of convictions has in many countries in the industrialised world for some times been moving upwards.

To assess the qualitative aspect of the development is more difficult. It is true that the application of the death penalty has been greatly reduced in recent centuries, and in normal times has even vanished in many countries. The same can be said of many forms of corporal punishment. Progress has also been made in improving the regime in the prison system. We must however be careful about simply concluding from this that there has been a qualitative humanisation. The 'degree of suffering' in the penal measures is not an absolute. To a large extent it consists of the difference between the normal living situation of people, and that which is created by the intervention of the c.j.s. The latter has always drawn its clientele mainly from the most disadvantaged sections of the population and still does so. The living standards of those same sections have in Europe improved considerably in recent years. The improvements inside prisons during the last 30 years, however, do not appear to have kept pace. If this supposition is correct, then the degree of suffering from the penal sanction has in a sense increased.

People who are involved in 'criminal' events do not appear in themselves to form a special category of people. Those who are officially recorded as 'criminal' constitute only a small part of those involved in events that legally are considered to require criminalisation. Among them young men from the most disadvantaged sections of the population are heavily over-represented.

Within the concept of criminality a broad range of situations are linked together. Most of these, however, have separate properties and no common denominator: violence within the family, violence in an anonymous context in the streets, breaking into private dwellings, completely divergent ways of illegal receiving of goods, different types of conduct in traffic, pollution of the environment, some forms of political activities. Neither in the motivation of those who are involved in such events, nor in the nature of the consequences or in the possibilities of dealing with them (be it in a preventive sense, or in the sense of the control of the conflict) is there any common structure to be discovered. All these events have in common, is that the c.j.s. is authorised to take action against them. Some of these events cause considerable suffering to those involved, quite often affecting both perpetrator and victim. Consider for example traffic accidents, and violence within the family. The vast majority of the events which are dealt with within the c.j.s. in the sphere of crime, however, would not score particularly high on an imaginary scale of personal hardship. Matrimonial difficulties, difficulties between parents and children, serious difficulties at work and housing problems will, as a rule, be experienced as more serious both as to degree and duration. If we compare 'criminal events' with other events, there is – on the level of those directly involved – nothing which distinguishes those 'criminal' events intrinsically from other difficult or unpleasant situations. Nor are they singled out as a rule by those directly involved themselves to be dealt with in a way differing radically from

the way other events are dealt with. Last, not least, some of these events are considered by those directly involved (and sometimes also by 'observers') as positive and harmless.

It is therefore not surprising that a considerable proportion of the events which would be defined as serious crime within the context of the c.j.s., remain completely outside that system. They are settled within the social context in which they take place (the family, the trade union, the professional association, the circle of friends, the workplace, the neighbourhood) in a similar way as other non-criminal trouble.²

All this means that there is no 'ontological reality' of crime.

2. Critical criminology and the concept of crime: what has been problematised and what not?

Critical criminology has naturally problematised and criticised many of the 'normal' notions about crime which I have just described. The contribution to this form of 'debunking' varies according to the different perspectives of the stream of critical criminology involved. In a certain period, marxist criminology predominantly took the stand that 'crime' was a product of the capitalistic system, and that crime would disappear if a new society took birth. In this perspective the disappearance of 'crime' was seen as a disappearance of the 'problematic situations' which are supposed to trigger the criminalisation processes. Disappearance of crime was not seen as: 'the disappearance of criminalisation processes as an answer to problematic situations'. In a later stage, critical criminology problematised the class-biased and 'irrational' aspects of the processes of primary and secondary criminalisation. In those endeavours the 'functionality' as well as the 'legal equality principle', which are so often invoked as legitimisation of processes of primary criminalisation, were de-mystified. On the basis of such a de-mystification, critical criminology has argued for partial decriminalisation, a more restrictive policy with respect to recourse to criminal law, radical non-intervention with respect to certain crimes and certain criminals. It has pointed to the far more weighty crimes of the powerful and asked for a change in criminal justice activities from the weak and the working class towards 'white collar crime'. It has pictured the war against crime as a sidetrack from the class struggle, at best an illusion invented to sell news, at worst an attempt to make the poor scape goats. With very few exceptions however, the concept of crime as such, the ontological reality of crime, has not been challenged.

Two recent books by critical criminologists (D.F. Greenberg 1981; J. Lea and J. Young 1984) show clearly the lack of interest of critical criminology in criticising the 'concept of crime' as such. Greenberg dedicates in his — in other

respects most interesting — book, less than one page to the question 'what is crime'. He mentions in this page only examples of critical criminologists who point out that other behaviours should be criminalised (violations of fundamental human rights and white collar crime). The examples he gives show that the critical criminologists he is referring to, do not challenge the ideas that: (1) it makes sense to construct a uniform scale of degree of harm; (2) harm should be attributed in the context of a criminal justice system to individuals; (3) malice is an element of crime; (4) malice can be determined in a criminal justice procedure; (5) crime is (or should be) the top of 'evil harm' as it is attributed to individuals.

The non-problematised character of crime as a concept is still clearer in the last book of Lea and Young. Their book belongs to the stream of the 'new realists' in critical criminology. Not only that they do not problematise the five points I mentioned above. On the contrary, they positively subscribe to many of those conventional wisdoms on crime. I cite some examples: 'crime is the end-point of a continuum of disorder' (p. 55), 'crime is the tip of the iceberg, it is a real problem in itself, but it is also a symbol for a far greater problem;' (p. 55), 'we argued that what is necessary, is a double thrust against both types of crime' (p. 73); the both types of crime which are referred to are street crime and corporate crime), 'street crime is the most transparent of all injustices. It is a starting point for all double thrust against crime on all levels. If we concentrate on it alone, as the political right would wish, we are actively engaged in a process of diversion from the crimes of the powerful. If we concentrate solely on the latter, as many on the left would have us to do, we omit what are real and pressing problems for working class people and loose the ability to move from the immediate to encompass the more hidden and thus demonstrate the intrinsic similarity of crime at all levels of our society.' (p. 75; italics by me).

There is also another rather recent trend which starts to problematise the concept of crime as such (Baratta 1983; Hulsman and Bernard-de Célis 1982; Landreville 1978; A. Normandeau 1984). This approach focusses on the fact that there is no 'ontological reality' of crime. It tries to reorganise the debate within criminology and criminal policy with this fact as a starting point. This leads to the *abolition* of criminal justice as we know it. Because 'crime as an ontological reality' is the corner stone of such a type of criminal justice. The 'why' and 'how' of this approach will be dealt with in the following sections.

3. What does it mean when we do not problematise (and reject) the concept of crime?

When we do not problematise (and reject) the concept of crime it means that we are stuck in a catascopic view on society in which our informational base (as

well the 'facts' as their 'interpretational frame') depends mainly on the institutional framework of criminal justice. It means therefore that we do not take effectively into account the critical analyses of this institutional framework by 'critical criminology'. I will not try to give an exhaustive list of all those findings of critical criminology which we leave then out of consideration. It suffices here to give some important examples. These examples will touch upon the questions of primary criminalisation, the *false consciousness* created by unequal secondary criminalisation linked with a certain type of mass media coverage, the dark figure and the contribution of interactionism to the understanding of social processes.

Primary criminalisation

(1). *The ideological foundation for centralised law as a basis for criminalisation*
The ideological foundation for written centralised law as a basis for criminalisation lies in a legal view on the world. In this legal view the concept of 'society' has a key role. Let us take a critical look at this concept.

In the legal view, 'society' consists of the formal institutions of the state on one hand and of individuals on the other. When we look at the historical development of this idea we see that it has two different sources. A religious one: God's chosen people which were ruled by the ten commandments. A secular one: People binding themselves together 'freely' by a social contract.

It is this legal view on 'society' which pervades the political discourse and also the discourse as it is often pursued in a sociological and criminological context. In such a view society is seen as an aggregation of people over which a state claims jurisdiction. This aggregation of people is then presented as having the properties of a *group*: people who share values and meanings in common, who engage in continued social interaction and who belong together by a ritualistic bounding. It is however clear that most aggregations of people, called in this way 'society', do *not* possess the properties of a group. In a group, people arrive at a similarly structured sense of what life is about. Shared direct experience is a necessary condition to arrive at such a state. This shared direct experience is lacking in the state society. The common experiences in the state society are to a high degree limited to mass media and formal institution-based *indirect* experience. Even this common indirect experience is often grossly exaggerated by the people producing the political and scientific discourses; they generalise unreflectedly their own experience to other 'members' of the 'society'. The members of e.g. the 'society of criminology' in all their national differentiation possess probably much more the character of a group – not because of that membership, but because of their shared experiences in life – then members of a state society. An important part of the function of social

regulation can only be fulfilled in a satisfactory way in a group context, because it has to be based on cognitive consensus.

The disparity caused by the unreflected attribution of group properties to the 'members' of the state society is clearly shown in the historical comparisons between state societies and tribal and acephalous societies. In such comparisons the social function of the tribe is often attributed to the state society. This reinforces naturally the idea that the state has the properties of a group. In such a comparative context, it is in my opinion more fruitful to compare (some) neighbourhoods, professional groups, circles of friends, social movements, recreational clubs, work settings, (private and public) as tribes. In such a view the state-society would be seen as a context in which a high degree of tribal interaction (co-operation and conflict) is going on and in which many data about those intertribal contacts are being gathered. Such a view on the state-society in comparison to tribal social organisation would be naturally incomplete and would have to take into account, that 'present day industrial social formations' differ from their traditional counterparts in the sense that the traditional tribes knew less overlapping memberships than the modern tribes and that the mobility between tribes (the *change* of tribe) is much easier in modern social formations than in traditional ones.

The *anascopic* view on social life, implied in the image of a society as a conglomerate of tribes, has in comparison to the *catastrophic* prevailing view, the advantage of making it easier to understand many of the findings of traditional and critical criminology (as the very high figures of unrecorded 'crime') and to promote an emancipatory and libertarian stand to issues of social regulation and social control.

In such a perspective not the individual but the 'intermediate institutions' – the modern tribes – would be seen as the buildingstones of the state-society. Many functions of social regulation can only be fulfilled in a 'tribe', because – to be realistic – they have to be founded on a cognitive consensus between those who interact. This cognitive consensus cannot be supposed to exist outside the context of those intermediate institutions.

(2). *The unequal powerrelations, the peculiarity of political processes and the legal technicalities involved in legislative processes*

There is a large body of research which shows how the processes of primary criminalisation are influenced by factors which have nothing to do with the negativity of the situations they are supposed to create a remedy for, nor with the existence of (other) resources which in fact could provide under certain circumstances a remedy for problematic situations (Report on Decriminalisation, Council of Europe 1980). This whole body of knowledge is neglected when we take the image of negativity (and of remedies against it) as it results from taking uncritically those primary criminalisation processes as a starting point for our views on social life and its problems.

Unequal secondary criminalisation and its link with the mass media

Urban areas in the industrialised world are characterised by the extreme social segregation that occurs within them. To a large degree, class is segregated from class, young from old, rich from poor. This creates a situation of mass ignorance; direct information about many aspects of life about what is going on in such a 'society' is not any more available. In such a state of affairs everybody is to a large degree dependent on the mass media for his opinions on the 'society' he lives in. This is true for the life worlds in so far as other life worlds are concerned, and it is equally true for that part of the system world which is involved in scientific research (criminology) and crime policy. This dependence on mass media information is particularly strong in cases in which certain activities are criminalised. The risk of criminalisation forces people to hide those activities. Direct information about what is going on in the life world in which those illegal activities take place is therefore more difficult to get. Victims of criminalised activities, in so far as they seek contact with the police and the judiciary, are obliged to speak the language of the system. They have to submit themselves to the interpretational frame which their stronger counterparts offer. Also from victims of criminalised activities reliable information is difficult to get.

The type of information however which the mass media portray, is what is 'newsworthy'. In brief, it selects events which are atypical, present them in a stereotypical fashion, contrast them against a backdrop of normality which is over-typical. This brings about a mystification about the world which is in contact with criminal justice. It is to this mystification that criminologists submit when they continue to use the concept of crime.

Dark figure

The studies which criminology has done in the field of the 'dark figure' and more specifically in the field of 'unrecorded crime' are of great importance. The findings of those studies have nevertheless not yet been integrated in criminological theory and in criminal policy practice. It is also striking that many conclusions on the basis of dark figure studies show, that many criminologists have been insufficiently aware of the limited way in which victim surveys can give insight in unrecorded crime. In my opinion the amount of unrecorded crime is systematically underestimated. Anyway, there is no doubt that actual criminalisation of criminalisable events – even in the field of traditional crime – is a very rare event indeed. In a country like Holland, far less than one percent of those criminalisable events is actually criminalised in the courts. Non-criminalisation is the rule, criminalisation a rare exception.

This fact is not taken into account if one looks at social reality taking as a starting point criminal justice.

Interactionism

The contribution of interactionism to sociology has made us aware of the importance of defining processes for the construction and the understanding of social reality. This showed also how differences in power relations influenced the social reality in the first place by the intermediary of those defining processes. The impact of criminal justice on social life is not in the first place exercised by direct intervention by its agents and not by the threat of repression. It orients the view and practices of policy makers and policy implementation. It orients the view and practices of policy makers and policy implementation towards the legal part of the system world (Hulsman 1984). *A criminology which continues to incorporate in its own 'language' the concepts which play a key role in this process, can never take an external view on this reality and is therefore unable to demystify it.*

My conclusion is that critical criminology has to abandon a catascope view on social reality, based on the definitional activities of the system which is the subject of its study, and has instead to take an anoscopic stance towards social reality. This makes it necessary to abandon as a tool in the conceptual frame of criminology the notion of 'crime'. Crime has no ontological reality. Crime is not the *object* but the *product* of criminal policy. Criminalisation is one of the many ways to construct social reality. In other words, when someone (person or organisation) wants to criminalise, this implies that he:

- a. deems a certain 'occurrence' or 'situation' as undesirable;
- b. attributes that undesirable occurrence to an individual;
- c. approaches this particular kind of individual behaviour with a specific style of social control: the style of punishment;
- d. applies a very particular style of punishment which is developed in a particular (legal) professional context and which is based on a 'scholastic' (last-judgement) perspective on the world. In this sense the style of punishment used in criminal justice differs profoundly from the styles of punishment in other social contexts;
- e. wants to work in a special organizational setting: criminal justice. This organizational setting is characterized by a very developed division of labour, a lack of accountability for the process as a whole and a lack of influence of those directly involved in the 'criminalised' event on the outcome of the process.

Two remarks have to be added to this rather 'streamlined' description of the specificity of the 'criminal way' to construct reality.

When we look at criminal justice processes in a more detailed way we see that within the timespan criminal justice deals with an individual, other styles of social control like the therapeutic and the compensatory ones can also play a role. Generally this 'blurring' of different styles of social control within a criminal justice process does not impair the predominance of the punishment style of social control.

In many instances the way in which cases are dealt with in criminal justice is influenced by 'negotiation'. This negotiation is however not a negotiation, between the parties implied in the 'original event', but between professionals, whose main interest is not related to the original event, but to their daily work in criminal justice.

How should we now proceed to liberate criminology from criminal justice and to develop within criminology an anascopic view? In the next section I will try to develop the outlines for such an approach.

3. Developing an anascopic view

Defining and dealing with trouble outside a formal context

When does trouble occur? Pfohl (1981) defines it as follows:

Trouble can be defined as that situation which occurs when (1) people are not ritualistically linked to a relatively similar sense of how life is and should be structured and (2) the lack of such links results in conflict over ways of thinking, feeling and acting.

Pfohl restricts himself in this definition to trouble which finds his source in a social conflict. We can extend his approach however to the way we are relating our lives to 'nature'. Trouble occurs also when 'nature' interferes differently from the way we expect it to 'behave'.

Pfohl distinguishes two types of rituals, which are essential to minimize trouble. The first when successfully enacted prevent trouble. These are *rituals or primary ordering*. The second attend to the presence of trouble. They are *rituals of reordering*. When successful they curtail or contain trouble.

Trouble (or *problematic situations*) are thus defined as events which are in a negative way deviating from the order in which we see and feel our lives rooted.

When we discuss problematic situations we should keep one thing in mind. It is wrong to think about problematic situations as situations which could be

eradicated in social life. They are part of life. People need problematic situations in the same way as food and air. More important then to prevent problematic situations is to try to influence societal structures in such a way that people can cope and deal with problems in a way which permits growth and learning and avoids alienation.

To avoid 'reifying' problematic situations it seems useful to make a distinction between:

1. situations which are considered problematic, by all those directly concerned with that situation;
2. situations which are considered problematic by some of those directly involved and not by others;
3. situations which are not considered problematic by those directly involved but only by persons or organisations not directly involved.

One of the consequences of the prevailing catascopic view on questions of trouble and order is that contrary to the abundance of concepts which can be brought to bear when we try to explain and understand *formal* processes of societal regulation, there is a scarcity of concepts when we use an anascopic perspective in a scientific context.

To understand the varieties in the way different participants construct meanings on the basis of 'what occurs', it could be helpful to use as analytical tool two concepts: (1) frame of interpretation, and (2) focus.

Within the *frame of interpretation* we can make a distinction between *natural* and *social* frames of interpretation. In a natural frame of interpretation a negative occurrence is an 'accident'. What happens is attributed to 'nature'.

Within the *social* frame of interpretation we can distinguish between more *person oriented* and more *structure oriented* varieties. The more person oriented varieties can be subdivided according to different 'styles' of social control: *penal, compensatory, therapeutic, conciliatory, and educational* (Black 1976; Meclintock 1980).

When people give meaning to life they do not necessarily use the same 'material'. When people are at a given moment involved in an interaction which started for two of them already the day before and for the third one on this given moment, there is a good chance that the two first ones will take in the construction of reality the interaction of the earlier day into account. Their focus for the definition of the situation will be wider than for the third one who got only on this given moment involved. The 'raw material' on which the social reality is constructed is different.

Let us 'play' a moment with this concepts on the basis of some examples of social life.

A road accident occurs. Two cars hit each other. One of the drivers is seriously injured. The other - uninjured driver - had had during the day serious trouble in his job and after his work had drunk whisky to get rid of his tension.

We can easily imagine different people involved in such an accident define it in very different ways. One person could apply a *natural frame of interpretation*. He attributes this injury to the clash of two vehicles. This you can expect to happen when you drive a certain number of miles, like you catch from time to time a cold. For him the trouble will lie in the process of healing. Perhaps he will in the future not want to expose himself to the risk of driving and use public transport instead. Another person could apply a *social frame of interpretation* in a *structure oriented* variety. He could attribute his injury to the societal organization of traffic. He could get interested in a political activity to make road traffic more safe. A third person could apply a *person oriented* variety of the social frame. He could make either himself or the other driver responsible for the accident and depending on the 'style' involved in this person oriented variety he would ask for *punishment, compensation, etc.* It is likely that the focus used in defining the event would differ between the two drivers. The injured driver would start from the accident. The other driver would see the accident perhaps in relation with the trouble he had in his job and his drinking. The initial definition of an event is likely to change over time. If the injured driver initially defined the event in the punishment variety of the person oriented frame of interpretation and he became confronted with the other driver – showing concern over his injury – his definition of the event would perhaps change.

The television set. Five students live together in a house. At a certain evening one of them gets angry and throws the television set from the staircase. The roommates could easily take very different views on this event. One could construct the event in the *penal* frame. He would 'blame' the perpetrator and ask for his eviction from the house. Another could take a more liberal view and apply the *compensatory* frame of interpretation. 'Everybody has a right to his anger – he says – but one is responsible for his actions. He has to buy a new television set and everything is OK'. A third student, not used to such expressions of anger could get very upset and ask for medical help to control such outbursts. He would apply the *therapeutical* frame of interpretation. The fourth student may apply the *conciliatory* frame of interpretation. He could interpret the event as a sign of tension in the group and ask for a collective self-examination with respect to the mutual relations.

The different frames of interpretation applied by the participants could be related to a different focus on what was going on in their common life. Those who applied the penal and the conciliatory frame of interpretation linked the shattered television set probably with other experiences in their mutual interactions.

The defaulter. We have a family. The family expects everyone to be in time for the meal. One of the family members breaks this rule. He comes regularly too late for dinner. It is easy to imagine that the family members define this

event by applying the person oriented frame of interpretation in its *penal* variation. Reproof is administered; perhaps reinforced after recidivism by 'fine' (a cut in pocketmoney). This reproof may lead to a change in the situation in the sense that the family member involved conforms more to the rule. It may also lead to an escalation of the situation. Imagine that the involved family member stops altogether to appear at the meals. Perhaps he even leaves the house.

In many families in such a case one would change of frame of interpretation and also change with respect to the 'focus' applied to the situation. In the beginning a narrow focus was applied. One looked only at the moment of appearance at the table. Now a broader focus of interpretation in the family is brought into bearing. Instead of penal frame of interpretation, a *therapeutical* or a *conciliatory* frame of interpretation is applied. Because things are considered now to be more 'serious' one leaves the penal frame of interpretation – which is in many families reserved only for minor events – and turns to a therapeutical or conciliatory frame of interpretation. There follows a collective inquiry in what is wrong with the family (in which also the rules within the family may be a topic of discussion) – the conciliatory model – or the family asks for the aid of an outsider expert to advise about the way to act with the defaulter – the therapeutical model.

We see also in this example how the concept of 'frame' and 'focus' can help us to describe and understand differences in the 'construction' of situations and in reactions to – for an outsider – comparable occurrences. The *additional* information contained in this last example is the flexibility which may exist in a social context to switch from one frame of interpretation and one focus to another and more particularly that a penal frame of interpretation in 'normal' life may very often be applied for *minor* events and other frames of interpretation for events which are considered important.

I choose my examples in such a way that they could easily relate to the direct experience of my readers. This implies naturally the risk that a reader will say: Yes I see that such an approach makes sense in the sphere of life you are talking about, but does it apply also in those spheres of life to which a definition of serious crime relates? I am convinced that the variety in frames of interpretation, in focus and in dynamics of the process of definition exist in those areas not less than in the areas I took my examples from. Here are two examples:

Some years ago Molukkans captured a Dutch train. One of the hostages was killed. Several of the hostages became friends with those Molukkans and visit them now still in prison. Perhaps you will answer me: 'Clear, Stockholm syndrome'. (That is, the psychiatric explanation for those hostages who do not conform to the c.j.s. stereotypes of victims' hate; and vengeance but who develop an understanding of and bond with their aggressors. According to this

explanation, such hostages are 'pathological'). So here is another example. In Holland, policemen on duty who kill another person are practically never declared guilty of a homicide. But burglars and other 'troublesome rascals' (Spector, 1981) who kill are condemned under this incrimination.

The meanings which those directly involved (and observers) bestow upon situations influence how they will deal with them. Laura Nader (1981) distinguishes the following procedures people use in dealing with trouble:

- *lumping it*. The issue or problem that gave rise to a disagreement is simply ignored and the relationship with the person who is part of the disagreement is continued.
- *avoidance or exit*. This option entails withdrawing from a situation or curtailing or terminating a relationship by leaving.
- *coercion*. This involves unilateral action.
- *negotiation*. The two principle parties are the decision makers, and the settlement of the matter is one to which both parties agree, without the aid of a third party. They do not seek a solution in terms of rules, but try to create the rules by which they can organize their relationship with one another.
- *mediation*. Mediation, in contrast, involves a third party who intervenes in a dispute to aid the principals in reaching an agreement.
- other procedural modes that are used in attempts to handle trouble are *arbitration* and *adjudication*. In *arbitration* both principals consent to the intervention of a third party whose judgement they must agree to accept beforehand. When we speak about *adjudication* we refer to the presence of a third party who has the authority to intervene in a dispute whether or not the principals wish it.

The list of ways of dealing with trouble which Nader gives is by no means exhaustive. People can address themselves for help to different professional or non-professional settings. They may engage in a 'ritual of reordering' which does not involve the other person earlier implied in the problematic situation (Pfohl 1981).

People may also engage in collective action to bring about a structural change in the situations which cause them trouble (Abel 1982). Which of these many courses of action will an involved person choose? The meaning which a directly involved person bestows upon a situation will influence, as we saw, his course of action. That course of action will also be influenced by the degree to which different strategies to deal with trouble are available and accessible for him. In other words the degree to which he has a real possibility of choice. This degree of choice is largely influenced by his place in the network of power which shapes his environment and by his practical possibilities to change the 'tribes' of which he is a part for other ones.

Formal and informal ways of defining trouble and dealing with it compared

The process of bestowing, meaning of what is going on in life is flexible in face to face relations insofar as those involved in this process feel relatively 'free' to each other as equal human beings. In other words: if they feel not constrained by the requirements of organizational or professional roles and they are not caught in a power relation which prevents some of the parties to take fully part in this process. This flexibility has many advantages. It increases the possibilities to reach by negotiation a common meaning of problematic situations. It provides also possibilities for learning. Experience can teach people that the application of a certain frame of interpretation and a certain focus does not lead very far in certain sectors of life.

This flexibility is often lacking when situations are defined and dealt with in a highly formalized context. The more such a context is specialized, the more the freedom of definition – and thus of reaction – is limited by a high degree of division of labour or by a high degree of professionalization. In such a case it depends on the type of institution which has – fortuitously – taken the case up which definition and which answer will be given. It is improbable that a definition and a reaction provided for in such a context corresponds with the definition and reactions of the direct involved.

There are however important differences in the degree of flexibility which formal institutions involved in a problematic situation show. In many countries we find a high degree of flexibility in parts of the police organization e.g. the neighbourhood police. The same may be true, of the first echelons of the health and social work system. Of all formalized control systems the criminal justice system seems the most inflexible. The organizational context (high division of labour) and the internal logic of its specific frame of interpretation (peculiar style of punishment in which a gravity scale modeled according to the 'last judgement' plays an overriding role) contribute both to this inflexibility. Another factor in the particularly alienating effect of criminal justice involvement in problematic situations is its extreme narrow focus: only very specific events modeled in accordance with a legal incrimination may be taken into account and these may only be considered as they were supposed to be on a certain moment in time. The dynamic side of constructing reality, lacks completely in this particular system. Thus the construction of reality as it is pursued in criminal justice will practically never coincide with the dynamics of the construction of reality of the direct involved. In criminal justice one is generally deciding on a reality which exists only within the system and finds seldom a counterpart in the outside world.

It may illuminate the questions we are dealing with to compare in a very global way the processes of constructing the reality in a criminal justice system with those in a civil justice system. In a criminal justice system it is a formal

organization separated from the direct involved people which decides about the preliminary definition of the case (police or public prosecutor). In civil justice it is one of the direct involved parties who decides about the preliminary definition and the other party has an opportunity to contribute to the definition on the same level as the plaintiff. It is true that they may be – even in civil justice – considerably limited in their freedom of definition by the constraints which a formal legal system puts on the (legal) relevance of certain definitions. The constraints in civil justice – although also alienating for the directly involved parties – are however considerably less severe than in criminal justice. A third important difference is that the directly involved parties have no influence in the consequences of a judgement in criminal justice. The execution of a sentence takes place on the initiative of a formal organization.

In civil justice the consequences of a judgement are in the hands of one of the parties and very often the existence of such a judgement has not benefit the losing party of all bargaining power. A civil judgement changes the power relation between involved parties but leaves them room for further negotiation. After the judgement they can interact on the basis of their own dynamic definition of the situation.

5. Conclusion

What would be the task of a critical criminology which has abandoned according to the view developed above, 'crime' as a conceptual tool? The main tasks of such a critical criminology can be summarized as follows:

- a. continue to describe, explain and demystify the activities of criminal justice and its adverse social effects. This activity should however be more directed than up till now to the definitory activities of this system. To do that, it would be necessary to compare in concrete fields of human life the activities of criminal justice (and their social effects) with those of other formal control systems (legal ones, like the civil justice systems, and non-legal ones, like the medical and social work system). The activities of those formal control systems with respect to a certain area of life should be at the same time compared with informal ways of dealing with such an area of life. In such a task, critical criminology can be stimulated by the developments in (legal) anthropology and in a more general way by sociology in an interpretative paradigm. This implies abandoning 'behavior' and deviance as a starting point for analysis and adopting instead a situation-oriented approach, micro and macro.
- b. Illustrate – but only as a way of example without pretending to be a 'science of problematic situations' – how in a specific field problematic situations could be addressed at different levels of the societal organisation without

- c. having recourse to criminal justice.
- d. Study strategies how to abolish criminal justice; in other words, how to liberate organisations like the police and the courts of a system of reference which turns them away of the variety of life and the needs of those directly involved.
- e. One of these strategies ought to be to contribute to the development of another overall language in which questions related to criminal justice and to public problems which generate claims to criminalisation, can be discussed without the bias (Cohen, 1985) of the present 'control babble'.

Notes

1. During the period of the seventies there was in Holland general governmental agreement on the desirability of reducing custodial sentences considerably, a goal endorsed by a large majority in Parliament. And yet the number of custodial sentences imposed during that period, and their average duration, continued to increase.
2. The International Society of Penal Law adopted at the world congress in Cairo in 1984 a resolution on mediation which supports this view. The preamble reads: 'This phenomenon of informal diversion of these occurrences which would be crimes if they were evaluated by criminal law, but which are either not perceived as such by those directly involved or are simply not reported to criminal justice agencies, plays an important role in the prevention and control of crime... This is true whether an offence is serious or minor. Attempts at formal diversion should not interfere with such informal controls... *Revue internationale de droit penal* 34, 1985, Editions Eres, Toulouse, p. 21.

References

- Abel, R. (ed.) (1982), *The Politics of Informal Justice*. New York: Academic Press.
- Baratta, A. (1983), 'Sur la criminologie critique et sa fonction dans la politique criminelle,' Vienna: World Society of Criminology.
- Black, D. (1976), *The Behavior of Law*. New York: Academic Press.
- Cohen, S. (1985), *Visions of Social Control*. Cambridge: Polity Press.
- Council of Europe (1980), 'Report on Decriminalisation,' Strasbourg.
- Greenberg, D.F. (ed.) (1981), *Crime and Capitalism*, Palo Alto: Mayfield.
- Hulsman, L. and Bernat de Celis, J. (1982), *Peines Pericles*, Paris. See also: *Sistema penal y seguridad ciudadana: hacia una alternativa* (1984) Barcelona: Ariel.
- Hulsman, L. (1985), 'Drug Policy as a Source of Drug Problems and a Vehicle of Colonisation and Repression,' Herman Rosera Cueva (ed.), Instituto de criminologia, Universidad Central, Quito. *Trigesimo quinto curso: internacional de criminologia*.
- Landreville (1978), 'Reform et abolition de la prison: illusion ou réalite?' *8me Congres International de Criminologie*, Lisbon.
- Lea, J. and Young, J. (1986), *What is to Be Done About Law and Order?* Harmondsworth: Penguin.
- Meeintock, F. (1980), 'The Future of Imprisonment in Britain.' In: A. Bottoms and R. Preston (eds.), *The Coming Penal Crisis*, Edinburgh.

- Normandeau, A. and Bernat de Célis, J. (1984), 'Alternatives to the Criminal Justice System. An Abolitionist Perspective,' International Centre for Comparative Criminology, Université de Montréal.
- Pfohl, S.J. (1981), 'Labelling Criminals,' In: H.L. Ross (ed.), *Law and Deviance*, Beverly Hills: Sage.
- Spector, M. (1981), 'Beyond Crime: Seven Methods to Control Troublesome Rascals,' In: H.L. Ross (ed.), *Law and Deviance*, Beverly Hills: Sage.