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**REDEFINING THE CRIMINAL MATTER: STATE CRIME, MASS ATROCITIES
AND SOCIAL HARM.
PREFACE¹**

***REDEFINIENDO LA CUESTIÓN CRIMINAL: CRÍMENES DE ESTADO, ATROCIDADES MASIVAS Y
DAÑO SOCIAL.
PRESENTACIÓN***

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1. Background

The special issue (nº 5, 2013) of *Crítica Penal y Poder* is the result of a research that has been developing in the last four years. Indeed, since we thought in 2009 on the translation of Wayne Morrison's book entitled *Criminology, Civilization, and the New World Order*, (Barcelona, Anthropos - OSPDH, 2012) in the OPSHR, we have been questioning ourselves about the meanings that criminology and sociology of penal-law might have within the 21st century as well as the researches that would thrive from them in the coming decades. Besides the questions referring to the 19th and the 20th centuries atrocities, wars, and genocides and the fact that criminology until the 1990s has replied with an unjustifiably silence, new questions came up over. Indeed, these new worries depicted questions like what should the latter disciplines accomplish (if they should do so) over great problems related to the sufferings that are happening in all around the globe. Which have as perpetrator(s) a relationships network of more complexity than those usually associated with the binomial offender - victim and that go beyond the own regulatory and sanctioning capacity of the nation States and their agencies of punitive social control. Through the latter, to our growing interest over criminalities committed by States, such as genocides and international crimes, has brought up the study of the concept of Social Harm.

¹ Translated by Nanor Hajjar.

There is no doubt in the fact that such a perspective over the radical criticism of the field of a national Criminology and of its 'certainties', we came up to question the epistemological foundation of the subjects on which we were working. How should one analyze the occurred events in Savar, Dakha, Bangladesh, where over 1.100 people lost their lives due to the collapse of a textile factory building of European merchandises? Unfortunately, it is safe to say that neither traditional criminology nor its critics can make a difference by trying to intervene in the latter situation. The reason for that is because its investigation would lead us to seek institutional responsibilities and of the regulatory gaps within the labour policies that led to this humanitarian tragedy. However, it is possible to think that the building collapsed because of a much complex phenomenon which breaks all the epistemological limits drawn by criminology, which, in its turn, breaks all judicial and political limits of the nation State by leaving us in front of complex global capitalist relationships, which depicts the destructive capacity that have some symbiosis between political and economic powers.

Naturally, these doubts led us to investigate over the latter events. For us, residents in Barcelona, but of Colombian origin, the necessity to find possible responses to these great and massive atrocities, of the great social harm, and of the structural violence generated by the manifestations of the capitalist-State turned out to be crucial.

With different perspectives and projects, we began to work. It came to our surprise to see the great amount of discussions written in English over the latter subjects. Unfortunately, such arguments were not as abundantly done within works written in Spanish. Although some academics have sought cultural interaction with Latin America, it is only during recent years that these communications began to be accomplished.

Thus, this is how, through *Crítica Penal y Poder* (CPyP), we achieved on creating a platform where investigators from Latin America and Europe began to communicate with one another, promoting academic debates and cultural interaction over criminological studies over massive atrocities and the social harm. Thereby, in the issue number four (March 2013), we published some works (such as the translation of *Beyond Criminology?* written by Hillyard and Tombs, the work of V. Ruggiero over the Environmental crimes, and an analysis made by L. Ferrajoli about the epistemological debates that we were having within the OPSHR). Seeing the successful and positive reception of many readers in Latin America, we have decided to associate ourselves to a bigger enterprise. Hence, we decided to make a monographic issue, by using diverse perspectives that interest us, in order to make discussions and to invite various renowned academics. Since we wanted that this work be debated in Latin America, we have decided to unite efforts and publish a bilingual issue with all the articles also accessible in Spanish.

2. Contents

The researches provided here come from diverse perspectives, which include different subjects: State crimes, studies on genocide, social harm, and the internal epistemological debates of critical criminology and of its (possible / desirable) relation with the latter topics.

However, as most readers will substantiate, it exists important sets of contact and a mutual interaction between all of them.

The special number begins with the work of **Dawn L. Rothe** entitled “*Criminological Theory and State Crime: How Far Can it Go?*” In the latter, Rothe makes the analysis of the relations, which exist between the criminological discourse and of its eventual relation with all forms of State crimes (State-corporate crimes, crimes of globalization, international crimes, supranational crimes, and political crimes). Understanding the challenges that the research on these crimes might have for criminologists, lawyers, and sociology of law scholars, the author ponders upon the criminological theory and on its falsifiable and quantifiable character in order to propose an integrated theoretical framework that can be applied on various forms of State crimes.

Within the work entitled “*Algunos interrogantes sobre las modalidades de juzgamiento de los crímenes estatales masivos*”, its author, **Daniel Feierstein**, presents a criminological analysis of the legal categories created in order to face the massive State crimes (war crimes, crimes against humanity, genocides), indicating their potential, their limits, and their challenges making them figures that, for the first time, have the ability to judge over their own punitive power. The author also proposes to rethink over the procedural modes in prosecuting massive State crimes in order to deal with crimes that are organized by its own punitive power in clandestine conditions where the proof of its crimes’ existence is questioned.

Also, the work entitled “*State Crime and the Sociology of Human Rights*”, written by professor **Tony Ward**, explores the relation between the sociological and normative concept of “Human Rights” and the ways it should be used for the understanding and the analysis of State crimes. By using the theoretical frameworks of B.S. Turner and G. Simmel, the author defends the idea that infringing Human Rights should not be understood as the violation of laws, but should be considered as the infringement of the fundamental principle of human rights, which is that States must justify coercive actions in terms that are acceptable to all those affected, as free and morally equal subjects.

In “*Beyond State-Fetishism: Developing a Theoretical Programme for State Crime Studies*”, professor **Kris Lasslett** proposes that, nowadays, the studies of State crimes have the opportunity to convert into a powerful intellectual resource for the fights against the crimes committed by the powerful ones. The author analyzes the epistemological roots of the organizational fetishism and of its effects that, such analytical tendencies, generate the comprehension of State crimes. Finally, he argues that Marxism continues to remain a useful theoretical framework in order to interpret complex State crimes such as, for example, the case of Papua New Guinea, where the question goes beyond the fetishist discourses of the elite’s offences.

Also, **Andrew Woolford** examines in his work entitled “*The Next Generation: Criminology, Genocide Studies, and Settler Colonialism*” the way that the criminology of genocide proposes distinctive problems coming from the first studies on genocides, such as

very ambitious comparisons, narrow legalities, and a lack of attention on the genocidal processes. Indeed, he suggests that the recent generation of genocide studies, which have been ignored by criminologists, especially those of North America, would help the criminology of genocide to overcome some of their its limitations. Finally, he points out that the growing area of critical studies over the colonial genocide offers vital lessons for the latter field.

In *“The Return of the Political: Carl Schmitt’s Contribution to Critical Criminologies”*, **Martiza Felices-Luna** analyzes how the concept of “the political”, explained by the German theorist Carl Schmitt, can help in reformulating (critical) criminologies in order to understand and value in a more correct way, as study objects, the discourses and practices of political violence and the armed conflicts. If positivism had “achieved” on taking politics out of the question of crime, the agenda of the law and order of the New Right would have had reached to strengthen the *pathologizing* of the criminal phenomenon within one’s and/or group’s behaviour, which should be administrated, controlled, and reduced. According to the author, the concept of “the political” can reinvigorate the complaint, peculiar to critical criminology, of the State, its apparatus of social control (like the criminal justice system) just like other ways of governance especially when it comes to the justice system’s destructive characteristics.

Richard Garside presents an interesting research on the concept of the social harm. In his work, *“Addressing Social Harm: Better Regulation Versus Social Transformation”*, Garside shows his concern, on the one hand, upon the underpinnings of the social harm approach (through a material theory, of the needs) and, on the other hand, upon the political projects related to this approach. Indeed, in respect to the latter and through the debates he has had with some authors who have written on the subject of the social harm, Garside explains that the latter projects should not limit to understand those harms as because of a specified form of capitalism, and the idea that harm can be reduced if the system is simply reformed. In order to back this idea up, Garside proposes a radical analysis, relying on the work of Mézáros, in which he tries to find the basis for a radical transformative analysis which can encourage the emancipatory power of the social harm approach.

Expanding his works of State - corporate crime and the symbiosis between State agencies and the markets, **Steve Tombs** analyses in his work entitled *“Working for the ‘Free’ Market: State Complicity in Routine Corporate Harm in the United Kingdom”* two types of social harms produced in the Great Britain. He focus on the economic harms produced by the retail sector of the UK financial services industry and, in the second, on the level and scale of airborne pollution in the UK from a range of business sources, rejecting the idea that, because of the crisis, the State had retired itself leaving the markets to work independently. Hence, it is the State’s which regulates the non-intervention that generates massive violence, working on regulation and deregulation in the name of economic recovery. Tombs’ work is about the understanding of the importance of making these harms visible to empower political struggles.

Following the latter, we present the work of **Wayne Morrison** entitled “*Bangladesh, 1971, War Crimes Trials and Control of the Narrative: The State or Collaborative Enterprise?*” In the latter, Morrison follows more thoroughly his work on Bangladesh. He had already explained it in his previous book “*Criminology, Civilization, and the New World Order*” (2012 [2006] ch. 9). Indeed, in this new work, Morrison presents an analysis on the different narratives that have been produced about the violent events which occurred in 1971, in relation to the three years from the beginning of the trials for war crimes, which some parties coined in calling them genocides. Baring the latter in mind, the author questions whether this is the definite time for Bangladesh to change its political forms or is just an opportunity for the resurgence of religious sentiments that undermine the secular Constitution and increase social instability in the country.

Finally, issue number 5 finishes with the publication of the review written by **Hugo Rodríguez Mendizábal** and **Gabriela Rodríguez Fernández** of **Naomi Klein**'s book *The Shock Doctrine: The Rise of Disaster Capitalism*. The book depicts that the neoconservative economical doctrine associated to the School of Chicago, its practical applications, and its institutional liabilities (the IMF, the World Bank, and different Troikas) with the latter doctrine, contrast with the concept of democracy and Human Rights because of its leading characteristic of social inequalities.

As conclusive thoughts, we would like to thank each and every one who agreed to unite for the accomplishment of this project. The texts that you, readers, have now in your hands are thanks to the mutual interest and the commitment of everyone who worked hard for 14 months: over 20 external reviewers, 17 translators, and the whole group of the CPyP. We would like to thank first of all to the authors who accepted to participate in this Special Issue. They provided us with high quality works. We are deeply thankful for their patience to help, correct, and always be available for questions and contact with the translators. We would also like to thank the ones who took the time to evaluate the texts, which, in many cases, proposed positive criticisms and orientations to improve the works. We are grateful to the exhaustive work carried out by the translators: thanks to María Eugenia D'Agostino, Sebastián Cabezas, Gabriela Rodríguez Fernández, Alejandro Piombo, Emmy Lindstam, Joan Antón, Katharina Vogels, David Castro Liñares, José Angel Brandariz García, Máximo Sozzo, Hugo Rodríguez Mendizábal, Marisa Fassi, Camilo Umaña Hernández, Cristina Fernández Bessa y Nanor Hajjar. Last, but not least, we would like to express an enormous gratitude to the group work of the CPyP, especially to Iñaki Rivera, Mónica Aranda, Héctor Silveira, Cristina Fernández, Gabriela Rodríguez y Joan Antón. In the beginning, we thought the project could be so ambitious and, in a moment, be out of our hands, but thanks to the collaboration of everyone, who worked on this issue, we made what seemed to be impossible, possible. Thank you to all who supported our project, and also to the special support of Gemma Masdeu of CRAI (Center of Resources for Learning and Research from the UB)

We hope that these works will generate many debates and promote the criminological imagination on both sides of the Atlantic and we also hope that they will extend and strengthen the relationships between academics of the field of Critical Criminology

(Anglophones and Hispanophones), always from a non-hegemonic and pluralist perspective. We desire that this issue can promote new works and discussions in different countries within Latin America where the political project for the respect of Human Rights and the rescue of human dignity in front of those who abuse of power, are shared. We have a lot to learn especially from ourselves.

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