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Critical theory and praxis in post-apartheid South Africa: the case for a critical criminology

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The obsession with empirical work in South African criminology has led to a neglect of 'context' in the form of skimming over structural oppressions; such as racism, inequality, poverty and unemployment, as if they were not potentially criminogenic societal factors. With regard to analysing so-called conventional crime, the aforementioned 'context' is an extremely important consideration in a country teeming with these structural oppressions. Contributions from both Critical Theory and Marxist-inspired criminology could correct this imbalance. Following the backdrop of such a discussion, this paper will examine the phenomenon of the prison-industrial complex, both in the US and, more particularly, in the local setting. The argument will then conclude with a three-pronged assessment, namely 1) an evaluation of the debt which Marxist-inspired criminologists (Jeffery Reiman, Angela Davis and Richard Quinney) owe to the Frankfurt School, 2) an overview of the relevant ideas from Critical Theory, and, 3) the application of conflict criminology supplemented by scholarly work in the tradition of the Frankfurt School (represented by Habermas and Žižek) to South African conditions.

Keywords: Marxist-inspired criminology, conflict criminology, Critical Theory, Frankfurt School, social context, structural oppression, prison-industrial complex

Introduction

My aim with this paper is to demonstrate that criminology in South Africa (Hesselink and Booyens 2014: 2, 13; Beukman 2005: 24ff; Herbig and Hesselink 2009; Bezuidenhout 2019) and the Western world in general (Wincup 2017: 5) has an obsession with empiricism. This unjust empirical focus has led to an emphasis on individual responsibility to the exclusion of institutionalised oppressions. More specifically, it has led to the stigmatisation of the poor as 'naturally' criminogenic. Empirical research can be defined as the process of testing a hypothesis using experimentation, direct or indirect observation, and experience, i.e., based on evidence which is observable through the senses (Chalmers 1982: xvi).

While I do not deny the value and importance of empirical work in criminology, I contend that its dominant trend in the discipline is ominous. It serves a dangerous ideological function, namely to direct attention away from the more impactful criminality present in modern society: that which is perpetuated by the ruling elite and by the underhanded operations of neo-liberal capitalism. An example of this is the prison-industrial complex [PIC], considered at length below. An overt emphasis on empirical results has brought about a neo-conservative criminological stance which glosses over the very structural and institutional oppressions, which greatly serve as criminogenic 'breeding grounds' (as demonstrated below).

Strangely, while this accent on empirical research in criminology is present in the United States and other Western countries, the alternative perspectives of Critical and conflict criminology (which both have a Marxist orientation) similarly originated in the United States and the United Kingdom respectively. Yet there is no discernible Marxist school for criminology in South Africa. In this paper I argue that these shortcomings in South African criminology can be rectified, if at least in part, by the application of selected ideas from Critical Theory, as well as the work of Marxist-inspired criminologists from abroad.

I will offer negative justification for doing so, by demonstrating that the field of criminology in South Africa is theoretically and conceptually stagnant at present. Next, I will suggest positive reasons for my argument, as Critical Theory can and does infuse an appreciation of the 'context' in which 'crime' is committed, as well as the politicised nature of both the idea of 'crime' and our understanding thereof. A further argument which I will explore is that the benefits of Critical

Theory have already been partially demonstrated by the important contributions to the analysis of the prison-industrial complex. These scholars were explicitly influenced by the Frankfurt School, especially the invaluable application of ideology critique itself.

Although Catherine Belsey (2002) makes a valuable distinction between 'Critical Theory' (spelt with capitals letters), and 'critical theory' (spelt with lower-case letters), it is worth noting that both categories contribute to a general critical practice aimed at the understanding and elimination of social oppression/repression. The former refers to the practice of Critical Theory in the tradition of the Frankfurt School and the latter to the contribution of all disciplines to this project, such as literature, criminology and evolutionary psychology.

I argue that South African criminology needs ideas from the Frankfurt School and certainly some neo-Marxist input, because:

a) Critical Theory can offer the kind of social critique necessary to identify, criticise and provide alternatives to the types of exploitation and corruption operative in modern society (for example, the PIC).

b) Criminology, as a mode of analysis and form of knowledge, is itself in need of ideological critique, in the form of broader framing, formulations and analyses, in order to expose the ideological function it both serves and has served in concealing and perpetuating the crimes of, and social oppression created by, the ruling elite.

It is my intention to demonstrate this argument by considering the significance of 'context', as well as the question, "Whose law and order are we protecting?", both of which have formed the basis of Anglo-American Marxist inquiry. This will position us to consider one of the most daunting yet seminal criminological issues of post-apartheid South Africa: the prison-industrial-complex. Next will be a consideration of the contributions from two representatives of the Frankfurt School, many of whose ideas are greatly applicable to the development of post-apartheid South African criminology. I will then detail the indebtedness of Marxist-inspired criminologists such as Angela Davis and Jeffrey Reiman to this tradition. This will take us to an appreciation of the work of two well-known Marxist criminologists, Reiman and Quinney, and the application of their work, as well as that of Žižek and Habermas in the South African context. Here it might be opportune to note that I apply and examine the work of both Marxist criminologists (Reiman, Quinney) and that of two members of the Frankfurt School (Habermas, Žižek) in this section in order for the latter to complement the former as, in my view, not all worthwhile ideas in Critical Theory have as yet percolated through to criminological theory. The application of their work is invaluable to the South African context, since it shows how local criminological thinking has

crystallised in its insistence on dogmatic empiricism without the assumed need to direct its efforts by way of reflection (namely, the philosophical component of research in the form of, for example, a Marxist methodology). I now turn to a review of the aforementioned overlooking of 'context' in Western criminology.

The neglect of context in Western criminology

Easily can it be argued that the 'context' of so-called conventional crime, especially in a country like South Africa, which is teeming with extreme structural oppression, is an immensely important element of study. My argument is that although our understanding of so-called conventional 'crime' demands an interdisciplinary perspective (certainly because it is a complex problem), the only approach that is likely to provide such a solution is a critical theory of society with an emancipatory vision. I am of course referring to Critical Theory in the tradition of the Frankfurt School, these two terms often being used interchangeably. It is worth noting that it was Lombroso, an early father of European criminology, who first broke with reflection as a reputable method and subsequently sent the discipline into the direction of empiricism (Gatti and Verde 2012). In the introduction I highlight the fact that South African criminology has a foundational bias in favour of empirical work. This section will develop that idea within the context of the latent value that Critical Theory and the tradition of the Frankfurt School can bring to criminology's currently moribund state.

Anni Hesselink's and Karen Booyens' (2014: 2, 13) 'qualitative approach' is a good example of the emphasis on empirical work, despite describing "[c]riminologists [as being] schooled professionals in understanding crime and criminality in its totality" in their conclusion. It is also significant that Beukman (2005: 24) refers to a research design in her chapter on methodology as "a plan of procedure for data collection and analysis". Obviously, data collection and analysis (i.e., empirical work) is not the only means of study for which one would formulate a research design. Herbig and Hesselink (2009: abstract) argue that "[c]riminology is informed by a combination of theory and empirical research enfolded into a body of knowledge on crime as a social phenomenon". Yet Bezuidenhout (2019) stresses the 'scientific' nature of criminological work as opposed to myth and speculation (read: philosophy). Similarly, Emma Wincup (2017: 5) quotes with approval Garland's definition of criminology, namely "a discipline with an emphasis on empirically grounded, scientific study". I argue that this institutional blind spot for insisting on empirical results leads to a serious neglect of the 'context' of crime.

Western criminology's lack of research into the 'context' of so-called conventional 'crime' is one of the areas towards which, as I suggested in the

introduction, Critical Theory has made and continues to make a profoundly positive impact on our understanding of crime, as well as our ability to combat it successfully. David Macey (1988: 4), one of Lacan's French commentators, explains the importance of context in understanding phenomena through the following striking words:

The suppression of a context is always dangerous, as it leaves us nothing to read with. We are simply faced by an intimidating monolith and a stark choice between complete and unconditional acceptance or unthinking rejection.

Consider this observation in relation to how individual responsibility for 'crime', off which imprisonment as our dominant sentencing regime feeds, has been largely discredited in favour of structural oppressions as 'sources' rather than 'causes' of criminal behaviour (Reiman 1990: 8-9, 14, 48). Lack of context results in an inability to grasp how and why structural oppressions are criminogenic.

Such structural oppressions, which in fact can translate into structural violence, take the form of, for example, poverty, chronic unemployment (isn't the name of the structural oppression that causes poverty and chronic unemployment called economic inequality?), racism, sexism, xenophobia and deepening inequality (Haney 2005: 81; Allen 1992: 82-83). A poignant illustration of the impact of institutional racism and police brutality against minority groups is the recent nationwide protests in much of the globe including North America and Europe, after the death of George Floyd, a black man in Minneapolis, who was choked to death by a white police officer with a history of violence. In this vein, Stanley Cohen (1973: 624) argues against an understanding of crime without context in his acknowledgement that crimes "carried out by the powerful are not only not punished, but are not called 'crime'". No wonder then that De Haan (1991: 208) suggests that "what we need is not a better theory of crime, but a more powerful critique of crime".

Another significant issue within our present South African political climate is state capture, which to date has approximately cost our country at least R1.5 trillion. The alleged corruption at Eskom, for example, has the potential to debilitate our economy, in addition to having accelerated an exodus of disgruntled South African professionals to other countries (BusinessTech 2018; Manyathela 2019). Marxist-inspired criminology is more interested in capitalist incentives surrounding criminality, such as the prison-industrial-complex, which benefits from and perpetuates 'crime' in order to profit from it, than in the questions arising from a concern with the 'causes' of crime (Braithwaite 1995: 89; McLaughlin 2010: 153, 15; Klein 2015). Critical Criminology, meanwhile, has moved past causal explanations of crime, in order to emphasise a "critique of correctional

criminology in which the questioning of political and social control would take precedence over behavioural and correctional issues... [and] the capacity of the capitalist state to criminalise problematical behaviour” (McLaughlin 2010: 155).

The former enterprise (an alarm over the ‘causes’ of crime) is the concern of traditional, mainstream criminology (Braithwaite 1995: 89). Accusations are justified that this practice of mainstream criminology (with its stance avowedly skewed towards ‘objectivity’), in dismissing its political situatedness and bias, legitimates the *status quo* (McLaughlin 2010; Reiman 1990: 8-9, 14, 48). Foucault’s thesis on the paradigm shift in punishment from ‘sovereign’ to ‘disciplinary power’ (McLaughlin 2010: 162-163) has sharpened Critical Criminology’s Marxist edge and shaped its refusal to take no “notice of disciplinary boundaries” (Young 2002: 252). Braithwaite (1995: 289) refers censoriously to “the limited relevance of statist criminology – the sort the state gives money to – to practical ongoing struggles to reduce the crime rate”. An emphasis on so-called ‘objective’ data on crime, as is the tendency locally, obscures the in-built political bias towards the ruling class.

As Jeffrey Reiman (1990: 131-133) argues, emphasis on individual responsibility (however misguided) is essential to a society that denies its own criminal responsibility, while displaying a lack of accountability towards the marginalised communities that are affected by its structural oppressions.

Despite the danger of focusing on the project of offenders’ individual responsibilities for crime to the exclusion of urgent social and political reform, in the form of combating sexism, unemployment, inequality, etc., the former is nonetheless an important project. It should be borne in mind, however, that the idea of individual responsibility has largely been discredited and replaced with a growing global awareness of structural oppressions as criminogenic (Haney 2005).

In this regard it is comforting to note Allen’s (1992: 82-83) observations on the reform efforts of Chinese prison administrators, who have avowedly socialist imperatives and who are generally sympathetic to the idea of heeding the damage of structural violence:

Responsibility for deviant behaviour is usually attributed to the external environment [...] These negative influences may not necessarily reflect on the reality of the environment, but on the individual’s perception of these realities. Consequently, the entire rehabilitation process is based on the task of re-educating the offender [...] to respond to the environment within a socialist orientation.

Much like the latter perspective, Haney (2005: 81) insists that “contextual, situational and structural forces” are absolutely imperative to improve upon negative behaviour, and yet imprisonment, as our dominant sentencing regime, still feeds off the (discredited) individualistic model of accountability and responsibility, thus hinting at the importance of interdisciplinary enquiry.

The Frankfurt School’s interdisciplinary preoccupation, as I explain in section 4.2 below, has a valuable contribution to make to the re-conceptualisation of criminology in the Global South, particularly in post-apartheid South Africa. Western criminology as a discipline is stuck, as noted above, in an epistemic impasse: our post-colonial, post-modern world, which is teeming with complex, even ‘wicked’ problems (such as crime in an increasingly unequal society), renders purely empirical study inadequate for making any meaningful intellectual headway. That having been said, the uncanny possibility (to borrow a term from Freud and Žižek) remains that perhaps vested interests (obscure funding) have a hand in keeping our circumscribed criminological perspective akin to that of the frog at the bottom of the well (to use a well-known Chinese metaphor): seeing only a small portion of the sky is analogous to mainstream criminology’s empirical tunnel vision augmented by an absence of a theory of ideology.

Another area in which Critical Theory has made a notable contribution is in illuminating the seminal distinction between so-called ‘conventional crime’ and the unacknowledged ‘crimes’ of the rich and powerful. Greater understanding of the nature of ‘climate crime’ is, for example, increasingly leading to civil disobedience among the youth on a trans-cultural scale. This discussion now takes us into an examination of the historical formation of the prison-industrial complex in South Africa.

The prison-industrial-complex

The murky workings of the prison-industrial complex have been defined as “a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need” (Schlosser 1998). Reiman, Quinney, Angela Davis and Michelle Alexander have all shed light on why this institutional apparatus is simultaneously fanning incarceration rates and generating top dollar from the perpetual recycling of (ex-)offenders in stigmatising, shaming cultures like those found in South Africa and the US. Said in another way, imprisonment as our dominant sentencing regime is ripe for an ideological critique, as outlined in section 4.2 below. I therefore consider the prison-industrial-complex to be an example *par excellence* of a suitable object of a Marxist reading of crime in capitalist society, especially bearing in mind its insidious contribution to crime in, for example and for our purposes, South Africa.

In this regard, Taylor and his group of co-researchers have highlighted the fact that, unless criminologists face the key question of 'Whose law and whose order is being protected?', one's methodological framing, considered in the previous section, will remain myopic, i.e., devoid of context (Taylor, Walton and Young, 1973). More recent research has centred around the prison-industrial-complex and its methods of feeding off the alienation of marginalised groups (the poor, the unemployed, the homeless, etc.) by recycling criminogenic individuals for reasons of profit (Lötter 2018: 145-148). As Michelle Alexander (2012: 95-96) explains:

The disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loic Wacquant as a "closed circuit of perpetual marginality". Hundreds of thousands of people are released from prison every year, only to find themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to find themselves in precisely the same circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status.

I argue that the stigmatisation of ex-offenders, directly, and the profit motive as it has come to be embedded in the PIC, indirectly, are important, though certainly not exclusive, drivers of South Africa's unsustainable rates of incarceration and recidivism.

By way of illustration, my own research interest lies in understanding the prison-industrial-complex and the ways in which that phenomenon is greased by the recycling of ex-offenders in a stigmatising, shaming culture within the context of imprisonment as our dominant sentencing regime. This project draws inspiration from Žižek's (2008) psychoanalytic insight regarding the return of the repressed, noted in section 4.2 below.

One observes the 'return of the repressed' in the crowding of the lucrative and politically secure prison system with the poor and vulnerable (Lötter 2018: 145-148). In addition, because the poor generally have far less privacy than the rich and powerful, the crimes of the poor are far easier to detect and police (Reiman 1990: 8-9, 14, 48, 80-115).

With regards to the US context, Michelle Alexander (2012) explored the issue of 'racial profiling' so as to demystify that jurisdiction's so-called 'war on drugs'. This has led to the overrepresentation of African American and Hispanic convicts (particularly if they are poor) in the criminal justice system of that country (Reiman 1990: 115). It has been demonstrated that in post-apartheid South Africa it is not race but money and social status that determine overrepresentation in

our prisons (Lötter 2018: 145–148). Since its transition to a non-racial society in 1994, neo-liberal incentives have focused on the importance of money and class as the issue of race became superseded by the former.

At this point, it is almost a truism that in post-apartheid South Africa the ideal of rehabilitation has, following the American model, been effectively abandoned in favour of warehousing and managerialism (Davis 2003: 40, 43; Muntingh 2008). In the words of Mary Bosworth (2010: 169), “while prisons have always been used to control the poor and the disorderly, the extent to which incarceration in the 1990s became divorced from any of its historical justifications for justice, crime reduction, or rehabilitation is remarkable”. That the rehabilitation ideal is still present in the vision and mission statements of the Department of Correctional Services (DCS) in South Africa is either the result of ignorance, deception, or is otherwise simply inexplicable. An illumination of the material imperative of the prison-industrial complex has thus shown the objective of rehabilitation in this country to be a myth.

The PIC as a concept is further explained by Davis, the well-known US prison abolitionist who once ran as the Presidential candidate of the Communist Party in the United States, when she says that, while most people assume a link between crime and incarceration, the truth is a great deal more nuanced. The following – somewhat lengthy – quotation is well worth citing:

The link that is usually assumed in popular and scholarly discourse is that crime produces punishment. What I have tried to do – together with many other public intellectuals, activists, scholars – is to encourage people to think about the possibility that punishment may be the consequence of other forces and not the inevitable consequence of the commission of crime. Which is not to say that people in prisons have not committed what we call “crimes” – I am not making that argument at all. [...] Those communities that are subject to police surveillance are much more likely to produce more bodies for the punishment industry. But even more important, imprisonment is the punitive solution to a whole range of social problems that are not being addressed by those social institutions that might help people lead better, more satisfying lives (Davis 2005: 37–38).

In the context of Davis’s exploration of the prison-industrial-complex, apart from the bizarrely superfluous Ebongweni C-Max prison facility in Kokstad (almost certainly an importation of American penal hardware), consider the much-ventilated issue of so-called fiscal dumping in Bosasa’s dealings with the DCS. Although ‘fiscal dumping’ may be explained as wasteful expenditure

to avoid underspending, it would be more intellectually honest to question why these funds were not used to alleviate a number of critical problem areas such as overcrowding, staff shortages and the neglect of structural maintenance in the department.

By way of illustration, although there is no question that the DCS is faced with a great many challenges (Sarkin 2008), for it to have a significant portion of its budget not utilised at the end of the financial year despite these aforementioned pressing needs, might strike the public as strange. This seemingly curious conduct could be explained if the rationale was to engage in so-called fraudulent 'fiscal dumping', i.e., spending money on spurious projects, such as an alleged pre-payment for televisions at vastly inflated prices (Basson 2019: 48-49), for the benefit of selected service providers (Seleka 2019).

The elephant in the room that demands addressing is whether or not it makes more sense to think of the phenomenon of 'fiscal dumping' as a deliberate and calculated effort to have money 'available' at the end of the financial year, in order to 'waste' those funds and in the process benefit a particular service provider, namely Bosasa (as it was known then) and its affiliate companies, as well as designated officials in the department. I am in agreement with Styan and Vecchiatto (2019: 50) who define 'fiscal dumping' as "money [that] was not being used by the department for the programmes it was intended for". In terms of an ideological critique of incarceration, the prison has failed to deliver what it had promised us (inroads on crime and recidivism), and from the point of view of the test of immanent criticism, it has botched the test on its own terms by fanning recidivism to the point of shamefully pursuing another altogether fraudulent agenda.

I argue that the prison-industrial complex (as a species of corruption) is relevant to the legitimacy of the prison as an institution (modelled on the discredited idea of individual responsibility, as I pointed out in section 2 above), since it has succeeded in repurposing an outdated institution for profit, if nothing else, once it had abandoned rehabilitation, while at the same time it has failed in its promised goals of fighting crime and curbing recidivism.

Another profitable angle for exploring the intimate relationship between this form of 'fiscal dumping' and the PIC, is to consider Angela Davis's observation that funds are unjustifiably diverted into unnecessary incarceration projects, while more worthwhile socio-economic factors, such as housing, education and basic health care, are overlooked (Davis 2003: 102; Lötter 2018: 147-148). If praxis and theory go hand in hand in achieving emancipatory goals, as the first generation of Frankfurt School scholars, Horkheimer and Marcuse, suggested, exercises (such as this contribution) should become commonplace in the everyday practice of the

craft. In the words of Angela Davis (2007), “Herbert Marcuse taught me that it was possible to be an academic, an activist, a scholar, and a revolutionary”.

For an analogy closer to home, which illuminates Angela Davis’s thinking on the phenomenon of the prison-industrial-complex, the tobacco industry has been attempting to force the South African government’s hand on the issue of the ban on the sale of tobacco products during the COVID-19 lockdown. Counsel for the Fair-Trade Independent Tobacco Association (Fita), the umbrella organisation for independent tobacco producers in South Africa, argued before a full-bench of the Pretoria High Court that the decision was not evidence-based. The World Health Organisation’s report, which the Minister relied upon to frame her promulgation of regulations under the Disaster Management Act, is actually inconclusive on the issue of whether or not smoking leads to greater susceptibility to catching the virus (Ndaba 2020). The claim that the ban aims to save lives has also been attacked as irrational; since nicotine is extremely addictive, it has allowed for a boom in the illicit trade of cigarettes, the ingredients of which – in contrast to legal tobacco products – are unregulated and potentially even more harmful. At the time of writing, the panel of three judges had not yet ruled on this issue.

These considerations lead to the glaring question of what motivated the ban if the thinking that informed it is devoid of reason. Johann van Loggerenberg (2019: 129), a tax evasion expert formerly employed by the South African Revenue Services, alludes to the fact that the responsible Minister, Nkosazana Dlamini-Zuma, may have links with Adriano Mazotti and Edward Zuma, alleged barons of the illicit tobacco world. The latter has benefited greatly from the ban on legal tobacco products. At the same time, the fiscus has lost at least R2 billion on the collection of so-called ‘sin’ taxes from the sale of tobacco products (Van Loggerenberg, quoted in Haffajee 2020), whereas Mazotti allegedly helped to finance Dlamini-Zuma’s presidential campaign. If these suspicions are true, this would be an excellent example of special interests parading as general interests, as Habermas would put it. Such a scenario is analogous to how the prison-industrial complex operates according to a business model not for the benefit of combating crime and slashing recidivism, but rather having the opposite effect by encouraging crime (in the recycling of ex-offenders in and out of prison and portraying the poor as criminogenic, among other tricks of the trade). This application of Reiman’s Pyrrhic defeat theory, which I explore in section 4.3 below, is a feasible (albeit Marxist) explanation for both the prison-industrial-complex and the irrational banning of tobacco products. Again, if the ban on tobacco products failed the test on its own terms (immanent criticism), then, as I have shown to be the case with the prison-industrial complex, we are entitled to assume that an altogether hidden agenda is being pursued, fuelled by the perpetuation of vested interests masquerading as general interests (as Habermas points out in section 4.2 below).

In this section I have attempted to show how critical theory could be used to explore the phenomenon of the prison-industrial complex and its insidious moorings in South Africa, an exercise which would not have been possible without a Marxist lens. Critical theory's Marxist and psychoanalytic underpinnings have been very successful in elucidating the ways in which this phenomenon has come to obscure our understanding of 'crime' and, in view of the Bosasa tender rigging and bribery scandal implicating the DCS, have blurred the demarcation between conventional 'crime' and 'legitimate' business. Analysis by way of ideological critique has been valuable in showing that the phenomenon of incarceration has failed on its own terms, by abandoning the ideal of rehabilitation and by pursuing an illegitimate agenda, the prison-industrial complex, which has actually encouraged crime rates. This observation also ties in well with Colin Leys's (2008a, 2008b) contention that the modern state has infused its agenda with that of business, so as to form a rent-seeking criminal governance intent on usurping the functions of the constitutional state by way of state capture (Johnson 2015, Bhorat et al. 2017). This perspective complements Reiman's 'Pyrrhic defeat theory,' considered in section 4.2 below, which postulates that the criminal justice system in capitalist societies actually achieves its goal when it utterly fails to curb crime. With this in mind, I consider, in the following section, how the Frankfurt School has explicitly influenced Marxist-inspired criminologists in forging their views on crime and society.

Critical theory

The influence of the Frankfurt School on Marxist criminology

Marxism, as a respectable methodology and theoretical perspective, became suspect as a result of historical upheavals, namely the collapse of the Berlin Wall in 1989 and the disintegration of the Soviet Union in 1991. However, it is suggested that a recent resurgence of interest in Marx, as well as Freud, has provided an opportunity for a revitalisation of criminology in South Africa. In terms of cause, we can at least partially thank Thomas Piketty's contribution to the study of inequality, as well as Žižek's well-known integration of Marx with Lacan's so-called orthodox interpretation(s) of Freud, for this revival of interest. My aim with this paper is to demonstrate how Critical Theory has come, or, at the very least is able, to enhance praxis in post-apartheid South Africa. Criminology is the one area of study where class conflict is clearly observable in late capitalism (Quinney 2008/1970, 1974, 1977).

This contribution notes how Critical Theory has influenced and complemented the intellectual efforts of Marxist criminologists, such as Jeffrey Reiman's 'Pyrrhic

defeat' theory of criminal justice and prison abolitionist activists, such as Angela Davis's contributions to the debate on the prison-industrial complex. In this vein, I aim to demonstrate the value of Critical Theory in criminology for the South African context.

Reiman (1990: 180n1) remarks in his provocatively entitled book, *The Rich Get Richer and the Poor Get Prison*, that the Frankfurt School has influenced him in rounding out his ideas on crime in capitalist societies. Other covert signs of the influence of the Frankfurt School on Reiman's work are his explicitly Marxist approach to the study of crime, and the ideological critique (a uniquely Frankfurt School tool of analysis) which he employs (Reiman 1990: 138) to show that the focus on the poor as criminogenic is a deliberate diversion from the crimes of the rich (Reiman 1990: 129-133).

Angela Davis (2005: 20-21), who studied under Horkheimer, Marcuse and Habermas and is a world-renowned prison abolitionist activist, replied to a question during an interview on the influence of critical theory in the shaping of her views on the prison-industrial complex with the following:

Well, I've certainly been inspired by critical theory, which privileges the role of philosophical reflection while simultaneously recognizing that philosophy cannot always by itself generate the answers to the questions it poses. When philosophical inquiry enters into conversation with other disciplines and methods, we are able to produce much fruitful results. Marcuse crossed the disciplinary borders that separate philosophy, sociology and literature. Adorno brought music and philosophy into the conversation. These were some of the first serious efforts to legitimate interdisciplinary inquiry.

It is interdisciplinary perspectives, as Angela Davis and Horkheimer (1993/1931: 6-11, 14) point out, which have highlighted Critical Theory's contribution to the understanding of difficult social problems (an aspect on which I have elaborated in section 2 above). The demonstrable impact of the Frankfurt School in the work of these scholars has great societal significance, as the application of their work to criminological issues in post-apartheid South Africa, explored below, shows.

Even though Bert Olivier (2018: 34) has seen fit to indict (critical) theory for its allegedly limited ability to "at best prepare the subject for action in sociopolitical reality by stressing – as the theorists I have enlisted to demonstrate this do in different ways – the difference between theory and action", I maintain that he sets the bar unrealistically high. While it is true that many theoretically unsophisticated people have taken up the fight against evils such as slavery

and apartheid, post-structuralism, with which Olivier is sympathetic, presents socio-political arrangements as inevitably and necessarily heterogeneous. Consequentially, theory can and does inspire people to take up battle in appropriate cases, as the examples of Angela Davis and Jeffrey Reiman show. In any event, theory is and remains important as a tool to critically scrutinise our goals in designing civil protests against injustice. To mention but one example, even planting a trillion trees, as the Trump administration proposed doing, will not alleviate the problem of global warming as these trees would take a hundred years to mature. Obviously, we have run out of time to avert the crisis and by all accounts, humanity has about a decade to play with, if we are to ease the worst consequences of the disaster. Theory is therefore needed to proverbially see the forest for the trees.

Such insights from Critical Theory have led to a growing realisation that 'context' is crucial for the understanding of so-called conventional crime. Next, I will consider the potential contribution of Critical Theory to criminology, in particular.

Critical Theory in the tradition of the Frankfurt School

Marxist-inspired Critical Theory in the tradition of the Frankfurt School has played an integral part in shaping local Critical Criminology, prioritising the contemplation of 'context' and the central question of 'Whose law and order are we protecting?' I will briefly note selected ideas from the contributions of two representatives of this tradition, namely Habermas (second generation) and Žižek (third generation), whose works suggest many potentially beneficial applications for criminology in South Africa. I chose these two over other suitable scholars because, to my mind, they have the most to offer such a project in an attempt to infuse critical thinking into post-apartheid South African criminology, as I will attempt to illustrate below.

David Rasmussen (1996: 11), in the introductory essay to *A Handbook of Critical Theory*, defines Critical Theory in the tradition of the Frankfurt School as a particular intellectual orientation towards a critical theory of society, with an emancipatory vision forged on the relationship between praxis/theory, that found its inspiration in the ideas of Marx and Freud. One may add to Rasmussen's definition that the research programme is continually adjusted for contemporary conditions. A brief overview of certain valuable ideas generated by Habermas and Žižek follows.

Habermas's seminal contribution to Critical Theory should best be examined within the context of his important debate with Gadamer. The former is perhaps the foremost representative of the second generation of the Frankfurt School. Habermas (1970: 287; McCarthy 1978: 173-174; Warnke 1987: 81-82) disagrees

with Gadamer's opinion that the hermeneutical exegesis of the text is sufficient to combat the ideological distortions which invariably skew the text's meaning, whether as a result of psychic repression (Freud) or socio-political oppressions (Marx), as it were (McCarthy 1978: 190). In response, Habermas (2008/1970) contends that the existence of 'systematic communicative distortions' proves Gadamer's notion of 'a fusing of horizons' (*Horizontverschmelzung*) to be political naivety. This idea of 'systematic communicative distortions' implies a need for the application of an ideological critique to every studied text. According to Marcuse (1960: 25), ideological critique will show up an artefact's ideologically compromised nature, which is demonstrable via the device known as 'immanent critique'. Immanent critique has been defined as "criticism on its own terms to show up its inconsistencies and thereby create the possibility of radical change – once it is clear that the phenomenon has failed on its own terms" (Lötter 2018: 63).

My argument regarding the aforementioned debate is that so-called 'systematic communicative distortions', as Habermas puts it, are crucial to understanding important aspects of contemporary criminology in post-apartheid South Africa, such as the PIC, a topic which I explored in section 3 (above). The tendency of business to align its agenda with that of government, a feature of what Leys (2008a, 2008b) calls 'total capitalism', presupposes conflict between generalised interests and vested interests, or what Habermas (1975: 113-114) refers to as 'special interests'. In fact, to invert Habermas, general interests are obliterated by the promotion of special interests acting as pseudo-general interests. We can accordingly expect resistance to any argument contesting a socio-political project embodying 'special interests' – irrespective of how well our arguments have been formulated (Lötter 2019: 500).

Žižek (2012) suggests that emancipatory goals, as encapsulated in movements such as the Arab Spring and Occupy Wall Street, both occurring in 2011, are attainable provided we aim for a negative utopia (in the Hegelian sense of the word and not that of the positive utopia of the Marxist persuasion). He explores this important idea in his book, *In Defense of Lost Causes* (2008). Žižek is of the view that these emancipatory dreams are achievable if we are prepared for continuous postponements. In this vein, he argues (2012: 134) against following mainstream tendencies in working towards the achievement of our negative utopia. Finally, the idea of the 'return of the repressed', which Žižek borrows from Freud, is applicable to the South African context in the sense that ex-offenders are a floating, surplus population unable to reintegrate into our harsh, stigmatising, shaming culture. This dynamic has added significantly to this country's unsustainable rates of recidivism (an idea which I explore in greater detail in section 4.3 below).

I am therefore of the considered view that philosophy, in particular Critical Theory, as I will attempt to show below, has a valuable contribution to make to criminology, the latter being an exercise in conflict resolution within the context of post-apartheid South Africa. This is, of course, provided that criminology does not operate according to the sinister agenda, as Reiman (1990: 129-133) and Quinney (1974, 1977) suggest, of focusing on the detection and prosecution of the petty crimes of the poor, in order to disguise the more monstrous crimes of the rich and powerful. If, however, the latter scenario proves to be the case, this would also explain, at least in part, the reason why reflexive disciplines, such as philosophy, would be shunned as credible perspectives on so-called 'conventional' crime. This observation adds to the value of critical theory in the South African context, where the discipline of criminology has become solely focused on an obsession with empirical results. I argue that criminology's focus on the so-called 'objective' realm of empirical data (which, considering its political bias, is anything but objective) is actually a smokescreen to conceal its ideological function of protecting the ruling classes. This is the reason that the kind of ideological critique practiced by the Frankfurt School is necessary for the local context.

Furthermore, I argue that the Frankfurt School can inject great value into the otherwise stultifying discipline of criminology, by means of Habermas's idea of 'systematic communicative distortions' and Žižek's polymerisation of an orthodox interpretation of Freud (notably the uncanny idea of the 'return of the repressed') with that of Marx. In the next section, I will demonstrate an application of the ideas of two Marxist criminologists to the insights of the Frankfurt School for implementation in South African criminology.

Conflict criminology and Critical Theory's general application in South Africa

This paper proposes that the legacy of Marxist-inspired criminology since the 1970s (Critical Criminology or conflict criminology as it is known in the UK and the US, respectively) has provided valuable insights into the sort of class conflict that is most intensely observed in such severely unequal countries as South Africa. Clearly, this methodology can be applied fruitfully to the local context. In this section I will explore, on the one hand, the work of two Marxist-inspired criminologists, Reiman and Quinney, and, on the other hand, those of Habermas and Žižek, the ideas of these latter that I outlined in section 4.2. Even though recent historical incidents have cast suspicion on the value of any Marxist perspective, as I noted above, it remains an invaluable aid to understanding the

construction of social reality (Eagleton 2012; Johnson 2015; Piketty 2014), which includes the nature of crime in capitalist societies.

In general, a Marxist perspective adds value to the exploration of a range of divergent crimes, such as rape, an instrument of control to keep women in their place, and violent property crime, such as robbery and home invasion. Colleen Hall (1988) notes how feminists have used a Marxist lens to make sense of the violence against and oppression of women as a 'class', cast in the role of stereotypical mothers in patriarchal society. As she points out "nature's purpose [...] need not be ours" (Hall 1988: 77n44). Within the South African context, Anine Kriegler (2018) contends that growing inequality can be directly linked to an explosion of violent crime aimed at property theft driven by resentment at being excluded from affluence. Said in another way, affluence is the cause and the violence is the symptom. The greed of the private sector (including its influence on government), as well as neo-colonialism, are the drivers of inequality in South Africa. By the same token, it is argued that the appearance and operation of the prison-industrial-complex, which I discussed two sections earlier, could, for example, not be understood without the aid of a Marxist reading of crime in capitalist society (Lötter 2018: 46-47). Incidentally, both Kriegler (2018) and Johnson (2015) use a 'silent' Marxist reading, i.e., they do not make their methodological influence explicit in their work on crime and criminality in South Africa. My thinking is that scholars in South Africa are wary to attach their names to a Marxist analysis because of its tendency to put off a somewhat conservative readership in this country, not to mention its link to a discredited communist agenda in Eastern Europe and elsewhere.

Meanwhile in the United States, Marxist criminologists such as Jeffrey Reiman (1990) and Richard Quinney (2008/1970) explain the notions of so-called 'crime' and 'crime detection' by referring to the theoretical constructs known as the 'Pyrrhic defeat theory' and the 'social reality of crime'/'objective mirage of crime', respectively, in capitalist society. These are applied in the South African context to demonstrate the argument and tease out its consequences.

Reiman's 'Pyrrhic defeat theory,' which has been very influential in the United States, explains why the rich and the powerful, for the most part, are able to escape justice in capitalist societies (Reiman 1990). Since the system was never designed to 'beat' crime but specifically designed to 'fail', it serves as a Pyrrhic defeat, since it is a failure in name only (Reiman 1990: 5). Reiman argues that by portraying the poor as 'naturally criminogenic' and focusing prosecution efforts on their petty 'crimes,' the rich and powerful are left in relative peace to get on with becoming even richer, even if this results in the latter committing monstrous crimes (as I argue below). The Oxford Dictionary has in fact just announced that

'climate emergency' is their Word of the Year for 2019. Naomi Klein (2015: 254, 255) uses unapologetically the phrase 'climate crime'.

Quinney (2008/1970) demonstrates that crime, far from being a pathology in a healthy society, is a direct symptom of the inequality and oppression perpetuated by the state, which is in the service of the ruling classes. Said in another way, according to Quinney, the rich and powerful are able to define particular behaviour as criminal, as well as shape the discourse of the public understanding of, and reaction to, crime. Richard Quinney (2008/1970: 5-6), considered to be one of the 10 most quoted criminologists of all time, has popularised the understanding that the so-called 'objective' reality of crime is pure hyperbole, since the behaviour which is labelled as 'criminal,' as well as the public understanding of that process, are constructed and shaped by vested interests (typically those of the rich and powerful). Crime, to paraphrase Quinney, is a socially and politically constructed 'reality'. The undeniable deception of the prison-industrial-complex in South Africa, discussed in the next section, also points to the way in which capital, on the cusp of the 21st century, has come to collude completely with government, furthering the vested interests of the rich and the powerful.

By way of example, consider how the much-lauded value of fairness operates in favour of the rich and powerful during criminal proceedings. During Fred van der Vyver's trial, wherein he was accused of having brutally murdered his girlfriend, Inge Lotz, his defence argued that the police had gone out of their way to fabricate forensic evidence in order to secure a guilty verdict. Three pieces of apparently damning forensic evidence were tendered by the prosecution, namely a demonstrable theory that Fred had killed Inge with an ornamental hammer, a bloody footprint in the bathroom, and finally, a fingerprint on a DVD cover. I will only focus on the last item. As Inge had rented the DVD shortly before her death, proof that his fingerprint was on the DVD cover would place Fred at the crime scene. During the trial, the defence convincingly showed that this fingerprint-evidence could not have come from a DVD cover, but probably from a glass, as it was lifted from a curved rather than rectangular surface. To be able to contradict and sway the judge, however, the defence had to fly in expert witnesses (whose combined testimonies related to all three items of evidence in dispute) from the Netherlands, the UK and the US, at a cost of no less than R9 million (Klatzow and Walker 2010: 226). Keep in mind that the defence's original allegation was not that the police were merely mistaken, but that the evidence against Fred was actually fabricated. How many other accused could afford to drum up a defence capable of proving fabrication? There is precious little doubt that had Fred, or his family, not had such money, he would have ended up in prison. As it so happened, Fred lost his civil suit for malicious prosecution, in which he sued the SAPS for R46 million on appeal, which strengthens my argument that so-called 'justice' in a

capitalist system, wherein money is the arbiter of truth, is the preserve of the rich and powerful. Consider also the infamous case of former president Jacob Zuma, who has managed to evade going to trial on a vast number of serious crimes ranging from bribery to corruption for almost two decades and is, either way, unlikely to see his trial concluded. Said in another way, the criminal justice system is a net designed to catch the small fish.

Apart from the rich and powerful, such as Fred van der Vyver and Jacob Zuma, being able to escape justice, if that is indeed what happened/ is happening, consider too the immense profits generated with no regard to the environment by industrialists such as the Koch brothers in the US (Klein 2015; Lötter 2018: 114–115; *Merchants of doubt*: 2014). This reckless, selfish releasing of carbon emissions for profit has contributed significantly to climate change to the detriment of all living beings on earth.

In addition to the invaluable ideas which Marxist-minded criminologists have generated, it remains for me to outline how three ideas from the Frankfurt School also have immensely beneficial practical implications for criminology in the South African context, as indicated in the introduction.

So far, I have attempted to demonstrate how Habermas's idea of 'systematic communicative distortions' is applicable to the phenomenon of the prison-industrial complex in South Africa, since it distorts our understanding of so-called conventional 'crime' by artificially encouraging the recycling of (ex-)offenders for corporate financial gain. Similarly, Žižek popularised the Freudian concept of 'the return of the repressed' (for example, and as discussed, the endless recycling of ex-offenders for profit) and expresses sympathy for reviving lost causes (such as the abandoned ideal of rehabilitation in Western corrections). My discussion, in section 3 above, of the driving force behind the prison-industrial complex, and the ways in which unsustainable recidivism rates in South Africa benefit the tenderpreneurs, explored in section 3 above, is academically relevant. Since the recycling of ex-offenders maintains the PIC, it has a vested interest in maintaining a stigmatising shaming culture based on imprisonment as our dominant sentencing regime. As such, it stimulates crime rather than the reverse, namely, the sustainable resettling of ex-offenders to curb recidivism. South Africa has one of the highest rates of incarceration in Africa (Sarkin 2008; World Prison Brief 2019) and one of the highest rates of recidivism in the world (Ngabonziza and Singh 2012: 87–102; Schoeman 2010: 80–94).

The unsustainable rates of recidivism within the PIC should make it clear that imprisonment as our dominant sentencing regime has not delivered on its implicit promise to make us safer, and I suggest that the reason for this, at least partially, lies in the PIC being the driving force behind both imprisonment and the recycling

of ex-offenders. If South Africa can re-orientate its resettlement practices of ex-offenders towards sustainability, as has been done fairly successfully in China, this would have a greatly beneficial impact on local crime and recidivism rates (Lötter 2018: 261-263). Žižek's (2008) idea of the 'return of the repressed' (the uncanny or *Unheimlichkeit*), read with Foucault's idea of a floating 'surplus population' in mind, ties in with a politicised labelling of 'ex-offenders' which certainly drives recidivism, as it is 'counter-productive' and 'criminogenic' (Braithwaite 1989: 20, 100). The idea of the 'return of the repressed', such as is seen in recidivism, comes in handy here because of a failure to resettle ex-offenders sustainably. According to the labelling perspective, a harsh, stigmatising, shaming environment drives the formerly incarcerated from mainstream society into the arms of criminal sub-cultures (Geiger 2006; Lötter 2018: 145-148).

In view of the role of criminal sub-cultures in perpetuating crime, I have attempted in this section to demonstrate an insidious distinction between conventional crime and crime committed by the rich. This feeds into my main argument, which is the need for critical or conflict criminology in South Africa, as well as the poverty experienced by the discipline in terms of the present discourses/ narratives that it entertains. In fleshing out this last step in my argument, that is, the general application of conflict criminology complemented by selected ideas from the Frankfurt School in South Africa, I move to conclude my paper with a few thoughtful ideas.

Concluding remarks

The following contribution has been an attempt to make the case that South African criminology has become moribund as a result of an obsession with empirical results, which has led to a neglect of 'context' in the intellectual understanding of crime. Such empiricist dogmatism is also informed by an overt emphasis on individual responsibility in a society that denies its own responsibility for its efforts in creating forms of structural oppressions that have been shown to be criminogenic. This state of affairs is to be expected in a discipline without an awareness of the impact of ideology (such as their own political situatedness and the origin of their research funding) on their work. This is compounded by government's tendency to fuse its agenda with that of business, as Leys has argued, the Bosasa-tender rigging scandal being a case in point.

I have also argued that notable features of local criminology direct attention away from the monstrous criminality perpetrated by modern society's wealthy elite, such as climate crime and the insidious operations of the PIC. Additionally, I have suggested that a combination of both conflict criminology and Critical Theory, as produced by the Frankfurt School and which has influenced such

criminologists as Jeffery Reiman, Richard Quinney and Angela Davis, could ameliorate this dire situation.

I have demonstrated my line of argumentation with an overview of the criminological value of context and the absence of an awareness of the role of ideology, in particular the seminal distinction between so-called 'conventional' 'crime' and the unacknowledged crimes of the rich and powerful, as well as the ways in which our understanding of crime is shaped by vested interests (as propounded by Quinney).

I then considered the phenomenon known as the prison-industrial complex, to which I employed ideological critique (as well as its corollary, immanent criticism), a tool of analysis popularised by the Frankfurt School. I have placed great emphasis on how a Marxist reading of crime in South Africa, being a capitalist state, can identify and delineate the features of an unmistakable prison-industrial complex, both in the US as well as locally, especially (once again) with reference to the Bosasa tender-rigging and corruption scandal implicating several high-ranking office-bearers inside DCS. The evidence suggests that within the DCS, funds were illegally diverted from projects in dire need of financing, such as long-overdue maintenance, overcrowding and staff shortages, to peripheral issues (such as televisions at inflated prices), by way of a measure known as 'fiscal dumping'. Whereas in the US the phenomenon of the prison-industrial complex has taken the form of sidetracking funds from important socio-economic projects, such as education, infrastructure and housing, in South Africa; it has taken the form of interdepartmental corruption in the form of 'fiscal dumping' for the sake of indulging in negligible projects. Critical Theory, especially its ideological critique, is desperately needed to unmask social evils such as the PIC.

In conclusion, my argument was enhanced, firstly, by the debt owed to the Frankfurt School by conflict criminologists (such as Angela Davis), secondly, by an overview of useful ideas offered by Critical Theory and, finally, by an application of ideas from both the Frankfurt School and Marxist-inspired criminologists (Reiman, Quinney, Davis) to the South African context. Given this context, as I have suggested, no criminologist can afford not to be deeply self-reflective of her or his political situatedness.

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