

A Practical Critique of Social-Scientific Reason in the Historical Study of Crime

The Politics of Historical Criminology and its Place in the
Historiography of Crime and Criminal Justice

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Abstract

Significant conceptual, professional and institutional developments have taken place over the last fifty years or so at the crossroad of criminology and history that deserve critical scrutiny and examination. From the consolidation of a *historiography of crime and criminal justice* to the emergence of a *historical criminology*, the shaping of a historical dimension to the study of crime signals at once a ‘historical turn’ in criminology and a social-scientific turn in historical scholarship. Though historical sociology provides a plausible justification for both of these – incomplete – turns through the notion of a *historical social science* – which can be defined as a movement towards history ‘as’ social science and a movement towards history ‘in’ social science – it is analytically limiting to reduce crime historians and historical criminologists to sociological objects. Instead, it is possible to make sense of those who participate in the historical study of crime as *political subjects* and of crime histories and criminological histories as forms of political practice and modes of political participation. Borrowing from Hans-Georg Gadamer’s proposal for a social science modelled on the basis of Aristotelian practical philosophy, the thesis advances a practical critique of social-scientific reason in the historical study of crime and explores historical criminology’s current hopes in the historiography of crime and criminal justice. An intellectual field and academic space decidedly theoretical, that is, apolitical and ‘indifferent to the present’, the historical study of crime is presently witnessing the emergence of a historical criminology that claims to be conducive to *practical knowledge*, to knowledge that is present-oriented and politically useful. In the context of a rather ambiguous encounter between crime historians and historical criminologists, then, this thesis develops a practical discourse around historical criminology with the aim of problematizing the uses of history for the study of crime and

of casting additional light on some of the social and political implications of doing social science while making use of history.

This is to certify that:

- i.* The thesis comprises only my original work towards the degree of Doctor of Philosophy,
- ii.* Due acknowledgment has been made in the text to all other material used,
- iii.* The thesis is less than 100,000 words in length, exclusive of tables, maps, bibliographies and appendices.

Roberto Catello

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The present is neither a given nor an arbitrary designation of “now”, that momentary experience of temporality which vanishes as soon as we name it. The present is another name for the political organization of existence...The present is both fate and choice, history and politics.

Sheldon Wolin, *The Presence of the Past*

If rhetoric is the politics of discourse, as discourse itself is the politics of language, then there is no such thing as politically innocent historiography.

Hayden White, *Rhetoric and History*

Introduction

Beginning in the second half of the 20th century, the historical study of crime has grown into a crowded intellectual site for the production of knowledge and subjectivity in academia. The ‘crime historian’, an unknown label in historical scholarship before World War II, is today an increasingly recognized professorial and academic specialization within university settings and research institutes. Since the opening of the postgraduate Centre for Social History at the University of Warwick in 1968, writing the history of crime has become a transcontinental activity. Conventionally said to have been sparked by the intersecting of historical research and social theory at the hands of British Marxists historians like E. P. Thompson, the historical study of crime has comfortably found its ways into university curricula, international conferences and intellectual fora. A remarkable contribution to our knowledge of the past, producing ‘crime histories’ is becoming, to a rising number of historians, a familiar way of performing the present.

Thinking historically about crime, however, is not a history specialization but a practice as old as the modern study of crime. In fact, only when the criminalists of the late 19th century defined crime as a social phenomenon and no longer as a legal entity did the history of crime become a reality separated from the history of criminal law and the history of civilization. At the same time, it was only when the social sciences officially admitted their dependency on historical thinking in the 1960s that the historical study of crime came to be widely appreciated as an academic and professional practice. A scenario in which the historical study of crime becomes fully monopolized by crime historians and substantially unaffected by a criminological counterpart, then, should probably arouse suspicion, as it would be unreasonable not to think of a ‘hybrid’ area of study like the history of crime as a fundamentally cooperative and collaborative space. Though studying crime historically appears as an interdisciplinary endeavour at its core, there is little

controversy in saying that, compared to the crime historian, the ‘historical criminologist’ has been markedly less successful at mastering the interaction between historical and social-scientific thinking that has underpinned the development of the historical study of crime since the second half of the 20th century. In other words, ‘historical criminology’ is still a study area in the making and, while the British Crime Historians have been meeting regularly since 2008, the historical criminologist remains an uncertain and dubious kind of academic agency lacking a professional code of conduct and a stable institutionalized presence worldwide.

This thesis is a historico-philosophical investigation into the hopes for a historical criminology in the present meant to problematize the ‘use of history’ for the study of crime. Through a critique of social-scientific reason in the historical study of crime inspired by Hans-Georg Gadamer’s critical writings on the human sciences and on technical rationality in the scientific age like *Reason in the Age of Science* (1981) and *Praise of Theory* (1998), I aim to develop a practical discourse around historical criminology. To that end, I offer a number of historico-philosophical reflections that fall under five interlinked research areas; social science’s relation to theory and practice (chapter 1), the meeting and overlapping of historical and social-scientific methods and research paths (chapter 2), the emergence of a historical dimension to the study of crime as a result of such a meeting (chapter 3), the place of historical criminology within the historical study of crime, as well as the differences and affinities between historical criminology and crime history and between progressive and regressive history (chapters 4 and 5), and the history, professionalization and specialization of Western historiography (chapter 6). These reflections fundamentally target contemporary historical criminology, which claims to be a generator of practical knowledge in the context, however, of a

historical study of crime that risks becoming increasingly technical, scientific, and engulfed in dimensions of productivity.

The overall view advanced in this thesis is not that the social sciences need to become more practical than they already are, but rather that understanding that they are practical is paramount to doing the job of the social scientist well. In this regard, the practical concern with social science that informs this thesis has little to do with the application of social-scientific theory – or lack thereof. The practical orientation of this study is not necessitated or instigated by the all-too-familiar anxiety that the social sciences have fallen way behind the natural sciences in terms of reaching ‘practical accomplishments’ and that they might “be condemned to political, economic and social irrelevancy” (Stehr 1992, p.ix). Instead of perpetuating the dubious separation of theory and practice as one between abstract and applied thinking, which leads us to see the theoretical sciences as determining “the relationship between things” while practical activity “consists in applying what they have taught us” (Podgórecki 1975, p.6), with the help of Gadamer I return to Aristotle’s original distinction between theory and practice to come up with a more innovative framework for understanding historical criminology’s claim to practical knowledge. Aristotle was the first to really popularize such a distinction and, as Bernstein (1971) suggested, it was Aristotle who brought the concept of practice – what the Greeks called *praxis* – to a quasi-technical level; with Aristotle, *praxis* begins to designate an ethical and political way of leading life proper to free individuals. It is this Aristotelian conception of practice that can help us appreciate the scope of historical criminology today.

The term ‘*praxis*’ in modern-day language connotes more than an Aristotelian or antique notion, as it has been conceptually adopted by a variety of philosophical movements such as Marxism, existentialism, pragmatism and analytic philosophy

(Bernstein 1971). In criminology, the notion of praxis was equated to Marxist emancipatory practice by Downes (1979) in ‘Praxis Makes Perfect’ and today it largely remains associated with revolutionary practice and radicalism – though a few attempts have been made at using the notion of praxis as an analytic category, as in Shover’s (1975) ‘Criminal Behavior as Theoretical Praxis’. My understanding of praxis is an Aristotelian one; praxis means active political participation, or the activity of a free citizen in the course of political life and a ‘philosophy of practice’ is, in the broadest sense possible, a philosophy “which bears a reference to the affairs of human life” (Aristotle 1797, p.408). Since Aristotle took human beings to be political beings, to him the science of politics belonged to practical philosophy “as its most noble part” (Gadamer 1981, p.89). Aristotle said *ο δε βίος πράξις, ου ποιησίς εστιν* – “life is action and not production” (1916, p.32), or “life is doing things, not making things” (1959, p.17). Praxis can therefore translate as ‘practice’, ‘action’, ‘doing’ or ‘doing things’, while ‘production’ and ‘making things’ were referred to by the Greeks as *poiesis*.

Poiesis broadly refers to that sphere of human activity called *work* – i.e., life is about being free to practically execute one’s own will, not about following standardised and uniform procedures that are externally imposed because serving the purpose not of the maker or producer but of what ought to be made or produced. Poiesis was understood by the Greeks as the productive knowledge that sustained the city-state, as the different sets of technical skills necessary to run the economy of the polis. At an individual level, poiesis can be interpreted as ‘expert know-how’, or “a knowledgeable mastery of operational procedures” (Gadamer 1981, p.92). For the Greeks, praxis and poiesis were *modes of being* – “The mode of being of humans does not consist in producing, but in acting” (Taminiaux 1991, p.111) – which explains why Aristotle believed that working was incompatible with being a citizen. Practice “consists of choosing, of deciding for

something and against something else” (Gadamer 1981, p.81), poiesis demands rigorous processes and provable results – to bring something into being, to create something that did not exist before, to make things, requires architectonics. Practice relates to “the all-embracing problem of the good in human life” (1981, p.117), while poiesis is confined by the limits of a determinate area, place or space. Practice entails ambiguity, unpredictability and irreversibility, poiesis relies on univocity, regularity and tidily arranged procedures that can be reversed. Poiesis exploits the neutrality and anonymity generated through the exhibition of general skills that are not unique to anybody in particular, whereas praxis refers to the unique exercise of one’s citizenship and the execution of one’s rational purposes in actual conduct, or to a practice of ‘individuation’ within a plurality of voices and activities:

It is the activity by which individuals relate to others in their sharing of words and deeds; in such a sharing, what is at issue is their being-together and the exercise of all the virtues that this sharing presupposes: temperance, courage, justice, and prudence (*phronesis*). (Taminiaux 1991, p.112, italics in original)

In this context, practice should not be equated to the application of theory, but to acting in the service of and participating in the shaping of the good – not of the ‘Good’ per se, which for Aristotle (1915, p.1218a) is not practical and therefore useless to practical philosophy, but of specific forms of it.

To be practical, for instance, can mean acting in the service of freedom; “Liberation is praxis: the action and reflection of men and women upon their world in order to transform it” (Freire 2005, p.79). Relatedly, ‘being practical’ can be deemed a defining feature of human beings:

The difference between animals – who...cannot create products detached from themselves – and humankind – who through their action upon the world create the realm of culture and history – is that only the latter are beings of the praxis. Only human beings *are* praxis—the praxis which, as the reflection and action which truly transform reality, is the source of knowledge and creation...It is as transforming and creative beings that humans, in their permanent relations with reality, produce not only material goods – tangible objects – but also social institutions, ideas, and concepts. Through their continuing praxis, men and women simultaneously create history and become historical-social beings. (Freire 2005, pp.100-101, italics in original)

Practice (praxis) can be rightly understood as superior to both theory (theoria) and production (poiesis); practice can literally free us, it can take us beyond our present condition into a changed state of affairs that was not causally predetermined by forces external to ourselves. Yet, partly due to the efforts of the British empiricists of the 17th and 18th century to deny any substantive conception of practical knowledge, and partly due to positivism's undercutting of the foundations of human agency and its attempted rewriting of the laws of action in accordance with determinist science since the first half of the 19th century, we might justifiably talk of a partial eclipse of praxis in the modern history of Western thought (Duke 2016).

This partial eclipse is well reported in the critiques of technology and technical rationality launched by Gadamer, Hannah Arendt, Jürgen Habermas, Richard Rorty and others whose works and writings had *phronesis*, which translates as prudence or practical wisdom and rationality, as well as practical philosophy, as their underlying common vision (Bernstein 1983). As Tabachnick (2004) suggested, such writers saw in *phronesis* – which Aristotle (1886, p.188) defined as “a formed faculty which apprehends truth by reasoning or calculation, and issues in action, in the field of human good” – an ideal candidate to counter-balance our contemporary over-reliance on technical know-how and technological thinking:

Instead of politics by polling and statistics, it promotes the insight and character of individual political leaders and citizens. Instead of standardized or computerized education programs, it gives power back to teachers and students. Rather than imposed economic and social development packages, it relies on indigenous knowledge. Thinkers over a wide range of fields and schools commend *phronesis* because it seems to at once inject discourse and ambiguity into politics and ethics, emphasize the priority of the individual in society, highlight the importance of traditions, and, of course, help us out from under the heavy weight of reason, logic, science and technology. (Tabachnick 2004, p.998)

Though I occasionally rely on Arendt and Bernstein, and though I discuss Bent Flyvbjerg's (2001) contention that all the social sciences should become ‘phronetic’, the practical critique of social-scientific reason that follows is principally based on a framework that originates in Gadamer's proposal for a social science modelled on the

basis of Aristotelian practical philosophy. This is the context of chapter 1, where I argue that historical criminology can think of itself in practico-philosophical terms and where I engage with Gadamer's critique of the human sciences to delineate the conceptual horizon of the thesis; that of a modern ideal of reason which ought to be 'for use', a reason which is 'active' in the sense that its meaning is grounded in action and production and not in theoretical activity, in praxis and poiesis and not in theoria.

When it comes to the social sciences, this ideal of reason tends to express itself in two main forms; that of technological dreams and that of emancipatory utopias. In the first instances, social scientists act in the capacity of experts, 'social technologists' and social engineers who, through the authority of science and technical know-how, help give life to a technocratic and technological society that deals with practical problems through technical solutions. In the case of the historical study of crime, its technological dream could be said to be that of *a science of the present*, of a *total* history of contemporary crime-related phenomena predicated on a perfect knowledge of their past that would allow crime historians to secure a specialized monopoly over the history of crime. As for emancipatory utopias, these intuitively refer to attempts at changing existing structures via social-scientific means – as with Marxist social scientists who think of themselves as agents of historical change – but, as shown with Gadamer's help, they can also be understood more modestly as critiques of the present. Foucault's (1979) *Discipline and Punish*, Rothman's (1971) *The Discovery of the Asylum* and Ignatieff's (1978) *A Just Measure of Pain*, for instance, could be conceived of as critiques of the present in the sense that they do not try to be projects of action but, at best, efforts at doing theory as practice. It must be acknowledged, moreover, that in the historical study of crime we also find works that claim to be written by 'distant spectators', though we should not go as far as thinking of such works as *inactive*, because they are still part of modern systems of

‘knowledge production’ as opposed to scholastic approaches to ‘knowledge preservation’.

A major aim of this thesis is that of looking at the shaping of a historical dimension to the study of crime as if it were a practical and productive capacity of that very same professional and academic activity – the activity of studying crime for a living, of studying it to know what it is, and of studying it to produce a better politics of crime in the present. I could have shown, historically and sociologically, how the historical study of crime came to be structured at the level of a cognitive, institutional and disciplinary division of labour both externally – i.e., in its relations to historical sociology, intellectual history, institutional history, penal history, etc. – and internally – at the level of the allocation of responsibilities and distribution of tasks within the historical study of crime and at the level of the creation of specific classifications for the study of criminal phenomena in historical perspective, like ‘the history of organized crime’, ‘the history of policing’, ‘gender and crime in history’, ‘homicide in early-modern England’, and so on. This could have proved a useful exercise, but my overall methodological premise is oriented not toward knowing the past but toward activating certain historical and philosophical discourses – and, more broadly, toward contributing to the development of a practical discourse of social science for historical criminology.

Historical criminology can be defined as “research which incorporates historical primary sources while addressing present-day debates and practices in the criminal justice field” (Lawrence 2018, p.1) and it may, therefore, be said to primarily concern criminologists using historical data for the purposes of their own discipline. The term also refers to an academic approach to the study of criminal phenomena that, on the one hand, offers a valuable tool-kit for the transfer of criminological frames of questioning into the domain of historical research and, on the other, serves as a heuristic that can be usefully

deployed to forge past and present for the sake of practical and policy objectives. Crime historians are barely aware of a co-worker named ‘historical criminologist’, possibly because the development of a historical study of crime has been marginal in scope if one contextualises it and measures it against the booming expansion of history specializations since the 1960s. Such a co-worker does somehow exist, however, and this thesis aims to cast some additional light on this dubious subject called the historical criminologist by way of a reflexive engagement with one of the most significant developments in the field of social-scientific knowledge production over the last fifty years or so; the overlapping of historical research and the study of crime. In particular, the thesis hopes to furnish an innovative framework for interpreting historical criminology’s practical knowledge claims.

To that end, this thesis attempts to activate several discourses of history and philosophy, as in chapter 1, where the focus is on the philosophy of the social sciences and on the social sciences’ relation to politics and political participation. As discussed in this thesis, the social sciences can develop a self-understanding modelled on Aristotelian practical philosophy and historical criminology can feasibly be thought of as a practical philosophy of crime-related phenomena. That, however, requires a detailed understanding of what constitutes an academic praxis – something which this thesis offers by returning to Aristotle with the aid of Gadamer. Chapter 2 is more concerned with the institutionalization of the social sciences than with their philosophy and it centres around the development of a ‘historical social science’ in the second half of the 20th century. The consolidation of a historical social science around the 1960s and 1970s constitutes the historical – as opposed to the conceptual – entry point to my reflexive engagement with the overlapping of the study of the past and the study of crime. Historical social science can be interpreted as an academic attitude grounded in the belief that historical

understanding is foundational to social-scientific thinking – and vice versa. Though at times understood as just another tool for crafting the past, it is possible to think of it as a mode of action to perform the present; instead of thinking of historical social science solely as a poietic and technical activity, i.e., as a scientifically-minded way of writing history and a new set of social-scientific techniques for carrying out historical research, one can conceive of it as a practical undertaking, or else, as an academic praxis. To be a historical social scientist is not a career; *it is to be in a certain relation to knowledge*, a relation that implies a certain appreciation of the consequentiality of knowing. In this, historical social science is somehow reminiscent of the Social Science Movement, also discussed in chapter 2. The Social Science Movement speaks of the prehistory of American social science; between the middle of the 19th century and the early 20th century, the social sciences in the United States were understood by many as a united moral force meant to deal with contemporary ills for the social good. The members of the Movement could, therefore, be said to have epitomized both the ideal of ‘technological dreamers’ and of ‘emancipatory utopians’. By reviving the history of the Movement, I hope to reactivate the practical sentiment that often underpinned the doings of social scientists in the second half of the 19th century while also warning about their optimism regarding the applicability of technical solutions to practical problems.

As suggested in this thesis, historical criminology is an academic activity pertaining to the historical study of crime, which, in turn, can be thought of as a province of historical social science. This is in fact a central point made in this thesis. The reason a ‘historical’ study of crime today is even possible is because since the second half of the 20th century the social sciences have more or less overtly undergone a ‘historical turn’, a process best encapsulated by a reflexive engagement with the concept of historical social science as developed by Wallerstein (1977, 1988, 2000, 2001, 2008). The thesis therefore

progresses from historical social science (chapter 2) to the historical study of crime (chapter 3) to historical criminology (chapter 4). Chapter 3 focuses on the activity of studying crime historically. An exploration of the field of the historical study of crime is initiated to highlight relevant aspects of the relation between theory and practice in the historiography of crime and criminal justice. The chapter suggests that studying crime historically implies one overarching intellectual admission; that crime and criminal justice are products of history. It goes on to show that the ‘historicity’ of criminal phenomena became a systematic subject of academic scrutiny in the second half of the 20th century and that the historical study of crime has since taken two primary active forms; first, that of an interplay of social-scientific and historical research methods geared towards the discovery of the universal truths of the history of crime and, second, that of a study only tangentially interested in the ‘truth’ of the past of crime and primarily aimed at providing clear routes to the reform of criminal justice *in the present*. The first form best captures the working spirit of crime historians, the second corresponds to a description of the general attitude of historical criminologists.

As shown in chapters 4 and 5, historical criminology is practical in the sense that it is present-oriented, whilst crime historians tend to see their work as past-oriented, that is, as ‘indifferent to the present’. But it would be somewhat imprecise to say that historical criminology is interested in the ‘practical past’ while crime historians concern themselves with the ‘historical past’. We may not say that crime history is theoretical and historical criminology practical. This is because both crime history and historical criminology methodologically require a degree of ‘theoretical’ engagement and sophistication – where theoretical means technical and scientific. Just to give one example, whenever one studies crime historically, a certain reliance on current criminological definitions and theories of crime and criminality must be granted. Simultaneously, various principles of

historiographical and archival research have to be followed. At the same time, the history of crime has developed its own theories and definitions – such as that crime is whatever the authorities of a given time want it to be, which was Pike’s historical definition of crime in *A History of Crime in England* ¹.

Hence, the historical study of crime imports theoretical and methodological constraints from criminology and historiography and adds its own technicalities on top of them. Moreover, both crime history and historical criminology only exist within academic and research settings, professional dynamics, working environments, intellectual markets – they are poietic, that is, they are both productive forces and instances of productive potentiality. Instead of a historical study of crime divided between a theoretical crime history and a practical historical criminology, then, it would be probably better to speak of crime history as a primarily productive capacity and of historical criminology as a productive as well as a practical one. *Historical criminology is the nucleus of the thesis*. There is no recognized initiator of historical criminology, though German politician and legal scholar Gustav Radbruch (1878-1949) was probably one of the first to use the term systematically to refer to a kind of analysis meant to disclose the historicity of contemporary manifestations of crime by comparing the ‘criminological physiognomy’ of different cultural periods. One of the criminologists who has arguably done the most to establish an autonomous conception of historical criminology is Paul Knepper and this thesis seeks to expand on Knepper’s (2014, 2016, 2018) and others’ (Churchill 2017; Knepper & Johansen 2016a; Lawrence 2012, 2016, 2018; Flaattenand and Ystehede

¹ As Pike himself put it:

Crime, then, – the crime with which the historian is concerned – is that which the law declares to be crime, or for which the state recognises a punishment, at any period over which the history extends. (Pike 1876, p.490)

2014; Yeomans 2018) work in the historical study of crime to help solidify a conceptual distinction between crime history and historical criminology.

Knepper argued that, for criminological purposes, historical research must go a step beyond revealing the past. History, to be of use to criminologists, must relate to present experience. There is, amongst historical criminologists, a commitment to ‘futurism’ (Knepper 2014, p.2082). This is a claim that I explore in detail throughout the thesis by juxtaposing historical criminology’s present-centredness and futurism with ‘historicism’ and by situating the emergence of a historical dimension to the study of crime within the history of Western historiography. The dialogue between historical criminology and crime history is the subject-matter of chapter 4 and is centred around historical criminology’s practical knowledge claims, its allegiance to futurism and its historiographical ambiguity. Here, the research question is formulated in terms of the power of human knowledge to embody professional agency – why is it that the proliferation of crime historians has not been paralleled by the flourishing of historical criminologists? Why has crime history – and not historical criminology – become the principal mode of producing knowledge in the field of the historical study of crime? The answer arguably lies in the value placed on the depoliticization of the past from within modern historical scholarship.

While most works of crime history follow E. P. Thompson’s postulation of a dubious separation – given his Marxist background – between historiography and politics in the historical study of crime, pioneers in historical criminology like Radzinowicz and Foucault popularized present-centred kinds of criminological histories – histories of the present, historical accounts centred on politics, that is, on ‘present history’. As shown in chapter 5, Radzinowicz and Foucault practiced ‘progressive’ and ‘regressive’ history respectively, both of which have a terminus in the present, not in historical knowledge

per se – and that makes them historiographic anomalies in the eyes of historians. Though Pratt (1996) argued in ‘Criminology and History: Understanding the Present’ that criminology became historical precisely when it adopted a Foucauldian posture – that of using history to study the present and not to hide in the past – it can be shown that Foucault did not inaugurate historical criminology, though he definitely helped shaping it, and that there are hopes for historical criminology beyond Foucault. In particular, historical criminology’s obsession with the present is at least as much a function of the influence of social and legal history on the historiography of crime and criminal justice as it is a function of the influence exerted in the field by Foucault’s genealogies and histories of the present.

Though up until the end of the 19th century it was a mantra to speak of history as ‘past politics’ and of politics as ‘present history’, the emergence of a scientific discourse of history over the last one hundred and fifty years or so fundamentally put in question and altered historians’ relation to politics and the present. In light of this, the final chapter (6) revisits key moments from the history of Western historiography in order to properly historicise the development of a historical dimension to the study of crime. From at least the 6th century BC, when history was first conceived by the Greeks as *episteme* and theoretical knowledge, it has been known that history has a purpose for life – from this, Cicero (1967, p.224) derived that history is life’s teacher. The great achievement of modernity was that of showing that life is the purpose of history – the modern individual thinks historically in order to live and is therefore always half-slave to the past and half-slave to the present. While modern historians up to the 19th century were often engaged in public and rhetorical exercises exalting the human character of history, the emergence of source-based history and the professionalization of historical studies in the last decades on the 19th century led historians to experience their work as a full commitment to

understanding the past premised on technical procedures and on a total indifference for the present.

The architect behind this rigidly empirical, technical, source-based and past-oriented historiography is generally taken to be Leopold von Ranke, a German historian who raised history to a science, a profession and a basic component of university curricula by establishing the intellectual respectability of historicism, or the historiographical doctrine which asserts that historical epochs are governed by their own historicity and therefore do not prefigure one another in any way other than temporally. If the past is not to be looked upon as if it were a precursor to the present, then history cannot be drawn into the governance and management of contemporary issues – “So far is history from improving politics that it itself is more usually compromised by it” (Ranke 1981b, p.108). Objectivity to Ranke meant impartiality, extinguishing the self and letting the past speak for itself. The task of the historian is not that of informing and instructing the present by judging the past, but that of facilitating human understanding by making it aware of “the inner core of events” and of their “deepest mysteries” (1981b, p.111). Historical knowledge is not useful because it can be put to work in the present but because it belongs “to the perfection of the human spirit” (1981b, p.111). In Ranke’s view, history was as different from politics as theoretical philosophy was different from practical philosophy (1981b, p.114).

Rankean historiography was still in vogue in the middle of the 20th century, even though by the early 20th century historiographical traditions antithetical to historicism like ‘new history’ and social history had already matured into valuable historiographical alternatives to it. Though social history is substantively engaged with in chapter 3, it is in chapter 6 that this historiographical tradition, together with that of new history, reveals itself in full light as a rejection of Rankean historiography understood as ‘spectator theory

of the past'. In the first decades of the 20th century, inspired by the Social Science Movement, new historians in the United States combined history and the social sciences for the sake of the present. At around the same time in France, Lucien Febvre and Marc Bloch, founders of the *Annales* and pioneers of social history, were working on a multidisciplinary approach to a social-scientific history of the present. To them, history could not but be history of the present and Febvre's motto in the last years of his life was 'history, science of the past, science of the present' (Braudel & Wallerstein 2009, pp.187-188). The historical study of crime, I argue in this thesis, is a contemporary form of social and new history that can conceivably reject the spectator theory of the past in favour of present-oriented historical accounts – of histories of the present. This is in fact what historical criminology in its entirety is premised upon, a commitment to the present and to the future and not to the past.

It should not be surprising that the historical study of crime came to flourish in the 1970s under the auspices of 'new social history'; while Thompson's pioneering work on crime history somehow helped transform the history of crime into a neutral and disinterested history specialization of a Rankean kind – a point elaborated in chapters 3 and 4 – the potential for the historical study of crime to be integrated within a broader science of the present cannot be underestimated. This is in fact the technological dream of crime history, which is not to say that it is the mission statement of contemporary crime historians. Rather, it is a reminder that, because the traditions of new and social history helped make historical social science and the historical study of crime possible, crime historians and historical criminologists today have a responsibility to balance not so much theory and practice but action and production, praxis and technical know-how, citizenship and expertise. In other words, the question is not whether crime historians and historical criminologists should be distant spectators or active political agents, but rather whether

participants in the historical study of crime can shape their relation to historical knowledge in such a way that is not simply conducive to knowledge-production but also to praxis and political action. Though new and social history can mistakenly be taken to be nothing other than history specializations, and therefore little more than instruments of knowledge-production for researchers and scholars, this thesis exposes their link to praxis and action and invites a reflection on the politics of historical criminology and of the historical study of crime more broadly.

As shown in this thesis, new and social histories designate kinds of social-scientific history that continue to contribute to the shaping of the historical study of crime in the present. At the beginning of the 20th century, these historiographical traditions laid the foundations for doing history as science of the present, while also keeping alive the democratic and emancipatory ethos of the Social Science Movement and an enlightened willingness to use knowledge to deal with practical challenges. Then particularly since the 1960s and 1970s, they became integral parts of historical social science and made it possible to study crime historically. The unity between practical and political knowledge and technical and scientific knowledge that new and social history enable, is the unity that grants the historical study of crime its present form; that of a past-oriented crime history growing increasingly technical and specialized in dialogue with a present-oriented historical criminology that is interested in practical knowledge targeting relevant crime-related issues in contemporary society. New and social history inform the historical study of crime in such a way that the historiography of crime and criminal justice cannot fail to notice its own practical orientation. But the professionalization of historical scholarship since at least the last two decades of the 19th century and the emergence of history specializations particularly since the 1960s threatens the practicality inherent to the activity of studying crime historically. The scientification of historical knowledge can

degenerate, within the historical study of crime, into an infinite search for the truths of the history of crime that is antithetical to the present's practical need to know about specific, past crime-related phenomena.

As argued in this thesis, the task of 'specialists' and 'experts' such as crime historians or historical criminologists is not that of turning knowledge into specialisms that most cannot appreciate but rather to make complex knowledge intelligible for the sake of some form of good. This is a point I make repeatedly in the thesis by invoking the need to balance action and production in one's life – including academic life – and to find a compromise between expert know-how and political participation in contemporary academia. Crime historians have so far been inclined to produce works of crime history that are indifferent to the present. This has allowed them to 'work' on the history of crime without deriving practical lessons from it. On the other hand, historical criminologists are attempting to show that their 'job' can constitute and correspond to a praxis, to a form of active citizenship. This is why we begin in chapter 1 with Gadamer's critique of the social sciences; as Gadamer argued, the most sensible way for the social sciences to develop a self-understanding that reflects the deeds and actions of social scientists is to make sense of social-scientific activity as practical capacity. Life is action and not production, as Aristotle said, and so doing social science and studying crime historically are to be understood primarily as practical undertakings and only secondarily as productive activities.

1.

A Practical Rationale for Social Science

The Place of Historical Criminology in the Study of Crime <> Social Science through the Lens of Aristotelian Practical Philosophy <> Theoria and Praxis in Ancient Greece <> An Example of Practico-Philosophical Social Science <> Technological Dreams and Emancipatory Utopias

This chapter introduces the practical critique of social-scientific reason that instigates this overall study. In one sentence, the chapter is a proposal for a historical criminology understood as practical philosophy of criminal phenomena. Starting from a conversation with philosopher Hans-Georg Gadamer about the social sciences' relation to theory and practice, the chapter shows the relevance of the conceptual triangulation between *theoria*, *praxis* and *poiesis* – the ancient Greeks' terms for theory, practice and production – for a practical understanding of social science, i.e., of historical criminology. The chapter's main point of reference is Gadamer's hermeneutical re-enacting of "Aristotle's ideal of *praktike episteme*" (1975a, p.311) or the Aristotelian ideal of practical knowledge and philosophy. Gadamer's willingness to fuse hermeneutics and practical philosophy was inspired "by the possibility of a genuine return to Plato and Aristotle" (Lawrence 1981, p.xv). He was personally concerned with the relation between philosophical hermeneutics and practical philosophy and with making fruitful use of the "notable tension in Plato and Aristotle between a technical notion of knowledge and a practical, political notion of knowledge" in the context of "the matrix of modern science and theory of science" (Gadamer 1981, p.131). In such a context, Gadamer pointed out that the model of the natural sciences may be complicit in the concretization of the 'technological dream' of the social sciences – for simplicity, we could speak of the social-scientific application of 'technical solutions' to social and practical problems, or else of a 'technocratic society' –

and that practical philosophy can function as a means of re-orienting ourselves in the present. The function of practical philosophy, according to Gadamer (1986a, p.164), is that of assisting our “concrete, practical ability to size things up insofar as it makes it easier to recognize in what direction we must look and to what things we must pay attention”. It helps us find the right target of action and, in that regard, a key responsibility of practical philosophy is that of telling us how to best apply theory to practice (Foster 1991, p.77).

Gadamer feared the rise of social engineering, technical thinking and technological applications of science, which threaten the possibility of pure research – of doing science because it is *beautiful*. Particularly since the beginning of the 20th century, industrialization pushed theory into the domain of political pragmatism and social utilitarianism, effectively subordinating theory to practice. He was puzzled by the pragmatist notion that the beautiful and superfluous cannot be nurtured unless necessities have been already accounted for (1998, p.33) and he doubted more generally that individuals can realize the Enlightenment superstition that the world can be shaped in our image. Reflecting on “our technological attitude toward the world”, Gadamer wondered:

The genuine researcher is motivated by a desire for knowledge and nothing else. And yet, over against the whole of our civilization that is founded on modern science, we must ask if something has not been omitted. (Gadamer 1976h, p.10)

From Gadamer’s point of view, that which is “distinctively human” is not poesis, or production, but rather superfluity, that which “serves no end, not even human needs” (Dawson 1998, p.x). In this, I would argue, Gadamer can help us see with the eyes of the ancient Greeks and guide us in our explorations of their use of terms like *theoria* and *praxis*. The chapter first locates the place of historical criminology in the historical study of crime in terms of an opposition with crime history. Crime historians are generally said to be concerned with the historical past and to be uninterested in the present. On the

contrary, historical criminologists are making themselves known for the focus they place on current problems and contemporary issues – they are ‘historians of the present’. This makes it intuitive to think of crime historians as ‘distant spectators’ and of historical criminologists as ‘active political agents’ and, since these words translate into ancient Greek as ‘philosophers’ and ‘politicians’ or ‘statesmen’, the chapter proceeds by relying on Gadamer’s take on the moment when Aristotle first drew a line between philosophy and politics in order to make sense of the opposition between crime history and historical criminology.

After introducing historical criminology’s relation to the study of crime, the chapter engages with Gadamer’s proposal for a social science modelled on the basis of Aristotelian practical philosophy. The social sciences are forms of self-knowledge, practical knowledge, thus the modern concept of science as method and research finds an always-already limited application in the study of human affairs, as in sociology, history or economics. The modern methodological distancing actuated by social scientists in the course of their professions, Gadamer argued, should be understood as a mode of *participation*, as affinity and proximity, and not as a way of neutralizing prejudices for the sake of objectivity. The chapter further explores the tension between participation and ‘distanciation’ by looking at the context of Greek antiquity in which Aristotle first articulated the distinction between *theoria* and *praxis* and between theoretical and practical knowledge. A few considerations about practical knowledge itself are made, and an instance of social science modelled on Aristotelian practical philosophy – namely, Flyvbjerg’s ‘phronetic social science’ – is discussed. Gadamer’s critique of the human sciences sits at the conceptual centre of the chapter, and shows that it makes little sense to worry about distant spectators in the humanities and social sciences of today because, in their current form, these are discernibly meant for turning knowledge into products

(poiesis) and turning knowledge into action (praxis), for concretizing ‘technological dreams’ and for realizing ‘emancipatory utopias’.

The starting point of this thesis, then, is a divided conception of a historical study of crime as consisting of a principally productive capacity which goes by the name of crime history but also of an increasingly practical tendency which corresponds to the development of a historical criminology.

The Place of Historical Criminology in the Study of Crime

“History”, said Muir and Ruggiero (1994b, p.vii), “begins where justice ends”. It takes only a small imaginative jump to conceive of historians in terms of criminal categories as ‘thieves’ – individuals practicing a special kind of grave robbing. “Fulfilling the demands of their discipline, historians justify their little thefts, unveiling past derelictions and expropriating judicial secrets” (1994b, pp.vii-viii). By contrast, to conceive of historians as criminologists seems to require a more critical imaginative effort, and an effort which may precipitate perplexing conceptual situations. After all, one might say that the historian’s interest in the criminal record is simply that of setting the record straight, that of arriving at the ‘truth’ of ‘what happened’ in the past for the sake of historical knowledge of crime-related phenomena. Criminologists are rather more preoccupied about the present than the past (Lawrence 2012; Churchill 2018b) and have historically been uninterested in past criminal records, though have rarely ventured into criminal archives for the sake of the present, for instance, for the purpose of influencing criminal policy or effecting a change in existing criminal justice practices, or at least to generate knowledge that can inform debate on contemporary issues and problems. Justifiably, then, criminologists may look at crime historians with a rather suspicious eye. Nonetheless, a complex cooperation between the study of history and the study of crime began in the

1960s which suggests that historians and criminologists managed to find a space for disciplinary cohabitation, a space which today goes by the name of *historical study of crime*. How to understand this cooperation is the focus of the next chapter, which attempts to make sense of this interplay between history and the study of crime from the broader perspective of the shaping of a ‘historical social science’ in the second half of the 20th century. For now, we can focus more specifically on the fact that, as J. A. Sharpe (1999, p.1) indicated in the opening sentence of *Crime in Early Modern England 1550-1750*, “crime is now accepted as a serious subject of historical study”.

The point that Sharpe makes may seem simplistic but is not; the phenomenon of crime has become a ‘serious subject’ of historical analysis in the sense that we now have a *historiography of crime and criminal justice*. While popular interest in notorious criminals and their deeds can be said to be perennial, ‘crime history’ and ‘criminal justice history’ were scarcely explored subjects in the 1970s and it is only in the last fifty years or so that the idea of a history of crime and criminal justice came to refer to “an interdisciplinary field of research into the past that engages a variety of topics, methods, and theories” (Knepper & Johansen 2016b, p.1) and that borrows from legal and institutional history, social and cultural history, colonial history and gender studies, as well as criminology and socio-legal studies, cultural studies, philosophy and other social sciences. This is not the place for a detailed account of the development of the history of crime and criminal justice, but it is important to note that such a development has had much to do with social history. Neglecting the possibility of thinking about crime as a historical phenomenon could be regarded as one variation of a broader tendency, that is, that of treating social history as “the Cinderella of the historical sciences” (Sharpe 1999, p.2). Although social history may be understood, uncritically, as a history specialization concerned with ‘social life’ as opposed to ‘political life’ or ‘economic life’, it might be

worth noting that, in the same way in which the history of criminal law is a *legal* history of crime, so the social history of crime is a *criminological* history. The history of criminal law is a history of crime *as* legal construct or concept while a criminological history of crime understands it as a social construct or concept (Dubber 2016). Put differently, social history may be more of a methodological requirement for writing the history of crime and criminal justice than a thematic choice within it.

To understand such a claim, it may be necessary to zoom out and put aside the relationship between history and criminology for a moment and think more broadly about the relationship between history and science instead. The historical record per se does not define or classify crimes – which is why historians of crime and other participants in the historical study of crime have to borrow or bring their terms from elsewhere, i.e., from the social sciences. At times this is so evident that, as Knepper and Johansen noted, it can be hard to meaningfully describe works in the field as conventional studies of history:

Given the exchange between historians and social scientists during the past four decades, it is difficult to meaningfully describe research on crime and criminal justice in the past within the study of “history”. There are statistical models of crime trends, micro-histories of murder, and genealogies of punishment in society; police history, historical criminology, and postcolonial studies of law. This interdisciplinarity presents newcomers with a bewildering array of concepts and methods, discussions and debates that range across the social sciences and humanities. (Knepper & Johansen 2016b, p.1)

Though not all of the approaches mentioned by Knepper and Johansen have a straightforward relation to science, statistical models clearly do and, as expressed quite lucidly by Weisser (1979, p.2), there is a reason why scientific models are appealing to the history of crime and criminal justice; historians have realized that “crime is a verifiable social trend” and that crime-related data can be put to use as a way of testing an unlimited number of hypotheses about social development:

Therefore, in the place of detailed grisly descriptions of spectacularly fiendish crimes, or pseudo-scientific investigations of a particularly crime-prone segment of the population, we can now turn to quantitative studies that link the incidence of crime to demographic movements, harvest levels and even temperature trends. (Weisser 1979, p.2)

The point is not that statistics are reliable tools to study crime in the past – from an early stage, many crime historians have been modest and humble about their findings, especially when based on quantifying and statistical techniques (Elton 1977, p.9). Rather, the point is that crime is measurable; it is a phenomenon that can be analysed on a societal basis through social-scientific models and methods meant to do precisely that. And that is so because crime is not an individual occurrence but a social reality – which is the empirical basis of the science of modern criminology without which much crime history could not have been conceived.

Crime history and criminal justice history would not have become the “mature and vibrant academic community” (Lawrence 2016, p.31) that they constitute today without the aid of criminological definitions and frameworks of inquiry. At the same time, historical criminology can hardly be called a sub-discipline or academic specialization, and its practitioners do not espouse a unified set of values, concerns or methods. To be sure, as Pratt (1996) noted over twenty years ago, it is possible to recognize trends that point at the coming into being of “a significant body of research in historical criminology which has developed in recent years” – in Australia and New Zealand, works such as Finnane’s (1994) studies on policing, Fairburn’s (1989) analyses of 19th-century crime patterns and Pratt’s (1992) own writings on the history of the New Zealand penal system could be mentioned. Overall, however, it is demonstrably true to say that crime historians feature more prominently and highly in the hierarchies of the historiography of crime and criminal justice than historical criminologists do. At this point in history, it is also true that they have certainly done most of the work in the field. The space that separates the crime historian from the historical criminologist is the entry point of this thesis; why is it that the crime historian, and not the historical criminologist, has come to constitute the right – or at least the preferred and more legitimate – form of professional agency and

academic subjectivity to deal with the study of crime in the past? Why has this ‘job’ not been deemed suitable by those who work in the field of criminology and criminal justice? In a way, a short and partial answer has – if implicitly – already been provided when we briefly noted that criminology is fundamentally present-oriented and focused on contemporary problems, but it is crucial that we investigate more meticulously the reasons why criminologists have been reluctant to incorporate historical research and analysis in their works.

At the end of an interview conducted for *Issues in Criminology* in September of 1970, one of the most prominent American criminologists of the time, David Matza, was pressed by J. G. Weis (the interviewer) on the question of whether he believed social history would become a new trend in sociology – “Well, no – historians already do social history” (1971, p.52) Matza quickly replied. Weis responded that one could not find much social history within sociology, to which Matza agreed but pointing out that many graduate students writing dissertations under his guidance were doing so “in a kind of social historical way” (1971, p.53) and that explorations of historical topics were being encouraged. Weis noted that the same trend also appeared to be emerging in criminology departments, at which point Matza said the following:

I think that everyone has always said, or anyone with half an ounce of sense has always said, that a main defect of sociology and criminology is that they’re not historical. We’ve always admitted it, but we haven’t done anything about it. (Weis & Matza 1971, p.53)

As Dixon (1996, p.77) rightly pointed out two and a half decades after this interview, a great deal of historical works in criminology have been produced “since Matza’s acerbic comment”, yet history “remains marginalized as, at best, introductory or background matter in criminology”. Dixon was addressing a paper by Pratt (1996) – ‘Criminology and History: Understanding the Present’ – in which the central thesis asserted that the institutional and disciplinary development of criminology as a positivist, correctional

‘applied science’ made it indisputably hard to find value in historical analysis and, following from that, that it was Foucault’s ‘histories of the present’ that offered a different role for history in criminology.

In this view, criminologists really began to shape a common disciplinary interest in the past of crime and criminal justice when history started to be engaged with “*not to hide in the past but to critically interrogate what had made possible the present*” (Pratt 1996, p.62, italics in original). In Pratt’s words, Foucault brought about “a new vitality to historical criminology” by exposing the limitations of legal and penological histories which tended to assume an optimistic attitude towards the inevitability of progress and the infallibility of rationality in historical development – the so-called Whig view of history – and by offering strategies (his genealogies and histories of the present) that could be put to use to look at present dilemmas in criminology and other social sciences through historical lens. In response to that, Dixon argued that Foucault’s interest in the present is in fact shared by most historians, including crime historians – “a concern to explain the present can be found (overtly or covertly) in most histories which can be distinguished from mere antiquarianism” (1996, p.78) – and, in agreement with Dean (1994), suggested that what Foucault did was providing a *new* way of understanding the present via historical means. While it is fair to say that some works in the historical study of crime are “at pains to link historical material with current concerns and developments” (Dixon 1996, p.78), others, like G. Pearson’s (1983) *Hooligan*, have been accused of relying on evidence which appears “almost invariably impressionistic” (Tomlins 1985, p.138) due to the fact that such studies are predicated on present interests and viewpoints. In the historical study of crime, this passion for the present and this willingness to put knowledge in action indubitably predates Foucault.

To show that, one would only have to read the very first few lines of Max Horkheimer's preface to Rusche and Kirchheimer's (2003) *Punishment and Social Structure*, a pioneering work in the historical study of crime – as well as in the sociology of punishment – first published in 1939 for the International Institute of Social Research:

The International Institute of Social Research was established in Frankfurt and Main in 1923 as an affiliate of the University. In the spring of 1933 the Institute was closed by the German government. In 1934 the Institute transferred its main activities to New York City, where it is affiliated with Columbia University. The members of the Institute form a group of German émigré scholars working and teaching in the fields of philosophy, psychology, economics, sociology, and law. Their work is held together by a common purpose: *to make the social sciences useful for an analysis of the main tendencies of present-day society*. (Horkheimer 2003, p.li, emphasis mine)

The context in which *Punishment and Social Structure* was produced, offered in a nutshell in this quote, speaks volumes about the possibility of severing science and politics in turbulent historical times and, in a historiographical context, it reminds us of the dictum made famous by one of the pioneers of modern social history, Lucien Febvre – *there is no history except of the present* (see Burguière 2009, pp.22-26). Rusche and Kirchheimer's hypothesis in *Punishment and Social Structure*, as Melossi (2003, p.249) put it, was “the idea that there should be a direct positive relationship between changing imprisonment rates and changing unemployment rates” and their contribution to the historical study of crime came in the form of a study that, from the start, has been deemed reductionist but also attentive to the interrelation between culture and punitive methods (Sellin 2003, p.xlviii) ². They proposed to study the development of methods of punishment from a historical perspective, which meant that punishment had to transcend its bond with crime and show itself not as consequence or negation of crime, but as “a social phenomenon freed from both its juristic concept and its social ends” (2003, p.5). In their words, “punishment as such does not exist; only concrete systems of punishment and specific criminal practices exist” (2003, p.5). Rusche and Kirchheimer concluded

² On Georg Rusche and Otto Kirchheimer also see Melossi (2014) and Garland (1991, pp.83-110).

their study by arguing for the replacement of repressive penal policy with progressive penal policy; only a society capable of providing for its people a degree of security and decent living standards can affect the crime rate and, similarly, the futility of severe and cruel measures of punishment will not go away unless society solves its social problems first (2003, p.207).

This may serve as partial validation of Dixon's suggestion that we should be able to find works in the historical study of crime, whether written by historians or not, that attempt to offer "solutions to problems" and that aim "to be 'practical' or useful" (1996, p.78) without having to feel obliged to look back at Foucault when searching for ways of doing and using history in criminology. However, it might still be the case that Dixon overestimated the capacity of approaches other than the Foucauldian one when it comes to dealing with concerns about the present and contemporary problems within the historical study of crime – after all, Foucault's works can be, if carefully and selectively, characterized as 'problematizations' precisely because they make current problems the starting point of the analysis. The two alternatives to Foucault that Dixon mentions, the Whig history of Radzinowicz and others like Reith (1943) and Critchley (1970) – which often produced appropriately progressive titles like *The Conquest of Violence* – and the Marxist social history of E. P. Thompson and Douglas Hay, are clearly not meant to be guides to action and can be thought of as 'practical' only in the most general sense that they may enrich *historical consciousness*, which as Rüsen (2005, p.24) argued is "a prerequisite to action" and "a necessary prerequisite for orientation" in the present. As Gadamer (1986b, p.11) posited, historical consciousness is not "a particularly scholarly method of approach" but "simply the fact that our senses are spiritually organized in such a way as to determine in advance our perception and experience". Historical consciousness guides our appreciation of present actuality by reference to past actuality

and, by creating a temporal orientation, it “ties the past to the present in a manner which bestows on present actuality a future perspective” (Rüsen 2005, p.24). In this sense, historical consciousness can be said to have a practical function; “it bestows upon actuality a temporal direction, an orientation which can guide action intentionally by the agency of historical memory” (2005, p.25). If history is understood as an account of the past, as a perspective on ‘what happened’ before us, then it probably has no relevance to criminology other than in a strictly scholastic sense. But since history can be understood as “a meaningful nexus between past, present and future”, or as “a translation of past into present, an interpretation of past actuality via a conception of temporal change which encompasses past, present and the expectation of future events” (2005, p.25), then we can make more sense of the idea, discussed later in chapter 4, that historical criminology makes a commitment to ‘futurism’³.

Historical criminology can be defined as “research which incorporates historical primary sources while addressing present-day debates and practices in the criminal justice field” (Lawrence 2018, p.1) and it could, therefore, be said to primarily concern criminologists using historical data for the purposes of their own discipline. As Lawrence (2018) argued, such criminologists have predominantly made use of historical sources to ‘problematize’ and not to ‘explain’ contemporary events, which seemingly lends back credibility to Pratt’s contention about the Foucauldian orientation of historical criminology. This tension between problematization and explanation is both internal and external to historical criminology. From within historical criminology, these can be thought of as two kinds of *present-centredness* best exemplified by Radzinowicz’s Whig historiography and Foucault’s critical history. Radzinowicz’s accounts of the

³ This should not be surprising in the first place, for, as Churchill (2018b, p.524) suggested, criminology itself “has been concerned predominantly with describing the present, often with the intent of influencing the future”.

development of the modern institutions of criminal justice and criminal law are designed to explain the current functioning and scope of such institutions by fitting them, from a current viewpoint, into a rational process of historical evolution and progress. In such accounts, the development of modern criminology is seen as an affirmation of history doing its course, a natural and organic consequence of penal and scientific advances – an instantiation of ‘progressive’ history at work. Foucault’s histories, on the contrary, are meant to upset history rather than affirm it. They focus on present problems and trace their genealogy via historical means and narratives, thus opening up different paths for a ‘regressive’ kind of history. While historical works in criminology up to the middle of the 20th century tended to be present-centred in a progressive way, since Foucault it has become more commonplace for those involved in the historical study of crime to engage with historical materials in a regressive manner, that is, in a manner that is suited to problematizing the present and not to explaining it. But problematization and explanation could also be taken to encapsulate the currently available alternatives for the *modus operandi* of those who concern themselves with the historiography of crime and criminal justice more broadly, where explanation stands for a scientific, neutral and theoretical undertaking geared towards understanding the past and where problematization signals a more practical, political and participatory endeavour linked to present-day problematic experiences.

Though some might be justifiably adverse to the idea that history can be used for political and practical purposes, it needs to be pointed out that what made the historical study of crime really flourish were the intellectual, academic, political, ideological and, ultimately, cultural changes that took place after 1968. To say that the history of crime signals a shift in method while also signalling a shift in political consciousness is orthodoxy among crime historians. And although many would be reluctant to go as far as

calling crime history and historical criminology *political tactics*, it would be quite uncontroversial to say that the historical study of crime is a research area where a certain *historiography of the left* has been historically hegemonic. As we shall see in later chapters, this can once again be said to have to do with social history ⁴, i.e., with factors such as the influence exerted in the field – especially post-World War II – by the French *Annales*, which had pioneered a peculiarly ‘social’ understanding of historical practice since the 1930s, and by Marxist historians in Britain – who were arguably the first to systematically apply theoretical models to the historical study of crime in the 1960s. At this stage, what concerns us is the possibility of making sense of historical criminology in practical terms, of imaging it as a part of current political life, and the possibility of experiencing it as a practical philosophy of criminal phenomena.

Social Science through the Lens of Aristotelian Practical Philosophy

What exactly is included in such a request will become clearer as the study progresses and there is no doubt that some credible qualification ought to be made about it sooner rather than later. As a start, one may approach the following considerations as fragmentary at best and as pertaining to a wider line of inquiry. For now, it needs to be said that this study builds, among other lines of inquiry, upon a series of ideas elaborated by philosopher Hans-Georg Gadamer about the relationship between theory and practice, the scope of the human sciences, the relation between science and the public sphere and about reason in the age of science (1975a, 1975b, 1977, 1978, 1979a, 1979b, 1981, 1998). Gadamer provocatively invited the humanities and social sciences to think of themselves

⁴ As Vann noted in the 1970s, “most social historians are on the left”, with “conservative social historians being no more numerous than Republican folk singers” (1976, p.233).

in terms of Aristotelian practical philosophy and not in terms of the scientific method ⁵ – “The only productive or appropriate way for the human sciences to think of themselves”, he contended, “is on the model of Aristotle’s practical philosophy rather than the modern concept of scientific method” (1998, p.50) ⁶. Practical philosophy was Aristotle’s approach to questions about ‘the good’, though it may be provisionally understood in more general terms as a “philosophical analysis of human life and human attitudes, human actions and human institutions” (Gadamer 1979a, p.78). Springing from his writings on human affairs such as the *Ethics* and the *Politics*, practical philosophy can be thought of as Aristotle’s meta-discourse on the political nature of human life ⁷. The ‘practical’ in Aristotelian practical philosophy stands in opposition to the ‘speculative’ understood in a specific way; as Aristotle famously wrote in the *Nicomachean Ethics*:

⁵ “If we take a look at the positive research in the human sciences during the last century” Gadamer said (1975c, p.11), “it seems that concerning the effective procedures of the human sciences...it is much more valid to characterize them by the Aristotelian concept of method than by the pseudo-Cartesian concept of the historical-critical method”.

⁶ Though Gadamer mostly refers to the ‘human sciences’ and ‘humanities’, his considerations are demonstrably pertinent to the ‘social sciences’; “As a thinker I just wanted to propose a better understanding of what we are doing in the humanities; and perhaps that goes even further than do the humanities in the narrow sense of the word and encompasses the “sciences” as well” (1979a, p.78). Relatedly, in *Reason in the Age of Science* he spoke of “an exact correspondence” between the hermeneutic experience “operative in the sciences” (1981, p.48) and politics understood as a discipline of practical philosophy. Already in ‘On the Scope and Function of Hermeneutical Reflection’, we find Gadamer (1976d, p.18) saying that the main theme of his investigations was “the theory of the *Geisteswissenschaften* (humanistic sciences and social sciences)”. There, he also noted that the universality of the hermeneutical situation makes it necessary that hermeneutics is “taken into account with regard to the logic of the social sciences, and especially in relation to the intentional alienation and distancing present in sociological methodology” (1976d, p.26).

⁷ At the end of his *Ethics* and in anticipation to the *Politics*, Aristotle characterizes practical philosophy as a philosophy concerning human affairs, that is, as “Human Philosophy” (1910, p.307), “that branch of philosophy the object of which is man” (1879, p.328), “the philosophy of human nature” (1888, p.292), or “our philosophy of human life” (1836, p.353), depending on the translation. Lobkowicz offers a slightly different rendering, where practical philosophy is “the part of philosophy concerned with the problems of man” (1967, p.11) and Foster (1991, p.59) defines practical philosophy as the ‘science’ of the human capacity to choose which way of life is best.

But our present inquiry has not, like the rest, a merely speculative aim; we are not inquiring merely in order to know what excellence or virtue is, but in order to become good. (Aristotle 1836, p.36)

Aristotelian practical philosophy propels us to launch inquiries designed not merely to acquire or consolidate knowledge of phenomena but to positively influence our own conduct and to shape our character, habits and practices for the better. Practical philosophy is not about technique, learnable skills and crafts but it has rather to do with “what is each individual’s due as citizen” and what constitutes one’s *arete* or ‘excellence’ (Gadamer 1981, p.92).

By suggesting that the human sciences can acquire a different self-understanding based on practical philosophy as opposed to scientific knowledge, Gadamer is hinting at the possibility of a human science that understands itself on the basis of a different ‘aim’ or ‘end’. The humanities and social sciences can think of themselves as having an end beyond themselves in the same way that the practical or productive sciences which Aristotle had in mind used to do. For Aristotle, medical science is practical or productive in the sense that its end is not medical knowledge, but ‘health’. Political science is practical or productive because it aims at goals like ‘law and order’, not at political knowledge (1915, p.1216b). Consequently, the end of sociology – if it is to be conceived as practical in scope – may not be just that of knowing how society works. The aim of a criminology that understands itself as practical may not be solely to know the causes of crime. Instead, as argued shortly, these aims might have to be found in a political ideal of what it means to act in a practical capacity in academia and in broader society. This ideal, it is worth noting, originates in Aristotle’s belief that in the study of human affairs what is sought is not speculative or theoretical knowledge but some specific end⁸ – in the case

⁸ Gadamer was quick to note that practical thinking and knowledge are not limited by considerations of means and how to bring about given ends. Thinking practically does not have to do with having “some practical sense that always finds the right means and the right way to whatever end is being sought” (1998, p.40). Rather, rationality (*Vernünftigkeit*) is a way of *holding oneself* which “one hold onto and which holds one, so as to keep on re-creating and

of practical matters, “the end is not a mere speculative knowledge of what is to be done, but rather the doing of it” (1836, p.346). As Aristotle himself pertinently put it in the *Eudemian Ethics*:

For we do not wish to know what bravery is but to be brave, nor what justice is but to be just, just as we wish to be in health rather than to know what being in health is, and to have our body in good condition rather than to know what good condition is. (Aristotle 1915, p.1216b)

It may be objected, however, that in this proposed ‘transition’ in self-understanding from the theoretical to the practical we are losing sight of the reality that the human sciences of today have historically made sense of themselves not through an Aristotelian understanding of speculative science but rather via an appreciation of the modern scientific method ⁹.

This point can be unproblematically addressed without oversimplifying matters. The rationale behind Gadamer’s rather challenging request – to think of the humanities and social sciences on the basis of Aristotle’s practical teachings – lies with the observation that modern scientific methodologies retain a fundamental axiom intrinsic to the concept of science as developed by the ancient Greeks – that science is essentially mathematical and that, since mathematics deals with that which is unchangeable and immutable, that science concerns itself with permanent and absolute (mathematical) truths. The aims of modern scientific investigation, as Gadamer (1976g, p.189) posited, “go beyond the natural self-givenness of the life-world and involve a specific idealization or mathematical description of the world”. To highlight the problematic nature of this

protecting the moral and human order that is established in common norms” (1998, p.40). Similarly, he noted that practical reason should not be understood as “a neutral capacity for finding the practical means for correct purposes or ends” (1981, p.133) due to its being inseparably linked to *ethos* – “If, for example, ethics is a teaching about the right way to live, it still presupposes its concretization within a living *ethos*” (1981, p.97).

⁹ “Then, under the influence of the new natural sciences of the seventeenth century”, as Dilthey ([1901] 1996, pp.333-334) put it, “the natural system of the human sciences was brought to completion, and its power to transform life and the sciences infinitely increased”.

observation, Gadamer pointed out the incongruous way in which John Stuart Mill treated the human sciences, a treatment that Gadamer showed to be emblematic of those empirical sciences modelling themselves on the basis of modern natural science; on the one hand he would not hesitate to refer to them as ‘moral sciences’, on the other he conferred on them a predictive power comparable to that of meteorology (1998, p.51). The incongruity in Mill’s understanding of the human sciences is even more apparent once it is acknowledged that he believed at one and the same time that “all causes operate according to mathematical laws” (1882, p.760) ¹⁰ and that ‘mathematical training’ is “an indispensable basis of real scientific education” (1882, p.762), but also that it would be ‘chimerical’ to hope that mathematical principle could govern complex social and political inquiries. “The mathematical solutions of physical questions become progressively more difficult and imperfect”, Mill wrote, “in proportion as the questions divest themselves of their abstract and hypothetical character, and approach nearer to the degree of complication actually existing in nature”. Similarly, he recognized that Auguste Comte also had “fully discussed the limits of the applicability of mathematical principles to the improvement of other sciences” (1882, p.761).

Such principles, Mill admitted, are “manifestly inapplicable” under certain circumstances, as when, for instance, we cannot observe the causes of given phenomena and therefore are unable to ascertain by induction their “numerical laws”. Or again, in cases where the causes are “so numerous, and intermixed in so complex a manner with one another, that even supposing their laws known, the computation of the aggregate

¹⁰ For Mill, it was impossible to think about causation “without introducing considerations of quantity and extension at every step” and “if the nature of the phenomena admits of our obtaining numerical data of sufficient accuracy” – he maintained – “the laws of quantity become the grand instrument for calculating forward to an effect, or backward to a cause” (1882, pp.760-761).

effect transcends the powers of the calculus as it is”, or where “the causes themselves are in a state of perpetual fluctuation; as in physiology, and still more, if possible, in the social science” (1882, p.761). Effectively speaking, Gadamer’s conviction about the need for the human sciences to seek “an epistemological self-understanding which is not based on the credence of the natural sciences” (1979a, p.74) aligns with Mill’s realization that mathematical and physical principles “remain inapplicable to the still more complex inquiries, the subjects of which are phenomena of society and government” (1882, p.762). Both thinkers seem to make Aristotle right in his belief that “all reasoning on matters of practice must be in outline merely, and not scientifically exact”, for “there are no invariable laws” (1886, pp.36-37) when it comes to practical thinking and practical matters. Mill urged that mathematical education is still valuable to the preparation of ‘more difficult investigations’ in that it provides not so much ‘doctrines’, but ‘method’ (1882, p.762) – and Gadamer would have at least agreed that “one must learn method to do the work of a humanist” (1979a, p.78), and that to think of the human sciences from the perspective of practical philosophy is not to introduce a new method to the study of the individual and society but to attempt to develop “a concept of knowledge and science which really corresponds with what everyone is doing in the humanities” (1979a, p.78).

¹¹. Still, Gadamer understood that “the possibilities for truth in science” (1975a, p.310) were restricted by method – as it was the case with Galileo, the pioneer of a scientific approach to knowledge that took the shape of a mathematical project limited by a kind of

¹¹ In the Foreword to the second edition of *Truth and Method*, Gadamer (2006, p.xxvi) acknowledged that “the methodological spirit of science permeates everywhere” and clarified that it was not remotely his intention to deny “the necessity of methodological work within the human sciences”. “The difference that confronts us”, Gadamer claimed, “is not in the method but in the objectives of knowledge” (2006, p.xxvi). Elsewhere, he claimed that the hermeneutical sciences (Geisteswissenschaften) “fall under the same standards of critical rationality that characterize the methodological procedures of all sciences”, though they might “justly be permitted to invoke the model of the practical philosophy that could also be called politics by Aristotle” (1981, pp.136-137).

validation through experimentation which pre-sets the boundaries of the field of investigation as dictated by methodological requirements ¹².

It should be added that what science was to the ancient Greeks is not identical to what science is to modernity – as Gadamer noted, the notion of empirical science “would have struck the Greek ear like a sounding bass” (1981, p.5). Thinkers like Plato described it through the use of the word *mathemata* and believed that what constituted a science was its reducibility to mathematical formulas – astronomy, for instance, owed its scientific character not to the observation of celestial phenomena but to their reduction to numerical and mathematical relationships (1998, p.72). On the contrary, Gadamer pointed out, modern sciences conceive of themselves as ‘sciences of experience’ dependent on inductive logic, which would have been inconceivable to the ancient Greeks, for, in their eyes, mathematics required no validation from experience. Nevertheless, Gadamer wished to challenge the idea that there is no affinity between science as the Greeks understood it and its modern counterpart by showing that the value of science lies in its being a thing of beauty ¹³:

The beautiful is such that it is pleasing of itself and permits no disputing about why it is beautiful and pleasing. Thus broadly conceived, the beautiful (*kalon* in Greek) pertains to all theoretical science. It is the joy of theory, the joy of discovering the truth, that science lays claim to. (Gadamer 1998, p.73, italics in original)

The great achievement of modern science consists in applying the language of mathematics to the observation of phenomena and, in that sense, its positivity lies not in new observations themselves, nor in an augmented experience of reality, but rather in “a

¹² Gadamer stated this point quite clearly in a lecture on scholarly prose and the function of rhetoric in gaining knowledge delivered in Wolfenbüttel in 1979. The concept of method used in modern science, he said, “demands that boundaries be set. What is attainable by method defines what can be an object of exploration” (1998, p.133).

¹³ The beautiful is a recurrent theme in Gadamer’s work. In *Truth and Method* (2006) he showed that beauty is relevant to ethics, and in *Praise of Theory* (1998) that it is so for science as well. Also see *The Relevance of the Beautiful* (1986b).

new projection of what it means to know” (1998, p.76). This new projection is exemplified by the modern conception of ‘method’ as formulated by thinkers like Galileo and Descartes.

While the Greeks invented a conception of method based on the appropriateness of a given approach to a specific subject of investigation, the Cartesian method was a standardized kind of method, ‘a universal method of verification’ (1998, p.77) ¹⁴. Modern science’s concept of method defines the conditions of knowability and makes use of ‘research’ as its preferred approach to reality, where research is understood as a never-ending empirical process of discovery and validation. Gadamer pointed out how problematic this modern concept of science as research can be by revealing that the ‘infinite process’ of scientific research is antithetical to “the present moment’s practical need to know” (1998, p.78) and by lamenting that when science is understood as research, practical reason must be left ‘in the lurch’. This is particularly relevant for our discussion about the historical study of crime, where it is clear that an infinite regress into the past of crime and criminal justice meant to provide general historical explanations could become antithetical to our present need to better understand specific crime-related problems from the past. What we are dealing with is a tension between the modern concept of science as method and research on one hand and “the desire for sympathetic understanding we have as people who live in the world” (1998, p.133) on the other.

Gadamer acknowledged that a new epoch of knowledge may be said to have begun with Galileo and that the human sciences generally express the form of modern scientific

¹⁴ For a short history of the idea of method from the Greeks to Descartes see Wolin (1969). By ancient Greek standards, method was, like philosophy, an *aporia* or a ‘way’ to truth. By the times of Descartes, making use of a method had become synonym with being methodical, that is, with “faithfully following a prescribed sequence of mental steps” (1969, p.1066), and soon method came to be understood as a form of discipline, or a “code of intellectual conduct” (1969, p.1067).

thinking (1981, p.23). However, in Gadamer's view the human sciences also extend older traditions going back to the antiquity of Western culture, such as that of practical philosophy as well as the tradition of *rhetoric*¹⁵. Rhetoric is a predominantly pejorative term in the contemporary mindset¹⁶ but was a necessary element of social life in the ancient Greek one. Rhetoric is according to Gadamer (1986b, p.17) "the universal form of human communication" that to this day "determines our social life in an incomparably more profound fashion than does science". The term rhetoric designates "the teachable art of speaking, as well as the natural gift and its exercise" (1981, p.114) and it includes "every spoken form of communication and is what holds human society together" (1998, p.52). For the Greeks, rhetoric did not count as science while history, for example, counted as rhetoric – as an art of communicating well. Aristotelian practical philosophy, Gadamer argued, provides "a common ground beneath rhetoric and critical thinking, between the traditional form of man's self-knowledge and modern science's reduction of everything to alien objectivity" (1998, p.56) – here, Gadamer can guide us in seeing the problems associated with the 'scientization' of the historical study of crime and of the social sciences in general, and can help us see the value of rhetoric not just for historical criminology but for contemporary historiography more broadly.

Instead of reducing the pursuit of knowledge in modern science to a quest for objectivity, as it happens almost systematically in the natural sciences, Gadamer hoped to show that what is vital and central to the humanities is the ideal of *participation*; "it is not objectivity (Objektivität) that is essential in the "human sciences" but the prior

¹⁵ Gadamer's own philosophical style was itself fundamentally rhetorical, or better, the 'rehabilitation of rhetoric' was a central element of his philosophy, and he practiced the use of rhetorical devices at least as much as he preached it (see Dawson 1998, pp.xv-xix).

¹⁶ This is arguably and partly Plato's fault, for in the *Gorgias* he equated rhetoric to the art of flattery and placed it at a distance from genuine knowledge – though in the *Phaedrus* he attributed to it a greater significance and a greater vicinity to 'techne' (see Gadamer 1981, p.119).

relation to their objects (Gegenstände)” (1998, p.56). In the realm of human knowledge, Gadamer claimed, “I would supplement the ideal of objective knowledge erected by the ethos of science with the ideal of participation” (1998, p.56). The notion of an ideal of participation can be appreciated from a variety of angles, such as that of ‘tradition’, that of ‘objectivity in science’, that of ‘political practice’, and it can be said to broadly reflect Gadamer’s philosophical views about the epistemological disunity of subject and object in the human sciences. In studies on Plato and Aristotle, for instance, Gadamer offered an understanding of the Platonic-Aristotelian way of thinking as a ‘shared line of questioning’ premised on a sense of ‘historical efficacy’ and ‘living continuity’, an understanding which constitutes “the proper subject matter of philosophy and which first opens the possibility of others entering into a relationship of participation in that line of questioning” (Ambrosio 1988, p.174). Here, a relationship of participation is basically synonymous with a tradition ¹⁷.

Similarly, when Gadamer (1986a) spoke of ‘logos-philosophy’ and of ‘unitary effect’ in writings like *The Idea of the Good in Platonic-Aristotelian Philosophy* to refer to the interconnectedness in the thought of these two ancient thinkers – to give a concrete example – he effectively defied the view that their divergent ideas were of primary philosophical significance ¹⁸. Once realized that the thought of both thinkers was centred on matters so fundamental to human beings and human flourishing such as happiness,

¹⁷ The notion of tradition should not be approached uncritically and, as Bernstein (1985, p.284) pointed out, Gadamer is not necessarily guilty of socio-political conservatism, for he “warned us against reifying tradition and thinking that it is something that is simply given”. As a matter of fact, tradition and hermeneutics are bound by the historical reality that hermeneutics was originally “the art of clarifying and mediating by our own effort of interpretation what is said by persons we encounter in tradition” (1976a, p.98).

¹⁸ As Gadamer (1986b, p.12) put it in *The Relevance of the Beautiful*, “it is the task of philosophy to discover what is common even in what is different”.

justice, duty and love, their disagreements, though objectively real, become secondary and their deeper connection becomes apparent or, as Ambrosio (1988, p.174) put it, it becomes clear that “what is most fundamental in the thought of each is something which is shared between them”¹⁹. For Gadamer, to do philosophy is to participate in a tradition and, when studying Plato and Aristotle we effectively enter into a relationship with them, a relationship of participation. Relatedly, a reluctance to accept the pursuit of objectivity as a categorical imperative of the human sciences points at the possibility of a different self-understanding in the humanities and social sciences, an understanding “that it is not a matter of mastering matters by information but of trying to participate in our social life and in the heritage of our culture” (1979a, p.85). The human sciences do not escape tradition but rather depend on it (Foster 1991, p.31) and this can be further appreciated by looking at what Gadamer meant by participation in the context of objectivity in text interpretation.

To look at a text purely as an object is to assume that the text naturally exists in such a form, that is, that the text as object “is simply there, waiting to be uncovered and characterized in terms completely adequate to the ‘things themselves’” (Wachterhauser 1986, p.440). As Wachterhauser wrote:

When we ask ourselves whether textual interpretation necessarily presupposes such ‘objects’ we are asking whether the meaning of a text is a fully determinate state of affairs simply awaiting discovery and description in terms which in no way constitute or alter what is there. (Wachterhauser 1986, p.440)

If one reads Gadamer’s *Truth and Method* as saying that the human sciences have no claim to equate their subject matter to the ‘objects’ of their study, it becomes clear why

¹⁹ This shows how Gadamer’s rhetorical approach aims not at the articulation of contemporary language constructs capable of deconstructing contemporary issues but rather at returning “to our tradition and the heritage of European thought in order to see how our modern presuppositions are arbitrary and in order to find possible alternatives to them” (Dawson 1998, p.xvii).

Gadamer considered the possibility of understanding a text objectively – and *as* object – as extremely problematic. Texts are *relations*; a text cannot exist independently of the mentalities of a certain historical epoch that make possible its interpenetration and separately from the preconceptions of a reader who investigates it – as Gadamer clearly conveyed when saying that “all reading involves application, so that a person reading a text is himself part of the meaning he apprehends. He belongs to the text he is reading” (2006, p.335)²⁰. To read a text presupposes certain ‘conditions of reception’ which allow the reader to turn the subject of the text into meaning and, as Wachterhauser (1986, p.441) suggested, it is fundamentally the act of inquiring into a text that produces textual meaning; “it is our very probing into a text which somehow brings its meaning to life”. Another way of saying this is that “a text, like a work of art, both constrains and invites participation (*Teilhabe*, *Teilnehmung*) in its meaning” (1986, p.444).

The humanities and social sciences do not cast light simply on new and old domains of objects but on “the quintessence of humanity’s self-objectification” (Gadamer 1998, p.60) and they have valuable content insofar as they participate “in the essential expressions of human experience formulated in art and history” (1998, p.56). In this sense, it would not be erroneous to think of historical criminology as a form of self-reflection and a mode of self-examination that can help us criminologists see our past for what it was and, at the same time, as a political practice that can guide our apprehension of what is valuable in our actions by resort to history. Since we are literally created by crime – in the sense that we are a historical by-product of it and that without it we would

²⁰ As Lawrence (1981, p.xix) put it in the introduction to Gadamer’s *Reason in the Age of Science*; “Understanding authors, texts, and the realities intended by their words is therefore always a function of self-understanding”.

not exist as either a profession or an expertise ²¹ – is it so unreasonable to assert that to understand crime cannot be but to understand ourselves as criminologists? For in that case, for historical criminology to be practical would not mean that it must be an applied science meant to solve current problems, but rather that it must show us what we have historically become and make us better for that ²². In that regard, a historical criminology that understands itself on the basis of Aristotelian practical philosophy would not be suited for turning knowledge into products or into action but rather suited for turning criminologists into better people. A historical criminology thus understood would be receptive to Gadamer's claim that practical thinking does not always support pragmatic conclusions and can in fact "restrain rampant pragmatism" (1998, p.24). This conception of historical criminology as being fundamentally about the history of criminology, moreover, does not fit the modern concept of science as research described above, as it incapacitates and renders superfluous an infinite search for answers in the past and instead brings attention to the importance of asking the right questions in the present.

The Enlightenment, Gadamer believed, laid the groundwork for the inauguration of modern scientific culture and, beginning with the reform of the modern university system started by Wilhelm von Humboldt, 'scientificity' has become an almost universal

²¹ This is evidently a Marxist, dialectical-materialist account of criminology. Criminologists, like detectives and judges, do not 'work on' or 'work with' criminals but rather they are criminals' own work – they are 'produced by' criminals. Noting that criminals do not produce crimes in the same way that poets produce verses or professors produce text-books, Marx argued that:

The criminal produces not only crimes but also criminal law, and with this also the professor who gives lectures on criminal law and in addition to this the inevitable compendium in which this same professor throws his lectures onto the general market as "commodities"...The criminal moreover produces the whole of the police and of criminal justice, constables, judges, hangmen, juries, etc.; and all these different lines of business, which form equally many categories of the social division of labour, develop different capacities of the human spirit, create new needs and new ways of satisfying them. (Marx 1969, p.387)

²² Such a conception of historical criminology would also fully align with Gadamer's view on the overarching aim of the human sciences, which is not knowledge per se but "the vital and ongoing shaping of man's knowledge of himself" (1981, p.146).

value. As Gadamer would put it, the enlightened reform of university politics in the first half of the 19th century laid the foundation for “the new *absolutum* of science” (1998, p.62 italics in original). While the theoretical attitude at the times of Plato and Aristotle consisted in distancing oneself from oneself and in reaching understanding for its own sake, the contemporary attitude has become, in Gadamer’s view, a kind of absolutism of scientific understanding monopolized by expertise and bureaucracy for the scientific management and betterment of social realities – or even worse for the advancement of corporate and private profit. In such a technological and technocratic climate, scientific thinking becomes a universalized view of world affairs which allows social engineers to join forces with emancipatory utopians in a hope that human reality can be scientifically managed and technically improved. Thus, researchers and scientists are turned into ‘experts’, especially in the field of human knowledge:

The appeal to experts and especially to social experts, and the whole model of applying the natural sciences to the tasks of modern mass society – all this has given the absolutum of scientificity a whole new explosive effect. (Gadamer 1998, p.62)

A technical and technological system of knowledge finds its application in the collective belief that societies can be run and governed through science, or else in the generalized realization that science works – but science’s only reason for being, Gadamer believed, is that it is beautiful, and from the beautiful we “cannot expect any advantage” since it “serves no purpose” (1986b, p.14). Instead of doing science because it is beautiful, individuals – and governments – pursue it because it is useful and efficient. But the historical interdependence between modern sciences, modern states and modern markets makes it as such that the modern expert cannot avoid taking responsibilities and exercising judgment.

But it is doubtful whether ‘the joy of theory that science lays claim to’, or else passion for theory, the scientific attitude that involves independence from self-interest,

can ever escape the supreme authority of rationality, of what Aristotle would call *phronesis*²³ – which, as Foster (1991, p.188) argued, is not only “an Aristotelian virtue” but also “a metaphor for the deciding self”. Rationality is the paradigm of method and not the other way around. The opposite has become credible thanks to the power of the natural sciences to shape reality by objectifying it, to control nature by understanding it²⁴ – “Any science is based upon the special nature of that which it has made its object through its methods of objectifying” (Gadamer 1976e, p.93). Gadamer’s fundamental project revolved around demonstrating that it is impossible to rationalize our experience and existence since reason and thinking are parts of such experience and existence. Not coincidentally, Gadamer (1976f, p.124) spoke of existence in terms of “the emergence of what is really up to us, where the guiding power of science breaks down”. The fact that we belong to the very same ‘life-world’ that the human sciences study and analyse makes it impossible to rationalize it²⁵. In a way, then, would it not be fair to read Gadamer’s *Praise of Theory* as saying that the human sciences are meant to be self-sufficient and unconcerned with human affairs? After all, to say the opposite would unleash the possibility of conceiving of such sciences as technical models of applied knowledge designed to control, make and manage things. But more importantly, would this not be

²³ As Bernstein made clear (1983, p.146), understanding is for Gadamer “a form of *phronesis*” and can therefore become constitutive of one’s praxis. To Gadamer, understanding – like *phronesis* – is “a form of moral-practical knowledge which becomes constitutive of what we are in the process of becoming” (Bernstein 1985, p.280).

²⁴ Modern science, said Gadamer (1998, p.41), has brought humankind “the domination of nature on a whole new scale and in a whole new sense”.

²⁵ This is reminiscent of Dilthey’s position on the human sciences, according to which human knowledge is reached by proceeding “from life and understanding, and from the relationship of reality, value, and purpose that is implicit in life” ([1910] 2002, p.140). The basic distinction between natural and social science lies in their mode of experiencing phenomena, with the natural sciences relying on ‘outer sensory experience’ and the social sciences on ‘inner lived experience’ (see Ermarth 1978, pp.94-108).

contrary to Gadamer's own proposal for a human science modelled on the basis of practical teachings? To answer these questions, we might have to eschew the modern dichotomy between theory and practice and briefly look at the issue through the lens of the ancient Greeks.

As Gadamer (1998, p.31) noted, the Greeks used the word *theoria* to mean – roughly – ‘observing’, ‘being an onlooker’ or ‘being a delegate participating in a festival’²⁶. Theory for the Greeks was not ‘observing’ in the sense of “a mere “seeing” that establishes what is present or stores up information” (1998, p.31). *Theoria* was, as Gadamer (1998, p.31) put it, “a way of comporting oneself, a position and condition” – a point on which we shall elaborate further in a minute. *Theoria* stood for a way of ‘being present’ in the double sense in which participants in a ceremony or ritual are present; such participants “are present in this way when they are engrossed in their participation as such, and this always includes their participating equally with others or possible others” (1998, p.31). In this ancient sense, theory was detached from two fundamental components of human life; action and production or, in Greek, *praxis* and *poiesis*. *Theoria* was neither for or about ‘doing things’ nor ‘making things’; it was for and about itself, a mode of conduct which bore its own fruits. Using a rather rhetorical style, Gadamer expressed this idea by talking about *theoria* as being concerned with a particular kind of good; not the good one might acquire, have or possess, as in the kind of goods that one may ‘make use of’ or ‘use up’, but that good which has no belonging and therefore is available for all to share²⁷ – “Is it so romantic to speak of theory as a life force in which

²⁶ “The primitive meaning of *theoria*”, said Gadamer, “is participation in the delegation sent to a festival for the sake of honoring the gods” (1981, p.17, italics in original).

²⁷ “This”, Gadamer (1981, p.77, italics in original) argued, “is what the Greeks called *theoria*”:

To have been given away to something that in virtue of its overwhelming presence is accessible to all in common and that is distinguished in such a way that in contrast to all other goods it is not

all humans have a share?” (1998, p.32) ²⁸. This ancient conception of theory, which Gadamer did not consider “at all out of date” but rather a conception which “has been expelled from our conscious reflection by a certain over-emphasis on practice” (1998, p.67), says very little about the possibility of controlling objects by explaining them and putting them to use for our present purposes; and it is this conception of theory that Gadamer had in mind when suggesting that the motto of the Enlightenment – *sapere aude*, dare to know – has to be re-understood as an “appeal to our social reason to awake from its technological dream” (1998, p.83).

In part, what Gadamer was hinting at is that “passion for theory involves a freedom from ends” (1998, p.68) and that a key element of theoretical life is ‘distanciation’, distance from oneself ²⁹. To live the theoretical life means seeing with the eye of the other and thinking “from the other person’s point of view” (1998, p.68), having an openness to the other and exposing the limitedness of one’s thinking for the sake of experiencing “constant correction by reality” (1998, p.68). This is why Gadamer says that “the distance proper to *theoria* is that of proximity and affinity” (1981, p.17, italics in original). Science’s freedom from ends, Gadamer reminded us, “serves to liberate us from those overly narrow ends that our wishes and illusions constantly create in us” (1998, p.68). Gadamer summarized his own praise of theory, or ‘the behaviour of a cultivated consciousness’, as follows – “disregarding oneself, regarding what is” (1998, p.35) – and,

diminished by being shared and so is not an object of dispute like all other goods but actually gains through participation. (Gadamer 1981, p.77)

²⁸ In the sentence immediately following the question, it might be important to note, Gadamer (1998, p.32) says: “You don’t have to be an appointed eulogist of theory to realize that theory is not exhausted by being of immediate service to practice”.

²⁹ We can understand distanciation as *disinterestedness*, or as forbidding ourselves to inquire into the purposes served by that which we look into, as in the case of art, where we do not ask the question “What purpose is served by enjoyment?” (Gadamer 1986b, p.19).

in a long passage which is worthwhile quoting, he positioned himself in relation to his ‘entire philosophical work’ in a way that casts a great deal of light on his ambivalent take on theory and practice and their relation to philosophy and the human sciences. Asked to reflect on notable attempts at bringing philosophy to bear upon real life and on the relation between his own thought and the concrete political questions of his time, Gadamer first justifies the refusal of his generation to follow the steps of Max Weber’s ‘impossible ideal’, then characterizes his work this way:

We wanted to grasp in what way reason was incarnated in existence itself. And it is that search which has determined my entire philosophical work...What I had known even as a young man is this: I could see the grandeur of the idea of science, but also its weakness over against what we called in those days *das Leben*, life...It was not a social theory that we elaborated. Instead of that, we were in search of a way to think in which we could see the truth of things, to discover the truth that was there in each thing before us in the world. And this meant that we were utterly distanced from not only the older ethos of German struggle and German fulfilment, but distanced likewise from efforts to control things, to make things, to manage things ³⁰. (Gadamer 1992, p.144, italics in original)

As Weinsheimer (1998, p.ix) noted in the foreword to *Praise of Theory*, Gadamer saw the human sciences as representing instances of this ‘reason incarnated in existence’,

³⁰ It is hard to take Gadamer literally here, for, as argued by Foster (1991, p.47), Gadamer “certainly wants his philosophy to be relevant to the spectrum of work done in the human sciences” – though he once asserted the following; “I cannot believe that it is the function of the philosopher to formulate in the form of a principle that which should be done in the concrete” (Gadamer 1975a, p.330). Similarly, as pointed out by Sullivan (1985, p.xvi) in the ‘Translator’s Introduction’ to Gadamer’s *Philosophical Apprenticeships*, “philosophical hermeneutics was first of all a different way of doing politics” and Gadamer’s writings between 1934 and 1942 can be said to constitute a kind of ‘political hermeneutics’ in view of the emphasis placed on the moral context and on the individual dimension of ethics. As Foster (1991, p.199) went on to say, however, Gadamer “holds those who mediate scientific knowledge to socio-political uses particularly responsible for the deformation of modern practice” and, as his foreword to the second edition of *Truth and Method* made rather clear, Gadamer’s revival of hermeneutics was not intended “to produce a manual for guiding understanding in the manner of the earlier hermeneutics”:

I did not wish to elaborate a system of rules to describe, let alone direct, the methodological procedure of the human sciences. Nor was it my aim to investigate the theoretical foundation of work in these fields in order to put my findings to practical ends. If there is any practical consequence of the present investigation, it certainly has nothing to do with an unscientific “commitment”; instead, it is concerned with the “scientific” integrity of acknowledging the commitment involved in all understanding. My real concern was and is philosophic: not what we do or what we ought to do, but what happens to us over and above our wanting and doing. (Gadamer 2006, pp.xxv-xxvi)

instances of a kind of practical knowledge “that comes from participation rather than distanciation”³¹.

For Gadamer, the human sciences lean towards an ideal of participation instead of one of objectivity because they concern themselves not with *theoria*, but with *praxis*. In the broadest sense of the word, *praxis* designates “all things practical, including all human behavior and all the ways people organize themselves in this world, not least of which is politics and, within that, legislation” (1998, p.56). Taking his cues from Aristotle, Gadamer argued that in order to be able to learn about ‘all things practical’ like the norms of human conduct and the nature of the state, “we must first be educated and so become capable of rationality” (1998, p.60), suggesting that, when reasoning on practical matters, participation is presupposed by theory. Another way of saying this is that “alongside the all-consuming passion to know” we should acknowledge the presence of “another genuinely all-encompassing use of reason that consists not in a learnable skill or in blind conformism but in one’s rational responsibility to oneself” (1998, pp.57-58) – or else, efforts to know things presuppose practical knowledge, which is but “the guiding force of reason in human action and behavior” (1998, p.40). Though in an often-ambivalent way, Gadamer ultimately advanced an understanding of theory and practice as mutually interdependent – “Devoting oneself entirely to “theoretical pursuits” presupposes “practical knowledge”” (1998, p.40) and human beings are ‘theoretical creatures’ to the core (1998, p.20) but practice is not “the blind application of theoretical findings about what it is possible for us to do” (1998, p.66). The Greeks showed that the joy of theory is “the supreme form of human life” and “the ideal of the best life” but they knew that theory is “embedded within the practice of conditioned and lived life” (Gadamer 1981, p.59; see

³¹ On why is it that Gadamer saw the human sciences as ‘moral-practical’ rather than theoretical disciplines see Bernstein (1985).

also 1981, p.66); “*Theoria* itself is a practice” (1981, p.90, italics in original). As explained by Dawson (1998, p.xxxii), Gadamer postulated, on the one hand, that “any practical activity that involves no theoretical reflection on the nature and goals of life is stifling and useless” but, on the other, that “the proper meaning of “theory” is a practical one of being caught up in a communal sharing in “what is””, which is what inspires “worthwhile practical activity”. Theory and practice had to be placed on the same level; though theory cannot be exhausted in its service to practice, since in its pure form it is our “greatest joy” (Gadamer 1998, p.20), life in general “is a unity of theory and practice that is the possibility and the duty of everyone” (1998, p.35). In this regard, “the normative character of practice...is “in practice” still a lot greater than theory thinks it is” (1981, p.83). Human self-understanding is fulfilled not just at the level of the joys of knowledge but also at the level of human experience and “it is only from within human practice that one person or another can turn for a while toward pure knowledge from time to time” (1998, pp.34-35). Like Aristotle, Gadamer recognized that individuals are made for thinking and acting and, in his ‘praise of theory’, he could not but remind us of the significance of practice.

***Theoria* and *Praxis* in Ancient Greece**

What is crucial to understanding Gadamer’s call for a social science modelled on Aristotelian practical philosophy, then, is the distinction between a social science premised on *theoria*, scientific procedure, and distanciation, and one premised on *praxis*, rhetoric, and participation. This distinction can be more firmly grasped by appreciating what the ancient Greeks meant by the terms theory and practice ³². In ancient Greek, these

³² It would be impractical to deal with the Greek tradition in its entirety here and, in fact, no mention will be made of Stoics and Epicureans and their relationships to theory and practice. Instead, what I am interested in is a specific moment in Greek antiquity, namely, when Aristotle articulated the distinction between theoretical and practical knowledge.

words were used to denote something other from what we would readily assume today; they referred to two different *walks of life* ³³. Simply put, by ‘theory’ the Greeks meant what we today would call ‘contemplative life’ while by ‘practice’ what is broadly understood as ‘political life’ (Lobkowitz 1967, p.4). What we are dealing with is not a distinction between abstract thought and human activity, but between two ways of being free. With the ancient Greek city-states populated by at least as many slaves as there were Greeks, the latter did not have to take care of manual labour, which means that physical work, from mining to domestic work, was not a set of sufficiently meaningful efforts to be considered a way of life nor a modality of free agency ³⁴. In a similar fashion, with artisans, merchants and retailers being principally foreign workers – Arabs, Phoenicians, Egyptians, etc. – who were somehow comparable to slaves and who had little to no claim to citizenship, wealthy Greeks did not bother with commerce and were instead obliged by custom to participate in politics and the business of the polis; while the poor, the ‘vulgar mob’, could not afford to be politicians and often led a hedonistic and voluptuous life, a life of enjoyment and passions, the wealthy were prevented from simply enjoying the wealth of their families and their lives were dominated by political activities.

³³ As Lobkowitz (1967, p.3) argued, when the Greeks placed *theoria* and *praxis* in opposition to each other, what they had in mind was “a distinction between various kinds or walks of life” and not an opposition between ‘thinking’ and ‘acting’ or between abstract thought and its application in concrete terms. That which was an opposition between *philosophy* and *politics* later became “an opposition between “theoretical thought” and almost any kind of human activity, in particular, productive activity” (1967, p.18). It is also not totally accurate to call *theoria* and *praxis* walks of life without qualifying that, in an Aristotelian framework, they “emerge as two dimensions of the truly human and free life” (Bernstein 1971, p.x). The relationship between *theoria* and *praxis* is one “between two activities which constituted two distinct walks of life and which since Aristotle were considered as expressive of two levels of human existence” (Lobkowitz 1967, p.35).

³⁴ There was one exception to this, namely, agricultural labour as carried out by small landholders with the aid of slaves, such as the husband of Euripides’ *Electra*. Still, the fact alone that slaves worked the land made it inconceivable for the Greeks to think of agricultural life as a happy and virtuous life (Lobkowitz 1967, p.19).

Hence, theory and practice were the two life choices of those who could lead a ‘good life’ as opposed to a ‘mere life’, a life beyond the mere fulfilment of the basic necessities of life. Politics and freedom were strictly connected to each other because in order to participate in political life one had to be literally free from the struggle for survival. Those who disliked the hectic character of political life, centred around the Assembly and requiring active participation and commitment, went by the name of philosophers. The philosophers were those who concerned themselves with what was delightful to the mind and not with what was relevant for the city-state. They strived for knowledge of eternal truths, they inquired into the sublime, the transcendental, the eternal. They aspired to wisdom and were sceptical of popular opinions. They contemplated, but not in the sense in which it would be appropriate to describe the monastic life of the Middle Ages. Their object of reflection and contemplation was not God but the universal, the mathematical, and the first causes. By today’s standards, philosophical contemplation would include scientific inquiry, as “the philosopher was the only Greek counterpart to the modern scientist” (Lobkowitz 1967, p.8). Theoretical life was a life detached from the political activities of the city-state, the life of a distant ‘spectator’ – for *θεωρός* means exactly that – uninterested in human affairs, while practical life denoted a life of political engagement. *Praxis*, the Greek word for practice, when understood in this context, translates as *active citizenship*. Praxis connotes moral conduct and political activity – it signifies “man’s free activity in the realm of political life” (Lobkowitz 1967, p.11) – and it is to Aristotle that we owe a proper conceptualization of this specific distinction between theory and practice.

Aristotle articulated this distinction at various points in his writings (i.e., 1916, pp.259-263, pp.288-290; 1886, pp.36-37, pp.187-188, pp.192-205) and there is no unequivocal way of describing it that does full justice to the original context in which the

distinction was made. For instance, it would be somehow untrue to say that the difference between theory and practice lies in the fact that one is an end that yields no results beyond itself while the other is never final and always a means to achieve some kind of good, end or goal. Though Aristotle believed that contemplative life was an end in itself, i.e., that one does not philosophise so as to give philosophy a use but to overcome ignorance and that there is no practical necessity guiding theoretical life, on the other hand he also took the good life to be an end in itself – that is, he took actions to be ends. This is because he understood that inactivity is not, strictly speaking, inaction, and that one can therefore speak of the activity of the mind, and of contemplation as a set of actions – or, as previously said, as a walk of life, indeed as the highest way of leading a life, for contemplative life was ultimately deemed superior to all things human. In fact, Aristotle understood contemplative life to be divine life while also contending that “the end of the art political is the best of all ends” (1886, p.23). When comparing the philosopher to the statesman, he recognized that despotically forcing people into a life of politics via constitutional means would represent an impediment to individual well-being but insisted that inactivity should not be placed above action and conceded that there is some truth to the statesman’s anti-philosophical assertion that someone who does nothing cannot possibly do well. Contemplation of pure forms and ideas does not always lead the inquirer in the direction of comprehension and apprehension of truth and, when reasoning about matters related to practice, particular facts have to overshadow universal truths and specific, realizable forms of the good have to take precedence over the universal good.

For Aristotle, this was so due to the fundamental character of being. In his view of human nature, the soul was divided in two parts, one irrational and one rational and, in turn, the rational part – reason – was itself divided in two, a practical part and a speculative one. This classical division of the soul or mind, John Dewey (1859-1952) astutely

recognized, originates in a *quest for certainty*. Only that which was unaltered and stayed unchanged could lead to knowledge of universal truths. That which was susceptible to change was by definition imperfect and conducive only to the imperfectly knowable. But what leads to variability and change more than human action? Action in antiquity represented “a precarious probability” and contemplative life was seen as an escape from the perils of action and of practical reflection conditioned by uncertainty (1929, p.10). The quest for certainty was thus to be fulfilled in pure knowing, in thinking concerned with invariable principles, while that which was alterable belonged to the sphere of action. Speculative or theoretical reason was thought to depend on invariable principles, necessary causes, universal truths and to correspond to the scientific or demonstrative faculty of the soul. Scientific knowledge was said to be invariable and science was definable as ‘a habit of demonstration’ (Aristotle 1886, p.185) and “a mode of judging that deals with universal and necessary truths” (1886, p.189) which was thought to bear no weight on human affairs.

Practical reason, instead, corresponds to the deliberative faculty of the soul, that which is busied with variable principles and causes, with that which is alterable, that which is subject to opinion, and with particular facts that are indemonstrable (Aristotle 1886, p.195). Since the actions of individuals count as that which is variable, ambiguous and unpredictable in outcome, a study of action is necessarily an uncertain study (1886, p.4), one that deals with what the special occasion requires (1886, p.36) and not with what is scientifically exact. A study of action, in other words, relies on deliberation, not scientific demonstration and, as Aristotle said, we deliberate not about ends and means but about means to an end. Practical reasoning, or reasoning on matters of practice, then, is not an end in itself, as it always has an end in view, as Aristotle nicely demonstrated by showing that an inquiry into ethics and politics is to be carried out *in order to become*

good, not just in order to know what ethics and politics are. Practical knowledge is a requirement for becoming good in practice.

Practical knowledge can be said to differ from theoretical knowledge in that the former is knowledge in agreement with experience while the latter is basically self-sufficient, that is, theoretical knowledge and reasoning have a terminus in themselves – in knowledge and reasoning – and not in action. When confronted by practical questions, or when reasoning “in the context of a desired end” (Audi 1989, p.28), a rational agent answers by deliberation and practical judgement – put simply, by drawing conclusions from premises and by determining what course of action best serves the end or ends to be realised in practice³⁵. Hence, practical knowledge is taken to generally refer to *knowledge with a potential terminus in action*. One can speak of practical knowledge, practical reasoning, practical intellect, practical rationality, practical wisdom, and though these words can be interpreted differently depending on the context in which they are spoken, for all practical purposes they share a primary function; they are meant to generate human action. Practical reasoning may be seen as “undertaken for a practical purpose, namely achieving some end, and normally as issuing in action” (Audi 1989, p.27). This does not mean that practical reasoning or knowledge always terminates in action but rather that it is typically meant for that, or else, “practical reasoning has *both* an obviously implied judgmental conclusion as its terminal element and, typically, an action as its issue” (1989, p.28, italics in original)³⁶. Aristotle, Hume and Kant are often cited as the most relevant

³⁵ In this sense, practical reasoning may have to be distinguished from practical argumentation (see Audi 1982, pp.27-30; Fenstermacher & Richardson 1993).

³⁶ A noticeable exception to this understanding of practical knowledge is Elizabeth Anscombe’s formulation in *Intention* (1957), where practical knowledge is introduced into the contemporary philosophical theory of action as a kind of non-observational knowledge constituting ‘the cause of its own understanding’. Anscombe’s formulation can be deemed to be an exception to the idea that practical knowledge has a terminus in action since it takes the logical conclusions of practical

thinkers to have helped shape a sense and understanding of practical reasoning and practical knowledge within the Western philosophical tradition (see Audi 1989; 2004) ³⁷.

Practical philosophy can be said to anticipate the interpretive tradition of the social sciences in recognizing hermeneutical dimensions to the study of human action. As Gadamer put it; “hermeneutic philosophy is the heir of the older tradition of practical philosophy” (1975a, p.316). This is because they both demystify science and its all-encompassing appeal to knowledge. Philosophical hermeneutics approximates the philosophical attitude that Aristotle took against the professional sophists of antiquity but in a modern form, as “it corrects the peculiar falsehood of modern consciousness: the idolatry of scientific method and of the anonymous authority of the sciences” and, at the same time, “it vindicates again the noblest task of the citizen – decision-making according to one’s own responsibility – instead of conceding that task to the expert” (Gadamer 1975a, p.316). They replace scientific procedures with inquiries based in practical considerations and, in so doing, assert the presence of practical reason against the prevalence of scientific absolutism. Practical philosophy and philosophical hermeneutics stand “beyond the alternatives of transcendental reflection and empirical-pragmatic knowledge” (1981, p.49). By thinking of themselves on the model of practical philosophy and philosophical hermeneutics, the social sciences place themselves in the realm not of *theoria* but of *praxis*, in the domain of the changeable and non-demonstrable, in the world of doxa and practical episteme and in the linguistic vicinity of rhetoric ³⁸. They cease to

reasoning – i.e., of Aristotelian practical syllogisms – to be themselves actions and not simply reasons to act. For details see Moran (2004).

³⁷ Duke (2016) suggested that the writings of Aquinas offer a more solid basis for a ‘substantive’ conception of practical reason than those of Aristotle and Kant – Hume being invoked in the service of ‘procedural’ accounts of practical reason instead.

³⁸ The relationship between practical philosophy and rhetoric received substantial treatment in Gadamer’s writings, as in this passage from ‘The Problem of Historical Consciousness’:

be assemblages of distant spectators and become spaces of active participation and ongoing dialogue and exchange about the relevant facts of life. The detached theoretical interest of the expert is replaced by the rational judgement of active political agents who try to deliberate well, to arrive, Aristotle would say, at ‘what is best in matters of practice’ (1886, p.192). For Aristotle, ethics and politics presupposed education and maturity, as well as a sense of belonging to a group. The same are also indispensable requisites for carrying out a sound social science, Gadamer would argue, and the greatest challenge for the social scientist may be said to be that of reconciling professional demands with practical requirements, which really means balancing ‘action’ and ‘production’ in one’s life:

One may note that the ideal of the full mastery of the tasks and problems of our civilization by science conceals an insoluble contradiction between the role and function of the expert as the master of a field of controllable, learnable and applicable scientific knowledge, on the one hand, and the fact of his own membership in society, on the other. (Gadamer 1975a, p.310)

We can now start to appreciate why a historiography of the left may be indicative of a broader desire to understand the activity of studying crime historically as a practical-philosophical activity. At the most basic level, the question becomes whether crime histories and historical criminologies are being written by distant spectators or active political agents, but the question also implies a critical consideration, that is, whether participating in the historical study of crime means producing and ‘making things’ through science or ‘doing things’ and acting and living in certain ways.

The scientific character of practical philosophy is, as far as I can see, the only methodological model for self-understanding of the human sciences if they are to be liberated from the spurious narrowing imposed by the model of the natural sciences. It imparts a scientific justification to the practical reason which sustains all human society and which is linked through millennia to the tradition of rhetoric. (Gadamer 1979b, p.107)

As Gadamer rightly pointed out, the aftermath of World War II saw the breakdown of established traditions and a growing desire for science to replace lost orientations. This quickly tended to turn Western governments into technocracies destabilising the conditions and putting into question the status of those who produce and transmit knowledge – teachers, academics, scholars, researchers, scientists, experts, in short, the cognitive labour force – and, particularly after 1968, it became clear that the relationship between knowledge, cognitive labour and the public sphere had to be reconsidered. Those who, like E. P. Thompson, helped inaugurate a historiography of crime and criminal justice in the 1960s knew this well and a radical conception of politics underpinned their scholarly work. Such a conception required more than historiographical rearrangements; it demanded that scientific procedure be coupled not only with a sense of civic membership but also with ‘dialectical imagination’³⁹. Gadamer’s approach was overall more compromising, being more carefully and modestly centred on the question of how to balance theory and practice:

Where can we find an orientation, a philosophical justification, for a scientific and critical effort which shares the modern ideal of method and yet which does not lose the condition of solidarity with and justification of our practical living? (Gadamer 1975a, p.311)

In this regard Gadamer’s hermeneutics also reflects an older and broader interest in the relationship between science and morality⁴⁰ which has been haunting modern thinking since the beginning of modernity and which, arguably, found its most vivid expression in early American pragmatists like Dewey (1929, p.42) who, wanting to abolish the

³⁹ Thompson’s engagement with the question of ‘theory and practice’ is discussed in chapters 3 and 4.

⁴⁰ As Foster (1991, p.46) suggested, moral practice and moral theory were viewed by Gadamer as “providing fundamental guidance for the activity of the human sciences”.

distinction between theory and practice, as well as the one between facts and values, asked “how is science to be accepted and yet the realm of values to be conserved?”.

An Example of Practico-Philosophical Social Science

Gadamer’s practico-philosophical critique of the human sciences has attracted a good deal of interest in a number of areas of relevance for the humanities and social sciences, not least that of educational research, which Wilfred Carr (2007) has for a while now been trying to reconstruct as ‘a species of Aristotelian practical science’^{41 42}. Here, I provide one instance of what Gadamer’s proposal for a social science modelled on practical Aristotelian teachings looks like in the eyes of someone other than Gadamer himself, to then return to his scepticism regarding the possibility of putting reason ‘to work’ by ways of praxis and poiesis, that is, practice and production. In *Making Social Science Matter*, Flyvbjerg (2001) developed a conception of the social sciences centred around Aristotle’s idea of *phronesis*, or practical wisdom, as a way of countering misguided reductionist approaches to social science that conceive of social-scientific efforts only in terms of ‘episteme’ and ‘techne’, knowledge and know-how. This is what he called *phronetic* social science – a ‘real’ form of social science meant to address the needs of those who wish to do social science as a way of making a difference ‘in practice’ and not just ‘in the academia’ (see for instance Flyvbjerg, Landman & Schram 2012). Phronesis was for Aristotle the highest intellectual virtue as well as a necessary requirement for social and

⁴¹ For a critique of Carr’s views on the relation between theory and practice see Moore (1981).

⁴² As early as 1969, Schwab (1969, 1971, 1973) was linking ways of knowing with ways of being practical in the field of education and curriculum studies, stimulating practical inquiry in a ‘moribund’ and ‘unhappy’ field which, in his eyes, could undergo a renaissance only by leaning towards the practical and away from the theoretical (see van Manen 1977). The practical, said Schwab (1969, p.1), refers to “a complex discipline, relatively unfamiliar to the academic and differing radically from the disciplines of the theoretic”. The disciplines of the practical are concerned with ‘choice’ and ‘action’, those of the theoretical with ‘knowledge’. Practical methods provide ‘defensible decisions’, while the methods of the theoretic lead to ‘warranted conclusions’.

political inquiry, and Aristotle considered it to be a prerequisite for the happiness of a citizen of the polis because of its role in balancing instrumental rationality with value-rationality. Aristotle proposed, for instance, that political science cannot be understood as episteme because of its emphasis on the particular, on content and on experience, and maintained that a well-functioning society thrives on phronetic political science instead. Those who practice phronesis possess knowledge of how to conduct themselves under particular circumstances which does not allow for its reduction to general truths. As Flyvbjerg explained, phronesis is “a sense of the ethically practical rather than a kind of science” (2001, p.57), a sense that cannot be grasped by a theoretical axiom. Phronesis is about values and action and cannot be boiled down to a science; it relates to the analysis of values as a starting point for human action and constitutes that intellectual activity that best serves praxis. It concerns the variable and changeable and that which escapes universal laws – it feeds on consideration, judgment, choice, and experience.

A phronetic social science, then, is a shot at an alternative concept of social science as based on context, judgment and practical knowledge (2001, p.24), an attempt at doing social science as practical intellectual activity “aimed at clarifying the problems, risks and possibilities we face as humans and societies, and at contributing to social and political praxis” (2001, p.4). It is also an endeavour that attracted some degree of criticism for not being Aristotelian enough and for largely dismissing action research (see Eikeland 2008, pp.43-45). This does not concern us as much as it does the fact that Flyvbjerg’s phronetic social science is representative of what Ricoeur (1997), in ‘A la Gloire de la Phronesis’, called ‘a return to Aristotle’, a process of ‘rediscovery’ which is explicit in the works of Gadamer, MacIntyre, Bernstein and many others and that is moved by a desire to find non-technical ways – prudence, judgment, practical knowledge – of making sense of particular and concrete situations in life and to establish individuality, agency

and subjectivity within disciplinary settings without having to subordinate one's activities to the pervasiveness of theory and science. While it is feasible to suggest that such a return to Aristotle was precipitated by the disenchantment with science following the failures of its modern applications (Eikeland 2008, p.16), I would contend that this was also necessitated by a reconceptualization of the discourse on power. Flyvbjerg elaborated on the ideas of Gadamer and Bernstein to include issues of power in considerations about *phronesis*. Bernstein rightly pointed out that “no practical discussion is going to take place unless you understand the relevance of *phronesis*” but, at the same time, “no practical philosophy can be adequate for our times unless it confronts the analysis of power” (Melcic & Bernstein 1989, p.217, italics in original). Flyvbjerg's guidelines for a ‘reformed’ social science try to address this by way of a ‘heuristics’ that includes the provision of “concrete examples and detailed narratives of how power works and with what consequences, and to suggest how power might be changed and work with other consequences” (2001, p.140). Phronetic social science offers the hope for a social-scientific research carried out as ‘a pragmatically governed interpretation of studied practices’, practices which are studied as part of an analysis which places power at its centre, practices which are approached with a focus on values, practices that force researchers to get ‘close to reality’ and emphasise ‘little things’, to look at ‘cases’ and ‘contexts’ and at the joining of ‘agency’ and ‘structure’, practices that place the research in the midst of a ‘polyphony of voices’⁴³.

Flyvbjerg's engagement with *phronesis* and social science seems to point at a deficiency in this study, and it seems to invite a swift admission of guilt, since this work has not really grappled with the issue of power so far – and, admittedly, it does not aim

⁴³ For a thorough exposition of the methodological guidelines for a reformed social science see Flyvbjerg (2001, pp.129-140).

to treat of it extensively at a later stage either. This, however, can be taken to be a limitation only in the sense that a thesis such as this inevitably appears as an identifiable sum of methodological omissions – it is defined more by what it omits than by what it contends. I would point out though that I subscribe to the view that the most sensible entry point to any analysis in the human sciences is history, that the only starting point to a study of history is the present, that the most adequate point of departure for a study of the present is the philosophy of action, that the philosophy of action (or practical philosophy) confronts the analysis of power by necessity, and that the analysis of power unavoidably entails the problem of freedom. This can be also taken to mean that freedom is the nucleus of power, that power is a form of action, that action is necessarily present, that the present is always historical, and that history is the main form human beings give to their understanding of themselves and society. This thesis addresses all such points but with a differential degree of interest and intensity. While greater attention is paid to the interplay of history and the study of the individual and society, to the link between history and the present, and to the relationship between the present and action, fewer considerations are made with regards to the confrontation between the philosophy of action and the question of power and to the problem of freedom in the analysis of power.

It will be noticed, for instance, that this thesis treats of power every time it discusses the issue of subjectivity, not least because it agrees with the Foucauldian notion that a study of power can be coupled with a study of the subject and the mechanisms for the production of subjective identities ⁴⁴. Considerations about power are essential to an understanding of the historical criminologist, the crime historian, the historical social scientist, and so on and, thus, I am aligned with Foucault when suggesting that individuals

⁴⁴ See Foucault (1982).

are vectors of power and that, for this reason, we have a responsibility to study and understand what power does to us, how power uses us and how its technologies form and shape our experiences and activities. Up to a certain point in his life, Foucault was working precisely on the relation between experience and the technology of power, the experiences that interested him being the ones often associated with his name like madness and criminality. My interest lies not in criminals but in criminologists and their becoming ‘historical’ and, at the level of the analysis of power, this study asks why is it that we have allowed for the proliferation of crime historians but not for the flourishing of historical criminologists? Why have we chosen crime history and not historical criminology as our principal mode of producing knowledge in the field of the historical study of crime? Though there is little to no doubt in my mind that this question will, one day, find a persuasive answer from within the boundaries of a historically-minded reflexive criminology, it remains presently confined to a less enticing cognitive alternative, that is, the *self-reflexive historiography* of a historical criminologist in the making ⁴⁵.

Technological Dreams and Emancipatory Utopias

We can now return to Gadamer’s critique of the human sciences. Such a critique, I would argue, points straight at the conceptual horizon of this thesis; that of a modern ideal of reason which ought to be ‘for use’, that modern ideal of reason that grounds its meaning in praxis and poiesis and not in theoria. Once incarnated in the existence of the human sciences, this ideal of reason tends to express itself in two main forms; first, as the endorsement of the *absolutum* of science which gives life to the ‘technological dream’

⁴⁵ Self-reflexive historiography is one of the many expressions specific to that broader project Foucault named the ‘historical ontology of ourselves’, the historico-philosophical practice that allows us to study what power and knowledge have made of us and how they have put us to use in the present (see Coloma 2011).

that Gadamer spoke of, the ethos of the scientifically faithful, the enlightened attitude of those who equate reason with science so as to put it to work as poiesis, that is, in its poietic or productive capacity as an instrument of human development and progress. And second, as the equally enlightened principle of origination in emancipatory endeavours and struggles, as the genetic beginning of academic freedom and social liberation, where reason *is* action, that is, praxis, and where the human sciences put reason to work in the sense of ‘effecting change’ and making a difference ‘in practice’. To put it somewhat differently, Gadamer’s take on the relation between theory and practice makes it clear that knowledge in modern times has no independence; it is subservient to modes of doing and making things, to practical projects aimed at changing existing political, economic, social and cultural arrangements and scientifico-technological ones designed to improve reality by explaining it and by creating and producing the tools necessary for such improvements to become real.

Gadamer (1998, p.79) encapsulated this idea quite concisely when he said that “man’s self-consciousness has come to rest ever more exclusively on his ability to do and to make things”. Our modern self-consciousness, he argued, “projects itself toward the technological dream and the emancipatory utopia” (1998, p.79). The technological dream is a concept used by Gadamer to refer to the ideal of a technocratic society ruled by ‘social technologists’ (1981, p.72) – a society where one has “recourse to the expert and looks to him for the discharging of the practical, political, and economic decisions one needs to make” (1981, p.72). Though a necessary underpinning of a technocratic society is technical rationality, the idea that its function is fundamentally a poietic or productive one should not be understated. Gadamer (1977, p.534) hinted at this when saying that modern natural science is better understood as *know-how* rather than as knowledge – as ‘*techne*’ rather than ‘*episteme*’, we might say – in the sense that “science makes possible

knowledge directed to the power of making, a knowing mastery of nature. This is technology. And this is precisely what practice is not". Modern science expresses itself in the form of expert know-how within the dynamics of *production based on knowledge*, i.e., as technology, and it functions as the poiesis that sustains the economic basis of modern living, just like there was a poiesis that provided the economic foundation for life in the Greek polis. Poiesis can be understood broadly as productive activity and technically as "a knowledgeable mastery of operational procedures" (1981, p.92), and to many it might not come as a surprise that Plato – the biggest enemy of liberty according to Popper, "the chief totalitarian theorist of the ancient world" as Grant (1954, p.185) called him – ultimately saw poiesis to be the preferable mode of 'being active' within the governing of a polis. In Plato's 'ideal city', poiesis and not praxis regulates human affairs; the statesman is not a 'doer' but a 'maker' who treats citizens like clay to create a work of art, an order of human affairs established through well-defined, predictable and unambiguous activities, like those of a craftsman in the workshop. Aristotle had a different view on the matter, believing that no reasonable organization of human affairs could be achieved without the very ambiguity and unpredictability of praxis and of *doxa* in general – of what Parmenides called 'the opinions of mortals'.

By emancipatory utopias, instead, we can more commonly understand projects like Marxism, theoretical ventures oriented towards action and not production, praxis and not poiesis. Praxis, Bernstein (1971, p.13) argued, is "the central concept in Marx's outlook" as well as a direct result of Marx's dialectical critique of Hegel's *Spirit* ⁴⁶ and

⁴⁶ When Hegel spoke of the *philosophy of spirit*, he had in mind what contemporary thinkers would call practical philosophy (see Pippin 2008), that is, that branch of philosophy that concentrates on action and agency, freedom and praxis. For Hegel, Solomon (1970, p.655) explains, spirit – like the Kantian transcendental 'I' – is "the subject of all possible experiences" and, like the Cartesian 'I Think', is "an activity, and not a "soul-thing" lying "behind" our thoughts". Indeed, *spirit is the universal in action* or, as Hegel put it in *Reason in History*, "the very essence of spirit is *action*" (1953, p.89, italics in original).

Cieszkowski was arguably the first to speak of philosophy as philosophy of practical activity, that is, of praxis (Bernstein 1971, p.xi). In his *Prison Notebooks*, Antonio Gramsci (1996) referred to Marxism in general both as ‘philosophy of praxis’ and as ‘absolute historicism’, while Althusser (2001, p.42) argued in *Lenin and Philosophy* that Marxism is not, like Gramsci suggested, ‘a new philosophy of practice’, but ‘a new practice of philosophy’ (see Derrida 2017). More broadly, the philosophy of praxis can be also described as a particular lineage of Marxist thought characteristic of Lukács, Adorno, Marcuse, and other Marxists – especially from the Frankfurt school – who have avoided the crude economic reductionism of orthodox Marxism (Feenberg 2014). To the philosopher of praxis, history appears as the paradigmatic order for the interpretation of ‘being’ in general. Being and reality present themselves as historical and history itself becomes an object of human practice, a product of human action. History, from this perspective, is *ontology* in the sense that, if it is true that we make our own history – as Marx and Vico before him were able to discern – and therefore that reality is *our* history, then, as Lukács put it, “we shall have raised ourselves in fact to the position from which reality can be understood as our ‘action’” (1971, p.147) ⁴⁷. As Hegel (1953, p.51) would have put it; “Man is his own action, the sequence of his actions, that into which he has been making himself”.

A utopia, Gadamer (1981, p.80) argued, “is not the projection of aims of action” but “a form of suggestiveness from afar” – put simply, it is a *critique of the present*. Though it might be inappropriate to call Gadamer an emancipatory utopian, it can be showed that he was significantly more concerned with knowledge being subservient to

⁴⁷ On the question of ontology and history in the philosophy of praxis, see Feenberg (2014, pp.1-20). In this context, ontology is to be understood critically and in a non-Platonic fashion, i.e., in a historico-effective fashion, as “fabric of praxis” (Negri 2017, p.195), or as “fabric and product of collective praxis” (2017, p.197).

‘making things’ than to ‘doing things’. As Foster (1991, p.202) realized, Gadamer was worried that the modern concept of practice is being “distorted by the technological model of practice as making a product” or, as Bernstein (1985, p.279, italics in original) put it, “Gadamer’s central claim is that there has been a forgetfulness and deformation of what *praxis* really is” – and “to correct this distortion”, Bernstein (1971, p.7) argued, we need to understand the individual “as an agent, as an active being engaged in various forms of practice”. This means that it is no longer enough to distinguish between theory and practice, we also need to distinguish practice as *praxis* from practice as *poiesis*. We could conceivably accomplish such a task by looking once again at Aristotle, this time at his distinction between *techne*, or science, and practical rationality, or *phronesis*, but this would indubitably take us beyond the scope of this study.

It suffices to say that Gadamer (1981, p.89) understood that in order to understand “the original notion of practice (*praxis*)” requires removing such a notion from the context of its opposition to science. *Praxis* is not defined in its opposition to theory or the application of theory either (1981, p.90), but rather it should be defined in its “delimitation over against production based on knowledge, the *poiesis* that provides the economic basis for the life of the polis” (1981, p.91, italics in original). A practical philosophy aimed at practical knowledge stands against technical rationality and know-how understood as expert knowledge of operational procedures – which is a matter of *phronesis* confronting *techne*, not *episteme*. In that regard, one of the most significant lessons we learn from Gadamer is well summarized by Foster (1991, p.202); “The critical issue of practice in our age, Gadamer asserts, is to ‘pilot’ our way through the tension between scientific know-how and practical wisdom”. This is a tension that I characterize throughout this thesis in terms of a balancing of *praxis* and *poiesis*, practice and production and, with Gadamer help, of emancipatory utopias and technological dreams. But this is also a

tension between citizenship and specialized labour, between the possibility of active political agency and the potential for scientific and technical production in the academia and beyond. What needs to be borne in mind is the idea that Aristotelian practical philosophy “is something other than the putatively neutral specialized knowledge of the expert who enters upon the tasks of politics and legislation like a non-participating observer” (1981, p.135). What must be sought is “the self-transformation of the social engineer into a social partner” (1981, p.166). Our goal should be neither that of making our practical and political reason scientific nor to make politics more academic (1998, p.65), but of accepting the power of scepticism over the dogmatism of science (1976f, p.129).

This study, then, is intended as a form of historico-philosophical criticism designed to reveal a more effective disjunction between action and production in the historical study of crime and to cast some light on the dynamics whereby social scientists are absorbed into dimensions of subjectivity and productivity that prevent them from acting in valuable practical capacities. The thesis is centred around the take-over of poiesis in the realm of social-scientific thinking and, in this regard, a key research idea concerns the possibility that historical criminology can be understood as an alternative kind of historical praxis, one that aims to put historical materials and contents ‘at work’ for the sake of action and not production. This also brings the thesis face to face with the potential reality that the social sciences may be part of a political dialogue about the present and that the historical study of crime might have to be understood, at least in part, as a present conversation about past crime-related phenomena undertaken to fulfil the demands of justice in contemporary society and not to know more about the past of such phenomena.

In this chapter, we saw that one way of making sense of the fact that crime historians seem to be interested in the theoretical whilst historical criminologists tend to value the practical, is to revive the ancient notions of theory as ‘being an onlooker’ and of practice as ‘active political citizenship’. A social science is practical when it concerns itself with praxis, that is, with politics. In view of that, it makes sense to speak of historical criminology as a practical philosophy of criminal phenomena at the point when the historical criminologist, in the spirit of the critical, ‘new criminologies’ of the 1960s and 1970s, realizes that without talking politics the study of crime can only speak an empty language. When it comes to the question; “What is it that we are doing when we do social science?”, the answer, this chapter showed, can reasonably be that we are acting in a practical capacity. As soon as we assert that, however, we unavoidably acknowledge that we could not possibly be doing what we do without also following given methodological and technical considerations. Thus, we can better understand Gadamer’s call for a compromise between science and politics, between neutral expertise and active political participation. In the next chapter, we concern ourselves with what can be taken to be one such compromise; *historical social science*. If properly understood, historical social science can become a counterbalancing force to specialization and technical expertise in the human sciences of the present.

Historical social science can be understood descriptively as the joining of a movement towards history ‘as’ social science and a movement towards history ‘in’ social science and, practically, as an academic attitude and mode of action premised on an agreement about the essentiality of historical thinking in the production of social-scientific knowledge. In the next chapter, I follow up with a conceptual justification for this practical conceptualization. Historical social science developed in the post-World War II intellectual environment and came to designate two central reconfigurations

concerning human knowledge; historical studies moved in the direction of the social sciences, and the social sciences moved in the direction of historical studies. Sociology, anthropology, psychology – and eventually criminology – began to locate a whole new set of objects of study on a historical plane, and historical research grounded its centre in theoretical and analytic – and not simply narrative and rhetorical – considerations. A closer cooperation between history and social science right after World War II, then, can feasibly be said to underpin the historical awakening that shaped and influenced works dealing with crime, criminology and criminal justice in the second half of the 20th century. Arguably, the historical study of crime is a province of historical social science. But it would be naïve to concede that purely methodological rearrangements at the crossroad of history and the study of crime sufficed to establish the conditions for the production of new kinds of subjectivity like the crime historian and the historical criminologist. When thinking about developments at the intersection of the study of crime and history from the perspective of the production of subjectivity, it is justifiable to believe that there ought to be more to a ‘crime historian’ than her methods. Equally simplistic would be to assume that an efficiently carried-out reorganization of method automatically made possible the production of a new kind of knowledge; put very simply, there ought to be more to crime history and historical criminology than barely applying social science to historical research or historical science to social research.

2.

Historical Social Science

Modern Knowledge as Active Knowledge <> A Historical Social-scientific Path for Historical Criminology <> On the Development of Historical Social Science <> Historical Social Science as Mode of Action <> Social Science as Techne and Praxis

The term ‘historical criminology’ refers to a historical approach to the study of criminal phenomena that, on the one hand, offers a valuable tool-kit for the transfer of criminological frames of questioning into the domain of historical research and, on the other, serves as a heuristic that can be usefully deployed to forge past and present for the sake of practical and policy objectives. Historians are barely aware of a co-worker named ‘historical criminologist’, possibly because the development of a historical study of crime has been marginal in scope if one contextualises it and measures it against the booming expansion of history specializations since the 1960s. In any circumstance, such a co-worker does somehow exist, and this thesis casts some additional light on the existence of this dubious subject called the historical criminologist by way of a reflexive engagement with one of the most significant developments in the field of social-scientific knowledge production over the last fifty years or so; the overlapping of historical research and the study of crime.

Arguably, there is no better entry point to an inquiry into the interrelation between the study of crime and the study of history than that offered by ‘historical social science’. Historical social science designates both a tendency in social science to think of research as historical practice as well as a tendency in historiography to think of research as social-scientific practice. Such tendencies were institutionalized starting in the second half of the 20th century and are currently undergoing and participating in processes of

disciplinary partition and academic and professional specialization. These tendencies can also be thought of as practical capacities and as abilities as well as techniques that await to be used in practice by historians and social scientists alike. By historical social scientist I mean the archetypal subjectivity that the interplay of these two tendencies produces at the level of ideas, while the historical criminologist, like the historical sociologist, the economic historian, the crime historian, and so on, is the practical and productive manifestation of this interplay from within a localized field of professional interactions and operations. Historical social science can be thought of as an exercise in ‘unthinking’ social science, as it gives life to occupational and academic postures that transcend the arbitrary borders of 19th-century social-scientific paradigms and to new ways forward for old ways of thinking. More broadly, it can be thought of as an overall academic attitude in social science, as an academic mode of action that forces us to reconsider social science’s relation to history, history’s relation to politics, and politics’ relation to social science.

This chapter opens with a number of considerations on the active nature of knowledge in modernity. It is pointed out that knowledge in modernity is subservient to action and production, to doing and making things, and that current abuses of science must be considered from the perspective of political reason and not technical rationality. The chapter goes on to offer historical criminology a narrative about its origins that transcends Foucault’s influence on the historical study of crime without totally ignoring his insights on the human sciences and the disciplines. The encounter between criminologists and historians does not necessarily lead to an interdisciplinary synthesis, just like, as Foucault (1980e, p.39) said, the coming together of historians and philosophers around the study of the power-knowledge nexus would constitute ‘a common labour’ of individuals seeking to ‘de-discipline’ themselves – and not an

interdisciplinary encounter. The chapter narrates the development of historical social science since the end of World War II and borrows from the intellectual arsenal of Immanuel Wallerstein the idea that all social scientists pursue a singular task, namely, historical social science. The chapter also engages with two thinkers – George Sarton and Wright Mills – who, in their own ways, captured the essence of historical social science as I understand it, and ends with a short historical exploration of the Social Science Movement, a key event in the history of Western social-scientific advances that exemplifies at once Gadamer's notions of an emancipatory utopia and of a technological dream.

Like the Social Science Movement, historical social science may place undue faith in the consequentiality of scientific research and, therefore, become susceptible to being subservient to poiesis and techne. It may succumb to expert know-how and become a miniature mode of intellectual production in which historical and social-scientific research designs are replicated for the sake of making things – not just material goods but also what Negri (2017, p.11) would call 'immaterial' goods like knowledge and expertise. When understood practically, however, historical social science can be seen as reasonably striking a balance between practice and theory and between participation and distancing in the scientific study of human affairs.

Modern Knowledge as Active Knowledge

Although this may initially sound unappealing to the many critics of the social sciences that would like to see them become more 'applied' and 'useful', it is reasonable to say that social-scientific knowledge is 'always in use'. If the social sciences are so conceived, it becomes unproblematic to say that they are practical sciences but, at the same time, that social scientists may have to keep an eye on their working practices or they risk reducing

themselves to the level not of free agents, rational thinkers and ethical beings but of working animals acting in the service of production for production's sake. When it comes to the contemporary study of crime, I would go as far as to say that we have historically witnessed the partial eclipsing of practicality in Western thinking and its relative subsumption to productive forces manifested in quite explicit forms. More broadly, I would contend that today both knowledge (*theoria*) and practice (*praxis*) in the social sciences are worrisomely subservient to production, to *poiesis* – or, at least, that the current social-scientific discourse on practice fails to adequately distinguish between practice as 'poiesis' and practice as 'praxis'. Social scientists may have historically overlooked the ancient maxim that life is action (*praxis*) and not production (*poiesis*).

In criminology as in other social sciences, it may be argued that this tendency to be guided by poiesis instead of praxis – we could say to make 'criminological things' instead of 'doing criminology' – finds its roots in the very essence of modern life. Modernity is active life, *vita activa*, doing *and* making instead of contemplating. One may consider, for instance, the fact that 'scholasticism', the preferred approach to learning up until the Renaissance, was a technique for knowledge preservation, not production. The scientific revolution was symptomatic of a changing mode of being, which goes by the name of 'the modern', that turned the human relation to knowledge on its head. Knowledge in the modern era is not to be sought for itself and, as Hannah Arendt (1998, p.292) suggested in *The Human Condition*, especially from the 17th century onwards "contemplation itself became altogether meaningless". What modernity seeks is the amplification of knowledge – hence the silence of contemplation ought to be broken. What purpose, though, would such an amplification of knowledge, such a breaking of the silence of contemplation, serve for the people of the modern era? According to Francis Bacon, it would provide none other than a method to command nature by action.

Knowledge, Bacon argued, has to be reconceptualised not in terms of ‘truth’, but of ‘operation’. This way, knowledge would steer people away from seeking satisfaction in thinking and push them to inquire into those causes and reasons that will give light to “new experiences and inventions” (1850, p.87). It would discourage individuals from seeking knowledge for itself as well as for their own benefit, for ostentation and for practicable enablement. It would be not for the “much easier matter to give satisfaction” but “to do the business” (1850, p.87) – by which Bacon obviously did not mean making money.

Knowledge meant for personal satisfaction and pleasure gives no fruits, knowledge for the sake of profit, profession or glory is “but as the golden ball thrown before Atalanta” (1850, p.83) ⁴⁸ and knowledge “referred to some particular point of use, is but as Harmodius” – the ancient Athenian tyrannicide who killed the Peisistratid tyrant Hipparchus – and “not like Hercules, who did perambulate the world to suppress tyrants and giants and monsters in every part” (1850, p.83). Knowledge as operation would become *power*, the power to change the human condition:

And therefore it is not the pleasure of curiosity, nor the quiet of resolution, nor the raising of the spirit, nor victory of wit, nor faculty of speech, nor lucre of profession, nor ambition of honour or fame, or inableness for business, that are the true ends of knowledge...the true end, scope, or office of knowledge...consist[s] not in any plausible, delectable, reverend, or admired discourse, or any satisfactory arguments, but in *effecting* and *working*, and in discovery of particulars not revealed before, for the better endowment and help of man’s life. (Bacon 1850, p.83, p.88, emphasis mine)

Effecting and working, praxis and poesis, action and production – together, they shape the *vita activa*, which is but a definition of modernity. When acting in a criminological capacity, then, the modern criminologist could be said to be in need of finding the right balance between ‘effecting’ and ‘working’, between action and production.

⁴⁸ Atalanta is a swift-footed huntress in Greek mythology who famously lost a foot race to pick up magic golden apples that her running rival Melanion would toss at her feet every time she caught up with him.

Today, when social-scientific knowledge turns out to be useful ‘in practice’, that mostly means that it is useful for poiesis and not praxis, for production and not action. As Flyvbjerg (2001, pp.3-4) noted, a major indication of this problem is social-scientific language itself. Social-scientific thinking and terminology have been colonized by the language of natural science and know-how to the point that derivations of ‘episteme’ and ‘techne’ are by now common-sense words in the humanities while phronesis, the highest intellectual virtue according to the ancient Greeks, as well as the foundation of praxis and the necessary basis for social and political inquiry, is largely overlooked. Arguably, it is futile to discuss ‘the theory’ of social science without taking into account that doing social science is predominantly an activity practised by a definite segment of a country’s workforce – the cognitive labour force, we could say – and that ‘scientific’ or ‘hermeneutic’ and the like are designations attached to human operations, such as that of observing phenomena or describing events, carried out for the most by scholars, researchers and scientists in universities and research institutes. In short, ‘positive social science’, ‘interpretive social science’, ‘historical social science’, and so on, are ways of acting or even modes of action for social scientists. This is partly an inheritance that social science owes to the Galilean method, which affirms that understanding *is* activity; as Dewey (1929, p.38) would put it, the experimental procedure of scientific enquiry “is one that installs doing at the heart of knowing”. As Arendt (1998) argued, science abandoned the classical opposition between knowing and doing when modernity turned the relationship between theory and practice upside-down, placing action and production, and no longer contemplation, at the top of the hierarchy of human achievements. The modern sciences are not simply ways of thinking about things but primarily ways of doing and making things. Therefore, to properly understand the historical study of crime is to conceive of crime-related histories not only as works of science but also as practices and

manifestations of productivity, as well as to conceive of those who write such histories not just as experts or scientists, but as political subjects and cognitive workers.

Similarly, the curiosity inherent in the modern study of crime itself, like the criminological will to come up with theoretical knowledge of criminal phenomena, was never purely speculative or solely intellectualistic but always practical and concretely applied. This is so because criminology is, simply put, a product of modernity, and modernity is premised on the reversal of contemplation and action, or, as Hannah Arendt put it, “the reversal of the hierarchical order between *vita contemplativa* and *vita activa*” (1998, p.289, italics in the original). Lamenting the overly theoretical nature of criminology would constitute some form of *reductio ad absurdum* because, unlike modern technology, which has its origin “exclusively in an altogether non-practical search for useless knowledge” and some of the first modern instruments such as the watch – which “was not invented for purposes of practical life, but exclusively for the highly “theoretical” purpose of conducting certain experiments with nature” (Arendt 1998, p.289) – criminology’s Beccarian beginnings in the 18th century are indistinguishable from a frenetic search for ways to overcome practical challenges – rising levels of civil disobedience and public disorder, the growing inefficacy of corporal punishments to deter the masses, “the cruelty of punishments, and the irregularity of proceedings in criminal cases...examples of the most unfeeling barbarity...the filth, and horrors of a prison...”; these were, according to Beccaria (1767, pp.3-4), some of the practical concerns that “ought to have roused the attention of those whose business is to direct the opinions of mankind”.

Combating the lack of experimentation and scientific application in criminology might be a slightly different matter, but an equally problematic one; for the primal question for a criminology that cares about its application is not what would make such

an application more successful but what kinds of application an ‘applied criminology’ should secure and reserve for itself. As Butterfield (1949) showed in *The Origins of Modern Science*, the reasons young children at school can today be instilled with knowledge and information that the greatest intellects such as Leonardo da Vinci and Galileo failed to make their own at their time have little to do with mounting experimental evidence or new techniques of observations:

In fact, we shall find that in both celestial and terrestrial physics...change is brought about, not by new observations or additional evidence in the first place, but by transpositions that were taking place inside the minds of the scientists themselves...Now, if we are seeking to understand this birth of modern science we must not imagine that everything is explained by resort to an experimental mode of procedure...The scientific revolution is most significant...in the fields of astronomy and mechanics. In the former realm the rise of experiment in any ordinary sense of the word can hardly be expected to have had any relevance. In regard to the latter...the great achievement [the modern law of inertia] was due to a transposition taking place in the mind of the enquirer himself...indeed, [it] was hardly a thing which the human mind would ever reach by experiment. (Butterfield 1949, p.1, p.68, p.72)

The modern mode of being is what gave life to the experiment itself in the first place, producing it through the human capacities of making and fabricating without which no experimental knowledge would be possible. As Arendt (1998, p.295) neatly put it when discussing the scientific revolution, “the use of the experiment for the purpose of knowledge was already the consequence of the conviction that one can know only what he has made himself”.

The process of making and producing knowledge through experiments within a criminological setting does not have to be repudiated, but this poietic and technical pursuit should not hinder the possibility of a reflexive engagement with criminology understood as praxis and kind of practical activity. What may be challenged, however, is the proclivity to equate social scientists with their methods. To reduce historical criminologists and crime historians to their methods is to turn human subjects into tools, ways of life into means of production. In a way, there is a rational justification for this; modernity turned upside-down the relationship between theory and practice to the point

that the wisdom of antiquity sometimes appears today in a reversed and overturned shape. Aristotle believed, among other scandalous things by today's standards, that citizenship is incompatible with having a job – for life is action and not production ⁴⁹. Today this antique maxim sounds quite bizarre and puzzling in most contexts, aristocratic to say the least, and transparently antithetical to capitalist ethics. Yet, Gadamer had his own way of entertaining this very idea:

I find it absolutely unjust to accuse scientists of the abuse of science. They cannot as scientists find anything in the sciences which limit or negate the possible abuse of the results. One can demand of the scientist insofar as he is a citizen that, as a citizen, he acts in the public interest; however, insofar as he is a scientist this demand is inapplicable. (Gadamer 1975a, pp.329-330)

As Gadamer (1985, p.177) made clear, hermeneutic philosophy is not a repudiation of methodological rationality, but “the hermeneutic task of integrating the monologic of the sciences into the communicative consciousness includes the task of exercising practical, social, and political reasonability” (1985, p.182). Abuses of science happen as a result of misapplications of political reason (1975a, p.329) and it is a political and not a scientific responsibility to ensure that the knowledge and know-how made possible by science is reasonably applied (1977, p.555).

A Historical Social-scientific Path for Historical Criminology

The contemporary criminologist is not a professional moralist and, though the nature of the object of criminological inquiry forces researchers and writers in the field of the study of crime to keep an eye on issues of normativity and rightness, of morality and values, it is uncontroversial to say that the ethos of a scientific investigation has to underlie the research process in order for the outcome to be systematically appreciated. This being a study ‘on’ history and criminology rather than ‘in’ history and criminology, however,

⁴⁹ Nussbaum (2000) discussed why Aristotle was wrong in believing that citizenship and work in adult life are incompatible in a paper on Aristotle, politics and human capabilities.

science will play no more than the role it deserves. Though it is desirable to understand the historical study of crime as a scientific reality, it is equally desirable to think of it as a practical one, as a practical reality through which to form judgements and lines of action directed at current issues and problems. As a matter of fact, there is consensus among criminologists as to what historical criminology is about; an approach to the study of crime that makes use of historical materials to produce practical judgments about criminal matters in the present. This is reasonably an enterprise in lineage with Foucault's 'history of the present', a project which, coincidentally or not, publicly began with the publication of *Discipline and Punish*. But does historical criminology have any hope to function without Foucault's history of the present?

In this chapter, I offer a conceptual rationale for historical criminology grounded in historical social science. It would be a mistake to reduce historical criminology to a Foucauldian endeavour – though the relationship between Foucault's work and historical criminology is not totally accidental. Not only was Foucault writing at a time when a wave of historical revisionism was sweeping the field of crime history and making accessible the past of a failing system of punitive justice and repressive state measures, but also at a time when the social sciences were developing all kinds of historical ramifications – economic history, historical sociology, historical anthropology and so on. Foucault helps explain the general orientation of historical criminology but, at this early stage of the thesis, Foucault, the history of the present, and historico-philosophical criticism must be momentarily put to one side. There is one main reason for this; the use of history for the purposes of studying crime and the effects that such use is having on the study of crime as a profession and as an academic activity is a central theme of this thesis. Since Foucault has been one of the most successful at using history to rethink crime-related phenomena and at affecting the study of crime in a practical way, I could

not possibly start from Foucault, for he had to be part of the phenomena under investigation. Instead of beginning by showing how peculiarly Foucauldian historical criminology is, the hopes for a historical criminology can be adequately appreciated by looking at the development of the historical study of crime in general and, even more broadly, at the shaping of historical social science.

On the Development of Historical Social Science

The past five decades have witnessed a growing fascination within the study of crime with questions and analytic frameworks that are historical in nature. The recent publication of *The Oxford Handbook of the History of Crime and Criminal Justice* (Knepper & Johansen 2016a), of encyclopediac works like *A Companion to the History of Crime and Criminal Justice* (Turner et al. 2017) and *The Social History of Crime and Punishment in America* (Miller 2012) and of textbook-like works such as Oliver and Hilgenberg's (2006) *A History of Crime and Criminal Justice in America*, testify to a growing interplay between history and criminology as well as to a cumulating body of scholarly works that is consciously realizing the value of systematically and comprehensively assembling a field of research around the historical study of crime and criminal justice. Particularly since the 1980s, academic works exploring the importance of history and the past for criminology have proliferated (see for instance Inciardi & Faupel 1980a; Fitzgerald, McLennan & Pawson 1981; Jones 1986; Garland 1985a, 1985b, 1988, 1991, 1997b, 1997c; Beirne 1994; Wetzell 2000; Becker & Wetzell 2006a; Godfrey, Williams & Lawrence 2008; Lawrence 2012; Garfinkel 2017; Shoemaker & Ward 2017), conceivably as part of a broader trend of academic inquiry in the social sciences that, following Wallerstein (1977, 2000), might be called *historical social science*.

Historical social science aims to concretize in practice the intellectual refusal to recognize the traditional disciplinary boundaries of the social sciences established between the late 1800 and World War II; it contends that there is no such thing, for instance, as ‘history’ or ‘criminology’ and advocates *unidisciplinarity* instead, that is, a will to dispute existing structures of knowledge and to institute intellectual schemas suited for modern-day challenges (see Wallerstein 2008) ⁵⁰. There is a sense in which it would be fruitless to try and assess the extent to which this concept – historical social science – signals a historical development in the social sciences or a social-scientific one in historical studies. McDonald (1996b), for instance, made it clear that the workings of the Social Science Research Council (SSRC) in the years following World War II had a great impact on American historians of the time, leading many of them to transform their discipline through the demolition of the ‘old’ scientific approach to history and its replacement with a ‘new’ one. In the simplest terms possible, this new scientific approach to history was similar to Robert K. Merton’s approach to the social sciences and it maintained that historians had to ground their work in theory; in short, it advocated appropriating social-scientific theory for historical research purposes. This was made particularly evident in the 1954 report of the SSRC’s historiography committee (SSRC, 1954), a report which was not well received by many practicing historians, as it was

⁵⁰ The concept of historical social science has quite a different meaning in Bryant (2000), who, in a complex realist critique of ‘sources and narratives in historical social science’, called for the consolidation of “a fully integrated sociological history, a unified and inclusive historical social science” (2000, p.489). He offered a view of historical social science as a sort of epistemological middle-ground between positivists and postmodernists in historical sociology, an analytic device that can be used to overcome theoretical and methodological difficulties in historical-sociological inquiry. Though an ambitious project when looking at it from within the precinct of sociology, it might be limiting to only make sense of historical social science from the view point of historical sociology and to conceive of it as a reflexive compromise between “dated empiricist dogmas” and “trendy illogical subjectivism”, or to think of historical social science as guarding “*against the illusions of an unmediated factual transparency, while also forestalling the projective imposition of grand conceptional schemes that violate the contextual integrities of other times, different places*” (2000, p.490, italics in original).

perceived to be an arrogant attempt to teach them what their job ‘really’ was (see for example Macrae 1954; DuWors 1955).

As H. Stuart Hughes (1960, p.32) put it in his influential essay ‘The Historian and the Social Scientist’, “since history has no generalizations of its own – since the only specifically historical category is that of time sequence – it must necessarily borrow its intellectual rationale from elsewhere”. Arguably, post-World War II historical scholarship came to espouse the vision that Karl Popper first discussed in 1936 in Brussels and then laid out in 1957 in *The Poverty of Historicism*; that the possibility of a *theoretical history* must be rejected, that is, that we must resist the possibility “of a historical social science that would correspond to *theoretical physics*” (Popper 1964, p.vii, italics in the original). In this view, history ‘adopted’ social-scientific theory because it could not have a theory of its own. It was not a question of method, i.e., of scientific method and how to best achieve scientificity through historical analyses – because, in the last analysis, there are no historical laws to be discovered that can predict the future course of human history. It was rather a question of understanding and how to best interpret phenomena in their historical context. With the influence of positivism and logical empiricism at their lowest in the mid-20th century ⁵¹, historical scholarship looked upon the social sciences for new guidelines and theoretical landscapes. A more attentive analysis, however, seems to suggest that for a time the social sciences had been moving towards history and not the other way around. As McDonald put it in his introduction to *The Historic Turn in the Human Sciences*:

One of the most distinctive aspects of the current intellectual epoch is a turn toward “history” that is in progress across the humanities and social sciences in America today. The signs of a significant transformation of the intellectual agendas of the human sciences are apparent in the appearance of, among other things, the “new historicism” in literary and legal theory, a revived interest in “history of philosophy”, a historically oriented “new institutionalism” and other historical

⁵¹ See for instance Watkins (1957).

approaches in political sciences and economics, “ethnohistory” in anthropology, “historical sociology” in sociology, and even a more self-consciously reflexive and historicist methodological discussion in history itself. (McDonald 1996a, p.1)

In fact, there is compelling evidence in support of the view that, throughout the second half of the 20th century, the humanities assumed a profoundly historical orientation. Almost five decades ago, for instance, Kenneth Gergen admitted that social psychology *is* history, or that, though the methods of research in social psychology are scientific in character, “theories of social behavior are primarily reflections of contemporary history” (1973, p.309) and that “social psychology is primarily an historical inquiry” (1973, p.310). At a time when the field was living through an existential crisis, Gergen introduced social constructionism into social psychology as a necessary way of reforming an overly empirical and government-friendly discipline (Burr 1995, pp.7-8). It should be legitimate to say, then, that historical social science may be understood both as a movement toward history *as* social science and as a turn toward history *in* social science

52.

As Wallerstein (2008) suggested, historical social science is a post-World War II development – and an unclear one. The concept can be extrapolated from the confusing and intermingled terminology used to describe the developing social sciences from the 1880s down to the mid-20th century. In the same way in which the term ‘economics’ replaced ‘political economy’ with William Stanley Jevons’ publication of the second edition of *The Theory of Political Economy* in 1879, starting in the late-19th century the language used to describe the nature and structure of social-scientific knowledge – which in the middle of the 19th century amounted to hundreds of labels and definitions – was reduced to a handful of names and terms. Wallerstein, et al. (1996) showed that from

⁵² As an alternative, the term ‘social science history’ could be used to refer to the movement toward history ‘as’ social science and the term ‘historical social science’ to refer to the turn toward history ‘in’ social science.

1880s down to 1945 social-scientific terminology came to be structured in accordance with six defining ‘disciplines’: sociology, economics, history, political science, anthropology, and Oriental studies. Within this new classification, historical social science came to designate not much a study area in its own right but rather a convergence between historical and social-scientific research, with concepts such as ‘historical sociology’, ‘new economic history’, ‘new institutionalism’, ‘historical anthropology’ and ‘historical geography’ gaining prominence in the 1960s. Such developments would at times go under the name of ‘social science history’, at times under that of ‘historical social science’.

A major condition for the consolidation of a historical social science was the growth of university education since the 1950s, which made possible the institutionalization and organization of social-scientific practice within a new setting ⁵³. In the United States, the work of the SSRC post-World War II helped transform historical practice and galvanize a committed cooperation between historiography and social-scientific methodology. In *Being a Historian*, Banner Jr. (2012) described the engagement of the SSRC with the academia post-World War II with quite a sense of admiration:

For roughly three decades after World War II, SSRC fellowships supported historians’ application of social scientific and statistical methods to historical research. And the broadening of that

⁵³ For what concerns criminology here in Australia, for instance, criminological developments were taking place as early as the late-19th century – as with the New South Wales penal administrator Frederick William Neitenstein and with the radical Melbourne clergyman Dr Charles Strong, who in 1895 founded the ‘Criminology Society of Victoria’ (Finnane 2012, p.159) – but the institutionalization of criminology matured in the 1950s and 1960s. The disciplinary foundations of academic Australian criminology owe much to the American psychiatrist Anita Mühl (1941), who wrote the first criminology book ever published in Australia, *The ABC of Criminology* (for details see Finnane 2006). Particularly thanks to the collaboration of George Paton and John Vincent Barry, the foundation of the Melbourne Department of Criminology followed about a decade later, with a Board of Studies in Criminology installed at the University of Melbourne in the late 1950. The Universities of Sydney and Auckland had to wait for another fifteen years before opening their own departments in 1965 (Grabosky 2007). The *Australian and New Zealand Society of Criminology* was established in Melbourne in 1967, and the first issue of *The Australian and New Zealand Journal of Criminology* came to be published a year later (Finnane 2008, p.201).

research and the teaching that accompanied it beyond history's previous focus on the United States and Western Europe was inconceivable without the SSRC's backing of language training and travel and fellowship support for young historians who subsequently became leading scholars of non-Western places and people. (Banner Jr. 2012, p.54)

The *National Institute of Law Enforcement and Criminal Justice* (today's *National Institute of Justice*) was created in 1968 and facilitated the creation of new arrangements in criminal justice research. The *Social Science History Association* was founded in 1974 and it has since coordinated interdisciplinary and cross-disciplinary research in historical social science. Independent and innovative social historical research, such as Rothman's *The Discovery of the Asylum* (1971) and Lane's *Policing the City* (1967), also played a role in popularizing the overlapping of historical and criminal justice research.

At a conceptual level, some such developments have been said to reflect a general movement of Western thought towards a sceptical stance regarding the methodological centrality of notions such as 'event' and 'episode' and towards a more positive engagement with concepts like 'pattern' and 'structure' ⁵⁴. More broadly still, they can be thought of as mirroring a modern willingness to understand both social and historical phenomena in their *longue durée* (see Braudel & Wallerstein 2009). More fundamentally, Wallerstein (1988) suggested that what brought both history and social science to life in their modern form in the 19th century was the ideological acceptance of the normality of change. The idea that change was 'normal', said Wallerstein, sprang from the political world instigated by the French Revolution and came to be consolidated and corroborated in the 19th century thanks to advances in science such as Darwin's theory of evolution, which refuted the doctrine of the fixity of species, placed human beings within the general

⁵⁴ Arguably this belief is objectionable, as some prominent authors of the time such as Michel Foucault and Paul Ricoeur were clearly moving in the opposite direction, i.e., from 'structure' to 'event'. Also, as noted by Taylor (1976), E. P. Thompson, though explicitly a Marxist, did not adhere to Althusser's structural Marxism and focused on the lived experiences of the lower classes instead of attempting to develop "a Marxist science dominated by Structure and missing out on Man" (Taylor 1976, p.412).

category of organic beings, and declared that the human species descended from pre-existing forms of life. Modern evolutionism itself, when viewed in its metaphysical nudity, has been understood by some as a special application of the historical method to the study of living beings, since it basically purports that a current state of being can be explained in terms of its causal relation with a previous one ⁵⁵. Thus, a proper conception of human nature – as well as a systematic conceptualization of social and political phenomena – came to be unintelligible when detached from a given understanding of change as natural or normal ⁵⁶. Ideologies of the 19th century such as conservatism, liberalism and Marxism can be understood as expressions of the realization that change is normal, with liberalism being “the natural ideology of normal change” (Wallerstein 2001, p.17). The social sciences themselves can be thought of as responses to the normality of change, as attempts at institutionalizing an empirical mode of studying the social world and understanding social change – so as to control it. The acceptance of the normality of change is what led to the necessity of understanding social phenomena in their historical relations and, after World War II, historical social science came to designate a way of understanding social reality by analysing historical change and, at the same time, a way of doing history by social-scientific means.

Historical Social Science as Mode of Action

The structuring of the social sciences within institutional settings from the late 1880s to 1945 hosted the material and intellectual conditions for the emergence of a historical

⁵⁵ See for instance Schiller’s studies on humanism and the metaphysics of evolution (1910, pp.171-208).

⁵⁶ Mastering this conception of change was a major task of modernity. Modernity as defined by convenience substituted the ecclesiastical legitimation of *order* premised on divine providence for the scientific certainty of *change*. While the modern world equated the nature of change with its *inevitability*, the post-modern posture may be said to consist in facing change in view of its *indeterminacy* (see Delanty 2000).

social science that, in the aftermath of World War II and its traumatizing effects, came to confront the very structuration of its emergence. Particularly after 1968, the consensus on the normality of change and on the scope of institutions such as the social sciences is put into question. The practical use of the social sciences for the intelligent governance of a changing world is doubted – indeed even questioned. Beginning in the mid-19th century, universities around the world have operated on a number of presumptions, some of which underpin the epistemological pulling apart of natural and social science, some others being responsible for the artificial divide between ‘nomothetic’ social sciences like history, anthropology and Oriental studies and ‘idiographic’ social sciences like sociology, economics and political science ⁵⁷. Disciplinary categorizations carried out within university faculties have led to the formation of increasingly specialized domains of knowledge and to the shaping of skilled technicians preoccupied with narrow research paths when this is not necessarily what the social sciences are about; arguably, what the social sciences are currently in need of is not more specialization but more ‘substantive rationality’. This is a concept first devised by Max Weber, who used it to mean the application of certain criteria of ‘ultimate ends’ – be they ethical, political, utilitarian, egalitarian, and the like – to measure the consequences of social action in terms of values ⁵⁸. Presently delegated to a specialized group of philosophers as a task for the few, that of substantive rationality is, in Wallerstein’s view, the central task of the social sciences.

⁵⁷ The historical details of this narrative have been dutifully analysed by Wallerstein, et al. (1996) in *Open the Social Sciences*, a report on the worldwide state of the social sciences and their contemporary role in the intellectual division of labour covering, among other topics, the historical construction of the humanities as forms of knowledge and their organizational structuring into disciplines.

⁵⁸ Rationality is arguably the major intellectual theme of Weber’s oeuvre. His typology of rationality aims to explain patterns of social action and is generally broken down into four classes; practical rationality, theoretical rationality, substantive rationality and formal rationality. Substantive rationality deploys a ‘value postulate’ in order to directly pattern human action, that is, it works as a ‘standard’ or a ‘valid canon’ against which judgments and decisions are made (for a detailed account of Weber’s types of rationality see Kalberg 1980).

What this means is that the social sciences can use empirical analyses to single out implausible scenarios and to test the consequences of alternative paths of action and can thereby create “a sound framework for what in the end remains a metaphysical, that is a political, debate” (Wallerstein 2000, p.32). Wallerstein put forward the possibility of ‘unthinking social science’, to leave behind the 19th-century paradigms of social science and their strict disciplinary boundaries and specialized areas of study and to endorse a more practical understanding of the social sciences – as he nicely put it, “I remain enough of a child of the Enlightenment to believe that reflection can be useful and consequential” (2000, pp.34-35). Wallerstein contended that three different scenarios confront the social sciences in their present form; first, they might collapse under the weight of their own organizational structure – i.e., the division between natural and social science, the concept of separate disciplines such as idiographic and nomothetic ones, the trend towards specialization, and so on. Second, the social sciences might end up being reorganized by agents other than the social scientists themselves – eager candidates might include ministries of education, university administrators and other bureaucrats whose principal motivation would be a rational cost-effective rearrangement of faculties and universities departments. Lastly, Wallerstein gave social scientists something of a hope:

The third scenario, perhaps less likely but probably more desirable, is that social scientists themselves take the lead in reunifying and redividing social science so as to create a more intelligent division of labour, one that would permit significant intellectual advance in the twenty-first century. I think such a reunification could only be achieved on the basis of considering that we are all pursuing a singular task, which I call *historical social science*, to underline that it must be based on the epistemological assumption that all useful descriptions of social reality are necessarily simultaneously ‘historical’...and ‘social scientific’. (Wallerstein 2000, pp.33-34, emphasis mine)

Notably, the first and second scenarios recreate an image of the social scientist as passive agent, as victim of structural and historical circumstances or, at best, as neutral subject at the mercy of external and foreign interests or the convenience of the moment. The third scenario, instead, places social scientists at the centre of the problem of the future of their

craft, unequivocally postulating their agency as a way of ‘doing something’ – of pursuing historical social science as *the* singular task of social scientists. In other words, historical social science offers the hope of understanding the doings of social scientists as modes of action, that is, historical social science can be interpreted pragmatically as the activity of believing and the acting upon the belief that historical understanding is foundational to social-scientific thinking – and vice versa.

The question of the possible role of historical social science in the present ultimately transcends the discourses of history and social science and inescapably resolves itself in the ethical and the political (Wallerstein 2001, p.76). Whether or not one makes it a matter of ‘unthinking social science’ and of overcoming the limits of 19th-century scientific paradigms, it needs to be asked if historical social science is only a tool for the study of change or if it is to be handled as an instrument for change and not just a tool for its understanding. Historical social science may not be simply a methodological synthesis but also an *academic attitude*, an attitude, moreover, which we do not fully understand precisely because of a tendency to look at its scope methodologically instead of historically. In fact, the most disturbing feature of historical social science is that its history is yet to be written ⁵⁹. Historians working on the intersection of historical and social-scientific methods tend to look at the development of historical social science as part of the historical and historiographical evolution of historical studies themselves – essentially, as a ‘new’ way of writing history, as just another set of techniques for doing historical research, as a poietic and technical capacity and not a practical undertaking, or

⁵⁹ Surely enough, studies centred around the ways in which the social sciences and historiography have overlapped since World War II abound – one only needs to mention the work done by historian Peter Burke on this and related matters in books like *Sociology and History* and *History and Social Theory* (see for instance Burke 1973, 1980, 1991, 1992, 1997, 2000; Pallares-Burke 2002, pp.129-157). But it is doubtful whether such studies should carry the label of ‘historical social science’.

else, as a means of producing historical works. To put it simply, historians see historical social science as a tool for crafting the past and not as an attitude meant for performing the present. Far from taking for granted that historical reflection can be ‘useful’ and ‘consequential’, to use Wallerstein’s terms, the orthodoxy among conventional historians – including those working within the historical study of crime – claims that the historical past has little to do with current affairs and that historical narratives, whether aided by scientific models, theories and concepts or not, can hardly serve as allies when facing contemporary problems and dilemmas.

The attitude of the historical social scientist is rather different – and different in a way that can be grasped by briefly looking at two thinkers that seem to have embodied that attitude rather well in the past. The first is one of the originators of the history of science, George Sarton (1884-1956). Sarton was a hardcore proponent of science who, in the course of his career, set in motion an ingenious balance of method and practical living that makes him worthy of mention. Sarton believed in science so much that he turned its history into a form of knowledge, ‘the history of science’. He made it possible, in other words, to use the history of science as a field of study, as a branch of knowledge, as a history specialization. Sarton’s faith in science was such that he came to the conclusion that the core task of history in general, from the perspective of what he called a ‘new humanism’, was that of finding in the works of past science “that which is not and cannot be superseded” (1988, p.liii), for in his view a ‘true’ humanist would know the ‘life of science’ just as well as the ‘life of art’ and the ‘life of religion’. “We can but live in the present”, said Sarton (1988, p.liii), but “to understand the present and make it a little our own, we must look both towards the past and towards the future”. Sarton would have agreed with Gadamer on one thing; that life must be beautiful as well as useful, that knowledge needs to be “a thing of beauty, or it is not worth having” (1988, p.liv). Sarton

believed the ultimate end of life to be that of giving life to “immaterial things” (1988, p.li) – we could say values – like truth, justice, and beauty. He reprimanded ‘scientists and inventors’ who failed to appreciate the beauty of the past because distracted by the beauty that science was producing in front of their very eyes and stated that a humanist makes no distinction between past and present and ‘looks at things’ neither from the point of view of the past nor from the point of view of the present, but from the point of view of *the whole*.

Artists and historians are no ‘useless dreamers’, and the duty of a humanist is “not simply to study the past in a passive and sheepish way and to lose himself in his admiration”, said Sarton (1988, p.liii), but rather the humanist contemplates the past “from the summit of modern science, with the whole of human experience at his disposal and with a heart full of hope”. The humanist looks at the past to transcend the human, to see the superior value of humanity, or even to see the whole of humanity past, present and future as ‘but one man’ (1988, p.liv). This way, “there is no past, there is no future, simply an everlasting present” (1988, p.liv). Sarton was not ironic in saying that “if the past were not part of your present, if it were not a living past, it would be better for you to leave it alone” (1988, p.lv). To him, historians ought not to remain ‘idle spectators’ and he warned that “it is not enough to appreciate and admire what our ancestors did, we must take up their best traditions, and that implies expert knowledge and craftsmanship, science and practice” (1988, p.lv). Hence, the new humanist succeeds when combining ‘the historical’ and ‘the scientific’, historical practice and scientific understanding. While the new humanist’s starting point to a historical social science is the scientific revolution, that of a *classical social analyst* – or ‘imaginative sociologist’ – would be the shaping of a historical consciousness. Wright Mills’ idea of a *sociological imagination* perhaps best captures the sense in which a new humanism in historical social science might

overemphasise the value of science at the expenses of historical understanding. Mills ([1959] 2000) exposed the modern incapacity to connect individual life to the history of society, the inability of some to form that quality of mind which is paramount to conceive of the interplay between the individual and society, between ‘biography’ and ‘history’, or between ‘self’ and ‘world’ ⁶⁰. This incapacity was, according to Mills, not due to a lack of information, for contemporary society arguably stands out as an ‘Age of Fact’, but rather due to a lack of sociological imagination, that quality of mind that rather directs individuals in their use of information and that enables them to understand “the larger historical scene in terms of its meaning for the inner life and the external career of a variety of individuals” (2000, p.5).

In Mills’ view, the ‘shaping of history’ has gradually outpaced the individual’s capacity for orientation in the present, leading some to fail to cope “with their personal troubles in such a way as to control the structural transformations that usually lie behind them” (2000, p.4). For scholars, scientists, journalists, artists, editors, and so on to achieve clear summations of what goes on around them demands an appreciation of the historical relativity of experience, which is why the classical social analyst illuminates the framework of modernity by uncovering its historicity. As Mills (2000, p.5) would put it, the ‘first fruit’ of the sociological imagination, which also counts as the ‘first lesson’ of social science, is the idea that “the individual can understand his own experience and gauge his own fate only by locating himself within his period” – a message that echoes both Gadamer’s suggestion that modern consciousness is historical consciousness and Dilthey’s hermeneutic assertion that human beings can observe history and the world around them only because they exist within them. In fact, it might be granted that Mills’

⁶⁰ Note how this is somehow reminiscent of a definition of hermeneutics as “the bridging of personal or historical distance between minds” (Gadamer 1976a, p.95).

sociological imagination provides an historicist basis for historical social science, that is, a historico-relativist standpoint to make sense of the idea that social science is at once historical and social-scientific:

For that imagination is the capacity to shift from one perspective to another – from the political to the psychological; from examination of a single family to comparative assessment of the national budgets of the world; from the theological school to the military establishment; from considerations of an oil industry to studies of contemporary poetry. It is the capacity to range from the most impersonal and remote transformations to the most intimate features of the human self – and to see the relations between the two. Back of its use there is always the urge to know the social and historical meaning of the individual in the society and in the period in which he has his quality and his being. (Mills 2000, p.7)

For all practical purposes, then, the sociological imagination is a form of *self-consciousness* (2000, p.7), a key component of which is the acquisition of a new way of thinking and the experiencing of a ‘transvaluation of values’ which Mills equated with the realization of “the cultural meaning of the social sciences” (2000, p.8). Contrary to both a blind scientism that would see the social sciences overuse scientific concepts and models for the sake of scientificity and to a new humanism that would tend to attribute greater import to scientific views than to historical insights, Mills advanced a conception of social science that is predominantly historical, cultural and political.

Instead of conceiving of the social sciences as “a set of bureaucratic techniques which inhibit social inquiry by ‘methodological’ pretensions” (2000, p.20), or else as a tray of scientific specializations, Mills was interested in “the moral problems of social study”, in “the problem of social science as a public issue” (2000, p.21) and in “the political meaning of studies of man and society” (2000, p.22). Mills therefore defined classic social analysis as a usable set of traditions whose fundamental aspect is an interest in ‘historical social structures’ and whose points of application and use are problems of direct relevance “to urgent public issues and insistent human troubles” (2000, p.21) – a definition that seems to also fit historical social science rather well. He was aware of the relevance of social science for ideologies, as he knew well of the impact of big

movements like the Enlightenment – and of relatively smaller ones like the Social Science Movement – on American sociology and of the historical presence of a ‘liberal practicality’ in the deeds of previous generations of sociologists. He was also more specifically aware of the relation of ideology to the work of historians as he noted, for instance, that some of them “seem eager to re-write the past in order to serve what can only be recognized as ideological purposes of the present” (2000, p.83).

What Mills was primarily worried about, however, was ‘illiberal practicality’, the American university system’s response to an increasingly demanding bureaucratization and administration of knowledge and education and to the rise of corporate business as system of power (2000, p.96). For Mills, the social sciences are not simply groupings of scientific knowledge but “the common denominator of our cultural period” (2000, p.13), the “signal feature” (2000, p.14) of modern cultural life, which nicely explains why the sociological imagination should be considered not as an academic specialty but a democratized quality of mind, a manifestation of and contribution to historical consciousness at the same time. The question of whether historical studies should be considered part of social science is misleading, for the problems that the study of the individual and society deals with cannot be adequately understood without putting in practice the view that “history is the shank of social study” (2000, p.143). The sociological imagination, in other words, is a compelling argument for historical social science, for practicing the idea that modern thinking is historical thinking and that social-scientific understanding is inadequate when ahistorical.

Borrowing from Gadamer, historical social science may be said to emerge from “a knowledge within the concrete situation of existence” (Gadamer 1976b, p.202), from situations that place the historical social scientist in the position of having to constantly mediating between the practical need to know and the technical requirements of

knowledge production. It may function as a reasonable compromise between practical and technical knowledge and offer a balance between scientific commitment and ethical responsibility, between reason and science as well as between social-scientific reason and politics. Particularly when understood practically, historical social science may help us see our undertakings as social scientists in a more participatory way, as a shared experience of proximity concerned with the problem of the good in human life as seen through the lens of history and social science. In this, it can serve as an effective academic practice to confront the increasingly technical demands for scientization and the trend toward specialization in the social sciences. That said, we may also perhaps see historical social science dissipate into the on-going process of labour division, specialization and professionalization that is englobing the social sciences, which would make it, rather pertinently I would say, comparable to the Social Science Movement. The Social Science Movement is one of the most significant as well as one of the most forgotten moments in the history of the social sciences. The idea that there once existed an ideal of a unified Social Science *in the singular* that defined itself as a social reform movement may even be totally unknown to portions of the social-scientific community today. Though it is not my intention to give a full account of this moment in the history of science and modern American society, it is significant that a scientific approach to social problems became the *religion* of an entire society – namely, American society – to then fade into the very fabric of the social sciences.

Social Science as Techne and Praxis

The Social Science Movement in the United States was a descendant of the liberal democratic tradition that developed in England and France during the Enlightenment stressing the supremacy of reason, science, natural law and the primacy of the individual over the state as keys to the improvement of human life. Though the *American Social*

Science Association was organized in 1865, the beginnings of the Movement can be located in the 1840s, when Comte's *Positive Philosophy* and the works of Darwin, Spencer, Marx, Mill and others were being systematically scrutinized for the first time by American thinkers. Though as early as 1784 John Adams (1735-1826) spoke of a 'science of society', in the early 1840s the social sciences were not an established term in the American vocabulary. But it was around this time that a vast array of human activities and endeavours started to be referred to as 'sciences'. It was becoming common to speak of history, for instance, as a science, with W. H. Prescott (1796-1859) – probably the first American scientific historian – calling it a science and H. C. Murphy (1810-1882) calling it 'the science of human nature' ⁶¹. Commerce was being referred to as science and not business, and one could talk of political science and moral science, statistical science, of archaeology as science, of a science of education, and of charity and legislation as sciences (see Bernard & Bernard 1943, pp.48-51). In the middle of the 19th century, Social Science too came to designate an attempt to carry out a scientific study of society, and one that combined European post-revolutionary radicalism and positive scientific philosophy *a la* Comte and *a la* Spencer. Going straight to the point; this was none other than an attempt to lay the foundations of American sociology.

The Social Science Movement, as Bernard and Bernard (1943, p.1) nicely put it, "may be said to epitomize the democratic philosophy of life". The Movement placed faith in the application of scientific methodology, seeing it as a tool for fighting the causes of the individual and of social justice. At first radical and utopian in character – "almost heroic in its aspirations" (Bernard & Bernard, 1943, p.3) – it carried the distinctive ideal

⁶¹ It was also becoming popular to use history more broadly to elaborate a philosophical science of the individual. In 1849, for instance, Hildreth published his *History of the United States, 1497-1789* as part of a comprehensive project for the creation of 'an inductive science of man'. Such a project, however, had little impact on Hildreth's days (Beitzinger 2011, p.329).

of assembling knowledge of the individual and society into a single body of Social Science and of making human knowledge available and accessible so that it could generate individual and social improvement. This was knowledge for the masses, for the Social Science Movement was a social reform movement that fused the 18th-century ideals of social reform, development and progress with the ideal of science. Its main object of concern was the application of the scientific ethos to problem-solving in the context of a transition from a collapsing feudal society to an emerging industrial one, and it expressed the form of a transition from a theologically driven society to a scientifically-minded one. As Bernard and Bernard (1943, p.33) put it, the Social Science Movement was “the religion of a society in the throes of industrialization, just as theology had been the religion of the old feudal world”. The Movement relied on three chief sciences – history, ethnology and statistics – and tried to demonstrate that these could be integrated to solve social problems, including financial problems. Virtually all Social Scientists believed in the existence of natural social laws, but Draper probably surpassed them all in his convictions. He ended the *History of the Intellectual Development of Europe* by saying that “the civilization of Europe has not taken place fortuitously, but in a definite manner, and under the control of natural law” (1905, p.400) and that the path of nations is not dream-like, for “there is a predetermined, a solemn march, in which all must join, ever moving, ever resistlessly advancing, encountering and enduring an inevitable succession of events”. In point of fact, Draper believed this is something which is readily knowable thanks to the scientific study of history which, by revealing the invariable law of the past, allows us to gain “a philosophical guide for the interpretation of the past acts of nations, and a prophetic monitor of their future, so far as prophecy is possible in human affairs” (1905, p.401). When looked at from the perspective of the development of Social Science, Draper’s insistence on the immanence of natural law in social development was

only a feature of a broader 19th-century attitude – indeed a ‘religion’ – keen on fulfilling social objectives and securing practical results through science.

It is remarkable that the beginnings of American sociology tell the story of a practical movement that brought together the social sciences, on one side, and social welfare, social reform and legislation on the other. The Movement came to an end soon after 1900, as it came to be basically absorbed by the social sciences while giving birth to American sociology at the same time. That which in the second half of the 19th century was a practical movement, mutated into a ‘theoretical’, cross-disciplinary study of social phenomena and data in the first half of the 20th century. For a while, the two ideals of science and reform went their own ways, and the gap between academic sociology, political science and economics, on one side, and social work and participation in the shaping of social existence and American life, on the other, naturally widened – although it needs to be said that the Movement was, one way or another, linked to the birth of the *American Prison Association*, the *National Conference of Social Work* and other networks that continued efforts at immediate social welfare (Bernard & Bernard, 1943, p.836), and that the great depression soon led to a revived interest in the relation between the social sciences and social problems in the 1930s. History too, was destined to become theoretical, to become indifferent to the present. But the efforts of the ‘new historians’ who, inspired by the Social Science Movement, worked in the direction of the development of a social-scientific approach to history that was purposefully informed by a historically presentist mind-set and by a desire for social reform, succeeded in keeping alive the possibility of a new science of history oriented towards practice. In fact, the idea that one should study the historical reality of crime-related phenomena not to know how such phenomena looked like or to know what they used to be in the past but to achieve justice in the present is partly the product of a tradition of democratic and socially-

oriented thinking that stretches back to the Enlightenment and the revolutionary wars. The Social Science Movement showed that the humanities did not have to fear exposing their practical commitments, and the determination and passion of its adherents paved the way for the conceptualization of a unified ‘science of the present’ informed by social democratic ideals.

The Social Science Movement exemplified the modern ideal of a reason which ought to be active – practical and productive, political and technical, ethical and scientific. It was, at one and the same time, an emancipatory utopia and a technological dream, a project aimed at the production of practical knowledge useful to deal with present dilemmas and a faithful attempt at using social-scientific knowledge to technically and technologically govern and manage social problems. One could ask to what extent this is descriptive of historical social science today. We can rest assured that Wallerstein was correct in suggesting that the scope of historical social science is not extinguished at the level of knowledge production, at the level of technical know-how and method, but it inescapably involves political participation and deliberation. The question of what the social sciences or historical social science ‘are for’ is a political question, not a scientific one and, as Gadamer (1975b, p.229) suggested, “the fact that the social sciences are a substitute for lost orientations is not an error or mistake of the social sciences, but of our society”. Gadamer (1976g, p.196) would probably suggest that the Movement succumbed to the illusion that science can provide rational decisions “that would constitute a “universal praxis”” – a risk not too irrelevant for historical social science today. Science can open new realms of possibility, it can show us what we are able to do and what is possible for us to do, but “the future of humanity”, said Gadamer (1976g, p.197), demands “that we do not simply do everything we can but that we require rational justification for what we should do”. With that end in sight, it is justifiable to evoke “the old impulse of

an authentic practical and political common sense” (1976g, p.197). When it comes to the historical study of crime, as hinted at early in chapter 1, politics played such an undisputed role in its emergence that made it possible to think of historical criminology as a practical philosophy in the first place.

In this chapter, then, I detailed some of the methodological, institutional and conceptual developments that made historical social science intelligible in the second half of the 20th century. In this way, I offered historical criminology a methodological rationale other than that provided by Foucault’s history of the present. Historical criminology was made possible by the same conditions that made crime history possible, that is, the overlapping of historical and social-scientific research methods that occurred over the last five or six decades. This must be owned. But it also goes without saying that the historical study of crime could not have been conceived in the absence of a certain political sensibility – and this will become ever more apparent in the next chapter, where I ask whether the work done by crime historians who excavated judicial records to understand the criminal law of the 18th century should be interpreted as a kind of voice-raising activity, as a practical undertaking conducted along the methodological lines of social history. As highlighted by the short-lived existence of the Social Science Movement, however, social science does not always succeed ‘in practice’, and the relationship between politics and social-scientific knowledge has to continue to be treated, ‘objectively’, as an uneasy one.

The next chapter emphasises this point by questioning the practical capacity of the historiography of crime and criminal justice. Though crime history has its roots in social history, and though social history has long had its own politics, the historical study of crime has so far not succeeded at defining itself as political practice. Instead, particularly due to the influence of E. P. Thompson, studying crime historically is today largely

perceived to be a historiographical task and not a political activity. In the next chapter, I show that Thompson, paradoxically, helped shape the possibility of understanding the practice of studying crime historically as political practice and that this was, in fact, the reason why he came to be revered by critical criminologists of his time.

3.

The Practical and the Social in the Historical Study of Crime

The Historiography of Crime and Criminal Justice and its Social History <> A Practical Hypothesis regarding the Historical Study of Crime <> Febvre and the Politics of Social History <> The Historical Criminologist as Political Subject <> Between Crime History and Historical Criminology

This chapter focuses on the activity of studying crime historically. An exploration of the field of the historical study of crime is initiated to highlight relevant aspects of the relation between theory and practice in the historiography of crime and criminal justice. The chapter suggests that studying crime historically implies one overarching intellectual admission – that crime and criminal justice are products of history – and goes on to show that the ‘historicity’ of criminal phenomena became a systematic subject of academic scrutiny in the second half of the 20th century. Since then, the historical study of crime has taken two primary active forms; first, that of an interplay of social-scientific and historical research methods geared towards the discovery of the universal truths of the history of crime and, second, that of a study only tangentially interested in the ‘truth’ of the past of crime and primarily aimed at providing clear routes to the reform of criminal justice *in the present*. The first form best captures the working spirit of crime historians, the second corresponds to a description of the general attitude of historical criminologists.

Thus, in this chapter the focus shifts from social science in general to the historical study of crime in particular. The chapter revolves around a practical hypothesis concerning the historical study of crime that credits E. P. Thompson for potentially bringing crime history to the level of political practice – in the form of an erudite activism that uses social historiography as a voice-raising activity. It will be emphasised that the trigger to a historical awakening in the study of crime in the 1960s was the contribution

made by individuals like Thompson, Eric Hobsbawm and George Rudé and that this development itself should be reflected upon in relation to the dialogue between history and social science in the second half of the 20th century, that is to say, in relation to the broader idealization of a historical social science. At its core, the chapter offers a strategy for making sense of works in the history of crime as practices. More than an imaginative effort, this is an attempt at making sense of the balancing of theory and practice as it plays out in the social sciences, or better at being able to conceive of social-scientific work both as subject – as activity – and as object – as production. Thompson, who, together with a few others, is largely responsible for the coming into being of a historiography of crime and criminal justice as we currently know it, may be plausibly taken to exemplify what it means to balance ‘political activity’ and ‘productivity’ in the historical study of crime.

Nonetheless, it will be shown that it is quite problematic to think of crime history as ‘practical’ based on crime historians’ own views of theory and practice, which will be explored in this and the next chapter. Unlike crime historians, historical criminologists seem more apt to the task of using history tactically today and less afraid to speak the language of politics. This has much to do with Foucault’s influence on the field and with the influence of Whig and legal history on the historical study of crime, but this will only become fully apparent in chapter 5. Here, I am concerned with describing the morphology of the historical study of crime and with exploring its relation to social history as well as to praxis. The chapter offers a broad view on the development of the historiography of crime and criminal justice centred around the work of Thompson and the Centre for Social History at Warwick. Thompson and colleagues systematically applied Marxist theory to the study of 18th-century criminal law and in so doing, I argue, inspired a practical and a social-scientific interest in the history of crime by appealing to an emancipatory spirit as well as to a methodological commitment.

The chapter also revisits an early moment in the history of Western historiography, namely, the founding of the *Annales* – prominent journal of social history – by two of the most illustrious proponents of French social history in the early 20th century, Febvre and Bloch. This will help us see the ambiguities of social history's relation to politics and science, and that social history can be conducive to both emancipatory utopias and technological dreams. On the one hand, it makes possible a bottom-up, democratized approach to the historical study of crime that constitutes not a systematizing method, but a kind of heuristic technique designed to raise the voices of those who have been oppressed in the past and who have been victimized by the injustices of history. On the other, it emboldens those who wish to see social history become a totalizing history, a 'universal praxis' faithful to a rigorous and neutral social-historical methodology – in short, *a science of the present*. Particularly in view of this, the chapter closes with a critical tone, with a Foucauldian intonation suggesting that historico-philosophical inquiries remain valuable forms of practical criticism of professional ethics and agency in contemporary society, for such inquiries allow for a conceptualization of the historical criminologist not as expert, professional, or 'social technologist', but as political subject.

The Historiography of Crime and Criminal Justice and its Social History

Studying crime historically implies one overarching intellectual admission; that crime and criminal justice are products of history. With the historicity of criminal phenomena becoming systematic subject of academic scrutiny in the second half of the 20th century, criminology and the study of crime more broadly began planting roots in historical research and beyond the confines of sociology, psychology, anthropology, jurisprudence – in short, beyond the various disciplines that students of crime have historically relied upon. This interdisciplinary endeavour has been carried out in a variety of different ways

and on a plethora of different topics but, with the aid of previous considerations on *theoria*, *poiesis* and *praxis* as well as historical social science, it can be imagined in two relatively easy ways; first, as a variation of scientific history and as an interplay of social-scientific and historical research methods geared towards the discovery of historical truths. *Albion's Fatal Tree*, a text often credited with having brought crime history to its current level of popularity, can easily be conceived of in these terms, as what Hay et al. (1975, p.56) were working on was the hypothesis that criminal law – and its ideological function – was the key social institution in 18th-century England to allow for the governing of the people at a time when England did not even have a police force. The point of that study, if you like, was to reach a richer understanding of the 18th century in England and of the hegemony of the English ruling class in the class struggle of the time. On the other hand, the historical study of crime can also be understood as being only tangentially interested in the ‘truth’ of the past of crime, its central aim arguably being that of broadening present understandings of punitive changes, criminality, social control, etc., by linking past and present and by providing clear routes to criminal justice reform (Pisciotta 2014).

Histories of crime deploy different analytic frameworks – social-scientific, conceptual, quantitative, and so on – and mix theoretical frames, primary and secondary sources and often online databases to develop a comprehensive view on disparate crime-related topics, generally organized by geographical location or historical periodization, like crime, criminal law, punishment and social control in medieval and early modern times in Europe (i.e., Weisser 1979; Gatrell, Lenman & Parker 1980; Sharpe 1999; Dean 2001) or crime and punishment specifically in, say, modern Britain (i.e., Cockburn 1977; McLynn 1989; Emsley 1996a; O'Donnell & McAuley, 2003). Crime histories can also be organized by specific topics like policing, criminal courts and prosecution (i.e., Bailey

1981a; Hay & Snyder 1989; Beattie 1986; Taylor 1998; Williams 2014) and by general ones like crime and society, crime and justice, crime and culture, crime and authority, women and crime, power and crime, and more (i.e., Philips 1977; Zedner 1991a; Rawlings 1999; Landau 2002a; Godfrey, Williams & Lawrence 2005; Srebnick & Lévy 2005), as well as by historiographical approach, as with micro-history and micro-studies in the history of crime (i.e., Muir & Ruggiero 1994a; Kilday & Nash 2017) ⁶². Up to the start of the second half of the 20th century, a handful of works in the historical study of crime had been produced. These focused chiefly on historic figures and their successes in reforming penalty and on the formation of penal apparatuses through the medium of intellectual, institutional and legal history. Their unifying theme was often the celebration of a steady progress in the field of criminal justice. This has a lot to do with the fact that they borrowed from the perspectives of jurists and legal scholars and tended, therefore, to be instantiation of ‘Whiggish’ or progressive history ⁶³.

Criminologists devoted to the study of history and historians of crime and criminal justice generally agree that the historical study of crime as we know it originates in social history and more specifically in ‘new social history’ or ‘history from below’, a branch of historical scholarship that since the 1960s has explicitly and openly aimed at raising the historical voices of the masses, the oppressed, the disadvantaged and at writing history from the perspectives of its losers and not its winners. The newly acquired centrality of those who have historically not been at the centre of historical inquiry that is found in new social history is unquestionably traceable back to social history in general and can

⁶² For a comprehensive introduction to the social history of crime, policing and punishment and to the historiography of crime and criminal justice, see Emsley and Knafla (1996), Knafla (1996) and Weiss (1999b).

⁶³ For crime historians’ views of Whig history see for example Storch (1989, pp.212-213), Emsley (1996b, pp.5-7) and Landau (2002b, pp.1-6).

hardly be deemed a novelty of new social history *per se*. Peter Stearns, who founded the *Journal of Social History* in 1967, describes doing social history as “attending to the voices of the inarticulate, or in other words, uncovering the agency and activities of various marginalized groups” (Karush & Stearns 2018, p.489). Such a conceptualization of ‘social’ history has roots in the works of 19th-century historians and intellectuals – some would argue particularly in the work of Marx and Engels ⁶⁴, with Fox-Genovese and Genovese (1976, p.205) going as far as saying that the ‘social’ in social history carries “an implicit socialist or at least anticapitalist commitment” ⁶⁵ – and, accordingly, one might say that the concern with the marginalized features both in the ‘old’ and in the ‘new’ social history or, as Charles Tilly (1984) would put it, both in ‘the old new social history’ and in the ‘new old social history’. This is to emphasise that a historical concern with the lower strata of society transcends the political awakening of the 1960s and does not necessarily constitute the sole motivation for studying crime historically and that, to properly address the ways in which the political zeal of the second half of the 20th century relates to the emergence of the historical study of crime as dimension of new social history, we are obliged to consider earlier developments in Western historiography.

⁶⁴ This is how Engels begins *The Condition of the Working Class in England*:

The book prefaced by the following pages treats of a subject which I originally intended to deal with in a single chapter of a more comprehensive work on the social history of England. However the importance of that subject soon made it necessary for me to investigate it separately. (Engels [1845] 1998, p.15)

Marxist philosopher Alex Callinicos (2011, p.101) claimed that all history from below borrows Marx’s conceptualization of history, or that “those who today write history “from below” are writing in the shadow of Marx’s declaration that “history...is the history of class struggle””. Similarly, Hobsbawm (1997, p.31) said that “no serious discussion of history is possible which doesn’t refer back to Marx or, more exactly, which does not start where he starts”.

⁶⁵ See Perkin (1973) and Joyce (2010) for thoughtful discussions on the historians’ reluctance to confront ‘the social’ as foundational concept of social history.

Social history is sometimes thought of as a specialized field of historical inquiry with a set of methodological requirements. Using ordinary people instead of ruling elites as sources of evidence and as centres of narratives, for instance, is a social-historical technique, and so is documenting large structural changes and connecting them with the lives of ordinary people (Tilly 1985). Rather than attempting to be a “prefabricated theory of social change” (Hexter 1963, p.16), social history actuates a historiographical shift in focus and tries to study social groupings and classes instead of political formations, historic events, famous battles and other analytic objects dear to other branches of history like political history and military history. In this sense, social history is deemed to be one history specialization among many, just another manifestation of ‘new history’, that is, of that force resulting from the interplay of social-scientific and historical methods that has imposed its presence within historical studies with ever increasing intensity from the 1960s onwards ⁶⁶. But there are also other ways of talking about social history – in the 1960s, Keith Thomas (1966) imagined it to be the subject around which all other branches of history would be organized. In a British context, social history has at times been understood, perhaps incorrectly, as a reaction against the political and diplomatic history typical of the first half of the 20th century and, at the same time, as a reaction against quantitative methods popular amongst economic historians (Taylor 1997). Internationally, it is often equated with a scientifically oriented, non-political approach to the past.

⁶⁶ By new history one may designate all varieties of interdisciplinary history, from political history and economic history to social history and psychohistory. New history can refer equally to family history, population history, intellectual history, the history of science and the history of meaning (see Rabb & Rotberg 1982). Another way of saying this is that new history is not a history specialization but a discourse about the movement towards history ‘as’ social science.

This conceptualization of social history as history specialization may be betrayed by social history's own past, for social history has also been practiced as a democratizing tool and not just a set of techniques for historical research. In its early manifestations at the times of Voltaire and the Enlightenment, when modern source-based history had not been conceived yet, social history turned attention away from kings, castles, politicians, parliaments and other centres of power to place *the people* at the centre of history. Similarly, it has been argued that in its infancy social history was a synonym for trade union history (Zeldin 1976, p.238). So understood, social history has been equated to *grassroots* history, to people's history, or to history seen from below – or also 'new' labour history (Rudé 1988a, p.52). Hobsbawm (1985), for instance, argued that the history of social history as field of study specific to the common people begins in the 18th century with the history of mass movements. The basic reason for this would be that the history of the people becomes possible only when the people become the motor of history. In that regard, it is not a coincidence that methods and themes in grassroots history owe much to the French tradition of historiography that developed around the times of the French revolution and that reflected the views not of the French ruling elites but of the French masses. Nevertheless, it is legitimate to say that we had to wait until the second half of the 20th century to see social history develop the intellectual unity and methodological maturity necessary to inform the shaping of a historical dimension to the study of an important aspect of people's social life such as crime – though in the middle of the 19th century socialist historians like Toynbee were already challenging mainstream 'state historiography' with histories of the people and histories about the evil of capitalism (Weiss 1999a).

Though the historical study of crime has its roots in the tradition of social history that, since at least the Enlightenment, has placed average people rather than gods and

heroes at the centre of narratives and analyses of our past, today the ‘social’ character of the historiography of crime and criminal justice remains ambiguous. As suggested in this and the next chapter, this has partly to do with Thompson’s influence in the field of the historical study of crime. Whilst practicing social history to study crime historically, Thompson claimed that crime historians have a responsibility to keep historiography and politics apart from each other. Partly thanks to Thompson’s efforts to depoliticize the social history of crime, the historiography of crime and criminal justice of today struggles to lay claim to practical achievements. Yet, this has not discouraged historical criminologists from situating the production of historical and social-scientific knowledge within frameworks of government and policy-making contexts. Similarly, Thompson’s controversial take on historiography’s relation to theory and practice has not demoralized those who wish to see a clearer connection established between the history of crime and the criminal justice of the present.

A Practical Hypothesis regarding the Historical Study of Crime

It is fair to say that the crime historian was almost a non-entity and a non-existent subjectivity in the first half of the 20th century – though at the time there were ‘penal’ historians – and to remark that history did not become an appealing analytic framework for a methodical study of crime-related phenomena until the 1970s ⁶⁷. As Clive Emsley (2005, p.117) wrote over a decade ago, “thirty years ago the history of crime, criminal justice, penal policy and penal institutions in Britain was a subject scarcely explored by academics”. The trigger to such a development – as suggested – is above all taken to be the enthusiasm for history from below and social history that arose in various academic

⁶⁷ To elaborate on this point, it would be fair to say that popular interest in notorious criminals and noteworthy crimes is perennial, that debates about crime rates have constituted part of public debate since the early 19th century, but that a crime and criminal justice historiography properly so called only developed in the 1970s (Lawrence 2016).

settings during the 1960s and 1970s. According to Gareth Stedman Jones, in England the term ‘social history’ started to be invoked in the 1950s and was initially associated with innovative ways of posing questions of historical interest as exemplified by works featuring in journals like the *Annales* and *Past and Present*, as well as with critiques internal to Marxist discourse, and with a more interactive cooperation between history on the one side and sociology and anthropology on the other (1983, p.5). As he put it, this ‘new’ idea of social history was characterized by “a totalizing ambition which would both displace the narrow concerns of traditional practitioners and make history central to the understanding of modern society and politics” (1983, p.5). Central to what Jones implied in this passage is the idea that, in the second half of the 20th century, historians had become incessantly suspicious of conventional interpretations of a discipline of history that would disclose the distant past ‘as it actually happened’. In the decades following World War II, it became apparent that the historicist approach inaugurated in the 19th century by Leopold von Ranke – the pioneer of modern source-based history – had limitations that required conceptual, methodological and practical reworking.

One such reworking was carried out by E. P. Thompson. Thompson was hailed as the greatest historian of the English-speaking world upon his death in 1993, and he died the most often cited historian of the 20th century (Palmer 1993, p.14; Hobsbawm 1994, p.157)⁶⁸. In 1963, Thompson (1963) published *The Making of the English Working Class*, where he popularized the technique of placing the life experience of working people at

⁶⁸ Thompson’s achievements are too great and many to be reviewed in this thesis. For an exhaustive bibliography, see Kaye and McClelland (1993). For his contribution to Marxist historiography, see Anderson (1980) and Palmer (1981). On Thompson’s influence on practising historians of his time and his reshaping of the relationship between historical writing and political activism, see Palmer (1994). For Thompson’s legacy on social history in the United States in particular, see Gregg (1998). For his contribution to 18th century studies, see King (1996). For a more recent account of Thompson’s political and historical influence more broadly, see Batzell, et al. (2015).

the centre of historical analyses. His subsequent work with the Warwick school and his collaborations with Eric Hobsbawm, Douglas Hay and others is conventionally said to have led the way for the modern history of crime and criminal justice (Knepper & Johansen 2016b, p.2). What sparked immense interest in this ‘modern history of crime’, it is often remarked, is that it carried out the examination of 18th century law and society through theory – more precisely, Marxist theory. The history of crime drastically replaced the framework of jurisprudence in historical analyses of criminal phenomena by putting social theory at the very centre of those analyses. This seems to provide support for the idea that the driving force behind the historical study of crime is the very logic of historical social science, that academic contributions from the humanities should be historical and social-scientific at the same time, and that a historiography of crime and criminal justice properly so called is to be understood as part of an overall *modus operandi* proper to the historical social scientist. Yet, as already indicated, the development of a historical dimension to the study of crime cannot unproblematically be considered solely a scientific, technical and methodological development.

Thompson arguably re-elevated historical inquiry to its status of political meaning-giving activity in a way that was likely unseen since Friedrich Meinecke (1862-1954)⁶⁹, and pioneered a type of new social historical analysis that placed what were generally taken to be the powerless victims of historical processes – i.e., poor and

⁶⁹ One of the founding thinkers of modern historiography and the leading German historian of the first half of the 20th century, Meinecke provocatively called for a greater engagement with political and cultural life. As he put it in the preface to *Weltbürgertum und Nationalstaat*:

My book is based upon the conviction that German historical inquiry must elevate itself to freer movement and contact with the great forces of political life and culture, without renouncing the precious tradition of its method, and that it must plunge into philosophy and politics, without experiencing injury in its end or essence, for thus alone can it develop its intimate essence and be both universal and national. (Meinecke 1911, p.vii)

uneducated working man and woman – in the middle of their conscious *historical making*. The historical study of crime, inspired by Thompson's seminars on new social history at the Warwick school, first took this general shape; that of a social approach to history meant to open a window onto the past of crime-related phenomena that would take into account the active participation of ordinary men and women in history. At the time this was a novel idea, for historical accounts of criminal phenomena then were virtually exclusively the prerogative of either intellectual history – which would centre chiefly on a few influential figures from the criminal sciences and from penal reformation movements – or institutional history – dedicated to describing the evolution of penal practices and institutions such as incarceration and the penitentiary. This could also be taken to mean that the historical study of crime emerged as a new practice – that of a *voice-raising activity* – and one which first targeted the exploited English working class of the 18th century. In fact, it was a work edited by Thompson and others on the relationship between 18th century English criminal law procedure and the lower classes that eventually brought the historical study of crime to international academic recognition. In *Albion's Fatal Tree* (Hay, et al. 1975), Thompson and others hoped to solve a specific riddle of the 18th century English criminal justice system, namely, the paradoxical rise in offences punishable by death at a time when the actual administration of criminal justice was relying less and less on capital sentences. Put it differently, while the actual imposition of the death penalty in England was in decline since the 16th century, the list of nominally capital offences grew all throughout the 18th century, creating a widening gap between the threat of punishment by death and its actual carrying out.

The conventional account of this paradox was proposed by Radzinowicz (1948) in the form of a theory of maximum severity purporting that, against the prevailing wisdom of the time that punishment should be 'proportionate' to the crime, British

reformers were reluctant to give up the deterrent policy of criminal law; in the absence of a professional police force and of a proper system of non-capital sanctions, the deterrent effect of the death penalty came to be perceived by 18th century British legislators and reformers as uniquely capable of ensuring order and obedience to established rules of conduct (see Langbein 1983). Thompson, Hay, Linebaugh and the other contributors to *Albion's Fatal Tree* came up with a different interpretation of this paradox. Guided by precepts of Marxist theory and historiography, they argued that the widening gap between the expanding threat of capital punishment and its more and more infrequent imposition in the 18th century was symptomatic of an enhanced discretionary power exercisable by the ruling elite. The core of their analysis of crime and society in 18th century England told us of criminal law that it was an ideological system dictated by governors and regulated by magistrates belonging the same 'noble ranks' as the governors, and that ultimately it served as an instrument of power in the hands of the ruling class. The class ideology of the ruling elite found its expression in a penal system that intertwined elements of 'majesty', 'justice' and 'mercy' and that was instrumental to fostering a social order based on the possession of property. Criminality in 18th century England was thus a 'class problem' and the criminal law, as famously put in the book, 'a ruling-class conspiracy against the lower orders'. Radical in its conclusions, *Albion's Fatal Tree* was said by some to have validated the claims laid out in 1924 by the Russian jurist E. B. Pashukanis in his classical Marxist study *The General Theory of Law and Marxism*; that penal policy mirrors class interests, that penal practice is a mechanism of class rule, and that the criminal law is an instrument of class domination (Pashukanis 1978; also, see Garland 1991, pp.111-118).

Albion's Fatal Tree generated a great deal of debate and controversy ⁷⁰, not least because it left – if I can borrow from G. H. Mead (1918) – a crack in ‘the psychology of punitive justice’. In spite of its critics, it has confidently been said that, together with a very few other works centred around the historical relationship between crime and the economic structure of society during the emergence of industrial capitalism like Hobsbawm’s *Primitive Rebels* and *Bandits* (1959, 1969), it laid the groundwork for the modern historical study of crime in the English-speaking world. At the very least, it productively applied social theory to the historical analysis of law and society. With that in mind, it should not be underestimated that in the 1960s and 1970s the fields of criminology and criminal justice were going through a number of international expansions and modifications. This is not to say that internal developments in criminology and criminal justice were, by themselves, a determining force behind the formation of the historical study of crime, but that growing intellectual markets across the Western world, greater and increasingly collaborative academic networks of teachers, scholars, researchers and translators as well as professional networks of institutes, institutions, and international fora, and faster exchanges of knowledge and information across the continent and beyond especially thanks to the development of electronic media since World War II, all provided at least some context for the historical study of crime to flourish.

By way of example, Emsley (1997) rightly pointed out that during the 1970s the English-speaking world was introduced for the first time to the English translations of Norbert Elias and Michel Foucault, two authors whose work has since informed research on crime history and on the development of the criminal justice system in Britain and

⁷⁰ See for instance Ray (1976), Langbein (1983) and Linebaugh (1985).

elsewhere. These authors did not necessarily engage with the lived experience of the oppressed directly in their work – or else this was not their main focus – so they fell outside the confines of new social historical scholarship. Yet their contribution to the historical study of crime has taken a different and differently useful form and today it remains significant in other regards ⁷¹. It may be argued, then, that while *Albion's Fatal Tree* successfully replaced legal analysis as a framework for the historical study of crime with social theory, and therefore signalled a methodological advance in the historical understanding of crime, its value lies beyond questions of method and approach and, like Foucault's *Discipline and Punish*, it transcends questions of science and scientific exactness and inescapably ends up inhabiting a space to be found somewhere inside the realm of the political; it shows that there is more to studying crime historically than an interplay of methodologies – and this may be easily grasped by jumping back to the official beginnings of modern social history in France in the early 20th century.

Febvre and the Politics of Social History

In the 1920s, Lucien Febvre and Marc Bloch – founders of the *Annales* and possibly the most influential social historians of the French tradition – were championing a new approach to history. This approach, which is now normally referred to as 'social', was at the basis of the interdisciplinary historical work done the *Annales*, and it maintained that history is a thinking mode, a way of thinking about present reality – a form of 'presentism' we might say, which borrowed from Febvre its motto, 'there is no history except of the present' (Burguière 2009, pp.22). For Febvre and Bloch, there was no such thing as 'medieval history', 'the history of ideas' or even 'social history' but only history, History

⁷¹ This has been explored in detail by Garland (1991) and Spierenburg (2004).

with the capital letter if you like, or else, total history. Febvre in particular, once called upon to contribute to the shaping of the French Encyclopaedia in the 1930s, took the opportunity to actualize this interdisciplinary synthesis (Burke 1973). Since the writing of his dissertation *Philippe II et la Franche Comté* in 1911, Febvre advanced a social historiography focused on social structures, and the founding of the *Annales* served in many ways the function of an anti-elitist counter-model to the state-oriented narrative history practiced by the Sorbonne school (Iggers 2005, p.472). His own work was predominantly centred on the early modern period and included geographical studies of history and histories about popular beliefs and collective mentalities, but the *Annales* of the 1930s was unquestionably preoccupied with the present and with politics, covering the most pressing issues of the time – from Italian fascism and Soviet communism to colonialism and the American New Deal. Yet Febvre's engagement with politics, like Thompson's, was ambiguous and the field of social history that owes much to him is often interpreted as a field for doing history without having to do politics. This is principally because Febvre saw social history as a tradition alien to the paradigmatic historiographical orientation of the 19th century, which was essentially centred around questions of ancient history, economic history, constitutional history, ecclesiastical history, diplomatic matters and foreign affairs, military history and other primarily nation-related topics (see for instance Maitland, et al. 1901).

In the eyes of Febvre, 'traditional' history, or historical practice up to the early 20th century, was essentially concerned with politics. Though potentially a generalization deduced by looking at the works of practising professionals and famous scholars of his times ⁷², this view of the practice of historians led Febvre to conceive of French 19th

⁷² Dewald (2006) demonstrated that, in fact, social history was a preoccupation of French intellectuals from the early 19th century. History was crucial to the individual of the 19th century as a way of understanding the world, and historical analyses were broad and "extending far

century historiography as fundamentally conducive to ‘history from above’ and not ‘history from below’:

To retrace the past of France was always to set out in a double picture the long struggle of the Kings, to establish from the point of view of domestic politics a rule of monarchical centralization and absolutism, and their long effort, from the point of view of foreign policy, to group the provinces, little by little, round the domain, and finally to fill the predestined frame with a land entirely French...The lengthy effort and struggle were all political in character, and history remained before all things a study of politics. (Febvre 1925, p.54)

Febvre’s view of 19th-century historical understanding does not necessarily reflect the formidable historical sense and faith in history in which that century was drowning. However, it does mirror the general attitude of practising historians of the time. After all, Victorian historiography had been summarised by E. A. Freeman (1823-1892) – British historian and Regius Professor of History at Oxford from 1884 until his death in 1892 – in the famous phrase *history is past politics, and politics present history* ⁷³. In 1882, Herbert Baxter Adams (1850-1901), who during his quarter-century career (1876-1900) at the Johns Hopkins University probably exerted more influence than any other 19th-century historian upon the professional teaching of history in American colleges and universities, made of ‘history is past politics, and politics present history’ the official motto of the department of history (see Cunningham 1976).

Febvre’s own work has been variously interpreted as political in character. Bentley (1997, p.468), for instance, suggested that at times it looks like “Febvre’s interest lies in a rather self-indulgent form of historical propaganda”. Huppert (1982) argued more directly that Febvre was more than a neutral observer of facts and, if one looks back at

beyond politics”. In 19th-century Paris, for instance, “histories of private life, women, peasants, religious mentalities, and a variety of related topics all attracted writers and readers”. The authors of such ‘social histories’ understood they were writing ‘a new kind of history’ and “just like Febvre they deplored their predecessors’ narrow interest in kings, wars, and state-building” (2006, p.214).

⁷³ The phrase has often – and wrongly – been attributed to Sir John Seeley, Regius Professor of History at Cambridge (see Hesketh 2014).

the spirit that led to the foundation of the *Annales* in 1929, what will be found is that the *Annales* were not understood as just another academic quarterly, but as a venture capable of mobilizing thinkers and professors and channelling their ideas into understanding the contemporary world and its risks and dangers – not least the Wall Street Crash of 1929 – and into changing it for the better. The name *Annales d'histoire sociale* used the purposefully vague term ‘social’ so that the object of study could engulf the whole of life (Zeldin 1976, p.240) – hence total history – and “from the collapse of the banking system through the rise of Fascist and Nazi regimes and until the very eve of Hitler’s war”, the editors of the *Annales* brought together some of the best academic minds of the time to the task of “studying the present so as to reach a profounder understanding of the past” (Huppert 1982, p.512). Particularly in its early years, the journal manifested a socialist influence – “it was clearly on the Left” by Huppert’s standards – and to this day it is accepted that Febvre was a leftist “with a socialist sensibility” (Burguière 2009, p.19). Something of a de-politicization of the *Annales* is traditionally said to have occurred after World War II, when the social history of Febvre and Bloch came to be practiced as a non-ideological method of historical inquiry focused on long periods and deep structures. Still, saying that social history is apolitical history remains a slightly dubious claim, and it might actually be more feasible, though more ambitious, to say that social history embodies a new politics of modernity, a politics of social change premised on freedom – historiographical freedom from authorities – democratization – looking at social problems from below – and participation – against the monopoly of the specialized, professional historian.

To be fair, Febvre was not all too clear about the idea of a history as science of the present. Commenting on Bloch’s conception of history as ‘the science of the past’, Febvre asked, “does that mean then that the past, as such, is a subject of science? Why

not then have *a science of the present*? No” (1973a, p.31, italics in original). History is the science of the individual in time, but it is also “a way of organizing the past so that it does not weigh too heavily on the shoulders of men”. History “systematically gathers in, classifies and assembles past facts in accordance with its present needs” and “consults death in accordance with the needs of life” (1973a, p.41). As Febvre liked to say, ‘Histoire, science de l’homme. Histoire, oeuvre de l’homme’ – history is the science of man and the work of man (1973c, p.266). In the last years of his life, however, Febvre would constantly repeat the motto ‘history, science of the past, science of the present’ (Braudel & Wallerstein 2009, pp.186-187). Febvre knew that history had a social function – that of “organizing the past in accordance with the needs of the present” (1973a, p.41) – but insisted that there was something nefarious about historians putting themselves at the service of ideological causes, pursuing a ‘servile’ history like a pseudo-prophetic historian of the 19th century. As Burguière (2009, p.34) noted, however, this was no resort to the ivory tower. Febvre and Bloch knew that the historian cannot but be part of the present, that historical inquiry starts with a question posed in the present. It is the fact that the historian lives in the present and acts and thinks within the limits set by the present that makes her psychology and individuality problematic for historiography and historical practice alike. The anthem of the *Annales* is that there is no firm partition between past and present, which does not mean that past and present are interchangeable but that the past must be of help in understanding the present as the present has to be helpful in understanding the past. The antiquarian loves old things, but the historian loves life and historical works overcome both the ‘local’ and the ‘national’ and reach out to that which is truly human (Febvre 1973b, p.3). Errors and incomprehension in the present result from ignorance of the past, Bloch believed, but one shall not get very far looking at the past with no appreciation of the present.

This ambivalent take on the relationship between past and present led to the development of the regressive method of the *Annales*, which poses questions in the present and looks gradually back at the past in search for answers. This fundamental problem of anachronism is discussed in chapter 5 in reference to Butterfield – who made it a problem of writing a history of the past in terms of the present. Bloch openly advocated for an anachronistic method, and Febvre addressed the point directly in a paper on psychology and history published in 1938. In it, Febvre argued that synthesizing history and science demands commitment to anachronism:

We have said enough to show that as soon as we refrain from projecting the present, that is our present, into the past, as soon as we give up psychological anachronism, the worst sort of anachronism, and the most insidious and harmful of all...it is obvious that we shall be unable to accept for the historical period in question any of the descriptions or statements made by psychologists of today working on the basis of data provided for them by our own age. (Febvre 1973b, p.9)

Febvre believed science was methodically taking over the universe and that psychology was “the very basis of any real work to be done by historians” (1973d, p.26). No direct contact with the past is possible, and it is human psychology that elaborates and actualizes a conception of it based on the suggestions of the present. So that, effectively, doing history is a way of deciphering the present. As a response to the Great Depression, in 1930 Febvre launched a collective inquiry on prices and monetary crisis to be carried out by the *Annales*, hoping it would be relevant for both ‘surveyors of the present’ and ‘investigators of the past’ (Burguière 2009, p.24). For Bloch and Febvre, history was a science of the past, but the past offered itself “to be read as the archaeology of the present” (Burguière 2009, p.26). And if Bloch and Febvre were reluctant, at least for a while, to call history a science of the present, their disciple Braudel was not ashamed to flirt with the idea of predicting the future through history. For all three, the needs of life guide the psychology of the historian in search for answers relevant to the present. They all

entertained the idea of a scientifically united history, of an interdisciplinary history and decried the call for a compartmentalized and overly specialized historical science.

When the social historians of the early 20th century put forward the idea of a ‘social’ history, what they meant was a totalizing scientific history that could speak to contemporary issues and current dilemmas. As social history entered the field of the study of crime in the 1960s through the work of Thompson, Hobsbawm, Hay and others, this became partly obfuscated by questions of method and by technicalities related to the production of historical and scientific knowledge. At the same time, only a few have so far questioned the fact that the history of crime has been written from the perspective of a historiography of the left. This leaves the historical study of crime in a paradoxical situation where the field is experienced by those on the inside as politically neutralizing whilst being seen by those on the outside as often politically motivated.

The Historical Criminologist as Political Subject

While the emergence of the historical study of crime as a field of research over the last fifty years or so has opened up a comprehensive analytic space for an understanding of the study of crime from the perspective of historical social science, it has also consolidated the feasibility of employing historico-philosophical inquiries as forms of practical criticism of professional ethics and agency in contemporary society. As previously discussed, the interdisciplinary work done over the last five decades at the intersection of criminological and criminal justice research and historical studies exploits the inherent logic of historical social science – namely, that “all useful descriptions of social reality are necessarily simultaneously ‘historical’...and ‘social scientific’” (Wallerstein 2000, p.34) – and, for this reason, deserves the attention of approaches that actively analyse social phenomena in their historical relations. But, particularly thanks to Foucault’s influence, this growing body of literature has also brought to light the more

critical requirement of weaponizing history and philosophy against the present and practicing them as ways of stimulating and generating action.

Studying the ways in which historical knowledge is finding its ways into the analyses and frameworks of the study of crime asks for such an academic field to reveal itself in its complexity not only as form of labour but also as historically-situated activity, as way of life and as form of subjectivity. Intellectual history, for instance, has done much to create an idea – or even an ideal – of criminological development in historical perspective, to create a history of criminology, and historical sociology has helped solidify an understanding of criminology as social and institutional activity and academic-administrative component in the modern division of labour. But it should be easy to see why the criminological profession as living form of cognitive labour power and mode of being needs to be grasped analytically not only as sociological object but also as ethical and political subject. In *Marx and Foucault*, Negri (2017) made this case quite forcefully:

And, while Marx was studying the laws of motion of capitalist society, it is now time to study *the laws* of working-class labour, or rather of *social activity* as a whole and of the production of subjectivity within the subsumption of society to capital and the immanence of resistance to exploitation viewed globally. Today it is no longer sufficient to study the laws of capital; we have to work on the expression of the potentiality of the rebellion of workers everywhere...But by what means shall we grasp labour in this way – not as sociological object but as political subject? (Negri 2017, p.78, italics in the original)

The historical study of crime seems to prove a point that is true of criminology and the social sciences in general, that is, that being a criminologist, or a crime historian, is to be thought of as both a type of historically-situated human experience and a manifestation of productive work.

Crime history and historical criminology offer an epistemic entry into the intersubjective dimension of being, into that reflexive location where we can ask ourselves who we are as social scientists – and it provides an answer that, on the surface, seems easy to digest; we are, in the simplest terms, *workers*, producers of ideas, theories and intellectual capital, a more or less organized kind of cognitive labour force or, as

Marx would have it, a useful occupation. It also suggests more dramatically, however, that in the process of producing historical works of criminological value, and of producing criminological material in general, we are bound to counterbalance ‘productivity’ with ‘practice’, to act less as ‘free sellers of labour-power’ and ‘animal laborans’ and more as free agents, rational thinkers and ethical beings. Within a criminological context, this may be taken to mean two correlated things at once: that criminologists have a duty to ‘do criminology’ and not simply to ‘make criminological things’ and that, just like crime historians, they have a responsibility to live their working activities as moments of wealth – as Marx would put it, “labour is *absolute poverty as object*, on one side, and is, on the other side, the *general possibility* of wealth as subject and as activity” (1973, p.296, italics in the original). The production of criminological knowledge cannot be a valuable good if this is meant only as production for production’s sake while criminological activity becomes simply a way of making a living – and our present condition indicates that such an unfortunate scenario is a living threat. One only needs to follow Lyotard (1984) on his take on the nature of knowledge in postmodernity, for instance, to be totally paralysed by the sort of knowledge which criminological research will likely produce in the near future.

Postmodernity, Lyotard argued, is characterized by an alteration in the status of knowledge. Knowledge is ‘mercantilized’, loses its use-value and “ceases to be an end in itself”; it becomes fundamentally a force of production, something that needs to be saleable and efficient, an “informational commodity indispensable to productive power” (1984, p.5) and its principal functions get reduced to research and transmission of acquired learning. Learning itself circulates “along the same line as money” and is basically “translated into quantities of information” (1984, p.6), science appears as a “moment in the circulation of capital” (1984, p.45), and performativity comes to replace truth. Postmodernity elevates the productive side of being at the expenses of practical

activity, hence the will to counter the ethos of productivity becomes a salient feature of the present. One of the greatest benefits of dealing with history when studying crime and criminology, hence, lies in those loci of historical consciousness that succeed at triggering valuable changes in our modus operandi and at achieving other practical outcomes. In the current, postmodern condition and, correspondingly, in the post-industrial age where the study of crime features as the aftermath of a transition from manual labour power to cognitive power and where knowledge becomes – with the invaluable contribution of universities – indispensable to productive power and is produced in order to be sold, doing history can become, to the criminologist, a practical mode of performing the present.

Plausibly, a criminologist can be deemed ‘historical’ when practicing the predicament that there is only history in action, that historical material can be used to generate multiple lines of action. This may not amount to doing historical research but rather to doing effective history, or critical history, to using historical data to trigger criminological effects – a practice in debt to many, such as Nietzsche, who believed we need history “for life and action, not as a convenient way to avoid life and action” (1909, p.3), and Foucault, who used it as a way of affirming knowledge as perspective and as a way of freeing the historical sense “from the demands of a suprahistorical history” (1984a, p.93). As Foucault showed, the critical use of history refers not to “a question of judging the past in the name of a truth that only we can possess in the present” (Foucault 1984a, p.97) but rather to a way of severing history’s connection to memory and to construct a counter-memory and an anti-history.

Between Crime History and Historical Criminology

The crime historian and the historical criminologist constitute new kinds of subjectivity and types of productive activity within criminal studies, new sources of knowledge and of professional identity in criminal science. It might be beneficial to clarify that the

historical considerations that frame this thesis are written from the perspective of a criminologist and not from the perspective of a historian and, therefore, it could be appropriate to concede that they do not claim to amount to actual writings of history as such. Historical writing in the proper sense, Perry Anderson (1978, p.8) reminded us, “is inseparable from direct research into the original records of the past – archival, epigraphic or archaeological”. That said, my understanding of crime history, social history and history in general is shaped and informed, primarily, by a careful reading of available works by historians and criminologists interested in history and in the development of a historical dimension to the study of crime.

Similarly, due to my criminological rather than historical training, my interest in historical research is subservient to criminological frames of questioning and the effective target of my inquiries is neither history proper or the discipline of history but the use and utilization of historical materials and methods for the practical purposes of criminology. In my defence, it has been suggested that this posture towards history falls well within the scope of historical criminology, for, as Knepper stated:

‘Historical criminology’ has emerged with the new social history, but its practitioners are not really interested in the past. It is less than history in the sense that the aim is not to find out what happened, but to produce practical knowledge for understanding the problem of crime in society. Criminologists do not try to understand the past for its own sake, but the future. Historical criminology wants to create models that explain the past well enough that they can be projected into the future and guide policy decisions in the present. (Knepper 2016, pp.2-3)

Although I hold a slightly more personalized view on the nature of historical criminology – one which focuses more forcefully on the production of practical knowledge for understanding not only crime in general but also the present condition of criminologists specifically – Knepper’s take on the issue suggests that criminologists are legitimately entitled to use history under conditions of their own choosing – provided that to use it is not to abuse it. Moreover, if we stick with Knepper’s view on historical criminology –

and we have good reasons for doing so ⁷⁴ – we are also bound to admit that there ought to be some kind of difference between crime history and historical criminology and that a line must be drawn between the workings of crime historians and historical criminologists.

Such a line is currently quite blurred, and one of the goals of this study is to elaborate on the ways in which historical criminology may differ, conceptually and practically, from crime history. Arguably, Knepper identified one of the core incongruities between these two analytic spaces within the historical study of crime, namely, a differential interest in the past; crime historians faithfully attempt to reconstruct the reality of past criminal phenomena, while historical criminologists have only an instrumental attentiveness for such phenomena. This, I would argue, is indicative of a more rudimentary distinction, a distinction at the level of what we take the subjects and objects of human experience and of human knowledge to be. Crime historians, in line with conventional historians' *modus operandi*, bring into the study of crime a tendency to look at the past in its self-sufficiency. They see themselves not as relating to the past but as letting the past speak for itself through them, as if the criminals of the past, to put it bluntly, could speak to us today. And whilst one would think that in a way they can and do and that, for instance, reading criminal biographies of past centuries would be a way of listening to criminals' own past stories, any trained historian knows that criminal biographies are extremely inaccurate and must be mostly treated as fictions rather than facts ⁷⁵. In other words, if one's true interest lies in the historically factual experience of

⁷⁴ Knepper is one of the very few criminologists to have written extensively –and recently – on the subject of history, the historical study of crime and historical criminology (i.e., 2014, 2016, 2018; Knepper & Scicluna 2010; Knepper & Johansen 2016a).

⁷⁵ This does not mean criminal biographies cannot be studied effectively and in a way that enriches the historical study of crime – see Rawlings (1992) and Linebaugh (1992).

criminals in the past, then the appropriate thing to do is reading crime historians, not the criminals themselves – to rely on ‘the expert’ in this field. When the public consumes criminal biographies, they do so as literature and not as history; and this is so because crime history describes the historically factual experience of the criminal while criminal biography primarily offers a historically fictional one. Crime history, in one reductive sentence, is history from the perspective of the criminal, i.e., of the hanged Londoner; it is the kind of history that is done to know what actually and objectively happened to criminals in the past.

On the other hand, the historical criminologist sees the past not as self-sufficient but as incomplete and problematic and approaches it as a way of dealing with present ambiguities and challenges. The Foucault of *Discipline and Punish* has been criticized *ad nauseam* for being a treacherous crime historian when it would be more beneficial to approach him as if he was writing from the perspective of a radical historical criminologist. When Foucault (1979, pp.3-6) described the public execution of Damians the regicide in 1757 – to give an idea of what I have in mind – he was doing something other than describing a public execution of the 18th century; he was using historical materials and records to relate modern penal practices like incarceration to the technologies of the power to punish that are at work today⁷⁶. He was not aiming at having Damians speak for himself, or at representing Damians’ past experience with the best possible accuracy and precision. He was trying to show that though today the spectacle of the scaffold is no longer part of penal practice this is only because the soul has entered the scene of penal justice and has become “the prison of the body” (1979, p.30). Damians

⁷⁶ In a lecture delivered in 1979, Foucault laid out the general ‘ligne de conduite’ characterizing his work up to that point in time, i.e., “analyse the relations between experiences like madness, death, crime, sexuality, and several technologies of power” (1981, p.226).

is one of the tools Foucault used to make points about contemporary events – in his case, the prison revolts going on in France in the early 1970s that led him to the creation of the *Groupe d'Informations sur les Prisons* in 1971, then to the delivery of a course at the Collège de France entitled *The Punitive Society* between 1972 and 1973, and finally to the publication of *Discipline and Punish* in 1975. Indeed, the idea that punishment and incarceration are essential components of a modern political technology of the body is something Foucault claimed to have learnt primarily from the present and only secondarily from history ⁷⁷. As explored previously, Foucault's history of the present has been posited as historiographical foundation of historical criminology; history as toolkit not 'to find out what happened', but 'to produce practical knowledge for understanding the problem of crime in society'. "If criminologists on occasion work from historical sources", Lawrence (2012, p.320) assured us, "and make no attempt to link this work explicitly to the concerns of the present, they are effectively acting primarily as historians". Unlike the crime historian, then, the historical criminologist seems to espouse the idea that history becomes truly valuable only when it is put into action, when it is weaponized and used in practice.

The historical study of crime may not have consolidated without first rendering accessible a bottom-up experience of the social-historical reality of crime-related phenomena through social-scientific means. But the growing recognition of a practical side to the historical study of crime as found in historical criminology hints at the possibility that criminologists working historically have a chance to make a difference in practice. This does not come without its problems, as there are fundamental questions to

⁷⁷ "That punishment in general and the prison in particular belong to a political technology of the body", said Foucault (1979, p.30), "is a lesson that I have learnt not so much from history as from the present".

be asked about the extent to which history can be usefully engaged with for the sake of the present. The equally pressing question concerning the relationship between crime history and historical criminology needs to be dealt with at greater length, and there is no doubt that only a constructive dialogue between historians and criminologists can lead to the maximization of the productive potentiality of the field of the historical study of crime taken as a whole. I would maintain that what is to be sought is a professional ethics of cognitive cooperation, a workplace strategy allowing for the pursuit of antagonistic ways of producing knowledge and action and at the same time for the attainment of professional cohesiveness. The historical study of crime can develop its own singularity as a space for cognitive labour power while retaining within itself dissenting views, voices, and workers but this requires a certain open-mindedness towards methodological eclecticism and innovative research paths.

What is at stake, in this limited context, is the production of subjectivity within academia. While the crime historian is by now an established specialized worker – with the British Crime Historians meeting every two years since 2008 – the figure of the historical criminologist remains uncertain and dubious, with no official and standardized training or stable institutionalized presence globally. At the core of the collision between history and criminology is located the possibility of the historical criminologist as a productive expression of human activity. The choices of criminologists engaging in historical research in the present will determine whether we will see the flourishing of a new practice of criminology in the near future. As of today, historical criminology is a study area in the making. Crime history and historical criminology may well resemble, in appearance, the classical dichotomy between theoretical and practical knowledge, between a disinterested science of absolute facts and an engaging and ongoing

conversation on matters of value, but their apparent differences extinguish themselves in the realm of production and performativity.

4.

Historical Criminology and its Dialogue with Crime History

The Province of Historical Criminology Determined <> Criminological Histories of the Past <> Theory and Practice in the Eyes of Crime Historians

Now that an introduction to the historical study of crime has been provided, it may be possible to explore in greater detail the scope of historical criminology as an academic attitude and in its relation to politics, that is, with ‘present history’. This chapter starts by looking at some of the definitional and disciplinary issues encountered when differentiating historical criminology from crime history and at some of the justifications used to legitimize the appellative ‘historical criminology’. One of the earliest, core tasks of historical criminology was that of comparing the ‘criminological physiognomy’ of different cultural periods to enlighten current understandings of the criminal phenomenon but, as highlighted in this chapter, historical criminology today exists in a more diversified form. It finds an analytic scope in a plethora of contexts, from that of feminist criminology to that of organized crime and, unlike crime history, makes a commitment not to the past for the sake of the past but to the present for the sake of the future. Works of historical criminology are generally aimed at generating action, at influencing the future and not at explaining the past. While it may still be unclear whether historical criminology should be the ‘sole property’ of criminologists or remain open to legal scholars, historians and sociologists alike, there is virtually no disagreement about the ‘presentist’ and present-centred attitude of this area of study.

The chapter is in the first place concerned with relevant, contemporary conversations about that which is essentially a study area in the making. It defines the current and currently ambiguous terms of historical criminology and contrasts different

views and interpretations of what historical criminology is presently said to be about. The chapter then briefly reviews some criminological histories from around the middle of the 20th century while also engaging with seminal works in the historical study of crime such as Pike's (1873, 1876) *A History of Crime in England*. Questions of method and science at the intersection of history and criminology are then addressed, to be followed by elaborations on the relationship of crime historians to theory and practice. In this final section of the chapter, the focus is on the controversial attitude of crime history towards the present, social history, politics and, to a lesser extent, towards criminology, an attitude which is well attested in the work of Rudé and Thompson. In *The Poverty of Theory*, Thompson (1978) made a controversial argument for the separation of historiography from politics. This has left the historical study of crime in a relative state of confusion when it comes to addressing its relationship with theory and practice. While most works of crime history follow E. P. Thompson's postulation of this dubious separation between historiography and politics in the historical study of crime, pioneers in historical criminology like Radzinowicz and Foucault – as I will show in the next chapter – popularized present-centred kinds of criminological histories; histories of the present, historical accounts centred on politics, that is, on 'present history'.

The Province of Historical Criminology Determined

Although social-scientific domains are usually flexible enough when it comes to definitions, the term historical criminology as currently elaborated does not allow for much definitional manoeuvring. The most intuitive position as to what historical criminology 'is' consists in saying that criminologists using history as their core mode of inquiry are acting in the capacity of historical criminologists. This view may be dismissed by some, since a criminologist who can 'do history' is also a trained historian and, therefore, someone who no longer acts in a fully criminological capacity. Does not

historical inquiry necessitate historical training? Does it not presuppose mastery of historical method? Godfrey, Williams and Lawrence (2008) offer a possible answer to these questions in a chapter from *History & Crime* titled ‘History, Criminology, and ‘Historical Criminology’’. In it, they argue that the emergence of a historical dimension to the study of crime is connected to the criminologist’s realization of the significance of historical contexts and to the overlapping of historical and social-scientific thinking. Backed by Mills’ quote that “every social science – or better, every well-considered social study – requires an historical scope of conception and a full use of historical materials” (2000, p.145), they suggestively point out that crime history and criminology are currently creating their own ‘history of interaction’ (Godfrey, Williams & Lawrence 2008, p.19) to the point that classifying certain works as either historical or criminological is no longer a possibility.

Among the works said by Godfrey, Williams and Lawrence (2008) to exist somewhere in the province of historical criminology we find Pearson’s (1983) studies of fear, youth crime, myth, street violence and hooliganism, Garland’s (1985a) historical analyses of penal strategies, Pratt’s (1997) inquiries into social and penal policy, Lea’s (2002) studies of crime and modernity, and a few more instances. These being works that deploy a variety of methods and cover a vast spectrum of topics, their bond may lie in the essentiality they place onto history in the context of an inquiry or analysis of criminal phenomena. In other words, historical criminology may not be equated with a field of specialization, but rather with an academic attitude that can trespass disciplinary boundaries as well as with an interdisciplinary practice that eludes strict classificatory terminologies. In a manner similar to historical social science, historical criminology escapes the formalizing and cataloguing power of social-scientific discourse and triggers a will to unthink social science, to go beyond the current structures of social-scientific

thinking. The habit of characterizing scholarly works explicitly as writings of historical criminology dates back to at least the 1930s ⁷⁸ and, to this day, the label ‘historical criminology’ has been quite selectively and only rarely applied, as in Geis and Goff’s (1986) ‘Edwin H. Sutherland’s White-Collar Crime in America: An Essay in Historical Criminology’, Mary Bosworth’s (2001) ‘The Past as a Foreign Country? Some Methodological Implications of Doing Historical Criminology’ and Knepper and Scicluna’s (2010) ‘Historical Criminology and the Imprisonment of Women in 19th-century Malta’. Knepper (2014) also wrote an entry for the *Encyclopedia of Criminology and Criminal Justice* titled ‘Historical Criminology’ and this is one of the few sources available today tackling the question of historical criminology on its own.

Knepper formulated general elucidations about historical criminology, such as that it “brings methods and concepts from history to the study of crime and criminal justice” (Knepper 2014, p.2081) and that over the past few decades criminologists “have taken several steps toward incorporating historical criminology as a subfield of inquiry” (2014, p.2086) without conflating its meaning with crime history. One might be tempted to approach historical criminology from the perspective of crime history, or from the perspective of a productive cooperation between history and criminology since the 1960s and 1970s and in relation to the rise of new social history and to developments in historical social science as exemplified by *Albion’s Fatal Tree*, but Knepper makes immediately clear that the historical criminologist differs from the crime historian. This should not be taken to mean that the conditions that made historical criminology possible

⁷⁸ The oldest reference to ‘historical criminology’ that I was able to find is contained in Lindesmith and Levin’s (1937, p.654) ‘The Lombrosian Myth in Criminology’, where the authors lament the lack of research on criminological developments in early criminological discourse, around the times when Lombroso was dominating the criminological landscape internationally. The priority accorded to Lombroso and the Italian school made it so that developments in other countries appeared as “a sort of no man’s land in historical criminology”.

are totally irrelevant to crime history and, in fact, Knepper mentions several underlying possibilities that seem to be conducive to both. Advances in archival research, for instance, ranging from the large-scale digitalization of criminal justice records to the digitalization of archived newspapers, might be said to transcend the disciplinary boundaries between crime history and historical criminology and to point in the direction of a ‘digital archaeology’ of crime and criminal justice⁷⁹. The influence of British Marxist historians like E. P. Thompson, who developed a theoretical framework to apply social history to the historical study of crime and do history from below, has been felt well beyond the field of crime history, as it reached criminologists uninterested in history and historians unattracted by criminal phenomena alike. The impact exerted by thinkers like Elias, Foucault and Braudel on historical scholarship has also equally been felt both within and without the historiography of crime and criminal justice, so that, while methodological differences between the ways in which historians and criminologists operate do exist, these may have less to do with sources than they have to do with reasons and intentions.

In support of that, Knepper mentions the works of criminologists who used historical material and records – like Nicole Rafter (1992), Mary Gibson (2002), Manuel Eisner (2001) and Hans van Hofer (2011) – to argue that, for criminological purposes, historical research has to go a step beyond revealing the past. History, to be of use to criminologists, must relate to the present, or else point to a clear statement about a present issue. There is, amongst historical criminologists, a commitment to ‘futurism’ (Knepper 2014, p.2082). The present stands against the historical criminologist as part of the phenomena under investigation which need explaining and whose explaining is critical to crime policy. Thus, van Hofer (2011, p.96) concluded from his historical analyses of

⁷⁹ On the digitalization of crime historiography also see Godfrey (2016) and Lawrence (2016).

criminal justice statistics that Scandinavian criminal justice was unsuccessful in the 20th century in controlling crime and that, therefore, a politician concerned with reducing crime today should look for crime prevention measures outside the criminal justice system. Similarly, Godfrey, Cox and Farrall (2007) did a study of ‘criminal lives’ centred around the themes of the family, employment and offending and which combined historical data sets and criminological theory with the hope of furnishing useful knowledge for today’s policy makers. Historians, on the other hand, generally avoid commenting on present issues and tend not to participate directly in any policy-making process. But, as Knepper pointed out, “the most interesting criminology arises at the point that history and criminology meet” (2014, p.2086), as evidenced by recent events such as the establishment of the Crime, Criminal Law and Criminology in History network in 2011 and of the European Historical Criminology working group in 2012.

Though selectively, the term historical criminology is found at work in a variety of contexts. In ‘History, Periodization and the Character of Contemporary Crime Control’, Churchill (2018a, p.1) reflects on the significance of history and historiography for the study of crime and points at the benefits “of developing a more fully historical criminology”. In an analysis of risk factors and pathways to imprisonment among incarcerated women in Victoria, Australia between 1860 and 1920, Piper and Nagy (2018, p.269) explore the life courses of female offenders from the past with the help of “a small body of life-course studies by historical criminologists and criminal justice historians”. In an examination of gendered perspectives, explanations and reactions to crime during the 19th and 20th century, Zedner builds on “research by social historians and historical criminologists” (1991b, p.313) to show “how far, and in what guises, Victorian assumptions about women continue to inform penal policy today” (1991b, p.353). Noting how little emphasis has been placed on the question of gender among historical

criminologists, Zedner relies on various intellectual developments like “recent social histories of the prison, the development of historical criminology, and the growth of writings by feminist criminologists” (1991b, pp.308-309) to show that historical reasons underpin contemporary penal policy’s attitudes towards female criminals. In a different context – that of a fascinating critique of ‘state-sanctioned criminology’ – Calder (1992, p.9) speaks of a “historical criminology of organized crime”. Arguing that the secrecy over Al Capone’s records as a Chicago gangster perpetuate a state-sanctioned criminology of organized crime that depends upon “selective dissemination of federal agency records”, Calder (1992, pp.15-16) insists that an “independent, rigorous historical criminology” must be distinguished “from a criminology which depends solely upon state information as definitive evidence”.

In ‘Historical Criminology and the Explanatory Power of the Past’, Lawrence (2018, p.1) locates the discourse of historical criminology in relation to the question about the extent to which the past can explain the present, and proposes that “the adoption of long time-frame historical research methods” can aid to identify and analyse historical continuities, reach a more nuanced understanding of the relation of criminal justice to micro and macro changes in history, and formulate a method for the identification of instances of historical recurrence. Similarly, Yeomans (2018, p.2) discusses how criminologists should engage with the past, and claims that historical research can elucidate our understanding of the present, as in cases in which it contributes “to explanations of some contemporary conditions or support cultural memory of historical experiences that continue to hold relevance today”. Looking at the functions and forms of historical research in criminology, he posits that contemporary criminology is guilty of ‘presentism’ in the sense that it obsesses with the present and neglects the past, and that the proper exercise of a ‘criminological imagination’ is necessary to link historical

contexts and social structures to individual experiences of crime. Historical criminology can be conducted at the level of cross-cultural research, and this may possibly be the future of comparative crime history (Morrison, 2003), but also from within the strict limits of national borders, as in the context of the historical development of crime and punishment in Sweden detailed by criminologists like von Hofer (2003), or in the context of, say, Dutch criminology, where, as highlighted by van Swaaningen (2006), a number of works in historical criminology began to be produced starting in the 1980s. Among these, we find studies on the abolition of capital punishment like Van Ruller's (1987) *Genade voor recht: gratieverlening aan ter dood veroordeelden in Nederland 1806-1870* and on the abolition of torture such as Faber's (1983) *Strafrechtspleging en Criminaliteit te Amsterdam, 1680-1811*, Manneke's (1998) historical studies on policing, Florike's (1993) explorations of the Dutch underworld in *Underworlds: Organized Crime in the Netherlands 1650-1800*, Leonards' (1995) studies of juvenile delinquency in *De ontdekking van het onschuldige criminele kind: Bestrafing en opvoeding van criminele kinderen in jeugdgevangenis en opvoedingsgesticht 1833-1886*, and *The Emancipation of Prisoners*, where Herman Franke (1995) analyses the changing balance of power between prisoners and their punishers in the Dutch penal system over the last two centuries.

It may be noted that whichever agreement can be reached about historical criminology today has to be deemed partial, as this is a study area in the making. It would be inappropriate, for instance, not to mention that some take historical criminology to be something radically different from a specialization for the criminologist:

We class all historical studies relevant to topics and discussions in the field of criminology, criminal law, the criminal sciences and the criminal justice system as Historical Criminology. We believe that Historical Criminology is best served by being viewed as an area of research, rather than being seen as the sole property of criminologists, legal scholars or historians. A unified discipline of Historical Criminology in today's global research community seems just an ideologically motivated dream. By not arguing for a unified discipline we hope to counteract

dogmatic and confessional practices which run the risk of suffocating innovative research. In short we oppose ahistorical and unfounded notions and views of crime and punishment in criminology. This special issue on Historical Criminology shows the strengths of differing traditions. (Flaatten & Ystehede 2014, pp.136-137)

The differing traditions from the special issue on Historical Criminology in the *European Journal of Criminology* cover disparate fields – cases of assassination in Europe in the early modern period, attempted regicides in the 18th century, the control of opium and its trade in Turkey, political crimes in early modern Europe, and more, but they all share the view that “with their historical take on their subjects they cast fresh light on familiar topics, and thereby also represent a form of reflection on the present” (2014, p.138). These studies, according to Flaatten and Ystehede (2014, p.138), belong to a now “loosely defined sub-discipline”, prominent examples of which are Spierenburg’s (1984) studies on the history of punishment, Rafter’s (2008) histories of criminology, Eisner’s (2011) work on violence in historical perspective, Emsley’s (1996b) and Dubber’s (2005) studies on the history of policing, and Valverde’s (1998) work on the history of alcohol control.

In notable contrast to this view, in ‘Towards Historical Criminology’ Churchill (2017) proposes that historical criminology’s primary scholarly domain is criminological – “the phrase suggests *historical* works of *criminology*, rather than a work of history as such” (2017, p.379, italics in original). Churchill provisionally defines historical criminology as “*the work of criminology done in an historical mode*”:

This definition allows one to draw contrasts with “criminal justice history” and “criminological history”. In the first case, criminal justice history is the work of history concerned with crime and criminal justice, as topics; in the second, one might define criminological history as the work of history informed by criminological concepts, theories or methods. By contrast with each, historical criminology is not the work of history as such, but an historical work of criminology. (Churchill 2017, p.380, italics in original)

A key task of historical criminology, according to Churchill, is that of showing the value of history for criminology, something that historical criminology does by reflecting “the prevailing temporal horizons of criminology as a field” (2017, p.380), that is, by being present-centred in orientation. In his view, historical criminology has four main research

paths ahead of itself. First, that of reviving long-term analyses of change so that it can be possible to “chart multiple lineages of historical passage” (2017, p.381) and avoid ‘totalizing views’ of historical change. Second, that of profiting from developments in comparative history and from the evolution of comparative modes of historical research that will bring historical comparison to a new level of sophistication. Third, historical criminology can make a few steps forward through “more sustained attention to how traces of the past – in material and memorial forms, both within particular institutions and amongst the population at large – persist in the present” (2017, p.382). Lastly, the inquiries of historical criminology may eventually illuminate possible future crime trends and contribute to studies of crime and justice past, present and future by exploiting the vantage point of the present.

Today, the hopes for a historical criminology remain scattered and uncertain. As historical criminologists attempt to distinguish their craft from that of crime historians, historical sociologists, and other participants in the historical study of crime, the historiography of crime and criminal justice risks to get further compartmentalized into specializations and sub-disciplines. The extent to which historical criminology will find a place of relevance in the historiography of crime and criminal justice is arguably functional to the resoluteness with which contemporary historical criminologists can push a ‘futurist’ agenda for the historical study of crime. In the meantime, we can explore in greater detail the way in which a link between criminology and history came to be established before the consolidation, over the last fifty years or so, of a historiography of crime and criminal justice, so that the current relation between historical criminology and crime history might be more aptly conceptualized.

Criminological Histories of the Past

Around the mid-20th century, in the midst of the Second World War, German politician and legal scholar Gustav Radbruch (1878-1949) was working on the history of crime in its relation to law and culture. His *Geschichte des Verbrechens: Versuch einer historischen Kriminologie* ([1951] 1991) – which can be translated as *History of Crime: An Attempt at Historical Criminology* – co-authored with Heinrich Gwinner, was published only a few years after Radbruch's death and was never translated into English. This work, though limited to a history of crime in Germany, possibly put forward the first explicit attempt at grasping the scope of historical criminology in general:

It is the task of historical criminology to compare the criminological physiognomy of different cultural periods and to show how the atmosphere and the conditions of the time influence its criminality, thereby making us aware of the fact that the criminality of our age is also dependent on its historical setting. (Radbruch and Gwinner [1951] 1991, p.6, Mannheim's translation)

Radbruch and Gwinner tried to accomplish this task by comparing the German criminality at the times of the Reformation with the Italian criminality of the Renaissance and other similar analyses, yet their work has been largely overlooked by crime historians.

This is probably because of a tendency, proper to crime history, to think of itself as being solely the craft of historians, while it should be recognized that, though admittedly it was only in the mid-1970s that the awakening of the historical study of crime came to be broadly recognised thanks to the conscious efforts of historical scholarship, historical studies and analyses of crime have been carried out by criminologists, legal scholars and others for over a century now. In fact, the first known work on the history of crime in English was written in the last quarter of the 19th century by a barrister-at-law and researcher in official records, Luke Owen Pike (1835-1915). In *A History of Crime in England*, Pike made some of the earliest steps into what, at his times, was an unexplored field – “In the attempt to write a History of Crime, a field is entered which has never previously been explored” (1873, p.3) – and left a number of marks on the history of crime; he demonstrated the importance of war, conquest and conflict, as well

as the importance of religion and of the Church's quest for supreme power for the historical understanding of crime. He linked the history of crime with the history of criminal law and the history of punishment, with the history of pauperism and riots, the history of the town, of commerce, of the naval enterprise, and more, whilst at the same time arguing for the differentiation between the history of crime and that of civilization – as he put it, “it is surely a paradox that there have long been many ‘Histories of Civilisation’, and not one ‘History of Crime’ (1873, p.4). He isolated relevant events in the history of crime and laid out historiographical and conceptual principles for the study of crime in history, such as that it should not concern itself with criminal biographies, that it must account for social conditions in history, that it cannot judge past criminals by modern standards and that the definition of crime is to be sought historically. Pike made critical use of primary sources and archival materials and his method was ‘essentially chronological’. He took the relation between past and present to be relevant for the future – “it is only by comparison of the past with the present that we can discern what grounds we have for hope in the future” (1873, p.5) – while implying that history's object is not that of securing plans for the future but of working towards historical truths and showing “the manner in which causes operate as a whole” (1876, p.550). Simultaneously, Pike connected the history of crime to the history of human sentiments, morals and civilizations, overemphasizing the workings of ‘progress’ and the narrative of passage from ‘savage’ to ‘civilized’, the gradual decay of barbarism and the power of the modern sentiment. Like Ranke, he took the hopes of mankind to lie *before* us and not *behind* us, to lie in progress and not in prescription (1873, p.331), i.e., in the progress made towards a sympathy with human suffering.

In the first quarter of the second half of the 20th century, Hermann Mannheim – while writing on the sociology of crime – mentioned the history of crime in passing,

noting that it had been largely neglected comparatively to the history of criminal law and the history of punishment ([1965] 2001, pp.422-424). Though recognizing that works such as Burckhardt's (1928) *The Civilization of the Renaissance in Italy* and Trevelyan's (1942) *English Social History* touched upon the historical dimension of crime and criminality, Mannheim cited Henry Mayhew's (1851) *London Labour and the London Poor* and Pike's (1873) *History of Crime in England* as the first English works to treat explicitly and exclusively of themes from within the history of crime. In Germany, the first of such works would be Avé-Lallemant's *Das deutsche Gaunertum*, a comprehensive study of crime and its history, its place in literature, its theoretical explanations, and its relation to language – first published in 1858. Mannheim was also able to list a number of historical works on crime published between the late 1920s and the early 1950s, like Exner and Lelewer's (1927) *Krieg und Kriminalität in Österreich*, Liepmann's (1930) *Krieg und Kriminalität in Deutschland*, Clinard's (1952) *The Black Market*, Kefauver's (1952) *Crime in America*, and Jerome Hall's (1952) *Theft, Law and Society*, as well as his own *Social Aspects of Crime in England between the Wars* (1940), *War and Crime* (1941), and his 'Three Contributions to the History of Crime in the Second World War and after' ([1955] 2002, pp.85-114).

Numerous publications from the first half of the 20th century could be listed which count as valuable contributions to the historical study of crime by crime historians and criminologists alike. As an example, *The Pioneers Series in Criminology*, launched in 1954 by Robert H. Gault, Elio Monachesi, Francis E. Allen and others in collaboration with *The Journal of Criminal Law, Criminology, and Police Science*, carried out the quintessentially historical task of compiling a comprehensive biographical account of the founding members of the criminal sciences and, in so doing, provided useful tools with which to make sense of the past of criminology and with which to expand the intellectual

history of crime and criminal justice (see Gault 1954). It might also be noted that textbooks in academic criminology have, since early in the 20th century, dedicated time to various types of historical narratives, at times providing historical context for the appreciation of theories, at other times placing texts and authors within historical traditions (see Garland 1997b, pp.13-18). Whether one reads Bonger's *An Introduction to Criminology* (1936) or Sutherland's *Principles of Criminology* (1947), for example, history plays at least the salient role of elucidating the scope and reach of criminological studies and the significance of criminological developments. Moreover, it would be appropriate to say that crime historians are not oblivious to developments in the historical study of crime from the first half of the 20th century as they have at times been obliged to acknowledge the influence that works such as Rusche and Kirchheimer's *Punishment and Social Structure* (1939), Grünhut's *Penal Reform* (1948) and Radzinowicz's *A History of English Criminal Law* (1948) have had on the development of a historical dimension to the study of crime. As a matter of fact, Pratt (1996) spoke of such works – together with seminal 'historico-criminological' research from the United States (i.e., Platt 1969; Rothman 1971; Scull 1977) and a few other works – as instantiations of 'historical criminology'.

The Foucault of *Discipline and Punish*, working somehow from the inside as well as from the outside of the historical study of crime, cited Rusche and Kirchheimer's work – first published in 1939 – as a methodological inspiration (1979, p.24) but, admittedly, this work is currently regarded more specifically as a classical contribution to the sociology of punishment rather than to crime history. Grünhut and Radzinowicz are somewhat revered by crime historians, their works having long been deemed monumental by those concerning themselves with the study of past experiences of crime and criminal justice, though their accounts are today looked upon as rather 'Whiggish', that is, based

on a kind of historiographical optimism with regards to the progress of penal reform and the advances of criminal science. Grünhut (1948), for instance, was a German-British legal scholar and criminologist who wrote a comparative study of penal reform movements centred around the birth of penal science. In his view, penal reform signalled an attempt to progressively and gradually abandon the use of force and to handle social problems “in a new spirit of sober experience and personal devotion” (1948, p.472). The future of penal reformation was, to Grünhut, linked to scientific advances as well as ‘practical social work’. The new outlook on crime provided by modern penal sciences brought about the necessary changes in penal policy to complete the history of penal reform internationally. It reinforced the attempts of 18th-century reformers who alleviated the misery of prison conditions and it strengthened the humanitarian impulse driving new correctional treatments. Science took over the centrality of religion in defining human and social issues like criminality thanks to positivism’s expansion of the range of scientific explanations to the question of the individual and society. A new science – criminology – was thus born, a science whose empirical basis could help adapt the criminal justice system to the demands of present-day penal policy (1948, p.467).

We can now say a few more words on historical criminology, to then move on to an analysis of its relation to crime history. Specifically, the extent to which historical criminology aims at practical rather than theoretical knowledge needs to be further explored, together with the notion that a historical criminology producing practical knowledge, i.e., knowledge valuable for present purposes, is in tension with a crime history that is intended to disinterestedly produce historical knowledge. To address these issues, I suggest going back to Chantilly, Virginia, USA, on the 11th and 12th of October 1979, when a national workshop on the application of historical research to the study of crime instigated by the *National Institute of Law Enforcement and Criminal Justice* drew

together sixteen researchers in history, criminology and criminal justice (see Rau 1980, pp.7-8). Much like Dixon (1996), such researchers put forward the bold idea that it is possible to understand contemporary crime and criminal justice matters through historical research. The past, according to some of the participants in this endeavour, can illuminate our present condition, inform contemporary policy and guide present judgements (Inciardi & Faupel, 1980b, p.11). History teaches lessons that emerge in the form of “generalizations about the past which may have some tentative applications for the present or the future” (1980b, p.12) – put differently, history can generate “an understanding of the processes of social change and demonstrate how a multitude of factors have served to shape the present” (1980b, p.13). Particularly persistent forms of criminality, like organized crime, can be analysed through a historical lens to furnish insights into the mechanics that permits such forms of criminality to develop, evolve and endure over time, as well as into management and control alternatives to them.

Partly in view of this, the workshop hoped to show the value of the interrelation between history, science, and politics – it hoped to persuade a relatively large audience that history is relevant to current problems, that historical research “adheres to the canons of scientific inquiry”, and that a number of historical themes and topics belong to “the federal agenda” (1980b, p.16). While some of the papers presented at the workshop relied on cross-cultural perspectives meant to enrich our current understandings of criminal justice systems through historical research (Duesteberg 1980; Gibson 1980; Miers 1980), others more explicitly called for the interdependence of social history and policy-oriented social science (Monkkonen 1980), while yet others detailed more specific issues, like juvenile justice and the way in which its current policy and administration is shaped by historical events (Ferdinand 1980). Should we conclude from this that crime history is as committed as historical criminology to futurism? The problem with such a view is that

for every crime history that centres on the idea that, say, the past centuries bequeathed us “a considerable legacy which continues to prevail upon contemporary policing” (Bailey 1981b, p.22), one finds two crime histories that are manifestly uninterested in contemporary policing and centre on its past instead (Taylor 1998; Williams 2014). For every study that mentions historians tackling today’s problems and participating in present criminal justice debates (i.e., Briggs, et al. 1996) there is a study that looks at crime in the past to get closer to “the core of some of the fundamental aspects of English society in the early modern period” (Sharpe 1999, p.28). For every crime historian studying the nature of violence and crime in the past to “help us make more informed policy choices about our future” (Johnson & Monkkonen 1996a, p.1), and for every study stating that an “understanding of the relationship between shaming, penalty and modern society relates to the presence and possibilities of the renaissance of shame in the present” (Pratt 2003, p.180), we shall find a crime historian who researched some of the most violent and shameful events of our past, like the passing of the Bloody Code in England, without producing any direct or explicit reference to violence and shame in contemporary times (McLynn 1989).

One way of understanding this confusing state of affairs within the historical study of crime is to appreciate that crime histories can be incidentally present-oriented while historical criminology appears to be so by necessity. But there is also a question of method and validity of findings that might be playing a role here, as evident in Rothman’s conclusion to the paper he delivered at the workshop on history and crime in Chantilly in 1979. Eager to announce some policy implications derived from his historical investigations into the progressive tradition in penal reform – a major theme of his *Conscience and Convenience* (1980a) – Rothman (1980b, p.282) notes that “to the degree that one is persuaded of the validity of the dynamic described here, then a series of policy

statements become appropriate”. There is no need to go through these statements, but we should pay attention to the fact that the consequentiality of historical studies of crime is perceived to be at least partly dependent on technical achievements, and that the growth of specialized research and publications in the historical study of crime are transforming the field in a narrowly ‘academic’ rather than ‘popular’ subject (Emsley, 1996a). Another way of saying this is that crime history has not been immune to the specialization, scientification and technicalization undergone by historical studies since at least the late 19th century and particularly since the 1970s⁸⁰ and, as Monkkonen (1980, p.53) made clear, “counting is the major means of understanding crime and criminal justice in the past and of comprehending crime and criminal justice in the present”. To be able to speak of the past of crime-related phenomena, Monkkonen would argue, we need to learn the language of mathematics and science, to participate in the quantitative historical study of crime via the use of analytic and statistical techniques ranging from percentaging, bivariate analysis and multivariate techniques to long-linear techniques and exploratory data analyses, and on to the various techniques identified by Greenberg (1979) in *Mathematical Criminology*.

There is little controversy in saying that historical criminology “foregrounds historical methodology” (Flaatten & Ystehede 2014, p.137); from advances in quantitative techniques for historical analysis and in archival research and the digitalization of criminal justice records to the influence of the French *Annales*, German modernization theory, Italian micro-history and Foucauldian genealogies, crime historians and historical criminologists have substantially diverse and methodologically

⁸⁰ Quantification has fascinated historians since at least the 1970s, prompting various debates on the reliability of statistical data like Gatrell and Hadden (1972) and Tobias (1979). The use of computerized statistical methods in the historical study of crime was pioneered by Greenberg (1974) and Monkkonen (1975).

variegated entry-points to the past of crime-related phenomena. The study of crime is “difficult terrain demanding particular expertise” (Cockburn 1977, p.xiii) and studying crime historically requires mastery of technical historiographical procedures, as Elton elucidated with regards to the history of crime in the early modern period:

Thus, the task – the primary task – of defining the subject matter of a history of crime involves two steps. Firstly, it is necessary to abandon modern categories based on the concepts of social norms, social justice and antisocial behaviour, in order to identify contemporary categories based on legal definition or the absence of it, to analyse the distinctions to be made here, and to resolve their many technical problems (through time, as well). Secondly, one needs to reintroduce those modern concepts in order to discover what possibly criminal activities the strict analysis may have eliminated and whether they should be added to the area of inquiry. Once this is done it is possible to study criminality in the early modern period. (Elton 1977, p.6)

The question to be asked, then, is how to react to the reality that, at the intersection of history and criminology, what we are dealing with are “essentially practical problems” (Cockburn 1977, p.xiv) and yet with problems to which we are at least in part obliged to apply technical solutions.

“Historically contextualised criminology”, as Pifferi (2016, p.16) prefers to call it, can be concerned with questions that are deemed of topical interest in the present (2016, p.254). But this will not furnish certain solutions to existing problems, rather it will contribute critically to their discussion (2016, p.259) and, as argued in *Reinventing Punishment*:

Therefore, the historical-comparative research on the individualization of punishment and the effects of criminology on punitive frameworks should combine the global and local perspectives, searching for diversity within a spectrum of sociological and scientific theories that aspire to define universal truths. (Pifferi 2016, p.32)

The search for universal truths in the historical study of crime runs parallel to the infinite process of research that the past of crime-related phenomena can potentially unleash in the near future. In the historical study of crime, “the list of topics requiring more or less urgent investigation is almost infinite” (Cockburn 1977, pp.xiii-xiv), so that this field of research opens the doors for an endless and undetermined process of discovery and

validation, for an infinite excavation of historical archives – for an unlimited productive potentiality.

Theory and Practice in the Eyes of Crime Historians

We may now move on to further investigate the question of whether it makes sense to think about the activity of studying crime historically as a practical and present-oriented endeavour by looking some more at the work of prominent crime historians, paying special attention to their attitudes towards theory, science, and politics. As a general rule, historical knowledge has either a terminus in action or in production, either in praxis or poiesis. One way of making sense of this is to think of history as ‘art’ as opposed to history as ‘artisanship’ and to understand that the history of Western historiography has been ‘lived and written’ both by artists as well as by artisans. At the level of knowledge production, the modern tendency since the times of the scientific revolution has been one leaning toward the development of technical and productive skills rather than practical capacities. Within the development of modern historical scholarship, this coincided with the formation of a habit of indifference towards the present and one of dispassionate attraction for the past.

Crime historians would have to concede that all historians are present-minded in the sense that writing history requires thinking about writing history and that, since all thinking is present experience, writing history cannot but relate to the present (see Hexter 1954)⁸¹. In the past, prominent historians had to recognize this – including Ranke, as we shall see in chapter 6. That said, historians would also agree that historiography is

⁸¹ This is true of the historical study of crime in general and of all specialized fields within it. See Gaskill (2000), for instance, for the problem of not resorting to present categories of experience in a study of crime and mentalities in early-modern England. Also see Bloch (1977) for a discussion of ‘the past and present in the present’.

episteme and not doxa, knowledge and not opinion, and that historiography deals with the historical past and not with ‘the past of our present’ (Heller 1982, p.81). Put differently, historiography is broadly taken by contemporary historians – as well as crime historians – to have no practical application as its terminus ⁸². Hexter pointed out that only under one condition can a better knowledge and understanding of the past be achieved by reading history; that one reads and studies it with the aim of understanding and knowing about the past, and not with the aim of fomenting action in the present or coming up with predictions about the future (1963, p.187). Notwithstanding, it seems that historical criminology is an exception to this historiographical rule. Similarly, most works in the ‘revisionist’ camp of the historical study of crime, like Foucault’s *Discipline and Punish*, Melossi and Pavarini’s *The Prison and the Factory*, Rothman’s *The Discovery of the Asylum* and Ignatieff’s *A Just Measure of Pain* make explicit references to the influence exerted on their works by their present contexts. Such works would unanimously admit that their origins are to be found in present concerns – like the European penal crisis of the late 1960s – but this alone would not classify them as practical histories. That said, they have been characterized – thanks to Gadamer’s influence – as “hermeneutical examinations” by Flaatten and Ystehede (2014, p.138) in that such researchers examined their sources in order to find that which the sources themselves did not aim to provide.

Rothman (1971), for instance, made clear that the history of the asylum should be relevant for our understanding of the present. In fact, since such history shows that there is nothing inevitable about the coming into being of our modern institutions like those of

⁸² This idealization of history as being a science of the past only, as shown in chapter 6, emerged in the 19th century, at a historical time when historians used to define themselves as mediators “between past and present through the major if not unique object of the nation or state” (Hartog 2014, p.203).

criminal justice and mental health, history is effectively speaking a ‘liberating practice’. In *Conscience and Convenience*, Rothman made an even more explicit call for an engaged historiography of crime and criminal justice; the goal of the book was, in the author’s words, “to inform both history and social policy, to analyse a revolution in practice that has an immediate relevance to present concerns” (1980, p.4). In a similar fashion, Ignatieff (1978) wrote his work on the new philosophy of punishment in England between 1775 and 1840 with the present in mind. His motive to study the penitentiary in the industrial revolution was the ever-recurring failure of incarceration in recent times. His study constitutes a social history aiming to define “where the rich and powerful of English life placed the outer limits of their power over the poor” (1978, p.xiii), but it also functions as a reflection on contemporary issues, with the work ending with a contemporary analysis of criminal justice policy and a note on the role of history in combating punitive power. Along similar lines, Foucault’s *Discipline and Punish* was a history of the present, but also a ‘historical background’ to an understanding of the power of normalization in modern society. Melossi and Pavarini (1981) wrote *The Prison and the Factory* as a response to the Italian penitentiary crisis of the late 1960s, and their work has been said to coincide with “a major expansion of interest in historical criminology” (Clarke, et al. 1981, p.xi). Arguably, however, this work is before anything else a contribution to Marxist historiography, its central objective being that of establishing the connection between the origins of the modern prison system to the rise of capitalism – “and that is all!” as Melossi and Pavarini (1981, p.1) emphasised.

Particularly since the birth of the *International Association for the History of Crime and Criminal Justice* in August 1978, some historians have purposefully made of the relationship between past and present a methodological component of crime history (see for instance Johnson & Monkkonen 1996b). In fact, some take the historical study

of crime to be always-already a work of comparative history in the sense that crime historians cannot but compare the past which they study with the present in which they live (Wiener 2003). Moreover, the history of crime itself provides a way to investigate time, place and culture, thus rather than being inconsequential, it makes possible studies on the historical meaning of crime in modern culture, to expand discourses of criminology, to explore the historical realities of police corruption, to put in their proper historical context popular media representations of crime and criminals, and so on (Srebnick & Lévy 2005).

Works in the historical study of crime like Zehr's *Crime and the Development of Modern Society* expressly claim to be exercises in 'history and not theory' while also claiming to have implication for criminal justice (1976, p.143). Studies like Williams' *Police Control Systems in Britain, 1775-1975* are also works of history and not theory (2014, p.14), works aiming specifically at enlightening the history of criminal justice, policing, punishment, etc. while also enriching our broader understanding of the history of modernity and modern life. Works like Thompson's *Whigs and Hunters* more modestly assert to be 'experiments in historiography' (1977, p.15) while others, like Kilday and Nash's *Histories of Crime: Britain 1600-2000*, are more inclined to occasionally offer "guesses about the future direction that academic and policy debates may follow" (2010, p.2). Some works in the history of crime are more visibly concerned with criminal justice policy and at times confess upfront that by using "analytical tools adopted from social science research – comparative analysis, time series analysis, and combinations of these and other techniques, historical analyses of events offer insights relevant to today's problems" (Rau 1980, p.7) or at least that history helps us determine how contemporary criminal justice practices came into being (Inciardi & Faupel 1980b, p.13). And there are those who, like historians from Keele University such as Briggs et al. (1996), write

histories of crime and punishment to be used primarily by criminology students with the goal of helping them place the present in a historically-informed context. Beginning from the premise that crime is one of the political issues of modern times, these authors explore how much historians can contribute to present debates by looking at the medieval origins of the English criminal justice system, at crime and punishment after the industrial revolution (1800-1875) and at the making of the modern criminal between 1875 and 1960.

The examples discussed so far do not make it easy to state with confidence that studying crime historically can be practically reconciled with present needs unproblematically, but their value is not simply symbolic either. Speaking of history from below, which stands as the backbone of the history of crime to this day, Hobsbawm (1985) contended that it does not begin, like traditional history, from a ready-made body of historical materials, that the historian from below cannot be an old-fashioned positivist expecting questions and answers to flow naturally from the analysis. This kind of historian is not simply interested in discovering the truth of the past but in explaining the past while providing a link to the present in the process. The sources used when doing history from below are often recognized as sources “because someone has asked a question and then prospected desperately around for some way – any way – of answering it” (1985, p.66). Still, Hobsbawm himself wrote extensively about the uses and abuses of history in society and politics, about those kinds of situations where historians find themselves in unexpected political roles and about those circumstances when history becomes an authority for the present. To Hobsbawm, the past represented “a permanent dimension of the human consciousness, an inevitable component of the institutions, values and other patterns of human society” (1985, p.10) and, precisely because of that, human beings have a responsibility towards historical facts, a duty to know history well and to single out and criticize political and ideological abuses of historical research. The

present can hardly be modelled on the basis of the past, let alone be a carbon-copy of it, and historical narratives that ‘dip into the past’ searching for assistance in forecasting the future need to be approached with extreme caution (1985, p.20). Historians are concerned with historical change and its mechanisms and patterns and history should not be treated as a ‘secular eschatology’ (1985, p.30). Nonetheless, though history cannot forecast the future, it can point at problems that will have to be solved one day. Learning from the past is just another word for ‘experience’ and a consciously-experienced present cannot but be a historically-informed one.

One of the most important British Marxist historians to have contributed to the historical study of crime, together with Thompson and Hobsbawm, was George Rudé, prominent historian from below. Rudé popularized the historical study of pre-industrial popular movements, of crowds, revolutions, protests, popular ideologies, criminality, and more (see Krantz 1985a). In works like *Criminal and Victim: Crime and Society in Early Nineteenth-Century England*, he pioneered the integration of figures on the victims of crime in the historiography of crime and criminal justice and offered important insights into the nature of economic crime, the existence of a criminal class and the clashes and interactions between the rich and the poor (1985). Noting that criminals and victims in his study tended to belong to different classes, Rudé asked whether a class war was being engaged in (1985, p.118). Though a few isolated gangs of ‘professional’ criminals could be said to be a reality of early 19th-century England, Rudé suggested they were too small in number to form a criminal class properly so called. This instantiation of crime history has much to offer to historical understanding; it corroborates, for example, what other crime historians have already ascertained about the past – i.e., about growing volumes of crime in urban centres as compared to the countryside or about the actual number of offences committed by full-time criminals as opposed to occasional ones. It also teaches

us something new about the characteristics and attitudes of victims of crime in history, which per se is also an important contribution to victimology. Yet, can it be said that Rudé wrote this work to help victims of crime in his lifetime?

The concern with the ‘below’ of history in Rudé’s work came from a strong human commitment. ‘Popular’, in his own vocabulary, meant ‘pertaining to the common people’. In his first published work, *The Crowd in the French Revolution*, he refused to look at the French masses from above, trying instead to capture the distinctive identity of the crowd from below, thus portraying the revolution not just as an important political event but as a significantly social one (1959). He was a Marxist open to the social sciences, a *historian’s historian* who combined “scrupulous archival research with detailed, almost *pointilliste*, quantitative analysis, and unfailingly clear exposition and writing with comparative perspectives and historiographical mastery” (Krantz 1985b, p.3, italics in original). One of his key achievements was that of successfully applying Marxist theory to the study of history from below, which is exactly what he did, for instance, in *Ideology and Popular Protest*. There, Rudé (1980) tried to uncover the ideology of protest with the theoretical help of Marx, Engels Lukács and Gramsci. Beginning from a Marxist theory of the ideology of working-class protest, he went on to develop a model for the analysis of various modern popular movements, including the English, American and French revolutions. But once again, the text does not say anything that could possibly feature in a user’s manual for organizing protests today ⁸³. As Clark (1985, p.56) put it, though Marxism illuminated “everything he wrote and everything he said”, Rudé was able to transcend loyalties of background, class and political conviction in life and in his work. Indeed, he admitted that he did not consider himself as ‘politically involved’ with the

⁸³ Similarly, we should ask to what extent Rudé’s and Hobsbawm’s (1969) *Captain Swing*, their classic social history of the Great English Agricultural Uprising of 1839, can be considered a practical and present-centred history.

rioters, wage earners and craftsmen under study but rather as sympathetically bonded with them (Rudé 1988b, p.58).

Though Rudé generally presented his work as being ‘pragmatic’ in nature and of little theoretical interest, Stretton (1985) argued that he likely underestimated his own theoretical capacities and the high theoretical standards of his own works. Not only did Rudé use theory – he used it well. In a time in which Marxist discourse was theoretically stuck on rigid elaborations of Marx as offered by Althusser, Habermas and others, Rudé arguably used Marxist theory productively. Accusing those who regard theories as consumption goods and things to be valued in themselves, Stretton warned about the valuing of theory for its own sake and insisted that Rudé made ‘good’ use of theory, treating it as a vital ingredient for historical writing and social research but also judging it “by its values in use, by its actual product of understanding or action” (1985, p.52). Rudé might have made a significant contribution to Marxist historiography, but his work is important both at a ‘technical’ and at a ‘valuational’ level, since it furnishes useful technical ‘guides’ to socially and politically challenging aspects of life. So that, though we would be right in saying that Rudé was studying revolutions and protests in the past to produce knowledge about them and not to improve protesting practises or to make revolution possible in the present, or that he was studying the victims of crime historically not to help victims of crime today but to know more about their past, one could still argue that his work has practical import because it enriches the historical consciousness. This is feasible, since it is possible to think of historical consciousness in practical terms, as seen with Rüsen early in chapter 1. But for however practical the historical consciousness can be, there are good reasons to doubt Rudé’s practical relevance to the history of crime and to history from below.

Rudé's own political beliefs, in fact, kept him from securing a stable position at British universities in the 1950s. A member of the British Communist Party since 1935, Rudé was forced to resign from St. Paul's School in London in 1949. A decade later, Hugh Stretton secured him an appointment as senior lecturer at the University of Adelaide. In Australia, he took time away from European politics and focused on theoretical work, seizing the opportunity to study transportation and to write the story of the social and political protesters transported to Australia between 1788 and 1868 – a story culminating in one of his most famous works, *Protest and Punishment* (1978). Though Rudé had left the Communist Party upon sailing to Adelaide, during his time in Australia he was treated almost like a political prisoner due to his party membership and the Australian Security Intelligence Organization (ASIO) monitored him and collected information about his personal and political activities for a decade. "History books of which he is the author and reports of his class work at schools in England", reads one of the notes passed by government agents to their superiors at ASIO, "all show that he is objective in his approach to his teaching subject and has not let his own personal politics intrude in any way" (Friguglietti 2005, p.9). Rudé's reluctance to bring his radical politics to history from below and to the historiography of crime and criminal justice was therefore necessitated at least in part from the outside, from the political terrain on which he found himself working in the capacity as a social and crime historian.

E. P. Thompson, on the other hand, made an explicit argument for the separation of science and politics that puts into question the possibility of a practical historical study of crime – as well as the more specific proposal made earlier about a practical crime history understood as voice-raising activity. In his highly controversial essay 'The Poverty of Theory', Thompson (1978) recurred to a methodological position resembling Weber's attitude towards the relation between science and politics. The essay was

intended as a ‘polemical political intervention’ and not as an ‘academic exercise’ (Thompson 1981, p.385) and it was primarily concerned with theoretical disputes within Marxist discourse and historiography – it was an attack on Althusser’s structuralism. Thompson wanted to address certain claims made by Althusser, such as that historical knowledge is as ‘historical’ as knowledge of sugar is ‘sweet’ by reconstructing standard procedures of historical practice – showing, for instance, how historians establish reliability of sources and generality of evidence. The proposed methodology, premised on the idea of a unified historical method and on the defence of a ‘dialogue between model and evidence’, came soon to be attacked for being inconsistent with Thompson’s own political commitments (see for instance Hall 1981; Warde 1982). The text has been read as ‘absolutist’, being a call for the eradication of the Stalinist legacy in Marxist thinking and for a return to ‘the agenda of 1956’ (Johnson 1981, p.389). The essay was, in Thompson’s words, “a political intervention, coming from a socialist publishing house and addressed to the left” but it was also an attempt at “removing socialist theory from a political to an academic context and procedure” (1981, pp.401-402). Thompson knew that the relation between theory and politics had to be addressed, from within historiography, at the level of the interplay of past and present, at the level of the interaction between ‘historical discipline’ and its ‘object’.

In Thompson’s view, historiography has as its object historical knowledge reconstructed from evidence and facts – yet facts are ‘liars’ that always conceal vulgar ideological intrusions. The historian’s task is not that of letting historical facts and evidence disclose their own meaning but to have them interrogated by “minds trained in a discipline of attentive disbelief” (1978, pp.220-221). The discipline of history relies on a ‘discourse of proof’ that presupposes “an encounter with objective evidence” (1981, p.407) which is achieved by a leap of faith:

A historian is entitled in his practice to make a provisional assumption of an epistemological character: that the evidence which he handles has a “real” (determinant) existence independent of its existence within the forms of thought, that this evidence is witness to a real historical process, and that this process...is the object of historical knowledge. (Thompson 1978, p.220)

At the same time, Thompson conceded that every historian is a ‘value-formed being’ that cannot operate in value-free ways, thus contributing to the creation of an important stereotype in modern historiography; the historian is always-already a political actor who constantly neutralizes value judgements through adequate methodological techniques. Thompson, then, might be said to have done to the historical study of crime what Ranke did to modern source-based historiography in general – a focal point of chapter 6; both made explicit their political commitments while practicing history, yet both undermined the alliance between historiography and politics. Both provided long-lasting sources of political inspiration in historical writing, yet willingly or unwillingly de-politicized historiography by elevating method, theory, and science.

But the history of the interaction between criminologists and Thompson and other crime historians is telling in this regard. As Stanley Cohen (1986, p.468) pointed out, the mid-1960s saw an “onslaught on conventional criminology” at the hands of the new criminology, Marxist, radical and critical criminology, the interactionist sociology of deviance, labelling theory, and so on. Here ‘conventional’ means scientific and positivist; as Cohen (1986, p.468) phrased it, “the faith of positivist criminology was that there was a ‘thing’ out there – crime – whose existence and pathological nature was self-evident”. The ‘new criminologies’ were unified in their willingness to “reverse the positivist separation of crime from the state, that is, to introduce politics into criminology” (1986, p.469) and it is for this very reason that they ‘discovered’ or ‘adopted’ historians like Thompson, Hobsbawm and Rudé:

For surely the enterprise of rescuing today’s deviants from the wastebin of social pathology was exactly parallel to these historians’ attempts to rescue machine breakers, food rioters, poachers and smugglers from – in E. P. Thompson’s ringing phrase – ‘the enormous condescension of posterity’...The message from Thompson on the Black Act, from Captain Swing, from *Albion’s*

Fatal Tree and, of course, from Hobsbawm's primitive rebels and social bandits seemed clear enough: to listen to experience in its own terms, from below, is to find its hidden significance. (Cohen 1986, pp.469-470, italics in original)

If there were a single point of agreement between crime historians and historical criminologists, it would have to be that the historical study of crime belongs to politics first, and only secondarily to science, and that raising the past voices of the oppressed is a moral and political practice and not simply a technical social-historical specialty.

In the previous chapter, we saw that historical social science can be understood as a mode of action and as an academic attitude and that the crime historian and the historical criminologist are amongst the productive and practical manifestations of such an attitude in the present. Here, I raised the possibility of understanding crime history as a voice-raising activity, as a kind of erudite activism that makes use of social historiographical techniques to resurrect the voices of the victims of punitive power in the past. This possibility seemed reasonable given that it was based on the work of E. P. Thompson and other British Marxist historians like Eric Hobsbawm and George Rudé and given that it relied on the productive potentiality inherent to one of the most critical intellectual environments of recent times – that of Western Europe in the 1960s. Nonetheless, we may acknowledge that crime history is to be considered 'practical' primarily in the sense that it expands the historical consciousness; it furnishes knowledge to make sense of crime-related phenomena in historical and comparative perspective, it enriches contemporary views of the past and creates possible links to the future without making predictions about it, it often tells us the stories of the perpetrators and victims of crime in history, thus supplementing the contemporary study of crime with historical awareness. The British Marxist historians that popularized the historical study of crime in the second half of the 20th century did not conceive of such an academic and professional activity as a *praxis* with a defined end in view – be it the eradication of the criminal phenomenon or the

reform of criminal justice. It is possible that some of the tasks of historical scholarship “have no relation to our own present and to the depths of its historical consciousness” but, at the same time, there is little doubt that “the great horizon of the past, out of which our culture and our present live, influences us in everything we want, hope for, or fear in the future” (Gadamer 1976h, pp.8-9). To us today, history is only present in light of the future.

Hobsbawm and Rudé did not study the social history of the Great English Agricultural Uprising of 1839 to see if the revolts and rebellions of 1968 could have been more aptly organized, or to galvanize further upheavals across Europe during their lifetimes. Rudé did not study the historical victims of crime to alleviate the burdens of victimhood in contemporary times, and Thompson’s *Whigs and Hunters* was fundamentally a study pointing at “the need for a general revaluation of eighteenth-century law” (1977, p.267). From this, should it be concluded that crime history does not seek practical knowledge? Only if crime history is taken to be a sub-discipline of a very limited conception of social history. Such a conception was advanced by individuals like Harold Perkin – the first individual to receive a salary to teach social history at a university in England – and proposed that social history is simply the history of society, a kind of history concerned with past events like the lives of ordinary men and women which are studied for their own sake and without reference to their practical utility. In Perkin’s view, when in 1968 Thompson established the first university-supported institute of social history in England – the postgraduate Centre for Social History at the new University of Warwick – he made the first serious contribution in the country toward this kind of history (see Perkin 1976, pp.132-133). But social history can also be understood as the organizing principle of historical studies in general and as the technical and methodological basis of historical social science. As this study points out at various

junctions, it has been used in the past as a democratizing force, as a resource in the intellectual arsenal of workers' movements, and as an attempt at synthesising history and social science for the sake of the present. In fact, it should be asked to what extent the new and social histories of the first half of the 20th century perpetuated the Western belief in progress or some other teleology and whether the social historian's use of social theory was meant to stabilize the uncertainty intrinsic to the narrative of Western development (Ross 1997).

That said, the historical study of crime did not originate in the replacement of a Whig and legal history of progress for a new and social history of progress. The political awakening of the 1960s helped crime history flourish as a destabilizing activity rather than as a reassuring form of story-telling and various developments of the second half of the 20th century – from postmodernism and the cultural turn in historical studies to the consolidation of a revisionist trend in the historical study of crime – have pushed crime historians to consider the possibility of using history as a liberating discipline. It remains to be said, however, that though this 'liberating history from below' has had a decisive success when it comes to inaugurating a historiography of crime and criminal justice, it is not a given that it should monopolise the field as a whole and, as Anderson (1975, p.11) would put it, "a 'history from above' – of the intricate machinery of class domination – is thus no less essential than a 'history from below'". At this point, what remains to be emphasised is the value of taking a more critical – rather than social – stance towards the past by conceiving of history as a curative practice and a diagnostic device to examine ourselves in our present form. This can be done by way of a semi-allegiance with Foucault, by making use of his 'historical ontology of ourselves' and of his history of the present in the context of a tension between progressive and regressive history, between Whig history and critical or effective history.

5.

Criminological Histories and Histories of the Present

The Criminological History of Radzinowicz <> A Brief Note on Present-centredness <> Foucault's History of the Present <> In Search of Historical Criminology

This chapter offers a reading of the criminological histories of Radzinowicz, of Foucault's history of the present and broader historico-philosophical project, and of few other Foucauldian works whose objects of inquiry are distinctively history and crime but which, at the same time, seem not to square well with either a criminological or historical field. Foucault is sometimes credited with having kickstarted historical criminology but there is a chance that Radzinowicz's work at the intersection of history, law and criminology will have him recognized as one of the pioneers of historical criminology. Here, Radzinowicz's Whig historiography of crime and criminal justice is juxtaposed to Foucault's attempts at a historical ontology of ourselves, and historical criminology's relation to politics is problematized in terms of a practical engagement with the present. Radzinowicz's and Foucault's writings on the history of crime are amongst the most present-oriented in the field. They differ significantly in approach – we could speak of a Whig or progressive approach and a regressive or genealogical one – yet have a common target; the present. This seems obvious enough in the case of Foucault, who explicitly wrote histories *of the present*. For what concerns Radzinowicz, it can be shown that the present-centredness characterizing his works was a function of his endorsement of the Whig tradition in historical thinking. Commenting on Radzinowicz's choice in *A History of English Criminal Law* to delineate the progress of criminal law starting in the mid-18th century, for instance, Landau (2002b, p.3) points out that such a choice combines with

Radzinowicz's "Whiggish proclivity" to brand 18th-century criminal law as "interesting chiefly for the scope it provided for reform":

Radzinowicz's analysis accorded with that of the Whig interpretation, in which the eighteenth century featured as a hiatus in the story of English progress, an era possessing the political structures which, as the nineteenth century showed, could be the engine of progress, but which were employed in a manner corrupting both the structures and those who run them. (Landau 2002b, p.3)

Though it would be perfectly fine here to focus on Radzinowicz's habit of narrating the history of penal justice from the perspective of the history of penal progress, this chapter is more concerned with his Whiggish take on the history of criminology.

The chapter deals with Radzinowicz first, then with Butterfield's Whig fallacy, and lastly with Foucault and Foucauldian themes. The chapter's engagement with Foucault is initially mediated through Radzinowicz but it then moves on to a more holistic view of Foucault's critical use of history, his relation to criminology and his political attitude, as with his active participation in the *Groupe d'Informations sur les Prisons*. The chapter also discusses Foucault's views on critique, scientific discourses and political practices. Foucauldian concepts like 'historical ontology of ourselves', 'genealogy', 'subjugated knowledges', and 'history of the present' are also substantively engaged with, in a hope that Foucault's contributions to historical criminology and the historical study of crime may be more aptly appreciated as exhortations to do theory as practice.

The Criminological History of Radzinowicz

Rather than the "leading historian of the age of penal progress" – which is how Garland (1995, p.194) dubbed him – Radzinowicz may be positively considered one of the most prolific historical criminologists to date. Here, for the sake of simplicity and concision, it may be necessary to stay concentrated on his writings on the history of criminology rather than on his writings on the history of crime. Radzinowicz was not a trained historian, but

the first Wolfson Professor of Criminology as well as the founding director of the Cambridge Institute of Criminology. At the age of twenty-two, in 1927, he moved to Rome to become a pupil of Enrico Ferri, one of the founders of the Positive School of criminology. While never regretting the impact of these early formative years on his thinking, particularly from the mid-1930s Radzinowicz started to distance himself from positivism and to become 'a criminological dissident' in view of the hijacking of the positivist penal agenda by Italian fascism. Around the same time, he made a turn to history at the suggestion of a Polish justice official who convinced him to move to England to study its penal system. This choice would save his life, as his native land Poland was soon invaded by the Nazis and many law school professors at the Free University of Warsaw and elsewhere were soon massacred (Hood 2001).

Radzinowicz's writings are very much a celebration of criminological science – in fact, they offer a rationale for its justification. What they suggest is that the origins of criminology are to be localized in a never-final scission from jurisprudence, a scission never fully complete and requiring a mutual reliance between criminal law and criminal science. He hoped to see criminology departments anywhere there existed schools of criminal law and, like Jerome Hall, championed a cooperative approach between legal practitioners and criminological expertise ⁸⁴. His overall view of the history of criminology can be summarized, if simplistically, as follows; criminal science was broadly understood from the times of Beccaria up until the early-20th century as no more than the study of criminal law. A desire to understand the phenomenon of crime itself had long led philosophers, historians and legislators away from strict analyses of criminal law, yet the first time that this desire turned into coherence and scientific maturity was in the second half of the 19th century with the advent of the Positive School in Italy

⁸⁴ See Hall (1933) for a discussion on the need for 'lawyer-criminologists'.

(Radzinowicz & Turner 1948, p.12). French statisticians already in the 1830s were arguing from observable facts rather than abstract judicial concepts that crime is determined by social factors – thus leading the way for “a scientific approach to crime as a social phenomenon” (Radzinowicz 1965, p.1048). But it was the work of Lombroso on delinquent man that led to a break from juridical considerations of crime *a la* Francesco Carrara, that is, from the abstract judicial logic typical of the Classical School started by Beccaria. The genesis and propagation of criminological talks, conferences, and publications that spread across Europe following the publication of Lombroso’s work left a rupture in the criminal sciences; thus began the modern history of criminology, with the progressive establishment of institutes for the learning of criminology as an independent discipline in France, Austria, England, Belgium, the United States and elsewhere starting with the official inauguration of the *Institute for the Study of Criminal Sciences* in the School of Law at the University of Rome on the 18th of February 1912.

In historical works like his *In Search of Criminology*, Radzinowicz (1961) presented a history of criminal science where the law yearns for criminology by necessity and yet perpetually keeps it at a distance and leaves it in a state of relative subordination. According to Radzinowicz, criminal law needed to retain its authority and so did the concept of individual responsibility, but criminology could give a new vitality to the law and its function of dispensing criminal justice; criminology could empower the law, but should not replace it (1961, p.179). Almost ridiculing the lack of criminological knowledge among law teachers in the United States in the early-1960s, Radzinowicz (1961, p.3) recalled and appealed to a past where in countries like Italy, Austria, Holland, France, professors of criminology featured more prominently than High Court Judges – a time when a sort of ‘reversal of a relationship of forces’ came to be noted in penal justice. In his view, the Positive School represented a rupture between classical and

modern criminology, as this school most evidently succeeded at breaking with a past where criminal studies were primarily reducible to a set of abstract judicial inferences deduced by axiomatic principles to be applied to penal matters. Its greatest accomplishment was the design of an analytic framework that focused on the criminal and not on the crime, on facts and not abstract legal categories. The unifying theme of classical criminology from Beccaria down to Carrara was a penal formula; *nulla poena sine lege, nulla poena sine crimine, nullum crimen sine poena legali* – no punishment without law, no punishment without crime, no crime without legal punishment. This formula, which sounds to many as an archaic Latin expression derived from Roman law, was an invention of the 18th century (see Hall 1937).

It was, in fact, the principle that made Beccaria influential by providing a rationale for his non-retributivist theory of punishment as deterrence and it was established as a cardinal tenet of penal law throughout Europe by the mid-19th century. As Carrara systematically argued, crime is a juridical being not a factual entity. Influenced by the zeitgeist of enlightened rationalism, at times by early social contract theories and, in the case of Carrara, by a frank catholic fundamentalist sentiment, classical criminologists took it for granted that human beings were free agents, acting or not acting at will, depending on the circumstances and opportunities available to them, according to rational means of calculation and judgment provided by the universality of consciousness. Their main task was to develop a system suitable for such an individual; the ‘man of reason’. And to this end they did what appeared to them to be most rational, that is, to adjust judicial logic and the working of penal practices to the structure of consciousness. Against the classicists led by Carrara, the Positive School strived to place the criminal at the centre of all considerations of criminal justice procedures and generally succeeded at influencing criminal justice and penal legislation in important ways. In fact, the greatest contribution

to criminal science made by the Positive School was “the recognition of the need to take the personality of the offender into consideration in all stages of criminal justice” (1948, p.472) and this principle “is not only adopted in the current penal legislation of every country”, Radzinowicz noted, but “is also defined in almost identical terms when the principles which should guide the judge in pronouncing sentence of punishment are laid down”. The principle is particularly evident when explored comparatively:

When comparing, for instance, art. 63 of the Swiss Federal Criminal Code of 1937, art. 133 of the Italian Penal Code of 1930, art. 54 of the Polish Penal Code of 1932, and art. 69 of the last draft of the German Penal Code of 1930, we see that the methods of fixing punishments under all these penal statutes are almost identical...all require the judge, when awarding a punishment or an indeterminate sentence, to take into account the personality of the offender. (Radzinowicz & Turner 1948, p.472)

The origins of criminology can therefore be traced back to the victory of the Positive School to ground the study of crime outside the realm of criminal law while reminding that the scope of criminology is best rewarded when its undertakings are directed towards the improvement of criminal law and justice – or better to criminal policy (Radzinowicz & Turner 1948, p.21).

Radzinowicz argued that study of crime should be brought into a closer relation with social science without forgetting, however, that in “the practical sphere, as in the academic, reciprocal influences between criminology and the law should be strengthened” (1961, p.181). In other words, criminology and law should be separated but not completely, and this partial ‘separation’ of law and criminology signals the origins of modern criminology or, alternatively, it stands for the inauguration of positivist criminology as model for modern criminal studies:

Virtually every element of value in contemporary criminological knowledge owes its formulation to that very remarkable school of Italian criminologists who took pride in describing themselves as the “positivists” and who, in contradistinction to the “classicists” led by Francesco Carrara, regarded criminal law as a changing social institution and crime as a product of individual disposition and environmental forces. (Radzinowicz 1961, p.3)

The birth of positivist criminology actualized a detachment from a previously accepted structure of things; its consolidation at the end of the 19th century ended the hegemony of classical criminal thought in both intellectual and institutional settings. The rise of scientific criminology could thus be understood in terms of the birth of a substantive field of knowledge enriching the domain of criminal law through extra-legal insights:

Whatever critical attitude may have been adopted towards their doctrine, there is no doubt that this school [the Positive School], by deepening and extending our knowledge of crime, and by drawing attention to many theoretical and practical problems, made plain the inadequacy of the narrow traditional view, and showed that criminal law is only one of the branches of the vast and complex science of crime. (Radzinowicz & Turner 1948, pp.12-13)

Needless to say, this account tells us about the history of criminology just as much as it does not tell us. Even granting that the growth of modern criminology coincided with the organization of an extra-legal discourse on crime and punishment that emerged in Italy in the last quarter of the 19th century, such an organization took so many different forms in different places that Radzinowicz himself could often not find good answers to the dynamic developments of early criminological discourse.

He was astonished by the fact, for instance, that, in places like Austria and Belgium, criminological science was, thanks to the work of individuals like Hans Gross (1847-1915) and Adolph Prins (1845-1919), a subject of its own already in the first decade of the 20th century – whilst in Germany, in the 1960s, no institute of criminology had yet been established. From this, Radzinowicz could have deduced that there is not ‘one’ history of criminology from classicism to positivism, but many contingent histories peculiar to their own traditions and conditions. Garland, for example, argued that criminological science in Britain developed out of “an indigenous tradition of applied medico-legal science” that can be traced to the 1860s. This makes it at least questionable to reduce complex and multifaceted socio-historical processes to a fight between two traditions and to think of them as phenomena that can be turned up-side down by a quarrel

between law and positive science (1988, p.2). The idea of a rupture between classicism and positivism in criminology has also been subjected to heavy criticism by scholars researching early criminological discourse like Piers Beirne (1993, p.228), who pointed out that ‘classical criminology’ should not be thought of as ‘a tradition’ of criminological thinking started by Beccaria but rather as “the retrospective invention of distorted scholarly self-aggrandizement”. By this Beirne meant that the Positive School’s keen interest in promoting its scientific criminology was predicated on the discrediting of Beccaria’s classical model. Beirne further suggested that no epistemological break between a tradition of classical jurisprudence premised on a combination of rationalism, voluntarism and humanism and a positive knowledge of crime grounded in scienticism can be reasonably taken to be a historically accurate description of criminology’s past. “To Matza, to Foucault, and in every standard textbook treatment of the subject”, Beirne (1993, p.225) lamented, “this history is one in which positivist criminology effects a complete break with the classical framework of its intellectual past”. In Beirne’s view, however, the idea that positivist criminology actuated a break from the voluntaristic and free-willist conception of man bequeathed by Beccaria to a deterministic discourse on the causes of crime fails once realized that Beccaria himself was advocating a deterministic discourse inspired by ‘the sciences of man’ (Beirne 1991; 1993, pp.11-64; 1994, pp.35-78) and once elements of continuity between Beccaria and the positivists are recognized.

This is neither to say that Radzinowicz had a hidden penal-criminological agenda or that he was purposefully unaware of criminological and criminal justice developments; as Knepper (2016, p.8) noted, Radzinowicz did a formidable amount of archival research into penal records to write the history of English criminal law, consulting over 1200 reports of commissions of inquiry, almost as many volumes of parliamentary debates and many thousands more documents among annual reports, accounts and papers. His work

on Victoria and Edwardian criminal justice policy alone, for instance, produced 800 annotated pages drawn from primary material (see Radzinowicz & Hood 1990). Instead, as suggested earlier, Radzinowicz was overly optimistic about criminal science and its achievements, and such optimism pervaded his historical writings or, even better, his historical criminology. As Knepper explained, Radzinowicz “found the motivation for his labour in the belief that it was essential for the future” (2016, p.8) – which seems to support the view that Radzinowicz should be thought of as a historical criminologist rather than as a penal historian, provided one agrees with Knepper that historical criminology makes a pledge to futurism. His goal in *A History of English Criminal Law* was to portray criminal law as an instrument of criminal policy as well as a historical category and, equally important, to present a history of English law as a history of penal advances and successes. This is true to the point that Knepper (2016, p.9) refers to Radzinowicz as “the king of Whig history” because of his habit of telling the history of penal justice in terms of the history of penal progress.

It is no mystery that Radzinowicz espoused a lawyer’s view of history – *A History of English Criminal Law* in particular has been called “much too much a lawyer’s book” (Elton 1977, p.1) – and that his historical work can be read as being written from within legal history ⁸⁵. That said, it is also true that he was no conventional legal historian; Geoffrey Elton was so disquieted by Radzinowicz’s approach to legal history that he would not accept the label of ‘penal historian’ while holding a chair in constitutional history at Cambridge ⁸⁶. Elton was the Regius Professor of Modern History at Cambridge

⁸⁵ In *Writing the History of Crime*, Knepper (2016, pp.10-12), for instance, discusses Radzinowicz primarily from within the tradition of legal history alongside William Blackstone, Luke Pike, William Holdsworth, Roscoe Pound, Jerome Hall, Douglas Hay, and others. Radzinowicz’s *A History of English Criminal Law* can be referred to as ‘internal’ legal history, the kind of history written by trained lawyers and which is predominantly of interest to other lawyers.

⁸⁶ On Elton’s reluctance to call himself a legal historian see Holmes (1997).

from 1983 to 1988 and was pleased to see, in the later years of his life, something of a restructuring and revival of legal history. Nonetheless, at various points in his career he criticized legal history for being too narrowly preoccupied with legal technicalities and for thus failing to convey a fuller historical understanding of the institutional and social circumstances relevant to the functioning of law. Moreover, Elton believed that lawyers' history was *necessarily* Whig history in the sense that, to lawyers writing history, "the doings of the past signify only inasmuch as they persist into and have life in the present" (1984, p.735) ⁸⁷. Lawyers are 'teleologically' preoccupied with history and, in *The Whig Interpretation of History*, Butterfield (1931) was right in attacking the readiness of historians from the 17th century onwards to uncritically accept lawyers' interpretations of historical events and to rely on historical accounts written with 'an eye on the present'. Put differently, a tendency for Whig history is one of the main problems that the historical study of crime has inherited from Radzinowicz and the legal tradition in historiography (Knepper 2016, p.229). That is, Whig history brings the historical study of crime face to face with the problem of the present in historiography, with presentism and the present-centredness of history – it brings history face to face with present politics.

A Brief Note on Present-centredness

It would be unfair to point at Radzinowicz's works and declare that the historical study of crime in its entirety is part of political tactics and not a disinterested science of past crime-related phenomena. Nevertheless, there is a nuanced way of making a related but less compelling point. As noticed, Radzinowicz's criminological histories have been

⁸⁷ This is in fact Elton's overall interpretation of Butterfield's 'Whig fallacy' – which will be dealt with in a moment; Whig history is precisely lawyers' history in the sense that it denotes a weakness of historians to think juridically about the past, for instance, to take the latest meaning of an event to be the only significant one for historical inquiry.

accused by crime historians of not being sufficiently past-oriented, of being indifferent to the past and sympathetic to the present. His commitment to the present is manifested in an overt engagement with the phenomena under description that renders his historical works suited not for the bookshelves but for the offices of present-day policymakers. As a matter of fact, Radzinowicz did not shy away from his faith in criminal science and his belief in penal progress, but rather placed them at the forefront of his work; “Lord Macaulay’s generalization that the history of England is the history of progress” said Radzinowicz (1948, p.ix) in the opening remarks of his history of English criminal law, “is as true of the criminal law of this country as of the other social institutions of which it is part”. Radzinowicz’s histories encourage considerations and debate about present events and thus undermine a dispassionate study of the past – they use historical inquiry to talk of the present and not of the past. As Landau (2002b, p.2) put it, Radzinowicz’s *A History of English Criminal Law* is “a masterful orchestration of voices criticizing the criminal law, declaring it corrupt, ineffective, illogical, asystematic, arbitrary, antithetical to the ends of justice, and therefore in need of drastic reform”. His explorations of 18th-century criminal law read as chapters in the evolution of English progress, which is why it has been suggested that his analyses are compatible and accord with the Whig interpretation of history that shaped British historiography from the 18th century down to the middle of the 20th century (Landau 2002b, pp.2-3).

It was Herbert Butterfield (1900-1979) to first define the ‘Whig fallacy’⁸⁸. In *The Whig Interpretation of History*, Butterfield (1931) concerned himself with the psychology of historians who tended to organize their schemes of history from the perspective of their own day – what he called ‘Whig’ historians. These historians’ interpretations of history

⁸⁸ See Wilson and Ashplant (1988) for a comprehensive analysis of the Whig fallacy as present-centred history and Elton (1984) for a general take on Butterfield’s Whig interpretation. On presentism as a necessary evil in historiography see Fendler (2008).

were, according to Butterfield, made with a biased reference to the present, and their underlying theory was that of studying the past for the sake of the present (1931, p.24). More specifically, the Whig interpretation of history is that which takes side with the Protestants and the Whigs, which emphasises the almost inevitable progress and development of the past in order to glorify the present. Put very simply, Whig history treats regicides and reformers of centuries past as contemporary heroes. “Real historical understanding is not achieved by the subordination of the past to the present”, Butterfield claimed, “but rather by our making the past our present and attempting to see life with the eyes of another century than our own” (1931, p.16). Studying the past ‘with one eye upon the present’ is essentially unhistorical and presentist and raises a significant problem of historiographical anachronism; it means that the historical story is organized by way of “a system of direct reference to the present” (1931, p.31). This was to Butterfield “the source of all sins and sophistries in history” (1931, p.32). The immediate juxtaposition between past and present or, to put it figuratively, ‘hunting for the present in the past’, leads to misconceiving historical figures misattributing political beliefs, as well as to distorting events to fit one’s view, i.e., to believe that the protestants at the time of the Reformation held similar view to the protestants of the first half of the 20th century. In *The Englishman and His History*, Butterfield (1944, p.6) further reflected on this present-centred historiographical tendency, calling it “a sublime and purposeful unhistoricity” that allows the historian to conveniently chose a past that is suited to present purposes.

Since his death in 1979, Butterfield’s take on the Whig interpretation of history has been discredited for reasons that do not really concern us. His conception of the Whig historian came soon to be regarded an idealized abstraction and his subsequent work in the history of science has been regarded itself as ‘whiggish’. Not only did it come to be recognized that the Whig historians were not the only ones twisting history for their own

purposes, but Butterfield himself also came to the conclusion, later in his life, that history could be of aid to the present – as he revealed in *Christianity and History* (1950) and other works from the 1950s onwards. Still, that a kind of British history stressing the growth of liberty, religious freedom and parliamentary government developed in certain Whig circles of the mid-19th century, is not something that can be denied. Nor can it be denied that a century earlier David Hume (1711-1776) was being accused of ‘toryism’ – i.e., of a presentist bias for the Tories – for his work on the history of England. Is this to say that Radzinowicz is a more contemporary version of Hume? Not necessarily. Rather, it is to say that the relationship between history and politics goes beyond a Whig interpretation. The Whig historiographical tendency, precisely as ‘present-centredness’, is a practical tendency – and, as we shall see later, one which fits well with much of what Oakeshott said about the practical mode of existence and the practical past ⁸⁹. Writing history backwards and seeing a decline of order, justice and liberty is as presentist as looking backwards and seeing only a civilizing process and a steady trajectory of development.

This, however, only proves the obvious; at the times of Hume as at the times of Butterfield, down to the present, history has been understood to be useful and at the service of life, to have a practical value. History, “the witness of time”, as Cicero (1967, p.224) admirably said in *De Oratore*, “the light of truth, the life of memory” – *historia magistra vitae*, history is life’s teacher; who would not want to have history at reach in politically challenging circumstances? Butterfield pointed out that precisely because

⁸⁹ In ‘The Activity of Being an Historian’, for example, Oakeshott argued that “the activity of inquiring into and making statements about the past appears as a hierarchy of attitudes towards the past” (1962, p.139) and the writing history with an eye on the present approximates that historical attitude which looks at the past as if it were an organizational principle for present practical life.

studying the past with reference to the present ultimately is – in his words – “inescapable” (1931, p.11) then perhaps it is sensible, at least for historians, to try and limit the interplay of past and present, to not make it a perpetual exercise to doing history by referencing the present. This seems a reasonable statement, and one which needs to be addressed if historical criminologists wish to secure for themselves the possibility of handling the past practically and if the notion of a history of the present is to play any significant role in the development of historical criminology. It is possible, in fact, that Foucault gave due consideration to Butterfield’s Whig interpretation at the time he was writing *Discipline and Punish*, as he stated his intentions to write ‘a history of the present’ but not ‘a history of the past in terms of the present’ (1979, p.31). Was this Foucault’s attempt to distance himself from legal history and Whig historiography? It is probable, particularly in view of the fact that, in the same work, Foucault also declared his intention to treat penal changes as chapters of political anatomy rather than as consequences of legal theories (1979, p.28) and since, already in previous works, he had attempted to move away from both economic and judicial analyses of power more broadly (Foucault 1980e).

Foucault’s History of the Present

Today, Foucault’s history of criminology is at least as well-known as that of Radzinowicz, and it can be ascertained with quite a degree of confidence that, contrary to Foucault’s intuitions about the prospect of a Deleuzian 20th-century, since the publication of *Discipline and Punish* few doubted that criminology would become at least in part Foucauldian. In fact, many contemporary criminologists study Foucault as well as books that tell them how to study Foucault. This is due to the intersecting of several factors, not least the relationship between the nature of Foucault’s work and the study of crime, and the impact that this relationship had on a portion of the criminological community. From within criminology, it soon became apparent that Foucault was investigating a number of

themes of high criminological relevance. Radzinowicz himself, in the last month of his life alone, counted and listed more than three-hundred books about Foucault plus numerous others written by Foucault himself, from which he extracted and selected more than forty ‘Foucauldian’ topics, such as danger, force, justice, law, normality, panopticism, police, power, prison, repression, suicide, and more (see Maier-Katkin 2003, pp.155-156). By reframing some such concepts, i.e., discipline and panopticon, Foucault gave a new twist to the critique of administrative criminology and offered a new rationale for critical criminology at a time of uncertainty precipitated by the decline of Western Marxism in the 1970s (Valverde 2009).

It should be easily understood why, then, to some criminologists Foucault stands as an episteme of its own; Foucault is something to look *with*, a mirror reflecting a different image of the criminological world. Radzinowicz was disquieted by Foucault’s writings. As Maier-Katkin (2003) pointed out, towards the end of his life he showed quite a peculiar interest in Foucault, collecting and selecting information about him from hundreds of sources. Maier-Katkin documented quite skilfully and in details how the disquiet Radzinowicz felt for Foucault was underpinned both by their opposite lifestyles and their conflicting views on issues such as authority, morality and history. Their respective views on the abolition of torture and penal evolution, for example, look to be irreconcilable and their political engagements ‘for’ and ‘against’ the prison system capture their dissonance in matters of penal practice:

While Foucault railed against the prison system as the most oppressive instrument of raw power, Radzinowicz served the Home Office in such roles as Chairman of the Subcommittee on Maximum Security in Prisons advocating a liberal regime within a secure border so as to safeguard public safety through incapacitation while respecting the moral imperative to treat prisoners humanely. (Maier-Katkin 2003, p.167)

Radzinowicz was a man of classical liberal values, quite aristocratic, and engaging with power, wealth and scholarship. Foucault was an unconventional character, libertine and

anarchistic (Maier-Katkin 2003, p.157). Radzinowicz geared his career towards conservatively preserving the values and beauties bequeathed by the Renaissance and the Enlightenment in the fields of law, science and the arts, whilst Foucault was a promoter of transgression and a champion of postmodern thought, a revolutionary thinker and a subversive intellectual. Radzinowicz was the king of Whig history in the historiography of crime and criminal justice, Foucault the first recognized genealogist of punitive power and historian of the present.

As Elton (1984, p.731) pointed out, the two main errors characteristic of the Whig fallacy are the error of writing history in the service of present-day causes and the error of rendering historical narratives as moral standpoints and viewpoints from which the present can be judged. Foucault's history of the present is said by some not to fall prey to the Whig fallacy in the sense that the spur to Foucault's investigations was not the understanding of an 'ideal' or 'complete' present (see Kendall & Wickham 1999, p.4). At the same time, it seems naïve to suggest that Foucault's writings were not historical *as well as* ethical, or that they were not present-centred and driven by present concerns. This intricacy is probably reducible to Foucault's views on theory and practice and his relation to politics. Many have sought to answer the question of 'how' Foucault used history, what he did with it, how he misused it and so on, but not as many have taken seriously the question of 'why' Foucault chose history as central entry point to his inquiries. If he was interested in the present, why write histories about it? Why not focus on the issues at hand politically and in the present instead of doing criticism through history? As a matter of fact, Foucault was the only one among the founding members of the *Groupe d'Informations sur les Prisons* to be also engaged at an academic level in the research of

internment practices. In Catucci's (2018) words, Foucault was a militant and a theorist at the same time ⁹⁰.

The *Groupe d'Informations sur les Prisons* was founded on the 8th of February 1971 in reaction to a series of prison strikes happening across France in the confronting political times of the immediate historical aftermath of May 1968. Its overarching goal was not the abolition of the prison but a rather more modest one; empowering prisoners to speak. The group's manifesto was concerned not with imagining a better prison or abolishing it altogether but with reasons for criticizing the way in which society treats those at the fringes, those who become marginalized and isolated. The group was born to give a voice to inmates, to be able to hear about the conditions of those who had 'lost themselves'. It aimed to provide 'spaces' where prisoners could speak and be heard, not 'theories' for how to best organize protests and prison uprisings. Hence, it resorted to a kind of political action that could be considered "local, punctual, oriented towards single aims that people can achieve, not towards utopic horizons" (Catucci 2018, p.340) ⁹¹. In 1972, when asked by a Swiss magazine to publish an article about a better prison system, Foucault replied that such an endeavour was beyond the reach of his intentions and pointed out that there could be no relation between his academic work and his militancy, because there is no theory that can solve politically challenging situations, no connection between political theory and political action.

The example of Heidegger's involvement with Nazism was likely behind Foucault's reluctance to intertwine theory and practice and, Catucci argued, the main

⁹⁰ The term 'theorist' is to be interpreted lightly, as it is advisable to conceive of many of Foucault's scholarly undertakings as anti-theoretical (see Sheridan 1980, p.215; Dreyfus & Rabinow 1983, p.124).

⁹¹ It is possible that Foucault's prison activism was also influenced by the work of the Black Panthers and other prison activists in the United States (Valverde 2017).

junction between Foucault's carceral advocacy and his academic work may lie "where the prisoner revolts illuminate the historicity of our penal institutions" (2018, p.333). Rather than trying to answer the question of the prison in general, Foucault opted for working on concrete problems specific to certain French prisons and announced his preference for 'actual work' over 'academic discussions' and his commitment to activism took the form of direct political action on behalf of prisoners. The publication of *Discipline and Punish*, however, seemingly contradicted this emphatic distancing of theory and historical research from action to at least some degree. This study was explicitly a critique of power, a study of the techniques and processes by which modern punitive power marginalizes parts of a country's population, a book that had to serve as "a historical background to various studies of the power of normalization and the formation of knowledge in modern society" (Foucault 1979, p.308). *Discipline and Punish* was intended as a *diagnosis* of that which came to constitute a contemporary condition, or that, as Dreyfus and Rabinow (1983) put it, writing the history of the present requires beginning with considerations of current situations and approaching historical material with a contemporary orientation – while avoiding both presentism and 'finalism'.

A history of the present does not project current interests and politics into past epochs, nor does it seek to show the necessary development of events in their progression from a distant point in the past into the present. In *The History of Sexuality*, for instance, Foucault did not try to answer the traditional historical question of what 'confession' was in the 17th century, nor was he interested in what that experience of confession could possibly mean to us today. He rather began from the premise that confession is crucial to modern expressions of power, then isolated the defining contemporary faces of that technology of power in the present, to lastly trace them back in time through a genealogy (see Dreyfus & Rabinow 1983; pp.118-125; Rose 1990). Foucault (1990, p.262) would

have put it this way; “I set out from a problem expressed in the terms current today and I try to work out its genealogy”, which means that the analysis begins with “a question posed in the present”. As Castel (1995, p.224) suggested when discussing Foucault’s *History of Madness*, the history of the present tries to effectuate a ‘double look back’, shedding light on contemporary practices like psychiatry and revealing the weight of their historical heritage on their functioning, while also shedding light on the history of mental disorders as a whole. From that, it could be further suggested that Foucault wrote a history of madness in order to question our present system of *reason*, as well a history of punishment meant to question our present system of *justice*.

At times Foucault gave the impression that his scrutiny of criminology was subservient to his research on the history of law, that his use of *forms of resistance* was only a gateway to analysing power relations through “the antagonism of strategies” (Foucault 1982, p.780), and that his focus on the mad and the criminal derived from “a point of reference” (2007c, p.132), that is, the influence of authors like Bataille, Artuad and Blanchot – writers that, in Foucault’s words, “posed the problem of experiences on the edge” (2007c, p.132). But it can be argued that in *Discipline and Punish* Foucault came to identify criminology with a typical practice for the transformation of individuality, perhaps even with the prototypical discipline. By providing the coercive penal apparatus with an ‘examinatory’ account of the criminal subject – an examination of the criminal under study or surveillance for instance – criminology enacts the ideal of a panoptical knowledge necessary for the governing of the modern individual. Criminology was for Foucault a vast case study for his analysis of the subject and power, an entry point that allowed for “a historical investigation into the events that have led us to constitute ourselves and to recognize ourselves as subjects of what we are doing, thinking, saying” (Foucault 2007c, p.113). His inquiry offered almost a ‘journalistic’

investigation into the relationship between law and criminology as part of an analytic of power relations that raised the issue of why, in Western societies, the exercise of power has been interpreted for so long as juridical and negative rather than technical and positive (1980d, pp.119-121). In such a context, the very act of questioning had to be located at the level of an ontology of the present, of a historical ontology of ourselves.

To Foucault, the point of doing history was to disturb it rather than affirm it – the obvious reason that made him unpopular among historians. He purposefully detected those things which were not being talked about at his time, revealing the fragility in things through historical narratives. Making visible the unseen meant addressing oneself to a different level of analysis or, as Foucault put it, addressing oneself “to a layer of material which had hitherto had no pertinence for history” (1980c, p.50) and not relying on a combination of historical contents pre-elaborated by historians and received as ‘ready-made fact’. Foucault is often accused of ignoring the dictates of history and obfuscating historical realities when his historical approaches were meant to revive the sort of knowledges that history, with the aid of historians, has helped make irrelevant and invisible – what he called ‘subjugated knowledges’ (1980e, pp.78-92). History, as Foucault understood it, had to offer a reason for ‘what we are here for’, it had to find and disseminate the seeds of a critical philosophy of the present seeking the principles of our potential transformation, the secrets that lie behind transforming ourselves.

Aligning with Nietzsche, Foucault took history to be a ‘curative science’ capable of prescribing the ‘best antidote’ – which nicely reveals that the job of the historians is set in motion by clinically looking at contemporary symptoms. Subjugated knowledges are those blocs of historical knowledge revealed by a *critical* history to be the best antidote to current problems, they are the emancipated knowledges that are brought into play *tactically* through genealogical means. Genealogy propels an insurrection of such

knowledges, it lends them an emancipatory escape from the subjection of ‘globalizing discourses’ and from the coercion of totalizing scientific discourses. It acts locally and anti-transcendentally, it is anti-Platonic in character as well as autonomous and non-centralized and is based on the use of effective history as a way of affirming the perspectival nature of knowledge (Foucault 1984a, p.90). Genealogy puts the perspectival job of the historian of the present to work by establishing “a historical knowledge of struggles” that can be used tactically today (1980b, p.83). Critical history does not judge the past in the name of a present truth but frees the historical sense from the demands of a totalitarian relation between history and memory so as to create a counter-memory or an anti-history.

Foucault proposed genealogy as a way of restoring “the conditions for the appearance of a singularity born out of multiple determining elements of which it is not the product, but rather the effect” (2007b, p.64). This constituted part of a kind of historico-philosophical practice that should be differentiated from historical philosophy and the philosophy of history – as Gutting (1994, p.2) would put it, Foucault was neither a ‘philosophical historian’ nor a ‘historicist philosopher’. Foucault made this clear in a discussion around the question of the Enlightenment as it related to Kant and the scope of critique – a question which he took to be about the relationships between power, truth and the subject (2007b, p.57). There, Foucault placed his project in the proximity of the intellectual German left – i.e., the Frankfurt school – and their critique of the relation between science and domination, as well as in the purview of an Husserlian reflection on the crisis of the European sciences as it related to the problematic interplay of ‘episteme’ and ‘techne’. Within that space, he defined critique as “the art of voluntary insubordination” or “the movement by which the subject gives himself the right to question truth on its effects of power and question power on its discourses of truth”

(2007b, p.47). Critique is neither about inner experiences nor fundamental structures of knowledge. It is a historical-philosophical practice in which “one has to make one’s own history, fabricate history, as if through fiction” ⁹² in order to “desubjectify the philosophical question by way of historical content” and to “liberate historical contents by examining the effects of power whose truth affects them and which they supposedly derive” (2007b, pp.56-57). Doing critique means captivating and nurturing a historical-philosophical practice that tracks paths of inquiry which are off the radar of the historian and to make visible the invisible by transgressing history without transcendentizing it. Critique is an anti-historic approach beginning with the here and now, with a problem that is experienced in the present.

This is not critique as Kant understood it, but Foucault’s way of exploiting Kant to gain access to the question of power through a procedure of ‘eventualization’ (2007b, p.59). This is, for instance, the procedure that allowed the Foucault of *Discipline and Punish* to study the metamorphosis of punitive methods in the West, to link mechanisms of penal coercion to elements of scientific knowledge and to situate techniques of punishment in the history of a certain ‘body politic’, to describe the power-knowledge nexus sustaining the carceral archipelago and to write “a genealogy of the present scientifico-legal complex from which the power to punish derives its bases, justifications and rules” (1979, p.23). Instead of writing from within the history of criminal law or the history of the social sciences, Foucault tried to link them both to a single ‘epistemologico-juridical formation’ by isolating a distinctive level of analysis that allowed for a reconceptualization of the birth of the prison in terms of the transformation of one art of

⁹² “I am well aware that I have never written anything but fictions”, said Foucault (1980a, p.193), but the relation between truth and fiction needs to be rethought to appreciate this. Fiction can function *in* truth, it can induce effects of truth; “one ‘fictions’ history on the basis of a political reality that makes it true, one ‘fictions’ a politics not yet in existence on the basis of a historical truth”.

punishing into another. Foucault described, for instance, a shift from inquisitorial justice to 'examinatory' justice, or from traditional, violent forms of power to a calculated technology of subjection, and a transition from historico-ritual to scientifico-disciplinary mechanisms for the transformation of individuality, that is, a transition from classical procedures centred around the assertion of guilt to the modern scientifico-legal complex. He analysed how, particularly in the 18th century, the positivity of modern life shifted from the vengeance of the sovereign to the defence of society, from the king's right to kill to the individual's right to live, from 'supplice' to 'asepsis', thus contributing to a history "of the different modes by which, in our culture, human beings are made subjects" (1982, p.777).

Such a project was not geared toward challenging historical readings of modern penal reform nor to offer a solution to the dilemmas raised by the prison as an institution, but to politically question manifestations of justice in the present such as the very acceptability of the prison and the criminal sciences in society. Foucault's historical writings are not to be taken as indifferent historical assessments of the power to punish in the past but as attempts to do theory *as* practice and struggle against power in the present. Foucault argued that an intellectual no longer has a compulsory duty to speak truths on behalf of a collectivity but rather now must struggle against the forms of power that seek to objectify and transform intellectuals themselves into tools in the spheres of truth, knowledge and discourse. The intellectual's activities may be conceived of as empirical and political both at the same time and should not be reduced to mere analytic exercises. Rather, they should be understood as being 'of use' (see Coloma 2001, p.192). Theory *is* practice, and the intellectual does not illuminate a path for a collectivity to take but rather leads activities alongside those who struggle for and against power. Deleuze made this point in an often-cited conversation with Foucault; "Practice", he said, "is a set

of relays from one theoretical point to another, and theory is a relay from one practice to another” (Foucault & Deleuze 1977, p.206). Thus, in his view, Foucault’s theoretical work encountered a wall at some point in its advances which had to be pierced through practice and which led to the creation of a relay – the *Groupe d’Informations sur les Prisons* – that could allow prisoners to speak for themselves. But this, Deleuze maintained, was not an application of theory in practice. Intellectuals deal with a ‘multiplicity’ that is equally theoretical as it is practical; “Representation no longer exists; there’s only action – theoretical action and practical action which serve as relays” (Foucault & Deleuze 1977, pp. 206-207). Theory is “exactly like a box of tools”, just like a book should be “a pair of glasses directed to the outside” (1977, p.208).

Foucault may be said to resemble the figure of what Foucault himself called a *specific* intellectual, one that establishes a connection between theory and practice outside the modality of the ‘universal’ and the ‘exemplary’ (1980d, p.126) and that enjoys seeing academic works being utilized as “a kind of tool-box which others can rummage through to find a tool which they can use however they wish in their own area” – an intellectual that writes for users, not readers (1994, pp.523-524). The history of the present is part of a useful tool-kit for the struggle against power in the present or, as Roth put it, “writing a history *of* the present means writing a history *in* the present, self-consciously writing in a field of power relations and political struggle” (1981, p.43, italics in original). Foucault’s histories of the present serve as critiques of our present condition and, as Tazzioli, Fuggle and Lanci (2015) pointed out in *Foucault and the History of Our Present*, they may be approached as if they were written by a journalist more than by a historian.

Just like a journalist, Foucault began his analyses by raising concrete problems occurring in the here and now, but he also added to that an extra dimension of reflection and introspection. His starting question was “what are we and what are we today?”

(2007c, pp.136-137) and his overall project can be approached as a critical philosophy seeking the conditions and “the indefinite possibilities of transforming the subject, of transforming ourselves” (2007a, p.153). This is why Foucault resorted to history; the ways the modern individual came to be constituted can only be interrogated within a historical framework ⁹³. Criticism, as a historico-philosophical practice, functions as a practice of ‘radical journalism’ meant to transform the present – it connects to the transformative work done by those struggling with power. Relating to the present is not simply a matter of belonging to it but it is always-already an unfinished task of self-fashioning and the attitude of criticizing who we are is at the same time a historical analysis of our limits and an experiment in moving beyond our present condition.

A genealogical insurrection of subjugated knowledges is always coupled with an incessant reworking on our own present, for the history of the present “designates precisely the point where historical reflections and a critical attitude from within and towards the present articulate the production of a difference within history” (Tazzioli, Fuggle & Lanci 2015, p.2). Through a genealogical account, the present becomes an object of transformative politics, a moment to seize in the fight for truth. In that regard, genealogy and the history of the present seem to share very little with Whig history, for they aim in no way to glorify the present. In fact, Foucault’s work on the prison has to be understood as an *anarchaeological* project meant to take the practice of confinement “in its historical singularity”, in its contingency, fragility and non-necessity (Foucault, 2014, p.79). As Foucault made particularly clear in his later writings on ethics and antiquity, criticism aims at showing the contingency and diversity of history rather than its

⁹³ When asked in an interview about what it is that makes it necessary to use genealogy to understand certain conditions of possibility of ‘objects’ and their modalities and constitution, Foucault replied that he “wanted to see how these problems of constitution could be resolved within a historical framework” without falling prey of either structuralism or phenomenology (1980d, p.117).

universality. It does not corroborate the present but uncovers the fragility and historical limitedness of it, encouraging individuals to imagine a different present and actually inviting them to *disengage* from it (Tazzioli, Fuggle & Lanci 2015, p.3). The past is not just an access to a better understanding of the present, but a source of difference and historical writing demands a certain ‘aestheticization’ that seeks not to erode the truth of the past but to aid the imagination in visualizing a radically different fiction about who we are today (Thacker 1997, p.39).

The resort to history does not constitute a sort of methodological distancing from current political concerns and from the matters of today, but rather an attempt at showing that discourses can be studied historically as practices. One of Foucault’s greatest contributions to the philosophy of social science was that of problematizing the political nature of social-scientific discourses. According to Foucault, the status and conditions of existence of the social-scientific discourses, just like their functioning and institutionalization, constituted a problem for political practice (1991, p.65). In his view, one could describe relations between scientific discourses and political practices, assign the proper role to political practices and scientific discourses in their relation to one another, and show that the positivity of discourses necessarily concerns politics. In a series of lectures delivered in Brazil in 1974 known as ‘Truth and Juridical Forms’, for instance, Foucault contended that the modern procedure of inquiry in the judicial domain, far from being the result of the progress of rationality, was rendered not only possible but necessary by ‘an entire political transformation’ and by ‘a new political structure’ (1996, p.338). The emergence of the rationality of judicial inquiry is a “complex political phenomenon” (1996, p.339) that must be looked at through an analysis of political transformations in medieval societies.

Thus, it may be argued that what Foucault was trying to define was “how, to what extent, at what level discourses, particularly scientific discourses, can be objects of a political practice” (1991, p.69). Relatedly, in his later writings on the hermeneutic of the subject and the Graeco-Roman times, Foucault took time to study practices of freedom and to tackle a fundamental question of practical philosophy – how can one practice freedom? Ethics, said Foucault, is the conscious practice of freedom, while freedom is the ontological basis of ethics (1997, p.284). In the Graeco-Roman world, individual freedom took an ethical shape in the practice of the care of the self. Freedom was then an ethical problem in the sense suggested by the word ‘ethos’ or way of being, or in the sense that it was an ethical problem to a subject’s mode of being. In other words, Foucault maintained that, to the Greeks, the problem of freedom was entirely political. He conveyed this idea quite nicely in a few words; “a slave has no ethics. Freedom is thus inherently political” (1997, p.286).

Foucault would not go as far as saying that the inquiry into the care of the self could mutate into a new way of thinking about politics or even into a new political practice of its own ⁹⁴, though he did talk of a new ethics whose fundamental criteria would be playing as little as possible with domination:

I believe that this is, in fact, the hinge point of ethical concerns and the political struggle for respect of rights, of critical thought against abusive techniques of government and research in ethics that seeks to ground individual freedom. (Foucault 1997, p.299)

Thus, the essential function of critique in the present is disclosed as an attitude against subjection, as a tactic for resisting power and domination. The historical ontology of ourselves, moving along the three axis of knowledge, power and ethics, takes the shape

⁹⁴ Even though the Greeks came up with a vibrant ‘philosophy of ethics’ that we can learn from, Foucault believed that solutions to contemporary problems need to be different from those devised by the ancient Greeks (see Maas & Brock 1983).

of a historico-philosophical critique, of a radical kind of journalism and of an erudite type of activism.

This historical ontology embodies the responsibility to produce an indefinite number of questions about the constitution of subjectivity in the presence of knowledge, about the constitution of subjects in their exercise of or submission to power, about the constitution of moral subjects through individual action, and so on (1984c, p.49). As Foucault outlined, genealogy is possible in three domains:

First, an historical ontology of ourselves in relation to truth through which we constitute ourselves as subjects of knowledge; second, an historical ontology of ourselves in relation to a field of power through which we constitute ourselves as subjects acting on others; third, an historical ontology in relation to ethics through which we constitute ourselves as moral agents. (Foucault 1983, p.237)

When dealing with Foucault, we are dealing with someone who, by his own admission, was more concerned with morals than with politics, or rather with someone who was concerned with “politics as an ethics” (1984b, p.375). Even then, it would be negligent not to question whether the breadth of the scope of such a project can adequately allow for the tackling of specific historical and social-scientific questions pursuant to a historico-criminological study. There are more than a few critics of Foucault’s historical ontology, with Butler and Dolan (1998, p.195) arguing, for instance, that the project of a historical ontology ‘of ourselves’ is not contradictory *per se* though it would actually appear be so within a Foucauldian framework. Although this has not prevented the historical study of crime from becoming at least in part Foucauldian, it might be safe to say that engaging with Foucault should not be just a matter of fashion.

In Search of Historical Criminology

Much can be said about Foucault as an author, intellectual, philosopher, and historian. Particularly with regards to his understanding of law, Kennedy (1991, pp.357-358) went as far as calling Foucault an ‘unmistakable criminalist’, implying that there might be a

sort of affinity between Foucault's own lines of enquiry and the practice of criminology. Hopefully, however, Foucault's methodological contribution to a historical criminology can now at least be better assessed in view of the preceding section. In Foucault's defence, one might point out that studying crime historically requires a certain sensibility towards the oppressed and the disadvantaged, towards the historical victims of power, but that it also demands a certain flexibility of the imagination to help confront history in its dispersion. The transformation of human beings is the positivity of historical change, so that imagining a different future is an exercise in predicting what we shall become, while imagining a different past is an attempt at discovering what else we could have been. To reveal the truths of the past or predict those of the future are two sides of the same endeavour; studying processes of transformation. When it comes to accessing the present, when it goes down to analysing the kinds of intellectual and professional transformations we are currently undergoing in the social sciences, there is no doubt that, as Agamben (2012) recommended, archaeology, and not 'futurology', is the only way in.

Even amongst histories of criminology that claim a more or less direct lineage with Foucault's histories of the present, there is a reluctance to engage with Foucault the journalist and a tendency to rely on Foucault the archaeologist ⁹⁵. In *Inventing the Criminal: A History of German Criminology, 1880-1945*, for example, Wetzell (2000) claimed to have taken his cues from Foucauldian 'suggestions'. Without resorting to either social, legal or political history or to what he considered an overly 'functionalist' approach characteristic of Foucault and others in the revisionist camp, he opted instead for an intellectual history and a history of science. Far from being an anti-history and a counter-memory, his is a detailed intellectual history of the science of criminology in

⁹⁵ Some of the historical works of Pasqualino (i.e., 1991a, 1991b), one of Foucault's students, might be considered as rare exceptions to this trend.

Germany between 1880 and 1945. Likewise, *Criminals and Their Scientists* – another history of criminology but this time in international perspective – approaches the study of criminology’s past genealogically, “as science and practice” (Becker & Wetzell 2006b, p.1). This work takes the binary relationship between criminals and their scientists as a starting point for an international history of criminology. The scope of the study is neither to discover the hidden origins of criminology or the inner drives of current criminological thought, but rather to approach the history of criminology from the point of view of a ‘history of discursive practices’ (2006b, p.7).

Wiener’s *Reconstructing the Criminal*, a cultural history of law and policy in England between 1830 and 1914, avoids siding with Foucault so as to transcend the debate between Whiggism and revisionism. This cultural history is meant as a contribution to a comprehensive account of “the meanings of crime and punishment in modern English history” (1990, p.11) but its starting point is the present, for it admits that it is the ‘contemporary crisis of criminal policy’ that makes possible the rethinking of the history of crime and punishment. Wiener welcomed Foucault’s cultural insights but rejected his political overtones. Challenging the privileged position of political explanations in cultural and social analysis, he proposed that criminal policy be seen not only as “an inevitably political art or science” but as “an equally inevitably aesthetic or philosophic form of politics” (1990, p.9). His point, then, is not to reduce the criminal to a strategy in the body politic but to enrich politics with philosophy and poetics so as to achieve a more culturally rich understanding of penal justice. Sustained efforts to study the history of criminology from a Foucauldian viewpoint were also made by David Garland⁹⁶. As early as the mid-1980s, he noted that, though internationally popular, criminology’s

⁹⁶ Garland’s intellectual engagement with Foucault is an ambiguous one, with abundant criticisms (i.e., 1990; 1991, pp.157-175; 1991b, pp.139-141; 1992).

history had escaped the rigorous scrutiny that generally applies to established social knowledges – something one would expect a Foucauldian ‘investigative reporter’ to say:

This failure of criminologists to reflect critically upon their own practice has meant that our knowledge of criminology’s development is sparse and inadequate. We are left with, on the one hand, hagiographies of the “founding fathers” and their “scientific mission” ... and, on the other, wholesale dismissals of the “reactionary purpose” and legacy of “positivism” with all the simplifications and over-statements which these entail... What is missing is any detailed account of the theoretical formation of the criminological programme, its internal characteristics and its relationship to its social conditions of emergence. (Garland 1985b, p.110)

Garland carried out that very project on his own taking cues from Foucault whilst also critiquing his ideas and offered amongst the most valuable contributions to an understanding of the history of the present within a historico-sociological analytic framework relevant both for criminologists and historians.

In his studies on the rise of scientific criminology in Britain, for example, Garland (1988) traced a genealogy of developments in British criminology up to 1935 meant to situate the shaping of criminological practices within the institutions and power relations that made them possible. The value of this genealogical line of inquiry, Garland argued, lies in its capacity for treating criminological thinking as something beyond an academic form, something amenable to the social fabric of modern times. In particular, he subscribed to the Foucauldian idea that the emergence of criminological discourse must be studied in connection to the birth of the prison; criminological knowledge grew up in the shadow of administrative practices like incarceration and it developed as an exercise not in understanding criminals but in knowing them so to be able to control them (1997c, p.182). He examined the ‘theoretical framework’ of criminology in relation to events and institutions ‘of the social world’ revealing the study of crime to be “part of the warp and weft of modern culture, articulating the mentalities and sensibilities of the age in a particular form and for a particular purpose” (1992, p.420). Through critical – rather than ‘impartial’ – lines of inquiry, Garland attempted not so much to deny the progressive features of criminology but to show that “in the detailed formulation of its arguments

criminology colluded in a definite set of political assumptions and policies” (1985b, p.110). In fact, in his view, the analysis of strategies and technologies of punitive power constantly needs to be accompanied by “an analysis of the politics of their exercise” (1996, p.462) and his studies on late modernity and ‘high-crime societies’ depict a ‘crime complex’ that produces social and psychological effects capable of exerting political and policy influence (2000).

Garland made sense of criminology in terms of and as part of power/knowledge nexuses in order to unmask its politics and to study the problem of crime in relation to ‘governmentality’ (1997a) and to write histories of crime and criminology that are analytic rather than archival in scope – i.e., histories meant to elucidate present issues and not to record past events. Though Foucault’s use of the genealogical method proves that historical materials can be brought to bear on contemporary problems (2014, p.379), Garland also acknowledged that the history of criminology need not be written exclusively from a Foucauldian perspective; intellectual history, institutional history, social history, cultural history, all offer valuable entry points to writing the history of criminology as well as the history of crime and criminal justice. That said, *The Culture of Control* opens with a chapter titled ‘A History of the Present’. Here, Garland (2010) claimed that characterizing a work as ‘history of the present’ carries with it a major historiographical commitment; one should not aim at writing a comprehensive history of a past period but at understanding the historical conditions that gave present practices and phenomena their current shape. Such historiographical repositioning allows those who study crime in history to rethink the present – to write, for instance, histories that speak of the structure and organization of crime control and criminal justice in their contemporary form.

We should ask to what extent Foucault helped shape a new practice for studying crime historically – i.e., a new historical criminology. Knepper argues that Foucault's greatest influence on the historical study of crime concerns the prioritization of theory over evidence. His 'theory-driven' approach offered an alternative to the progressivism of Whig and legal history but, in the last analysis, it distorted the past just as much as Whig history for the sake of making statements relevant to the present (2016, p.232). In Knepper's view, in fact, the historical study of crime currently finds itself in an uncomfortable situation, since its very beginnings would be inconceivable without social and cultural history, yet its future developments seem to require the affirmation of the value of conventional methods of historical research. What made Foucault's project appealing to criminologists working historically is the fact that historical criminologists identify with a type of academic subjectivity that, in the process of studying crime-related phenomena, acts on the idea that history is essential to understanding such phenomena in the present. It should be borne in mind, however, that the question of 'the present in historiography' in no way originates in Foucault – Nietzsche for instance, concerned himself with tracing "the value-blindness of historical objectivism back to the conflict between the alienated historical world and the life-powers of the present" (Gadamer 1981, p.6). More broadly, the historical prevalence of a practical attitude in Western historiography up to the first half of the 19th century and beyond has rarely been questioned and, as seen with Febvre, Bloch and the *Annales* in chapter 3, the idea that history is history of the present, and perhaps even a science of the present, has been flirted with since at least the early 20th century.

In the next chapter, we take a long view on the development of Western historiography starting, again, from the ancient Greeks, in order to better conceptualize the interaction of the historical and the practical in historical criminology and to further

put to the test historical criminologists' claims to practical knowledge. As shown in chapter 1, practical knowledge is knowledge with a potential terminus in action, and debates about the theoretical and practical character of historical knowledge have been recorded since at least the 5th century BC, at the time when the Greek historian Herodotus proposed that history, as 'inquiry', produces episteme – theoretical knowledge. Various episodes from the history of Western historiography will be subjected to scrutiny with the aim of elucidating the problematic relation between past and present for modern historiography and of de-obfuscating history's relation to science and politics. Historical criminology must ask itself if it can succeed at using history practically and for present policy-making purposes. Benedetto Croce, as we shall see in the next chapter, was probably right in asserting that history is already practically useful as it is, and that historiography is unable, on its own, to assess the extent to which history can be valuable without becoming untrue. Thus, the next chapter revisits key moments from the history of modern Western historiography to provide some further historical and conceptual contextualization to the development of a historical dimension to the study of crime.

6.

History as Past Politics, Politics as Present History

The Arche of Western Historiography <> History and Enlightenment <> History as Science <> Historicity in Historiography <> Oakeshott on History and the Practical Past <> Croce's Practical Philosophy of History <> New History and the Science of the Present <> The Iron Cage of History Specializations

As a major aim of this study is that of problematizing the use of history for criminology, I could not refrain from making use of a narrative account of the history of Western historiography. Gadamer's critique of the human sciences is particularly illuminating when seen in light of the historical development of the historical profession, particularly because it speaks directly to the devaluation of rhetoric and the coming of the *absolutum* of techne in the humanities and social sciences. Though history has been conceived since at least the 19th century as a specialized, technical and scientific endeavour, the kind of storytelling appropriate to history at the time of its inception in ancient Greece was that of what we today would call 'literature'. According to Hayden White, it is the opposition of history as science and history as art and literature that sustains the belief, antithetical to history's claim to serve practical purposes, that the imagination has no place in historical practice (2014, p.12). This is crucial in Gadamer's terms; what really makes a productive scholar is not learning the methods – "It is imagination [*Phantasie*] that is the decisive function of the scholar" (1976h, p.12, italics in original). Since the times of Herodotus and Thucydides, history has been understood as "a pedagogical and indeed practical discipline par excellence" (White 2014, p.12) and, as Foucault showed, history functions more as a practical and ethical discourse than as a scientific one.

This chapter starts from the ancient Greeks, who invented history as we know it today in the Western world, history as 'inquiry' into the past. The point of surveying early

moments from the history of Western historiography – the Greeks and the Romans, as well as Enlightenment thinkers – is that of providing some historical context to the arrival of a new ideal of historical thinking which came to be popularized in the early 19th century by Leopold von Ranke. This new ideal was well summarized by Gadamer:

The historical consciousness has the task of understanding all the witnesses of a past time out of the spirit of that time, of extricating them from the preoccupations of our own present life, and of knowing, without moral smugness, the past as a human phenomenon. (Gadamer 1976h, p.5)

Ranke was a German nationalist historian credited for founding modern source-based history. He espoused a view of history referred to as historicism, which – to use Gadamer’s phrasing – extricated historians from the present because it claimed that past epochs are uniquely different from the present and not to be regarded as precursors to the present. Historical epochs have their own *historicity*. Partly thanks to Ranke, the past came to be studied for its own sake – not to learn lessons, not to predict future events, but to know ‘what happened’ in the past. His approach was empirical and based on primary archival research, and he elevated history to a science by replacing rhetoric with method. Particularly in the last two decades of the 19th century, his contributions to historical thinking helped transform the discipline of history into a professional and academic specialization.

Having dealt with Ranke, I briefly address Carl Becker’s relativist historiography and a revealing moment from the history of professional historiography, namely, the delivery of his prominent ‘Everyman His Own Historian’ presidential address to the *American Historical Association* in Minneapolis in 1931. The focus here, as in most of the chapter, is on history’s relation to politics and the usefulness of historical knowledge. Then I engage with two thinkers whose views may be delegitimizing slightly, at a historiographical level at least, of historical criminology’s basic ground – its mixture of practicality and futurism. The first is Michael Oakeshott – English philosopher and a

political theorist – who published *Experience and Its Modes* in 1933 and inferred in it that the historical past can be of no practical use at all, arguing for a distinction between the historical and the practical past. The other is Benedetto Croce, Italian philosopher, historian and politician who practiced a ‘pragmatic historicism’ as well as a practical philosophy of life but ultimately taught that historiography was theoretical rather than practical. I then return to the question of ‘science in history’ with a short discussion of new history. The new historians were part of an intellectual movement of American historians in the first decades of the 20th century who, inspired by the Social Science Movement, wanted to fuse historical research and social-scientific methods and techniques for the sake of improving the present. The final section of the chapter presents a critique of history specialization and of new and social history. New and social history are today regarded mostly as history specializations but, as noted already with regards to social history in chapter 3, this is reductive in that their relations to the social sciences go beyond merely technical questions of methodology – as mentioned early in this thesis, a social history of crime is a social-scientific history, i.e., a criminological history.

The new historians of the early 20th century in America, like the social historians in France at the times of Febvre and Bloch, wanted to exploit the interaction of history and the social sciences to make advances in the present. For this reason, I consider them as potential social technologists and social dreamers. But because they put to work their scientific commitment and social-historical technical know-how in a practical way, I would not deny them access to the realm of emancipatory utopias. The ‘new’ and the ‘social’ in history are vulnerable to the persuasiveness of science which tends to totalize them – in the case of social history, for instance, to turn it into a ‘total’ history of *all* aspects of the past, including crime, from a social point of view. New and social history are the indispensable ingredients for a contemporary historiography understood as a

science of the present. History as science of the present is a technological dream that, from within the historical study of crime, cannot but lead to an infinite excavation of criminal archives and create an unlimited research potentiality and undetermined intellectual productivity through constant ‘indirect observation’ of past crime-related phenomena. This would be none other than a form of indirect yet total surveillance of the past carried out with the technical help of scientific models and theories, a clear exemplification of what Gadamer (1981, p.63) was alluding to when speaking of the ‘total oblivion of being’ of the technological thought of our present times.

The Arche of Western Historiography

Since at least the times of the ancient Greeks, who invented history as it is known in the West – history as ‘inquiry’ – there has been a tendency for some historians to do history with an eye on the present and for others to do history with both eyes on the past. Historically, present-centred histories have outnumbered and overshadowed past-oriented histories, as manifestations of history as art have been historically more popular and widespread than manifestations of history as science, but since the 19th century the latter gained momentum. Relatedly, as Gadamer (1998, p.52) pointed out, the European historian’s ideal changed between the 18th and 19th century from Plutarch to Thucydides; the latter admired for being “a factual reporter and analyst” (Pelling 2002, p.10), a thoughtful, careful and precise historian, while the former was remembered for his literary virtues and charm.

The Greeks, it is generally agreed, were not aware of the historicity of their thought and, partly because of that, relegated historical inquiry to the lower ranks of thinking. Aristotle – to support this point – had no explicit philosophy of history and

believed poetry to be more philosophic and ‘of graver import’ than history ⁹⁷. Similarly, the medieval mind was rather ahistorical and, in the Middle Ages, history did not feature as one of the seven liberal arts – grammar, rhetoric, dialectics, arithmetic, geometry, music and astronomy. The Italian poet Petrarch (1304-1374) might have been the first in the West to write about the idea of a linear – as opposed to cyclical – movement of history, describing his own times as times of revival following the dark ages that lasted from the times of the Sack of Rome to the 14th century (Aylmer 1997, p.250). Yet, the very idea of ‘the Middle Ages’, this space between the ancient and the modern world, was quite alien to the mediaeval mind and to make sense of notions such as ‘modern’ and ‘progressive’, or ‘retrograde’ and ‘primitive’, one would have to wait until the early 17th century, when thinkers like Francis Bacon were conceptualizing the modern meaning of progress in time (Lukacs 1985, p.13) ⁹⁸. In the 5th century BC, the Greek historian Herodotus came to conceive of historiography as *episteme*, as knowledge, and not as *doxa*, as opinion, suggesting that historiography has since then renounced to secure a practical application for itself, that history no longer had to deal with the immediate sphere of everyday knowledge (see Heller 1982, pp.79-80). Yet, Herodotus’ younger contemporary, the Athenian historian Thucydides, was quick to blame him for not distinguishing adequately between past and present and for writing histories designed ‘to meet the taste of an immediate public’ (Thomas 1988, p.54).

⁹⁷ This point was articulated quite lucidly by Powell (1987), who argued that Aristotle had, at best, a general view of history – which was that history is a mere succession of undetermined events. Powell also tackled quite comprehensively *why* Aristotle did without a theory of history.

⁹⁸ In this chapter, I refrain from making more than just a few comments about historiography from the period of the Renaissance to the Enlightenment. For a historiographical survey from the Renaissance to the 18th century see Aylmer (1997), for the historiography of the Renaissance see Croce (1921, pp.224-242) and Findlen (2002).

In the 2nd century BC, Hellenized Syrian satirist Lucian of Samosata wrote *A True Story* – also known as *True History* (1902) – a novel where he made fun of outlandish accounts reported in the historical sources of ancient times. For Lucian, history was not poetry and it did not have to praise individuals or deeds and give pleasure to an audience. In his influential essay ‘How to Write History’, Lucien instructed that history had one task and one end – “what is useful” (1959, p.15). He reprimanded historians of the day for putting history at the service of contemporary power games, political dynamics and personal gains and posited that “the historian’s sole task is to tell the tale as it happened” (1959, p.55). When writing history, one should not keep in mind a present audience, and the historian that serves the present “will rightly be counted a flatterer” (1959, p.55). Instead of writing historical accounts as prize-essays for a given occasion, historians should bequeath a true account of what happened in the past to posterity, setting forth historical matters in their exactness and expounding them lucidly. The historian had to be impartial towards the facts, approach them not as an orator would but in the manner of a sculptor. History for Lucien fulfilled a collective learning function whereby future generations could benefit from considerations of the records of the past when confronting problematic situations.

Still, the Romans believed they had inherited from the Greek a kind of history that was fundamentally rhetorical, as they genuinely viewed history as *opus oratorium maxime*, as a kind of public speaking, as an art of using words well, as the highest artistic form of oratory, as a civic practice, and Thucydides was for Cicero and for all ancient critics the most symbolic exponent of this art of eloquence (Walker 1968, p.145). As Gadamer (1976d, p.22) pointed out, the masters of rhetoric – from Protagoras to Isocrates – claimed to be teaching not just an art of speaking, but also “the formation of a civic consciousness that bore the premise of political success”. History was above all a literary

genre concerning real events guided by aesthetic and artistic rather than explicitly historiographical principles and was instrumentally oriented towards practical objectives. Greek historiography was cultivated by men like Herodotus and Thucydides to be a form of art and not a science, and it was judged to be a matter of beauty of form rather than a matter of exact criticism. It is in this sense that the great historians of Rome like Livy, Sallustius and Tacitus understood historiography – and it is this same sense of history that underlined the efforts of Guicciardini and Machiavelli during the Renaissance. Sallustius believed that the historian has a duty to exalt those memories of the past deserving to be passed on to future generations. Tacitus' main historiographical aim was rhetorical effectiveness, and his work is valuable primarily for its artistic content and only secondarily for its historiographical achievements. At the same time, however, Tacitus strived for objectivity and impartiality, aiming at writing history *sine ira et studio*, that is, without hate and zealousness. In antiquity as at the beginning of the 20th century, history has been conceived of as both the practice of artists and the product of artisans – but, as Alan Nevins rightly pointed out, in the first half of the 20th century the artisans of history multiplied.

History and Enlightenment

To Voltaire, who was born at the very end of the 17th century, the Renaissance stood as the beginning of the modern world. With Voltaire and the Enlightenment, history became, to use Giannone's words, *storia civile*, that is, history of society (see Trevor-Roper 2010)⁹⁹. The Enlightenment exalted the philosophical, critical and universal aspects of history, superimposing enlightened values on historical narratives to explain the historical

⁹⁹ As Dilthey ([1901] 1996, p.345) would put it, with the Enlightenment, "history began to include the system of culture".

dynamism of societies. Thus, in Vico's *New Science* ([1725] 1948, p.100) history becomes man's universal knowledge of himself, that is, the Science becomes "at once a history of the ideas, the customs, and the deeds of mankind" from which to derive the principles of the history of human nature – which are none other than the principles of universal history. Vico was a humanist working from within the tradition of rhetoric, sharing much with the ancient Sophists, Aristotle, Cicero, and the civic humanists of the early Italian Renaissance who gave a new meaning to the *vita activa*, to modern life. Throughout his life, he delivered commemorations, elegies, nuptial poems, funeral orations, and all kinds of solemn orations, and his *New Science* was conceived and structured as a system inherent to the functioning of public life itself. Reality was for Vico *mondo civile*, the world of man, a world ruled by capriciousness, chance, opportunity, uncertainty and therefore a world that could not possibly be understood and analysed through a 'geometrical' method. "Et vero, si methodum geometricam in vitam agendam importes" said Vico, "nihil plus agas, quam si des operam ut cum ratione insanias" – *and in truth, if you were to adopt the geometrical method in the conduct of life, you would be doing nothing more than committing yourself to going insane with reason* (1914, p.181, translation mine)¹⁰⁰. This resembles a precept of Aristotelian practical philosophy discussed earlier; that the study of human beings and societies is to be conducted along practico-philosophical lines and that the understanding of politics and ethics is a matter of participation and deliberation, of dialogue and practical reasoning. Vico is arguably the originator of the philosophy of history, being probably the first historicist, or the first to propose that thinking modes vary with historical eras and, in the 18th century, various components of his work – like his 'theory of the imagination' – became popular tools for

¹⁰⁰ For a detailed account of Vico's theory of culture, science of civilization, pedagogy and rhetorical tradition see Mooney (1985).

illustrating the ways in which modern thinking differs from thinking in antiquity. In Vico's view, individuals could only know what they make themselves, thus history is knowable because it is the making of individuals, while nature could not possibly be known (Jonas 1963, p.134).

The philosophy of history only really took flight after the middle of the 18th century. At that point in time, the main focus of enlightened philosophies of history was the emergence of the modern, as well as the very process of modernization (Rohbeck 2005, p.189) and their target was often the rejection of the idea of inevitable progress or criticism of the dynamics of secularization. Kant's *Idea for a Universal History with a Cosmopolitan Purpose* (1970b) was an attempt to demonstrate that since mankind in its collective actions could not possibly follow a rational purpose of its own, it had to find a purpose in nature behind the unfolding of human events, that is, it had to formulate a history of human beings that act without a plan of their own. His *Eighth Proposition* reads as follows:

The history of the human race as a whole can be regarded as the realisation of a hidden plan of nature to bring about an internally – and for this purpose also externally – perfect political constitution as the only possible state within which all natural capacities of mankind can be developed completely. (Kant 1970b, p.50)

Kant viewed historical development as a necessary movement towards freedom and reason (see Fackenheim 1956). He believed that each individual had a moral duty to contribute towards the establishment of a 'perfect political constitution', leading to a view of history wherein progress is a moral demand imposed by practical imperatives and fundamental moral principles – i.e., the principle of self-legislation of practical reason. The philosophy of history, then, had to demonstrate the historical possibility of progress not by appealing to a 'grand narrative' but by laboriously excavating from the past those

‘historical signs’ that point to increases in justice ¹⁰¹. The historiography of the Enlightenment was intended to direct people’s view of the present “to the central tasks of engaging and acting in the public domain” (Nagl-Docekal 2005, p.184) ¹⁰² – as Croce (1921, p.256) asserted, enlightened historiographies were pragmatic, sometimes excessively so. This, at the same time, does not mean that Kant’s historical signs can be used in the present to prophesy the future, as they should rather be conceived as ‘declarations’ concerning the intentions behind an individual’s own actions ¹⁰³.

While Classical thinkers considered difference of opinions as heresy and as sign of decay, the Enlightenment nurtured tolerance and pluralism, offering a rationale for a ‘open society’. Kant’s philosophy stood as a form of cultural criticism and his work bore – and still bears – significant political inspiration; the idea of ‘self-legislation’, for example, the notion of a society as free union of self-legislating citizens, was a revolutionary idea in his times. In 1784, Kant wrote a piece on the question ‘What is Enlightenment?’ in the German periodical *Berlinische Monatschrift*. In it, Kant defined Enlightenment as ‘the emergence’ or ‘the escape’ of men from their self-imposed immaturity (1970a). The fundamental requirement of the Enlightenment is freedom, or the property of making use of reason in all spheres of public life, and the public use of one’s reason only is what brings about the progress of the Enlightenment. He wrote that he and his contemporaries were not living in ‘an enlightened era’ but rather in ‘an age of enlightenment’ and mentioned two forces keeping mankind from fully realizing an

¹⁰¹ See for instance Kant’s (2001) ‘An Old Question Raised Again: Is the Human Race Constantly Progressing?’ where Kant described the theory of the signs in history.

¹⁰² It is interesting to think about this point in relation to the fact that the illuminism was not necessarily a middle class or bourgeois ideology but arguably a revolutionary one (see Hobsbawm 1964, pp.21-22).

¹⁰³ For a more substantial engagement with Kant’s philosophy of history, see Dupré (1998) and Anderson-Gold (2001).

enlightened project; laziness and cowardice. This finds an obvious explanation within the framework of this thesis; laziness is the nemesis of production, cowardice of practice, and since modernity is *vita activa*, active life centred around action and production instead of contemplation, the negations of productivity and activity became the worst enemies of the modern individual. The age of Reason was living through a foundational moment of modernity, a moment when it was becoming clearer and clearer what Bacon (1850) meant at the close of the 16th century when he wrote, in his essay ‘In Praise of Knowledge’, that the true offices of knowledge are ‘effecting’ and ‘working’. For Enlightenment thinkers, it was becoming intelligible to think of knowledge as subordinate to action and production, to think of the true ends of knowledge as action and production, as *praxis* and *poiesis*. Bacon’s dictum that knowledge is power can be understood as a modern way of saying that *knowledge is action*, that knowledge is power when is ‘in action’, or else, when it is put into practice.

History as Science

If up to the 19th century history had been regarded primarily as a present-minded art, it is widely recognized that this very same century also brought history closer to a scientific and past-oriented self-understanding. Dilthey expressed this idea with the attitude of a scientific historian:

There have been great historians since the Greeks who, with the clairvoyance of artists, looked into the affairs of the world. But it is the inner law of historical science that, as the historical world forms itself in time, scientific understanding of man’s historical nature grows along with it. (Dilthey [1901] 1996, pp.325-326)

The key figure behind this 19th-century transition is taken to be Ranke, who, though an ardent believer in history as both science and art, raised history to the level of objective knowledge of the past in the modern sense (see Wines 1981; Bentley 1997, pp.419-423; Lieberesohn 2002; Berding 2005; Rüsen 2005, pp.41-57). Ranke’s historical approach

may be understood as a working strategy counter to the Enlightenment ¹⁰⁴. The historical philosophies of the Enlightenment had the moral function to teach by example, that is, they marginalized God in their historical narratives and elevated the individual and the ways to individual freedom, improvement and wellbeing. They were mostly secular, meant to elevate the human spirit, and often endorsed satire as their fundamental mode of representation. Historicism, on the other hand, came to prevalence in the first half of the 19th century through Ranke and was precisely a reaction against atomism and the tradition of the French revolution of 1789 (Bentley 1997, p.408). Ranke's historicism was an outcome of the German Wars of Liberation and a realization of the spirit of 1813, the spirit of the German liberation from Napoleon and the First French Empire. The Prussian monarchy began to be conceived as a high moment in the history of human freedom, a society where the individual was free by virtue of being part of a whole. A German conception of freedom was born to replace the French ideal of 1789 (Iggers 1983, p.21). Ranke was appointed Prussian Royal Historiographer in 1841, and his histories were visibly characterized by a pervasive preoccupation with the state. As a matter of fact, his work as a whole has been widely read as elitist and undemocratic; its impartiality actually hid a strong current of German nationalism and served to justify the monarchical order in what had to be a conservative Restoration Europe (Iggers 2002, p.234). Ranke's colleagues – Droysen, Sybel, von Treitschke – practiced history professionally and openly proclaimed that their scholarship was politically-driven, that it served the pursuit of a powerful German state ¹⁰⁵, but he insisted that the 'historiographically correct' thing

¹⁰⁴ It has also been suggested that Ranke's scientific historiography was intended as a negation of the emancipative promise of liberalism (Maclean 1982, p.351).

¹⁰⁵ As Iggers (2002, p.235) pointed out, it appears that such historians approached historical archives seeking to reinforce their political confirmation bias. The professionalization of history in Germany in no way led historians to abandon their political commitments and, in fact, historical scholarship tended to be sympathetic of the aims of the state.

to do when looking at the past is withholding judgment and simply observe it ‘in its essence’, ‘as it really was’, ‘wie es eigentlich gewesen’.

“The Greeks”, Dilthey (1996, p.326) remarked, “were the creators of the great art of history”. Since ancient times history has served as one of mankind’s chief forms of artistic representation. In the last two decades of the 19th century in particular, the great art of history was turned into a discipline and a science increasingly worried about standards of scholarship. Since the times of Ranke, history started to be looked at only secondarily as art, rhetorical device, and present-centred narrative about the past, and primarily as method to disclose the past as it actually happened. History was said to have become, at last, a way of systematizing the past and not just a rhetorical, oratory and literary technique to recount old and occasionally useful stories. With Ranke, over two-thousand years of history as literature seemed to have come to an end ¹⁰⁶, as he established the respectability of historicism among students of history, or the idea that history is to be understood in its own terms and not from the point of view of contemporary religious and political struggles, that is, that it has to be judged in its own terms and not “as a precursor of the present” (Wines 1981, p.21) ¹⁰⁷. Ranke knew that ‘the impulse of the

¹⁰⁶ Ranke himself said in his 1836 inaugural address at the University of Berlin that history, like politics, can be understood both as an art and as a science and that, as an art, “history is based wholly on literature” (1981b, p.114).

¹⁰⁷ Historicism has also been understood by some, i.e., Popper, as the proposition that there are laws in history. Popper (1945) called Hegel, and not Ranke, the origin of modern historicism – he also called him ‘the source of all contemporary historicism’. I take for good the interpretation provided above, that historicism means accepting that each historical epoch is particular to itself and that history is the activity of uncovering this particularity. For a detailed analysis of historicity and historicism see Kosloski (2005). An alternative definition of historicism was provided by Mandelbaum in *The Problem of Historical Knowledge*:

Historicism consists in the attempt to take seriously (in a philosophical sense) the fact of change. It sees behind every particular fact the one ultimate fact of change: every particular is treated with relation to the process of change out of which it arises, and this process is seen as immanent to it. (Mandelbaum 1967, pp.88-89)

present' is such that 'history will always be rewritten' and for that reason the historian had an ethical task to develop the strictest method to avoid writing history with an eye on the present.

In his *History of the Latin and Teutonic Nations, 1494-1514*, Ranke expressed this point rather succinctly:

History has had assigned to it the office of judging the past and of instructing the present for the benefit of future ages. To such high offices the present work does not presume: it seeks only to show what actually happened [*wie es eigentlich gewesen*]. (Ranke 1981a, p.58, italics in original)

Ranke was not saying that the relationship between past and present can be severed, as he acknowledged that “knowledge of the past is incomplete without an acquaintance with the present” and that “an understanding of the present is impossible without a knowledge of the past” (1981b, p.114). Rather, he was saying that history should not be subservient to politics – that it should be independent from it – and that though history can offer an immeasurable good to politics by clearing away errors and misunderstandings, as a general rule and as a standard of professional and ethical conduct it had to be approached as theory, not as practice. In Ranke, that is, the difference between history and politics becomes the difference between theoretical and practical philosophy – “one is practiced more in shadow and the other in the light of day” and “one suffices simply to preserve, the other passes beyond preservation to the creation of something new” (Ranke 1981b, p.114). Plausibly, the “master of modern historical narrative” (Dilthey 1996, p.233), was effectively trying to reinvent modern historiography as a whole by popularizing the idea that the value of history for politics is at best indirect.

This possibility should be taken with a grain of salt, however, as it has already been said that Ranke had his own politics – as Gadamer (1976d, p.29) would put it, Ranke’s epic consciousness “was inclined to foster the nonpoliticality appropriate to an authoritarian state”. He was a German nationalist historian, often opposed to social

reforms and favourable to historic monarchy. The emphasis on nations as historical actors constituted the bulk of his magisterial work on the Ottoman and Spanish empires, the French civil wars, the Popes, the Reformation in Germany, etc. At some point in his life, he even became a political journalist, looking at contemporary issues through his monarchical politics¹⁰⁸. Moreover, as pointed out earlier, Ranke has been interpreted by following traditions of historians as having postulated precisely the primacy of politics in history. The tradition to which the nationalist historical writing of Ranke belonged was that of the Protestant educated middle class, a tradition for which politics “mattered among anything else because it seemed to promise a secularized redemption from the divisions of German history” (Liebersohn 2002, p.167). Nationhood was understood by Ranke in tandem with the formation of the modern state, and his belief in the destiny of Germany is found ubiquitously in his historical writings. In fact, Liebersohn suggested that Ranke’s writings are valuable not because of their pseudo-objectivity but for “their rare synthesis of political commitment and appreciation of historical diversity” (2002, p.171); he was neither an antiquarian nor an ideologue, and he achieved “a *balance* of political motive and historical judgment” (2002, p.171, italics in original). Ranke was writing at a time when a growing sense of the past was penetrating the fields of politics and law, theology and literature, geology and evolutionary biology, a time when science was becoming historical and history scientific (Wines 1981, p.1). To him history appeared not as an immense repository of practical and political axioms, but as a powerful tool to understand reality – especially the reality of the state.

¹⁰⁸ Ranke was seen as a suitable conservative scholar of established reputation who could edit a new journal to compete with the liberal political ideals that were circulating at the time in Germany as a consequence of the revolutions of 1830 in France and Belgium. This proved to be a failure, however, commercially and politically (Wines 1981, p.10).

Ranke addressed this question quite precisely; “What does history, which gives us a supply of knowledge of previous ages, have to do with the improvement of contemporary states?” (1981b, p.108). Confronting the ideas of those who believed that the organization of the state would be facilitated if the German youth paid greater attention to history, Ranke reacted by noting that “many deny decisively that history can or must be drawn upon to bring order to government” (1981b, p.108). The improvement of contemporary states, he believed, required a science completely different from history. History looks at the origins of evil but only ‘the new science of politics’ can find its remedies. There is a steady line of progress in the history of mankind and “we can raise no longer those questions which occurred in other ages, only those which concern us today” (1981b, p.108). Human beings cannot lose confidence in their ability to organize politically, and since it is easy to find in history that which agrees with contemporary political doctrines, drawing history into politics is inevitably problematic. Courage, not history, is what is needed when doing politics. The basis of history and politics, Ranke conceded, was one and the same:

Just as there can be no politics which does not rest on a complete and exact knowledge of the state which is to be ruled – and that knowledge is inconceivable without knowing the events of past ages – and just as history incorporates this very knowledge, or attempts to comprehend it, so it is clear that in this matter both are most closely connected. I do not say that politics is impossible without a perfect historical understanding...It is, after all, the task of history to extract from past events the nature of the state and to bring us to an understanding of it; the task of politics, to carry on and develop it after recognition and understanding are successfully achieved. (Ranke 1981b, pp.113-114)

Nevertheless, though both history and politics are at once an art and a science, and though as sciences they are connected, as arts they are not much alike. History rests on critical understanding, accepts only what is true, and is “by its nature universal” (1981b, p.115). Moreover, it is based on literature, casting light on past events and preserving their memory. Politics, instead, consists of practical affairs, it keeps individuals together through the bonds of the state, of the law, of the collective. “History and politics differ

from one another, just as do theoretical and practical philosophy” (1981b, p.114). While it may be true that Ranke did not fully succeed at keeping history an art and a science, it may be argued that he effectively made historiography apolitical.

Lastly, when Ranke is hailed as the founder of ‘objective historiography’, what is really being referred to in the first place is the fact that before Ranke history was written by cultivated men – or almost exclusively men – who, often thanks to their public or civil positions, could reach broad audiences and inspire nations and generations through the persuasion of language, through rhetoric. As Rüsen (2005, p.42) would put it; “from a historical perspective, modern historical studies have laid claim to a systematic rationality by emphasising antirhetorical arguments”. As briefly shown earlier, before Ranke historiography used to be basically adjusted to the needs of the audience addressed and employed the language of common sense to teach practical lessons about life. Ranke claimed that the historian should ‘extinguish the self’ and let history speak for itself ¹⁰⁹, and attempted to transform historical studies into an empirical science following methodological rules conducive to the production of historical knowledge through a process of research. Effectively speaking, with Ranke rhetorical history is supplanted by an empiricist and research-based didactic activity, for as it is often said, although he was not the first to make use of archives for the purpose of writing history, he is deemed the first to have done it considerably well ¹¹⁰. Ranke’s scientific approach to historiography

¹⁰⁹ Rüsen (1993, pp.129-146) provided a comprehensive account of how Ranke hoped to fulfil this scientific requirement of historiography, of how he replaced rhetoric with an idealist philosophy of history and, at the same time, transformed his political ideas in “rhetorical modes and strategies of historical writing” (1993, p.137).

¹¹⁰ Woolf noted that Ranke’s historiographical position – that the past is what happened in essence – is meant not as a philosophical generalization but as a lesson to be learned on the use of archival sources, and it should be understood as carrying with it “an abdication of the historian’s judicial-didactic role” (2011, p.372).

has little in common with the rhetorical attitude of historiographers like Francesco Guicciardini (1483-1540) – who used fictional characters as sources – and makes use of narrative to articulate the outcomes of empirical processes of research. Research is what guarantees truth, and it is this Rankean intuition that can be said to have undermined the long-held relation between literature and history and to have eventually led to the empirical turn of historical studies in the late 19th century. In order to be science, history cannot be rhetoric and literature but a well-defined research procedure that replaces tricks and fantasy with truth. Ranke may be thought of as having replaced the presentism and political bias inherent in all historical accounts with objectivity, with historiographical impartiality, rigorous examination of historical evidence, and inductive reasoning – from the particular to the general ¹¹¹.

Modern historiography is conventionally said to have begun with Niccolò Machiavelli (1469-1527), who, together with Florentine historian and diplomat Guicciardini, was esteemed as the only historian worth of note from antiquity still at the times of Gibbon and Voltaire (Trevor-Roper 2010, p.2). At a time when the ethos of the Renaissance was being exploited to undermine church texts and challenge religious authority, Machiavelli took history beyond the Judeo-Christian tradition and undermined faith in Christian teleology, thus liberating history from theology (Wilson 2005, pp.11-12). Machiavelli's and Guicciardini's histories were one-sided and politically biased; in one sentence, they aimed at showing how to win and maintain political power (Dilthey 1996, p.334). Historiography was then totally subordinated to the Italian party politics of the age. During the Enlightenment, the historical philosophy of Voltaire, Montesquieu,

¹¹¹ This, as already said, does not mean that political inclinations are not detectable in his historiographical approach, as he can be deemed a moderate conservative (Rüsen 1993, p.136). Similarly, more than a replacement of rhetoric by method, Ranke could be said to have placed rhetoric “into God's hands” and to have spiritualized it (Rüsen 2005, p.45).

Giannone, Gibbon and others eventually lead to an understanding of history no longer as chronicle of past events and battles but as history of society, as history understood as a science meant to explain social change and the progress of mankind. In the first half on the 19th century, with Ranke, and with or without his approval, it turned into something of a spectator theory of the past.

We can grasp the essence of this chapter's contentions up to this point with the aid of a quote from Hayden White's *The Practical Past*:

History writing in its origins was supposed to teach lessons and provide models of comportment for living human beings especially in the prosecution of public affairs. And this remained the case well into the eighteenth century. But in the nineteenth century, the study of history ceased to have any practical utility precisely in the extent to which it succeeded in transforming into a science. (White 2014, p.10)

The transformation of history into a science meant that the rhetorical function of history writing had to be put aside, which is highly problematic if one agrees with White that “the principal source of a historical work's strength as an *interpretation* of the *events* which it treats as the *data to be explained* is rhetorical in nature” (1978, p.3, italics in original). Rhetoric makes history interactive, in the sense that the rhetorician's task is fundamentally that of mastering the art of communicating “in such an effectively persuasive way that the arguments brought forward are always appropriate to the specific receptivity of the souls to which they are directed” (Gadamer 1976d, p.21). Rhetoric is not “mere theory of forms of speech and persuasion” (1976d, p.20) but a communicative praxis in which human linguisticity is truly universal in form. In rhetoric as in hermeneutics, “theory is subsequent to that out of which it is abstracted; that is, to praxis” (1976d, p.21), and it is the ubiquity of rhetoric that allows science to be “a sociological factor of life” (1976d, p.24). Only through rhetoric is science a valuable force, in that “all the representations of science that are directed beyond the mere narrow circle of specialists...owe their effectiveness to the rhetorical element they contain” (1976d, p.24).

Granted this, the revitalization of rhetoric becomes an important part of the task of confronting the technical and technological tendencies of contemporary social-scientific thought.

Historicity in Historiography

In the first decades of the 20th century, there was no academic consensus as to what role history had to play for life or politics and as to whether history had to be regarded and practiced as a science and not as an artistic mode of representation or as a literary capacity. The idea that the past could be showed to be ‘what actually happened’ did not fade away with the last century, nor did the idea that the past is, in one way or another, useful and beautiful. Up until the 19th century history was strongly and ubiquitously regarded precisely as something like literature, while it has since then become, not without any resistance, more and more of a kind of ‘truth’. In 1877, William Stubbs (1825-1901) – considered by most the initiator of British academic history – sat in front of a University Commission in his capacity as Oxford Regius Professor of Modern History and spoke thus:

I am opposed to having a professorship or lectureship in literature connected with the Historical Schools. I think that to have the History School hampered with dilettante teaching, such as the teaching of English literature, must necessarily do great harm to the school. (cited in Parker 1979, p.165)

It may seem comical that the paper citing such a statement was published in the academic journal *Literature and History* – which has been publishing since 1975 – but there is no irony in this; the ambiguity of the symbiosis between history and science that materialized in the last decades of the 19th century can be detected all throughout the 20th century.

In Theodore Roosevelt’s *History as Literature* (1913), the 26th President of the United States admitted that no literary capacity was needed to carry out a great deal of historical research, that unscientific history was unwarranted and indeed that in the future

this was going to become more and more evident, and that history had to welcome the entrance of all sciences into its domain. Yet, he contended that historians should also have the power “to embody ghosts, to put flesh and blood on dry bones, to make dead men living before our eyes” and ultimately “the power to take the science of history and turn it into literature” (1913, p.6). The historian had to be a moralist without torturing facts to support certain views, deal with common things and be able to “paint for us the plain people, the ordinary men and women” (1913, p.27). The historian, Roosevelt believed, had to “bring the past before our eyes as if it were the present” (1913, p.32). It is in this spirit that in the 1970s, while many historians were transitioning into using analytics methods from economics, sociology anthropology and so on, many moved in the opposite direction – towards the exaltation of narrative and narration ¹¹². In addition to the question of scientificity – the question as to how much of a science history can really be – early 20th-century historiography had to deal with the logical conclusions drawn from the ‘discovery’ of historicity. In ‘The Continuity of History and the Existential Moment’, Gadamer (1972, p.232, italics in original) argued that “the problem of history [*Geschichte*], lies in the concept of historicity [*Geschichtlichkeit*]”, a concept which expresses “nothing about the relationship of events – that it really was so – but rather states something about the mode of being of man who is in history”. Historians are themselves agents of history as well as its artefacts, so that “something of the historicity

¹¹² This point is argued quite forcefully by Lawrence Stone (1979) who observed that in the 1970s, parallel to a rise in popularity of social-scientific methods in historical studies, a revival of narrative also occurred:

Historians have always told stories. From Thucydides and Tacitus to Gibbon and Macaulay the composition of narrative in lively and elegant prose was always accounted their highest ambition. History was regarded as a branch of rhetoric. For the last fifty years, however, this story-telling function has fallen into ill repute among those who have regarded themselves as in the vanguard of the profession, the practitioners of the so-called “new history” of the post-Second-World-War era... Now, however, I detect evidence of an undercurrent which is sucking many prominent “new historians” back again into some form of narrative. (Stone 1979, p.3)

of the historian's own understanding is already at work in his choice of objects and in the rubrics under which he places the object as a historical problem" (1976c, p.48).

In the history of professional historiography, perhaps no event is more remarkable when it comes to the historicity of the historian's experience than Carl Becker's delivery of his famous 'Everyman His Own Historian' presidential address to the *American Historical Association* in the Minneapolis of the early 1930s. In that address, Becker articulated a relativist historiography centred on the subjectivity of historical facts and on the idea that history springs from the historian's imagination, themes that were being discussed at roughly the same time by British philosopher Michael Oakeshott in *Experience and its Modes*¹¹³. "If the essence of history is the memory of things said and done", proclaimed Becker (1932, p.223), "then it is obvious that every normal person, Mr. Everyman, knows some history". Becker was attacking the tradition of scientific history that since the 1880s insisted on treating the study of history as a science of investigation modelled on the natural sciences. Against the idea of an objective history monopolized by historical scholarship, Becker asserted that every historian is a Mr. Everyman:

History as the artificial extension of the social memory...is an art of long standing, necessarily so since it springs instinctively from the impulse to enlarge the range of immediate experience; and however camouflaged by the disfiguring jargon of science, it is still in essence what it has always been...The history written by historians, like the history informally fashioned by Mr. Everyman, is thus a convenient blend of truth and fancy, of what we commonly distinguish as 'fact' and 'interpretation'. (Becker 1932, p.231)

There might be more suitable historiographical dichotomies than that between Becker and Oakeshott when it comes to understanding present-centredness and the use of the past, but it is noticeable that whereas both believed that the past of history is, in the last instance, the historian's ideas, they differed in that Becker was convinced that history

¹¹³ In that work, Oakeshott argued, among other things, that history is the historians' experience and that "the historical past is not a *part* of the real world" ([1933] 1966, p.118, italics in original).

should be understood as ‘a kind of screen’ used by collectives – i.e., by entire generations – to project a certain ‘vision of the future’ while Oakeshott maintained that history has no practical use *at all*, that when history and practice are mixed together nothing good can come from that mix. Becker was influenced by the work of his teachers J. H. Robinson and F. J. Turner and came out public about his view that the past should be useful to the present. He was sceptical about the possibility of having history leading to social reform, and rather believed that history was a social instrument that would liberate the human mind. Oakeshott ([1933] 1966, p.105), on the other hand, strenuously argued that “whenever the past is regarded as a storehouse of political wisdom...whenever the past is seen in specific relation to the present, that past is not the past in history”¹¹⁴.

Despite their different takes with regards to historical understanding, Becker and Oakeshott are representative of a historic intellectual trend, quite noticeable in the first half of the 20th century, that concerned itself with the relation of historical thinking to present experience. Not simply in the sense that the past in history is an assemblage of ideas in the present – that historical facts are present data. In fact, this is a point Heidegger had already made a decade earlier in his famous ‘Phenomenological Interpretations with Respect to Aristotle’:

The situation of the interpretation, of the understanding appropriation of the past, is always the situation of a living present. History itself, the past which is taken on in understanding, grows in its comprehensibility with the primordially...of the decisive choice and formation of the hermeneutical situation. The past opens itself only according to the resoluteness...and force of the ability-to-lay-open...which a present has available to it. (Heidegger [1922] 1992, p.358)

The late 19th century and early 20th century proliferate with prominent thinkers preoccupied with the study of the present and the utility of history. From Dilthey’s critique of historical reason, Nietzsche’s reflections on the historicity of the subject and

¹¹⁴ See (Klein 1985) for a sustained treatment of Becker as historiographer and Dray (1968) for Oakeshott’s theory of history.

Heidegger's history of 'beyng' to Gentile's actualism, Croce's pragmatic historicism, Febvre's interest in contemporary society, Ortega Y Gasset's doctrine of a possible anticipation of the future – in short, this was a time when, as Dutch historian Johan Huizinga (1872-1945) would have put it, history was entering our very blood. In his 1924-1925 lectures at the University of Marburg on Plato's dialogue *The Sophist*, Heidegger proclaimed that the past we seek access to is not separated from us but rather "we are this past itself" and that understanding history means understanding ourselves today – "not in the sense that we might establish various things about ourselves, but that we experience what we *ought* to be" (1997, p.7, italics in original). Historical inquiry is what concerns *us*, not the past *per se*, Heidegger would have argued – but some would have taken issues with this view. Michael Oakeshott and Benedetto Croce, for example, agreed on the present-oriented nature of historical inquiry but, at the same time, doubted that history could be put unproblematically at the service of present practical purposes.

Oakeshott on History and the Practical Past

In *Experience and Its Modes*, first published in 1933, Oakeshott – philosopher and a political theorist interested, among other subjects, in the history of science and the philosophy of history – approached the question on the relation between past and present from the perspective of an idealist conception of philosophy as escape from practice rather than as gospel of human action. In his view, philosophy had no direct bearing on practical life; philosophy is a mood, and philosophical experience is sought for its own sake. The philosopher is "the victim of thought" ([1933] 1966, p.2) and, "instead of a gospel", said Oakeshott (1966, p.3), "the most philosophy can offer us (in respect of practical life) is an escape"¹¹⁵. If one looks at modes of experience such as the historical, the scientific

¹¹⁵ This is quite evidently a classical conception of philosophy, philosophy as *theoria*, where the philosophers feature as distant spectators indifferent to the present, as *absences* in the Assembly.

and the practical modes of experience, what one finds is that they are worlds of ideas, mental variations and modifications of present experience. Taking history as an example, Oakeshott disputed that it consists of past experiences alone and not of present thoughts and ideas. History is not a ‘series’, a ‘sum’, or a ‘course of events’ independent from experience – indeed, nothing can be independent of experience. To say that history is a world of facts is to say that it is a world of ideas, and there is no difference between history as it happened and as it is thought in the present.

History, Oakeshott (1966, p.93) argued, “is experience, the historian’s world of experience; it is a world of ideas, the historian’s world of ideas”. History is a way of experiencing past events *today*, at that moment in time when past events co-exist in the historian’s mind in the form of present ideas. This led Oakeshott to believe that a distinction must be drawn between the historical past and the practical past. The practical past is past that is sought in the present, the past that often serves politics or religion, that uses the language of history but the thought of practice, the past that is referred to in order to justify and validate practical beliefs about the present. “To seek in legend and in myth, in saga and in religious biography, or in ‘the birth of nationalism’, the dawn of historical consciousness”, Oakeshott (1966, p.105) maintained, “is to commit ourselves to a misconception which can only lead us farther astray the more faithfully it is followed”. The practical conception of the past might have been bequeathed to the Christian world by Judaism. The Hebrew, in Oakeshott’s view, had no awareness of the historical past ¹¹⁶.

It is likely that Oakeshott broadly failed to persuade his contemporaries precisely because of the anachronistic nature of his classicist and idealist philosophy, which, at a time when pragmatism was conquering the minds of many across the Atlantic, was seen as a decadent attempt – the first publication of *Experience and Its Modes* took decades to sell out, and only starting in the 1960s did Oakeshott receive a noticeable amount of attention from historical scholarship.

¹¹⁶ Oakeshott (1966, p.127) went as far as denying the Hebrew “any proper historical consciousness”, saying that, by accepting the notion of ‘God in history’, they had allowed the practical past to intrude the historical past and to bring chaos in the world of historical experience.

Not unlike other peoples of the time, they regarded the past to be fundamentally *their* past; they were concerned with the way the past was alive in their people. History to the Hebrew was saga, mythology, “an effort to make actual and impressive their beliefs about their present world and about the character of God” (1966, p.104). While the Greeks were reluctant to revive the past to add value to the divinities of their imagination, the Hebrew imagination was constantly captive to referencing the past for that very same purpose. Not that they disillusioned themselves by imagining a purely fancied past, for the power to capture the imagination inherent to their religious narratives was predicated precisely on their being true, on their being faithful representations of what actually happened in the past. Rather, religious narratives inspired the Hebrew to extract from the past what was sought practically in their present experiences, to use the language of history to express their religious desires and to give their own beliefs the force they thought they deserved.

The past for history, differently from the practical past, can be thought of as the past for its own sake; “history is the past for the sake of the past” (1966, p.106). Historians deal with a past that is dead and that is unlike the present and seek to cast light on a past that is independent of the present, that is not seen in terms of the present. This version of the past, which sounds much like a Rankean conception, is for Oakeshott only explicative of what the past is *for* history and not *in* history. To assume that the past is something fixed and finished in its independence from present experience is to admit that the past is something we have no evidence of, something unknowable to the human mind. Rather than ‘what really happened’, then, the past is *what evidence in the present obliges us to believe*, not least because the facts of history are facts of the present. It is deceiving to think that two worlds exist at once – a world of past events and a world of present understandings of those same past events; “there is only one world, and it is a world of

present experience” (1966, p.108). The historical past is a present world of ideas, and the past ‘in’ history is always an *inference*, the outcome of judgments derived from the historian’s present world of experience. Oakeshott knew that this constituted a paradox, for he was essentially saying that the historical past is, in the last analysis, not past. As a matter of fact, Oakeshott invited us to take this paradox absolutely: “It is not merely that the past must survive into the present in order to become the historical past; the past must *be* the present before it is historical” (1966, p.109, italics in original).

Oakeshott was not just regurgitating the popular historiographical wisdom of his times; that all history is, after all, ‘contemporary’ history. To him, the historical past was indeed present, but peculiarly so:

The historical past does not stand over against the present world of experience, as a separate tract of experience; on the contrary, it is a special organization of that world, it is the organization of the totality of experience *sub specie praeteritorum* [under the aspect of elsewhere]. The historical past is always present; and yet historical experience is always in the form of the past...History, because it is experience, is present, its facts are present facts, its world a present world of ideas; but because it is history, the formulation of experience as a whole *sub specie praeteritorum*, it is the continuous assertion of a past which is not past and of a present which is not present. (Oakeshott 1966, p.111, italics in original)

The past in history is not to be taken to be an element of the real world, for it is the whole of reality under the aspect of elsewhere, it is “the whole of reality subsumed under the category of the past” (1966, p.118). This makes history an abstract entity and a defective mode of experience; as Oakeshott claimed, “its form contradicts the nature of its content” (1966, p.146). History is not an extension of present experience but a modification of it, it is “an arrest in experience” (1966, p.148), or even a ‘mutilation’ of present experience that deforms and limits the present by subsuming it to the category of the past. History, Oakeshott concluded, does not lead anywhere; it consists of abstractions and is, from an experiential standpoint, an error. Contrary to those who, since at least the times of Cicero, thought that the very purpose of history was that of being life’s teacher, he argued that historical knowledge does not extend present experience and therefore cannot enrich it or

improve it. The historical mode of experience is irrelevant to practical life and “whenever history finds itself joined with practical experience, the result can be only the destruction of both” (1966, pp.157-158). The world of history and the world of practice are distinct arrests in experience, different alterations of experience and, in Oakeshott’s view, there could be no relation between the two ¹¹⁷.

Oakeshott’s conception of history was all but well received in the first half of the 20th century. By way of example, the historiographical contentions of someone like German theologian Ernst Troeltsch (1865-1923), with whom Oakeshott took terms in *Experience and Its Modes*, are vastly more representative of the general attitude of the time towards the nature of historical thinking in Europe. In *Protestantism and Progress*, Troeltsch (1912) stated that all sciences, including history, are to be thought of in their relation to the thinking minds that conceive them. This means that there is a constant obligation to return to present experience every time an explanation or understanding of the past – or of phenomena in general – is sought. As a matter of fact, Troeltsch (1912, p.3) believed that “the understanding of the present is always the final goal of history”. History is the entirety of human experience, and it has no higher purpose than that of being applied to present existence. History is the insertion of the *particularity* of the present into the *generality* of the course of things for the sake of a better understanding of the future. This early-20th century idealization of historical practice captures the spirit

¹¹⁷ Later in his life, Oakeshott (1962) doubled down on his thoughts on history in his now-famous essay ‘The Activity of Being an Historian’. There, he proceeded once again to demonstrate that the past is “a certain way of reading ‘the present’” (1962, p.147) and to show that the task of the historian is thus “to create by a process of translation” or to understand past deeds and occurrences “in a manner in which they were never understood at the time; to translate action and event from their practical idiom into an historical idiom” (1962, p.164). Past events are present evidence, the outcome of a process of understanding present occurrences “as evidence for happenings that have already taken place”. Hence, according to Oakeshott, the past is “a certain sort of reading of the present” (1962, p.150) and the activity of being an historian consists in studying past events for their own sake (1962, p.155), even though the historian never does anything other than understanding present events as evidence for past happenings.

in which Febvre wrote the first lines of his inaugural review for the opening of the *Annales* in Strasbourg in 1929: “While historians are applying their tried and true methods to the documents of the past”, wrote Febvre, “greater and greater numbers of men are devoting their energies, though not, on occasion, without a certain feverishness, to the study of contemporary societies and economies” (cited in Braudel [1969] 1980, p.18).

Croce’s Practical Philosophy of History

Though many would consider them idealistically inflated historiographical exaggerations, Oakeshott’s views on the relation between history and practice were somehow shared by Italian philosopher, historian and politician Benedetto Croce (1866-1952), who maintained in *Theory and History of Historiography* that practical history – or *practicist* history, as he sometimes called it – was, effectively, not history (1921, p.43). Croce also shared with Oakeshott an idealist understanding of history as being fundamentally the historian’s ideas – his way of saying this was that *there is no history without narrative*. History for Croce is representation and construction of what actually happened, therefore history is doomed without philosophy, which “cannot of necessity be anything but the *methodological moment of historiography*” (1921, p.151, italics in original). Relatedly, Croce agreed with Oakeshott that there are not two distinct worlds, one of past events and one of present understandings, for facts are historical insofar as they are thought, and no distinction can be drawn between historical and non-historical facts, nor between history proper and theory of history. The historical past and historiography are both the work of a thinking mind, and the thinking mind is always in the present. Croce asserted that ‘real’ history was history in the act of thinking and, therefore, that contemporaneity was “not the characteristic of a class of histories” but rather “an intrinsic character of every history” (1921, p.14). One should not distinguish between contemporary and non-contemporary history but at best between history and

chronicle; as Croce (1921, p.19) put it, “history is living chronicle, chronicle is dead history”. History begins with documents – with life – and with criticism – with thought. These being the two elements of historical synthesis, all history, contemporary and ancient, springs from “an interest in the life of the present” (1921, p.12) that moves us to investigate the past. “[The] collecting of dead documents and writing down of empty histories is an act of life which serves life”, said Croce (1921, p.24), and even in a scenario where an infinite number of infinite histories were available for our satisfaction, we would have no choice but *forget them* and “concentrate upon that particular point alone which corresponds to a problem and constitutes living, active history” (1921, p.54), or else, contemporary history.

Instead of a differentiation between historical and practical past, as in the case of Oakeshott, in Croce the distinction is between chronicle as practical and mnemonic function and history as knowledge of the *eternal* present (1921, p.61), a distinction that Croce analysed both conceptually and historically at a time when Giovanni Gentile (1875-1944) was also working on an *actualist* theory of history revolving around the idea that history belongs to the present ¹¹⁸. History, simply put, is living history, that is,

¹¹⁸ Gentile was ‘the philosopher of Fascism’. He advanced an idealist, culturally modernist, actualist philosophy of history centred on the notion of history as eternal becoming. As H. Wildon Carr (1857-1931) explained in the introduction to Gentile’s *The Theory of Mind as Pure Act*:

“Actual” means that it is the idealism of to-day, not only in the sense that it is latest in time, the most recent and modern formation of the principle, but in the meaning that the history of philosophy has itself imposed this form on present thought. But “actual” means also that it is the idealistic concept of the present, the concept of an eternal present, which is not an exclusion of times past and times future, but a comprehension of all history as present act determined by past fact, eternal becoming. (Carr 1922, pp.xii-xiii)

While Gentile’s historical thought was much in line with Croce’s presentism, Guido de Ruggiero (1888-1948), Italian politician and historian of philosophy, took issue with both because of their ‘actualism’ and went on instead to build a historiography that would do justice to history by distancing past and present. For Croce and Gentile *contra* de Ruggiero see Peters (2013), who analysed quite in detail the way in which all three ultimately held the conviction “that the past is not dead, but living” (2013, p.630). On Gentile, actualism and Fascism see Fogu (2003).

contemporary history, while chronicle is past history and comprises philological, poetical and practicistical history. History is at its core an act of thought, while chronicle is an act of will, and though every history is fated to become chronicle the moment it is no longer thought, the general development of a historical consciousness was, according to Croce, marginalizing erroneous forms of history and guiding real history away from non-histories:

It will be thought that the clearness acquired by the historical consciousness as to the nature of its own work will at least avail to destroy the erroneous forms of history, that since we have shown that philological history or chronicle is not history, and that poetical history is poetry and not history, the 'facts' that correspond to those beliefs must disappear, or become ever more limited in extension, to the point of disappearing altogether in a near or distant future, as catapults have disappeared before guns and as we see carriages disappearing before automobiles. (Croce 1921, pp.47-48)

Croce tried to demonstrate this point by surveying the development of the theory of history from Graeco-Roman times to his days. In the process of doing that, he espoused a humanistic vision of history and the doctrine of the positivity of history. In his view, since historical thought originates in contemporaneity and in present interests, historical knowledge has a correspondence with the practical needs of the present moment. To him, as Peters (2013, p.112) rightly pointed out, contemporary history meant "history which stems from practical needs in the present" and relieving the past was an act of thought which could not be detached from the practical interest of life. Non-histories and pseudo-histories often emphasise a practical necessity through narrative, but this was judged as nonsensical by Croce precisely because history cannot but be constructed with the end of solving present practical problems; trying to make history more useful than *that* could not but be an exercise in historiographical redundancy.

Pseudo-histories like philological history, which Croce understood as "the pouring out of one or more books into a new book" (1921, pp.27-28), were popular at the time of the Renaissance and failed when serving as basis for action because they implied the absurdity that practical matters could be elucidated via a process of 'transcription'.

Similarly, the metaphysical philosophies of history of Enlightenment thinkers such as Vico, Hegel and others – who engaged with history to make it more useful or more respectable by reducing its course to pure concepts – were not real histories to Croce. In the Romantic era, nostalgic historiographies wrongly fomented action by appealing to sentiments and, more broadly, ‘pragmatic’ histories – popular all throughout our past since the beginning of written records – are written with specific practical ends in view instead of being genuine pursuits of historical truths. By arguing that the object of historical inquiry is the present and not the past and that the real past sits in the historian’s mind, Croce was able to refute those agnostics in historiography who claimed that the past is unknowable and inaccessible. He championed the idea that doing history necessarily involves bias and that, therefore, historical knowledge is always uncertain; being a product of the mind’s workings over the problems of our practical present, it inevitably terminates somewhere in the region of ‘what needs to be known’ at this or that moment in time rather than in the vicinity of historical truth. To put it in different terms, Croce attempted to put an end to the debate on the use and usefulness of history by equating the past to historical thinking and by showing that history is always history of the present ¹¹⁹.

Croce was not saying that historiography and theories of history have to be present-oriented rather than past-oriented, but rather – much like Febvre and Bloch in France – that there is only one kind of history, history in the present tense. Aided by the metaphysical doctrine of the contemporaneity of the past, Croce abolished the temporal division between past and present, between thought and reality – and ultimately between thought and action – to finally identify history proper with *self-consciousness*. The world

¹¹⁹ A systematic exposition of most of the points made above and of Croce’s philosophy of history in general can be found in Peters’ (2013) *History as Thought and Action*.

is our evidence and, within a Crocean framework, “the scientist, the philosopher, and even the artist are all historians to the extent that they are aware of their own activities” (Peters 2013, p.115). This seems to echo Carl Becker’s notion that ‘everyman his own historian’, but Croce was no advocate for a relativist historiography – for he actually urged us to conceive of the relation of history to life not as one of relativity but as one of *unity* – and, as he explained in some autobiographical notes written in 1934, the point of his historiographical efforts in *Theory and History of Historiography* was to show that the true nature of history is that of being contemporary, that is, of being born from the intellectual and moral needs of present experience (Croce 1956, p.357). Croce’s philosophy can be taken to be “a vindication of the empirical sense of the notion of the living past” (Peters 2013, p.630). Throughout his life, he constantly searched for tangible traces of the past in the present and regarded knowledge of the past as indispensable for practical purposes:

Croce regarded reality as a construction of historical thought; reality is a product of the historical way of looking at things. In this reality there is no place for a transcendent God, an extramundane will, or ‘providence’, but only for human action, which is completely transparent to historical thought. The highest aim of historical thought is therefore ‘historical catharsis’, which ‘liberates’ man from the burden of the past. With this theory Croce drew his idea of the living past to its ultimate practical consequence: mankind has to think historically in order to live. (Peters 2013, p.630)

Though seemingly counterintuitive, it would be a mistake to read Croce as being a proponent of practical history himself – but it is possible to regard his philosophy, as that of Gentile, de Ruggiero and Collingwood, as a kind of ‘pragmatic historicism’.

Croce was in favour of practice in life, not in historiography, and though history cannot but be history of life, though the past “does not live otherwise than in the present” (1921, p.91), the historian’s engrossment with the past constitutes a theoretical, not a practical activity:

The history of historiography is neither *literary* history nor the history of cultural, social, political, moral doings, which are of a *practical* nature, but that it is certainly all of these things, by reason

of the unbreakable unity of history, though with it the *accent* does not fall upon practical facts, but rather upon *historiographical thought*, which is its proper subject. (Croce 1921, p.171, italics in original)

Croce (1913) had already elaborated on many of these points in his *Philosophy of the Practical*, his major contribution to ethics and the philosophy of the spirit. Croce took spirit to be the whole of reality manifesting itself in two possible forms; the theoretical and the practical. Practical activity refers to the activity of the will – as in Oakeshott, whom understood practical experience as experience *sub specie voluntatis*, or experience under the aspect of the will – and while with theoretical activity the world can be understood, with practical activity it can be changed. Up to the 19th century, historians were unafraid to practically engage with history and often their public role as orators and teachers of virtue almost required it. With the advent of modern source-based history, however, this practical or pragmatic approach to history was put into question. Rhetorical accounts of the past, whose truth lied in political science and the *ars oratoria* and not in the historical past, started to be looked upon with suspicion, being now considered poetical and oriented towards calculated ends. These ‘useful’ histories were downgraded to the ranks of half-histories stuck in the middle of poetry and ‘practicism’ – they became abuses of history, antiquated attempts to exploit history failing to appreciate that the use of history is *history itself* (Croce 1921, p.280). Ultimately, Croce agreed with Meinecke that, although history is inseparable from philosophy and politics, this should not come at the expense of historiography.

New History and the Science of the Present

Croce’s and Oakeshott’s thought helps us further clarify the nature of the relationship of history with science and politics at the beginning of the 20th century. This was a time when advances in science were making room for prophecy in history, as seen in chapter 2 with the Social Science Movement in the United States and in chapter 3 with French

social historians such as Febvre and Bloch and their work at the *Annales*. At this point in the history of Western historiography, the interaction of historical and scientific ideas that underpins historical social science today can be seen in its primordial form. In France, in 1900, Henri Berr (1863-1954) founded the journal *Revue de synthèse historique* to provide a platform for interdisciplinary history at a time when the discipline was becoming increasingly compartmentalized and specialized – a basis meant to allow for the articulation of a new synthesis for the science of history. In the programmatic statement of the journal, Berr proposed that “sociology, to establish itself as a discipline, must be primarily a study of what is social in history” (1973, p.252). Similarly, in Germany, already in the 1890s, Karl Lamprecht (1856-1915) incorporated cultural and social dynamics in his studies of history. Lamprecht’s historical writings were characterized by an interest for human activities in their social relations and by a curiosity to discover through inductive methods the historical regularities behind the shaping of the present (Chickering 1993).

Lamprecht, who was arguably the most famous historian in Wilhelmine Germany, made headlines in the late 19th century for writing a *new history* that “recognized in past centuries conditions and problems like those which attract most attention at the present time” (Dow 1898, p.431). In view of Lamprecht’s innovative work, ‘new’ history came to be understood along the following lines:

The new history takes into account all the activities of man as a social being...It recognizes as the essentials in historical life certain natural, individual and social-psychic factors, whose nature, transformations and mutual relations form the civilization of any given time. The new history...holds to the principle of describing the human past from the point of view of rational evolution...By adhering strictly to inductive methods, it hopes to trace at last just how the world of men and of nations has grown into what it is to-day and so to put into the hands of philosophy trustworthy, scientific conclusions. (Dow 1898, p.448)

Like Berr in France and F. J. Turner (1861-1932) in the United States ¹²⁰, Lamprecht was not following Henry Thomas Buckle's attempts to develop accounts of historical development based on natural laws. In his view, the use of analytic techniques was necessary in historical research to carry out a function that narrative could not fulfil; that of constructing a psychological typology of collective mentalities. Influenced by the new perspectives of the social sciences of the 19th century like sociology, biology and psychology, Lamprecht wanted to discover the historical laws of national psychological development, to then systematize such laws in a comparative universal history.

While historians in Germany were dealing with Lamprecht's and Dilthey's attempts to synthesize history and psychology, in the United States some, inspired by the development of the Social Science Movement, were working on the development of a social-scientific approach to history geared towards social reform and underpinned by historical presentism (Saveth 1964, p.7). This was new history in the United States, where the term came to be popularized thanks to the publication of J. H. Robinson's *The New History* in 1912. Robinson imagined a historical method fully informed by the discoveries of anthropology, economics, psychology, and sociology (see Burke 2001). For Robinson, history had a chief task – “to help us to understand ourselves and our fellows and the problems and prospects of mankind” (1912, p.17). This was not a cheap allusion to Cicero's *historia magistra vitae*, to the ancient idea that valuable lessons can be derived from the past, for in Robinson's view this kind of usefulness of history was actually illusory. If a universal knowledge of the past was achieved, Robinson argued, this would

¹²⁰ Turner's seminal essay 'The Significance of the Frontier in American History' – published in the Annual report of the *American Historical Association* in 1893 – presented the American frontier as “the meeting point between savagery and civilization” and “a fertile field for investigation” (1893, p.200). The essay permanently altered the course of American studies of history by interpreting institutional changes in the country as responses to social, environmental and geographical factors.

furnish not *precedents* of conduct, but a perfect comprehension of the *present* – founded on a perfect knowledge of history – upon which to base conduct and, in this sense, history may be viewed “as an artificial extension and broadening of our memories” which may be used “to overcome the natural bewilderment of all unfamiliar situations” (1912, p.20). In this lied the practical value of history, not in its exemplary content but in its allegiance to the present:

The present has hitherto been the willing victim of the past; the time has now come when it should turn on the past and exploit it in the interests of advance. (Robinson 1912, p.24)

As shown in previous chapters, the attitude of the new historians of North America towards the interplay between history and science for the sake of the present had counterparts on the European continent and reflected a broader dilemma about the social function of modern historiography that was bothering historians at the end of the 19th century.

Around 1900, the relationship between history and science was at a critical juncture, and the new history reflected a desire for new orientations in historical scholarship. Exactly in the year 1900 died Moses Coit Tyler (1835-1900), the first professor of American History in the United States. Invited in 1881 to Cornell to fill this historic first professorship, Tyler personified a transitional stage between his romantic predecessors – like Sparks and Bancroft – and the new scientific history with which he was not exactly comfortable (Kammen 1983, p.72). At the time of Tyler’s death, the 19th-century paradigm of historical studies, which originated in Germany with the educational reforms initiated by Wilhelm von Humboldt and the founding, in 1810, of the University of Berlin where first Niebhur and later Ranke took historical research to a higher level,

was seriously put into question for the first time ¹²¹. With historical scholarship on the verge of becoming a professionalized discipline – a process officially started with Ranke but effectively consolidated in the 1880s – the desire for a science of history grew stronger. Historians were seeking identity and independence – we might even say professional identity and financial independence – as they had to cope with the rise of various sciences like Franz Boas’s cultural anthropology, Freud’s psychoanalysis and Durkheim’s sociology at the same time that they had to compensate for the failures of Auguste Comte, Buckle and others to formulate laws of history.

It was at this point in the history of Western historiography that a synthesis between history and social science became intelligible. Rankean historiography started to be flanked by social-scientific approaches to history like new history and social history, and historicism came to be confronted by presentism. The historiographical ideal of doing history ‘with both eyes on the past’ morphed in part into a willingness to treat history as a science of the present. But the scientific applications of historical knowledge advanced by new and social historians in the early 20th century did not prevent the modern science of history from becoming an increasingly specialized and compartmentalized form of knowing. And today, when it comes to understanding the historical study of crime and its place in the history of Western historiography, there would be no less ambiguous way of defining it than by saying that the historical study of crime is a history specialization.

The Iron Cage of History Specializations

¹²¹ As Burke (1992, p.15) noted, though Ranke was still the terminus of historical studies in Germany around 1900, in the United States the prospects for a new kind of history received more favourable reactions. Also see Iggers (1962) for a comparative look at Ranke’s influence of German and American historians of the time.

Crime history – when understood as a history specialization – combines, at one level, historical and social-scientific methods and, at another level, history and social life. Even a superficial look at the historical study of crime makes clear that it is hard to imagine what contemporary crime history would be like without some knowledge of statistics and quantification, of demography and psychohistory, of sociological models like modernization and social-control theory and psychological notions such as that of collective mentality. But this should not distract from the fact that the emergence of a historical discourse on crime and criminal justice may also have to be located beyond the synthesis of history and social science and within a broader attempt to write a total history of mankind, a history of every aspect of human life – in other words, to pursue a scientific application of history as science of the present. That pursuit was the ultimate historiographical aim of the new and social historians of the early 20th century. Yet, when one speaks of new history today, much of the historical background offered in this chapter simply fades away. In fact, it is fair to say that only in the 1970s and 1980s did the labels ‘new history’, or even ‘social history’ and ‘new social history’ begin to be associated with an approach to the past that was able to provide alternative routes to research and writing to the ones furnished by conventional Rankean historiography.

Today, by new history one probably means the kind of histories of Asa Briggs, Natalie Zemon Davis, Keith Thomas, Carlo Ginzburg and Quentin Skinner (see Pallares-Burke 2002). The term is often also more broadly invoked to awaken the spirit of the *Annales* and the French social history of Lucien Febvre and Marc Bloch and of their disciple Fernand Braudel. This make a good deal of sense, since French social history is characterised, like American new history, by a special interest in the social dimension of human existence, in social-scientific methods, and in contemporary issues and social problems. The unique features of these two kinds of history are not to be erased by treating

them as one but, at the level of concepts, some have felt entitled to use these two terms – ‘new history’ and ‘social history’ – interchangeably and in juxtaposition to the historical tradition of the 19th century, i.e., to Ranke. Going along with such a strategy for a moment, new or social history can be broadly understood as a historical approach that is scientific and interdisciplinary and that looks predominantly at social – as opposed to political, economic, military, etc. – phenomena in their historical multidimensionality through analyses and not only through narratives. The space that separates conventional 19th-century history and new history is not insignificant, and we could summarize the various ways in which new history may be said to differ from conventional history as follows; with new history, the explicit concern with the political is replaced by a much more encompassing concern with virtually every human activity and aspect of human life. Reliance on narrative, on stories about events, is balanced with scientific analyses such as the analysis of structures and with theoretical models. Historiography shifts away from being a state-friendly and often state-sponsored methodology to embodying a bottom-up orientation towards the past. Documents as the only valid sources of historical research become only one kind of source among a greater variety of types of evidence (oral, visual, statistical, quantitative, etc.). A united vision of history is challenged by a fragmentary one, and the objective ‘voice of history’ is confronted by a cultural relativist *heteroglossia*, a diversified conglomerate of varied and opposing voices ¹²². Lastly, the past as territory owned by professional historians becomes the analytic object of interdisciplinary and multidisciplinary inquiries and projects (Burke 2001, pp.3-6).

¹²² This is demonstrably a more recent aspect of new history, however, precipitated by the 1960s and postmodernism and not an inheritance of the American new history of the early 20th century just discussed. The new historians of the 1970s and 1980s might have denied quite uniformly that there is such thing as ‘the’ past, but many of the American new historians shared the classical modern view that past, present and future are indissoluble, and in many ways extended the classical traditions of total and universal history.

To the extent that social history and new history help us shape the world in our own image from the bottom-up, they are distinctively modern, i.e., *active*, in the sense of being part of the modern project for the construction of a secular, scientific and historical world. To the extent that they correspond to practices of the people and not of the authorities, they are linked to the spirit of 1789 and the Enlightenment and are present-centred in the sense of being antiauthoritarian and biased towards freedom. Democracy, said Robespierre (1974, p.4), is that state of government in which “the sovereign people, guided by laws of their own enacting, do themselves all that they can do well, and by means of delegates all which they cannot do themselves”. Is it possible to think of a new historian that aspires to this democratic ideal, to think of the new historian as a *delegate* of democracy, where the delegate, however, is a social partner and not a social technologist? This way, the working function of the new historian coincides with the activities of a political agent and a responsible moral self. The productive potentiality of history matches the needs of the present, the historian’s poiesis is balanced with praxis, job is reconciled with civic duty, labour becomes subject. The new historian finds a source of professional subjectivity in a set of meaningful human operations. But to the extent that new history and social history are also sciences, they fundamentally agree with the premise that science is not ‘theory’ as the Greeks understood it, it is no contemplative life but active life, doing and making things instead of contemplating them. This is obvious in one sense; science is a means of production, one of mankind’s productive powers (see Horkheimer 1972, pp.3-9) and since the first industrial revolution at the end of the 18th century science has become, as Lyotard (1984, p.45) finely put it, “a moment in the circulation of capital”. Scientific historians are artisans by nature, but the new historian is an artist by choice. New history and social history cannot but be the artistic choices of productive subjects and the deliberative stances of active political participants at the same

time – because fundamentally new history and social history, like crime history and historical criminology, are modes of acting in the workplace, they represent what certain ‘citizens’ do in their capacity as ‘workers’.

The social sciences have been created as a response to social change, as institutions of modernity suited for the management of the rapidly changing conditions of modern life. In many ways, they have acted much in the way in which the disciplines function in a Foucauldian sense, as “systems for the control and delimitation of discourse” (Foucault 1972, p.220). ‘New history’, ‘social history’ and ‘total history’ may be deemed to be ancestors of historical social science, of that convergence between an increasingly social-scientific history and a social science that increasingly understands itself as historical – as in Thompson’s crime historiography and Gergen’s social psychology. A new history is a history informed by and actively relying on new scientific perspectives, namely, the new perspectives highlighted by the social sciences since the 19th century. Social history is new history; a social history is a history that takes all such new social perspectives and combines them in a total way, like Fernand Braudel ([1963] 1994) did when writing a history of civilizations from the point of view of geography, sociology, economics, and collective psychology. Social history, that is, is total history. A total history allows for a total appropriation of history by social science – a frightening perspective for some historians since this would leave a final and definitive crack in the on-going fragmentation of historiography (Megill 1991) ¹²³. This means appropriation of a stable field of operations, a stable set of objects for the study of history, society and social change. It means turning *all* history into social history, and therefore social history into “all history from the social point of view” (Perkin 1953, p.59). To put it differently,

¹²³ This could also be interpreted positively as an ascendance of history above all others social sciences, were history “would be the queen of the social sciences by virtue of its ability to assimilate everyone else’s methods and topics” (Appleby, Hunt & Jacob 1995, p.82).

total history allows the social sciences to penetrate the historical dimension of all human experiences and to “conceptualize the multidimensionality of change by moving beyond the fragmentation of historical knowledge into a series of specialized domains” (Burguière 2009, p.133). This way, however, political history, economy history, military history, family history, crime history, and so on, become stable fields of operations, and eventually areas of the cognitive – i.e., non-material – division of labour and academic professionalization.

These stable fields of operations have commonly been called history specializations. History specializations allow the sciences (i.e., sociology, economics, criminology, etc.) – as well as philosophy and literature – to interact and collaborate with the historical record to the point of creating a multidimensional history. This is most definitely what Braudel had in mind when speaking of “collective research” ([1969] 1980, p.52) in the context of the crisis of the human sciences and their historical turn of the post-1945 era and when contending, as he did in works like *A History of Civilizations*, that defining the idea of civilization “requires the combined efforts of all the social sciences” (1994, p.9). For him, the social sciences had to “suspend their constant border disputes” ([1980, p.52) and come together. Multidimensional history, then, like total history, may just be a synonym for Braudel’s idea of a science of history seeking to be a science of the present. The ‘historicization’ of the social sciences, the ‘scientificization’ of historical studies, and the trend towards multidisciplinary and cross-disciplinary research that has swept the modern departments of social science particularly since the second half of the 20th century, all testify to the partial success of scientific history, new history and social history in crashing some of the barriers that kept various social disciplines at a distance.

For however strenuously American new historians like Robinson and French social historians like Febvre and Braudel advocated for and advanced a social-scientific

history unimpeded by disciplinary boundaries in the 20th century, however, trying for instance to synthesize history and psychology and to deploy all the social sciences for a total study of society, it is indisputable that a useful professionalization and institutional specialization of new or social history did in fact happen. Instead of a total, unified, social-scientific history of the present, as Braudel would have had it, the development of ‘social science history’ or ‘historical social science’ has so far led disproportionately to the professionalization of specialized domains of knowledge – like crime history – and to the isolation or distancing of academics from the public and political realms. Social history, in all its various manifestations, was by no means immune to this simultaneous process of totalization and specialization:

Left to itself, people’s history can enclose itself in a locally defined totality where no alien forces intrude. It can serve as a kind of escapism, a flight from the uncertainties of the present to the apparent stabilities of the past. (Samuel 1981, p.xxxii)

By the turn of the 20th century, it became evident that the appeal of a scientifically united and liberating history from below had failed to displace the traditional concerns of conventional historiography (Sharpe 2001, p.38) and that the boom in varieties of economic histories, urban histories, social histories, family histories, and so on since the 1960s had actually caused, in Cannadine’s words, ‘a cult of professionalism’ to form among practising historians (1987, p.176). The proliferation of specialized forms of historical inquiry meant that the discipline of history had to emanate from full-time academics and fully trained historians, so that the ‘new’ history of the 1960s and 1970s brought historians closer and closer to historical archives but further and further away from public audiences. Faced with a professional scholarship that tended to turn historical narratives into sub-specialisms treating the past as a scientific object, using increasingly technical language and increasingly complex frameworks drawn from the social sciences, the lay public found it impossible to keep up with the reading of professional history, and the result was that “more and more academic historians were writing more and more

academic history which fewer and fewer people were actually reading” (Cannadine 1987, p.177). It is fair to say, however, that specialization has not been the fate of social history alone, but of the historical discipline as a whole since its very inception in the 19th century.

The transformation of history into a professional discipline in the 19th century – i.e., the professionalization of historical studies – occurred within a wide institutional web of developments proper to the 19th century, and it was the result of the educational reforms that took place between the French Revolution of 1789 and the Napoleonic Wars; modern universities, scholarly journals, professional clubs and societies, research institutes and libraries, public archives, national and international conferences –all were incorporated into an attempt to turn an art and a form of literature into a type of learning and a field of knowledge. The 19th-century university system, unlike its 18th-century predecessor, enacted strict disciplinary divisions between history, literature, philosophy and theology, separating the historian from other scholars and establishing career patterns that, based on the transformation of the doctorate into a research degree, required trained as professionals and not people of broad learning. Scholarly journals were founded particularly in the last third of the 19th century which, again, unlike those of the 18th century, addressed a professional and not a broad, popular readership. Already in 1840, the Dutch founded the historical journal *Historisk Tidskrift*, and Ranke’s student Heinrich von Sybel founded the journal *Historische Zeitschrift* in 1859. The *Nation* in the United States like the *Edinburgh Review* in the United Kingdom and numerous other journals addressing a general, educated public often dealt with historical themes and topics, but from the 1870s onwards there was an explosion of scholarly journals of history, among others, the *Revue Historique* in France, 1876, the *Rivista storica* in Italy in 1884, the *English Historical Review* in 1886 and the *American Historical Review* almost a decade

later (Iggers 2002, p.230). Associations of historians also formed ¹²⁴, like the *American Historical Association* in 1884, and many seized the opportunity to earn a livelihood by becoming trained, professional historians. Being a historian, Hamerow (1986, p.321) explained, “ceased to be a high-risk venture like being a writer, composer, or painter. It became an organized occupation with a clearly defined standard of conduct, procedure, method, and reward”. Historians started to accept the premise that, for history to contribute to human progress, their work had to be objective and scientific (Appleby, Hunt & Jacob, 1995, p.76). At the same time, the institutional basis of historical scholarship in the 19th century was very much state-sponsored, and the institutional framework in which contemporary historians operate today continues to be operationally rigid, or, as Iggers (2005, p.471) would put it, “history, like other fields in the social sciences and the humanities, is caught in an iron cage of increasing professionalization and specialization”. Ultimately, historians “work within the framework of institutions that affect the ways in which they write history” (2005, p.475); in the 20th century they strove for a new kind of history, only to realize that achieving it would see them ‘trapped in a socioeconomic structure of their own making’ ¹²⁵.

The new and social historians brought historical scholarship face to face with the present, with present history, with politics. That the social historian is “a specialist in an impossibly long list of varied topics” (Perkin 1953, p.72) is the social historian’s own fault and the social historian’s own merit. Being a link in the normative logistics of modernity, social history has a practical responsibility to democratize historical knowledge with the aid of science, a political duty to create an historical image of

¹²⁴ In the United States, following the inauguration of the *American Philological Association* in 1869, at least seventy academic societies formed within ten years, and about twenty major scholarly organizations were founded between 1876 and 1905 (Hamerow 1986, p.322).

¹²⁵ This is a reference to Max Weber’s ‘iron cage’, which, as Baehr (2001) argued, may be translated effectively as ‘shell as hard as steel’.

mankind and of human experience that is socialized in the sense that it is drawn from the bottom-up and not from the top-down and that it is therefore democratized, and a moral imperative to understand history so that the present can be more aptly navigated. Ancient and modern history are keys to understanding the present, but so is the task of identifying major and real problems today or, as Braudel would put it, of distinguishing between the ‘essential’ and the ‘peripheral’. Social history is political not in the sense of being ‘left’ or ‘right’ – though it is true that historically it has been predominantly on the left – but in the sense of participating in the construction of a grassroots reality of the present that says that history is what we, the people, make it. It should come as no surprise then, that in its infancy social history was indistinguishable from labour history and the history of the labour movement, or that Toynbee used it to expose ‘the evils of the industrial system’ (see Wilson 2014) and Hobsbawm (1952) to recount the history of machine-breakers and machine-wrecking as form of early working-class struggle. Nor is it surprising that Marxism has been the most impactful tradition on social history together with that of the French *Annales*.

The fact that the historical study of crime has been unable to keep away from the demands of a historiography of the left can be attributed to a certain historiographical sensibility towards the unfairness with which intellectual history, institutional history and the history of criminal law have treated criminals of the past. Tortured bodies, dangerous classes, rascals, lawbreakers, evil and wicked people, demonic witches have all become, through social history and crime history, more than objects of analysis; they have become voices to be heard and advisors with first-hand experience of worrisome states of affairs and trends in penal matters. If the historical study of crime is a province of historical social science, the latter is at least in part an inheritance of new history and social history, of a fusion of historical and social-scientific methods in the early 20th century meant to

unify the human knowledge of the time against contemporary evils and social problems. New history and social history are not to be thought of only as history specializations, but also as precursors to a historical social science understood as practical mode of acting in a professional capacity. All the various manifestations of the historical social scientist such as historical criminologists, crime historians, economic historians, historical sociologists, and so on, may either confront the teachings of new and social history with the courage of empowered political constituents – of delegates of democracy, of social partners – or else risk to become social technologists and technological dreamers.

This is not an invitation to praxis in any sense other than the one proposed in chapter 1, that the social sciences can plausibly think of themselves as having praxis and not *theoria* as their target. It is an indication that understanding the human sciences as practical is a prerequisite for doing our job well. When it comes to history, the same was well understood up to the 19th century, and then forgotten thereon. Over the last five decades or so, it has become commonplace for historians to deny their discipline's interconnectedness with politics and to downplay the link between the past and current affairs. History, some say, is unfit to speak about the urgent and pressing issues of today, let alone to guide or inform political action in the present:

I believe that to use history as a weapon in political struggle is counter-productive. One comes to believe one's own propaganda, to overdramatise the past, and hence to forget the real complexities of the issues of any time. One comes to idealise one's own side, and to divide human beings into Us and Them. (Burke 1981, p.8)

As shown in this thesis, it is doubtful that what Thompson and other Marxist historians did in the sphere of the historical study of crime constituted 'a weapon in political struggle', but we can still justifiably think of at least some participants in the historical study of crime as critics of the present, that is, as 'emancipatory utopians'.

In this final chapter, I discussed a number of episodes from the history of Western historiography to indirectly and implicitly question some of the core themes of historical criminology. Historical criminology is anti-historicist in principle, as its primary presupposition is that the past lives through the present, and this puts it at odds with the orthodox historiographical practice of the Western tradition since the times of Ranke – but in line with the traditions of new and social history. Effectively speaking, historical criminology needs to establish a dualistic legitimation for itself; that the knowledge it produces is at once practical *and* historical. This is to keep in line with the working principle of historical social science that every description or account of social reality ought to be both historical and social-scientific. That historical knowledge is practical is not self-evident, however, and Oakeshott and Croce revealed just that; history may be a mode of representation unable to provide any concrete answers to present problems, and indeed it may not be historiography's task to serve as 'a weapon in the political struggle'. How aware are historical criminologists of these seemingly legitimate objections to their practical attitude?

While historical criminologists will feasibly be accused of misusing the past for present-minded purposes and emancipatory-utopian prospects for the future, crime historians will be the ones more likely to find themselves having to deal with the critique of history specialization and the unfeasibility of making historiography part of a science of the present. If the 'universal truths' of the historical study of crime were to be discovered, a perfect knowledge of the history of crime would become possible and this, in turn, would concretize, in Robinson's words, "*a perfect comprehension of existing conditions founded upon a perfect knowledge of the past*" (1912, p.21, italics in original). This is, in Gadamer's terms, a clear contemporary example of technological dreaming, just as what the Social Science Movement was doing in the second half of the 19th century

constituted a technological dream. A crime history that morphs into an infinite series of highly specialized domains of inquiry disclosing a total view of what happened in relation to past crime-related phenomena through an unlimited process of archival research and excavation of criminal records, sounds like an authoritarian fiction and not a liberating practice. Historical criminologists and crime historians would be better served by taking a different path, such as that of initiating a more fruitful dialogue about the historical past and the practical past, about historicity and the rhetoric of history, and about research methods and academic ends.

Conclusion

In a paper presented at the meeting of *The European Sociological Association* in Murcia in 2003, Howard Becker (2003) took issue with the very idea on which the event was based and around which it was centred; that of ‘making sociology relevant to society’. His argument was that making sociology relevant actually means making it irrelevant – why? Because, that way, sociologists would look at ‘problems’ as framed by others. Sociology, on its own, does not find out social problems, but rather finds out how society works. Anyone can come up with a list of things that need fixing in a given society, and still the sociologist is not able to determine, on the basis of sociological theories and concepts, who should be helped and what needs fixing – because that is not what the sociologist is ‘for’. What is relevant at one point in history may not be as relevant at a later point, and what is relevant in sociological analysis is often made irrelevant by ‘practicality’ – in other words, what is relevant at a sociological level may not be relevant at a political one. Instead of studying what is relevant, i.e., social problems, Becker concluded that the sociologist may as well stay focused on what is largely considered irrelevant and not bother if the results of the investigation are not immediately useful.

In light of the preceding considerations, I doubt that historical criminology would be satisfied to think of itself in the terms expressed by Becker and, hopefully, this thesis provided a valuable alternative way of thinking about historical criminology by resorting to a practical critique of social-scientific and technical rationality in the context of the historical study of crime. An ‘irrelevant’ sociology is a sociology *indifferent to the present* – and there can be no such a historical criminology. Doing historical criminology for the sake of historical knowledge would amount to a ‘praise of theory’, to an attempt by criminologists working historically to seek knowledge because *knowing is a thing of beauty*. But this study showed that modernity demands that knowing be a form of doing

and making, a means to action and production and not an end-in-itself – the modern period rendered contemplation “an entirely meaningless experience” while also conflating the meaning of action with that of ‘making’ and ‘fabricating’ (Arendt 1998, p.320). Gadamer believed that human wellbeing depends on the constant renewal of the balance between theory and practice – “Theory is just as primordial an anthropological datum as is practical and political power. So everything depends on constantly renewing the balance between these two human forces” (1998, p.68). Expanding on this theme, my research aimed to demonstrate that the balancing between practice and production, between praxis and poesis, is equally crucial to doing the job of the social scientist well.

As a way of questioning the rise of productive activity in the academia, I took the question of how to ‘use’, ‘practice’ or ‘produce’ knowledge in the study of crime to be a question of agency and action, a question for practical philosophy. Through the example of the historical study of crime, I problematized the fact that, over the last fifty years or so, the interplay between the study of history and the study of crime hosted the conditions for the creation of a new academic and professional subjectivity and a new productive capacity, namely, the crime historian, while failing to provide a solid institutional, disciplinary or even conceptual basis for the professionalization of the historical criminologist. Far from offering a philosophical justification for specializing in historical criminology, I tried to show that the historical study of crime need not be just another history specialization, that understanding crime historically can be conceived of as a practical capacity. Collaboratory endeavours at the intersection of criminology and history do not necessarily lead to interdisciplinary syntheses and further division of labour, just like the coming together of historians and philosophers around the analysis of power constitutes a common labour of individuals seeking to ‘de-discipline’ themselves and not an interdisciplinary encounter (Foucault 1980e, p.39).

This thesis investigated the value of thinking practically about the study of crime, it subjected to scrutiny the practical role of history in understanding present crime-related phenomena and it problematized the production of subjectivity within the social sciences of today. To this end, it articulated and relied upon a conceptualization of social science modelled on the basis of Aristotelian practical philosophy intended to elucidate the relationship not just between knowledge and action but between action and production in the academia. A proposal for a historical criminology understood as practical philosophy of criminal phenomena stood against crime history as manifestation of technical rationality understood as expert knowledge of operational procedures. The thesis was thus intended as a form of historico-philosophical criticism aimed at casting some light on the dynamics whereby social scientists are absorbed into dimensions of subjectivity and productivity that prevent them from acting in valuable practical capacities. A key research idea advanced in this thesis was the possibility that historical criminology may be understood as an unorthodox kind of historical praxis aiming to put historical materials and contents ‘at work’ for the sake of action in the present. This idea brought the social sciences face to face with the potential reality that they might be part of a political dialogue about current affairs. Similarly, it forced the historical study of crime to confront an alternative for self-understanding; studying crime historically could take the form of a present conversation about past crime-related phenomena undertaken to fulfil the demands of justice in contemporary society and not to know more about the past of such phenomena.

As shown in this thesis, historical criminology may not be equated with a field of knowledge but rather with an academic attitude that trespasses disciplinary boundaries and methodological barriers and that is pragmatically oriented towards generating practical knowledge for the sake of a better future. This partly explains why Foucault’s

histories of the present have been appealing to criminologists working historically; historical criminologists identify with a type of academic subjectivity that, in the process of studying crime-related phenomena, acts on the idea that history is essential to understanding such phenomena in the present. At a historiographical level, it was E. P. Thompson who denied historical criminologists the possibility of thinking of themselves as ‘political subjects’ by controversially arguing for the separation of politics and historiography in the historical study of crime. Thompson conceded that every historian is a ‘value-formed being’ that cannot operate in ‘value-free ways’, but precisely because of that the historian is always-already a political actor who ought to constantly neutralize value judgements through adequate methodological techniques. This echoes Butterfield’s critique of the Whig fallacy and, in fact, Radzinowicz’s progressive history and Foucault’s regressive history attracted a similar amount of criticism from crime historians for not being representative enough of ‘what actually happened’ in the past. Historical criminologists are unable to depict a disinterested picture of the past because, just like Whig historians and Foucauldian genealogists, they do history ‘with an eye on the present’.

The present-oriented nature of historical criminology made it compelling to conceptualize such an academic attitude through the lens of Aristotelian practical philosophy; historical criminologists do not produce knowledge of unchanging things, or episteme, but rather knowledge about ever-changing human action, practical knowledge. They do so by using history to explain and problematize the present and, therefore, qualify as potential ‘emancipatory utopians’ – provided that we agree with Gadamer that an emancipatory utopia is a critique of the present and not necessarily a project of direct political action. But the historical study of crime is also a miniature mode of production and as such the knowledge that is generated within it is knowledge derived from labour,

knowledge emerging during the course of someone's occupation as part of a process of making and creating things – as part of a process of production based on knowledge, or poiesis. Moreover, crime became a serious subject of historical analysis thanks to the development of a historiography of crime and criminal justice over the last five decades or so. This historiography was inspired by political concerns and ideals but overtime it has tended to depoliticize itself and to become a neutral and objective foundation for a new history specialization, much like social history. As studying crime historically progressively turned into a 'difficult terrain' that requires 'particular expertise', to paraphrase Cockburn (1977), technical concerns and methodological requirements started to overshadow the practical targeting of specific issues that makes the historical study of crime 'relevant'.

To put it simply, nowadays participating in the historical study of crime is not solely a *practice* – where 'practicing' means executing "one's freely and well-thought-out plans" (Gadamer 1981, p.82) – but also a career path and technical activity, a mode of inquiry within which our choices are limited by the reliability of current models and methods, availability of data and sources, opportunities for funds and research grants, levels of public and academic interest and potential for profit, and more. In view of this, this study reminded social scientists that *life is action, not production* and that the ethical and political requirement of participating in a shared understanding of all things practical, from politics and legislation to crime and its history, is anterior to any methodological and technological need to be indifferent to the present – we are citizens before we are scientists and researchers.

The notion of a 'historical social science' explored in this thesis was meant to offer a reasonable compromise between praxis on one hand and poiesis and techne on the other – between citizenship and expertise, politics and science, participation and

objectivity. ‘Being’ or ‘acting like’ a historical social scientist is not a job, nor is it a matter of applying a standardized set of fixed methodological procedures. It is an attitude, a way of comporting oneself that transcends the strict boundaries of disciplinary specialization in the social sciences. As such, historical social science is not for ‘making things’ through a carefully studied combination of historiographical and social-scientific means and techniques. Rather, the term describes a form of academic conduct resembling that of George Sarton and Wright Mills. Sarton reprimanded historians who characterized themselves as ‘idle spectators’ and asserted that we should take up our ancestors’ best traditions instead of simply admiring them, which implies ‘practice’ and ‘science’, ‘craftmanship’ and ‘expert knowledge’. Similarly, Mills was interested in the interaction of the historical and the social-scientific, and he held a present-oriented view of the social sciences as a non-specialized ‘democratized quality of mind’ that relies on ‘a usable set of traditions’ to deal with ‘urgent public issues’ and ‘insistent human troubles’. Doing historical social science is not an endeavour ‘indifferent to the present’ and, as suggested in this thesis, historical social science can lead both in the direction of emancipatory utopias and of technological dreams.

Since the historical study of crime can be taken to be a province of historical social science, there is a danger that it too may succumb to expert know-how and become a miniature mode of intellectual production in which research designs are replicated exclusively for the sake of making things – including ‘immaterial’ goods like knowledge and expertise. Crime historians may not realize that studying the past for its own sake is still a poietic operation anytime its outcome is a product separated from the activity itself – i.e., a manuscript, a textbook, a journal article, and the like. In fact, we could say that doing crime history is a poietic activity so long as there is a ‘market’ for it. Historical criminologists are not opposed to the commercialization of knowledge per se, but

historical criminology can create a space for a critique of history specializations that pushes historical scholarship and expertise away from the camp of the ‘social technologists’ and the ‘social engineers’ and towards the field of ‘social partners’. This is not to say, however, that historical criminologists are categorically emancipatory utopians, as they themselves can fall prey to the appeal of expert status and to the *absolutum* of science. The search for ‘universal truths’ in the historical study of crime has already begun, and no one interested in studying crime historically is in a position to ignore the quantitative and mathematical aspects of studying crime historically.

That said, this thesis emphasised the presence of a ‘social’ tradition in historical thinking alongside this scientific and technical tendency in the historical study of crime. As a major target of this thesis was history’s relation to politics, part of my research focus was fixated on those historians who, as Eley (2005, p.190) put it in *A Crooked Line*, “practiced an active version of history’s pedagogy” – and these happened to be social historians like Thompson, Hobsbawm, Charles Tilly, and so on. Social history served the fundamental function of showing that, if Ranke brought historical scholarship face to face with science and method in the early 19th century, historiographical traditions from the turn of the 20th century like new and social history brought it face to face with the present. New historians like Robinson popularized the view that the past had to be exploited for the benefit of the present by combining the power of all the social sciences, and social historians such as Febvre fervently believed science was methodically taking over modern life and that history and science had to be synthesized in order to decipher the present. New and social history are synonyms for ‘social-scientific history’ and these historiographical traditions prefigured and anticipated historical social science and therefore made the historical study of crime possible. They also laid the foundations for doing history as *science of the present* more broadly, while also retaining the spirit of the

Social Science Movement and an enlightened willingness to use knowledge to deal with practical challenges. Thus, they established a synthetic unity between practical and political knowledge on one side and technical and scientific knowledge on the other, a unity which gives the historical study of crime its contemporary form; that of a principally past-oriented, technical and scientific crime history in dialogue with a presentist historical criminology that transcends *techne* and *poiesis* to target relevant crime-related issues in contemporary society.

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