

THE HISTORICIST OBJECTION TO HISTORICAL CRIMINOLOGY

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Abstract

A central question surrounding the historical study of crime today concerns whether studying crime historically has a valuable contribution to make to the reform of criminal justice in the present or whether its scope should remain limited to providing a more satisfactory understanding of past crime-related phenomena. This paper problematises such a question by critically discussing the relationship between the history of crime and criminal justice policy. While it seems intuitive to suggest that historical works in criminology can positively effect change in the field of criminal justice, the historical study of crime, punishment and criminal justice presents historical criminologists with a key methodological challenge that has not yet received sufficient scrutiny by historical criminologists; that of overcoming historicism. The paper starts by showing that the dominant influence of historicism on Western historiography up until the middle of the twentieth century prevented the flourishing of historical works in criminology. It then suggests that, in the second half of the twentieth century, a number of historical works on crime started to move away from the historicist conception of history as *spectator theory of the past* thanks to the popularisation of present-centred historiographies such as Foucault's *history of the present*. Lastly, the paper reviews some recent writings at the intersection of history and criminology to show that overcoming historicism in the historical study of crime is possible but also that there are limits to history's capacity to contribute to present-day debates about topics of criminological relevance.

Keywords: crime history, criminal justice reform, historical criminology, historical study of crime, historicism, Leopold von Ranke.

Introduction

Historians in the Western tradition inherited from the ancient Greeks a *practical* conception of history and, up until the late-nineteenth century, historical thinking and

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writing were widely regarded as a quintessentially artistic, political and pedagogical exercises meant to enlighten the human spirit and throw light on present events. Whether one reads historians of ancient Rome, modern historiographers of the Renaissance or historical philosophers of the Enlightenment, there is a sense in which history has always been about politics and the present. Many historians and philosophers in the late-nineteenth and early-twentieth century still firmly believed that the relationship between past and present and between history and politics was inseparable. Friedrich Nietzsche wrote about why we need history ‘for the sake of life and action, not so as to turn comfortably away from life and action’.¹ Ernst Troeltsch claimed in *Protestantism and Progress* that ‘the understanding of the present is always the final goal of history’.² The historiography of Benedetto Croce was a testament to the idea that all history is contemporary history and that history is always history of the present.³ Lucien Febvre’s motto was ‘there is no history except of the present’ and, in the last years of his life, he would often say ‘history, science of the past, science of the present’.⁴ In his 1924-1925 lectures at the University of Marburg on Plato’s dialogue *The Sophist*, Heidegger said 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’.⁵ The list of prominent thinkers who saw an inextricable connection between past and present is so impressive that it can be hard to fathom why criminology – as a discipline concerned with contemporary manifestations of crime-related phenomena and present issues in criminal justice – has, for most of its history, been neglecting the past while studying crime in the present.

As argued in this paper, to understand why criminology has historically been unquestionably *ahistorical* we first need to familiarise with the notion of *historicism*. As the dominant paradigm in modern Western historiography since the nineteenth century, historicism helped transform the study of the past from a practical exercise into a theoretical endeavour. Put differently, historicism is synonymous with *past-oriented* historiography, or with the sort of historical writing that looks at the past ‘for its own sake’ and that, in so doing, renounces the task of imparting practical lessons. As soon as the final goal of history became the understanding of the past, and no longer the understanding of the present, history lost its practical utility, as well as its capacity to attract the attention of social scientists. In criminology, we had to wait for works such as Foucault’s *Discipline and Punish* to see a renewed interest in historical research. Why Foucault? Because he used history to problematise the present and not to explain the

¹ Friedrich Nietzsche, *Untimely Meditations*, translated by R. J. Hollingdale (Cambridge University Press, [1873] 2007) p.59.

² Ernst Troeltsch, *Protestantism and Progress: A Historical Study of the Relation of Protestantism to the Modern World* (Williams & Norgate, 1912) p.3.

³ Adam Schaff, ‘Why History is Constantly Rewritten’, *Diogenes*, 8 (30) (1960) pp.62-74, p.65.

⁴ Fernand Braudel and Immanuel Wallerstein, ‘History and the Social Sciences: The Longue Durée’, *Review*, 32 (2) (2009) pp.171-203, pp.186-187.

⁵ Martin Heidegger, *Plato’s Sophist*, translated by R. Rojcewicz and A. Schuwer (Indiana University Press, 1997) p.7, italics in original.

past; his histories were clearly anti-historicist, i.e., ‘histories of the present’. It was the anti-historicism and present-centredness of writers like Foucault that, particularly from the last quarter on the twentieth century onward, motivated criminologists to engage with historical materials.

The relationship between history and criminology, however, remains an ambiguous one even today. In what follows, I argue that this is partly due to the fact that historicism continues to represent a barrier to the effective synthesis of the two disciplines. I show why this is so through a sustained engagement with the historiography of Leopold von Ranke (1795-1886) – who is widely regarded as the most outspoken proponent of historicism from the nineteenth century – and through the articulation of a *historicist objection* to historical criminology. I also offer a possible rebuttal to such an objection by discussing anti-historicist trends in the historical study of crime and by showing that historical criminology defies historicist conventions and resists formal historicisation through a weaponisation of historiographic present-centredness. In the final part of the paper, I review the contributions to a recent Special Issue of *The Howard Journal of Crime and Justice* titled ‘Can History Make a Difference? The Relationship Between the History of Crime and Criminal Justice Policy’ with the aim of showing that historians and criminologists are now openly studying the relationship between the historical study of crime and contemporary issues in criminal justice. The fact that crime historians and historical criminologists are becoming more and more confident in discussing the policy implications of their historical explorations indicates that the historiography of crime and criminal justice can help overcome historicism by contributing to the development of a *historiography of the present*.

Criminology and History

Why study crime historically? The most straightforward answer to such a question is that *crime, punishment and criminal justice are products of history*. At a fundamental level, this means that a key determinant of crime-related phenomena is their *historicity*; a sound analysis of criminal behaviour demands that such behaviour be located in the broader historical context and milieu that shape its occurrence and define its form. This is a central precept of the *historical criminology* envisioned decades ago by German politician, legal scholar and eminent Heidelberg criminologist Gustav Radbruch (1878-1949). In the midst of World War II, Radbruch was working on the history of crime in its relation to law and culture within a German context. His *Geschichte des Verbrechens: Versuch einer historischen Kriminologie* – which can be translated as *History of Crime: An Attempt at Historical Criminology* – was co-authored with Heinrich Gwinner and was published only a few years after Radbruch’s death. Though never translated into English, this work put forward one of the first explicit attempts at delineating the overarching scope of historical criminology:

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.⁶

Comparing manifestations of crime and criminality from different historical periods may indeed facilitate an understanding of the historical specificity of contemporary crime-related phenomena. But does this imply that historical inquiry can *directly* contribute to the fight against crime or to the improvement of criminal justice arrangements in the present? Knowing that the criminality of the present is ‘dependent on its historical setting’ does not indicate that an accurate understanding of the past can inform contemporary responses to crime. In fact, it might actually imply the opposite; if current manifestations of crime are specific to our own age and historical moment, then the study of the past will never have much to offer to contemporary crime control or the reform of criminal justice.

This explains why criminologists have, for most of their discipline’s history, been reluctant to engage with historiography and to collaborate with historians. Put simply, criminologists could see little value in integrating historical materials and assimilating understandings of past events in criminology’s problem-solving pedagogy and present-oriented mode of inquiry.⁷ This is especially true of the post-World War II era in which most university departments of criminology were established in the English-speaking world. At the time, criminological discourse was dominated by a focus on rehabilitation and used to take, almost by default, the shape of a positivistic social-scientific discourse aimed at practically addressing crime-related problems. This was mostly due to the expectation that such a type of discourse should provide *useful knowledge* for the state to draw on to enhance its strategy of government and its efforts to control and contain crime, ensure public safety, and reform offenders. As Robert A. Nye put it at the end of the 1970s:

Until recently, historians interested in the study of crime have been hamstrung in their work by the relative poverty of theoretical vision provided them by the criminological sciences. For several generations, work in criminological studies has been dominated by the correctional orientation that initially inspired the early American and European penal reformers of the first half of the 19th century. Since those heroic days, criminology in the West has been a pre-eminently practical discipline: a bastard social science built upon the fieldwork of penology, police science, and criminalistics. And there lies the rub. Criminologists long ago became the impotent functionaries

⁶ Gustav Radbruch and Heinrich Gwinner, *Geschichte des Verbrechens: Versuch einer historischen Kriminologie* (Eichborn Verlag, [1951] 1991) p.6.

⁷ Throughout the twentieth century, historians too have shown very little interest in criminology. As Hay asserted at the start of the 1980s, ‘[r]ecent histories of crime and criminal law make little use of criminology, partly because it is notably indifferent to what interests historians most: cultural, political, and economic change’. By the early 2000s, however, a number of historians – notably Barry Godfrey – were starting to move into criminology. Douglas Hay, ‘Crime and Justice in Eighteenth-and Nineteenth-century England’, *Crime and Justice*, 2 (1980) pp.45-84, p.45.

of national crime-fighting establishment [...] [Hence] it ought not to be surprising that historical investigations of crime have been neither numerous nor, until recently, especially fruitful.⁸

Though the second half of the twentieth century saw a gradual interdisciplinary merging of historical and criminological studies, such a merging did not reach a mature stage in the past century. As prominent American sociologist and criminologist David Matza recognised in an interview from fifty years ago, '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'.⁹ At the turn of twentieth century, Dixon noted that though a great deal of historical works in criminology had been produced 'since Matza's acerbic comment', history still remained 'marginalized as, at best, introductory or background matter in criminology'.¹⁰ In short, the claim that the main tendency of sociology and anthropology up to the late-twentieth century was 'ahistorical, and even anti-historical' can be extended to criminology as well.¹¹ The notion of a 'historical sociology' was virtually unheard of before the 1970s¹² and that of a 'historical criminology' is still deemed somewhat suspicious even today.

What explains the hesitancy of historians and criminologists to collaborate and create a space for disciplinary co-habitation in the immediate post-World War II era? There is a simple but compelling answer to this question; the hegemonic paradigm in modern historiography, namely, *historicism*, was still in vogue in the mid-twentieth century. Historicism teaches that *the past should not be taken to be a precursor of the present* because historical periods and epochs are governed by their own historicity. The most renowned advocate of historicism, a German nationalist historian named Leopold von Ranke – who is widely regarded as a pioneer of modern scientific history, or empiricist, source-based, archival history – popularised the idea that historical epochs possess a uniquely historical quality and peculiarity in works such as *History of the Latin and Teutonic Nations, 1494-1514*. Ranke maintained that the historian's job is *not* to teach lessons about the present but only to show *what really happened in the past*. From a historicist perspective, historical inquiry does not have a positive and decisive contribution to make to the improvement of criminal justice in the present. Since the relation between past and present is an ambiguous one – historicists argue – it is doubtful

⁸ Robert A. Nye, 'Crime in Modern Societies: Some Research Strategies for Historians', *Journal of Social History*, 11 (4) (1978) pp.491-507, p.491.

⁹ Joseph G. Weis and David Matza, 'Dialogue with David Matza', *Issues in Criminology*, 6 (1) (1971) pp.33-53, p.53.

¹⁰ David Dixon, 'History in Criminology', *Current Issues in Criminal Justice*, 8 (1) (1996) pp.77-81, p.77.

¹¹ John R. Hall, 'The Time of History and the History of Times', *History and Theory*, 19 (2) (1980) pp.113-131, p.113.

¹² Theda Skocpol, 'Emerging Agendas and Recurrent Strategies in Historical Sociology', in Theda Skocpol (ed.) *Vision and Method in Historical Sociology* (Cambridge University Press, 1984) pp.356-391.

that a more lucid understanding of past crime-related phenomena can consistently offer practical solutions to contemporary problems in criminal justice.

If the positivist tendencies of much criminological reflection up to the last decades of the twentieth century constituted the first barrier to the merging of criminology and history, then, a second barrier was built into the very working methods of the orthodox historiography of the time:

[T]here still seems to be a barrier between the two disciplines of criminology and history. Perhaps another reason for this has been the nature of much historical inquiry itself, at least until recently: as if the purpose of history was *not* to address the present – which was what criminology as a problem-solving discipline was interested in – but to uncover the past. This would be undertaken in the form of empiricist, fact finding voyages of discovery – but backwards through time [...] Again, I do not wish to deny the legitimacy of such scholarship [...] However, what this form of historical scholarship seemed to confirm was the idea that history itself was of little relevance to criminology. It was something of an esoteric luxury: the perusal of dusty old volumes to communicate with the dead should be secondary to the more important issues of communicating with the living through surveys and all the other research methods and technology that criminology had at its disposal.¹³

The notion that historical inquiry is an ‘empiricist, fact-finding voyage of discovery’ to uncover the past is largely a modern invention, and one which owes much to Ranke’s popularisation of historicism in the nineteenth century. In antiquity, historical investigation was not understood as a fact-based process of *indirect observation* of the past based on an empiricist methodology. It was not informed by anti-rhetorical principles and by systematic *indifference to the present*, nor was it conducted according to rigorous and meticulous primary research of sources and archives. In the fifth century BC, the Greek historian Herodotus came to conceive of historiography as *episteme* (knowledge) and not as *doxa* (opinion), thus making possible a modality of historical inquiry that renounces the task of securing a pedagogical application for itself by detaching the historical past from the immediate sphere of everyday knowledge.¹⁴ Yet, Herodotus’ younger contemporary, the Athenian historian Thucydides, was quick to blame Herodotus for not distinguishing adequately between (the historical) past and (the living) present. Quite simply, Thucydides recognised that Herodotus was writing histories intended to meet the taste of an immediate public.¹⁵ For Herodotus, the purpose of historical inquiry was not to disinterestedly narrate what had been and no longer was, but rather to ‘save human

¹³ John Pratt, ‘Criminology and History: Understanding the Present’, *Current Issues in Criminal Justice*, 8 (1) (1996) pp.60-76, p.62, italics in original.

¹⁴ On this point see Agnes Heller, *A Theory of History* (Routledge & Kegan Paul, 1982) pp.79-80.

¹⁵ Carol G. Thomas, ‘Between Literacy and Orality. Herodotus’ Historiography’, *Mediterranean Historical Review*, 3 (2) (1988) pp.54-70, p.54.

deeds from the futility that comes from oblivion'.¹⁶ The historiographic method of the 'Father of History' was summarised by Herodotus himself as follows: 'I know not what the truth may be, I tell the tale as 'twas told to me'.¹⁷ Thus, it would be a mistake to read Herodotus' writings in a belief that they objectively depict 'what actually happened' in the past.

Thucydides has been judged by following generations of historians as a more reliable and factually precise narrator of the past than Herodotus, with admirers holding him up as 'a very mirror of truthfulness'.¹⁸ Chiefly thanks to his qualities as a careful and accurate historian and 'factual reporter and analyst' of past events,¹⁹ Thucydides replaced Plutarch as the European historian's ideal between the eighteenth and nineteenth century, at a time when Western historiography was beginning to place descriptive objectivity and factuality above literary virtues and rhetorical and stylistic charm.²⁰ Once again, however, it would be an error to think that Thucydides' historical writings have value only because of what they teach about the past. Thucydides himself pointed out in his *History of the Peloponnesian Wars* that '[t]here is, however, no advantage in reflections on the past further than may be of service to the present'.²¹ Thucydides' account of the war between the Athenians and their allies and Sparta and the Peloponnesian League was not meant simply as a historical description of an epic battle but as an *immortal narrative* with political relevance to *all* historical epochs. In the preface to a mid-eighteenth-century edition of Thucydides' *History* – just to provide some evidence in support of such a claim – the Very Revd. Dr William Smith (1711-1787) referred to Thucydides as the most instructive Greek historian to have demonstrated the importance of history for the present and for the politics of his time. For Smith, the 'grand business of history' consisted in making 'man wiser in themselves and better members

¹⁶ Hannah Arendt, 'The Modern Concept of History', *The Review of Politics*, 20 (4) (1958) pp.570-580, p.570.

¹⁷ Herodotus, *Herodotus, Books I and II*, trans. A. D. Godley (Harvard University Press, 1975) p.xiii.

¹⁸ Charles Bigg, 'On Some Characteristics of Thucydides', in Thucydides, *The History of the War between the Peloponnesians and Athenians* (Longmans, Green and Co, 1900) pp.xxvi- xlix, p.xxxii.

¹⁹ Christopher B. R. Pelling, 'Plutarch and Thucydides', in Philip A. Stadter (ed.) *Plutarch and the Historical Tradition* (Routledge, 2002) pp.10-40, p.10.

²⁰ Hans-Georg Gadamer, *Praise of Theory: Speeches and Essays*, trans. C. Dawson (Yale University Press, 1998) p.52.

²¹ Thucydides, *The History of the Peloponnesian War* (New York: E. P. Dutton and Company, [1876] 1950), p.80. As it is often the case with ancient Greek texts, different translations are available. Here, an alternative possibility would be the following: 'With regard, however, to what is past and done, what need is there to find fault at length, except in so far as that is profitable for what is present?'. Thucydides, *History of the Peloponnesian War*, Books I and II, trans. C. F. Smith (William Heinemann Ltd, 1956) p.205.

of society'. At a fundamental level, Smith understood that being 'well versed in a similarity of cases prepares men better for counsel or action on present contingencies'.²²

Smith was writing at a time when modern historiography was still in its infancy and when the scientific study of history was still premature. But similar claims have been made over the last two centuries and continue to be repeated today. In the last quarter of the nineteenth century, when scientific history was gaining popularity, Crawley pointed out that the job of the historian is not that different from that of the journalist. As he put it, the historian and the journalist 'treat of contemporary events and of states of society, politically, very like each other'. Accordingly, Thucydides' history 'is only ancient in the sense that the events related happened a long while ago' but 'in all other respects it is more modern than the history of our own country-men in the Middle Ages'.²³ At the very start of the twentieth century, Charles Bigg noted that Thucydides' history of the Peloponnesian War 'has become a battle-ground of modern parties, and the Athenian Ecclesia has been held up alternately as a warning and an example to the English House of Commons'.²⁴ Only a couple of years ago, Crowcroft reiterated that Thucydides imagined his *History* as being 'not merely a history of an epic struggle, but a possession 'for all time', which revealed the mainsprings of political ambition and human conflict'.²⁵ In short, historical inquiry has for over 2,500 years been understood as constituting a *practical guide* for present and future action. It is for this very reason that the *historian-as-commentator* remains an established figure in the Western historiographic tradition to this day. To put it in one sentence; since the times of Herodotus and Thucydides, history has been understood as 'a pedagogical and indeed practical discipline par excellence'.²⁶ This suggests that it is not history as *inquiry* – which is how the ancient Greeks understood it – that represents a challenge for the historical study of crime and for the criminological study of the past. Rather, the challenge lies in confronting the historicist interpretation of history, or that approach in modern historiography that professes that the only way to successfully communicate with the dead is to categorically avoid communicating with the living.²⁷

²² William Smith, *The History of the Peloponnesian War*, Vol I, New edition (Harper & Brothers, [1781] 1836) p.xiii.

²³ Richard Crawley, 'Introduction', in Thucydides, *The History of the Peloponnesian War* (E. P. Dutton and Company, [1876] 1950) pp.ix-xii, p.x.

²⁴ Bigg, 'On Some Characteristics of Thucydides', p.xlix.

²⁵ Robert Crowcroft, 'A Tiger in the Grass, the Case for Applied History: Can the Study of the Past Really Help Us Understand the Present?', *History Today*, 68 (9) (2018) pp.36-41, p.38.

²⁶ Hayden White, *The Practical Past* (Northwestern University Press, 2014) p.12.

²⁷ Here, it is worth noting that the historical study of crime owes much to the tradition of 'social history' and that some of the major exponents of the social study of the past like Marc Bloch (1886-1944) and Lucien Febvre (1878-1956) believed that history 'requires us to join the study of the dead and the living' and that history 'consults death in accordance with the needs of life'. Marc Bloch, *The Historian's Craft*, trans. P. Putnam (Manchester University Press, 1992) p.3. Lucien Febvre, 'A New Kind of History', in Peter Burke (ed.) *A New Kind of History: From the Writings of Febvre*, trans. K. Folca (Harper & Row, 1973) pp.27-43, p.41.

In what follows, I offer a constructive criticism of historical criminology's central claim, i.e., that *history can serve as an ally in the reform of criminal justice in the present*. The paper advances a historicist objection to such a claim: the appropriate way of obtaining accurate depictions of the past is to *keep both eyes on the past* when doing historical research – to forget about the present. Therefore, studying crime historically with an eye to reforming criminal justice risks producing inaccurate descriptions of past phenomena and, in turn, inadequate or faulty recommendations for present practice based on such descriptions. Can historical knowledge have a terminus in action and function as a force for change in the present? Can historical criminologists convincingly reassure us that historical inquiry has a role to play in addressing contemporary criminal justice matters? These are not rhetorical questions. *Criminal justice issues are practical issues*, and it is not self-evident that historical knowledge can be translated into practical knowledge.

While it is popular to think of history in Ciceronian terms as *magistra vitae*, or as *life's teacher*, the development of modern historiography and the professionalisation of history in the nineteenth century led modern historiography to become a sort of *spectator theory of the past*. From the nineteenth century onward, professional historians have tended to think of themselves as *neutral observers* of past epochs and events rather than as *advisors to the present*. Since the times of Herodotus and Thucydides history has been understood as a politico-pedagogical exercise. Relatedly, historical thinkers and historiographers up to the late-nineteenth century were regularly engaged in public and rhetorical performances exalting the human character of history. The inextricable relation between history and politics was so taken for granted before the twentieth century that the motto of Victorian historiography was *history is past politics, and politics present history*. The transformation of history into science of the past which began in the nineteenth century, however, fundamentally altered the historian's relationship with politics and the present. Even though such a transformation has been only partially successful and remains incomplete to this very day, there is no guarantee that crime historians and historical criminologists will soon secure a role as government advisors on crime control, penal policy and criminal justice matters.

In the next section, I engage with the views of one of the most influential historians of the nineteenth century – namely, Ranke – to show why historicism poses the greatest challenge to the flourishing of historical criminology today. Ranke elevated history to the level of objective science by turning it into a spectator theory of the past, i.e., by turning all history into historicism. Rankean historicism is opposed to efforts to make history relevant for present purposes. Hence, any attempt to reform criminal justice by resort to history that does not confront historicist arguments risks losing legitimacy. More generally, any attempt at 'applied history' must overcome the historicist challenge in order to be taken seriously. Ranke's historicism can be regarded as 'the most influential school of traditionalist historiography'. Such a school has mostly been concerned 'with questions

which are of limited interest to social scientists [...] and it has often deliberately rejected the search for generalizations and regularities which characterizes social and other sciences'.²⁸ In that regard, the restrictions imposed by historicism on the use of the past and the usefulness of history apply and extend well beyond the historical study of crime and the contributions it may make to criminal justice policy. By exploring the tensions between historicism and historical criminology, then, we are also implicitly and indirectly reflecting on the relationship between history and social science more broadly.

The Science of History: Historicism as Spectator Theory of the Past

In antiquity, the study of the past was not approached as a scientific endeavour but as one of mankind's chief forms of *artistic* representation. The Romans, for instance, believed that they had inherited from the ancient Greeks a kind of history that was fundamentally rhetorical. They genuinely viewed history as *opus oratorium maxime*, a kind of public speaking, an art of using words well. To them, history represented the highest artistic form of oratory and a quintessentially civic practice, and Thucydides was for Cicero and for all ancient critics the most symbolic exponent of an art of eloquence.²⁹ As Gadamer 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'.³⁰ History in antiquity was above all a *literary genre* concerning real events guided by aesthetic and artistic rather than explicitly historiographic principles and was instrumentally oriented towards practical objectives. Since Greek historiography was cultivated by men like Herodotus and Thucydides to be a form of art and not a science, historical inquiry in antiquity was judged to be a matter of beauty of form rather than a matter of descriptive exactness. It is in this sense that the great historians of Rome such as Livy, Sallustius and Tacitus understood historiography. Similarly, it is this same view of history that underlined the efforts of pioneers in modern historiography like Guicciardini and Machiavelli during the Renaissance.

If up to the nineteenth century history had been regarded primarily as a present-minded art, however, that very same century brought history closer to a scientific and past-oriented self-understanding. The key figure behind this nineteenth-century transition is generally taken to be Leopold von Ranke. Though an ardent believer in history as both science and art, Ranke raised history to the level of objective knowledge of the past in the modern sense.³¹ More precisely, Ranke established the respectability of historicism

²⁸ Eric J. Hobsbawm, 'The Contribution of History to Social Science', *International Social Science Journal*, 33 (4) (1981) pp.624-640, pp.626-627.

²⁹ Bessie Walker and Elisabeth Henry, *The Annals of Tacitus: A Study in the Writing of History* (The University Press, 1968) p.145.

³⁰ Hans-Georg Gadamer, 'On the Scope and Function of Hermeneutical Reflection', in David E. Linge (ed.) *Hans-Georg Gadamer: Philosophical Hermeneutics*, trans. D. E. Linge (University of California Press, 1976) pp.18-43, p.22.

³¹ Georg G. Iggers, 'The Image of Ranke in American and German Historical Thought', *History and Theory*, 2 (1) (1962) pp.17-40. Helmut Berding, 'Leopold von Ranke', in Peter Kosloski (ed.) *The*

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. History, in other words, is not to be judged 'as a precursor of the present'.³² Historicism teaches that *each historical epoch is particular to itself* and that *history is the activity of uncovering this particularity*.³³ Ranke knew that 'the impulse of the present' is such that 'history will always be rewritten'. Precisely for that reason, however, Ranke claimed that historians have an ethical obligation to develop the strictest methods to avoid writing history 'with an eye on the present'.

Ranke's scientific historiography was intended as a negation of the emancipative promise of liberalism and his historical approach may be understood as a working strategy counter to the Enlightenment.³⁴ The Enlightenment exalted the philosophical, critical and universal aspects of history, superimposing enlightened values on historical narratives to explain the historical dynamism of societies. The historiography of the Enlightenment was meant to direct people's views of the present 'to the central tasks of engaging and acting in the public domain'.³⁵ Enlightened historiographies were *pragmatic*, sometimes excessively so. The historical philosophies of the Enlightenment had the moral function to teach by example. They marginalised God in their historical narratives and elevated the individual and the ways to individual freedom, improvement, and wellbeing. They were mostly secular, meant to lift 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 nineteenth century through Ranke and was precisely a reaction against atomism and the tradition of the French revolution of 1789.³⁶ Ranke's historicism was an outcome of the German Wars of Liberation and a

Discovery of Historicity in German Idealism and Historism (Springer, 2005) pp.41-58. Jörn Rüsen, *History: Narration, Interpretation, Orientation* (Berghahn Books, 2005) pp.41-57.

³² Roger Wines, 'Introduction', in Roger Wines (ed.) *Leopold von Ranke: The Secret of World History. Selected Writings on the Art and Science of History* (Fordham University Press, 1981) pp1-31, p.21.

³³ The term 'historicism' has proved to be quite resistant to unequivocal definition. Popper, for instance, understood it as the proposition that there are laws in history. A popular definition of historicism was provided by Mandelbaum: 'Historicism consists in the attempt to take seriously (in a philosophical sense) the fact of change'. Hayden White argued that 'the conventional distinctions between 'history' and 'historicism' are virtually worthless'. For a detailed analysis of historicism see Dwight E. Lee and Robert N. Beck, 'The Meaning of "Historicism"', *The American Historical Review*, 59 (3) (1954) pp.568-577, and Georg G. Iggers, 'Historicism: The History and Meaning of the Term', *Journal of the History of Ideas*, 56 (1) (1995) pp.129-152. Karl R. Popper, *The Poverty of Historicism* (Harper Torchbooks, 1964). Maurice Mandelbaum, *The Problem of Historical Knowledge* (Harper & Row, 1967), p.88. Hayden White, 'Historicism, History, and the Figurative Imagination', *History and Theory*, 14 (4) (1975) pp.48-67, p.49.

³⁴ Michael J. Maclean, 'Johann Gustav Droysen and the Development of Historical Hermeneutics', *History and Theory*, 21 (3) (1982) pp.347-365, p.351.

³⁵ Herta Nagl-Docekal, 'Why Kant's Reflections on History Still Have Relevance', in Peter Kosloski (ed.) *The Discovery of Historicity in German Idealism and Historism* (Springer, 2005) pp.172-186, p.184.

³⁶ Michael Bentley, 'Approaches to Modernity: Western Historiography Since the Enlightenment', in Michael Bentley (ed.) *Companion to Historiography* (Routledge, 1997) pp.395-506, p.408.

realisation 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. Thus, a German conception of freedom was born to replace the French ideal of 1789.³⁷

Ranke was appointed Prussian Royal Historiographer in 1841 and his histories were visibly characterised by a pervasive preoccupation with the state. As a matter of fact, Ranke's entire oeuvre 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.³⁸ Ranke's colleagues – Droysen, Sybel, von Treitschke and others – practiced history professionally and openly proclaimed that their scholarship was politically-driven. That is to say, they overtly acknowledged that history as they practiced it served the pursuit of a powerful German state.³⁹ Ranke, instead, insisted that the 'historiographically correct' thing 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'. In his *History of the Latin and Teutonic Nations, 1494-1514* – first published in 1824 – Ranke expressed this point rather clearly:

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*].⁴⁰

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'.⁴¹ Rather, Ranke meant that history should not be subservient to

³⁷ Georg G. Iggers, *The German Conception of History: The National Tradition of Historical Thought from Herder to the Present Day* (Wesleyan University Press, 1983) p.21.

³⁸ Georg G. Iggers, 'The Professionalization of Historical Studies and the Guiding Assumptions of Modern Historical Thought', in Lloyd Kramer and Sarah Maza (eds.) *A Companion to Western Historical Thought* (Blackwell Publishers Inc, 2002) pp.225-242, p.234.

³⁹ As Iggers pointed out, such historians approached historical archives seeking to reinforce their political confirmation bias. The professionalisation 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. This should not be taken as a derogatory remark, however, for as Harthog put it, the historian of the nineteenth century was, for the most, 'the mediator between past and present through the major if not unique object of the nation or state'. Iggers, 'The Professionalization of Historical Studies', p.235. François Hartog, 'The Present of the Historian', *History of the Present*, 4 (2) (2014) pp.203-219, p.203.

⁴⁰ Leopold von Ranke, 'Introduction to the History of the Latin and Teutonic Nations', in Roger Wines (ed.) *Leopold von Ranke: The Secret of World History. Selected Writings on the Art and Science of History* (Fordham University Press, 1981) pp.55-60, p.58, italics in original.

⁴¹ Leopold von Ranke, 'On the Relation of and Distinction between History and Politics', in Roger Wines (ed.) *Leopold von Ranke: The Secret of World History. Selected Writings on the Art and Science of History* (Fordham University Press, 1981) pp.105-117, p.114.

present politics – that it should be independent from it. As a standard of professional and ethical conduct, history had to be approached as *theory*, not as *practice*. With Ranke, that is, the difference between history and politics came to approximate the difference between theoretical and practical philosophy: ‘History and politics differ from one another, just as do 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’.⁴² In other words, the ‘master of modern historical narrative’⁴³ effectively tried to reinvent modern historiography as a whole by negating the value of history for politics and the present.

This point remains a rather contested one, however, for as Hayden White argued, ‘[t]he politicalization of historical thinking was a virtual precondition of its own professionalization’.⁴⁴ It is an accepted fact among historians that Ranke had his own politics. As Gadamer put it, Ranke’s epic consciousness ‘was inclined to foster the nonpoliticality appropriate to an authoritarian state’.⁴⁵ Ranke 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, and so on. At some point in his life, he even became a political journalist, looking at contemporary issues through his monarchical politics.⁴⁶ Moreover, Ranke has been interpreted by following traditions of historians precisely as the historian who postulated the primacy of politics in history. The tradition to which the nationalist historical writing of Ranke belongs was that of the Protestant educated middle class, a tradition for which politics ‘mattered among anything else because it seemed to promise a secularised redemption from the divisions of German history’.⁴⁷ 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’. Ranke was neither an antiquarian nor an ideologue, and he achieved ‘a *balance* of

⁴² Ranke, ‘On the Relation of and Distinction between History and Politics’, p.114.

⁴³ Dilthey, ‘The Eighteenth Century and the Historical World’, p.233.

⁴⁴ Hayden White, ‘The Politics of Historical Interpretation: Discipline and De-sublimation’, *Critical Inquiry*, 9 (1) (1982) pp.113-137, p.118.

⁴⁵ Gadamer, ‘On the Scope and Function of Hermeneutical Reflection’, p.29.

⁴⁶ 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, ‘Introduction’, p.10.

⁴⁷ Harry Liebersohn, ‘German Historical Writing from Ranke to Weber: The Primacy of Politics’, in Lloyd Kramer and Sarah Maza (eds.) *A Companion to Western Historical Thought* (Blackwell Publishers, 2002) pp.1661-1684, p.167.

political motive and historical judgment'.⁴⁸ 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. To Ranke, 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.

Ranke addressed the question about the relation between history and politics and the usefulness of historical inquiry for the present quite directly; 'What does history, which gives us a supply of knowledge of previous ages, have to do with the improvement of contemporary states?'. Confronting those who believed that the organisation 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'. The improvement of contemporary states, Ranke believed, requires a science completely different from history. History looks at the origins of evil but only the *new science of politics* can find its remedies and 'we can raise no longer those questions which occurred in other ages, only those which concern us today'. Human beings cannot lose confidence in their ability to organise 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 and confronting present problems.⁴⁹

Lastly, it is important to note that Ranke is hailed as the founder of 'objective historiography' because his historiographic predecessors were 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 would put it, 'from a historical perspective, modern historical studies have laid claim to a systematic rationality by emphasising antirhetorical arguments'.⁵⁰ Prior to Ranke, historiography used to be carefully adjusted to the needs of the audience and employed the language of common sense to teach practical lessons about life. Ranke claimed that the historian should 'extinguish the self' and let the past speak for itself.⁵¹ He attempted to transform history into an empirical science that follows strict 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. Indeed, though Ranke was not the first to make use of archives for the purpose of writing history, he is deemed the first to

⁴⁸ Liebersohn, 'German Historical Writing from Ranke to Weber', p.171, italics in original.

⁴⁹ Ranke, 'On the Relation of and Distinction between History and Politics', p.108.

⁵⁰ Rüsen, *History: Narration, Interpretation, Orientation*, p.42.

⁵¹ Arguably, Ranke fulfilled this scientific requirement of historiography by replacing rhetoric with an idealist philosophy of history and, at the same time, by transforming his political ideas into 'rhetorical modes and strategies of historical writing'. Jörn Rüsen, *Studies in Metahistory* (Human Sciences Research Council, 1993) p.137.

have done so considerably well.⁵² Ranke's scientific approach to historiography had little in common with the rhetorical attitude of historiographers like Francesco Guicciardini (1483-1540), who used fictional characters as sources. Instead, Ranke made 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 in historiography in the late nineteenth century.⁵³ To be an objective science, history cannot be a rhetorical and literal art but a well-defined research procedure that replaces tricks and fantasy with truth. Ranke, then, may be said to have replaced the rhetorical presentism and political bias inherent in all historical accounts with objectivity, historiographic impartiality, and rigorous examination of historical evidence.

We can now bring this section to a conclusion. In the nineteenth century, thanks to Ranke, history began its transformation into a science, and it turned into a sort of spectator theory of the 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.⁵⁴

If history becomes a reliable source of information about the past the moment it renounces its practical mission, then it needs to be asked what exactly criminologists working historically hope to achieve by using historical inquiry. This is arguably the core problem for historical criminology today; on the one hand, history as art, rhetorical device, and present-centred narrative about the past cannot possibly be a reliable tool for scientifically explaining current manifestations of crime or pushing for the reform of criminal justice. On the other hand, objective historiography as method to disclose the past 'in its essence' is possible to the extent that the past is studied without presumption of changing the present.

⁵² Ranke's historiographic position – that the past is what happened in essence – is meant not as a philosophical generalisation 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'. Daniel Woolf, *A Global History of History* (Cambridge University Press, 2011) p.372.

⁵³ It is also possible to argue that what Ranke actually did was 'to 'novelize' history while depriving it of both the techniques and imaginative resources of invention and representation that were henceforth exiled into the domain of 'fiction''. Hayden White, 'Introduction: Historical Fiction, Fictional History, and Historical Reality', *Rethinking History*, 9 (2-3) (2005) pp.147-157, p.150.

⁵⁴ White, *The Practical Past*, p.10.

History as oratory, rhetorical, and literary art and technique to recount old and occasionally useful stories is most definitely not what historical criminologists are primarily interested in. At the same time, history understood as disinterested and past-oriented study of 'what actually happened' in previous epochs is explicitly antithetical to the possibility of using historical knowledge as practical guide to current dilemmas. If historical epochs are governed by their own historicity and therefore do not prefigure one another in any way other than temporally, then history should not be drawn into the governance and management of contemporary issues. Doing so would run the risk of muddling history and *the politics of the present* and of compromising objective historical understanding in the process. As Ranke would put it; 'So far is history from improving politics that it itself is more usually compromised by it'.⁵⁵ For Ranke, objectivity meant impartiality, 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'. Historical knowledge is not useful because it can be used in the present but because it belongs 'to the perfection of the human spirit'.⁵⁶

Now that a historicist objection to the practical use of the past has been articulated, it is worthwhile considering what a rebuttal to such an objection might be. The next section develops one such rebuttal in the context of the historical study of crime. Since historical criminology does not seek historical understanding for its own sake, we must inquire into whether its methodological rationale can be based on anything other than an explicit anti-historicist commitment. As a matter of fact, such a commitment seems already to have been a feature of a number of historical works on crime and crime-related phenomena. In the first place, crime historians have themselves explored the relationship between the history of crime and criminal justice policy for some time now. This does not mean that they have conclusively shown that resorts to history can satisfactorily aid policymakers in drafting better criminal justice policies. It does indicate, however, that there exists a commitment among some crime historians to at least reflect on the policy implications of their historical investigations. It also needs to be recognised that the historical and comparative study of criminal punishment has long revealed the policy relevance of historical perspectives for criminal justice and penal matters. Last but not least, it should be acknowledged that the sustained influence of Foucault's history of the present on the historical study of crime, punishment, and criminal justice speaks volumes about the desire of some of those working in such fields to overcome historicism and to transcend its spectator theory of the past.

Historical Criminology and Anti-Historicism in the Historical Study of Crime

If history were unambiguously meant not to generate 'useful knowledge' but only to enhance our understanding of past events and phenomena, then one would expect it to have remained an esoteric luxury for criminologists to this day. Yet this is not exactly the

⁵⁵ Ranke, 'On the Relation of and Distinction between History and Politics', p.108.

⁵⁶ Ranke, 'On the Relation of and Distinction between History and Politics', p.111.

case. Particularly thanks to the growing popularity of social history in the second half of the twentieth century, the historical study of crime has progressively ascended to a position of respectability in academic circles across the globe. While the 'crime' historian was a virtually unknown label in historical scholarship before World War II, today that same label designates a well-established professorial and academic specialism within university settings and research institutes. In addition to having so far made a remarkable contribution to our knowledge of past crime-related phenomena, writing crime histories has become, to a rising number of historians, a familiar way of *performing the present*.⁵⁷ Though the social history of crime has often been written following historicist guidelines designed to prevent crime historians from commenting on contemporary matters, some historians have vocally and openly discussed the practical potential intrinsic to studying crime historically. This finds a sufficient explanation in the idea that historicism – just like any other historiographic paradigm – is to be understood not as a universal methodological system of rules for the writing of history proper but rather as a kind of *historiographic performance*. Historicism should be regarded as a technical and methodological *choice* rather than an epistemological obligation.⁵⁸ If historicism were the only plausible historiographic method to allow for truthful descriptions of past events and phenomena – simply by virtue of the fact that it is the historiographic approach most devoted to studying the past 'for its own sake' – then it would have to be conceded that there can be no relation between the historical study of crime and contemporary criminal justice policy.

However, the idea that the study of the past can influence the current policy climate and have implications for criminal justice has been recognised for decades. 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 the historical study of crime.⁵⁹ In fact, some historians take crime history 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.⁶⁰ This realisation is particularly relevant for the realm of policy; as Sir Walter Raleigh would have put it, 'we may gather out of history a policy no less wise than eternal; by the comparison and application of other men's fore-passed

⁵⁷ On the 'performative turn' in historical studies and the humanities more broadly see Peter Burke, 'Performing History: The Importance of Occasions', *Rethinking History*, 9 (1) (2005) pp.35-52.

⁵⁸ Following Rankean historicism is more than just a technical or methodological choice: 'the choice of following Ranke in fleeing presentism [...] is still a *moral choice* open to each historian'. Mary P. Winsor, 'The Practitioner of Science: Everyone Her Own Historian', *Journal of the History of Biology*, 34 (2) (2001) pp.229-245, p.236, emphasis mine.

⁵⁹ Eric A. Johnson and Eric H. Monkkonen, *The Civilization of Crime: Violence in Town and Country Since the Middle Ages* (University of Illinois Press, 1996)

⁶⁰ Martin J. Wiener, 'Foreword', in Barry S. Godfrey, Clive Emsley and Graeme Dunstall (eds.) *Comparative Histories of Crime* (Cullompton: Willan Publishing, 2003) pp.vii-viii.

miseries with our own like errors and ill deservings'.⁶¹ Moreover, the history of crime provides ways to investigate time, place and culture; far from being inconsequential, it makes it possible to study the historical meaning of crime, to expand discourses of criminology, to place representations of crime and punishment in their proper historical context, and much more.⁶² For what concerns the relationship between the history of crime and contemporary criminal justice policy, such a relationship has been explored by criminologists and historians for over four decades.

In October 1979, a national workshop on the application of historical research to the study of crime organised by the *National Institute of Law Enforcement and Criminal Justice* drew together sixteen researchers in history, criminology and criminal justice in Chantilly, Virginia. The workshop focused on the ways in which historical research facilitates and enriches understandings of contemporary crime and criminal justice matters. The past, many of the workshop's participants argued, can illuminate the present condition, inform contemporary policy and guide present judgements on criminal justice. 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'. 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'.⁶³ Particularly persistent forms of criminality, like organised crime, can be analysed through a historical lens to furnish insights into the mechanics that permit such forms of criminality to develop, evolve and endure over time, as well as into alternative strategies for their management and control. The workshop aimed 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 policy problems and that a number of historical themes and topics belong to 'the federal agenda'.⁶⁴ Some of the papers presented at the workshop relied on cross-cultural perspectives meant to enrich current understandings of criminal justice systems through historical research.⁶⁵ A number of contributors made explicit calls for a greater interdependence of social history and policy-oriented social science.⁶⁶ Others still

⁶¹ Sir Walter Raleigh, *The Works of Sir Walter Raleigh, Vol II. The History of the World, Book I* (Oxford University Press, 1829) p.iv.

⁶² Amy G. Srebnick and Rene Lévy (eds.) *Crime and Culture: An Historical Perspective* (Ashgate, 2005)

⁶³ James A. Inciardi and Faupel, Charles E. 1980, 'Introduction', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime: Implications for Criminal Justice Policy* (SAGE Publications, 1980) pp.11-28, pp.11-13.

⁶⁴ Inciardi and Faupel, *History and Crime*, p.16.

⁶⁵ Thomas J. Duesterberg, 'The Politics of Criminal Justice Reform: Nineteenth Century France', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.135-152. Mary Gibson, 'The State of Prostitution: Prohibition, Regulation, or Decriminalization?', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.193-208. David Miers, 'Eighteenth Century Gaming: Implications for Modern Casino Control', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.169-192.

⁶⁶ Eric H. Monkkonen, 'The Quantitative Historical Study of Crime and Criminal Justice', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.53-73.

focused on more targeted topics such as juvenile justice and the way in which its current policy and administration is shaped by historical events.⁶⁷

Just as a number of crime historians have kept an eye on the present while writing the history of crime, so historical criminologists tend to espouse anti-historicist attitudes. In simple terms, they reject the idea that there is no necessary or direct link between past and present. This is why 'present-centeredness' and 'futurism' are among the major forms of representation for the historical criminologist's contentions:

'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.⁶⁸

Historical criminology is still a study area in the making; its scope and features are not well defined and its potential contribution to the study of crime as a whole remains a matter of debate. A number of works in the historical study of crime make explicit reference to 'historical' criminology⁶⁹ and the oldest mention of 'historical criminology'

⁶⁷ Theodore N. Ferdinand, 'History and Policy in Juvenile Justice', in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.153-168.

⁶⁸ Paul Knepper, *Writing the History of Crime* (Bloomsbury, 2016) pp.2-3.

⁶⁹ Here is a selective list: Gustav Radbruch and Heinrich Gwinner, *Geschichte des Verbrechens: Versuch einer historischen Kriminologie* (Eichborn Verlag, [1951] 1991). Marc Alexander, 'IV. Historical Criminology: Memories of a Belgian Prison Psychiatrist Bridging Fifty Years', *International Journal of Offender Therapy and Comparative Criminology*, 16 (1) (1972) pp.66-73. Gilbert Geis and Colin Goff, 'Edwin H. Sutherland's White-Collar Crime in America: An Essay in Historical Criminology', *Criminal Justice History*, 7 (1986) pp.1-31. Lucia Zedner, 'Women, Crime, and Penal Responses: A Historical Account', *Crime and Justice*, 14 (1991) pp.307-362. James D. Calder, 'Al Capone and the Internal Revenue Service: State-Sanctioned Criminology of Organized Crime', *Crime, Law and Social Change*, 17 (1992) pp.1-23. John Pratt, 'Criminology and History: Understanding the Present', *Current Issues in Criminal Justice*, 8 (1) (1996) pp.60-76. Mary Bosworth, 'The Past as a Foreign Country? Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41 (3) (2001) pp.431-442. Barry S. Godfrey, Chris A. Williams and Paul Lawrence, *History & Crime* (SAGE Publications, 2008). Paul Knepper and Sandra Scicluna, 'Historical Criminology and the Imprisonment of Women in 19th-Century Malta', *Theoretical Criminology*, 14 (4) (2010) pp.407-424. Paul Lawrence, 'History, Criminology and the 'Use' of the Past', *Theoretical Criminology*, 16 (3) (2012) pp.313-328. Sverre Flaatten and Per Jørgen Ystehede, 'What's Past is Prologue', *European Journal of Criminology*, 11 (2) (2014) pp.135-141. Paul Knepper, 'Historical Criminology', in Gerben Bruinsma and David Weisburd (eds.) *Encyclopedia of Criminology and Criminal Justice* (Springer, 2014) pp.2081-2087. Mathieu Deflem, 'Comparative Historical Analysis in Criminology and Criminal Justice', *The Routledge Handbook of Qualitative Criminology* (Routledge, 2015) pp.63-73. Knepper, *Writing the History of Crime*. David Churchill, 'Towards Historical Criminology', *Crime, Histoire & Sociétés*, 21 (2) (2017) pp.379-386.

known to the author can be found in Lindesmith and Levin.⁷⁰ There is no recognised initiator of historical criminology, though Radbruch was probably one of the first to use the term coherently 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.

Historical criminologists do not currently espouse a unified set of research interests, nor do they adopt a coherent set of research methods. For this reason, historical criminology can hardly be called an academic specialisation. That said, already a quarter of a century ago, Pratt noticed the existence of trends that pointed at the coming into being of ‘a significant body of research in historical criminology which has developed in recent years’⁷¹ – a body of research which included Pratt’s own work on the history of the New Zealand penal system and on the history of the governance of dangerous offenders, Finnane’s historical studies on policing and Fairburn’s analyses of nineteenth-century crime patterns.⁷² The flourishing of an interdisciplinary historical-criminological research field in the second half of the twentieth century owes much to the writings of Radzinowicz on the history of English criminal law, independent publications by Platt, Rothman, Scull, Ignatieff, Foucault, Melossi and Pavarini, and the ‘new histories’ of Garland and Sim.⁷³ Equally important, the establishment of scholarly journals like

David Churchill ‘Thinking Forward through the Past: Prospecting for Urban Order in (Victorian) Public Parks’, *Theoretical Criminology*, 22 (4) (2018a) pp.523-554. David Churchill, ‘What is Historical Criminology? Thinking Historically about Crime and Justice’, *British Society of Criminology Newsletter*, 82 (2018b) pp.8-11. Alana J. Piper and Victoria M. Nagy, ‘Risk Factors and Pathways to Imprisonment among Incarcerated Women in Victoria, 1860-1920’, *Journal of Australian Studies*, 42 (3) (2018) pp.268-284. David Churchill, ‘History, Periodization and the Character of Contemporary Crime Control’, *Criminology & Criminal Justice*, 19 (4) (2019) pp.475-492. Paul Lawrence, ‘Historical Criminology and the Explanatory Power of the Past’, *Criminology & Criminal Justice*, 19 (4) (2019) pp.493-511. Henry Yeomans, ‘Historical Context and the Criminological Imagination: Towards a Three-Dimensional Criminology’, *Criminology & Criminal Justice*, 19 (4) (2019) pp.456-474. Thomas Guiney, ‘Excavating the Archive: Reflections on a Historical Criminology of Government, Penal Policy and Criminal Justice Change’, *Criminology & Criminal Justice*, 20 (1) (2020) pp.76-92. Henry Yeomans, David Churchill and Iain Channing, ‘Conversations in a Crowded Room: An Assessment of the Contribution of Historical Research to Criminology’, *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.243-260.

⁷⁰ Alfred Lindesmith and Yale Levin, ‘The Lombrosian Myth in Criminology’, *American Journal of Sociology*, 42 (5) (1937) pp.653-671, p.654.

⁷¹ Pratt, ‘Criminology and History’, p.62.

⁷² John Pratt, *Punishment in a Perfect Society* (Victoria University Press, 1992). John Pratt, *Governing the Dangerous: Dangerousness, Law and Social Change* (The Federation Press, 1997). Mark Finnane, *Police and Government* (Oxford University Press, 1994). Miles Fairburn, *The Ideal Society and its Enemies* (Auckland University Press, 1989).

⁷³ Leon Radzinowicz, *A History of English Criminal Law and its Administration since 1750*, Volume I (Stevens & Sons, 1948). Anthony Platt, *The Child Savers* (University of Chicago Press, 1969). David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Little, Brown & Company, 1971). Andrew Scull, *Decarceration* (Prentice Hall, 1977). Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Macmillan, 1978). Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. A. Sheridan (Vintage Books, 1979). Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System*, trans. G. Cousin

Criminal Justice History in 1980 and the broader development of a *historiography of crime and criminal justice* inspired criminologists to do criminology in a historical mode.⁷⁴

It is imperative, however, not to equate works in historical criminology with works of crime history, as though there are affinities between them, there are also substantial differences. While the British Crime Historians have been meeting regularly since 2008 to discuss and debate common research interests, historical criminologists are part of a rather eclectic group of scholars currently lacking a professional code of conduct and a stable institutionalised presence worldwide. Moreover, while the growing popularity of crime history can be more or less unproblematically attributed to E. P. Thompson and a few other British Marxist historians like Eric Hobsbawm and George Rudé, it has been claimed that it was primarily Foucault's histories of the present to persuade criminologists of the value of historical inquiry for criminological purposes. As Pratt would put it, 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*'.⁷⁵ 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 toward the inevitability of progress and the infallibility of rationality in historical development – the so-called *Whig* view of history.⁷⁶ Foucault offered methodological strategies useful to looking at present dilemmas in criminology and criminal justice through a historical lens while also making it possible to avoid the presentism of Whig history and the historicism of traditionalist historiography.⁷⁷

Today, historical criminology is generally defined as 'research which incorporates historical primary sources while addressing present-day debates and practices in the criminal justice field', but it is unclear whether this should be taken to mean that historical

(The MacMillan Press, 1981). David Garland, *Punishment and Welfare: A History of Penal Strategies* (Gower, 1985). Joe Sim, *Medical Power and the Prison* (Sage, 1990).

⁷⁴ For a comprehensive introduction to the historiography of crime and criminal justice, see Clive Emsley and Louis A. Knafla (eds.), *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History* (Greenwood Press, 1996), Robert P. Weiss (ed.), *Social History of Crime, Policing and Punishment* (Dartmouth, 1999), and Paul Knepper and Anja Johansen (eds.) *The Oxford Handbook of the History of Crime and Criminal Justice* (Oxford University Press, 2016).

⁷⁵ Pratt, 'Criminology and History', p.62, italics in original.

⁷⁶ Pratt, 'Criminology and History', p.63.

⁷⁷ This is a point that Dreyfus and Rabinow made very clear and which, however, is often overlooked. In his 'Delphic pronouncement' about writing a 'history of the present' but not a 'history of the past in terms of the present', Foucault was rejecting two methodological positions at once: avoid capturing 'the meaning or significance of a past epoch' or getting 'the whole picture of a past age' as a traditional (historicist) historian would do and, at the same time, do not read 'present interests, institutions, and politics back into history' as this would get you accused of the presentist fallacy. Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, Second edition (The University of Chicago Press, 1983) p.118.

criminology is a scholarly domain of interest for criminologists *only*.⁷⁸ Churchill, for instance, refers to historical criminology as ‘*the work of criminology done in an historical mode*’,⁷⁹ which suggests that historical criminology is the ‘sole property’ of criminologists. Yeomans, Churchill and Channing opt for a less isolationist approach and prefer making sense of historical works in criminology as ‘conversations in a crowded room’.⁸⁰ Moving further in that direction, Flaatten and Ystehede go as far as classing ‘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’.⁸¹ Independently of whether historical criminology should be regarded as a unified sub-discipline of criminology or a wider and more far-reaching area of interdisciplinary research, there is agreement about the core feature of works in historical criminology; such works operate according to a contentious historiographic principle, namely, *present-centeredness*. Put differently, works in historical criminology are not particularly interested in revealing what happened in the past. Rather, they focus on using historical materials for present practical purposes in the fields of criminology and criminal justice. As Deflem lucidly put it, ‘historical criminology is not merely a criminology of the past’.⁸² A key task of historical criminology, for example, is that of deriving generalisations about current manifestations of crime by identifying elements of continuity and discontinuity between crime-related phenomena past and present.⁸³ Far from suggesting that the past is past and that the present is therefore untouched by it, historical works in criminology like Radbruch’s *Geschichte des Verbrechens* lucidly reveal the significance of historical understanding for criminological practice.

One of Radbruch’s key historical-criminological assertions, for instance, comes from a 1938 article on the origins of criminal law in the class of serfs published in *Elegantiae Juris Criminalis*. In such a work, Radbruch proposed that the origins of modern criminal law are found in intra-household discipline of household members. Put differently, Radbruch argued that modern criminal law bears traces of its origins in domestic disciplinary practices and slave punishments, suggesting – among other things – that patriarchal remnants affect the functioning of contemporary procedures in criminal

⁷⁸ Lawrence, ‘Historical Criminology’, p.493.

⁷⁹ Churchill, ‘Towards Historical Criminology’, p.380, italics in original.

⁸⁰ Yeomans, Churchill and Channing, ‘Conversations in a Crowded Room’, p.245.

⁸¹ Flaatten and Ystehede, ‘What’s Past is Prologue’, p.136.

⁸² Deflem, ‘Comparative Historical Analysis’, p.63.

⁸³ Lawrence, for example, delineates three ways in which historical criminologists reference the past while addressing present concerns, or three present-centred modes of historical-criminological inquiry; the jarring counterpoint, the surprising continuity, and the long-term historical survey. Lawrence, ‘Historical Criminology’, p.495.

justice.⁸⁴ If sufficient historical evidence in support of such a claim is gathered,⁸⁵ how can it possibly not be conceived as ‘useful knowledge’ to be weaponised when, say, examining violence against women today and contemporary criminal justice responses to it? If Radbruch was right in asserting that, to this very day, the criminal law ‘reflects its origin in slave punishments [...] Being punished means being treated like a slave’,⁸⁶ to what extent can his insights be ignored by legislators and policy-makers? Similarly, if Sellin was correct in arguing that penal slavery ‘has not yet been completely stamped out despite the reforms in correctional treatment’,⁸⁷ how can we say that his work does not carry policy relevance? Evidently, the historical study of crime, punishment and criminal justice raises important policy questions about crime control, criminal law, criminal justice and penal matters today.

Likewise, should it be persuasively established that specific forms of punishment correspond to given stages of economic development, which was Rusche and Kirchheimer’s hypothesis in *Punishment and Social Structure*⁸⁸ – a pioneering work in the historical study of crime and criminal justice first published in 1939 – then a number of policy considerations would naturally make themselves available. In the same vein, when in 1979 Rothman presented the findings of his historical investigations into the progressive tradition in prison reform at a workshop on the policy implications of the historical study of crime, his concluding statement was the following: ‘To the degree that one is persuaded of the validity of the dynamic described here, then a series of policy statements become appropriate’.⁸⁹ Then, in *Conscience and Convenience*, Rothman made an even more explicit call for an active engagement within social history and, by extension, within the historiography of crime and criminal justice. The aim of the book was – in Rothman’s own words – ‘to inform both history and social policy, to analyse a

⁸⁴ Gustav Radbruch, *Elegantiae Juris Criminalis*, Second edition (Verlag für Recht und Gesellschaft AG, 1950). On Radbruch’s hypothesis see Markus D. Dubber, ‘Histories of Crime and Criminal Justice and the Historical Analysis of Criminal Law’, in Paul Knepper and Anja Johansen (eds.) *The Oxford Handbook of the History of Crime and Criminal Justice* (Oxford University Press, 2016) pp.597-612, pp.602-605.

⁸⁵ Some would disagree with Radbruch’s idea that ‘the untamed sovereignty of the lord over his serfs is entirely continuous with the current sovereign powers of states over their citizens’. Mireille Hildebrandt, ‘Radbruch on the Origins of the Criminal Law: Punitive Interventions before Sovereignty’, in Markus D. Dubber (ed.) *Foundational Texts in Modern Criminal Law* (Oxford University Press, 2014) pp.219-238, p.238.

⁸⁶ Radbruch, *Elegantiae Juris Criminalis*, pp.11-12.

⁸⁷ Thorsten Sellin, ‘A Look at Prison History’, *Federal Probation*, 31 (3) (1967) pp.18-23, p.23.

⁸⁸ Georg Rusche and Otto Kirchherimer, *Punishment and Social Structure* (Transaction Publishers, 2003).

⁸⁹ David J. Rothman, ‘For the Good of All: The Progressive Tradition in Prison Reform’, in James A. Inciardi and Charles E. Faupel (eds.) *History and Crime*, pp.271-284, p.282. Rothman also made clear in *The Discovery of the Asylum* that the history of the asylum is relevant for our understanding of the present. Since such a history shows that there is nothing inevitable about the coming into being of modern institutions like those of criminal justice and mental health, the study of the past can effectively be experienced as a ‘liberating practice’.

revolution in practice that has an immediate relevance to present concerns'.⁹⁰ Studying crime, punishment and criminal justice in historical perspective does not always constitute an attempt to hide in the past and shy away from present dilemmas and issues. Some would even go a step further and argue that 'a concern to explain the present can be found (overtly or covertly) in most histories which can be distinguished from mere antiquarianism'.⁹¹ This applies to crime history too. Though some works in the historical study of crime are 'at pains to link historical material with current concerns and developments',⁹² others – like Pearson's *Hooligan*, for instance – have been accused of relying on evidence which appears as 'almost invariably impressionistic' due to its present-centredness and policy relevance.⁹³

Sellin's *Slavery and the Penal System*⁹⁴ – a work designed to test Radbruch's hypothesis on the origins of modern criminal punishment – produced findings which have been judged as 'disturbingly applicable to the contemporary United States'.⁹⁵ More generally, Sellin's analyses of the history of punishment have been said to speak directly to contemporary developments in penality and to offer 'insights that are invaluable in understanding our age of penal excess'.⁹⁶ Similarly, more recent historical studies exposing the link between modern penitentiary practices and the slave plantations and workhouses of past epochs – such as those written by Hindus, Spierenburg, Hirsch and Whitman⁹⁷ – are not to be regarded as mere intellectual pursuits devoid of any practical scope. Such studies, as Whitman put it, 'promise something of real importance for public policy'.⁹⁸ Hence, it would be a disservice to the social sciences to conceive of the comparative study of criminal punishment as a purely 'theoretical' endeavour. As Sellin himself recognised, the knowledge generated through the social sciences is, if not directly, at least indirectly responsible for penological progress – in the sense that it

⁹⁰ David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Little, Brown & Company, 1980) p.4.

⁹¹ David Dixon, 'History in Criminology', *Current Issues in Criminal Justice*, 8 (1) (1996) pp.77-81, p.78.

⁹² Dixon, 'History in Criminology', p.78.

⁹³ Geoffrey Pearson, *Hooligan: A History of Respectable Fears* (MacMillan, 1983). Christopher L. Tomlins, 'Whose Law? What Order? Historicist Interventions in the "War against Crime"', *Law in Context*, 3 (1985) pp.130-147, p.138.

⁹⁴ Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976).

⁹⁵ Mark T. Carleton, 'J. Thorsten Sellin. Slavery and the Penal System', *The American Historical Review*, 82 (3) (1977) p.606, p.606.

⁹⁶ John Moore, 'Classic Text Revisited: Slavery and the Penal System', *Criminal Justice Matters*, 85 (1) (2011) p.40, p.40.

⁹⁷ Michael Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767–1878* (University of North Carolina Press, 1980). Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe* (Rutgers, 1991). Adam J. Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (Yale University Press, 1992). James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford University Press, 2003).

⁹⁸ James J. Whitman, 'The Comparative Study of Criminal Punishment', *Annual Review of Law and Social Science*, 1 (17) (2005) pp.17-34, p.23.

affects the intellectual climate in which legislators, correctional administrators and social scientists themselves live and think.⁹⁹ Whether one looks at historical jurisprudence, legal history, penal history, historical criminology, crime history, and so on, there is a need to acknowledge that such branches of knowledge can have a terminus in policy and action.

Arguably, then, the main challenge for historical criminology today is that of effectively translating historical knowledge into principles for practice, or that of demonstrating the potential utilisation of historical insights for practical present purposes. Historical criminologists have expressed this idea in a variety of compatible ways. Knepper, for example, argues that historical research must go a step beyond revealing the past to be of use for criminology. In order to have analytic meaning for criminologists, the past must relate in one way or another to present experience. Hence, historical criminologists link past and present by resorting to a *futurist* commitment.¹⁰⁰ It is the desire for a more promising future that incentivises criminologists to exploit knowledge of the past in search of a more complete understanding of the present and of workable strategies to change it. A more popular way of entertaining a similar idea consists in borrowing from Foucault the notion of the history of the present, as Garland did in *The Culture of Control*.¹⁰¹ For Garland, describing a work on crime and social order in contemporary society as a 'history of the present' means that such a work, *i*) focuses on 'the historical conditions of existence upon which contemporary practices depend', *ii*) uses historical inquiry to discover how certain phenomena 'came to acquire their current characteristics', and *iii*) offers an analysis that is motivated 'not by a historical concern to understand the past but by a critical concern to come to terms with the present'.¹⁰² Though admitting that Foucault's use of history as a means of critically engaging with the present sounds paradoxical and provocative, Garland emphasises that the Foucauldian history of the present is not to be judged as presentist, in the sense that it is not built on the historiographic fallacy of using present concepts and concerns to understand the past.¹⁰³ In *Discipline and Punish*, Foucault made clear that he wanted to avoid such a fallacy when, at the start of the book, he outlined his intention to write a history of the present but not 'a history of the past in terms of the present'.¹⁰⁴ Crucially, writing the history of the present is more than a methodological and historiographic choice; it is a *political* decision or, as Roth put it, 'writing a history of the present means writing a history

⁹⁹ Sellin, *Slavery and the Penal System*, p.23.

¹⁰⁰ Knepper, 'Historical Criminology' p.2082.

¹⁰¹ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, 2001).

¹⁰² Garland, *The Culture of Control*, p.2.

¹⁰³ David Garland, 'What is a "History of the Present"? On Foucault's Genealogies and their Critical Preconditions', *Punishment and Society*, 16 (4) (2014) pp.365-384, p.367.

¹⁰⁴ Foucault, *Discipline and Punish*, p.31. On presentism *contra* Rankean historicism see Adam Schaff 'Why History is Constantly Rewritten', *Diogenes*, 8 (30) (1960) pp.62-74. On the tensions between historicism and presentism in the historiography of sociology see Steven Seidman, et al., 'The Historicist Controversy: Understanding the Sociological Past', *Sociological Theory*, 3 (1) (1985) pp.13-28.

in the present, self-consciously writing in a field of power relations and political struggle'.¹⁰⁵

Following Foucault, historical criminologists tend to see the past not as self-sufficient but as incomplete and problematic and study it as a way of dealing with present ambiguities and challenges. The Foucault of *Discipline and Punish* has been criticised *ad nauseam* for being a treacherous crime historian. That said, it would make a lot of sense to read *Discipline and Punish* as if it were written by a radical historical criminologist. When Foucault described the public execution of Damians the regicide in 1757 – to give a concrete idea – he was doing something other than describing a public execution of the eighteenth century; he was using historical materials and records to relate modern penal practices to the technologies of the power to punish that are at work today.¹⁰⁶ 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'.¹⁰⁷ Damians is one of the analytic tools used by Foucault to speak about contemporary events – first among them the prison revolts going on in France in the early-nineteen-seventies that led Foucault 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. In fact, 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.¹⁰⁸

Foucault's history of the present has been posited as historiographic foundation of historical criminology; history as toolkit not to find out what happened in the past but to generate practical knowledge for understanding and dealing with the problem of crime today. 'If criminologists on occasion work from historical sources', Lawrence claims, 'and make no attempt to link this work explicitly to the concerns of the present, they are effectively acting primarily as historians'.¹⁰⁹ Historical criminologists, then, appear to

¹⁰⁵ Michael S. Roth, 'Foucault's "History of the Present"', *History and Theory*, 20 (1) (1981) pp.32-46, p.43, italics in original.

¹⁰⁶ Foucault, *Discipline and Punish*, pp.3-6. In a lecture delivered in 1979, Foucault laid out the general *ligne de conduite* characterising 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'. Michel Foucault, 'Omnes et Singulatim: Towards a Criticism of "Political Reason"', in *The Tanner Lectures on Human Values*, 11 (University of Utah Press, 1981) pp. 223-54, p.226.

¹⁰⁷ Foucault, *Discipline and Punish*, p.30.

¹⁰⁸ 'That punishment in general and the prison in particular belong to a political technology of the body', said Foucault, 'is a lesson that I have learnt not so much from history as from the present'. Foucault, *Discipline and Punish*, p.30.

¹⁰⁹ Lawrence, 'History, Criminology and the 'Use' of the Past', p.320.

endorse the idea that history becomes truly valuable only when it is put into action, when it is weaponised for the sake of the present. In that regard, the historical criminologists of today seem to be on the right track; their central objective is neither that of explaining or that of problematising the present but, ultimately, that of *changing* it. Early historical criminologists like Radbruch or Radzinowicz were intent on revealing the historicity of the present. They wanted to make sense of the present by resort to history; they hoped to 'explain' the present. The revisionists in the historical study of crime – Rothman, Foucault, etc. – went a step further and used history not just to explain the present but to 'problematise' it. Their task was that of showing that alternative pasts exist, that the present is more complex than it may seem, and that our understanding of the present is in a constant state of revision. Today's historical criminologists are working together with hopeful crime historians to shape the next generation of works in the historical study of crime.

As mentioned, what binds such works together is primarily a willingness to see usefulness in history, or a will to make sense of historical knowledge as useful knowledge, 'practical' knowledge. It is therefore not surprising that a central concern for historical criminologists today is the reform of criminal justice and the potential for history to contribute to such a reform. As a way of further exploring the relationship between the historical study of crime and criminal justice reform, the final section of the paper reviews the contributions made to a recently published Special Issue of *The Howard Journal of Crime and Justice* titled 'Can History Make a Difference? The Relationship Between the History of Crime and Criminal Justice Policy'.¹¹⁰ The overarching aim of the section is to show that, though historical works have so far shown only a limited capacity to influence contemporary criminal justice policy, they nonetheless have the potential to instigate change and reform. In fact, the most significant input of historical works on crime, punishment, and criminal justice is that they consistently show that change is possible in the fields of crime control, criminal justice reform and penal policy.

The Historical Study of Crime and the Reform of Criminal Justice

A growing number of criminologists are becoming ever more persuaded of the fact that history should play a more central role in the design of criminal justice arrangements today. But how can historical criminologists be more actively involved in the creation of a better criminal justice system? A recently published Special Issue of *The Howard Journal of Crime and Justice* addresses this question more or less explicitly by exploring the relationship between the history of crime and criminal justice policy. In essence, the Special Issue's contributors were asked to reflect on how much of a difference historical inquiry can make to the reform of criminal justice. In the Special Issue's opening paper, Yeomans, Churchill and Channing admit that criminology 'appears to share with other

¹¹⁰ The Special Issue was edited by Barry Godfrey and was published in September 2020. It can be freely accessed here:

<https://onlinelibrary.wiley.com/toc/20591101/2020/59/3>

social sciences an awkward relationship with both the past itself and the academic discipline of history' and that the impact of historical research on criminology remains 'somewhat patchy' to this very day.¹¹¹ Moreover, Yeomans, Churchill and Channing recognise that an affirmative answer cannot currently be given to the question of whether history can effectively make a significant difference in contemporary criminal justice matters.¹¹² Various contributors to the Special Issue, however, make unambiguous attempts at arguing that history is useful for present purposes relating to criminal justice. In fact, the unifying theme of the Special Issue is that in-depth historical understandings can inform current practice in criminal justice and have, therefore, a direct link with contemporary states of affair in criminal justice and the possibility of affecting them.

Cox and Godfrey, for instance, show that generations of reformers from the early nineteenth century onward have 'tried and failed to improve conventional juvenile justice institutions' and argue, on this historical basis, that the time has come to think about alternatives to youth incarceration.¹¹³ Similarly, Goldson situates youth justice reform in England and Wales in its historical evolution and reflects on whether it makes any sense, in such a context, to study phenomena under the aspect of their *past-ness* rather than of their *present-ness*. Goldson states that historical mappings can not only provide lessons for the present of youth justice but can also furnish insights valuable for the design of its future: 'Longitudinal excavation and analysis of youth justice reform not only enables us to situate and to understand the present but – if those with power care to take heed – it might even serve as a basis for crafting policy into the future'.¹¹⁴ Equally ambitious contributors such as Williams and Walklate assess the potential for non-judicial alternatives to domestic violence by way of historical examples and suggest that valuable lessons can be learned from history which can inform current policy. As Williams and Walklate argue, 'Better connecting the past and the present affords a better base from which to make sense of the present'. Equally important, they point out that 'an

¹¹¹ Yeomans, Churchill and Channing, 'Conversations in a Crowded Room', p.244.

¹¹² In a similarly modest fashion, Lawrence argues that the only methodologically sound way to evaluate the potential of historical inquiry to address present issues and concerns in the field of criminal justice is long time-frame historical criminology, or 'the analysis of historical evidence over periods of at least several centuries'. In a slightly more pessimist vein, Pifferi claims that though 'historically contextualised criminology' can rightfully be concerned with topics of relevance for the present, it will only be able to contribute critically to their discussion without directly offering certain solutions to existing problems. Lawrence, 'Historical Criminology', p.494. Michele Pifferi, *Reinventing Punishment: A Comparative History of Criminology and Penology in the Nineteenth and Twentieth Centuries* (Oxford University Press, 2016) p.16.

¹¹³ Pamela Cox and Barry S. Godfrey, 'The 'Great Decarceration': Historical Trends and Future Possibilities', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.261-285, p.280.

¹¹⁴ Barry Goldson, 'Excavating Youth Justice Reform: Historical Mapping and Speculative Prospects', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.317-334, p.318.

appreciation of history that is both long and deep would do much to challenge contemporary policy debates in responding to violence(s) against women'.¹¹⁵

Mooney and Shanahan explore the use of history to inform current debates on incarceration and on the future of penal reform in New York City by focusing on the social history of the jail complex on Rikers Island. By synthesising and contextualising 'the story of Rikers into a total historical picture', Mooney and Shanahan show that historical research has a special role to play in the construction of contemporary narratives about incarceration.¹¹⁶ Recognising that the abolitionist movement in America that has – for quite a while – been calling for the closure of Rikers is currently facing organised opposition by community-based activists as well as jail expansion projects, Mooney and Shanahan contend that history can make critical interventions into debates about present criminal justice issues:

It is at this juncture, as we will demonstrate, that the role of history becomes paramount, as competing accounts of reality vie for supremacy, furnishing their own versions of the past, its role in the road to the present, and ultimately, what kind of future we can look forward to. ¹¹⁷

Anderson et al. focus on the colonial history of Guyana to test the hypothesis that the current prison problems in the country are linked to colonialism and argue that 'history can play a role in addressing present-day concerns about the form and function of incarceration'.¹¹⁸ In a similar fashion, Inwood and Roberts use historical analysis to reveal that the disproportionate imprisonment of Indigenous people in British Columbia is not an immutable phenomenon but one with deep historical roots, and that we should not expect its continuation to be inevitable. Their historical case study of Indigenous incarceration rates shows that 'the more important contribution of historical perspective deriving from the 19th-Century registers is not the precise detail of offending patterns, rather it is to remind policymakers that change is possible' ¹¹⁹.

This last assertion is quite representative of the shared attitude of historical criminologists; history for criminologists is not merely a descriptive science of past

¹¹⁵ Lucy Williams and Sandra Walklate, 'Policy Responses to Domestic Violence, the Criminalisation Thesis and 'Learning from History'', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.305-316, p.315.

¹¹⁶ Jayne Mooney and Jarrod Shanahan, 'Rikers Island Jail Complex: The Use of Social History to Inform Current Debates on Incarceration in New York City', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.286-304, p.289.

¹¹⁷ Mooney and Shanahan, 'Rikers Island Jail Complex', p.288.

¹¹⁸ Clare Anderson, et al., 'Guyana's Prisons: Colonial Histories of Post-Colonial Challenges', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.335-349, p.335.

¹¹⁹ Kris Inwood and Evans Roberts, "Indians are the Majority of the Prisoners?' Historical Variations in Incarceration Rates for Indigenous Women and Men in British Columbia', *The Howard Journal of Crime and Criminal Justice*, 59 (3) (2020) pp.350-369, p.365.

exactness but a sort of *prescriptive heuristic* that can help address criminal justice issues and instigate change and reform in the present. This means that historical criminologists – just like some crime historians – are not reluctant to let history speak to present issues in criminal justice and it is paramount that historical criminologists engage in sustained debates on why this attitude is not without its problems. Those who study crime historically would have to concede that all histories are present-centred 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.¹²⁰ That said, a significant number of historians would argue that historiography deals with the historical past and not with ‘the past of our present’ and that historiography has no practical application as its terminus.¹²¹ As Jack H. Hexter pointed out, only under one condition can a better understanding of the past be achieved through history; that one reads and studies it with the aim of understanding and knowing the past, and not to foment action in the present or come up with predictions about the future.¹²² Historical criminology is an obvious exception to this historiographic rule and there is little doubt that this is, at least in part, an inheritance of the impact of Foucault’s history of the present on the historical study of crime and criminal justice.

In fact, it should be uncontroversial to say that the contributions to the history of crime reviewed in this section read very much like ‘histories of the present’, or histories written ‘with an eye on the present’. It is this very feature that, from a historical criminologist’s perspective, makes such contributions invaluable; each makes use of historical knowledge to influence the politics of the present and this, I would argue, is the defining ingredient in historical works of criminology. That said, historical criminology need not be written from an exclusively Foucauldian perspective; intellectual history, institutional history, social history, cultural history, all offer valuable entry points to doing historical criminology and writing the history of crime and criminal justice. To a certain extent, however, Foucault did help shape a new practice for studying crime historically. Not only did he make it possible to engage in a new kind of historical criminology different from the Whiggish and presentist one popularised by Radzinowicz, but he also legitimised a *critical historical criminology* informed by a historiography of the present. Paul Knepper argues that Foucault’s greatest influence on the historical study of crime concerns the prioritisation of theory over evidence. His ‘theory-driven’ approach offered an alternative to the progressivism of Whig and legal history but, in the last analysis, distorted the past just as much as Whig history for the sake of making statements relevant to the present.¹²³ In Knepper’s view, the historical study of crime currently finds itself in

¹²⁰ Jack H. Hexter, *Reappraisals in History* (Longmans, Green & Co, 1963). This is true of history in general and of all specialised fields within it. For a sustained discussion of the problem of not resorting to present categories of experience in a study of crime and mentalities in early-modern England, for instance, see Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge University Press, 2000).

¹²¹ Heller, *A Theory of History*, p.81.

¹²² Hexter, *Reappraisals in History*, p.187.

¹²³ Knepper, *Writing the History of Crime*, p.232.

an uncomfortable situation; its very beginnings would be inconceivable without social and cultural history and influences like Foucault, yet its future developments require the affirmation of the value of 'conventional methods' of historical research. Yet, what made Foucault's history of the present appealing to criminologists working historically is precisely the fact that such criminologists take history to be essential for our present understanding of crime-related phenomena.

Perhaps Knepper's call for a reaffirmation of the value of 'conventional' historiographic methods can be interpreted as an exhortation to be faithful to the anti-rhetorical, empirical and archival methods of the scientific history of the nineteenth century, that is, to traditionalist historiography *a la* Ranke. But would not this make historical criminology indistinguishable from past-oriented crime history? This is a phenomenon that often presents itself during syntheses; elements are not simply subsumed but fundamentally altered to the point of becoming unrecognisable. Instead of imagining a historical criminology that is devoid of its defining function, let us entertain the possibility that it is precisely by providing perspectives that are different from those offered by crime historians that historical criminologists will make a valuable contribution to the historical study of crime. Instead of thinking more like historians, we should keep *unthinking criminology*. It is arguable that historical criminology will make progress by endorsing conventional historiographic techniques or by way of an orthodox interdisciplinary synthesis with history. Godfrey, Williams and Lawrence point out that criminology and crime history have, by now, created their own 'history of interaction' and that this makes it almost impossible to classify certain works in the historical study of crime as either 'criminological' or 'historical'.¹²⁴ Quite frankly, this suggests that, far from being purely an interdisciplinary endeavour, the historical study of crime is an exercise in what Wallerstein would call *unthinking social science* – or, as Foucault would put it, an attempt to *de-discipline* ourselves.¹²⁵

The first step toward overcoming historicism in the historiography of crime and criminal justice, then, is recognising that we, as criminologists, should not be expected to act like historians, just like we would not expect historians to act in a criminological capacity while writing crime histories. Criminologists cannot be asked to be indifferent spectators of the past, and the sooner we make this clear, the better equipped we will be to do our job as active participants in the politics of the present. This does not mean, however, that historicist objections to historical works in criminology can be simply dismissed by historical criminologists. Rather, it means that criminologists working

¹²⁴ Barry S. Godfrey, Paul Lawrence, and Chris A. Williams, *History & Crime* (SAGE Publications, 2008) p.19.

¹²⁵ Immanuel Wallerstein, *Unthinking Social Science: The Limits of Nineteenth-century Paradigms*, Second edition (Temple University Press, 2001). Michel Foucault, 'La Poussière et le Nuage', in Michèle Perrot (ed.) *L'Impossible Prison: Recherches sur le Système Pénitentiaire au XIX Siècle* (Éd. du Seuil, 1980) pp.29-39.

historically need to take a reflexive attitude toward the historical study of crime. Historical criminologists need to think carefully and critically about the place of historical criminology within the historiography of crime and criminal justice, and ought to be prepared to deal with criticisms mounted by trained historians who may see historical works in criminology as abuses of history and as social-scientific contaminations of historiography.