Review of:


*Constitutive Criminology* offers more than an “affirmative” theory of crime. Of interest to social thinkers generally is the “constitutive” social theory underlying the approach to criminology which Henry and Milovanovic develop from a number of Postmodernist sources, most notably, Chaos theory. Modernist social theories are outlined and castigated, as in Postmodern analyses generally, as embodying a metaphysics which privileges particular discourses while silencing others and serving to recursively reproduce crime and other social harms. Specific modernist theorists are partially resurrected by the authors to the extent they anticipate Postmodern critiques. Notable here would be Giddens, whose theory of structuration posited a contingent social structure recursively reproduced by human agency, Friere’s dialogical pedagogy which emphasised the transformative powers of speaking “true words”, and Matza’s conceptualisation of delinquent “drift”, interpreted as indicative of a state of maximum indeterminancy.

What the authors term “sceptical” Postmodernism is useful critically, in the deconstruction of modernist assumptions, but not constitutively since its radical anti-foundational stance leads nowhere other than to nihilism. Henry and Milovanovic’s integrative approach builds on an “affirmative” Postmodernism which takes seriously the contingent “virtual” realities which are socially constructed through interaction and discourse.

*Constitutive Criminology* develops a self-consciously “utopian” and “romantic” vision of social change which the authors claim is necessitated by the failure of modernist-inspired change, principally Marxism. Constitutive theory, which is “beyond” both (sceptical) postmodernism and Marxism, is touted as a progressive alternative to both.

Overall, while I found the argument quite dense, the authors go to some pains to present their versions of others’ texts in accessible ways, repeating meanings, using examples and reiterating points throughout, while maintaining the complexity of the conceptualisations.

Drawing on the Postmodern image of the de-centred subject, in the view of affirmative Post-Modernism, human agents have a multifaceted nature which is both unique as well as socially and discursively constituted. Moreover, humans are subjects-in-process, continually recreating themselves while simultaneously continually recreating the social context which shapes their identity and potential as well as the identity and potential of others. Discursive practices produce culturally and historically specific representations (images) which are imbued with object-like reality and attain relative stability. They then
become the co-ordinates of reconstructive action, based upon and upholding specific agents’ version of these images.

In this process, other representations are silenced or denied and the human agency which constituted the contingent and transitory “reality” is hidden. While discursively constructed, these social structures are intricately interconnected, constitutive interrelational sets which constitute and inhabit each other; they exist in a dialectical flux which is, in principle, unstable and unpredictable. At any instance, however, certain depiction’s gain ascendancy and are strengthened by social action which is undertaken in relation to them. Social actors “invest” in these depictions; they organise action to defend specific representations, giving them the appearance of stability and, hitherto and presently (though not necessarily), producing the dynamics of subordination and oppression. What is created, then, is a discursively constituted “virtual” society.

Consistent with affirmative Postmodern interpretations, crime and harmfulness are discursively constructed categories which are, nevertheless, “real” in their consequences. Particular relatively stabilised social forms provide the basis for two types of harms (crimes): harms of reduction, which occurs when a social agent experiences a loss of some quality, and harms of repression, which occur when a social agent experiences a restriction from achieving a desired end. While all humans invest in their respective constructions of reality, some become “excessive investors”, conflating socially constructed differences with differential evaluations of worth, reinforcing a social hierarchy while suppressing others’ co-production, rendering them silent.

With respect to causality, given the fundamental indeterminacy of causal relations, affirmative Postmodernism again turns to Chaos theory for an image of a complexly dialectical theory. Constitutive dialectics envisages numerous interpenetrating relational sets which co-exist exist in a flux which is in principle unstable. Each has its own logic which, at any time, can be complementary or antagonistic to the others, although one may be dominant at any given. What appears to be global stability masks an underlying local indeterminacy where what appear to be insignificant factors may have disproportional effects.

Certain of these complexly inter-related sets involve the logic of domination. While these discursive practices divide and separate people, invoking unequal evaluations and hierarchies of power, they exist in an uneasy tension with alternative and silenced conceptions. The points of intersection of these “variables” represent points of maximum indeterminacy, the points which are central to the analysis of constitutive theory. The “virtual society”, then, may have the appearance of a monolith in which continually emergent discursive practices are reproduced, resulting in relatively stable meaning constructions. But in the very reflexive reordering of social “reality” lies the opportunity for social change.

In the medium and long run, constitutive theory proposes that current constructions which are productive of social harms need to be replaced with
alternative discourses. This is not a matter of substituting genuine truth for a false truth or recreating another “master” discourse. “Replacement” discourses deconstruct assumed “truths” and provide “alternative visions”, alternative “virtual realities” invoking a multiplicity of resistances (p. xi) and resurrecting those voices of the marginalized which do not simply mirror the hegemonic.

The justice practice of constitutive theory involve three micro-technologies, the first of which is to intervene at the generative sites of discursive production, principally the mass media. The second micro-technology is based on pacifism, the rejection of the view that it is necessary to use power or force to effect social change. By the definition of the authors, any excessive investment in the use of power is “crime”. What are necessary, then, are peacemaking activities that will transform the practices and ideologies of previous “excessive investors” in power and, thereby, actually reduce the incidences of power as crime.

Some recalcitrant excessive investors, impervious to these collective solutions, might benefit from “narrative therapy”, the third micro-technology. The dominant narratives which have shaped the agents’ constitutive work are deconstructed and they are assisted in developing “liberating life narratives” which redirect their constitutive investments in inter-personal relations. Both victims and “excessive investors” must become “recovering subjects” who are conscious not only of the constitutive nature of “virtual reality” but of their role in engendering and potentially transforming it. Transformation occurs in a complex interaction in which all agents are changed in a complexly reflexive and ultimately unpredictable way.

Finally, the authors develop a vision of a Utopian political economy in which “humans have a genuine power of self-determination”. Maximum human freedom exists in a constituted set of social interrelationships which are in a state of disequilibrium; a new consensus is both impossible and undesirable. Social order is always open, no system of domination or dependence can be entrenched, and the conditions are maximised for the reconstitution of subject positions. The result is mutual privileging of multiple groups which strive for the production of new, alternative signifiers, and struggle to realise their versions of “reality”. In this respect, Constitutive Criminology builds upon social movements analysis.

Mindful of the impracticality of “extremely radical” reforms which “neglect the force of existing totalities”, this super-liberalism envisages a “transitional redistributive principle where both the well-off and the disenfranchised are benefited” (emphasis in original). Employees, for example, would build equity in corporate stock, eventually becoming co-owners of their corporations (p. 243n).

In sum, Constitutive Criminology presents a model of the creation of social “reality” which is built from micro interactions, a vision of a “utopian” society existing in far from equilibrium conditions and, in between, some relatively
undeveloped practices to move from the present to the future. Ultimately, my reservations about this theoretical set will reflect my “modernist” biases.

Constitutive theory is built on a vision of a post-industrial order in the developed “west” where “information” and knowledges replace in importance material production. It is within the “academy” (the epíteme of post-modern society) in the over-developed world that discourse analysis has achieved some ascendancy among critical intellectuals. In my view, insufficient attention is given to the material basis of this specific social order. Analysis should be grounded in a materialistic analysis of production and distribution in the global era in which the over-developed world occupies a particular place (research and development – information and knowledge) in the global division of labour. This would mean developing such concepts as a global “political economy” which the authors use without theoretical elaboration.

The “state” is also under-theorised, although in their critique of anarchism, the authors indicate that there would be the need for some central authority to protect necessary rights in the utopian super-liberal social formation. Social hierarchies may be based on many definitions of “difference”. It would be useful to theorise the forms of power which shape the dominant form of oppression in any given social formation.

Human action is materially transformative. The time and space in which humans learn and develop conceptual practices is structured by hegemonic discourses which are contextualised in a materially constructed environment which has a physical reality independent of conceptions about it. The actual constitution of this materiality reinforces hegemonic conceptions, making them seem natural and inevitable, shaping and influencing the agency of humans within them. In social change, the transformation of structure is fundamental.

According to the affirmative definition of crime, any instance of “excessive investment” is in principal similar to any other. This has the benefit of including the every-day economic harms of the powerful which result from the routine operation of the logic of capital. This all-inclusive definition, however, makes it difficult to theorise a more particular definition of “crime”. It would seem to me to be useful to theorise the difference between the harms which are recognised and defined as crimes in a particular constellation of constitutive relational sets and institutional constructions and those harms which are ignored or deemed lawful.

The examples of practices consistent with constitutive criminology are drawn from interventions which are directed at the conventional definition of crimes. The major generative source of harm in the new economic order, however, is the actions of those “excessive investors” who have privileged access to the material resources of power – dominant groups in charge of the state and trans-national corporations. The usual answer to obliging the powerful to accept social change is to subject them to counter-power. This strategy is negated by the author’s pacifism. Minimally, the utopian, romantic vision of change which
includes the privileged, those who benefit materially from the hierarchical “virtual” society which they have constructed, remains undeveloped.

*Constitutive Criminology* represents the evolution of the theorising of two major figures in the Postmodern tradition. It builds on the previous work of both Henry and Milovanovic while representing a stage in an as yet unfinished project. It is a stimulating book, raising issues which must be confronted by scholars in the positivist, romantic and Marxist traditions of modern theorising. I remain sceptical of the efficacy of social change which has its source in the activities of the academy. We need some alternative organisational framework for determining and judging the consequences of transformative social practices rooted in a social scientific model which, despite its limitations and shortcomings, is superior to philosphising.