Marxism and the Definition of Crime

Dr. David Moxon
Sheffield Hallam University

Marxism was once among the dominant perspectives in the criminological field. Following something of a decline in its influence, recently there have been signs that it is on the cusp of a revival. Any such revival should be built upon sound theoretical foundations if it is to be fruitful and enduring. This necessitates the development of a robust Marxist definition of crime. In a recent work, Cowling has proposed a definition of crime that is based upon legally enshrined consensus. This runs counter to Sumner’s idea of crime and deviance as ideological ‘censure’. In what follows the two positions will be outlined, a number of weaknesses in the definition proposed by Cowling will be suggested, and it will be argued that the notion of censure should serve as the basis for a renewed Marxist focus on crime and deviance.

Introduction

In the criminological field, Marxism’s golden age of the 1970s is now but a distant memory. The vigorous debates that characterised the period gradually declined as the participants grew tired of theoretical wrangling (Sumner, 1990a: 15). Then, during the 1980s and 1990s, many one-time Marxists abandoned their earlier positions: Jock Young, for example, helped to establish ‘left realist’ theory, whilst in the US Richard Quinney developed ‘peacemaking criminology’ (Lea and Young, 1984; Pepinsky and Quinney, 1991). Marxism’s influence in the discipline has undoubtedly waned as a result. Nevertheless, work conducted under the Marxist banner never completely disappeared (see Lynch, 1997; Taylor, 1999a, 1999b; Russell, 2002) and now there are suggestions that we are on the brink of a return to “a neo-Marxist criminology […] this time in the context of a capitalism careering out of control” (Downes and Rock, 2007: 323).

If Marxist criminology is on the cusp of a renaissance, then it could hardly be more timely. The perspectives that dominated the middle years of the twentieth century now seem, to a large extent, theoretically and politically exhausted. Today the field is dominated by ‘new right’ thinkers and a revived faith in the rational actor model of criminal behaviour.¹ On what would traditionally be called the ‘left’, recent years have seen the emergence of the somewhat voguish cultural criminology, which rather sidelines the political economy of crime and deviance and instead focuses heavily on their ‘expressive’ nature.² These shifts in emphasis have taken place against a background of rising punitiveness in the criminal justice system, the steady privatisation of its key institutions, and the US-style warehousing in overstretched prisons of the convicted, who hail disproportionately from minority ethnic groups and are overwhelmingly from the lowest rungs of the social ladder.

Thus, on the face of it, the ground would seem relatively fertile for a criminology informed by Marxism. Of course, any such return to Marx requires robust theoretical underpinnings, for in the criminological field as in many others, often ambitious Marxist work has been subjected to a barrage of

² Beck’s notion of the ‘risk society’ (1992) has also been influential. See Feeley and Simon’s description of ‘actuarial justice’ (1992) and O’Malley (2006).
criticism. If Marxism is to reclaim its place as a central theory in the criminological arena, a convincing definition of crime as a foundation stone for theoretical and empirical advances is clearly desirable.

A recent work by Mark Cowling, *Marxism and Criminological Theory*, surveys the field and makes suggestions as to the direction a revitalised Marxist criminology should take. In doing so, it reveals a schism in the way that Marxists have defined crime. This schism has major repercussions for the manner in which Marxists view and study crime. In short, Cowling rejects the common Marxist approach of finding an accommodation with symbolic interactionism's notion of 'labelling'. Instead, Cowling (2008: 42) argues for what he calls an 'extended definition of crime'.

What follows is divided into three sections. The article will begin by outlining Cowling's definition of crime. It will then be contrasted with Colin Sumner's notion of 'censure', which adopts certain elements of the 'labelling' approach. Finally, the notion of censure will be used as the standpoint from which to examine Cowling's 'extended definition'. The suggestion is that, contra Cowling, the Marxist dalliance with symbolic interactionism is not misguided. In fact, the interactionist notion of labelling can be productively harnessed within a robust Marxist framework. In its most sophisticated variant in the work of Sumner, a plausible and convincing scheme has been developed which should serve as the basis for any renaissance in Marxist criminology.

**Cowling's definition of crime**

For those Marxists who have sought to engineer a link with symbolic interactionism, the interactionist notion of 'labelling' has been of central importance. However, Marxists are more forceful than interactionists in their insistence that those with the ability to make their labels 'stick' are the ruling class and their representatives. In this way Marxists have attempted to wed their total vision of the social structure and its relations of power with the micro-level insights provided by interactionism. The self-confessedly partial glimpses of criminality and deviance that interactionism offers are harnessed within a Marxist theory where individual phenomena are understood and gain significance from their relationship to capitalist relations of production.

Cowling distances himself from this position. It is what he considers the 'arbitrariness' of the interactionist stance that is its chief flaw; this is the idea that a 'criminal' act only exists once it has been defined as such. Cowling argues that this approach “works best for victimless crimes” such as the oft-cited example of marijuana smoking, but he feels it unsatisfactory for more serious crimes; “it is difficult to accept that the activities of Harold Shipman were a problem only because the politically powerful defined them as murder. ... Symbolic interactionism is thus superficial” (2008: 41). It implies that “crime has no ontological reality so that anything can be decriminalised” (Ibid.:234). For Cowling, this ignores the empirical reality that legal systems across time and space consistently define certain actions as criminal. In short, Cowling suggests that “the infinitely flexible definitions of symbolic interactionism are neither very plausible in themselves nor a suitable foundation for a Marxist account of crime” (Ibid.:111).

---

3 This notion is most concisely outlined by Becker (1963: 4).
The truth of the matter, according to Cowling, is that “consensus crimes are a feature of a variety of social systems” (Ibid.). There tends to be overwhelming agreement within particular societies about many of the acts that are classified as criminal. This is the case over the longue duree; indeed, “the relative continuity of the criminal law can be seen to have its foundations in consensus crimes” (Ibid.:236). Furthermore, there is also a degree of consensus between different societies about a wide range of behaviours: “Consensus crimes such as murder, assault and the theft of personal property are widely recognised in different societies” (Ibid.:234). Indeed, for Cowling, that such consensus crimes exist contributes to the persistence and tenacity of the capitalist mode of production: “At a fundamental level, laws which are necessary for any kind of orderly society, such as those against consensus crimes, are also necessary for the reproduction of capitalism” (Ibid.:235).

Given the existence of such ‘consensus crimes’, Cowling rejects interactionism and adopts a “more conventional conception of crime”, largely based upon the legal definition (Ibid.:34). However, he rejects a purely legal definition for it is far too limiting and beset with difficulties (Ibid.:38-9). There is a good case, according to him, for including ‘injurious acts’ which are not officially designated as crime; this includes a range of white collar and corporate misdemeanours which can be thought of as crimes in the fullest sense rather than as mere technical violations (Ibid.:42). In short, Cowling defines ‘crime’ as those acts legally categorised as such, many of which command broad assent as to their criminal status, and also those acts that are not legally defined as crime, but which are so injurious as to warrant inclusion in the category ‘crime’; these “non-criminal offences generally have a logical basis in common law and are adaptations of it” (Ibid.:43). As he puts it, there are good reasons for attempting a Marxist explanation of crime as it is generally understood, but extended to incorporate wrongs which are currently dealt with by administrative means or simply left unchecked (Ibid.:52).

On this basis, Cowling proposes a fivefold classification of crimes. As one would expect on the basis of his definition, this classification proposes a range of crimes reasonably close to those identified by law. For him, “this approach is more sympathetic to conventional definitions than the one taken by critical criminologists, which is uncomfortably close to the total flexibility of symbolic interactionists” (Ibid.:122). The first of Cowling’s crime types, consensus crimes, are “the most central crimes which are unlikely to alter in a major way” and ‘are those necessary to any orderly society’. This includes offences of killing, violence, and taking possessions without good reason. Consensus crimes are not wholly static, as “obviously all kinds of changes can happen around the margins of these central crimes and the way in which they are treated, but they are unlikely to simply disappear” (Ibid.:49). It is this relative stability that casts doubt on the symbolic interactionists’ notion that anything can be labelled as crime. The second group of crimes are those “essential to the functioning of the mode of production”. This includes offences concerning contractual enforcement, and the practices of trade unions. The third category is crimes based upon the “enforcement of religious and moral ideas”. This includes laws relating to abortion and euthanasia, for example. Fourth are

---

5 This follows Sutherland (1945) and Slapper and Tombs (1999).
6 Cowling borrows the term ‘consensus crime’ from Hagan (1994).
“derivative or secondary offences”, put on the books in order to ease the prosecution of more serious offences. This may include possession of an offensive weapon. The final group of crimes are those related to maintaining the authority of the state. This may include offences such as imitating a police officer, or indeed anything that undermines the state (Ibid.:49-52).

For Cowling this fivefold categorisation is useful as it helps to concretise the notion that uniform explanations intended to cover all crimes are flawed; “the most promising approach is to abandon the assumption in much writing on criminological theory that all crimes can be explained in the same way. Marxism can then be seen to be more applicable to some types of crime than others” (Ibid.:49). According to Cowling, Marxism is particularly well equipped to explain forms of consensus crime where those crimes are acquisitive in nature, although not where they are driven by ‘individual jealousy or desire to dominate’ (Ibid.). The amenability of the other forms of crime to Marxist explanation is variable, though a good many crimes should be responsive to Marxist analysis, particularly where economic interests are at stake (Ibid.:49-52).

**Sumner and the notion of ‘censure’**

One of the more puzzling aspects of Cowling’s book is the omission from his useful summary of Marxist criminology of the work of Colin Sumner. This omission is all the more surprising when one considers Sumner’s consistent focus upon some of the questions and issues that Cowling himself addresses. Over his considerable oeuvre, Sumner has developed a rigorous and sophisticated concept of crime and deviance rooted in a Marxist framework. Crime and deviance, he suggests, are instances of ‘censure’.

Given the volume of work on censure it is useful to return to its foundations in the 1970s in order to comprehend it properly, for it is in his early works where Sumner most rigorously outlines his position. Sumner’s initial interventions were intended as a response to Hirst. Hirst (1975a; 1975b), in the course of his own (Althusserian) response to The New Criminology, had famously suggested that Marxism had no business in constructing a theory of crime and deviance. This was because the concepts of crime and deviance are not objects specified by Marxist theory. Instead they “vanish into the general theoretical concerns […] of Marxism” (Hirst, 1975a: 204). Sumner did not wholly reject Hirst’s analysis, but argued that Hirst could have inferred, from his own logic, that Marxism was able to “construct an object of knowledge that could be termed ‘deviance’” (Sumner, 1976: 165).\(^7\) Such an object would have to be reworked from scratch using the conceptual categories of Marxism in order to circumvent Hirst’s concerns (Sumner, 1976; 1994: 302-3). It was to this task that Sumner directed his attention. Hirst himself had suggested both that deviance was constituted by ideology (Hirst, 1975b: 238-9),\(^8\) and that ideology was one of the core categories of Marxism (Hirst, 1975a: 204). On this basis, Sumner utilised the category of ideology in order to construct a Marxist concept of deviance and crime.

---

\(^7\) At this point Sumner’s concern was with ‘deviance’ alone.

\(^8\) Hirst used the phrase ‘practico-social ideology’.
Concurrently with these debates, Sumner developed a theory of ideology which crystallised many of the themes that had emerged within Marxism over the previous couple of decades (Sumner, 1979). This theory avoided the difficulties of much Marxist work which reduces ideology and other superstructural phenomena to mere ‘reflections’ of the economic base. Sumner drew a much richer notion of ideology. He saw it as an integral part of all social practice rather than merely being a gaseous effect of more fundamental processes or the deceptive cloak hiding ‘real’ social relations. Nevertheless, he maintained that ideologies (ideas, impressions, notions) and ideological formations (complex systematisations of ideologies) are rooted in the social relations of production that lie at the heart of historical materialist theory.

With this notion of ideology underpinning his work, Sumner developed a new definition of crime and deviance. In the first place, for Sumner ‘crime’ and ‘deviance’ are not valid groups; they are “hopelessly inadequate as empirical descriptors of social behaviour” (Sumner, 1990a: 26). Indeed, “the search for a general concept [such as crime or deviance] to encompass such widely varying practices, problems and situations was itself logically misguided” (Sumner, 1994: 310). The behaviours that these categories cover are too diverse to be amenable to explanation by single all-encompassing aetiological theories. The only common aspects of ‘deviant’ or ‘criminal’ behaviours are that they are purposive behaviours, and they have been labelled as deviant or criminal.

This position represented something of a dialectical transcendence of the two most influential positions of the criminology of the early 1970s. On the one hand was symbolic interactionism, particularly the notion of labelling. On the other was the Marxism of The New Criminology. From symbolic interactionism Sumner takes the notion that the essence of ‘crime’ or ‘deviance’ is the label itself. As Becker and others had argued, deviance is behaviour defined as such. However, Sumner rejects the implication of ‘passivity’ that this formulation contains. For symbolic interactionists, “deviance was not an objective fact until the individual had internalised the censure through interaction with the rule-enforcers and readjusted his symbolic universe in terms of its meaning”. Thus there was nothing purposive about initial acts of rule-breaking, in the sense that the rules themselves were not deliberately breached. No individual consciously sets out to be a criminal or a deviant. Instead, individuals perform actions, some of which break rules; rule-enforcers react by stigmatising the rule-breaker; the rule-breaker internalises the stigmatisation and begins to perceive themselves as criminal or deviant. In effect, the label generates the behaviour, or at least the self-definition (Sumner, 1976: 168-70).

This idea soon became untenable. “Mere empirical observation” of the “collective celebrations of deviance and political rebellion in the late 1960s were the final nail in the coffin: one could not make the label generate the behaviour” (Ibid.:170). Many acts of crime and deviance were patently conscious and purposive. Individuals and groups actually strove for the status of Becker’s ‘outsider’. Thus, symbolic interactionism’s implication of passivity was doomed. More radical conflict theorists of the early 1970s added a focus on the class foundations and functions of the labelling practices themselves. The reluctance of symbolic interactionism to address issues of power always lay

---

9 See especially Sumner, 1979, Chapter 2. What follows is a necessarily brief overview.
10 As Sumner points out, at the time his work was considered ‘neo-Marxist’ or ‘Marxisant’ (Greenberg and Anderson, 1981). However, he saw it as being derived from the central principles of a dynamic Marxist tradition. See Sumner, 1994: 303.
11 Sumner consistently takes a strong line on this point. For criticism of this interpretation of interactionism, see Downes and Rock, 2007: 164-75.
12 More radical conflict theorists of the early 1970s added a focus on the class foundations and functions of the labelling practices themselves. The reluctance of symbolic interactionism to address issues of power always lay...
This was precisely the issue that *The New Criminology* sought to resolve. Criminals and deviants were fully aware of the choices they were making according to Taylor, Walton and Young. Indeed, this argument was extended so far that the deviant was recast as an almost heroic, proto-revolutionary actor, deliberately offending the norms of an oppressive society.\(^\text{13}\) For them, the criminal or deviant was not “a passive, ineffectual, stigmatised individual” but a “decision maker who often actively violates the moral and legal codes of society”. As such, “deviance is a property of the act rather than a spurious label” (Taylor, Walton and Young, 1973: 147, 221). Sumner too adopts the notion of a purposive actor. However, he identifies a flaw in Taylor, Walton and Young’s formulation: “Purposiveness is merely a common element of all human practice and indicates nothing about deviance” (Sumner, 1976: 169). Crime and deviance may well be purposive acts, but if this is true of all social practice then we cannot base a definition of crime and deviance upon it. So, despite seeking to produce a “fully social theory of deviance” (Taylor, Walton and Young, 1973: 270-8) and discussing the processes of societal reaction, *The New Criminology* failed to furnish a clear and rigorous concept of crime or deviance; simply pointing out the purposive nature of criminal and deviant action was not sufficient.\(^\text{14}\)

Nevertheless, by drawing from these bodies of thought, Sumner was able to provide the basis for a revitalised Marxist comprehension of crime and deviance. From symbolic interactionism came the notion of labelling, that crime or deviance is a quality of the label not of the act (but not that crime and deviance is therefore a passive activity that takes shape only when the label has been applied and adopted). From *The New Criminology* came the idea that crime and deviance is purposive action (but not the idea that this alone constitutes crime and deviance; criminal and deviant action must also be labelled as such). In addition, of course, was the idea derived from Hirst that a Marxist theory of crime and deviance must be re-worked from within the categories of Marxism (but not the idea that this is impossible).

Sumner allied these theoretical antecedents with his notion of ideology. Not only did this satisfy Hirst’s requirement concerning the extension of existing categories of Marxism, but it led to a new understanding of crime and deviance as ‘censures’. Crime and deviance are elements of highly contextualised moral and political discourses; “negative ideological categories with specific historical application” (Sumner, 1990a: 26). These negative categories are social censures. In given contexts, certain (purposive) actions are marked off as being ‘criminal’ or ‘deviant’. Such actions are the ones that offend various aspects of the ideology or worldview of those in positions of power and authority; that hegemonic ideology itself is borne of class conflict, in the interaction between consciousness and practical experiences (Sumner and Sandberg, 1990). In short:

The ‘social’ world, the realm of society, does not just produce offensive behaviours but also perceptions of offensiveness and thus crime and deviance are always doubly socially constructed (Sumner, 2004: 6).

\(^{13}\) This trend is still evident in some strands of Young’s work; see Ferrell, Hayward and Young, 2008.

\(^{14}\) This is not Sumner’s only criticism of the concept of deviance employed in *The New Criminology*. See Sumner, 1976: 160-4.
They are constructed both “as practical or behavioural responses to social conditions and as social censures reflecting the emotions, ideologies, and values of powerful social groups” (Ibid.:9). Ultimately crime and deviance can be viewed as censures authorised by the powerful, rather than as behaviours peculiar to certain groups of people (Sumner, 1990a).\(^\text{15}\)

The role of censure

Sumner has refined the basic notion of censure in a series of works. His views on censure’s role are particularly useful in seeking to comprehend his position. According to Sumner, all groups of people develop censures, but in class societies, the economically dominant class will have the greatest capacity to assert its censures, for instance through the legal system and through its control of media and communication (1990a: 27; 1976: 170). The sectional censures of the dominant class can therefore become social censures, widely accepted and internalised even by subordinate classes (Sumner, 1976: 170). In this way censures have an important role in the reproduction of hegemony. The “daily censure of crime attempts to unify and publicise the hegemonic bloc’s vision of its nation and morality”; offenders are marked off from non-offenders, good symbolically marked off from evil (Sumner, 1990b: 47-9).\(^\text{16}\) It is therefore wrong to see censures as wholly negative, as “simple class instruments expressing undiluted economic ideology” (Sumner and Sandberg, 1990: 188), or as mere “superstructural mist” (Sumner, 1976: 173). Rather, they represent interests and express a worldview. Indeed, each censure embodies “generalised social ideologies reflecting generalised social relations, rich with historical conflict, monuments to divisions of wealth, power and consciousness” (Ibid.).

Seen in this light, definitions of crime and deviance and indeed criminal justice itself are always fundamentally political rather than being neutral, technical exercises (Sumner and Sandberg, 1990: 190). For Sumner, “to the extent that criminal justice does not reflect the opinions and interests of all sectors of the polity, it becomes an instrument of sectional violence” (Sumner, 1990b: 43). According to him, crime and deviance are constituted by

a series of normative divides or ideological cuts, cuts made in social practice - and the dominant cuts made in our society are those made by the rich, powerful and authoritative.

It is their distinctions, forged in the heat of driving interests and conflictual practical enforcement, in the practice of conquest, domination and possession, which divide the world up into the positive and negative, right and wrong, normal and deviant” (Sumner, 1994: 299).

Despite this, censures are not blunt tools of class domination. Though capitalist criminal justice systems tend to reflect the economic, political and ideological interests of the hegemonic class, they must also respond to the needs of other groups or they will not command assent. As such, censures

\(^{15}\) This also justifies the conceptual elision of crime and deviance; they are both ideological censures. Of course single practices can be censured as both criminal and deviant, although often they are censured as one and not the other.

\(^{16}\) This echoes Foucault’s idea that the role of the criminal justice system is to make the proletarianised fear the non-proletarianised. See Foucault, 1980: 15.
tend to invoke widely accepted general principles of an era, “albeit superficially, selectively and partially” (Sumner, 1990a: 28). Some consensus is therefore expressed through them. Ultimately, social censures and criminal justice practices more generally “are not just instruments for defining ‘deviance’ and catching ‘criminals’”, but are “important ideological resources in the practical business of hegemonic politics” and potential sites of struggle (Sumner and Sandberg, 1990: 190).

Towards a critique of Cowling’s definition of crime

Two very different Marxist conceptions of crime have been detailed. Cowling conceives of crime as being the product of a relatively stable consensus, reflected in the official legal system. Some 'injurious' acts not officially defined as crime also warrant inclusion. Cowling suggests a fivefold definition of crime; Marxist theory is well suited to explaining some, but not all of these five crime types. He contrasts this with what he sees as the almost limitless flexibility of symbolic interactionist definitions that have been commonly allied to some kind of Marxist position. Sumner sees crime and deviance as ideological censures; behaviours that offend the worldview or interests of the dominant groups in society are marked off and designated as ‘criminal’ or ‘deviant’. A number of difficulties with Cowling’s position are immediately apparent. In what follows, six such difficulties will be discussed.

The critique of labelling

Firstly, Cowling’s rejection of the symbolic interactionist notion of labelling due to its “infinitely flexible” (2008: 133) nature is misguided. Just because something is infinitely flexible in principle does not mean that it will always be bent to its extremes. Sumner provides two reasons why labelling will not, in practice, be a wildly arbitrary process. In the first place, there is the need to make the law appear as a legitimate force in order for it to command assent, as outlined above. Brazenly partisan class laws or denunciations of conduct will rarely, if ever, be made. Secondly, the worldview inherent in the dominant ideology at any given time also narrows the range of plausible and desirable options for the law-maker or labeller. To take an extreme example, the “theme of individual liberty in bourgeois ideology corresponding to the productive activities of commodity exchange under the capitalist mode of production” render it highly unlikely that the doctrine of freedom of contract, a basic principle of contract law, would ever be revoked under current conditions (Collins, 1982: 59-60). Of course, matters of crime and deviance are often more contentious than this, but the point remains. Thus, we can agree with Cowling that, as a matter of abstract principle, the labelling approach suggests that anything can be classed as criminal. However, in practice, the free-for-all that Cowling supposes labelling theory erroneously predicts will not materialise. Any action can be censured. Which actions actually are censured is a result of the interplay between circumstance, ideology and the need for legitimacy.}

Cowling also suggests that, according to symbolic interactionism, behaviours are unproblematic until defined as such by those with the power to apply labels. This is something he is uncomfortable with: “It is difficult to accept that the activities of Harold Shipman were a problem only because the

17 See also Hirst (1975b: 240) and, famously, Thompson (1975: 263-6).
18 Cowling largely ignores the role of ideology. According to him, “theories of ideology play a relatively minor role in criminological theories related to Marxism, so there is no need for an elaborate discussion here” (2008: 22).
politically powerful defined them as murder. ... Symbolic interactionism is thus superficial” (Cowling, 2008: 41). However, Sumner’s notion of censure does not require acceptance of this idea. Whether or not a particular behaviour is problematic (however this rather slippery term is defined) has no necessary relationship to its status as criminal or deviant; “in the abstract, there is no relation of logical or rational necessity between what is popularly morally censured and what is practically censured in the criminal justice system” (Sumner, 1990b: 46). Thus, practices that are commonly considered to be unproblematic may be subject to official censure, whilst widely condemned acts may not be. Of course, many practices that are generally abhorred will indeed be censured. Yet this should not conceal the real nature of the censure, even in the case of the most serious and widely condemned acts: “Murder is not a behaviour but a censure, applied to certain killings, whose pattern of application is thoroughly ideological” (Sumner, 1990a: 34).

The compatibility between interactionism and Marxism

Not only does Cowling reject symbolic interactionism, he holds that it is based upon assumptions that are “dubiously compatible” with Marxism (Cowling, 2008: ix).19 However, this is a mere assertion. There is no detailed explanation of why it is the case. Indeed, Cowling suggests at one point that some aspects of symbolic interactionism “could probably be grafted on to Marxism” (Ibid.:40).20 Yet elsewhere he appears to go back on this.21 As such, it is difficult to be precise about the nature of Cowling’s objections to the attempts at marrying symbolic interactionism with Marxism. Of course, Cowling is perfectly entitled to reject the substantive arguments of symbolic interactionism, although as suggested above he is mistaken in the general thrust of his criticisms. However, to claim in addition to this that symbolic interactionism is only ‘dubiously compatible’ with Marxism requires additional argument that Cowling does not supply.

In any case, Sumner demonstrates how Marxism can incorporate some of the central insights of symbolic interactionism in a rigorous manner. As discussed above, his theory does not merely ‘graft on’ interactionist insights to Marxism, but unites the two perspectives in a new theoretical whole. Thus, far from being an awkward amalgam of essentially incompatible components, Sumner’s work makes good the alliance between symbolic interactionism and Marxism. Furthermore, in doing so it transcends some of the limitations of symbolic interactionism.22

Consensus crimes and Marxism

Having rejected symbolic interactionism as well as the view that it can be rendered compatible with Marxism, Cowling adopts the notion of consensus as the root of his conception of crime. On the face of it, this is a plausible position to take, as there is clearly some broad agreement within and between societies as to which acts should be considered criminal. Indeed, mainstream and “traditional perspectives [on law and crime] emphasise the law as a reflection of normative consensus

---

19 See also Cowling, 2008: pp. 4, 5, 40-1.
20 See also Cowling, 2008: 74.
21 For instance, as noted earlier, Cowling suggests that “the infinitely flexible definitions of symbolic interactionism are neither very plausible in themselves nor a suitable foundation for a Marxist account of crime” (2008:111).
22 Over the years, this kind of alliance with other theoretical traditions has been responsible for much of the vitality of western Marxist thought to the extent of being one of its defining features. See Anderson, 1976: 58.
and harmoniser of interests” (Greenberg, 1976: 611). Yet surely it is important for Marxism not to accept without issue this consensus. One of the fundamental tenets of Marxism is the identification of division and conflict as the driving force in historical change; after all, “the history of all hitherto existing society is the history of class struggle” (Marx and Engels, 1968: 35). Cowling’s position shades off into a somewhat Durkheimian conception of solidarity, with criminals and deviants being those who transgress the normative boundaries of an otherwise harmonious society. Such a view is at risk of glossing over class and other divisions in society.²³

This is not to deny that there is some consensus around the status of certain acts as criminal, or indeed as deviant. But rather than meekly accept this, Marxist theory must surely attempt to explore the historical origins and nature of this consensus. The question of how consensus is won from a fundamentally conflictual situation must be paramount. By simply accepting consensus at face value, Cowling leaves us ill-equipped to address this question. Although in principle there is nothing in his formulation that would prevent the task of addressing it from being attempted, the means of doing so are not provided. Sumner’s notion of censure, on the other hand, furnishes the concepts to do just that. Indeed, they are integral to the structure of his definition of crime and deviance. Through an analysis of the historical development of ideology and hegemony rooted in material conditions and productive relationships, the genesis of consensus can be explored and its historical conditions of existence interrogated.

Sumner talks at length of the dangers of adopting a consensus style definition:

To believe that what is anti-social, wrong, wicked, dangerous or a nuisance is a matter of collective, transcendental, normative or moral agreement, and not a question of economic, political and ideological constitution, is contrary to the evidence of history, and therefore a poor basis for a realistic politics of criminal justice. It is, essentially, to abandon sociology altogether, and socialism, in favour of a return to the transcendental idealism of certain old theologies; if it is proposed as a sociological argument, then it is closer to the evolutionary consensualism of Parsons, to Bell’s ‘end of ideology’, or to the pragmatism of Dewey than to the historical materialism of Marx or the moral realism of Habermas and Gramsci (Sumner, 1990c: 4-5).

Indeed, according to Sumner

Any criminology which ignores the social roots and contested character of the criminal justice system, by taking the state definitions of crime as adequate definitions of types of behaviour, is not only antidiluvean but also discreditable as a dominant ideological arm of the state (Ibid.:2).

Further still, to accept state definitions of crime

²³ Of course, one must be aware of the need not to draw arbitrary limits around what can reasonably be classed as ‘Marxist’ in a manner akin to Hirst. Nevertheless, a belief in the conflictual underlying nature of class society would seem to be a relatively non-controversial requirement of any Marxism.
is to convey the sectional and historical tools of the state into universally valid behavioural concepts. It is to take the state as God of all knowledge and to assume that even popular assent to legislation automatically transforms context bound political judgement into universal truth (Sumner, 1994: 301-2).

The ‘extended definition’ of crime

Cowling’s ‘extended definition of crime’ (Cowling, 2008: 42) is also problematic. According to him, “injurious acts” (Ibid.) not officially designated as criminal should also be considered as such. Cowling suggests that injurious acts are “seriously damaging breaches of administrative regulations and activities which are socially damaging and should be illegal. This would accord with the notion of crime as a ‘serious wrong’, which is, or should be, illegal” (Ibid.:204). Cowling hints at two methods by which this notion can be made to work.

Cowling’s stated position suggests that the law can be extended to cover those wrongs which are currently unchecked.24 The process of extending the law should be relatively straightforward, for Cowling argues that “non-criminal offences generally have a logical basis in common law and are adaptations of it” (Ibid.:43). As such, the ‘extension’ of the category ‘crime’ is not based upon notions of social harm or human rights (Ibid.:44-7). Instead, it presumably involves the fullest expression possible of already existing legal logic and categories. However, this position has grave implications for Cowling’s notion of consensus crimes. It begs a crucial question: why are these ‘unchecked wrongs’ not criminalised in the first place? On the one hand, it may be that they do not command consensus. If this is the case, then to criminalise them would be inconsistent with Cowling’s consensus definition of crime. On the other hand it may be that the criminal law has not properly codified the consensus it is supposed to express. If the logic governing existing legal categories was to be applied systematically to its fullest extent, then in principle a comprehensive statute book of crimes would be possible, perfectly embodying consensus. But if this is the case then the very same criticisms of adopting a consensus definition that were noted in the previous section apply.

However in other passages, Cowling hints at a second way that the extended definition could be rendered plausible. Despite his opposition to relying on ‘normative political theory’ as a basis for criminal definitions (Ibid.:47), he intimates that the notion of distributive justice has the potential to provide just such a foundation. Indeed, Cowling holds that “in a world where the onward advance to socialism is anything but certain socialists need to advocate their position in terms of a demand for distributive justice” (Ibid.:213), and furthermore there are good reasons “for anyone aspiring to develop a Marxist theory of criminology to make use of conceptions of justice, and, indeed, to have conceptions of criminal justice” (Ibid.:196). Presumably, once armed with a well developed theory of justice, any act which breaches said principles of justice can then be considered criminal, regardless of its current legal status.25 However, Marxism has consistently struggled to provide such a theory, a

24 Such wrongs include white collar and corporate misdemeanours. See Cowling, 2008: pp. 43-4, 52, 204-9.
25 See Cowling, 2008: 196: “These conceptions [of justice] form a significant underpinning of the study of corporate and white collar crime”.
fact that Cowling acknowledges (Ibid.:196-200). His own route out of this quandary is unclear. He outlines the Rawlsian view that “the task of a theorist of distributive justice is to work out a way of establishing a just distribution, and criminal justice would simply be a matter of restoring a just distribution” (Ibid.:203). This is certainly a promising basis on which to develop the notion of the extended definition, but difficulties remain. Chiefly, Cowling does not detail precisely what should be considered a ‘just’ distribution, or how to go about ascertaining one. Given that Marxism has been unable to theorise with any conviction a notion of justice, this omission is crucial, particularly in view of the fact that the extended definition Cowling employs is potentially so reliant on just such a notion. In addition it is not clear how such a theory of justice, properly articulated, could be related to the notion of consensus crime, if indeed at all. If acts were deemed criminal when they contravened some principle of justice, then presumably the role of consensus in the matter is redundant, unless of course the principles of justice themselves were based upon some form of Habermasian accord. Nor is it clear what the position would be if the principles of justice rendered acts as criminal that the law, even if its logic was properly and fully extended, did not. Alas, these issues are not touched upon.

The reason that Cowling’s definition of crime encounters these difficulties is because, in short, it is stuck between the ‘is’ and the ‘ought’. His definition is based in the law as it stands, in the ‘is’. Yet this leaves us facing the “ridiculous prospect” of having the conceptual object of Marxist analysis being settled the state and its legislators. This is the “inescapable consequence” of “accepting legal definitions as the determinants of theoretical concepts” (O’Malley, 1987: 76-7). Thus, Cowling’s definition attempts to go further than this and outline what should be criminalised, the ‘ought’. The result is a definition unsatisfied with simply regarding ‘crime’ as that which is currently legally prohibited, but without the theoretical underpinnings to articulate convincingly why we might consider ‘crime’ as something more than this. Furthermore, the definition pushes us towards a ‘limbo’ where there are two ‘crimes’: those which the state defines, and those which the theory defines. This additional theoretical concept would create confusion rather than clarity, because it would duplicate the title of the bourgeois concept, graft this onto a Marxist definition, but leave the original concrete totality of ‘crime’ theoretically unexhausted (O’Malley, 1988: 68).

The desire to identify which types of behaviour should be classed as criminal presupposes that the content of the category ‘crime’ can be correctly specified. This in turn presupposes that the category ‘crime’ itself is something pre-given, even eternal, with criteria governing that which is to be included within its bounds. This is to fetishise crime. As described earlier, Sumner points out the great flaw of such a position: The category ‘crime’, which covers such varying practices and behaviours, is “hopelessly inadequate” as an “empirical descriptor of social behaviour” (Sumner, 1990a: 26). Given this, “the search for a general concept to encompass such widely varying practices,
problems and situations […] logically misguided” (Sumner, 1994: 310). Sumner himself avoids the problem of fetishising crime. This is because he sees ‘crime’ itself as an ideological category. Individual behaviours and practices are not innately ‘criminal’ or ‘non-criminal’, but are best seen as reflecting social tensions and expressing particular interpretations of them. Some of these practices are ideologically censured as crime or deviance. When ‘crime’ is seen in this light, worrying about what should ‘properly’ be considered criminal makes little sense.

**Contemporary relevance**

Cowling is well aware of the changing nature of late modern capitalism and processes of globalisation. But nowhere are the consequences of these processes for his definition of crime teased out. By contrast, not only has Sumner written at length about contemporary social shifts, but the implications of these shifts are written into the very structure of his definition of crime and deviance.

In *The Sociology of Deviance: An Obituary*, Sumner argues that the notion of deviance was a feature of the modern phase of social history. This is because deviance was defined against the consensus expectations and norms that modernity provided. That consensus has been exploded in late modernity. As a result deviance by definition has become impossible or, at the very least, much more difficult, and its historic meaning and function has been lost. The ordered world of modernity has been replaced by a world where diversity is now the anti-norm, or norm, depending on how you look at it. The social as the fabric of society, the state-backed political consensus of welfarism, has been replaced by the idea of the universality of difference or the normality of deviation (Sumner, 2004: 24).

Today, even the very term ‘social’ “connotes a bygone age of integrated communities, welfare states, militant trade unions, and class politics”, (Ibid.:23-4) and fails to register the Hobbesian nature of social reality or the “all consuming black hole that is the dominance of things, individualist greed, and impersonal organisation” (Ibid.:28).

For Sumner, this means that the concept of censure’s time has come. The disintegration of the ‘social’ in late modernity has revealed more clearly the real nature of deviance, and by extension crime, as political constructs. Today, crime and deviance are best understood as the dominant censures of the day, reflecting dominant economic, political and cultural interests and preferences and targeting the groups, individuals and acts offending those interests and preferences. A particular censure of crime or deviance, and the level of its enforcement, may approximate to some democratically shared ‘social’ value to some

---

29 In addition, it is but a short step from this position to an ignorance of the historical genesis and development of crime categories as well as their sectional origins. See Sumner, 1994: 297. See also Hall et al, 1978: 188.
30 For instance, Cowling introduces the ideas of Manuel Castells at some length. See Cowling, 2008: 23-33.
31 Indeed, Sumner (1994: 302) questions whether the tentative social consensus that deviance was defined against ever really materialised. See also Sumner, 1994: 309.
degree, and may even contribute to some poorly defined social health, but as a whole, censures and their enforcement tend to reflect the antisocial interests of capital, patriarchy and ethnicities (Ibid.).

Indeed, “in an antisocial world no behaviour has uncontested meanings and disapproval is more a sign of powerful interest than moral purity” (Ibid.:20). As a result, criminal justice becomes “more overtly an ideological and political force used by the directors of society to restore and restructure their hegemony” (Sumner and Sandberg, 1990: 188). 32 Crime and deviance’s status as censure will only become clearer as the fracturing social processes of late modernity intensify. As the solid structures and relative accord of modernity melt into air, so the more difficult it becomes to sustain a consensus notion of crime in the style of Cowling.

The relationship between Cowling’s definition and Marxism

The limitations of Cowling’s definition of crime, as should be clear, are many. Nevertheless, it is a position that shares an affinity with left realism, which has become one of the key strands of contemporary criminology. Given this, it is likely to appeal to those Marxists who, following left realism, wish to abandon what could be seen as academic flights of fancy and adopt a more intuitive, conventional definition of crime (see Cowling, 2008: 133).

Yet one further problem remains. Cowling’s is an avowedly Marxist definition of crime, but it is difficult to ascertain what is Marxist about it at all. It is not outlined how the notion of consensus crimes fits in with a Marxist schema; less so how any of it is actually demanded by the theory. The same is true of Cowling’s five categories of crime and the ‘extended definition’. Of course, no one single mode of thought has exclusive rights to the Marxist label, and concepts and ideas from Marx and Marxism can be and have been used in ways that diverge from the central strands of the tradition. Nevertheless, it should still be necessary to detail carefully the relationship of one’s position to, say, the historical materialism outlined in the 1859 Preface. 33

Sumner, on the other hand, whatever else one makes of his notion of censure, cannot be accused of taking lightly the need for a Marxist definition of crime to be grounded rigorously in Marxist theory. His deployment of the concept of ideology self-consciously locates his theory firmly within the traditions of historical materialism and the western Marxist focus on superstructural mechanisms (Anderson, 1976: 4). It is a fine example of how Marxism and its core concepts can be continually reworked and rendered useful for the analysis of contemporary phenomena that at first sight are beyond its immediate remit.

Conclusion

32 The watershed moment in this process of revelation came in 1979, when Margaret Thatcher’s successful election campaign explicitly politicised crime and justice issues. Crime and deviance have remained overtly political issues ever since (Sumner, 1994: 310). On the ‘return of politics’ and Thatcher, see Sumner, 1990a and Sumner and Sandberg, 1990.

33 See Marx (1968).
Cowling and Sumner outline two very different definitions of crime. Cowling suggests that crime is the product of a relatively stable consensus, reflected in the official legal system. Some ‘injurious’ acts not officially defined as crime also warrant inclusion. Sumner sees ‘crime’ and ‘deviance’ as ideological categories; where the interests or the worldview of dominant classes are offended by particular behaviour, said behaviour is censured. It should be clear, given the difficulties with Cowling’s definition outlined above, that Sumner’s definition represents the superior starting point for Marxist deliberations on crime.

Sumner outlines a way forward for such deliberations. The focus of study should be on the ideologies which colour censorious statutes, judgements and so on (Sumner and Sandberg, 1990: 164). This encompasses the study of a number of issues: The material context of interests and mores that lead to ideological censure; the historical conditions of the emergence of particular censures; the process of their elevation to fully social status; their role in class conflict. Thus, it is “precisely by theorising in its own terms and not in those provided by a criminological discourse” that Marxism can aid the understanding of crime and criminal justice systems (O’Malley, 1987: 82).

The problem facing such an analysis is

that the ideology of the neutrality and consensuality of the criminal justice system keeps masking the truth of the predominance of the interests and ideologies of the hegemonic bloc (Sumner, 1990b: 51).

By helping to expose this, Marxist criminology can contribute to the revival of Marxism as a whole in the face of what hindered it both theoretically and politically over the course of the twentieth century,

namely, the ways in which popular consent can be so constructed by a historical bloc seeking hegemony, as to harness to its support some populist discontents, neutralise the opposing forces, disaggregate the opposition and really incorporate some strategic elements of popular opinion into its own hegemonic project (Hall, 1985: 117-8).

It is this task, outlined two decades ago, that Marxists should take up with renewed vigour. The vision of crime as censure not only makes a great deal of sense from a Marxist point of view, but it should place Marxists in the vanguard of those trying to understand contemporary criminal phenomena, and just as importantly, the authorities’ response to them.

References


34 Thompson (1975) famously performed precisely these tasks in relation to the crimes of trespass and theft in Whigs and Hunters. See Sumner, 1994: 298-300. Policing the Crisis (Hall et al, 1978) was also in this vein.

35 When issues of crime and criminal justice systems are collapsed into a more general Marxist framework, “Marxist criminology” itself could be considered a “myth” (O’Malley, 1988: 75). This is reflected in Sumner’s insistence that we should study censure rather than crime and deviance.

36 Some contemporary criminological work, though not explicitly Marxist, is certainly in keeping with this kind of analysis of both the behaviours encouraged by late modern capitalism and the state’s responses to them. See Hall, Winlow and Ancrum (2008) and Wacquant (2009).


