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SOCIAL HARM: ITS CAUSES AND ITS VICTIMS

DAÑO SOCIAL: SUS CAUSAS Y SUS VICTIMAS

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This special issue number 7 of the journal *Crítica Penal y Poder* follows up on the analysis of the recent view, within the realms of the critical approach to the penal system, known as social harm. This analysis was initiated in issue number 4 of the journal and deepened in its issue number 5.

The framework of the current issue stands on three basic topics. First, we would like to inquire about **causality** within social harm. For particular examples, what does it make the cycle of systemic and recurrent damage to occur? It is easy to see how, in general, the causes of these harms are collected within the label ‘neoliberalism’. A possible reason for the omnipresence of this economic doctrine whenever we talk about social harm could be the following. The management of what the market considers an economic resource seems to be at the heart of the abusive situations leading to this type of damages.

The market logic, both regarding the management of economic resources together with the inner definition of what these resources are, is one-dimensional. The decisions about how to administer and what should be included within this management are subordinated to the profit maximization of those who exploit the resource itself. Thus, this market mixture aims to deal with the environment in Huelva (Natali), real estate built in Spain during the construction bubble (Bernat and Morillas), scientific production in academia (Faria), formal law offenders (Jiménez), production processes in big corporations and the laws regulating them (Vasilantonopoulou), drugs (Miró) or drug addicts (Garreaud). All these diverse realities enter the market logic in the same way and, within that logic, should be managed

in the same manner. Within the neoliberal doctrine, the market thus becomes an ‘economic psychopath’: it lives absorbed in its own goal, with no empathy whatsoever for the common good and for which, rules or the social consequences of its acts have no meaning unless they serve its own purpose. It does not matter what these targeted realities mean for the people involved: all of them have to go through the same process and go after the same goal of profit maximization.¹ All other issues such as social, political, environmental and the like do not enter in the profit equation. Whenever harm is produced upon any of these dimensions, it is understood as collateral damage orthogonal to the right computations. The struggle for these socio-politic consequences to enter the accounting, and for this accounting not to be done solely by the very same who are exploiting the resource (whether energetic, territorial, demographic, etc.), started some time ago: as described by Miró in his paper, considering the overall “costs” of some policies (in his case, drugs) is a standing argument for their change. All and all, this very struggle is not exempt of criticism. First, because it prioritizes the economic approach over the social or environmental insight. And second, because victims are handled as another resource to be included in the very same computations which instrumentalizes them and makes them invisible.

As an alternative to this instrumental view of the “cost”, the social harm approach presents several advantages based on its new paradigm: those who suffer harm are presented as victims, its stories begin to matter (not only “count”), and its defiance, current or breeding, awake or asleep, enlightened or subordinated, becomes the object of study.

Here is where the second topic of this issue, the **victims**, enters the board. According to the definition of victim given by the United Nations (Declaration 40/34 of Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29th, 1985) any person who has suffered harm through acts that are in violation of criminal laws operative within Member States have this status.

However, people who have suffered the harm from systemic and recurrent policies are not always self-conscious, or are not considered as such by other, so that frequently are pointed at as the origin of the problem (by their recklessness, infringements, neglects, or

¹ According to the logic of the market, coined in the 18th century, that goal ends up benefiting everyone, as hinted by Adam Smith: “The rich [...] consume little more than the poor, and in spite of their natural selfishness and rapacity, though they mean only their own convenience, though the sole end which they propose from the labours of all the thousands whom they employ, be the gratification of their own vain and insatiable desires, they divide with the poor the produce of all their improvements. They are led by an invisible hand to make nearly the same distribution of the necessaries of life, which would have been made, had the earth been divided into equal portions among all its inhabitants, and thus without intending it, without knowing it, advance the interest of the society, and afford means to the multiplication of the species.” (Smith, 1790, part IV, chapter 1, paragraph 10). This statement has repeatedly been contradicted by reality, even in his time. Nevertheless, the addition of the prefix “neo” on the 20th century has made theorist and technocrats of economic liberalism to forget about this “indirectly” distributive objective: from Von Mises and Hayek onwards, social consequences have not been included in such computations (Foucault, 2008).

weaknesses). From then on, as illustrated by Jiménez Franco for the case of jail policies, people become populations and management strategies are defined based on policies to administer the damage, totally separated from the rights and needs of those to which the damage is directed to.

The social harm approach –totally in line with the definition of victims by the United Nations –, shows two fundamental points: first of all, the absence of a penal classification does not necessarily mean the denial of the status of victims, and second, in many instances, this fact is not known to the victims, precisely because of the power abuse (hidden or not) practiced (factually and rhetorically) upon them.

As Vasilantonopoulou points out, the lack of power to defend themselves as well as the lack of knowledge to be self-determined, their geographical dispersion and on occasions, the fuzzy nature of the harm they are suffering, all contribute to the disappearance of the victims in the haze of what the legal system considers to be defensible and recorded. The work of Bernat shows how legal officers consider the victims of power abuse within the real estate and financial sector in Spain responsible of their own situation. It also presents how hard it is for the victims to see themselves as such, to go beyond shame.² This complex situation makes the defense against aggression even more difficult for victims and facilitates both to the politicians and the *de facto* powers the actions and inactions causing the perpetuation of that harm.

The ambiguity in the appraisal or in the legal assessment of this type of situations is also both the cause and the effect of the policies which are denounced in this special issue. The article by Faria provides a good example in the academic arena. She brings to the forefront a type of conducts which in other phases of criminology would be labeled as anomy. As she records, in Academia, fabrication, falsification and plagiarism are the most criticized deviant behaviours. However, the very same scientists criticizing these actions have a hard time relating them with the pressure they suffer to publish or to get funding. Furthermore, they are more lenient in judging improper behaviour arising from the complex relation between junior and senior researchers or from the universities, corporations and/or the state. The case presented by the author forces us to widen our approach to social harm and include those situations in which the problem is not the absence of the legal norm, as it usually happens in other instances of social harm, but the presence of a weak set of morals upon the “pressures” arising within the current system of production of scientific knowledge. In such a system, as with other examples of social harm, identifying the victim is not evident. Precisely because of that feature of the damage we should ask ourselves what we have contributed both as society but also as academics.

² Sara Cobb, among others, has shown how a person’s “*iter*”, needed to exit the condition of victimized object to establish itself in active subject of its own history, goes through several phases. More often than not, one of the phases is shame. This shame takes responsibility away from those who produce the harm and blames the victim. Changing this condition of victimized object towards one of “agency” in which the victim has appropriated the status of victim and has decided to stop with the situation of victimization is particularly complex in those instances where there is no social acknowledgement of the unlawful behaviour by the aggressor (Cobb, 1997); besides, the absence, fuzziness or inefficiency of the legal system regarding that abusive behaviour intensify the restraining strength of that self-perception.

For all these reasons we thought necessary to stimulate an academic analysis arising from the experiences of social harm victims. This way, Natali talks to the citizens of Huelva, victims of the pollution produced by the industrial and chemical poles built on the outskirts of the city; Bernat, in his article, and Morillas, in his review of the HRW report, approach the evicted in Spain; Faria compares the opinions of scientists regarding problematic behavior in academia; Jiménez theorizes about those who are target of the jail policies; Vasilantonopoulou revisits how corporations produce harm; Miró concentrates on those affected by drug policies; and Garreaud writes a review on a book dealing with drug addicts, forgotten by society in a suburban ghetto next to San Francisco, California.

The variety of realities upon which the “market” acts imposes the third basis of this issue: its **interdisciplinary character**. Opposite to the economic one-dimensionalism of the neoliberal doctrine, the diversity of realities subject to social harm makes us assume an interdisciplinary approach covering Anthropology (Natali, Bernat, Faria or Garreaud), Economics (Natali, Bernat, Vasilantonopoulou or Morillas), Law (Natali, Bernat, Jiménez, Vasilantonopoulou or Miró) or Sociology (Faria, Bernat, Garreaud or Morillas).

This issue includes 6 contributions by professors and researchers working in universities from different countries: Spain, Portugal, Greece, Italy and United Kingdom. The research in these papers deals with realities that, although are present and evident in the south of our continent, are also comparable with experiences in other parts of the world. All contributors have fulfilled the task entrusted to them, namely, to talk about the victims, to explore the causes beyond the macro-social level, and to make use of multidisciplinary tools of analysis. We believe the outcome, together with the two reviews by Morillas and Garreaud, widens and enriches our perspective of social harm: that which not only talks about the “bottom”, but also from that “bottom”, from the micro, that which can touch upon bodies and souls.

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