

## Left Realism, community and state-building

Lea, John

Postprint / Postprint

Zeitschriftenartikel / journal article

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### Empfohlene Zitierung / Suggested Citation:

Lea, J. (2010). Left Realism, community and state-building. *Crime, Law and Social Change*, 54(2), 141-158. <https://doi.org/10.1007/s10611-010-9250-9>

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# **Left Realism, Community and State-Building**

John Lea

University of Brighton, [J.N.Lea@brighton.ac.uk](mailto:J.N.Lea@brighton.ac.uk)

## **abstract**

Left Realism, as it emerged in the mid 1980s in the UK was a policy-oriented intervention focusing on the reality of crime for the working class victim and the need to elaborate a socialist alternative to conservative emphases on 'law and order'. It saw the renewal of high crime, deprived communities as involving democratic police accountability to those communities. During the subsequent period developments have moved very much against the orientations of Left Realism. This paper compares two different contexts of renewal – the deprived urban community in the UK and the war-torn 'failed state' in Bosnia – and identifies certain common policy orientations which are then criticised from a Left Realist perspective.

## **Left Realism and the democratic imperative**

Left realism in the UK emerged during the early 1980s as a policy-oriented intervention focusing on the reality of crime for the working class victim and the need to elaborate a socialist alternative to conservative emphases on 'law and order'. [47,52,70,71,79]. To do so it had to confront other criminologies at both ends of political spectrum. On the right a 'Right Realist' criminology (see for example [77] argued biological and psychological causes of crime while conservative criminal justice policy advocated more police with more powers and more stringent punishment as the solution to the crime problem. The efficiency and effectiveness of the police, and criminal justice agencies was seen largely as a question of targets and performance indicators which usually amounted to maximisation of arrests. Left Realism responded that the key factor was the flow of information about crime from victims and communities to the police and that this was a matter of trust rather than powers and performance targets. If local communities don't trust the police they won't give information.

On the left there was a confrontation with what was polemically termed 'Left Idealism', a criminology which saw the criminality of the poor as a combination of media induced 'moral panic' [16] and criminalisation by ruling elites of what were in effect primitive forms of rebellion [30,32]. Left Realism, by contrast, started from the impact of crime on poor communities and noted that most street crime in such areas is intra-class and, even if an expression of anger, is misdirected. Often, however, "far from being hostile to capitalist values it is precisely an extension of the value system upon which capitalism is constructed." [35: 141, 34]. Left Realists did not deny that ruling elites often attempt to criminalise forms of protest but noted that that such attempts necessarily assume that the public, and the poor in particular, has already a negative view of crime, based on practical experience of victimisation. And this practical experience of victimisation in the poor and working class communities was the Left Realist focus.

Thus the relationship between the police and the community was the focus of Left Realist theory. The most important element of this was the flow of information from the community to the police about crime. Local focused victimisation surveys, of which the Islington Crime Survey [45] was the pioneer in the UK showed massive distrust and a reluctance to give information about crime to the police, yet alone to appear as a court witness in a criminal prosecution. Police meanwhile complained about the lack of information flow and responded with intensified 'stop and search' operations aimed at information trawling. The large numbers of entirely innocent people caught in such stops only had the effect of alienating more community members, particularly the young, and reducing the flow of information even further in a spiralling 'vicious circle' of police-community alienation. [52,47]

Left Realism's response to this vicious circle was to insist on the connection between police efficiency and the accountability of policing to the local communities in which it operated as the basis of trust. The political right were obsessed with targets and performance indicators - maximisation of arrests which, like stop and search, could alienate communities as much as help deal with their crime problems especially if easy arrests under pressure of targets meant over-emphasis on trivial offences such as use or possession of small amounts of drugs. By contrast, any meaningful police efficiency meant responsiveness to crime needs defined by the community itself. A community

would trust its police if the latter shared its priorities in terms of focus on the crimes that the community defined as serious. And if it trusted them it would provide information about crime which is the key to police effectiveness.

In traditional working class communities this process of accountability was cultural: police were recruited from the community and shared its values sufficiently to establish a "pragmatic and grudging acceptance" [5,61]. But the effects of decades of de-industrialisation leading to deprivation fragmentation of the old working class community, combined with immigration and ethnic diversity had undermined this. The police were an increasingly alien force in many poor communities especially among unemployed and socially marginalised young people and the vicious circle noted above was its clearest manifestation

Therefore, argued Left Realism, a restoration of trust between community and police must necessarily take an institutionalised democratic form. This was explicitly connected with process of de-marginalisation of the young and unemployed. We answered conservatives who baulked at the thought of giving the urban underclass a voice in local democracy by reference to their forefathers who evidenced similar panic at giving the parliamentary franchise to those who had no stake in the ownership of property but owned only their own labour power. We concluded that a further change was now on the agenda:

"that of changing the democratic system from one which reflects only the compromises between those social classes rooted in the system of production to a system in which the interests of the new strata of people marginalised from production can find a voice." [52: 240].

Democracy functions as an integrative mechanism:

"Democracy... has an educative and an integrative function in itself. It is through participation in decision-making in matters that affect our lives that we learn political responsibility, the respect for other people's right to their point of view, and the acceptance that the final decision will have to be a compromise between differing points of view" [52: 239].

A crucial part of that integration process would be:

"a community-wide debate on crime... [which]... would provide a new source of cohesion as different groups discovered that they faced similar problems and had similar needs" [52: 259-60].

Young people stereotyped as dangerous and disruptive and engaged in anti-social behaviour are frequently themselves victims of theft and violence. Their proclivity for 'anti-social behaviour' is a signal of the lack access to resources with which to engage in more constructive forms of activity.

But most important, Left Realism linked the democratic renewal of communities, with police accountability as a central aspect, as a crucial underpinning to civil liberties and due process. A fair trial in the courts is based on the flow of information about crime and the willingness of individuals to appear as witness at trial. In its absence the police will attempt other ways of gaining evidence such as intrusive surveillance and stop and search while the courts will be persuaded to dilute the rules of proof, admit hearsay evidence and other changes to criminal procedure.

### **The Square of Crime and the Social Relations of Crime Control**

The flow of information to the police about crime was a complex dynamic which needed to be unpacked from a simple police-community dyad into a more complex interaction among the participants. The actual victims of crime, the criminal offenders and the forms of communication between them were an important part of the picture. But the wider community would only give information to police about crime if it legitimised the status of the victims concerned and criminalised the offenders. Offenders had particular relations not only with their immediate victims but with the community as a whole. Powerful offenders with the capacity to inflict reprisals can induce reluctance on the part of both the immediate victim and the wider community to give information to the police. Some varieties of victims - as traditionally with domestic violence - may be unable to claim victim status in the eyes of the community and find themselves blamed by the latter for 'causing trouble' while the offender is practically decriminalised. In all these cases police willingness to investigate may come up against a 'brick wall' of silence from both victims and wider community.

Left Realism attempted to portray the importance of these interactions in terms of

a 'square of crime' [50, 79, 80] or what I later called the 'social relations of crime control' [51] specified as the interaction between law enforcement, the wider community and public, the victim and the offender. This framework enabled a detailed specification of the conditions of existence of a policing and criminal justice system meeting community needs. It can be summarised in terms of a number of key questions. Under what conditions are communities prepared to hand over some of their conflicts to the state law enforcement agencies as crimes rather than engage in do-it-yourself justice? Which types of offenders will both the law enforcement agencies and the wider community criminalise in practice rather than as legal possibility? What behaviour on the part of victims is required to secure recognition by both law enforcement agencies and the wider community? What sorts of relations between different types of offenders and their victims facilitate the intervention of law enforcement?

These questions can be asked at different analytical levels. At the most general level they can involve a response in terms of the historical conditions making possible the emergence of the modern system of criminal justice as such [51] ). They also provide the starting point for a comprehensive research programme which could have brought together both subcultural and structural elements. On the one hand an integrated subcultural approach to the study of the interactions between police, communities, offenders and victims in various types of communities and, on the other, a study of the functioning of criminal justice institutions - police and courts in particular - in terms of these relations. There have been studies of the growth of the repressive security or penal state [e.g., 74] and explorations of various subcultural meanings of criminality but often without making the necessary attempt to link the two. Theories of the penal state may lack an account of the subcultural resistance they produce while 'cultural criminology' can only "imagine" a study of the state as repressive and constraining force. [27]. The integrative potential of Left Realism for criminological theory has been left relatively underdeveloped.

But the most important aspect, especially for Left Realism in its early stages, was the practical orientation of the 'social relations of crime control' approach as a framework for specifying the types of interventions in poor and deprived urban areas necessary for the construction of a system of crime control meeting community needs. It

is this level of intervention which most directly embodies the democratic imperative. Left Realism was clear that police (and similar agencies) must be part of the community and orientated to its needs and crime priorities rather than imposing externally dictated, central government targets. In terms of the politics of community-building there was a necessity to avoid local activists being co-opted into collaboration with, and becoming spokespeople for, centralised political or administrative structures insensitive to community defined needs while imposing their own targets and agendas and concepts of governance. Community-building involves, finally, maximising resolution of conflicts through interactions, connections and compromise between community groups. The orientation must be towards incorporating those sections such as victims without a voice - women, minorities and marginalised youth normally excluded from community life and increasingly labelled in terms of risk, criminality and gang membership [36,38].

If the above paragraph sounds rather dated then this is testimony to how far things have moved in the opposite direction to that advocated by Left Realism 25 years ago. There are of course suggestions that Left Realism has been absorbed into dominant paradigms in criminology with a resulting loss of identity and "is now little more than the name taken by mainstream criminology when it appears in radical circles." [24: 289] This is paralleled by the suggestion that since 1997 Left Realism as a policy orientation has become absorbed into the crime control policies of the New Labour governments in the UK [43: 228]. If Left Realism had become as mainstream as these suggestions imply, then it might also be expected that the integrative potential of the square of crime would come to pre-eminence as a paradigm in criminology and criminal justice. In fact the opposite has been the case: Left Realism has had relatively little influence and in fact "it is extremely rare to find an approach that examines the changing nature of crime by incorporating all four dimensions [of the square of crime] into the analysis." [54: 346]

To the extent that that Left Realism has been absorbed into the New Labour consensus this has certainly been at the expense of the democratic imperative. While community-building with a focus on crime control has been an aspect of government policy both domestically and internationally, the role of democratisation has been, while not entirely absent, heavily overlaid by other concerns. The remainder of this article is concerned with two areas which illustrate this: urban renewal in the UK and

stabilisation strategies following the war in former Yugoslavia. Both areas, it will be argued, exemplify policy and political orientations very different to that advocated by Left Realism. They are characterised, firstly, by the role of criminal justice, not as part of a democratic social relations of crime control but as an autonomous agency of social reconstruction, and secondly by the exclusion and marginalisation of significant groups as part of the strategy of reconstruction itself.

### **Crime control and community-building**

In recent years globalisation, involving "the adoption by governments and elites of liberalisation, deregulation and privatisation as well as the ideology and politics of laissez faire" [14: 26] has had a profound impact on the UK and other leading industrial states. The greater freedom of movement of capital and investment funds combined with a fundamental shift in power in favour of international business has been to the disadvantage of working class communities. This process, following the period of continuous economic expansion up to the late 1970s had two important consequences for social policy and crime control: a simultaneous intensification of social problems and the weakening of the traditional means to resolve them

The intensification of social problems consisted of the combination of growing social inequality and social fragmentation. Thus "with respect to both poverty and wealth, Britain became increasingly segregated and polarised over the past two or three decades of the 20th century" [22: 87]. Meanwhile the UK "has... become steadily more socially fragmented since 1971... the social glue and cohesion has been weakening and that Britain has been steadily moving towards a slightly more atomised society with each decade that passes" [23: 29] Despite recent falls, crime rates remain at high levels compared to the early 1960s with concentrations in poor communities of organised crime and gangs

A traditional social democratic response, characteristic of the period of the Keynesian Welfare State up to the end of the 1970s in the UK, would be to redistribute wealth through progressive taxation and welfare programmes while channelling economic resources – employment, education and investment – to poor communities to reverse fragmentation, decay and high crime rates. Left Realism would add that this must be in the context of building local democracy and agency accountability in the



allocation of employment and resources.

On one level the New Labour government has been inspired by democratic motives. Thus the 2008 UK government White Paper 'Communities in Control: real people, real power' [21] proposes a responsibility on local councils (local city government) to responding to citizen petitions, to involve local people in decision making – including 'neighbourhood level determination of priorities for council spending'. Such themes harmonise strongly with Left Realist themes of local democracy and police accountability. However, despite valuable work by community and voluntary agencies aimed at employment and social inclusion there have been powerful tendencies working in other directions.

Channelling economic resources to deprived areas pre-supposes an ability on the part of the national state to decisively influence capital investment decisions. But under conditions of neo-liberal de-regulation this power is weakened considerably. Government policy becomes, rather than community renewal through the steering of investment into poor communities, a matter of incentivising footloose globally mobile capital to locate in such areas by making the latter attractive locations for business and local authorities taking steps to "convince corporate executives that their public policies are capable of supporting profitable business activities before their territories are earmarked for investment" [33: 143].

Community cohesion has therefore to pre-date, and act as a pre-requisite for, the inward flow of investment. It has therefore tended to be built in the face of marginalised and disorderly groups rather than through their re-integration into a democratic local public sphere. Under New Labour, the mechanics of building community cohesion came to assume a mixture of ideological exhortation and coercion. Exhortation took the form of an injunction to orderly and work-seeking behaviour through a new emphasis on personal responsibility and respect [39] while coercion has taken the form of strategies aimed at the regulation of 'anti-social behaviour' by the marginalised poor from the standpoint of maintaining the security of middle class residential and consumption zones.

From the standpoint of criminology an important inspiration is the Wilson-Kelling (1982) argument that the de facto criminalisation by police of 'incivilities' (i.e. low level anti-social behaviour such as street drinking, begging, aggressive behaviour) can arrest

the economic and social community decay by making streets and public spaces safe so as to stop driving law-abiding citizens off the streets and out of the area. The argument embodies an illusory causality: in fact anti-social behaviour is likely to be a problem precisely where more serious crime is already well established. [40,41] Nevertheless it has been an important theoretical inspiration for the anti-social behaviour agenda in the UK [8,69], an agenda directly opposed to the position argued by Left Realists.

Firstly, it generally involves restrictions on the movement of those charged with such behaviour. As a form of regulation has at its disposal an expanding and frequently shifting array of devices including Anti-Social Behaviour Orders (ASBOs), Parenting Orders, Curfew Orders, Dispersal Orders, Alcohol Free Zones, School Exclusions, Fixed Penalty Notices. These are devices for what Cohen [17] famously described as 'net widening' [6, 19, 69] through the device of 'pre-emptive criminalisation' of sub-criminal activities [28]. These generally involve restrictions on entry into particular spaces and areas and are thus "less about socially integrating those who live at the margins of society and more about guarding the boundaries between the established and the outsiders" [63: 165, see also 68]. Urban development moves in the direction of a securitising process in which middle class residences and new consumption areas are secured with various combinations of entry gates and CCTV so that "the global businessman will at last be free to enjoy his cappuccino... He is 'safe', because they [the poor, prostitutes and drug users] have been removed from view. Reconstructed as social litter, they have been swept away" [37: 25]. In London, for example, "the spaces of regeneration ... are constituted in a variety of ways including ... the propagation of models of social pathology, and the punishment of deviant groups and individuals... Neighbourhood renewal programmes include 'punitive sovereignty' and 'target hardening' programmes designed to clear the streets of particular groups while securing them for conspicuous consumption" [44: 8].

Thus the 'democratic' elements of such development tend to become a divisive force, mobilising middle class 'active citizens' around police and central government-led agendas of cleaning up the area by keeping the poor and marginalised out of sight. [29] Ostensible forms of democratic or consultative local initiatives, such as local Crime and Disorder Reduction Partnerships (CRDPS) in which agencies such as police, education and social services liaise with local agencies and stakeholders

"lack significant autonomy from central government...Under pressure from government to prioritize national targets...the community safety remit of CDRPs has narrowed to a focus on crime reduction... By and large, their engagement with the private sector is minimal, voluntary sector input is often marginalised and community involvement largely non-existent" [18: 460-2].

The second feature of the control of anti-social behaviour is its circumventing of the principles of criminal justice. "Rather, regulatory ideas are being used to circumvent and erode established criminal justice principles, notably those of due process, proportionality and special protections traditionally afforded to young people." [19 : 210]. Due process principles such as 'beyond reasonable doubt' and the right of the accused to cross examine all prosecution evidence are a considerable hindrance to agencies concerned with the management of anti-social behaviour and low level incivilities where the target is less conviction of individual offenders than the management of groups defined as risks. The role of hearsay evidence, the reduction of proof to civil law standards of 'balance of probabilities' are all features of the management of anti-social behaviour . Furthermore, the key to due process is the flow of reliable information about crime to the law enforcement and prosecution agencies. Such information is unlikely from groups who feel their social and spatial marginality is being reinforced rather than ameliorated by official agencies which, in the case of control of anti-social behaviour, includes not only the police but other agencies such as schools and social housing in an expanding 'police family' [7].

It should be clear that such arrangements are the antithesis of what Left Realists were advocating the in mid 1980s. Instead of social inclusion through democracy, employment and the restriction of law enforcement to issues of crime defined through inclusive democratic process policing has become part of a spectrum of agencies aiming to build community through a process of 'authoritarian renewal' [66]. A criminal justice system which *depends upon* the social relations of crime control is now deployed as a device with which to *construct them* in the interests of building communities attractive to global capital. In the process democratic accountability is replaced by mobilisation of 'respectable' elements – those with secure jobs and property who define themselves as the community and as collective potential victim while the marginalised are externalised as a risk group. In these situations the social relations of crime control are weak to the

point of non-existence.

From a Left Realist perspective, intervention in poor communities with high crime rates at all points of the square of crime would involve, as already noted, independent action to strengthen communities through the establishment of democratic organs combined with investment in employment and education to enable the re-integration of marginalised youth and reductions in anti-social behaviour and low level incivilities. Such resilient communities would be better equipped to subject police to a proper accountability regarding crime priorities. They would also be in a better position to deal with anti-social behaviour through various forms of rehabilitation and restorative justice - making the latter conditional, not so much on prior admission of a criminal offence, as it is in the majority of cases, but participation in various de-marginalisation projects relating to work and collective community activities. The aim of Left Realism was to defend criminal justice by making it democratically accountable, not to turn it into a device for the authoritarian regulation of the poor and marginalised as a whole. But in the absence of such strategies the marginalisation of Left Realism as a theoretical and political perspective is only to be expected.

### **Crime control and state-building**

Globalisation has reproduced the dynamics of social inequality and fragmentation on a global scale in the form of massive inequalities between countries and the emergence of weak and 'failed states' which reproduce, on a larger scale, the same problems of security and renewal as deprived areas in the cities of Europe and North America [64]. In Europe, the collapse of the Soviet Union due to an inability of its closed autarchic economy to integrate into increasingly globalised capital flows [31] created a vacuum in which former Soviet republics and East European states under Soviet hegemony made their own transitions to capitalism, became 'failed states' or, as in the case of Yugoslavia, collapsed into armed violence between its constituent ethnic communities, in particular Serbs, Croats and Bosniaks (Bosnian Muslims).

Two features of the armed conflict in former Yugoslavia (1990 - 1995), Bosnia in particular, emphasised criminal justice and crime control. Firstly the conflict was seen as an exemplar of 'new wars' [46, 57, 72] involving not warfare between the regular armies of legitimate states but armed conflict in the context of state breakup in which

different factions attempted to carve new state entities out of the ruins. Such conflicts involve the deliberate targeting of civilians, forced population movement and 'ethnic cleansing' combined with a major role for organised crime in financing the conflict in the context of the collapse of centralised state taxation systems. The combatants themselves constitute a mixture of remnants of official military forces, police, volunteers and criminal gangs. These conflicts are more like criminality also in that mass targeting of civilians is the context for war crimes, genocide and crimes against humanity.

This leads to a second feature: the key role played by criminalisation and criminal justice in the post-conflict situation. The early phases of 'humanitarian intervention' [75] by coalitions of states under the auspices of the United Nations, the European Union and NATO to stop the conflicts has been described as 'cosmopolitan law enforcement' [46: 124]. Likewise, the immediate post-conflict situation, both in Yugoslavia and in similar conflicts, has given a high priority to criminal trials of those held responsible for war crimes and genocide as part of the process of post-conflict reconstruction.

High profile criminal trials of those accused of having 'command responsibility' for genocide and other war crime is regarded as a key initial move in the process of reconstruction and state-building supervised by the intervening coalitions of states. Unlike a domestic court, the decision to establish a special tribunal, in this case the International Criminal Tribunal for Former Yugoslavia (ICTY) to try the Serbian head of state, Slobodan Milosevic and the leader of the Bosnian Serbs, Radovan Karadzic as well as a number of other lower profile war-crime accused, mainly for crimes committed against the Muslim community such as the Srebrenica massacre of Bosniak males, has to be justified in terms of its effects. Whereas for a domestic criminal justice system the fact that a crime has been committed is sufficient justification for a trial, because of the relatively recent and fragile extension of criminalisation to the international sphere, its outcome - retributive justice, deterrence, closure for the participants has had to be argued for in each case, though this is becoming to an extent normalised with the establishment of the permanent International Criminal Court (ICC) in 2002.

Just as urban communities cannot be left to become the preserve of gang warfare, failed states must be rebuilt as quickly as possible through some form of humanitarian intervention. However, many question the wisdom of indicting heads of state or political

leaders and attempting to attribute individual criminal responsibility for such events as the massacre at Srebrenica in the same way that a domestic criminal trial may establish criminal responsibility for a bank robbery. In the case of the ICTY there has been considerable debate concerning the role of, and indeed the wisdom of, such high profile prosecutions as those of Milosevic and Karadzic.

From a Left Realist perspective, there are important analogies with the problems surrounding the role of law enforcement in community-building in deprived areas in the cities of Europe and North America.. The renewal process has been less focused on a revitalisation of democratic life than on authoritarian renewal largely through external agencies enforcing responsibility and 'good governance' to create stable formally democratic structures which will not challenge dominant western interests. [26, 67] Criminal justice agencies have played a key role and thus the issue is again what happens to these agencies when they operate outside the restraining dynamics of the social relations of crime control.

The most articulate defence of the ICTY was made by its first president, the Italian jurist Antonio Cassese (1998) in terms of the capacity of the criminal justice process to produce closure. Firstly, individual guilt is established over collective guilt. Victims and relatives know that someone has been held responsible and punished, Secondly, a trial can dissipate calls for revenge and vigilantism, in effect a continuation of the war. Thirdly, a trial establishes a historical record and makes all the evidence public and forces people to admit what occurred. Reconciliation between previously warring communities cannot be established on the basis of covering up the facts. From this perspective the work of the ICTY is a crucial first step in reconstruction and state-building.

However an examination of the operation of the ICTY - and any similar tribunal for that matter - from the standpoint of the social relations of crime control leads to a more critical perspective. The first issue is the externality of the tribunal to the communities and victims it wishes to compensate and from whom it requires a flow of information and the offenders it wishes to place on trial. It is not simply that the Hague (the seat of the ICTY) is nine hundred miles from Sarajevo and the judges are, for the most part, drawn from outside the territory but also that the relations of trust with communities and victims are weak or absent. The ICTY was politically controversial being seen widely

as the political instrument of the intervening states. Critics have argued that the court is biased before it starts – e.g. why indict Milosevic and Karadzic for genocide while failing to indict NATO for the bombing of Serb civilians? The ICTY has a continuing lack of support and, indeed, can be considered an obstacle to the economic development of the region both given that the amount of international funding devoted to it is greater than that spent on improving health and social services and also, more directly, that international aid to the region for economic development is conditional on collaboration with it [42].

The lack of consensus around the work of the ICTY in Bosnia is demonstrated by Clark [15] on the basis of fieldwork in the region as recently as 2008. She argues that while there was widespread feeling that prosecution of war-crimes are preferable to vigilante revenge attacks, this was despite a feeling among Bosniaks that the ICTY was failing in this task while Bosnian Serbs and Croats were unanimous in seeing it as biased against their ethnic community. So in a minimal sense the very existence of the tribunal may have dissipated direct revenge but this was not associated with a trust of the tribunal. The ICTY had not dissipated notions of collective responsibility for the conflict because only a small percentage of war criminals were perceived as having faced prosecution. Most important, the ICTY has failed to establish a single agreed historical truth regarding the atrocities, such as Srebrenica, in place of the competing accounts of war-guilt, victim and aggressor status held by the three communities in which most saw their own violence as legitimate self defence.

Clarke challenges the idea that the ICTY can establish a shared record of historical truth which can bring the communities together. "Truth is an inherently contested concept and nowhere is this more evident than in [Bosnia] itself, where essentially three competing versions of truth exist -- the Bosniak, the Serb and the Croat -- according to which 'we' were the principal victims and 'they' were the aggressors." [15: 476] This is precisely the problem that we have identified in our previous context - the use of the criminal justice process to build what it in fact presupposes, the social relations of crime control. Three competing version of truth reflect three different communities each with opposed definitions of victims and offenders, in addition to the problem of collective guilt. This both reflects the quality of the 'evidence' that the ICTY can assemble as well as, reciprocally, its effect on achieving reconciliation



But while the ICTY has done little to develop the social relations of crime control, its legitimacy as a criminal justice institution depends on their existence. It is caught in a vicious circle. Trials, to stand a chance of being seen as legitimate, require accurate information from victims and witnesses. But if this is not widely seen as forthcoming then the prosecutions will be seen as biased and based on false evidence. The refusal to deliver indicted suspects to the tribunal extended until quite late in the day to externally controlled UN/EU police and military forces [60] presumably on the grounds that it would prejudice their precarious relationship with the communities, particularly with the Serbs. Evidence gathering is difficult enough in post-conflict situations with infrastructural breakdown and large numbers of displaced persons but the difficulties are reinforced by the continuation of community division and lack of trust.

This leads to the main theme of legal critics such as Laughland (2007, 2008) who see the ICTY as a vehicle for 'show trials' compromised from the outset and with rules of evidence designed to maximise the chance of conviction, of those that the external powers wanted convicted for political reasons. Laughland argues furthermore that the trial of Milosevic was heavily reliant on hearsay evidence, which might be expected given the political and technical obstacles to the gathering of reliable evidence and persuading individuals to appear as witnesses.

The tribunal is thus inevitably a political device, imposed from the outside and by confusing criminal justice and politics, a blunt instrument for state-building. Many supporters of the extension of criminal prosecution both of the crimes against humanity committed by authoritarian regimes [62] and by parties to 'new wars' – on the grounds that domestic courts may be reluctant to prosecute such atrocities, admit the vulnerability of tribunals such as the ICTY to political manipulation by the powerful intervening states [65]. But such vulnerability results from the lack of anchorage in the social relations of crime control in the state itself. The re-establishment of such relations in Bosnia is the key to the acceptability of the ICTY or any other war-crimes court. But such tribunals themselves fail as devices for building those relations.

On the other hand there are those critics who see the whole process of international criminalisation as flawed to the extent that the criminal justice approach, by abstracting out particular incidents for prosecution loses sight of the fact that they were committed in the context of a war between two parties both of whom will have



been involved in numerous incidents of killing. Thus David Chandler argues:

"The crimes of war, of civil war in particular, do not lend themselves to legal forms of reparation. Law is effective and legitimate when it is based on a social or political consensus. The attempt to apply the law to the atrocities committed in the Bosnian war has led to frustration, disappointment and division. Nowhere is this clearer than in the case of Srebrenica, where the ICTY has ruled that the Serb takeover of the town constituted the one act of genocide of the Bosnian war. The families of the victims have been encouraged in their hopes that their loss will be recognised or recompensed, but they are unlikely to be satisfied regardless of the number of international memorials or the length of the prison sentences of Karadzic, Mladic and others. For families who lost relatives and loved ones who fought on the other side of the war, the special recognition of Srebrenica as a genocide is seen as a slight to their suffering, which to them is just as deep." [12]

Thus for Chandler criminal prosecution may have little role in healing the wounds of such wars as former-Yugoslavia. This process is primarily one of political accommodation between communities to which high profile war crimes prosecutions contribute little. The dynamics of new wars, in particular the mass targeting of civilians, even if such conflicts cannot be characterised as war crimes *tout court*, certainly produce a context in which such crimes are extremely likely. But the key task is the re-establishment of the social relations of crime control through a process of political accommodation. Only on this basis can a criminal justice system capable of investigating and prosecuting all forms of crime, including war crime, emerge. Thus such accommodation must precede the identification and prosecution by domestic criminal justice of war crimes and crimes against humanity.

In a practical sense externally imposed and managed criminal tribunals are not good vehicles for community-building because as externally imposed structures they find themselves having to take sides and make decisions as to who are the offenders and who the victims and "in taking sides they participate in the re-allocation of political power." [2: 34] War-crime prosecutions may become a political act, a way of placing certain leaders and factions whom the powerful states dislike, outside the frame of political accommodation [25]. There can be no political accommodation with criminals.

As with community-building in urban areas, the reliance on criminalisation as a key aspect of state-building excludes those who need to be brought back into a process of political accommodation as part of the building of a functioning democracy.

As to the mechanisms of political accommodation some commentators [15, 76] suggest the usefulness of the restorative justice approach used in the South African Truth And Reconciliation Commission (TRC) that followed the ending of the apartheid regime. Such a structure in the South African context was able to "allow for a broader examination of culpability beyond the narrow and often legalistic definitions of guilt. They generate a process of national introspection that requires that everyone -- soldiers, civilians, lawyers, doctors, clergy, journalists, etc. -- examine their role in the conflicts of the past" [73, as quoted in 15: 479]. However, notwithstanding these advantages, such institutions may still reproduce the individualism of the criminal justice process. The South African situation resulted from a political compromise whereby the TRC offered individual amnesty for perpetrators of injustice who told the truth, a process that, however valid in individual cases, failed to confront apartheid as a structure of power and resource distribution [53, 55]. They need to be supplemented by a process of mutual recognition of collective political interests of the various ethnic communities.

Beyond the work of the ICTY lies the reconstruction of a normally functioning criminal justice system and other state agencies. In Bosnia reconstruction and state-building faced particular obstacles in that many key public institutions, including law enforcement agencies had become militarised during the conflict. Indeed the militarisation and politicisation of the police, as well as the role of organised crime in funding, supplying and providing manpower, had created a situation in which

"...no one knows who should be considered 'as a criminal', who are 'the police', and who are 'the army'. Criminals become incorporated into formal

control agencies and criminal behaviour is not only unpunished – it is even regarded as desirable as a strategy of inter-ethnic war." [58: 475]

Thus at the cessation of hostilities - particularly as this was a result of outside intervention - powerful armed factions remained in place, including warlord and criminal groups with structures of economic and political allegiances built up during the conflict. The involvement of external agencies, under the auspices of the United Nations

and the European Union, in initial reconstruction was therefore inevitable. Nevertheless viable state building must start with the recognition of the various groupings and their interests, however militarised and organised along sectarian lines, and begin a process of compromise and accommodation. In Bosnia police forces were divided along political and ethnic lines. The creation of a UN/EU sponsored police force and the attempt to enforce non-discriminatory police service did little to eliminate the causes of this separateness [59]. The establishment of a multi-ethnic force has faced obstacles in the form of entrenched ethnic loyalties which include police and which cannot be short-circuited from above [10].

Initially the new state apparatus is the tool of the 'international community' (de facto the US and the major states of the EU) the legitimacy of whose courts and tribunals lies outside the territory. The weakness is precisely built into the system. The rule of law and humane justice is not the outcome of a process of political and social accommodation between the ethnic communities and their political parties in a process of building the social relations of crime control - a return to the Yugoslavian ideal - but enforced from the outside by the institutions of the EU, in particular the Office of the High Representative (OHR). This office, arising out of the 1995 Dayton Agreement which terminated the conflict in former Yugoslavia was equipped with extra draconian powers (known as Bonn powers) in 1997 to sack local politicians and officials - including police and criminal justice - who failed to comply with EU edicts regarding anti-corruption and 'good governance', and to force through policy measures without discussion. Compliance by local political groups was linked to the prospect of future accession to EU membership.

Some police reforms emanating from the OHR were undoubtedly beneficial. Indeed, it may be argued that externally driven reform is the only way to secure imposition of the rule of law and impartiality and avoid ethnic competition and continuing antagonism. Externally imposed governance thus "problematizes the principle of local control over policing, especially where a majority may exercise undue influence at the expense of others." [1: 332]

However, Paddy Ashdown, during his term of incumbency at OHR in 2004, allegedly attempted to impose without debate a particular model of police restructuring, establishing a Police Restructuring Commission with foreigners as both chair and

deputy. The aim was to impose a centralised police force in what is in fact a federal state of Muslim, Serb and Croat entities. This then led to failure as politicians could not agree. "The lesson of police reform is that neither the stick of the Bonn powers, nor the carrot of EU accession can drive top-down reforms which do not have a basis of support within Bosnian society." [56: 20, 11]

In other words centralised reforms and targets, emanating from outside the communities affected, and lacking their political consent can simply create an apparatus alienated from all communities. A similar set of arguments are usually advanced by police chiefs in the UK when any proposal is made regarding real local democratic accountability. 'Political bias' is raised as a problem and this is then tied to the notion of 'extremists' seizing control of the police. In this way the political process itself becomes portrayed as a variety of 'extremism' in contrast to an 'impartial' process of purely technical administration. Such a process is a poor basis for conflict resolution and state building, because it cannot enter into the messy business of politics and starting from the situation on the ground and the need to build structures of trust and accommodation from existing resources and groups and even take on board the notion that organised criminal groups "also contributed to a number of peace operation goals - including helping to sustain the civilian population and even bringing an end to the conflict." [3: 32]

Thus the recent Bosnia-Herzegovina Ministry of Justice document on Justice Sector Reform Strategy 2008-2012 [4] is firmly committed to "independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law... [and to] systems and processes that guarantee equal access to justice in Bosnia-Herzegovina." [4: 5]. However, the document immediately sounds a note of crisis in that "the sustainability of reforms executed to date is in doubt, unless action is taken to build upon achievements to date, as well as to address weaknesses still persistent within the overall justice system." [4: 9]

The political consequences for state building have been delay and a failure to confront and accommodate the real political process. The emerging political elites, like the respectable 'active citizens' mobilised by these external structures, oriented themselves to the EU and its institutions rather than to the more messy process of local political accommodation

"Rather than state-building, it would appear that ten years of informal trusteeship or shared sovereignty under the framework established by the Dayton agreement, have done little either to build the capacity of the Bosnian state or to legitimate it in the eyes of the population. The powers and the authority of the state have been subsumed by external actors and this process has prevented any real policy-making power being dissolved to elected bodies, which were initially to have taken over government responsibilities following a year's transitional period." [13: 147]

In other words, state-building weakens the state. The Left Realist position should be clear: state-building, including a viable criminal justice system, cannot be imposed from without, even if it technically conforms to the rule of law and due process. An externally imposed criminal justice system is not part of a system of social relations of crime control. For key sections of the population it does not act as a criminal justice system but as something else - authoritarian renewal device from outside. agency of oppression by one community over another, the continuation of the conflict. It does not produce clear shared definitions between communities regarding offenders and victims, and trust in the police through local accountability. In the short run the building of such trust may involve conceding the ethnic nature of local police forces rather than attempting to enforce by external power that which can only be built up by a process of careful political accommodation.

### **Conclusion: In Defence of Politics**

This brief survey of two different contexts of social reconstruction – the deprived urban community in the UK and the war-torn 'failed state' in Bosnia - has attempted to identify, albeit briefly, certain common features, despite the obvious differences in context, and to contrast them to a Left Realist perspective. The first similarity is the deployment of criminal justice as an agency of renewal in a way that reinforces exclusion. In the case of the UK the use of criminalisation and the anti-social behaviour agenda deepen the divide between 'respectable' sections of the community and marginalised young people while in Bosnia the role of the ICTY and the externally directed war-crime trials followed by externally enforced criminal justice reforms undermined a process of political accommodation by maintaining war memories and

antagonisms.

Secondly, the lack of local democratic control over the institutions of renewal. In the UK the role of crime reduction partnerships which, although consultative and with a democratic face in fact are constrained by central government targets and seek to impose these through local structures rather than building consensus. In Bosnia the overbearing power of the OHR and the EU, now coming to a conclusion, may in an analogous way have delayed rather than fostered the process of political accommodation.

Left Realism, by contrast, starts from a paradox: the recognition of the importance of politics - the process of inclusion through legitimate conflict, recognition of interests, accommodation and compromise - as the necessary foundation for a criminal justice system whose legitimacy is accepted beyond political conflict. This foundation, the 'square of crime' and the social relations of crime control, cannot be imposed from above through an authoritarian community or state-building which simultaneously excludes and criminalises those who, however unsavoury they may appear, must be recognised as political actors. The greater the detachment of criminal justice agencies from the social relations of crime control the less access to information flow from the public and the agencies inevitably move in authoritarian directions either as instruments of intrusive surveillance or as partisan machines serving one constituency at the expense of others.

Left Realism at its core was a defence of the importance of politics in building communities and, I have suggested here, equally in building states. As Bernard Crick wrote:

"When the choice is really between any order at all and anarchy, then it is enough just to govern; but more often the task of preserving a state must be seen in terms of governing well. Governing well means governing in the interests of the governed and, ultimately, there is no sure way of finding out what these interests are, but by representing them in the politically sovereign body; and there is no sure way of convincing people that all their interests may not be realisable together or at once, but by letting them try, letting them see for themselves the conflict of interests inevitable in any state." [20: 114]

This is as true for the renovation of local communities as it is for the renovation of entire

territorial nation states. It is as true today as it was in 1966 when Crick wrote, and as it was in 1984 when the founding text of Left Realism was written.

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