

# Northwestern

PRITZKER SCHOOL OF LAW

Journal of Criminal Law  
and Criminology

---

Review

Reviewed Work(s): *The Politics of Redress: Crime, Punishment and Penal Abolition* by Willem de Haan

Review by: Dragan Milovanovic

Source: *The Journal of Criminal Law and Criminology* (1973-), Autumn, 1991, Vol. 82, No. 3 (Autumn, 1991), pp. 708-712

Published by: Northwestern University Pritzker School of Law

Stable URL: <https://www.jstor.org/stable/1143750>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

Northwestern University Pritzker School of Law is collaborating with JSTOR to digitize, preserve and extend access to *The Journal of Criminal Law and Criminology* (1973-)

**THE POLITICS OF REDRESS: CRIME, PUNISHMENT AND PENAL ABOLITION.** By *Willem de Haan*. Unwin Hyman Ltd., 1990. Pp. 205. \$15.95.

This book develops a critical examination of the politics of crime, the question of punishment in a just order, and reform in penology. In a rather short but clearly written, non-dogmatic style, Willem de Haan skillfully presents some clear-headed thinking about issues often circuitously addressed. Central to his efforts is a reconceptualization of punishment in terms of "redress," and beyond that, a call for more creative, and even more idealistic theorizing.

De Haan first addresses the "crisis" in critical criminology. He traces the origins of radical/critical criminology and its search for a critical social theory. Pointing out the shortcomings of conventional criminological thought about the definition of crime and justification of punishment he notes that much of "realism", whether Left or Right, is rooted in an enterprise constitutive of common-sense understandings of crime and punishment and hence supportive, inadvertently or advertently, of the consolidation of a conservative "law-and-order" mentality. Drawing inspiration from the abolitionist movement centered in Europe, he questions the wisdom of the Left in its tactics of simply replying to the conservative agenda of the Right. Necessary is transcendental activity, a praxis leading to societal change, rather than a reactive-negative politics. In fact, the Right has successfully captured the conceptual apparatus by formulating a common-sense answer to the compelling social problems of the age, including crime and punishment, while the Left has offered questionable solutions. De Haan, continuing to draw from the abolitionist movement, indicates that we should get away from defining troubles as "crime"; crime is a myth which well supports ever more pervasive methods of control. Instead, we should reconceptualize crime in an alternative discourse that centers on troubles faced by agents in a political economy. Perhaps, he suggests, crime should wither away as a concept and so too, theories of crime.

The Left often inadvertently contributes to the expansion of control-talk; for example, de Haan asks us to consider some recent social movements — environmental, feminist, and minority — and their generated "get-tough-with-the-violator" discourse. Clearly,

societal problems of major magnitude exist; the central question for de Haan becomes definitional and one concerning the appropriate societal reaction. More specifically, he argues, the current crisis rests more on the contemporary “fuzzy politics and morals” of the critical criminological movement. Coming from a noted critical criminologist, this self-reflective critique of the critical/radical criminological paradigm is welcome. All too often within “progressive” movements, in their haste to move from here to there, *forms* of domination are reinvented or reconstituted in new guise. The call for “reversing of the hierarchies,” for example, a catchword incorporated from Jacques Derrida’s postmodernist approach, too often means replacing one form of domination by another with self-serving ideological baggage and often resulting in further societal problems.<sup>1</sup> This is yet another example of “fuzzy politics.”

He then examines the often stated hypothesis that correlates unemployment rates with rising imprisonment rates. He shows that what has been overlooked is that the key factor seems to be the correlation between rising unemployment rates and increased duration of imprisonment, rather than just increased imprisonment rates. Looking at imprisonment rates and unemployment rates in the Netherlands, he disputes conventional critical criminological wisdom that argues that employment is the best predictor variable of imprisonment rates.<sup>2</sup>

Next, de Haan suggests for serious thought Jurgen H. Habermas’ much debated “ideal speech situation” as offering a potentially alternative method in reaching understanding in forums for dispute-settlements.<sup>3</sup> He advocates a practical rationality devoid of instrumental means-ends rationality guided by the media of power, money, and exclusively efficiency-centered considerations. This thesis leads directly into the question of the necessity of punishment in a just order. Taking the position of a “moral rationalist” — that moral judgments can be rationally developed — de Haan advocates the use of reason rooted in deductive or inductive logic *in context*. Hence the appeal of Habermas’ ideal speech situation. It is open, flexible to the unfolding activities of human activity, and allows each party to participate in a discourse replete with criticizable validity claims. Only in formalism with its underlying support of instrumental rationality are human agents stripped of their historically specific, multifarious nature. Thus, de Haan redefines the debate

---

<sup>1</sup> See JACQUES DERRIDA, *MARGINS OF PHILOSOPHY* (Alan Bass trans. 1982).

<sup>2</sup> This argument is particularly well-presented by Steven Box’s much heralded findings reported in *RECESSION, CRIME AND PUNISHMENT* (1987).

<sup>3</sup> See JURGEN H. HABERMAS, *LEGITIMATION CRISIS* 107-08 (1975).

concerning the question of the inevitability of punishment in a just order by reconceptualizing terms.

Accordingly, much theorizing by such notables as Alan Gewirth<sup>4</sup> and Derek Phillips,<sup>5</sup> he argues, are focused on *sanction* rather than punishment, and is hopelessly stuck with a unicausal model which stipulates punishment necessarily following crime. This leads inevitably to tautological arguments. This model just perpetuates suffering; it does not offer compensation for loss, according to de Haan. For de Haan, Habermas offers the potential for developing a substantive, rationally-based justification of moral principles rooted in symbolic communication, or in other words, practical rationality that is context specific.

In many ways, de Haan's call does resurrect Max Weber's comparison of ideal-typical forms of legal thought such as formal rationality, formal irrationality, substantive rationality, and substantive irrationality.<sup>6</sup> It was Weber who first noted the "irresolvable conflict" between legal principles rooted in substantive as opposed to formal rationality and justice. De Haan's position could find a willing ally in Weber's examination of substantive rational forms of legal thought and social control. This remains to be examined.

De Haan's thesis also continues a recent trend by radical/critical theorists' questioning whether punishment has a place in a just order. Jeffrey H. Reiman, for example, building on the John Rawl's classic *A Theory of Justice*,<sup>7</sup> offers what he calls rationally-derived first principles of justice which can be applied deductively.<sup>8</sup> These moral principle embody the belief that "where people *do cooperate* to produce benefits that went into producing them. . .inequalities must work to maximize the share of everyone in society starting from the worst-off individual." Reiman's view, unlike de Haan's, attempts to root a moral discourse materialistically in a political economy in his idea of a "labor theory of moral value." Between de Haan and Reiman much important and assuredly useful debate will surely arise.

The next chapter examines the demise of popular justice tribunals in Cuba and the movement toward formalization. De Haan asks whether their experience can shed light on the development of moral first principles for movements in the United States. He offers

---

<sup>4</sup> ALAN GEWIRTH, *REASON AND MORALITY* (1978).

<sup>5</sup> DEREK PHILLIPS, *TOWARD A JUST SOCIAL ORDER* (1986).

<sup>6</sup> For a description of Max Weber and his work, see ANTHONY T. KRONMAN, *MAX WEBER* (1983).

<sup>7</sup> JOHN RAWL, *A THEORY OF JUSTICE* (1971).

<sup>8</sup> See JEFFREY H. REIMAN, *JUSTICE AND MODERN MORAL PHILOSOPHY* (1990).

much first hand experience as well as theoretical examination. He concludes that the Cuban socialist legality is useless in its potential applicability to a capitalist economy. He refrains from any outright condemnatory remarks, although, perhaps, one may take him to task and accuse his unwillingness to do so as a case of fuzzy politics. Certainly much good, as well as much questionable activity, has, and continues to take place in Cuba. To simply enter a conspiracy of silence concerning shortcomings (to be discussed only privately in Left circles), in my opinion, does a disservice to open and critical examination, and is counterproductive in developing visions of possible non-subjugating, alternative political economies and social formations.

In the last chapter, de Haan offers some insightful and refreshing suggestions about alternatives. Having already argued that practical discourse should be based on substantive rational principles, he offers the notion of “redress” to capture this alternative conceptualization to the formalism of crime and punishment discourse. After examining alternatives to legalistic definitions of crime — the Schwendingers’ deductive approach on the one hand,<sup>9</sup> and the feminist inductive approach on the other — he pleads that no solution to the definitional problem exists (p. 154). The real answer, again, is to reconceptualize terms. For de Haan, what needs to be instituted is a form of practical discourse under the principle of redress. It specifies a procedural justice rather than a formally substantive one. The elements of this discourse would include open-ended discussion about “unfortunate events,” the encouragement of a diversity of reactions and analysis for each concrete situation, which in turn would encourage the proliferation of alternative meaning constructions. All this would be guided by a sensitivity to alternative dispute regulatory mechanisms which provide clues for alternative regulations of conflict. Decisions, therefore, should always be open-ended, subject to competing and criticizable validity claims.

Practical discourse, one rooted in context, would also develop, inductively, into general and principled conclusions (p. 159). It is only in this way that the complexities and multifarious nature of agency and accountability could be understood; on the one hand leading inductively to new principled conclusions, and on the other, acting as an open-ended guide for deductive lines of application.

---

<sup>9</sup> Herman & Julia Siegel Schwendinger, *Defenders of Order? Or Guardians of Human Rights?* reproduced in JAN TAYLOR, PAUL WALTON & JOCK YOUNG, *CRITICAL CRIMINOLOGY* (1975).

To assure its feasibility, de Haan argues that we need (1) some minimal level of communicative competence by interlocutors and (2) some process by which potentially endless practical discourse could be brought to closure. As to the latter, some legal system still would be necessary to assure closure, fairness, and compliance (p. 167). This seemingly sticky dilemma of advocating, on the one hand, a practical discourse and, on the other, the necessity of a legal form rooted in legal rationality is answered by de Haan by his insistence for a search for the discovery of principles that are mutually compatible (p. 168). He seems to suggest that a continuously evolving system of inductive and deductive open-ended principles could address the question of generalizability as well as being sensitive to the uniqueness of contexts in producing a more human politics of redress.

What can be said of all this? De Haan has stimulated discussion for a wide audience. He demands that readers of his book become engaged. Responses will surely materialize from a broad political spectrum extending from the Right to Left, both praising and condemning his conclusions. However, he boldly encourages thinking in both directions: realism and idealism. The important point of all this is that we can have a happy marriage of the two. At a time where movements, both on the Left and the Right, are gaining momentum toward some form of "realism", this is a courageous and admirable call. Certainly de Haan's examination is not only critical of conventional criminology, but also critically reflects on the situation within his own paradigm. It's about time! His suggestions are enlightening. We need, he tells us, a practical discourse rooted in context which can be given form in the notion of "redress." This discourse would be open-ended. Inductively and deductively developed notions of moral principles could replace formal control-talk discourse based on purposive, mean-ends rational discourse which is guided by money, power, and exclusively efficiency considerations. His criticism of the Right in its articulation of a receptive, but questionable solution to the crime and imprisonment problem, as well as his criticism of the Left in its often fuzzy politics and morals, is a welcomed commentary to the often unfronted shortcomings of particular paradigm-invoked thinking.

DRAGAN MILOVANOVIC  
ASSOCIATE PROFESSOR  
DEPARTMENT OF CRIMINAL JUSTICE  
NORTHEASTERN ILLINOIS UNIVERSITY