

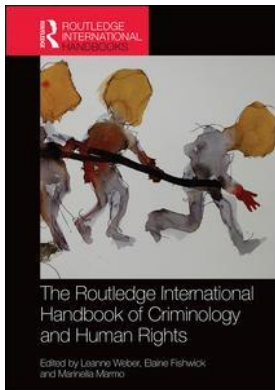
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Thinking about human rights from within criminology

Anthony Amatrudo

Human rights are amongst of the most important issues for contemporary criminology and there have been a number of attempts to incorporate human rights into the criminological canon. We shall look at three writers, all of whom furnish very useful accounts. These three thinkers are Manuel Lopez-Ray, Stan Cohen and Lucia Zedner. Lopez-Ray was taken with the practical issues that public policy throws up, such as devising agreed standards of treatment for prisoners and young offenders and using the law to secure human rights for those subject to the criminal justice system. He saw a focus upon human rights within academic criminology as enabling it to do international and comparative work, notably around the measurement of indices of good practice. Stan Cohen is a colossal figure in the Social Sciences and left an immense legacy of work. In regard to human rights his contribution spanned both practical activism as well as a deal of published literature and he had an impact upon the development of international relations as a discipline. In terms of criminology his contribution is undoubted, though complex, and we shall focus on the way he conceived of the state and the way it executes its crime control function. Lucia Zedner has explored the ways in which ethical problems have arisen in relation to the day-to-day operation of the criminal justice system; notably she has explored the ways in which the individual's ability to go about his or her business is often compromised by meta-risk considerations that undermine personal privacy and compromise civil liberties. These thinkers are representative of three broad approaches to the treatment of human rights within criminology – Lopez-Ray's with a focus on practical social policy, Zedner's with an emphasis upon deliberative democracy as a bulwark against the likelihood of a diminution in the rights and civil liberties resulting from actuarial policies of predictive risk, and Cohen's with its deeper philosophical concerns about social control and how we should live in late modernity. Interestingly both Zedner and Cohen approach human rights with one eye on social control. For them the extent, and form, of social control has definite human rights concerns for the citizenry. They are less interested with the human rights of criminals than they are with curtailment of the freedom and autonomy of the mass of citizens who are law-abiding. Therefore the form, and extent, of state social control in late modernity is the major concern. Moreover, because state social control tends to be focused on definite groups the bulk of the population typically remains unconcerned that social control is being extended in any case (Cohen 2001).

Manuel Lopez-Ray

Manuel Lopez-Ray was a senior United Nations (UN) official and an academic, notably at the University of Madrid and the Institute of Criminology at the University of Cambridge. In the post-war era he was a key figure serving, at various times, as a lawyer and as national delegate at various international forums where international policy was determined. For example, he ensured that criminological research was used in the considerations of the UN Seminar on the Institutional Treatment of Juvenile Offenders in 1954. He saw the importance of criminological research in giving the UN a rigorous evidence base for its work, notably in arriving at agreed international standards of treatment for prisoners and young offenders. He was the author of a UN Report in 1953 *International cooperation by the UN in the prevention of crime and the treatment of offenders* which argued for the internationalization of standards of treatment for persons who are subject to the criminal law. He had witnessed the excesses of World War 2 and the dreadful results of allowing countries to set their own standards of judicial treatment outside of the international system of regulation around core issues of human rights. He understood the UN as promoting human rights within nation states through a regime of standard setting and in dealing with breaches of human rights through either the use of international law, or the incorporation of international legal standards within national legal frameworks (Lopez-Ray 1957, pp. 526–38). He knew that the most important issue, in the aftermath of the excesses of Nazism in Europe and Japanese militarism in Asia, was gaining agreement on, and then enforcing, these new post-war legally defined standards of treatment that equate to human rights. Lopez-Ray stands out as a major figure in this endeavour for he represents the template of the criminologist working collaboratively with lawyers and public policy experts and harnessing empirical research and quantitative data to develop what would become the post-war settlement around human rights enforcement, notably in regard to the criminal justice systems of sovereign nations. In his linking of the local nature of criminal justice with the broader international legal framework he was a pioneer in fostering the widest possible context, and dissemination, for criminological research (Lopez-Ray 1982, pp. 12–17). Moreover, by including state crime, and genocide, as part of the purview of criminological study he was a championing a broad treatment of crime (Lopez-Ray 1970).

Lopez-Ray understood human rights primarily as an issue for social policy and he saw the universal nature of human rights as best promoted by international agreement involving the UN. He also understood that members of the medical profession and those interested in economic development, as well as lawyers and criminologists, should contribute to the development of this new post-war infrastructure of human rights. He took up the role of Chief of the Social Defense of the UN in 1952 and saw it as his task to work with a range of non-government organizations in order to broaden the policy and research base for the UN around the treatment of offenders, including young offenders, and crime prevention. He was essentially a practical person and he ensured that his role as Chief of the Social Defense soon became associated with a form of leadership that supported those persons working locally, at the nation state level, with technical assistance, notably around the development of an enlightened criminal justice, including such matters as the practical management of prisons and the dissemination of criminological research. He believed that good practice within the criminal justice system always requires a solid research base (Lopez-Ray 1957, p. 528, 1982, p. 14).

In 1955 he chaired a UN Congress in Geneva and included representatives from 61 countries along with delegates from the International Labour Organization (ILO), the Council of Europe and the World Health Organization. It was a practical affair and the three main items on the agenda were the development of standards for the treatment of offenders, the institution

of prison labour, which had been especially abused in Germany, and how to prevent young people embarking on a life of crime. It established the rehabilitative principle within local criminal justice systems. The ILO was worried that prison labour could undercut regular production and reduce wages in the general population. The ILO was also concerned with the levels of remuneration that prisoners received and also their safety in terms of the operation of machinery, including the appropriate levels of training. The Congress was judged a success and importantly in regard to prison life it argued prisons should aim: '[To] minimize the differences between prison life and life at liberty which tend to lessen the responsibility of prisoners or the respect due to their dignity as human beings' (Lopez-Ray 1957, p. 530, 1955). The Congress promoted the notion that the prisoner should continue their relationship with the wider community, not be excluded from it. This was a radical communitarian view of prison life and it is testament to Lopez-Ray's tenacity that he was able to enshrine it, not only in the 1955 Congress Report, but later in UN policy where he continually stressed the individual nature of prisoner's lives and their ongoing connection to family and community outside of the prison. It was Lopez-Ray's view, and that of the Congress, that prisons are institutions founded for rehabilitation. They should be humane places. The Congress stipulated that prisons should be small, no more than 500 inmates in Point 63 of its proceedings. The number of 500 was based on the number of prisoners a governor might reasonably be expected to know in a system that valued personal knowledge. The 1955 Congress stressed *prison welfare* as key to rehabilitation and noted it as an important and measureable indicator in the management of the prison estate. Moreover, the Congress Report is clear that all matters relating to prison welfare are enshrined in law in order that they can be challenged where breached. The purpose of the UN was understood as ensuring binding minimum standards upon nation states. Lopez-Ray saw criminological research as providing the necessary research base required for the enactment of legislation around the acceptable levels of provision prisoners should expect and the development of the expertise required to undertake such an assessment (Lopez-Ray 1982, p. 17).

The direct linkage of criminal justice policy with broader notions of human rights and a benevolent political community is established in the work and writing of Lopez-Ray. He begins a tradition of criminological research and policy analysis that seeks to work at the national and the international level to ensure that justice is advanced in all criminal justice systems; and that the work of national criminal justice systems coheres to the highest standards of treatment and human rights, as opposed to focusing narrowly upon law enforcement. He begins a tradition of measuring and monitoring the ways in which the criminal justice system operates in order to uphold these higher standards of treatment and human rights at the level of best international practice.

Stan Cohen

Unlike Lopez-Ray, Cohen was not centrally concerned about statistical data or even criminological research, as such, but rather he was concerned with deeper political themes relating to the structures we all inhabit and their role in controlling people, especially in relation to the role of the state and its ideological capacity (Nelken 1985, p. 247). Cohen's work on human rights is extensive and he wrote a great deal about Israel and South Africa. However, it is his *Visions of social control: crime, punishment and classification* (Cohen 1985) that has had the most impact in terms of his work on social control and the ways in which political and cultural forces can exclude individuals, and groups, from the normal practices of social and political life. He argued that far from such exclusion being imposed it would be welcomed by the bulk of the population.

Visions of social control has an initial chapter on what Cohen terms master patterns. He sets out four transformations that occurred between the beginning of the nineteenth century and end of the twentieth century. First, he shows how the state became more and more involved in the processes of social control supplanting the established, though less formal arrangements, with more centralized and rationalized arrangements that tended to focus upon the apparatuses of control and punishment targeted at crime and delinquency, as well as the treatment of other types of deviants. Second, there then grew up an increasing differentiation, and categorization, of deviants and their arrangement into various classification systems all of with their own forms of knowledge and bodies of experts. Third, this developed into: '(an) increased segregation of deviants into "asylums" – penitentiaries, prisons, mental hospitals, reformatories and other closed purpose-built institutions' (Cohen 1985, p. 12). At this stage prison becomes the dominant mode of punishment and rehabilitation. And finally, Cohen notes a change in the practice of punishment away from an emphasis upon the body to an emphasis upon the mind. He notes how: 'The mind replaces the body as the object of penal repression and positivist theories emerge to justify concentrating on the individual offender and not the general offence' (Cohen 1985, p. 13). This four-stage scheme is not entirely novel and it certainly builds upon earlier work such as Rothman's *The discovery of the asylum* (1971); Foucault's *Discipline and punish: the birth of the prison* (1977) and Rusche and Kirchheimer's *Punishment and social structure* (2003). Cohen is keen to maintain that these developments were, at least initially, motivated by the best intentions of European post-Enlightenment thought. However, as with Rothman's writing in *The discovery of the asylum*, he holds that the reformers of the nineteenth century, though humane, were inexperienced and unable to obtain the outcomes they desired. So with the case of rehabilitation the sheer numbers of incarcerated persons worked against it as a procedure. Moreover, as the nineteenth century got underway the new capitalist class demanded harsher and harsher social control and, indeed, this control became more and more focused upon the working classes. The prison: 'renders docile the recalcitrant members of the working class. It deters others, it teaches habits of discipline and order, and it reproduces the lost hierarchy. It repairs defective humans to compete in the market place' (Cohen 1985, p. 23). This being the complete opposite of the 1955 Congress the aim of which was the minimalization of the differences between the life of the prison and the life of the community outside.

Cohen was aware that the transformation he set out met with a deal of opposition in the nineteenth century and he wrote of the 'destructuring impulse' of those in positions of power (Cohen 1985, p. 31, 1993). He set out four areas that this 'destructuring impulse' concentrated upon. First, there is a movement away from the state towards a more decentralized system of community-based agencies of control. Second, there is a movement away from expert knowledge. Third, there is a movement away from institutions towards a greater emphasis upon community treatment and reintegration. Lastly, there is a movement away from the mind and back to justice (Cohen 1985, p. 31). Cohen maintained that during the latter half of the twentieth century the calls to destructure took hold and, wrongly as it turned out, advocates thought that this destructuring was synonymous with increased freedom. This destructuring resulted in a state wherein: 'the original structures have become stronger; far from any decrease, the reach and intensity of state control have been increased' (Cohen 1985, p. 37). Moreover, that: 'the system enlarges itself and becomes more intrusive, subjecting more and newer groups of deviants to the power of the state and increasing the intensity of control directed at former deviants' (Cohen 1985, p. 38). What Cohen sets out is a historically driven meta-narrative of social control. His main point being that the: 'likeliest future of social control . . . is a future of decisive and deepening bifurcation; on the soft side there is definite inclusion, on the hard side, rigid exclusion' (Cohen 1985, p. 37). Cohen has in mind a range of behaviour and states of being

that count as *soft*, such as mental health and minor delinquent episodes. The deeper point he is making is in relation to the development of new forms of social inclusion that co-exist with exclusionary practices and that these would be deemed to be a risk: such inclusionary strategies would run the gamut of diagnostic, predictive and preventive measures and that such things as leisure activity, the family and the management of human sexuality would all be co-opted as part of the mechanism of social control. Furthermore, that in parallel with this surveillance will come to completely saturate our public spaces and that the urban environment we live and work in: 'will become sites for behavioural control' (Cohen 1985, p. 232). He saw observation as a form of panopticon control (Cohen 1985, p. 221). In using the term *hard* he was referring to the usual criminal breaches which would still be dealt with by incarceration and segregation in a Durkheimian fashion in regard to: 'boundary maintenance, rule classification, social solidarity' (Cohen 1985, p. 233).

The importance of Cohen's work is in his understanding late modernity as being characterized by both inclusionary and exclusionary mechanisms. The new forms of social control would not overturn the old mechanisms of social control only lead to the populace seeing their public space as increasingly a threatening place from which they need protection, including an emphasis upon surveillance. He follows Orwell in understanding these new exclusionary mechanisms will be increasingly *built in* to our daily lives and not only at the level of regulating public space but in terms of the workings of our minds (Cohen 1985, pp. 197–235). After the publication of *Visions of social control: crime, punishment and classification* it does seem that our world has indeed developed in the terms Cohen predicted and that it is true to say that it is easy to find evidence of *net widening and mesh thinning*. The prison estate has grown out of all proportion, notably in the United Kingdom and United States, and we can readily list the inclusionary systems that permeate our ordinary lives. Of course, technology has made this possible and, as he predicted, there have been calls for more and more surveillance of our public spaces, monitoring of the Internet and collection of our phone records, notably after 9/11 and 7/7. We all now accept monitoring and surveillance and now consider it part of normal life. What Cohen noted as a worrying *vision of social control* is conceived of as part of the routine job of crime control and prevention, or indeed of other things such as Islamic extremism, terrorism, the sexual exploitation of minors or immigration status. It is fair to say that Cohen's work on the increased use of inclusionary mechanisms is underscored by his earlier work around moral panic (Cohen 1972).

The richness, and usefulness, of Cohen's work lies in his noting of profound moral concerns about how we should live; notably in relation to arguments surrounding our human rights, arguments about the rightful goals of politics and even about the nature of our private lives. He wants us all to think carefully about the implications of social control in late modernity and its potential to extend itself, bit by bit, and for the net to widen and the mesh thin until we are all subject to it. The meta-point Cohen set out was a political one about the choices we make as citizens. He noted that the: 'choice between exclusion and inclusion is, above all else, a political decision determined by the nature of the state. Nevertheless, different as the actual governing criterion is, the dimensions of choice at each stage of the system are the same. At the macro-level, do we construct exclusive or inclusive systems? At the micro-level, do we exclude or include this particular individual?' (Cohen 1985, p. 271).

In *States of denial* Cohen grapples with the knotty issue of how in the face of increased social control there is, by and large, moral passivity. Why, he asks, are people so unconcerned by the unpalatable realities of our world and largely unmoved by the suffering of other people? There is awareness of human rights breaches and a plethora of other dreadful things yet Cohen argues that people are not always even aware they are switching off to these dreadful things. He argues that there is a culture of denial wherein it is: 'neither a matter of telling the truth nor intentionally

telling a lie. . . . There seem to be states of mind, or even whole cultures, in which we know and don't know at the same time' (Cohen 2001, pp. 4–5). Cohen sets out three forms of psychosocial denial, which he terms literal, interpretative and implicatory. The literal form denies basic facts or knowledge; for example, the fact that prisoners at Guantanamo Bay have been treated badly. In the interpretative form the denial is not about the facts but instead the meaning is altered – for example, 'they were moved on not ethnically cleansed'. This interpretative form gives a more palatable form to the facts (Cohen 2001, p. 7). Finally, there is the implicatory form of denial which, though it does not deny the event or even the accepted interpretation of the event, nonetheless denies the 'psychological, political or moral implications' of it (Cohen 2001, p. 8). Cohen shows how such states of psychological denial are a routine form of coping mechanism. Moreover, that these three strategies are: 'learnt by ordinary cultural transmission, and are drawn from a well-established collectively available pool. . . . Socialization teaches us which motives are acceptable for which action' (Cohen 2001, p. 59). Such denials, moreover, not only allow people to live lives untroubled by the nastier side of modern life they also allow the state, and state actors, to go about their business without too much public concern; a point also made by van Dijk in relation to racism (1993).

Lucia Zedner

Zedner has developed an argument around the concept of risk in which risk, and the language of risk, is used by the public authorities to undermine the language, and practice, of human rights. She follows Cohen in rooting her work in deeper moral and political arguments about the nature, and extent, of our civil liberties and human rights. She sets out how our language of rights, including human rights, is increasingly juxtaposed with the language of risk, and risk management by the public authorities and how this is echoed in the media (Zedner 2006, pp. 423–5). The challenge for human rights discourse is that it is progressively set alongside a form of risk assessment, such as terrorism or serious organized crime. Moreover, notions of individual rights and personal sovereignty are weighed against the safety and wellbeing of the community and the discussion is set in utilitarian terms. The media, and our elected politicians, often use a censorious and declamatory language in advocating the safety of the many over the rights of certain targeted individuals. The arguments advanced for the protection of the individual against the overwhelming power of the state tend to lose out in times of crisis, such as following 9/11. Similar arguments are advanced in the prosecution of so-called serious crime as opposed to ordinary crime (Amatrudo 2009, pp. 109–10). Zedner's point being that whether it is through the use of risk or seriousness language the outcome is often to dismantle the protections that citizens enjoy under the Common Law and she notes that this is tolerated because only minority groups are popularly understood as the target (Zedner 2009).

In 'Neither safe nor sound? The perils and possibilities of risk', Zedner (2006) set out the dangers to our civil liberties from a risk-based public policy; in terms of how a risk-based analysis can, and will, undermine our most basic legal values and sense of the importance of individual human rights. She maintains that unless the public authorities employ a rigorous moral sense of the worth of universal individual rights, and uphold that as an ethical principle, then the likely calls for more and more risk assessments and intrusions into our normal lives are likely to proceed unchecked. She sets out how risk itself is a pretty imprecise and general term whose original use was in engineering and science. In the field of engineering and science notions of risk and probability are typically related back to readily assessable, and usually mathematically determined, criteria in natural science methodology and to engineering practice. Her point being that the facts surrounding crime and terrorism are entirely different in nature, especially in terms

of their causality, to the extent that they can never be straightforwardly determined. Moreover, that: 'human risks are necessarily reactive and call for reflexive strategies' (Zedner 2006, p. 423). She develops a working distinction between risk assessment and risk management and this distinction plays the major part in her critique of risk. She determines how since the 1990s there has been a change in how security is treated in terms of a marked shift towards risk-based approaches and away from rule-based approaches, such as respect for universal human rights. Indeed, she argues that risk-based approaches have become a 'central tool in the management of crime and terrorism' (Zedner 2006, p. 424). Historically, risk-based approaches to crime and terrorism have been set out in terms of legal rules and precedent. Whereas, where risk is prioritized, as with the contemporary treatment of crime and terrorism, there is tendency to play down the existing legal framework. She sets out the issues in relation to risk-based treatments in terms of proportionality and transparency, though her main criticism is in terms of what is and what is not knowable. She details how a supposedly scientific approach to risk masks both deeper political considerations and an unrealistic determination of the ability of the public authorities to calculate risk with any sort of precision. The focus upon immanent risk not only masks political considerations but tends to underestimate that risk itself is concerned with a form of prediction in which the risk itself is always weighed against the norms and values of a society, norms and values which themselves fluctuate (Amatrudo 2009, p. 76). There are real risks of not delineating the processes used for determining risk, which Zedner calls *quasi-scientific*, from those political processes of developing the concept of risk, in public policy terms, which are a political construction. Risk assessment being concerned with those elements of risk that are based on credible and objective data: whereas the management of risk is a far broader concept that concerns the actual decision-making processes that are coloured by political considerations. The point here is not to make too much of this distinction, which is open to the charge of over-determination, but instead to highlight the political considerations that are at play when dealing with risk. For example, determining the level of risk in the context of offender profiling necessarily involves a great deal of value judgement and, in any case, is tied to pre-existing categories. Moreover, there is a crudity in using simple utilitarian criteria when assessing the general welfare, which does not equate to science, and which often has disproportionately bad outcomes for certain groups and individuals, which are not only unscientific but which are unjust. In any case the public authorities often assess and re-assess some groups whilst others are left alone for a plethora of reasons. Her main point is that risk assessment and the management of risk are closely allied activities and it is mistaken to presume otherwise.

Zedner advocates a discussion about risk set in the broad terms of deliberative democracy rather than confining it too narrowly in terms of the criminal justice system; and here she follows contemporary political science (Dryzek 1997). It is at the level of political discourse that claims about risk need to be assessed. Where risk is cut off from broader political considerations a false science can grow up as was the case in determining weapons of mass destruction in Iraq (Zedner 2006, p. 431). In advocating deliberative democracy she follows Sparks in noting the importance of the social and cultural aspects of the entire risk determination process (Sparks 2001). In the process of deliberative democracy there is an ongoing negotiation between citizens and between citizens and elected officials. This sort of deliberative process allows citizens to take part in, for example, the level of counter-terrorism measures employed in city centres. She understands the sheer level of imprecision in determining risks and the dangers of allowing decisions about risk to be made narrowly by criminal justice actors, and increasingly the military and other experts; preferring instead to broaden the determination through deliberative democracy.

Zedner argued that historically crime has been treated in terms of notions of right and wrong and in terms of assessing past events. The crime always pre-dates the trial. However, following

her earlier work on risk she noted an emerging focus around pre-crime; and more particularly, a pre-crime fashioned around risk or, if you like, potential risk. This emerging focus on pre-crime tends to advocate pre-emptive action by the state against *risky* individuals and groups. It also tends to see security as a purchasable commodity. Interestingly, this line of reasoning has a deal of overlap with the work of the modernist novelist Philip K. Dick, notably his 1956 short story *Minority report* (Dick 2002). Whilst she is alive to the dangers of this new emphasis upon pre-crime and security she is not altogether averse to the some of the ideas it throws up. She argues:

A coincidental facet of the temporal shift to pre-crime is that responsibility for security against risk falls not only to the State but extends to individuals, communal and private agents. The shift is therefore not only temporal but also sectorial; spreading out from the State to embrace pre-emptive endeavours only remotely related to crime.

(Zedner 2007, p. 261)

The implications for human rights relate to such issues as freedom of expression and religion, notably the Muslim faith, which have come under state scrutiny following 9/11 (Zedner 2014, pp. 99–105).

She determines that using the category of pre-crime greatly widens the scope of criminology; opening it up to look not only at the police and public authorities but also to the whole industry of private security and community safety more generally. It opens up the nature of public and private provision and the place of civil as well as criminal measures in dealing with crime: and, as Loader has noted, the extent to which the state delegates its prosecutorial role (Loader 1997). None of this is to suggest that policing was never focused upon preventive measures or that the police have always had a monopoly of crime control; however, it is to suggest that the emphasis has definitely altered towards a pre-crime approach, as Jones and Newburn have shown (Jones and Newburn 2002). The shift towards a pre-crime approach relates directly to the perceived threats following 9/11 and 7/7 which changed the ways in which people thought about risk and how the public authorities felt they had to adapt to these new circumstances. In such circumstances, of real existential threat, a preventive security strategy seems appropriate. However, such a strategy itself needs to battle against the pre-existing demands of regular policing in terms of obtaining resources. There is a tendency to play up this existential risk and for a pre-crime strategy to displace regular policing activity over time. The shift towards a pre-crime rationale often entails: ‘earlier and earlier interventions, to reduce opportunity, to target harden and to increase surveillance even before the commission of crime is a distant prospect’ (Zedner 2007, p. 265). It can lead to increased levels of incarceration as more and more persons are deemed dangerous. More concerning still is that, over time, the criminal justice system can become detached from crime and concern itself increasingly with matters of security: indeed as security itself becomes commoditized the tendency is to diminish the role of the policing in public space.

The point Zedner takes from the shift towards a pre-crime focus centre upon our everyday notions about civil liberties with its demands for protections of our private lives and beyond that our broader sense of what is rightful and fair treatment for the generality of citizens. She demands that criminologists take part in normative theory, notably around: ‘the political and economic interests underlying the present pursuit of security as well as the intellectual assumptions upon which security policies are based’ (Zedner 2007, p. 266). She argues that criminology will need to open to a whole new range of ideas, drawn from philosophy and contemporary political theory in order to establish: ‘the values, principles and human rights that are to be

defended in its (security) pursuit' (Zedner 2007, p. 275). She is alive also to the danger of a pre-crime rationale as a threat to criminology itself in a policy world where traditional ideas about crime are marginalized as there is a greater and greater, focus on pre-crime, security and the assessment of risk.

Conclusion

Human rights have established themselves as part of the criminological corpus, notably in criminological theory. The work of Lopez-Ray, Cohen and Zedner does more than offer us a high order of scholarship: it offers us a range of approaches to the treatment of human rights within the criminal justice system. Lopez-Ray furnishes us with a very practical, and optimistic, methodology that establishes an esteemed place for criminological research. In noting how an engagement, by criminologists, with the system of governance and law can deliver results in terms of the practical realization of human rights, he saw how by embedding a notion of universal human rights within the criminal justice system, notably with regard to the prison, that we are able to recast the criminal justice system in terms of the highest ideals of human rights; and how this also represents an overall improvement for the community as a whole. On the other hand both Cohen and Zedner are less optimistic and tend to see human rights as under threat in late modernity. What Zedner highlights is the paranoia around risk which she sees as a constant companion to late modern governance though she beckons us to engage in a form of deliberative democracy as a challenge to it. Cohen's view is the bleakest of all. He demonstrates how, over time, there are incremental diminutions to all our freedoms. The state widens its net and narrows its mesh and more and more of us become subject to state surveillance, regulation and control. The creeping totalitarianism he outlines has echoes of Orwell and also of the Nazi state, which systematically profiled its citizens in the run up to World War 2 (Cohen 1996). All of these thinkers develop themes of perennial interest to criminologists, mindful of the importance of human rights to the criminal justice system: and each of them offers a guide to systematically negotiating human rights and the criminal justice system.

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