

REVIEW

Iyiola Solanke (ed), On Crime, Society, and Responsibility in the work of Nicola Lacey, Oxford: Oxford University Press, 2020, xi+ 268 pp, hb £80.00

On Crime, Society, and Responsibility in the work of Nicola Lacey is the first ever common law Festschrift for a woman. This collection, brought together by Iyiola Solanke, is therefore a significant milestone in the long and ongoing effort to transform the space of legal scholarship.

The ten chapters that constitute this collection are organised into three parts, each based on distinct themes drawn from Lacey's work: constructions of criminal responsibility, gender and ethics in criminal responsibility, and the political economy of criminal responsibility. Some familiarity with Lacey's work is, naturally, presumed and would enhance the experience of reading this collection, but the essays provide sufficient context for the reader to be able to follow the arguments without having read the original work on which they draw.

The first essay (Andrew Ashworth and Lucia Zedner) addresses Lacey's contention that the patterns of use of criminal law and other measures of social ordering for the creation of responsible citizens map onto growing state 'confidence in the possibility of shaping the habits and dispositions of citizenship'. The chapter is largely focused on how the proliferation of 'technologies of responsibility' has altered the relationship between the individual and the state, and recast issues of structural underdevelopment and marginalisation as problems of individual disorderly conduct. In the penultimate section, the authors cautiously argue that this trend may not necessarily indicate growing state confidence in the ability of technologies of responsibility to create moulds of ideal citizenship, as Lacey suggests, but rather point to other developments such as the failure of traditional welfare mechanisms, the impact of globalisation, or the need to quell populist discontent. This analysis is interesting, though it does not explore what these alternative developments might ultimately indicate about the legitimacy of criminal law, and its role in social coordination, both of which are central pillars of Lacey's analysis of criminal responsibility.

The second essay (Antony Duff) is a theoretical exploration that seeks to reframe Lacey's argument that conceptions of responsibility have moved from responsibility based on capacity to responsibility based on risk, and indicate a resurgence of character-based responsibility. Duff argues that the change actually regards the conditions of criminal liability, and can be seen as a disconnection of liability from responsibility understood as accountability. To make this point, he deftly probes the boundaries, relationships, and meanings of the terms 'responsibility', 'attributability', 'accountability' and 'liability'. He then demonstrates the relevance (philosophically and practically) of this reframing by linking accountability to citizenship, and the 'right' to answer for oneself within the safeguards

of a criminal trial. Within the limited scope of the essay, Duff's argument that developments in criminal responsibility point not towards the resurgence of responsibility *grounded* in character but forms of responsibility of which character is a *condition* is compelling.

The third essay (Ngairé Naffine) deconstructs the abstract individual who appears to be the subject of theories of criminal law. This deconstruction revolves around John Gardner's attempts to theorise rape (an offence that Naffine rightly characterises as 'historically, culturally, and legally tightly knit to particular populations') while wedded to the paradigm of the ahistorical, rational individual whose choices may be universalised. The focus on Gardner's work entails that the essay relies on the works of feminist legal scholars in general without engaging directly with Lacey's work. This does not take away from the substantive strength of the essay. However, greater reference to Lacey's writing on difference feminism's challenge to 'neutrality' in liberal (including liberal feminist) legal scholarship would have been appropriate in this Festschrift. Naffine highlights the conflicts and paradoxes that arise in universal and abstract approaches to law, and correctly argues that the constant flux between the reality of socially situated subjects and the abstract individual of canonical criminal law theory has gone largely unacknowledged and unaddressed. However, in speaking of the socially situated subject, the author focuses mainly on situation by 'sex' (rather than gender), and recognises only 'men' and 'women' as the socially situated inhabitants of the domain of rape law. The spectrum of gender identity that exists outside the binary of sex has complicated rape law, and dichotomies (self/other, rationality/emotion, public/private) that mapped onto the binary of sex may now be challenged, expanded or nuanced from the lens of gender. In light of this, the choice of 'sex' as Naffine's frame of analysis ought to have been explained.

The fourth essay (John Gardner) engages with Lacey and Pickard's position as blame-sceptics. Gardner accepts their position against affective blame, but contends that it is better characterised as a form of reproach-scepticism rather than blame-scepticism because, according to him, it is possible to blame without revealing the emotions that accompany blaming. He argues that responsibility in the sense of blameworthiness, rather than simply attributability, cannot rationally exist without blame, nor is blaming normatively bad or undesirable, provided that the expression of blame can be controlled or mediated. The extent to which this separation may reasonably be achieved in practice is, in my opinion, questionable especially within the institutional structures of criminal law and justice that are predisposed to being punitive. More importantly, however, Gardner's position does not seem to fully appreciate and engage with the implications of Lacey and Pickard's blame-scepticism, particularly for the politics surrounding punishment for criminal responsibility. If it is neither possible nor desirable to discard blame, does it follow that penal systems will always be essentially retributivist? If not, how can we practically hope to retain blame while simultaneously moving towards rehabilitative criminal justice policy?

The fifth essay (Hanna Pickard) adds another dimension to Lacey's analysis of criminal responsibility which takes into account 'historically changing social, political, and economic contexts', but does not consider the role of psychology

in criminal responsibility, especially within the courtroom. Based on empirical studies on the attitudes of convicted rapists and the general public regarding explanations for rape, Pickard draws out descriptive and prescriptive norms for men and women which together constitute rape culture. She then links these norms to attitudes within the courtroom which determine the evidence that is introduced and accepted in rape trials, as well as outcomes which tether responsibility to explanations based in rape culture. The essay makes a fascinating and valuable contribution in demonstrating how psychology is the bridge between rape culture (social) and rape trials (socio-legal). An avenue for further engagement with Lacey's work on criminal responsibility (which analyses criminal responsibility within the broader context of criminalisation) might be in examining whether psychology has a similar role to play in determining the form and content of rape legislation.

The sixth essay (Alan Norrie) takes a psychoanalytical perspective on guilt, arguing that it is key to developing a mature 'retributivism' in criminal law. Norrie argues for a mature version of guilt which 'is creative, developmental, and ethically progressive'. This form of guilt encourages self-reflection and a desire to make amends, and forms the core of a theory in which 'past and future action are fully combined through the medium of the mature, guilty, subject'. Norrie's theory has significant potential in penal law reform, but since it focuses more on self-reflection and restitution than punishment or just dessert, it is not always clear why it is characterised as a mature 'retributivism'. The essay's engagement with Lacey's work could also have been more comprehensive. In particular, the link drawn between the theory of mature 'retributivism' and Lacey and Pickard's arguments against affective blaming comes across as somewhat perfunctory.

The seventh essay (Arlie Loughnan) makes the very relevant argument that recognising 'interstitial spaces' ('spaces existing within or between, or in advance of, standard or orthodox legal spaces') allows criminal responsibility scholarship to move beyond this paradigm and study the evolution of the principles of criminal responsibility in other, equally relevant dimensions – for instance, comparative jurisprudence on criminal responsibility. The vantage point of comparative jurisprudence has distinct advantages according to Loughnan, since it allows legal analysis to be simultaneously 'embedded and disembedded, both tied to territorial space and free-floating' and reveals the underlying relations of power, historical processes, and connections with other forms of knowledge, in the development of criminal responsibility principles and practice.

The eighth essay (Emily Jackson) takes up Lacey's suggestion to embed the concerns and principles of law within the institutional interests which impact law-making. In the context of the UK's law on assisted suicide, she demonstrates that while the refusal to legalise assisted suicide is anchored in 'vulnerability', the construction of those seeking assisted suicide as 'vulnerable' is not supported by evidence. The concern for the 'vulnerable' as a trump against the rights of those who do want assisted suicide, Jackson convincingly argues, cloaks the interests of the medical profession, a powerful interest group with considerable influence over medical law and policy. She then takes this further, suggesting that this understanding of institutional interests can be operationalised by activists who seek the legalisation of assisted suicide to secure the support of the medical

community for their cause. And while this is not discussed overtly in the essay, Jackson's analysis of the evidence available on those who seek assisted suicide is also revealing of the class interests that underlie rights-based activism for their cause. In that sense, the contestations between different institutional interests at play in this debate start to become evident, though their relevance is not explored.

The ninth essay (Lindsay Farmer) seeks to build on the principles developed by Lacey regarding the role of political economy in understanding and conceptualising criminal responsibility. The author argues that when political economy is viewed as external to criminal law, as merely the context of its development, its role in constituting modern criminal law and its institutions is obscured. Farmer discusses the views of Adam Smith, Jeremy Bentham and John Stuart Mill, demonstrating that despite the differences in the approaches of the three theorists, it is possible to discern significant similarities (such as the centrality of free exchange and freedom of commerce, balanced with concerns for welfare) and how their views of the proper role and function of the law were shaped by these central tenets.

The final essay of the collection (David Garland) engages with Lacey's work most directly and comprehensively, providing an overview and a review of her use of the varieties of capitalism theory. He highlights Lacey's remarkable contribution in using this theory to explain the trends of, and the similarities and differences between, different penal systems. Garland also offers nuanced criticism of her work, some of which ties in with criticism of the varieties of capitalism theory in general (such as the inadequacy of the simplistic 'two-variety typology' upon which it is based), while some is concerned more with Lacey's use of it to understand institutions and systems of law (such as a lack of compelling reasons for the underlying assumption of 'a high degree of institutional complementarity and mutual entailment linking a society's penal system to its economy'). The broad scope of the essay does not compromise attention to detail, making this the most well-rounded of the ten chapters.

In conclusion, Solanke has brought together some of the leading scholars of law and the social sciences to create a collection of essays that matches the profound and eclectic nature of Lacey's contribution to legal scholarship. It would be close to impossible to truly do justice to all the major themes of Lacey's work on criminal responsibility, expansive as they are, but it is worth noting some shortcomings for which this Festschrift may fairly be criticised. First, the historical, social, economic and cultural specificity of Lacey's conception of criminal responsibility challenges the possibility of an idea of criminal responsibility that is universal (beyond a small core). While this is briefly acknowledged in the collection, there is insufficient engagement with what it means for criminal legal scholarship, or whether, how, and to what extent this specificity may be contested. Secondly, the collection mirrors the 'default northern orientation' of critical criminal responsibility scholarship (criticised by Loughnan in her essay) presenting only the perspectives of authors from developed countries. Lacey's own writings also do not generally include developing nations which, of course, reflects a valid and personal choice that does not take away from the relevance of her theoretical work to other, especially common law, jurisdictions.

Regardless, exploring the *impact* her work has had on scholarship in developing nations or the extent to which her conception of criminal responsibility applies to developing nations, could have made this collection more textured. Finally, the absence of questions of feminism and/or gender from essays other than those discussing rape law shows that Lacey's use of gender and feminism as crucial theoretical lenses does not receive adequate attention in this collection. A significant theme of Lacey's work on criminal responsibility, that is, the criminalisation of women and the handling of women's criminal responsibility by legal institutions and processes, is also omitted.

These shortcomings notwithstanding, the collection provides a broad and immersive understanding of the salient themes of Lacey's scholarship on criminal responsibility, with each author opening a dialogue between an aspect of Lacey's work and their own. The arguments and questions raised through this collection will, undoubtedly, serve to advance and nuance the scholarship on criminal responsibility.

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