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AFTERWORD: THE FIELD OF CRIMINAL LAW AND ITS METAMORPHOSES

The Heuristic Added-value of Ethnographic Research into a Hybrid Praxis

*Franz Schultheis*¹

In the political sciences, the state, and its institutions, actors and practices classically represent a domain of theory formation and macrostructural research, while empirical social research has traditionally been hesitant to engage in this area and remains on the margins. The dominant macroperspectives go hand in hand with reifying narratives of “the state”, its interventions, and its strategies and rationales. Although the state as an entity is neither visible nor tangible, the image of a kind of metasubject, as elevated to an almost metaphysical level in Louis XVI’s dictum «*L’État, c’est moi*», has a stubborn persistence, albeit now in a secularized form. In the 19th century, under the aegis of the authoritarian Prussian regime, this reification took on the humanizing aspect of the “father state” (*Vater Staat*), an abstract patriarchal concept that brought the carrot and the stick, concern and chastisement, welfare and corrective violence under one roof. Bourdieu described these two facets of the modern state as its left and right hands, as manifested in two supposedly quite distinct systems of law: criminal law and social law, each with its own institutional structures, and areas and logics of intervention.

Such a rigid conception of a “division of labour” between self-referential subsystems, each with its own closed codifications, is historically quite obsolete and completely ignores long-evident processes of transformation and hybridization. This is made abundantly clear in the works of ethnographic and sociohistorical research on a specific area of state intervention and regulation that are collected here. They have in common the adoption of a bottom-up approach towards the concrete practices of state institutions and their actors in respect of a specific “target group”, where the conception of a Janus-faced “father state” that is both caring and corrective has a very specific relevance. The concern here is with people on the cusp of adulthood, a population group that is represented as problematic in multiple ways.

In sociological terms, adolescence is a status transition that is accompanied by multiple uncertainties and risks. This concerns not only the uncertainties of status and role typical of the search for and piecing together of identity during the crisis of adolescence (with all the many blockages, resistances, detours and dead-ends that this involves). No less importantly, it is also a matter of the social representations and regulation of this stage of life, viewed as especially precarious, during which the success or failure of social reproduction and integra-

¹ Translated by Graeme Currie.

tion appear to occur in a particularly intense form. In terms of ideal types, we can consider this as the tension between two apparently contradictory socio-political apparatuses for the regulation of adolescents, each corresponding to specific forms of intervention: on the one hand, the image of adolescents as “vulnerable”, because of certain factors in the social environment that are often considered to be “dangerous” and, on the other, the image of adolescents as themselves “dangerous”, as a population that is practically predestined for deviant behaviour on the basis of an assumed constitutive instability or “immaturity” (Schultheis 2005a). These attitudes and practices, which are considered harmful to social order and everyday normality, are troubling in two regards.

On the one hand, they concern the entire spectrum of deviant behaviour that troubles social norms and public order: from antisocial behaviour to criminal offences of varying severity. On the other hand, adolescent deviancy and delinquency appears as an – equally serious – endangerment of the longer-term sociobiographical ability to integrate or “sociality” of young adults, which can lead to an entire vicious circle of interdependent mutually reinforcing social dysfunctions and increasing deviations from the standard biography of employees in aspirational capitalist societies and their pressure towards “employability”. Under conditions of the radical marketization of society and significantly increased demands on human capital, society’s flexibility, mobility and creativity in the age of a “new spirit of capitalism” (Boltanski and Chiapello 2005), the process of “Learning to Labour” (Willis 1981) places significantly increasing demands on the individual who is to be socialized in this flexible habitus, and not everyone is equally able to cope with these challenges or, depending on family background, in possession of the economic and cultural capital necessary to thrive in this competition. For these reasons, questions of sociostructural disparities in each individual’s available life opportunities and the sociostatistical probability and biographical impact of personal experience with state interventions in the course of one’s life are interlinked in complex and mutually interdependent ways.

The way in which societies deal with these issues of intergenerational reproduction and the socialization of young adults for their future roles is highly variable in both historical and intercultural terms. The studies presented in this volume provide a number of illustrations of this.

Since the 1980s, criminal law in Switzerland has changed markedly, as is the case in most Western states (Schultheis and Keller 2008). The shrinking of the welfare state that can be observed across a wide range of fronts has gone hand-in-hand with the development of new and more robust approaches to the regulation of criminality in general and a hardening of practices in the area of youth justice in particular, apparently inspired initially by the American concept of “zero tolerance”. This was the current author’s assumption in the EU research project he undertook together with Pierre Bourdieu and Loïc Wacquant from 1996 on *«Les nouvelles formes de régulation de la déviance juvénile»*. The initial hypothesis of a generalisation of the American model of repression initially appeared alluring, yet as we descended from the heights of social theoretical diagnosis to the level of ethnographic field research and examined the various practices designed to govern youth deviance as the objects of qualitative study by means of interviews with a range of actors in various European cities, this hypothesis revealed itself as untenable under European conditions and within European

state structures (Lebaron and Schultheis 2007; Schultheis 2005b). In a very similar way to the papers in this special edition, we came to the realization that both hands of the state and their legal frameworks – criminal and social law – made use of a broad repertoire of hybrid and finely graded forms of intervention, in ways that were often highly nuanced, in order to achieve the highest level of effectiveness in each individual instance. In so doing, the relevant actors operated in a way similar to those in the case studies presented here, making use of strategies that combined prevention, observation and sanctions, which appeared to find their common purpose in the broad societal goal of strengthening the personal responsibility of their “clients”.

With a broad spectrum of empirical research and a wide variety of relevant findings, this collection of papers closes a genuine research gap.

The state of research in Switzerland as in most of its neighbours has so far been typified by the predominance of compartmentalized approaches in which the practices and rationales of each individual institution are considered in isolation. This approach omits to consider these as chains of action whose various links are interdependent. This leads to a widespread tendency to ignore the fact that, in this hybrid social field, multiple institutions and their actors compete over the monopoly of legitimate interpretation and legitimate action.

The papers in the current volume are gathered from several countries and diverge in terms of their focus on specific concrete configurations of actors in this arena of state activity. However, they are united in breaking away from the strong tendency to consider individual, supposedly autonomous institutional structures in isolation and with insufficient regard for complexity, delivering in each case a contribution to this collection’s overall thesis regarding the hybridization of state regulation of adolescent deviance. They also have in common the placing of the perspective of adolescents themselves at the centre of these constellations of institutional actors and their “clients”, thereby avoiding simply assigning them the role of passive “playthings” of systems of justice or welfare-state protection. The young people in these texts are rather presented as agents of the activities that these institutions register and evaluate and/or condemn. In the interactions they have with the social workers or legal officials they come into contact with, they reveal – whether consciously or unconsciously – their own strategic practices and rationalities.

The topic of the young recipients of state directives and prohibitions, calls to order and sanctions is a blind spot in Swiss sociological research. The ethnographic field research presented here goes some way towards closing this research gap. Beyond this, it is also an important contribution towards reviving the social sciences’ concern with “the state”, in which its structures and functioning are analysed from the bottom up, starting with concrete and tangible empirical practices.

As always, the work of research raises more questions than it is able to answer. It thus acts as a stimulus for subsequent, more thoroughgoing studies. The questions generated here for future studies to pursue include:

- How should the areas of responsibility of each institutional actor in the realms of social, health and justice policy be reorganized and coordinated?
- What specific conflicts of jurisdiction are likely to arise in this, and how will these impact the management of each specific matter of social policy?

- Who in the future is to be observed, condemned, protected and/or punished and by which institutional apparatus?
- How does this hybrid practice of criminal law contribute to a restructuring of social relations and potentially also to a redistribution of material and symbolic resources and life opportunities?
- What kinds of long-term effects will this kind of state regulation have on the biographical trajectories of adolescents?
- And finally: How does the general public view these forms of hybrid criminal law, and are they considered as a more or less legitimate adaptation of state action to changing social conditions?

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