What Does It Mean to Reconstruct Criminal Law? Reading Mannheim's *Criminal Justice and Social Reconstruction* (1946)

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I. Introduction

What does it mean to reconstruct criminal law? In a sense all writings on criminal law are "reconstructive" projects. A case note reconstructs the reasoning of a court to show what (in the view of the author) the court got right or wrong. A journal article might "reconstruct" an area of law more systematically to show where there are gaps or inconsistencies. And the treatise or textbook attempts a more systematic reconstruction yet, at the level of the "discipline" as a whole, presenting the criminal law in terms of a theoretical framework that organizes or explains the whole area—be it for teaching or professional purposes. There is no natural order to the criminal law, only constructions and reconstructions, shapings and reshapings, thinkings and rethinkings. And yet, we tend to think of the concept of reconstruction as being reserved for something more systematic—it is a response to some sort of crisis or stagnation in legal doctrine or theory. Thus the project of "rational reconstruction," originally championed by Neil MacCormick, was a response to the allegedly deconstructive (or "trashing") projects of critical legal theorists.[1] Lacey and Wells's *Reconstructing Criminal Law* itself, far from being an exercise in "trashing" the criminal law, was a serious and systematic attempt to rethink the way that criminal law was thought about and taught, and to include new perspectives and material in the teaching of a doctrinal subject.[2] Rather than offering a finished normative project or reconstruction, it assembled materials and asked questions that might lead to further reconstructions. What this suggests is that in thinking about the question of reconstructing criminal law we need to begin by distinguishing between different kinds of reconstructive projects and also to ask about the purpose of the reconstruction.

I will return to the question of the meaning of reconstruction later in the paper, but my more immediate interest is in looking at a historical example of radical reconstruction

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[1] Neil MacCormick, Reconstruction after Deconstruction: A Response to CLS, 10 Oxford J. Legal Stud. 539 (1990).

[2] For discussion, see Kate Leader, Nicola Lacey, Celia Wells & Dirk Meure, *Reconstructing Criminal Law*, in Leading Works in Criminal Law 173 (Chloë Kennedy & Lindsay Farmer eds., 2024).

as a way of opening up these questions. This is Hermann Mannheim's *Criminal Justice and Social Reconstruction* (hereinafter *CJSR*), first published in 1946, a book which is little known today. The reconstruction being appealed to was the huge project of social and economic reconstruction that followed World War II. However, what is intriguing is that Mannheim saw this reconstruction as not just the physical rebuilding of cities and infrastructure, but as also requiring the reconstruction of institutions of criminal justice—and his book offers an original and fundamental challenge to many aspects of the criminal law that, even today, are taken for granted.

II. *Criminal Justice and Social Reconstruction* (1946)

Mannheim (1889-1974) was one of a number of German refugees who fled to Britain in the 1930s after the Nazis came to power in Germany.[3] He had been born in Libau (Liepāja) in Russian Latvia to Jewish parents in 1889.[4] He studied law at the universities of Munich, Freiburg, Strasbourg, and Konigsberg, obtaining his *Dr. Jur.* from the University of Konigsberg in 1912. After a period of war service, he became a judge, while simultaneously completing his *Habilitation* and becoming a Professor at the University of Berlin in 1929. However, he was stripped of his judicial and academic positions by the "Aryan clause" of the Nazi civil service law of 1933 (even though he had been baptized as a protestant). He left Germany, arriving in London in 1934, supported by the Academic Assistance Council, a body which had been set up by Sir William Beveridge, then-director of the London School of Economics (LSE), to assist refugees from Nazi Germany. There were few opportunities open to him to teach criminal law, in part because German criminal law was seen as so different from English criminal law, and in part because criminal law was not at the time seen in England as an academic subject. Instead Mannheim turned to criminology, producing a distinguished body of research—to the extent that he is now seen as one of the founders of the discipline of criminology in England.[5] Notwithstanding his distinction, to his great personal resentment, he was never promoted to the rank of professor in the U.K. and his extensive academic achievements met with only limited recognition in his adopted country during his lifetime. He died in 1965, but the Mannheim Centre for Criminology was not established at the LSE until the late 1980s.

[3] See generally Jurists Uprooted: German-Speaking Émigré Lawyers in Twentieth-Century Britain (Jack Beatson & Reinhard Zimmermann eds., 2004).

[4] For biographical details, I have drawn on Roger Hood, Hermann Mannheim and Max Grünhut: Criminological Pioneers in London and Oxford, 44 Brit. J. Criminology 469 (2004); see also Lord Chorley, Hermann Mannheim: A Biographical Appreciation, 10 Brit. J. Criminology 324 (1970).

[5] Reflected in the naming of the Mannheim Centre at the LSE. He was apparently also resentful of the fact that the first center for criminology was established under the leadership of Leon Radzinowicz at the University of Cambridge rather than in London.

CJSR was published by Routledge and Kegan Paul as part of the *International Library of Sociology and Social Reconstruction*.[6] This series, established in 1942, was edited by Mannheim's namesake, Karl Mannheim, and played a key role in the development of sociology as an academic discipline in the U.K., drawing in particular on the work of *émigrés* and political refugees from Germany and through them on wider European traditions in sociology and social theory.[7] In the early years of the series in particular, under the influence of Karl Mannheim, the emphasis was on social reconstruction understood as:

> [T]he necessary readjustment of democracy to changed social conditions; the problems of economic and social planning; the human side of planning; analysis of the existing democratic, totalitarian and semi-totalitarian systems; social changes brought about by the war; psychological problems of the new era; the moral and religious crisis; education, art, culture and science in the period of reconstruction.[8]

These broad themes, and in particular the perception that there was a crisis of values and a need for social planning, are strongly reflected in *CJSR*. The book was divided into two main parts. The first part—the crisis in values and the criminal law—had sections on the protection of human life, the protection of sexual and family life, and on economic crime (subdivided into property and economic crime against the state). The second part—on criminal justice and social reconstruction—was focused on the "re-planning of criminal justice." The aim was to show how the work of social reconstruction might be reflected in the field of criminal law and criminal justice.[9] This was driven in part by a recognition that the conclusion of the war was likely (as it had been in 1919) to lead to an increase in crime, but it was also motivated by a belief in the need for wider social reconstruction to modernize institutions of criminal law and criminal justice so as to make them fit to perform their functions in a modern society.[10] This, he argued, would require more than just penal reforms (i.e., to punishment), but also changes to the criminal law because criminal law reform had been neglected for so long that it was out of touch "with the progressive elements of social thought."[11] In particular, he argued that criminal law was too individualistic and as a result had "not yet become sufficiently aware of the fact that we are living not in an individualistic

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[6] On the history and influence of this series, see Jennifer Platt, The International Library of Sociology and Social Reconstruction and British Sociology, in The Palgrave Handbook of Sociology in Britain 236 (John Holmwood & John Scott eds., 2014).

[7] Hermann Mannheim eventually published three books in the series. The other two were *Juvenile Delinquency in an English Middle Town* (1948) and *Group Problems in Crime and Punishment* (1955).

[8] Publisher's description of the series, cited in Platt, supra note 6, at 245.

[9] CJSR, preface at vii.

[10] The epigraphs to the book give a flavor of the spirit of the book. He cites, amongst others, Harold Laski (to whom the book is dedicated), William Beveridge, A.V. Dicey, and Barbara Wootton, all appealing in different ways to the need for new, and scientific, approaches.

[11] CJSR, preface at vii.

but in a mass age, where everything has to be adapted to the use of mass methods."[12] The challenge then was to reconstruct the law to reflect these modern values.

His approach had three broad themes.[13] First of all, he argued that it was necessary to decriminalize certain forms of conduct and bring other forms of anti-social conduct within the scope of the criminal law, or bring existing laws into line with new forms of conduct or modern forms of psychological or sociological knowledge.[14] He thus argued for the decriminalization of abortion, suicide, and homosexual activity because existing laws reflected outdated religious beliefs.[15] By contrast, he argued that the exploitation for sexual purposes of a woman's economic dependence should be criminalized and also advocated the criminalization of certain forms of racial prejudice.[16] Second, he argued that in certain areas, the criminal law was too individualistic. He criticized the law of homicide for focusing only on interpersonal violence and argued that it was necessary to criminalize negligent conduct where it led to death or serious danger to life or health because the function of the criminal law was not only to protect individual rights and interests, but also the rights and interests of the community at large.[17] While this would be best achieved by preventive action rather than by means of the criminal law, he argued that there remained a role for the criminal law where it could enforce values connected to and supported by the community. Third, he was clear that modern criminal law required a preventive approach that would require a rethinking of the relationship between criminal law and administrative bodies rather than an over-reliance on criminal law and punishment. Preventive action was often of an administrative character—issuing licenses and permits, advising on economic policy, and so on. One consequence of this was that it would result in administrative bodies taking over some of the work done by criminal courts. However, on the other hand, he argued that in areas such as competition policy, where the courts could not set general standards, such standards should be established by administrative bodies and then enforced by the courts.

We can illustrate his approach by looking at the section of the book on economic crime—which in many ways, I would argue, is the most interesting and innovative part of his argument.[18] This begins in a conventional way with a focus on property and property offenses, but then quickly broadens out to look at other areas such as what he called protection *against* property and economic crimes against the state. It begins by outlining changes

[12] Id. at 57.

[13] See esp. the summary, id. at 195-98.

[14] It can be seen as a form of sociological jurisprudence. Hood argues that he was influenced by the approach of Franz von Liszt, through his *Doktorvater* Eduard Kohlrausch. See Hood, supra note 4, at 471.

[15] CJSR, at 42-54 & ch. 4.

[16] Id. at 63 & 191.

[17] Id. app. § 1 (Criminal Negligence).

[18] Id. chs. 6-9.

in social and economic life that were relevant to thinking about changes in property offenses.[19] These changes included:

- The shift from largely immovable agricultural property to movable commercial and industrial property;
- Increasing inequality in the distribution of property;
- Property increasingly being placed under the control of "servants" or employees;
- The transformation of wealth from property in visible and tangible goods to invisible and intangible powers and rights;
- The passing of ownership of valuable property from individuals to big corporations; and
- The consequent separation between ownership and control, which then led to a decline in social responsibility on the part of the owner.

This was then contrasted with what Mannheim saw as the archaic or "infantile" features of the common law of theft where the law reflected the social significance attached to certain forms of property, or thefts from certain places, rather than keeping pace with changes in the form or social functions of property.[20] Property offenses in general were thus a relic of an older system of property relations and had not been modernized. To the extent that the development of the law had been driven by economic needs, these had generally been the needs of the propertied classes rather than the broader economic interests of society.

He went on to argue that if the law was truly to reflect those broader economic interests, it was necessary to focus on how changes in the form, and in patterns of ownership, of property had had an impact on the scope and effectiveness of the law. There followed a wide-ranging discussion of different understandings of property, drawing on work in sociology, anthropology, and criminology, as well as referring to the criminal law of a large number of different countries. This included, for example, an analysis of the differential penalties for the theft of private and state (or communal) property under the Soviet criminal code, and whether this was leading to changes in the attitudes towards private property of the average Soviet citizen.[21] His point here was to argue that the focus on the rights of private property owners to hoard, waste, or destroy property could be against the public interest, and that it was necessary to explore whether it should be made criminal to destroy or damage one's own property under certain circumstances. Following up on this theme, the remaining two chapters of this section on economic crime were devoted to what Mannheim called "protection against property," by which he meant protection against forms of exploitation that flowed from property ownership and the concentration of power that this entailed. This included economic crimes against the state (profiteering, taxation

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[19] Id. at 86-87; see also id. ch. 6 more generally. He cites Jerome Hall, Theft, Law and Society (1935), here as "one of the few really outstanding models of how successfully to combine legal history and analysis with the mastery of economic and sociological facts." CJSR, at 87 n.2.

[20] He suggested, for example, CJSR, at 92-93, that when the courts removed the requirement that theft should be for profit (for lucre) from the definition of theft, this changed the character of the law from being an economic crime to a crime against public order (i.e., it was regulating the conduct of the lower classes rather than being about money). He describes the law as infantile, id. at 93.

[21] Id. ch. 7, at 109-15.

fraud, and monopoly) and the protection of labor and protection against labor.[22] It is possible to get a flavor of the arguments here by looking at the section on monopoly.[23]

Mannheim understood monopoly as an abuse of property similar to other abuses of financial power, such as profiteering or "share-pushing."[24] He also argued that, as the experience of the Sherman Act 1890 in the U.S. showed, monopoly could be a political threat as certain corporations became too powerful and threatened the institutions of the state. The key question for him was whether or not monopoly should be brought within the scope of the criminal law. On the one hand, he argued that since it had been clearly shown that monopolies were anti-social in their consequences and a greater threat to the community than crimes like profiteering, share-pushing, and so on, it would be against the idea of social justice to leave abuses of monopoly outside the criminal law.[25] Against this, he was clear that the American experience with the Sherman Act ("the most discussed statute of our time") had shown that there were considerable difficulties with using the criminal law in this area. Some of the difficulties had arisen from poor drafting, and in particular the use of general standards in the legislation, which handed too much power to the courts.[26] Further difficulties had then arisen from the recognition that free competition was not always a social good, and that not all monopolies were bad.[27] In the U.S. legislation, the prohibition on monopoly (or restraint of trade) had been framed in very general terms, which had led the courts to introduce the so-called "rule of reason" to distinguish between good and bad monopolies.[28] While this was judged necessary to make the legislation workable, Mannheim argued that this then deprived the Act of its emotional appeal—not all monopolies were punishable, but rather only those judged by the courts to be unreasonable—and this in turn had led to problems with obtaining the support of the ordinary citizen for the law. In place of this, he argued that there was a greater need for co-ordination with administrative bodies which had the necessary expertise to make economic judgments about the effects of monopolies, rather than relying on open-ended standards and judicial

[22] Id. chs. 8 & 9.

[23] Id. at 152-73; see also Hermann Mannheim, Freedom of Competition and Criminal Law, 7 Mod. L. Rev. 1 (1944).

[24] Share-pushing was the practice of selling shares directly to purchasers (sometimes door-to-door) rather than on stock exchanges, with the shares often being over-valued. This was regulated by the Prevention of Fraud (Investment) Act 1939. For critical discussion, see CJSR, at 123-29.

[25] Herbert Morrison, The State and Industry, in Herbert Morrison et al., Can Planning be Democratic?: A Collection of Essays Prepared for the Fabian Society 1, 15-16 (1944) (arguing that the problems of monopoly are inefficiency, exploitation, and the political menace).

[26] "In some ways, the Sherman Act marks the beginning of a movement which has reached its peak in the National Socialist legislative technique of systematically permeating the whole body of the criminal law with [general] conceptions of this type." CJSR, at 160.

[27] Id. at 161-63. In addition to this, he was highly critical of the drafting of the Sherman Act.

[28] This was the idea that the restraint of trade had to be "unreasonable." See Giuliano Amato, Anti-Trust and the Bounds of Power ch. 1 (1997).

legislation. Criminal law could play a role in this area, but it needed to be supported by the appropriate administrative rules and machinery.[29]

This gives a flavor of Mannheim's work and his often incisive views. There is much that is challenging here, but it is not always easy for the contemporary reader. The section on the protection of human life argues for the decriminalization of abortion and birth control, but also discusses forced sterilization and the question of how to deal with "socially useless lives."[30] While he was himself a victim of Nazi persecution, he discussed national socialist penal legislation on topics such as population control with a surprising degree of critical detachment.[31] The book as a whole references a wide range of contemporary social ideas—from psychoanalysis to eugenics—many of which have subsequently fallen out of favor. Overall, though, as an approach to reconstructing the criminal law, there is much here that is of enduring value.

III. Reconstructing Criminal Law

For Mannheim, reconstruction was clearly connected to a certain historical moment and process—rebuilding after war. Reconstruction was the rebuilding of something that had been damaged or destroyed, but this was not to be done in a reverential way—recreating what was lost—but rather meant building something new on the foundations of the old. The ending of the war offered such an opportunity, and he was clearly engaged with the project of social renewal as something both practical and intellectual. *CJSR*, thus, clearly captures something of the spirit of the times in which it was written, in its sense of optimism and opportunity. What was important was not only the need for social reconstruction after the war but a broader modernist project in which the crisis of traditional values was seen as creating the necessity to build anew from first principles. However, it is interesting that his project is not that of reconstructing criminal law, but of thinking about what needs to be done in the area of criminal justice as part of that wider project of social reconstruction.[32] He starts from the wider project and moves to criminal law, rather than many academic projects which are more narrowly focused on criminal law.

In this context, it is important to note three features of his project that raise questions about the limits of this form of reconstruction. The first is that it is "technocratic," placing a strong reliance on experts and forms of expert knowledge to build a better society. This is evident throughout part I of the book, on the crisis in values and the criminal law,

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[29] Notwithstanding this more measured discussion he then concluded by arguing that the penal law reformer may need to adapt the law of high treason to deal with the peril of the over-mighty subject. CJSR, at 173.

[30] CJSR, ch. 2 including extensive discussion of Nazi legislation on this topic.

[31] See also Hermann Mannheim, The German Prevention of Crime Act, 1933, 26 J. Crim. L. & Criminology 517 (1935).

[32] Reconstruction for Mannheim was a question of "how the work of Social Reconstruction might be reflected in the field of Criminal Justice," CJSR, at vii. This might be contrasted with the narrower idea of "reconstructivism" which focuses on the role which criminal law and punishment might play in reconstructing social relationships after the commission of a crime. See Joshua Kleinfeld, Reconstructivism: The Place of Criminal Law in Ethical Life, 129 Harv. L. Rev. 1486 (2016). I do not discuss this here.

where his arguments for reform of the criminal law are based on "scientific" knowledge claims, whether about sexuality, the population, or competition. Scientific knowledge was seen as a positive force, challenging prejudice or traditional values as a means of identifying and responding to socially harmful conduct. The reliance on scientific knowledge and experts also lay at the heart of his argument about the relationship between criminal law and administrative law. His argument here was that administrative tribunals, composed of experts in the relevant areas, would be expected to set standards that could then be enforced by the criminal law (rather than the standards being set by the courts themselves).[33] Such a process was necessary because the administration of certain areas of modern life was complex and technical and could not be done efficiently by courts relying on general standards framed by legislation. This was because judges did not possess the necessary technical understanding of the diverse areas being regulated—while judges might properly enforce standards formulated elsewhere. We can see this finally in his chapter on "Making the Administration of Criminal Justice more Scientific," where he argued for a fairer system of expert witnesses and for integrating experts into the sentencing and punishment process.[34] This then is a vision of reconstruction based on elite, technical, knowledge which was to be used in certain ways. His vision might be contrasted with more democratic or participatory reconstructive projects, which might value forms of local or "traditional" knowledge in different ways.[35] It also raises questions about whether or not a shared basis for this kind of scientific reconstruction still exists.[36]

Second, and related to this first point, this vision of reconstruction was state-centered. To some extent this was to be expected, given the scale of physical rebuilding that was required in the post-war period; but arguably, a somewhat broader set of assumptions is at work here.[37] For Mannheim, the state is generally seen as a positive force, an instrument for change. The state was the only institution that possessed the capacity and knowledge necessary to drive transformation. This can be seen, for example, in his emphasis on centralized planning.[38] Planning, he argued, was "inherent in the very idea of the criminal law"

[33] CJSR, at 203-18.

[34] Id. ch. 11. The recommendations on expert witnesses (court-appointed experts paid for by the state) are still argued for today. There is a summary of his recommendations, id. at 237.

[35] Cf. Meredith Rossner et al., Finding Common Ground: Reconstructing Criminology with Epistemic Justice, 1 Mod. Crim. L. Rev. 143 (2024) (in this issue). It is also interesting to note that Mannheim was highly critical of the jury and argued for a greater role for legally qualified stipendiary magistrates. CJSR, ch. 12.

[36] Arlie Loughnan, Hyper-Knowledge and the Legitimation of Criminal Law, 1 Mod. Crim. L. Rev. 17 (2024) (in this issue).

[37] It is also worth noting the major contemporary initiatives to create the welfare state under the Labour post-war government which Mannheim clearly supported. See The Beveridge Report (Social Insurance and Allied Services), Cmd 6404 (1942).

[38] He was dismissive of Hayek's critique of "socialist planning" as set out in *The Road to Serfdom* (1944) (2001 ed.), arguing that protecting individuals would end up favoring the interests of some individuals over others. See CJSR, at 201-02.

to the extent that it sought to regulate human behavior.[39] He summarized his arguments about planning and criminal justice in a short section (entitled "And More Planning") at the end of the book.[40] Here, he argued that it was possible to plan responses to crime, because the incidence of crime was linked to economic and social conditions, and that the prevention of crime required co-ordination with social and economic reforms.[41] That is to say, he argued that a necessary consequence of economic planning by the state was to address the economic and social conditions that cause crime. More planning was also required in relation to criminal justice to ensure the effective co-ordination of available resources within the community. He saw the main issues here as the need to define or improve relationships between public (or state) and private agencies and between central and local authorities, and the need for better co-ordination between the various parts of the criminal justice system. Planning was thus centralized and technical: "[p]lanning in this sphere, as in the field of crime prevention, implies the existence of some adequate machinery to adjust the work of each individual particle of the system to that of the others."[42] The challenge here is that few today would have such faith in the state and its institutions, which are often seen as causing harm, either directly or indirectly, rather than as the means by which harms should be addressed.[43] Any contemporary reflection on reconstruction has to engage in a more critical way with the role of the state and also to connect in different ways with the values of the community.

Finally, it is important to reflect on Mannheim's view of law and legalism, because many of his recommendations about the role of administrative tribunals and the role of experts would seem to displace law and raise questions about the extent of legal protections of the individual. Mannheim addresses some of these questions in a brief discussion of the rule of law and its relation to administrative law, and in particular the use of vague standards rather than precise rules of law by administrative bodies.[44] Here he argued that both administrative law and criminal law already relied on vague definitions. The problem was thus not one of administrative law as such, in his view, but of whether or not there was some measure of judicial control over administrative proceedings. More broadly, he contended that the issue was less the use of broad standards than how the law was enforced: "[t]he fate of

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[39] CJSR, at 262. He went on: "In an unplanned, or a badly planned, society, the criminal law is saddled with a number of problems which should be solved by much more refined techniques." Id.

[40] Id. at 259-69.

[41] This was particularly important in dealing with the anticipated rise in criminal activity in the post-war period. See CJSR, at 259-62 & Hermann Mannheim, War and Crime p. II (1941).

[42] CJSR, at 269.

[43] See Roxana Willis, Should We Abolish Hate Crime Law or Is There a Case for Its Reconstruction?, 1 Mod. Crim. L. Rev. 109 (2024) (in this issue); Marie Manikis, Citizens, State Fallibilities, and Responsibility in Criminal Law, 1 Mod. Crim. L. Rev. 95 (2024) (in this issue).

[44] CJSR, at 199-218. This is particularly concerned to address the arguments of Dicey, as developed by Lord Hewart in *The New Despotism* (1929), that the growth of administrative bodies displaced the role of the courts and challenged the separation of powers under the rule of law.

civil liberty depends on the men who have to administer criminal justice much more than on this or any other legal formula."[45] His focus was thus less on moral or ethical values in themselves, than on the question of institutions and how they might bring about certain socially valuable ends.

IV. Conclusion

> The great task of the future will be to separate the valuable elements in the traditional approach from the bias rooted in vested interests and sheer unreasonableness.[46]

CJSR offers a fascinating snapshot of social thought in the immediate post-World War II period as well as challenging many taken-for-granted aspects of the criminal law. As an outsider (a German-trained lawyer looking at the common law; as a criminologist) Mannheim displays a refreshing iconoclasm and sees no particular need to respect the traditions of the common law. The book offers a fresh approach to the criminal law, beginning with social analysis and proceeding from that to a focus on the functions or aims of the law—and how the use of criminal law might best serve those ends. For these reasons it is a book which has continuing relevance, notwithstanding that there are sections which seem dated, archaic, or just plain troubling. Mannheim himself acknowledged that it was not a complete account and that there would be gaps and shortcomings, but what is important (as with Lacey and Wells's *Reconstructing Criminal Law*) is not the offering of a finished normative project, but the opening up of pathways to think about alternatives. Perhaps what is disappointing is that the book is not better known, as it has much to offer in terms of ideas and method.

The book, finally, is a reminder that when we think about reconstruction, we should not see it as a question that is of only academic interest or only a matter of how we teach criminal law. It is also necessarily linked to wider social questions—about values, and the functions and aims of the criminal law—that we neglect at our peril. Bringing discussion of Mannheim back would be of value in its own right, for the many insights and ideas that he offers—even if his understanding of reconstruction is closely linked to a particular historical moment and social project. Discussion of "forgotten books" such as Mannheim's, moreover, can also contribute to developing an understanding of an older tradition of critical analysis of the criminal law. This would help by broadening understanding of the history of the discipline—reconstructing our understanding of the history of criminal law—but also serve as a resource for thinking critically about the future.

[45] CJSR, at 213. It is interesting to compare this with MacCormick's defense of legalism as an attitude of commitment towards the law. See MacCormick, supra note 1, at 541.

[46] CJSR, preface at viii.