

Gerlinda Smaus - Feminist and criminologist

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Though Gerlinda Smaus started her career as „young criminologist”, she is now old enough to be honoured by this Festschrift. The label of the young criminologist might have faded, but not the one of a critical criminologist – and a (very) critical thinker. Her focus is the construction of realities, and indirectly - its change. Never being an activist (despite a half- hearted excursion into the women’s movement in the late 70th in Saarbrücken with the, then, very “old” women over thirty), she is embedded in academia, and, in this context, a battlesome feminist. To this day.

Her scholarly program as a feminist criminologist – or in her case better: criminal sociologist (Smaus 95: 24) – is best outlined in her own words: “How is it done, to uphold unequal distribution and gender hierarchy at the same time?” (Smaus 1990: 280) Her approach is informed by deep conviction, that the subject matter of criminology is not constituted by criminality but by the criminal law (Smaus 1995: 24). If anything she despises, it is the search for the aetiology of crime – and: the lack of theory (Smaus 1995:17). Call me a suspect, but I am probably just the person Gerlinda Smaus saw in me: Someone who backs off from theories, but whose observations suggest a theoretical background (Smaus 1996: 193). She herself was never guilty of that. She always belonged to the species homo theoreticus, with the surprising insight that there would be more damage done by a general theory than by the prevailing eclecticism (Smaus 1997:17).

Feminist criminology

The question of feminism in science was - and is - an issue (Nunner-Winkler 1994, Brückner 1998), which touches on “feminist criminology”. Krimpedia tells us, that “feminist criminology” is “the introduction of a feminist worldview into criminology,”¹ and Kunz (2004) asks: Who should conduct feminist criminology: only women, or only women with a feminist concept of science or also sympathetic men?

In her work Gerlinda Smaus tries to give account to what is feminism, gender and feminist criminology. She notes that women’s studies often equates with feminist research and both are understood as studies by women on women (Smaus 1995:9). Following Harding (1986) she defines the feminist approach to science as a critique of the “normal science” which is androcentric.

Gender – according to Harding - manifests on three different, but highly gendered levels: a symbolic order, the division of labour and socially constructed roles and identities. Not only do we constantly attribute the dichotomous categories of “male” and “female” to individuals, but also – according to

¹ http://www.kriminologie.uni-hamburg.de/wiki/index.php/Feministische_Kriminologie. Accessed 9 June 2010.

Smaus – to all notions of our thinking as well as to all social institutions (Smaus 1995:12). We are “doing gender” (West and Zimmermann 1987, česky 2008; Gildemeister 2004).

In this sense, criminal law too has a gender (Smaus 1997: 183). According to Smaus the (criminal) law - as well as science - is male: both function and functionary (Smaus 1997:183); while other institutions are “motherly”: educating and caring (Smaus 2000:4). Counselling can be considered among the motherly, nonetheless disciplinary mechanisms (Smaus 2000:14). With reference to Foucault she reminds us, that the “poor” criminal, who calls for treatment, was created by criminology, not by the criminal law system (Smaus 1997:187). Which should make criminology yet another “motherly” institution.

Feminist epistemology

Looking at claim and reality Gerlinda Smaus distinguishes three feminist epistemologies: empirism, standpoint approach and postmodernism (Smaus 1995:12), which she uses as analytical categories (logics of reconstruction) to describe feminist criminology, whose part - or even figurehead (Lamnek 1997: 168) - and analyst she is.

Being an empiricist by conviction I want to use the same categories not to analyse but to describe – overlapping – developments in feminist criminology.

Standpoint approach

According to Smaus the standpoint approach draws from liberation movements’ desire for change. The epistemic background is the idea that common or comparable experiences – as women – allow a better understanding of the subject matter (Smaus 1995: 14). As examples in feminist criminology she declares all kind of studies inspired by the affliction from male violence as a shared experience (Smaus 1997:184).

It, indeed, marked a starting point, when Maria Mies (1978) declared her postulates of dedicated feminist (action) research. What had started off as evaluating “women’s projects” such as the first Berlin women’s shelter (Hagemann-White 1981) and the hotline for raped women in Mainz (Teubner 1983) developed later into the first representative study on violence against women in Germany (GiG-net 2008). Even though these studies are no more conducted by “women from projects”, Gerlinda’s assessment that the researchers are not considered and don’t consider themselves “criminologists”, might still be valid (Smaus 1995:14).

I think it is based on these early - standpoint – studies, that both the empirical research and postmodern approaches could develop. Indeed: “in feminist theory it is necessary to take on a standpoint” (Smaus 1996:197). From an androcentric perspective it might be a “successor science” (Smaus 1995:14 quoting Smart and Cain), but from a feminist point of view this was “predecessor’s science”.

What is perhaps more interesting – from a gender perspective – is the experience that the victim's status of women came under attack during the debate on "the abuse of the abuse" (see Oberlies and Schmauch 2005) and when men claimed the status of victims of domestic violence (Bock 2001). In both cases the reaction went from "belittlement" to "backlash". Being the victim of violence seems itself gendered, a female attribute. No wonder that students, when asked, assume more women are victims of violence while in fact, statistics count more male victims of violence (Oberlies and Elz 2010). Again Gerlinda Smaus had been ahead of her time commenting on my dissertation: "Since patriarchy choose to produce violent men and non-violent women, what do we – women – want to praise us for? That we are not able to answer back?" (Smaus 1996:197).

Feminist empiricism

A second wave of female criminology (not always feminist criminology) brought forth a number of empiric researches. According to Gerlinda Smaus all the publications on the criminality of women and girls fall into this category; epistemically driven by the idea to eliminate blank spots and improve science as a whole (Smaus 1995:12).

Her list of candidates shows that feminism had arrived in academia: it was now possible to have a PhD with the subject of feminist criminology, and women like Henriette Abel (1988), Sabine Kirchhoff (1994) and me (Oberlies 1995) indeed proved that point. It was no more the women from the project environments – or sympathetic men in academia (Weis 1982, Steinhilper 1986) - that drove the discussions.

But again, there is a bias in all that: despite the fact, that most of the registered criminal acts of women are property crimes (Oberlies and Elz 2010), most of the social research on gender criminality is done on sexual and domestic violence, including homicide, infanticide or femicide (Elz 2009). If (female) gender is constructed then science – and for that matter feminist criminology – is part of the construction industry. Dangerous women have been created by criminologists as daunting examples before (Oberlies 1994), now the feminist criminologists (like me) and their interest in all kind of killings (Temme and Künzel 2010) draws a picture of how "criminal women" are - and normal women should not be, seemingly fulfilling Adler's (1978) prophecy that emancipation and crime goes hand in hand. This understanding added up to my definition of feminist criminology: critique of patriarchy, facing masculinity (as a façade, construction) – and stop being flabbergasted about women, because feminist criminology is doing gender (Oberlies 1994).

But to be fair, only few empirical studies showed interest in women only (Funken 1989), more wanted to dismantle the system - and male dominance – by understanding both, empirically. In this, Linda and I always agreed to disagree. (What a shame that your Festschrift gives me the final word on this issue – for now.)

Yes, it is a humiliation that the situational interpretation of raped women is not taken seriously (Smaus 1997:190). An empiric approach is one way of giving women a voice. Postmodernism where all words and notions are being de-constructed makes people speechless. Only one person is talking:

the philosopher (gender neutral). There were times, when women had to be silent in church, there were times, when men knew better, now there are the times when gender theorists identify performances. Call me a conservative feminist, but I want to treat women as experts of their lives - and experts as performing roles. In short: I have more questions than answers? I am a feminist empiricist.

Feminist postmodernism

For Gerlinda Smaus criminality is never a description but always an ascription – as is gender. That not only made her a prominent representative of the labelling approach (one of few women of the time), but also a postmodern feminist in times when feminism was just about modern.

She translated Giddens' theory of structuration into thoughts on crime, as an inter-relation of structure (the criminal law system) and acts (the criminalized behaviour). She continued this line by introducing the thinking of Sandra Harding (1986) on the gender bias of science (Smaus 1995, 1997) into critical criminology/criminal sociology. Coming up with her intellectual mantra, that (control-) structures do have a gender, while women in many ways don't (Smaus 1997:182).

In her article "Reproduction of the role of women in prison" (Streit 1/91, S 23 – 33) she asks about the purpose of the gender selectiveness of criminal justice and the ways to control women. Starting from a feminist theory of society, she states that patriarchy offers power over women and children even to otherwise unpropertied men as a compensation for the unequal allocation of power and goods amongst men. She distinguishes between men in the public sphere from men in the private sphere and women, who are, according to her (and the common feminist thinking of the time) always associated with the private sphere. According to Gerlinda Smaus, the "public" criminal law controls men; the control of women is left to the private sphere (Smaus 91:25), where domestic violence is the ultima ratio of male dominance (Smaus 91:27). With this in mind the criminal norms do not therefore have to provide for actions of women, except when it comes to reproduction (Smaus 91:25). She suggests that the function of the criminal system – as disciplinary power regarding males - is substituted by social work rescue operations to avoid (moral) neglect of women such as singleness and childlessness. And again, (fear of) violence – as ultima ratio - ensures both social restrictions on women, and male protectiveness (Smaus 91: 28).

According to Gerlinda Smaus the function of prisons in this setting is the creation of "reliable proletarians" on the male part and "reliable housewives" on the female part (Smaus 91:29), drawing from analyses of the criminal system as targeting change in the lifestyle of women and the (non)work style of men (Smaus 91:24 ff). The organizational structure of prisons reproduces the role of women in society: reduced to household chores, little professional training, lack of leisure facilities, hierarchical order with male, patriarchal authority on top and social services as a rigorous, but caring mother both infantilising the prisoners (Smaus 91:31). The prison culture, on the other hand, is an attempt to adapt to this total institution. (Always) showing some interest in homosexual relationships, Gerlinda Smaus takes the opportunity to analyse lesbian relationships in prisons – at least some of them – as homosexual practices in hetero-normative (as one would say these days)

“disguise”, with one woman “playing” the male role (Smaus 91:31). Already then she opened the window to the theoretical consideration, that gender roles might not depend on the sex but on the context (Smaus 91:31) – or simply on a role-play (Butler 1990): gender troubled by imprisonment.

In her article “The gender of the criminal law” (1997) She suggests to analyze criminal law as a selective construction. Criminal law, she suggests, places women in positions, that do not interest the law. It’s main target group are men. If the criminal law targets women directly it is- so Smaus - to degrade them morally (i.e. abortion). Still: Due to the universal claim of criminal law, sometimes even women get netted. But – according to Smaus – the significance of their acts - such as theft or fraud - is different as they (have to) violate the law “on behalf of their husband”, who are expected to be the breadwinner. While women – when stealing - concentrate on the value in use, men go for the value in trade – which reflects in higher punishment. But if women go “male”, they have to bear the full brunt of the criminal law. This again shows that men and women are not summoned as biological beings, but are reacted upon as agents of social roles. So, if Cain asks, why the construction of the male role is deeply criminogenic, Linda’s answer is: because powerful men prohibit other men, who are poorer or less powerful, access to resources (Smaus 1997:188).

She always made me think (and sometimes I hope, I made her think as well). Even now I am inspired by the clarity of her thoughts – clarity that I miss recently, especially in social sciences. Which is why I handed Linda’s articles from 15 years ago to my students, who thought they were radical. And in fact, this is what they still are.

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