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MYTHS AND NARRATIVES OF PREDICTIVE POLICING: AN APPROACH FROM RADICAL CRIMINOLOGY

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ABSTRACT

In this paper, I provide an overview of the expanding use of predictive policing and the narratives backing its implementation. Within the ongoing debate on the use of algorithmic predictions in law enforcement, my point is above all a critique of conventional criticisms, mostly inspired by a privacy-centred approach that focuses on the risks of profiling as the ultimate benchmark for assessing predictive methods. Through practical examples and surveys into the criminological rationalities fuelling predictive initiatives, I argue how, although relevant, this dimension falls short of grasping the technical and theoretical complexities of predictive policing, which frequently leads to inadequate regulatory responses. The need for a holistic approach re-

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flects the key role played by predictive policing in the deployment of neoliberal governance and, in particular, in redefining the traditional relationship between private and public powers in the security provision chain. Against this backdrop, radical criminology is called to a relentless debunking of dominant rhetoric, in view of which I sketch the basis for a necessary future attunement between the materialist sociology of penal control and the critical theory of police power.

KEY WORDS: Predictive Policing; Police Power; Sociology of Penal Control; Radical Criminology; Critique of Security.

SUMMARY

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1. INTRODUCTION AND STATE OF AFFAIRS

When hearing the phrase 'Predictive Policing', our mind immediately turns to futuristic scenarios in which volitive behaviours are easily anticipated through algorithmic calculations before perpetrators can even have cognition of their own will. This imagery does not correspond to what predictive policing (hereafter PP) stands for nowadays, nor does it facilitate a correct understanding of the problems arising from the functioning of these tools. Indeed, predictive policing designates the use of algorithmic predictions to forecast future police targets, these being either future offenders (person-based PP) or future crime spots (place-based PP) (Brayne, 2021; Ferguson, 2017; Perry *et al.*, 2013; Uchida, 2014; Couchman, 2019). In operational terms, the difference lies in the type of algorithmic output: in the case of person-based PP the result delivered by the algorithmic processing is a risk assessment applied to an individual, while for place-based systems, the risk assessment applies to a geographical or urban district about which the chances for future crimes are calculated. It

should be noted that I am deliberately sticking here to a restrictive definition of PP, that is, one limited to algorithmic predictions made at the level of crime prevention and police investigations, leaving aside computational techniques used to make forensic decisions. The latter fall under what Završnik (2021) defines as ‘algorithmic justice’, consisting of decisions made by the Court within an already initiated trial and normally concerning forensic evaluations (bail, parole length of sentence) about the temporary or partial restoration of personal freedom. The distinction is not an academic sophism, for, in the case of Algorithmic Justice, the encounter with the Criminal Justice System does not originate from any algorithmic prediction and predictive technologies come into play only at a later stage. Moreover, within the forensic context, the subject under assessment can only be an individual, which is why there is no *person vs place* duality in the possible types of predictive outputs. However, a certain conflation in the literature between ‘algorithmic/predictive justice’ and ‘predictive policing’ may contribute to explaining why even critical analysts of the latter often limit themselves to reproducing arguments borrowed from the longer-standing tradition of the criticisms of the former (e.g., Angwin *et al.*, 2016). I shall return to this in a moment.

Even adopting such a restrictive notion of PP, recent studies demonstrate how these police practices, after being inaugurated in the US (Robinson, & Koepke, 2016), have spread rapidly in many European countries like the UK (Babuta, & Oswald, 2019; Couchman, 2019), Denmark (Neslen, 2021), the Netherlands (Oosterloo, & Van Schie, 2018), Germany (Gerstner, 2018; Seidensticker, Bode, & Stoffel, 2018), Italy (Fair Trials, 2021), France (Technopolice, 2020) and Switzerland (AlgorithmWatch, 2020²¹). Somehow not surprisingly, the

²¹ According to the same source, in 2020 Poland, Greece and Belgium were planning to roll out forms of PP. This projection seems to be confirmed today by the web pages of private companies apparently active in the PP market sector in those countries. See: <https://www.mim.ai/predictive-policing-system-for-the-polish-police/> https://www.intracom-telecom.com/en/news/press/press2022/2022_07_15.htm; <https://eticasfoundation.org/predictive-policing-in-belgium/>

overwhelming majority of predictive systems are place-based in type, and this cannot be dissociated from the basic misconception whereby the critique of PP pivots around the inspection of the existence of profiling²². Indeed, the more the critique ends with simply measuring the risk of ‘profiling’ in a legalistic sense, the more place-based systems can gain ground and secure themselves against more incisive criticisms by simply claiming the unrelatedness to practices of profiling and, hence, their default non-invasiveness. In this regard it should be noted that the appeal to privacy rights – a natural corollary to the grievances about the risk of profiling – has never been effective, historically speaking, as a defensive argument in the field of law enforcement. In fact, the sphere of privacy cannot be invoked as an absolute limit when the reason for certain activities lies in crime prevention. The exception clauses scattered across the Directive (EU) 680/2016 and the draft of the AI act are good examples of how generally imperative legal safeguards can be overridden when necessary for law enforcement purposes²³. In sum, privacy can be key in other branches of the legal system and against other forms of algorithmic profiling unrelated to crime prevention, but when it comes to law enforcement, the prerogatives of police power have precisely in the overrun of citizens’ privacy one of their defining traits and historical *raison d’être*.

In addition to the limited potential –in the law-enforcement context– of the ‘*privacy vs profiling*’ legal argument, further pro-

²² Under art. 4 (4) GDPR, ‘profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular, to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.

²³ Think about Art. 10 Directive EU 680/2016 regarding the conditions for processing sensitive data, or the provisions in the current AI act draft dispensing with the general obligation to gather informed consent of natural persons participating in testing of AI tools if implemented for purposes of law enforcement, or the exceptions to the general prohibition of real-time remote biometric identification systems in publicly accessible spaces.

blems result from translating such a 'privacy-centred perspective' into claims and regulatory demands. For example, it is not unusual that concerns regarding the exercise of fundamental freedoms (free speech, free expression, association) related to the non-observance of privacy rights end up being the real keystone for legally assessing PP practices (Couchman, 2019; Lynskey, 2019; Norga, 2021). Without minimising the importance of these civil liberties, perplexities similar to those raised about privacy protection can be reiterated here. Even fundamental freedoms paramount to a democratic society —as is the case with those laid down in Art. 10 and 11 ECHR— are not necessarily an impassable barrier to criminal prosecution. On the contrary, the fundamental rights corresponding to the Criminal Justice Guarantees under the Rule of Law should never shrink. Therefore, especially in light of predictive practices aiming at enabling pre-emptive police intervention, one should rather wonder, in the first place, whether principles like the presumption of innocence, the principle of materiality (*nullum crimen sine iniuria*), or the principle of legality are fulfilled. The reference to the last needs to be explained in relation to the claim of secrecy on the inner workings (in particular the predictive markers) of most algorithms, which I will touch on later.

Lastly, to conclude this introductory section, it is worth adding that a privacy-based approach primarily —if not exclusively— focused on the risks of profiling also forecloses proposals or critical stances going beyond demands for more transparency or the search for technical solutions to operational asymmetries (biases, opacities, self-fulfilling prophecies, *etc.*). At the same time, it flattens the debate to the tackling of moral dilemmas: e.g., *is it more desirable a false negative at liberty or a false positive who gets overpoliced?* Moral dilemmas are of course very important and, in many cases, inescapable: however, simply wondering which outcome is preferable in the alternative between A or B prevents us from pre-questioning the reason why should we act in such a pre-given duopolistic scenario.

2. A CRITIQUE OF CONVENTIONAL CRITICISMS

As just explained, an understanding of PP practices exclusively forged on the concern for ‘profiling’ is often the prelude to the adoption of a privacy-based prism unable to lay claim to something more (or something different) than greater operational transparency and better-conceived solutions to moral dilemmas. On this premise, I will try to give a brief overview of how a privacy-centred perspective brings in its train a series of misconceptions about the real workings of PP technologies, which end up impacting multiple levels of the understanding of PP-related matters.

From a technical angle, the *first* misunderstanding is that such a critical scrutiny of profiling is usually carried out at the output level only. Accordingly, if the output does not consist of an individualised risk assessment, the threat of profiling is averted. This is, of course, the result of the artificial parallelism between PP and other predictive practices (like predictive justice or other data-driven predictions outside the Criminal Justice system culminating in decisions about targeted recipients) where the assessment is always about an individual and the algorithmic output linearly reflects this operational chain. However, what this approach fails to consider is that the type of output says nothing about the nature of the inputs employed, and indeed, both families of PP (place-based and person-based), independently of the output delivered, usually resort to interchangeable input data. Thus, in the person-based predictive systems, the individual-based nature of the output does not exclude the inputting of geospatial information if assumed indicative of criminal propensity: the person-based HART model, for instance, uses postcodes as markers for individuals (Couchman, 2019). Symmetrically, a place-based system may deliver outputs in the form of geo-spatial predictions, while being fuelled by input data identical to those needed for operations of profiling: examples are place-based systems like XLaw in Italy or CAS in the Netherlands that input criminal records and other personal information of individuals related to the hot areas. Dwelling

on the Dutch case, Oosterloo, & Van Schie (2018) bring out that the place-based system CAS is fuelled by three different sources of data, the most important of which are the National Crime Database (BVI) and the Central Bureau of Statistics (CBS). The variables from the BVI, among which “suspect” is used as a personal status rather than as factual evidence in connection to investigated crime, are:

1. *Distance in km of the address of the closest known offender (suspect) of an incident who has been active in the past 6 months.*
2. *Number of known offenders (suspects) of an incident who have been active in the past 6 months that live within 500 meters.*
3. *Number of known offenders (suspects) of an incident who have been active in the past six months that live within 1000 meters.*

Perhaps even more interestingly, the markers retrieved from the CBS are:

1. *Number of inhabitants in zip code area*
2. *Number of men in zip code area*
3. *Number of women in zip code area*
4. *Number of households in zip code area*
5. *Average size of households in zip code area*
6. *Number of non-Western allochthones in zip code area (NB. removed in 2017)*
7. *Number of one person households in zip code area*
8. *Number of one parent households in zip code area*
9. *Number of multiple person households without children in zip code area*
10. *Number of two parent households in zip code area*
11. *Average age in zip code area*
12. *Housing stock in zip code area*
13. *Average property value in zip code area*
14. *Number of income recipients in zip code area*
15. *Number of social benefits recipients in zip code area*
16. *Fiscal monthly income in zip code area*

In sum, while CBS markers 1-11 concern gender and household composition, the following six have an exclusively economic nature, factoring into the housing stock, the average property value, the number of income or social benefits recipients and the fiscal monthly income per zip code area. In addition, although marker 6 was removed in 2017 for its blatantly discriminatory nature, the grid suggests that no substantial changes followed the removal of the reference to non-Western allochthones, insofar as demographic and socio-economic characterizations from the other variables still in place are in themselves sufficient to point at specific ethnic groups within the same social context, thus achieving indirectly the same result. Therefore, a place-based system may be a smokescreen to hide not only operations that beyond the facade of a geospatial output heavily build on person-based data at the input level but even the use of proxies for prohibited sensitive data (in this case race).

What has just been shown introduces a *second*—more theoretical—misunderstanding, which largely explains the first one. Indeed, looking at profiling as the crucial element to assess the acceptability of PP practices generates a false epistemic differentiation between *person-based* and *place-based* techniques, with the latter being regarded as less alarming methods of ‘place-profiling’. Nevertheless, I have demonstrated elsewhere (Gatti, 2022a) how misleading is a theoretical differentiation between person-based and place-based predictions in light of the history of criminological thought. Although I cannot reiterate here all the arguments developed there, I will restate that the crime-space relational conceptualisation, started by the French (Quetelet, 1984 [1831]; Balby, & Guerry, 1929) and the English (Fletcher, 1849; Mayhew, 1862) Cartographic schools, has been responsible for the ontologisation of crime (i.e. crime as an ontological reality, and hence predictable) since before the bio-anthropological theories of ‘born criminal’ appeared. According to the Cartographers, the explanation of crime should follow a straightforward social determinism whereby any knowledge about crime distribution reflected the distribution of poverty (paradigm of *so-*

cio-economic deficit). In other words, mapping crime was a flipside of mapping poverty or other socio-economic variables suggestive of the latter (educational levels, household composition, bastardy, levels of deposits in saving banks etc.) to the point that in many of their arguments poverty and crime are superposable terms (Booth 1904). In this sense, the contribution of the Cartographic school to positivist criminal aetiology –even before the Lombrosian anthropological positivism– is somehow underestimated. What is more, the historical prevalence at the turn of the 20th century of Lombrosian anthropology over the socio-economic framework of the Cartographic School was not the result of an epistemic clash. The reasons are rather to be sought in the practical need for “a convenient rationalization (. . .) and an escape from the implications of the dangerous doctrine that crime is an essential product of our social organization” (Vold, 1979, p. 40). In fact, though without any progressive purpose, in the cartographic analysis, the link with demographic factors remained outspoken, while an anthropological categorisation of the criminal ensured a safer distance from social dynamics and could better serve the interests of those who looked upon the lower classes “as a category detached from the prevailing social conditions and portrayed as a race apart” (Radzinowicz, 1966, p. 39). Therefore, the Cartographic analysis and the Lombrosian positivism were nothing but two different ways – one environmental, the other anthropological – to give “scientific” substance to the notion of “conditionality to crime” (Bianchi, Simondi, & Taylor, 1975) and thus identify persons or social groups worthy of emargination. In sum, two routes led to the same point, but the second one ended up prevailing between the end of the 19th and the turn of the 20th century because of political contingencies which made it preferable in the management of class conflict. The commonality between environmental and person-based rationalisations of crime is largely demonstrated, after this initial ‘miscoordination’, by the perfect synergy pairing the following generations of theories thrived in each of these two parallel storylines: thus, in the first half of the

20th century, the operational link —e.g. in the interchangeability of predictive markers— is evident between the Ecological School of Chicago and the actuarial paradigm; likewise, starting from the last quarter of 20th century, the situational theories and the theory of selective incapacitation are perfectly complementary and mutually imply each other, both being reactions to the end of penal welfarism (Gatti, 2022a). In sum, dealing with place-based or person-based predictions in differential terms is, *inter alia*, a deeply erroneous reconstruction from an epistemic point of view, in particular in light of the history of the conceptualisation of crime in relation to space.

The *third* misunderstanding I want to stress is of a legal nature and concerns how the miscomprehension of PP functioning can affect law-making processes and the adequacy of regulatory responses to potential abuses in the implementation of PP technologies. In the absence of a specific body of legislation and being the AI Act still under debate while writing these lines, I will refer here to Directive (UE) 2016/680, also known as ‘Law Enforcement Directive’. This is a regulatory text twin to GDPR 2016/679 (together they compose the so-called Data Protection Package), but specifically laid down for Law Enforcement-related matters. In art. 11 LED (2016/680) a provision concerning automated processing is established, which reads as follows: “Member States shall provide for a decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited unless authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller”. As we can see, “profiling”, along with the reference to “adverse legal effects”, stands as a central element in defining the scope of the provision, implicitly suggesting that the benchmark addressed by the European legislator is a typified and formalised decision-making culminating in an official measure or order issued by a public authority that directly impacts the sphere of rights of targeted

individuals. However, we know that PP techniques are used to predict targets of police intervention at the level of crime prevention activity and do not consist of any formal decision-making leading to the issue of decisions delivered to the data subject and affecting his/her personal legal sphere in the same way a ruling or an administrative measure would.

Nevertheless, with an interpretative effort and assuming that the requirement of building “solely” on automated processing is concurrently fulfilled, we may argue that PP practices are covered by the provision through the reference to a “significant affection”. Therefore, once agreed that PP practices fall within the scope of art.11 LED, their legitimacy shall be subject to 1) the authorisation of the Union or Member State law, and 2) mandatory safeguards, including “the right to obtain human intervention”. Now, how could the “data subject” appeal to such a right in the case of practices that are neither formal decision-making nor processes known to the data subject? Indeed, the real (and often only) recipients of the predictive output are the police forces enacting the algorithmic prompt, not the data subject. The idea behind the provision is borrowed from very different situations where the point is to revert or revise, by bringing human decision-makers into play, an unfair automated decision already known or communicated to the addressee: this is the precondition for the data subject to formally challenge the decision before it produces detrimental effects. However, this is not the context in which PP takes place, whose “effects” are achieved – and, to some extent, already irreversible – just as the prediction is delivered to the police agents. In conclusion, whilst legal countermeasures reproducing guarantees typical of formalised decision-making cannot be a realistic remedy, provisions like art. 11 LED show how a conception gauged on the ‘*privacy vs profiling*’ principle is still the prism through which law-making is conceived, even when the peculiarities of law enforcement should inform the legislative measure.

3. AUSTERITY, SOFT PRIVATISATION, SECRECY

Any attempt to summarise the essence of PP would be grossly incomplete if overlooking the historical conjuncture that backdropped the first theorisations of PP in the US in the period between 2008 and 2009 (Beck and McCue, 2009; Bratton, & Malinowski, 2008). Besides marking the appearance of PP in the public debate, the coincidence with such a historical phase is not accidental and must be examined in light of the economic restructuring after the 2008 crisis. Indeed, this foundational literature represents a very telling mirror of the political agenda of PP, understood as both an economic and a criminal policy. The very cornerstone inspiring the presentation to the public of PP benefits is the attempt to extrapolate into the law-enforcement realm the austerity tenet '*doing more with less*', given the progressive reduction in crime prevention resources. PP is thus touted, first and foremost, as a winning combination of data-driven metrics with a minimum margin for error, ensuring a cost-effective and timely intervention that perfectly meets the tough demands of economic recession. This ideological operation required not only the naturalisation of previous police practices —whose continuity should be secured from the threats of recession— but also the introduction of new narrative layers paving the way for business-like terminology. In this scenario, the reduction in crime figures for police agencies is equated to the production of profit for private companies (Bratton, & Malinowski, 2008, p. 263), while the offender decision-making needs to be tackled through techniques of customer steering (like loyalty programs and e-commerce analytics) and behavioural predictive calculations similar to those used by Walmart and Amazon (Beck and McCue 2009) or by Netflix and insurance companies (Uchida, 2014). In another interview, Colleen McCue says that studying criminal behaviour is not that different from examining other types of behaviour like shopping, as "people are creatures of habit" and "when you go shopping you go to a place where they have the things you're looking

for...the criminal wants to go where he will be successful also”²⁴. The premise is that criminals follow patterns, and with software similar to those used by retailers like Wal-Mart and Amazon to determine purchasing trends, police can determine where the next crime will occur and how to prevent it.

At the same time, long-standing criminological leitmotifs are re-enacted to reinforce the idea of mechanistic predictability of crime, in particular through naturalistic metaphors. Predpol blog, for example, states that earthquakes and crime work similarly, in such a way that “mathematical models for predicting earthquake aftershocks can predict the ‘after-crimes’ of an initial incident” (Friend, 2018). In Beck and McCue’s (2009, p. 21) foundational article, the predictability of crime is tantamount to the prediction of the increase in pop-tart demand before an approaching storm, while according to Uchida, & Swatt (2013, p. 290), PP is like a “laser surgery [. . .] to remove tumours or improve eyesight”. Further examples, also from different countries, may be given. However, the point here is to bring out why PP finds its best criminological allies in theories, such as the situational and incapacitative ones, sensitive to budgetary demands and easily replicable by computational technologies. On the one hand, the situational theories provide the perfect schematisation of crime prediction according to three simple factors: suitable targets, motivated offender and absence of guardians (Cohen, & Felson, 1979)²⁵. In addition, the very name of some situational inflexions —for example,

²⁴ Retrieved from: <https://blog.predpol.com/agence-france-presse-features-predpol>

²⁵ However, despite the insistence in situational literature on exclusively environmental variables, on closer analysis, the assessment of target vulnerability for each area ends up corresponding to an estimate of the resident offender population based on unemployment, public housing, and low-income household rates (Townesley *et al.* 2003, p. 621), while in Clarke (1980, p. 141) the notion of crime is carved as an alternative to legitimate employment. As a result, despite the outspoken focus on environmental characteristics only, the situational theories keep operationalising a notion of crime perfectly coinciding with the paradigm of socio-economic deficit.

the theory of “infectious burglaries” (Townesley *et al.*, 2003), which is the basis of many existing PP systems— contributes to validating the aforementioned naturalistic characterisation. On the other hand, the incapacitative theories provide the perfect rationale for the dismissal of any rehabilitative function of criminal policies, in a historical phase in which rehabilitation turned into an unsustainable cost. To keep all these threads together (business parallelisms, naturalistic metaphors, and specific criminological assumptions), another crucial concept is needed, namely, the ‘inherently repetitive nature’ of crime. I shall return to this point in the next section when the idea of ‘repetitiveness’ will be addressed within the debate on the (alleged) technical requirements determining the range of predictable crimes.

The entrepreneurial turn impressed on the security chain can also be observed in another phenomenon that, while not featured in the absolute totality of PP implementations, characterises the vast majority of them. I’m referring to the business relationship usually established between private companies developing and marketing predictive software and institutional buyers. The proprietary nature of the systems —needless to say— increases the wall of secrecy, as private vendors, when surveyed about the inner workings of their algorithms, shield themselves behind the trade-secrecy claim. Referring to that, it is worth noting that the aforementioned list of predictive markers used by the system CAS in the Netherlands was made available to researchers, among other reasons, precisely by the circumstance that the Dutch software is one of the few ones developed in-house by the police forces. At the same time, we also saw how in-house crafting is not synonymous with a lack of abuses or avoidance of questionable variables. However, exceptions aside, the vast majority of cases correspond to a business relationship between private vendors and public purchasers, which I have renamed elsewhere “soft privatisation” (Gatti, 2022b). In fact, to a first approximation, a certain transfer of power towards the private sector is inherent in these transactions, as police activities end up being steered —more or less directly— by algorithmic technologies whose input data and source codes are proprietary

assets. Having made this observation, two additional caveats justify the “soft” attribute. *First*, such a trade relation does not constitute any privatisation of police functions, insofar as the institutional architecture of security provision is not altered, nor are any other public functions outsourced. *Second*, the point of origin of this trade trajectory is not the corporate sector. In other words, we are not facing an ‘outside-in’ trading scheme according to which the software is developed elsewhere by private vendors and enters local institutions from external markets. Nearly all creators of proprietary systems are former police agents who only in their previous capacity as serving police officers could have time and resources to collect big amounts of data, design the systems, train them, and test them for a sufficient time in their precincts. The establishment of private companies — which is when the creators strategically migrate from the public to the corporate sector— only occurs at a later stage, intending to copyright and market a knowledge asset developed and tested within state bodies and built on information available to public authorities only. It would therefore be misleading to take the private domain as the point of origin of a unidirectional trade flow aimed at implanting ‘from the outside’ private creations into the public sector. In sum, without prejudice to the lack of formal outsourcing of public functions and given the increasingly blurring boundaries between the public and private sphere, what seems evident under the ‘soft privatisation’ regime is the radical reconfiguration of the very concept of security and the renegotiation of the security agenda around business productivity. What is more, the lack of formal modifications to the security delivery chain is probably the precondition for such a reconfiguration of the security agenda to take place, while the achievement of the same objectives would be hardly justifiable under ordinary legislative reforms.

In the previous paragraph, I hinted at the problem of secrecy as a facet of the leading role of private companies in the development and marketing of the overwhelming majority of predictive algorithms. This does not mean that the predictive markers of in-house software

are automatically disclosed, nor does it indicate that the solution to secrecy is a call for transparency made in the name of privacy. In the opening section, I have pointed out that, in the law-enforcement field, privacy cannot be the primary lens, as it may be easily overcome by the traditional prerogatives of police power. What I want to put forward is then a different interpretation, whereby the problem of secrecy is tackled from the perspective of the principle of legality. This is a basic cornerstone of the Criminal Justice System under the Rule of Law, being synthesisable in the Latin maxim *nullum crimen, nulla poena sine lege*. Traditionally, its meaning consisted in the requirement that any offence and the corresponding criminal penalty must be laid down in a statutory act previously cognisable to anyone who could be subject to its application. One corollary of the principle of legality is then the access to the legal source in which the offence is described and the penalty established. Now, I'm not arguing that the algorithmic variables are the equivalent of new (or atypical) legal sources. This would be an exaggerated interpretation. However, the point is to think about the significance of the principle of legality, questioning whether it is really satisfied by only guaranteeing access to legal sources. If this were the case, the principle of legality would comprise a mere procedural duty for legislators to lay down offences and penalties in official texts, and the right of the citizenry to access them. This explanation sounds a bit reductive, though. The historical meaning of the principle of legality is more far-reaching and expresses the need to allow citizens to estimate the institutional reaction against certain behaviours they may put into practice. Keeping secrecy over codes and markers that lead to differential levels of criminal spotlighting because of enduring characteristics or volitional behaviours conflicts with this basic requirement of being able to evaluate in advance the consequences of one's actions or decisions. It must be clear that this has nothing to do with the confidentiality of the investigation, as the claim is not about accessing personal or contextual data of specific individuals or occurrences under investigation, but mass-scale criteria used to steer the very foundations of

crime prevention activities. It is in relation to this important dimension of the principle of legality that, to my understanding, the claim of secrecy—even when made by private actors—should be overruled.

4. WHAT DOES RADICAL CRIMINOLOGY HAVE TO SAY ABOUT PP?

The reason I resort to the term ‘Radical Criminology’ in this last—although not conclusive—section is to add, or perhaps to restore, a semantic plus to the expression ‘Critical Criminology’, whose original meaning has been progressively diluted²⁶ to the point that the commonly accepted meaning in contemporary scholarship includes any criticism of neoliberal criminal policies, regardless of the theoretical background from which the critique proceeds. I’m not then positing any ‘natural’ hierarchy between Critical Criminology and Radical Criminology, nor am I saying that the latter is by definition more radical than the first. I’m only opting for strategic use of terms while regretting the fact that the current meaning attached to the wording ‘critical criminology’ does not correspond to the original one. It is precisely because of the semantic deformation undergone by the expression ‘critical’ (probably for its greater ‘exportability’ from the original political context²⁷), and the lower risk of adulteration thus far proven by the

²⁶ The tendency to co-optation by the ruling ideology in Academia is a very effective and well-proven strategy of de-radicalisation, which combines—in this case—with the quick adaptation to semantic deformations by the majority of scholars. Indeed, they are more interested in the perspectives of academic marketing opened up by the “inclusive turn” of lines of study originally precluded to them, rather than fighting for the non-deformation of terms.

²⁷ Albeit with a different goal, I dwell on this issue in another paper (Gatti, 2023), where in order to outline what ‘critical criminology’ in the strict sense should designate, I set forth a range of possible names to tighten up the contents of that definition: ‘*materialist/critical sociology of penal control*’, ‘*materialist/critical sociology of punitive control*’, ‘*critical Italian-Hispanophone criminology*’, ‘*critical Italian-Iberophone criminology*’.

term 'Radical criminology', that I want to borrow here the Berkeley School denomination (Platt 1974) and thus retrieve, immediately and unambiguously, two tenets of the critical tradition which I identify myself with. These premises are 1) the epistemic debunking of any etiological analysis of crime; 2) a dialectic analysis of society whereby the criminal justice system is to be regarded as a facet of the structural (in the sense of 'irreducible') contradiction of the socio-legal system. As for the first point, I want to recall Baratta's statement that traditional criminology's claim to elaborate a theory of the causes of crime is "epistemologically unjustified", since "a search for causes is not possible concerning objects that are defined through social or institutional norms, conventions or evaluations [. . .]" (1989, p. 16).

As regards the second point, the same Baratta (*ibidem*) underscores the structural necessity for the legal system to feed back into a permanent contradiction between the image that the system proposes of itself and its real functioning. This mismatch between stated principles (equality and defence of common interests) and their realisation (substantive inequality) is not an unfortunate and contingent discrepancy, but a necessary condition for the system to keep functioning exactly in this unequal and selective way. Indeed, without this contradiction between 'declared form' and 'actual content', the law could not perform its real function of producing and maintaining inequality in the social system, as its existence —if its real purposes were overtly declared— would be continually threatened by a crisis of legitimacy.

The manifestation of such a structural contradiction in the field of police power is traceable in the structural inconsistency between formal equality and substantive inequality in the chances of being spotlighted and selected as part of the criminal population. Therefore, when parsing PP practices through the lens of radical criminology, one crucial question is whether PP is an attempt at strengthening with an additional layer of technical-numerical 'objectivity' the rationalisation already sought through the promise of formal equality at the law-making level. On reflection, this idea is not entirely new, being rather the continuation of a trend already started in the 19th

century under the influence of utilitarianism and positivist philosophy, when “crime statistics carried the promise of attaching reason to modern criminal justice system” (Završnik 2017, p. 133). However, PP appears to go one step further in epitomising so plastically how unquestionable, apolitical and self-evident is the correctness of the procedure, forasmuch as it can be outsourced and automated, while in the meantime we sit and wait for the only thing that matters: the result.

The increasing blurring of political accountability is also visible in the type of justifications –apparently simply technical– given for the operational scope of PP. Although the selection of the targeted crimes occurs “at source” and rather reflects the policy agenda of the criminological theories operationalised by the PP devices, very often the political significance nestled within these delimitations is misrepresented as a set of mere technical requirements, essential for the very functioning of PP technologies. For example, not even referring to the need for large amounts of data, as opposed to small-scale datasets typical of traditional heuristic methods (Europol, 2014; Perry *et al.*, 2013, p. XIV), is unproblematic. Behind the apparent lack of implications, the requirement for ‘large amounts of data’ as a precondition to build any predictive system (or to make it reasonable to devise and train new ones) is in itself a deliberate focus on clusters of historical crime data, that is, a validation of the pre-existing selectivity of the Criminal Justice System. Indeed, historical crime data is not a picture of crime, but rather a picture of how police responded to crime. The reasons for such a statement are quite intuitive and it may suffice to think of structurally non-reported crimes or crimes that go underreported because of socio-cultural factors (perception of crime relevance, opportunity to report it, social trust in the police). Not to mention other classes of crimes –like police misconduct– hardly ever contemplated in crime statistics for being generally regarded as something different from real crimes. There is also the possibility of reported offences not followed up by the police, as well as phenomena of crime overrepresentation in those areas systematically over-po-

liced. Moreover, depending on how official statistics are collected, reported incidents (e.g. arrests) may be contemplated within crime data even when in Court, at a later moment, they are not declared unlawful acts.

But apart from these general warnings on what historical crime data mean, the particular emphasis in PP on the need for large datasets brings in its train two other fallacies, usually represented as mere technical requirements: the importance of the space-time traceability of crime incidents, and special attention on crimes 'repetitive in nature'. Now, the point is not to deny that these factors may work as operational delimiters and trainers of the predictive systems; the issue is rather whether they are just technical requirements or entail something else. On closer look, securing the conditions for space-time traceability of crime is in itself a selective look on criminal matters, since wondering about the exact physical place of a criminal offence only makes sense when referring to a certain concept of 'space' where only certain conducts take place (normally inter-personal offences and property crimes in the urban or, at most, domestic space)²⁸. On the contrary, other types of offences (e.g., financial crime, big tax frauds), corresponding not by accident to the crimes of the upper class, are exactly the ones for which it makes no sense to wonder about the place of commission. Quite similarly, 'repetitiveness' is not an intrinsic quality, nor a neutral description. As seen above, the statistical frequency of certain occurrences can be altered by reporting habits based on cultural factors, as well as artificially created through the systematic over-policing of certain sectors of society. Moreover, some crimes may be statistically less frequent just for being beyond the material reach of the general population (corporate crimes) or because of their legal definition requiring qualified status for perpetrators (corruption, abuse of office, etc.), thus ensuring further mechanisms of socioeconomic filtering. The very idea of repetitiveness

²⁸ For an in-depth analysis of how conceiving crime in relation to space is *per se* a short-sighted view concealing a socio-economic selection, see Gatti, 2022b.

reflects a precise phenomenology of crime, primarily construed as an activity replacing legal forms of livelihood, somehow limited to those social sectors implicitly depicted as 'in need to' commit crime. This assumption of an underlying 'necessity' is the tacit precondition to building a predictability theorem, being rhetorically conveyed to the public in the shape of naturalistic or consumer-like metaphors. Indeed, what is being borrowed from the business context in these parallels with customer behaviour analytics is the estimation of how certain 'needs' are covered. Again, there is very little self-evidence in thinking of crime in terms of 'necessary repetitiveness', being this another tool of socio-economic governance in criminal matters.

A last point, not thoroughly analysable here but at least to be mentioned, concerns the concept of 'security' consistent with a radical criminology standpoint. On the one hand, the term 'security' appears in Baratta's work as a claim formulated in terms of 'security of rights' (Baratta, 2001), as opposed to the 'right of security' which is instead the normative point of view (purely intra-systemic) of technocratic policies. The 'security of rights' is instead an extra-systemic look at rights, whereby rights are primarily understood as the normative projection of human necessities (Baratta, 1990). In this perspective, law may deploy in ways more or less functional to covering these necessities, but positive law is not the centre of the reasoning. Thus, the term 'security of rights' should be construed as the 'certainty of getting primary necessities fulfilled', rather than an abstract idea of security recalling demands of order and self-referential solidity of the legal system. On the other hand, the critical theory of police power (Neocleous, 2021) —which guides my analysis of PP practices— seems to have a different approach to the question of 'security'. Here security stands as a category problematic in itself (Neocleous, 2008; Id., 2018) insofar as, in parallel with the term 'police', security is the ultimate cornerstone of capitalist order. This emerges from a careful reading of the foundational literature of bourgeois thought (Hobbes, Locke, Smith, Bentham, Montesquieu, and Hume) in which security, implanted in commodified social relations, systematically overrides

liberty as the precondition for capital productivity. In his analysis, Neocleous demonstrates how security has little to do with the prosecution of unlawful acts while constituting in its essence governance of the side effects of capital deployment, in particular by establishing mechanisms of less-eligibility between accepted livelihood modalities and unlawful ones. Far from being a definite value, security is a process where the final goal must be never fully attained, so that the need for security can be articulated at any moment as a demand for obedience.

The coexistence between Neocleous' call for a "reckless critique of security" (2018, p. 887) and claims still based on the "security of rights" in the radical criminology tradition raises the issue of their compatibility. However, my point is that, despite their different formulations, these are arguments meant to address different aspects of the problem, without denying each other. What is more, I believe that Neocleous can help to better understand Baratta. Indeed, Baratta's (1990, p. 14) use of the term 'right(s)' is knowingly ambivalent: sometimes it refers to positive law, sometimes to the necessities underlying it, regardless of their actual transposition into positive norms or their actual satisfaction once formalised as legal provisions. But the fact remains that these are two separate concepts since the mere existence of a positive norm does not ensure the satisfaction of the necessity inherent to its establishment, nor do all necessities find normative projection in a given legal system. Therefore, "security of rights" is the ideal goal to which to aspire, not what security is in practice. The latter corresponds instead to the 'right to security', namely, to the description of security provided by Neocleous. To preserve the internal coherence of Baratta's reasoning, the 'security of rights' as the ideal goal (i.e. the undifferentiated satisfaction of needs within society) is not attainable in an intra-systemic perspective, as the problem of the ineffectiveness of rights for Baratta, far from being a problem of intra-system correctives, reflects the structural contradiction of capitalist society. Although he apparently resorts to an intra-system language, this is simply the precondition to transcend the system in

practice, since in order to be formulated as claims to strive for under the capitalist system, human necessities must be framed as demands for rights. Considering this, Baratta is not trapped in any contradiction, unless one ignores the dialectical perspective of his analysis and wants to overinterpret the use of the 'language of rights'. In conclusion, while there is no doubt that an irreducible problem arises from the very term 'security', this lies precisely in what Neocleous illustrates, not in the problematic separation of security from right-wing rhetorics, as Pitch (2013) suggests. This is, in a nutshell, my take on the issue, with the hope that it can represent a baseline for deeper and growing attunement between the Critical theory of Police Power and the Materialist Sociology of Punitive Control.

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