

**GHOSTBUSTING CRIME'S PHANTASMS**

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Peter Hutchings

*The Criminal Spectre in Law, Literature and Aesthetics: Incriminating Subjects*

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[81] A spectre is haunting modernity — the spectre of criminality. So goes the forcefully argued and highly persuasive thesis of Sydney-based literary critic-cum-criminologist, Dr Peter Hutchings, in his richly wide-ranging, elegantly written, and, on occasion, wryly humorous new study *The Criminal Spectre in Law, Literature and Aesthetics: Incriminating Subjects (The Criminal Spectre)*. Taking his cue from contemporary criminological classics such as Alison Young's *Imagining Crime: Textual Outlaws and Criminal Conversations* (Sage, 1996) as the somewhat unwieldy title indicates (note to Routledge editor: why not reverse the titular order, with the catchy noun phrase, 'Incriminating Subjects' coming first, followed by the amplifying phrase, 'The Criminal Spectre in Law, Literature and Aesthetics'?), Hutchings engages what might be called the criminal imaginary, and its dissemination of the 'plague of fantasies': for example, the serial killer, the criminal mastermind, the monstrous feminine and so on. Hutchings takes up this critico-criminological project, but extends it, taking it one step further — specifically, he *historicises* the imagination of crime — despite his disclaimer to the contrary that he is not writing a 'period' study. So Hutchings' historicist project turns out to be a properly Foucauldian one because, in its focus on the theory and practice of crime, he broaches what might be called a genealogical analysis of criminological power/knowledge. Not that Hutchings is, by any stretch of the imagination, an orthodox Foucauldian, with all that implies (not only power/knowledge but reason/madness, subject/subjection and so on). Indeed, other influences — Marx, Benjamin, even Lacan — figure as more formative. But it is with Foucault — and, especially, the Foucault of *Discipline and Punish* — that Hutchings enters into dialogue, and, inevitably, debate.

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Naturally enough, Jeremy Bentham is a touchstone for Hutchings, as much as he was for Foucault. But the Bentham that Hutchings invokes is a very different thinker from that of Foucault. Instead of the well, even over researched [82] architect of the Panopticon,<sup>2</sup> the Bentham that Hutchings engages is the 'ghostbuster' — the author's sly sobriquet — of legal fictions. Now, despite its metaphoric use and abuse by the 'law and literature' movement, a 'legal fiction' is, first and foremost, a judicial term of art, with a very real legal historical significance. Simply put, a legal fiction enables a court to act *ultra vires*, and take jurisdiction over a matter, hitherto outside its ambit (for example, the Court of Exchequer, historically restricted to public concerns like royal revenues, hearing actions for the recovery of debt, very much a civil matter) by assuming, fictitiously, that a form of action *within* its jurisdiction has occurred, even when, as a matter of fact, no such action has occurred (returning to the example of the Exchequer: the court took jurisdiction over civil debt through the fiction of *quo minus*, an action claiming an outstanding civil debt was preventing the creditor from paying his taxes to the Crown). Bentham, of course, loathed the whole business of legal fictions, which he saw as symptomatic of all that was *wrong* with the common law, under venal *aegis* of 'Judge & Co': anachronistic, aleatory and a curial cheat, if ever there was one. And he made it, amongst other things, part of his life's work to stamp out this legal *legerdemain*.

This story of fiction in the law has been told at greater length, and in more detail elsewhere.<sup>3</sup> But the wrinkle that Hutchings introduces in his gloss of Bentham's theory of fictions is the figure of the spectre, a trope, at once, biographical and philosophical. Biographical, because Hutchings grounds Bentham's loathing of fictions in his childhood fear of phantasms: namely, the bugaboo, Palethorp, concocted, as a tease for the young Jeremy, by his family's domestics. Palethorp haunts Bentham throughout his life — so Hutchings implies — predisposing him, and

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<sup>2</sup> See, eg, such excellent sources, also cited by Hutchings: Martin Weiner's masterful *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (1990), and John Bender's path-breaking *Imagining the Penitentiary: Fiction and the Architecture of the Mind in Eighteenth-Century England* (1987).

<sup>3</sup> See, eg, Hutchings' source: C K Ogden's *Jeremy Bentham's Theory of Fictions* (1937).

his philosophy against spectrality in all its forms: not just the spectre of legal fictions, but that ‘ur-spectre’, the Law of Nature. Utility, of course, was to supplant natural law, the ‘greatest good for the greatest number’ substituting for the ‘Ethics of *The Good*’. The problem, though, with utility is that its ‘felicific calculus’ *displaces* rather than *replaces* fictionality, enabling the return, and, indeed reinscription of a *prosopopoeic* ‘Nature’, which looks like it stepped directly out of Blackstone’s *Commentaries*, and to which those two markers of utility — pleasure and pain — are in thrall. ‘Nature has placed mankind’, quotes Hutchings from Bentham’s *Introduction the Principles and Morals of Legislation*, ‘under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as determine what we should do’ (Hutchings, 5). This ‘return of the repressed’, as it were, tips Hutchings’ theoretical tilt away from Foucault, and toward a *psychoanalysis* (with an, albeit, deconstructive twist, echoic of Derrida’s *Spectres of Marx*) of hauntings, of *revenants*: or what Hutchings calls ‘specularisations’.

Specularisation is Hutchings’ own neologism, and, as an idea, constitutes the very real conceptual contribution *The Criminal Spectre* makes to the critico-criminological project, if not post modern theory. For specularisation supplements, and may very well supercede Foucault’s paradigm of ‘discipline and punish’, the reigning historical model for both criminology and postmodernity. Specularisation does so by addressing, full on, the central paradox that lies at the heart of Foucault’s paradigm shift from punishment to discipline. Simply put: why is it that the move to a regime of discipline, with its highly private and internalised penological systems of surveillance, is accompanied by a residual counter-move: namely, the over-production of images of punishment, and its very public, and external technologies of corporeal pain? Precisely because, so Hutchings argues, discipline’s de-corporealisation of punishment, gives rise to, indeed, compels its psychologisation, on the analogy, that what is repressed, somatically, will return, symptomatically, as a psychic rather than physical disturbance — in short, an imaginary spectre. What’s more: the effect of punishment’s pervasive spectral recurrence, *within* the very regime of discipline, alters, according to Hutchings, the very nature of discipline itself, rendering it a kind of [83] spectacle. Dickens is particularly germane to Hutchings’ argument here, especially his masterpiece of discipline and punish, *Great*

*Expectations*. There, Pip is haunted by not only by punishment's gibbet glimpsed from the Marshes in the novel's celebrated opening scene ('...a gibbet, with some chains hanging onto it which once held a pirate', quoted by Hutchings 44), but discipline's prison, Newgate ('I consumed the whole time in thinking how strange it was that I should be encompassed by all this taint of prison and crime', quoted by Hutchings 45), so much so that that it become impossible to separate the two, so blurred have the boundaries between discipline and punish become through specularisation.

Indeed, so confused are these cadastres that the very space of discipline, the prison, has become spectacularised as a site for the performance of punishment. Occupying centre-stage, and, indeed, providing the principal *venue* for punishment's theatre of pain is none other than discipline's blueprint, Bentham's Panopticon. Hitherto the source of surveillance, the Panopticon is, now, according to Hutchings, the cynosure of all gazes, because here treads across its boards and underneath its proscenium, a veritable *dramatis personae* of penological modernity, the cast of criminal spectrality itself. Whether it be a leading role (like the serial killer) or a bit player (Poe's murderous orangutan in the *The Murders of the Rue Morgue*), all the parts of this critico-criminological drama are meticulously roll-called, and given appropriate star-billing in a series of textual readings, spread across three chapters, which comprise the bulk of his Hutchings' book. Chapter four, for example, tracks, as its title indicates ('The feminine phantom: women, crime, and fantasy'), the 'feminine phantom' of crime, Lombroso's *la donna delinquente*: it is her shadow that the detective yarns of Poe's Dupin (*The Mystery of Marie Roget*) and Conan Doyle's Holmes (*A Scandal in Bohemia*) pursue, as much as legislative acts of public order and policing, like the *Contagious Diseases Act*, seek to capture and contain. Or to take another instance: chapter three's 'Mad, murderous and dangerous to know' turns to, and takes up a theme, related to that of the feminine phantom: that of the murderer, who, in the Imaginary of crime turns out to be, more often than not, a *madwoman* (see Hutchings' excellent reading of *Lady Audley's Secret*), the very indeterminacy of whom — is she truly deranged or devilishly cunning? — raises all the ambiguities of the *M'Naughton* rules and the insanity defence. Finally to reserve the most spectacular for last, consider chapter six's analysis of 19th century representations

(principally, of Holmes' nemesis, Prof Moriarty) of a figure still very much with us in contemporary pop culture, be it Hannibal Lecter or Ernst Blofeld, Don Vito Coreleone or Lex Luthor: that is, the figure of the criminal mastermind, or, as Hutchings would have it, 'The Genius of Crime'.

The curious aspect, though, of Hutchings' parade of criminal types is that it appears to mimic the very genre of 19th century taxonomy (Lavater, Bertillon and, especially, Lombroso) that he, as very much a 21st century literary and legal theorist, purports to deconstruct. Is Peter Hutchings the new Lombroso? I would suggest *not* — or, if Hutchings is, then he is very much a *post modern* Lombroso: because the main effect of his criminogenic casting-call, in line with typically post modern strategies of reversal, is to de-taxonomise taxonomy, thereby proffering an anti-taxonomy, a taxonomy of indeterminacy in which no one, or no thing is as knowable as it seems. After all, the feminine phantom [84] remains just as illegible, just as unreadable at chapter four's close, as she was at its beginning with Holmes' very Lacanian sounding version of *La Femme*, 'the woman' — in other words, Irene Adler — who, by the end of 'A Scandal in Bohemia' might well be said to *n'existe pas*. Similarly, the criminal *par excellent* — the murderer — seems to evade, as much as attract the law through defences like insanity, which remain so internally conflicted, so hopelessly confused that it is never quite clear where the accused stands — guilty or innocent? *intra vires* or *ultra vires* the law? — be he, the factitious Daniel M'Naughton (who is found innocent, by reason of insanity, when the very standard that exculpates him — the eponymous *M'Naughton* rules — would, in fact, find him guilty), or she, the fictitious Lady Audley (who is found guilty — more bad than mad — but is sequestered in an asylum, as if insanely innocent, precisely to punish her criminality and prevent any more volitional wrong-doing). And, finally, even that most self-knowing and self-possessed of criminal spectres — the genius of crime — turns out to be just another version of a highly etiolated literary tradition of Romantic over-reachers (Milton's Satan, Byron's Cain and so on): a fiction at the heart of fiction, a discursive 'nothing' (quoted Hutchings 189).

It is with the last type, the empty cipher of criminal genius, that Hutchings arrives at his theoretical bottom line: to wit, that the very subject of crime, which criminology

(and all of its allied 'ologies': penology, psychology, phrenology, physiology) purports to study, tracing, empirically, its pathological causes, is, in fact, an *effect* rather than a cause of that empirical study. That is to say, the discourse of criminology produces, *a priori* — indeed, conjures up — the subject-as-spectre of crime which it claims to document *a posteriori*. What's more, the very spectrality — in other words, fictionality — which enables discourse to call forth criminal subjectivity, also guarantees that this subject of crime will never be entirely hegemonised *by* discourse. Because, as discourse itself, as a fiction, the criminal spectre-as-subject floats free of any textual or contextual anchoring, and, consequently, has the potential to elude, resist, even subvert the drive-to-document — or what Hutchings calls, by way of Kant, 'the empirical imperative'. Nowhere in *The Criminal Spectre* is the empirical imperative put on trial, judged and found more wanting than in the book's stylistic and conceptual *tour-de-force*, chapter five, 'Modern forensics: photography and other subjects'. There, Hutchings tracks the rise and — if not the fall, then, at least, *the impasse* of the 'indexical function', in which criminology lands itself, with photography as its unwitting sidekick. In its efforts, throughout the 19th century, to realise a forensics of absolute certainty, criminology enlists photography to index the visage of criminality. Previously rendered by the onto-theological aesthetics of Lavater (in physiogomic sketches that look like society portraits, see Catherine the Great's), now the criminal face is to be recorded precisely, objectively and scientifically through a daguerrotypic process known as *bertillonage* (after its inventor, Bertillon). Uncertainty, however, is never far from the surface here, as the depths of the 'optical unconscious' — as Hutchings, following Benjamin, terms it — are shallow indeed. Uncanny resemblances, inevitably, occur and recur (especially around the issue of race) to disrupt this indexical effort, and its will-to-identify, forcing criminology to look to other forensic fields, particularly dactyloscopy — or, the science of fingerprinting. But the lesson lingers: from here on in, no criminal identity is absolutely identifiable because identity, itself, is unidentifiable — instead, a void looms, a lack beckons. So forensics, like Atget's photographs of Parisian crime scenes, must become scenes of criminal absence, evacuated of all bodily presence because subjectivity, itself, has been decorporealised: the criminal suspect has become a spectre. *Le sujet criminale n'existe pas.*

Now the question that arises, by way of conclusion, and one that I fear Hutchings may beg, is this: whether his text is intended to exorcise the criminal spectre by naming it, and thereby consigning it to oblivion? Exorcisms, of course, always turned, ritualistically, on the production of 'bell, book and candle' — and, certainly *The Criminal Spectre* would seem to be *the* book, tailor-made for casting out demons. But, then, perhaps exorcism is not Hutchings' objective, and his silence on the matter may very well be purposive, indicating another, altogether different agenda: that of recalling the spectre to life, materialising it, and thereby releasing it from the criminal Imaginary's Panopticon, which looks more and more like the Bastille of Dr Manette. Thus, the possibility presents itself of a post-disciplinary future in which the abjected 'Others' of modernity — like the criminal spectre — are to be reintegrated into the polity. [85] But whether Hutchings is a ghost-buster or a *sans culotte*, a Jesuit out of *The Exorcist* or a Jacobin from the Revolution, one thing is certain: *The Criminal Spectre* is one of the most rigorous, provocative and exciting new works of cultural legal studies to appear, either in this country or the common law world, and Peter Hutchings possesses one of the strongest voices *in*, as well as freshest visions *of*, the interdisciplinary study of law and literature.