

# The Meta-Significance of Criminal Responsibility

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Arlie Loughnan\*

## Abstract

Criminal responsibility now forms the subject matter of a rich and deep vein of criminal law theory. Taking up Farmer's exhortation to reflectivity in criminal legal scholarship, this article suggests that the prominent scholarly profile of criminal responsibility is a product of its particular qualities as an object of academic study, over and above its role in the criminal law. The significance of criminal responsibility in/for criminal law theory, which I call the meta-significance of criminal responsibility, has two aspects, corresponding to two of its qualities as an object of study. I suggest that, with synthetic and talismanic qualities, criminal responsibility has particular meaning both within and beyond the bounds of criminal legal theory.

## I. Introduction

Farmer's rich analysis of "making the modern criminal law" is constructed around criminalization, the scope of the criminal law. Rather than proceeding in a legal-philosophical mode, by asking which principles should guide the determination of the appropriate reach and limits of the criminal law, Farmer engages with "the prior question": "how is it that the question of criminalization has come to be framed in these terms[?]" (1). As Farmer argues, conventional criminal law theory presents a two-dimensional picture of the law—the problem of the attribution of responsibility (criminal responsibility) and the problem of the limits of the law (criminalization)—and treats both problems as primarily ones of moral philosophy.<sup>1</sup> In *Making the Modern Criminal Law: Civil Order and Criminalization* and his other work, Farmer seeks to connect these two problems and to rethink the *a priori* position of legal philosophy as the means by which to address them.

With this starting point, Farmer identifies himself as a critical criminal law theorist. In broad terms, critical criminal law theory assesses legal principles and practices within a social and political context, acknowledging and taking account of contingencies, inconsistencies and change over time. This approach stands in contrast to the bulk of criminal law theory, which has been strongly informed by the legal-philosophical scholarly tradition, marked by "the search for enduring universal principles," and the pursuit of

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<sup>1</sup> Lindsay Farmer, *The Obsession with Definition: The Nature of Crime and Critical Legal Theory*, 5 *Social & Legal Stud.* 57 (1996).

correspondence between the criminal law and moral notions of harm and wrong.<sup>2</sup> Critical criminal law theoretical work has been developed by a set of scholars, including Nicola Lacey, Farmer and Alan Norrie, who harness socio-historical and socio-theoretic knowledge to the task of analyzing criminal law.<sup>3</sup> Work in this tradition extends the scholarly inquiry beyond legal concepts (responsibility, legality, etc.) to examine the temporal, institutional and other “conditions of possibility” for the elaboration of legal ideas.<sup>4</sup> In *Making the Modern Criminal Law*, Farmer seeks to take seriously each of the contextual dimensions of the criminal law, taking into account their multifaceted influence on the development of the modern law, and, in so doing, driving critical criminal law scholarship forward.

Criminal responsibility—broadly, the form or structure of the criminal law—represents a key plank of Farmer’s analysis of the development of the modern criminal law. Farmer argues that criminal responsibility has become central to “the law’s reflexive account of itself,” that is, to the criminal legal story about the criminal law.<sup>5</sup> In *Making the Modern Criminal Law*, Farmer makes the case that criminal responsibility is significant because, along with jurisdiction and codification, it has come to be “central to the modality or form of [criminal] law,” which, according to Farmer, is “the way that civil order is secured” (165). As I discuss below, Farmer analyzes the way in which criminal responsibility has been used to define legal personhood (subjectivity) and to set the parameters of the relationship between the individual and the state (citizenship). Farmer’s powerful account helps to explain the central place of criminal responsibility in the modern criminal law, where it is regarded as the lynchpin of the law, and in criminal law theory, where it garners enormous interest and forms the subject matter of an ever-expanding body of scholarly work.

But is the prominence of criminal responsibility on the scholarly landscape merely a function of its role in the criminal law and the legal order? Put another way, is the significance of criminal responsibility to the criminal law simply reflected in the high profile of criminal responsibility in criminal law theory, with legal scholarship existing in a straightforwardly derivative relationship with the positive law? To reflect on this question, we need to turn the scholarly gaze back on itself, and to consider the significance of criminal responsibility to criminal law scholars and in/for criminal law theory. Given the popularity of criminal responsibility as a topic in criminal law theory, this reflection is both timely and appropriate. It also serves to further advance critical criminal law studies. In a way

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<sup>2</sup> See Ngairé Naffine, *Criminal Conversations: Farmer, Lacey and the New Social Scholarship*, 38 *Sydney L. Rev.* 505 (2016).

<sup>3</sup> See Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (2016); Lindsay Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law, 1747 to the Present* (1997); Alan Norrie, *Punishment, Responsibility and Justice: A Relational Critique* (2000). Lacey coined the term critical criminal responsibility studies. See Lacey, *supra*, at 176.

<sup>4</sup> See Markus D. Dubber & Lindsay Farmer, *Introduction: Regarding Criminal Law Historically*, in *Modern Histories of Crime and Punishment 1* (Markus D. Dubber & Lindsay Farmer eds., 2007); Nicola Lacey, *Jurisprudence, History, and the Institutional Quality of Law*, 101 *Va. L. Rev.* 919 (2015).

<sup>5</sup> Farmer, *supra* note 1, at 68.

that implicitly invokes this kind of reflection, Farmer states that the scholarly imperative is to see the criminal law as a “network of practices”—whether that be enforcing the law or producing a theory of the criminal law.<sup>6</sup> I take this to suggest that there is value in subjecting theoretical scholarship on criminal responsibility to attention.

In this paper, I suggest that the prominent scholarly profile of criminal responsibility is a product of its particular qualities as an object of academic study, over and above its role in the criminal law and the legal order, with the legal scholarly attention paid to criminal responsibility enhancing its perceived significance in criminal law. The significance of criminal responsibility in/for criminal law theory, which I call the meta-significance of criminal responsibility, has two aspects, corresponding to two of its qualities as an object of study. I suggest that criminal responsibility has synthetic and talismanic qualities, in that it knits different issues together, and it draws associations with matters outside the criminal law. This means that criminal responsibility has particular meaning both *within* and *beyond* the bounds of criminal legal theory: it provides a means of thinking and talking about the criminal law as a whole that also captures its essence, and it has extra-legal reach, extending beyond the bounds of the criminal law and legal scholarship. Together, these qualities of criminal responsibility help to account for its high profile on the criminal legal theory landscape.

## II. Farmer on Criminal Responsibility

Farmer is motivated by a key question—“why have critical approaches responded so inadequately to the challenge to develop a radical approach to criminal law?”—and this leads him to suggest that scholarly focus should be on the content or values of the criminal law, not on the definition of a crime.<sup>7</sup> Following Neil MacCormick, Farmer analyzes the criminal law as an institution, conceptualizing law not as “a system of moral or social norms endowed with institutional existence” but as “institutions that constitute legal norms” (22). This approach puts the focus on the kinds of values, such as the rule of law and respect for individual liberty, around which such institutions are oriented (23). Following MacCormick, Farmer understands the law in a purposive way, regarding the aim of the criminal law as serving the conditions of civil society—“facilitating relative peace and mutual trust between strangers” (25). For Farmer, this understanding opens up questions about “how ideas of peace and civil order have shaped the criminal law, how criminal law as an institution has sought to secure these ends, and how the criminal law has interacted with other areas of law or forms of regulation” (29). These questions guide Farmer’s analysis.

On the basis of this approach to the criminal law—as an institution—Farmer suggests that criminal responsibility represents a conceptual structure unique to the criminal

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<sup>6</sup> Id.

<sup>7</sup> Id. at 58.

law (170).<sup>8</sup> In the process of abstracting from the law relating to specific offences, responsibility was “systematized”—around a “certain version of personal responsibility . . . focused on foresight of consequences” (194). As Farmer writes, “the recognition of a common conceptual structure” of the criminal law—criminal responsibility—was then taken as “capable of defining the scope of the criminal law” (194). A “refined conceptual schema” of capacity, knowledge and intention was “reflexively applied to the criminal law as a whole,” enabling the identification of rules and the establishment of legitimate and illegitimate forms of liability (194). The role of criminal responsibility in the systematization of the criminal law has been obscured in scholarship with a “narrow focus on form rather than function,” where responsibility is understood as primarily concerned with subjective fault and liability for punishment, rather than with the content of the law (194, 196).

Building on this analysis, Farmer makes the case that criminal responsibility is central to the modern criminal law because it is key to the “modality of law,” the way in which civil order is secured, not because of the practical centrality of subjective fault in the development of the modern criminal law, which has been overlaid onto the law *ex post facto* (165). According to Farmer, civil order is not primarily about “moral community” but about the “co-ordination of complex modern societies composed of a range of entities or legal persons that are responsible, in a range of different ways, for their own conduct, for the wellbeing of others, and for the maintenance of social institutions” (193). As Farmer writes, “the resort to law as a form of government reinforces the civility of the civil order” (194)—distinguishing law from other modes of social regulation or coercion—and it is civil order rather than particular interests (such as individual freedom) that the criminal law aims to foster and protect.

Beneath this broad story about the centrality of criminal responsibility in the modern criminal law, ideas about responsibility for crime have varied over time. Farmer traces the way in which responsibility developed from an idea that explained incapacity, or exemptions from punishment (in the eighteenth century), to a more inculpatory model, which encoded states of behavior and different degrees of fault (over the course of the nineteenth century), and then to an increasingly refined notion that “clos[ed] the gap between the presumed capacities of the legal subject and their actual psychological capacities” (in the twentieth century) (182).<sup>9</sup> In the current period, the subjective approach to criminal liability—according to which fault depends on what the accused intended or foresaw—has been consolidated, but, according to Farmer, this has gone along with a moralization of criminal responsibility, according to which its theoretical basis is more normative than psychological, with responsibility treated as a “moral property of agents” (189-90). At the same time, the capacity of the law to enforce “social responsibilities”—in which individuals are held responsible for creating risk, and for the future consequences

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<sup>8</sup> See also Nicola Lacey, *Responsibility and Modernity in Criminal Law*, 9 J. Pol. Phil. 249, 267-68 (2001).

<sup>9</sup> As Farmer argues, this linked criminal responsibility to criminal procedure on the basis that guilt is the central condition of criminal liability (183), and it paved the way for consensus to build around the idea that strict liability was “distinct and abnormal” while subjective liability was “normal” (185).

of conduct—has been extended, and this has made “individuals more responsible (or responsible for more)” (191-92). I return to this point about the moralization of criminal responsibility below.

In Farmer’s account, in the current era, criminal responsibility is significant in two different ways, each of which concerns its functions in criminal law and the legal order, and is connected to the other. The first of these relates to legal subjectivity. Criminal responsibility is the means of defining legal personhood—the issue of who is the proper subject of the law. As Farmer argues, the subject of the law is an autonomous individual, who is deemed to possess certain capacities and to be capable of being guided by norms, and who can be held to account for his or her conduct in breaching those norms (168). And, while the focus of scholarly analysis of responsibility is on “retrospective responsibility” (being responsible for past conduct, that is, answerability or accountability), “prospective responsibility” is just as important (imposing obligations and duties on a person who can adapt their conduct to norms and plan over time) (169). When this forward-looking aspect of responsibility is taken into account, it becomes clear that criminal responsibility, “a juridical model of the responsible person”—the individual, reasoning subject—corresponds to the modern conception of personhood. Broadly, this modern concept of personhood revolves around the idea of persons as proprietors of their own capacities.<sup>10</sup>

The second dimension of the significance of criminal responsibility in Farmer’s account relates to citizenship, or the relationship between the individual and the state. For Farmer, because, along with civil law, criminal law “routinely articulates responsibilities and duties” (170), it is intimately linked to both the definition of modes of political organization and to the legitimacy of the criminal law—which together encompass matters such as relationships between self and others; the criminalization of certain conduct and the permission given for other types of conduct; and fairness in the definition of rules, the attribution of liability, at trial, and in punishment (170). With reference to key criminal law authors of the second half of the twentieth century, H.L.A. Hart and Glanville Williams, Farmer argues that criminal responsibility came to be linked to “political liberty” in a “complex way”: “social responsibilities specified by the state were recognized in the criminal law, but the individual also required protection against state power” (187). And while responsibility was seen as a means of limiting the criminal liability of individuals (to exclude those who did not have certain capacities or could not exercise certain choices, in legal-philosophical scholarly terms), it was not thought to restrict the scope of the criminal law, setting criminal responsibility apart from discussions of criminalization.

Bringing these two dimensions of the significance of criminal responsibility together, Farmer concludes that responsibility has shaped the substantive content of the criminal law—criminalization—in a way that goes “far beyond the idea of constraint” (which is its role according to legal-philosophical accounts of responsibility) (164). According to Farmer, “responsibility must be understood in the much broader sense of

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<sup>10</sup> See Jane Collier et al., *Sanctioned Identities: Legal Constructions of Modern Personhood*, 2 *Identities* 1 (1995).

establishing rules and standards of conduct,” and the development of the modern law must be understood as a process “in which the specification of liability has tracked the growth of prospective responsibilities in the criminal law” (196). That is, criminal responsibility has been a platform for the development of the modern criminal law.

As this discussion suggests, Farmer’s account represents a fundamental critique of the dominant legal-philosophical accounts of criminal responsibility. These accounts, which include sophisticated analyses by Antony Duff and Victor Tadros, focus on the concept of responsibility, and tend to generate a singular guiding question, along the lines of “who should be responsible under criminal law?”<sup>11</sup> By contrast with legal-philosophical accounts of criminal responsibility, in Farmer’s analysis, criminal responsibility is not as an absolute concept that “founds” the criminal justice system, and exists outside it, but “a linguistic term that mediates the relations between legal and social institutions.”<sup>12</sup> In other words, for Farmer, “the language of legal responsibility [is] one way in which the relations between legal and political organization are mediated.”<sup>13</sup> In *Making the Modern Criminal Law* Farmer exposes the significance of the received wisdom that criminal responsibility acts as both a constraint on the scope of the criminal law as a whole *and* justifies punishment by the state in particular instances, where the “punishable individual” is “both the source and the subject of the criminal law” (I return to this both/and feature of criminal responsibility below): the effect is that questions of power, justice and politics are evacuated from the criminal law (190, 195).<sup>14</sup>

The critical study of criminal responsibility provided in *Making the Modern Criminal Law* is careful and nuanced, and invites further reflection on the extensive and deep scholarly investment in responsibility for crime.<sup>15</sup> In the spirit of critical reflection, I turn to examine the significance of criminal responsibility in/for criminal law theory.

### III. The Meta-Significance of Criminal Responsibility

The significance of criminal responsibility in/for criminal law theory, which I call the meta-significance of criminal responsibility, may be considered an additional dimension of critical studies of criminal responsibility. There are two aspects to the meta-significance of criminal responsibility, which correspond to two of its qualities as an object of study. I suggest that criminal responsibility has particular meaning both *within* and *beyond* the

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<sup>11</sup> See Antony Duff, *Answering for Crime: Responsibility and Liability in the Criminal Law* (2007); Victor Tadros, *Criminal Responsibility* (2005); but see Arlie Loughnan, *Historicizing Criminal Responsibility*, in *The New Philosophy of Criminal Law* 133 (Chad Flanders & Zachary Hoskins eds., 2016).

<sup>12</sup> Lindsay Farmer, *What Has the Philosophy of Punishment Got to Do with the Criminal Law?*, 3 *Law & Critique* 241, 250 (1992).

<sup>13</sup> Farmer, *supra* note 3, at 12.

<sup>14</sup> See also Lacey, *supra* note 4, at 930.

<sup>15</sup> Farmer states that his arguments do not exhaust those which might be made about the significance of responsibility, but rather function to open up a different perspective on responsibility and its significance for criminalization (165).

bounds of criminal legal theory: it provides a means of thinking and talking about the criminal law as a whole that captures its essence, and it has an extra-legal reach articulating in the moral, social and political realms, and stretching beyond the bounds of the criminal law and legal scholarship.

### *A. The Synthetic Quality of Criminal Responsibility*

With its synthetic quality, criminal responsibility knits different issues together, forming a way of understanding the criminal law in both form and spirit. With reference to the distinction between the particular and the general, and the actual and the ideal, in criminal law, I suggest that this feature of criminal responsibility as an object of study means it has particular significance *within* criminal law theory.

As an object of study, criminal responsibility is at once general and particular. Criminal responsibility connotes the structure or form of the criminal law as a whole, as well as the way the law applies in a specific instance, to a specific (responsible) individual (responsibility attribution). Viewed as an object of theoretical attention, this at-once-particular-and-general aspect of criminal responsibility is significant because it makes it possible to tell both a macro and a micro story about the criminal law through criminal responsibility. It is on back of this both/and feature of criminal responsibility that, as Farmer argues, scholars have understood criminal responsibility to operate as both a constraint on the scope of the criminal law as a whole, *and* to justify punishment by the state in particular instances (190). Because criminal responsibility denotes both the structure of the law and its personification in the form of the “responsible individual,” it becomes possible to think and talk about the criminal law in the aggregate, where the law comprises one body of rules or principles, and in discrete instances, where an individual accused of crime stands in for the polity as a whole, at the same time.

Criminal responsibility is at once particular and general in another way. As the form or structure of the law, criminal responsibility is particular to the criminal law, but lies below or beyond the great mass of specific provisions and practices that make up any system of positive law. Scholarly preoccupation with criminal responsibility permits theorists to get around the messy reality of the criminal law, which, as well as changing rapidly, seems to be ever more complex. It is perhaps no mere coincidence that criminal responsibility has come to be such a prominent theoretical concern at a time when the scope of the criminal law in common law jurisdictions such as England and Wales is wider than ever, making it harder to identify principles that govern the expansion of the law (196).<sup>16</sup> In addition, scholarly focus on criminal responsibility has the effect of flattening jurisdictional and temporal distinctions between systems of law, permitting academic conversations and analyses to transcend such distinctions. This provides criminal law the-

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<sup>16</sup> On the expanse of the criminal law in England and Wales, see, e.g., James Chalmers & Fiona Leverick, *Tracking the Creation of Criminal Offences*, 7 *Crim. L. Rev.* 543 (2013).

orists with a way of singing from the same song sheet, analyzing the criminal law across jurisdictional boundaries despite differences in substantive laws and change over time.<sup>17</sup>

The synthetic quality of criminal responsibility as an object of study has been enhanced by the mode in which responsibility for crime is typically studied. As discussed above, legal-philosophical studies of criminal responsibility dominate the scholarly field, and, within these studies, the tendency to talk about the law in normative terms risks obscuring the distinction between the ideal and the actual law. For instance, as Lacey argues, in recent decades, legal-philosophical scholarly obsession with subjective fault has delegitimized major parts of the criminal law corpus that do not conform to this “ideal” mode of responsibility-attribution, ensuring that accounts of criminal law centered on a subjective, capacity-based conception of responsibility can continue to claim to be accounts of the criminal law as a whole.<sup>18</sup> But, while some legal-philosophical work on criminal responsibility is at best a theory of only part of the criminal law, there is a lack of self-reflection about this partiality. As Farmer writes, the mixed nature of liability practices has had “little impact” on the ongoing effort by scholars to develop a unitary account of criminal liability (189). As this suggests, criminal law theory produces law in its own image, and scholarly focus on criminal responsibility feeds back into the subject matter under consideration, reinforcing its perceived centrality to the criminal law.

Taking these points together, it can be seen that criminal responsibility is not just an object of study, but also a means of studying the criminal law. With its synthetic quality, criminal responsibility facilitates a slippage from the idea of criminal responsibility as the form or structure of the criminal law, from what is on its face a formal and ostensibly neutral issue of the organization of the law, to a thicker and more evaluative issue of the “real” criminal law. In effect, criminal responsibility becomes the essence or spirit of the criminal law—and the study of criminal responsibility becomes the study of the “truth” of the criminal law.

### ***B. The Talismanic Quality of Criminal Responsibility***

As an object of study, criminal responsibility also has a talismanic quality, in that it draws associations with fundamental matters of morality, subjectivity, the nature and form of interpersonal relations, and relations between individuals and the state. The significance of this in/for criminal law theory is that criminal responsibility does not reduce to a merely technical and circumscribed sub-disciplinary concern, but is something that has extra-legal reach and “external” meaning, stretching *beyond* the bounds of criminal law and criminal law scholarship.

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<sup>17</sup> This flattening of jurisdictional and temporal differences enables criminal law scholars to escape the fundamental nation-state nature of the criminal law, enhancing the perceived relevance of criminal legal study in a globalised world, in which power relations are recognised as increasingly fragmented.

<sup>18</sup> See Nicola Lacey, *Institutionalising Responsibility: Implications for Jurisprudence*, 4 *Juris*. 1 (2013). Lacey suggests that that sort of approach to theorising criminal responsibility raises a legitimate question about precisely what such theoretical accounts are accounts of. *Id.* at 10-11.



Some aspects of the “external” meaning of criminal responsibility have long been recognized. As scholars working in the legal-philosophical tradition argue, criminal responsibility has both a moral and a political dimension: it is connected to moral practices of calling individuals to account for their conduct (that is, to responsibility more generally), and to a liberal political structure that is concerned with personal autonomy, freedom, and privacy.<sup>19</sup> These connections account for the importance of subjective awareness of fault in legal-philosophical accounts of criminal responsibility: it is lauded because subjective fault is regarded as a chief means of respecting freedom of action and treating individuals as agents.<sup>20</sup> But the “external” aspects of criminal responsibility are also felt in the social realm, something which has been brought to the fore by critical criminal responsibility scholars.<sup>21</sup> As Lacey argues in relation to criminal responsibility attribution practices, the particular shape these practices take reflects the evaluative, epistemological, social-cultural, and political context in which they take place.<sup>22</sup> Put another way, as a social practice, holding someone to account for crime is informed by each of the dynamics through which we make sense of the world—including gender relations, the structure of the family, and the ambitions and constraints of the nation state.

Taking into account the social dimension of criminal responsibility reveals the distinctive, talismanic aspect of criminal responsibility as an object of study. As it draws associations with matters beyond the law, criminal responsibility can be connected with responsibility practices more broadly, and this connection means that the study of criminal responsibility can lay claim to being the study of an aspect of the wider social order, not “just” the legal order. Responsibility saturates our legal, economic and political institutions and our social practices,<sup>23</sup> and dynamics of responsibility have come to form a central axis along which interpersonal relations are understood and social systems are structured. Further, in the current era, responsibility is closely associated with particular political discourses (“rights and responsibilities”) and with various governance practices operating in modern liberal democracies. And this connection to responsibility more generally means that criminal responsibility has extra-legal purchase—it articulates into the moral, social and political spheres—and this in turn provides gravitas to the scholarly study of criminal responsibility.

It is under these (changing) responsibility conditions that recent developments in criminal responsibility attribution practices have occurred, and it is these conditions that give those changes their significance. As critical responsibility scholars have argued, crim-

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<sup>19</sup> See, e.g., Duff, *supra* note 11; Tadros, *supra* note 11.

<sup>20</sup> For critical discussion, see Ngaire Naffine, *Human Agents in Criminal Law and Its Scholarship*, 35 *Crim. L.J.* 51, 53-54 (2011).

<sup>21</sup> See, e.g., Nicola Lacey, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (2008); Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (2009).

<sup>22</sup> Lacey, *supra* note 3, at 14.

<sup>23</sup> See Andrew Parker et al., *Introduction*, in *Subjects of Responsibility: Framing Personhood in Modern Bureaucracies* 1, 4 (Andrew Parker et al. eds., 2011).

inal responsibility attribution now takes on distinct coloring. On Farmer's analysis, in the current era, with a theoretical basis that is now more normative than psychological, criminal responsibility is thoroughly moralized—and responsibility is regarded as “a moral property of agents” (189-90). On Lacey's analysis, the resurgence of character responsibility, and the appearance of a hybrid character-risk responsibility, mark out the current era and suggest that what is being evaluated is disposition or attitude, reflecting “a reverberation of anxiety in a world marked by renewed economic and social insecurity.”<sup>24</sup> These developments reflect the particular features of a late modern social investment in responsible individuals: under conditions in which individual responsibility is both valorized and problematized, attribution practices rest on diverse (perhaps even incoherent) epistemological and ontological resources.

There is a further point to note in relation to the changing social significance of responsibility. In recent decades, the language of criminal responsibility appears to have overtaken that of the “general part” in theoretical analyses of the criminal law. Arguably, there is an important linguistic difference between “criminal responsibility” and “the general part” of criminal law, even if these terms are treated as synonymous by criminal law scholars. As Lacey writes, “the general part” encompasses “technical, normative and conceptual doctrines and broad procedural values” (such as the principle of legality), but it is addressed to judges, not to citizens.<sup>25</sup> The language of criminal responsibility transcends these boundaries: criminal responsibility appears to be significant to legal practitioners *and* to those accused of crime, but also to ordinary people, as citizens and as people. Unlike terms such as “criminal liability,” which have an express specialist, technical meaning, criminal responsibility evokes something more fundamental, hinting at a deeper and broader reach than that corresponding to the turf of the criminal law. The technical nature of “the general part”—something that has meaning *within* the criminal law, to those actors who are “insiders”—does not command the same extra-legal purchase as criminal responsibility.

Taking these points together, it becomes clear that criminal responsibility now has a socio-political currency that goes beyond its existence as a formal feature of criminal law. Criminal responsibility has strong symbolic power in the legal order and the wider social order of which the legal order is part. This is the inverse of Farmer's point about criminal responsibility as “primarily a legal artefact”—that is, a creature of the criminal law—albeit one that, as a contingent matter, “tracks” conceptions of moral responsibility (165, 170). As an object of study, one of the features of criminal responsibility is that what is indeed “primarily a legal artefact” carries with it extra-legal meaning and resonance. And this is significant because it means that criminal responsibility does not reduce to a merely technical and limited sub-disciplinary concern, but carries meaning beyond the criminal law and beyond criminal law theory.

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<sup>24</sup> See Lacey, *supra* note 3, at 168; see generally *id.* at 99-106.

<sup>25</sup> See *id.* at 20.

#### IV. Conclusion

Jumping off from Farmer's critical account of criminal responsibility—as a platform for development of the modern criminal law—and taking seriously his exhortation to reflectivity in criminal legal scholarship, this paper offered an assessment of the significance of criminal responsibility in/for criminal law theory, on the basis that the high profile of criminal responsibility on the legal theory terrain is not straightforwardly a product of its significance in criminal law. I argued that, arising from its qualities as an object of study, criminal responsibility has distinctive significance in/for criminal law theory. I suggested that it provides a means of thinking and talking about the criminal law as a whole that also captures its essence, and that has an extra-legal reach. And this means that criminal responsibility holds particular meaning both *within* and *beyond* the bounds of the criminal law. I briefly canvass two of the implications of this analysis.

First, the study of criminal responsibility demands a high degree of self-reflection. The demand for scholarly self-reflection has long been a calling card of critical legal studies,<sup>26</sup> but this demand seems to carry distinctive weight in relation to criminal responsibility. Recognizing both the dominance of the legal-philosophical scholarly tradition on the legal theory terrain, and the role of scholarship in creating the criminal law in its own image, means that significant care must be taken in developing critical approaches to responsibility in criminal law. This is in part a question of scholarly research disposition as well as methodology, and it hints at particular ways of undertaking critical work on responsibility in criminal law. It suggests (but does not proscribe) that such work will be characterized by reflexivity, and is likely to allow for multiple stories about criminal responsibility to emerge, with interest in what might be found in the intricacies or margins of the criminal law, in its messy reality or operation, if not on the face of its “principles.”

Second, the critical study of criminal responsibility might be further enriched through connection to sociological and social scientific work on responsibility. To date, critical studies of criminal responsibility have analyzed the significance of responsibility for the criminal law, indicating the centrality of responsibility as an aspect of the coherence and rationality of the modern criminal law. But there is scope to open out the discussion beyond disciplinary boundaries, and to connect the study of criminal responsibility with the study of responsibility more broadly. Connecting criminal responsibility to responsibility more generally entails bringing criminal legal scholarly efforts together with those of scholars in the humanities and social sciences—placing legal responsibility practices in a wider frame of social practices—which will enable criminal responsibility to be included in a wider, inter-disciplinary “politics of responsibility.” The critical study of criminal responsibility might be enhanced by exploring the connections between social responsibility practices and responsibility in criminal law.

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<sup>26</sup> See, e.g., William Twining, Reflections on Law in Context, in *Essays for Patrick Atiyah* 1 (Peter Cane & Jane Stapleton eds., 1991).