
research article

For a 'marginal criminological realism': Zaffaroni and the birth of a critical perspective on the criminal question from the Global South

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In this paper we address how in the birth of critical criminology in Latin America, one of its key architects, Eugenio Raúl Zaffaroni, poses in detail a problematisation that has acquired a very great centrality in the current debate: the hierarchy, asymmetry and dependency between the Global North and the Global South in the production of criminological knowledge, and offers ways to challenge the reproduction of this dynamic as a long-term phenomenon. His theoretical and political position in the 1980s, defined as a 'marginal criminological realism', anticipates a series of revealing points that we rediscover in the contemporary discussion. In this way, this paper seeks to avoid falling into an 'amnesia' by revitalising the historical exploration of the critical perspectives on the criminal question. In this exploration, we identify what constitutes, from our point of view, a firm foundation on which to build our own critical work from both a scientific and political point of view in Latin America and, more generally, in peripheral, marginal contexts.

Key words Zaffaroni • critical criminology • marginal realism • Latin America

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Introduction

In this paper we address the birth of critical criminology in Latin America, primarily in the world of law schools during the 1970s and 1980s. By exploring the work of one of its key architects, Eugenio Raúl Zaffaroni, we seek to show in detail how in the very birth of a critical perspective on the criminal question in the region, a problematisation that has acquired centrality in the international debate on contemporary criminology is already raised in detail. We refer to the hierarchy, asymmetry and dependency in the production of knowledge in this field between the Global North – the central countries, the imperial metropolises – and the Global South – the peripheral countries,

the colonies and ex-colonies – and the need to fight against the reproduction of this dynamic as a long-term phenomenon. In Zaffaroni's contributions during the 1980s, a critical perspective on the criminal question in Latin America necessarily implied building an approach 'from the margins', and that meant identifying and confronting this fundamental problematisation. In this sense, a critical criminology could not but be a 'southern criminology', a 'decolonial criminology', even though Zaffaroni did not use these now familiar terms to make sense of his theoretical and political position.

We think it is important to reclaim his contribution to show how the contemporary debate on the matter was preceded by extensive work that came from the Global South. This work has struggled to resist the reproduction of the subordination of these most disadvantaged scenarios in the production of criminological knowledge, generating fruitful innovations to think about this problematisation in the present.¹ It would be an irony if the current approaches that aim to decolonise and southernise criminology leave in oblivion precisely the texts and authors that previously challenged the very problem they intend to challenge, and even more so when those challenges were constructed from within disadvantaged scenarios in the production and circulation of knowledge on the criminal question. We believe that this exploration is also a way to combat a temptation to fall into an 'amnesia' (Goyes and South, 2017) that usually occurs in the accelerated contemporary debate, where the impression is often given that everything is being invented anew and a blindness persists with respect to previous developments – above all, and not by chance, when they occur beyond the central, privileged contexts.

This article intends also to contribute to the ongoing construction of the history of critical thought on the criminal question in Latin America, which has gained a certain momentum recently but still leaves vast areas to be explored. This history must not fall into an apology, but give a detailed account of the trajectories and achievements of Latin American critical criminology, identifying also its limitations and blockages.² In this way, these historical inquiries are useful for the purpose of knowing the past, but they also represent a contribution to and reflection on the present. By placing our own context – the local with its agents and texts – at the centre and prioritising a vision from there of the relevant problems, concepts, and arguments, a decolonising, southernising effect is already generated (Mignolo, 2012).

Southernising/decolonising criminology

In the contemporary criminological debate, especially in the English-speaking world, numerous voices problematise the profound inequality in the production and circulation of knowledge between different parts of the world. This inequality has implied and implies a strong predominance of the problems, concepts and arguments that are produced in the Global North over those that are produced in the Global South. This predominance is rooted, albeit with complexity, in broader economic, political, and cultural inequalities that have been structured by imperialism in its various forms throughout history and to the present day. It is produced by and produces a style of formulation by Northern intellectuals of their problems, concepts and arguments as if they were universal, hiding the fact that they are embedded in particular places and times. In turn, researchers from the Global South frequently and uncritically import these problems, concepts and arguments from the Global North and apply them to their own contexts, articulating a form of subordination

and dependency that prevents significant innovations; they become providers of local empirical data that reinforce the alleged universality of the privileged intellectual production of the Global North. The contemporary critical views of this dynamic are combined with calls to prevent it from reproducing, promoting various political and scientific strategies to do so.

These coinciding voices are almost always situated within the framework of broader appeals to the construction of a 'southern criminology' or a 'decolonial / postcolonial / countercolonial criminology' (Cain, 2000; Brown, 2001; 2005; 2014; 2017; 2018; 2021; Agozino, 2003; 2004; 2010; 2018; Blagg, 2008; Cunneen, 2011; 2018; Medina, 2011; Aas, 2012; Carrington et al, 2016; 2018; 2019a; 2019b; Cunneen and Tauri, 2017; Goyes, 2018; 2019; Moosavi, 2019a; 2019b; Travers, 2019; Cavalcanti, 2020; Dimou, 2021; Goyes et al, 2021; Aliverti et al, 2021).³ We do not intend to exaggerate the level of consensus in this recent literature because there is vigorous debate on several important points, but we believe that there is a significant core in this regard that must be highlighted because of its importance and effects.

In this article we want to show how this significant core has been preceded by intellectual work that came from the Global South that constitutes sources to think about this problematisation in the present, thus avoiding the selective oblivion of the past (Goyes and South, 2017; Goyes, 2018; 2019; Goyes et al, 2021). For this we focus on the important contribution of Zaffaroni to the birth of critical criminology in Latin America.

The birth of critical criminology in Latin America and the centrality of Zaffaroni's contribution

In Latin America, critical criminology began to take shape in the 1970s, especially in certain national scenarios. The Venezuelan context was particularly fertile due to the pioneering work of Lola Aniyar de Castro and Rosa del Olmo, crucial regional figures (Anitua, 2005: 419–21; Goyes, 2023; Sozzo, 2006: 385–406; Cordeiro, 2020: 124–40). There were also significant developments during this decade in Brazil and Argentina (see Carvalho, 2023; Anitua, 2023; the references indicated in note 2). This intellectual production originated, mainly, in the academic field of law. Previously, this field was crucial, like medicine, in the development of the positivist criminological tradition in its 'golden age' in the region, between the 1880s and 1930s (Sozzo, 2020: 121–3). But also, from the 1930s onwards, and as Anitua points out in this special issue, in the critique of positivist criminology from different philosophical, legal and political points of view. Most of the intellectuals who played central roles in the construction of a critical criminological vocabulary in Latin America had been trained in the field of criminal law and within the framework of that critique – plural and complex – of the positivist criminological tradition. Beginning in the 1970s, they encountered critical, radical, Marxist criminology, born in the Global North, both in English-speaking countries and in continental Europe, among which the Italian and Spanish scenarios stand out (in the latter case, strongly promoted by Latin American exiles such as Juan Bustos Ramirez and Roberto Bergalli), with which there were long-term affinities and connections (Sozzo, 2006: 402–404; 2020: 128).

The encounter with this theoretical production on the criminal question of the Global North took place in a broad intellectual climate that crosses both social and human sciences and politics in Latin America, which were strongly marked

by the processes of transition to socialism and its debates, connected to the Cuban, Chilean and Nicaraguan experiences as well as to the various strategies pursued by leftist movements in other parts of Latin America. Hence, Latin American critical criminologists were actively involved in discussions about a 'liberation' philosophy, theology, and politics, and among their sources of inspiration, the work of Latin American intellectuals such as Enrique Dussel, Leopoldo Zea and Rodolfo Kusch, played an important role (Anitua, 2005: 418–9; Alagia and Codino, 2019: 323–54). In fact, some of the key authors in the construction of this critical perspective for Latin America explicitly defined this type of theoretical vocabulary as a 'criminology of liberation' (Bergalli, 1981–1982; Aniyar de Castro, 1981–1982; 1987). At the same time, the views of Latin American critical criminologists were strongly marked by debates about dependency theory in economics and sociology, as a way of rethinking the role of Latin American countries in the dynamics of global capitalism and its cultural, political and social consequences, especially through the work of authors such as Andre Gunder Frank, Celso Furtado, Henrique Cardoso and Enzo Faletto. It is no coincidence that the differentiation between central and peripheral countries played a central role in the discourse of Latin American critical criminologists. In fact, this is clear in the Manifesto of Latin American Critical Criminologists of 1981, adopted at a founding meeting held in Mexico City, and written by several key authors such as Lola Aniyar de Castro and Roberto Bergalli:

In the discourse of the centrality and the periphery of power, the question of social control is inscribed as a priority. The type of discipline necessary for social relations in peripheral countries to remain within the framework provided by the imperial powers determines the fate and form of the control systems. (GLCC, 1981–1982: 136; see also Aniyar de Castro, 1987: 13–5; 1990: 15–8; Anitua, 2005: 423–4; Fonseca, 2018: 720–4; Alagia and Codino, 2019: 323–30)

The 1980s were certainly a time when critical criminological ideas were widely debated in Latin America, characterised by vibrancy and multiplicity, although largely limited to the academic field of law, with few exceptions, in a more general framework marked by the transition to democracy and the possibilities that this process generated in academic and political terms. At this crucial moment in the construction of critical criminological thinking in Latin America, the work of Zaffaroni, an Argentine intellectual whose extraordinary influence is difficult to exaggerate, acquires a central place.⁴

Zaffaroni was already a prominent criminal law jurist in the 1970s. He has published numerous books recognised in the field, including *Manual de Derecho Penal* (1977) and the five-volume *Tratado de Derecho Penal* (published between 1980 and 1983). During the 1970s he was a professor of criminal law at various private Argentine universities (Catholic University of La Plata, University of the Argentine Social Museum and University of Salvador). In 1984 he took the position of Professor of Criminal Law in the Faculty of law at the University of Buenos Aires (the most important institution in this academic field in the country), a position in which he remained until his retirement in 2007. Like many criminal law professors in Argentina, since the end of the 1960s, Zaffaroni had simultaneously been a judge in various jurisdictions. Throughout the 1980s, he was a sentencing judge and judge of the appeals chamber

in the national jurisdiction based in the city of Buenos Aires. He was also later a Judge of the Supreme Court of Justice of the Nation between 2003 and 2016, and a judge of the Inter-American Court of Human Rights between 2016 and 2022.

However, at the beginning of the 1980s, Zaffaroni's intellectual production took a turn. He became actively involved in critical criminological debates in Latin America, departing to a certain extent from his previous interest in criminal law theory (for more details, see [García, 2021: 39–68](#)).⁵ Within this framework, he published a series of books of extraordinary importance for the construction of a critical perspective on the criminal question in the region. First, *El preso sin condena en América Latina y el Caribe* ([Zaffaroni et al, 1983](#)), a collective book resulting from a comparative, statistical and legal study of the phenomenon of prison on remand in 30 countries, advocating for its reduction. Second, *Sistemas penal y derechos humanos en América Latina* ([Zaffaroni, 1984](#)), two collective books that evaluate the protection of human rights against penal systems, both from a normative and factual point of view, promoting an integration between criminal law and criminology, an attempt that became a fundamental milestone in Latin America ([Aniyar de Castro, 1984: 239; 2010: 19; Baratta, 2004: 300](#)). Third, *Criminología. Aproximaciones desde un margen* ([Zaffaroni, 1988](#)), a history of criminology, in general, and in Latin America, in particular, in relation to the debates that were taking place among Latin American authors. Finally, *En busca de las penas perdidas. Deslegitimación y dogmática jurídico-penal* ([Zaffaroni, 1989](#)), in which he began the task – restoring the proposals of Baratta (1980) in this regard – of building a 'new integrated model of criminal science' based on a critical position in relation to criminology and criminal law, which starts from the 'delegitimation of the penal system' and tries to rebuild tools to hold back the power to punish. The latter is, without a doubt, his crucial book in this period, widely distributed and highly influential. It was published simultaneously in Argentina, Colombia, Peru, and Bolivia, translated into Portuguese in 1991 and Italian in 1994 (for detailed discussions of its contents, see [Elbert, 1989; Elbert et al, 1993; Nino and Zaffaroni, 2004; Alagia and Codino, 2019](#)).

During the 1980s, through these books, Zaffaroni reflected on the problem of hierarchy, asymmetry and dependency in the production and circulation of knowledge on the criminal question between the Global North and South, and the need to resist the reproduction of this dynamic as a long-term phenomenon. In this sense, his work builds a direct and immediate association between the construction of a critical perspective on the criminal question in Latin America and the need for a vision that assumes that it is built 'from the margin', with the problems and possibilities that this entails. For Zaffaroni, critical criminology in Latin America could only be critical to the extent that it was marked by 'southernisation' and 'decolonisation', even though he did not use these contemporary expressions, but appealed to what he called a 'marginal criminological realism'.

It is possible to argue that this is a crucial trait of his thought already in this early period, in dialogue with the important debates that crisscrossed Latin American social and human sciences and politics in those years, such as those sparked by a dependency theory and a theology, philosophy and politics of liberation, as highlighted above. We recognise that this crucial trait is also present, in partially different ways, in other key authors in the emergence of critical criminology in Latin America.⁶ But the centrality, depth and inventiveness that was acquired in Zaffaroni's intellectual production is unique. We now turn our attention to his reflections on this matter.

From our margin

Critique of the uncritical importation of ideas on the criminal question from the centre to the periphery

In his books published in the 1980s, Zaffaroni forges a strong critique of the uncritical importation of criminological ideas, as well as models of criminal policy and legislation, to peripheral countries from central countries. For Zaffaroni, this has a long history beginning in the 18th century and is present in the fields of criminal law and criminology, in which these ‘imported’ visions have become ‘dominant’ (Zaffaroni, 1988: 19, 60–1, 101, 124–6). He emphasises that ‘ideological reproduction powerhouses’ – academic institutions – in peripheral contexts tend to repeat ‘central theoretical discourses’, especially by academics trained in the universities of central countries (Zaffaroni, 1989: 83, see also 136–9). This distorts the ability to understand ‘what happens’ in the ‘Latin American reality’ (Zaffaroni, 1982: 103; 1984: 15, 69). From his point of view, it is increasingly obvious that theories generated in central countries do not have ‘universal validity’, even though they are presented as such (Zaffaroni, 1988: 3, 74–5), since they express a ‘scientific provincialism’ (Zaffaroni, 1984: 135). According to Zaffaroni, in Latin America any perspective from the central contexts is always partial, due to the evident ‘phenomenal diversity’ of these scenarios in comparison to ‘our margin’ (Zaffaroni, 1988: 3).

Criminological critique in the centre and in the periphery

In Zaffaroni’s opinion, it is indisputable that any criminology that accounts for the Latin American reality ‘must be critical, just like that of any peripheral area’ (Zaffaroni, 1988: 21). Now, the ‘central critical criminology’ makes important contributions, but it also is created in central countries and, therefore, its relevance is limited to those contexts (Zaffaroni, 1984: 71). For this reason, it is necessary to avoid ‘adopting the central critique without discrimination’, reviving the old tradition of copying what has little or nothing to do with the Latin American reality (Zaffaroni, 1984: 73). He then points out: ‘Our critique cannot therefore be the central criminological critique’ (Zaffaroni, 1988: 21).⁷

Nonetheless, for Zaffaroni, the ‘explanatory models’ of central countries can be useful to give us some clues, but they are not enough ‘here’, ‘on the margin’, as they do not refer specifically to ‘our’ realities (Zaffaroni, 1984: 36). However, because a ‘Latin American criminological theory’ is lacking, we are forced to ‘take theoretical elements sent from the central countries’ but only to the extent that ‘they can help us build our own theories’ (Zaffaroni, 1984: 75). This is so because the effort to develop a theoretical framework from scratch that allows us to approach our reality in our way would be titanic. Certainly ‘we depend on central theoretical frameworks and their elements. This forces us to make use of these elements, selecting and combining them’ (Zaffaroni, 1989: 165–6). For Zaffaroni it is about building a ‘syncretic critique’ (Zaffaroni, 1984: 75; 1988: 4; 1989: 175), something that is ‘inevitable’ and at the same time ‘desirable’ for ‘any attempt that wants to be realistic and be carried out from our margin’ (Zaffaroni, 1989: 166). Zaffaroni highlights that having this type of debate would be also beneficial for central countries:

The central theories referring to the penal system and its legal constructions... are also ‘provincial’, so that a vision of the same complex of powers from a

different (marginal) perspective... can enrich their own knowledge about a fact of power that they have almost always observed from a 'single side of the moon'.... A marginal perspective would be able to add a new angle of vision that allows us to get closer to the fact of power at a global level. (Zaffaroni, 1989: 179)

Already in *Sistemas Penales y Derechos Humanos* (1984), Zaffaroni advocated for the construction of a Latin American criminology that would be a part of a broader Third World criminology:

Those of us, like Latin Americans, who are from the countries of peripheral capitalism, have received criminological theories elaborated in the countries of central capitalism, having noted long ago that these theories do not have universal validity, since they are not applicable to the interpretation of the forms of social control in our area. Hence the justified aspiration to develop a 'Latin American criminology', although we believe that, without much effort, it could be extended to include a 'Third World criminology'. Of course, this must not be done incorrectly, as that would be to try to provide interpretations of this social control in the countries of peripheral capitalism that we dogmatically proclaim as valid for the central countries. This would be to oppose a scientific provincialism to another scientific provincialism, which should be avoided. Therefore, what I understand by 'Latin American criminology' – or, more broadly, of the Third World – is the elaboration of an interpretation of this form of social control in our countries that, compared with that of central countries, serves to elaborate a vision of the general guidelines that govern it and that produce different effects depending on the socio-economic circumstance (effects that could be more or less dramatic – and present even markedly original developments – depending on different historical-political and cultural components). (Zaffaroni, 1984: 135)

Zaffaroni also emphasises the importance of communication between 'marginal places', their obvious differences notwithstanding, and underlines that their isolation was part of a colonial and neocolonial strategy of subordination:

Our approach will only be from one of those margins and, therefore, it will also be partial because there are other margins about which we know very little. This is not an accident either, but is part of the technique of power, one of whose keys has always been the monopoly of information and communication with the margins. This monopoly allows it to maintain an intermarginal isolation, as well as an intramarginal one (the artificial division between areas on the same margin). Overcoming the balkanisation of our margin is the priority task of marginal awareness that we must carry out, but that of intermarginal isolation is much more difficult. (Zaffaroni, 1988: 3)

Dependency and marginalisation

Zaffaroni inscribes his critique in a broader framework inspired by dependency theory, as a key to reading the histories of Latin American economies and societies.⁸

For Zaffaroni, Latin America constitutes a continent whose history is marked by exploitation and subjugation (Zaffaroni, 1982: 9). Social injustice in the region is the result of international factors and the international distribution of labour that gives a subordinated role to peripheral countries in the globalisation of capitalism (Zaffaroni, 1982: 1–3; 1988: 33, 58). This translates into ‘underdevelopment’ and a peripheral economic structure that oppresses millions of people who are socially marginalised (Zaffaroni, 1982: 9; 1984: 38).

For Zaffaroni, Latin America has been integrated into the global capitalist system, ‘bearing the worst part’, which implies that its underdevelopment is ‘an expression of world power and not an original phenomenon’ (Zaffaroni, 1988: 23). Indeed, after the Second World War it was believed that central capitalism would expand its well-being to underdeveloped countries and that the ‘development model for the periphery was central development’. However, that vision, in his perspective, ‘is dead’ (Zaffaroni, 1984: 146). ‘World power’ and its ‘international distribution of labour’ locates Latin American countries as ‘proletarian societies’, which clearly distinguishes them from ‘central societies’ (Zaffaroni, 1988: 21). A society where almost its entire population is incorporated into a high-tech labour system ‘rests, logically, on a power structure’ that has very little in common with a country where almost 50% of its people are marginalised by industrial production, with a much more elementary level of technology (Zaffaroni, 1988: 22).

According to Zaffaroni, the dependency theory illuminates that ‘our phenomena are not analogous to the central ones, but are derived phenomena and, therefore, present a differential particularity that is impossible to grasp with the categories of central knowledge’ (Zaffaroni, 1989: 69). Specifically, the origin of Latin American economic dependency comes from its colonial status (Zaffaroni, 1984: 148–9) and has had different phases marked by different revolutions: colonialism and the mercantile revolution (16th century), neocolonialism and the industrial revolution (18th century), and the current techno-colonialism and the techno-scientific revolution (Zaffaroni, 1989: 69–70, 122). The first two historical phases, colonial and neocolonial, constituted two different stages of equally cruel genocide and ethnocide:

These are two genocidal chapters, resulting from a forced incorporation that implanted trans-cultural punitive social control, functional for its colonialist and neo-colonialist objectives. In both eras, the genocidal ideology was justified by our ‘unquestionable inferiority’ within a theocratic ‘theoretical framework’ in colonialism (inferiority for not having received the Christian message) and a ‘scientific framework’ in neocolonialism (inferiority for not having the same degree of ‘civilisation’ or for being biologically inferior). (Zaffaroni, 1989: 122)

Both of these stages were structured by ‘global central power’ and in no way by an autonomous dynamic, and subordination was accompanied ‘with a certain discourse or “knowledge”’ (Zaffaroni, 1989: 70), which means that the colonial enterprise was invariably legitimised by the knowledge of its time (Zaffaroni, 1988: 65). In this way, ‘the central power’ imposed a ‘structure of knowledge’ on peripheral, colonial and postcolonial contexts that was ‘supracultural’ and an ‘imposed cultural mould’. However, this imposed structure of knowledge ‘interacts with marginalised cultures in

the process of syncretisation' (Zaffaroni, 1988: 88).⁹ Hence, any attempt to approach the reality of the margins cannot refuse an analogous 'theoretical syncretism', because nothing social and that involves our 'popular majorities' ceases to be 'syncretic'. 'Nothing can be understood about our margin if its main character is not recognised and if our marginalisation in the ethnocentric history of industrial civilisation is not assumed' (Zaffaroni, 1989: 175).

Revaluation of 'popular knowledge'

This central point in Zaffaroni's thought in the 1980s about the need for a 'theoretical syncretism' translates into a strong revaluation of 'popular knowledge'. In his perspective in Latin America, an 'ethnocide' was produced, spreading the view that 'the only possible civilisation and the only sense of knowledge derived from it is the one provided by advanced industrialist countries', and this meant 'denying any historical and anthropological importance to our pre-European Latin American civilisations' (Zaffaroni, 1984: 40).

Indeed, according to Zaffaroni, the concept of science itself is the product of 'a manipulation of power throughout history' (Zaffaroni, 1989: 37). With regard to knowledge, the problem in Latin America can be summed up in a simple statement: 'there is a duplicity of guidelines for "knowledge": one "official" and the other "popular"' (Zaffaroni, 1988: 99). Although the two inevitably interact, "'popular" knowledge has almost always been a source of folkloric value, of anthropological curiosity... of conjunctural data demonstrating underdevelopment, a subculture or another "sub" that always connotes inferiority, prejudice, racism or class monopoly of truth' (Zaffaroni, 1988: 99). This dual knowledge generates a 'failed approach to reality' due to the absence of a 'synthesis' (prohibited by 'official knowledge') by the majority of intellectuals in Latin America, which causes a curious phenomenon:

'Official' knowledge proclaims the monopoly of rationality, ignoring that 'popular' knowledge has its own internal rationality. However, as the man of the Latin American middle classes may not have access to the internal rationality of popular knowledge, his contacts with it very frequently acquire forms of maximum irrationality'. (Zaffaroni, 1988: 99)

The task, in short, is to determine if there are 'orders of knowledge necessary to transform our reality' without entering into ideological questions concerning the 'concepts of "science"' that 'are conditioned by the structure of world power' (Zaffaroni, 1988: 14).¹⁰

Cruelty and violence

For Zaffaroni, Latin American reality is characterised by an extreme level of social and economic marginalisation but also by extensive violence, especially that deployed through the penal system. Marginalisation and violence are interconnected 'because any measure that tends to reduce the margins of violence has to modify the economic model to a certain degree' (Zaffaroni, 1984: 74). Violence is, therefore, a permanent component of the economic and social system of Latin American countries' peripheral capitalism (Zaffaroni, 1984: 159, 160–1).

In the periphery, the violation of human rights is obvious in terms of the right to human development because not all people are guaranteed the most basic right to life (Zaffaroni, 1988: 13–4, 36). This is the result of central countries determining the development of Latin American societies since the beginning of colonisation (Zaffaroni, 1988: 23). Human life is preserved for the peripheral middle classes to be sure, but ‘the rest are valued as a useless surplus that must be controlled, eliminating the excess’ (Zaffaroni, 1988: 48). For Zaffaroni, power thus exercises a kind of ‘genocide by omission’ (Zaffaroni, 1988: 47).

At the same time, the penal systems of marginal countries display much greater operative violence than those of central countries (Zaffaroni, 1988: 2; 1989: 39), resulting in more deaths than all the homicides committed by individuals combined (Zaffaroni, 1989: 17).¹¹ Precisely for this reason, the structural characteristics of penal systems in Latin America are more evident than in the centre, due to their higher levels of violence (Zaffaroni, 1989: 180). Effectively, through the penal system a true ‘genocide in action’ is provoked (Zaffaroni, 1989: 127): ‘The colonialist and neocolonialist genocide has not ended on our margin, our penal systems continue to carry it out, and if we do not stop them in time, they will be responsible for a techno-colonialist genocide’ (Zaffaroni, 1989: 129).

Empirical research and a reality that ‘hurts the eyes’

During the 1980s, Zaffaroni reflected on the place of empirical research in the construction of a critical criminological perspective in Latin America. In his opinion, for a ‘general critical assessment’ of the functioning of penal systems in Latin America, ‘greater penetration or investigation’ is not needed (Zaffaroni, 1984: 26). In other words, ‘field research’ in Latin America ‘is not usually indispensable to the same extent as in the central countries since the magnitude and nature of some phenomena is so evident’ (Zaffaroni, 1988: 4). In particular, the structural characteristics of the penal system in our margin are more obvious than in the centre, due to the extraordinarily high levels of violence (Zaffaroni, 1989: 180). In this regard, he points out that no one can deny these characteristics in Latin America and that ‘in no “science” is it intended to demonstrate the obvious’ (Zaffaroni, 1988: 18). In other words, in Latin America, to recognise the distance between the reality of the penal system and its normative programming embodied in the law requires only ‘a very superficial observation’ (Zaffaroni, 1989: 16).

Nevertheless, at the same time, Zaffaroni recognises the need for empirical research to deepen the knowledge of particular dimensions of Latin American penal systems and their real effects (Zaffaroni, 1984: 16). Whether the gap between on-the-ground reality and the parameters of human rights is growing or lessening; in which sectors this occurs; what the trends are that have to be promoted or reversed; are already recognised as matters that needed empirical research in *Sistemas Penales y Derechos Humanos en América latina* (Zaffaroni, 1984: 26). He also highlights the complexity of this task in the region due to the limited material resources to carry it out and, therefore, he recognises that this research project in particular was an exploratory one that was confined by the possibilities existing at that time, and that later it should be deepened through ‘many years of work’ (Zaffaroni, 1984: 21–2). Zaffaroni mentions other important elements that hinder the development of this type of empirical research on the penal system in Latin America. On the one hand, given

that these attempts were generally accompanied by a critical orientation, researchers experienced the 'antipathy' of penal power and institutions, which impeded access to their agents and practices to such an extent that, in some cases, it even became risky for researchers' lives. On the other hand, the extraordinary influence in Latin America of positivist criminology blocked this type of empirical research, which is linked to other theoretical positions developed out of a critique of that intellectual tradition (Zaffaroni, 1984: 21–2, 57–61; 1988: 2, 24). It is necessary to underline – as we pointed out above – that during the 1980s Zaffaroni was actively involved, and played key roles, in other wide-ranging empirical research projects of a comparative nature in Latin America, such as the one referring to the uses of prison on remand (Carranza et al, 1983) and to the deaths produced by penal systems (Zaffaroni, 1993).

'Marginal criminological realism'

In the 1980s Zaffaroni defined, in his successive texts, this complex exercise of theoretical and political inventiveness as a 'marginal realism' (Sozzo, 2006: 407, 410; García, 2021: 150–4). Marginal realism, in the Zaffaronian perspective, comprises three different dimensions in relation to criminology, criminal policy and criminal law (Zaffaroni, 1989: 177). According to Zaffaroni, realist-marginal criminology would allow researchers to approach the mechanisms and effects of the real functioning of penal systems in Latin America with a manifest political intention: to seek the necessary knowledge to reduce the levels of violence immediately and to eliminate them in the future (Zaffaroni, 1989: 177). In other words, it is about generating a critical perspective that is effectively functional for the transformation of Latin American reality (Zaffaroni, 1988: 23, 24):

In our margin we must get used to smiling sceptically when we are stigmatised as 'mystics', 'intuitionists', 'irrationalists', 'anti-scientists', etc., pretending to identify ourselves with central ideologies that followed different paths and that were instrumental in the struggles around the central power. Obviously, for this it will be necessary to do away with our inferiority complex, woven by the ideologies that were imposed by the central power, and look, as best as we can, at what our reality places before our eyes, with its unquestionable quota of enormous deficiencies and injustices. This is the difficult path of a marginal realism. (Zaffaroni, 1988: 58)

Why 'marginal'? For Zaffaroni,

assuming the marginal position... does not cost anything for our subaltern populations but it is relatively difficult for the researcher, not only because of his class origin but also because all the preparation and training conditions him to produce a discourse in a 'universal' way, as if 'centre' and 'margin' of power did not exist. (Zaffaroni, 1988: 3)

According to Zaffaroni, to assume the condition of 'marginal' is to transform the fact that 'we are located on the periphery of global power' into a central axis of our gaze (Zaffaroni, 1988: 3; 1993: 9). However, he opts for 'marginal' instead of 'peripheral' 'because it is more expressive'. 'Marginal' implies accepting a point of

view about ‘our facts of power’ in the context of a ‘relationship of dependency with the central power’ (Zaffaroni, 1989: 170). ‘Marginal’ embodies a culturally diffused definition of the marginalised Latin American population, which was conceived in the stages of colonialism and which Zaffaroni calls the ‘marginal-syncretic originality of Latin America’. It can only be understood historically, that is, in the 500 years of dependency of Latin America, as a colossal process of marginalisation (Zaffaroni, 1989: 170–2).

Why ‘realistic’? For Zaffaroni, this qualification is the synthesis of several philosophical and political elements. On the one hand, it means that the world ‘exists beyond and independently of us’ without ‘the act of knowing’ fulfilling a ‘creative’ role (Zaffaroni, 1989: 167). In addition, it involves circumventing the ‘reification’ of certain categories that the penal system constructs (such as ‘crime’), which are ‘invented realities’ that make thinking difficult. Realism also entails a political option, in other words, ‘relinquish – at least for the time being – any ideal model and a discussion about it because of the urgency to begin a praxis that reduces violence’, in light of the primary task of preserving human life (Zaffaroni, 1989: 167). This explains Zaffaroni’s vocation to intervene against the ‘genocide in action’ and the need to contain punitive power as a primary normative objective articulated in his work on the criminal policy and criminal law dimensions (Zaffaroni, 1989: 160–70). Zaffaroni’s preferred tool to contain punitive power is the reinterpretation of criminal law and the construction of a new perspective, which begins with the delegitimisation of the penal system (Zaffaroni, 1989: 9).¹²

Conclusions

Throughout this article we have shown how Zaffaroni’s work during the 1980s placed, at the centre of the construction of a critical perspective on the criminal question in Latin America, the problematisation of hierarchy, asymmetry and subordination in this field of knowledge between the Global North and South. At the same time, he expressed the need to fight against the reproduction of this dynamic as a long-term phenomenon. In this way, ‘marginal criminological realism’, as he defined his innovative position, constituted a series of assertions that critical criminology in Latin America and, more broadly, in peripheral countries, could only be imagined as a ‘decolonial’, ‘southern’ criminology, even though these expressions had not yet acquired the force they have today in the international debate. In this way, Zaffaroni, ‘from our margin’ anticipated a series of revealing points that we rediscover in the current criminological discussion. It seems to us that based on them it is possible, taking into consideration this extraordinarily significant precedent, to lay firm foundations for thinking about our own work from and for peripheral, marginal scenarios, both from a scientific point of view and a political one. We could try to synthesise these firm foundations as follows:

- A. The need to critique the long tradition of uncritical importation of problems, concepts and arguments related to the criminal question from the Global North to the Global South, based on their consideration as ‘universal’ – placeless or timeless – and part of a ‘modernity’ or ‘civilisation’ in which the peripheral intellectuals aspire to participate in this way.

- B. The need to see these elaborations generated in the Global North, including those that have a critical orientation, as 'provincial', which reflect the specificities of the temporal and spatial coordinates in which they are constructed.
- C. The recognition that these elaborations generated in the Global North can be useful for the task of understanding our peripheral, marginal contexts, keeping in mind that it is marked by important differences with respect to the centre in its dynamics and processes in relation to the criminal question, which are rooted in a long history of colonialism and neocolonialism, with its effects of marginalisation and dependency. But this utility – not always or in all cases! – is only possible on the condition that the proposals presented in the two previous points are effectively developed.
- D. The use of the elaborations from the Global North must be developed through a fruitful ongoing dialogue with the rich and varied traditions of 'popular', 'unofficial' knowledge generated in peripheral, marginal contexts, despite the processes of colonisation and neocolonisation, within the framework of a history of 'syncretisation'.
- E. The development of empirical research can be a path for the necessary immersion in peripheral, marginal contexts, which allows the development of theoretical and political constructions from and for them, even though we recognise that certain elements of these realities, linked to their cruelty and violence, are so evident that other types of approaches also reveal them, such as the one born from lived experience.
- F. The need, in addition to a more equitable dialogue with the elaborations generated in the Global North, to build a substantial, fruitful dialogue between the different peripheral, marginal contexts, based on the recognition of their differences and similarities, as a way of mutual enrichment.
- G. The need to develop a thought 'from our margin' that has the central political and ethical purpose of keeping back punitive power and 'genocide in action' here and now, which not only calls for the production of knowledge but also for realistic action and so imagines a strong connection between criminology, criminal policy and criminal law as a valuable and fundamental feature.

Based on the diffusion and extraordinary influence of Zaffaroni's work – but also the multiple coincidences with the proposals of other key Latin American authors of that time – it is possible to conclude that at least part of these firm foundations we set out have shaped a 'common sense' in Latin American critical criminology from the 1980s onwards, especially in the academic field of law.¹³ Since the 2010s, Zaffaroni has returned to some of these revealing points, adding a deep complexity to them that deserves detailed analysis such as we have done with respect to his intellectual production of the 1980s. This is an important exploration that still needs to be done.¹⁴

These firm foundations delineate a normative perspective confronting the hierarchy, asymmetry and subordination between the Global North and Global South in the production of criminological knowledge. An enormous pending task is to evaluate to what extent the intellectual production in the tradition of critical criminology in Latin America has effectively travelled this path over the last three decades, and the delimitation of its achievements and limitations in this regard. This is an ambitious

and complex research question that requires a collective effort across national borders, by researchers interested in the history and present of this intellectual tradition. We hope that this article will contribute to such an endeavour.

Notes

- ¹ For a recent exercise that has points of contact with what this article proposes, on another cultural context and the work of Syed Hussein Alatas, see Moosavi (2019a).
- ² In addition to the important contributions to this special issue, see the works of Anitúa (2005), Sozzo (2006; 2020; 2021), Malaguti Batista (2011; 2012), Giamberardino (2012), Andrade (2012), Vasconcelos (2014; 2017), Alagia and Codino (2019), Goyes (2019), Cordeiro (2020), Carvalho and Matos (2021a; 2021b), García (2021).
- ³ These proposals in relation to criminology echo a series of general debates in the social sciences that have acquired intensity in the last two decades and have generated crucial points of reference.
- ⁴ To illustrate this influence, throughout these decades Zaffaroni received 46 honorary doctorates, 43 of which were awarded by Latin American universities. For a detailed exploration of Zaffaroni's perspective in criminology from the 1980s onward, see García (2021) and Alagia and Codino (2019: 363–464). For an exploration of the styles of public engagement that Zaffaroni developed throughout his intellectual career, see Sozzo (2020: 128–33).
- ⁵ Linked to this since 1984, he also became professor of Criminology in the Faculty of Psychology at the University of Buenos Aires, a position he held until his retirement in 2007.
- ⁶ Such as Rosa del Olmo who delved into this problematisation on several occasions during the 1970s and 1980s (Del Olmo, 1975; 1981; 1990; see also Sozzo, 2006: 388–9, 398–400, 404–05).
- ⁷ He illustrates this with respect to the differences in the 'disciplinary function' of prisons in the centre and in the periphery. Prisons in marginal countries were established as a 'minor kidnapping institution within a much larger one' that was 'the great colonial kidnapping institution' (Zaffaroni, 1989: 81). This was overlooked by key authors in the central critique such as Foucault, when among the 'kidnapping institutions' he did not include 'the colony', which must be rethought of as 'a gigantic kidnapping institution with very particular characteristics' (Zaffaroni, 1989: 78).
- ⁸ As we pointed out in the preceding section, this was a perspective that has permeated the debate in the social and human sciences in Latin America since the 1960s, with extraordinary force. In Zaffaroni's work there are explicit references to certain key authors in this debate such as Gunder Frank, Baran, Cardoso and Ribeiro (see Zaffaroni, 1984: 13; 1989: 68–71).
- ⁹ For Zaffaroni, 'Latin America is, historically and anthropologically, the concentration of all worldviews marginalised by the rise of Europe, which generates conflicts, but is simultaneously fulfilling a syncretic process that is perhaps one of the most interesting and promising. Cultural superiority, the rise of European power and its universalisation brutally marginalised and subjugated the Indigenous and Blacks, making use of their own marginalised people. Finally, those who first marginalised us were marginalised by other "superiors" and sent us the marginalised of their already marginalised societies in Europe. We are an epiphenomenon of syncretisation, of marginalisation of the central power, unique in the world for its human, geographical and cultural dimensions. We are the syncretisation of the remains of all the genocides of a power that seems to

- advance towards the destruction of all humankind' (Zaffaroni, 1988: 76; see also 1989: 173–4).
- ¹⁰ In this reevaluation of 'popular knowledge' and the appeal to 'syncretism', Zaffaroni dialogues with key contributors to the 'philosophy of liberation' in Latin America such as Leopoldo Zea, Enrique Dussel and Rodolfo Kusch. As we pointed out in the preceding section, this tradition of thought constituted an important intellectual source for the birth of critical criminology in Latin America (see Zaffaroni, 1988: 69, 76, 78, 152, 221; 1989: 175).
- ¹¹ Between 1986 and 1990, Zaffaroni coordinated at the Inter-American Institute of Human Rights, a collective investigation of violations of the 'human right to life' by penal systems, the result of which was the book *Muertes Anunciadas* (Zaffaroni, 1993).
- ¹² Zaffaroni's 'realism' was not inspired by the so-called 'left realism' present in English-language criminology literature during the 1980s (Young, Lea, Matthews, and so on). Rather, his 'realism' stems from the debate in 20th century criminal law philosophy and theory, initially in the German context and later in Spanish-language contexts, especially around the work of Welzel and its 'finalist theory', of which Zaffaroni was an important voice from the 1970s onwards (as is clear from his autobiographical note in this special issue). This 'realist' point of view becomes 'criminological' in his intellectual production of the 1980s, in relation to his encounter with critical criminology and, at the same time, 'marginal' in relation to his encounter with the 'philosophy of liberation' and the 'dependency theory' in the debate of Latin American human and social sciences and politics. In fact, he was influenced during the 1980s by 'abolitionist' positions, particularly that of Louk Hulsman (Zaffaroni, 1983a; 1983b) – it is not by chance that Zaffaroni dedicated his crucial book of this period, *En Busca de las Penas Perdidas* (1989), to him – and by 'minimalist' positions of Italian critical criminologists, particularly Alessandro Baratta, which were often presented in Europe as antagonistic to left realism (see also his autobiographical note in this special issue).
- ¹³ However, the task of mapping Zaffaroni's influence on criminology (or criminal law theory) in Latin America is an endeavour that has not yet been carried out in detail, despite the well-diffused recognition of the centrality of his work.
- ¹⁴ A work in this sense would find important points of reference in Zaffaroni (2012; 2015; 2022), Zaffaroni and Codino (2015), Zaffaroni and Dias Dos Santos (2019) (see also Alagia and Codino, 2019: 369–464). An important question is to what extent these recent explorations of Zaffaroni's work have entered into a dialogue with the broader contemporary debate in Latin American social and human sciences that has involved the 'decolonial turn' and, especially, the discussion about the 'coloniality of knowledge' (among many crucial references, see Lander, 2000).

Conflict of interest

The authors declare that there is no conflict of interest.

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