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## Keynote Address: *Critical Criminology for a Global Age*<sup>1</sup>

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### A SHORT PREFACE

I want to begin by thanking all those who worked to make possible what I hope will be looked upon as the first annual Critical Criminology and Justice Studies Conference. I also want to thank the organizers for the honor of being invited to deliver the keynote address for the conference.

Being in the room that day with so many like-minded criminologists seemed a long way from the early 1970s when small groups of U.S. and British "radical criminologists" – the *bête noir* of what Don Gibbons (1979) so aptly termed "the criminological enterprise" – were struggling for, while being ambivalent about, a place within academic criminology. Today, in 2009, there is a sufficient critical mass of critical criminologists within even the relatively limited geographical reach of the Western Society of Criminology to hold a separate conference.

Stanley Cohen (1988), to my mind one of the best sociologists of criminological knowledge, has questioned whether such gains are to be lauded or lamented. It is certainly the case that while radical, critical, and feminist criminologists were scaling the ramparts of academia with some success, the forces of repressive control were successfully capturing levers of state power, unleashing thirty years of mass incarceration fueled by wars on crime, drugs, and poor people (Austin and Irwin 2000; Patillo, Weiman and Western 2004). Despite this triumph of repressive control, it remains important, nevertheless, for those of us that Cohen termed "anti-

criminologists" to continue reaffirming our commitment to critical analyses and honing our public policy alternatives to unequal justice. Doing so is not academic wool-gathering, as conservative politicians and managerial criminologists might suggest. It is, instead, purposeful action.

Public policy inevitably articulates the interests and consciousness of those with the positional power to determine state law, rather than codifying some pure form of scholarly knowledge or reflecting positivist visions of "evidence based" practice. Politics is always political, and justice policy is politics *par excellence* because it always announces a particular worldview about human nature and social order.

One need not have read Foucault (2003) to know that power determines what is understood as truth and that this politically determined truth is the basis for state policy. The inability of critical criminology to substantially slow the tide of state repression against the dispossessed is not a failure of intellectual effort or political commitment. Nor is it some failure to "get the message out." Speaking truth to power comes with no guarantee that power will listen. In fact, it probably comes with exactly the opposite. Small groups of dissidents, by themselves, rarely make headway against the forces of history. They can, however, create, nurture, and grow an intellectual framework that offers alternatives to a moribund system of thought and action once that system's failings become too weighty to ignore. It seems to me that this has been largely what critical criminologists have been doing these last 30 years, British "left-realists" excepted.

With the collapse of the neo-liberal dream of global economic hegemony, the burgeoning costs of a wildly overgrown justice system, and the election of the first mixed-race president in U.S. history, I think that moment for broad, public reconsideration of our justice practices might not be too far ahead. Thus, this is a timely opportunity to reflect on the challenges and promises of growing a criminology that is capable of understanding crime and justice as an expression of social order rather than as just an annoying social problem to be managed in what is otherwise the best of all possible worlds.

## KEY NOTE

Once I had agreed to be the keynote speaker for the Critical Criminology and Justice Studies Conference, I began to ponder, as is often my inclination, the *meaning* of the task before me. Long ago, as an apprentice musician, I learned that a *key note* is the lowest note in a scale, the one that determines the subsequent notes and gives its name to the scale. And I had a colloquial understanding of the idea of a *keynote* address. However, I thought that perhaps it would be interesting to consider the linguistic foundation of these terms.

Delving into my favorite source, *The Oxford English Dictionary*, I found two distinct meanings of key note when applied to the spoken word. In one, the two-word phrase "key note" is internal to the presentation, and in the other, the meaning of the single word "keynote" is external to it. When referring to the internal character of a presentation, a key note is "the leading idea of a discourse...the prevailing tone of thought or feeling." Thus, according to a 1783 rhetoric text, "Much of the Orator's art and ability is shown, in striking properly at the commencement, the key note...of the rest of his Oration" (OED, 2009).

When speaking of its external focus, a keynote is "an opening address, designed to state the main concerns or to set the prevailing tone for a conference" in a way that can "arouse enthusiasm or promote unity" (OED, 2009).

Thus informed, I found myself with two challenges: finding the key note, that is the leading idea that would set the tone of my presentation, and offering a keynote which would state the main concerns of the conference and arouse enthusiasm for the critical criminology project.

The key note, that is, the leading idea I settled on, is the product of a double borrowing. Drawing from an article I wrote for the first issue of *Critical Criminology*, I propose that the essence of critical criminology is the *critique of domination*, a phrase I originally borrowed from Trent Schroyer's (1973) book of the same name.

The larger keynote I hope to strike, that is, the idea around which I wish to create enthusiasm and unity, is the proposition that the essence of critical criminology's critique of domination is to challenge the epistemological foundations of orthodox criminology – specifically: (1)

legal formalism, (2) methodological individualism, (3) ameliorative motivations, and (4) mass-manufactured fears.

Given the complexity of these topics and the need to complete my remarks in a reasonable number of pages, I can only offer a partial elaboration of these concepts. I hope, however, you will find them useful in thinking about the character, purpose, and I would dare to say, the rightness, of our endeavors to transform criminology from a tool of political control to one of human liberation.

## The Critique of Domination

Critical criminology is engaged in a critique of domination insofar as it seeks to understand how taken-for-granted systems of control embed, circulate, and reproduce underlying structures and practices of economic, cultural, and political power. This critique of domination is found throughout critical criminology:

- In analyses of class, racial, and ethnic disparities in policing and punishment that reveal the justice system's role in preserving political-economic, racial, and ethnic domination by demonizing the harms available to subaltern classes while ignoring those that can only be perpetrated by elites.
- In studies of laws and justice practices that reveal the state's contribution to validating the domination of men over women and children, and of humans over non-human beings.
- In queer research that reveals how law and justice practices enforce normative heterosexuality.
- In studies that foreground how everyday justice talk reproduces the bio-power of the state and those who most benefit from its discipline of bodies, terrain, and social spaces.
- In the study of discrepancies between the human rights rhetoric of states and their actual human rights practices.
- And in many other criminological inquiries that recognize that law is power; that power is differentially distributed; and that any imbalances of power, whether or not deliberate in their creation, are pernicious in their practice.

The recognition of the centrality of power to all systems of state control, and a desire to reveal its operation lies, I argue, at the very heart of critical criminology. It is this concern that inevitably renders critical criminology a critique of domination. Wherever power operates behind a scrim of ideology, law, and rhetoric that obscures its existence, the not-so-simple act of revealing its presence is an unavoidable critique of the domination that power makes possible – much like revealing the Wizard of Oz or the naked emperor to the populace. Ah! The wisdom of

children's stories, those wise narratives we are told to leave behind as part of "growing up."

Because it is fundamentally a critique of domination, critical criminology is inherently a politically marginalized enterprise insofar as it lies outside the dominant consciousness that informs established systems of law and taken-for-granted practices of social control. There are costs to this marginality. Far fewer will be the invitations to sit at the councils of government or to dine at the trough of government-funded research. And even when one is offered a seat or a plate, wise critical criminologists will always query how such benefits might reduce their willingness to critique the dominant authority that is favoring them.

I am not, here, eschewing participation in governmentally supported research or state-authored programs for social change, as might someone more deeply influenced by anarchist politics than myself. In the choice between progressive reform and distant revolution, I am often lured to the side of reform by the voices of immediate suffering. I am suggesting, however, that critical criminologists should remain alert to the contradiction inherent in seeking a political platform from which to make critical change, and remain cautious about the possibilities of the hidden agendas, unintended consequences, and intellectual compromises that lurk in the shadows of participation in governmentality.

### **Keynote: Mobilizing the Critique of Domination**

While the internal keynote of my remarks is the idea that critical criminology is fundamentally a critique of domination, my mobilizing theme is setting out what I think might be a useful framework for recognizing the conceptual barriers to this critique. Those who take a critical stance to criminological inquiry have long recognized that orthodox criminology places relatively little emphasis on the greatest social harms and much on relatively smaller-scale, interpersonal forms of wrongdoing.

Most orthodox criminological inquiries focus on crimes of private greed, rage, or self-destruction. Most murderers, for instance, kill one or two people, with the occasional mass murderer killing ten or twenty. If all the criminological books, articles, and research reports devoted to analyzing these solitary killers were brought together, they would fill miles of library shelves. On the other hand, criminological analyses of political leaders who pursue wars of aggression that kill thousands or even millions of soldiers and civilians *might* fill a small shopping bag or two, if that. The same is true for the corporate and governmental designers of globalized capitalist projects, enterprises that dispossess peoples of land, livelihood, and culture in the name of profitable forms of progress. Most orthodox criminologists would find little reason to analyze the resulting political violence

or economic dismemberment. When it comes to studying the dealers of death and misery, Ted Bundy and Wayne Gacy are of much more interest to most criminologists than George W. Bush, Dick Cheney, or even Osama Bin Laden.

Orthodox criminology's primary focus on small-scale crimes arises from four meta-tendencies within the discipline: legal formalism, methodological individualism, ameliorative motivations, and mass-manufactured fear.

1) *Legal formalism*. The legal formalist position holds that "law is a set of rules and principles independent of other political and social institutions" (Garner 1999:913). Within the criminological tradition, legal formalism allows crimes to appear as real, as simple facts separate from the social, political, and economic forces that give rise to the legal system that names them crimes. In Morrison's (1995) terms, "law creates its own ontology." In its extreme, a formalist ethic has been used to argue that only individuals who have been prosecuted and convicted can be appropriately studied by criminologists, for only in these instances has there been a judicial determination that both a crime and a criminal exist (Tappan 1947).

The long-standing acceptance of legal formalism as the meta-theoretical foundation of criminology places most forms of injury resulting from organizational deviance in pursuit of economic and/or political gain beyond consideration. Insofar as those who determine the content of law are drawn from the same social register as those who manage the economic and political institutions that generate far-reaching forms of organizational deviance, legal formalism shields elites from social inquiry, protects their wrongdoings from condemnation, and clears the pathway for a managerial criminology concerned only with working class varieties of crime.

2) *Methodological individualism*. Methodological individualism is the proposition that crime arises from the private conduct of specific persons acting with a conscious design to cause harm to people or property. As a meta-theoretical assumption, methodological individualism directs the criminological gaze toward individual offenders and victims. This ensures that the focus of criminology will be crimes that can be attributed to the *mens rea* of specific wrongdoers. Harms, crimes, and social injuries rooted in organizational deviance, and I would argue that these are the true sources of the greatest social injuries, are thereby automatically excluded from mainstream criminological inquiry.

3) *Ameliorative motivations*. Historically, the dream of criminology has been to create a knowledge base that leads to the reduction of crime. The positivist promise, that knowing the cause of a problem is tantamount to envisioning its cure, can be deeply seductive to any field of inquiry that hopes to make the world better, and

criminology was so seduced. The desire to ameliorate the crime problem led criminological analysts to focus primarily on those crimes they could imagine reducing through the creation of a better informed, more efficient, or fairer justice system that would minimize the common crimes of the least well-off, and/or reform wrongdoers where prevention failed.

While part of the reason for focusing on individuals arises from the tendency for legal formalism to direct criminological inquiry toward crimes of individuals, the desire for ameliorative success, I suggest, exerts an independent pressure against studying the crimes and criminogenic character of large-scale political and economic institutions. Large-scale arrangements are a poor fit with the ameliorative desires of orthodox criminology for two reasons. First, addressing them would require a deep critique of established political-economic and cultural processes, a critique that would appear to violate the canons of value neutrality fundamental to positivist inquiry. Second, the desire for quick, technical fixes wilts in the presence of seemingly unalterable or "natural" social systems. As a result, criminology's ameliorative tendencies have the ironic effect of promoting organizational deviance by normalizing its outcomes as "accidents" or acceptable risks (Perrow 1999; Vaughan 1996).

4) *Mass-mediated fear.* Given its concern with ameliorating recognized criminological problems, the criminological gaze is easily tempted in one direction or another by public fears and mass-mediated crime waves (Altheide 2002). News and entertainment media ubiquitously and continually reinforce narratives about crime and justice organized around discourses of legal formalism and methodological individualism. News and entertainment foreground stories of individual criminals who have "broken the law," naturalizing both the law and the criminal individual. As a cultural process, these communicative systems create a particular "feel for the game" when it comes to the meaning of crime and justice (Bourdieu 1998).<sup>2</sup> This "feel" leaves most elite and organizational deviance outside the frame of "real" crime.

As a cultural project, mass media attention to private crimes is a project of forgetting—forgetting the masses who were or are being victimized in the pursuit of domination. From *Buffalo Bill's Wild West Show* to the contemporarily popular television drama *24*, with its normalization of torture as legitimate investigative strategy, mass communications and mass entertainments have a long history of dehumanizing the victims of elite power and justifying or even celebrating elite crimes. In doing so, they normalize great wrongs such as the aerial bombing of civilians as a tool of war (Kramer 2010) or turning war into a profit center (Whyte 2010) – to the point where they are beyond criminological consciousness.

## FRAMEWORKS FOR A CRITICAL CRIMINOLOGY

Creating a criminology that is not constrained by legal formalism and the other pro-power tendencies inherent in the discipline, I suggest, might benefit from theorizing how four characteristics of contemporary bio-power are reflected in whatever specific phenomenon we are analyzing. These are:

- 1) Political practices are always economic.
- 2) Economic practices are always political.
- 3) Both economic and political practices are deeply cultural.
- 4) The forces of economics, politics, and culture are frequently ill at ease with one another.

When I say political practices are economic, I am not reverting to the instrumentalist elite domination claim that governments are little more than the "executive" of some capitalist or other economic ruling class. State managers serve political constituencies whose perceived goals at any particular moment may, or may not, comfortably coincide with those of capital managers and owners. Thus, at times, as structuralists have noted, states may pursue paths that key sectors of capital would prefer they did not (Jessop 1982; Beirne 1979; Poulantzas 1973). Nevertheless, political practices, even when they are at odds with specific economic interests, are disciplined by the fundamental economic framework of a social order. Thus, managers of capitalist states are able to pursue a relatively wide range of economic policies, but only to the extent that these can be convincingly presented as contributing to the overall goal of ensuring stable capitalist markets, even if some sectors of capital are vigorously opposed to specific reform projects. One need not look beyond the variations on capitalism pursued by both Franklin Roosevelt and Barack Obama, in their efforts to return capitalist markets to stability and growth after significant economic contractions, to recognize the degree to which every state, except a revolutionary state (and only until the revolution is consolidated into a new order), will operate within a distinct band of economic assumptions and possibilities.

The actions of political states, including their laws, cannot be understood independently from the economic arrangements they are designed to facilitate and protect, and upon which they depend for financial support. This does not mean the state is the slavish tool of economic practices. But it does mean that economic considerations are always present in any analysis of political practices, including law making and criminal justice.

When I say that the economic practices are always political, I do not mean to suggest that economic decision-makers are merely the facilitators of less obvious political agendas, as might be the case when economic crises are manufactured and/or used to extend state power via a

"shock doctrine" (Klein 2008). Capital is not unitary, cohesive, or self-contained. Nor does it require any particular cultural framework to function (Zizek 2008). Capital, thus, is not exclusive to any particular sociological framework, as evidenced by the ability of capital to coexist with both U.S. neo-liberal democracy and Chinese communist state-capitalism.

While there are often significant overlaps between economic and political agendas, political leaders (at least for the present moment) manage geographically *bounded* states as compared to capital managers who serve the interest of geographically *dispersed* investors, some of whom benefit from particular political designs, and others who may not.

The Iraq war, for instance, advantaged capital sectors associated with the production of military hardware and the provision of military services (O'Reilly 2005). We are only beginning to learn the extent to which profiteering and corruption by military contractors enriched private sector capital (Whyte 2010). The hopes for war profits ensure that some sectors of capital will always support war. Thus, in the United States, representatives of the military-industrial complex have a long history of supporting hawks as political candidates.

At the same time, war or other foreign adventures do not necessarily serve the interests of all capital sectors. In the case of the Iraq war, for instance, the domestic construction sector experienced substantial increases in the cost of material inputs leading to a rise in new home prices that, along with corruption in the mortgage lending sector, may have contributed to the eventual collapse of the housing market and wider destabilization of capitalist profit-making.

For these reasons, any criminological inquiry into economic wrongdoing must always be alert to both the supportive and constraining role of political forces over economic decision-making.

When I say that both economic and political practices are always cultural, I do not mean to suggest that culture – understood here as the material representation and social performance of deeply rooted myths, values, and ideations through speech, ritual action, and routinized daily practices – is either uniform or a simple expression of political and economic forces in any contemporary nation-state. Rather, I suggest that no political or economic action can be understood outside of the cultural frameworks that give meaning to those actions.

Both politics and economics are cultural constructions before they are anything else. Groups with a shared culture must first imagine particular configurations of power or value before these can ever take material form as a government, money, or an economic system. While at the same time, materialized practices exert powerful influences on the construction of cultural products, in a continual dialectic.

Critical analyses of crimes and social injuries must consider how leaders and followers come to believe that practices of domination flow from noble, rather than base motives. They must interrogate how these understandings intersect with culturally constructed historical narratives of a people and their purpose. Foucault's conception of *biopower* and Bourdieu's notion of *habitus* are useful theoretical touchstones for such analyses. However, I feel there is much to be done in applying these to the creation of a culturally sensitive form of critical criminology that neither denies nor overemphasizes the importance of agency in the construction of social life. What I am suggesting here is that critical criminologists need to investigate how domination becomes part of the habitus of societies in ways that enable both elites and large masses of subordinates to become reasonably tolerant of the harms committed by dominant groups, while equivalently outraged at the lesser harms committed by the dominated.

Like David Harvey (2003: 29), I suggest that the logics of capitalism and empire – and to his analyses I would add culture – “frequently tug against each other, sometimes to the point of outright antagonism.” In the contemporary moment, neo-liberal capitalism, national geopolitical strategies, and cultural ideations exist in a state of tension. However, they do so with sufficient points of convergence to also make it possible for states to effectively convince large majorities that established justice policies are not strategies to reproduce existing patterns of economic and political domination, but are natural and logical efforts to preserve social order in the interests of all.

Given the tensions among economics, politics, and culture, it is important for critical criminologists to comprehend, not only the convergences among these social forces – but also the fault lines between them. This has two purposes. It is an effective standpoint for understanding apparent anomalies and tensions between law and economics. And, it provides the activist critical criminologist with a clearer understanding of where levers for change might best be inserted.

## BEYOND LEGAL FORMALISM

In a series of articles, Ron Kramer and I argued that the invasion of Iraq and many elements of the subsequent occupation were violations of international law, as designated by the United Nations and Nuremburg charters and the specific treaties and conventions that have evolved from them (Kramer and Michalowski 2005). On reflection, it seems to me that our argument points to several challenges facing efforts to move beyond legal formalist frameworks – that is, frameworks dependant on the claim that somehow the events in question are violations of law.

Our characterization of the invasion and occupation of Iraq as international crimes is not a description of international law in action, but rather our interpretation of

how international jurists *might* rule if the Iraq war were to come before them. However, no authoritative international prosecutor or court has yet to rule that these actions are violations of international law. From the standpoint of legal formalism, one which supporters of the war are inclined to embrace, without such a ruling, all claims that the invasion constituted a war crime of aggression are unsupportable. I am not embracing this legalist standpoint. Rather, I use it to note that grounding criminological analyses of, in this case, international wrongdoing, on legalist suppositions of how judges might rule is an analytically vulnerable standpoint.

The appeal to international laws, while certainly a useful guidepost, presents another analytic conundrum. The United Nations, as a framework for creating and applying international law, is itself an expression of geo-political interests and unequal power relations wherein decisions about the legality of both classes of actions and specific wrongful actions within those classes depend, not upon some routine application of law, but upon the relative strength of geo-political coalitions and the particular interests of powerful members involved in those actions. Any legal system designed so that its most powerful potential violators, that is, the permanent members of the Security Council, can veto enforcement actions directed toward their own violations cannot be reasonably considered a system of law.

The tension between the legalist views of international law and the reality that these laws in action are the expression of existing geo-political balances of power suggests that grounding analyses of crimes of domination on existing international frameworks of human rights as if these frameworks were laws may not be a sound meta-theoretical choice.

One path away from legal formalism is to treat the legal or tolerated wrongdoings of powerful sectors and institutions as forms of deviance. Although The U.N. and Nuremburg Charters, the Universal Declaration of Human Rights, as well as other U.N. covenants and customary international laws lack the primary characteristics of positive law, they nevertheless are significant international norms (Donnelly 2003; Glendon 2002). From this standpoint, one could conclude that acts that appear to contravene these norms are as legitimate a topic for criminological inquiry as any other form of non-criminal deviance.

Criminology has a long history of studying forms of deviance that were either not criminalized, or from the perspective of social activists, not sufficiently penalized. This is certainly true in the areas of civil rights violations, child and woman abuse, hate crimes, and violations of the rights of indigenous peoples. As Dershowitz (2004) argues, legal rights are frequently created out of campaigns against social wrongs. The fact that positive laws do not prohibit many of the social injuries caused by domination does not automatically place these injuries outside the

boundaries of criminological inquiry. Many of these harms and social injuries are certainly viewed as deviant by the majority of their victims, and on that basis alone are legitimate topics of inquiry (Green and Ward 2000; 2004).

While there is much to recommend a deviance rather than a legalist model as the meta-theoretical starting point for critical criminological inquiry, doing so relies on *a priori* social constructions of a particular situation or outcome as problematic (Blumer 1971). However, many harmful consequences of domination may not generate even this level of social recognition and approbation, yet they remain injurious nevertheless. To the extent that criminologists identify socially injurious outcomes of domination, these can and should be incorporated within the criminological arena, regardless of their juridical or social movement status.

Some years ago, I had suggested that a possible alternative to legalist and deviance-based approaches to the critique of domination might be the concept of *analogous social injury* (Michalowski 1985). Specifically, analogous social injuries are actions that produce “death, injury, financial loss, fear, emotional distress or deprivation of the rights of political participation that are equivalent or greater in gravity to similar consequences resulting from actions defined as criminal by law” (Michalowski 2007). As a starting point in the conception of our subject matter this approach directs criminologists to actively seek, identify, and analyze social forces that generate individual, collective, and organizational actions whose injurious consequences are equivalent to actions defined as crime by law. It is in this space between accepting and condemning socially injurious actions that states reveal the truth and the contours of domination.

Put simply, murder kills people. War kills people. Thus, why nations commit war and who are its victims ought be at least as central to criminological inquiry as why and whom individuals murder. Similarly, robbery, burglary, and theft use force or guile in ways that make people poorer. Many practices fostered by neo-liberal capitalism also use force or guile to make people poorer (Perkins 2005). Thus, I suggest, it makes little sense, but for the ideology of domination, to claim that robbery, burglary, and theft are legitimate topics of criminological inquiry, but global manipulations of credit, the expropriation of hereditary lands or resources under the guise of development, or mandated “structural adjustments” that impoverish many while benefiting few, are not.

John Braithwaite (1985:18) once suggested that casting such a broad net is an effort to shape criminological inquiry to fit individual moral preferences. However, I suggest that the concept of analogous social injury does just the opposite. It substitutes an analytic measure – degree of injury – for the moral and political preferences inherent in all legal systems. Those attempting to begin their inquiry from an analogous social injury

standpoint would, of course, face the challenge of making a compelling factual case that the injuries being studied are indeed analogous in the gravity of injury to criminal acts. Doing this, in itself, however, would play an important role in expanding the horizons of criminological inquiry.

A critical criminology formed around a broad vision of social injury is well suited to the challenge of pursuing social justice in the twenty-first century. The globe has been reshaped into a highly integrated, if fragile, capitalist network, with a class structure arrayed as much across nations as within them. While domination remains to be challenged within the advanced capitalist states, I suggest that the dominion that advanced states exert over those situated lower in the global class structure is an even graver challenge to the ideals of social justice that animate critical criminologies of all flavors. Insofar as many of these injurious actions exist in the "space between laws" created by international structures of dominance and subaltern states, it is imperative that critical criminology transcend legalism and strike out toward a new vision that begins with social injury, not with law.

As we reveal the discrepant choices through which political systems tolerate grave harms while aggressively repressing lesser ones, we contribute to peeling back the many layers of ideological construction that normalize domination. While doing so does not automatically provoke justice or limit domination, it does contribute to the formulation of new understandings and new policy options to be tried when and if the political climate surrounding justice policy undergoes significant change.

## Endnotes

<sup>1</sup> Originally presented as the keynote address for the inaugural Critical Criminology and Justice Studies Conference, San Diego, CA, 2009.

<sup>2</sup> While Bourdieu was particularly concerned with *habitus* as a class-differentiated phenomenon, and there are identifiable class differences in the "feel for the game" concerning crime and justice, particularly with respect to surplus population groups, I suggest that dominant media outlets represent and reproduce what could be called conventional mass *habitus*, that is a cultural frame accepted broadly across social classes.

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