Special Issue: *Discourse, Race and the State*

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Preface to the Special Issue: *Discourse, Race and the State*

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This volume of the *Western Criminology Review* addresses the construction of racialized justice as a social and discursive process. Since its first appearance in criminological thinking 20 years ago, critical race theory has grown in significance. Originally part of Critical Legal Studies (CLS) that questioned law and the courts, critical race theory has grown to become a major challenge to the operation of social control and questions the legitimacy of dominant power structures. Early research drew attention to judicial outcomes --- in particular, sentencing disparities --- that appeared to indicate that race was a factor in explaining different treatment between blacks and whites. Other work went beyond reporting differences to advocating political action. Important, too, has been the ways in which a racialized criminal justice system, based on stereotypes of offenders, immigrants and criminal justice practitioners, contributes to the ongoing production of crime and that the combined effects of race, crime and "justice" differentially impact communities, families and children of racial and ethnic groups. Marginalizing youth of color, and segregating communities along the lines of race and ethnicity, generates feelings of abandonment by societal-level institutions. As injustice increases, the legitimacy of social institutions is undermined. Longtime contributors to critical race theory in criminology, Richard Delgado and Jean Stefancic (1993; 2005) have pointed out that while we need to continue to document differences in justice practices, we also need to be aware of the fundamental social processes that produce these differences. These include "the social construction of race, and the related idea of differential racialization," which holds that "race and races are products of social thought, categories that dominant society invents, as it racializes different minority groups for particular purposes" (Delgado and Stefancic 1993 and Delgado and Stafancic 2005 as cited in Lanier and Henry 2009:377).

This special issue of the *Western Criminology Review* then focuses on the ways in which discourse around issues of criminal justice frames, channels and contributes to the institutionalized practices that produce the ultimate disparities in the system. Contributors look at how we conceive of and socially construct our view of the "other" in language that becomes an embodiment of the state's power to perpetuate injustice. They do so from the perspective of someone who worked in an institution who is now an academic, a convict's view, a critical criminologist's observation of a meeting between prisoners, victims and policymakers, and an analysis of discourse in the social construction of criminal justice. The volume marks a shift in focus from studies about racial differences in crime and justice to the processes that produce and institutionalize those differences.

Background: The articles in this volume are based on presentations at the first annual Critical Criminology/ Justice Studies conference held prior to the annual Western Society of Criminology meeting in San Diego in February 2009. The second annual meeting was held in Hawaii in February 2010, and the attendees to this collaborative hope to make it an annual event.

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Keynote Address: *Critical Criminology for a Global Age*[1]

Raymond Michalowski
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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).[2] 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 Barak 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 capitalists 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

[1] Originally presented as the keynote address for the inaugural Critical Criminology and Justice Studies Conference, San Diego, CA, 2009.

[2] 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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Notes on the Study of Language: Towards Critical Race Criminology

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Abstract: *In this paper I demonstrate that the study of language constitutes an effective platform for the sociological analysis of 'race' and 'crime.' I also establish that the study of justice-related language provides a powerful tool for the construction of a critical race criminology or the study of racism residing in the discourse about, and the practices of, what is termed the 'criminal justice system.' Specifically, I demonstrate that the study of language contributes to critical race criminology by demonstrating how everyday language (reality) not only criminalizes people of color, but also builds and maintains racist 'criminal justice system' discourses and practices, even while acknowledging the problem of 'race' in matters of 'crime' and 'criminal justice.' I determine that, while to some extent previous research has highlighted the potential of language studies to unmask the racism of modern 'criminal justice' discourse and 'criminal justice' practices, much work remains to be done. To demonstrate the latter arguments, I (1) present previous justice-related language studies in a critical race criminology light, and (2) suggest an agenda for future research that will employ justice-related language studies as a contribution to critical race criminology.*

Keywords: race and crime; race and criminal justice; language; critical race criminology; poststructuralism; postmodernism

REALITY IS LANGUAGED

Edward Sapir (1921) once noted that human beings do not live in an objective world alone, but also exist at the mercy of the everyday language of their society. Sapir demonstrates that language is not merely the incidental means of communication and reflection, but that the *real world* is built on the language habits of a group. As he writes, "We see and hear, and otherwise experience very largely as we do because the language habits of our community predispose certain choices of interpretation" (cited in Whorf 1956:134).

Sapir's point, that the *real world* is little more than a habitual language construction, invites criminologists to ponder modern justice language. For researchers interested in the problems of the 'criminal justice system,' the question is clear: what are the justice-related language habits of modern discourse, and what interpretations do

such language habits predispose speakers and listeners toward? If Sapir is correct, and merely by using the language we do, we *define* what we seek to describe, it is critical to ask how the justice we practice is a language construction.

Thinking About Language: Structuralists, Poststructuralists, and Postmodernists

The above proposition, that language demonstrates the world is less objective and more intersubjective, is not without detractors. Today, the debate happens mostly between those who align themselves with structuralism or poststructuralism. For structuralists, human behavior is determined by various structures, such as "society" (Levi-Straus 1969a). From this view, persons are seen as born into a social life that exists independently of them and which significantly determines their behavior. For

structuralists, individuals act according to the "institutions," "values," and "culture" of the social life of which they are a product (Levi-Strauss 1963).

For structuralists, meanings are necessarily produced within a "culture." Levi-Strauss (1963, 1966, 1969b), the founder of structuralism, argues that the human mind has structures that predetermine all practices of social life. For structuralists, there is such a thing as "society" and it predates individuals. Language, for example, is seen as the product of the "grammatical structure" of opposites (cold/warm, peace/war, male/female, etc.) and a Saussurean system of signs. Thus, for structuralists, language is a system whose logic can be uncovered by studying the biological and social structures that produce it.

The fundamental assumption of structuralism is that all content is determined by structure and that all meaning is a result of relationships between structures or networks of structures. Structuralists have sought this kind of *grammar of structure* in a wide range of human social phenomena. Levi-Strauss (1963) found it in kinship structures and myths, Lacan (1968) in the unconscious, and Barthes (1986) in narratives. Thus, to a structuralist, all phenomena are organized around systems of signs; i.e., they are languages that are given by deep structures (Chandler 2002).

For structuralists, the study of texts and speech is an investigation of how structures show up in discourse. For structuralists, the study of language can produce two things; one, it allows them to study the details of a particular sign system, and two, it allows them to identify how deep structures impact language. Meaning is produced by persons, not because they arrive to it alone, nor because they create it within a context or interaction, but because they are guided to meaning by the larger structures and networks of structures. According to structuralists, although meanings can organize experience, meanings are always products of structures and not the result of intentional individuals. Thus, for structuralists, while practices of social life can appear to be the producers of meanings, in truth both the practices and the minds are the products of deep structures (Levi-Strauss 1963).

The structuralist account becomes heavily reconsidered after the 1960s through the work of Michel Foucault (1973) and others, who begin to suspect that human nature and behavior is vastly more complex than being simply a product of structural forces. For poststructuralists, the problem also emerges as a methodological one, namely that, in contrast to the structuralist suggestion, one cannot so neatly step outside of discourse to "objectively" assess matters. Building on Heidegger and Nietzsche, and armed with Derrida's "deconstructive" method, poststructuralists emerge with a new paradigm that some label postmodernist, not least because structuralism was tied to modernism and Enlightenment rational-logical thinking. The new paradigm flirts with the inherent ambiguity of texts and the impossibility of final or complete interpretations (Derrida 1976).

Though almost all those labeled as poststructuralist or postmodernist at one point or another deny such membership, we can locate a body of scholarship that is working to modify structuralist conclusions. The work of Barthes, Derrida, Foucault, Lacan, Baudrillard, and Kristeva rejects the foundationalist and essentialist nature of structuralist thought. These authors also reject Enlightenment ideas about human nature as sacred, separate, timeless, and progressive. Instead, humans, more typically referred to as "human subjects" and sometimes as "human agents," are seen as constructed within interaction, through intersubjectivity and importantly, within discourse. A human subject is seen as a collection of roles, though not in the strict sense of identities fixed in a social hierarchy or structure, but more as fluid and multitudinous disparate existences depending on environment, location, and time, and is seen as living in different discourses that are produced, reproduced and shifted in interaction (Barthes 1972).

Consequently, poststructuralists/postmodernists emerge with the view that attention to context and discourse is primary, especially over any concern with structure (Barthes 1975). For poststructuralists, language becomes the primary concern as it is now *not* simply the product or evidence of structure, as it was in structuralism, but the location of meaning creation, or that which gives birth to experience (Barthes 1972). Meaning here is a result of a particular context, a particular discourse, or a particular "text" (a context with a complete set of assumed rules and relationships).

For the poststructuralist/postmodernist, meaning is only perceivable from the angle of a particular text: objectivity in the structuralist sense is impossible, and an intersubjective understanding of meaning remains the only possible reading of such text (Derrida 1976). Reading meanings or texts can only occur within the experience of reading meanings or texts together (and by this, I mean both multiple texts and multiple readers). Even my use of "experience" here is problematic for poststructuralists, as it implies the possibility of an objective reality, such as history or institutions. The poststructuralist replaces history with "historicity" in order to indicate the tentativeness of meaning-agreement, the innate multiplicity of meanings any single text offers, and the centrality of the "reader" or interpreter (Foucault 1973). Institutions become clusters of recurring relationships and practices having the appearance of reality, rather than being reality. Social relationships are represented by appearances of these appearances, constituting a hyperreality or a simulation of a representation (Baudrillard 1975; 1983). Additionally, interpretation is always within discourse, because what we know, analyze, and conclude is accomplished through discourse and

within a text – both of which we cannot step out of (Barthes 1975). For poststructuralists, without exception, texts are only what they are read as because reading only occurs within and through discourses that are innumerable even within a single linguistic tradition. Simply put: we cannot step outside of our hermeneutic (or interpretation).

Thus, with poststructuralism/postmodernism the "there-ness" of meaning is replaced by the insight that texts have no inherent meanings, only shifting and unstable meanings (Lacan 1968). Languages or discourses cannot deliver us to the "True" interpretation because a language or a discourse itself derives its meaning by contrast with other languages and discourses (Derrida 1976). Meanings cannot exist in the logocentric sense of Plato; i.e., there is no beauty, truth, or right/wrong way, but only beauties, truths, and right/wrong ways.

Unsurprisingly, poststructuralists advise extreme caution in the interpretation of texts as such acts frequently favor dominant interpretive models, values or influential authors/thinkers, and frequently ignore the marginal (Kristeva 1980). Derrida's (1976) deconstructive method is a process that allows us to take apart the ways in which meanings are designed and put into operation. In this fashion, poststructuralism draws our attention to how we always "see" and "hear" the dominant discourse (Foucault 2003) and the dominant codes that frame or "educate" us to recast other interpretations (Barthes 1975).

In the social and human sciences, the debate between structuralism and poststructuralism/postmodernism has resulted in shifting our attention from an obsession with "facts" and "data" to the complex implications of language, discourse, and text. Many scholars have seized the opportunity to rethink various aspects of knowledge and social life; e.g., ontology and epistemology (Tyler 1987), genres (Geertz 1988), the senses (Stoller 1992), and the disappearance of individual speakers into the patterns of discourse (Moerman 1988). Others have expanded the reach of "social construction of reality" theory beyond the founding work of sociological phenomenologist Alfred Schutz (1932; 1964), Berger and Luckman (1966), and others to the productions of selves in personal relationships (Blumstein 1991), the use of disclaimers and neutralization of the moral bind of law (Sykes and Matza 1957), the use of accounts, excuses, and justifications to normalize and manage problematic situations along with the use of motives (Scott and Lyman 1968), and the use of disclaimers to manage identity in problematic events (Hewitt and Stokes 1975).

Poststructuralism has also inspired and regrouped much criminological theory; from its precursor in the 1938 writings on tagging (Tannenbaum 1938) through the founding of differential association in 1939 (Sutherland and Cressey 1974), differential reinforcement (Akers 1979), social constructionism (Quinney 1970), peacemaking criminology (Pepinsky and Quinney 1991), labeling (Becker 1963), primary and secondary deviance

(Lemert 1972), constructing social problems (Spector and Kitsuse 1977), constructing rule making and rule breaking (Pfuhl and Henry 1993), and through criminologists, such as constitutive theorists who combine social constructionist thinking with postmodernism, and some elements of modernism (Henry and Milovanovic 1996; 1999; Milovanovic 2002). The most recent manifestation of the poststructuralist turn in criminology is to be found in the collective writings on "cultural criminology" by Jeff Ferrell, Keith Hayward and Jock Young (2009).

There are also weighty implications of poststructuralism elsewhere. For example, as they relate to this research project, they include: What is our justice discourse? What does its deconstruction demonstrate? What does our discourse posit as beautiful justice, true justice, and the right/wrong way? What meanings is our justice discourse privileging? What meanings is our justice discourse marginalizing? Which persons do such meanings privilege or marginalize? Who are the agents (moral entrepreneurs) of the dominant discourse? What are the Foucauldian *subjugated knowledges* that are not *apparent* in our public discourse of justice (Foucault 2003)? In other words, what are the justice meanings, truths, and knowledges that are confined, given no place, or driven underground? What are the marginalized agents declaring about justice meanings? Who in our discourse is defined as "fighting for" and "fighting against" justice? How do all these claim to speak for all of us?

Justice Is What Is Languaged

The profound impact of language choices has been demonstrated well beyond theory. The consequence of language choices when justice situations are described has been skillfully demonstrated by laypersons and academics. In his fiction and essays, George Orwell (2000) demonstrates the power of language as a tool for domination. He shows how moral entrepreneurs frequently use (and abuse) clever language choice, metaphor, and meaningless words, in order to deceive publics. In more recent times, Frank Burton and Pat Carlen (1977) advance a similar argument about the 'Official Discourse' of government language in reports, rhetorical positions, and the like. Burton and Carlen also expose the greater capacity of government authors to define situations in social life as a result of their disproportionate power to owners of other discourses on the same topic. Students of 'criminal justice' show how language choices along with cognitive psychology can influence law and legal practice (Solan and Tiersma 2005), or how incarcerated youth use language to resist powerful state and academic discourses on the etiology and amelioration of juvenile deviance (Banks 2009), or how the incarcerated generally do the same through the use of "jailhouse lawyers" (Thomas 1988), and through resistance against the attempted confinement of their agency (Bosworth 1999). Michel

Foucault (1977) provides another great example. He masterfully demonstrates how the study of dominant language unmasks the capacity of some groups to control discourses and hence to control the realities of not only their own groups, but also the public at large; in other words, the perception of reality and thus reality itself.

The work of these authors, and the work of many others from numerous fields of study, create a precedent for the argument that the use of language in social life can privilege certain discourses to dominance, while marginalizing alternative discourses to second or third place, or sometimes even to irrelevancy (early critical criminologists who struggled for recognition with orthodox criminologists knew this problem intimately).

In the broader research field of 'criminal justice,' daily language choices that once were seen as deliberate have now become habits of language that carry a concrete reality. For example, what once was an intentional, perhaps even odd, drawing of certain social situations as the encounter of 'criminals' and 'victims' in 'crime' situations is now widely experienced as anything but a discourse creation, an option, or one of many possible ways of describing such situations. Instead, the linguistic distinctions 'criminal,' 'victim,' and 'crime' (along with myriad meanings that automatically accompany them) are now an innate part of how scholars and publics widely think of, or describe, these social situations, why responses to some actors in such situations belong in the domain of 'criminal justice' and not social justice, and why 'criminals' are viewed as worthy of punishment and 'victims' as worthy of empathy (see Beck in this volume). There are many other ways to *experience* and *describe* these social situations, and they are not in the literature of social and cultural anthropology alone. Although such experiences and descriptions are not widely available, they do exist, such as the restorative justice worldviews of some native peoples in North America, Australia, and New Zealand.

While analysis of alternative descriptions of such situations must be left for another time, here I would like to emphasize that *justice language choices* possess enormous power to support (and ultimately to create and recreate) entire *justice discourses* that in turn seem to describe an innate *social reality*. Seen this way, a cumulative set of justice language choices builds complex and intertwined perceptions that construct 'crimes,' 'offenders,' and entire paradigms of justice. Such distinctions and paradigms, no matter how *real* they appear to be, are always little more than a discourse, manifest through relationships, and importantly, constitute only one of an unlimited number of available or imaginable discourses.

Thus, in time, justice (language) paradigms, such as the retributive/punitive one that is based on the distinctions 'offenders,' 'victims,' 'crimes,' and the like, become deeply accepted *obvious* interpretations of social situations. In the right political climate, these interpretations then become dominant justice (language) movements, such as the 'tough on crime' discourse has become in North America (but see Kappeler and Kraska 1999).

For students of race and justice, and specifically for students of critical race criminology, the questions are many. The most important of these is how everyday language (reality) not only criminalizes people of color, but also builds and maintains racist 'criminal justice system' discourses and practices, even while acknowledging the problem of 'race' in matters of 'crime' and 'criminal justice.'

Race Is Languaged

The idea developed above, that language choices and distinctions create and sustain entire social discourses that, in turn, seem to describe an innate social reality, is no less true in the situation of 'race.' While 'race' groupings reflect phenotypic and genotypic traits, beyond this they are merely a social construction (Lie 2004; Palmie 2007). As the American Anthropological Association bluntly states, "differentiating species into biologically defined 'races' has proven meaningless and unscientific" (AAA 2009). Research demonstrates that the interpretation 'race' is not a matter of biology, as more genetic variability exists within such grouping than between them (Long and Kittles 2003). Moreover, conceptions of 'race' and 'races' are not timeless fixtures but social products that are invented, maintained, and eliminated as they serve an age and a society (Delgado and Stefancic 2001). As such, 'race' belongs to the study of history and sociology that interprets all human inventions (language) used to negotiate the imaginings called perceptions and experiences of difference (Smedley 1999). Put differently, the creation 'race,' reflects a *linguistic device* to express intellectual and popular beliefs about human groups and to justify ideologies with definitive historic and economic purposes (colonization, slavery, etc.).

The implications of 'race' are far reaching. In the human and social sciences, scholars face a call to use sharp and critical eyes to identify not just the constructed nature of 'race,' but also the hegemonic role that the distinction itself supports (Zuberi and Bonilla-Silva 2008). This is a call to observe and decry racism, but importantly it is also a call to recognize that modern social environments are hyper-racialized and necessitate that scholars examine the *color* of social theory, the *color* of analytic frames, and the *color* of practice. Some scholars have found color in the "unconscious racism" of law (Lawrence 1987), and some have found evidence of color in the "petit apartheid" practices of jury nullification and racial profiling (Milovanovic and Russell 2001). Yet others, encouraged by the postmodern turn, point to the usefulness of examining narratives and storytelling, analyzing the

construction of subjectivity and viewpoints, as well as re-imagining methodology through which knowledge is validated – all to locate the oppression inherent in racist discursive activities (Arrigo, Milovanovic, and Schehr 2005).

In the study of 'crime,' 'race' is more commonly encountered as a research variable that endless generations of bean-counting criminologists take for granted and accept as unproblematic. Here 'race' is encountered as a construction whose very study perpetuates and encourages racist 'criminal justice' thinking and practices it purports to deconstruct. Karen Glover's *Racial Profiling: Research, Racism and Resistance*, calls for a "critical race criminology" that

> "specifically addresses traditional and contemporary examinations of race in criminology and contests the ways the discipline produces and represents race by focusing on and indeed validating experiential knowledge via the social narrative of marginalized communities" (2009:2).

Glover's call denotes the point of entry for the study of language as it contributes to a critical race criminology and the study of racism which resides in the discourse and practices of the 'criminal justice system.' My point here is that to study the specific language of 'criminal justice' discourse is to visit the site where 'race' and 'racism' infuses 'criminal justice discourse.' Indeed, it is in everyday language (reality) that people of color are criminalized; it is in everyday word choice, word use, and word control that the racist 'criminal justice system' discourses and practices are built, maintained, and reproduced (even while the problem of 'race' and 'racism' in matters of 'crime' and 'criminal justice' is being fully acknowledged).

'Racism' reflects the ways in which social relations are constructed to advantage and disadvantage human groups that are distinguished as belonging to disparate 'racial' categories (Bonilla-Silva 2003). More important to my project here, 'racism' reflects the ways in which social relations are *continuously maintained, recursively reconstructed, and creatively innovated* to advantage and disadvantage human groups that are distinguished as belonging to disparate 'racial' categories. To accomplish the latter, it becomes important to expose the mechanisms that sustain 'racist' discourse and 'racist' practices *even amidst a discourse and practices that claim to recognize and contest such 'racism.'*

I contend that the study of justice-related language provides for the study of mechanisms that sustain 'racist' discourses and practices. The identification of race, race as a discursive process and racisms through the study of justice-related language provides a powerful tool for the construction of critical race criminology. My remaining purposes in this article are to identify such justice-related language research that highlights the work of 'racism' and to make a call for further critically aware and reflexive research on race.

STUDIES OF JUSTICE-RELATED LANGUAGE FOR A CRITICAL RACE CRIMINOLOGY

I have been arguing throughout this article that the study of justice-related language is an essential ally to critical race criminology. Although a methodical examination of race-related language in the criminal justice system's rhetoric has not been undertaken, nor the potential for such an analysis previously identified, the power and promise of such work can be demonstrated by considering previous work in the theoretical context just developed.

Haig Bosmajian's (1960; 1983) historical studies examine the power of language to label, construct, suppress, and control people by use of metaphor. For example, he demonstrates how the languaging of Native Americans as 'uncivilized barbarians,' African Americans as 'beasts' or 'nonpersons,' European Jews as 'vermin,' 'parasites,' and 'a plague,' along with similar implications for persons through the language of sexism, homophobia, and the language of war, gives legal and moral standing to efforts to criminalize and control such populations.

Similarly, Turner Royce (2002) recently studied the transcripts of the British House of Commons and discovered that, almost without exception, when parliamentarians discuss people of Romani descent (those commonly known as Gypsies), they discuss them as 'dishonest,' 'criminal,' 'dirty,' and most importantly, as threatening, not least because as itinerant bands they are portrayed as potentially stealing children.

Above all, such scholarship shows how language can be used to justify human action, such as defining others in ways that permit and encourage their social control: exterminating or enslaving entire race/ethnic groups, justifying unequal treatment of social members that differ by gender or sexual orientation, ostracizing and removing from everyday life social members that are defined as undesirable because they possess identities and selves that are different from those in the mainstream, which in our age, would include justifying the massive incarceration of young black men.

While there is not a large body of research exploring how language can be used to criminalize persons of color, some research exists, and as I am demonstrating, it is global. Rob White (2002) explores how 'offensive language' is socially constructed in ways that serve to criminalize the street activities of young indigenous people in Australia. He looks at swearing, and specifically how the cultural use of words, such as 'fuck,' result in

Aboriginal youth becoming disproportionately involved with the Australian 'criminal justice system.' White's convincing argument is that state power is used (in the policing and regulating legacy of colonialism) against certain groups of people in ways that criminalize and further marginalize these groups. In this example, the focus is on 'bad' language and how it allows a legitimate and systematic intrusion into the lives of the less powerful Aboriginal persons. It also exposes how this language builds toward the eventual criminalization and marginalization of Aboriginals – to an exceptionally disproportionate scale. White's research is an excellent demonstration of how language is used to do the work of criminalizing people of color. Aboriginal youth are defined, controlled, and 'kept in place' by the use of 'law' and 'criminal justice system' practices that distinguish specific uses of language as illegal, uncivil, and inappropriate. White proves the power, relevance, and impact of language in relation to issues of social and 'criminal justice' and also demonstrates how language is a powerful tool that can be used against others.

In my own work, I complete language studies that I term *Language of Justice* research. I argue that everyday justice discourse takes place within a body of interpretations, metaphors, rhetorical frames, and ultimately ideology, which is rarely acknowledged and is instead accepted as self-evident. In my research, I conduct language studies, which are individual investigations into a word or a phrase commonly used in 'criminal justice' discourse. I do these language studies to interfere with and disrupt everyday justice discourse and in order to get to the *language habits* that we have forgotten are habits and that we have confused for reality. In this research, I commonly discover that the language of social control, and 'criminal justice' in general, is designed to encounter people of color, as well as those of lower socio-economic status and of certain gender (Coyle 2002).

For example, in a recent project, a colleague and I demonstrated that the currently occurring discursive shift from 'tough on crime' to 'smart on crime' does not reflect a change in 'criminal justice' ideology that somehow recognizes the racist consequence of the 'tough on crime' movement (Altheide and Coyle 2006). Instead, the shift to 'smart on crime' denotes a rhetorical device that is designed to mask the political and economical infeasibility of sustaining the funding of what has become the gargantuan 'criminal justice system' (see Kappeler and Kraska, 1999 for a similar analysis of the shift from law enforcement and crime control to community policing).

Similarly, in my study of 'innocent victim,' I demonstrate how the use of 'victim,' as compared to the use of 'innocent victim,' unveils a hidden aspect of victimhood language more broadly (Coyle 2002). I show that the term 'innocent victim' is used for those believed to not be responsible for their victimhood, while the term 'victim' is used for the rest. Obviously, who is called an 'innocent victim' and who is designated as a 'victim' gains deep importance. In my data, I find that those experiencing racial prejudice are, in their majority, described as 'victims' and not as 'innocent victims.'

The above research demonstrates how everyday language (reality) not only criminalizes people of color, but also builds and maintains racist 'criminal justice system' discourses and practices, even while acknowledging the problem of 'race' in matters of 'crime' and 'criminal justice.' As witnessed in these works, to study the specific language of 'criminal justice' discourse is to visit the site where racism infuses 'criminal justice discourse' by word choice, word use, and word control.

A CALL FOR LANGUAGE STUDIES TOWARD A CRITICAL RACE CRIMINOLOGY

It is evident that language-related research has the capacity to contribute to critical race criminology. Specifically, language studies can unmask the racism of modern 'criminal justice' discourse and modern 'criminal justice system' practices. While existing research demonstrates the potential, much work remains to be done.

Researchers can identify the construction and maintenance of race work in the discourse and practices of 'criminal justice' in at least two important ways. The first is to conduct individual investigations into any word or phrase commonly used in 'criminal justice discourse.' It is exactly because (as the above review illustrates) everyday justice discourse takes place within a body of interpretations, metaphors, rhetorical frames, and ultimately ideology, that can be and sometimes is racist, that the study of the very words and phrases used in 'criminal justice' discourse will disclose the presence of racism. The most fruitful work will probably be to first explore the most common language currently used in 'criminal justice' discourse. The fact is that detailed studies of 'crime,' 'criminal,' 'offender' – whether by analysis of media content, 'criminal justice' research writings, interview data, or other – have yet to be completed. Further, qualitative, ethnographic (language) work on numerous populations, such as 'race' groups or 'criminal justice system' workers, can suggest avenues of research that are difficult to recognize from the current perspective that has predictably blinded researchers to the *language habits* of multiple 'criminal justice' discourses.

The second way researchers can identify the construction and maintenance of race work in the discourse and practices of 'criminal justice' is to engage in a critical examination of the language they encounter in their research, regardless of its topic. An ethnography of the incarcerated youth of color in a juvenile facility in the U.S.A. can unveil not only the voice and meanings young boys of color give their experience, but also can trace what

the very words they use show about racism in incarcerated and everyday life (in the manner that White's work did for Aboriginal youth in Australia). It is difficult to imagine how any 'criminal justice' research project – regardless of its goals – would not benefit from a careful analysis of the language encountered.

Ultimately, the hyper-racialized environments of everyday life mean discourse and practice has color. Learning to identify the color of 'criminal justice' discourse and practices is the work of critical race criminologists and the concern of all students of 'crime' and social life. As an anonymous reviewer of an earlier draft of this paper noted, while my analysis of the language of 'race' demonstrates it is a socially constructed category that has its uses for short-term strategic reasons (namely, in order to point to how groups of humans are created and subjugated), my larger point should not be missed: the very category deserves to wither away.

CONCLUSION

The language used in everyday life already embodies theories of reality. This means that scholars, merely by using language, *define* what they think they are only *describing*. The implication inherent in critical race criminology is that if a racist 'criminal justice system' is present, then the racism lives in the language and importantly, given our age of political correctness, in a language that frequently *does not sound racist*. I propose the critical rejection of a supposedly seamless and homogeneous language, which defines social and 'criminal justice' as the domain of social control, e.g. a social reality where 'criminals' create 'victims' and are 'offenders.' Importantly, when scholars of justice study, they must study the language habits of those they are directly or indirectly studying. Such language considerations will unmask how language is used to justify social control, subjugation, and criminalization of persons, especially persons of color.

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Victims' Rights and Public Safety?
Unmasking Racial Politics in Crime Discourses Surrounding Parole Revocation for "Lifers" in California

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Abstract: *This paper reports on an intensive day-long symposium on Proposition 9 (also called the Victims' Bill of Rights Act, or Marsy's Law) held inside San Quentin, a maximum security prison for men in Northern California. This new law essentially ends parole for inmates serving terms of 25-years-to-life by extending the wait time between a parole denial and a new hearing to fifteen years. Its sponsors have framed it as a victims' rights bill. This paper adopts a race, gender, and critical criminology perspective to challenge dominant criminal justice language and common-sense discourse such as "victims' rights," "public safety," and "equality." Dominant framings in criminal justice are deconstructed and their multiple meanings are explored from the position of diverse actors gathered at the prison symposium —Proposition 9 proponents, prisoners, crime victims, and prisoner-rights advocates. The paper argues that rather than protecting crime victims and promoting public safety (claims by Proposition 9 proponents) power and inequality inhere in mainstream criminal justice language whose dominant discursive framings mask a racial agenda and engender new forms of victimization—that of prisoners and their families. Politicized criminal justice talk surrounding "victims' rights," and the specific dichotomies it produces, ultimately denies rights and endangers the public by indefinitely removing parole-eligible "lifers' from their communities.*

Keywords: critical criminology; prisons; race; gender; discourse analysis; critical race theory; social control; critical legal theory; victims' rights; Marsy's Law

INTRODUCTION

> *"The law does not passively adjudicate questions of social power; rather the law is an active instance of the very power politics it purports to avoid and stand above." (Crenshaw, 1995:xxiv)*

This paper analyzes how rights discourses and mainstream criminal justice language, captured in commonsense concepts such as "victims," "criminals," and "public safety," have helped to make California one of the most punitive states in the nation. The Victims' Bill of Rights Act of 2008 (also called Marsy's Law, or Proposition 9) vastly changes the way persons in prison serving life terms with the possibility of parole, are considered for parole. The severity of this new law is perhaps most clearly seen in its presumption of a fifteen-year "wait period" between parole hearings, as opposed to the usual one-year wait period, for inmates who are denied parole.[1] Opponents of the Law argue that this amounts to an additional prison sentence. The following is an analysis of how The Victims' Bill of Rights Act claims to uphold equal rights and protections for California citizens—and for *particular* citizens. But this paper is not about the law, nor is it an instrumentalist critique of law's racially biased outcomes. Rather, it is about how laws in the liberal legalist tradition, and about how criminal justice language, construct and are constitutive of unequal social relations.

My main argument is that the justice language employed to frame the issue of crime by proponents of Proposition 9 masks and embodies racial, gender, and class power. Commonsense notions about crime, victims, and public safety belie the inherent power relations they represent and bolster a political agenda that reinforces white privilege and serves the function of excluding those not privileged. I seek to show how the Victims' Bill of Rights Act and Proposition 9 proponents have actively appropriated the very rights discourse used in the past by socially oppressed groups, and in so doing, reify white privilege into law. This paper asks: (i) who is being protected from whom through the Victims' Bill of Rights Act, (ii) who are the "victims," (iii) who are the perpetrators, and most of all, (iv) whose rights are at stake? I accomplish this analysis through a report on an unusual event — a deeply emotionally charged, day-long symposium on Proposition 9 held inside San Quentin prison, a maximum security prison for men in Northern California. I was invited to the event, held in October 2008, as a scholar and prison activist, one month before Californians voted to approve Proposition 9 by a 54% majority.[2] The Prison University Project[3] sponsored this symposium, which was structured as a panel discussion-debate with outside guests and prisoners freely participating.

I deconstructed the criminal justice language and the discourse surrounding the Victims' Bill of Rights Act of 2008 using a discourse analysis of what was said during the seven-hour long symposium, and a textual analysis of campaign literature.[4] In this discussion of how both proponents and opponents of Proposition 9 employed criminal justice discourse, I intend to demonstrate how The Victims' Bill of Rights Act, rather than an example of the neutral adjudication of interpersonal conflict between two parties—"victims" and "criminals"—represents the "active instance" of social power relations (Crenshaw 1995) and specifically masks racial power. I take a deconstructionist approach to make three main theoretical points: (1) the commonsense justice language of mainstream criminology relies on linguistic polarities, what I am calling *antagonistic dichotomies*, which, bolstered by liberal legalist discourse, are embedded in power relations; (2) racial and gendered power relations, found in the victim identity in particular, are associated with these antagonist dichotomies; and (3) "victims' rights," as a concept and as a movement, shadows other types of victimization and appropriates rights discourses in a way that reproduces power and privilege, a process I am calling *rights reversals*.

CRIMINAL JUSTICE LANGUAGE: THEORETICAL PERSPECTIVES AND ARGUMENTS

My theoretical approach incorporates an explicit analysis of power by framing this discussion within critical criminological, race, and feminist scholarship. I am primarily interested in exploring how both mainstream criminal justice language and liberal legal discourses masquerade as commonsense and neutral but mask power. As Raymond Michalowski (2009) reminds us, critical criminology is a critique of power—of laws and justice practices and language, and how they reproduce domination. In taking a critical criminology perspective, in which laws are seen as created by those who have power (Black 1976; Chambliss 1999; Chambliss and Seidman 1971). My aim is to broaden orthodox criminology's focus on interpersonal-harms to include an exploration of the state's *social* harms/punitive crime policy. While appearing to empower (particular) crime victims, such policy, in fact, serves the interests of, and empowers, the state. In turn, all citizens, whether inside or outside the prison walls, are harmed by a state committed to punishment over social welfare (Arrigo and Milovanovic, 2009). While I focus on language and rights discourse (specifically "victims' rights"), I also place the Victims' Bill of Rights Act within the broader social and political context of the "get-tough-on-crime" movement of the last four decades (see, for example, Beckett 1997; Feeley and Simon 1992; Simon and Feeley 2003). In this sense, the Victims' Bill of Rights Act of 2008 (hereafter referred to as the VBRA) can also be understood to be an extension of determinate sentencing and other mandatory sentencing schemes in today's era of mass imprisonment, and thus, is part of an increasingly punitive state apparatus.[5]

There is a considerable body of sociolinguistic scholarship as well as cross-disciplinary work on how language functions to construct the everyday reality we take for granted. Language, including legal and justice language, is embedded with meanings; it already embodies that which it pretends to be merely describing (see for example Beckett 1997; Coyle 2002; Fowler, Kress, Trew, and Hodge 1979; Hall, Critcher, Jefferson, Clarke, and Roberts 1979; Henry and Milovanovic 1996, 1999; Wood 1999, 2005). For instance, commonsense notions such as "crime victim" or "innocent victim" imply their opposite— a "guilty," "criminal," "perpetrator" (Coyle 2002), and idealized victims also imply less worthy or ignored victims (Wood 2005). Here I ask how criminal justice language and liberal legalist discourse produce social and racial/gender power relations through specific *antagonistic dichotomies*.

My overriding arguments about crime discourse rely on the feminist scholarship on intersectionality (Crenshaw 1995; Matsuda 1996). For example, Mari Matsuda (1996:64) encourages us to "ask the other question" such

that race and racism require an analysis of gender, social class, and other oppressions. Feminist legal scholars and cultural historians address how constructions of crime and crime victims draw on long-held American ideologies of the Black criminal and the protection of white women by white men within patriarchal social and legal institutions (Morrison 1993; Roberts 1997; Stabile 2006; Wood 1999, 2005). Foucault's (1977) critique of power-knowledge, whereby discursive power produces new social subjects who can be dominated, is also useful in order to understand how "crime victim" might constitute a new identity, one that reproduces unequal power relations. For example, I suggest that the Proposition 9 campaign and the VBRA reproduce and strengthen the victim identity: this new social subject, the "crime victim," in making claims to rights ("victims' rights"), in turn ironically denies and "reverses" the rights of others, in this case, those of California prisoners. The VBRA proponents use rights claims ("victims' rights") to *deny* the rights of prisoners by appropriating those very rights discourses traditionally used by oppressed groups in struggles for equality; hence the concept of *rights reversal.*

Much of my analysis centers on how Critical Legal Studies (CLS) intervened into the liberal legalist tradition, which views law as an apolitical mediator of social conflict. CLS draws connections between law, power, and white supremacy (white domination within the social, legal and cultural spheres) illustrating how racial power operates within legal discourses (Crenshaw 1995; Harris 1995). Critical Race Theory, similarly, asks how laws are a constitutive element of race itself, how law both historically constructed race, "and shapes and is shaped by race relations" today (Crenshaw 1995:xxiv). At the prison symposium, race was, indeed, the elephant in the room: it was never mentioned neither by the advocates of the VBRA nor by the prisoners (all of the former were white, while the vast majority of the latter was Black or Latino).[6] However, I am suggesting that race was ever present in the terms and tropes: "victims," "innocence," "criminals," "safety," and "rights," which disguised power and white supremacy.

Overall, I argue that criminal justice language sets up what I am calling *antagonist dichotomies,* which function as mutually exclusive categories. Through such polarities (for example, "victim" implies "criminal," "victims' rights" implies the lack of rights for "criminals" who are deemed unworthy of rights or protections), I seek to explore how mainstream justice language concepts are diametrically opposed, and without the possibility of reconciliation between seemingly autonomous entities. I claim that the dichotomies produced through criminal justice language are *antagonistic* because they function to exclude, and they derive from, and reproduce, explicit kinds of domination. Furthermore, I argue that these antagonistic dichotomies also constitute the very foundation of orthodox criminology and ameliorative

justice's focus on interpersonal harms. That is, antagonistic dichotomies—victim/criminal, public safety/danger—are embedded in mainstream justice language and appear to fuel methodological individualism, the interpersonal-harms focus of orthodox criminology.

This paper is organized into three sections. In the first section I explore the antagonistic dichotomies embedded in mainstream criminal justice language. In the second section I focus on the construction of the "crime victim" identity, and specific racial meanings of the concept of "innocent victim." I also include a discussion of rights discourses within liberal democratic states showing how groups who hold power use claims to rights to maintained class and racial inequality. In the third section, I give voice to the San Quentin prisoners and other opponents of the Victims' Bill of Rights Act, illustrating how they challenge and disrupt commonsense criminal justice discourse and its underlying tensions and dichotomies. The prisoners reframed the crime issue by focusing on the state's social harms, and complicated and reconstructed concepts of "victim," "criminal," "merit," "rights," and "public safety."

MAINSTREAM CRIME TALK AND ANTAGONISTIC LANGUAGE DICHOTOMIES

Approximately 50 individuals, myself included, filed into the San Quentin prison chapel: half were prisoners themselves, "lifers" serving terms of 25-years-to-life with the possibility of parole, and the other half, invited outside speakers and guests. The latter included several proponents of Proposition 9 as well as opponents of the bill, mostly activists, prison lawyers, and academics.[7] The debate that followed played out as an excruciatingly tense exercise in opposites: commonsense, everyday justice language used by the proponents of the VBRA was marked by seemingly irreconcilable dichotomies, for example, victim/criminal, innocence/guilt, public safety/danger.

The extreme polarity of positions taken between proponents and opponents of Proposition 9, The Victims' Bill of Rights Act, and the difficulty of adequately articulating a response, left many of us feeling battered and worn. We lacked words for what felt intrinsically unjust about the proposed VBRA. At the core of the debate was the proponents' claims to rights as crime victims and the fundamental tension between orthodox and critical criminology—that is, the personal-harms versus social-harms focus of each side, which fueled the debate over this new law. Michalowski (2009) states,

> Whereas mainstream criminology's focus is on interpersonal aspects of crime, critical criminology explores the *states'* social harms. While the ameliorative model relies on

determining individual motivations, etc. critical criminologists ask the larger question of what constitutes crime.

Normative or orthodox criminology is characterized by legal formalism, such that only acts designated by law are objects of formal legal study. It supports an ameliorative justice model, which only adjudicates interpersonal harms, rather than addressing harms and crimes that are committed by the state (including those inflicted by punitive crime policy) or by institutions upon communities. In the ameliorative justice model the entire focus is on *mens rea*, or individual intention, with regard to crime (Michalowski 2009). Social and community harms perpetuated by the state and by institutions are omitted from mainstream criminological discourse. In the case of the VBRA, victims' rights groups presented themselves as merely upholding the individual rights of crime victims—the right to protection against individual perpetrators of violent crime. Nowhere in their discourse was there mention or acknowledgement of potential unfair and unequal effects of this law, or the injustice it could incur for certain communities, let alone of broader social causes of crime. The exclusive focus of Proposition 9/VBRA proponents on interpersonal harms or ameliorative justice is founded on, and bolstered by, the victim/criminal dichotomy and claims to rights. Consider the following statements made by the VBRA proponents (emphases added):

• "This bill only goes after those who show *no remorse.*" (Mitch Zak, Yes on Proposition 9 Campaign P.R. Manager, 2008)

• "Proposition 9 is simply about giving *more rights to victims*…it puts the constitutional rights of crime victims on an *equal playing field* with those of defendants." (Mitch Zak, Yes on Proposition 9 Campaign, 2008)

• "[Proposition 9] prohibits early release policies, so we won't *forfeit public safety* by reducing overcrowding." (Belinda Harris-Ritter, crime victim and attorney, 2008)

These statements reveal the operation of antagonist dichotomies within justice language. The crime issue becomes reduced within the ameliorative justice framework to a matter of interpersonal harms, where rights claims hold a central place. The commonsense, criminal justice buzz-words: "lack of remorse," "victims' rights," and "public safety," together with liberalist legal discourse about the "equal playing field," are used to justify claims to rights, and provide the vehicles through which crime victims reduce the terms of debate to a matter of interpersonal wrongs which must be righted. The claim

that inmates have "no remorse" sets up a strongly antagonistic dichotomy between the victim and the (remorseless) offender who, apparently due to an inability to feel empathy, assumes a monstrous identity.

The Proposition 9/VBRA's proponents, whose specific language choices strengthen the focus on interpersonal harms and ameliorative justice, have set up three principle polarities through which they frame the crime issue. Table 1, below, shows how VBRA proponents' justice-language claims reduce the complex issue of crime and harm to what I am calling *antagonist dichotomizes*; that is, irreconcilable polarities, which rationalize an even more punitive response to crime.

Table 1. *Individual Harms: Antagonistic Dichotomies*

Individual Harms: Antagonistic Dichotomies	
▪ Victims vs. Victimizers	Proposition 9
▪ Safety vs. Danger	Increases public safety and
▪ Innocence vs. Guilt	decreases public danger

These language choices function dialectically such that victim/victimizer are reduced and reified into polar opposites, as are notions of safety/danger, equal rights/unequal access to rights, and so on. Moreover, these sets of antagonist conceptual dichotomies imply the impossibility of reconciliation. It would appear that victim status within the ameliorative justice/individual-harms model encourages and even necessitates polarization of identities and inherent antagonisms. For example, the "crime victim" is rendered his or her victim status through the way in which "victim" conceptually constructs its opposite (the "criminal," who is assumed to be violent) such that victim and victimizer become calcified into diametrically opposing positions. The crime victim's demands for justice in the form of ever harsher punishment, in turn, seems reasonable, even expected: they are inherently justified through the oppositional constructions of "victims' rights/remorseless criminals," innocence/guilt, and "safety/danger." Significantly, these victim/criminal, innocence/guilt, safety/danger dichotomies carry an implicit moral overtone; they elevate the moral stance of crime victims and demonize offenders, crystallizing each identity.

Thus, perhaps most significant, the rights-claims by crime victims produce new kinds of social subjects and identities. "The crime victim" identity lies at the core of the Proposition 9/VBRA's proponents' justification for a class of more and harsher punishment; punishment that would presumably allow crime victims to finally enjoy what are apparently absent rights to public safety and state protection against immoral criminals. Moreover, embedded in these claims is a hidden set of assumptions: "victims" as an identity becomes a kind of totalized, perpetual self-righteous identity. The unspoken assumption

is that victims could never themselves victimize others (for example, cause social harm). Additionally proponents' claim that crime victims deserve "equal rights," the same rights as offenders, embodies the absurd assumption that prisoners in fact enjoy *more* rights than free citizens. This is based on the false assumption that because we have a due process system, prisoners have constitutional rights that protect them in ways that ordinary citizens do not; they are part of a "protected" class. Finally, the claim that passage of the VBRA is a matter of "public safety" which the public should not "forfeit" by releasing lifers who are up for parole, assumes that lengthy incarceration makes society safer.

Ironically, it is these very antagonist dichotomies that veil *social* harms. For constructions such as "innocent victim/guilty criminal" reproduce power relations and hold implicit racial and gendered meaning within the context of ameliorative justice struggles and justice discourse surrounding the Proposition 9/VBRA. In much the same way as the former Bush administration's ameliorative justice claims about "evil-doers" were used to justify war, Proposition 9 /VBRA advocates' employment of justice language and rights claims served a purpose far less noble than avenging themselves against individual wrongdoers.

In the following sections, I explore how rights claims by "crime victims," in conjunction with methodological individualism (or mainstream criminology's exclusive focus on rectifying or reacting to interpersonal harms) mask social and racial and gender power relations by masquerading as neutral—as merely a matter of adjudication between two otherwise equal actors.

Race and the Inequality of "Equal Rights" (for Victims)

The claim by Mr. Mitch Zak, the Proposition 9/VBRA campaign's public relations representative, of merely "put[ting] victims on an equal playing field with defendants" is an example of how such liberal concepts of equality disguise the exercise of power. Michalowski (2009) points out that "critical criminology seeks to show where power and domination are obscured behind a veil of ideology." As Critical Legal Studies (CLS) has shown, under liberal forms of government, law purports to function as neutral but in fact masks power interests and relations. Kimberle Crenshaw (1995:xxv) argues that, whereas the liberal legalist tradition viewed law as a mere mediator of social conflict, critical legal studies revealed how "legal institutions *construct* social interests and relations" (my emphasis). Commonsense concepts of "victims," "rights," "equal protection," and "the equal playing field," within the context of the Proposition 9/VBRA campaign, become highly ideological constructs that are far from neutral.

How does ideology function with regard to Proposition 9/The Victims' Bill of Rights Act? That is,

how do claims to equal rights by crime victims in fact represent a highly ideological position and set of assumptions about "criminals," "victims," and "rights" that reproduce race and class domination? To begin with, the VBRA's ideological character can be uncovered perhaps most obviously in several striking and fundamental contradictions in the logic of this law. First, contrary to the claim by Mr. Zak (2008) that "Proposition 9 is simply about giving more rights to victims…[by putting] the constitutional rights of crime victims *on an equal playing field* with those of defendants" (my emphasis), this law does more than neutrally "mediate the threat posed by others [where citizens belong to a] community of equals" (Cook 1995:88), as legal formalism holds. Ironically, both sides do not share equal social status to begin with, nor are they equally rights-bearing citizens. The proponents of Proponents of Proposition 9/VBRA are free citizens seeking "equal rights" with *prisoners*—an explicitly un-free and incarcerated population. Vast social class and racial differences also exist between these two groups.

Second, the Proposition 9/VBRA further subjugates those already incarcerated by undermining their constitutional rights (including the right to counsel, the overriding of the jury decision of life with the possibility of parole, and other rights).[8] In this way, what parades as justice— avenging crime victims and punishing criminals--disguises attempts to deny prisoners their constitutional rights.

Third, the ideological nature of the Proposition 9/VBRA is seen in its deeply flawed overall logic. It places an irrational focus on those inmates (lifers) who are the *least* likely to be paroled in California in the first place; or if they are by chance paroled, to recidivate.[9] In short, the illogic of proponents' calls for "equal rights with defendants," the challenge this law poses to prisoners' constitutional rights, and proponents' insistence on keeping the least-likely-to-be-paroled group of offenders behind bars for longer, all belie the neutrality of their equal rights-claims.

Law, I am therefore suggesting, does not merely arbitrate interpersonal wrongs between citizens, nor does it delineate "neutral boundaries defining the liberal equality of individuals within a community of equals" (Cook 1995). Rather, in states under liberal forms of government that are marked by class and racial inequality, ameliorative justice necessarily becomes far more than the neutral mediation of conflicts between members of a community of equals. The Proposition 9/Victims' Bill of Rights Act, through invoking the victim/criminal dichotomy and through its rights claims, masquerades as neutral but in fact *demarcates race, gender, and class boundaries.*

THE VICTIM IDENTITY

One way race, gender, and class boundaries are maintained is through the very construction of "the crime

victim" *identity* and through victims' claims to rights. At the San Quentin symposium, Proposition 9/VBRA proponents reflected their strong investment in the victim identity. This identity was strengthened through repetition of personal stories of victimization and the details of the crimes committed upon them or their families (which in turn bolstered their demands for ameliorative justice). For example, before the roomful of prisoners, Ms. Belinda Harris-Ritter, an attorney and self-described crime victim, recounted the night an intruder drove onto her family's property and murdered both of her parents in cold blood. She has repeated this story many times in her victims' rights advocacy work. Similarly, the effect of the killings on her sisters has also reinforced her identity as a victim. She explained: "My sisters will always have to live with this: it's affected them to this day," equating their symptoms to Post Traumatic Stress Disorder (Harris-Ritter 2008). The retelling of these stories and horrific events allows these violations to be relived again and again, reinforcing and reifying the victim identity. For example, later that day, the same story was repeated to the CBS Television reporter covering the symposium. Harris-Ritter (2008) said, "I would wake up in the middle of the night for a long time, thinking 'what's wrong with *me* that my parents were murdered?' It takes a long time to get over that." The victim identity appears to leave little room for empathizing with other victims and other forms of victimization. For instance, earlier, when a prisoner stood up and explained that the VBRA denies rights to, and unfairly treats, parole-eligible inmates who are already serving long sentences, and pointed out the *ex post facto* nature of the Act[10] by saying, "We have already *rehabilitated* ourselves" (San Quentin Prisoner 2008), Mr. Zak (2008) responded: "There are families who will never see their loved ones again."

The victim identity, in its current form, is part of the larger victims' rights movement whose key victory occurred in 1991 in *Payne v. Tennessee (501 U.S. 808)* when the Supreme Court ruled that victim impact statements were permissible in the penalty phase of capital murder trials and do not violate the constitutional rights of defendants (Smith and Huff 1992; Wood 1999). Austin Sarat (1997) claims that this ruling reified the victim identity into law; it blurred the line between vengeance and retribution, legitimating vengeance in modern legality. Victims' Rights groups have been behind much of recent tough-on-crime legislation which has included mandatory minimum sentencing schemes and Three Strikes laws, restricting parole for offenders (as the VBRA does), requiring longer prisoner terms, and constraining judicial decision making during sentencing.

The victim is not a new political identity. For example, claims about the sexual victimization of white women were used to justify lynching and later, the death penalty. However, it has resurfaced in national politics in its current form in the victims' rights movement. Indeed,

the crime-victim identity, used as a platform for avenging interpersonal harms, continues to perpetuate social harms (harms to the community committed by the state), and like before, harms that are disproportionately (and specifically) enacted against people of color. Jonathan Simon (2008), sociologist and speaker at the San Quentin symposium, discussed how the appearance of a victim identity in California and national politics has exaggerated violent crime and offenders per se (which are a small fraction of all crime), and this generates public fear of crime and justifies the subsequent expansion of the criminal justice system. This, in turn, detracts from the state's ability to solve deeper social problems, as state monies are usurped from needed social services (see also Simon 1997). The victim identity that has surfaced in Californian political speech, Simon (2008) claims, essentially operates to reduce complex social problems to an issue of crime. For example, the media's focus on looting during Hurricane Katrina, by drawing attention to unlawful behavior by flood survivors, detracted attention from the larger related social problem of climate change.

What is crucial in the case of Katrina is how crime discourse and the media functioned to invert the status of the (mostly Black) *victims* of the hurricane by rendering them *criminals*. Carol A. Stabile (2006) illustrates the American media's inability to view Blacks as victims of the flood during Katrina. Moreover, she documents in detail this inability to conceptualize black people as victims, from slavery, to lynching, to human and civil rights violations including police brutality, pointing out that even in light of such obvious criminal treatment of blacks by whites as witnessed in the Rodney King case, consensus was created in favor of the dominant framing of white victims/ black criminals. This construct of blacks-as-criminals/ whites-as-innocent-victims permeates the American criminological imagination. America's cyclical "moral panics" over crime and drugs have historically racialized the crime issue in a similar way, rendering black, brown, and Asian men criminals, and in recent decades constructing black women who use drugs as monstrous "crack mothers" who intentionally victimize their babies. Significantly, these scares are followed by punitive crime legislation (see for example, Beckett 1997; Cohen 1985; Edsall 1991; Hall et al. 1979; Reinarman and Levine 1997).[11]

Rather than set up a debate about who is the more deserving victim, those subjected to interpersonal or to state harms, the aim of this analysis is to unveil these state harms. I am particularly concerned with how the construction of victims/criminals, while appearing to benefit white crime victims, empowers the state at the expense of *all* victims, and of the most disadvantaged and vulnerable communities in America. For example, besides failing to make our communities safer, punishment policies such as mass incarceration and a more punitive state have, more broadly in recent decades, superseded and

replaced social welfare policies and the state's distributive role. Simon analyzes how victims' rights movements serve to define the public as potential victims; the penal system, within the context of welfare state decline, is then used to mobilize public consent for welfare state reform (See Simon 1997). Indeed, fear, politicized by victims' rights movements, has had the effect of narrowing the focus of criminal law and criminal justice discourse to defend narrowly defined "victims." Within an individual harms/ameliorative justice framework, "victims' rights," narrowly defined and policed, obscures and at the same time perpetuates state harms.

The Raced and Gendered "Victim": White Innocence / Black Guilt

In the American cultural imagination, "victim" has specific racial implications such that innocence is imagined in terms of whiteness and criminal guilt, in terms of blackness. Our commonsense cultural understanding of a victim is a person lacking in culpability, one who is disconnected from motives such as those pertaining to political or social power, or who is associated with weakness and a lack of agency (Coyle 2002). Michael Coyle (2002) finds that "crime victim" is also synonymous with and implies "innocent victim," as concepts of victim frequently appear in the mass media as the duo, "innocent victim," especially in relation to children. Crime victims have also been viewed as persons who have been disempowered as a result of other's excessive investment in power (see Henry and Milovanovic 1996). What is crucial, however, about victims' rights movements and the punitive legislation they produce is how they construct and police a victim identity that is deeply raced and gendered. Understanding concepts of "innocence" and "victim" requires asking "the other question" (Matsuda 1996): finding integral connections between gender, race, and class. We must unearth these latter within crime policy to view their deep roots in American concepts of crime, victims, and criminals.

As indicated from the outset, another name for the Victims' Bill of Rights Act of 2008 is Marsy's Law. Marsy was a young, wealthy, Caucasian female and college student who was murdered by her boyfriend. Feminist and feminist legal scholars illustrate how constructions of white women's experience of victimization keep crime policy intact, for example, through legal constructions of an idealized crime victim who is white, female, and young (Wood 2005). As is the case with Marsy's Law, Jennifer K. Wood (2005) points out that much of our tough crime legislation revolves around these young, white females (and their fetuses), for example, Megan's Law, Jessica's Law, Lacey and Connor's Law, and others. She argues that this ideal victim shapes the parameters of the victim identity around which laws are passed; yet, the state ignores and fails to name similar cases of the violent murder of young black girls and women, claiming "These cases [of ideal victims] illustrate how the emphasis on punishment-as-protection becomes the primary means through which racist, classist, and sexist practices are both reproduced and masked in crime policy" (Wood 2005:4). In addition, in policing the boundaries of who counts as a victim, laws derived from, and upholding, the state-as-protector of white females through punitive crime policy also determine who counts as a criminal. In this sense, they determine national membership and belonging. Through tough laws such as the VBRA, offenders are increasingly seen as nonhuman and deserving of indefinite detention, permanent removal from society, and only certain kinds of victims become martyred. Marsy's Law, in addition to reproducing the ideal-type young, white, middle-class, female victim, significantly amends the California Constitution (as the VBRA does) to redefine victims as including a crime victim's family members and explicitly *excluding* "a person in custody for any offense, the accused, or a person whom the court has determined did not act in the best interest of a minor victim" (Cal. Const., art.1, section 28(e).).[12] This law, then, defines victims in a way that explicitly delineates who is *not* a victim. That is, who is to be seen exclusively as criminal, thus preventing any understanding of how those deemed "criminal" (prisoners, even the accused, for example) might themselves also be victims—both of interpersonal violence and state violence, including poverty, let alone *their* family and friends who are victimized by the incarceration.

The ideal white, female victim, therefore, while obscuring other ways of conceptualizing victimization and other victims, supports state repression in that these images of ideal victims rely on racist constructions of threat or risk that criminalize African Americans and black men in particular. Veiled beneath the protection myth of the VBRA as protector of (white, female) crime victims are attempts to solidify a racist, androcentric version of the state, one characterized by its power to punish. These victim constructions draw on national crime narratives about "white male protection of white female victims" (Stabile 2006:33), and white men protecting white women from black and brown men, extend back to the beginning of the American republic (Spivak 1988). Stabile (2006:183) argues that historically, American society, and the white males in charge of it, constructed black males not as a direct threat to white supremacy (and white masculinity) but in an indirect way: through personal investment in their identities as protectors of white females and moral or family values such that historically, slave revolts and other "acts of insurrection against white supremacy were rendered as attacks on white femininity." Conservatives use this idealized victim icon of the VBRA to uphold the state's power to punish only when it serves its interests: "Muscular solutions remain the province of a system that is fundamentally androcentric, that cares about its feminized and female victims only insofar as they

further a wider agenda of punishment and a state oriented toward repression" (Stabile 2006:189).

White fear is a core component of both crime policy and rights. Toni Morrison's (1993) historical analysis lends further insight into the racial meanings surrounding the unique features of the crime victim in California politics. She sees notions of innocence, formed in contrast to notions of blackness, which have historically served as a trope for white fear—for "the terror of European outcasts…[and] their powerlessness" in colonial America (Morrison 1993:37). Morrison draws connections in the American literary imagination between race, innocence, and newness—the newness and innocence of the early American nation-state and first European immigrants—an innocence that was juxtaposed to the racial Other which the un-free slave population represented. She states, "for a people who made much of their "newness"—their potential, freedom, and innocence—it is striking how dour, how troubled, how frightened and haunted our early and founding literature truly is" (Morrison 1993:35). Ideas of innocence and freedom have been racialized in the American imagination: they are associated with whiteness and juxtaposed against blackness. Moreover, that which white people feared became associated with Black people:

> The black population was available for meditations on terror—the terror of European outcasts, their dread of failure, powerlessness…evil, sin, greed. In other words, this slave population was understood to have offered itself up for reflections on human freedom in terms other than the abstractions of human potential and the rights of man (Morrison 1993:37).

Essentially, founding American freedoms and rights established by, and for, white people were hashed out and understood in opposition to those who were denied rights and freedom. The racialized meanings found in crime discourse are fortified by a politics of fear and a perceived increased risk of victimization. It is telling perhaps that while exiting the prison at the end of the symposium, Ms. Harris-Ritter (2008), when pressed about her commitment to the VBRA bill in light of the fact that "lifers" are the prison population least likely to recidivate, exclaimed: "I know it's irrational—but I'm *scared!*"[13] Stabile shows how current research on public fear of crime reveals underlying fear by white people of a loss of power, including underlying resentment of black people, who are perceived as usurping this power: both fears are often expressed as a "fear of crime." "Mainstream discussions of fear of crime act as a code language through which segments of the population express racial hostilities that can no longer be voiced in a directly antagonistic or racist language" (Stabile 2006:181).

It appears, therefore, that black and brown people are excluded from the victim category in direct proportion to the power to punish that white victims afford the state. White identity in the U.S. since slavery has relied on a sense of superiority and exclusion. White innocence and purity today play out in capital sentencing such that white victims are exalted above other victims. Many studies have found that jury decisions in capital cases indicate a special valuation of white victims (Dieter 1998). David Baldus and his colleagues (1994) found that defendants whose victims were white were 4.3 times more likely to receive a death sentence than similarly situated defendants whose victims were black. Studies also found that where white victims are involved, black defendants disproportionately received death sentences. Notably, it is mostly all-white juries and prosecutors seeking and assigning these death penalties (Baldus et al.1994).

The victim/criminal dichotomy, then, reinforces, and is reinforced by, punitive crime laws that protect only certain kinds of victims and punish only certain kinds of criminals. Capital punishment exemplifies this, where the lives of white victims are valued more highly than the lives of victims of other races, as well as how ideas of whiteness-as-purity and blackness-as-filth still permeate our language and laws. Claiming that "The assigned… inferiority of blacks necessarily shaped white identity," Cheryl Harris (1995:283) illustrates this through the historical "one-drop" rule that demarcated the racial line: "purity and contamination are invoked—black blood is a contaminant and white racial identity is pure."

Essentially, I have argued that "innocent victim," while it underlies putatively neutral rights claims, such as those embodied in the Victim's Bill of Rights Act of 2008, must be understood as an oppositional identity that is race and gender-laden. "Innocent victim" is an idea born of the intimate relationship between white women and their white male "protectors" against a threat, disguised in criminal justice language, associated with black masculinity and black people in an effort to invoke state power through punitive criminal laws.

Rights (for "Victims") and Racial Exclusion

The way those who inhabit the crime victim identity negotiate rights, specific rights as and for *victims,* holds specific racial meanings. Harris (1995:283) shows how rights themselves, for example property rights, imply exclusion and are inexorable from white identity. "The right to exclude was the central principle…of whiteness as identity, for whiteness in large part has been characterized not by an inherent unifying characteristic, but by the exclusion of others deemed to be 'not white'." In addition, Harris (1995:280) sees property—personal possessions from which one has a legal right to exclude others—as synonymous with white skin privilege and white identity itself. "Whiteness—the rights to white identity as

embraced by the law—*is* property if by 'property' one means all of a person's legal rights" (my emphasis). Thus, whiteness can be understood as a legally protected *identity* and in this sense, as a kind of exclusive possession. If property is defined as rights ("all of a person's legal rights"), whiteness is therefore synonymous with *rights,* including the right to exclude. "Rights" then, which indicate *white* rights and privileges, implies here a non-white Other who is presumably undeserving of rights. As Harris (1995:283) argues, "Whiteness is to be understood as a theoretical construct evolved for the purpose of racial exclusion…*White supremacy* is at base, not mere difference" (my emphasis).

The dichotomous and mutually exclusive relationship between those deemed to be deserving of rights and those deemed undeserving of rights is echoed in the structure of the Victims' Bill of Rights Act of 2008. Table 2, below, shows these dichotomous rights claims by each side of the VBRA debate.

Table 2. *Oppositional Rights Discourses*

Proponents vs.	Opponents
(Interpersonal Harms Focus)	(Social Harms Focus)
• Crime victims as merely upholding their own rights	• Crime victims as denying "lifers" their constitutional rights

I am arguing that those who politically identify as crime victims are privileged to an array of new entitlements. "Victim," like whiteness, becomes a legally exclusive identity, an exclusionary status, now engraved in the California Constitution, explicitly stating, as mentioned, that offenders serving time cannot be victims. It paints offenders as undeserving of rights and inherently criminal. I have shown that "victim" has a long history as a trope for whiteness, either as a privilege reserved for white women in the past, or in current victim rights laws named after white females, or as an identity that more often results in capital punishment on behalf of white plaintiffs. Needless to say, most of the men and women, serving time or otherwise, who are most affected by the Victims' Bill of Rights Act are people of color. The language we use to talk about liberal rights and crime masks these state harms as a common good, as "public safety." Rights for some victims that exclude rights for others are social structural harms that are kept outside the system of criminal study because laws are created by those who have power.

PRISONERS SPEAK: DISRUPTING DICHOTOMIES, COMPLICATING MAINSTREAM JUSTICE DISCOURSE

"The voices of all should be heard in a democracy…" (San Quentin Prison Chaplain, 2008)

I now turn to foregrounding the voices of prisoners, the voices that the Victims' Bill of Rights Act of 2008 silences, and whose testimonials expand the definitions of victim and criminality. At the prison symposium, San Quentin inmates spoke about the Victims' Bill of Rights Act in ways that challenged mainstream criminal justice language and its antagonist dichotomies. Their seldom heard accounts pushed the framing of the crime issue beyond the boundaries of interpersonal-harms and turned upside down notions of "victims," "rights," "public safety," and "criminals." Overall, the opponents of the initiative revealed explicit social and community harms that underlay the VBRA. Below, I bring prisoners into the conversation, illustrating the juxtaposition of ameliorative justice perspectives and mainstream criminal justice language with social-harms perspectives typically left out of criminological debates. Here, I attempt to loosen and dislodge entrenched constructs of "victim" and "criminal" and further expose their raced and gendered underpinnings.

Expanding the Boundaries of "Victim"

To begin with, two core oppositional framings of "victim" can be identified in the VBRA opponents' and proponents' discourse.

Table 3. *Oppositional "Victim" Discourses*

Proponents vs.	Opponents
• Crime victims who seek rights are innocent (apolitical)	• Crime victims who seek rights are a politicized, a special interest group
• Crime victims are a monolithic group	• Crime victims are a diverse group: many oppose Proposition 9 and advocate restorative justice

First, despite being framed as a neutral quest for victims' rights by the VBRA advocates, the Proposition 9 Campaign was actually a highly organized political effort created and supported by many individuals who are not survivors (or victims) of violent crimes.[14] Second, "crime

victim" is not a monolithic category: while the VBRA advocates and victims' rights movement present themselves as speaking for all crime victims, opponents of the bill, who themselves had been injured by violent crime, challenge the universality of the term "victim." For example, a panel speaker working for restorative justice who opposed Proposition 9 described her own ordeal of gang rape and false imprisonment as a child, which she likened to "torture," yet she did not identify herself as a "victim." Instead, she emphasized that she chooses to call herself a "survivor," not a victim, today (Karroll 2008).[15]

As they recounted stories of rape and murder against member of their own families, prisoners challenged the exclusivity of "victim" identity as a privilege held by those with power. The police never investigated many of these crimes. The following quotations summarize the prisoners' claims:

- "Punishing me also punishes my mother: I've been in since age 16, with 26 more years to do; if I get a 15-year deferred parole, I'll be in my sixties when I get out." (San Quentin Prisoner, 2008)

- "My brother was murdered by a stranger while he was pumping gas…to this day, there hasn't been an investigation… My mother didn't get to have her voice heard." (San Quentin Prisoner, 2008)

- "My daughter was raped; I couldn't help her here in prison—I nearly went crazy." (San Quentin Prisoner, 2008)

The idea that offenders can also be crime victims complicates the criminal/victim polarity and widens the parameters of the victim identity. In effect, the "monolithic view" of victim proposed by the victims' rights movement is only possible by "erasing" the diverse others in the victim discourse; and it is done by vilifying the racial Other. By challenging this antagonistic dichotomy between victims and criminals, it becomes clear that these linguistic constructions are not fixed but fluid concepts. By revealing that "criminals" and their families can also be crime victims, the limited concept of interpersonal-harms is reframed, and the scope of such harms is expanded to include community harms. For example, the prisoner who included himself in the category of "victim," illustrated the lack of state protection or justice in poor communities. By doing so, he was quietly questioning white hegemonic claims to innocence (innocent victims merely seeking their rights). This inmate's calm but indignant commentary about how his mother became a victim too when his brother was ruthlessly murdered (a crime that was never pursued by the police) emphasizes this African American inmate's "invisible" victim status. How members of communities of color and their families are treated after such events reveals how victim status and rights are

uniquely linked to whiteness: the police simply did not investigate his brother's murder case. The law often fails to operate in black poor communities when African Americans become crime victims (see for example Venkatesh 2008), yet easily renders them defendants.

The broader social harms caused by these oppositional discourses were repeatedly illustrated in the prisoners' comments. Referring to his own youth, another prisoner asked:

> What about a set of victims we don't hear about? We are all affected by our environment. The 1970s prison mentality gave youth a false sense of manhood, gang culture formed and forced others into it. Aren't these innocent children who fall into the gang trap? Can we agree there are many environmental failures that allow these kids to fall into that gang trap? Who was there to protect *them*? (San Quentin Prisoner, 2008)

The idea that youths growing up in economically deprived communities are innocent and gullible challenges the narrowly framed victim concept and the interpersonal-harms focus of the VBRA by depicting how an entire community is victimized by poverty, neglect, and cultural messages about masculinity that promote violence. Moreover, the idea of community (i.e. environmental) exposure increasing the risk for delinquency and criminality in vulnerable youth reinforces the concept that interpersonal and social harm are inextricably linked. This again, discredits the narrow monolithic view set forth by proponent of Proposition 9.

Once the link between interpersonal harm and societal harm is made, one must consider how gender, race, and class play into invisible forms of victimization: socialization into black and brown masculinity had become linked to prison and gang culture for those growing up in poverty, which in turn contributes to these youths' victimization and incarceration. The above testimonial also inverts mainstream notions of youth of color as a generation of "predators" (a term popularized in political speech) who are deserving of harsher punishment, by holding society responsible for failing to protect vulnerable, at-risk youth. It is perhaps ironic that convicted criminals, those society deems dangerous and depraved, are contesting these constructs of "victim" and "criminal." For, in addition to their stories of community harms, some of these offenders or their families, like Ms. Harris-Ritter, are also victims of interpersonal crimes and violence. Yet, these men speaking about their experiences of victimization are not easily or ever fully heard in the U.S., if they are heard at all. Rather, it is the voice of Ms. Harris-Ritter and the image of Lacy and Megan and Marsy—the idealized victims—that come to mind, evoking recognition and sympathy. If African American communities are particularly criminalized, offenders in general are vilified

and dehumanized. Speaking of the crime news media in the U.S., Stabile (2006:183) writes:

> Constructing African Americans as criminals, priming white audiences to understand race and racial issues solely through the prism of crime, these narratives denied African Americans the status of victim and thereby robbed them of one of the most powerful cultural avenues for sympathy and restitution.

Like the "Zero Tolerance" policies for which they advocate, victims' rights proponents show zero sympathy for offenders. Such dichotomized thinking perpetuates the invisibility of all but society's ideal victims, dehumanizes those whose behavior has offended, and hides the state's harms against disadvantaged citizens and communities of color. These discursive constructions of "victims" are strengthened through the admissibility of victim testimony at death penalty sentencing and are even reiterated by Supreme Court justices (Wood 1999); yet, it is not the victim we must humanize, but the defendant (Wood 1999; Dubber 2002). The antagonistic dichotomies of the oppositional victim discourse begin to reveal how state harms, specifically the punishing state, hurt the most vulnerable citizens and inhabitants of the U.S.—poor people and communities of color—and the specific ways our punishment system dehumanizes those who are caught up in it.

Remorse, Rehabilitation, and Merit

As they came up to the microphone in the San Quentin Prison chapel, the prisoners consistently countered claims about their inherent criminality that had been made by Mr. Zak and the other VBRA proponents. In so doing, they recast themselves as meritorious beings who had spent decades in prison seeking all the available rehabilitation they could find. Indeed, the VBRA proponents' claims about remorse ("this bill only goes after those with no remorse") cannot be separated from racialized notions of merit and rights.[16] In Table 4, below, I identify several additional justice concepts and liberal ideologies— those of remorse, rehabilitation and merit—through which to further explore challenges to dominant criminal justice language dichotomies.

The victims' rights proponents' framing of offenders as violent killers with no remorse was countered by the opponents' state-harms focus that revealed the violence of contemporary punishment. "No remorse" claims have been employed to justify more and harsher punishment, and has constructed offenders as essentially non-empathetic and lacking in humanity. By extension, such a being is beyond reform and unsuitable for rehabilitation, an assumption the prisoners avidly contested through stories of their own rehabilitation. In a key statement that showed how the

Table 4. *Oppositional "Merit" Discourses*

Proponents	vs.	Opponents
• "Lifers" (perpetrators) are violent killers		• Many "lifers" are non-violent offenders caught in draconian laws (Three Strikes…)
• Perpetrators are remorseless and dangerous, deserve harsh punishment		• Offender are human beings with potential for change through rehabilitation
• Perpetrators as "takers" (of lives, etc)		• "Lifers" have a special ability to give back to their communities and to society

VBRA, by empowering the state to punish, hurts *all* citizens, one inmate emphasized that: "rehabilitation is the only true way to public safety" (San Quentin Prisoners 2008). The inmates also pointed out that many lifers are nonviolent offenders who are over-punished under today's harsh sentencing schemes.[17] The putative neutrality of law within the liberalist legal tradition relies heavily on the notion of merit. Yet what counts as merit is itself a product of power. Crenshaw (1995:xxix) explores how racial power plays out through the myth of the meritocracy, explaining that race-based critiques of liberal individualism "reveal how certain conceptions of merit function not as a neutral basis for distributing resources and opportunity, but rather as a repository of hidden, race-specific preferences for those who have the power to determine the meaning and consequences of 'merit'."

As the San Quentin Prisoners, one by one, got up and spoke, perhaps the single most common statement made was about their rehabilitation and hard work. They said: I'm not the same person I was 20 years ago;" "We have done the work [of rehabilitation];" "Proposition 9 takes away hope: hope is what makes rehabilitation possible;" "What is justice to you?;" "Please dialogue with us so we can be of service to you" (San Quentin Prisoners 2008).[18] Additionally, the prisoners pointed out that lifers play a key role in maintaining prison calm, saying: "We hold the prison together…and help maintain calm: if lifers lose hope all hell will break loose in here" (San Quentin Prisoners 2008). In this way, the prisoners' claims about rehabilitation suggested that they can and do change. They also countered the strong assumption in the VBRA proponents' discourses that they lacked merit, arguing that in fact, lifers play a crucial leadership role once back in their communities, saying "Put these old bulls back in the bull pen – we can make our communities safe" (San Quentin Prisoner 2008). Through their self-descriptions as

meritorious beings, the prisoners were in fact redefining commonsense notions of "public safety."[19] Moreover, if their claims about rehabilitation disrupted constructions of the hardened criminal, these "lifers" also depicted themselves as in fact leaders *within the prison community* and as playing an important role in maintaining the order and calm of the prison. This is a fact that is generally accepted by corrections officials.[20]

Overall, opponents of the Victim's Bill of Rights Act challenged this law on the grounds that it:

- "Ends hope" for prisoners serving life
- Removes potential leaders (fathers, sons, mothers) from their communities
- Diminishes social capital within poor communities
- Redirects money away from state social services, and from rehabilitation, towards prisons
- Erodes younger generations' belief in redemption and hard work
- Exacerbates determinate sentencing and other punitive laws.

The passage of the Victims' Bill of Rights Act perpetuates social harms committed by the state. Lynn Cooper (2008), scholar and speaker on the prison panel, discussed the destabilizing effects and "collateral consequences" such as loss of social capital for communities where men ages 17-35 are missing (incarcerated), and the even larger impact on families of women "lifers" affected under the VBRA.[21] These social harms are hidden insidious crimes, committed by invisible actors against victims rendered invisible by antagonistically dichotomous constructions of racialized and gendered victims/criminals. For, as Stabile (2006:183) states:

> U.S. society has (*sic*) denied blacks a victim status at all. Invested in reproducing the mandates of racialized androcentrism, this system of meaning and practices offers up explanations that effectively decriminalize its own actions. In this fashion, the historically most vulnerable are rendered as the most significant threat to the dominant social order.

By inserting themselves into the victim discourse San Quentin prisoners disrupted the interpersonal harms/ameliorative justice framing of crime, and the victim/criminal dichotomy. They questioned victim as a monolithic category, which is subsumed in the everyday justice language of "crime victim," "merit," and "rights," thereby challenging victim status as an exclusively white privilege, and they redefined this language. Most significantly, by illuminating the antagonistic dichotomies found in criminal justice language, the prisoners unearthed

Table 5.Community Harms: Reversal of Dominant Discourses

Community Harms: Reversal of Dominant Discourses (Complex non-polarized view)	
• Victims can be victimizers • Offenders can be victims • The "innocent" can be guilty	Proposition 9 *increases* public danger and decreases public safety

and brought to light the class and racial tensions and struggles at the base of this law. In short, where white supremacy disguised as "victims' rights" vilified them as remorseless monsters, the prisoners faced these powerful discursive constructions of race, reframing the crime issue and restoring their essential humanity.

CONCLUSION

I have tried to illustrate how everyday, commonsense justice language is marked by antagonistic dichotomies that carry racial and gendered meanings. These dichotomies bolster an interpersonal-harms, ameliorative justice focus that, when politicized through Victim's Bill of Rights Act of 2008, strengthens the state's power to punish. Victims' rights claims lie on a historical continuum with earlier racial and gendered constructions of victims and criminals in the service of maintaining white male privilege as "protectors" of white women. The hidden racial meanings invoked by (black) criminal and innocent (white, female) victim reify racial antagonism into criminal justice discourse, making some victims invisible, and silencing the racial Other. Advocates' claims to rights for crime victims mask harm to the community and to *communities*. Our definition of "victim" in America, which has become increasingly narrowed within victims' rights discourses, blinds us to social harms such as poverty, injustice, and the state's punishment. The VBRA, with its underlying antagonistic dichotomies, insidiously *justifies* more punishment; it veils social and racial power, contributing to the mass warehousing of (black and brown) peoples in California prisons, a concept discussed by John Irwin (2005).

By co-opting the "Bill of Rights" in its title, the Victim's Bill of Rights Act ironically empowers the state to punish Americans rather than protect them. This Act also represents an insidious inversion of rights discourse, or *rights reversals*. It appropriates and inverts the very concept of rights and oppression. For example, rights-based political movements were and are traditionally fought by those who lack social power, the truly oppressed, as seen with the Black civil rights movement and the women's movement.

Our challenge as scholars and critical criminologists is to move through and beyond these dichotomies, even in our *analyses*. We must show how *all* are victimized when we empower the state to punish (Arrigo and Milovanovic 2009). Rather than to create a hierarchy of victimization or privilege community harms above interpersonal harms, instead we must show how rights claims, politicized within victims' rights movements, reinforce the punitive state as protector of (only some) victims. We also must show how current criminal justice policies empower the-state-as-punisher and dismantle the-state-as-provider. This harms all crime victims and all citizens, especially the most vulnerable citizens. Our task, then, as critical criminologists, is to develop a new criminal justice language, what Henry and Milovanovic (1996) call a "replacement discourse," to answer the dichotomizations in crime discourse, one that recognizes interpersonal and state harms, and that will address social harms in a way that dislodges racial power from liberal law and mainstream criminal justice talk. Our work must also include dismantling the punishment systems these discourses sustain. We might start by foregrounding the experience and words of those most oppressed. As Mary Bosworth and her colleagues suggest, by going into the prisons we "demonstrate people's fundamental humanity" (Bosworth, Campbell, Demby, Ferranti, and Santos 2005:260). Such work in prisons and communities can clear a space for the voices of those who are silenced and most oppressed by the rights, freedoms, and very language we take for granted.

Endnotes

[1]The Victims' Bill of Rights Act of 2008, or Proposition 9, severely curtails the possibility of parole for "lifers" (those serving 25-years-to-life in state prison with the possibility of parole). It holds a presumption of a 15-year wait or denial period between probation hearings for parole-eligible inmates who are denied parole (previously, the rollover period was one to two years). The Act's advocates claim it merely provides "more flexibility" to parole boards (Zak 2008). Yet, Proposition 9 sets the strict standard of "clear and convincing evidence" to *prevent* this 15-year denial period (if it is prevented, the Board can require a rollover of three--unlikely--to five, seven, or ten years). The Board of Parole Hearings (BPH), essentially, must choose the 15-year maximum deferral except in cases of extraordinary circumstances surrounding an inmate's parole eligibility. The Act's other provisions, many of which reiterate those of an earlier California law, include: expanded access to parole hearings by giving crime victims access to, and to information about, parole hearings whether or not they have a specified relationship to the victim of the crime; preventing early release of prisoners even to reduce overcrowding; requiring notice be sent to any victim of any felony for which the prisoner has been convicted; requiring automatic restitution be paid to crime victims or their families; redefining the term "victim"; and amending Proposition 9 to the California Constitution.

[2]The public knew little about this bill, which was scarcely debated in public. It was sponsored by the billionaire, Henry Nicholas (brother to Marsy, who was murdered by her boyfriend in 1983). Nicholas spent $4.8 million dollars of his own money on this campaign, while only $450,000 was spent by opponents of Proposition 9. (Ironically, due to several unrelated criminal charges against Nicholas that had surfaced, the Proposition 9 campaign distanced itself from Nicholas.)

[3]The Prison University Project, a nonprofit organization directed by Jody Lewin, operates through the accredited private Christian Patton University in Oakland, California; it offers a college degree to inmates who complete courses taught by instructors and teaching assistants inside San Quentin Prison. The aim of the October 2008 symposium was to air the ideas of both sides, bringing together inmates and the public in an atypical discussion that would give voice to those most affected by this law: California prisoners. It was also meant to draw publicity and educate the public (through the media attention) about Proposition 9.

[4]To conduct this analysis I relied on handwritten notes, since electronic devices (tape recorders, computers, etc.) were not permitted in the prison (only a pen and notepad were allowed inside). I collected about 20 pages of notes that day, for which I used a mix of a grounded theory approach (See Strauss and Corbin 1990) and content analysis. I identified concepts and organized themes, summarized from the various claims made by each side into "issue frames" (see for example, Beckett 1997). For example, I organized my data to show how concepts such as "victim, "merit" or "public safety" were framed by both sides, and I analyzed the oppositional nature of these framings that are presented in the Tables and Charts in this article. I also categorized key direct quotations used by both sides under thematic headings in the text, which allowed for further analysis. Where possible I include direct quotes from the prisoners and other opponents of Proposition 9, as well as from its advocates; in some places I had to reconstruct quotes from my notes as closely as possible. Finally, I relied on the text of the Victims' Bill of Rights Act and the Proposition 9 campaign literature for clarification.

[5]In 1977, California abandoned the rehabilitation ideal and indeterminate sentencing, an open-ended sentencing policy which left discretion to parole boards and allowed "good time credits" to earn early release for certain

offenders. These were replaced by determinate sentencing in 1977, which mandates fixed prison terms that are on average longer than under the previous system (Feeley and Simon 1992). Since that time, California has passed over 100 new determinate sentencing laws. California's Three Strikes Law and Proposition 21 (the "Juvenile Three Strikes") are among these. Fixed or determinate sentencing terms are typically long, 25 years, and many more offenses, including many nonviolent offenses, now fall under Three Strikes and other mandatory sentencing policy, dramatically increasing the length of time convicts spend in prison, spurring mass incarceration prison overcrowding.

[6]About 65% of the inmates in the prison chapel was Black, as was the prison Chaplain and presiding prison law attorney on the panel. Several activists and academics were also people of color. The remainder of prisoners was divided about equally between Latinos and whites.

[7]The prison symposium was well-attended and emotionally charged: television media were there, emotions and tensions ran high on both sides and so much was at stake for the men inside the walls of San Quentin. We, the invited guests and speakers, filed in through the two rows of heavy iron gates, slamming shut behind us, then into the courtyard, flanked by death row cell blocks on one side, and the prison chapel on the other, and the American flag flying in between, an odd symbolism. The symposium was held in the prison chapel. It consisted of panel of speakers. The Proposition 9 campaign members and proponents present were: Belinda Harris-Ritter, attorney and victims' rights advocate, who was accompanied by another woman, presumably also a crime victim, who did not speak or identify herself, and a man named Mitch Zak, the Proposition 9 campaign manager and public relations professional. The rest of us, who greatly outnumbered them, opposed the bill: the Prison Chaplain; about, 25 prisoners (all "lifers) who sat among us in the audience, about ten of whom spoke on the panel; a self-proclaimed survivor of a crime, Jaimee Karroll, who runs a restorative justice project in San Quentin; a prisoner rights attorney; and about 25 invited guests and activists and academics, of which I was one. We made up an unlikely brotherhood and sisterhood: the inmates in blue prison tops reading "San Quentin" across their backs, and blue jeans and tennis shoes, sat, composed, in the pews on the right side of the podium. The activists and academics sat on the left side. Mr. Zak, the first speaker, was seated on the panel next to the prison attorney and Chaplain.

[8]According the *Fresno Bee (12-14-08),* certain portions of Proposition 9 have been blocked by a federal judge, since they conflict with rights gained in a 14-year class action lawsuit in Sacramento federal court (Olsen 2009). However, the 15-year rollover period remains intact among other provisions.

[9]Lifers are the prison population least likely to recidivate; they have a recidivism rate of about one percent. Ironically, the Proposition 9/VBRA focuses on them, and not the 70% of inmates who are at risk for re-offending (in California 7 in 10 inmates recommit crimes, not this one percent.) Additionally, parole is extremely rarely granted for homicide in California—in the last 20 years, only .05% of those convicted of second-degree murder or manslaughter who were eligible for parole were granted parole. The question becomes, how does deterring the .05% each year make us safer?

[10]This law, as one inmate noted, "changes the rules of the game midway through." By legislating such an extreme delay between parole hearings. It seems to retroactively change the original sentence conferred on the defendant at trial, of 25-years-to-life *with* the possibility of parole.

[11]Historical "moral panics" over crime and drugs have been cyclical, the most recent being the War on Drugs of the 1980s. They have been potent discursive tools through which governments have reduced complex social problems to a matter of crime and called for more law and order (Hall et al. 1979; Beckett 1997; Reinarman and Levine 1997; Musto 1973). The public's fear of external dangers has been rallied since Prohibition, most typically by equating crime and drugs with a racialized Other—Blacks Chinese, Mexicans, immigrants. Dorothy Roberts (1997) claims that the "crack baby," the central image of the War on Drugs, painted Black mothers as monsters who intentionally harmed their children.

[12]Prior to the passage of Proposition 9, the victim was defined under the Penal Code as "the person against whom a crime had been committed." Under the VBRA, the California Constitution now defines "victim" as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or a delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated." The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds did not act in the best interests of a minor victim." (Cal. Const., art. 1 section 28(e).).

[13]While exiting the prison, my companion, a law student, informed me that she was able to chat with Belinda Harris-Ritter casually, just minutes earlier. This quote about fear was conveyed to me from the report of their conversation.

[14]The Proposition 9 campaign is part of an organized and well-funded victims' rights interest group in California, for which Mitch Zak was a paid public relations professional. Victims' rights group members are known for showing up at the parole hearings of inmates to whom they have no intimate or family connection whatsoever. This group and movement, with its tough-on-crime agenda and success in passing harsh criminal legislation, constitutes more than a group of survivors of violent crimes.

[15]Jamee Karoll, who is active in restorative justice at San Quentin, offered an account of her own psychological healing, which necessitated understanding that her perpetrators were also suffering and of the need to pave the way for offenders to give back as a way to restore justice. While "survivor" might work to reverse innocent victim/criminal constructs, it too may carry certain moralizing implications and may not represent the full range of violent crime victims, especially those who either did not survive, or have not survived the traumatic effects of a crime.

[16]The VBRA proponents claim to be establishing a neutral baseline (an "equal playing field") for crime victims and offenders. The irony is that the poor (including inmates) are structurally denied opportunities to demonstrate merit because of the persistence of inequality (or lack of rehabilitation programs in prisons); they are excluded from the playing field. Those with power in fact determine the meaning of merit. As Crenshaw states, "The putatively neutral baseline from which Affirmative Action is said to represent a deviation is in fact a mechanism for perpetuating the distribution of rights, privileges, and opportunity established under a regime of uncontested white supremacy" (Crenshaw 1995: xxix).

[17]This inmate was given a life sentence in the mid 1990s on a conspiracy charges in a robbery of a business, in which no one was killed. He announced on the panel that he had no gun, a car was hijacked, and a security guard was knocked unconscious. A Latino inmate later discussed with me his charges: he was given a third strike and thus an automatic 25 years-to-life in prison for three nonviolent felonies (two residential burglaries and one attempted burglary). This is typical in Three Strikes sentencing whereby many defendants whose offenses are non-violent are incarcerated for long terms or life terms.

[18]Lifers with parole are in fact more motivated to take advantage of any rehabilitation programs offered in the prison than those inmates serving long, determinate sentences *without* the chance parole. However, the VBRA proponents' claims imply that offenders are beyond rehabilitation due to their inherently inhumanity.

[19]It is significant that the prisoners contested notions of meritocracy by constructing themselves as preservers of *public safety* as opposed to criminal predators: even more important than their peace-keeping role within the prison, they illuminated their potential role, as fully rehabilitated men, as providers, leaders and role models, especially for youth, in their own disadvantaged communities, once (and if) released.

[20]It is telling that the powerful California prison guards union, the California Correctional Peace Officers Association (CCPOA), which typically heavily backs punitive laws such as Three Strikes and Proposition 21, refused to back VBRA. One inmate told me that this is because the CCPOA was well aware of lifers' instrumental role in maintaining prison order and calm, and understands the repercussions for prison guards if prisoners lose the incentive to behave well or seek rehabilitation. Additionally, "lifers," as keepers of order, demonstrates an ironic reversal of the image of the remorseless, monstrous criminal at base of the VBRA advocates' argument.

[21]In addition, denial of parole also results in a loss of community and familial mechanisms of social control, of youths especially, in poor communities, where the police then take on this role. Cooper (2008) also stressed that the VBRA destroys hope and the belief in hard work, change and redemption by severely undermining the incentive for rehabilitation. She pointed to the social harms of long-term incarceration for neighborhoods and communities, describing a "tipping point" effect when nearly one percent of community members in poor Black and Latino communities is in prison, causing whole communities to become destabilized.

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From Child to Captive: Constructing Captivity in a Juvenile Institution

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Abstract: *Juvenile detention centers are not simply places that regulate and control the behavior of children accused of crimes. Nor are they places that "rehabilitate" or "fix" children in need. Instead, juvenile detention centers provide the social location in which detained children, who are often working class and of color, are created unequal, and treated accordingly. I argue that inside juvenile detention centers, children are constructed as "captives," as members of a permanent, disreputable category. Focusing on the experiences of juvenile detention guards, I show how guards construct detained youth as pathological and deserving of punitive treatment. As a result, detained youth are ushered into a rising category of exclusion that carries the salience of other categories of difference, like race, class and gender. "Captivity" is a rising marker of inequality, and is the product of an ongoing interactional process that is reproduced, maintained, and legitimated in the everyday interactions between guards and between guards and detained youth.*

Someone said life is easy when you're a kid.
Now that I think about it . . . when was I a kid?
My life has been hard.
My mother dead, my brother lost, my father crazy
My life trapped in a cage.
Who was to care for me when I was in trouble.
No one to help
No one to care

--Angel, a 16 year-old captive of the state.

I received this poem in the mail from Angel, a young man I mentored for over six years. Since the age of 12, he has spent most of his teenage years locked up, leaving him angry at the juvenile justice system, which he believes has robbed him of his childhood and "prepared him for the pen."

I spent nearly two years as an ethnographic researcher inside Rosy Meadows, a large juvenile detention center that houses anywhere between 150-200 youth between the ages of 11-18 in the Northwest, United States. In 2005, for

the United States as a whole, 354,100 youth cycled through such juvenile detention centers (OJJDP 2008). The more time I spent talking with the incarcerated youth and their state-issued guardians, the more I began to question the conventional research on juvenile justice, which is far too often defined by existing paradigms of rehabilitation and punishment. On the left, progressive criminologists and policy makers decry the draconian shift toward punishment and the subsequent evaporation of funding for rehabilitation programs, leaving a "vulnerable" population "at risk" (Inderbitzen 2006; Krisberg 2005). On the right, conservatives argue that the juvenile justice system is far too lenient on "dangerous" and "predatory" youth and should focus more on punishment and incapacitation (DiIulio 1995). As the debate rages between rehabilitation and punishment, there is another overlooked, and far more insidious, function of the current juvenile justice system: the systematic branding of incarcerated youth as "criminal," leading to the death of childhood and the birth of what I call "captivity."

Given the massive experiment in incarceration over the last thirty years, it is time to think of "captivity" as a rising form of state legitimated inequality, similar to other categorical identities, like race, gender, and class. In this article, I avoid using conventional words like "delinquent," "offender," or "criminal" not only because these terms reduce the humanity of the children to whom they are applied, but also because they are theoretically insufficient; they push researchers to focus solely on the behavior of children and ignore the role institutions play in constructing categories of delinquency (Becker 1963). Instead, I use the concept of "captivity" to highlight the interactional and institutional process through which incarcerated children are created different inside a total institution. The concept of captivity implies interaction because to be a captive, one must be held in that category by some outside force, whether it comes in the form of a guard, a judge, or an entire institution. To understand the social world of juvenile detention centers in particular, and "juvenile delinquency" in general, the researcher must focus not only on the activities of detained children, but also on the activities of juvenile justice officials. I emphasize that a captive identity is not a descriptor of the individual attributes or behaviors of detained youth, but rather it is "an emergent property of social situations" (West and Zimmerman 1987). As such, captivity must be constructed, reproduced, and maintained in the everyday interactions between guards, and between guards and children. A captive identity, then, is the both the outcome of and justification for the creation of a new category of inequality that carries the salience of other categories of difference, like race, class, and gender.

Not since slavery have we seen the rise of an institution that so fundamentally perpetuates and legitimates massive inequality, especially for inner city children of color. While there is little ethnographic research on juvenile institutions, there is a growing body of literature that links adult criminal justice institutions to growing social inequality. Western (2006) argues that incarceration has become a normal part of the life course for the urban poor. Incarceration limits the educational and occupational opportunities available to the formerly incarcerated, especially young Black and Latino males (Western 2006). Similarly, Pager (2007) finds that the "negative credential" of incarceration severely restricts the job opportunities available to the formerly incarcerated, whose chances of being considered for employment are nearly half that of applicants without criminal records. The mark of incarceration, Pager writes, results in the "categorical exclusion of whole classes of individuals on the basis of their stigmatized identity" (Pager 2007:149). With nearly 7 million people in the U.S. in prison, jail, or under the control of probation or parole, the research of Western and Pager suggests that the prison has become a major mechanism that reproduces and legitimates inequality for the urban poor (Austin and Irwin 2001).

Although the United States detains and incarcerates people at a rate that far surpasses that of any other nation, there has been an almost complete lack of recent ethnographic research on what happens to people while they are held captive in an era of mass incarceration. Few researchers have stepped foot inside the cinder-block halls of juvenile and adult facilities, let alone talked with the confined and their guards.[1] Most of the detailed ethnographic accounts of juvenile and adult facilities were written prior to the 1980s, long before the era of massive incarceration, leading Waquant (2002) to decry the "curious eclipse of prison ethnography." If there has been an eclipse of prison ethnography, then there has also been a total whiteout of ethnographic studies on juvenile detention centers and youth prisons.

It is within this yawning gulf in the literature that I situate my ethnographic research on juvenile detention centers. My research suggests that juvenile detention centers are not simply places that regulate and control the behavior of children accused of crimes, nor are they places that "rehabilitate" or "fix" children in need. Instead, juvenile detention centers provide the social location in which detained children, who are often working class and of color, are created different and unequal.

To make this argument, I draw from Erving Goffman's (1961) classic work on total institutions and West and Fenstermaker's more recent work on "doing difference" (West and Fenstermaker 1995; Fenstermaker and West 2002). Goffman asserts that total institutions, such as prisons and mental hospitals, subject people to a massive status degradation and force inmates to undergo a "series of abasements, degradations, humiliation, and profanations of self" (Goffman 1961:14). Total institutions are all-encompassing and sever inmates from the outside world, restrict their movements inside the institution, and more importantly, deprive human beings of their individuality and humanity. Goffman (1961) contends that it is not individual illness or pathology, but rather the institution itself that fundamentally shapes the social world of the inmate and their self-conceptions. Indeed, the very architecture of the detention center, the focus of this study, suggests youth are different and dangerous: the thick steel doors, the countless locks on every door and every drawer, the listening devices built into each cell, and the numerous gazing security cameras. Although the overwhelming majority of youth are detained for non-violent offenses, the architecture of Rosy Meadows resembles that of adult, more secure institutions.

My research suggests that detention centers not only subject children to a process of status degradation (Garfinkel 1956; Goffman 1961), but also play a crucial role in the construction of "captivity," a rising category of exclusion and inequality. Moving beyond traditional criminological research, I draw from West and Fenstermaker's (1995) "Doing Difference" framework. The "doing difference" framework was originally intended

to explain the construction of categories of inequality, like race, class, gender, and sexuality (West and Fenstermaker 2002). The social construction of captive identities, however, shares much in common with other categorical identities. West and Fenstermaker argue that categories of difference are not so much individual attributes, but rather they are accomplished through everyday interaction. West and Fenstermaker, for example, assert that we "do gender," and this involves a social process of "creating differences between girls and boys and women and men, differences that are not natural, essential, or biological. Once these differences have been constructed, they are used to reinforce the 'essentialness' of gender" (Fenstermaker and West 2002:13). Through every-day interaction, people engage in behavior with an eye toward what it means to be a man or a woman. These normative conceptions, to which all are held accountable, reinforce the "essentialness" of gender and, therefore, reproduce and reaffirm gender inequality; so much so that many behaviors can be easily identified as feminine or masculine, as if they were "natural" rather than socially constructed differences.

In this article, I use the "doing difference" framework to provide a unique analysis of the ways in which a new form of inequality, referred to as captivity, is first imposed and then reproduced, maintained, and legitimated in the everyday interactions between guards and detained children.[2] Guards offer descriptive accounts of the detainees as "pathological," "untrustworthy," "dangerous," and "irresponsible." In the words of Wally, a detention guard in his 40s, "These kids are skilled manipulators. They don't want to take responsibility for their action…You know, I can't be intellectual with them, or anything like that, just because of our backgrounds. They're different. They're not really educated. They're not really mature. They're not responsible." Wally is not alone. I heard countless guards describe detained youth in similar ways, as "baby criminals," "troubled," "assholes," "manipulators," "predators," and "con-artists." This particular way of framing youth – as pathological, troubled, and dysfunctional – shapes every aspect of juvenile detention facilities. Guards are trained to always be suspicious of the "pathological" juvenile population. They are instructed never to turn their backs to the youth, never to share personal stories, and to maintain their social distance, almost as if the youth are suffering from an infectious disease that threatens to contaminate all who come too close.

The training guards receive and their experience on the job, leads guards to believe that the youth are "pathological," "untrustworthy," "dangerous," and "irresponsible." These characteristics, guards argue, are part of the captive's "essential" character (West and Fenstermaker 2002:207). Guards, then, interact with the youth with an eye toward these normative conceptions. Through these everyday interactions, juvenile facilities usher detained youth into a constructed category of

exclusion that marks the end of childhood and the birth of captivity – leaving Angel to question inside a small cage of cinder-block and steel, "when was I a kid?"

RESEARCH METHODS: WHEN THE RESEARCHER BECOMES ACCOUNTABLE

There is a contentious debate between ethnographers about the value of critical ethnography. On one side, more traditional social researchers, with a positivist bent, argue that the goal of the researcher is to "transcend personal biases, prejudices, and values and remain neutral toward their object of study" (Esterberg 2002). The goal, here, is to be an objective observer, not an active participant in the social worlds of the researched. On the other side, critical ethnographers argue that objectivity in the field is impossible and that the researchers have their own interests and biases. Thus, rather than claim to be "objective," ethnographic researchers should instead be reflexive about how their social identity, their standpoint, shapes the research they produce (Twine 2000).

As a critical ethnographer, I worried deeply about how my status would affect my access to detention guards. Before I was a researcher, I served as a volunteer at Rosy Meadows. I was young, wore baggy pants, had a goatee, and was just starting graduate school. Later, I would become an ethnographic researcher. I began my fieldwork at Rosy Meadows in October 1998. I spent 20 hours a week for nearly two years inside the detention center. I ate the bland food, played cards, and attended church services. I followed both the youth and the guards in their daily routine. During the ethnographic component of my research, I spoke with 25 guards, asking them questions as they went about their work. This more informal way of speaking with guards proved highly effective, as guards were far more comfortable talking to me during their daily routine. I also formally interviewed guards in the summer of 2002. I interviewed an additional 8 detention guards and a detention supervisor. I obtained most of my interviews through convenience sampling. I simply sat outside the detention center and asked guards if I could interview them. I obtained 3 interviews through snowball sampling with the assistance of guards who helped set up these interviews. All formal interviews were recorded with the consent of the interviewees.

When I returned to Rosy Meadows in 2002, my former status as a volunteer helped me not only gain access to detention guards, but also aided the interview process. I had known many of the guards that I interviewed from when I was a volunteer. One guard, in particular, helped me set up interviews with guards I didn't know. She knew me as trustworthy and as someone who would not talk to management. Without her help, I doubt I would have been able to interview as many guards as I did.

From my experiences as a volunteer and researcher, I knew what questions might raise caution among the guards and saved those for later in the research process. In addition, I knew many of the dilemmas guards faced in their daily routines and knew how to ask questions to elicit their feelings and personal stories about dealing with detained youth. This would have been difficult had I been an outsider with no familiarity of what goes on inside juvenile detention centers. In general, my experience in detention helped me formulate a series of open-ended questions that struck at the heart of many of the personal dilemmas guards face in their interactions, not only with captive children, but also with their co-workers and supervisors.

However, one of the difficulties I had in connecting with guards was the different ways we saw the children. As indicated above, many detention guards held a narrow view of detained children and embraced normative conceptions of the captive population as pathological and untrustworthy. I didn't see the children that way. Much of this had to do with where I came of age. Growing up in the inner city of Indianapolis, I had a number of friends who had been detained or incarcerated. I didn't know them as "criminals" or "delinquents;" I knew them as Charles from down the block on Forest Manor or Mike from around the corner on Meridian Street. I knew them as friends, and as such, I knew their lives were far more complex than the "criminal" labels could ever capture.

Aside from growing up with friends who were confined within the juvenile justice system, I also served as a mentor for two teenagers who were sent to youth camps. Angel, who was 15 when I first met him, lived around the corner from me, and I knew him and his family quite well. I knew Angel as more than just a blue uniformed captive; I knew him in other roles as well. He was a brother, a grandson, a damn good chess player, and someone who loved video games. I knew him as the young man who raced down the driveway to scoop a three year-old off the street, milliseconds before a car raced by. My experience as a mentor provided a more intimate picture of the lives of detained and incarcerated children, something that is often lacking in the conventional literature. This sometimes made it difficult for me to interact with detention guards whose only experience with the youth was within the confines of a juvenile detention center. Because guards are instructed not to intermingle with formerly detained children on the outside, they rarely see the youth in roles outside of those they play in detention, and this makes guards far more susceptible to stereotypes, as well as contributing toward their construction and maintenance.

Because I had a different view of the children than most guards, I had to be careful about who found out. As a volunteer, guards held me accountable to the way they saw the detainees, as "troubled youth" who don't take responsibility for their actions. Many guards simply assumed that I saw the children in the same way, and it was difficult for me to manage their expectations of me. At times, they expected me to treat the youth as they did. And when I didn't, when I, for example, brought candy for the youth on Halloween, a couple of guards commented that I had been manipulated, hustled by youth addicted to candy. Guards often warned me that if I didn't watch out, the youth would take advantage of me. Many guards told me always to be suspicious of the youth. Even during my volunteer training, I was instructed to take off my gold jewelry before entering detention for fear that the youth might steal it. "If it's valuable, don't take it into detention," the volunteer coordinator warned.

On other occasions, detention supervisors held me accountable in more formal ways. One evening, Angel's grandfather came to visit him in detention. I was playing cards with Angel, and he asked if I wanted to join him for the visit. A guard escorted us down the hallway and up the stairs to the visiting room.

Angel's grandfather, Manuel, sat quietly, a black cowboy hat covered his head. He smiled when he saw us, slowly rising from his chair to greet us. He hugged Angel and shook my hand.

"Where's Big Mike?" Angel asked, looking for his uncle through the reinforced windows. Enough family members have been denied entrance into detention that Angel no longer expects to see anyone other than his grandfather. Nonetheless, Angel has not accepted the power of his keepers to sever his ties from his family.

"That's messed up, why won't they let me see him? Why won't they let him in?"

Manuel shook his head, angry, but trying not to show it. Angel walked to the window and tried to look out through the security doors at his uncle. "That's fucked up. Why won't they let me see him? He's my uncle. He's family."

A voice from the control booth blared over the speakers, "Angel, sit down. If you get up again, I'm going to cancel your visit."

The visiting room grew quiet; only the buzz from the fluorescent lights could be heard. Manuel rose slowly from his chair and limped over to the intercom. "Stop treating the kids like this. Keep treating them like this, and I'm going to the get my lawyer."

A couple of the parents in the room cracked a smile, happy to hear somebody talking back. Manuel returned to the table, and we talked for about five minutes, until the family sitting next to the window left. Angel suggested that we sit by the window, so he could see his uncle on the other side. Manuel moved first, then I followed, and then Angel. That way they could not cancel our visit. It worked, but the guards in the control booth stared at us for the remaining 25 minutes. I knew I was in trouble.

After the visit, I made it down the stairs to control post #1 when the phone rang. The post staff called my name and instructed me to return to central control. There, I met

Kirsten Baker, a middle-aged supervisor. She held my volunteer card and driver's license in her hand, a subtle hint that I was supposed to leave.

"Angel knows better than to do that," Kirsten says abruptly with the tone of a parent. "He knows the rules. He was acting like a child."

As politely as possible, I explained to her that Angel was upset because he couldn't see his uncle, and that I didn't know about the rule to stay seated at all times in the visiting room. I apologized. Kirsten then told me that she has known Angel's grandfather for years, and that he wasn't a good role model. However, throughout our conversation, Kirsten kept confusing Angel's grandfather with his uncle, calling them both by the wrong name, a mistake that told me she didn't know Angel's family as much as she thought.

"Well, in the future, and I know it's not your responsibility, but if you can tell them not to move in the future, maybe tell them that's not a good idea. They should know, but when you moved with them, it made you look like you were colluding with them."

Throughout my time as a volunteer, my actions sometimes came under the gaze of detention guards and supervisors for breaking the rules and crossing the invisible line between guards and captive. In cases like the above, when I was suspected of colluding with the youth, I played the role of a naïve graduate student, as someone who was unaware of the detention rules. As much as possible, I avoided voicing my thoughts. My silence bothered me, a weight that felt like I was acquiescing to an unjust system. Deep down, I wanted to tell Kirsten that she was stereotyping Angel and his grandfather and that she didn't know them at all. I wanted to challenge their visiting policies as unnecessarily restrictive and punitive. But I didn't; instead, I played the role of an apologetic idiot, so that I could come back to the detention center another day. In this way, I was held in check and brought back in line with normative conceptions of detained children. My silence was secured.

My experiences taught me a lesson about the ways that guards themselves are held accountable and how they are pressured to behave in accordance with the normative conceptions of the captive population. In my interviews, I noticed that a handful of guards, especially those who had a rapport with the youth, often hid their feelings from their co-workers as well. One guard in particular disagreed with many of the rules he was expected to enforce. He routinely broke them. He let the youth stay up later at night, allowed them to have pencils in their cells so they could write letters, and he let them stay out in the courtyard for longer than the designated time. But, he did so in secret, always with an eye to what his co-workers might think if he was detected. He dimmed the lights when the children were out of their cells past their bedtimes, so that they couldn't be seen from the hallway. He made sure he had a friend at the post before he took the kids out to the courtyard for extended periods of time. My involvement as a volunteer helped me see this aspect of a guard's social world and helped me remain sensitive to the pressures guards experience on the job, a sensitivity that would have been impossible had I taken a more "objective" and more detached approach to conducting research at Rosy Meadows.

CONSTRUCTING CAPTIVITY IN A JUVENILE DETENTION CENTER

The pressures that I felt as a volunteer to conform to a more punitive, detached way of interacting with the youth were similar to those experienced by detention guards. In this section, I discuss the experiences of juvenile detention guards: how they view the youth under their charge, the training they receive, the rules they enforce, and the punitive culture that develops among them. In doing so, I attempt to show how the functionaries of juvenile justice construct detained youth as "captives," as members of a disreputable category.

The Hood Complex: Framing Pathology

It's a quiet evening in Unit B. Devin, a tall detention guard in his early 30s, stands before a group of blue uniformed children. He's trying to teach them about responsibility, hard work, and making the right choices. Some of the teenagers look down, eyes focused on their orange sandals, while others watch Devin with keen interest. This formal activity is called structured learning, and all guards on the night shift are supposed to take an hour out of their day to teach the children life lessons, but few ever do.

"How many of you have heard about Mike Tyson?" Devin asks.

The children nod their heads, aware of Tyson's recent troubles with the law.

"I think he was set up!" Sean says, sitting at one of the circular tables with three other children.

"What?" Devin asks with raised eyebrows, "You don't think that he is responsible for what he did?"

"I'm not saying that," Sean answers, "I'm saying they made him out to be a demon. That is all you ever saw of him. He was a demon."

"Why are you making excuses for him?" Devin asks, his voice slightly agitated. "He is an abusive person. He abused his wife. He's hit people. He can't control himself. That's on him."

Slightly frustrated, Sean answers, "I'm not saying he didn't do those things. He probably did, and he was wrong. I'm saying that people made him out to be a demon, and he played right into that. He acted like they wanted him to act."

Devin pauses for a moment, and then with an air of condescension, says, "Man, you've got 'hood complex' don't you?"

"I'm not in a gang. I'm not part of any hood," Sean says, taking offense to Devin's accusations.

"I'm not saying that," Devin says, "Do you know what I mean when I say 'hood complex'?"

"No, but I'm not in a gang."

"Listen," Devin says authoritatively, "I'm not saying you are. I'm just saying that you expect people to do for you without you giving anything back. You see, some of you are going to have to change your attitude. The outside world isn't going to mess around with you. My people are in Texas. They worked hard. They pulled themselves up by their own bootstraps. It's a struggle, yeah, but you have to make the right choices. You have to think of more than just yourself."

Devin continues, his voice calmer and more sincere. "You're gonna have to learn to play the game. You may have to change the way you dress. To get a job, you may have to wear a suit. I've had to wear a suit at times, you know. You're gonna have to learn how to act in different places; how to have a positive attitude. Employers don't like someone with a bad attitude. You're gonna have to learn how to say 'yes sir' and 'no sir,' and stuff like that."

"Let me ask you something. How many of you ever feel relaxed?" Devin asks.

"Man," another blue-uniformed teenager says, "How can we be relaxed, we're locked up?"

Devin's use of the phrase "hood complex" to explain Sean's behavior speaks volumes to how guards view detained children. In Devin's mind, the blue uniformed children that sit before him lack the proper values to succeed in mainstream society. They have bad attitudes. They lack the values of hard work, responsibility, and, perhaps most important, respect for authority. When Sean offers a different account of Mike Tyson's troubles with the law, when he suggests that the demonization of Mike Tyson in the media also played a part in his downfall, Devin quickly dismisses the teenager's ideas. For Devin, the fact that Sean even mentions the demonization of Tyson is evidence of a tragic ailment infecting the children inside detention: the "hood complex" — a deeply entrenched, pathological value system to be found among children living in low-income inner-city neighborhoods.

This narrative reveals how guards construct children as members of a disreputable categorical identity, which legitimates the massive status change from child to captive. The social construction of the captive population relies on the production and maintenance of descriptive accounts of their behavior inside and outside detention walls (Heritage 1984). Devin deploys the "hood complex" as an account, an explanation for why the children are locked up. Devin doesn't even know Sean's name. But Sean wears a blue uniform, and as a result, Devin treats him like a captive, a criminal worthy of suspicion.

Devin is not alone in offering this account of the captive's behavior. In my interviews, guards often voiced similar characterizations when describing detained children. The more sympathetic guards use words such as "troubled" or "at-risk," while more punitive guards use words such as "baby con-artist," "criminal," and "assholes" to describe the detainees. Although there are gradations in how guards describe the children under their supervision, each word positions the problems squarely on the shoulders of the captive population. In his book, *Garfinkel and Ethnomethology,* Heritage argues that the "social world, indeed what counts as social reality itself, is managed and acted upon through the medium of ordinary description" (Heritage 1984:137). Descriptive accounts not only help people make sense of their world, but also these accounts construct social reality. For detention guards, descriptive accounts like the "hood complex" help guards justify some of the more unsavory parts of their job, like forcing teenagers into cells the size of a small walk-in closet sometimes for days, even months at a time. Goffman argues that inside total institutions, descriptive accounts like the "Hood Complex" serve an important function:

> Given the inmates whom they have charge, and the processing that must be done to them, the staff tends to evolve what may be thought of as a theory of human nature. As an implicit part of institutional perspective, this theory rationalizes activity, provides a subtle means of maintaining social distance from inmates and a stereotyped view of them, and justifies the treatment accorded them. (Goffman 1961:84)

The idea that captive children act from a defective value system travels far beyond the minds of individual guards and can be found deeply embedded in the very structure of the detention center. It can be found in the training that guards receive, the rules that guards enforce, and the everyday conversations that guards have with detainees and their co-workers. The assumption of pathology lies at the heart of the Rosy Meadows, and rationalizes how the children are treated, caged and punished.

"It's Bad Everywhere:" Training to Assume Pathology

All guards are required to attend the two-week juvenile workers academy. The academy instructs guards on how to supervise confined youth, how to enforce the rules, and how to properly use physical force. Beyond the technical aspects of their employment, the training academy exposes guards to an institutional framework that provides a normative conception of the children as pathological, as internally deficient. In this section, I focus on how guards come face to face with an accounting framework that portrays children as pathological.

Alana is in her early 20s and identifies as Asian American. I talk with her after she finishes the training course at the detention academy. She describes her time at the academy as disturbing, because she felt that the recruits were trained to be overly hostile and aggressive toward the youth.

"When I was at the academy, we did this role playing game," she says. "There were three kids in the shower, and you know, at the other institutions they have group showers. So, they asked, what would you do if the kids were flooding the showers and refused to come out? A couple of the staff from the other institution said, 'You mace them.' And everybody there was agreeing with them. I was like what about trying to talk them out. They said, 'no, no don't do that. It's procedure to mace them. You got to follow procedure.'"

Before she attended the academy, Alana's few months of employment at Rosy Meadows convinced her that the institution was particularly cold and hostile toward the youth. However, she thought Rosy Meadows was the exception. Now, she says, "I realize that it's bad everywhere." She looks frustrated, the look of somebody who is fighting against a system she feels powerless to change.

Alana's experience at the training academy taught her not only how she is supposed to view the captive, but also how she is expected to treat them. When Alana says, "I realize that it's bad everywhere," she highlights how a punitive approach to managing the detained youth has become part of the normal operating procedure of juvenile justice institutions, so much so that those guards who question institutional procedures are brought back into line with instructions to "follow procedure," even when it requires spraying teenagers with mace.

All new recruits attend this mandatory training academy during their six-month probationary period of employment. It is here where guards learn to view children as captives and treat them accordingly. Alana lends me a copy of the *Juvenile Workers Handbook*. I study its pages and find numerous warnings about the pathological behavior of detained and incarcerated youth. The Handbook, for example, describes captive children as sociopathic, and lists a series of steps to deal with them.

"The first step in preparing to deal with offenders," the Handbook says, "is to understand the sociopathic personality."[3] The Handbook lists characteristics of the "sociopathic" personality: "irresponsible, self-centered, feels little or no guilt, sees others as objects for exploitation, compulsive liar, and strong drive for immediate gratification, adept at manipulation, has lack of insight into own behavior, uses others to meet own needs, lies about behavior." The Handbook warns, "You must recognize that a majority of the offender population will be sociopathic to some degree."[4]

There is also a section dedicated to warning guards about manipulative behavior: "FACT: You can be manipulated by the helpful and friendly as well as the aggressive and demanding offender…Realize that inmates will take advantage of you if you let them…Understand the characteristics of a 'criminal'"[5]

At the academy, guards are not only taught to view the detained children as pathological, manipulative, and untrustworthy, but also, given this "objective" reality, they are taught to treat captive children differently from how they would treat children outside the detention walls. The training academy teaches guards to be prepared at all times, to watch their back, and use physical force in ways that are only acceptable inside the detention walls. Guards learn how to use chemical sprays, self defense tactics, and take-down techniques, all of which are framed as normal and legitimate operating procedures when dealing with "potentially violent" detainees. "Safety and Security" is the mantra, and all forms of punishment -- five point restraints, chemical sprays, and take-down tactics—are justified under its banner.

At the academy, guards learn what kind of people the captives are, their personality, their behavior, and their disposition. In the process, children are reduced to the crimes they may or may not have committed. Other roles that the children play on the outside are erased; they are no longer brothers and sisters, sons and daughters, athletes or students; instead, they are captives. The idea that the captives are pathological is not just a belief or an attitude. Rather, it is an account of social reality that eclipses all other explanations (Heritage 1984:154). Missing from these descriptive accounts is a discussion about how detention policies may create the problems guards experience on their jobs. Take, for example, the claim that the detainees are "manipulative." Manipulation is largely a product of the institutional environment. Detained youth are deprived of everything from toothpaste to hairbrushes to lotion. As a result, they must find ways to secure their daily necessities through what Erving Goffman calls "secondary adjustments," or what detained children call "working the system" (Goffman 1961: 54). This, according to Goffman (1961), is not a product of some internal character flaw, but rather is the product of the institutional context in which this behavior occurs.

Although the institution trains its workforce to view the children as pathological, the training they receive is short-lived. For guards to adopt the normative conceptions of children as pathological, they must experience conflict in their everyday interactions with the children that legitimates and even justifies these normative conceptions. When the youth deploy "secondary adjustments" to cope with the institutional reality of confinement, when they flood their toilets, bang their fist against their doors, cuss at staff, guards point to these behaviors as emblematic of their essential character. Instead of seeing these behaviors as the product of confinement inside total institutions, guards treat these characteristics as though they are essential features of captive children. This process is only

amplified by the rules and punishments guards are expected to enforce.

Mice in a Maze: Detention Rules and Punishments

At Rosy Meadows, there is a body of rules that guards are expected to enforce. These rules govern everything from how the detainees walk down the hallway – hands to the sides, quiet, head forward – to how they wear their institutional garb: shirt tucked in, pants pulled up, and identification band on the right wrist. In all, there are over 50 rules that govern the captive's behavior inside detention. These rules are the backbone of what officials call the behavior management program — an incentive/punishment system viewed by detention officials as a "teaching tool…to change behavior."[6] Like the training of guards, the implicit assumption of the behavior management program is that the children are pathological in some form or another, which is manifested in their behavior – behavior that requires proactive institutional guidelines to transform it.

The behavior management program, also known as the "level system," imposes an artificial hierarchy on the detained population, marking those with, and those without, certain privileges. Ideally, if detained children follow all the rules and obey the instructions of their keeper, they are rewarded with extra time out of their cells, later bedtimes, and allowed more telephone access privileges. If, however, they break institutional rules or defy the guard's orders, they may be punished with cell confinement, which in theory should last anywhere from eight hours to three days, but, in reality, may last for months. If detainees, for example, have a pencil in their cell, or if they possess more than five books, they may be locked in their cells for 16 hours. If they tuck their pants into their socks, if they are found with sagging county blues, they may be locked in their cells for two days. If they flood their cells, they may be locked in their cells for a minimum of three days, with additional punishment depending on how they behave while confined to their cells. I have, on two separate occasions, observed children confined to their cells for a period of three months for 23 hours a day.

The rules and punishments are the material manifestation of normative conceptions of detained children as pathological and are situated in a juvenile justice framework that relies heavily on punishment to impose behavioral conformity. Many guards believe that detained children can't be trusted, and this assumption shapes their interactions with captive youth. For example, when escorting the children down the hallway, guards never turn their backs to the detainees. Or when issuing pencils, guards always count to make sure they have all the pencils before the children return to their cells. Guards rarely leave their personal items out in the open. Instead, they make sure they are safely locked away. Guards not only believe that the captive can't be trusted, but also they identify a series of behavior problems that are believed to be part of the captive's essential character. The children are viewed as behavior problems, because, first, they don't respect adult authority, second, they don't respect the rules, and third, they don't take responsibility for their behavior. Many guards believe that these attitudes, or as Devin calls it, "the Hood complex," are the primary obstacles blocking the captive's entrance into a more middle-class style of life and a life free of crime. From the official perspective, the key to managing detained children is to change their behavior by subjecting them to a rigid set of rules and punishments.

The rules, however, place guards in a precarious position. Given that the rules are grounded in an assumption of pathology, the children experience the rules as overly punitive and unjust and are likely to resist them. The rules, because of their punitive nature, pit guards against captives. After all, a guard's job is to control children via small cinderblock cells, which is not likely to be viewed favorably by the children who must figure out how to cope with the boredom, anxiety, and frustration associated with long periods of confinement. If a guard enforces the rules as they are supposed to, their days will be characterized by widespread conflict with the detainees, and it is this conflict and the behavior that emerges from it, that ultimately confirms for the guards that the children are pathological, and deserving of punishment.

"I Have to Be Mean All the Time:" The Development of a Punitive Culture

I have focused on the training guards receive and the rules they enforce to illustrate how normative conceptions of the captive population as pathological are embedded within the social structure of the institution. The institution, however, does not exist outside of the people who carry out its policies and practices. One of the side effects of the "get tough on crime" movement is that it has radically changed the interactions between detention guards and youth. As juvenile institutions eschewed rehabilitation for punishment, a punitive culture developed among guards. A guard's worth is often based on their ability to hold the line against the captive population. In the next section, I examine the pressure guards feel to embody a more punitive approach by focusing on the experience of two rookie guards: Jennifer and Alana.

Jennifer looks exhausted. She leans against the control booth in the hallway, talking to the guard inside. All the children in her unit are locked down. Some stand at their doors, quietly staring out of narrow windows. Others communicate to one another through the cracks of their doors.

"What's goin' on?" I ask Jennifer.

"Argh, they're bad today," she says, looking back into the Unit. "I don't know what's wrong with them. They're really acting up. It's crazy in there."

At this point, Jennifer has been working at the detention center for nearly a year and feels she has lost control of her unit. The children often argue with her over the way she enforces the rules. When we are an earshot away, the children often tell me that she is always "power-tripping." Most of the children don't like her, and a few hate her with a passion that only the confined can understand. So when she orders the children to their cells, some move at a snail's pace, others bang on their doors, and a few cuss at her – anything to make her day a living hell. Jennifer is at the end of her rope. She tells me that she's thinking about finding another job.

A few weeks later, I catch up with Jennifer again, and she still looks tired.

"Are you still thinking about leaving?" I ask.

"Oh yeah! I don't think I can take much more of this. I have to be mean all the time. I'm just not like this. This isn't me. I'm not a mean person, but with this job, you have to be. I thought I'd be able to do more one-on-one with the kids, but most of my day is spent yelling at them. I just don't like that. That's not the way I am."

"What is it that makes you feel like you have to be mean?" I ask.

"It's the kids. You see them. You know, if you don't have control, if you're nice to them, they'll walk all over you. When I first came in here, I tried to be nice, and tried to be lax on the rules, but they took advantage of me. So, slowly I had to toughen up."

And toughen up is exactly what Jennifer did. When she works the units, I see many of the children locked behind steel doors, punished for what the children see as petty infractions. One child, for example, spent a day in his cell for, in Jennifer's words, "looking funny." Jennifer rarely talks to the youth when problems arise. Instead, she locks them away. In return, the captives rebel by banging on their doors, cursing at her, and in some cases, flooding their toilets. These acts of resistance turn Jennifer's day into a living hell. She is always putting out fires. To escape the chaos of her unit, she takes excessively long breaks that last for hours. This, of course, fans the flames of juvenile rebelliousness, because while on break, the children wait in their cells until she returns, adding more time to the 14 hours a day they already spend in their cells.

I talked to Jennifer when she first started working the units. "It's an easy job," she said. "I like just talking to the kids, and trying to help them out." At the time, Jennifer was far more lenient with the youth. She bent the rules and let them stay out past their bedtime, so she could talk with them one-on-one. But, this raised the suspicion of her co-workers, who felt she was "too soft" when dealing with the captive. Her co-workers began to spread rumors that she was afraid of the youth, and that she couldn't handle her job. "She won't last very long," a few guards told me,

when she wasn't around. Her co-workers began to police her and watch her every move.

"The problem," Jennifer lamented, "is that there are people in your business a lot of the time. Like, they'll come into your hall and tell you that your kids should be down and stuff like that. A lot of it, I think, is because I'm new."

On many occasions, I observed staff invade her unit, sometimes yelling at her to enforce the rules. One evening, I was playing cards with a few teenagers, but our game was drowned out by loud thumping sounds of a young man's fist banging against his cell door. He was angry because Jennifer punished him with two hours of cell confinement for dancing in the hallway on his way to church. Soon after, one of Jennifer's co-workers barged into the unit and questioned her.

"Who is that banging on the door," Tyree, a short, stocky guard asks.

"It's Huey. He's mad because I gave him hours," Jennifer answers.

"You need to give him more hours," Tyree admonishes with the condescending tone of a parent reprimanding a child. "I wouldn't tolerate that."

Jennifer deals with these kinds of invasions on a regular basis. Her co-workers, usually male, scrutinize her ability to enforce the rules, often in front of the children. Jennifer is certainly not alone. I talk to other guards who tell me the same thing. Alana also experiences pressure from her co-workers to enforce the rules by the book. One day, for example, I'm sitting at the table with Alana and two other children, playing cards. Meanwhile, a couple of detainees challenge one another to a friendly push-up contest. Huey, a 16 year old, takes off his shirt to flex his muscles while he tries to out-do his competition. Wally, Jennifer's co-worker, who is guarding the adjacent unit, stands in the hallway and stares at the children as they compete for who can do the most pushups. Wally shifts his eyes surreptitiously between the shirtless detainee and Alana. Finally, he walks into the unit and says in a deep authoritative voice, "Put your shirt on! Put your shirt on!" Huey looks startled, and then stares at Wally with the eyes of a hawk. Wally and Huey are at a standoff, eyes blazing, until Alana, who has a rapport with Huey, walks up and politely tells him, "Put your shirt on, please." Huey follows Alana's orders without the cold stare, and without altercation. Wally leaves without acknowledging Alana's presence.

On another day, Tyree charges into Alana's unit. He sees Andre, a 17 year-old, on the phone. "Why are you on the phone?" he yells at the young man, who had been waiting for three days to talk to his daughter. "It's not the weekend," he shouts, and then, in mid-sentence, he stops and looks at Mario, a 16 year-old, who's sitting quietly at the table. "What the hell are you doing out of your cell? I gave you hours. What are you doing out of our cell?"

Tyree's tirade turns to Alana, "What is he doing out of his cell?"

Alana looks stunned, speechless.

"What do you care?" another detainee interrupts, almost protectively.

"Do you have a problem? Do you want hours, too?" Tyree shouts, veins beginning to pop from his forehead. Tyree then leaves the unit and walks down to the supervisor's office to complain that Alana is not enforcing the rules.

A few weeks later, Alana tells me that Tyree thinks she's afraid of the kids. "I mean, what does he want me to do, yell at the kids for every little thing they do? From now on, I'm just going to keep to myself," Alana says, shaking her head. "This all makes me think that maybe I'm in the wrong place." Alana has been talking to other women, and they tell her to watch her back. One woman, for example, says other guards did the same thing to her until she wrestled a kid to the ground. They left her alone after that, convinced she was tough enough for the job. Ironically, a week later, Alana, too, responded to a fight and had to physically take down the youth. Later in the day, Tyree stopped by to pat her on the back, saying "Nice Job."

New guards, especially women, experience this kind of harassment on a daily basis. Men experience harassment as well, but not to the same degree as women. For example, Jonathan, a guard in his 20s, tells me that when he first started working, a lot of the older guards picked on him because he was young and fresh out of college. They thought he wouldn't be able to handle the job. For Jonathan, the harassment didn't end until he challenged one of the guards to a fight in the parking lot. The guard backed down and never said a word to Jonathan again. For guards like Alana and Jennifer, however, challenging Tyree or Wally to a fight in the parking lot is not an option. There is an unstated belief in detention that men are far more equipped to handle the job than are women, because men have greater physical strength to control the captive population. In an institution that relies heavily on punishment and control, women are perceived to be at a disadvantage, because of their "essential" nurturing qualities, qualities that render them "too soft" for the job. Dana Britton, author of *At Work in the Iron Cage* finds a similar hegemonic masculinity in adult prisons.

> The ability to use physical means to control violence is asserted as an inherent requirement of the job, one that sets the limits of what women are able to contribute. This kind of categorical assertion relies fundamentally on essentialist notions about masculinity and femininity. These ideas are key components in the prevailing form of occupational masculinity that holds men, strictly by virtue of being male, are better able to deal with inmate violence than women. (Britton 2003:171)

Listening to Jennifer and Alana, I realize how the aggressive treatment of children is not only codified in the rule books and the training that guards receive, but also is an important part of the hyper-masculine culture among guards, a culture that is reproduced and maintained through interactions that place a high value on the ability to use of physical force and violence. Guards gain acceptance from their co-workers by displaying their toughness – a peacock-like ruffling of feathers that proves they can handle their jobs and enforce the rules. Guards, like Alana, prove their strength by using physical force against detained children. Here, the bodies of captive children become the stage where guards act out their toughness and prove their worthiness as detention guards. Britton writes: "In their early days on the job, all officers must prove themselves, not only to inmates, but also to coworkers and supervisors. In a men's prison, the key to accomplishing this is demonstrating the ability to handle violence" (Britton 2003:169).

Although all new guards experience pressure to display their toughness, women experience far more pressure than their male counterparts. Women experience a dual accountability. At once, their male co-workers hold them accountable to hegemonic ideals of masculinity and femininity, while simultaneously holding them accountable to their status as detention guards. In a masculine culture, the former is viewed as a disadvantage to one's ability to perform the responsibilities of the latter. As such, guards like Jennifer and Alana are held accountable to normative conceptions of the detained population and are pressured to display their toughness, to enforce the rules, and take control of their unit. Guards are conscious of how their actions are assessed by their co-workers, and as a result, guards begin to enforce the rules by the book and embrace a punitive demeanor to show they have control over captive children.

The pressure to conform to institutional expectations sets in motion a cyclical process that ultimately confirms the image guards hold of the captive population. In her early days on the job, Jennifer didn't have as many problems with the detained youth. She even claimed, "It's an easy job." It wasn't long, however, before Jennifer caved into the pressure from her co-workers. Afraid that she would be viewed as "too soft," Jennifer started to yell at the captives and enforce countless petty rules. She no longer talked with the youth one-on-one, and she became more distant in her interactions. As a result, the youth lashed back with creative means of resistance, like dragging their feet, pounding their fist against their steel doors, and flooding their toilets. This creative resistive response only reaffirmed Jennifer's belief that the children are pathological or, as Devin says, inflicted with a bad case of the "hood complex." This vicious cycle explains how Jennifer, in a matter of months, transformed from a guard who loved working with children to a guard who sees the

captives as pathological, as crazy, and deserving of punishment.

The accounts by Jennifer and Alana expose how normative conceptions of captive youth are maintained, reproduced, and sometimes challenged in the everyday interactions of guards. Guards work in an institutional context that has been heavily shaped by the "get tough" on crime movement, and consequently, they experience a great deal of pressure to conform to institutional expectations to treat the youth as captives.

Everything about the institution—from physical structure of the buildings to the way guards are trained, to the rules and punishments they are expected to enforce, to the culture of guards—pressures guards to adopt punitive approaches to working with the detained children, an approach that ultimately confirms how guards think about the youth. As I described in this article, the normative conceptions guards hold of detained children are not only the product of the detention structure, they are is also, in part, the cause. Yes, the material realities of the detention structure – the training, the rules, and the punishments – constrain detention guards in multiple ways. But guards still have agency. It is through their daily interactions with captives and co-workers, in the context of the historical and ideological framework of U.S. juvenile justice, that guards perform much of the institutional work by policing one another and pressuring their co-workers to adopt aggressive, punitive approaches to interacting with captive children. Responding to these pressures, many guards like Jennifer, begin to enforce the rules by the book, embracing a punitive demeanor to show they have control over their units. In doing so, detained children resist their punitive attempts to establish control and deploy the "weapons of the weak," like dragging their feet, banging against walls, and flooding their toilets (Scott 1985). A battle ensues between keepers and kept – a battle that reaffirms for the guards that the captives have distinctive, even immutable, characteristics, which must be controlled and contained. This causes the children to become more deeply suspicious of the guards and the justice system that employs them. It is through this everyday process that guards become purveyors of an institutional logic that ultimately constructs the children as members of a categorical identity that is deserving of the punishment they receive.

This, perhaps, explains why only a few guards at Rosy Meadows work directly with captive children. Most sit behind their desks and limit their interactions with captive children. The children often tell me that there are only a handful of guards who talk with and listen to them. A lot of guards agree. Tommy, an Asian American detention guard, speaks about his co-workers: "Many are so institutionalized, if a kid asks to see a nurse, their first assumption is that he's faking it and that he's alright. They're not interested at all in the kids. As far as getting to know the kids, I only know of about 3 or 5 staff that have the motivation to invest their time with the kids." The

other guards, he says, have burned out and have given up on the children. "You come to work, put in your hours and go home." My research tragically suggests that at Rosy Meadows, the ideals of rehabilitation are dead. Not a single guard I interviewed believed that Rosy Meadows provided a rehabilitative environment for detained children.

Confronting an institution that is structured around punishment, even those guards who desire to work with the children find that their efforts receive little reward from their superiors and are often discouraged by their co-workers. Speaking to the how juvenile institutions push guards in a punitive direction, Miles explains, "the chances of being able to retain the good part of what you brought in with your creative thoughts, your enthusiasm, and all your love of humanity, whatever it might be, I think you would find that in most cases you'd feel like you got hit by a truck…the whole system is such that it would tax you beyond your resources."

CONCLUSION: THE TRAGEDY OF CAPTIVITY

During my first few months as a volunteer at Rosy Meadows, I always left the building with a terrible feeling in my stomach. There was little in the academic literature that could prepare me for such a harsh reality. Inside the detention walls were not the "offenders," "delinquents," or "criminals" that are mentioned in much of the literature. Instead, I saw young men and women trying to make sense of their world, faced with days, months, and sometimes years locked into a brutal time warp that many felt robbed them of their childhood. It wasn't easy to see so many children locked up in 7' X 8' cells. It was even more difficult to see how most detention guards treated the youth, as if they were an entirely different class of human beings, undeserving of basic human rights. Perhaps this shouldn't be surprising given that the United States has joined only Somalia in refusing to ratify the Convention on the Rights of the Child.[7]

One of the most difficult aspects of conducting research at Rosy Meadows was how normal it all seemed. Most within the institution went about their work as though holding hundreds of children in cells was a natural state of affairs, the only logical way to manage and control "delinquents." How does the caging of adolescents become a "natural" state of affairs? After all, locking children in cells is not acceptable in most social contexts; in fact, it is illegal. Imagine the criminal charges parents would face if they locked a child in a closet for 23 hours a day. Or picture the public outcry school administrators would face if teachers locked their students in school bathrooms.

The only way for the caging of adolescents to become "normal," is if the children are framed as different from all other children, and therefore deserving of such treatment.

The media, of course, does much of this work, particularly with the rise of the "super-predator" myth, popular in the 1990s, that warned of skyrocketing crime perpetrated by a new type of youthful offender (Hancock 2000). In this article, however, I argued that detention centers have become the primary location in which children are created different and unequal.

One of the limitations of this article is that it focuses exclusively on detention guards and the punitive environment in which they work. In future articles based on the same research, I will turn my attention to how detained youth experience juvenile detention centers and how they respond in the way they are framed by detention officials. My research suggests that incarcerated young men often internalize the stereotypical images detention guards hold of them. Some think heavily about suicide, while others lash out and resist the authority of their keepers, only to be pushed deeper and deeper into the juvenile justice and, later, criminal justice system.

This article is also limited to what happens inside detention walls. Tragically, I suspect that the stigmatizing mark of captivity does not end once the children are released. My continued conversations with formerly detained and incarcerated youth lead me to believe that the experiences of confinement, as well as the stigma of captivity, continue to shape their interactions with more than just the juvenile justice system. Victor Rios, in his article, "The Hyper-Criminalization of Black and Latino Male Youth in the Era of Mass Incarceration," contends that formerly incarcerated young men experience hyper-criminalization, not only from juvenile justice institutions, but also "from non-criminal justice structures traditionally intended to nurture: the school, the family, and the community center" (Rios 2006: 40). As formerly detained and incarcerated young men navigate their lives outside detention walls, they often find that the ghost of captivity continues to haunt their life opportunities.

Shortly before his 18th birthday and his release from a state youth camp, Angel sent me a deeply reflective letter:

> Chris, I want to ask you what you think of me as a person? I'm gonna be honest with you, there are two sides to me, which you probably already know. There is the side I was born with, the good side that has dreams. Then there's the other side, the side that grew up in a cell, the side that's ready to explode…Bro, I'm almost 18 now, and I'm afraid that I'll commit another offence and do some time in the pen. I'm afraid to leave this place because of the many chances I'll have to commit another felony. I don't know what side will win. It's fucked up, my time in juvenile hasn't prepared me for the outside, it's only prepared me for the pen.

A couple of years later, Angel passed away in a car accident. Nearly a third of his life had been spent locked away, mostly inside a small 7 X 8 cage. I wept for weeks and still feel the pain and loss as I type, four years after his death. The consequences of Angel's story and the confinement of thousands of children are heartbreaking, not only for those condemned to captivity, but also for those detention guards, who must ultimately come to terms with the fact that their jobs do little to help the children they deal with on a daily basis. The story of Rosy Meadows is not simply about an ineffective institution that fails to rehabilitate children. It is a far more catastrophic story about how juvenile justice institutions and their functionaries construct children as captives and in the process, rob sections of an entire generation of their childhood.

Endnotes

[1] Most juvenile detention centers use a number of words to describe staff that supervises detained youth. Some institutions use "Juvenile Service Officer," "Juvenile Supervision Officer," or "Juvenile Rehabilitation Officer." Rather than reify the official story of rehabilitation promoted by juvenile institutions, I intentionally use the word "guard," which is a more accurate description of their work. Not one guard I interviewed believed that the youth received any form of rehabilitation while in detention. Although most guards desired to develop a more positive rapport with the youth, most felt that their role had been reduced to assuring the "safety and security" of the institution, which is similar to that found among guards in adult prisons. Fictional names have been used for all of the guards referred to by name in this article.

[2] I acknowledge that these differences are also maintained and reaffirmed in the interactions between children as well, but the data I present here are limited to the interactions between guards, and between guards and children.

[3] Criminal Justice Training Commission, Juvenile Workers Academy, Part II, Supervision.

[4] Criminal Justice Training Commission, Juvenile Workers Academy, Part II, Supervision.

[5] Criminal Justice Training Commission, Juvenile Workers Academy, Part II, Supervision.

[6] Rosy County Department of Youth Services, Level System Handbook, 6: "The underlying concept of the level system program is that of behavior modification. This is viewed as a teaching tool using reinforcement to change behavior"

[7] Amnesty International (1998).

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From Corrections to College: The Value of a Convict's Voice

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Abstract: *The rise in mass incarceration has been accompanied by an abandonment of first-hand, in-depth accounts of crime and incarceration. Too few criminologists have stepped foot inside a prison, let alone served time within its walls. Situated within a growing movement of convict criminology, this article provides a first-hand account of the abuse convicts often experience in the home, the streets, and later in prison. Breaking from the traditional scholarly format, this autobiographical article not only highlights the importance of a convict's voice, but also calls on criminologists to move beyond official data sources and crime reports to a more in-depth exploration of complex lives of the incarcerated and formerly incarcerated.*

The era of mass incarceration has given birth to what has been titled the New School of Convict Criminology, a revolution in critical criminology that privileges the voice of the incarcerated and formerly incarcerated (Ross and Richards 2003; Jones, Ross, Richards, and Murphy 2009). To the shock of the general public and the amazement of some mainstream criminologists, the formally convicted offender, who has gone on from prison to complete a higher degree, typically a doctorate, has increasingly joined the ranks of academia and is fighting to gain a significant voice in criminology and penal policy. Ironically, at a time when 2.3 million people are locked behind bars, there has been a conspicuous absence of first-hand accounts of prison life in the criminal justice literature (Wacquant 2002). Labeling theorist Howard Becker long ago warned that much of criminal justice literature fails to provide in-depth accounts of the daily lives and thoughts of those who carry the label of "criminal" (Becker 1963). Although there have been several ethnographies of and by offenders (see for example, Cromwell 2009; Rewttig 1999; Canada 1996),

and classic ethnographies and prison commentaries have been written by ex-convicts (Irwin 1970; 1985; McCleary 1978), nearly 50 years after Becker's call for more in-depth, first-hand accounts of crime and criminal justice institutions, this charge remains largely unanswered. Despite the steady growth of convict criminology, most research continues to be plagued by what Polsky (1969) called "courthouse sociology," a methodological approach confined to analyses of official data sets and crime reports. As a result, few researchers venture outside their air-conditioned university offices into the social worlds of those they are attempting to study (Richards and Ross 2003; although important exceptions include Richard Wright and Scott Decker 1996; 1997; Jody Miller 2001; Jeff Ferrell 1996; 2006, among others).

Coming on the heels of over a decade of convict criminology (Irwin 1970; Terry 1997; Richards and Ross 2003; Jones et al. 2009), this article provides a first-hand account of "doing time" on the streets of California, behind the bars of the California Department of Corrections, and later within the halls of community

college. The article is unconventional in that it is autobiographical and intentionally breaks free from the veneer of "objectivity" that characterizes much of conventional criminology. As anyone who has served time in the prison knows, there are no "objective" observers within the prison industrial complex. Everyone, from guards to convicts to researchers, has their own particular standpoint. Far too often, researchers hide behind the illusion of "objectivity" but lack a solid understanding of the lives of the people who have served time behind bars. They have never felt the human degradation that comes with incarceration: the endless strip searches, the brutal monotony, and the continual physical and mental abuse. As Ross and Richards lament, "there is something wrong when criminology/criminal justice research is…conducted by academics or consultants who have had minimal contact with the criminal justice system, or by former employees of the law enforcement establishment (Ross and Richards 2003:1). Given this, much of what has passed for "objective" research has been plagued by the unexplored privileges of criminologists, who live dramatically different and often, segregated lives from those they attempt to study and understand (Jones et al. 2009:157-158). If criminologists are serious about the study of criminal justice institutions, they must take seriously the call of convict criminologists to move beyond an overreliance on official data sets and dive into the social world of the prison. Before sharing my own position on this, it would be valuable to briefly consider the concerns and contributions of other convict criminologists.

WHAT IS CONVICT CRIMINOLOGY?

In their recent review of the last 10 years of "Convict Criminology," Richard S. Jones, Jeffrey Ian Ross, Stephen C. Richards, and Daniel S. Murphy (2009; see also Richards, Newbold, and Ross 2009), identify ten central issues that concern members of this School. These are:

1. "How the problem of crime is defined" (Jones et al. 2009:152), especially whose behavior is subject to incarceration and whose is not, with concern for the hypocrisy that disproportionately incarcerates poor white and ethnic or racial groups relative to "the monumental crimes against property, the environment, and humanity that are committed by corporations and governments [that] still go largely unprosecuted and unpunished" (Richards et al. 2009:356);

2. "The experience of prisoners and ex-cons" (Jones et al. 2009:152), documented through "direct observation and real-life experience in understanding different processes, procedures and institutional settings," particularly the dehumanization and brutality of inmates at the hands of the guards resulting "in high levels of

intimidation, serious assault, and sexual predation," the "bad food, old uniforms, lack of heat in the winter or air conditioning in the summer," and the destructive surveillance and control practice of "snitching" that exacerbates institutional violence (Richards et al. 2009:362);

3. The policy solutions to crime that are proposed and implemented; for example, laws resulting in "extraordinarily long sentences" for petty offenses, "complemented by the imposition of long parole periods after release, with strict conditions, rigorous monitoring, and hair trigger violation components" whereby "released prisoners may be summarily returned to prison for supervision rule violations" (Richards et al. 2009:361);

4. "The devastating impacts of those decisions on the men and women 'labeled' criminals who are locked in correctional facilities, separated from loved ones, and prevented from fully reintegrating into the community" (Jones et al. 2009:152); this is "a carceral environment that…produces social cripples whose return to a felonious lifestyle and further incarceration is virtually ensured" (Richards et al. 2009:360-361);

5. The destructive impact of the prison sentences on family, friends, and community who are, by virtue of the imprisonment, also vicariously sentenced;

6. "Record high rates of incarceration" leading to "overcrowding of penal institutions" (Jones et al. 2009:152) in "large-scale penitentiaries and reformatories where prisoners are warehoused in massive cellblocks" instead of recognizing the value of "a reduced prison population housed in smaller institutions…of single-celled units of no more than 60" (Richards et al. 2009:362);

7. "Lack of meaningful programming inside and outside the prison" (Jones et al. 2009:152) with reduced vocational and educational programs, an inadequate system of paid jobs, no advanced vocational training, higher educational opportunities or family skills development, all of which need to be reinstated at sufficient levels to serve many inmates (Richards et al. 2009:362);

8. "Structural impediments to successful reentry that results in a revolving-door criminal justice system" (Jones et al. 2009:152), including inadequate "gate money," unsuitable clothing for employment, no identification cards and papers, and out of date institutional medical records (Richards et al. 2009:362);

9. The misrepresentation of crime, prisoners, and prison life "by scholars, the media and the government" (Jones et al. 2009:153) that contributes to discrimination in searching for or maintaining employment and in the possibility provided convict criminologists to be interviewed by the media as a

way of "dispelling popular myths about criminals" Richards et al. 2009:360);

10. Providing effective, low-cost, humane alternative strategies to prison, including peacemaking and restorative justice approaches to harm reduction and conflict.

(Derived from: Jones et al. 2009; Richards et al. 2009)

In their historical review and assessment of the field, Jones, Richards, Ross and colleagues point out that because of their first-hand intense experience of being incarcerated and because of their academic training, convict criminologists are in a unique position to meaningfully analyze their own situation and that of the incarcerated in relation to social institutions and the wider system: "The convict scholars are able to do what many previous scholars are unable to do: merge their past with their present and provide a provocative approach to their field" (Jones et al. 2009:153). Convict criminology "conceptualizes these micro activities as being embedded in the larger political economy and as a reflection of it" (Jones et al. 2009:156). Convict criminologists can conduct effective ethnographic research work with offenders precisely because they can pass as members, speak the language, and enter the meaningful worlds of those they study and of which they were a part.

FROM CORRECTIONS TO COLLEGE

In 2008, I (Martin Leyva) started the Transitions Program at Santa Barbara City College, which helps parolees, probationers, and former addicts reintegrate into society through therapy and education. Working with my peers, I found that childhood traumas have numbed us to the world. Many of us have been trained since childhood to enter prison; not simply a physical cage, but also a mental, emotional, and spiritual confinement. I had been training for this my entire life but didn't know it. The following is my story, my life, and it's a story that can't be caged in by criminologists, who often reduce me to crime statistics, or by policy makers, who claim I am a "repeat offender," or by the police, who see me as a "career criminal" and who continue to harass me, waiting for the opportunity to put me back in the cage. In telling my story, I hope to expose the many contradictions of the criminal injustice system, a system that mirrors the abuse many convicts experienced in the home, an abuse that led many to commit crime in the first place.

The End of Childhood

Can you imagine how I feel—to be treated as a little boy and not as a man? And when I was a little boy, I was treated as a man—and can you imagine what that does to a boy? … The state-

raised convict's conception of manhood…is a fanatically defiant and alienated individual who cannot imagine what forgiveness is, or mercy or tolerance, because he has no experience of such values. (Abbott 1981:14)

When I walked in the room, I should have been shocked, but I wasn't. Standing in that room, I watched the only positive male role-model I had with a rubber strap around his arm, his sleeve rolled up and veins pulsating. He should have told me to leave, but instead, he gave me advice I would never forget: "do the drug mijo, don't let the drug do you." He was my uncle, a man that spent most of his life in jail and prison. I admired him so much that I eventually became him.

Every time he disappeared, I knew years would pass by before I would see him again. When I was six, my mother took me to see him in the California Institution for Men in Chino, California, and I knew it was prison. The guards were walking around with their nightsticks and the tower target shooters sitting high up above us. When I was little, I used to think they were in heaven, they were so high up. I learned the truth years later when I eventually served time in the same institution. They were high up there too, but I could still throw a Molotov cocktail at them, if needed.

I learned so much from my uncle just by watching him. I learned to keep my mouth shut when people asked unwanted questions. I knew what I could say and what I couldn't. I learned that violence was sometimes necessary. When my uncle beat my neighbor for snitching to the police, I learned the consequences of being a rat. Back then, watching my uncle beat my neighbor was the coolest thing I had ever witnessed. I saw my neighbor lying on the ground, half dead, because he broke the code. At an early age, I learned how to protect myself from snitches that betray the by-laws of the "culture," a culture that I came to love. But my uncle wasn't the only teacher. As a child, I learned how to lie, steal, and cheat. I learned how to keep secrets both at home and on the streets. My uncle didn't intend for me to learn these lessons, but I learned them anyway. Like many of the other youngsters in my hood, we learned by watching the older men. They didn't understand that we were sponges that absorbed everything that came our way. I admired everything about my uncles and their friends: their walk, their talk, and all the respect that they had in the neighborhood.

I also learned a lot from the violence in my house. My step-father was an alcoholic. He wasn't just a drunk; he was a violent raging drunk. He regularly beat my mom and yelled at my sisters and me. When he was "teaching my mom a lesson," I would run to her rescue and jump on his back, only to be thrown across the room. As if that wasn't enough, he yelled and ridiculed me for being weak. Watching my stepfather, I learned how to hate. I learned how to hate those who abused women and children,

another trait that would come in handy when I eventually went to prison. My stepfather used to say, "So you want to be a man?" and at the young age of six, I would answer back, "I am a man!" I was never a boy, and he treated me like a man. He challenged me to act like a man, walk, talk and fight like a man. This was my life, but it wasn't just me; there were a lot of us.

Growing up, the neighborhood kids and I would play by the creek. There was always one of us too afraid to go home, too scared to face the inevitable abuse. Maybe that's the darkness in the eyes of the many people in prison. Darkness created from years and years of abuse and secrets that haunt us. We're all victims of our environments, and because of it, many of us suffer from a lot of trauma that goes unspoken. It exists in the lives of the many that grow up in ghetto neighborhoods where we are forced to be men and never allowed to be boys. In the end, my childhood prepared me for the streets and later, life in a prison.

The Life: Doing Time on the Streets

Growing up on the streets, I learned whom I could trust. The police and city officials, who were supposed to serve and protect, did the opposite. They devastated my community and brought our hatred of them to a boil. I remember when the police were called to my house to respond to a domestic dispute but they only walked away, leaving behind my crying mother, who was scared for her life. The "pigs" looked at me, at the young age of seven, like I was nothing; a waste of their time. I wondered, am I less of a human? Don't I deserve the same respect that the kids down the street in the "better" neighborhoods get? But life was different on my side of town. The police arrested us but never protected us. The sad thing is that many of us internalized these subtle messages. Still until this day, I can't help but despise the biggest gang of them all, law enforcement, and the feeling is mutual.

By the time I hit the age of 10, I was equipped with the tools to survive in my own home and neighborhood. I was imprisoned, emotionally, mentally, and physically. I was numbed to my feelings and emotions so early in life that committing crimes became easy. I learned not to care for others at all. I didn't care what they felt or thought; it was a learned behavior that if you didn't support me, I was against you. I looked at those who weren't part of my life as nothing. I didn't care. I only cared about the life that was taught to me. These feelings would haunt me for years.

I remember one day, I was sitting at home, relaxing and flipping through the TV channels. I'd just got out of prison where I'd served one year on a parole violation. The phone rang, and it was a good homeboy. He told me about a guy he didn't like on the other side of town and said he wanted to "jack" his ride. Having just been released from prison, most would think that I should say no and try to talk him out of it. But I couldn't. I was knee-deep in my

criminal career, and "no" was not an option. I rose from my couch like I was superman donning his cape. I grabbed my long sleeve black shirt, my facemask beanie, and my 9mm handgun. I asked my friend if he wanted me to jack the guy, or if he was going to do it. He said he would, so naturally, I was going to drive. As I cruised over to pick up my homeboy, I loaded my clip. It was a way of life for me, driving and loading. I put the gun under my seat, within reaching distance, just in case. I picked up my partner, and we were off. My homeboy told me the details: who, what, when, where and why. And yes, there was always a reason why. Right or wrong, I had no choice but to help him. We sat across the street, in my car, waiting patiently. The guy's car was in the grocery store parking lot where he worked. We could see the doors to the store, and we waited for him to leave his shift. My homeboy did his homework.

With our facemask beanies on our heads, waiting to be pulled down, we sat and talked shit to each other. It's what we did. Suddenly, the "enemy" walked out the doors. We creeped into the parking lot, turned the headlights off, rolled down our masks, and inched closer to his car. The timing couldn't have been better; we had done this before. I put my passenger car door close to the victim's car, my buddy jumped out, and we both pointed our 9mm handguns at him. The 9mm was the weapon of cheap choice, win or lose; it was the right gun for every occasion. The guy knew the game; he quickly put his hands up and moved backward. I could see, smell, and taste his fear; it was the same fear I had when my drunken father was chasing me. He tossed my homie the keys without even being told, and my homeboy jumped into his car. My buddy fired up the car and was off. I told the guy not to move, keep his face down, and that if he reported my vehicle, I would be back; it wasn't like the car had the right license plates anyway. I drove off, hearing my open passenger door slam shut from the momentum of the gas pedal. My homeboy was right on time, waiting for me curbside at the drop-off site. We always planned out the drop-off and pick-up spot, never leaving room for error. I didn't want to go back to prison. Not for this. We went back to my friend's house, jumped in his car, and drove to the scene of the crime, parking in the gas station across the street. Not feeling a bit of remorse, we smoked cigarettes and drank tall fountain sodas, because alcohol wasn't cool when you're driving. We watched the cops, detectives, and news reporters do their thing.

That was our own organized crime ring, jacking cars, mini-stores, and innocent bystanders, and selling the merchandise to whoever would pay. We sold guns and other weapons to those who were not afraid to use them. I actually later sold a gun to the same guy we car jacked. He told me the reason he was buying the gun was because he got car jacked. Nice! I even had to show him how to load the thing.

Are there people out there who would like to be me? Are there people who fantasize about living a crazy and unpredictable life? Of course, but many can't, nor will they ever, live that life, because they fear the consequences. So, there are companies like Rock-star Games, the makers of Grand Theft Auto; a game that allows the player to live the romanticized life of crime and of violence. But this game doesn't come with "feelings," and it certainly doesn't come with consequences and death. These are the things that "criminals" gamble with when we play the game of real crime.

We live a life that can be played in a videogame, but the main ingredient is missing: feeling. In a perverse way, the media has put "criminals" on a pedestal to be simultaneously feared and worshipped. Out of curiosity, I played my little nephew's game, Grand Theft Auto 4. It was all there, the talk, the walk, and ways of gaining respect and street power, that ever-elusive power that many young gang members die trying to reach. It's a way of life for many, and there is no winning in the end. While our society glamorizes crime though video games, music, and news stories, a lot of people turn a profit. The video game makers increase their market share. The police pad their budgets with a society that is far too willing to pay for the perception of safety. Politicians secure elections by pawning "criminals" as "super-predators," and academic researchers receive government funding for research that guarantees their promotion. In the end, it's us on the bottom, the so-called "criminals," who pay the price with our lives caged by draconian prison sentences—sentences handed down by district attorneys, who have become the new and improved judges.

Prison Life: The Abuse Never Stops

Not too long ago, I was at the parole office for my monthly parole meeting. I noticed the similarities between my peers and me. I quickly checked the faces that I haven't seen before. I noticed the neatness in their style and middle/index finger grip on their smoke. It's a trait that can be spotted in any town or city. I noticed the darkness in their eyes, a darkness that tells their history. The darker the eye, the deeper the story, and I'm not just talking about time in prison. I am talking about mental, physical, and emotional abuse that so many of my peers have experienced, all of which guarantees their return to prison. As I sat in the parole office, I couldn't help but think of the injustice of it all. California would rather spend more than $50,000 a year to keep us behind bars, many for petty crimes and parole violations, than provide the mental and emotional therapy that so many of us desperately need. While drug charges carry mandatory minimums and fill our prison system, there are few intensive treatment programs. This is a fundamental fact missing from the stories mainstream criminologists tell about us; though it is a main theme of the story critical

criminologists painfully point out (Austin, Clear, Duster, et al. 2008). Many paint us as predators, as victimizers, and while many of us did commit crimes, there were far more crimes committed against us before we decided to live this life, none of which is ever taken into consideration during court proceedings.

There are many reasons why we commit crimes and get sent to prison. I am not making excuses, but once we become property of the state, it should be the State's responsibility to rehabilitate us so that we become active members of society. It should be a crime not to provide me, the so-called "criminal," with the basics of life: education, therapy, and the simple necessities to survive outside prison. Prison doesn't provide the tools necessary to keep us out of prison. Instead, they provide the opposite and reinforce many of the lessons that I learned growing up. I suspect that they want me to stay numb. Why else would they force me into a cage barely the size of a walk-in closet? It's profitable to keep me in prison. The telephone companies make money off of our collect calls; the prison guards union swells their members and increases their lobbying power. My years in prison have taught me that correctional guards purposely degrade and lower the already non-existing self-esteem of us criminals. Once inside the walls, we cease to be human beings, which makes it far easier for them to corral us from place to place like we're animals.

I remember when I was transferred from Wasco to North Kern State Prison reception because of prison overcrowding. It's no surprise that the California prison system is overcrowded. There are so few services designed to keep us out of prison. When the California Department of Corrections trans-packs us from one prison to another, they begin early in the morning around 2 am. I awoke to a loud kick and screams at my door, "Hey Leyva! Wake up! You're being trans-packed in 20 minutes!" The guards blasted lights from above, and it felt like they burned off my eyelids. I woke up too quickly to take a birdbath in my sink, as my "cellie," as cellmates are called, made us a cup of cold mud (cheap prison coffee). We sat for a few minutes and waited for the pig to escort me to R&R, receive and release. My cellmate told me that it was a pleasure meeting me, and I told him to hang in there. He was new to all the lock-up shit, and I was honored to school the kid and turn him into "a good warrior," willing to take a hit and even become the aggressor if necessary.

In prison, there are many who will take advantage of a young newcomer. Given this, we are forced to join a subculture to survive. It's not only the inmates, but also the correctional system itself that forces us to click up. We have to if we want to survive. My cellmate and I are Native American, and we choose to walk with our people behind prison walls. Behind the walls, there are many subcultures, but we are only allowed one. We are all segregated from the beginning; the guards ask us who we run with and what we claim. If one doesn't know coming

into the system, they quickly learn the hard way. We Indians in prison are few but willing and ready to do what is necessary for our survival.

The pigs came to my door, and by 2:30 am, I am ready to be moved to Delano. Wasco and Delano are a 15-minute drive. If given the chance, I could throw a damn rock from prison to prison.

But the move between prisons was an exercise in torture. First, I was put in a cell with others who were half asleep and already complaining to the pigs about being hungry and tired. It was like being in a maternity ward with nagging babies that can talk. All the surrounding cells were already full, and of course, suffering from the same old song and dance that was happening in my cell. The pigs ignored them. All I wanted was some peace and quiet, but what in the hell was I thinking. I'm in prison. There is never peace, and there is never quiet. As the hours went by, my cell was the last to be transferred. After 15 hours of waiting, I would finally board a bus for Delano at 5 pm. Everybody was pissed. We began to load up; one by one, shackled waist to wrist to ankle, tight and degraded. We were loaded onto the bus with a shotgun wielding pig with trigger-happy tendencies written all over his fat face. Little did I know that our bus would be traveling the opposite direction to Tehachapi to do a drop, followed by a visit to Corcoran State, and then to the Corcoran Secure Housing Unit (SHU), home of the infamous Charles Manson.

When we arrived at Corcoran SHU, a place where the guards were caught staging and betting on gladiator-style fights, one of my peers asked a young man on the bus what he did. The young man said he beat a cop and was serving 15-to-life with his sentence starting in the hole. My peer smiled and responded with, "Well, sometimes, you have to do what you have to do. Keep your head up; we're on your side." We all smiled in solidarity, and he left us for the hole.

Solidarity is what kept many of us alive, and it was another trait learned growing up in the hood. As we left the Corcoran SHU, the pig in the back of the bus with the shotgun yelled, "next stop ladies, paradise." I'm offended; this asshole hiding behind a steel plate holding a shotgun has the audacity to talk shit. Comments like these are an everyday reality, but I have grown used to it. I first experienced it growing up, and I learned early that I would lose if I allowed it to affect me. I grew up a born leader and learned that it is better to never respond in the moment. It's easier to pull a sneak attack on ignorance. Never let them see it affect you, and even more so, never let them see you execute pay back.

Next stop was North Kern State Prison in Delano. It was three in the morning, and after 25 hours of travel, no one is happy. As we lined up, side-by-side, the pig instructed us to strip from our paper jumpsuit and, all together like a sadistic cheerleading squad, we do the piggy shuffle. "Open your mouth let me see you wiggle your tongue. Hands out, wiggle your fingers. Pull your ears forward! Turn around. Lift your left leg up! Wiggle your toes, right foot, and wiggle your toes! Bend over, spread your butt cheeks, squat and cough. One more time! Louder!" Every time this happened, I felt like screaming, "we do the hokey pokey, and we shake it all about, and that's what it's all about!" Fucking pigs make me sick. We did the hokey pokey before we left Wasco, and now, one more time upon arrival. We never left their sight.

Like soldiers who degrade their enemies in battle, I think the guards like degrading us, because it gives them a sick sense of power. As we're lined up and given our outfits, I glanced to the left and made eye contact with the pig. I violated one of the fundamental rules of slavery, and all hell broke loose. He approached me, and without skipping a beat, he looked me in the eye and gave me a verbal whipping, "What in the fuck are you looking at loser? What in the fuck are you making eye contact with me for, huh? Do you have something to say to me? What's your problem low-life?" He continued for what seemed to be hours, yelling and screaming at me, calling me every name in the book, degrading me in every possible way. If I had been weak, I would have broken down. But he noticed that I didn't flinch or react, which meant he poured it on thicker and thicker. Eventually, he knocked me down and ordered me to a little room with 5 or 6 other goon pigs in tow. In the room, he demanded that I explain why I looked at him. I looked him in the eye and said in a calm and relaxed tone; "it's been a long day and night and I'm tired. I have no excuse. I'm hungry and all I want is a place to rest my head." I didn't apologize; fuck that!

As a child, I had been through all of this before. These experiences were nothing but a reproduction of the abuse I experienced as a child. The state had become my abusive step-father. This is nothing new to me and countless other men and women who are institutionalized and corralled in and out of prison. When that pig was in my face, degrading me, it was no different than my stepfather, standing before me and calling me a worthless piece of shit. It was no different than the feeling of having a teacher or a neighborhood pig tell me that I was stupid and would never amount to anything. In a sense, I have been in training since I was just a baby. My mind has been through worse. But, at least the man who degraded me as a child gave me a fake apology, hug, and told me he loved me. The pig was just a fucking mirror of that earlier man.

Sometimes, I wonder if the world knows just how numb we convicts are to them, just how closed and separated by hate we are from society. And it's the mirror of hate that many young folks feel from society. It's what we learn growing up in poverty. It's what we learn from schools that don't provide the necessary books to educate us. It's what we learn from cops who degrade and harass us. We never learn to ask for help, and even if we did, help is rare. Our parents had to work two to three jobs just to survive. Not just that, some are too fucked up on drugs and

alcohol to care. We raised ourselves in a childhood that never really existed. Asking for help was not an option.

Today, I face this reality daily with the young men and women I mentor. I see my childhood in them. I recall the many times that I thought my childhood wasn't that bad. Then, I see and hear their stories, and it brings up so many suppressed emotions. Reality hits hard. My life is a reoccurrence of tragedy and makes for statistics that are read about in some classroom. Prisons are more than physical. They are deeper than the steel and concrete zoos that supposedly house the worst of the worst. I don't remember the last time I saw the "worst of the worst," but I know they exist. For the most part, prison is just a warehouse for the streets, just so that we feel safer at night when we shut our lights off and tuck our asses into bed. But really, with the 173,000 of my peers in prison in California, do you really feel safe at night knowing that the families we come from are bigger? For every one of us the courts put away, there are many more on the streets without fathers, without mothers, without anyone to love and nurture them. Prison is not the answer to crime. Prison is a crime!

Freedom: A Transition from Prison to College

When I was finally released from prison in 2007, I asked myself over and over how I could stay free from prison? I struggled for answers. I had no idea what I was going to do. With two strikes on my record, it was hard to find work. Even though I paid my debt to society, I would have to report my crimes to the world for the rest of my life. "Have you ever been convicted of a felony?" Yes! The odds are stacked against me with that single question alone; no one would give me the time of day. I am a felon, and I will pay my "debt" for the rest of my life.

Besides being a felon, I'm also a product of my environment. I never learned the basics of life, like asking for help. I never learned to express my emotions or feelings. I thought there was no way that I could survive outside the walls. I was destined to try, fail, and return to my old habits. Nobody in my circle would be surprised, because that is what I did. I was comfortable with failure and letting my loved ones down.

After losing my third job in three months, I was still determined to stay out of prison. I decided to enroll in school. Many of my elders in prison suggested that I return to school and change my life. They didn't want me to end up like "them," but in my mind, I am "them." I didn't feel they were less than me for spending a lifetime in prison. We are one and the same. I was raised with "them," and I have nothing but love and respect for society's worst. In prison, my elders gave me a gift I'll never forget. They taught me about the Inipi (Sweat Lodge), a ceremony that we Indians behind the walls love so much that we are willing to die for it. We hold the Sweat Lodge close to our hearts. It's the only sacred place in prison where we are

allowed to return to Mother Earth and feel safe, secure, and nurtured, like the wombs of our mothers, a re-birth in prison. The Inipi allowed me to survive in prison, and it supported and reinforced my decision to stay out by grounding me in a spiritual belief system that transcended prison walls and my previous life on the streets. It was the only place where I felt safe.

Equipped with the lessons from my elders in prison, I enrolled in community college. I thought I was bound to fail. Failure was normal to me, just like breathing, failure and disappointment came easy. I've learned to degrade myself and hold myself back. I told myself that if I fail at this, the streets would always give me a place to succeed, even if only for a short while. But the teachings of the Inipi taught me that I was stronger than these negative thoughts, and that they could no longer control me and limit my potential.

I didn't know what I was getting myself into when I went back to school. I remembered the books I read in prison, like *Native Heart* by Gabriel Horn and *Why We Can't Wait* by Martin Luther King Jr. A.C. Ross's *Mitakuye Oyasin* taught me about how everything in life is connected. I even read banned books like Joan Moore's *Homeboys, Gangs, Drugs and Prison in the Barrios of Los Angeles*. The Skin that gave me that book warned me not to get caught with it or else the pigs would take it. I cherished those books, because they offered a window into my potential, a pathway to freedom.

Aside from books, it was the lifers who served as the most intellectual and profound teachers that I would ever have. The lessons I learned from lifers and the knowledge I gained from reading books in prison sprang to life when I enrolled in college. After two semesters, I felt alive. I had a drive to feel wanted and understood. It was a new feeling. But I also knew that I didn't know how to act in this new setting. I didn't know how to ask for help, and I didn't know how to accept it when offered. I also found that I lost the ability to speak in public. I was scared. I decided to enroll in Alcohol and Drug Counseling courses (ADC), because I wanted to help my people out, and since my people consist of needles, baggies, liars, and thieves, everything I was, what better field could I get into? But with the ADC classes, I began to dive into my own life and the contradictions that have plagued me since birth. I found that the only place I knew myself, the only place where I was comfortable in my skin, was in prison. Physical or other, prison was where I felt powerful. That wasn't going to work for me; I needed to love myself without the syringes, bottles, and the power one feels through violence. I wanted to look in the mirror and smile for good reasons, not deviant ones riddled with hidden depression and strife. I needed to be there for myself, so I finally sucked it up, and used campus therapy. I discovered myself.

After one of my monthly check-ins at the parole office, I saw that I wasn't alone. Some of my peers that I

saw at the parole office were also attending community college. I saw them on campus. I knew their disposition. I knew their walk, but I wasn't going to ask them about prison. I could see in their eyes that they didn't know how to ask for help either. But I was determined to change that and seek help for all of us. Here we all were, transitioning from a correctional institution to a learning institution. What a scary thing. I wanted my college to see and recognize my peers and me as human beings, not animals locked in cages that were freed for a short time. We weren't just "criminals" to be read about in administration of injustice, sociology and psychology textbooks. We weren't simply statistics to be studied. I wanted the world to know that we are alive and well, ready and willing to learn, share, and speak the truth with confidence. We needed to know that we were worth something. We needed to know that someone understood us. I began a support group. We were the only ones who could understand each other, and we had to free ourselves from hatred taught to us by years of abuse in the household and years of torture in the prison system.

There are things that hold us back from moving forward, and given some direction, we will be productive members in this fucked-up society that I love to hate but yearn to be a part of. After growing up and spending time in prison, I realized that my self-esteem and worth were little to nothing, especially outside the confines of my neighborhood and prison. In prison and in the neighborhood, I was comfortable. I was able to smile and be myself. Why? Because I was understood there; loved and cared for. I was accepted. But I wasn't comfortable in the classroom, which was full of judgmental, close-minded individuals who were taught by the media how to look down on my "type." I had a shaved head, tattoos, baggy pants, and a strut that you see in video games, on television shows like *America Most Wanted*, *Cops*, and every other bullshit *Lockdown* show that justifies the absurdity of the prison industrial complex. It's no wonder why they are scared of me. In their mind, I am an animal that needs to be locked behind a gate. People watch prison shows and news and assume that they are doing us good by voting for stiffer laws (e.g., three-strikes laws) and harsher sentences. In the process, however, citizens are voting to remove fathers, uncles, and sons from society. We're removing mothers, aunts, and daughters from needed families just so that a scared population can sleep at night. Prison is not the solution to insomnia.

I vowed to fight back by creating the Transitions Program and helping young men and women in similar circumstances. One of my goals for the Program was to create a safe environment, so that we could release the tension caused by years of abuse and hurt. We wanted to nurture a place where we could come together and help each other realize that we're not alone in our struggle. We needed to learn the power of our stories and share them with the world. The same stories that I share in this article

are repeated over and over again by my peers. I am certainly not alone. There are 2.3 million of us in cages and millions more on probation and parole. Our stories and struggles need to be heard. These are pain-filled stories that you don't hear about on the television or read about in textbooks that paint us as "criminals," "super-predators," and "thugs." We are grown adults filled with painful childhood trauma covered by fake laughter and smiles.

In the Transitions Program, I like to share that we are only as strong as our struggles, and if we give ourselves the chance to get educated, we will be armed with a mind that no bars can contain. I learned that I am not a bad person. I was just born into a bad situation and I am a survivor worthy of living a decent life. I am worth something, and I'm going to live my life. But I know the struggle continues.

Even while I was writing this article, I was sitting down at a little "panaderia" (Mexican sweet bread) in the little town of Ojai, population 7500. Earlier, when I was walking down to the street, I saw a sheriff's vehicle slow to snail's pace. They eyeballed me and looked me up and down like I was nothing. I strolled past them, and I didn't give them the time of day. I truly don't like them, and it's not just one, it's all of them. My years of experience in the criminal justice system taught me that it's us versus them, and I always win. Even if they give me shit and search me illegally, I win, because they will never find anything. I can't trust or believe any cop. They are nothing to me, and they are dealing with a hardened individual who is numb to their so-called authority. A badge means nothing to me, and they know it. That's why they still harass me. Fuck them. As I continued to work on this article, one, two, and three pigs drive by and scope me out. I laughed. They must really think that they can intimidate me into giving them something; they can't.

Despite the continued harassment by police, I graduated in 2009 with my Certificate in Drug and Alcohol Counseling, and I am currently a mentor for young men on probation. I recently met a 12 year-old young man who was sadly a replica of my childhood. It was strange seeing this reality through new educated eyes. What once looked to me as normal, I now see as an injustice to our cultural survival. I hate to say this, but this young man is prison bound. Twelve years old and addicted to heroin. I'm not going to ask myself what happened; I know what happened, and it's a tragedy that now his young life has more statistical stories than most grown adults. At his young age, the pigs, district attorneys, and judges already look at him as a form of job security, a young man who will travel in and out of the prison system, securing a steady stream of middle class jobs that leech off the poor. It was heart-breaking to see his already little frame strung out and sucked up, his young face, pale and saddened by grief. I remember the look in his eyes. He is already a veteran of the streets and knows how to survive. His walk and the talk was that of a veteran dope fiend. He already

has the ability to disconnect from the world that pretends to care about him. He asks if I missed the feeling of drugs, but he is caught off guard by my one simple statement: "I don't miss that feeling at all mijo."

THE VALUE OF A CONVICT'S VOICE

There are many young lives that mirror my life and the many people I have met during my years in and out of addiction and prison. I hope that by sharing my story, I have added to the growing body of convict criminology by telling a more human story of crime, incarceration, and redemption. Too much is lost in the tales that conventional criminologist tell about "criminals." Confined by official data sets and crime reports, mainstream criminologists often reduce the incarcerated to the mistakes they have made in their lives, their crimes. In the process, they neglect the full complexity of our lives: "In the real world people who work or live with felons are often surprised at the reserve, sensitivity, gentility, and good humor people who may have been convicted in the past of serious crimes…a person is more than the worst thing he or she ever did" (Richards et al. 2009:361). As John Irwin writes, "The general public, most functionaries in the criminal justice system, and many criminologists fail to fully understand and appreciate the viewpoint of the convict and because of this see them as less than human, as inferior or evil deviants" (Irwin 2003:xix). We are not simply "criminals" to be surveyed, categorized. We are not data! We are husbands, fathers, mothers, and daughters. We are human beings struggling to find our way in an era of mass incarceration.

This article joins the call by convict criminologists for mainstream criminologists and policy makers to value the voices of the incarcerated and formerly incarcerated. Although convict narratives are sometimes not written in the conventional scholarly format, they are increasingly important to the literature on criminal justice. However, as the convict criminology literature demonstrates, many published works by the formerly incarcerated are increasingly being published which reflect the synthesis of their social science training and their prison experience: "Although trained as scientists, they do not forget their duty to report what they find and help translate it into policy recommendations" (Richards et al. 2009:360). My short autobiographical tale written in this genre makes three fundamental points that all criminologists and policy makers should take seriously when conducting research on crime and incarceration.

First, convicts aren't simply "criminals" or "offenders," we are also victims of abuse both during childhood and later during our incarceration. As convict criminologists have observed, the language found in scholarly articles often reaffirms and legitimates stereotypical conceptions of incarcerated people, and ultimately serves to justify inhumane treatment at the hands of the prison industrial complex (Richards 1998; Jones et al. 2009). Terms like "offender" and "criminal" and "good guys" and "bad guys" overshadow that totality of the convict experience and ignore the abuse that many of us experienced in the home, on the streets, and in the prison system, while simultaneously denying the multifaceted human qualities that we possess. For this reason, convict criminologists "avoid referring to people in terms of the crime for which they were convicted as if this were their master status…a component of their identity…a person's crime may indicate very little about him or her"(Richards et al. 2009:361).

Second, as evident in my story, the mass incarceration experiment is bound to fail because prisons often mirror the same abuse that ushered many of us into crime in the first place. My story warns of the futility of spending billions of dollars on a warehouse prison system that fails to offer the necessary rehabilitation programs and often guarantees our return to prison. Prisons are not the solution to crime, but rather they are a crime, or should be thought of as such. The literature on corrections often fails to convey the total degradation and abuse that one feels while incarcerated. This is perhaps because few criminologists have set foot in a prison (Ross and Richards 2003).

Third, convict criminologists have already begun to make valuable contributions to the criminological and policy literature and have been particularly influential in working with critical criminologists interested in prison abolition and in developing "Peacemaking Criminology," which provides restorative justice alternatives to the dehumanizing and alienating prison experience (Pepinsky and Quinney 1991). Although convict criminologists have been challenged, not least by the mixed public perception of the dangerousness of their crime, leading those with drug convictions to be more accepted than those with violence or sexual abuse convictions, many have conducted research on personal transformation, social stigma; have contributed to public policy around prison population reduction, and prisoner re-entry; and some have done this while completing their prison sentences. Their research has lead to early release programs and changes in the management of parole violations that lead to further sentences of incarceration (Jones et al. 2009:161-162).

Fourth, my story speaks to the importance of education as providing a pathway to freedom. The Transitions Program at Santa Barbara City College provides an example of what is possible when programs value the lives and experiences of the formerly incarcerated. As more and more convicts become college educated, it is critical for criminologists to recognize the value of a convict's voice. This voice has gone on to make important and productive contributions to their universities and to students, providing mentorship and advising for students who seek them out, especially those who themselves have got into trouble with the law or who have themselves served time; a portion of the 630,000 offenders

released every year find their way to college and can be challenged to succeed with advisers who are able to provide support and hope for the future (Jones et al. 2009:163-164). In addition, convict criminologists have organized courses for the incarcerated while in prison, using student intern instructors.

In short, a criminology that ignores the voice of the convicted criminal is unlikely to change the crisis in corrections that confront the United States in the 21st century; a criminology that incorporates the convict's voice offers hope for a different, less harmful future.

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