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Advancing Critical Criminology through Anthropology

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Abstract: *Since its genesis, critical criminology has been committed to a critique of domination and to developing and exploring broader conceptions of "crime" to include "harms" that are not necessarily proscribed by law. Without diminishing the contributions of early or current critical criminologists, this article suggests that critical criminology can further its goals by looking to anthropology. Such a recommendation is not without risk. Early "criminal anthropology" regarded criminality as inherited and contended that individuals could be "born criminal" (e.g., Fletcher 1891). Subsequent anthropological investigations of crime were and have continued to be sporadic, and the discipline's approach to crime has not been particularly unified. (Anthropology has often considered crime within broader explorations of law, for example, or through related, albeit different, examinations of sorcery and witchcraft.) Despite these limitations or shortcomings, this article presents three ways in which anthropology can speak to, and engage with, critical criminology's "insistence that criminological inquiry move beyond the boundaries imposed by legalistic definitions of crime" and its critique of domination (Michalowski 1996:11): 1) anthropology can help reveal processes of domination that are pervasive; 2) anthropology can remind us that what constitutes "crime" is culturally specific and temporal; and 3) anthropology can help provide paradigms for better living—allowing critical criminologists to be not just critical, not just prescriptive, but aspirational. A wide range of ethnographic accounts is considered.*

Keywords: anthropology; culture; domination; harm; power; resistance

INTRODUCTION

As a subject, "crime" has not generated significant interest in the field of cultural anthropology.¹ While one could point to an anthology here or a review essay there, one would be hard-pressed to support the contention that anthropology has approached crime in a coherent, unified, or sustained way—or that it has even generated substantial, ongoing debates about crime.² Most often, crime appears in the context of some other inquiry, such as disorder (Comaroff and Comaroff 2004, 2006), violence (e.g., Betzig et al. 1988; Knauft et al. 1991), witchcraft and sorcery (Favret-Saada 1980; Geschiere 1997), primitive law (Driberg 1928), the nature of the relationship between law and conflict (Collier 1975), or labor, employment, social stratification, and the effects of deindustrialization (e.g., Bourgois 1996; Phillips 1999; Sullivan 1989), rather than on its own and as the primary subject of

anthropological attention (cf. Parnell and Kane 2003; Schneider and Schneider 2008).

This phenomenon may be due, in part, to sociology's near hegemony over all matters crime-related (before criminology became its own discipline or sub-discipline, depending on one's perspective).³ But cultural anthropology's lack of attention to crime may also be attributed, at least in part, to the regrettable subfield of criminal anthropology (also known as anthropological criminology), which Fletcher (1891:204), in his famous address to the Anthropological Society of Washington, defined as "the study of the being who, in consequence of physical conformation, hereditary taint, or surroundings of vice, poverty, and ill example, yields to temptation and begins a career of crime." Although such efforts to "biologize law-breaking" (Rafter 2007:808) were later discredited and abandoned because of concerns for their racist and eugenicist policy implications (Cullen and Agnew

2006:22; see also Brennan et al. 1995:65; Raine 2002:43), the experience may have left anthropology reluctant to venture into the world of crime.⁴

Such unwillingness is unfortunate for a number of very basic reasons: 1) anthropology shares sociology's and criminology's forefathers (e.g., Durkheim, Marx, Weber) and canonical figures (e.g., Foucault) — individuals who contemplated issues of conflict and cooperation, power and punishment, which lie at the heart of or are integral to understandings of crime;⁵ 2) while all cultures possess proscribed behaviors, "crime" is still culturally-specific and peoples differ (over time) over what behavior is to be condemned and condoned (see, e.g., Betzig et al. 1988; Brisman 2006; Cullen and Agnew 2006:266-67; Daly and Wilson 1997:53; Ellis and Walsh 1997:230; Fletcher 1891:204; Herrnstein 1995:40), rendering crime ideal for longitudinal and comparative anthropological study; and 3) relatively few ethnographies of crime exist — "thick" accounts (in the Geertzian sense) of the experience of committing crimes or participating in a subculture of crime, of being a victim, of residing in a community that fears crime, or of migrating to a particular community because of its low crime rate.

This last point merits some clarification. I do not mean to suggest that researchers have not employed ethnographic field methods in their study of crime. Many fine ethnographies of crime have improved and shaped our understanding of the convergence of cultural and criminal processes in various societies (e.g., Adler 1985; Becker 1963; Ferrell 1993; Ferrell and Hamm 1998; Humphreys 1975). But only a small percentage have been written by anthropologists or with an anthropological perspective (e.g., Malinowski 1959; Merry 1981). While ethnography does not and should not reside solely under the dominion of anthropology (see Kratz 2007), given anthropology's strength with this methodology and the fact that the study of crime has been increasingly dominated by "shallow survey research" and "abstract statistical analysis" (Ferrell 1999:402),⁶ there is a tremendous need for more anthropologically-oriented studies of crime (see generally Betzig et al. 1988; Burawoy et al. 1991; Hagedorn 1990; Polsky 1969; Van Maanen 1995; and Sampson and Groves 1989).

Furthermore, while sociology is often focused on *social structures* (and while criminology tends to focus either on how *individual characteristics* influence actors' propensity for aggression, violence, and crime based on biological or social psychological antecedents, or on individuals in relation to their *larger social environments*, such as schools, neighborhoods, and nation states (Griffiths, Yule, and Gartner 2011), anthropology appreciates these structures, characteristics, and environments, but realizes that much of what makes humans "human" lies in *cultural ideation* (Donovan 2008:xiv). In other words, because anthropology casts a wider net than its sister discipline, sociology—because

anthropology extends beyond *society* and *social structures* — because anthropology considers elements of culture, such as beliefs, ideas, symbols, and other internal dimensions of group living (Donovan 2008:xviii) — anthropology can provide further avenues for understanding how "crime" is, has been, or might be defined, prevented, and controlled, as well as its meaning for offenders, victims, cultural groups, and society, more generally. As such, anthropology should be more heavily invested in issues of, and matters pertaining to, crime and criminology, or can, at the very least, and as this article suggests, contribute to criminologist's study of crime.

Despite anthropology's inattention to crime as a singular subject matter — or, at least, anthropology's sporadic interest in crime — there is much that criminology as a whole could gain from a consideration of anthropological approaches, insights, and perspectives on crime. For example, Collier (1975:125) provides anthropological support for both labeling theory and Quinney's (1969, 1974) Marxist criminology. There may still be fruitful linkages between criminology and biological and evolutionary anthropology (see, e.g., Brisman 2010c). To offer a third example: anthropologists, because of the time spent in the field, and the scope of their inquiries, can consider the distinctions and relationships between "norms" and "institutions," "legal formalities" and "legal realities," and "rules" and "behaviors" (Donovan 2008:14, 18, 23-24) — all of which could have bearing on criminological studies and explorations. In this article, I consider ways that anthropology can help or advance *critical criminology* — or reasons why critical criminologists might look to some of the work of anthropologists. More specifically, I identify three ways in which anthropology can speak to, and engage with, critical criminology's "insistence that criminological inquiry move beyond the boundaries imposed by legalistic definitions of crime" and its critique of domination — for "unapologetically" embracing "a commitment to confronting racism, sexism, working class oppression and US neo-colonialism" (Michalowski 1996:11, 12):

1. Anthropology can help reveal processes of domination that are pervasive.
2. Anthropology can remind us that what constitutes "crime" is culturally specific and temporal (a point alluded to above).
3. Anthropology can help provide paradigms for better living—allowing critical criminologists to be not just *critical*, not just *prescriptive*, but *aspirational*.

These categories or types of intersections between anthropology and critical criminology are but the tip of the iceberg. The discussion that follows offers representative examples for each, rather than an exhaustive account of relevant anthropological inquiries. My hope is that this

article will prompt further investigations into the nature of, and extent to which, anthropological-critical criminological linkages exist — so that the typology becomes both more elaborate and more robust.

ANTHROPOLOGY CAN HELP REVEAL PROCESSES OF DOMINATION THAT ARE PERVASIVE

European anthropologists in the early twentieth century were more likely to be complicit in, rather than challengers of, processes of domination. Much fieldwork and ethnography at this time was undertaken by anthropologists at the behest of, and with funding from, European powers with colonialist and imperialist objectives in Africa and Asia — and, as Bodley (2008:21) explains, “anthropologists were quick to stress the presumed deficiencies of tribal cultures for externally imposed change or a rejection of proposals that tribals be granted political autonomy.” British social anthropologists of this era, in particular, have been criticized for implicitly and explicitly supporting British foreign policy, which utilized ethnographic knowledge to govern through indirect rule (Erickson and Murphy 2003; Kottak 2008).

Nineteenth-century American anthropology should also be considered in a less-than-positive light — individuals such as Samuel George Morton and Josiah Clark Nott promoted racial polygenism (the doctrine that races are immutable, separately created species), which was used to defend slavery in the ante-bellum American South (see Erickson and Murphy 2003). But many American anthropologists in the early twentieth century operated in the spirit of critical criminologists today. Franz Boas, often considered the father of American cultural anthropology, rejected racial polygenism and argued that cultural differences are influenced by environment, rather than heredity. Ruth Benedict, Boas’s student, worked with other anthropologists for the United States Office of War Information to promote cultural relativism, combat ethnocentrism and racism, and help defeat Nazism and the Axis powers (see Erickson and Murphy 2003).⁷

Thus, while early anthropology (British social anthropology and American cultural anthropology) may not have possessed the most laudatory goals or “findings” — and were often “agents of colonial governments” (Bodley 2008:1) — anthropologists from the mid-twentieth-century onward were, and have continued to be, “instrumental in bringing to the world’s attention the wide variety of cultures extant on the planet we all share” (Donovan 2008:198). Bodley acknowledges that “[a]nthropologists may justifiably take credit for exposing the ethnocentrism of nineteenth-century writers who described indigenous peoples as badly in need of improvement,” but he is less effusive than Donovan. Bodley points out that

until recently, anthropologists “overlook[ed] the ethnocentrism that . . . commonly occurred in the professional literature on economic development” — writing that often “mistakenly attributed to [small-scale cultures] the conditions of starvation, ill health, and poverty, which actually may be related to the inequalities that often accompany industrialization and commercialization” (2008:21, 24).⁸ Notwithstanding Bodley’s well-founded concerns about anthropological inattention to ethnocentric economic development writing, anthropological knowledge and insights frequently have and will continue to contest ethnocentrism, which is and should persist in being vital to the critical criminological endeavor.

To take matters one step further, Knauff asserts that one of the goals of anthropology is, or should be, “to expose, analyze, and critique human inequality and domination” (1996:50) — a position that is very close to Michalowski’s description of, and prescription for, critical criminology above. What I would like to suggest in this section is that critical criminology might further achieve its (shared) goal of critiquing domination *through* anthropology. More specifically, I wish to propose that by looking at anthropological accounts, critical criminologists might be able to better locate instances of domination that we may not see in our day-to-day lives (either in the U.S. or elsewhere), and to discover the extent to which particular instances of domination are more widespread — the extent to which they are rampant and raging, rather than unique or isolated occurrences.

For example, mainstream criminologists frequently limit their study of “violence” to behavior by an individual that threatens or causes physical, sexual, or psychological harm and resist critical criminologists’ desire to look beyond legal definitions of violence (i.e., those defined by criminal statute). Critical criminologists, seeking to generate additional support for their more capacious view, might turn to Taussig (2005:134-35), who writes:

[W]hen I look at my diaries [from Colombia] for 1970-1972, I get a shock. I see first of all that my definition of ‘violence’ is quite different. Instead of in-your-face knives and guns and corpses alongside the roads just outside of town, I see another class of violence . . . the violence of the economy with its unemployment, miserable pay, and humiliating working conditions. . . . The violence of the economy . . . gives way to the blatantly political and criminal violence, which in turn gives way to routine and numbness punctuated by panic.

Taussig’s treatment of unemployment, underpayment, and disastrous working conditions as violence can bolster critical criminologists’ broad conception of “violence;” that his example is from Colombia illustrates that this type of violence occurs outside of North America, Western

Europe, and Australia — the usual loci for criminological research.

Taussig could also prove helpful for critical criminologists interested in state crime — specifically extrajudicial domination and violence — and linkages between various economic interests and state crime and violence. Criminologists who research state crime⁹ often study “political criminality” (i.e., corruption and manipulation of the electoral process); criminality associated with economic and corporate activities (such as violations of health and safety regulations); criminality at the social and cultural levels (such as institutional racism); and genocide, ethnic cleansing, terrorism, torture, and other security or police force criminality (McLaughlin 2001). While anthropology has the potential to contribute to critical criminological discourse on all of these categories of state crime.¹⁰ I will confine my comments here to the fourth category.

If Vincent (1989:156) contends that “lawmaking in the hands of members of the ruling class serves their interests,” Taussig and others show that *lawbreaking* in the hands of members of the ruling class serves their interests. Taussig describes how the Colombian paramilitaries (*limpieza*) function as a “clandestine wing of the army and police,” meaning that they “lie beyond the reach of law, human rights, and the restrictions imposed by the U.S. government on its aid to the Colombian armed forces” (2005:xii). Linger (2003), Scheper-Hughes (1992, 2006), and Pinheiro (2000) have all extensively documented the ways in which and the potential reasons why acts of abduction, torture, and murder have continued to occur throughout Brazil, in spite of democratic governance and long after the formal end of authoritarian rule. Scheper-Hughes (2006:157) describes how the middle class in northeastern Brazil are “complicit” in unleashing death squads to “sweep the streets of . . . social garbage.” Pinheiro records “a continuation of the death squads and other repressive clandestine organizations and practices that prevailed during the dictatorship” and explains that “[t]he police tend to see the rule of law as an obstacle rather than as an effective guarantee of public security” (2000:121, 127). Pinheiro details how police violence (including torture and taking place both in prisons and on the streets) is largely directed toward “dangerous classes” — who do not view the state as a/the defender of rights or protector of security (2000:126).

While Pinheiro’s account, like that of Linger and Scheper-Hughes, and that of Taussig in Colombia — as well as those of state crime critical criminologists, illustrates how contempt for the penal code by state-level or quasi-state-level authorities may still exist in countries with democratic governance, what is particularly compelling about his work is that he posits that the rule of law is far from being effectively established because a “certain tolerance for violence continues in government organizations and in society in general” (2000:136).

Essentially, while Pinheiro places the larger onus on state institutions (and calls for, among other things, constitutional amendments to reform the judicial court system and the institution of the police), he recognizes that “violence is deeply rooted in the wide gap between the elites and the general population, the longevity of slavery, racial discrimination, and profound social inequalities” (2000:139), and that a democratic civil society is both a product of, *and necessary for*, a democratic state. In other words, anthropology can contribute to critical criminology’s study of state crime by offering examples that fall within the above-mentioned categories. Work like that of Pinheiro can help uncover various processes, trends, and features of *civil* society that may play a role in, or exacerbate, state crime, thereby affording critical criminologists the opportunity to expand their critique and offer more holistic recommendations for reform and change.

Aside from a more capacious conception of violence and more pervasive examples of extrajudicial violence and state crime, we might consider how critical criminology maintains that crime stems from relations of power and selective processes of criminalization (Chadwick and Scraton 2001). Similarly, albeit through a comparative and historical perspective, anthropology has exposed processes of criminalization — ways in which state authorities, media, and “citizen discourse” (which may or may not be separate entities/phenomena) define particular groups and practices as criminal, with prejudicial consequences—“selectively ignor[ing] or sponsor[ing] some illegal activities while vigorously prosecuting others” (Schneider and Schneider 2008:351, 352). Critical criminologists who are interested in such state-level examples of domination and who are seeking interdisciplinary and cross-national examples of such “institutionalized forms of power” (Ortner 1995:174)¹¹ might consider Collier’s (1989:201) broad observations about the relationship between the forms that laws take and the impact of laws at the local level. Or they might review Borneman (1997:25), discussed in greater detail below, who asks (in the context of formerly communist states attempting to transition to democratic governance): “which crimes are the state’s business to punish? And what are the justifications for these criminalizations?” Others might find Merry (1998; 2000) instructive for her description of how European colonizers attempted to criminalize the everyday practices of their colonial subjects, applying the unfamiliar legal framework of “harm to society” as distinct from harm to specific others punishable through compensation, and for her illustration of a shift from the criminalization of “vice” to the severe interdiction of “work violations” as British and U.S. planters set up the sugar economy in Hawaii. Those seeking a more contemporary example might find Sharff (1987:47) useful for description of the ways in which the War on Drugs was carried out in the early-to-mid 1980s in New York City:

Early in 1984, the city launched a massive, military-type campaign on drug dealing in the neighborhood with regular, housing, and transportation police and undercover agents. They were supported by mounted police as well as motorcycle, canine, and helicopter units. During the next two years, over 17,000 young men were arrested in the neighborhood, of whom the majority were street dealers. Many of them now languish in city jails, state prisons and federal penitentiaries. The fact that these institutions are so overcrowded means that most of the prisoners cannot be reached by training or rehabilitative programs. The stressful life in prisons with its chicanery and debasement of every detail of daily life ensures that very few lucky and persistent men will profit from the existing educational programs. And most of the men, once caught in the wheels of criminal justice, are certain to stay hooked up to the system. The women remain, raising children and hoping.

While there have been numerous critiques of the “militaristic” War on Drugs (see, e.g., Austin, et al. 2001; Ferrell 2002; Robinson 2001; see also Merolla 2008; Preson and Roots 2004), Sharff’s account offers another instance of what has been criminalized and who have been the objects of such processes of criminalization, and lends further support to research on the ongoing effects of such “military-type campaigns” on both those arrested and their families.¹²

Before turning from the ways in which anthropology can help reveal processes of domination that are pervasive — and the ways in which anthropology can assist critical criminology in making its claims about and critiques of domination — I would like to offer one final comment and caveat. Anthropology can help reveal how domination is or can be resisted (see, e.g., Abu-Lughod 1986; Ong 1987; see also Abu-Lughod 1990:53 n.1 and Ortner 1995:183).¹³ That said, while there has been significant attention to resistance in anthropological literature, resistance as a subject of inquiry and representation has been a matter of contention, and critical criminologists seeking to undertake studies of resistance should be familiar with these anthropological debates.

Writing about the state of the discipline of anthropology and the relationships between theoretical perspectives and approaches since the 1960s, Ortner (1984) expressed concern about the growing interest in, and attention to, domination in the field of anthropology. While acknowledging that “to penetrate into the workings of asymmetrical social relations is to penetrate to the heart of much of what is going on in any given system,” Ortner voiced her unease with “the centrality of domination,” arguing that “such an enterprise, taken by itself, is one-sided. Patterns of cooperation, reciprocity, and solidarity

constitute the other side of the coin of social being” (1984:157).

Ten years later, the concern had shifted to “the theoretical hegemony of resistance” (Brown 1996:729). According to Brown “[r]esistance, as well as its myriad refinements and mutations (such as ‘subversion,’ ‘transgression,’ and so forth), has become a central, perhaps even a dominant, theme in the study of social life. Selecting a recent issue of the *American Ethnologist* (February 1994) more or less at random, one finds that ‘resistance’ appears in the title or internal subheads of about half the essays offered; still others mention it in passing” (1996:729). Brown decries “[t]he discovery of resistance almost everywhere,” worrying that anthropology’s “concern with multiple layers of resistance [can] blind us to certain features of the story that are potentially of great interest” (1996:730, 731). Brown’s intention is not to “disparage the struggles of the downtrodden,” but rather to make the case there is often more to interlocutors’ social life than just resistance/resisting and that “[a] myopic focus on resistance . . . can easily blind us to zones of complicity and, for that matter, of sui generis creativity” (1996:730, 733). Brown (1996:734) concludes:

All social life entails degrees of dominance and subordination, which mirror the hierarchy intrinsic to the family and to the socialization process itself. Resistance to such power can no more explain the myriad forms of culture than gravity can explain the varied architecture of trees.

The task of cultural anthropology remains, as it always has been, to illuminate how human beings use their emotional, intellectual, aesthetic, and material resources to thrive in a range of social settings. Domination and subordination are, of course, key elements of this process. But so are reciprocity, altruism, and the creative power of the imagination, forces that serve to remind us that society cannot be relegated to the conceptual status of a penal colony without impoverishing anthropological theory and, worse still, violating the complex and creative understandings of those for whom we presume to speak.

Abu-Lughod’s perspective on anthropology’s heightened interest in resistance is more nuanced than that of Brown. She recognizes a shift in the way in which resistance has been studied: “what one finds now is a concern with unlikely forms of resistance, subversions rather than large-scale collective insurrections, small or local resistances not tied to the overthrow of systems or even to ideologies of emancipation” (1990:41). While she seems to value the attention paid to “such previously devalued or neglected forms of resistance” — to such

“minor defiances”—she asserts that the focus on resistance has been undertaken at the expense of an analysis of power, and fears that there is now a “tendency to romanticize resistance, to read forms of resistance as signs of the ineffectiveness of systems of power and of the resilience and creativity of the human spirit in its refusal to be dominated” (1990:41, 43, 42). Put differently, Abu-Lughod states that the most interesting thing to come out of the work on resistance “is a greater sense of the complexity of the nature and forms of domination,” but that “[d]espite the considerable theoretical sophistication of many studies of resistance and their contribution to the widening of our definition of the political, it seems . . . that because they are ultimately more concerned with finding resistors and explaining resistance than with examining power, they do not explore as fully as they might the implications of the forms of resistance they locate.” Urging scholars to consider the implications of studies of resistance for our theories of power, Abu-Lughod calls for “a small shift in the way we look at resistance” so that resistance is used as a “diagnostic of power” so that it can, among other things, identify historical shifts in configurations or methods of power (1990:42).

Focusing on the Awlad ‘Ali Bedouins in Egypt, Abu-Lughod endeavors to describe not only “the rich and sometimes contradictory details of resistance,” but also how such details can reveal “the complex workings of social power” (1990:42). Essentially, Abu-Lughod uses resistance as a lens: contemplating various forms of resistance in Bedouin society (e.g., women’s minor defiances of restrictions enforced by male elders, such as secrets and silences, collusion in the hiding of knowledge, covering for each other in minor matters, smoking in secret; resistance to (arranged) marriage; sexually irreverent discourse, such as making fun of men and manhood; folktales, jokes, and poems/songs — *ghinnāwas* — that are recited in public in the midst of ordinary conversations and that function as “subversive discourse”) enables her to bring to light the ways in which power relations are historically transformed (1990:42-48). But her larger point — and one that is relevant for critical criminologists — is that “we should learn to read in various local and everyday resistances the existence of a range of specific strategies and structures of power. Attention to the forms of resistance in particular societies can help us become critical of partial or reductionist theories of power” (1990:53). To do otherwise, Abu-Lughod suggests, may essentialize power (in as much as it runs the risk of oversimplifying or idealizing resistance).

In “Resistance and the Problem of Ethnographic Refusal,” Ortner (1995) expresses her displeasure with studies of resistance, exhibiting much of the same trenchant criticism that she showed in her comments about domination in her 1984 article, discussed above. Ortner begins by discussing various ways in which resistance has been conceptualized. She explains that resistance was

initially “a relatively unambiguous category, half of the seemingly simple binary, domination versus resistance. Domination was a relatively fixed and institutionalized form of power; resistance was essentially organized opposition to power institutionalized in this way” (1995:174). She then acknowledges Foucault’s success in shifting attention to less institutionalized, more omnipresent and quotidian forms of power, and Scott’s (1985) illumination of less organized, more enveloping and persistent everyday forms of resistance.¹⁴ Ortner notes how some have addressed the question of intentionality (i.e., whether an act can be deemed one of resistance if the actor does not possess the conscious objective to resist), before stating that while resistance may be ambiguous and may present problems as a category, it is still “a reasonably useful category, if only because it highlights the presence and play of power in most forms of relationship and activity. . . . [W]e are not required to decide once and for all whether any given act fits into a fixed box called resistance” (1995:175).

With this backdrop, Ortner proceeds with her key concern — resistance studies’ ethnographic thinness. Ortner refers to this as the problem of “ethnographic refusal” — “a refusal of thickness, a failure of holism or density which itself may take various forms” — and presents a number of issues that arise as a result of this “ethnographic refusal” (1995:174). First, Ortner asserts that studies of resistance do not contain enough analysis of the *internal* politics of the resistors. Ortner claims that “resistors are doing more than simply opposing domination” and that ignoring the dynamics, tensions, and conflicts among subalterns produces a romanticized picture of the resistors — a point Abu-Lughod (1990) makes to which I alluded above. Ortner (1995:179) stresses that “individual acts of resistance, as well as large-scale resistance movements, are often themselves conflicted, internally contradictory, and affectively ambivalent, in large part due to these internal political complexities,” and she emphasizes that in order to conduct an adequate examination of resistance, one must observe the prior and ongoing politics within resistance groups. In other words, Ortner feels that resistance studies have devoted too much attention to the politics in the oppressor-resistor relationship and have neglected to scrutinize the politics in the relationships of resistors to each other.

In a similar vein, Ortner alleges that resistance studies frequently do not attend to, or even recognize, the “cultural richness” of the resistors (1995:183). Here, Ortner urges scholars to pay attention to cultural dynamics — such as religion — which may reveal some of the beliefs and values behind resistance movements, and which will help avoid the depiction of resistors’ responses to domination as ad hoc and springing solely from specific situations or instances of domination. Ortner maintains that recognizing a subaltern group’s cultural processes, practices, and features will also help show the depth and range of the

group's own notions of order, justice, and meaning — and the basis for and vision of their world without the oppressors.

Finally, Ortner reminds us that “subaltern” is not a “monolithic category . . . who is presumed to have a unitary identity and consciousness” (1995:183). She criticizes the “poststructuralist move . . . to de-essentialize the subject” — or the “de(con)struction of the subject” (1995:185, 186) — and argues that ethnographic subjects need to “retain powerful voices” — that they should not “representationally disappear” (1995:187). Part of the purpose of providing better representation of subjects is to create “better portraits of subjects in and of themselves” (1995:187). Doing so also uncovers “the projects that they construct and enact. For it is in the formulation and enactment of those projects that they both become and transform who they are, and that they sustain or transform their social and cultural universe” (1995:187). I would add that while retaining and representing the subject can help scholars to depict the internal politics and cultural complexity of the resisters — issues alluded to above — an adequate treatment of the individual subject can also reveal how domination and resistance is experienced personally (as well as collectively), and can disclose transformations in consciousness, awareness, and identity.

To conclude, anthropology can help expose instances of domination as reflections of widespread processes. Anthropology can also provide some models for the study of resistance (however conceived). But because of critical criminology's anti-positivism and the left-leaning political perspectives of its adherents, critical criminologists should be aware of, contemplate, and engage the anthropological debates surrounding studies and accounts of resistance so as not to romanticize it.

ANTHROPOLOGY CAN REMIND US THAT WHAT CONSTITUTES “CRIME” IS CULTURALLY SPECIFIC AND TEMPORAL

In “A Sociological Analysis of the Law of Vagrancy,” William J. Chambliss laments the “severe shortage of sociological relevant analyses of the relationship between particular laws and the social setting in which these laws emerge, are interpreted, and take form” (1964:67). Examining the law of vagrancy in Anglo-American jurisprudence, Chambliss finds support for the Weberian contention that “‘status groups’ determine the content of the law” (1964:77, citing Rheinstein 1954)—a position inconsistent with the perspective that the law is a reflection of “‘public opinion’” (1964:77, citing Friedmann 1959).

Chambliss further develops his ideas about the disparities between the “law in action” and the “law in the books” in *Law, Order, and Power*, where he and his co-author, Robert B. Seidman, argue that “[t]he legal order —

the rules which the various law-making institutions in the bureaucracy that is the State lay down for the governance of officials and citizens, the tribunals, official and unofficial, formal and informal, which determine whether the rules have been breached, and the bureaucratic agencies which enforce the law — is in fact a self-serving system to maintain power and privilege” (1971:4). Chambliss and Seidman examine the creation of formal rules of law, general principles of criminal law, and the implementation of law. Towards the end of their treatise, in a chapter on poverty and the criminal process, Chambliss and Seidman set forth a number of propositions regarding the decision to enforce the laws against certain persons and not against others. Two of the propositions are as follows: “In complex societies, political power is closely tied to social position. Therefore, those laws which prohibit certain types of behavior popular among lower-class persons are more likely to be enforced, while laws restricting the behavior of middle- or upper-class persons are not likely to be enforced” (1971:475).

Chambliss reworks many of his ideas from his 1964 article and his 1971 book in his chapter, “Toward a Radical Criminology,” in the first edition of *The Politics of Law: A Progressive Critique* — a work of “critical legal theory” and part of both the anthropology of law and critical criminology canons. In the spirit of his earlier work, Chambliss asserts that traditionally, criminology has asked “Why is it that some people commit crime while others do not?” (1982:230). In the wake of 1960s civil rights demonstrations, anti-Vietnam War protests, and blatant criminality by political leaders and giant corporations, Chambliss suggests that the more salient question is “Why are some acts defined by law as criminal while others are not?” (1982:230). The former question treats “crime” as a constant and takes “the definition of behavior by the state as a given” (1982:233). The latter question recognizes that “many acts come to be defined as criminal because of the interplay of power and political struggles reflecting economic conditions” (1982:230-31). To support this position, Chambliss (1982:233) states:

Historical analyses [have] revealed the political and economic forces behind the creation of criminal law. . . . [T]he law of theft arose to protect the interests and property of mercantilists against the interests and property of workers; vagrancy laws reflected the tensions in precapitalist England among feudal landlords peasants, and the emergent capitalist class in the cities; ‘machine smashing’ in rural England was a rational response to workers seeking to defy the trend toward boring, monotonous industrial production, but the state came down on the side of the capitalist class and criminalized such acts; rights of rural village dwellers to hunt, fish, and gather wood were retracted and such activities became acts of criminality punishable by death as a result of the state's

intervention on the side of the landed gentry in opposition to the customs, values, and interests of the majority of the rural population; indeed, even murder came to be defined as an act against the state (that is, as a crime) as a result of political and economic struggles in which the majority of the people were simply powerless to have their views represented at law. Laws that were acknowledged by everyone as serious violations of personal freedom and security — laws prohibiting murder, rape, vandalism, and theft — were found, on closer scrutiny, to be based on contradictory values and to have emerged as a result of political and economic forces.

Essentially, what is defined as “criminal” changes over time and history can reveal the political and economic forces behind the creation of criminal law. Chambliss contends that when one adopts this perspective and considers revelations of white-collar, corporate, governmental and organized crime in the 1960s and 1970s, as well as findings that “crime waves” and “soaring crime rates” frequently distort or misrepresent the actual danger of crime and the seriousness of offenses, criminology cannot continue with “business as usual” (1982:234). Chambliss describes and calls for a “paradigm revolution” — one that defines crime not as a criminal justice problem or as a social-psychological problem — but as a cultural phenomenon. Chambliss argues that criminology should not try to answer the impossible question of “why some people commit crime while others do not” and should instead try to “understand and explain the entire range of phenomena called crime” (1982:239). According to Chambliss (1982:239):

We must understand the political, economic, and social forces leading to differences in crime rates in different historical periods as well as differences between countries in the same period. We must explore the differences between crime in capitalist and socialist societies. We must look carefully at the historical roots of criminal laws and the legislative and appellate court processes that define acts as criminal to understand the larger issues and enlighten the public as to exactly what crime is and what kind of threat it poses to their well-being. We must continue to examine the legal process to see why some laws are enforced and others are not; why some people are arrested, prosecuted, and sentenced, while others are not.

Writing twenty years later, anthropologist Laura Nader (2003) describes how in 1990, eight years after Chambliss’s chapter, the second edition of *The Politics of Law* replaced Chambliss’ chapter with Elliott Currie’s “Crime, Justice, and the Social Environment” — a chapter that discusses a “conservative revolution” in the United States marked by a rapid rise in incarceration and the

privatization of new and old prisons. The third edition of *The Politics of Law* (published in 1998), Nader explains, also omits Chambliss’ chapter and includes instead an updated chapter by Currie, “Crime and Punishment in the United States: Myths, Realities and Possibilities,” that further details the growth of incarceration in the United States. Currie’s chapters pay little attention to “crime as a category,” Nader (2003:57) explains. “So much for paradigm revolutions,” she laments. “It appears that we are now back to business as usual.”

Although an anthropologist, Nader accepts Chambliss’s challenge for criminology and attempts to illustrate via cross-cultural examination how “crime is a category arbitrarily applied in relation to social configurations expressed in law” (2003:57). Drawing on a range of examples — from natural resource plundering in Indonesia and Papua New Guinea, to toxic tort litigation in the United States, to her own research among the Zapotec on the seriousness of endangering the interests of the Commons — Nader illustrates how the very distinctions between “civil” and “criminal” that we take for granted in Western law and that more or less help to circumscribe the field of *criminology* (efforts of critical criminologists notwithstanding) either do not exist or exist in very different configurations in many of the non-Western places that anthropologists study. According to Nader (2003:58), “the question of native categories forces us to address the two powerful categories of Western law — ‘civil’ and ‘criminal’ — that are *ispo facto* part of our cultural baggage when we go elsewhere to work.” As Nader (2003:58) explains, “when anthropologists work in non-Western contexts we cannot simply accept the categories civil and criminal as given. In developing nation states they are clearly cultural constructs, the legacy of a specific Western tradition.” She continues: “Although crimes, from the Western perspective, are violations of the law, violations of the law from the cross-cultural perspective are not necessarily crimes. The concept of crime, an idea related to Western jurisprudential history, becomes problematic when applied cross-culturally” (2003:59). Following Chambliss and extending his line of thinking, Nader calls for continued inquiries as to why some acts are defined by law as criminal while others are not, and suggests that such examinations might “shift the current civil and the criminal paradigm toward consequence thinking rather than rigid adherence to categories” (2003:71).

Despite its omission from subsequent editions of *The Politics of Law*, Chambliss’s chapter remains an important tract for both legal anthropologists and critical criminologists. As well it should. Chambliss’s appeal is as relevant now as in 1982 (or in 1971 or 1964, for that matter), and perhaps more so. Nader should be commended for responding to Chambliss’s plea and for persuasively arguing that “crime” is a culturally-constructed category that loses its moorings when

subjected to cross-cultural (and historical) examination. Indeed, anthropology is particularly well-suited to illustrating that while all cultures possess (some form of) proscribed behaviors, “crime” is still culturally-specific and location-specific, and that people(s) differ (over time) over what behavior is to be condemned and condoned, and how we should respond to the former.

For example, Fletcher, his ideas regarding criminal anthropology (noted at the outset of this article) notwithstanding, comments that:

we are met with the difficulty of deciding what constitutes crime. True, the criminal law of every country answers the question; but that which is a crime under one government is not so regarded under another. Duelling, for example, which, if fatal, is punished as murder in many countries, is not cognizable by law at all in others if the encounter has been fairly conducted. So, also, what was formerly regarded as a crime becomes diminished in its gravity or may disappear altogether as public opinion changes. Sorcery, sacrilege, heresy, and blasphemy have practically disappeared from the penal codes of the civilized world (1891:204).

Whereas Fletcher writes about crime from a somewhat meta-analytical level — i.e., as a reflection on and prescription for the discipline of anthropology — Oberg (1934) approaches crime as merely one issue among many in a culture’s wide social milieu. His account of “Crime and Punishment in Tlingit Society” is purely descriptive, rather than comparative or theoretical. For instance, when Oberg (1934:146) states that “crime against an individual did not exist. The loss of an individual by murder, the loss of property by theft, or shame brought to a member of a clan, were clan losses and the clan demanded an equivalent in revenge,” he does so for purposes of using crime and punishment to illuminate the relation of the individual to the clan more generally. He is not interested in making larger statements about anthropological approaches to crime, nor does he wish to comment on crime in Tlingit society in relationship to crime in U.S. society. But the critical criminologist interested the relationship of economic and political power to enforcement and punishment who reads Oberg today might be interested in Oberg’s finding that “[h]ow crime is to be punished depends largely upon the rank of the criminal. Men of high rank could often escape death through a payment of goods” (1934:152).

In her review, “Law and Anthropology,” written almost eighty years after Fletcher and thirty-five years after Oberg, Moore explains that anthropologists believe that “law is incomprehensible outside of its social context,” and that while most (if not all) peoples distinguish between serious and trivial breaches of legal rules “not all formalize these into named categories like

‘felony’ and ‘misdemeanor’” (1969:289, 266) — categories that have tremendous legal and practical importance in U.S. jurisprudence, but that are hardly as fixed as we sometimes imagine them to be and which carry little currency *qua* categories in cross-cultural contexts. Similarly, Borneman (1997), in his study of transitional justice in the former East Germany (with some select comparisons with other formerly communist states in Europe), addresses the question of how societies deal with the abuses of power, crimes, and human rights violations of the previous regime. In so doing, Borneman demonstrates how taken-for-granted categories (such as criminality and the rule of law, perpetrator and victim, reconciliation and vindication) are socially and politically constructed: “*Crime* is a socially constructed category of wrong and unjust deeds; such acts are by definition both socially disapproved of and legally prohibited. Needless to say, definitions of crime vary by place and over time” (1997:62). This is not to suggest that because Borneman, like Moore and Nader (or Fletcher and Oberg, for that matter), views categories such as “crime” to be culturally- or situationally-constructed, that he also regards such categories as insignificant or meaningless. Nor does Borneman wish to downplay or diminish violence and atrocities by quibbling over terminology. To the contrary, Borneman states that “although both criminals and victims are culturally and historically variable categories . . . who in periods of intensive change can easily switch places, it will nonetheless be necessary in a legal regime of the rule of law type to reaffirm the distinction between the two” (1997:144). In other words, because such categories are malleable, ductile, and impermanent, what becomes imperative is the *response* to various abuses and injustices. Borneman’s specific argument is that “accountability” (established in part through retributive justice) is of central importance to (the legitimacy of) emerging democracies. But his concern for how harm is conceptualized and perpetrated, and, more notably, how states respond to and rectify state-level crime is, and should continue to be, consistent with the critical criminological endeavor.

Other anthropologists support the proposition that crime is culturally, temporally, and geographically specific, but do so almost in passing or in the context of a broader inquiry. Greenhouse (1986:165), for example, notes that “associating in the nighttime in the town of Hopewell [GA] with [one’s] negro slave woman” was a capital offense in the 1860s. Although Greenhouse’s focus is on the development of social structure in the town of Hopewell, Georgia, and the meaning of conflict for Hopewell residents, rather than on capital crimes before the 13th Amendment’s prohibition of slavery, her account not only adds support to the notion of the impermanence of criminal law, but could prove insightful for critical criminologists interested in the range and scope of anti-miscegenation laws before *Loving v. Virginia* (which struck down a Virginia statute prohibiting interracial

marriage), in drawing comparisons between anti-miscegenation laws and sodomy laws prior to *Lawrence v. Texas* (which invalidated Texas's law classifying consensual, adult homosexual intercourse as illegal sodomy), as well as for critical criminologists interested in informal means of conflict resolution.

In sum, anthropology can provide broad and substantial support for the notion that "crime" is a cultural construct incomprehensible outside of its social, temporal, and geographic context — an inquiry unto itself — and can offer useful examples for critical criminologists interested in investigating such matters as: 1) why some acts are defined by law as "criminal" while others are not (Chambliss's and Nader's question); 2) the relationship of economic and political power to enforcement and punishment (noted above in the context of Oberg); 3) why some crimes are labeled "felonies" and others "misdemeanors" (noted above in the context of Moore); 4) how to respond to and make amends for state crimes committed by oppressive regimes (noted above in the context of Borneman); and 5) the relationship of race and crime (noted above in the context of Greenhouse). For Nader (and for Chambliss), the real goal of considering crime as a cultural construct and asking why some acts are defined by law as "criminal" while others are not, is to help shift our analyses to the consequences of various acts and omissions, however they may be categorized (e.g., "civil" or "criminal").

I would take the additional step of proposing that contemplating and exposing the consequences of various acts and omissions (whether "civil" or "criminal," whether "legal" or "illegal") could enable critical criminologists to push for regulation of social harms — harms that are not (necessarily) proscribed by law, but that are nonetheless injurious — as well as for the decriminalization of certain types of behavior that cause little detriment or may actually be beneficial (see Brisman 2010e). In other words, anthropology can provide a lens with which to examine how other cultures have delineated permissible and proscribed behaviors. Given that criminology reifies the category of "crime" (efforts of critical criminologists notwithstanding), turning to anthropological examples (and engaging in ethnological study) might help to reduce the supremacy of the "crime" category so that we consider the effects of a wider range of acts and omissions (however defined) rather than confining our study to that which falls within the "crime" grouping. For example, such an endeavor could help critical criminologists push for regulation of (or better regulation of) activities, behaviors, patterns, and practices on the corporate- and state-level that lead to environmental degradation and natural resource destruction (e.g., amending the Resource Conservation and Recovery Act to include E-waste material — electronic devices (or parts of electronic devices) — that are currently exempt under the legislation's definition of "hazardous" waste¹⁵).

Conversely, treating crime as a cultural construct and shifting our analyses to the consequences of various acts and omissions could help critical criminologists push for the repeal of statutes that criminalize certain behaviors (e.g., possession of marijuana) or laws that have a disproportionate impact on certain groups of people (e.g., sentencing disparities for crack and powder cocaine).

Finally, if anthropology can offer examples of and lend support to critical criminologists' position that what constitutes "crime" is culturally specific and temporal, anthropology might also offer a paradigm for how to apply this knowledge in the criminal justice arena — an issue that has been a challenge for critical criminologists who, as Michalowski (2010:5) has explained, have been "politically marginalized," have received few "invitations to sit at the councils of government or to dine at the trough of government-funded research," and who have often encountered obstacles to achieving progressive reform, let alone social justice. Although an in-depth discussion is outside the scope of this article, I would also like to suggest that critical criminologists might examine the ways in which anthropologists have served as expert witnesses in cases involving cultural differences (e.g., Sutherland 1994). To explicate, anthropologists have occasionally testified in cases involving the "culture defense"— "characterized as a claim that when ascertaining guilt or setting a penalty the court should consider relevant features of the defendant's cultural background" (Donovan 2008:217). In such cases, which have ranged from those involving animals, attire, and children to drugs, homicide, and death/the dead (see Renteln 2005), the defendants have asserted that their "their cultural background properly negated the intent required to be held responsible for committing a crime" (Goldstein 1994:143) and anthropologists have testified to the cultural heritage or tradition and to the individual's membership in the group or culture. For example, Sutherland, an anthropologist who has conducted extensive fieldwork with Gypsies in the United States, participated in a case in which a nineteen-year-old Gypsy man was charged with using a false social security number (that of his five-year-old nephew) to obtain credit to purchase a car. She testified for the defense that the defendant lacked the intent to defraud because Gypsies (nomadic people by tradition) frequently borrow each others' American names and social security numbers because they consider them as "corporate property" of their kin group (or *vitsa*) and that secretiveness and concealing identity is a long-established pattern of Gypsies who have been persecuted around the world for centuries (1994:75).¹⁶ Cultural differences have also been at stake in cases involving child marriage,¹⁷ polygamy,¹⁸ *oyako-shinju* (parent-child suicide),¹⁹ and "marriage-by-capture,"²⁰ as well as in homicide cases involving defenses based on culture-bound syndromes,²¹ diminished

capacity,²² and provocation²³ (although not all of these cases have involved testimony from anthropologists).²⁴

Essentially, I could envision a role for critical criminologists that is akin to that of anthropologists in cases involving cultural differences (see Brisman 2010b). Because critical criminologists accept that “crime” is a cultural construct that differs based on context, circumstance, geography, and time, they might be willing and able to serve in this capacity — especially if they have conducted extensive fieldwork. In addition, because legal systems tend to reify their own cultural assumptions—to treat them as “normal” or even “natural” and to dismiss, condemn, and criminalize others’ cultural beliefs and practices (see Donovan 2008:225) — critical criminologists, who, as noted above, are committed to a critique of domination, might embrace the opportunity to assist in the defense of an individual who has been charged with a crime and whose non-dominant culture is, effectively, on trial. That said, critical criminologists would need to be careful that their endorsement of the culture defense does not result in support for or acceptance of various cultural practices that are themselves oppressive — a position taken by Koptiuch (1996:228, 229), who has argued that the “culture defense” does not reflect “multicultural sensitivity,” but rather sustains racist, sexist, and colonialist forms of knowledge.²⁵ Notwithstanding such concerns, critical criminologists might agree with Starr and Collier (1989:7) that the “legal system does not provide an impartial arena [for] contestants from all strata of society” and find inspiration in Renteln’s (2005) reasoning that for “litigants to be treated equally under the law [they must be] treated differently” — something that the culture defense has the potential to offer and which critical criminologists might provide.

ANTHROPOLOGY CAN HELP PROVIDE PARADIGMS FOR BETTER LIVING—ALLOWING CRITICAL CRIMINOLOGISTS TO BE NOT JUST CRITICAL, NOT JUST PRESCRIPTIVE (IN THE SENSE OF OFFERING RECOMMENDATIONS), BUT ASPIRATIONAL (HOW ONE OUGHT TO BEHAVE)

Critical criminology challenges the assumptions and content of orthodox or traditional criminology. It contests this “administrative criminology,” which treats crime as a “value free” concept and non-reflectively accepts the prevailing definitions of what constitutes the problem of crime, and which possesses a lack of interest in the structural forces and social and economic causes of crime (see Presdee 2004). In the process of confronting the goals, knowledge base, and theories of orthodox or

traditional or “administrative” criminology, critical criminology has also asserted that the concepts of inequality (economic and racial, as well as gender) and power are integral to understanding crime and crime control, and has maintained that the criminal justice system, which defends the existing social order, reflects the power structure in society and protects the interests of the capitalist class. As Maguire (1988:134) explains, critical criminology contends “(1) that conflict, domination and repression are characteristic elements of capitalist society; (2) that the majority of crime in capitalist societies is the result of the inherent contradictions of capitalist social organization; (3) that laws and the criminal justice system generally protect the interests of the powerful to the disadvantage of the powerless.”²⁶ Similarly, Michalowski (1996:12) explicates that critical criminologists have “fram[ed] the class structure and the institutional arrangements of 20th century corporate capitalism as causal forces in the labeling of crime and criminals” and have “linked social constructionism with a critique of domination as manifest in the political-economic framework of the nation and the world. At its best, this analysis helped reveal the subtle dynamics of race, class, and gender oppression in the making of laws and the administration of justice.”

Because critical criminology has been both critical of the discipline of criminology and critical of capitalism as an economic system,²⁷ one might be inclined, then, to view critical criminology in purely oppositional terms — as *against* certain approaches, concepts, orders, and systems, rather than *for* anything in particular. But Michalowski (1996:9) states that critical criminologists are “concerned with the political, economic, and cultural forces that shape the definition and character of crime, and that frame the public and academic discourse *about how we might achieve justice*” (emphasis added). Similarly, Maguire (1988:134, 138) observes that critical criminologists hold fast to the notion that “criminal justice makes sense only in the larger context of social justice,” and that “criminal justice reforms need to be married to social justice reforms.” Likewise, Young (1985:552) asserts: “The conservative solution [to crime] is more prisons, more police, faster trials, harsher sentences, and closer surveillance. The radical policy is more social justice and less criminal justice.” Thus, critical criminologists do stand for something — *social justice* — and have taken additional steps to propose and promote specific policy proposals. This is, by no means, a new development. In as much as it is a critique of advanced capitalist society, Quinney’s *Class, State, and Crime* contains a Marxist-based call for “popular justice” — where people “attempt to resolve conflicts between themselves in their own communities and workplaces [and] [o]utside the legal institutions of the capitalist state” (1977:162-63). Young (1985:567-74) presents an “agenda for critical criminology” to transform criminal justice into social

justice, and to move from “production for profit” to “production for human need, for community, and for praxis.” And in his survey of radical criminologists, Maguire (1988:145) found that for radical criminologists, “the etiology of crime has to do with social structural arrangements and institutional opportunities and constraints. Work education, health care and the distribution of wealth and income are social justice foci that . . . have an influence on criminal behavior.” Beyond this macro-emphasis, respondents in Maguire’s (1988:145) survey identified a number of specific criminal justice recommendations:

the professionalization and humanizing of police training and work (e.g., sabbaticals and job rotation plans [reduce police burnout and mitigate the tendency for police officers to think in us/them terms]); the formulation of laws and legal procedure to reflect a social harms standard (e.g., the commission of an overhaul of the FBI’s Uniform Crime Reports, or an increase in funds to combat corporate crime); the guarantee of equal legal representation (e.g., national legal insurance); and the development of community-based retrospective justice (e.g., the establishment of neighborhood tribunals for disposition of many, if not most, criminal offenses).

An in-depth examination of programs and recommendations promulgated by critical criminologists is unattainable in this “era of interdisciplinarity,” to use Ortner’s (1995:176) phrase. Even a cursory overview of critical criminologists’ proposed programs and recommendations is outside the scope of this article. Instead, I wish to take the more modest step of suggesting that because “most anthropologists today are rarely satisfied to accrue . . . knowledge for its own sake, hoping instead to be able to use these insights to improve the conditions of the original ethnographic informants, if not all persons and cultures” (Donovan 2008:xi) — a perspective that critical criminologists likely share (even if their methodology does not involve ethnography and informants) — critical criminologists might build upon and expand their ideas for an “imagined future” (Cover 1986:1604) or “world-that-might-be” (Cover 1984:181) by looking to anthropological accounts of justice, dispute resolution, and the like.

For example, anthropology can help critical criminology narrow the gap between the existing world (and current criminal justice paradigms) and the imagined world by providing models and arguments for greater/increased governmental (and corporate) accountability (Borneman 1997:16) and for a form of justice that seeks to compensate victims for moral injuries (agreed-upon wrongs that do not necessarily result in specific harm), thereby helping to reestablish victims’ dignity (Borneman 1997:7). When proposing penalties for environmental crimes, such as water pollution and other

damage to the Commons (e.g., the Deepwater Horizon oil spill in the Gulf of Mexico?), critical criminologists might look to Nader’s study of the Zapotec, who considered pollution of the water supply and endangering the public health of communities to be more serious than murder (1969, 1980, 2003; Nader and Todd 1978). Those critical criminologists interested in progressive, rather than regressive fines — ones that penalize the rich more heavily than the poor — might consult Barton’s (1919) description of fines among the Ifugao of the Philippines, whose system was organized according to the ability of each class to pay, as well as Rosen’s (2006) comments about Scandinavian courts issuing traffic fines based on one’s income.²⁸ Finally, Chagnon’s (1992) description of Yanomami village headmen, who must lead by example and persuasion, and who must be more generous than any other villager, could provide a paradigm for the type of characteristics and qualities our leaders and public figures should possess.

Of course critical criminologists would need to be careful. “Cross-disciplinary raids on theories and theoreticians run significant risks,” Lave and Fernandez caution, and individuals conducting interdisciplinary cross-fertilization should be wary of “precisely what kind of anthropology and what kind of history they bring together” (1992:261, citing Comaroff 1982). More on point, critical criminologists will need to be careful not to romanticize the peoples described in anthropological accounts. As Ortner reminds us, every group has its “own politics”— e.g., “local categories of friction and tension” between men and women, parents and children, seniors and juniors; conflicts among brothers over inheritance; struggles for supremacy between religious sects (1995:177). Even the simplest societies, she continues, contain a politics that may be as complex and “sometimes every bit as oppressive, as those of capitalism and colonialism” (Ortner 1995:179). Thus, critical criminologists will need to be mindful of the context in which appealing models of dispute resolution, justice, and the like appear. While anthropology can provide some ideas, before importing any broad or specific approaches, models, perspectives, rules or penalties, critical criminologists will need to study the circumstances that have taken place in those particular cultures that have given rise to such ideas (so that we do not romanticize these cultures and/or ignore instances of oppression and domination there). That said, whereas some disciplinary divisions are tenaciously sustained, South (2010:228) suggests that “criminology as a field has always been shaped by the influence of, and borrowings from, many other academic disciplines.” In other words, given that criminologists have been open to influence from other disciplines and have been willing to poach theories and approaches from other fields, provided critical criminologists pay attention to context and circumstances, politics and history, there is little reason they should not

look to anthropology for prescription, inspiration, and aspiration.

CONCLUSION

I wish to conclude this article with three points and a word of caution as I look ahead to future endeavors involving the intersections and exchanges between critical criminology and anthropology.

First, at the outset of this article, I stressed that critical criminology has been committed to a critique of domination and to developing and exploring broader conceptions of “crime” to include harms that are not necessarily proscribed by law. By titling this article, “Advancing Critical Criminology through Anthropology,” I do not wish to diminish the contributions of early or current critical criminologists who have admirably undertaken (and succeeded in) the task of expanding the boundaries of criminology beyond “legalistic definitions of crime” and “confronting racism, sexism, working class oppression and US neo-colonialism” (Michalowski 1996:11, 12). I do not want to ignore the early calls for “trans-societal comparisons” (Young 1985:567) of anti-social behavior and crime (however defined by different societies)—as well as the different contexts and social formations in which such behavior and crime appears and the responses to them. Nor do I intend to disregard the more recent work of *comparative criminologists*, who have urged criminologists, in general, to engage in the systematic and theoretical comparison of crime, crime prevention, and crime control in two or more cultural states (see Barak 2000a, 2000b), and who have recommended that professors introduce comparative criminology into their teachings. As Johnson (2009:15) explains,

[g]iven the chance, many students get interested in comparative criminology because it scratches their itch to know about other peoples and cultures and because it reveals assumptions and raises questions about patterns that are taken for granted in America but that do not get much attention when the preoccupation is the United States. One important purpose of comparative criminology is to deepen understanding of what is distinctive and problematic about crime and punishment in one’s own country.

Critical criminology is a vibrant division/perspective within criminology, and comparative criminological undertakings have become increasingly more popular; neither critical criminology nor comparative criminology can be considered flailing, stagnant or in need of resuscitation from another discipline. My goal in this article has been to generate further avenues of inquiry for current and future critical criminologists — inquiries that will also benefit the discipline of anthropology — rather

than to find fault with critical criminology or identify a deficiency.

Second, at the beginning of this article, I distinguished anthropological and sociological contributions to the field of criminology and to the study of crime and criminality. In particular, I noted that anthropology and sociology share common ancestors, but that their unit of study and history with respect to crime, criminality, and criminology has been different. I made only passing reference to the issue of methodology and then proceeded to focus on the “results generated” by anthropology (see Donovan 2008:vii), rather than the process by which anthropologists have arrived at them. It bears mention that the reason that I have neglected a consideration of the ways in which criminology (in general) and critical criminology (in particular) could benefit from anthropological insights into qualitative methods is that I firmly believe that many others (e.g., Ferrell 1993, 1999; Ferrell and Hamm 1998; Sullivan 1989) have persuasively argued for greater use of ethnographic methods and that the discipline of criminology is attuned to this debate, even if its researchers and scholars have not responded as enthusiastically as they might.

Third, this article has focused on the ways in which anthropology can help critical criminology expose processes of domination and illuminate the contingent nature of crime — that what constitutes “crime” is culturally specific and temporal. This article has also endeavored to demonstrate how anthropology can present paradigms for better living — allowing critical criminologists to be not just *critical*, not just *prescriptive*, but *aspirational*. While this article has stressed the ways in which critical criminology can advance through anthropology, this article has devoted less attention to the ways in which anthropology might advance through critical criminology. The emphasis on the benefits that anthropology might provide for critical criminology should not be interpreted as an indication that critical criminology has little to offer to anthropology. To the contrary, I see anthropology and critical criminology in a *mutualistic* relationship — where each provides benefits to the other — rather than a *commensalist* relationship where anthropology is neither helped nor harmed.²⁹ And this article has proposed that anthropology could profit from more direct or comprehensive ethnographic study of crime and has implied that there is much that anthropology could gain from the theoretical orientations of critical criminology. While I leave for another day a more in-depth examination of what anthropologists might learn from critical criminologists (for example, how to expand ethnography into different regions) — or how both anthropology and critical criminology might overcome disciplinary and subdisciplinary parochialism and insularity — this article’s emphasis on the benefits to critical criminology should not be understood as a suggestion that anthropology is, or would be, unaffected or

harmed by collaboration or cross-fertilization with critical criminology (to mix biological metaphors).

Finally, while this article has argued that anthropology can help expose processes of domination that are repeated elsewhere (i.e., outside of the major loci of criminological attention) and are pervasive, and while anthropology can offer paradigms for better living, we need to be careful. As Nietzsche famously warned: “He who fights with monsters should be careful lest he thereby become a monster. And if thou gaze long enough into an abyss, the abyss will gaze into thee” (1886:52). Critical criminologists should battle monsters — racism, sexism, misogyny, homophobia, xenophobia, working class oppression, environmental degradation and natural resource destruction, economic exploitation, U.S. neo-colonialism and imperialism. And anthropology can be helpful in these fights — its rejection of ethnocentrism (which underpins racism and xenophobia, and which at its worst, can lead to genocide) and its promotion of cultural relativism should prove instructive for critical criminology, and its examination of the discourse of human rights (see, e.g., Brisman 2011a, 2011b; Goodale and Merry 2007; Merry 2006; Riles 2006) can help critical criminology further develop its thinking in this regard. But in the process, we should be careful not to become monsters ourselves; regardless of our interests and influences, we should be mindful that in critiquing domination, we, ourselves, do not become domineering. For example, one of the ways in which the British justified their own dominance in colonial India was to point to what they considered barbaric practices, such as *sati* (widow burning), and to claim they (the British) were engaged in a civilizing mission that would save Indian women from these practices (see Ortner 1995:178; see also Jain, Misra, and Srivastava 1987; Mani 1987) — a situation that Spivak (1988:296) described as one in which “white men are saving brown women from brown men.” This is not to suggest that critical criminologists have become British colonialists/imperialists. But a critique or challenge to domination can (and often does) result in replacing “old prejudices with new ones” (Omi and Winant 1994:198n.9) — one *form* of domination with another. In as much as we need to critique domination, we need to “exercise vigilance” over our critique (Rosse 1993:290) — or employ a “cautious discernment among commitments” (Cover 1984-85:196). Anthropology can provide the theory, history, and context to help mitigate such risks.

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Endnotes

¹ I specify “cultural anthropology” because “crime” has been explored from a biological anthropological and evolutionary anthropological vantage point in arguably a more substantive way than it has been from a cultural anthropological perspective. Indeed, “forensic anthropology” is the application of the science of physical anthropology and human osteology to the legal process, usually in criminal cases where the victim’s remains have been burned, mutilated, are in the advanced stages of decomposition, or are otherwise unrecognizable (see Kottak 2008).

² Although well outside the scope of this article, it is worth noting that some would ask whether cultural anthropology has *ever* approached *anything* in a unified way. Writing in the mid-1980s, Ortner claimed that the field of anthropology had become “a thing of shreds and patches, of individuals and small coterie pursuing disjunctive investigations and talking mainly to themselves” (1984:126). Although Ortner acknowledged that “there was at least a period when there were a few large categories of theoretical affiliation, a set of identifiable camps or schools,” she denied that anthropology was ever “actually unified in the sense of adopting a single paradigm” (1984:126).

³ Note, however, that according to Barak (2003:218), because criminology’s “interests are too wide ranging, its practices too diverse, and its theories too interdependent, no single discipline has ever been able to monopolize criminology successfully. Sociology had appeared to do so until its collapse and the meteoric rise of cultural studies and criminologies in their own right during the last quarter of the 20th century.”

⁴ “Crime” — an act or omission that the law makes punishable — is quintessentially the product of states and state law (see Henry and Lanier (2001) for a presentation of classic/legalistic definitions of “crime,” as well as new directions in defining “crime” and integrating approaches to the study of “crime”). Not all societies have had “law” — in the sense of possessing a formal legal code, an enforcement mechanism, and a judiciary system — and, indeed, classical anthropologists tended to conduct fieldwork in non-state and proto-state societies or among peoples technically within the borders of a state, but subject to very limited state influence (see Chambliss and

Seidman 1971 for a discussion). Accordingly, they did not — or *could not* — study “crime,” which was contingent on states and state law.

While not all societies have had “law,” all have had some form of social control — i.e., beliefs and practices that operate to maintain norms, ensure compliance, and regulate conflict — and some classical anthropologists did study deviation from cultural norms. Indeed, as Schneider and Schneider (2008:354) explain, “until the 1950s, anthropological research was oriented toward small-scale societies in which deviance had a moral rather than legal status, and violators of norms were shamed, ridiculed, held up for retribution, or punished as witches or sorcerers.” But this is as close as classical anthropologists came to studying “crime.”

Today, all political entities exist within nation-states and are subject to state control. As a result, anthropologists cannot investigate bands, tribes, or chiefdoms as self-contained forms of political organization. While this fact of political organization (and the real or perceived presence of the state) should (or, at least, *could*) make “crime” an appropriate subject of inquiry for anthropologists, anthropology has been slow to contemplate “crime” (including its definition, prevention, control, and meaning to offenders, victims, and society, more generally). In addition, I would suggest that the fact that cultural anthropology traditionally focused on small-scale, non-state and proto-state societies (and has been less interested than sociology in promoting grand theories or models to explain/understand social phenomena) may have made it more difficult for anthropology to overcome the regrettable endeavor of criminal anthropology/anthropological criminology than it was for sociology to move past the shortcomings of positivist theories of crime (e.g., Lombroso).

⁵ See, e.g., Ortner (1984) for a discussion of the role and impact of such figures in anthropology. Readers who are interested in the shared epistemological foundations and complementary objectives of anthropology and history might consult Levi-Strauss (1963), Lewis (1968), Sahlins (1981), Schapera (1962), and Worsley (1968).

⁶ Writing ten years earlier, Sullivan (1989:6-7) lamented the “shift in research methods away from ethnographic studies toward analyses of self-report survey data and of aggregate social statistics on crime on unemployment,” claiming that such “quantitative methods do not portray . . . local-level processes very well.”

⁷ It bears mention that *ethnocentrism* — the belief in the superiority of one’s own culture — “is vital to the integrity of any society” (Bodley 2008:21) and “contributes to social solidarity, a sense of value and community, among people who share a cultural tradition” (Kottak 2008:196). Where ethnocentrism becomes

problematic — and potentially deadly — is when it “becomes the basis for forcing irrelevant standards upon another culture” (Bodley 2008:21).

⁸ Bodley further indicts economic development writers in the 1960s for lumping tribal peoples indiscriminately with underdeveloped peoples, and takes such writers to task for “referring explicitly to economic underdevelopment as a ‘sickness,’ speaking of the ‘medicine of social change,’ and comparing change agents to brain surgeons” (2008:25, citing Arensberg and Niehoff 1964). According to Bodley (2008:25), “[i]t appears that the attitudes of some modern cultural reformers were unaffected by the discovery of ethnocentrism.”

⁹ It bears mention that state crime is a subject that has broad appeal and is of interest to criminologists who do not hold critical criminological perspectives, as well as to legal scholars. I thank Dawn L. Rothe for reminding me of this.

¹⁰ I do not wish to imply here that criminology, in general, and critical criminology, more particularly, has somehow been deficient in its investigations of state crime. Fredrichs (1998), Ross (2000), Rothe (2009), and Rothe and Mullins (2010) are but a few examples of the breadth and depth with which criminology has considered state crime. I merely wish to suggest — as I have endeavored to do throughout this paper — that critical criminology could strengthen its positions (and improve the range and detail of its examples) by looking to anthropological accounts and perspectives.

¹¹ I leave for another day a consideration of how critical criminologists might explore anthropological examples of “less institutionalized, more pervasive, and more everyday forms of power” *à la* Foucault (Ortner 1995:175).

¹² For a discussion of the gendered impact of the United States’ War on Drugs abroad, see, e.g., Norton-Hawk (2010).

¹³ As with my discussion of state crime, *supra* n.10, I do not wish to imply here that criminology, in general, and critical criminology, more particularly, has somehow been lacking in its investigations of resistance. To the contrary, criminologists working in critical or cultural veins have closely examined how power has been defied, opposed, and subverted (see, e.g., Ferrell 1993, 2001; Snyder 2009). Nor do I want to insinuate that scholars studying resistance have not already toggled back and forth between anthropology and critical criminology (see, e.g., Kane 2009). (My own work on resistance has also been cross-disciplinary in this regard; see, e.g., Brisman 2007, 2008a, 2008b, 2009a, 2009b, 2009c, 2010d, 2010f.) Rather, I

merely wish to suggest — as I have endeavored to do throughout this article — that critical criminology could strengthen its positions (and improve the range and detail of its examples) by looking to anthropological accounts and perspectives on resistance.

¹⁴ For an argument that the domination-resistance binary obscures an understanding of postcolonial relations, see Mbembe (1992).

¹⁵ See Gibbs, McGarrell, and Axelrod (2010) for a discussion.

¹⁶ As Sutherland (1994:75, 81) explains, by using the social security number of a relative, the defendant was following “a time-honored tradition to remain anonymous and separate from non-Gypsy society” and that “[i]dentification — a serious legal issue in a bureaucratic society composed of people with fixed abodes and a written language — has virtually no meaning for the nomadic Gypsies who consider descent and extended family ties the defining factor for identification.”

¹⁷ *People v. Benu*, 87 Misc.2d 139, 385 N.Y.S.2d 222 (N.Y.City Crim.Ct. 1976).

¹⁸ *People v. Ezeonu*, 155 Misc.2d 344, 588 N.Y.S.2d 116 (N.Y.Sup. Ct. 1992).

¹⁹ *People v. Kimura*, No. A-091133 (Santa Monica Super. Ct. Nov. 21, 1985); see also Bryant (1990); *Harvard Law Review* (1986); Pound (1985); Rosen (2006:171-75); Woo (1989).

²⁰ *People v. Moua*, No. 315972-0 (Fresno County Super. Ct. Feb. 7, 1985).

²¹ *State v. Ganai*, 81 Hawai‘i 358, 917 P.2d 370 (Haw. 1996).

²² *People v. Poddar*, 26 Cal.App.3d 438, 103 Cal.Rptr. 84 (Cal.App. 1 Dist. 1972).

²³ *People v. Aphaylath*, 68 N.Y.2d 945, 502 N.E.2d 998, 510 N.Y.S.2d 83 (N.Y. 1986).

²⁴ It bears mention that in these cases, courts have not uniformly permitted or disallowed cultural testimony. Furthermore, those cases where courts have allowed such cultural testimony have not always resulted in acquittal or sentencing mitigation for the defendant.

²⁵ In her examination of “the cultural debate over the applicability of U.S. criminal law to select groups of recent immigrants in America’s diaspora,” Koptiuch “track[s] the historical genealogy of the unacknowledged colonial

shadow that darkly haunts uncritical exuberance about the liberatory potential of ‘multiculturalism’ within the law,” and argues that “[i]n the culture defense, gender violence ordinarily criminalized by U.S. legal science is redefined as ‘ritual’ by authority of anthropological science” (1996:217, 216). Readers interested in the debates regarding the pros and cons of the culture defense might consult, for example, Choi (1990); Gallin (1994); Magnarella (1991); Renteln (1993); Rimonte (1991); Rosen (1991); Sams (1986); Sherman (1986); Sheybani (1987); Thompson (1985); and Volpp (1994).

²⁶ It bears mention that Maguire (1988:134) employs the term, “radical criminology,” but indicates that the label encompasses “conflict,” “critical,” and “Marxist” perspectives, among others. Michalowski (1996:14) also notes that there exist multiple “critical criminologies” and that “critical criminology” encompasses “broad social theories such as feminism, political-economy, post-structuralism and postmodernism, as well as its own distinct hybrid theories such as anarchist criminology, constitutive criminology, cultural criminology, newsmaking criminology, peacemaking criminology, and left realist criminology.” In this paper, I primarily employ the term, “critical criminology” (or “critical criminologist”), using “radical criminology” (or “radical criminologist”) only in the context of discussing Maguire in order to maintain consistency with his writing.

²⁷ Maguire (1988:146) explains that in addition to attempting to influence and reshape the field of criminology and “the powerful in society,” critical criminologists also target elected representatives, administrators, and functionaries in the criminal justice system, and public opinion.

²⁸ Rosen (2006:192) notes that Finnish police gave a speeding ticket in the amount of \$216,900 to a millionaire, based on his income tax information. It bears mention that Scandinavian countries are not the only ones in which traffic offenders have been fined according to their income. In January 2010, a Swiss court fined a speeder with an estimated wealth of over \$20 million \$290,000 for driving thirty-five miles an hour (fifty-seven kilometers an hour) faster than the fifty-mile-an-hour (eighty-kilometer-an-hour) limit (*Huffington Post* 2010).

²⁹ In biology, *symbiosis* refers to any intimate relationship or association between members of two or more species. The concept includes *mutualism*, where different species living in close association provide benefits to each other, *commensalism*, an association between two different species in which one benefits and the other is unaffected, and *parasitism*, in which one organism benefits and the other is adversely affected.

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