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**Special Issue:
Critical Criminology: Mass Incarceration, Prevention, and Immigration**

Special Issue Editors

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Preface to the Special Issue: *Critical Criminology: Mass Incarceration, Prevention, and Immigration*

Special Issue Editors: Christine Curtis and Karen S. Glover

This volume of the Western Criminology Review is a special issue on critical criminology research and theory. Contributors look at how we conceive of and socially construct our views that become an embodiment of the state's power to perpetuate injustice. The topics range from the effects of mass incarceration, the importance of deconstruction of our criminal justice practices such as prevention services and the effect of racialized justice as a result of immigration policy, and the value of adding an anthropological perspective to critical theory.

As her keynote address at the 2010 meeting, Dr. Meda Chesney-Lind, University of Hawaii at Manoa, confronted the disturbing fact that spending on incarceration is now outstripping spending on higher education and she presented a new strategy to challenge mass imprisonment. Her article here, based on her keynote speech, discusses data showing that nationwide, incarceration rates have continued to increase, despite declining crime rates. Hawaii has followed a similar trend, with an increasing number of prisoners shipped to private correctional facilities on the mainland. In addition, around half of all new prison admissions in Hawaii are for parolee and probationer revocations. She advocates for improvements to the criminal justice system but also encourages reinvesting in social institutions particularly education, using money now spent on incarceration to increase opportunities and strengthen communities, as a preventative policy to reverse the community to prison pipeline.

Dr. Alan Mobley, San Diego State University, continues the discussion of mass incarceration in his article entitled "Decarceration Nation: Penal Downsizing and the Human Security Framework". Dr. Mobley also raises concerns regarding the increase in imprisonment and suggests that, as some jurisdictions consider downsizing prisons because of budget concerns, they also consider a new approach to re-entry and reintegration, including restorative justice. He presents the 1994 United Nations definition of human security on an international level and

challenges the reader to consider the relevance to the criminal justice system in the United States. He concludes "this call for human security is for a fundamental rethinking of the purpose and practice of justice. A shift toward holistic security would open up the justice system to include a deeper involvement of victims and other citizens, and it would set its sights upon improving the quality of community life. The isolation of the justice professions would be replaced by more interdependent relationships. Undoubtedly, a concerted pursuit of human security would precipitate changes in almost every aspect of today's justice traditions."

Addressing policy that reduces incarceration may not in itself provide sufficient opportunity for transformation of the negative spiral our criminal justice system finds itself in. In her contribution to this volume "Is Prevention Inherently Good? A Deconstructionist Approach to Prevention Literature, Policy and Practice," Lorinda Stoneman M.S., a doctoral student at the University of Victoria's School of Child and Youth Care, deconstructs long-held values related to prevention. Her premise is that we should assess the implications of routine practices that have been implemented with the goal of preventing juvenile crime and consider if what is being done under the auspices of care, rather than control, does harm or good. The issue of risk assessment has been seen as critical in determining those in need of prevention services, and Stoneman points out that our ability to measure risk is limited. She also argues that there is a potential downside to evidence-based programming which may perpetuate flawed programs based, not on quality research, but on bureaucratic interpretation of goals and success.

Dr. Jesse Díaz Jr., Texas A&M University also addresses the extent to which government policy creates or contributes to the criminalization process, potentially creating more harm than good. In his article, "Immigration Policy, Criminalization and the Growth of the Immigration Industrial Complex: Restriction, Expulsion, and Eradication of the Undocumented in the U.S." Dr. Díaz

explores stereotypes of immigrants as a 'criminal threat.' He argues that the "Immigration Industrial Complex" has marginalized Latino immigrants and limited the potential political and economic power of the Latino community. He presents an historical review of the impact of immigration policy and the involvement of immigrants in criminal activity during two time frames during the 19th and 20th centuries. He explores the impact of anti-immigrant sentiments on policy decisions over time as they relate to European, Asian and Latino immigrants. He concludes, despite research showing that immigrants are not disproportionately involved in criminal activity, the stereotype of the "criminal alien" persists and has a negative impact on policies and individuals. He suggests a number of areas for future research including: the nexus between immigration, crime and ethnicity in current and future generations; injustices carried out by the Prison Industrial Complex with the move to privatization; division of families as a result of immigration policies; and the potential exclusion of immigrants from the electoral process.

Finally, Dr. Avi Brisman, Emory University Department of Anthropology, suggests we expand our critical thinking about crime and criminal justice by taking account of the contributions made by anthropology. In his article entitled "Advancing Critical Criminology through Anthropology" Brisman argues that without diminishing

the contributions of early or current critical criminologists, anthropological theory can help move the discussion of defining crime beyond its legalistic boundaries and beyond the critique of domination to include the culturally specific and temporal aspects of crime. In support of his argument, Brisman discusses some of the rich ethnographic research in anthropology. His refreshing rethinking of our approach to crime and justice demonstrates that we are not destined to be locked into our own cultural patterns of crime and punishment.

Overall we hope that this second special issue of WCR on critical criminology provides the reader with stimulating original insights that enhance our understanding of the complexity of the issues we are facing in today's field of criminal justice studies.

Background: The articles in this volume are based on presentations from the 2009, 2010 and 2011 annual Critical Criminology and Justice Studies (CC&JS) Mini-Conferences held in February prior to the Western Society of Criminology meetings. The focus of the meetings has been on the ways discourse around issues of criminal justice frames, channels and contributes to the institutionalized practices that produce the ultimate disparities in the system.

About the Special Issue Editors:

Christine Curtis is a lecturer in criminal justice, in the School of Public Affairs at San Diego State University. She was formerly a lead criminal justice researcher for SANDAG, served as a past-president of the Western Society of Criminology and, in 2010, received the prestigious June Morrison-Tom Gitchoff Founders Award for significant improvement of the quality of justice.

Karen S. Glover Ph.D., is an Assistant Professor of Sociology-Criminology & Justice Studies, California State University, San Marcos. Her research and teaching interests include racial and ethnic studies, critical criminology, sociology of law, police studies, critical race theory, and qualitative methodology. Most recently, she is the author of the book *Racial Profiling: Research, Racism, and Resistance* (2009).

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Keynote Address, Critical Criminology and Justice Studies Conference 2010 Honolulu: *Classrooms or Cells*¹

Meda Chesney-Lind
University of Hawaii, Manoa

Keywords: alternatives to incarceration; costs of incarceration; corrections and higher education spending; incarceration in Hawaii; critical criminology

Hawaii, like many states, is facing a severe budget crisis, and that has meant that public higher education is in crisis. Locally and nationally, that has many thinking about the future of public education as currently funded. Specifically, how do we sustain what is arguably one of the greatest—and undervalued—aspects of American culture.

For me, thinking about public higher education in Hawaii is personal. I received both my MA and my PhD here at the University of Hawaii at Manoa, and I've also worked my entire professional career in various campuses in the system (including a community college). In the seventies, I was a graduate student in a building right up the road from here (Saunders Hall), and I think I got a world class education there. And candidly, I did not have a lot of money; most of the time I was in graduate school, I received a "rent subsidy" which was income qualified. So you might say I was receiving welfare, so the affordability of Manoa (as we call it) was also important to me.

About the same time I was studying at UHM, there was another young woman, Ann, getting her PhD. here as well. Ann had already received her BA from Manoa in 1967, and she would enroll again in the early seventies as a young single mother with a son and her daughter. She would eventually complete her MA and her PhD. from Manoa. She would also have two brilliant children who survived and thrived [to take a thought from her dissertation] in the vibrant intellectual community around the campus. What does this history have to do with the crisis that confronts us?

Everybody asks "where are we going to get the money to fund higher education?" Well, I have an answer. Let's go back to my early career as a young criminologist. In 1970, I knew we imprisoned about 300 people in Hawaii, because I was doing research at the State's one and only prison which held that number. As Table 1 shows, by 1980 this number had essentially tripled (926). Like the rest of the country, Hawaii had embarked on what scholars now call "mass incarceration" so that eventually even that base number would seem small (see Table 1).

By 2008, Hawaii would imprison over 6,000 people, with a *third* of them on the mainland, far away from their families. I know these numbers look low (especially compared to California's numbers). Although Hawaii has an incarceration rate "28% lower than the national average of incarcerated adults per 100,000" (National Institute of Corrections 2011), the growth is something I have watched with astonishment. And because Hawaii is a small state, like many other states, we have also opened our "first" women's prison (which is currently over-crowded) during this period. Figure 1, shows the growth in women's incarceration since 1977.

Overall, the number of people we imprison in Hawaii has *increased* by 20% just since the turn of the century. This increase occurred despite the fact that Hawai'i has seen its crime rate decline to the lowest level in decades (Fuatagavi and Perrone 2010).

Recall that more than 60% of those we incarcerate in the US are ethnic minorities, and in Hawaii that means Hawaiians (39%), Filipino (12%), Samoans (5%), and

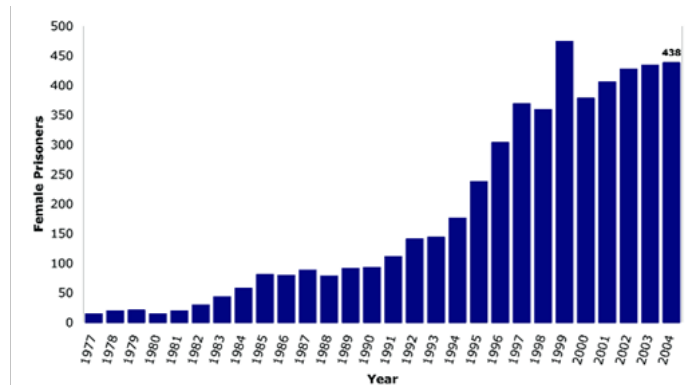
other people of color (Hawaii Department of Public Safety 2010:43). Native Hawaiians, in particular, are over-represented in our jails and prisons.

Table 1: Hawai'i Department of Public Safety Annual Inmate Population

| INMATE POPULATION FROM 1980 TO 2008 | | CONTRACTED OUT OF STATE FACILITIES, 1996-2008 |
|---|---------------------------|--|
| <i>End of Fiscal Year</i> | <i>Assigned Count</i> | <i>End of Fiscal Year Counts</i> |
| 1980 | 926 | |
| 1981 | 1,121 | |
| 1982 | 1,326 | |
| 1983 | 1,473 | |
| 1984 | 1,769 | |
| 1985 | 2,045 | |
| 1986 | 2,159 | |
| 1987 | 2,259 | |
| 1988 | 2,289 | |
| 1989 | 2,480 | |
| 1990 | 2,625 | |
| 1991 | 2,673 | |
| 1992 | 2,999 | |
| 1993 | 3,133 | |
| 1994 | 3,246 | |
| 1995 | 3,583 | |
| 1996 | 3,693 | 300 |
| 1997 | 4,604 | 300 |
| 1998 | 5,216 | 600 |
| 1999 | 5,043 | 1,178 |
| 2000 | 5,127 | 1,079 |
| 2001 | 5,412 | 1,194 |
| 2002 | 5,569 | 1,232 |
| 2003 | 5,657 | 1,295 |
| 2004 | 5,958 | 1,579 |
| 2005 | 6,092 | 1,730 |
| 2006 | 6,251 | 1,844 |
| 2007 | 6,045 | 2,009 |
| 2008 | 6,014 | 2,014 |

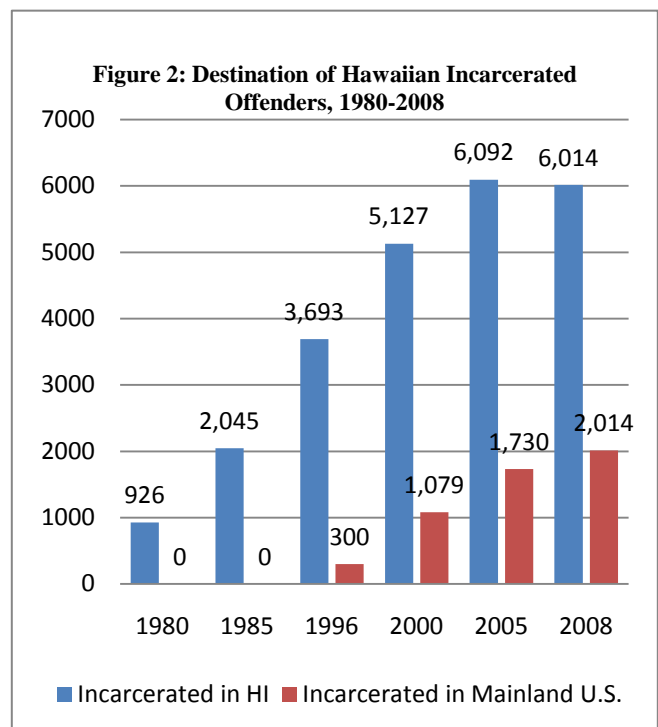
Source: Hawaii Department of Public Safety 2010, p. 43.

Figure 1: Sentenced Female Prisoners in Hawaii, 1977-2004



Source: Frost, Greene, and Pranis 2006, p. 55.

Figure 2 below shows the rate of growth of Hawaii's prison population relative to the growth of those incarcerated out of state.



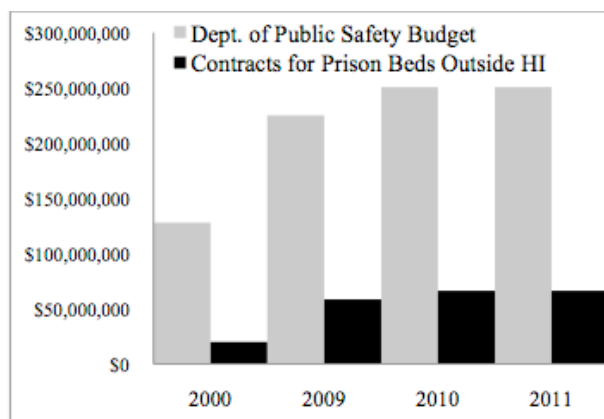
Source: Derived from Department of Public Safety, Hawaii 2010, p. 43.

Looking specifically at those we house on the mainland, a review of Hawaii's classification system revealed that 60% of our Hawaii inmates doing time in mainland private, for profit prisons, are actually minimum or community custody. That means they could be housed in minimum security or community custody beds here in

Hawaii instead of thousands of miles away from their homes and families.

Figure 3 shows Hawaii's Correction's Budget and the amounts spent on prison beds outside Hawaii:

Figure 3: Hawaii Department of Public Safety Contracts for Prison Beds Outside Hawaii, 2000-2011



Source: Smart Justice 2010, p. 2.

Speaking of money, since the turn of the century, the corrections budget in Hawaii has increased by 87.5% (from 128M to 225M in 09). During the same time: money spent to send prisoners to private prisons increased by 192% (20M to 58.4M): "As it stands now, 31.5% of PSD's general fund operating appropriations goes toward incarcerating prisoners outside of Hawai'i; this is up from 15.6% in 2000" (Smart Justice 2010:2).

And what does Hawaii get for these millions? One indication from 2009 report on the Otter Creek Correctional Center, run by the Corrections Corporation of America, is that women inmates were removed by Hawaiian correctional officials as a result of charges of sexual abuse by CCA guards (Urbina 2009). At least "six CCA employees were charged with sexual abuse or rape, including the prison's chaplain" (Friedmann 2010). Moreover, as anyone who has studied the private, for profit prison system knows, terrible short cuts are taken in all sorts of ways in these systems.

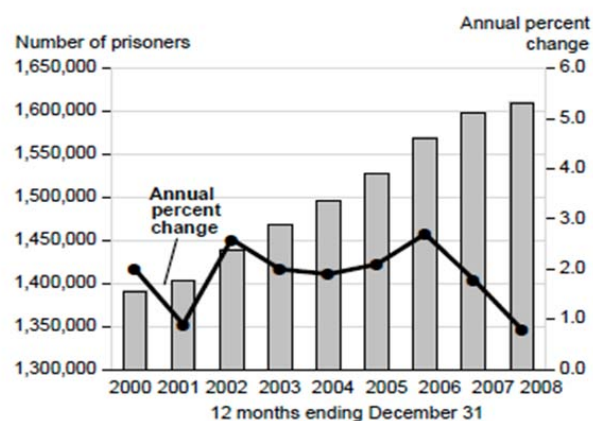
Hawaii is not alone in spending vast sums of money on corrections. America is the world's largest incarcerator and incarceration doesn't come cheap. So, where do the nation's Governors go to get the money to house this huge number of prisoners? The answer, sadly, is simple: mostly from Higher Education. While corrections budgets in the US soared over the past few decades "Between 1987 and 2007 the amounts states spent on corrections more than doubled," funding for higher education stagnated (Based on data from The National Association of State Budget Officers 2009 cited by The Pew Center on the States 2009:15).

Hawaii, it turns out, is not alone in this. We have heard from [former] Governor Schwarzenegger who is has called attention to California's misplaced priorities. He even proposed a constitutional amendment "barring the state from spending a higher percentage on prisons than higher education" and pointed out that "in the last 30 years, prison spending increased from 3 percent of the state general fund to 11 percent while higher education spending declined from 10 percent to 7.5 percent. Spending 45 percent more on prisons than universities is no way to proceed into the future" (Jackson 2010).

The good news is that nationally the pace of incarceration is slowing. At yearend 2008, the U.S. prison population grew at the slowest rate (0.8%) since 2000, reaching 1,610,446 sentenced prisoners (see Figure 4). And by yearend 2009 the rate of incarceration had increased only 0.2% over 2008, an increase that "marked the third consecutive year of slower growth in the U.S. prison population and the smallest increase during the decade" (BJS 2010:1).

Figure 4: State and Federal Prisoners

Prisoners under state or federal jurisdiction at yearend, 2000-2008

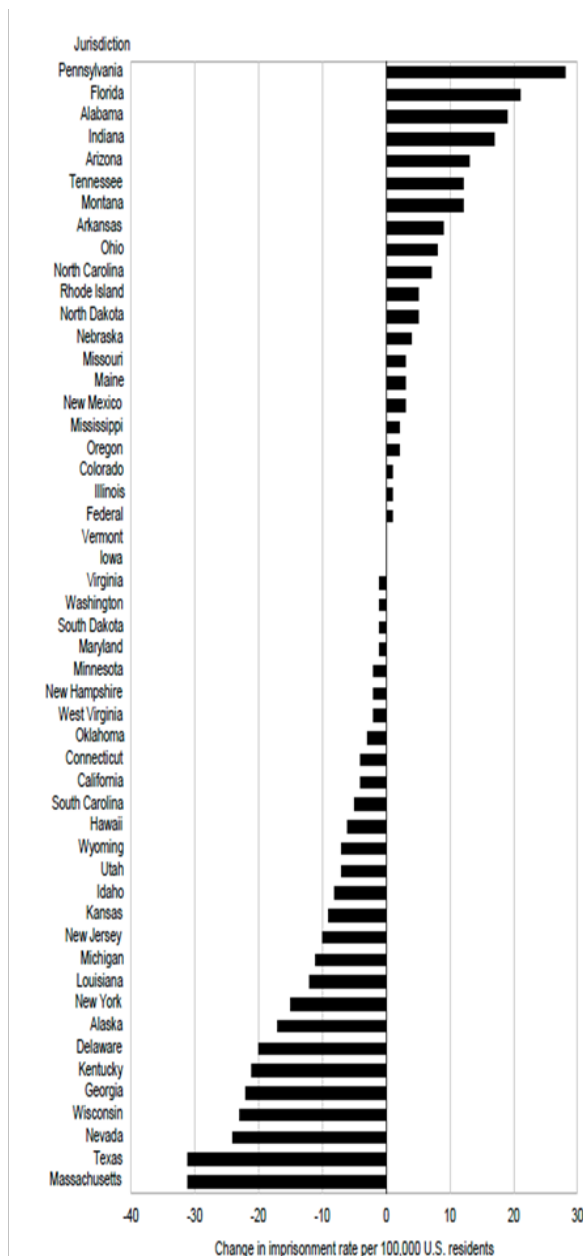


Source: BJS (Bureau of Justice Statistics) (2009), p.1.

Growth of the prison population since 2000 (1.8% per year on average) was less than a third of the average annual rate during the 1990s (6.5% per year on average).

Moreover, considerable variation exists by State (See Figure 5, below).

Twenty-eight states reported a decrease in their imprisonment rates, 20 states reported an increase, and two states reported no change to their imprisonment rates at year end 2008. Massachusetts and Texas (both down 31 prisoners per 100,000 U.S. residents) reported the largest declines in their imprisonment rates. Pennsylvania (up 28 prisoners per 100,000), Florida (up 21 prisoners per 100,000), and Alabama (up 19 prisoners per 100,000) reported the largest increases in their imprisonment rates at year end (BJS 2010).

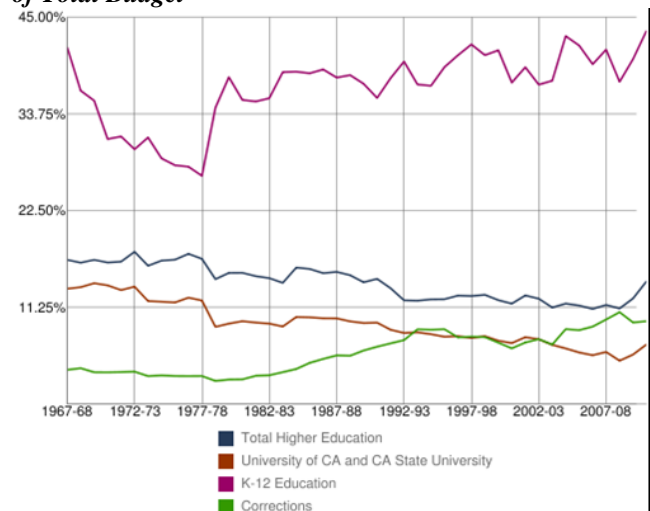
Figure 5: Change in imprisonment rate, 2007-2008

Source: BJS (Bureau of Justice Statistics) 2009, p. 7.

Where does this all leave us? At the University of Hawaii, Manoa, this situation has presented us with a “teachable moment” politically since the cutbacks in higher education have provided us with an audience for what used to be a politically unpopular position. We suddenly have students facing *huge* tuition increases, focused on the nation’s warped priorities. And of course, these are accompanied by *huge* cutbacks in classes and campus budgets.

Recently, I was able to tell our students that, the University of Hawaii was No. 1; not in football though. We were No. 1 in tuition increases, raising our tuition by 20% in just one year (2006). That was the highest tuition increase of any public university in the nation that year. Of course, that tuition increase pales in comparison to those now being seen in California public higher education—32%, with little end in sight.³ These students and their parents represent only the beginning, but we suddenly have a chance to be heard by a group that could be quite influential.

Someone once said never let a good crisis go to waste. Well higher education in the US is facing a *major* crisis, but that means that we, progressive criminologists have a chance to be heard from people who generally could care less about incarceration. But when you are talking to your students and their parents, the connection between these two issues needs to be very, very clear as the California table did so graphically.

Figure 6: Budgets from the State General Fund: Percent of Total Budget

Source: Post-Secondary Education Commission 2010, p. 1.

Looking at that California budget table, watch the funding for lower education (sometimes called K-12). You can see that after a sharp dip (after the Passage of Prop 13, I’m guessing), budgets for K-12 maintained pretty well. The Community Colleges also did relatively well, as we saw before. It was higher education, and especially 4 year and doctoral campuses that really took the hit. Well, why care about that? In Hawaii I’ve been saying the University of Hawaii, Manoa is the *only* place that Native Hawaiian and other economically challenged students have a chance at being the judges, lawyers and doctors and not just the room cleaners (though there’s nothing wrong with that if

it's their choice. Indeed, the Union representing them came to our teach-in to make just that point!)

State budgets *have* to be balanced, so literally every dollar spent on corrections could have been spent elsewhere, and the clear loser in that budget battle has been Higher Education.

My call to you as progressive criminologists, is to do as much as we can to find these same data for your state (you can use the Pew Report as a start) and then build out the argument.

Locally, a colleague and I tried to do this, by gathering what compelling, local data we could on the problem and writing a factual op ed that was published in the State's largest paper, the *Honolulu Advertiser* (Chesney-Lind and Brown 2008).

This year, as our legislature is gathering, Kat Brady² with the Community Alliance on Prisons is putting the finishing touches on a great, accessible publication that goes over these facts again, in more detail, while also taking on the myths (like incarceration is responsible for the crime drop). Some of the tables I used in today's presentation come from Kat's latest draft of *SMART JUSTICE* (2010). She's documented very powerfully how the State's corrections budget has ballooned in recent years.

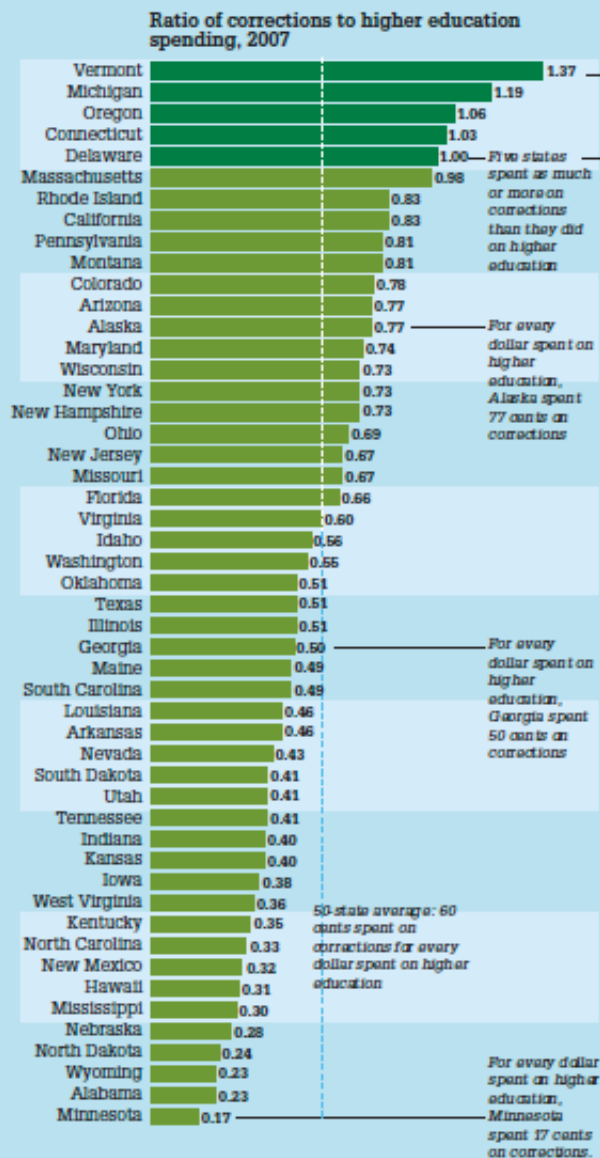
So, let's go back to that other young woman, Ann, I mentioned at the beginning of this talk who was attending graduate school about the same time as me and in the same building I did. Her full name back then was Ann Dunham-Soetoro. Now think about her son, Barack Obama, who is the first Black President of the United States, born and bred in Hawaii while his mother attended graduate school.

Those of us who are fighting former Governor Lingle's efforts to cut public education for schools while continuing to write checks for Corrections Corporation of America are fighting for future Ann Dunhams who are non-traditional students coming back to school after many years, with two young multi-ethnic kids in tow. They, like Ann, don't have a lot of money, but they have big dreams for themselves and their children.

Her son, President Barack Obama, has supported Senator Webb's "National Criminal Justice Commission Act," has been tasked to comprehensively review and overhaul America's criminal justice system and won a major victory when the Senate Judiciary Committee approved the measure with bipartisan support. Webb often notes that we are the world's largest incarcerator; we comprise 5% of the world's population but we imprison a quarter of the world's inmates. He concludes: "Either we are the most evil people on earth or we are doing something very wrong" (Webb, 2009: 4). This Act has gone to the senate floor, which is very encouraging, though there are cautionary signs ahead such as the continued operation of the Nation's most notorious prison, Guantanamo.

MAKING DECISIONS WHERE TO SPEND

While states don't necessarily choose between higher education and corrections, a dollar spent in one area is unavailable for another.



SOURCE: Reanalysis of data presented in the National Association of State Budget Officers, "State Expenditure Report" series

Source: Pew Center on the States 2009, p. 16.

So I urge you to be as savvy as Senator Webb, and to seek to find *new* venues and ways to urge the country choose classrooms over cells, to reverse America's misguided priorities.

UHM just celebrated its 100th birthday. I want UH Manoa, and other public Universities like it to be here for the next 100 years so we can always promise that amazing future to Hawaii's gifted young people no matter what their ethnicity or income.

Endnotes

¹ Originally presented as the keynote address for the inaugural Critical Criminology and Justice Studies Conference, Honolulu, CA, 2010. Many thanks to Stuart Henry, Karen Glover, Christine Curtis and other members of the Critical Criminology community who extended this honor to me. I also wish to especially thank Stuart Henry for putting my speech into draft form for me to edit.

² 2010's Critical Criminology and Justice Studies award winner.

³ Since this Keynote presentation the U.S. Department of Education (2011) released data that show universities with the highest percentage increase in costs (tuition and fees) included 23 of California's public universities in the top 5% in the nation with the highest increases, and these ranged from 35% to 47% between 2007-08 and 2009-10.

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Decarceration Nation? Penal Downsizing and the Human Security Framework

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Abstract: *A federal judicial panel has recently ordered the state of California to reduce its landmark prison population by 40,000 inmates over two years, from 170,000 to around 130,000. Besides addressing worrisome fiscal problems, just how California and other states deal with penal downsizing is important, both for the present needs of public safety and for future justice planning. This paper addresses what appears to be the next phase in our national experiment in mass incarceration: penal downsizing. I argue for the adoption of a restorative "human security" policy orientation. The human security framework was developed by the United Nations and has been described as "freedom from want and freedom from fear." Attending to the human security needs of individuals, families, and communities, can reorient justice systems away from largely discredited punitive justice models and provide direction for the difficult public policy choices that lay ahead.*

Keywords: California corrections; decarceration; human security; mass incarceration; penal downsizing; penal policy; restorative justice; United Nations

INTRODUCTION

Recently, a federal judicial panel ordered the state of California to reduce its prison population by 40,000 inmates over two years, from 170,000 to around 130,000. This unusual court imposition has now survived an appeal to the U.S. Supreme Court (Savage and McGreevy 2011). The reduction, sizable as it is, still would leave the system "overcrowded," in that the remaining population would put the prison system at 130% of design capacity, some 30,000 inmates over its intended incarcerated caseload. Besides addressing worrisome fiscal problems,¹ just how California and other states deal with penal downsizing is important, both for the present needs of public safety and for future justice planning. Especially at stake is the stability of poor, minority neighborhoods faced with disproportionately bearing the burden of dealing with an erratic justice apparatus (Clear 2007).

This paper is offered in the spirit of contributing to what appears to be the next phase in our national experiment in mass incarceration, penal downsizing. I argue below for

the adoption of a "human security" policy orientation (Sen 1999). The human security framework, perhaps idealistically described as "freedom from want and freedom from fear," (Ogata 2002) can reorient justice systems away from largely discredited punitive justice models and provide direction for the difficult public policy choices that lay ahead. An initiative to emphasize human security might not be as radical as it first appears, since such characteristics are already implied in the recent move in corrections toward prioritizing prisoner reentry (Travis 2005; Petersilia 2003), and in specialized courts, such as homeless and drug courts (Berman and Feinblatt 2005). What remains in order to move this agenda forward is to build the conceptual linkages between the harms of punitive justice, the insights achieved through reconceptualizing reentry, and the holistic, preventative character of human security.

This is important work. Nationally, the emerging penal downsizing will serve as a multi-layered experiment

that will inform future debates on sentencing, incarceration practices, alternative sanctions, and reentry (Austin, et. al. 2007).

MASS INCARCERATION, THE NEW PENOLOGY, AND THE DEATH OF THE SOCIAL

The case of North Lawndale, one of the most desolate zones of Chicago's West Side, gives a measure of the depth of penal penetration in the hyperghetto. In 1999 the police recorded 17,059 arrests in this bleak all-black neighborhood for a population of barely 25,800 adults; one third of these arrests were for narcotics offenses, with simple possession comprising three cases in four; of the 2,979 local residents remanded to the Illinois Department of Corrections that year, 1,909 were convicted of drug violations and another 596 of theft, these two infractions accounting for 85% of all entries in state prison from the area. The result of this relentless police and penal purge is that the number of North Lawndale men serving time in state prison (9,893) nearly equaled the male population over age 18 left in the neighborhood (10,585). (Wacquant 2006:84)

From 1970 to 1988, the prison population in the U.S. tripled (Bureau of Justice Statistics 1989). In the next twelve years it tripled again, threatening to fill prisons faster than states could build them (Lynch 2000). The incarceration business is said to employ 747,000 people and involve over \$37 billion in expenditures (Jacobson 2005:67-70).

Advocates for the rights of racial minorities have been especially alarmed by mass incarceration, since many argue that prison overcrowding and racial segregation have worsened prevailing conditions in prisons and in minority neighborhoods (Miller 1996). The life chances of African-American and Latino males are already diminished by their frequent interaction with the criminal justice system (Western 2006). Across the country racialized minorities continue to be over-represented in succeeding cohorts of penal detainees (Mauer 2006). Some critics of the expanding prison-industrial complex make the claim that mass incarceration is far from anomalous, but merely the latest punitive twist in the continuing legacy of America's hot and cold running fascination with race-based social engineering (Alexander 2010; Clear 2007; Wacquant 2009; Gordon 1999).

Largely setting racial characteristics aside, Feeley and Simon (1992) examined the rising use of forward-looking actuarial calculations in the justice system and concluded that it marked a clear departure from established ways of doing justice. They called the current epoch of cost-centered, risk avoidance criminal justice administration,

"the new penology." Along with other writers known as "risk theorists" (Rigakos 1999), Feeley and Simon maintain that throughout the criminal justice system officials are in the business of managing dangerous groups. The penal complex's long-standing focus on the treatment of individual criminals is now peripheral. No longer are the aims of imprisonment to change the offender, either through punishing deterrence or by rehabilitation. Now prisons serve to segregate large numbers of selected criminals and thereby "rearrange the distribution of offenders in society" (Feeley and Simon 1992:458). Markedly, the groups targeted consist predominantly of blacks and Latinos (Bosworth 2010; Morin 2009).

What Nikolas Rose (1996) has called "the death of the social" offers an explanation for what is often called "punitiveness" in contemporary discourse on penalty. In the 1960s and 1970s it was popular to lay much of the blame for crime on social factors such as racism, inequality, poverty, and dysfunctional upbringing. With such a perspective it made sense that society should try to cure crime collectively by ameliorating or eliminating causal social pathologies through the application of broad-based policy measures. Social programs aimed at the "underclass" sought to bring people up and out of impoverishing, debilitating "criminogenic" conditions, situational factors that were widely seen as unintended consequences of building a modern society. The perceived failure of social welfare programs in the 1980s and 1990s has relieved the populous of the obligation to purge the social of its detrimental aspects.²

Now that the social is deemed no longer useful as an intellectual construct, programs put forward to deal with "its" harms have lost their appeal. A pragmatic mentality has taken hold. It asks, "What can we do now to improve standardized measures of well-being?" Pragmatism-as-policy aims to manage that which troubles public spaces. The methods that are advocated to do so target "factors" that are seen as most amenable to immediate manipulation and control: persons and places. Places are made more crime proof as potential crime targets are "hardened," extra police are commissioned as guardians, and persons thought to represent the face of criminal potential are neutralized or incapacitated. In this way the progenitors of crime are dealt with on a "situation prevention" basis, effectively barring the formation of criminal opportunities.

Factors, such as the increased length of prison sentences and time served are, therefore, not expressly "punitive," but a focused attempt to suppress crime. Long-term incapacitation is a surgical strike directed against perpetrators as the prime movers of criminal activity. Imprisonment is not meant to be punishing, but debilitating, and it forms an integral part of a larger strategy that targets all three of the major ingredients in an ecological accounting of crime. The mass incarceration of criminal offenders identified by their conduct and constituted by "high risk" portfolios appears to be

depersonalized and involve homogeneous treatment, but it is based on notions of individual merit and responsibility. "Personal responsibility" as the keystone of a legal/moral system, in fact, is individualizing in the extreme. Mitigating factors, social or otherwise, are excised from explanations for actions: individuals are simply held accountable for their actions. As a legal philosophy, personal responsibility implies that punishing offenders is acceptable because their offenses are theirs alone. But this is not the only possible reading. A more parsimonious interpretation that includes elements of social justice might suggest that personal responsibility as a dictum relieves the collective of any responsibility for the lives of those who engage in criminal conduct.

Indeed, the presence of a "new penology" as constituted by Feeley and Simon (1992) can be interpreted far differently. Instead of seeing punitive incapacitation of the dangerous classes as indicative of a systematic imperative to manage risk, a totalizing agenda as grand, impersonal, and mischievous as any other Twentieth Century-ism, wholesale imprisonment can be positioned as a return to the basics of governance: upholding values and maintaining order. The massive expansion of state penalty arguably follows the realization that those who choose crime, whatever the cause, must be dealt with. As much as our prisons are filling disproportionately with minority males and the poor, we must confess that those of us buoyed by a robust economy, occupied with marvelously varied and enticing consumer products, and otherwise enmeshed in contemporary living, have little inclination toward dealing with the underlying social or personal pathologies that lead some to crime. We want designated others to deal with "them," to act decisively, and in accordance with the now-prevalent American political conservatism, to "dispose of the new dangerous class" (Irwin 2005: 207). Just as the imperatives of a hyped-up capitalist culture urge us to shut away our elderly, tranquilize our children, and flat-out leave our troublesome spouses, few feel any obligation to serve or sacrifice for the sake of others, especially feared others. It is less painful and perhaps less costly to simply lock them up or out. In practice, policies of exclusion might ruffle or otherwise arouse a few sensitive cases of conscience, but the answer for that is out of sight, out of mind.

The scientific and quite intentional partitioning of the population into criminal and noncriminal classes calls for the incarceration of the former. And the criminogenic nature of prison, combined with the increasing lengths of sentences, exposes the poor and otherwise unsuccessful to an increased and redistributed scope of criminality in a most socially regressive way. But this reality is surely a consequence of non-policy, not its design. Something, after all, must be done with those who steal pizza, rob handbags, and traffic in illegal items. But the reflexive penalty described by the new penology, race-based or not, is a retrenchment, an avoidance of trial and error schemes,

social complexity, and failed solutions. It is a negation of the notion of social justice, of progress, and a blow to the power of ideas. Technocratic, institution-driven managerialism is a denial of the human capacity to qualitatively improve. It is a turning inward and away from the political.

WHAT DO WE WANT A JUSTICE SYSTEM TO DO?

Few sets of institutional arrangements created in the West since the Industrial Revolution have been as large a failure as the criminal justice system. In theory it administers just, proportionate corrections that deter. In practice, it fails to correct or deter, just as often making things worse as better. It is a criminal injustice system, that systematically turns a blind eye to crimes of the powerful, while imprisonment remains the best funded labour market program for the unemployed and indigenous peoples. (Braithwaite 1996).

The task of a criminal justice system is, essentially, to protect human beings and their belongings. A complaint often levied against the criminal justice system in the United States is that its pursuit of this mission is selective. The title of one enduring criminology text sums up this view: *"The Rich Get Richer and the Poor Get Prison"* (Reiman 1997. See also, Mauer 2006; Currie 1998). As Braithwaite suggests in the above quote, some persons are much more vulnerable to harm and to loss than others. These same less protected people and the places they frequent are also much more likely to bear the weight of justice system activity, and the sting of criminal justice sanctions (Clear 2007). They absorb much of the harm brought about by justice processes even as they receive few of the benefits (Mauer and Chesney-Lind 2003).

Some critics speculate that this is intentional, that the security of some is earned at the expense of others (see Gilmore 2007). These critics strongly suggest that we put our energies into tearing down the façade of justice through piercing critique and interdisciplinary critical analysis capable of exposing the true nature of this vicious cycle. Others, such as the proponents of the popular "Broken Windows" theory of crime fighting, propose that we focus our attention on extending to all, the relative security enjoyed by some (Kelling 1998). This second set of voices, often positioned as nonpartisan, appear in the public realm as "moderate." They claim that playing "the blame game" leads nowhere, serves to harden divisions, and actually, perhaps inadvertently, maintains the status quo (Weisburd et al. 2004; Bratton 1998). This stance, recently heard on the political campaign trail, seems in ascendance today.

I seek to honor both orientations, the critical and the mainstream, even as I press for the reinvention of justice in

the United States. My stance is animated by two inclinations. One is to acknowledge and address the harms visited upon so many by the lack of physical security in the U.S. Absurdly, this high level of dangerousness has not come from a dearth of criminal justice system activity, but from its opposite. Justice agencies have been particularly active in relatively poor minority communities. It is these communities that have experienced most directly the pains of criminal justice processes.

The harms have been documented by many (see Wacquant 2009; Clear 2007; Bernstein 2007; Mauer and Chesney-Lind 2003; Davis 1992) and point to a racialized state of affairs that is as ironic as it is unsupportable.

My second inclination is toward the aspirations to unity so eloquently spoken of by the current U.S. President, and, for that matter, by his predecessor. The spirit of the day seems to suggest that if we are to achieve the promises of America we must come together in our efforts toward sound public policy, accentuate our commonalities, and ease off our differences.

What can criminal justice contribute to a reduction of harm and a quest for unity in public affairs? How can the justice system come to be aligned, indisputably, with broader societal goals like equality, proportionality, and fairness? Can the criminal justice system reasonably be expected to make a meaningful and lasting contribution to change?

Recent scholarship by Wacquant (2009; 2002) is especially pessimistic in this regard as it traces the oddly macabre progression of America's most "peculiar institution." From slavery, to Jim Crow, to the hyperghetto and mass incarceration, this analysis strongly suggests that race-based, and even class-based, bias within the law is simply too profoundly embedded to change. Race-based "reforms" enacted by the U.S. political system have been profound, and in their day "game changers." They have brought about the end of slavery, the demise of Jim Crow, and the enactment of the Civil Rights Act.³ Presently, we may be seeing the beginnings of a legislative movement away from mass incarceration. Still, a pattern of reform, compromise, and accommodation leaves much to be desired. The abolition of slavery, as remarkable as it was, did leave Jim Crow, whose final throes with the passage of the Civil Rights Act were accompanied by the rise of the prison-industrial complex. What might the end of mass imprisonment bring? I do not know, but America's history in such things, especially, when seen from below, is not one to inspire much hope (Zinn 2003).

REDUCING THE SOCIAL-ECOLOGICAL FOOTPRINT OF PENALITY

Today we easily accept the notion of a criminal justice system working on our behalf to prosecute and punish criminals, but the concept is a relatively young one.

Malcolm Feeley (1979) informs us that the "criminal justice system" concept was a byproduct of a generalized "systems thinking" spread throughout the government by its widespread use in planning and promulgating the war in Vietnam. The military-industrial complex is characterized by a "systems analysis" approach noted by Eisenhower as a threat to be contained, because of its tendency to spiral out of control. A smaller but equally daunting and insidious prison-industrial complex has risen and threatens to reproduce the same inexorable logic. Still, the existence of a complex or network of organizations with converging and complementary interests does not a system make. The myth of an integrated and effective criminal justice system has cost us much, and nowhere more than in our conception of prisons.

The attempt to join prisons to the law enforcement function has distorted their usefulness and influenced us to assign them roles in a crime control project that they cannot perform. Then, when prisons fail to excel in these roles, we are disappointed and tend to react in drastic ways. Everyone involved pays for our anger and disappointment, as it periodically appears in the form of chaotic "prison reform."

An important question that we might ask ourselves is whether or not prison reform ought to mean reducing the harm caused by the operation of penal institutions or whether we might actually rekindle the hope of our (perhaps) more inspired predecessors, and actually attempt to extract unmitigated good from the operation of our "systems" of correction.

Perhaps it is time to admit that mass incarceration is not a response to crime at all, or at least not the general category of crime. The general category would include white-collar crime, the type of criminality engaged in disproportionately by executives such as those at Enron, Tyco, the White House, or Wall Street, few of whom are ever pursued, brought to trial, or incarcerated.

Mass incarceration is targeted not at crime, violence, or victimizations, or costs to society, for that matter, but at those deemed "street" criminals. With this clarification in mind I suspect that within the term "street crime" the more important variable for reform is "street" not "crime." When the focus is on "crime," as it usually is, we soon concentrate on "offenders" and "victims," objects of theft, substances of abuse, and so on. This approach has brought us to the present crisis. Focusing on "streets" however, might draw our attention to the neighborhoods and communities that serve as unwitting hosts to crime, its precursors and collateral events.

We know that not all streets give rise equally to crime. Street crime is mostly concentrated in poor communities. Those same streets are scenes of myriad social problems besides crime. Further, it is my contention that attending to these other known and preventable social problems will bring many more benefits and far fewer harms than do today's conventional street crime fighting strategies, where

what is fought is both crime and the streets, a battle that is fought, it seems, at cross purposes.

How can we fight crime without battling the streets? There is no answer to this paradox within the traditional crime-fighting paradigm. If we are to lower incidences of street crime without disabling neighborhoods we must build neighborhoods that support lawful behavior and discourage criminality.

THE GLOBAL TURN TOWARD “SECURITY”

The field of security studies remains largely neglected by criminal justice scholars,⁴ probably because security studies traditionally focus on national-level threats emanating from outside the nation-state, while criminal justice is tasked with public order maintenance within far narrower territorial boundaries. This dichotomy is changing, especially with the formation of the U.S. Department of Homeland Security and its enormous funding mechanisms and emphasis on interagency collaboration.

But thus far, the meeting places for criminal justice and security studies have been around topics such as offender profiling (e.g. Who is a terrorist? A criminal?) and defensible space (e.g. How to harden borders and other “high-value” targets?). I believe that the conceptual space holding the greatest potential impact remains largely unexplored, however, and that is the area known as “human security.”

Human Security

Human security comes to us from the fields of foreign affairs and international development, where it was developed to provide some meaningful carrots to accompany, and perhaps ultimately replace, the world’s military sticks (Etzioni 2007; 2004). Definitions of human security revolve around “safety from chronic threats such as hunger, disease and repression,” and “protection from sudden and hurtful disruptions in the patterns of daily life – whether in jobs, in homes, or in communities” (United Nations 1994). The inquiry into human security came into sharper focus with the emergence of the United Nations Millennium Development Goals (United Nations 2005) program and its mission of ending extreme poverty. This emphasis became a global mandate to reduce the vulnerability of the most disadvantaged to calamity, natural disasters, violence, and radicalism. Indicators of disadvantage, of course, have long been of high interest to students of criminal justice.

Interestingly, the human security philosophy was exemplified by the words of former President George W. Bush when, after launching the War on Terror, he traveled to Malaysia and Indonesia to tell their leaders that they

must attend to the social and economic needs of their people if they were to undercut the appeal of so-called radical Islamic schools, madrasas, and other supposed pipelines for terrorists (Perlez 2003). This acknowledgement that vulnerable people and places can be made less dangerous by lifting their quality of life, later came to define the U.S. approach in Iraq (at least its public face), led by General David Petraeus (see Petraeus 1987; Sennott 2007).

Observers of criminal justice here in the U.S., appalled by years of reductions in the number and variety of crime-fighting carrots and the proliferation of increasingly militaristic sticks, began to wonder why, what was good enough to fight the allure of gangs in Baghdad, Jakarta, and Kuala Lumpur, could not get a tryout in Queens, Detroit, or South-Central?

The United Nations (1994) Human Development Report offers a definition of human security. The Report’s authors argue that the scope of security concerns should be expanded to include threats in seven areas. As I summarize these areas in turn, I invite you to think about the places and people in the U.S. most involved with the criminal justice system, and to consider whether these threat areas are relevant to their lives and life chances:

- *Economic security* — Economic security requires an assured basic income for individuals, usually from productive and remunerative work or, as a last resort, from a publicly financed safety net. In this sense, only about a quarter of the world’s people are presently economically secure. While the economic security problem may be more serious in developing countries, concern also arises in developed countries as well. Unemployment problems constitute an important factor underlying political tensions and ethnic violence.
- *Food security* — Food security requires that all people at all times have both physical and economic access to basic food. According to the United Nations, the overall availability of food is not a problem: rather, the problem often is the poor distribution of food and a lack of purchasing power. According to the UN, the key is to tackle the problems relating to access to assets, work and assured income.
- *Health security* — Health security aims to guarantee a minimum protection from diseases and unhealthy lifestyles. In developing countries, the major causes of death are infectious and parasitic diseases, which kill 17 million people annually. In industrialized countries, the major killers are diseases of the circulatory system, killing 5.5 million every year. According to the

United Nations, in both developing and industrial countries, threats to health security are usually greater for poor people in rural areas, particularly children. This is mainly due to malnutrition and insufficient supply of medicine, clean water, or other necessities for healthcare.

- *Environmental security* — Environmental security aims to protect people from the short- and long-term ravages of nature, man-made threats in nature, and deterioration of the natural environment. In developing countries, lack of access to clean water resources is one of the greatest environmental threats. In industrial countries, one of the major threats is air pollution. Global climate change, caused by the emission of greenhouse gases, is another environmental security issue.
- *Personal security* — Personal security aims to protect people from physical violence, whether from the state or external states, from violent individuals and sub-state actors, from domestic abuse, or from predatory adults. For many people, the greatest source of anxiety is crime, particularly violent crime.
- *Community security* — Community security aims to protect people from the loss of traditional relationships and values and from sectarian and ethnic violence. Traditional communities, particularly minority ethnic groups are often threatened. About half of the world's states have experienced some inter-ethnic strife. The United Nations declared 1993 the Year of Indigenous People to highlight the continuing vulnerability of the 300 million aboriginal people in 70 countries as they face a widening spiral of violence.
- *Political security* — Political security is concerned with whether people live in a society that honors their basic human rights. According to a survey conducted by Amnesty International, political repression, systematic torture, ill treatment or disappearance was still practiced in 110 countries. Human rights violations are most frequent during periods of political unrest. Along with repressing individuals and groups, governments may try to exercise control over ideas and information.

As a policy paradigm, then, human security is something we have prescribed for others. And, when one thinks of Roosevelt's New Deal⁵ and Johnson's Great Society, echoes sound of the same prescriptions. What of the Obama era? Might a heightened concern for the

security of individual human beings and the communities they live in rise again to the fore?

Lest you think this approach is radical and unrealistic, please bear in mind that over the past generation or two justice makeovers have been plentiful. On the one hand, we have as an example the case of mass incarceration and its unprecedented, epoch-making growth. On the other hand—and there is another hand—we should not lose sight of the fact that many police agencies have renamed themselves public safety organizations, along the way altering their guiding philosophies (e.g. community policing, problem-oriented policing) and color schemes (in terms of vehicle and personnel adornment, as well as sworn officers' ethnic backgrounds); many courts have discarded robes and elevated benches and relocated themselves into their communities; and most of our prison systems have sought to reorient themselves as correctional agencies (see Clear and Cole 2005; Pranis, Stuart and Wedge 2003). And even though these makeovers remain incompletely realized, and can be a source of cynicism (Mobley 2005), I suggest that such efforts give evidence to a collective progressive desire.

In discussing the future, it is especially important to remember the past. Today, in poor minority communities in the U.S. it is not uncommon to hear residents speak of criminal justice as genocide (Alexander 2010). And whether or not you agree with this characterization, it is impossible to deny the devastating effects in these places of crime and society's response to crime. I think it is essential to acknowledge the harms and pains of people hurt by justice. Looking forward with hopeful empowerment is impossible without a deep recognition of the past and its casualties and survivors.

REENTRY AS LEVER FOR CHANGE

Prisoner reentry into society emerged several years ago as a field open to varied interpretations. Many were (and remain) skeptical of its potential for meaningful innovation and feel its introduction akin to "rearranging deck chairs on the Titanic." Focusing on successful reentry can bring us to a fuller understanding of the causes and conditions of criminality, recidivism, and all of the collateral consequences of incarceration. This focus on societal context rather than particular crimes or criminal offenders takes the onus for success away from the relative few, the returning prisoners, their families, and neighborhoods, and places it at the door of the many—those of us in society at-large who put them away, carry on with our lives, and then receive them. How we structure their trials, sanctioning, actual reentry, and the terms of their post-release lives, has profound potential for change, and could well bring about a restructuring of the entire criminal justice endeavor.

The current great interest in prisoner reentry suggests a way forward. Reentry emphasizes and acknowledges the

vast public safety implications of corrections by admitting that anyone—guilty, innocent, addicted, or indifferent—set loose in society without essential provisions presents an elevated risk to health, safety, and well being. Government, the legal custodian of prisoners, bears responsibility for the fate of such persons since government facilities are the institutions from which prisoners are severed. Withholding adequate severance packages and expecting sustainable, lawful living is as counterfactual as it is unconscionable.

If we are to explore a new justice paradigm through prioritizing reentry and resettlement of former prisoners, our questions would then concern the contents of the severance package, and whether it ought to contain literacy, physical and mental wellness, housing, and reasons to believe in the possibility of a positive, productive future. Such an inquiry might be guided by notions of human security.

If a prisoner were to leave confinement functionally literate, healthy, with a safe and comfortable place to go, and with a justifiably positive attitude on life, when would their preparation begin? Would anything be gained by delaying it past initial introduction into the prison system? And, if the prison system itself was held to be criminogenic, then might the imprisonment experience itself be best deferred?

And what of prisoners' reception back into the community? Currently, as a society, we think it reasonable to distrust and stigmatize former prisoners, to restrict their employment options and mobility, their civil rights, and to punish their future infractions much more harshly than similar misdeeds committed by non-felons. If we consider the possibility that this rather cool reception undoes much of any good accomplished via prison rehabilitation services, at great expense, might we work to alter the reception? Could such changes involve the recomposition of the reception committee, and their attitudes and behaviors? In other words, if successful resettlement becomes everyone's business, the very logic of incapacitation and punitive incarceration may come to be tested in profound ways. Questions will arise as to the destructive, debilitating nature of justice system processes, of widespread institutional failure, and of racially biased juridic outcomes. Popular participation in the rites of reentry may give rise to a total reexamination of American justice.

Rescuing Reentry

Prisoner reentry provides a ready case study of system reform, particularly since it can be seen as a perhaps noble attempt to change a dysfunctional system from within. (Incidentally, I would suggest that prisoner reentry serves quite well as a metaphor for those of us who have felt politically marginalized if not excluded for much of the

past generation. Now it seems is the time of our reentry. What will we make of this "second chance"?)

Prisoner reentry emerged as a field with potential to serve as a leverage point for change. Many of us troubled by our complicity in the near genocidal era of mass incarceration have invested hope and energy in this burgeoning field. As many scholars have pointed out, if justice systems were to prioritize successful reentry, then the individual welfare of each prisoner would have to be acknowledged and taken into consideration (Petersilia 2003; Travis 2005; Terry 2004). Each stage of the justice process would have to be evaluated in terms of its effects on successful reentry. Such a principled reevaluation process could reduce our outrageous levels of punitiveness, decrease debilitating stigma, improve access to helpful programs and vital treatment, and alter conditions of confinement and parole supervision.

The human beings who constitute what surely must be acknowledged as a "prisoner class" may be experiencing some positive changes and lowered levels of punitiveness due to the prisoner reentry movement. Its focus on individuals and neighborhoods, and its commitment to taking a more holistic look at successful post-release living have provoked new thinking, some pilot projects, and some real changes (U.S. Department of Labor 2009). But this nascent reform project may be short lived.

The incredibly daunting problem that we face today is that reentry planning took place in an era of economic expansion and relative (if selective) prosperity, when state coffers were filling and labor was in demand. Governments were willing to spend a little more on prisoners' well being, and employers were beginning to give them a look. Now, just when reentry plans are being piloted across the country and perhaps are on their way to wider implementation, the condition of the economy has shifted. Prosperity is replaced with fiscal caution, economic expansion with contraction, and an overall sense of security has been replaced by general insecurity.

What will this mean for the 700,000 or so leaving prison each year and returning to hard pressed communities? The pattern of public and private policies reflecting least eligibility suggests that they will be left to their own devices. Government claims of lowered revenue accompany lowered property values and reduced profits accruing to private firms. After paying for the war, the Wall Street bailout, and shoring up the middle class through an economic stimulus package, precious little will be left for the struggling classes.

We should expect no major letdown in the area of public spending on safety and security, however. For generalized fear and insecurity is always looking for scapegoats (Garland 2001). The deep economic recession of 1981 saw members of Congress smashing Japanese-made televisions with sledgehammers right on the Capitol steps. The intervening years have seen the rise of a new "enemy," the criminal. This negative archetype pushed

aside the “foreign devil” just as globalization made the world a much smaller and interconnected place. The criminal, rather than threatening us from the outside, lurks amongst us. As scholars such as Christian Parenti (2000) and Jonathan Simon (2007) note, setting up and promising to knock down the criminal has been a favored political trope since the presidency of Richard Nixon. The present financial calamity combined with anti-immigrant (i.e. Latino) xenophobia and global recession may make the polity once again vulnerable to the allure of claims to a touchstone of purity, a safe space that we can occupy, feel protected within, and know that things will be alright.

The combination of impoverished welfare and heightened insecurity means that, at precisely the time when our seven-hundred thousand former incarcerates will be looking to “go with what they know” to make ends meet, the security state will be most geared up to apprehend them. It doesn’t take much in the way of prescience to see that reentry as a corrections initiative may well be replaced by a new round of warehousing. Particularly if the prison-industrial complex has indeed become “too big to fail” in economic terms, the prospects are strong for a reverse engineered reentry, where jobs are saved, the public is protected, and the polity is made pure.

SUSTAINABLE JUSTICE, RESTORATIVE JUSTICE

Although they used the term “community justice” Clear and Karp express many of the challenges and prospects of adopting the human security approach. The move from traditional punitive justice “requires a change in purpose from a narrowly conceived agenda of crime control to a broadly determined mission of enhancing the quality of community life” (Clear and Karp 2000:107). Human security, like community justice, aims to undercut the very likelihood of criminal events through responsiveness “to criminogenic community conditions—the conditions that facilitate criminal events” (Clear and Karp 2000:107).

The present call for human security is for a fundamental rethinking of the purpose and practice of justice. A shift toward holistic security would open up the justice system to include a deeper involvement of victims and other citizens, and it would set its sights upon improving the quality of community life. The isolation of the justice professions would be replaced by more interdependent relationships. Undoubtedly, a concerted pursuit of human security would precipitate changes in almost every aspect of today’s justice traditions (Mobley 2011).

The emergent paradigm of restorative justice also resonates with human security. Restorative justice has implications for radical justice reform as it highlights a forthright assessment of the needs of individuals, families,

and communities (Braithwaite 2002). Restorative justice has already moved us conceptually away from a hard-and-fast focus on determination of guilt and punishment, and toward reconciliation. Human security entails a holistic approach to public safety and security. It empowers residents to take responsibility for their communities and to make claims upon resources, both public and private, for help in doing so. In short, human security appears a good fit for holistic, community-based reentry strategies.

CONCLUSION

Dee Hock, Founder and CEO of Visa, foresaw the conditions underlying many of today’s difficulties. As he says in *Birth of the Chaordic Age*:

We are living on the knife’s edge of one of those rare and momentous turning points in human history. Livable lives for our grandchildren, their children, and their children’s children hang in the balance.

The Industrial Age, hierarchical, command-and-control institutions that, over the past four hundred years, have grown to dominate our commercial, political, and social lives are increasingly irrelevant in the face of the exploding diversity and complexity of society worldwide. They are failing, not only in the sense of collapse, but in the more common and pernicious form—organizations increasingly unable to achieve the purpose for which they were created, yet continuing to expand as they devour resources, decimate the earth, and demean humanity. The very nature of these organizations alienates and disheartens the people caught up in them. Behind their endless promises of a peaceful, constructive societal order, which they never deliver, they are increasingly unable to manage even their own affairs while society, commerce, and the biosphere slide increasingly into disarray. We are experiencing a global epidemic of institutional failure that knows no bounds. We must seriously question the concepts underlying the current structures of organization and whether they are suitable to the management of accelerating societal and environmental problems—and, even beyond that, we must seriously consider whether they are the primary cause of those problems. (Hock 1999)

In preparing individuals for better futures, we find ourselves tasked with nothing less than restructuring our bureaucracies and altering our perceptions of justice, self, and other. Are convicted criminals worthy of our concern?

Do their families and communities deserve more than simply serving as dumping grounds for “social junk” and “social dynamite”? Are felons deserving of our investment even when non-felons face cutbacks in social services?

These are some of the core questions we will have to thoughtfully address if we are to take the present justice system reality and flip it from perpetual harm production to actual harm reduction.

The past 200 years have provided much evidence both for the harmful effects of prisons and for their utility to democratic societies. Few today, however, consider them to be much more than necessary evils. Is incarceration a necessary evil? We know that the penitentiary was birthed with great optimism. From Jeremy Bentham onward, adherents of a rehabilitative philosophy advocated for the prison and championed its redeeming potential. Indeed, the prison was designed to lead its inhabitants to salvation. Far from saving souls, however, the prison has become a mechanism of social insecurity. As the era of mass incarceration begins its decline, a key question will be: How can we reclaim our mandate to achieve justice equitably?

Globally, examples of justice reformation have included, as integral elements, public hearings known as truth and reconciliation processes, where expressions of trauma and victimization have been offered both as cathartic recrimination and as necessary to reconciliation (Graybill 2002; Magarrell, Wesley and Finca 2008). Criminologists have recently come to categorize the work of truth and reconciliation commissions as valuable tools of transitional justice, a scheme most commonly applied to nation-states seeking to recover from political revolution and civil war. It is in this spirit that I offer the suggestion that our justice reinvention efforts follow the lead of peoples in more extreme circumstances and that we apply their hard-earned lessons and valued principles to our pressing, even if less severe, justice-related problems.

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Endnotes

¹ California, like many states, is in the midst of fiscal crisis. According to the Legislative Analyst's Office, as of February, 2011 the budget deficit estimate stands at twenty-six billion dollars. The prison budget accounts for ten billion dollars of state spending (LAO 2011).

² Irwin (2005) and others have noted the fallacy of claims regarding the failure of poverty reduction programs and the efficacy of incarceration in reducing crime rates.

³ Yet some argue that in recent years it has become evident that both slavery and Jim Crow have returned with new names, but with similar results and the gains of the Civil Rights Movement have been slowly rescinded. (See Alexander 2010).

⁴ With some notable exceptions, such as the scholars associated with the Australian Research Council Centre of Excellence in Policing and Security. See <http://www.ceps.edu.au>.

⁵ In fact, the Human Security slogan, "freedom from want, freedom from fear," is drawn from FDR's famous "Four Freedoms" speech, best known for the phrase, "We have nothing to fear but fear itself."

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Is Prevention Inherently Good? A Deconstructionist Approach to Prevention Literature, Policy and Practice¹

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Abstract: *Framing deconstruction as a useful tool prior to engaging in research and practice, this paper views the notion of "prevention" through a deconstructionist critique. By exploring prevention as a value-laden rather than value-neutral discourse, the paper illustrates the implications of the routine practices of professionalization, risk calculation and responding to the "other." It asks readers to cautiously engage in praxis so as not to re-inscribe dominant hegemonic discourses, and instead to become comfortable with tentative, emergent and ever-changing forms of knowledge related to prevention issues. The paper suggests that by opening up our field to a deconstructionist critique we acknowledge its importance while recognizing our own contribution to the open architecture of knowledge.*

Keywords: crime prevention; deconstruction; evidence-based policy; neo-liberalism; prevention; postmodernism; post-structuralism; risk society

INTRODUCTION

The practice of "prevention" carries with it immeasurable rhetorical power. Although it is itself an elusive notion (Haggerty 2003; Gilling 1997), being in favor of prevention and thus in opposition to harm evokes one of the most powerful binaries in both Western society and throughout the larger global terrain. Consequently, labeling or framing any course of action as preventative carries with it implications of goodness, moral righteousness, ethical justness and all of the power associated with being on the "right" side of the binary. Prevention, however, should be recognized as a broad and unwieldy notion – a tangle of values, beliefs and perspectives complete with all-encompassing moral undertones. While the concept is held to have a self-evident definition – the anticipation of harm produces pro-active solutions that then reduce or eliminate the threat of harm – the discourse of prevention is necessarily laden with values and binaries. Although the connotations of prevention, indicative of its moral value, hold that prevention is an ethical, humanitarian, and even cost-

effective goal, this commentary sets out to ask how the postmodernist deconstructionist critique might begin to unsettle and destabilize the hegemonic aspects of prevention to inform those who wish to research and practice within the crime prevention discourse. The paper analyzes the specific ideas that inform the discourse on prevention (power, professionalization, state-versus-individual responsibility and risk assessment) incorporating ideas from Jacques Derrida's conceptual tool of deconstruction and also drawing on the theoretical work of Michel Foucault (social control, anti-essentialism, power/knowledge), Emmanuel Levinas (ethics of the other), and Felix Guattari and Gilles Deleuze (rhizomes and fractal ontology).

Referring throughout to crime prevention strategies and their coinciding evaluations on local, national and international fronts, some important and widely relevant considerations include: (1) What is meant by *preventionism* as both a culture and a discourse? (2) How is the "other" constructed and maintained throughout the prevention discourse? (3) What are the moral and ethical components embedded within notions of "doing good,"

through “preventing harm”?, and (4) How is power used and re-inscribed in the prevention discourse? Prior to engaging in, theorizing upon, and practicing crime prevention, and programs bearing that label, theoreticians, researchers and practitioners should consider the importance of each of these questions, and recognize this commentary as an expression of the uncertainty surrounding meanings, agenda, and the political and ethical content of prevention.

The themes espoused here are designed to be relevant to a wide audience, to apply to the preliminary thoughts of academics pursuing research on prevention, to remind researchers that we are all implicated in the ideologies beneath our research, and to spark debate and thoughtfulness on the eve of practice. For these reasons this commentary will explore the ethical character of prevention through a discussion of responsibility to the other: Why should we care for and about the other? Some important considerations to be elaborated are: the necessity of “risk,” the coupling of crime prevention with evidence-based practice (EBP), and the ideology of “community.”

To investigate these matters, the following analysis is divided into four areas. First, the theoretical and practical framework of crime prevention is presented. Second, a summary outline of both affirmative postmodern thought and the deconstructionist critique is provided. Third, deconstruction is applied to the discourse on prevention, and finally, an alternative approach to the status quo is offered.

CRIME PREVENTION: A THEORETICAL AND PRACTICAL FRAMEWORK

In order to grasp what is at stake as we research and critique crime prevention, it is important to first become familiar with the emergence of the concept of prevention. What follows is not a taxonomy of the area, but instead a summary to help frame the following discussion. Crime prevention itself has many varying definitions, shaped not least by what is counted as crime and on that the production of crime is based on positivist assumptions about causality. Restricted legalistic definitions of crime lead to a focus on “street” crime or “crimes of the powerless,” whereas more expansive definitions of crime include corporate and state crime or “crimes of the powerful” (Henry and Lanier 2001; Canadian Law Commission 2003). Some definitions of prevention focus on actions that reduce actual levels of street crime and fear of crime (Lab 2007), while others focus on the reduction of risk factors known to lead to harm, such as criminality and social disorganization within communities, schools and families (Sherman et al. 2002) or regulation of corporations and states that create insidious injuries to their consumers, clients or public (Alvesalo et al. 2006). Still other definitions focus on reduction of harm as a positive

measure of crime prevention, and some equate restrictions on the exercise of power with a reduction in harm production (Henry and Milovanovic 1996; Milovanovic and Henry 2001). Among these varying definitions, however, there is agreement that crime prevention is understood with reference to its consequences to the wellbeing of others rather than its intentions to limit negative effects upon them. Moreover, the concept of prevention, whether restricted or expansive, is set within a positivist analytical framework that assumes that scientific analysis can identify the factors, whether, micro-, meso- or macro-level, that produce harm, and that intervention strategies can be designed to limit the negative impact of these factors and, therefore, reduce harm production. As shall be discussed later, this positivist underpinning of prevention discourse is itself limited.

Emergence of Crime Prevention

Crime prevention is not a new social strategy of intervention. Prevention techniques, based on some vague notion that antecedents lead to outcomes and that by changing the antecedents we can change outcomes, have always been at the center of criminal justice policy. Even prior to formal systems of social control such as the police, communities focused on deterrence of “crime” by believing they were eliminating the benefits of criminal behavior through retribution and revenge, just as non-western communities focused on contests, ostracism, dispute resolution and other settlement directed talking designed to defuse or de-escalate future harm production by removing or rechanneling the relational activities that produced the offensive outcomes (Roberts 1979). Once police forces emerged as the norm in twentieth century Western societies, they too held crime prevention as their main goal (Lab 2007). Indeed, the Metropolitan Police Act of 1829 states “The primary object of an efficient police force is the prevention of crime” (quoting Sir Richard Maine, 1829; Metropolitan Police, 2010).

Coupled with the emergence of police forces, the application of scientific inquiry to the etiology of crime during the latter half of the 20th century began to identify patterns in the commission of crimes to the point that social, in addition to individual, causes were identified in the tradition of positivist thinking that dominated much of the century. This changed measures of prevention from deterring offenders who were seen as making the choice to commit criminal acts, to a focus on the criminal whose individual pathology *drove* them to commit such acts, to a focus on community problems such as poverty and lack (or low levels) of education—problems that were mainly associated with the lower class (Brantingham and Faust 1976), and then to a consideration of the structural causes of power that facilitated patterns of harms by both the lower and upper classes, as well as systems and social processes that resulted in harmful outcomes (Quinney,

1977; Young, 1999). The result was a shift from a focus on criminal acts to a focus on the pathology of the individual (e.g. substance abuse, mental illness) and later, to a focus on social pathology concentrating on social and environmental contexts that produced criminals, and then to a focus on criminogenic social systems and power structures that produced widespread harm from fraud to environmental pollution.

Consistent with the theoretical change in the scope of crime and its perceived cause, the focus of intervention and public policy also shifted: practice moved from a deterrence model to a treatment/rehabilitation model, then to a prevention model through social engineering, ranging from physical to social intervention aimed at designing out crime, and finally to a macro-social intervention model advocating widespread systemic societal changes designed to reduce the power differentials that privileged some forms of harm production while criminalizing others. Again, regardless of the level, positivist discourse framed a villainous causal agent to be condemned and exorcised, with the resultant reduction in harm. Absent was any sense that positivist thinking about crime and its prevention might contribute to its constitution as a social reality. That would come later through a postmodernist critique of modernist criminology with implications for the deconstruction of prevention.

In the spirit of early prevention measures based on a deterrence philosophy, a look at the nascent juvenile justice system demonstrates a drive toward punishing behaviors that were thought to lead to conventional criminal behavior later in life; such as curfew violation, incorrigibility and substance abuse (Lab 2007). The juvenile justice system did not, however, address how white collar, corporate and state agency offenders arrived at their harm producing behavior and, therefore, represented a myopic view of prevention (Alvesalo et al. 2006). An example of this early crime prevention based on the social pathology philosophy is found in the community development project described by Shaw and McKay – the “Chicago Area Project” of 1931 (Lab 2007; Welsh and Hoshi 2002). To reverse the lack of social ties and high residential transition observed within the spatial zones surrounding the central area of Chicago, the Project aimed to build social control through community enhancement and pride. The underlying idea was that a thriving and connected and organized community could provide its own informal behavioral controls among residents and visitors (Sherman, Farrington, Welsh and Mackenzie 2002). This, of course, assumed the only crimes that needed to be prevented were those found in the “zones of transition” identified by the Chicago School sociologists, based on police data of crimes that occur in public (or street crimes). Absent from such analysis was any sense that crimes were abundant in places such as the meat packing yards, the corn exchange or the Chicago mercantile exchange, let

alone in the form of political corruption in the city of Chicago. This limited concept of harm prevention did not extend to prominent city officials, who were accused, and in some cases convicted, of contract fixing, bribery, and related activities. Prevention was very much tied to a “street” concept of crime rather than a “suite” concept; even less was there much awareness of the inter-relationship between the two, other than a minimal recognition of the role of slum landlord’s lack of investment in the very properties that created the squalor of the areas of the city that they controlled. As Alvesalo et al. state, the concern is with the “narrowly constructed terrain of ‘crime prevention,’ a terrain which focuses upon, as criminal justice systems (and criminologies) have almost always focused upon, the crimes and incivilities of the relatively powerless” (2006:2).

Community Crime Prevention

Community based prevention strategies, a variation of the social pathology approach to intervention, focus on development at the community level to change the social conditions that were thought to give rise to crime and other harmful behavior (Welsh and Hoshi 2002). Consider the definition of the National Crime Prevention Council “Crime prevention is a pattern of attitudes and behaviors directed at reducing the threat of crime and enhancing the sense of safety and security, to positively influence the quality of life in our society, and to develop environments where crime cannot flourish” (Crime Prevention Coalition 1990:64).

Community institutions such as schools, after-school programs, family programs and youth clubs are often the settings for such interventions, especially since many target children and youth. More recently, crime prevention categories have been developed to discuss situational crime prevention and social crime prevention. While situational prevention relates to changing the physical environment within a community, the latter refers to changing characteristics of members in a community to decrease their propensity to commit crime. Social crime prevention might include delivery of educational resources, health treatment and an enhanced employment policy (Gilling 1997). Community crime prevention – whether situational or social – is, within the prevention discourse, thought of as a participatory approach “community-based and community-focused, representing a true partnership between the government and local residents” (Rosenbaum, 1988:380). These social pathology approaches and the community model are often limited to micro- or at best meso-level interventions and are rarely applied to address wider macro-level forces (Cherney 2001), let alone the forces that allow crimes of the powerful to remain outside the purview of prevention (Alvesalo et al. 2006).

Prevention Models: Primary, Secondary, and Tertiary

Another way to conceptualize crime prevention strategies is through the public health model, which seems to be the common organizational format featured in the literature (and which has specific implications for evidence-based practice, which will be discussed later). The conceptual model of crime prevention put forth by Brantingham and Faust (1976), based on the public health model, divides crime prevention into three overarching approaches – primary, secondary, and tertiary. Primary prevention focuses on the social (people and relationships) or physical (spatial characteristics and organization) environment, the characteristics of which are said to provide opportunities for, or precipitate, criminal events (Brantingham and Faust 1976). There are multiple levels of prevention within the primary category. While police presence and increased community and individual mechanisms of surveillance fit within this category, so do social prevention measures for reducing poverty and other social ills. The common feature of primary prevention techniques is their efforts to avoid initial crime and harmful behaviors (Lab 2007).

Secondary crime prevention measures, reflecting the individual pathology model, attempt early intervention and work by identifying and responding to the needs of potential offenders or victims who may become involved in crime (Brantingham and Brantingham 2005). An example of this type of intervention is drug and alcohol treatment, where illicit substance use is assumed to lead to a propensity for crime, or an after-school program designed to keep children at risk of victimization in a safe place after classes (Brantingham and Brantingham 2005).

Finally, tertiary crime prevention is concerned with intervention once a crime has been committed (and identified), and thus falls predominantly within the scope of the criminal justice system to reduce repeat offending (Brantingham and Faust 1976). Tertiary approaches may include, for example, physical modifications to buildings that have been the target of property crime, offender rehabilitation programs, or programs designed to improve the conditions of marginalized people (Brantingham and Brantingham 2005).

As Brantingham and Brantingham (2005) argue, many traditional approaches to crime prevention have suffered due to their focus mainly on offenders without viewing crime as “a complex phenomenon with a complex etiology” (2005:272). Situational crime prevention (Clarke 1983) aims to take account of these complexities and is able to direct intervention at all of the three (primary, secondary and tertiary) levels of prevention. Through a process of embedding “what works” and developing evidence-based policy, it is suggested that situational crime prevention will become established and secure ongoing funding (Brantingham and Brantingham 2005).

A CRITICAL/POSTMODERN AGENDA FOR TWENTY-FIRST CENTURY CRIME PREVENTION

Chunn and Menzies (2006), in their discussion of the changing nature of the discipline of criminology in Canada, link crime prevention technologies to the (new) paradigm of “applied criminal-justice policy” (2006:672) amid increased risk-based concerns and governed by the neo-liberal, neo-conservative political movement of the twenty-first century. Criminology, they argue, is now dominated by a marked alignment with state politics such that a grand narrative espousing a “mastery of human problems of all kinds” (2006:672) is delivered. Furthermore, criminology’s movement to focus on technologies, including crime prevention, “contribute to the ideological and discursive hegemony of the idea that ‘social’ problems can be more quickly, cheaply, and effectively addressed through criminal law and criminal justice than through social policy and social justice” (2006:673). To this end, they illustrate that the discipline of criminology, at least in its mainstream form (and its more recent criminal justice focus), has taken on qualities that have been seen as necessary in maintaining its own existence, but also as a factor in maintaining the hegemony of criminal justice as a state project. Crime prevention, as outlined so far, fits squarely beneath this new umbrella. However, critical criminology in a variety of forms, including those designated as radical, feminist and postmodernist, takes a different stance. A few aspects of the critical paradigm are worth clarifying before moving to a discussion of deconstructionism that forms part of a postmodernist critique of prevention.

Critical Theory, Poststructuralism, Postmodernism and Deconstruction

Mainstream criminology, whether operating at a micro-, meso- or macro-level of analysis has embraced a positivist methodological stance in that it treats social phenomenon such as “crime,” as social facts whose causes can be determined. Much of criminology is a positivist enterprise comprising of theory formation and testing to determine the veracity of the causes on which to base policy designed to prevent the problem of crime (state defined). In contrast, critical theory, post-structuralism, and postmodernism each situate positivism as an inadequate “grand narrative” through which to understand our social world (Agger 1991); they expose and question the validity of the assumptions that propel the positivistic discourse. Agger (1991) suggests that most academic and professional research and writing are prepared in adherence to the positive paradigm (striving for the illusion of objectivity). In contrast, critical, post-structural, and postmodern theorists set out to critique “the optimistic

assumptions of modernist thinkers” (Henry and Milovanovic 1996: 4). They framed positivism as “the most effective new form of capitalist ideology” (Agger 1991:109) – an ideology that arose in the Enlightenment and that maintains social control from within by re-creating values and assumptions as “truths.” Ultimately, postmodernists suggest that positivism is the new governing mythology encouraging us to accept the status quo as unchangeable truth (Agger 1991).

The most enduring part of critical theory is its attention to the biases beneath social science “knowledge” and its re-framing of knowledge as provisional and a product of history. Appreciating that modernist social science is founded on assumptions that are open to question, leads us to be more critically aware of assuming any inherent value in professional concepts such as “prevention” and “preventionism.”

Acknowledging the connection between post-structuralism and postmodernism, Agger (1991) suggests that the former can best be described as “a theory of knowledge and language” (1991:112), while post-modernism directs focus more towards culture, history, and society. Derrida, one of the leading post-structuralist writers, introduced the concept of deconstruction – a method designed to critique the truth claims implied by textual objectivism by exploring the biases and assumptions embedded in traditional understandings. More recently, Derrida’s deconstruction has begun to play a part in some criminological analyses of cultural practices and the discursive production of harm. Henry and Milovanovic (1996) assert that deconstruction “of texts” is one of the foremost ways by which postmodernists critique the truth claims of modernists. From their perspective, “texts” include narrative accounts (reports, stories, as well as gestures) as well as discourses (written, spoken, or illustrated communication). Before considering their analysis in relation to the issues of prevention I will outline some key constructs that I have drawn on from the postmodernist critique.

Amid the diverse definitions of postmodernism and deconstruction, my analysis is formed with specific attention paid to the poststructuralist ideas of Derrida, as well as the postmodern ideas of Levinas (1989), Foucault (1977), and Deleuze and Guattari (1987). As indicated, I will use deconstruction affirmatively. However, instead of explicating the nuances explored by each of these authors, I will identify some of the relevant main themes in their work.

Several of Derrida’s (1997) key propositions related to the epistemology of deconstruction center on the “metaphysics of presence.” This concept explains a hierarchy embedded in language where the first term in a binary is understood as presence, and the last one is implicitly de-valued as in absence (Arrigo, Milovanovic and Schehr 2005), (for example: white over black, man over woman). Derrida demonstrates that when the order is

reversed attention switches to the importance of the previously dominating term. The concept of “logocentrism” – the tendency in Western thought to hold the central idea as most true or important – is especially problematic for Derrida, specifically because it maintains and glosses over marginalization. Three interconnected principles in this perspective include: *differance*, reversal of hierarchies, and arguments that undo themselves (Arrigo, Milovanovic and Schehr 2005). First, *differance* indicates the dependence of terms in a binary on one another for clarity in meaning; each term includes remnants of the other, thus making it possible to deconstruct the discourse to reveal the fragility of the truth of the meaning it creates. Second, reversal of hierarchies occurs where the marginalized term and the powerful term in a binary are switched in their positions, to reveal the structure of domination. However “Deconstruction does not consist in passing from one concept to another, but in overturning and displacing a conceptual order, as well as the nonconceptual order with which the conceptual order is articulated” (Derrida 1985:329). Third, arguments that “undo” themselves, refers to the deconstructive reversals of given doctrines that privilege certain conceptions of human nature. Thus it is shown that “the reasons for privileging one side of an opposition over the other, often turn out to be the reasons for privileging the other side. The virtues of the first term are seen to be the virtues of the second; the vices of the second are revealed to be the vices of the first” (Balkin 1987:755). Through such “un-grounding” of preferred conceptions they are revealed not to stand as self-sufficient or self-explaining.

In postmodern theory, reality is considered a social construction within which meanings are negotiated through social interactions built from such discursive oppositions which have no foundation, in spite of how real they appear. Lather, for example, states “the essence of the postmodern argument is that the dualisms which continue to dominate Western thought are inadequate for understanding a world of multiple causes and effects interacting in complex and non-linear ways” (1991:21). Because power is unevenly distributed, age, race, sex, class, intelligence and other categorical boundaries exclude some people. Lather, in her argument for postmodern praxis (theory in practice), extends the critique beyond positivist theory stating: “not only positivists, but also existentialisms, phenomenologies, critical theories: all seem exhausted, rife with subject-object dualisms, teleological utopianisms, totalizing abstractions, the lust for certainty and impositional tendencies tainted with colonialism and/or vanguard politics” (1991:88).

Given this kind of critique, that suggests our certainties are uncertain fictions of our discourse, what are postmodernist deconstructionists suggesting instead, and how does the postmodernist agenda translate to doing something to prevent the harm that some cause to others? Is it enough to simply deconstruct these narratives on

which policy and practice is founded, or is something more required? In evaluating the postmodernist agenda, some feel that critique alone, is inadequate.

Critiques of the Critical/ Postmodern Agenda

The postmodern critique, particularly in the social and human sciences, has often been discarded by some as an overreaction to the limits of the positivist epistemologies of the Enlightenment and its resulting practices. White (2007), exploring postmodern development within the human and social sciences, cogently proposes that unease with positivist epistemologies has caused some to express “concern with the limitations of rule-based formulations and so-called ‘value neutral’ approaches to practice and have called for more personal, embodied, narratively informed and situationally immersed understandings of practice” (2007:228). But others have been less empathetic in their criticism.

There are three main discernable criticisms of the postmodern analysis. First, postmodernism has been narrowly characterized as a perspective necessitating a relativist standpoint and for rejecting dominant theories naively, without offering new alternatives (Russell 1997; Schwartz and Friedrichs 1994). The conclusion is that postmodernists’ tendency for abstract thought may detract from the reality of actual violent experiences; furthermore, such a process is claimed to make little sense in the realm of policy, since we have no way to either move forward or to progress.

Second, the dense and even impenetrable conceptual language within postmodern texts is often itself the subject of criticism. The paradox lies in the discontinuity between postmodernism as a freeing discourse, ready to question marginalization and oppression, yet composed in a language and style that is inaccessible to many. However, as Schwartz and Friedrichs (1994) acknowledge, while the style may undermine the relevance of postmodernism in the field of criminology, the point of postmodern writing is not to spoon-feed its readers, but instead to write in a way that is open to interpretation, such that readers may construct their own meanings which is one of the goals of postmodernism (Henry and Milovanovic 1999). However, does this new and emergent discourse ultimately operate any differently from modernist writing?

Indeed, the third main criticism argues that postmodernism is hypocritical, as it re-creates the master narratives and binaries it proposes to reject simply with a new discourse. For example, Schwartz and Friedrichs (1994) ask whether postmodernism is removed from reality in a similar fashion as modernist writings. Some deconstructionist thinkers, however, acknowledge this trap and seek to be aware of their own values and assumptions. For example, in using deconstruction to interrogate meaning and practice, Lather, cautions us against “dissembling the master narrative, especially those of

Marx and Freud,” to simply replace them with “Foucault, Derrida, Baudrillard, Lacan, etc., as new master discourses” (Lather 1991: 49). Furthermore, postmodern scholars are aware that they are adopting a position that disavows claims to objectivity and warn that while the postmodern task provides valued knowledge and insight, it does not do so under the guise of neutrality.

Since the 1990s, some scholars have tried to stretch the postmodern critique of modernism into a more “affirmative” version while trying to avoid the dangers of lapsing into a new fangled modernism. This has been especially prominent in the field of criminology where some scholars have proposed that deconstruction is followed by reconstruction in an attempt to demonstrate the value of an open architecture of knowledge that allows for transformation without ossification; allows a self-conscious reconstruction that is open to further transformation. For example, Henry and Milovanovic (1996; 1999) distinguish between “skeptical post-modernists” who limit their analysis to deconstructing discourses in order to reveal inner contradictions, assumptions and claims to truth, and “affirmative postmodernists” who not only deconstruct but “reconstruct a replacement text/discourse that goes beyond the nihilistic limits of the skeptical position” (Henry and Milovanovic 1996:5). In other words, affirmative postmodernists do not believe that critique should only involve infinite deconstruction that challenges claims to truth, but also that it should be concerned with reconstructing a replacement discourse, or discourses, that are contingent and constitutive of less harmful outcomes.

As a result, Henry and Milovanovic’s constitutive criminology (1996) is not so easily subject to the same criticisms of relativism or nihilism that may be launched at skeptical versions of postmodernism. They argue that the creation of “replacement discourses” is important in the study of criminology through a postmodern inspired lens, meaning that only through new constructions of reality can the oppressed seek expression. To further characterize the emergence of constitutive criminology, Henry and Milovanovic (1996) unpack several popular debates within postmodern literature. First, they suggest that the binary of modernist and postmodernist might be better conceived as points on a continuum, indicating that some modernist theories are more open to postmodern thought and vice versa. Second, they disagree with the simplicity of the action-versus-theory binary, stating that to privilege one over the other, or to suggest that one can occur to the exclusion of the other, is to misunderstand their inter-relationship. In light of this, they introduce the concept of “transpraxis, a movement toward the never completed” (1996:14), a vision of the open architecture of knowledge production that is not frozen at various points of truth but which can transform and even undermine itself.

Clearly the criticism of nihilism is easier to level at skeptical postmodernists than at affirmative post-

modernists, but once postmodernists waded into the realm of reconstruction, are they not simply substituting new truths for old, and thereby becoming just another disguised version of modernism? Or is the openness of their architecture of knowledge sufficient to render their analysis “Beyond Postmodernism”? In order to explore this possibility I will subject prevention and preventionism to an affirmative postmodern influenced critique.²

PREVENTIONISM: THE PROFESSIONALISATION OF PREVENTION

Each of the models of crime prevention discussed earlier are not only outcomes of positivist analytical logic but carry an ideological context that is power inscribing and disciplining, a context that is reflected in the profession of prevention. This section of the paper encourages a deeper critical look into the professionalism of prevention, and the related concept of “preventionism,” “the belief that social problems can be prevented rather than resolved” (Billis 1981:375), to argue that prevention is not as apolitical as it appears.

Prevention has now grown to include at least 15 different disciplines (Durlak 1997 in Kenny et al. 2002), which are empowered by their disciplinary claims to involvement in the discourse. While multi-disciplinary involvement is not a problem in itself, it becomes problematic when each is invested in, and competing for, legitimacy. Rose (1998) uncovers similar troubles in his genealogy of the “psy” disciplines where, in order to legitimize their own field’s powers, theorists and practitioners tend to lay claim to particular (esoteric) knowledge. Reflecting the power of professional investment psy-experts employ disciplinary technologies not only as remedies, but also to construct ailments – the solving of which buttress their own positions. As Haggerty (2003) reminds us, many “experts” are financially, politically, or ideologically invested in the problem of crime and they endeavor to maintain this status quo. Jock Young (2007) offers us some insight into why, in the present era, we are particularly susceptible to the allure of anything fixed and secure. He alludes to the business of crime control through his concept of “vertigo” that leaves us striving for certainties:

vertigo is the malaise of late modernity: a sense of insecurity of insubstantiality, and of uncertainty, a whiff of chaos and a fear of falling. The signs of giddiness, of unsteadiness, are everywhere, some serious, many minor; yet once acknowledged, a series of separate seemingly disparate facts begin to fall into place. The obsession with rules, an insistence on clear uncompromising lines of demarcation between correct and incorrect behaviour, a narrowing of borders, the

decreased tolerance of deviance, a disproportionate response to rule-breaking, an easy resort to punitiveness and a point at which simple punishment begins to verge on the vindictive (Young 2007:12).

The cause of this vertigo is none other than “insecurities of status and of economic position” (2007:12), causing the public and the professional to grasp any and all means of status stabilization symptomatic of their own middle-class insecurity.

Moreover, some have argued that not only has preventionism become an anchor for stabilizing the helping professions, but that in the process, it has expanded its strategies into new areas while simultaneously expanding control over them. In 1981, Billis (in Gilling 1997) indicated that the concept of “preventionism” had resulted in a public interventionist expansion into areas that might more fruitfully be looked after by the voluntary or private sector – an expansion due in part to the undeniable logic of prevention work and the negative brand (“reactionary”) that is given to those in disagreement. Similarly, Gilling (1997) suggests that we take a closer look at the beneficiaries of such prevention activities, even in settings where they fail (which is often). He indicates that gain is experienced not solely by target communities, but especially by professionals holding specific expertise maintained through prevention activities, and also by the state. While professionals in the helping disciplines seek to entrench their role by being able to identify areas of intervention, the state is able to re-legitimize its own existence by managing such attempts. We might add that all of this activity also distracts us from seriously problematizing the concept of crime and the resulting harms that remain outside the gaze of the preventionist’s lens. How does community crime prevention, for example, address corporate crime or environmental pollution?

Secondary prevention – whereby certain kinds of risk are identified and addressed – further entrenches professionalization, expanding and legitimating a body of expertise. With increased professionalization prevention, as a strategy, is explored exclusively by experts expanding its discourse almost infinitely. In considering the ecology of knowledge, we must make evident the tendencies of specific disciplinary discourses to make knowledge inaccessible to others while working to preserve their own survival (similar themes are discussed in Crow, Levine and Nager 1992). Confronted with the languages held within various discourses, we are faced with re-constructing the *Tower of Babel* laboring in silos, failing to comprehend the foreign tongues and actions of others, concerning ourselves instead with our own sophistry. Further, the basic logic underlying professionalization is troublesome for its disincentive to actually produce widely effective prevention techniques, or those that might challenge the power structure within which we are comfortably located.

Self-preservation dictates that a balance between minor effectiveness and complete effectiveness must be struck, since an over-reliance on the latter will dry up the market for professionals (Gilling 1997). Further, expanding the scope of prevention to include those with power rather than the relatively powerless might result in the loss of funding for any type of prevention professional. How, then, do we deconstruct power and view the status quo through a critical lens when we are simultaneously invested in continuing its present arrangements? How do we move beyond our academic diatribe to face our pragmatic realities?

Preventionism: Decentralizing or Downloading Responsibility?

A clearer demonstration of the ideology of prevention, used by governments as a power inscribing and disciplining discourse, is the observation that primary prevention is being used by the state as a mechanism of social control, where downloading the responsibility for prevention from the state to individuals is evident (Haggerty 2003). For example, if a specific primary prevention technique focuses on education as a prevention mechanism, it becomes straightforward for governments or their agencies to blame the victim for negligence in failing to protect her/himself against a known threat. This has been a feminist criticism of routine activity explanations of crime which accepts the gender structured nature of predatory sexual offenses being predominantly male and promotes prevention policies advocating that women change their routine behavior or appearance to reduce their probability of being a suitable victim. Failure to do so becomes the fault of the victim through choosing to ignore the threat. This would be similar to suggesting that members of a neighborhood are at fault because they do not move out of an area known to be toxic because of wastewater contamination by a local chemical company. The ideological positioning of such preventionism that focuses attention on the victim's failure is part of an uncritical preventionism that often unwittingly accommodates to existing power structures: "Neo-liberal governments concern themselves with facilitating the global movement of capital, and producing wealth..." instead of promoting social capital and supporting populations in need (Callahan and Swift 2007:159).

"Actuarial" or risk-based projects are perhaps the newest technologies of power designed to identify and correct certain risky individuals (and, in situational crime prevention, risky *spaces*) and are a mechanism of neo-liberal governance (moving away from the welfare state) that regulates populations and spaces rather than organizations and structures that coproduce those risks. Where children are concerned, both consensus and actuarial assessments of risk are used to determine and prevent the *potential* of harm rather than to define and

respond to the present state of the child (Callahan and Swift 2007) or to address the conditions that create such children at risk.

The neo-liberal shift in governance implicated by community crime prevention is heralded by some as a productive move away from the hegemonic discourses of authoritarian crime control; for rationality to succeed over a law and order approach (c.f. Clarke's situational crime prevention, 1983). While the efforts of local crime prevention specialists are admirable, for others (c.f. Garland 2001), decentralized risk assessment has not led to enhanced community safety, but rather, has created an illusion of support while downloading the state's responsibilities onto individuals in a time of economic stress. Haggerty (2003) suggests that the result is a paradox where community crime prevention "introduces a deeply anti-social dimension into precautionary anti-crime decisions that works against the more communitarian focus of other approaches to crime prevention" (2003:211). This is especially pressing given Hastings' (2005) proposal that the inverse relationship between community capacity and need undermines the effectiveness of community crime prevention measures. Since local measures are not supported with the same fiscal attention devoted to state interventions, it is in the economic best interest of states to participate in this shift. The contradiction evolves when one considers that education, social cohesion, and security are still considered the property of the state. Accordingly, local crime prevention measures cannot include these social elements in prevention measures, diverting the spotlight from social explanations and on to the disorder problem (Sutton and Cherney 2002).

Crime prevention has also been seen as a way to justify the commodification of security moving towards a society of surveillance (Hughes 1998, in Sutton and Cherney 2002). This critique sees crime prevention as producing decentralized power and discipline under the guise of increasing individual participation in community safety. In this view, individuals, families, and communities, rather than the state are burdened with the responsibility for their own safety. Although partnerships in crime prevention are developed to improve efficiency, the differential power between governments and communities means that governments will continue to exercise control and set the agendas, focusing on state interests over local concerns (Hastings 2005).

What is the result when, through a neo-liberal de-centering of governance, we download responsibility of crime prevention to smaller community groups and individuals? What is our ethical responsibility when researching these approaches? I suggest that while community governance seems attractive from the perspective of increased participatory democracy, the result in practice forces protection from, prevention of, and intervention in harm to be underscored by a charitable approach. It is no longer the *responsibility* of the state to

take care of people and institute macro-social change, but rather the responsibility of smaller community organizations and faith-led groups. These groups, simply due to their community status, are limited in that they can only work toward micro-level change. Community-based prevention does not reach far enough to change the totality or to address the conditions it creates for the meso-level (communities and neighborhoods). Failure of these programs does not reflect poorly on the state as a traditional approach might hold, but rather inscribes blame on the communities themselves (who hold little more than superficial power) for failing to address the needs of their members. Again the case of corporate crime is instructive. Instead of working to regulate and limit the manufacture and sale of faulty products, a community-based prevention model would place the onus on the consumers at risk to organize to protect themselves against harm from such purchases. Clearly, in widespread cases private citizen action could result in a class-action suit against the offending corporation, but why isn't government involved more heavily in supporting and promoting socially responsible corporations?

To simplify the problem, neo-liberal governance and the effects on prevention practice is analogous to parents making broad, overarching (and sometimes oppressive) rules for their children and then downloading the responsibility on them to advocate for their own emancipation without changing any of the over-riding structures. Choice in this model is depicted as an elusive figment of our imaginations when in fact we now hold a *stake* in our own oppression. Rose (1998) discusses the illusion of unbridled freedom; subjects are obliged to be free and to form their own existence in a plurality of others, thus being responsible for self-governance. It seems prudent to consider Rose's proposal that we "open up our contemporary regime of the self to critical thought . . . that can work on the limits of what is thinkable, extend those limits, and hence enhance the contestability of what we take to be natural and inevitable about our current ways of relating to ourselves" (Rose 1998:2). This proposal asks that we reach into the very practices that orient the discourse of prevention, not to destroy the foundations upon which they lie, but rather to become more intimately familiar with the ways we form our assumptions. Upon revealing these ways, we need to be ready to shed those technologies we find oppressive and to continue to stretch and complicate, rather than narrow and simplify, our ways of knowing that influence our practice.

While a counter-hegemonic opening up of our values (as values and not as truths) will not automatically transform the processes and technologies that we use, this might be an appropriate *contretemps* in the discourse of prevention. It also poses the question to researchers and academics alike: how can we proceed while retaining complexity and flexibility within the technologies of prevention, yet refrain from re-inscribing the binary of

ethics in this manner? In other words, how can we move forward with an open architectural model that is sensitive to emerging contingencies but does not recreate the existing structures?

Preventionism: The Rise of Risk and Actuarial Assessments

We cannot miss the critical discourse that points to the "calculability of individuals" – the ability to rationally predict and know actions, thoughts, and behaviors of the human entity – as a recent manifestation of the technology of power and domination. "We have entered, it appears, the age of the calculable person whose individuality is no longer ineffable, unique, and beyond knowledge, but can be known, mapped, calibrated, evaluated, quantified, predicted, and managed" (Rose 1998:88). Thus, what Colin Gordon (as cited by Rose 1998:89) has called "institutional epistemology" refers to the production of knowledge from these organized and administrative managerial systems. A Foucauldian account proposes that social control is generally exerted through non-invasive, routinized mechanisms of surveillance and discipline (Foucault 1977). Tied firmly to notions of rationality, "knowledge, here, needs to be understood as itself, in a crucial sense, a matter of technique, rooted in attempts to organize experience according to certain values" (Rose 1998:89). Like the "psy" disciplines, actuarial methods normalize to the extent that they are unable to recognize difference as anything other than negative risk.

We also soon forget that errors in risk assessment affect individual people since they are easily represented with numbers in our analyses. Part of the beauty in assessing risk is that we never need to admit miscalculations upon false-positives. In this case we never need to face the fact that predicted harm did not occur because we were wrong to assume with certainty that it would. Instead, we might herald our intervention or prevention measures as being successful in preventing this harm. There are two necessary conclusions that flow from the argument above: first, we are more likely to make the latter conclusion when we are in doubt, and second, that there is an incentive to be careless about false-positives rather than be in the position to make the error of false-negatives, thus widening our net of risk.

The combination of risk and preventionism also serves to increase the professionalization of prevention as discussed above. For example, while prevention was largely developed in the disciplines of public health and community safety, developmental psychology has risen to discover preventative measures that respond to the differences between normal and abnormal developmental processes (Kenny et al. 2002). To contextualize what can seem overly philosophical, we need to inquire into the result of such calibration of individuals. The discourse of prevention, as a ready example, necessitates the calculation

of risk to determine where interventions are needed, how they should be implemented and where our costs are best allocated. None of the answers to these questions can be asserted with certainty since the equation asks us to predict – to look into the future and make a well-informed gamble. A problem arises when, due to the systematic nature of managerial science, we forget that our prediction capabilities are fallible.

Preventionism: Best Practice and Evaluation

As mentioned above, crime prevention measures are often directed by evidence-based practice (EBP) and “what works” principles (Cherney 2000). The integration of EBP (with roots in epidemiology) into state social policy, particularly with regard to crime prevention, was long awaited in the social science community to justify federal funding (c.f. Sherman 1997); however, governments’ utilization of EBP has morphed into a power-maintaining tool. Searching through the contemporary critiques of EBP, it is not difficult to find assessments that describe it as a practice that re-inscribes the power of the hegemonic discourse. For instance, Cherney’s (2000) fear “is that the pursuit of an identifiable set of ‘what works’ principles may overshadow a range of critical issues that need to be considered” (2000:93), separating crime prevention technologies and the experts that employ them from broader social and political issues. Based on a postmodern critique of singular and best notions of truth and reality, EBP is criticized as but one mechanism in the machinery of the world: constructed and constructing rather than providing a mirror of reality (Abma 2002). In this power-laden environment, some discourses have power (abstract, disembodied discourses) while others lack power (embodied ones). Some take community-based prevention measures to signify a more inclusive approach to Western governance, shifting away from an emphasis on “law and order” toward efforts to preserve democracy. The preservation of democracy is coupled with movements towards evidence-based practice and a renewed rationality, where methodical approaches to identifying “what works” are more widely implemented (Cherney 2000; Sutton and Cherney 2002).

Unfortunately, EBP, as we know it, is marred by the surrounding bureaucracy. The characteristics of Popper’s scientific “truths” as provisional and temporary, open to falsification –perhaps “the best that we have right now” – are pushed aside in the current managerial setting. Efficiency becomes synonymous with quality; systematic, immediate, and widespread application is the norm. The dramatic failures of youth crime prevention programs within prisons (e.g., Scared Straight) and schools (e.g. The DARE program–drug abuse resistance education), to name a few, have also added to the fear of proceeding in absence of evidence (Welsh and Farrington 2005).

ALTERNATIVE POSTMODERNIST APPROACH

Congruent with Henry and Milovanovic’s (1996; 1999) constitutive criminology, the aim of postmodernism should be affirmative rather than nihilistic. Affirmative postmodernism disagrees that promoting the conceptual position of the oppressed at the expense of that of the powerful will lead to justice – rather, this only entrenches a new dominant discourse. Instead, Arrigo, Milovanovic and Schehr (2005) and Henry and Milovanovic (1996; 1999) focus on the creation of provisional relational truths as a part of a dialogical exchange. This perspective resonates with Deleuze and Guattari (1987) who, through their schizoanalysis, argue that the critical philosopher is always engaged in deconstruction *and* reconstruction, contending that fractal, provisional knowledge represents possibilities that cannot be met with modernist thought. Thus, from a deconstructionist perspective “what works” is opposed to a set of practices that “do not work” or fail to work. Here “work” is privileged and carries affirmation for one set of prevention practices over others. The EBA is seen as a deciding factor in what works. However, since prevention success is based on recidivism measures or re-arrest rates, after a variety of interventions, we omit to consider a whole range of interventions, particularly those at the meso- and macro-level, that might also have “worked” had they been implemented. Since such an approach to crime prevention threatens to miss the macro-sociological picture (for example, that crime and safety differentials correlate with socially disadvantaged communities and individuals) extending its focus mainly towards micro- or meso-level problems (Cherney 2000), it is imperative to direct some effort towards a discussion of an alternative approach – and to do so in a reflexive way creating a replacement discourse. This is not to say that a macro-level theoretical and practical approach would be a panacea to improve all social conditions, but instead to make the point that a new approach to guide thought and action is necessary, and one that does not come to a final truth, but is open to ongoing transformation as an emergent discourse continually open to rewriting.

Thus, in deconstructing the discourse of prevention and researching prevention programs, we should acknowledge the infinity of our subjective understanding, working upon and within itself, never yielding a separate or detached core, essence, or truth, but only more *folds* of different shapes and sizes (Deleuze 2006). What Gilles Deleuze calls the *fold* has been applied widely as a constructivist philosophical perspective and represents a humble approach concerning what we can know. His philosophies allow for the understanding and grasping of knowledge, space, and time, while allowing for flexibility. He re-defines reality as dynamic, a continuum lacking rigid essential qualities, and open for infinite new and evolving understandings.

While my overly terse summary of Deleuze does no justice to his extended epistemological metaphor, it is important for the fact of maintaining the provisional nature of reality (a notion that may be contrasted directly with the rigidity of professionalization); important to allow us the agency to act in a moment of time while recognizing the possibility of a new moment in time. "Deconstructive thinking [pre-empting research on prevention] is a way of affirming the irreducible alterity of the world we are trying to construe" (Caputo 1997).

I have in the past considered myself overly romantic in believing that we can collect systematic evidence as *provisional* truths rather than absolute, and also work toward action in the policy setting (the open architecture approach). However, I think the agenda of post-structuralism *invites* us to be romantic (fully aware of the romantic/rational binary I am implicated in) and to resist settling what is a persistently unsettled world even in light of the difficulties therein.

GATHERING THE STRANDS

Deconstructive thinking in reference to prevention does not negate its utility, but asks us to unravel and then continuously re-build the notion of prevention as we partake in it (see Henry and Milovanovic 1996). Once we cease this process, the underlying assumptions become regarded as truths and we forget their provisional nature. The process of deconstructing prevention must happen on a variety of levels. When we think about and conduct research on prevention, we must deconstruct; when we use techniques of prevention in our practice, we must deconstruct; when we transfer and receive knowledge about prevention, we must deconstruct. The most difficult part of it all – the part that Lather (1991) refers to as "working the ruins" – is the continuity of the process – the deconstruction of deconstructions.

In my deconstruction of prevention, I have attempted to destabilize power within the prevention discourse, un-inscribe the traditional dualisms, and have tried to be comfortable with the instability left in their place. I suggested we maintain flexibility in our analyses, assumptions, and actions, paying close attention to deconstructing not by bringing everything to a standstill, but by questioning our actions as we take them and by opening up the discourses within which we work. All the while, I have suggested that we can partake in this deconstruction without destructing positive science altogether.

The intention of this commentary is not to provide answers, but instead to inspire questions and to establish the utility and necessity of taking a postmodern stance in developing criminological research and practice. As researchers, academics and practitioners alike, we can no longer deny our own implications in perpetuating the

ideologies and discourses into which we inquire. We are not passive bodies who can work and inquire from a distance, but instead our integrity demands that we approach our work from a critical stance. In sum, a few important questions remain. How do the politics and professionalization of prevention affect our work? How does neo-liberal governance change the nature of prevention work, and how, in light of this, can we research ethically? How can we work and research while maintaining flexibility and provisionally accepted ideas? How can we avoid re-inscribing the "other" as a charitable case? We might consider moving forward with an open architectural model that is sensitive to emerging contingencies but does not recreate the existing structures.

Endnotes

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² My efforts here to problematize prevention should not be confused with an argument that prevention as a strategy should be abandoned, but rather as an argument that prevention is *so* important and so widespread that it is worthy of the critical effort to see if it stands up to the challenge of a deconstructionist critique.

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Immigration Policy, Criminalization and the Growth of the Immigration Industrial Complex: Restriction, Expulsion, and Eradication of the Undocumented in the U.S.¹

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Abstract: *The stereotype of immigrants as a "criminal threat" has armed anti-immigrant sentiment and policy despite social scientists having consistently demonstrated that immigrants are less likely to engage in crime than are their U.S.-born counterparts. This paper critically examines the link between immigrants and crime, paying special attention to two periods of high immigration to the U.S. During the 19th century through the early 20th century, mostly ethnic white European and Asia immigrants were victims of interethnic and racial violence, culminating in policies that restricted Asians, and prompted mass expulsions of mostly Mexicanos. By the late 20th century and into the 21st century, Latinos and Asians entered en masse. The ensuing anti-immigrant sentiment and policies that sought to disenfranchise these groups, coupled with the rhetoric that evolved from "alien" to "criminal alien," have progressively served to justify the expansion of enforcement-only policies that include workplace and home sweeps, deportation, and increasingly, detention. Arguably, these forms of policing, along with contemporary immigration policies, have given rise to, and fueled, the Immigration Industrial Complex—an industry based on immigrant detainees and supported by Congressional powers. I argue that, like the rise of the Prison Industrial Complex, that along with the "war on drugs" sought to eradicate the potential political threat of post-civil rights era young black males, the Immigration Industrial Complex is a system that is being used to eradicate Latino immigrants from society; to stifle their potential social advancement stemming from the Browning of America, an imminent and perilous demographic, political, and economic threat to the degenerating white hegemonic order.*

Keywords: browning of America; expulsion; eradication; hegemony; immigration and crime; immigration industrial complex; immigration policy; prison industrial complex

INTRODUCTION

In this paper, I argue that racialized stereotypes of immigrants as "criminal threats" have strengthened anti-immigrant sentiment and have provided rhetorical support for policies that criminalize immigrants. These stereotypes have endured despite social scientific research demonstrating that immigrants are less likely to engage in crime than are their US-born counterparts.

Although the US prides itself as a "nation of immigrants," immigrants have historically been viewed by a sector of the public as "our oldest national problem" (Stockwell 1927), a situation which has recently prompted

a rise in hate crimes against Latino immigrants, thereby justifying their disenfranchisement from fully engaging in the U.S. political landscape. Data documenting this rise in hate crimes are found in a variety of sources, most notably the Federal Bureau of Investigation's (FBI) annual Hate Crime Statistics, and in information compiled and analyzed by the Southern Poverty Law Center (SPLC).

Federal Bureau of Investigation data disclosed that in the mid- to late-1990s, ethnicity-based hate crimes against Latinos ranged from an average of 719 a year in the five years between 2005-2009, compared with an average of 646 a year in the five-year period 2000-2004, and an average of 639 a year in the five-year period 1995-1999. This represents a 12.5% increase in the most recent period

compared to the earliest period for which data is available and an 11.3% increase during 2000-2004 (FBI 2010). During these same periods the annual average number of anti-immigration hate groups identified by the SPLC increased from 0 in 1995-1999, to 3.6 in 2000-2004, and 11.4 in 2005-2006, most of these being in the West, Mid-West and Plains states (SPLC 2010).

In this paper, I also examine the link between immigrants and crime, while paying keen attention to two periods of high immigration to the U.S. The first period commences in the early 19th century into the early 20th century, and a second contemporary period covers mostly Asian and Latin American immigration concentrated in the latter part of the 20th century to the present. I argue that from the beginning of the 19th century, racially motivated stereotypes employed by the dominant class and law enforcement agencies have served to justify and reinforce associations made between people of color and crime that have fueled the implementation of restrictive and exclusionary immigration policies that have maintained immigrants in a marginalized status. These mechanisms differ for each period of high immigration and are explored as they pertain to both periods.

Both periods show that white Northern and Western European immigrants neither experienced the levels of violence toward them, nor experienced the levels and/or types of expulsion that have been experienced by immigrants of color. White European immigrants have climbed to the top demographically, economically, and politically; as such, this analysis considers the role that U.S. immigration policies have played in maintaining white dominance over immigrants of color, especially over undocumented immigrants.

I argue that during the periods examined in this paper these policy mechanisms have become more punitive, now concentrating on criminalizing recent immigrants, based on the immigration-crime stereotype, despite ample evidence that no significant links exist between immigrants and crime. I show that despite the need for their labor, and the existence of immigration policies that ensure their authorized passage to work permissibly in the U.S., there has been a rise in (1) anti-immigrant federal labor policies such as E-Verify, No Match Letters, and (2) statewide laws that aim to felonize some undocumented immigrant workers in some states. In short, immigrants have increasingly become targets of racist policies aimed at criminalizing them and which, therefore, make them vulnerable for deportation.

There has also developed a contemporary policy shift to detain and purge society of mostly immigrants of color by methods of social engineering which—like the Prison Industrial Complex—is manifest in the rise of a privately-owned “for profit” Immigration Industrial Complex that ultimately serves as a mechanism to institutionalize the criminalization of immigrants, by detention. As Koulish (2007) stated, “the immigration industrial complex”

involves “privatizing decades of border militarization and low intensity conflict. . .[and] is part of a post-9/11 neo-liberal regime that is designed to re-territorialize and privatize the war on terror on the domestic front. . .[that] figures prominently in . . . neo-liberal shock therapy.”

To fuel this industry, however, there have been successions of anti-immigrant policies that have made vulnerable both unauthorized and authorized immigrants. These policies reflect an anti-immigrant sentiment steeped in the public psyche conveyed to it by hate media, and by the concerted efforts of hate groups who stop immigrants crossing the México-US border and harass them in the interior of the US (see for example, SPLC 2009). Taken together, I will argue that these anti-immigrant activities have been undertaken to maintain, but mainly to protect, the white European hegemonic order.

In the first section of this paper, I briefly examine early trends of immigration to the U.S., which clearly exhibit that ethnic immigrants from Northern Europe created a white-dominated, racial hegemonic order in the U.S. I follow this analysis with a discussion of the early research on crime that clearly dismissed the notion that immigrants were engaging in higher rates of crime than were their U.S.-born counterparts.

EARLY IMMIGRATION: IMMIGRATION AND CRIME RESEARCH

The first period of heightened immigration to the U.S. examined in this paper spans nearly a century and comprises two distinct waves. In the first wave between 1819 and 1882, 10 million immigrants from Northern and Western Europe, along with an estimated 300,000 black slaves settled in the U.S. The second wave of immigration to the U.S. was dominated by Southern and Eastern Europeans; between 1882 and 1921, an estimated 20 million plus new inhabitants settled. Once the “new immigrants” from Southern and Eastern Europe arrived, bringing with them new customs and traits, the “old immigrants” from Northern and Western Europe began considering the social impact of immigration (Kelsey 1926).

“Native-born” white policymakers commonly accused recent immigrants of color of bringing the criminalities of their mother countries to the U.S. Ethnic and racist stereotypes of Southern and Eastern Europeans, commonly viewed as “nonwhite,” were implicitly and/or explicitly invoked in such charges (Cordasco 1973). In order to keep recent immigrants “in their place,” Western and Northern Europeans discriminated against other European immigrants and oftentimes engaged in violence against them (Yans-McLaughlin 1990). This *nativism* also led to enacting restrictive policies against various groups of immigrants of color, culminating in federal policies that virtually blocked their presence in the U.S. once they had

been used for their labor. Examples include the Chinese after having laid the railroads, the Filipinos and Japanese after having tilled the fields alongside *Mexicanos*, and policies against Southern and Eastern European immigrant workers after they had saturated the textile industry in the Northeast.

Following this anti-immigrant sentiment and practice, early studies characterized most immigrants as criminals, but these works were often false or misleading (McKee 1993). According to McKee, the racist Eugenics Movement provided “scientific” backing to public opinion by purporting the “biological inferiority” of non-Anglo Saxons and underscored the imported “evils” of newer ethnic groups (McKee 1993). However, the social science community discredited this pseudo science because of its lack of empirical evidence and methodological rigor (Hagan and Palloni 1998; Martinez 2000; Sellin 1938). Despite this, the idea’s popularity prevailed amongst certain individuals, and politicians that continued to impose anti-immigrant legislation through the mid-20th century.

A flurry of reports at the turn of the century undermined the ethnocentric underpinnings of the Anglo Saxon outlook toward the “crime-prone” foreign-born. For example, Hart (1896) denounced an earlier study that quantitatively linked foreign birth with criminality. Hart compared the foreign born to a combined sample of the native-born, their children, and the children of immigrants, and found that of “ten thousand white persons born in this country, a little less than nine” were incarcerated, while of those “born in foreign countries, nearly twice as many were convicts” (1896:396). Using the same data, but dividing the sample by generation and nativity, Hart also found that in the US, the foreign-born group accounted only for a fraction of the total crimes committed by their U.S.-born counterparts.

According to Colburn and Pozzetta (1974), in 1908, New York Police Commissioner, Theodore Bingham, wrote the most damaging and widely cited article in North America, titled “Foreign Criminals of New York.” Bingham wrote,

[immigration] brings among us the predatory criminals of all nations, as well as the feuds of the Armenian Hunchakist, the Neapolitan Camorra, the Sicilian Mafia, the Chinese Tongs, and other quarrels of the scum of the earth. Our streets are overrun with foreign prostitutes...and foreign anarchists openly advocate murder and arson in our slums. (Colburn and Pozzetta 1974:599)

Bingham’s remedy was to establish a secret police force that would hunt down, arrest and deport foreign-born criminals.

In direct contradiction to Bingham’s assertion, in 1901, a federally appointed body, the Immigration

Commission, issued a “Special Report on General Statistics of Immigration and the Foreign-Born.” It reported that foreign-born whites were less oriented toward crime than were U.S.-born whites. In 1911, the Immigration Commission stated that not enough satisfactory evidence had yet been found to show that migration has resulted in increases of crime (Horowitz 2001). As late as 1931, during the Hoover era, another federal entity, the National Commission on Law Observance and Enforcement, analyzed data on crime and arrest statistics from fifty-two cities, resulting in yet another report that undermined the popular belief that a high percentage of crime could be ascribed to immigrant “aliens” (Bowler 1931).

Even studies focused on the latter part of the 19th century, corroborated the claims that immigrants and crime were not linked. Hourwich (1912) found that from 1850 to 1860, the foreign-born population in New York increased relative to the total population, but the annual average number of convictions during this period fell below the average for the preceding decade. In the same vein, Kelsey (1926) found that from 1880 to 1890 as the foreign-born population went up, the rate of criminality went down.

To be clear, certain white ethnic communities did include a certain criminal element (Thomas and Znaniecki 1920). Consequently, research turned from discrediting the notion that immigrants were generally more prone than are native-born individuals to be engaged in crime, to why those that did engage in crime, did so. Early studies then focused on the limited opportunity structures that immigrants faced when they arrived, to dilapidated and disorganized neighborhoods in the U.S., particularly in cities like Chicago (Park, Burgess, McKenzie and Roderick 1925; Park and Miller 1923; Shaw and McKay 1942; Taylor 1931). To overcome the disadvantages afforded by their new neighborhoods, immigrants oftentimes took advantage of illegitimate opportunities (Merton 1938) by sometimes joining gangs usually comprised of second-generation youth (Ross 1937) or ascending into organized crime (Whyte 1943). Like most immigrants today, however, it is highly probable that the majority were law-abiding, hardworking, and wanted little to no contact with authorities.

Indeed, studies showed that crimes committed by immigrants were perpetrated generally within the immigrant community; that is, certain members of white ethnic groups preyed upon other white ethnic groups. Horowitz (2001) suggested that prior to the 1920s Jewish gangsters in New York recurrently terrorized strikers into returning to work, as well as picked pockets on crowded city streets. Italians, on the other hand, ran extortion rings in San Francisco and prostitution rings in Chicago. Furthermore, small grocery owners in these neighborhoods combined the legitimate and illegitimate by lending themselves to the loan sharking business, preying on the

incapability of newly arrived immigrant laborers to obtain credit through formal means. The economic and structural milieu of the enclaves of ethnic groups of color also lent themselves to the formation of petty and organized crime including the Japanese Yakuza, Chinese Triads, and the ability of Latin American drug cartels to establish control over the distribution of drugs (Lyman and Potter 2004).

Kenny and Finckenauer (1995) drew from Merton's strain theory claim that the "American Dream" stresses the goals of wealth accumulation, success, and power by means of hard work, education, and thrift. They argued that when acceptable means of obtaining "success" failed to materialize, individuals might employ illegitimate means to reach "success" or reject socially accepted goals and supplant them with alternative goals. Yet, they also contend that unlike in the U.S., organized crime was not entirely crime-driven, rather it was tied integrally to the political and economic systems in the home countries of some of these groups.

Responding to the idea of an *alien conspiracy*, whereby ethnic immigrants bring with them their "cultural and criminal evils," Kenney and Finckenauer (1995) showed that long before these waves of immigrants arrived, organized crime was well established amongst white ethnic immigrants and their successive generations in New York City, and other regions of the country. Yet, the consistent "fear" of the immigrant as criminals continued until restrictive immigration policies were initiated that included legal expulsion, and in many cases immigrants of color were not expelled from regions with legal authority, but rather forcefully by the hands of white immigrants.

EARLY IMMIGRANTS: OVERT DISCRIMINATION, VIOLENCE, AND EXPULSION

Marginalized white ethnic groups of various backgrounds experienced extreme discrimination manifested through mob violence by the dominant Anglo Saxon. For example, in 1874 Italians were killed in Western Pennsylvania's coalmines, lynched in 1891 in West Virginia and New Orleans and in 1895 in Southern Colorado. Slavic coal miners in Southern Pennsylvania were shot and killed in 1886 and 1897. However, these white ethnic immigrants experienced neither the sustained levels of violence, nor the expulsion that immigrants of color were subjected to during these epochs.

For example, Asian immigrants were not only discriminated against and violently attacked, but also were expelled from various regions in the U.S. (Yans-McLaughlin 1990; Sanmeyer 1991). From the 1850s through 1870s, Chinese gold miners were repeatedly harassed and killed in mining regions and in the 1880s, they were expelled from some forty localities in the West.

The most notorious incidents of violence against the Chinese included various massacres between 1871 and 1887 in cities in California, Wyoming, Washington, and Oregon. Asian Indians were expelled from Bellingham and Everett, Washington in 1907 and Live Oak, California in 1908. Japanese laborers were driven out of cities across California between 1921 and 1924, including Turlock, Livingston, Delano, Hopland, Woodlake, and on two separate occasions from Los Angeles; they were also expelled from Toledo, Oregon in 1925. Filipinos were attacked by white mobs in California between 1919 and 1930, in Exeter, Stockton, Dinuba, and Watsonville (Akers Chacón 2006). The discrimination, violence, and expulsion perpetrated by racist whites against Mexican immigrants in the U.S. were particularly heinous.

Pedraza and Rumbaut (1996) argued that the experience of northward-bound Mexicans closely mirrored that of the black experience in the South. Carey McWilliams (1948) corroborated this argument by shedding light on Mexican lynchings. He reported that the first person lynched in California was Mexican and argued that an accurate estimate of the number of Mexican lynchings between 1849 and 1890 would require "vast research." Furthermore, between 1915 and 1917, the Texas Rangers and other vigilantes in South Texas killed an estimated five thousand Mexicans (McWilliams 1948). According to Mirandé (1987), "Meskins" were depicted as bloodthirsty savages and stereotyped as "*bandidos*," when they banded together to combat the unprovoked lynchings, massacres, and land robbing along the border. *Mexicanos* were also subjected to a two-tiered justice system favoring white "settlers," that were oftentimes dedicated to the annihilation of these "despicable creatures" and viewed as heroes by the "respectable and honorable" dominating class (Mirandé 1987).

In examining this first period of high immigration to the US, the link perpetuated between criminality and immigration, irrespective of social science findings to the contrary, has provided the foundation for popular violence against immigrants, particularly marginalized immigrants of color. Stereotypes also helped to justify anti-immigrant policies targeting these groups despite the notion that immigration laws are enacted "for the protection and well being of U.S. residents" (Reitzel 1946:1100). As such, a flurry of anti-immigration laws began targeting specific groups and culminated in a blanket policy that, for all intents and purposes, stopped immigration to the US, which showed that the racial and ethnic makeup of the US was a primary concern for white nativists. According to McKee (1993), the only recourse for the white establishment was to create policy that would sterilize, prevent entry to, and make deportable those immigrants that were "diseased," "feeble-minded," and with "mental disorder."

According to the Center for New Community, "in the wake of the Civil War, and with the failure of

Reconstruction, it was Jim Crow and anti-miscegenation laws that intended to keep the races forever separate and distinct” (2005:5). As such, race-specific anti-immigration policies began with the serial exclusion of Asian immigrants in an epoch recognized for “yellow peril.” The Chinese were first prohibited from immigration in 1882, the Japanese in 1908 (which was not manifestly law), and the Immigration Act of 1917 excluded “Asian Indians and all other native inhabitants of a barred Asiatic zone” (Ngai 2004:18). This was followed by a more sweeping policy on immigration to the U.S. Though certain groups were restricted from migrating to the U.S., the nation’s first comprehensive restriction law, which set the foundation for future laws, was passed in 1924 and was retrospectively viewed as an “emergency measure” (Stockwell 1927).

The 1924 Immigration and Naturalization Act “established for the first time numerical limits on immigration and a global racial and national hierarchy that favored some immigrants over others” (Ngai 2004:3). Specifically, the 1924 Act established national origin quotas, exempted countries of the Western Hemisphere from numerical restrictions, and excluded all persons ineligible to citizenship from immigration. From this policy the Immigration and Naturalization Service (INS) was born. On one hand, its purpose was to restrict undesirable white ethnic immigrants, and on the other, it was supposed to deal with Mexican immigrants at the border by the mechanism of the INS border patrol.

This national immigration policy was based on white racism and ethnocentric ideologies. Western Europe benefitted greatly from the distribution of national origin quotas because they were calculated based on two percent of the foreign population using the 1890 census, a census that did not reflect the influx of immigration from Southern and Eastern Europe as did the 1910 or 1920 census. Furthermore, the exclusion of all “persons ineligible to citizenship” continued the legacy of Asian exclusion as it barred all the nations of Eastern and Southern Asia from immigration (Wu 2003; Ong Hing 2004).

During this period, Latino immigrants, mostly *Mexicanos* as “commuter” labor, were typically allowed to freely cross the México-US border in their pursuit of agricultural work, but at other times, when their labor was unwanted, they were restricted, or were even expelled *en masse*. This happened, for example, in the 1930s when deportations and repatriations promptly occurred once the *migra* had been handsomely funded, which also coincided with the end of both World Wars. Bert Corona, an acclaimed immigrant and labor rights activist during the mid-20th century, reported that based on the INS’s “friendly” opportunity for *braceros* to regularize their expired labor contracts, a litany of them that complied to receive their *permisos*.

The INS knew exactly where they lived, which made it very easy for its agents to round up an estimated over one million *Mexicano* laborers in 1954, and deport them after sending them “baggage letters” thirty days prior (Garcia, 1994). According to Corona, this was the onset of “Operation Wetback,” a series of deportations that lasted for years, and named after *Mexicanos* that worked in the US without documents, or wetbacks, “...a pejorative term suggesting aliens who were in the country sponging off its riches ...[but were actually] working [here] productively” (182), and had merely crossed the border in search of work because of the high unemployment in México, and were unable to enroll in the *Bracero* Program.

The enforcement policy of employing deportations has been a prominent and effective method for the INS, and now the Immigration and Customs Enforcement (ICE), a branch agency of the Department of Homeland Security (DHS), to legally expulse undocumented immigrants from this country, to give a cover that America is “safe.” It is historically obvious that the agency has proven not to be effective in deterring immigrants from crossing the México-US border (Florida 2008).

In sum, this period was marked by high immigration, violent expulsions of ethnic immigrants by whites, and policies that sought to restrict and expulse immigrants of color, and is marred by a history of violence and overt racism. Although there has not been the historically extreme overt violence by whites lynching other white immigrants and immigrants of color as witnessed in the past, there has been an increased membership in hate groups and hate crimes against Latinos (documented earlier) in recent years. The number of hate groups identified by the SPLC rose from a reported 602 in 2000, to 888 in 2007, or a 48% uptick, which has arguably been driven by the immigration debate (Potok 2008). Southern Poverty Law Center data for 2010 puts the number of hate groups at 1002, which is 12.8% above the number in 2007 and 66.5% above the numbers reported in 2000 (Potok 2011).

In the following years, policies were focused on not only restriction but also imposed quotas that laid the groundwork for justified expulsions manifested through the development and increase of INS’s militarization of the border, interior raids on the community and workplaces, and deportations. In the next section, I provide a brief review of the prevailing stereotypes and anti-immigrant policies that have now instituted the eradication of immigrants from a convergence of tactics—imprisoning immigrants for profit, and maintaining the hegemonic power structure.

CONTEMPORARY IMMIGRATION: IMMIGRATION AND CRIME RESEARCH

The second period of high immigration to the US is marked by the 1965 amendments to the Immigration and Naturalization Act. The 1965 Act replaced the 1924 national origin quotas with a “global (applying to all countries) and evenly distributed (20,000 per country)” quota system (Ngai 2004:227). Immigration legislation for the first time created the conception of the “undocumented worker,” which has become synonymous with “Mexican,” because of the large labor pool that México has supplied and of which has consistently exceeded this limit. At the same time, it imposed quotas on countries in the Western Hemisphere. For instance, the 1965 Act opened up the possibility of Asian immigration but made Latin American immigration more arduous by imposing a quota the 1924 Act had never imposed.

The relaxed immigration quotas led to significant increases in legal international migration to the U.S. beginning when the Act went into effect in 1968. In the following era of immigration to the U.S., the racial composition reversed from 90% white immigrants, to 90% immigrants of color entering into the U.S. (Massey, Durand and Malone 2002). That is, the composition of international migration to the U.S. changed from the earlier period of high immigration largely dominated by European immigrants to one dominated by Asian and Latin American immigrants (for the increase in Latin American immigration in spite of the caps placed on the Western hemisphere see Massey 1995). Furthermore, the introduction of quotas on the Western hemisphere created an undocumented stream of immigration from México without numerically changing the immigrant flow, and the militarization of the border increased the incentive for immigrants to become a permanently settled population (Massey, Durand and Malone 2002).

As immigration and crime research waned during the mid-20th century, it was again brought to the forefront in the late part of the century after the last current flow of immigration was well underway, and the findings were very similar to earlier research: immigrants were less engaged in crime than were their U.S.-born counterparts. Similar to findings at the turn of the 20th century, studies at the end of the 20th century still supported the idea that immigrants commit proportionally fewer crimes than do U.S.-born citizens (Horowitz 2001).

In an analysis of FBI records, the General Accounting Office reported that foreign-born individuals accounted for only 19 percent of total arrests in six major cities in 1985. Similarly, Butcher and Piehl (1998a) examined cities with high-density immigrant populations and those with fewer immigrants and claimed that although cities with high levels of immigration tend to have high crime rates, there was no differences from “year to year or over 10 years,” and further claimed that “it does not appear that reducing

the number of new immigrants will lead to a measurable impact on crime rates” (1998a:486). Although there has been an increase in the incarceration of foreign-born residents, this increase coincides with an overall trend showing an increase in incarceration in general (Morawetz 2000). This holds, even though the data for immigrant incarceration may be inflated, because when immigrants are sentenced they are typically given longer sentences than are U.S.-born inmates (Butcher and Piehl 2000).

Contrary to earlier public perceptions that immigrants brought the criminality of their home countries with them, studies have shown that the longer the exposure to the U.S., the more likely immigrants and later generations mirror and or surpass native-born crime rates. Specifically, Butcher and Piehl (1998b) found that newly arrived immigrants were less likely to be incarcerated than those that had been in the U.S. for a longer period; furthermore, they argued that the longer immigrants stay in the U.S., the more likely they are to reflect the conviction rates of the native-born. In a *New York Times* article Sampson (2006) reported that first-generation Mexicans in Chicago were 45 times *less* likely to commit violence than the third-generation. Furthermore, Lee (2003) found that “assimilated” youth have long been more likely to be delinquent.

Aside from trend data, theoretical advancements have also been made in the field of immigration and crime. Two researchers, Sampson and Martinez, in particular, have developed a slate of research focused on crime in relation to race, ethnicity, and immigration. For example, Lee and Martinez (2000) argued that crime is not only a function of economic or cultural forces, but is also linked intimately to the fundamental process of social change.

Other scholars also criticized cultural explanations of crime, pointing instead to neighborhood effects in mostly immigrant communities, which have advanced the literature on social disorganization (Sampson, Morenoff and Raudenbush 2005; Sampson and Wilson 1995; Sampson, Raudenbush and Earls 1997). For instance, Sampson and Lauritsen (1997) advanced the “proximity hypothesis,” pointing to structural conditions and arguing that the “subculture of violence” could not account for the wide variety of crime across structurally diverse neighborhoods of color. They assert that powerful and lower-level factors coincide to impede social organization, creating climates for expected criminal activities. Because immigrants were settling in these urban transitional zones an intuitive interpretation might expect higher rates of crime among this group, and that seemed to be the case in the 1930s. However, the key issue affecting crime at that time was argued to be the organizational stability of the community. Disorganized neighborhoods frequently showed higher levels of transition, and competing cultures were correlated with higher levels of crime. However, when these immigrants moved out to more stable working class homes the crime rates in these areas was lower.

What Sampson's recent research shows is that areas of settled immigration actually have a lower crime rate. Sampson (2008) concluded "living in a neighborhood of concentrated immigration was directly associated with lower violence . . . immigration thus appeared "protective" against violence" and that "cities of concentrated immigration are some of the safest places around" (2008: 29, 30). Indeed, he argued that rather than cultural conflict, immigration and increasing cultural diversity has helped spur economic and urban growth as immigrants shape the host society.

Ramiro Martinez has been at the forefront of the research on the relationship between immigration, ethnicity, and crime, and he says that the vast body of literature fails to support the hypothesis that immigrants are highly crime-prone. He has quantitatively examined the homicide rates among ethnic groups in Miami during the 1990s (Martinez 1997), the relationship between ethnic distribution and homicide (Martinez 2006), the relationship between immigration, urban violence, and homicide rates (Martinez 2000), the impact of immigration on homicide rates across three border cities (Lee, Martinez and Rosenfeld 2001), cultural differences in homicide rates among and between immigrant and native groups in Miami (Martinez 2002b), and Latino homicide rates in five cities across the U.S. (Martinez 2002a). Martinez and Valenzuela (2006) addressed the many facets of the nexus between immigration, crime, ethnicity, and violence and found that immigrants are clearly underrepresented in crime rates. Based on similar assertions Nielson and Martinez (2009) claimed that immigrants fail to disrupt and/or undermine social integration in their communities. Similarly, Sampson's (2008) research shows an inverse relationship in the period 1990-2004 between homicide and immigration, with the highest immigration rate correlating to the lowest homicide rate:

[T]he pattern upends popular stereotypes. Among the public, policy makers, and even many academics, a common expectation is that the concentration of immigrants and the influx of foreigners drive up crime rates because of the assumed propensities of these groups to commit crimes and settle in poor, presumably disorganized communities . . . and yet immigrants appear in general to be less violent than people born in America, particularly when they live in neighborhoods with high numbers of other immigrants. (Sampson, 2008:29-30)

Moreover, where Latinos do engage in violence, has typically nothing to do with a culture of violence, but with the conditions that create conflict. Martinez (1996) undertook the "first comprehensive analysis of Latino homicide," and found that inequality among the Latino community is more to blame than simply poverty. His study showed that a large income gap within the

community creates the conditions under which Latinos vent frustration against each other. Their frustration is compounded by the obstacles immigrants faced, making them less likely to socially and economically compete for scarce jobs and resources, and therefore, less likely to compete for status within these communities (a focus negated by Wilson 1987, 1996). Martinez (2002b) also examined the Latino experience stemming from the newest wave of immigration, which he dates between 1980 through the 1990s.

Though he posited that research on Latino crime practically remained untouched during the 1980s and 1990s, and that more studies on Latino crime were needed, Yzaguirre (1987) found that Latinos experienced an increase in crime in their communities because of federal job-training program cutbacks. His study showed that it cost less to train individuals and employ them than it did to incarcerate them for a crime they committed because they had no money. Despite few programs to train immigrants, there remains high employment rates amongst them, which could explain to some degree their lower crime rates.

At the end of the 20th century, research still reported low engagement in crime amongst immigrants. However anti-immigrant forces that were being galvanized, and which were fully triggered by the events of 9/11, heightened the rhetoric about them being crime prone. Stereotypes and labeling of immigrants of color, mostly Muslims, were used to justify many atrocities to them. But this rhetoric was soon turned and cast upon Latino immigrants and has been effective in riling up and expanding the memberships of hate groups, which has in turn prompted the brunt of hate crimes in the US, against Latinos.

STEREOTYPES, POLICING, AND POLICY

The public perception that links immigrants with crime, finds new manifestations in the contemporary period, particularly surrounding issues of national security, drug enforcement, and unauthorized immigration. Kil and Menjivar suggested that the public frequently views immigrants as "criminals, enemies and [therefore] threats to national security" (2006:173-174). According to some researchers these views have been fueled by acts like the initial bombing of the World Trade Center in 1993 (Kleinknecht 1996) and the ensuing 9/11 events (Fernandez 2007). In fact, the nativist sentiment post-9/11 led to a wave of hate crimes committed against the foreign born, especially the Muslim community that became a target of vicious attacks and, in some cases, homicides (Hanania 2003). According to FBI data anti-Islamic hate crimes averaged 32 per year in the five year period from 1995-1999. In 2001 they increased to 546, and averaged 219 for the five year period from 2000-2004 and 144 per year during the most recent period from 2005-2009. In 2007, some U.S. politicians, such as Newt Gingrich

“declared the ‘war at home’ against illegal immigrants was more deadly than the battlefields of Iraq” (Sampson 2008: 29).

Indeed, hostility targeting Mexican immigrants is particularly acute, especially near the México-U.S. border. For example, Kil and Menjívar (2006) equate the U.S. “war on drugs” as the “war on the border.” U.S.-led antidrug efforts targeting *Mexicanos*, and the criminalization of unauthorized immigrants has led to the stereotype of the “drug smuggling” Mexican *inmigrante*. Based on conversations with immigrants, in the rare cases where unauthorized immigrants have smuggled small quantities of drugs, it is oftentimes used to fund the border-crossing journey. This is much like a cross-country hitchhiker filling his or her pockets with valuables to sell, pawn, or trade for victuals—a border-crosser would typically cross drugs to remunerate the trek, not as a career endeavor.

Furthermore, Mexicans, irrespective of their authorized status have been stereotyped as “illegal,” making the pejorative term *illegal* synonymous with the “disease-carrying, crime-prone Mexican.” Yet, Passel and Fix (1994) showed that only one-third of all unauthorized immigrants are Mexican. Moreover, reports have shown that approximately half of all unauthorized immigrants overstayed their visas, and a large portion of them crossed the border permissibly (González 2005). Nevertheless, Martinez (2006) stated that media stereotypes have existed since the turn of the last century, “morphing from bandit to gang member.”

Though some scholars have argued that there are periods when immigrants are portrayed in a favorable light, arguably these blips occur within a larger anti-immigrant context. Santa Ana, Trevino, Bailey and Necochea (2007) argued that the media in “humane” light portrayed immigrants during the immigrant rights mobilizations in Spring 2006. However, just as before the mass mobilizations, immigrants were portrayed and stereotyped once again as “criminals” shortly afterward. This blip in the media’s characterization of immigrants occurred in the context of increasing anti-immigrant sentiment and persistent public stereotyping of Latino immigrants (Chavez 2001) as gang members, drug smugglers (Mears 2001), and terrorists (Kil and Menjívar 2006).

The 2006 mobilizations themselves were in response to anti-immigrant sentiment that was galvanized in a draconian restrictive immigration reform policy, HR4437, which passed on December 16th, 2005, in the House of Representatives in less than a week, but stalled in the Senate. Had this Bill been passed, it would have immediately criminalized 12 million undocumented immigrants and (1) charged anyone that aided and abetted them with an aggravated felony, (2) authorized local law enforcement officers to apply federal immigration laws, (3) constructed hundreds of miles of fencing along the

México-U.S. border, and (4) called for the immediate deportation of all unauthorized and deportable immigrants. Since then, anti-immigrant sentiment, rhetoric, and actions have thrived in the media, further polarizing the U.S. citizenry.

Racialized stereotypes of Latino and Middle Eastern immigrants found in the public and the media have real consequences. For example Green, McFalls and Smith (2001: 486) argued that “the media instigate hate crime by formulating, propagating, and legitimating stereotypes about potential target populations,” which is particularly troubling for immigrants given their latest treatment in the media and the current rise in Ku Klux Klan membership and other nativist fringe groups. Nevertheless, Sacco (1995) pointed out that, regardless of what is reported in the news media, it is the audience members’ own predispositions that determine their interpretation of what they are reading or viewing and the actions they take in response to the media. In other words, the media simply incite existing racist-oriented reactions and provide scripts and justifications through which individuals become motivated to on.

Presently, with the exception of the state still targeting Muslims as “terrorists,” the brunt of attention in the media has turned to Latino immigrants, but mostly to *Mexicano* immigrants. In terms of the galvanization of hate-driven sentiment among the American public, it is clear that it has greatly influenced and justified anti-immigrant policies and actions that serve to protect the status quo. In the following sections, I focus mainly on *Mexicanos*.

HATE GROUP VIGILANTISM AND ITS PUBLIC SUPPORT

The propensity to view immigrants as criminals has led to a widespread campaign and heightened vigilance to monitor immigrants’ activities, restrict their movement, and ultimately remove them from the U.S. In the years following the 9/11 events, anti-immigrant-oriented hate groups spawned across the US (see data discussed earlier and the SPLC’s geographical hate map, SPLC 2011), yet some had already been in existence along the México-U.S. border. In Arizona, a band of ranchers had already been actively accosting immigrants crossing through the treacherous desert across their land. In one case migrants sued a rancher for assaulting their group (Seper 2009).

In 2004, a hate group emerged that was named after California Proposition 187, “Save Our State” (SOS), a law that in 1994 would have denied social services to immigrants statewide. The myopic nature of SOS disallowed for it to move beyond Southern California, and of what it once was, it has become a mere shadow. It targeted perhaps the most vulnerable immigrant group, day laborers—those who seek informal temporary employment in public view. Another hate group that was much more

successful and mainstreamed was the Minutemen Project (MMP), who clandestinely grew through 2004, and publicly surfaced in the spring of 2005. Its purpose was to circumvent the entry of migrants passing through the Naco-Bisbee Arizona corridor during the month of April, under the guise of a “community watch group.” Then California Governor Arnold Schwarzenegger praised the hate group’s actions, and later invited them to undertake operations in California (Sterngold and Martin 2005). Although the MMP projected to draw an estimated 2,500 “border watch” volunteers in Arizona, according to Vicente Rodriguez, an immigrant rights activist from San Diego, when he arrived to the city of Tombstone, Arizona, to protest the presence of the MMP “there was seventy-five minutemen that showed up and they stayed for the month of April, they reported turning over 327 immigrants to the Border Patrol...about seventy-five television cameras were also present, [but left] four days later because the Pope died.” Although there was resistance to the presence of the MMP in Arizona, when the MMP chose to “patrol” the border in Eastern San Diego County, the leftist faction of the Southern California Immigrant Rights Movement mobilized to successfully neutralize their operation (Díaz 2010). The activists allowed only three migrants to be detained by the MMP and/or the *migra*, and two migrants were shot by the *cazamigrantes*.

Despite the success of such anti-immigrant hate groups as MMP and SOS, along with the ability of the Arizona ranchers to escape criminal charges for the many atrocities they committed against migrants, SOS and other hate groups, such as the American Civil Patrol, and Friends of the Border Patrol, never mobilized to the border during the zenith of these racist activities that preceded the passage of HR4437 in late 2005 (Díaz, 2010). Nevertheless, they were successful in opportunistically drawing a modicum of media attention. It can also be argued that, during this epoch, these groups were fueled by the rise of “hate media” that exploded but none stood out and garnered more attention than CNN’s Lou Dobbs, who quickly became the conventional voice of the anti-immigrant movement. Before being fired by CNN, he can be credited for unilaterally bridging the anti-immigrant forces from within the U.S. Congress, the xenophobic vigilantes, and most critically, mainstream America, against Latino immigrants (Lovato 2009).

In the years leading up to and after the passage of HR4437, it has been *Main Street America* that has given rise to the anti-immigrant movement to impose local and statewide anti-immigrant legislation around the country. One of the most widely known local struggles around this issue was in Hazelton Pennsylvania (Powell and Garcia 2006). Other statewide struggles that have given rise to the most racist law enforcement shenanigans, not seen since the Texas Rangers of the 19th century, have occurred in Arizona around 287G, and Arizona State Proposition 200, which have both gone beyond California Proposition

187, that failed on unconstitutional grounds in the mid-1990s.

Since the passage of HR4437 in late 2005, the focus has been on enforcement-only policies by the past and current presidential administrations as a resolution to the immigration reform debate. Compulsory policies were imposed by the Bush administration, which included home and workplace raids, deportations, and most dastardly, the detention of men, women, children, and even entire families, which could prove costly in the next election where Latino citizens were voting (Sanchez 2009). These racist actions to pass anti-immigration laws serve a much broader purpose than the mere appeasement of hometown anti-immigrant racism. The continued criminalization of immigrant workers fuels an emerging privately owned and maintained machine that has reaped the benefits and has grown to unprecedented proportion.

In the next section, I discuss some of the policies that have served to criminalize authorized and unauthorized immigrants, and how these anti-immigrant legislative attacks on the immigrant community have made it more vulnerable to enforcement-only policies during the Bush and Obama administrations.

CONTEMPORARY IMMIGRATION POLICY

Rhetoric from federal-level politicians and their national allies that has pushed “enforcement first” policies, and that links national security with unauthorized entry into the U.S., fuels the “phantom panic” that aims to expel immigrants from the country; but, most reprehensibly primarily criminalizes them. Prior to 2007, national nongovernmental organizations such as the National Council of *La Raza* (NCLR), the Mexican American Legal Defense and Educational Fund, and the League of Latin American Citizens, along with the Catholic Church, the Service Employees International Union, and other so-called immigrant advocates including Democratic Party “allies” to the Immigrant Rights Movement, allowed for the anti-immigrant Republican Party’s extreme right-wingers to continue demanding “enforcement first” policies. This included the Secure Fence Act of 2006, which insured a “double fence” along the border, and the 287G Program that has trained local authorities to enforce federal anti-immigration laws after being “trained.”

It can be argued that the public’s disbelief of the government’s capacity to secure the México-U.S. border led to stalled immigration reform in 2006 and 2007, which prompted both political parties to begin looking “tough on immigration.” As a result, HR 6061, the Secure Fence Act of 2006 was overwhelmingly passed on September 14th, by 64 Democrats and 131 Republicans, voting against 131 Democrats and 6 Republicans and 1 Independent, for a total of 283 to 183; and in the Senate it passed on the 29th

September by a margin of 80 to 19, with 26 Democrats supporting the legislation (Washington Post 2010).

And yes, then Senator Barack Obama (D-IL) was among those Senators voting in the affirmative despite what he stated “sen[t] two strong messages with which he disagree[d]—that México is “not our friend” and that an enforcement-only approach can work—because restoring order in the border region is necessary to winning the American people’s support for full reform” (Kowalski 2007: 1). In one of Obama’s favorite words, these reasons were “disingenuous” because no fence, long or short, will restore “order” on the border, and also because, as a presidential candidate, he should have led and persuaded, not hid behind a “safe vote” (Kowalski 2007).

In 2007, both political parties and the brunt of non-governmental organizations, including large unions and the Catholic Church, argued that “Every nation has the right to protect its borders,” and that once the border is completely enforced “immigration reform is then perceivable.” This is encoded “enforcement!” Now, these organizations, along with the Democratic Party, are admonishing enforcement-first policies but they cannot have it both ways. Because of their demands for enforcement in order to get “reform” new policies, like the statewide Arizona law SB1070, are being implemented across the country and this has ultimately led to rampant racial profiling and hate crimes against Latino immigrants. The mere presence of either a perceived foreign born or “foreign-looking” U.S.-born individual, seems to be a prerequisite for their perceived participation in criminal behavior, and this is especially true if he or she “looks Mexican” (Mirandé 2003).

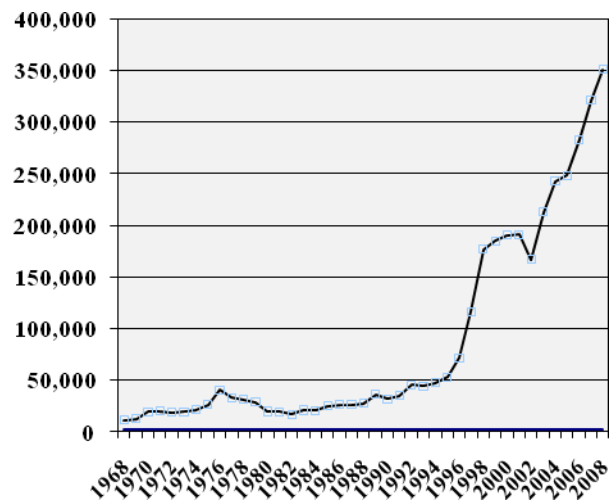
The link between immigrants and criminality has led to policy that is aimed at curbing the immigrant population by lowering the benefits provided to them, attacking the cultural core value of Latino immigrants, the family, by expelling individuals, like in earlier waves of immigration, and by attacking immigrants’ livelihoods and their very existence in U.S. society. For instance, in the 1990s three state initiatives were placed before California voters in consecutive elections. Proposition 187, on the 1994 ballot, known as the “Save Our State” initiative, sought to deny undocumented immigrants access to public benefits such as health care and education; Proposition 209, on the 1996 ballot, known as the “California Civil Rights Initiative,” sought to end affirmative action; and, Proposition 227, on the 1998 ballot, known as the “Unz Initiative,” sought to end bilingual education. California voters passed all three initiatives, however 187 was determined to be unconstitutional and was never implemented. In 1996, these state initiatives were supplemented by anti-immigrant legislation at the federal level.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, established “restrictions on the eligibility of legal immigrants for means-tested public assistance and broadened restrictions on public benefits for undocumented immigrants. It also required the INS to

verify an immigrant’s status before he or she could receive benefits” (Singer and Gilbertson 2000:3). In 1997, in response to protests and public outcry, some immigrants who entered the U.S. before 1996 had their benefits restored (Fix and Passel 2002; Reese and Ramirez 2002).

The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), augmented sentencing for numerous “low level” or previously considered misdemeanor crimes, expanded the deportable criteria for immigrants who committed offenses and, the most inequitable change, made these violations retroactive leading to a sharp rise in deportations (see Figure 1).

Figure 1: Deportations in the US 1968-2008



Source: This graph is derived from data provided from the Department of Homeland Security

Thus, the growth of anti-immigrant policy is promoted regularly as “anticrime” legislation in an attempt to portray the government as being “tough on national security.” For example, Paterson (2010) argued that on May 26th, 2010, President Obama has supported the “manufacturing of a border crisis” by sending National Guard troops to the border along with \$500 million, although “El Paso and San Diego are rated among the safest cities in the US. Since 9/11, no terrorist has been detected crossing from México. Even detentions of border-crossers are way down, up to 90 percent in the New México corridor alone” (2010:1). Furthermore, despite the head of DHS, Janet Napolitano’s claim that “If you look at the facts, the border is now more secure than ever,” even Cecilia Muñoz the former head of NCLR and current White House deputy Cecilia Muñoz “denied politics was the main motivator for calling out the Guard. Reiterating the President’s position, Muñoz insisted the focus of the Guard deployment would be halting illegal drug and cash shipments, not immigrants” (Paterson 2010:

3). Also in light of record low crime rates along the US side of the México-U.S. border, Mexican immigrants, like criminals, even those who have usually not committed a felonious or other serious offense, continue to serve time in jail preceding deportation, “in limbo.”

Days after the major 2006 mobilizations that began in Philadelphia, and followed in the Bay Area, Chicago, Dallas, Denver, Los Angeles, Milwaukee, and many other cities around the country against the anti-immigrant legislation, or what I have called *La Gran Epoca Primavera 2006* (Díaz 2010), the U.S. Senate immigration debate took place on March 27th, 2006, which virtually eliminated from all consideration the draconian provisions of HR4437. This bill was undoubtedly defeated on the streets; the historic mobilizations clearly influenced the debate that undermined HR4437, and these images are embedded deeply still in the memory of citizens and noncitizens alike.

Even so, as described above, in recent years law enforcement has increased its anti-immigrant campaign of deporting and detaining mostly Latino immigrants at an alarming rate. This is a more sophisticated methodology of enforcement that now has the essential goals of the Prison Industrial Complex (PIC), detain for profit, and eradicate from society a certain population. In the case of immigrants, in the past they were viewed as “alien,” and sent back to where they came from; in the present they are viewed as “criminal aliens” and, therefore, imprisoned in publically funded privately operated for profit penitentiaries to keep the public “safe.”

THE RISE OF THE IMMIGRATION INDUSTRIAL COMPLEX

It has been established that the criminalization of immigrants, whether they have entered the U.S. permissibly or not, and public discourse that associates them with the “terrorist threat,” along with a history of draconian anti-immigrant policies, have created and fueled a profit-making “Immigration Industrial Complex” (IIC), that is highly centered around workplace raids, deportations and most detrimental to this group, detention (Fernandez 2007; Golash-Boza 2009).

As suggested earlier, because the public commonly perceives Latinos as a “crime threat,” usually as drug dealers and gang members (Martinez 2006), it provides support for the government’s efforts to militarize and spatially secure the México-U.S. border (Palafox 1996; Nuñez 1999). However, the México-U.S. border is not the only focus of national security. Border enforcement has moved to the interior (Menjívar and Bejarano 2004); ICE has increased their efforts to raid workplaces and communities, plaguing Latino immigrant communities with fear and harassment. These raids have resulted in scant apprehensions of mostly undocumented Latino

citizens and proved to be generally ineffective in securing the border.

Kossoudji (1992) found that migrants stay in the U.S. longer when they are not apprehended, and when apprehended stay in México shorter periods of time before returning to the U.S. to compensate for the cost of a past apprehension. One researcher advocated for the police community to record ethnicity and related data sources so that researchers and practitioners can directly test, rather than assume, that Latinos are — or are not — crime prone (Martinez 2006).

CATCH AND RELEASE, CATCH AND DETAIN, AND CONSEQUENCES

Although expulsion via deportations has been the pattern for nearly a century, now one of the most widespread and insidious ways in which expulsions are pursued is by detaining immigrants out of public view (Fernandes 2007). Detainment has increased by 31% in the past ten years, and among undocumented immigrants from all nationalities, has risen from 6,785 in 1995 to more than 22,000 in 2006, and the U.S. Government was paying the detention center owners \$95 a head in 2007 (Lydersen 2007). Detentions tripled from 1994 to 2001, from 5,532 to 19,533; and in fiscal year 2000 the then INS admitted more than 188,000 impermissible immigrants into detention (Jackson Lee 2001). From 1997 to 2007, detention rates more than doubled (Douglas and Saenz 2009). Detentions severely and negatively affect detainees’ lives while they await deportation or asylum hearings. Ironically, many detainees have not been convicted of a crime, yet they are held in facilities that restrict their movement, prevent their access to gainful employment and, most detrimentally, limit interaction with their families and society, both of whom are greatly dependent on them.

Detentions and deportations are exacerbated with the increase in raids carried out by ICE. According to the Associated Press (2007), worksite arrests have dramatically increased in the past two years; ICE agents have arrested more than 4,000 people in workplace raids from October 2006 through September 2007 and 3,700 during the previous year; that is up from fewer than 500 arrests in 2002 and 2003. Because of the home and workplace raids, expulsions have also risen. In 2004, there were an approximate 174,000 deportations; there were approximately 221,664 deported under the guise of “national security” in 2006; an increase of 20 percent from 2005; in the fiscal year 2007 there were an estimated 288,663 deportations, and in the following year 2008, 349,041 deportations were undertaken. Haughtily, ICE stands by its arrest procedures, which includes allowing phone calls, asking about familial and childcare issues, and

giving lists of free or low-cost legal aid offered by organizations in these areas of apprehension.

Organizers of the Immigrant Rights Movement have experienced years of institutional backlash at the hands of the US government for the spring 2006 pro-immigrant mobilizations. Three years before the 2006 mass mobilizations, fewer than 500 arrests were made; the year prior, 3,700 individuals were arrested by ICE, and the year following, an estimated 4,000 individuals were arrested in ICE workplace raids (Garcia 2007). As recently as October 2008, more than 300 suspected undocumented immigrants were detained at Raeford's Columbia Farms, a chicken processing plant in Greenville, South Carolina (Associated Press 2008). Just two months prior, in August 2008, more than 600 suspected undocumented immigrants were detained at a Mississippi plant in the largest single-workplace immigration raid in U.S. history (Ordóñez and Alexander 2008); and, in the Inland Empire, California, dozens of day laborers were arrested, beginning on Christmas Eve and Day, 2008. During these actions a disgruntled *migra* agent was fired for giving water and aiding an injured immigrant against administrative orders, and exposed an "arrest quota." His superior wanted him to stay in the field to meet his apprehension and arrest quota for the month (Taxin 2009). Although the raids have slowed, after mobilizations by pro-immigrant forces at the ICE office in Riverside, the struggle continues in the Inland Empire (Wall 2009).

Not only are unauthorized immigrants being deported at an alarming rate, but also the deportations of authorized immigrants who have engaged in "criminal" activities, have also dramatically increased. According to Kanstroom (2000), due to the provisions of the IIRIRA, long-term permanent residents were immediately deportable for minor post-entry offenses. Because this policy was retroactive, many individuals convicted of felonies who had served their time were again incarcerated to await deportation trials. Indeed, following the implementation of the 1996 Act, over 500 legal residents were detained after being arrested for old DUI charges. Furthermore, any individual who has committed any type of felony, is subject to automatic deportation (Kanstroom 2000) and the term "aggravated felony" was relaxed to include fraud—which, prior to this, was neither considered aggravated, nor a felony—in order to inflate deportable criteria (Morawetz 2000). Finally, laws have become so far reaching that both documented or undocumented immigrants in a state or federal prison are eligible for deportation; in urban areas there has been a 50 percent increase in arrests for misdemeanors; even for petty misdemeanors (Butcher and Piehl 2000). These actions preceded the atrocities of 9/11.

Furthermore, in recent years, in an effort to "cleanse" the U.S. of undesirables or "criminals," the criterion for deporting immigrants has also expanded, leading to an increase in deportations. For example, in 2007, 221,664 unauthorized immigrants were removed from the U.S., an

increase of 20 percent from the preceding year (Preston 2007). Many of these individuals lost their right to due process and were removed under the guise of "national security," especially after the events of 9/11, whereupon attention has slowly turned to the specific criminalization of undocumented Latino immigrants.

Immigrants that have fled life-threatening situations, such as war, and then subsequently seek asylum, but who entered the US "unlawfully," are often a targeted group for deportations; this is especially relevant for children. In 2005, the Department of Homeland Security arrested 7,787 children, and every year thousands of children enter the United States, impermissibly and alone (Scharf and Hess 1988), and the average age of these traveling kids was 15 years old (Bhabha and Schmidt 2008).

At the core of the Immigration Industrial Complex is the inhumane and immoral division of families, despite the significance of so-called American family values. These racist anti-immigrant policies criminalize parents and children alike, and subsequently tear their families apart. Immigrant parents and immigrant rights activists have long complained that procedures used by ICE make it arduous for parents to ensure childcare for their children in case of their being arrested (Associated Press 2007). The main grievance is that this policy, that not only criminalizes parents but children alike, tears families apart, keeping parents from employment and, therefore, leaves many families unable to cope on single or nonexistent incomes (Garay 2007). Between fiscal years 1998 and 2007, ICE reported 2,199,138 removals in the U.S., involving 108,434 undocumented parents of U.S. citizen children (DHS 2009).

Randy Capps, in a 2006 Pew Hispanic Center 2006 study, estimated, that there are five million children in the US with at least one undocumented parent; an estimated 3.1 million children are US citizens, and an estimated 1.8 million are themselves undocumented. He stated that "there are a lot more children, if you will, that are at risk of consequences in the future if these worksite raids are ongoing" (Associated Press 2007). The Associated Press cited Lisa Navarrete, from the National Council for La Raza, "We're hearing these stories every week, of something happening, an enforcement action, kids and families being separated, kids being left behind not taken care of...clearly that's a major issue within this whole enforcement strategy" (2007:2).

The incarceration of children makes them *de facto* co-conspiring crimeless prisoners, much like the Japanese and Jewish "interns" of the past. In some cases, children are deported while their parents are allowed to stay in the country (Toosi 2007); or parents are picked up in a sweep and the children are left to fend for themselves (Castañeda 2007). Nevertheless, facilities like the Hutto Detention Center are constructed to "maintain the unity of alien families" (ICE 2007). As previously mentioned, this often means that children who are US citizens are detained in

facilities that are much more like prisons than like the “homes” the government and or profiteers would portray.

DISCUSSION

The perception of “*criminal alien*” has remained popular through much of US history, despite the large body of evidence that indicates immigrants commit crimes at a lower rates than do their U.S.-born counterparts (Butcher and Piehl 2000; Kanstroom 2000; Moenoff and Astor 2006; Morawetz 2000). In a joint paper sponsored by the Carnegie Endowment for International Peace and the Urban Institute, Horowitz wrote, “Few stereotypes of immigrants are as enduring, or have been proven so categorically false over literally decades of research, as the notion that immigrants are disproportionately likely to engage in criminal activity...(If anything) immigrants are disproportionately unlikely to be criminal” (2001:2). Despite research contradicting the stereotype of *criminal alien*, immigrants are linked continually with crime in the public’s perception and in the rhetoric used to justify anti-immigrant policies. Such negative images of immigrants, particularly immigrants of color, fuel the policing of immigrants and their eradication from society.

The current anti-immigrant sentiment that abounds among the American public is extraordinary. Like the period at the turn of the 20th century when population control measures were enacted in many forms, the current period is very similar; the cry is again to stop the “illegal invasion.” Moreover, with the flow of newly arrived immigrants to the U.S. or to other countries, propelled is the sentiment that they are the cause of our social maladies, including crime. However, research has consistently shown that immigrants engage in less crime than their U.S.-born counterparts, and or their foreign-born counterparts who have been in the U.S. for a longer period. The recent efforts to criminalize undocumented immigrants into aggravated felons through the provisions of IIRIRA and HR4437 are clear attempts to maintain immigrants’ political and economic disenfranchisement, and to keep them in the shadows.

Future research clearly needs to focus on the children and successive generations of immigrants, and to explore further the probability of their engaging in crime unlike their parents (Gans 1992; Knox and McCurrie 1997; MacDonald 2004; Vigil 1988; Waters 1999; Zatz and Portillos 2000). Research is needed to study the veracity of the most recent claims asserting that a high percentage of immigrants are responsible for the most recent “rise in crime in the U.S.,” especially along the México-U.S. border. While there has been a rise in crime in the Juarez and Mexicali-Tijuana geopolitical corridors, the roles of both immigrants and native-born U.S. citizens should be investigated carefully, given the history of the cities that buttress these corridors such as El Paso and San Diego, which have been amongst the safest.

Because Los Angeles is a final destination for numerous immigrants and, because of the groundswell in anti-immigrant public sentiment there, a study on the nexus of immigration, crime, and ethnicity in Los Angeles is greatly needed. A study of this magnitude would advance Martinez’s research on Latino-related homicide, as well as other major crimes in the most populous U.S. cities, and shed light on crime trends in the new destinations that have attracted immigrants over the past two decades.

This paper challenges criminologists and sociolegal-oriented social scientists to begin investigating the injustices carried out at the hands of private prison profiteers with the blessings and funding of the U.S. government by way of implementing policies that fuel and profit this industry, all of which ultimately provide the bodies necessary to fill these detention centers (Leighton and Selman 2009). There is an imminent need for research on the separation and welfare of the many families divided each day by this industry, and of the consequences that they face post-detention. There are clear implications and knowledge from this research that would arm well the many social servants that serve this afflicted group.

Despite the Supreme Court and the past and current Obama administration capacity to call a moratorium on the raids and deportations, the U.S. government’s clear response to the division of these families is to continue incarcerating children with their parents, and expand enforcement-only policies such as Secure Communities. Even after promising to pursue immigration reform during his first campaign, President Obama has pushed the immigration reform debate indefinitely. He also embarked first upon the healthcare debate, which riled up racist overtones against immigrants among its opponents—clearly, a tactical error for President Obama who many immigrants embraced during his campaign. In fact, the Obama administration has consistently flaunted its record on immigration law enforcement.

Preston (2009) stated that “After early pledges by President Obama that he would moderate the Bush administration’s tough policy on immigration enforcement, his administration is pursuing an aggressive strategy for an illegal-immigration crackdown that relies significantly on programs started by his predecessor” (2009 A4:1). Obama has delineated his plan to pursue an enforcement-only strategy, which counterpoises his consistent promises to Latino audiences and Immigrant Rights Movement organizers that he would use his executive power to cease the raids and deportations, but interestingly has yet to mention, and or denounce, the detention industry.

Kateel posited that what followed the pinnacle of the civil rights movement was a rise in the incarceration of blacks, a potential threat to the future white political establishment. He also pointed out that President Nixon’s strategy to curb crime as “articulated behind closed doors, was to direct the criminal justice system primarily at the

black community without publicly saying so, [which] became public knowledge after one of Nixon's closest aides' personal experiences with the prison system exposed him to its evils (2008: 2).

Indeed, the so-called "war on drugs" has undoubtedly fed the private detention industry by hypercriminalizing people of color. There is no doubt that the low intensity "urban war" on blacks has run concomitant to the rise of the Prison Industrial Complex, and now the low intensity "border war" on Latino immigrants and the rise of the Immigration Industrial Complex. More specifically, Latino immigrants represent a future electoral threat against the white hegemonic order; therefore, it is beneficial to eradicate them from society vis-à-vis the IIC, much like in the post-civil rights era, when young black males were eradicated from society by the urban "war on drugs" and the rise of the PIC.

Ironically, in classic "blaming the victim" fashion, President Obama's Father's Day speech during his campaign blamed black males for not living up to their duty of fatherhood (Maxwell 2009). The PIC, racial profiling, along with many other structural obstacles have served to divide their families, making their absence from society seem as a social ill that only they can heal, essentially blames them as victims of their own devises. As such, the "criminal" stereotype also has served to set this process in motion for people of color. Imparting the pejorative "illegal" stigmatization to immigrants—that typically do not understand whichever part of "illegal" you offer him or her because they engage in less crime than do their U.S.-born counterparts, by the way—has also served to support and fuel the creation and expansion of these profiteering private industries.

The parallels between the Prison Industrial Complex and the Immigration Industrial Complex are cacophonously analogous; clearly both are serving to eradicate a targeted population that have supplied historically the labor pool, yet are criminalized and, therefore, compromised for profit, while concomitantly maintaining the white hegemonic order. By itself, the most obvious threat for the white establishment is the *Browning of America*, a demographic shift that is poised to brush in a radical racial composition of the country in coming years like the social and political disenfranchisement of previous immigrant groups, and even blacks. We are in the midst of an epitomic *ethnodistillation* targeting 12 million mostly Latino immigrants, a phenomenon unseen since the annihilation of dozens of millions of the Americas' indigenous at the hand of the Spanish Conquistadores in Mexican territory, and "white savages" invading Native American soil, under the auspices of God, law, and order.

In sum, this paper has shown that the relationship between immigration and crime needs to be examined even more critically. Future investigation in this area is necessary in order to lay bare the racist stereotyping of

immigrants as criminals, an agenda that has served to restrict, expel, and now, institutionally eradicate them by growing the Immigration Industrial Complex that is poised to ensure the further subjugation of millions of immigrants already lurking in the shadows of our society.

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Endnote

¹ This work is in memoriam of the countless families that have been affected greatly by unwarranted anti-immigrant policies emerging from successive presidential administrations and congresses.

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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; Knauff 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 PERVERSIVE

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 Scruton 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 *is po 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 coteries 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. Friedrichs (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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