

Neither Justice nor Crime

(We are all Criminals Now)

Jeff Shantz

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We have entered a period in which it must finally be recognized and admitted that criminal justice systems in Western liberal democracies are neither, in any real or meaningful way, about justice nor, even, about crime.

While it has perhaps long been recognized, at least by those subjected to its numerous inequities and biases and excesses (among critical theorists and certainly among the oppressed) that criminal justice is not about justice (this awareness represented in oppositional voices, particularly by poor and racialized communities that speak of “injustice system” or notions of “just us”), it is a more recently glimpsed (perhaps only partly) reality that criminal justice systems are not now (if ever) directed at addressing (in some vague way, never mind *stopping*) crime. They do not even live up to that minimal claim to legitimation.

This emerging awareness is based in the recognition that most criminal justice system activity is not even taken up with dealing with actual crimes (let alone social harms), except in the minimal degree necessary to maintain some legitimizing capacities. Rather, most criminal justice system activity is involved in two areas: first, in dealing with administration and administrative breaches; and second, in surveillance and punishment of people not engaged in criminal activity.

As Aiyanas Ormond, in this issue, points out, approximately 21 percent of criminal justice system activity is directed toward administrative offenses in the Canadian context. These include failures to appear, missed meetings, unpaid fines, etc. rather than actual “crimes” (associated with any social harms). Ormond suggests that the system is driven by a class-based process of “crime mining” in which low level, or entirely harmless occurrences, typically survival strategies of the poor, are increasingly criminalized or illegalized, brought within the system for processing as a means for keeping public funds circulating into the system agencies and institutions at a time when actual crime rates are dropping.

Even more dramatically, and perhaps foreboding (and more disturbing for the middle strata and more comfortable) is the fact that much of the system’s resources are directed at the surveillance, criminalization and punishment of people *who have committed no crime*. This includes the broad range of criminalizing practices deployed against protesters and others caught up on the streets during protest events—people who are arrested and detained simply because they are present in areas (where they might live or have jobs) that the state is securing for global economic and political elites (as at meetings of the G8 and G20 or World Trade Organization, etc.).

In Toronto during the G20 meetings of 2010, for example, around 1300 people were arrested, the largest mass arrest in Canadian history, and detained throughout the G20 meeting period—despite having done nothing wrong (reflected in the fact that almost all were released without charge after the meetings concluded). Many were not even protesters—quite a few were workers simply heading to or from their jobs. A large proportion of detainees were arrested through so-called kettling practices in which police trap crowds in alleyways or side streets (regardless of what individuals in the crowd were doing beforehand) and refuse to let them leave. In these cases everyone on a street is viewed as, treated, as, rendered, a criminal. They are all made illegal. Even where they have done *nothing* to cause concern or harm.

Beyond this are the variety of associational laws generated over the last two decades that criminalize people, again not for any actions they have engaged in, simply for having some sort of, often tenuous, vague, or meaningless “connection” or “association” with a group or collective that the state dislikes. In Canada, well before the 9/11 attacks provided the statist justification for all manner of egregious laws, the government of the day passed anti-gang legislation that allowed the state to arrest, detain, and charge people, as well as seizing their assets, if they had some gang association. Typically the law served only to target rather low level participants. It was not long before the Chief of Police in Toronto (now a federal government minister) attempted to have an anti-poverty group known for direct action politics, the Ontario Coalition Against Poverty, declared a gang, members arrested, office resources seized. While the Chief was thwarted in that effort, after 9/11 the anti-terror laws passed almost immediately afterward extended the associational legislation for use against people having, again vague, association with supposed terrorist groups. Incredibly, evidence of association in these cases can consist of a little as wearing a patch with a terror group symbol on your clothing or selling a newspaper from a labeled group.

These associational policies represent a significant dismantling of central aspects of liberal democratic legal systems. They do away with foundations of due process: disclosure of evidence, assumptions of innocence. In cases like security certificates, legal instruments in Canada that allow the state to arrest and detain people without cause, for unlimited periods, without evidence, and without public hearings, even *habeas corpus* is jeopardized. Such legislation renders criminological staples of *actus rea* and *mens rea* entirely meaningless.

While the state focus on activists-organizers, protesters, and any oppositional forces—is not new (and forms a large part of the basis for state formation in capitalist liberal democracies), what is a significant recent development is that state control practices, as in NSA spying or surveillance activities for example, are now directed at regular folks—at everyone, even the citizens who most accept state claims to criminal justice legitimacy.

Criminologists, rather than posing as mere analysts of criminal justice systems who, even as critics, accept that, even if they cannot dispense justice, they at least deal with crime, (while perhaps offering suggestions for improvement or questioning the relationship to justice along the way), must take up the new pressing task of shifting the focus and foundation of the discipline.

We must stop pursuing the study of a chimera—of something that does not exist (or else move our discipline to the realm of mythic studies or fantasy). We certainly must toss aside our taken-for-granted assumptions about the discipline’s central organizational object of study. If the criminal justice system is involved neither in addressing crime nor in securing justice, what then is its current character and foundation? In the current period, the so-called criminal justice system is largely about the circulation of social wealth in a manner that deprives the poor and enriches those with greater economic privilege. Indeed, as criminologists we might well shift to organiza-

tional analysis of self-perpetuating bureaucracies or profit-making tendencies to accumulation within bureaucracies.

Criminal justice systems as sprawling bureaucracies are directed, as all bureaucracies are, at self preservation and managed growth. They tend to expand (in size and in reach). They are redistributors of wealth upwards. They take resources from the working classes and deploy it upwards toward the more privileged (lawyers, judges, politicians, private capital).

But the criminal justice system serves another important function. And that is to render any and all who might challenge its position and privilege (and the position of the status quo it upholds and profits from) as against the law, as illegal. Even more, though, in the current period the system serves to make suspect, to survey, to track and contain, to criminalize, and to warn even those who do not oppose. These become the common characteristics of everyday life within liberal democracies (which are rendered perhaps post-liberal non-democracies).

Critical theorists such as Jeff Reiman have incisively shown that criminal justice systems in capitalist liberal democracies are not designed to deliver justice. Reiman has shown instead that the system works rather to shift attention away from the social harms of elites and to focus on the crimes of the working classes. This reinforces a narrative that describes social harm as coming from non-elites-the so-called dangerous classes to be feared and regulated.

Yet this approach is incomplete and does not go far enough. The issue today that criminology must contend with is that the criminal justice system is not maintained by a focus on actual crime (whether working class or not). And the system, in its surveillance functions especially, is directed at a generalized *non-criminality*. This is a key transformation.

We are all illegal now. We are all criminals, resources to be mined and manipulated to fulfill the self-perpetuating drives of accumulating systems. And, what is really in play, we are all potential media of exchange for systems designed fundamentally to accumulate capital and redistribute resources (from bottom to top) in a self-aggrandizing fashion. But we must be converted to the proper currency and the new criminalizing practices achieve this.

In this context we must give up all claims to be objective, neutral analysts (while blithely deluding ourselves that what we study, as a criminal justice system, actually exists). If those threatened with or subjected to repression, surveillance, criminalization, and/or state violence are portrayed as-and treated as-insurgents (as threats to the systemic status quo) then criminologists, as those who are supposed to understand the workings of these systems, have a responsibility to stand with the insurgents against the forces of criminalization. We must be insurgents ourselves. Criminology must, in recognizing and honestly naming, systems of repression must also be an insurgent practice.

Our criminology must be an insurgent criminology. That is, it must be a criminology in and of active struggles, active revolt, against states, and capital, and their criminal justice systems; a criminology that rises against, that seeks to abolish instituted authorities.

Jeff Shantz, December 2013, Surrey (Newton), B.C. (unceded Coast Salish territories)

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