Defining Criminality: Confronting Racist and Classist Narratives of the Criminal

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Title:

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Abstract: Defining someone as a criminal carries serious consequences for the individual in terms of a denial of resources, increased surveillance, incarceration, and dehumanization, and also for society as a whole.

While the United States is often thought of as being one of the most democratic and free countries in the world, a look at the rates of US incarceration reveals a different image. The US incarcerates more people than any other country. Even more astonishing is that this enormous increase in incarceration has occurred over a relatively short period of time. In US state and federal prisons alone, the number of incarcerated people from 1974 to 2000 increased sevenfold ("Criminal Justice Facts"). However staggering this trend, it reflects only the number of those physically incarcerated in state and federal prisons. Tens of thousands of people, although not physically behind bars, still find themselves under constant surveillance by the US criminal justice system through parole or probation and are not included in these numbers. To make matters worse, any kind of contact with the criminal justice system can put an individual's access to social welfare programs in jeopardy, further limiting resources for ex-offenders even as data suggest that these programs are proven to reduce recidivism rates. Even if an ex-offender is able to obtain social assistance, they will be subjected to constant surveillance upon which that assistance is dependent. Thus, for those already in precarious socio-economic positions it often only takes one penal sentence to establish a lifetime of contact with the carceral state.

Defining someone as a criminal carries serious consequences not just for the individual, but also for society as a whole. Yet criminality is not a static concept: it has evolved over time to enhance the function of power and control in our society which is ultimately dangerous for everyone's freedom. Social welfare is one of the most important safety nets available to economically vulnerable people but as the state chips away at these programs and increases restrictions on who can receive assistance – often explicitly excluding ex-offenders – it reinforces the constructed concept of who a criminal is and exculpates itself from its role in the creation of these disparities and the criminal identity itself.

Michel Foucault's concept of "the monster" (Abnormal 2003) is helpful to understand the social effect and individual consequences of the administration of the criminal identity. In his examination of the "human monster," Foucault argued that the ways we understand the monster have not remained static but rather have evolved to meet the needs of the state. He argued that monsters were first understood as a sort of undefined conundrum, figures that both reside within and outside society (Foucault 2003). However, in order to define and rationalize the monster, they came to be defined by a "monstrosity of conduct" which then allowed the monsters to be more effectively punished and controlled (Foucault 2003, 73). Author Bernard Harcourt has found that what constitutes crime itself has also evolved to include anything that threatens daily order (Harcourt 2011). This means that even something as minor as littering or loitering could be considered a criminal act. Foucault and Harcourt not only show how the definition of criminality is continuously evolving but also that it has come to define anyone who disrupts order. This has serious consequences for all of society as now the state is justified in identifying an individual as a "monster" or "criminal" and punishing them for committing an ever-expanding list of crimes.

Furthermore, Foucault, in his critique of the psychiatric opinion, argued that the way the narrative of the criminal has been formed has had the express purpose of extending punitive power to punish individuals for traits like poverty or lack of education which are not violations of the law (Foucault 2003). This marries criminality to identity, effectively making the criminal

identification inescapable. Therefore, it becomes clear that by expanding the definition of crime to include anything that threatens order while simultaneously making the criminal identification inescapable, criminality is a tool of power. Authors such as Michelle Alexander, Lani Guinier and Gerald Torres have further illustrated the specific ways in which criminality has evolved in the US to identify poor people of color as criminal, not because this group commits more crime than any other group, but because they possess the markers of the criminal. These authors have argued that colorblind rhetoric which includes "law and order" rhetoric or "tough on crime" rhetoric aids the criminal identification of poor people of color. Because this language is formally colorblind, it has proliferated in both our social and political spheres as a legally permissible tool of discrimination, upholding and justifying power structures that continuously disenfranchise poor people of color. In this system, an individual does not have to commit a particular criminal act to merit criminal identification. Simply possessing the traits or markers of the criminal can serve as justification for punishment, surveillance, incarceration, and dehumanization.

Colorblind rhetoric has had a clear role in the expansion of the penal system into society. Alexander argues that the history of colorblind rhetoric was first used at the end of the Civil Rights as a way to reestablish a racial hierarchy (Alexander 2010, 40). In order to function, this hierarchy would have to be formally "race-neutral" so that one could not easily point at any specific policy or law and claim that it was racist or discriminatory. This is precisely why, Alexander claims, the colorblind phrase "law and order" emerged in the 1950s to link "opposition to civil rights legislation to calls for law and order, arguing that Martin Luther King Jr.'s philosophy of civil disobedience was a leading cause of crime" (Alexander 2010, 40-41). The colorblind language of "law and order" proliferates in our political system and public consciousness as a new tool to identify those who broke the rules, in this case identifying black protesters as criminals.

Unsurprisingly, this language did not remain static, and eventually evolved to include "competing images of the poor as 'deserving' and 'undeserving'," the idea being that public assistance should be reserved for those who "deserve" it, rather than the "monsters" or the "criminals" (Alexander 2010, 46). Colorblind "law and order" rhetoric identifies poverty as a marker of the criminal. In American society, colorblindness goes a step further to reinforce the idea that poor people of color are criminals. This hierarchy of "deserving" and "undeserving" poor is entirely constructed and reinforced by the narrative of the criminal. The idea that some poor people are more "deserving" of welfare than others, specifically the others that Ronald Reagan repeatedly referred to as "welfare queens," served to exacerbate the racial divide in US politics and society and became a tool to help mobilize political support. This colorblind rhetoric flows from the mouths of politicians of every political ideology. President Clinton was responsible for legislation that significantly reinforced this idea of "law and order." The 1994 Crime Bill was "hailed as a victory for the Democrats, who 'were able to wrest the crime issue from the Republicans and make it their own'" (Alexander 2010, 56). Both political parties compete against each other to appear increasingly more "tough on crime" because using this colorblind rhetoric proved effective in garnering public support.

Colorblindness is not just a tool to limit resources to those identified as "undeserving," expand the penal system, and enhance political power, but also to exculpate the state from any role in

systemic racism. As Guinier and Torres wrote in The Miner's Canary, the use of colorblindness not only places the full responsibility for the effects of racism onto the individual, but also strategically places the burden of racism itself on the individual as "most people who oppose racism today believe that it is a psychological condition" instead of as something institutional (Guinier and Torres 2009, 43). Thus, colorblindness not only operates to identify the criminals but also "locates the problem in the individual" (44). In this way, the underlying racist power structures in our society may continue undisturbed, protected by colorblindness. In a colorblind society, one can efficiently place blame for both the expansion of the prison system and discrimination onto the individual. If racism is a psychological condition and criminality is already predetermined according to specific traits, then there is no reason to question or change the status quo. In fact, by invoking the image of the "criminal" through colorblind language, politicians have been able to systematically defund social welfare and vastly increase their investments in the penal system over a remarkably short period of time with little to no social or political repercussions.

Part of the reason policy makers have been able to escape scrutiny is because many laws surrounding public assistance and criminal justice are formally "equal." However, this intentionally ignores the fact that such laws impact people of color significantly more. The result, "after formal, state-sanctioned barriers to individual mobility are removed," is that "any continuing inequality must result from the personal failure of individuals or, in its modern iteration, the dysfunction of black culture" (Guinier and Torres 2009, 35). Colorblindness assumes pre-existing equality for all people, essentially asserting that the "individual has no historical antecedents, no important social relationships, and no political commitments" (38). The individual exists in a society which is formally equal but which still carries all of the same discrimination. However, that discrimination becomes institutionalized by colorblindness as, placing the burden of both discrimination and the failure to overcome it upon the individual, there are few or no options left to challenge the system. In a kind of paradox, racist, classist narratives about poverty and criminality are permitted under a "colorblind" system. If the socio-political and socio-economic status of an individual exists in a vacuum, then the only explanation that colorblindness permits when faced with a fact such as "people of color make up 37% of the U.S. population but 67% of the prison population" ("Criminal Justice Facts") is the "the dysfunction of black culture." This paradox is mirrored throughout the prison and social welfare system in the US creating seemingly illogical public policy decisions.

Following the welfare reforms implemented through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states changed the way they allocated funding for social welfare programs. One of the "central tenets" of this reform is that "cash assistance should provide temporary support while a family engages in required activities to help it connect to or prepare for work" (Schott et al. 2015). However, according to a 2015 report by the Center on Budget and Policy Priorities, there are only 12 states that spend over 15% of the TANF block grant on work-related activities, including training services, transportation to work, and wage subsidies (Schott et al. 2015). Instead, the report found that about one-third of federal and state TANF spending in 2014 was devoted to "other areas" including initiatives to encourage "two-parent families" and "promote responsible fatherhood" (Schott et al. 2015). There is no question which group of "fathers" this initiative targets. According to the pre-constructed narrative of who is poor, irresponsible, and likely criminal, that individual is a person of color,

and, more explicitly, a black man, despite the carceral state's dramatically negative effect on familial structure.

This trend in funding shows a complete disregard for the effects of the carceral state which severely restricts the ability of low-income people of color to financially provide for themselves, let alone a family. Furthermore, with little to no forms of assistance available to the most vulnerable, these initiatives place the full responsibility of their socio-economic status onto the individual. This exculpates the state from responsibility in creating and upholding discrimination and making the criminal identification inescapable once it has been applied. This is the reality of a colorblind society.

The narrative of the criminal will remain pervasive in our society until it is questioned and problematized. Further research should address questions related to how decriminalizing and destigmatizing social welfare, as well as making it accessible to ex-offenders, could be a method for reducing recidivism and for decreasing interventions of the state in terms of surveillance and policing. With phenomena like "prison gerrymandering" appearing in our electoral system, an additional set of questions would be centered on how restoring the voting rights of incarcerated people would help to mitigate the overrepresentation of communities with large prison populations. How might these changes help enfranchise and support the most vulnerable members of our society and begin to change how we define criminality and the criminal? These questions are difficult, to be sure, but continuing down the path of mass incarceration benefits no one except those in power. Now is not the time to be afraid to hold the state responsible because, in reality, the real monster was never the one we called "criminal" but rather the state itself.

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