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Psychosocial Analysis of an Ethnography at the Cuyahoga County Public Defenders Office

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In the summer of 2017, I began my internship at the felony division of the Cuyahoga County Public Defenders. This organization is the county's public defense firm, providing attorney aid to low-income and indigent defendants who, in the arraignment judge's expert opinion, potentially face at least 30 days in prison, should they be found guilty (Cuyahoga County, n.d., p. 1). American society's conviction to uphold the right to counsel is the legacy of the Supreme Court's landmark interpretation of the Sixth Amendment in *Gideon v. Wainwright* (Israel, 1963, p. 222).

Though the front stage operations of public defenders have been sensationalized in television and cinema dramas, my internship revealed the inner workings of the legal system's back stage (Goffman, 1956, pp. 30-33). Through this experience, I learned that the Public Defender assigns multiple attorneys to function as on-call counselors, available to answer the questions of defendants (Shaker Heights, 2010, p. 2). By minimizing the amount of clients on location, on-call attorneys create a dromotropic environment (Virilio & Redhead, 2005, p. 34) without imposing time nor resource strain on the majority of public defenders, demonstrating a function-creep of McDonaldization into not-for-profit government agencies (Ritzer, 1993, p. 8-9).

Furthermore, I argue that despite today's indigent defendants remaining as deficient in fiscal capital as their income-class peers from 1963, today's impoverished are richer than ever in terms of social and legal-cultural capital due to the explosion of communication and to the data-repository technology of the Information Age (Gordon, 2016, pp. 172-200).

This boon to the Public Defenders' clients is a result of a phenomenon which may be called *data-driven scopophilia*. This type of scopophilia refers to the tendency towards collecting, observing, and analyzing data and metadata that is amplified by the bureaucratization and scientization of postmodern societies of control (Deleuze, 1992, p. 2). Since more data results in more accurate analyses of phenomenon at the expense of civil liberties, data-driven scopophilia has a polyvalent nature when it emerges in politics and companies (Kargupta, Datta, Wang, & Sivakumar, 2005, p. 388-393). However, the demos utilizes this philia as well, most notably in consumerism (Campbell, 2005, p. 101-102). From my tenure at the Public Defenders, indigent defendants' ability and desire to ask questions and collect data on the status of their own cases and to prognosticate likely outcomes based on the legal knowledge of operators and attorneys has become an apparent extrapolation of data-driven scopophilia.

Essentially, clients are not only willing to be scopophilic to cases similar to theirs as a means of accumulating data, but they are also willing to be treated as data in order to interpolate likely outcomes of their impending court proceedings. As such, the evolution of technology has had a significant effect on the evolution of American society, particularly on how the lower-class has more formal, social,

and legal-cultural capital at its beck (Black, 1976, pp. 67-69). Though not exclusively, technology resides as a cultural direction and it helps equalize class disparities as an instrument of both social control and of defiance when deviance has occurred (Beniger, 1986, p. 45-47).

Shifting from the logistics of the Public Defenders Office into the investigative component of its work, a highly contested yet salient adaptation of the criminal justice system is the use of DNA matches. The use of DNA searches at crime scenes, particularly partial and familial matches, are often understood by law enforcement as a natural process for evidence collections (Bentham, 1827, p. 71-81). These searches provide exacerbating circumstances in both court and parole hearings, as well as during police investigations and pre-sentencing investigations (Clear, Cole, & Reisig, 2013, pp. 114-115). Since 2002, DNA searches have caused more public anxiety due to police departments utilizing low-to-moderate stringency criteria, requiring only one allele match at each chromosomal locus, otherwise known as a partial match (Murphy, 2010, p. 292).

Oftentimes, partial matches will implicate family members of persons present at crime scenes, due to genetic similarities. Advances in genetic typing have made finding leads off of cold-hits quicker than off of full matches, where all 13 genetic markers matchup between crime scene DNA and UNSUB DNA (Murphy, 2010, p. 294-299). However, partial matches have been done proactively. To instantiate: DNA searches that determine matches between crime scene evidence and prisoner genomes have been used to either jeopardize parole eligibility (Clear, Cole, & Reisig, 2013, p. 256) or implicate family members as possible perpetrators, like in the case of the Grim Sleeper (Dolen, Rubin, & Landsberg, 2009, pp. 2-3). These concerns raise skepticism to partial matches' adherence to the Fourth Amendment, supporting the hypothesis that the U.S.A. is rapidly morphing into a surveillance state which supplants the implicit right to privacy in preference to explicit maintenance of law and order (Greenwald, 2015, p. 222).

Researching this topic brings about questions regarding the intersection of biopolitics and necropower to the forefront (Pareto, 1916, p. 213). Though concerns over biopower once orbited around public health matters and state-sponsored healthcare, surveilling entities have capitalized on dangerization-induced public paranoia in order to fuse the inquiry of panopticism with the rigidity of biological determinism to birth partial matches, which regard citizens as metadata that can and should be used by the state as probable cause for capiases, interrogations, and subpoenas (Foucault, 2004, pp. 108-109).

Though the merits of biological determinism as justification for biopolitics are better suited to another article, it should be noted that interdisciplinary research between personality psychology and critical-racial criminology has

concluded that around 66% of antisocial convicts do not raise future antisocial convicts, findings which call into question the predictive potential of familial matches (Murphy, 2010, pp. 328-329). When considering the propensity for partial matches to be used to catch violent offenders, individuals who could face LWOP and death sentences, this innovation of genetic typing must be critiqued as legal control flirting too much with biopower and necropower (Kelly, 1992, pp. 420-421).

Another manifestation of psychosocial and legal theories is in post-conviction investigation. This claim is made apparent through an investigation I conducted last summer. Due to an abundance of evidence, including victims' corpses being found in near proximity to the convict, who will be referred to as "John Doe," the mitigation arguments focused around mental health and social stressors. In searching for exculpatory evidence, I ferreted medical records, both of John Doe and of his family. These were integral in establishing malady links intragenerationally and intergenerationally across John Doe's family and in making arguments for hereditary illnesses that would alter emotions and cognitions.

Using my sociological imagination, I decided to discern criminogenic risk factors through a biomedicalization of the convict's social situation (Kirkpatrick & Kirkpatrick, 2006, p. 19). To exemplify: when perusing records from John Doe's schools, military service, and genealogy, I searched for recurring antisocial behaviors and treated them as analogs to symptoms of a larger, metaphorical disease: felonious violence (Douglas & Olshaker, 2001, pp. 192-193).

While I was working on the investigation, I occasionally recessed to the Cuyahoga County Felony Court and observed a homicide trial. From what I am able to discuss, the case involved a wife who was being indicted of conspiring to murder her husband. The prosecution argued that the defendant had hired assassins to kill the victim and then collect insurance benefits. The lower-class conjugality parented multiple children in their home but lived in a neighborhood with many childless families, making the couple relatively less wealthy. Considering that the motive was money, and the circumstances were of relative poverty, conditions were rife with risk factors (Daly, 1988, p. 100). Because trial observance was not my main responsibilities, I only witnessed the proceedings in disparate parts, though seeing the front stage operations of attorneys helped constellate what the research and investigation taking place at the office should become.

Once my investigative work coagulated, my tasks shifted to research. At the time that I write this, my research regarding post-expungement finances and

also of various multivariable analyses of different types of violent offenders are in process.

My first project regarded whether record ensealment improved the job prospects and the financial circumstances of the Public Defenders' clients. This continuing project is in the preliminary stages of the publication process, so since it will become publicly available, I am able to expand on details. Data collection was accomplished via an eight question phone survey. To compel the county that expungements benefit not only clients, but also the county, data is being collected for a time series analysis of public assistance to argue that clients with sealed records are less likely to require welfare aid from the county. Cuyahoga County has a vested interest in liberating individuals from indigence since the overall impoverished population has grown since the turn of the noughties, from 222,000 individuals in 2005 to over 240,000 in 2014 (Research Office & Larrick, 2017, p. 55). By the nature of cold calls, data collection is ongoing, currently at around 200 participants.

Though this study is ongoing, based on patternicity, I expect that expungements will be correlative with increased wages, increased job prospects, and decreased reliance on general assistance (Shermer, 2008, p. 1). Assuming my presumptions are veracious, such an outcome would be consonant with labeling theory, an iteration on the philosophical axis of criminological meaning (Peterson, 1999, p. 19-20) that emphasizes social stigmas and the looking-glass self as a reference for socially learned, formal procedures (Cooley, 1920, p. 173). The label of "ex-convict" tends to be a non-starter in both the informal and the formal spheres, alienating individuals from kith and kin as well as voiding job applications (Farrington, 1977, p 4-6). Not only that, but being stigmatized as a former convict is probative of a heightened likelihood of recidivism (Chiricos et al., 2007, p. 2). By keeping elements of a person's criminal record confidential, he is able to maneuver through the lifeworld without prejudices hampering his capacity for vertical social mobility, effectively controlling for criminal outliers in behavior that would otherwise demonize him (Young, 1999, p. 114).

This creates a particularly interesting calculus when analyzing males of minority groups: the disproportionate representatives of U.S. corrections (Galea & Vlahov, 2002, p. 134). Society's inability to perceive incarceration "beyond good and evil" (Nietzsche, 1886, p.

28) adds a dimension to the social space in which minority males inherently occupy, which is posited by the emergence of a new citizenship (Young, 1999, p. 203). As such, once a twoness becomes a dimensional *threeness*, yet in the eyes of employers and others, a convicted minority male gets diminished into a *fractionness* (Du Bois, 1899, p. 276).

Moving past society's perpetuation of stigmas, the psychology of the stigmatized cannot be understated as a conduit for the continuing impact of the

convict label. I argue that the looking-glass self is a pivot point for labeling theory because internalized oppression can cause a metamorphosis of one's sense of self (Anderson, 1990, p. 186).

For heuristics, one can conduct a thought experiment where society is incapable of prejudging, neither formally nor informally, individuals who have been convicted of a crime. My claim is that despite the absence of backward-looking social control, the label will still transform the subject's self-image (Chriss, 2013, p. 48). As a corollary, I further claim that labels have both a radial and a cultural location (Black, 1976, pp. 49, 65). However, given the parameters of the thought experiment, the direction of the aforementioned social positions cannot be externalized, and thus, must be internalized, entering the macrocosm of psychology.

I conduct this exercise for the sake of academics, clinicians, and policy-makers who strive for evidence-based reform of remanded citizens: simply smoothing out the sociological topography of an individual so that it resembles the idealized landscape of theory will not meet the threshold for alleviative therapy. At the therapeutic level, conducting diagnosis, prescription, and posology with the same adumbration developed to classify and to order the social world would be reductionist to the complexities and to the forces unique to psychology (Ben-Davis & Collins, 1966, pp. 5-6). This phenomenon is the result of sociology, as an object, ignoring the exogenous of psychology in preference for its own endogeny. Such phenomenology is symbolized by the alternate-reality motif present in works of the fantasy genre known as Reality Marbles: the physical manifestation of a world built by the intransigent ideals of the respective character (Apter, 1982, p. 132). Stigmas microaggress at an intrapersonal, possibly unconscious, level. Such a salvo requires either psychotherapy to fully address the resultant reflexive stigmatizations (Goldstein & Shuman, 2016, p. 77).

Works Cited

Anderson, Elijah. 1990. *Streetwise: Race, Class, and Change in a Urban Community*. Chicago, IL: University of Chicago Press.

Apter, T. E. 1982. *Fantasy Literature: An Approach to Reality*. London, UK: Macmillan.

Ben-David, Joseph and Randall Collins. 1966. "Social Factors in the Origins of a New Science: The Case of Psychology." *American Sociological Review* 31(4):451-65. Retrieved August 8, 2017 (http://www.jstor.org/stable/2090769?seq=1#page_scan_tab_contents).

- Beniger, James R. 1986. *The Control Revolution: Technological and Economic Origins of the Information Society*. Cambridge, MA: Harvard University Press.
- Bentham, Jeremy. 1827. *Rationale of Judicial Evidence*. Littleton, CO: F.B. Rothman.
- Black, Donald. 1976. *The Behavior of Law*. Bingley, UK: Emerald.
- Campbell, Colin. 2005. *The Romantic Ethic and the Spirit of Modern Consumerism*. London, UK: Alcuin Academics.
- Chiricos, Ted, Kelle Barrick, William Bales, and Stephanie Bontrager. 2007. "The Labeling Of Convicted Felons and Its Consequences for Recidivism." *Criminology*45(3):547–81. Retrieved August 8, 2017 (<http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2007.00089.x/full>).
- Chriss, J. J. (2013). *Social control: An Introduction* (Second ed.). Maiden, MA: Polity Press.
- Clear, T. R., Cole, G. F., & Reisig, M. D. (2013). *American Corrections* (Third ed.). Belmont, CA: Cengage Learning.
- Cooley, Charles Horton. 1902. *Human Nature and the Social Order*. New York, NY: Ch. Scribners.
- Cuyahoga County. n.d. "Welcome to the Cuyahoga County Public Defender Website." *Cuyahoga County Public Defender*. Retrieved August 7, 2017 (<http://publicdefender.cuyahogacounty.us>).
- Daly, Martin and Margo Wilson. 1988. *Homicide*. New Brunswick, Canada: Transaction Publishers.
- Deleuze, G. (1992). Postscript on the Societies of Control. *October*, 59, 3-7. Retrieved August 7, 2017, from http://links.jstor.org/sici?sici=0162-2870%28199224%2959%3C3%3APOTSOC%3E2.0.CO%3B2-T_
- Dolen, Maura, Joel Rubin, and Mitchell Landsberg. 2009. "DNA Leads to Arrest in Grim Sleeper Killings." *Los Angeles Times*, November 29. Retrieved August 7, 2017 (http://www.highbeam.com/doc/1G1-218227286.html?refid=easy_hf).

- Douglas, John E. and Mark Olshaker. 2001. *The Anatomy of Motive*. London, UK: Pocket.
- Du Bois, W. E. B. 1899. *The Philadelphia Negro*. Philadelphia, PA: University of Pennsylvania Press.
- Farrington, David P. 1977. "The Effects of Public Labelling." *The British Journal of Criminology* 17(2):112–25. Retrieved August 8, 2017 (http://www.jstor.org/stable/23636356?seq=1#page_scan_tab_contents).
- Foucault, Michel. 2004. *The Birth of Biopolitics*. New York, NY: Palgrave Macmillan.
- Galea, Sandra and David Vlahov. 2002. "Social Determinants and the Health of Drug Users: Socioeconomic Status, Homelessness, and Incarceration." *Public Health Review* 117:134–45. Retrieved August 8, 2017 (https://www.ncbi.nlm.nih.gov/pmc/articles/P_MC1913691/).
- Goffman, Erving. 1956. *The Presentation of Self in Everyday Life*. New York, NY: Anchor Books.
- Goldstein, Diane E. and Amy Shuman. 2016. *The Stigmatized Vernacular: Where Reflexivity Meets Untellability*. Bloomington, IN: Indiana University Press.
- Gordon, Robert J. 2016. *The Rise and Fall of American Growth: The U.S. Standard of Living Since the Civil War*. Princeton, NJ: Princeton University.
- Greenwald, Glenn. 2015. *No place to hide: Edward Snowden, the NSA, and the U.S. surveillance state*. New York, NY: Picador.
- Hamilton, James D. 1994. "Time Series Analysis." *Princeton University Press* 1–786. Retrieved August 8, 2017 (<http://doc1.lbfl.li/aca/FLMF037168.pdf>).
- Israel, Jerold H. 1963. "Gideon v. Wainwright: The "Art" of Overruling." *The Supreme Court Review* 1963:211–72. Retrieved August 7, 2017 (<http://www.journals.uchicago.edu/doi/abs/10.1086/scr.1963.3108734?journalCode=scr>).

- Kargupta, H., Datta, S., Wang, Q., & Sivakumar, K. (2005, May 01). Random-Data Perturbation Techniques and Privacy-Preserving Data Mining. Retrieved October 06, 2017, from <https://link.springer.com/journal/10115>.
- Kelly, John Maurice. 1992. *A Short History of Western Legal Theory*. Oxford, UK: Clarendon Press.
- Kirkpatrick, Donald L. and James D. Kirkpatrick. 2006. *Transferring Learning to Behavior: Using the Four Levels to Improve Performance*. San Francisco, CA: Berrett-Koehler Publishers.
- Murphy, Erin. 2010. "Familial DNA Searches: Potential, Pitfalls, and Privacy Concerns." *Advanced Topics in Forensic DNA Typing* 292–347. Retrieved August 7, 2017 (<http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1169&context=mlr>).
- Nietzsche, Friedrich. 1886. *Beyond Good and Evil*. Kitakyushu, Japan: Center for Contemporary Art.
- Pareto, Vilfredo. 1916. *The Mind and Society*. New York, NY: Dover Publishing.
- Peterson, J. B. (1999). *Maps of Meaning: The Architecture of Belief*. New York, NY: Routledge.
- Research Office and Don Larrick. 2017. *The Ohio Poverty Report*. Columbus, OH: Ohio Development Services Agency, Research Office. Retrieved August 8, 2017 (<https://development.ohio.gov/files/research/P7005.pdf>).
- Ritzer, George. 1993. *The McDonaldization of Society: The New American Menace*. Thousand Oaks, CA: Pine Forge Press.
- Shaker Heights. 2010. "Where to Go for Legal Advice in the Cleveland Area." *Where to Go for Legal Advice in the Cleveland Area*.
- Shermer, Michael. 2008. "Patternicity." *Scientific American* 299(6):48–48. Retrieved August 8, 2017 (<http://heinonline.org/HOL/LandingPage?handle=hein.journals/siulj35&d-iv=15&id=&page=>).
- U.S. Cong. (1787). *The U.S. Constitution (Founding Fathers)* [Cong.]. Washington, D.C.: Dept. of the Interior, National Park Service.

Virilio, P., & Redhead, S. (2005). *The Paul Virilio Reader*. New York, NY: Columbia University Press.

Young, Jock. 1999. *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*. Thousand Oaks, CA: Sage Publications.