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Queer Contestations and the Future of a 'Queer' Criminology

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Abstract It is intuitive to include critical criminologists in early conversations about "queering" criminology given that the paradigms and methods of critical criminology can be employed to challenge subordination and inequality in its several dimensions. The first part (and main focus) of this article problematizes this intuition, which is easy to accept at face value, by reflecting backwards and explaining how early influential critical criminological views perpetuated damaging stereotypes and representations of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people as sexual deviants. The second part reflects forward, and discusses the difficulties of carving a space in the discipline for critical queer perspectives. Drawing on critical and critical race theories, this article advocates a relational, intersectional approach to conceptualize sexual orientation and gender identity in criminological theory and research. This approach considers the connections among sexual orientation or gender identity and other differences (e.g., race, ethnicity, nationality, religion, class, gender, etc.) without assuming or attaching fixed meanings to those differences.

Introduction

LGBTQ populations have been stigmatized and ignored in several ways since the inception of the field of criminology (Groombridge 1999; Woods 2014a, b). Changing the criminological treatment of LGBTQ populations—and sexual orientation and gender identity issues more broadly—invites and requires new conversations, frameworks, and approaches. This contemplative article addresses how critical criminologists in particular might answer this call.

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The first part (and main focus) of this article identifies and discusses two reasons why embracing critical criminology and relying on critical methods to answer this call are not so straightforward. First, the potential for critical methods to challenge orthodox assumptions about the world around us, and to identify and to challenge injustice, makes critical criminology an attractive space to engender change with respect to how criminologists approach both sexual orientation or gender identity concepts and LGBTQ populations. As the article will explain, however, critical criminologists have had a historical role in perpetuating damaging representations of LGBTQ people as sexual deviants. These early deviant conceptualizations were reflections of the dominant societal and cultural meanings attached to sexual orientation and gender identity concepts at the time.

It is much less common for critical criminologists to depict LGBTQ people in this fashion today. Many critical criminologists, though, continue to make heterosexist assumptions about relationship and family arrangements, and to ignore sexual orientation and gender identity differences in their theories and research. This criticism applies not only to critical criminology, but also to the biological, psychological, and sociological schools of criminology. Nevertheless, the fact that critical criminologists are not the lone culprits in this regard does not mean that their discussions of sexual orientation and gender identity should be protected from critical analysis. In fact, the tenets of critical criminology suggest that critical criminologists would be more inviting and receptive to such criticism.

Second, identifying the missteps of the criminological past prompts the question of how queer criminologists might move forward. This question is complicated because LGBTQ advocates and scholars—especially outside the discipline—make different, and arguably conflicting, assumptions about the nature of sexual orientation and gender identity. Some advocate an identity-based approach, which assumes that existing categories of sexual orientation and gender identity (*e.g.*, "gay," "lesbian," "bisexual," and "transgender") correspond to collective identities. Others advocate a deconstructive approach, which seeks to disrupt fixed or stabilized notions of sexual orientation and gender identity. I have argued elsewhere that as a newly developing subfield, "queer criminology" should leave room for research under both approaches, given that they each address a need for greater criminological engagement with sexual orientation and gender identity (Woods 2014b). Nevertheless, some have disagreed with this position, advocating either one approach or the other given the drawbacks of those respective approaches (see e.g., Ball 2014).

Although one article cannot address the range of issues arising from the tension between identity-based and deconstructive approaches to sexual orientation and gender identity, the second part of this article draws on critical theory (Minow 1990)—and critical race theory in particular (Crenshaw 1991)—to discuss the risks of taking either approach too far in criminological theory and research. Against this backdrop, it argues for an intersectional approach that frames sexual orientation and gender identity through a lens of *relational difference*. This relational approach does not view sexual orientation or gender identity in isolation, but rather considers how these differences intersect with other differences (*e.g.*, race, nationality, religion, class, and age, among others) to shape people's experiences of policing, criminal offending, victimization, desistance from crime, and their interactions with the criminal justice and penal systems more generally. It also recognizes that sexual orientation and gender identity differences are imbued with meanings that tangibly influence people's lives, without relying on fixed notions of identity to assume that those differences either have universal meanings or create universal experiences in criminological contexts.

The Historical Stigmatization and Current Neglect of LGBTQ Populations

The historical treatment of LGBTQ populations and sexual orientation and gender identity in Western criminology can be explained through a concept I call the *homosexual deviancy thesis*, summarized as follows: Prior to the 1970s, LGBTQ people in Western societies were often labeled as criminals, psychopaths, sinners, and perverts (Sarbin 1996). At its core, the homosexual deviancy thesis argues that criminologists facilitated and reinforced these deviant misconceptions of LGBTQ people—intentionally in some cases, and, unintentionally in others (Woods 2014a).

The homosexual deviancy thesis has two elements: the *deviance-centered element* and the *invisibility element*. The *deviance-centered element* argues that criminological discussions of sexual orientation, gender identity, and LGBTQ populations contained the degrading characterizations of LGBTQ people described above until about the 1970s. Although some criminologists disagreed with those characterizations, the discipline primarily engaged with sexual orientation and gender identity only insofar as determining whether non-heterosexual conduct or identities, or gender non-conforming behaviors and identities, were forms of deviance themselves. The *invisibility element* argues that discussions of sexual orientation, gender identity, and LGBTQ populations virtually disappear from criminological theory and research after the 1970s—when sodomy laws largely lost force in Western countries, and especially the United States, through repeal or lack of enforcement (Eskridge 2008). Studies of hate crime, bullying, and intimate partner violence are noteworthy exceptions (Woods 2014b). As a result of LGBTQ people's historical distortion and more recent omission from criminological theory and research, there is little understanding of how sexual orientation and gender identity differences might relate to criminal offending, desistence, policing, and victimization (beyond bias crime and intimate partner violence to a lesser extent) (see generally Peterson and Panfil 2014).

As explained below, evidence supporting both elements appears in early and more recent critical criminological perspectives. At the onset, I acknowledge that critics might allege that I am cherry-picking examples to illustrate these themes, and advancing specific readings of criminological works that are open to interpretation. It is impossible to discuss every critical perspective and potential interpretation of a work in one short contemplative piece. I underscore here, though, that the examples discussed below are widely recognized as influential critical perspectives that shaped future theories and research.

The Homo(sexual) Deviant: Early Critical Criminological Perspectives

As interactionism came to the fore in sociological studies of deviance during the 1950s and 1960s, early critical criminologists started examining homosexuality (a concept that was then viewed to encompass gender non-conformity) as a social, as opposed to an individual pathological, problem (Rubin 2002). Researchers justified this shift based on a perceived growth of urban neighborhoods with visible LGBTQ populations that sprung from new settlement patterns after World War II (Bérubé 1990). Studies of homosexuality, from a social vantage point, posed new questions about the role of environment and subcultures in facilitating homosexuality. As a consequence of framing homosexuality as a perceived form of (social) sexual deviance, most early critical criminologists did not consider sexual orientation or gender identity as non-deviant differences comparable to other differences such as race, ethnicity, and class, among others. In turn, few early critical criminologists conceptualized homophobia and transphobia—concepts that challenge the stigmatization of LGBTQ populations as sexual deviants on the sole basis of their sexual orientations and

gender identities—as structural-social conditions that might facilitate criminal offending or victimization (see MacKinnon 1979).

Examples from the societal reaction and labeling tradition illustrate how the sexual deviance framework shaped discussions of LGBTQ populations in early critical criminological perspectives. These theories—which examine how societies come to define certain behaviors and people as deviant—were created mostly by U.S.-based scholars when interactionism dominated sociological explanations of deviance in the 1950s and 1960s (Becker 1963; Lemert 1951; Tannenbaum 1938). At the time, a heavy social stigma attached to homosexuality, as illustrated by the crackdowns and surge in police harassment at LGBTQ bars and establishments (Woods 2009), as well as the increased enforcement of U.S. sodomy laws against LGBTQ people and especially gay men (Eskridge 2008).

The writings of Lemert and Becker—two popular theorists from the societal reaction and labeling tradition—showcase the representations of LGBTQ people as sexual deviants. Lemert (1951) developed the influential concepts of primary and secondary deviance. He defined "primary deviance" as relatively infrequent criminal acts that did not influence how the actors viewed themselves or how society viewed the actors, and defined "secondary deviance" as criminal acts that could not be detached from how the actors viewed themselves or how society viewed the actors. He contended that a series of primary deviant acts followed by a series of increasingly negative societal reactions could cause primary deviance to shift to secondary deviance. During this process, society came to define the actors as deviant; the actors came to view themselves similarly, and then acted in accordance with that label.

Lemert used homosexuality as an example to discuss how having a stigmatized social status can open up channels for particular social benefits:

> This makes it important to examine more closely the ways in which a deviant status or role gives access to rewards and satisfaction. If effective stigmatization imposes penalties and circumscribes access to conventional means of life satisfactions, it may also provide new means to ends sought. Thus becoming an admitted homosexual ("coming out") may endanger one's livelihood or his professional career, but it also absolves the individual from failure to assume the heavy responsibilities of marriage and parenthood, and it is a ready way of fending painful involvements in heterosexual affairs (1972:74–75).

Here, Lemert recognized the deviant status assigned to homosexuals at the time, but also framed obstacles to same-sex marriage and parenthood as possible social rewards. On the one hand, Lemert's characterization reflects how notions of same-sex marriage and LGBTQ parents were outside the realm of social possibility when he articulated his views. It also reflects the then-prevailing monolithic conception of "homosexual" identity that excluded other LGBTQ identity statuses. On the other hand, his characterization raises concerns given that many LGBTQ people might have had children prior to "coming out" in a heterosexual relationship, and in a hostile social climate, were forced to choose between being openly LGBTQ and maintaining their parental ties. For those individuals, "coming out" did not "absolve" them of parenthood; rather, sacrificing parenthood was an opportunity cost (as opposed to a reward) for being openly LGBTQ. I recognize that it is unfair to criticize Lemert too harshly for not focusing on these aspects given his surrounding cultural and social environment, which he acknowledged stigmatized LGBTQ people. Nevertheless, given LGBTQ political and social gains since Lemert's time, reflecting on this passage today illustrates the important point that early critical criminologists defined the possible social experiences of LGBTQ people (marriage and parenthood, for example) in terms of sexual deviance.

Resonating with the interactionist tradition, Lemert also used homosexuality as an example to support his view that group associations had a central role in sustaining specific forms of deviance. He stated that "groups become instrumentally important in those forms of deviance which require for their systematic or continued activation goods and services provided by others through organized relationships" (1951:73). He further underscored homosexuality, "although practicable through seducing normals, generally requires patterns of similar inclinations" (1951:37). Although Lemert did not discuss homosexual subcultures in depth, he explicitly characterized homosexuality as a type of deviance sustained through associations of people with similarly deviant sexual preferences.

The role of "homosexual subcultures" in facilitating homosexual deviance is a recurring theme in Becker's (1963) *Outsiders*. At many points, Becker used homosexuality as an example to apply interactionist principles to define deviance as a societal creation. He explained that the homosexual "makes deviance as a way of life" and "organizes his identity around a pattern of deviant behavior" (1963:30). Becker also relied on homosexuality to support his main argument that being labeled as deviant produced a self-fulfilling prophecy by setting into motion social processes that excluded individuals from conventional spheres of society:

> For example, being a homosexual may not affect one's ability to do office work, but to be known as a homosexual in an office may make it impossible to continue working there…In such cases, the individual finds it difficult to conform to other rules which he had no intention or desire to break, and perforce finds himself deviant in these areas as well. The homosexual who is deprived of a "respectable" job by the discovery of his deviance may drift into unconventional, marginal occupations where it does not make so much difference (1963:34).

As indicated in the above passage, Becker also considered the ways that homosexuals became deviant in other aspects of their lives as a consequence of being labeled as deviants by society for being homosexual. But the starting point and the heart of his analysis focused on the homosexual as a deviant identity.

Becker's labeling theory stressed the function of peer groups in influencing deviance. He hypothesized that the norms of peer groups could function to slow down or halt movement towards deviance. To illustrate this point, Becker relied on Reiss' (1951) popular sociological study of "peers" and "queers" to argue that the norms of hustler peer groups "immunized" members "against increasing deviance" (1951:36). In this discussion, Becker again described homosexuality as a form of sexual deviance, describing hustlers' ability to separate their sexual identities from homosexual acts as a mechanism that prevented them from continuing to a "kind of sexual deviancy" (1951:36). Becker also used homosexuality as an example to demonstrate the opposite point that norms within peer associations could facilitate deviance. He stated that membership in a deviant subculture "solidifie[d] a deviant identity" and that "a set of perspectives and understandings about what the world is like and how to deal with it, and a set of routine activities based on those perspectives" emerged from deviant subcultures (1963:38). Becker argued that the homosexual community developed their own historical, legal, and psychological justifications for their deviant activities:

> Moving into an organized deviant group has several consequences for the career of the deviant. First of all, deviant groups tend, more than deviant individuals, to be pushed into rationalizing their position. At an extreme, they develop a very complicated historical, legal, and psychological justification for their deviant activity.

> The homosexual community is a good case. Magazines and books by homosexuals and for homosexuals include historical articles about famous homosexuals in history. They contain articles on the biology and physiology of sex, designed to show that homosexuality is a "normal" sexual response. Taken together, this material provides a working philosophy for the active homosexual, explaining to him why he is the way he is, that other people have also been that way, and why it is all right for him to be that way" (Becker 1963:38).

This "working philosophy" of the homosexual facilitated and sustained patterns of homosexual deviance:

> Most deviant groups have a self-justifying rationale (or "ideology"), although seldom is it as well worked out as that of the homosexual. While such rationales do operate, as pointed out earlier, to neutralize the conventional attitudes that deviants may still find in themselves toward their own behavior, they also perform another function. They furnish the individual with reasons that appear sound for continuing the line of activity he has begun. A person who quiets his own doubts by adopting the rationale moves into a more principled and consistent kind of deviance than was possible for him before adopting it (Becker 1963:38-39).

Here, Becker was primarily evaluating how deviance functioned and shaped the behaviors and worldviews of its targets. At the same time, his analysis arguably perpetuates a view that treats organized attempts for LGBTQ recognition, acceptance, and equality as manifestations of extreme deviance, as opposed to justified attempts to eliminate marginalization on the basis of a difference that shaped people's lives and society refused to respect. By so doing, LGBTQ populations bear a stigma of sexual deviance no matter what—even in their attempts to eliminate unjust marginalization for being LGBTQ.

Although the passages above are open to interpretation, the fundamental point that I want to stress is that they demonstrate how early critical criminological discussions of LGBTQ populations—and "homosexuals" in particular—took place through the lens of sexual deviance. Although these early critical criminologists did not necessarily intend to stigmatize LGBTQ people, their inability to engage in critical discourse outside the sexual deviancy framework illustrates that their early critical perspectives rely on outdated ways of thinking about sexuality and gender identity that are damaging to LGBTQ people today.

Sexual Orientation and Gender Identity as Irrelevant to Social Structure

Early critical criminological perspectives also rarely conceptualized homophobia or transphobia as structural conditions that might facilitate criminal offending or victimization outside of sex-crime contexts. At least two factors contributed to this macro-level neglect. First, because homosexuality was widely viewed as a form of sexual deviance, few early critical criminologists recognized sexual orientation or gender identity as non-deviant differences that were relevant to the organization of society. Second, the Classical social theories of Durkheim, Weber, and Marx—which influenced many early and recent critical criminological theories—neglected sexuality and gender more broadly (Seidman 1996).

Radical (Marxist) theories of crime—which explain crime in terms of the inequitable distribution of political and economic power in capitalist societies (Lynch et al. 2000)— offer salient examples of early critical criminological perspectives that did not recognize sexual orientation or gender identity as relevant features to the social structure. Radical

criminological theories became popular during the 1960s and 1970s, when a wave of social justice movements (*e.g.*, the U.S. Civil Rights Movement, the anti-Vietnam war protests, university revolts, and the women's liberation movement, and the Stonewall Riots) shaped political and social climates, especially in the United States (Lynch et al. 2000; Platt 1974).

Quinney was one of the first criminologists to develop a radical theory of crime in the counterculture movements of the 1960s and 1970s. Before advancing his radical theory, however, Quinney (1970) advanced a social conflict theory of crime that viewed the content and enforcement of the criminal law as products of political power. He discussed homosexuality at a few points in his social conflict theory and characterized homosexuality as a form of sexual deviance in each case. Quinney relied on prior sociological studies within the social learning and labeling traditions to argue that the "homosexual" was a learned social role. He further relied on this body of research to explain how homosexuals adapted to the stigma attached to their deviant social statuses (Quinney 1970:260). He acknowledged the evolving favorable legal and police attitudes towards homosexuality in the United States and England, but stressed that they did not necessarily reflect changes in public opinion.

Quinney largely omitted discussions of homosexuality in advancing his later radical theory of crime, after abandoning his social conflict perspective (1974a, b, 1977). Relying primarily on Marxism, Quinney viewed the criminal law as the centerpiece of the existing economic and social order because it enabled the state to use force and coercion to protect the interests of the ruling class. In his view, the interests of the ruling class framed law enforcement and crime control, which functioned to defy any resistance to the status quo from members of the non-ruling class. He advocated replacing capitalism with socialism to eliminate inequalities that capitalism created and sustained.

In his radical scholarship, Quinney mentioned homosexuality only in passing when discussing laws that had been mostly repealed and targeted particular conduct (homo-sexuality, gambling, prostitution, and abortion) (1977:158; 1974:190). Consistent with the homosexual deviancy thesis, the lens of sexual deviance framed these discussions. In turn, Quinney's radical theory did not consider the relationship between capitalist production, sexual culture, and criminality. It also did not consider how sexual orientation or gender identity differences intersected with class struggles, or how replacing capitalism with socialism affected existing assumptions about sexuality and gender in the social order. Although these questions invite future detailed discussion, the important point is that the differences between Quinney's discussions of homosexuality in his social conflict theory and his radical theory lend support to the macro-level neglect of sexual orientation or gender identity differences in early critical criminological perspectives.

The writings of Chambliss provide additional support for this view. Chambliss (1964) popular essay, "A Sociological Analysis of the Law of Vargrancy," traced the develop-ment and enforcement of vagrancy laws from the fourteenth century in England, to the twentieth century in England and the United States. He argued that vagrancy laws first appeared in fourteenth-century England to help landowners after the Black Death elimi-nated a considerable segment of the English labor force, and to pressure available laborers to accept low-wage work. In his view, the purpose of vagrancy laws shifted in the sixteenth century from requiring labor to controlling criminal activity and regulating "rogue" populations. Vagrancy laws maintained a similar purpose in twentieth-century England and the United States, focusing on the "arrest and confinement of the 'down and outers' who inhabit[ed] certain sections of our larger cities" (Chambliss 1964:75). Their controlling function was "a reflection of society's perception of a continuing need to control some of its 'suspicious' or 'undesirable' members" (1964:75).

Chambliss' analysis of vagrancy laws omitted consideration of their enforcement against sexual and gender minorities. Several scholars, though, have documented the application and expansion of vagrancy laws in nineteenth- and twentieth-century England and the United States against gay men, lesbians, cross-dressers, and other gender non-conforming people (Adler 1989; Cocks 2003; Eskridge 2008; Weeks 1977). The exclusion of this discussion from Chambliss' analysis is noteworthy because it raises questions about whether vagrancy statutes functioned exclusively as tools to further the interests of the economic ruling classes in nineteenth- and twentieth-century England and the United States. Adler (1989), for instance, documented the development of vagrancy laws in St. Louis, Missouri during the nineteenth century Civil War Era. He found that merchants did not successfully exploit criminal codes in order to boost capital during this period. Rather, by the beginning of the Civil War, vagrancy statutes "served as instruments to protect residents from moral threats," including homosexual and gender non-conforming behaviors (1989:222). Local newspapers reported stories of law enforcement relying on vagrancy laws to arrest John Burns, "a suspected homosexual," and Susan Bale, "a young woman who preferred to dress in men's clothing" (1989:222). From these accounts, Adler concluded that "local culture—not the narrow economic needs of the elite—defined the application of vagrancy laws in St. Louis" during this period (Adler 1989:221).

Adler may have overemphasized the cultural dimensions of enforcing vagrancy laws against LGBTQ populations. Consistent with Chambliss' position, this enforcement also might have had an economic dimension. The aftermath of the Civil War devastated many local economies in the United States, and a need for people to move from their families to make ends meet disrupted traditional family structures (Ransom and Sutch 2001; Rose 1992). In this context, vagrancy laws against sexual and gender minorities might have served as a means to defend traditional family structures that were the primary unit of economic production for many individuals before the Civil War. But regardless of whether vagrancy laws had an economic or cultural purpose, the critical point is that sexual orientation and gender identity had a bearing on the wider and historical functions of vagrancy laws.

Chambliss later explicitly adopted Marxism to articulate nine basic tenets of the function of criminal law (Chambliss 1975). In presenting and discussing these tenets, Chambliss also omitted considerations of sexual orientation and gender identity. This omission raises questions, which are never answered in his work, about how sexual orientation and gender identity relate to the etiology of crime and criminal law production in capitalist and non-capitalist societies. In the copious body of Chambliss' radical writings, the issue of homosexuality arises almost exclusively in the context of "victimless crimes." These discussions show the influence that the criminal stigma attached to homosexuality had on the treatment of LGBTQ people within his writings. Chambliss acknowledged this stigma in the 1988 treatise, *Exploring Criminology*, in which he explained that the criminal stigma attached to homosexuality was not the mere product of legislative acts, but was also reinforced by decisions of the United States Judiciary (1988:51). Even though Chambliss did not assert that homosexuals were sexual deviants in this work, his discussions focused on the debate over the criminalization of homosexuality.

In short, the examples above illustrate that early critical criminologists omitted considerations of homophobia and transphobia in their attempts to theorize macro-level factors in the social structure that might facilitate crime. Arguably, this omission is additional evidence that early critical criminologists refused or did not have the conceptual tools to engage with LGBTQ populations without relying on notions of sexual deviance.

The Invisible Offenders: More Recent Critical Criminological Perspectives

LGBTQ populations are much less commonly portrayed as sexual deviants in more recent critical criminological perspectives that have developed after interactionism lost force in the 1970s. It is difficult to characterize this as progress, though, because there have been very few discussions of sexual orientation and gender identity overall.

Generally, discussions of sexual orientation and gender identity in more recent critical criminological perspectives have taken three forms. First, some critical criminologists have referenced the declining popularity of criminal laws targeting homosexual acts as an example of societal disagreement over the definition of crime (*e.g.*, Braithwaite 1989). Although these discussions do not characterize homosexuality as a form of deviance *per se*, their scope is limited to the issue of whether homosexuality is a type of sexual deviance. Second, critical criminologists have discussed the problem of bias crimes motivated by sexual orientation, and gender identity to a lesser extent (*e.g.*, Messerschmidt 1993; Perry 2001; Stanko 1990). Although these discussions demonstrate how conceptualizing sexual orientation and gender identity as differences can improve knowledge of LGBTQ people's experiences of crime, their scope is limited to a narrow area of victimology. Third, some critical perspectives (especially feminist and cultural criminologists) have articulated a need to integrate queer perspectives and deconstruct a heterosexist social order that facilitates the subordination of LGBTQ people (*e.g.*, Ferrell and Sanders 1995; Messerschmidt 1986). These calls acknowledge the relevance of sexual orientation and gender identity to societal organization, but criminologists have yet to comprehensively integrate those differences into a criminological theory.

Therefore, although critical criminologists have provided these insightful first steps, they have yet to offer a broader conceptual framework to explain how sexual orientation and gender identity may relate to: (1) the criminal victimization of LGBTQ people on a broader scale than hate crime, or (2) the reasons why LGBTQ people to engage in criminal offending or desist from crime. These criticisms are not intended to undercut the value that critical criminological research on hate crime victimization has and continues to offer. Critical criminologists have stressed the importance of listening to marginalized groups in order to learn about the realities of how they experience crime (Young 1986). Hate crime is an unfortunate reality that many LGBTQ individuals and communities face. This type of victimization, however, is only one piece of the puzzle.

The lack of criminological engagement with LGBTQ offenders outside the lens of sexual deviance is especially problematic. In many respects, the status of LGBTQ offenders in the field has shifted from the "sexual deviants" to the "invisible offenders." Criminologists' lack of focus on LGBTQ offenders is perplexing given that prison scholars and scholars in other disciplines have drawn attention to the presence of LGBTQ inmates inside of prison walls and the unjust social conditions that lead to their incarceration (*e.g.*, Dolovich 2012; Gehi and Arkles 2007; Robinson 2011). Although these scholars have documented that LGBTQ people—especially low-income and LGBTQ people of color—are behind bars, criminologists to date have paid very little attention to how they got there.

Moreover, new critical-criminological conversations about LGBTQ offenders are warranted in light of recent developments in the subfield that attempt to deconstruct heterosexist gender structures, but appear to focus on heterosexual subjects to do so. For instance, a new trend in feminist criminology emerged in the 1990s that focuses on the role of men and their performance of masculinity in offending (Collier 1998; Messerschmidt 1993). As Messerschmidt (1993) explains, this enterprise focuses on "men as men and boys as boys" (p. 14). Although this area of criminology has provided meaningful insight

into how gender norms are socially constructed, it has largely focused on deconstructing the "heterosexual male" offender. In so doing, the enterprise has yet to further the understanding of how gender norms may lead LGBTQ people—and LGBTQ men in particular—to commit or to desist from crime. It also provides little insight into how other differences—including race, ethnicity, class, etc.—intersect with sexual orientation and gender identity to shape the causes and experiences of crime.

In short, focusing on LGBTQ offenders is just as an important piece of the puzzle as anti-LGBTQ victimization for at least three reasons. First, stemming from her research on gay-identified gang members, Panfil (2013) rightfully argues that the criminological neglect of LGBTQ offending is connected to the broader denial of LGBTQ people's agency in the field of criminology. Second, because of a lack of emphasis on LGBTQ offending, the dominant existing narrative of the "gay offender" is a "sexual offender" (especially the "child molester"). This narrative is rooted in the male-focused and outdated sexual deviance framework. Although criminologists have paid very little attention to transgender and gender non-conforming people, a parallel, misguided narrative exists of the "transgender offender" as a "sex worker." Accordingly, there is a need for counter-narratives and better representations of the nuanced ways in which sexual orientation and gender identity might influence a broad spectrum of criminal involvement. Without them, ill-founded stereotypes will continue to thrive and to shape criminological perceptions of LGBTQ populations.

Third, turning a blind eye to LGBTQ offenders discounts a central part of the consequences of homophobia and transphobia in criminal justice contexts. Many LGBTQ people are excluded and face pervasive discrimination in vital spheres of daily life, including housing, employment, marriage, family, religion, public accommodation, medical care, and education. These struggles can take different forms when considering how sexual orientation and gender identity intersect with other differences, such as race, ethnicity, class, age, and religion. Restricting criminological considerations of homophobia and transphobia to victimization ignores the reality that those structural conditions may shape unjust policing practices, influence LGBTQ populations to resort to breaking the law in some instances (e.g., "survival crimes"), or unfairly influence societal determinations of criminal guilt. In turn, the criminological neglect of LGBTQ offenders insulates any of their behaviors possibly rooted in homophobia or transphobia from investigation, and therefore, inhibits developing criminological interventions for addressing them.

Moving Forward

The analysis above demonstrates the need for new critical criminological frameworks to address LGBTQ populations, and, sexual orientation and gender identity more broadly. This section articulates some of the difficulties surrounding how critical criminologists may go about advancing the field in this regard, and broadly sketches one particular approach that has promise.

One obstacle to creating a queer criminology stems from contesting definitions over the term "queer" itself. Although community advocates and scholars disagree over its precise meaning, the term "queer" has been generally used in two ways outside the discipline. First, "queer" has been used as an umbrella term to describe persons who assume an array of defined sexual orientation and gender identity categories, including "gay," lesbian," "bisexual," and "transgender" (Jagose 1996). Second, the term "queer" has been used challenge rigid identity categories with respect to sex, gender, and sexuality (e.g., man/

woman, gay/straight). Under this second approach, "queer" has also been used to challenge the stability of concepts, methods, and assumptions of conventional social science research (Plummer 2005).

The tension between these contesting definitions of "queer" poses a potential catch-22 situation if either the identity-based or deconstructive approach is taken too far. On the one hand, if queer criminology accepts the first meaning of the term "queer," then it risks being void of critical introspection. Queer criminology may draw attention to the exclusion of LGBTQ populations within criminological research, but also marginalize individuals with non-normative sexual orientations and gender identities who do not identify with, or fit within, accepted definitions of experiences of lesbian, gay, bisexual, and transgender. On the other hand, if queer criminology accepts the second meaning of the term "queer," then it risks diluting identity categories to the extent that it may discount the experiences of people who identify with, and experience marginalization on the basis of, differences that mold those categories.

The following examples illustrate that the risks of taking either the identity-based or deconstructive approach to its extreme are not merely hypothetical. With respect to taking the identity-based approach too far, consider the historical and continuing trend in criminological theory and research to associate "gay identity" with "homosexual subcultures." Some of these discussions took place between the 1950s and 1970s when sociologists became concerned with the social aspects of homosexuality and, in turn, investigated homosexual subcultures and "gay spaces" (*e.g.*, bars, neighborhoods, cruising spaces, etc.). The previous analysis of Becker's *Outsiders* demonstrates this point. Akers' (1973) social learning theory provides another example. Akers argued that social learning drove individuals to move away from heterosexual behavior toward a stable pattern of "deviant" sexuality. In making this argument, he referenced a study that identified four alleged phases of "becoming a homosexual"—the final phase entailed exposure to "gay" subcultures (Steele 1967:9–10). Based on these assumed stages, Akers argued that homosexual subcultures provided a mechanism of reinforcement for homosexuals to continue engaging in homosexual behaviors. Such discussions advanced an essentialized view that there was one set pattern of becoming a homosexual, and that people were not "full" homosexuals until they immersed themselves in homosexual subcultures.

Discussions of homosexual subcultures in more recent critical criminological perspectives do not define gay identity through homosexual subcultures as strongly as past perspectives did. There is still an emphasis on subculture, though, when LGBTQ populations are discussed. Ferrell and Sanders (1995:318), for instance, posit that "we need a cultural criminology that can understand the criminal worlds of lesbians and gays… Largely in response to their social marginalization and criminalization, members of gay and lesbian subcultures have developed elaborately stylish codes of personal conduct and presentation of self." Young (1999:90) argues that "the concept of subculture allows us to gain insight into the nature of diversity in late modernity." He criticizes the tendency for late-modern societies to essentialize identities, arguing that difference in late modernity is "related to subculture" (1999:91). In his view, "[m]ale homosexuality is cast… as gay culture" in the multiculturalism of late modernity (1999:99).

Of course, "gay" subcultures exist and are an important part of the social experiences of some LGBTQ individuals (Frederick 2013). Criminologists, however, perpetuate a narrow view of what it means to be LGBTQ by categorically connecting LGBTQ people's experiences of crime to these subcultures. Many LGBTQ people do not belong to "gay" subcultures, and many LGBTQ people deliberately distance themselves from those subcultures for different reasons. For instance, "gay" subcultures did not, and still do not,

provide a sense of community for all LGBTQ people, and have been criticized for discriminating against queer women, transgender and other gender-variant people, persons of color, the poor, and other marginalized groups (Bowleg et al. 2003; Boykin 1996; Hemphill 1991; Icard 1986; Loiacano 1989; Mays et al. 1993; Moore 2001). In light of these criticisms, advancing rigid definitions or meanings attached to "gay" identity (e.g., as belonging to a "gay" subculture) risks neglecting the criminologically-relevant experiences of a diversity of LGBTQ people.

Conversely, to illustrate the potential harms of taking the deconstructive approach too far, consider the recent heightened public discussion in the United States about the suicides of LGBTQ youth motivated by school bullying. In 2010, media coverage of suicides of LGBTQ youth who were bullied by their peers increased dramatically (Paceley and Flynn 2012). This coverage drew attention to the struggles of being an LGBTQ youth, especially in educational settings. Some sources, though, recognized that bullying motivated the suicides, but omitted any mention that the victims were bullied because of prejudice against their sexual orientation or gender identity (e.g., Dee 2012). Some commentators framed the bullying issue as a universal problem for all teens, not just "gay" teens (e.g., Carlson 2010)—and other sources reported statements from school administrators making similar characterizations (e.g., Des Moines Register 2012). Arguably, some commentators who were more hostile to LGBTQ youth used this generalization tactic to deflect the public's attention away from bullying that was rooted specifically in homophobia or transphobia.

The LGBTQ youth suicide example poses a potential dilemma for queer criminologists who might advocate for deconstructive approaches at their extreme, which would call for dismantling categorized notions of sexual orientation and gender identity differences. Minow (1990:40) argues that "refusing to acknowledge… differences may make them continue to matter in a world constructed with some groups but not others in mind." Based on this view, if queer criminologists focus exclusively on dismantling any held notions of sexual orientation or gender identity differences, then the inevitable tradeoff is a lack of focus on the criminologically-relevant struggles that LGBTQ people currently face because of homophobia or transphobia rooted in those differences.

In identifying these risks of taking the identity-based or deconstructive approaches too far, I do not intend to undermine emerging criminological perspectives regarding sexual orientation or gender identity that clearly fall under one approach but do not take that approach to its extreme. At the same time, warning against these risks at the extreme is a meaningful exercise because it is fairly easy to advance "queer" criminological frameworks that either: (1) perpetuate exclusive and essentialized meanings of sexual orientation or gender identity, or (2) deconstruct to the point that they are difficult to apply in criminological research or too distanced from the real-world and criminologically-relevant experiences of LGBTQ people on the ground.

One promising approach (of likely many) is to recognize sexual orientation and gender identity differences as relational concepts. This approach would not assume or attach particular meanings to criminological subjects on the basis of sexual orientation or gender identity, but rather prioritize the perspective and voices of criminological subjects in determining the potential connections between sexual orientation or gender identity differences and crime. In some instances, this approach might require embracing existing sexual and gender categories to capture and convey the criminological experiences of individuals within particular LGBTQ communities. As Minow (1990:78) observes, however, "[d]iscovering that difference arises in relationships and in contexts that are themselves mutable introduces new angles of vision, new possibilities for change." In this

regard, queer theories provide important insight into the margins of those categories, and call attention to which individuals are and are not excluded by them.

People's social experiences are not only shaped by sexual orientation and gender identity differences, but also are molded by a host of other differences including race, ethnicity, religion, class, and age, among others. Viewing sexual orientation and gender identity as relational, historically-situated, concepts facilitates understandings of how these differences intersect with other differences to shape experiences of crime. Critical race scholarship—and Crenshaw's (1991) theory of intersectionality in particular—offer useful frameworks to explain how the intersection of multiple differences can engender varying experiences of discrimination, marginalization, and violence. Crenshaw (1991:1242) argues that "[t]he problem with identity politics is not that it fails to transcend difference, as some critics charge, but rather the opposite—that it frequently conflates or ignores intragroup differences." Crenshaw (1991:1244) further explains that "the experiences Black women face are not subsumed within the traditional boundaries of race or gender discrimination as these boundaries are currently understood, and that the intersection of racism and sexism factors into Black women's lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately." Recognizing intersectional angles avoids the pitfall of overlooking the potential multi-dimensionality of LGBTQ people's experiences of marginalization by looking at sexual orientation or gender identity differences in a vacuum in criminological theory and research (see also, Meyer 2013).

The push for intersectional frameworks that include sexual orientation and gender identity differences presented here is in tension with some recent critical criminological perspectives that problematize an alleged trend to overemphasize difference and identity in today's world. For instance, Young (2011, 2007, 1999) argues that late modernity is marked by "ontological insecurity" and a "crisis of identity" that arises from the crossing and blurring of economic, cultural, social, spatial, and moral boundaries. He contends that one late-modern solution to this crisis is to draw lines and boundaries by emphasizing features, and using identity politics to demonize others through the essentialization of difference. Although Young provides insight into how differences may function in certain ways in late modern society, it is important not to quickly dismiss projects to elucidate and to rectify the criminological mistreatment of LGBTQ populations as part of this late-modern trend. The long history of the enforcement of anti-sodomy laws and police harassment of LGBTQ populations illustrates that discrimination on the basis of sexual orientation and gender identity is not simply late-modern societal experience.

Conclusion

Critical criminological theories and methods have great promise to advance the treatment of LGBTQ populations, and sexual orientation and gender identity issues, in the field. That being said, a key aspect of brainstorming and creating new critical "queer" criminological frameworks is to account for how those advancements relate to what critical criminologists have said previously about sexuality and gender identity. This article has documented some missteps and outdated ways of thinking about LGBTQ issues in the history of critical criminology, and advanced one of many possible directions to avoid these early pitfalls as we go forward towards a critical "queer" criminology.

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