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Responsive Categorization and Accusation

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Prelude: Crewe's Responsibility Beyond Blame

Modern crime control apparatuses mostly attribute culpability to individual persons (criminals, offenders) starting with accusations that potentially open gateways to trial and punishment (Agamben, 2018; Goebel, 1976). Several analysts have pointed to the marginalizing effects of expanding cultures of punitive crime control (Muncie, 2007; Dayan, 2011; Garland, 1990, 2002; Christie, 2016), and the damaging effects of their remarkably tenacious inequalities (Simon, 2014; Alexander, 2010; Loic Wacquant, 2000). A current restorative movement was born out of calls for Kuhnian paradigm shifts in criminal justice to effect 'changing lenses' based on restoring broken social relations (Zehr, 2015; Zehr & Toews, 2004), 'reintegrative shaming' (Braithwaite, 2010; Strang & Braithwaite, 2001), republican-based responsive regulation (Braithwaite, 2002), reimagined transformative justice (Aertsen & Pali, 2017), etc. The early promise was to rethink the state's adversarial, conflict-based, retributive justice paradigms — a theme echoed in peacemaking criminology's critiques of criminal justice and its attempts to reduce conflict through techniques akin those deployed to end war (Pepinsky, 2006; Pepinsky & Quinney, 1991). That approach also referred to how certain criminal justice myths actually generate crime and perpetuate injustices that some take to be inherent to criminal justice (Pepinski & Jesilow, 1984).

In a thought-provoking discussion of blame, responsibility and justice, Crewe (2019) engages several such approaches, including peacemaking criminology's challenges to oppressive, punitive, and conflict-nurturing discourses. But the nub of his paper is directed to what he sees as the conceptual basis upon which juridical decisions of criminal responsibility, guilt, and punishment rest — namely, ideas of blame. That is, for him, concepts of blame and blameworthiness render certain legal procedures legitimate and enable a narrowly calculated sense of criminal responsibility alongside the 'need' for punitive sanction (2019: p. 3-4). Against this tendency, Crewe worries that the more blame-focused criminalization is enunciated as a necessary response to those who break the law, the more the moral foundations of criminal justice operations are obscured. Similarly, when conventional (administratively aligned) versions of criminology work off an empirically discoverable ontology ('crime'), they tend to overlook the moral foundations of what

they do (even if simultaneously and paradoxically they embrace free will as a justification for blame, guilt, culpability, and responsibility). In this regard, Crewe echoes peacemaking criminology's call not to ignore the moral forces behind criminalization (Pepinski & Jesilow, 1984), and the associated quest to, 'eradicate conflict in the criminal justice systems and the world at large' (2019: p. 4). At the same time, he worries that an overarching appeal to religious moral orders — 'doxic traditions' — has unnecessarily limited the appeal and impact of peacemaking approaches.

By way of redress, Crewe offers a particular kind of 'phenomenological inquiry' to problematize and rethink the role that blame plays in dominant modes of criminalization. Questioning the experience of being in a world contoured by philosophical images of blame, he disrupts the foundations of criminal justice. The latter obscure the ethical frameworks upon which they rest, and fail to confront their reliance on conflict-ridden, cycles of punitive violence. In rethinking this conceptual terrain, Crewe insists on the primordially of ethics over ontology in matters of criminalization, starkly rejecting the view that blame ought to ground processes of justice and also refusing the view that blame and responsibility be connected to justify punishment. He also refuses to accept blame as a necessary dimension of criminal justice, emphasizing that blame-orientated experiences distort what being responsible subjects should involve in the wake of criminal disruptions.

He develops this argument by engaging philosophical traditions that variously conceive of blame in relation to responsibility, reason, desire, emotion, cognition, social function, and so on. Though offering a tentative nod in the direction of the social functions of blame perspectives, his phenomenology favours a focus on subjective experience:

'The work of blaming begins with a notable event or situation, one that pierces my thresholds of consciousness. This event or situation that initiates blaming is conventionally taken to be negative, giving rise to the situation where blame is customarily set against praise.' (2019: p. 5).

And further,

'an event occurs creating a situation which unsettles our equilibrium in a negative way, i.e. disturbs, upsets, or distresses us. Should this unsettling or distressing experience elicit in us the kind of reactive attitude envisaged by Strawson, we, as humans so often do attempt to make sense of this new world, which activity frequently involves a search for cause' (2019: p. 10).

But causal analysis alone cannot help us to understand the moral contours of blame because we experience the latter through local, intersubjective relations. That is, we tend to evoke blame when our meaning horizons are somehow shattered by circumstances, conjuring emotions that invite us to make (new) sense of disrupted interactions. Our attempts to reorder meaning horizons may or may not involve blaming. Indeed, reverberating with Garfinkel's ethnomethodology (1991), or perhaps Berger and Luckmann's (1967) phenomenology, Crewe approaches blame as one amongst many possibilities for responding to 'criminal' events, and one that he wishes to detach from other responses.

He turns to Levinas to develop the idea that our being-with-others, the very auspices of our intersubjective lives, necessarily involves ethical responses; ethics, that is, yields ontology. Indeed, subjects only ever emerge through local responses and the meaning worlds such responses create (2019: p. 13ff). So, subjects and subjectivities — the 'I', the 'us', the 'we' — appear historically via

a basic responsibility that our interactions with others demand. In more Levinasian terms, the amorphous ‘face of the other’ that is encountered at birth draws out responses from an ‘unformed passivity,’ and this effect forges historical and ethically formed subjects (Levinas, 1998, 1995; see also Critchley, 1992). One might be tempted here to say that we have a basic ‘ability to respond’; but that is not quite right. Rather, ‘we’ subjects emerge out of very basic responses that our historical relations with others continuously draw out. The latter relations spawn meaning horizons through which we try to make sense of our worlds. Responding is how ‘we’ appear, and how intersubjectivity forges the subjects (and the meaning horizons) that surface in given contexts. This sort of responsibility is both basic and profoundly constitutive.

A key implication of Crewe’s reliance on Levinas is this: conventional criminal justice concepts of blame as an initiator of guilt, and a justification for offender responsibility through punitive violence, require reformulation. This is why Crewe calls on us to detach blame from criminal justice’s limited understanding of responsibility, insisting instead that moral accounting lies beyond blame. After all, our very being is the product of moral relations with others, and more particularly appears through, ‘response-making — our unavoidable responsibility to the Other’ (2020: 13). This basic responsibility does not follow from blame, nor is it a matter of providing an ‘accounting for oneself’, or indeed ‘answering for’ another. By summoning Levinas, Crewe invites a new sense of responsibility as basic to our being with others. Responsibility in this sense generates subjects and presumably also allows for the dissolution of harmful forms thereof:

‘axiomatically, and without any possibility of things being otherwise, I sublimate my responsibility for myself or to myself into responsibility *for* the other, in the form of a total substitution for him, resulting in the erasure of my ‘ego’’ (2019: p. 13)

Ultimately, though, this category of responsibility ‘reveals’ blaming as violence because it fails to recognize, and even erases, the other as a subject. So, criminalizing blame, ‘occurs in the absence of the blamed as subject, rather in the way of a trial absent the defendant: it subjects the ‘soul’ of the Other to erasure’ (2019: p. 14). This argument leads Crewe to a resounding, ‘we must not blame’ (2019: p. 14). Diminishing conflict and promoting peace should not, that is, lead us to focus on what others owe in situations perceived as wrongdoing; rather ‘it means a kind of social justice absent blaming’ (2019: p. 15). That is, ‘the act of blaming in the form of demanding an account, indicates our failure in our obligation to and for the Other’ (2019: 14). Let us leave the text with his final ironic, if biblical-sounding, command: ‘thou shalt not blame’!

First Response: Blame After Accusation

Who knows what subject, what author, will emerge through ‘my’ responses that follow? What kinds of responsibilities will it evoke? With these questions in mind, an opening response to Crewe’s text is an experiential and interpretative one, borne to several readings. Like him, I question appeals to focus justice around concepts of blame, blameworthiness, blamers, the blamed, criminal law’s subsequent individualized judgements of guilt, etc.. Philosophical discourses of blame seem transfixed on finding a suitably stable definition that can delimit what it is to be blameworthy; often as validations for punitive responses. For instance,

‘Blame is a reaction to something of negative normative significance about someone or their behavior. A paradigm case, perhaps, would be when one person wrongs another, and the latter responds with resentment and a verbal rebuke, but of course

we also blame others for their attitudes and characters...Thus blaming scenarios typically involve a wide range of inward and outward responses to a wrongful or bad action, attitude, or character (such responses include: beliefs, desires, expectations, emotions, sanctions, and so on). In theorizing about blame, then, philosophers have typically asked two questions: Which precise reactions and interactions constitute blame? Under what conditions is it appropriate to respond in these ways?' (Tognazzini & Coates, 2018, p. 1 – emphasis added)

Crewe rightly questions the 'of course' in such approaches. He also worries about how they tie responsibility to blame, since (as we have seen) the former evokes a primordial ethics of being-with-others while the latter does not. Yet one might want to add that 'blaming scenarios' in criminal law only come into being through specific kinds of accusation; they contingently surface through particular types of accusatory processes. So, while blame might be uncoupled from responsibility, accusation lies at the foundation for both criminal law's blame-centred rituals, and for wider (Levinasian) ethical responsibilities. Moreover, whether blame is evoked or not, accusation is foundational to criminalization since it initiates criminal matters in contexts as diverse as ancient Greece, Rome, Medieval England, the late 18 century Cape of Good Hope, or 19th century North West Territories in Canada (Pavlich, 2018). Even in contexts where notions of 'crime' were hazy, public sanction was instigated through rituals of accusation as collective responses to matters analogous to crime, delict, or public offence (Rutledge, 2001; Riggsby, 1999). Of these various contexts, one may then ask: what accusative processes translated local lore into law, rite into right, concrete allegation into abstracted legal argument, collective social arrangement into individual criminal culpability?

In other words, accusation, whether it involves blame or not, is a foundation of criminal law. It erects ways to categorize and reform chains of signification – usually as a response to meaning-shattering events – in ways that 'make sense' for local subjects in historical contexts. To be sure, 'making sense' here is shaped inordinately by those who have the local capacity, or authority, to carry their favoured categories into action, but such activities need not involve blame. I may, for instance, accuse you of a crime without blaming you for taking the actions you did – as in the case of the desperate person who steals a loaf of bread to feed a family, or indeed with regard to regulatory offences. Whether accusations of crime involve blame or not, they serve to initiate legal action with enormous effect on how responsibility is subsequently conceived and institutionalized. Christie's (2016) 'crime control as industry' idea aptly points to expansive and expanding criminal justice systems, with an unequally marginalizing (Simon, 2014; Alexander, 2010; Sim, 2009; Wacquant, 2009), and vast undemocratic 'governance through crime' (Simon, 2007). Were it possible to reduce the unequal flows of people into criminal justice institutions, one might actively seek new concepts of responsibility – beyond blame, individual notions of criminal culpability, or justified punishment – when defining and governing democratically (or ethically) problematized social relations. One way to contemplate such reductions is to confront how criminal accusation variously admits people through localized gateways to criminal justice.

Accusation thus adds layers to Crewe's rejection of blame as a necessary condition for determining responsibility: it is basic to criminalization and regulates more foundational responsibilities that emerge from our specific relations with others (Nancy, 2000). Indeed, social relations that disrupt familiar phenomenological experiences, or reorder through criminal justice practices, always involve accusatory categorizations, but do not always rely on blame to reinstate meaning. Rituals of accusation then pivot on more basic forms of categorization than blame, highlighting how different gateways might expose subjects differently to criminalizing networks.

Recall that the term 'accusation' embraces etymological overtones of the Greek *kategoria*, suggesting a basic attachment to categorization, to 'making sense' in the wake of disrupted meaning worlds (Antaki, 2017). To be sure, that sense-making might sometimes involve blame, but criminal justice defers to many other sorts of categorization, each evoking different responses and responsibilities.

In this sense, one may redirect Crewe's phenomenology more broadly to experiences of criminal accusation that select accused subjects for entry into criminalizing institutions (Pavlich & Unger, 2017). For example, in a case of blood libel accusation in 12th century Norwich, various locals unwittingly encountered a 12-year-old boy's corpse in the woods, shattering their everyday meaning frameworks. In concerted attempts at semantic repair, we find participants trying to make sense of their experiences with others, interactively seeking to settle disturbed meanings, and responding in ways that yielded subjectivity and subjection to different stories about what had happened (Pavlich, 2018, p. 83ff; Rose, 2015). Such discussions took various forms in different contexts, evoking a politics of accusation that involved local voices, clerics, aristocrats, and even, reportedly, the King (Rose, 2015). To be sure the matter of who to accuse, and so hold responsible, for the death did not simply revolve around which person to blame; rather it involved a hagiographic categorizing of events that eventually pointed an accusatory finger to the Norwich Jewish community.

Put differently, this was less a politics of blame, than a politics of accusation behind an astonishing blood libel allegation sustained through the tenacious imputations conjured by a local monk, Thomas of Monmouth (Monmouth, 2015; Johnson, 2007; McCulloh, 1997). Seeking to make his way up the church hierarchy, this case afforded him an opportunity to have the boy (William) beatified after many years of political advocacy. The remnants of Thomas' hagiography suggest the tortured reasoning that restored meaning for some participants through a blood libel accusation of a whole community (Langmuir, 1984). My point here is that crime-seeking categorizations, and even Thomas' rhetoric about who to blame, pivoted on a politics of accusation located in wider frames of meaning (e.g., anti-semitism, clerical politics, class distinctions) to forge claims. The accusation provided more basic ways to understand gateways to criminalisation than criminal justice's internal ideas about blame, guilt, and responsibility (punishment). In other words, the politics of criminal accusation constitutes a basic threshold to criminal justice; it has a wider purview, even when it embraces secondarily conjured notions of blame and criminal responsibility.

Thus, we might refuse the internal idioms of criminal justice by problematizing what they seek to keep silent: the basic role criminal accusation plays when channelling subjects to face law in the wake of disruptive events. Rendering such accusation-based thresholds invisible enables subtle powers to forge patterns of subjection that subsequently justify themselves through individual notions of crime, blame, responsibility, punishment, etc. That is, an effective amnesia permits criminal law to overlook its accusation-based auspices, and to herald subordinate concepts like blame. We may turn to its Greek etymological lineage to show that beyond blame, accusation was aligned with ideas of 'credit,' 'censure', 'charge', as well as 'impute' (Antaki 2017, 48-49). It is also possible to siphon from that complex etymology a previously mentioned sense of an initiating **causa** unleashed by an accusation (Agamben, 2018). One might also recall, in passing, that the **crimen** of criminology (*'the logos of crimen'*) is not only tied to visions of 'crime' (Pavlich, 2018, pp. 1-2); it has been closely aligned with a 'cry of distress' (with overtones of the hue and cry), or to 'call someone to account for their actions' (Ayto, 2011, p. 5). From this, criminology's discursive object might be revised from 'crime' to the way local contexts 'call to account' through specific forms of accusation.

Second Response: Accusation and Responsibility

One should be cautious when framing accusation as a substrate for criminalizing calculations of justice. More broadly, as an ethical impetus, criminal accusation is not amenable to ahistorical demarcation. Rather, if anything, its emergence appears through relations that operate locally in its name. And these are what Nietzsche (1967) described as the silent, 'lowly beginnings' of criminal justice. Accusation in this sense, enables the very possibility of criminalization. It is then not a technique that requires fixed accusers (whether private or state), unvarying local procedures, or stable accused identities. Rather, its local relational forms involve a politics that makes sense of disrupted meanings and enables the co-appearance of accusation, accuser, the accused, as well as authorized third parties (Pavlich, 2006).

We have in processes of accusation, then, an instance of Nancy's (2000) 'the with', relations with others, through which particular sorts of responses and responsibilities spawn the subjects at hand. A basic accusative form, that is, draws out historical subjects through a responsibility for the other. In his *Otherwise than Being*, Levinas indicates that such possibilities emerge from an even more basic accusative power: a pre-legal accusation. More broadly, he sees this also as a 'preconceptual' accusative moment that draws responses (Levinas, 1998, p. 111-112). The very emergence of a self, or subject, is predicated on a basic accusation by a formless other (as indicated by the unformed 'face' that beckons to us from birth) that calls one to account, that accuses one, demanding responses and so shaping what 'we' become. The accusation that traces me through interactive responses to others is conceptually before what emerges as a subject. Indicating a profound connection between responsibility and subjectivity, Levinas (2008, 1995) underscores a primordial accusative calling to account which draws on all who are born into relations with others.

One may thus extend Crewe's reading of Levinas to see this primary accusation as shaping 'unconditional passivity'. It yields a self, a subject, through responsibility to and for others:

'in responsibility for another subjectivity is only this unlimited passivity of an accusative which does not issue out of a declension it would have undergone starting from the nominative... Everything from the start is the accusative. Such is the exceptional condition or unconditionality of the self, the signification of the pronoun **self** for which our Latin grammars themselves know no nominative form.' (Levinas, 1998, p. 112).

So, the supposedly wilful, volitional self that is accused of a crime and held individually blameworthy or responsible to law is a product of a second order accusation. It is subsequent to Levinas' basic preconceptual, accusative gesture, where subjects are formed as others call them to account (accused) — their responses form as historically emerging beings. Ethics is basic here because the preconceptual accusations draw out local responsibilities to and for amorphous others and yield different subjective forms. At the same time, law's accusations impute second order subjects (accusers, the accused) with conditioned ideas of blame, and the limited responsibilities defined by relational processes of law. Criminal accusation thus generates particularly inflected subjects who emerge through responses conditioned by historically formed justice systems. Akin to the primordial accusative form in language, that is, criminal accusation (whether imagined, contrived, calumnious, self-deceiving) draws out subjects (through the responses its rituals require) who are to face possible criminalization. Its subjects appear also through response. In an act of

existential amnesia, fundamental responsibilities are overshadowed by resultant criminal justice visions: individual offenders who freely chose to violate criminal law's claimed sovereignty may be blamed, and held culpable, or responsible to communities. Primordial and secondary accusations, that is, support the limited sense of blame and responsibility that Crew seeks to uncouple, and collapse.

Third Response: Accusation Defines Criminalization

As Crewe notes, peacemaking criminology's faith challenges criminal justice. It invites us to think past the *lex talionis* of state justice, to reduce conflict, and to exact peace by rescinding worldviews behind problematized relations (Pepinski & Jesilow, 1984). This suggests a leap of faith that promises less conflicted orders and peaceful futures. That faith, or reliance on 'doxic traditions', aims precisely to change how we categorize and respond to wrong. While echoing that paradigm's transformative sentiment, as noted, Crewe's difficulties with *doxia* lead him to phenomenology, but also to a rejection of the freewill-blame-responsibility axiom behind criminal justice in everyday life. By problematizing the internal foundations of criminal justice, he calls for social justice built on a responsibility to and for others. The promise is to pursue a different way of approaching justice and responsibility without individual blame. However, a promise of this sort may require us to explore the current place of accusation within criminal justice before considering the prospect of other grammars of accusation, beyond the demands of criminal law. Specifically, one may need to grasp the foundational role criminal accusation plays in law before considering — in my next two responses — how different grammars of accusation promise to reduce the unequal flows of cohorts into vast and expanding crime control institutions.

Turning to the first matter, one may allude to a courtroom drama in a J.M. Coetzee's novel to make the point that accusation is not tangential to crime-focused trials, but central to them. We encounter an accused man who no longer cares what happens to him as he yields to allegations that he is guilty. He disconsolately declares that he has no desire to contest the law's charges. In a revealing rebuke, the judge tells him,

'You say further that you do not want to save yourself. But your salvation is not a matter that rests in your hands. If we, your judges, do not do our best to save you, following scrupulously the letter of the law, then we will have failed to save the law. Of course we have a responsibility to society, a grave and onerous responsibility... But we have an equal responsibility to save you the accused from yourself, in the event that you are or were not yourself as the law understands being oneself to be. Am I clear?' (Coetzee, 2016 Kindle Loc 2063-2068)

In other words, with echoes of Kafka's *The Trial*, where K stands accused of something never revealed, the law is 'saved' so long as the contextually forged co-appearance of accusers, accused, and juridical agents remains intact, at least as understood from received points of view. But as significantly, the passage highlights close connections between accusation, criminal trials, and legal responsibility. The point can be made by recalling that historically etched socio-cultural practices of accusation deploy thresholds of — or gateways with attendant gatekeepers determining entry to — criminal justice. They enable points from which selected subjects are judged deserving, or not, of entering local processes of criminalization.

Here disrupted meanings are repaired (or perhaps reconstituted) through institutions that receive information that someone has committed a crime (e.g., police, preliminary examinations,

grand juries, etc). These constitute moments of accusatory categorization, where socially forged meanings are taken over by legally sanctioned processes for transcribing (and translating) verbal accounts of events. They demand a limited range of responses with attendant subjections, thereby shaping accused subjects for possible entry to state orchestrated criminalizing processes. These subjections require particular responses and so enable the previously mentioned co-appearance of subjects at thresholds of criminal law and its justice (i.e., the criminally accused, accusers, and various kinds of judges). This is how accusation solicits subjections from lowly, and often overlooked, recesses that go under such banners as impartial procedures for all, justifiable blame, making guilty offenders responsible, etc. These are the accusatory foundations where criminal law elicits what it demands of responsible subjects to, as Coetzee notes, save itself.

One may underscore the point thus: a second order accusation, predicated on a preconceptual accusative, is foundational to law's criminalizations. At stake here is a historical grammar of accusation that defines criminal law's opening, its entry points. Amongst other things, this means that the ground of such law does not lie in the determination of criminal blame, guilt or innocence, nor even with a capacity to inflict punishment. Rather, it lies with a prior ability to exact narrowly defined responses, and to categorize disrupted meaning horizons using legally sanctioned idioms. Interestingly, the previously noted Latin noun **crimen** also derives from a root **cernere** that connotes the Greek '**krinein**' (decide); the latter is related to terms such as 'categorize', 'critic', 'secret', 'crisis' and so on (Pavlich, 2018, p. 2; Ayto, 2011, p. 145). The capacity to categorize in the face of a crisis (the work of a critic?) could of course take multiple forms, but it is also the lifeblood of criminalization when disrupted meanings are reordered through lexicons of crime, criminal responsibility, and punishment.

In this way, versions of criminal accusation institute criminal justice. Criminal law's fictional targets are, that is, decisive for which persons may be legally categorized and called to account as accused subjects. Such subjections take seriously Agamben's argument that:

'what defines the trial is neither guilt (which is unnecessary in archaic law) nor punishment but rather the accusation. Indeed, the accusation is perhaps the juridical 'category' par excellence (*kategoria* means 'accusation' in Greek), without which the whole edifice of law would fall apart: the indictment of Being within the sphere of law. The law, then, is essentially an accusation or a 'category.' When Being is indicated, or 'accused,' within the sphere of law, it loses its innocence; it becomes a *cosa* (a thing), that is a *cause* (a case): an object of litigation' (Agamben, 2011, p. 23).

As such, the foundations of criminal law lie in the accusations that categorize and call to account in ways that subject selected persons to criminalization. One may repeat that blame could be part of such subjections, but not necessarily so. We might, as peacemaking quests suggest, pursue radically other ways of accusing, of categorizing. To put it differently, could another grammar of accusation enable rituals as foundations for directing new calculations of how to be-with-others justly? Interrupting *criminal* accusations that generate the fictional persons of criminal law and its descendants, could for instance involve dislocations of the individual person who is held to criminal account (Antaki, 2017). Such ideas, again echo Nancy's (2000) sense of 'the with' that continuously shapes our relations with others, or perhaps Derrida's ideas of an always impossible justice to come (Derrida, 1992).

Fourth Response: Refusing Blame and Grammars of Individualizing Criminal Accusation.

As a foundation of criminal law, particular ways of accusing others of crime exact responses and responsibilities that shape the subjects and persons who are selectively required to face institutions of state criminalization. Even if often eclipsed, accusatory forms that propagate massive criminal justice empires may seem to be immovably ensconced within crime-obsessed societies; but that should in no way obscure their historical contingency. The grammars of criminal accusation that unequally feed individually accused persons into increasingly punitive and expanding crime control networks are not necessary developments: they are the outcome of historical moral choices (Meyer & O'Malley, 2009; Wacquant, 2009).

Without claiming expertise in criminal procedure, one might note that accusations often revolve around legally transcribed information and complaint, sworn witness statements, depositions, police reports, preliminary examinations, etc. As noted, such accusations typically solicit verbal declarations from accusers, witnesses, and (under caution) accused persons; they are supposedly 'heard' and then transcribed by sanctioned criminal justice authorities who encipher stories into law's locally sanctioned narratives. Accusations of crime, that is, typically proceed by way of information or complaint; legal stories are exacted from hidden transitions of voice to document transcribed by state sanctioned practitioners. The alleged factual representation of events as record is, however, always a creative accomplishment, often masked by the formal appearance of documents as fact. That is, law's criminalizing stories build up from accusations that proceed through information, statements, and depositions. The latter are transmuted into legal idioms that claim a privileged truth about happenings, using particular fact gathering techniques, oath-taking or affirmation, precedence, statutory interpretation, legal writing, adversarial testing (in preliminary hearings or in some contexts grand juries), etc. In these transitional shelters, complexity is reduced to legally relevant facts and transcribed, staccato-like, for posterity in the uniform tones of mandated forms that recount legal narratives. The 'documentality' that governs here is critical, but so too is a subjection to an individualizing grammar of criminal accusation (Ferraris, 2013).

These are the kinds of accusatory grammars that commence criminalization; we have seen that they allow for a broader discussion than criminal law's narrowed concepts of blame and blameworthiness, and how to respond to these via punitive sanction. We then apprehend criminal justice's now pervasive will-blame-guilt-responsibility-punishment axiom as resting on a basic subjection; namely, the individual subject whose form is initially shaped through modern criminal accusation, then through legal judgement and punishment. Echoing Foucault (2015, 1995), Lagasnerie's (2018) critique of courtroom judgement in France, and Fassin's (2018) analyses of punishment rationales and practices point to the centrality of such individualized responsibilities. As Lagasnerie puts it,

'The system of judgment first deploys an individualizing construction of events. It imputes actions to individuals. Only then can it begin to identify the eventual criminal responsibility of the subject behind the 'criminal act' and from there determine the punishment he or she merits, if one is merited.' (Lagasnerie, 2018, p. 77).

The assertion of *a priori* individuals (biopolitically, or economically categorized) at the start of criminalization is basic to criminal justice narratives, and their implied legal persons.

We have already alluded to the place of documentation, uniformity, transcription, and accusatory procedures at the start of such criminalizing processes – these accusatory machineries

extricate criminally culpable individuals who may or may not then face (or be shaped further by) judgments of guilt and sentenced punishments. In other words, the fictionalized legal person that emerges as response to initiating rituals of criminal accusation then becomes law's target, and defines its jurisdiction (Dorsett & McVeigh, 2012; Naffine, 2011, 2009a). As criminal justice calls subjects to account through accusations, so it begins to delineate its targeted objects as both general and specific beings: a plurality of individualized subjects over whom criminal law's jurisdiction is proclaimed, and simultaneously, a particular legal person who is compelled to appear as a singular, accused individual (Esposito, 2015, 2012b). To be sure, corporately framed persons may also be called to criminal account, often where strict liability cases circumvent ordinary procedures (Vincent, 1989). But the everyday reflex of modern criminal courts apportion guilt and responsibility for crime to individually framed offenders (Duff et al., 2010).

Lacey's work on responsibility attribution calculated through outcomes, characters, actuarial profiles, or psychological personalities may at times suggest a broadening of the logic at hand, even to jettisoning blame for forgiveness (Lacey & Pickard, 2019; Lacey, 2017, 2015); but notions of the individual person remain basic to such formulations (Esposito, 2012a). One may point to genealogies of legal persons to highlight the deep Roman roots of criminal law's individual persons (Agamben, 2018, 2011; Supiot, 2017; Carrithers et al., 1985). Specifically, in Roman law, ideas of personhood may be traced to the use of ancient masks (*personas*) that symbolized different social privileges and positions bestowed upon selected people or families, with important consequences for their lives (Parsley, 2010). Here, the masks were never possessed by individuals, yet,

'every individual was identified by a name that expressed his belonging to a gens, to a lineage; but this lineage was defined in turn by the ancestor's mask of wax that every patrician family kept in the atrium of its home' (Agamben, 2011, p. 46).

Such customs allow us to see Levinas' basic accusation at play, where the 'face' of a lineage, the other, calls subjects into being historically via responses it summons by an allegorically accusing mask. Indeed, as Supiot (2017 at note 69) suggests, the life of Roman persons was conditioned by the inheritance of an ancestral death masks that literally contained the 'imprint of the face of the dead man,' a remaining physical or metonymic 'trace of that person'. The basic accusation of this *imago* drew social responses and framed a subject's particular standing in law. In other words, following preconceptual accusation and response, family-based subjectivities emerged and provided traces for the degrees of legal personhood that became the target of law. As he puts it,

'In Ancient Rome, personality was assigned to the one entrusted with the *imagines* and the names of the ancestors: the *pater familias*. In Roman law, not all human beings had full personality: some were treated as things, while others simply partook of the personality of the *pater familias*. There was no generic concept of 'person' but rather degrees of personality, from slave to *pater familias* via freedmen, free sons and women, peregrines, and so forth.' (Supiot, 2017, p. 71)

As degrees of personhood hardened into socio-legal categories, so a modern propensity for fixed understandings of individual subjects appeared.

Yet the assumption that individuals pre-exist accusation forgets basic accusative calls and responses, within historical power-knowledge formations, that forged modern subjects as individuals. For example, Fassin references the subtle mechanisms by which modern

criminalization and punishment practices shifted our gaze away from social forms of life to individualized subjects:

‘Both the liability of the offender and the individualization of the sanction therefore contribute to a narrowing of retribution on the individual held liable, who is deemed solely accountable for the act he allegedly committed and those he might commit in the future.’ (Fassin 2018, p. 109–10)

For Fassin, a history of individualized persons as the only credible recipients of criminalizing forces is relatively recent event, silhouetted against the previous, collective, approaches to guilt. As he puts it, in past contexts, notions of guilt and culpability were,

‘...inscribed in a process of circulation of persons and goods between clans rather than implying their individual responsibility. The violation of the moral norm or of the social order created a debt that the group had to repay—and not a fault that the individual had to expiate.’ (Fassin 2018, p. 48).

In a similar vein, Nietzsche (1997) saw guilt as allied to notions of debt (*lex talionis* again — ‘an eye for an eye’). That was over time eclipsed by struggles that ‘seared’ a slave morality into modern minds, thereby subordinating the social roots of harm to individualized concepts of criminality. Indeed, legal judgements that declared individual persons as solely responsible for a crime did so at the expense of sociocultural relations that contoured local encounters as wrongdoing. They underplayed or ignored the sociocultural, economic, political, and ethical logics behind the generation of ‘crime’ or wrongdoing. This sort of amnesia undergirds law’s individual judgments of guilt, narrow ideas of responsibility, and individually focused punishment. As Lagasnerie notes, so familiar is this approach nowadays that we find it hard even to conceive of criminal judgement devoid of individual responsibility attribution:

‘from the moment we accept the subject as a being responsible for his actions, how can we imagine that he shouldn’t answer for them and assume the consequences? The existence of individual responsibility for one’s actions legitimizes the act of judging. It further allows for the legitimization of the criminal justice system as an instrument not only to punish but also to dissuade: the individual is presumed to be the conscious, intentional, and voluntary author of his acts, such that the possibility of punishment is likely to spur him to renounce criminal action.’ (Lagasnerie, 2018, p. 71).

In short, a specific grammar of accusation forges discursive paths towards individual-centred images of criminal judgement and responsibility, demanding reduced responses and patterns of subjection. It does not discover (but forges) the persons it targets for subjection and obedience. One grammar of accusation may indeed stand as a key source for blame-centred paths of meaning following disruptions that are cast as criminal, but we should not take this as either necessary or the only grammar of accusation. Accusation, that is, could categorize, or an ethical call to account in many other ways, enabling different responses and responsibilities; and without, as Crewe reminds us, individual blame and judgments of criminal guilt, or punishment.

Fifth Response: Amending Individual, Crime-focused, Grammars of Accusation

If it be that accusation rather than blame befits a transformative paradigm to unearth the roots of criminalization and criminal justice, then we might raise the prospect of changing the scope of said justice by altering the individualized accusatory grammars upon which it rests. So, when responding phenomenologically to experiences of disrupted meaning horizons, by evoking languages of harm, wrongdoing, misconduct, and so on, one need not turn to concepts or practices devoted to individual blame, crime, or punishment, as a rote way to repair ruptured signification. That such a reflex is common in today's crime-obsessed contexts should not be confused with inevitability. Indeed, the very persistence of such responses robs us of another possibility; namely, considering accusatory encounters beyond notions of blame, crime, individual culpability, or retributive punishment. As Crewe's analysis makes plain, it is possible to reassemble meaning and categories in ways that present other, more socially informed, responsibilities.

But let us be clear: as one conjures some atrocious events that destroy interaction, it is difficult to deny that there are a handful of cases for which some sort of incapacitation may be called; but any such gesture must always be a starting point for diagnosing what forms of life, ways of 'being with', have solicited responses — and so subjects, subjections, and subjectivities — that deny responsibilities to and for others. The point is not to ignore the material effects of destructive relations, but to try to define in precise ways the scale of social harm and responsibility, as well as the kind of accusation most appropriate to transformative responses to problematized interactions. Clearly, this aim is not simply to apportion blame or culpability to legally or criminologically conceived, responsible, individuals. Rather, meaning disturbances could secure rituals that reflectively examine the limits of problematized social associations, and the responsive subjections thereby cultivated. In many cases, social limits may be in need of transformation to shape new kinds of subjects from accusative responses; but in others, as Crewe concludes, different conceptions of a primordial responsibility **for** others may be pursued through 'social' rather than criminal justice.

However, pointing to possibilities beyond what is now often taken-for-granted almost inevitably invites the **quo vadis** question: 'where to from here'? Based on what has been so far been offered in the above responses, it will perhaps come as little surprise that the following speculation will refuse criminal accusation as a starting point for justice, calling for other patterns of accusation, with other responses and responsibilities. Much could, of course be said about such patterns, but three openings will no doubt be crucial.

First, as implied, different grammars of accusation could be entertained. We have referenced how criminal law calls people to account using, delineations of crime, criminalizing procedures, individualized images of who can be accused and deemed culpable for a criminal event, and how punishment is to be understood as taking responsibility. The implication here is that an alternative grammar of accusation might work off other understandings of wrongdoing, responsibility and social justice. Is it worth emphasizing a point: as meaning immersed subjects, it is not possible to get rid of accusation once and for all, any more than it is possible for phenomenological subjects to avoid categorization, especially after taken for granted meanings are dislocated. With that in mind, how should we understand the idea of grammar — which specifies 'proper' ways to use language in context and so evokes meaning — with respect to criminal accusation?

Turning to Wittgenstein (1980), one might recall that grammar tells us what sort of entity something is in specific contexts (Wittgenstein, 1980 #373; Pitkin, 1973). But there are at least two senses or uses of his term. On the one hand, one might locate the grammar of 'criminal accusation' through the meanings ascribed to the phrase historically (whether through statute, case precedent, or local guides). These circumscribe specific procedures and limits around what can count as proper instances thereof, and point to a 'surface grammar' that stipulates how to use words in the language games of criminal law (Wittgenstein, 1980 # 664). On the other, a 'depth grammar' traces largely inscrutable conventions borne to 'forms of life' that render surface grammar possible (akin to Nancy's 'the with,' or the basic responsibility of Levinas' preconceptual accusative). As such, one might say that criminal accusation appears through related surface and depth grammars, and its amendment calls for us to change the rules of certain language games, along with associated forms of life (Pavlich, 2018, p. 6). By tapping certain grammars of accusation, criminal law reveals conventions (forms of life) attached to state authorized accusers and legally ordained identities of the accused. To be sure, amending such ubiquitous relational complexes is a formidable challenge for it involves altering the grammars that supply rules for meaning via the conventions of associated forms of life. Yet, we may begin by problematizing familiar and taken for granted ways of approaching criminal accusation, allowing for what likely would be framed as an irrelevant, impossible prospect within dominant criminal justice meaning horizons. This no doubt is to be expected when attending to any prospects for amended grammars, when recognizing other responsibilities.

Second, though complex, attempts to interrupt specific grammars of criminal accusation challenge, as does Crewe, a singular logic. This logic, as seen, calls individual offenders to account, judges guilty persons as solely culpable for a criminal act, and relies on punishment as a way of holding guilty offenders responsible. The initiating form of accusation is bound up tightly with criminalizing knowledge-power so that attempts to modify that grammar may seem overwhelming. Yet one could, for example, imagine accusations that categorize through social rather than individualized tropes. Could one accuse, say, marginalizing social structures, or collective rather than individual persons, thereby holding complex social inequalities rather than individuals to account? This sort of accusation could work off altered fictions that declare collective rather than individual legal persons (Naffine, 2009b, 2004; Fagundes, 2000). To pursue a collectively orientated grammar of accusation one might recategorize 'the accused' as, say, a social structure. By so doing, the locus of responsibility would shift to 'the with,' signalling promises of social rather than criminal justice. A paradigm shift from individual to communal socio-cultural images of what is accused implies a different kind of governmental response. One may here look to examples in New Zealand/Aotearoa, where rivers and mountains have been designated as legal persons to enunciate new responsibilities for law, including a basic respect for people, land, and environments. Recalibrating accusation to spurn criminal law's usual demands for criminalizable individuals promises also to rescind the marginalising, and unequal social relations to which criminal justice institutions have long been integrally attached (Cahill, 1998). If law's gaze were to target – though altered grammars of accusation – collectively traced relations as persons, it might evoke new responses, and new ways of categorizing or imputing responsibility to problematized associations.

Thirdly, the implications of revised grammars of accusation for discourses like criminal justice, criminology, and criminal law will likely be profound. However, unlike Agamben (Agamben, 2018), one need not take this recognition to mean an anarchist death knell for all three. At the same time, hard-fought changes to the grammars by which criminal accusation now categorises could promise radically to reduce the size and profile of networks that criminalize individual persons, opening the way to a redeployment of the multitudes who operate exclusively in the name

of criminal justice. Restorative justice tribunals that keep to earlier promises to change paradigms and the operations of criminal justice, especially when they deploy collectively imagined responsibilities, could have a role here — less so for restorative practices that simply shore up individually cast responsibilities of criminalization with rituals demanding victims, offenders, and restored communities (Pavlich, 2005).

As indicated in passing, the implications for criminology would be significant: its drive would shift from being a policy-driven science directed at the essence of crime or criminals to one seeking new responses and responsibilities behind how subjects (individual or collective) are called to account — accused — in relation to problematized relational events. To be sure, a renewed critical criminology might retrace certain institutional critiques (of policing, courts, and punishment), but it would also focus on significantly reducing criminalization by attending to the ways subjects are first entered into criminalizing systems as accused individual persons. This could enable discourses actively to pursue governmental strategies beyond legal or policy idioms anchored to crime and punishment.

Finally, previous responses challenge criminal law's claimed monopolistic jurisdiction, and this immediately raises the spectre of legal pluralism. As suggested, in relatively few instances the logic of incapacitation through criminalization might serve as an opening response for only few cases. However, the basic thread of my responses pushes for criminal law's radical reduction — thus opening up possibilities for more collectively-orientated calculations of justice, including the prospect of multiple fields of legal, social, and cultural modes of regulation. Such attempts to transform responses to, and the subject experiences of, accusatory categories open up to what criminal justice casts as its 'other', as other ways of approaching responsibilities that form out of problematized relations with others. Such an approach would surely recognize the legal pluralism that was denied, but not silenced, by state and colonial claims to monopolies of jurisdiction for criminal law. The recent resurgence of Indigenous law would then be at the forefront of thinking about revised ideas of what democratic notions of sovereignty, law, and citizenship could offer (Asch et al., 2018; Coyle & Borrows, 2017; Simpson & Smith, 2014; Coulthard, 2014; Napoleon, 2010). Equally, Benton's (2001) work highlights the heterogeneous forms of law that exist globally and give lie to the pretence of one criminal justice across time and place. As an emphasis on one vision law as sole keeper of legitimate, blame, crime, individual responsibility, and punishment is roundly challenged, so its limits become visible and its accusation-based foundations exposed. And when those limits appear, we are more able to encounter promises of new grammars of accusation and calibrations of justice that are currently deemed impossible. And yet it is a shared yearning for precisely this impossible promise that enlivens Crewe's thoughtful responses to peacemaking approaches, condition my previous responses. Both might be taken to call for responsibilities beyond today's crime and punishment empires, with attendant effects on what kinds of subjects that might become.

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