

The Risks of Engagement

Criminal Justice Ethnography in the Crossfire

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In an old work first published in 1977, the Polish-British sociologist and Marxist Ralph Miliband contrasted two views on political conflicts. From a liberal viewpoint, he argued, they exist in terms of problems that need to be ‘managed’ or ‘solved’. The root assumption of a liberal take on such conflicts is that they do not run very deep and can even be functional, in the sense that they are a stabilizing rather than disruptive force. Conflicts clear the air and remind people of the social order they want to keep in place and the harmony they cherish and wish to preserve. From a Marxist perspective, however, political conflicts are cracks in the systems of domination that offer a window on the possibilities of change. Conflicts have revolutionary seeds and may awaken people to the grounded idea that stability is often not a matter of reason but of coercion or persuasion, frequently happening to the disadvantage of those who are stuck in society’s lowest ranks.

In the 15 years or so in which I have been engaged in criminal justice research, we have seen a groundswell of opposition to criminal justice agencies almost unequalled in history, leaving little space to doubt the nature of the bulk of crime as well as its repression, that is, as different sides of a political conflict. In a downward spiral, new generations of disadvantaged youth give expression to their discontent in their very own juvenile and sometimes lawbreaking way, arousing more punitive responses from agents of the law, which in turn give rise to youth’s ‘weapons of the weak’ (Scott, 1985): micro-aggressions against authorities, hooliganism, unauthorized and occasionally escalating protests, petty property crimes, and so on. In my experience, these transgressions form the majority of offenses and usurp most of street cops’ time, reminding us of the long-forgotten theories about the politics of crime and crime control (e.g. Quinney 1970). In this short essay it suffices to mention the first proposition in Quinney’s theoretical framework: ‘Crime is a definition of human conduct that is created by authorized agents in a politically organized society’ (ibid.: 15). A few years before, Howard Becker had

already conjured a vivid image of what such a statement actually means. Tongue in cheek he had written that ‘no one proposes that addicts should make and enforce laws for policemen’ (1967: 241).

My own experiences with political conflicts in the context of criminal justice have been of an ethnographic nature and can be divided along three research lines. Firstly, five years of fieldwork focused on the Dutch police between 2008 and 2013 as well as a more recent project on big data policing have created the opportunity to gain a better understanding of the socially divisive effects of police profiling (Mutsaers 2019a; Mutsaers and Van Nuenen 2023). I have come to agree with Herbert that state actors such as the police ‘employ certain grids of legibility upon the input they receive from the citizenry’ and increasingly, we may add, from data warehouses (2006: 72). This input is sorted into categories and reacted to via particular routines that are typical within the agency and often detrimental to underprivileged classes of (non)citizens (see Mutsaers 2014, for example, for the effects on undocumented migrants). These routines render communities sensible through a particular state epistemology, says Herbert, privileging some people but leaving others underserved and overpoliced.

The countless protests that have erupted in the last decade to combat the injustice *caused by* police departments around the world, make it clear that such social fissures do not remain unanswered. Powerful slogans such as ‘No Justice, No Peace’ have gone viral to expose the fragility of social order and the ephemerality of harmony. In a second line of research I focused on these anti-police protests, in particular those organized by the Chicago chapter of the Black Lives Matter movement in the United States (Mutsaers 2019b; Mutsaers and Van Nuenen 2018). I was very much interested in the struggle that was (and still is) going on to gain recognition for victimhood. While police officers claimed to be overwhelmed by ‘Black crime’, African American citizens built a case for ‘Black victimhood’. Even more, with the archival power (Trouillot 1995) of metadata such as hashtags at their fingertips (literally), they digitally compiled death-by-cop cases to argue that this was a matter of structural violence amounting to state crime. In a legal system that finds it very hard to reason beyond individual culpability, people felt they were left no other choice than proposing radical transformation: the complete abolition of retributive state agencies that do more harm than good.

The third research line consists of three recent projects all taking place at the deep end of the criminal justice system: in or after prison. On the Caribbean island of Curaçao we collected counterstories from the island’s youth detention center in an attempt to decolonize youth justice. Here, too, we saw the facility’s obsession with individual risk and culpability – often accompanied by Euro-centric ideas

about parents' failure to raise their children properly and offer security – clashing with the detained youth's own stories about structural violence and inequality as a result of a racialized society and world system. Across the Atlantic, we are currently giving an artistic twist to the study of such counterstories by looking at their development in drillrap songs and how this hip hop style influences youth in Dutch detention centers. While the authorities tend to condemn drillrap as a criminogenic genre full of hyperbolic representations and encouragements of gang violence, adopting a more forgiving and understanding pedagogy may open our eyes to the possibility that many of the lyrics are actually a classic *cri de coeur*. They chronicle lives of poverty, racism and exclusion and communicate an important message: "if society is turned against me, then screw it". Finally, we ask how such deep divides can be bridged and how broken bridges can be repaired. We take inspiration from the immensely rich history of *restorative* justice that characterizes the Maroons of Suriname. These formerly enslaved runaways had escaped from one of the cruelest retributive justice systems humankind has ever known, i.e. the American plantation system, in which they lacked almost all rights and were even denied legal personhood. Freedom regained, they developed their own justice systems based on principles of equality, participation, reconciliation and restoration. The current project investigates formal and informal traces of this history and explores, together with ex-detained youth, the possibilities to install restorative (youth) justice in contemporary Surinamese society, as addition to or even replacement of the retributive criminal justice system that still exists as Europe's legacy.

All three research lines have in common that they draw attention to the conflicted contours of criminal justice. They position criminal justice agencies at the forefront of political conflict, where society's direction is determined and the interests and needs of different groups of people are weighed. Burning questions tell us that much is at stake: Do we really want to imprison minors? Are we ready to finally outlaw illicit forms of profiling and to take anti-police protests seriously rather than consider them a disturbance of public order? Do we keep prioritizing individual culpability over social justice? Will we stay deaf to youthful expressions of discontent? Do we prefer an oppressing pedagogy or are we ready to embrace pedagogies of the oppressed?

Coming back to Miliband, I increasingly think that the liberal response to these political conflicts is inadequate and leaves them to fester. Coming up with a diversity training here or a legal amendment there appears to me to be band aids on wounds too large to heal. Piecemeal reform to help an existing system move forward makes no sense if that system is deeply unfair, utterly dehumanizing, and widely contested. Honesty requires me to admit that for years I thought otherwise.

Not that I didn't see the system's shortcomings, but I held on to reformist ideas of gradual improvement and progress. As recently as 2019 I developed a checks-and-balances argument in my book *Police Unlimited*. As long as we would succeed to curb the outer bounds of police power and delimit police discretion in its human and technological forms, we could still repair the system. Going against the grain, I argued for more instead of less bureaucracy within the police to improve accountability structures, restrict the police mandate, establish a clear boundary between public and private spheres and thus to encourage a form of policing *without* regard to person (i.e. identitarian-free policing).

More recently I have come to think of such reformism as a failing strategy, that is, if we genuinely want to build more open and inclusive societies. The transformation was caused by a moment of personal crisis, Gramsci-style, in the sense that I found myself in a mental interregnum in which old ideas lingered in the end of their days while new ones had not yet fully seen the light of dawn. The crisis occurred after fieldwork, in what Didier Fassin (2015) would call the public *afterlife* of ethnography.

'The field' in which ethnographers work nowadays is often not only a multi-sided but also a multi-temporal phenomenon. In my case: I have worked with various police departments across the Netherlands and with some but not others I maintained a working relationship long after my fieldwork had officially ended. This 'time difference' made sure that I became further embedded in some social relationships but drifted away from others; a difference, by the way, that occurred both between and within departments. For example, my connection to the police station in my hometown was particularly strong, but I especially worked together with rank-and-file officers. The short description of this collaboration (and its mediatization) that follows, is an abridged version of a book chapter in the *Routledge International Handbook of Police Ethnography* (Mutsaers 2022).

About 18 months after my fieldwork had officially ended, I was still working with this police station to translate the outcomes of my ethnography into practical solutions to counter police discrimination. My spirits were lifted, because I was glad to live in a country where such sensitive issues could be openly addressed – or so it seemed. With a group of four street cops I formed a taskforce to work on a tool to improve oversight of stop-and-search activities and to detect possible signs of ethnic profiling in a structured manner. These signs had been clearly visible within the police team, we all agreed, so we expected to deliver some impactful outcomes. We worked on a format that was borrowed from the San Diego Police Department, and to preempt complaints about paperwork we planned to build a digital application. The stop-and-search data would be used for basic quantitative

analysis in order to (a) be able to detect disproportionate police scrutiny of minority groups, (b) study its effects in terms of ‘successful’ criminal cases, and (c) write tailored summaries on each team member to provide the station chief with insights on officers’ stop-and-search behavior. These could subsequently be used in job evaluation interviews.

In an atmosphere of congenial excitement we decided to give some publicity to our plans, as these coincided with the final preparations for the public defense of my PhD thesis, in which I made a case for a public anthropology of policing. Because of our mediagenic topic – colloquially known as ‘stop forms’ – the press release in which our initiative was mentioned travelled far and wide. I gave one of my first interviews to the *NRC Handelsblad*, a high-quality Dutch newspaper. The reporter was particularly interested in our application as he knew that it would raise some eyebrows due to its ‘policing the police’ qualities (Rowe 2020). Inspired by the courage of the four officers I was working with, I gave the reporter a frank account of our intentions: we hoped to institute the first local system in the country to monitor law enforcement practices with the intention to detect possible illicit profiling and to scale up nationally if our endeavor were to prove successful.

Matching our ambitions, the newspaper editors decided to put our story on the front page and combined it with statements by the Chief of National Police and a senior policy advisor working for the Dutch branch of Amnesty International. The events that followed confronted us with a question that W.E.B. Du Bois had made world famous and which many of the profiled minority youth we had encountered in the streets must have thought about time and again: *How does it feel to be a problem?* Suddenly, our taskforce had become a public relations problem due to the fact that headquarters in The Hague was not amused about our local initiative and tried to quarantine it. In an early morning press release, the national police had stated that the organization was willing to explore the usefulness and feasibility of the app. As if there were no such thing as the digital archive, the press release was changed a few hours later to the unhedged assertion that the police team in question was not going to work with the app, nor had it ever planned to do so.

Faced with contradicting views, the *NRC* reporter approached another taskforce member (a Turkish-Dutch senior constable) to confirm the existence of our project. This constable had agreed to cooperate before but wanted to stay anonymous because he knew very well that our work entailed career risks. Now, however, the reporter used his real name, rank, and station (without consent!) in order to assure his readers that he had used a reliable source. This unexpected and objectionable course of events put our colleague at the center of a political forcefield, which took him years to recover from. Our stop form project was the first one in a long row to

end prematurely; many others stranded in city councils where progressive parties had submitted plans similar to ours. This sobering experience had made me aware of the *risks* of engagement in the absence of a clear idea about the *rules* of engagement.

In addition, it made me doubt the reformist agenda that I thought I was contributing to. Apparently, problems – in this case ethnic tensions between police and policed – were not even managed or solved; they were simply left unaddressed. Even worse, while our attempts to increase police oversight and counter ethnic profiling were blocked, new technologies popped up that further entrenched ethnic profiling within the organization. Advanced forms of predictive policing by means of algorithms were being developed, tested and rolled out nationally with the speed of light, which meant bad news for the ethnic groups of citizens we considered to be in dire need of being protected – not by the police but against (certain elements of) it. From an open society perspective, such developments can be seen as counter-reforms that frustrate positive revision for the sake of diversity and equality. They expose a *conflict* instead of *consensus* model of law enforcement that sheds light on the unevenness of police protection and surveillance.

Returning to Miliband once more and coming to a conclusion, I must say that I came out of my personal Gramscian crisis more receptive to a Marxist view of political conflict than I was before. This is something different than claiming to be a *Marxist* altogether. Besides, Miliband himself argued that too many *Marxisms* are around to attach any meaning to such a claim. Like many others before and after him, he wrote in jest that Marx for one never proclaimed to be a Marxist. What it does mean, however, is that I have started to see the political conflicts encountered in my studies as system-wrecking possibilities that tell us something about *how to change the world*, to speak in concert with Eric Hobsbawm's so-titled book (2011) – the last book he wrote before passing away at the age of 95. To me, this is the essence of engaged scholarship: observing people's struggles against inequality and suffering, and delivering the analytical tools to help them further their cause. A very Marxian understanding indeed.

Evidently, my disillusionment with criminal justice reforms was not only caused by that single idiosyncratic experience in the media, nor by its ugly aftermath. In my experience, simply too many reforms have failed across criminal justice systems worldwide and numerous good proposals have never even been put on the agenda in the first place. As a result, problems keep piling up: ethnic disparity endures in criminal justice systems from arrest through prosecution and sentencing to incarceration; prisons remain the criminogenic environments they have always been; young offenders are still muted and deprived of their childhoods; low confidence

in the system increasingly leads to forms of self-help security and excessive vigilance; protests become more subversive in nature; and, perhaps most fundamentally, people keep being robbed of the opportunity to deal with their own conflicts.

The observant reader may notice that this final issue brings us back to the aforementioned alternative to retributive justice. One of the main charges of the *restorative* justice movement against criminal law is that it theoretically positions the state as the victim of crime. Not only does such a move make it very difficult to think about the state as a harmful agent in its own right, despite all the counterevidence that has been gathered; it also sidelines victims of crime and takes conflict away from its 'rightful owners'. With its army of legal professionals (police officers, judges, lawyers, prison guards, probation workers, etc.) the criminal justice system deskills people in handling their own conflicts (cf. Christie 1977). But if political conflicts are indeed cracks in the systems of domination that offer a window on the possibilities of change, we may be looking at numerous instances of system-wrecking by people who want to have a fighting chance to win back the right to deal with conflict in a more sovereign and respectful way.

For example, most BLM activists simply want to see their communities healed and relationships restored. Rather than conceiving of provocative drill songs as pre-criminal acts, it may help to see young *drillers* as kids who are actually screaming at the top of their lungs that they want to have some autonomy and support in dealing with the tensions of life. The counterstories that we collected in youth detention centers more generally teach us that years of childhood adversity have made most detainees more resilient in the face of setbacks than their more privileged peers. Rather than stifling such resiliency in correctional programs, an example should be taken from it.

Based on the restorative principle of making good rather than adding pain, many things have been set in motion across the world, both within and outside criminal justice systems. In all of our projects, we keep a close watch on them.

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