

## Chapter 2

# “Queering Criminology”: Overview of the State of the Field

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**Abstract** This chapter provides an overview of the treatment of sexual orientation and gender identity issues and LGBTQ populations in the field of criminology. The chapter advances three main points. First, it argues that there is very little data on LGBTQ people’s experiences of crime, both in terms of victimization and offending. Second, the overwhelming majority of criminological engagement with sexual orientation and gender identity occurred prior to the 1980s, and discussed these concepts insofar as assessing whether “homosexuality”—a term that was often employed to describe non-heterosexual sexualities and gender non-conforming identities/expressions—was or was not a form of criminal sexual deviance. Third, to date, there is little to no theoretical engagement with sexual orientation and gender identity in each of the four major schools of criminological thought: biological, psychological, sociological, and critical. I argue that these three points are a reflection of the historical and continuing stigma of the sexual deviance framework on the treatment of sexual orientation and gender identity concepts, and LGBTQ people in the field. This chapter makes a call to “queer criminology,” which in my view, requires overcoming the sexual deviance framework and reorienting criminological inquiry to give due consideration to sexual orientation and gender identity as non-deviant differences that may shape people’s experiences of crime and experiences in the criminal justice system more generally.

**Keywords** Crime data • Criminological theory • Gender identity • Intersectionality • Offending • Queer • Race • Sexual deviance • Sexual orientation • Sodomy laws • Victimization

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## Introduction

The inception of modern criminology is often traced to the 1870s, when a group of Italian physicians began to apply the scientific method to study crime and criminal offenders. Since then, criminology has developed into a vibrant and diverse field that utilizes biological, psychological, sociological, and critical methods. This chapter provides an overview of criminologists' engagement with lesbian, gay, bisexual, transgender, and queer (LGBTQ) populations; sexual orientation and gender identity concepts; and queer theories. The extent of this engagement can be summarized in three short words: Not very much.

The criticism that the field of criminology has distorted or ignored particular social groups is not new. For decades, feminists have called attention to the neglect and damaging stereotyping of women in criminological theory and research (Gelsthorpe and Morris 1990; Heidensohn 1985; Messerschmidt 1997; Smart 1977). Criminologists have also criticized the field for its inadequate treatment of class and race/ethnicity (Phillips and Bowling 2003; Quinney 1977; Rusche and Kirchheimer 1968 [1939]; Taylor et al. 1973). These trailblazers took it upon themselves to construct spaces within the field that recognized, and attempted to further the understanding of, specific social groups as criminological subjects. In spite of this progress, LGBTQ populations have remained largely neglected and misrepresented in the field.

This chapter makes a call to “queer” criminology. In so doing, I advocate for greater inclusion of LGBTQ perspectives, concepts, and theories in the field. This call requires reorienting the focus of criminological inquiry to give due consideration to the relationship between sexual orientation/gender identity differences and victimization and offending.

At the onset, I recognize that it is impossible to provide a complete summary of the criminological treatment of sexual orientation and gender identity in a single chapter. Consequently, there are areas of criminological theory and research that are not discussed in this overview. That being said, this overview goes beyond merely stating the obvious—that criminologists have largely mistreated and ignored sexual orientation and gender identity issues and LGBTQ populations—by identifying and discussing three key themes.

First, there is very little data on LGBTQ people's experiences of crime. As the chapter explains, there is almost no data on LGBTQ offenders or LGBTQ-headed families. Moreover, the bulk of LGBTQ-inclusive criminological research from the past four decades has focused almost exclusively on bias crime/bullying and intimate partner violence (Peterson and Panfil, this volume). Although these growing bodies of research have been instrumental in increasing knowledge about certain aspects of LGBTQ people's experiences of crime, their applicability is limited because they focus on narrow areas of victimology. Consequently, there is a need for criminologists to investigate the diversity of circumstances under which LGBTQ people experience and commit crime.

Second, the overwhelming majority of criminological engagement with sexual orientation and gender identity occurred prior to the 1980s, and discussed these

concepts insofar as assessing whether “homosexuality”—a term primarily used to describe non-heterosexual sexualities and gender non-conforming identities/expressions—was a type of criminal (or non-criminal) sexual deviance. The nature of this engagement was a reflection of the stigma attached to homosexuality and LGBTQ people in Western legal, social, and political spheres. Anti-sodomy and sexual psychopath laws had central roles in these prior criminological discussions. These discussions also often included damaging characterizations of LGBTQ people as criminals, psychopaths, and perverts (see too, Dennis, this volume).

Third, there is little to no theoretical engagement with sexual orientation and gender identity in each of the four major schools of criminology: biological, psychological, sociological, and critical. This lack of engagement raises concerns about whether existing criminological methods and theories apply to the experiences of LGBTQ people today, and whether queer criminologists can and should modify them to address sexual orientation and gender identity. It also raises key questions about the role of queer theories—which have been virtually excluded from criminological theories—to inform those modifications and to create new criminological frameworks. These themes parallel prior and ongoing discussions among feminist scholars about the propriety of working within existing criminological frameworks to provide a complete understanding of the relationship between gender and crime (Cain 1990). Whether queer criminologists must challenge criminological frameworks at their core to provide a comprehensive and nuanced understanding of the relationship between sexual orientation, gender identity, and crime is an important and debatable question.

The combination of these three key themes gives rise to a core argument, which I label the *homosexual deviancy thesis*, and is summarized as follows: Prior to the 1970s, LGBTQ people in Western countries were often labeled as criminals, psychopaths, sinners, and perverts (Sarbin 1996). The *homosexual deviancy thesis* argues that the field of criminology has historically facilitated, reinforced, and left these deviant misconceptions of LGBTQ people intact (Woods 2013). This thesis has two elements, which I label the *deviance-centered element* and the *invisibility element*. The *deviance-centered element* applies to discussions of sexual orientation, gender identity, and LGBTQ populations in the field until about the 1970s. It argues that these discussions contained the degrading characterizations of LGBTQ people described above. Although some criminologists disagreed with these characterizations, the discipline as a whole engaged with sexual orientation and gender identity insofar as determining whether being lesbian, gay, bisexual, or transgender was or was not a form of deviancy itself. The *invisibility element* applies to criminological discussions of sexual orientation, gender identity, and LGBTQ populations after the 1970s until today. The element argues that after the 1970s—when sodomy laws largely lost force in Western countries, and especially the United States, through repeal and lack of enforcement—discussions of sexual orientation, gender identity, and LGBTQ populations virtually disappeared from criminological theory and research. Studies on bias crime/bullying and intimate partner violence are notable exceptions. As a result of the historical distortion and more recent exclusion of LGBTQ populations from criminological theory and

research, there is very little understanding of how sexual orientation and gender identity might shape the causes of crime today.

In making a call to “queer” criminology, my point of view in this chapter is rooted in the present state of the treatment of sexual orientation and gender identity in the field, which is subject to (and hopefully will) change in the future. My core argument is that in light of this present state, one central goal of queer criminology must be to advance the field beyond the sexual deviance framework to consider how sexual orientation and gender identity/expression as non-deviant differences—in combination with other differences, such as race/ethnicity, class, and religion—may influence victimization, involvement in crime, and experiences in the criminal justice system more broadly (Woods 2014). In short, the lingering stigma of sexual deviance that still attaches to LGBTQ people in the field is a reflection that criminology is behind the times in its treatment of sexual orientation and gender identity. The availability of identity-based and critical deconstructionist paradigms illustrates the variety of alternatives that criminologists may adopt to engender a shift away from the sexual deviance framework—the basic point is that this shift is, and has been, long overdue.

## **Crime Data on LGBTQ Populations in the United States**

Existing official crime statistics, victim surveys, and self-report surveys provide a very limited glimpse of LGBTQ people’s victimization and offending because they exclude sexual orientation and gender identity as key variables (but see, e.g., Johnson, this volume, who offers cautions regarding LGBTQ people’s inclusion in “big data”). The main source of official crime data in the United States is the Uniform Crime Report (UCR), which is based on data reported by over 17,000 law enforcement agencies. The UCR includes data on four categories of violent crime (murder, forcible rape, robbery, and aggravated assault) and four categories of property crime (burglary, larceny-theft, motor vehicle theft, and arson). In expanded data, the UCR breaks down murder offenses based on the race (White, Black, other race, unknown race), sex (male, female), and age of the victims and the offenders. Sexual orientation and gender identity are omitted from the expanded data, and sex constructs are based on binary conceptions of biological sex. The UCR also includes data on the number of arrests for twenty-eight specific offenses.<sup>1</sup> In other expanded data, the UCR breaks down these arrests for various

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<sup>1</sup> These offenses include murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, arson, other assaults, forgery and counterfeiting, fraud, embezzlement, stolen property (buying, receiving and possessing), vandalism, weapons (carrying and possessing), prostitution and commercial vice, sex offenses (except forcible rape and prostitution), drug abuse violations, gambling, offenses against the family and children, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, all other offenses (except traffic), suspicion, and curfew and loitering law violations.

geographic localities based on the age, sex (male, female), and race (White, Black, American Indian or Alaskan Native, Asian or Pacific Islander) of the arrestees. Sexual orientation and gender identity are also omitted from this expanded data.

The only mention of sexual orientation in the UCR appears in a separate report on bias crime, which records the number of bias crime incidents, offenses, victims, and known offenders based on “sexual orientation bias” (anti-male homosexual, anti-female homosexual, anti-homosexual, anti-heterosexual, anti-bisexual). Bias-motivation codes for gender identity were added very recently (in 2012) to the bias crime report, but data are not yet available.

One limitation of official crime data is that many crimes are not reported to the police. Crime victimization surveys are useful because they have the potential to capture both reported and unreported crime. The National Crime Victimization Survey (NCVS), conducted jointly by the U.S. Department of Justice and the U.S. Census Bureau, is the largest ongoing victim survey in the United States. The NCVS is based on a nationally representative sample of about 40,000 households (approximately 70,000–75,000 people). The households are included in the sample for three years, and the participants are interviewed twice a year about their victimization experiences with violent and property crimes. The NCVS asks participants demographic questions about age, marital status (married, widowed, divorced, separated, never married), sex (male, female), race (Hispanic, White, Black/African American, American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, Other—Specify), and income.<sup>2</sup> Sexual orientation and gender identity are omitted from these demographic questions. These concepts only appear in a series of questions about bias crimes. In those questions, the respondents can answer whether they believed that they were victims of a bias crime, whether they perceived the crime to be motivated by their “gender” or “sexual orientation,” and whether the incident took place near a gay bar or at a Gay Pride March.<sup>3</sup> Although Bureau of Justice statisticians report that the NCVS has included statistics on crimes motivated by “gender or gender identity bias” since 2010 (Sandholtz et al. 2013), the operationalization of this construct makes it

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<sup>2</sup> Questions involving demographic characteristics are part of the NCVS Basic Screen Questionnaire, which is a separate document from the NCVS Crime Incident Report, which asks about the criminal incidents themselves. The point made here is based on the latest released version of the NCVS Basic Screen Questionnaire (covering July 2008 through December 2009).

<sup>3</sup> In the latest released version of the NCVS Crime Incident Report (covering July 2008 through December 2009), Question 161 reads: “Do you have any reason to suspect the incident just discussed was a hate crime or crime of prejudice or bigotry?” The participants can then answer yes/no. Question 162 reads: “Do you suspect that the offender(s) targeted you because of...” 162(e) states “your gender” and the participants can check yes/no/don’t know. 162(f) states “your sexual orientation” and the participants can check yes/no/don’t know. Question 165 asks about the evidence that made participants suspect that the incident was a hate crime or crime of prejudice or bigotry. 165(a) asks: “Did the incident occur on or near a holiday, event, location, gathering place, or building commonly associated with a specific group (for example, at the Gay Pride March or at a synagogue, Korean church, or gay bar)?” The participants can then answer yes/no/don’t know.

difficult to distinguish crimes motivated by gender from crimes motivated by gender identity and/or expression. The NCVS questionnaire only asks whether respondents believe that they have been targeted because of their “gender,” and the most recent edition of the NCVS survey manual defines “gender” explicitly as “male or female.”

In addition to official crime statistics and victim surveys, some criminologists and researchers in other fields have conducted research on specific types of LGBTQ criminal victimization. The majority of this research focuses on bias crime (Berrill 1990; Berrill and Herek 1990; Carragher and Jay 2002; D’Augelli and Grossman 2001; Herek 1989, 2009; Herek and Berrill 1992; Herek et al. 1997, 1999, 2002; Meyer 2010; Stotzer 2008, 2009). Research on LGBTQ people’s experiences of intimate partner violence (Ard and Makadon 2011; Burke et al. 2002; Cruz 2003; Greenwood et al. 2002; Hester and Donovan 2009; Island and Letellier 1991; Letellier 1994; Leventhal and Lundy 1999; Margolies and Leeder 1995; McClennen 2005; McClennen et al. 2002; Messinger 2011; Murray and Mobley 2009; Oriel 2012; Renzetti and Miley 1996; Waldner-Haugrud et al. 1997) and bullying (Berlan et al. 2010; Birkett et al. 2009; Darwich et al. 2012; Hong and Garbarino 2012; Russell et al. 2011) have also become more common. Moreover, researchers in other fields have documented prevalent rates of substance abuse in LGBTQ communities (Carpiano et al. 2011; Cabaj 1992; Chesney et al. 1998; Halkitis and Parsons 2002; Halkitis et al. 2001, 2003; Hospers and Kok 1995; Leigh and Stall 1993; McKirnan and Peterson 1989; Morales and Graves 1983; Ostrow and Shelby 2000; Stall and Leigh 1994; Stall and Wiley 1988; Woody et al. 1999).

Advocating for greater inclusion of sexual orientation and gender identity in crime data raises challenging questions about how to define sexual orientation and gender identity constructs—a theme that parallels debates in the field over how to define other characteristics, such as race/ethnicity and class, in criminological research (Georges-Abeyie 1984; Hinch 1983). It also raises ethical questions about the government monitoring of LGBTQ people and whether it is more appropriate to use particular methods when conducting criminological research to respect LGBTQ people’s privacy.

Although these inquiries invite careful consideration in future research, the omission of sexual orientation and gender identity from crime data is concerning for at least three reasons. First, this omission has resulted in little to no baseline statistics on how crime influences the lives of LGBTQ people in obvious and non-obvious ways, both in terms of victimization and offending. Second, because crime statistics influence budgetary decisions for criminal justice programs, the omission of LGBTQ populations from crime data may inhibit governments at the local, state, and federal levels from implementing and/or funding programs that address the specific needs of LGBTQ victims and offenders. Third, this omission may also perpetuate a lack of engagement with sexual orientation and gender identity in criminological theory. A vast amount of criminological theory has been influenced by three propositions involving individual/group differences and crime: (1) men commit more, and more serious crime, than women; (2) racial and ethnic

minorities in poor urban neighborhoods commit a disproportionate amount of crime; and (3) crime rates peak during adolescence and then decline rapidly until the late-twenties, when those rates level off. The omission of sexual orientation and gender identity from crime data prevents criminologists from exploring how these general propositions differ when applied to LGBTQ populations, and also inhibits them from discovering and problematizing any comparable propositions that involve LGBTQ people.

## **The Treatment of LGBTQ Populations in Major Criminological Theories**

### ***Early Biological Perspectives on Crime***

I have argued that the treatment of sexual orientation and gender identity in early biological theories of crime was the product of Western societal changes during the second half of the twentieth century (Woods 2013). Before then, homosexuality was viewed as a series of abominable acts as opposed to a distinct identity (Weeks 1981). As city spaces and populations became increasingly mobile from rapid industrialization and urbanization, a diversity of sexual and gender non-conforming behaviors became more visible in the public sphere (Bullough 1979; Weeks 1979). Because Victorian ideology restricted the government from maintaining a large role in regulating private sexual conduct, middle-class society turned to medical experts to resolve moral dilemmas and to generate new definitions of sexual normalcy (Hamowy 1977; Greenberg 1988).

A science of sexology emerged under these circumstances. As sexologists studied homosexuality in greater detail, societal conceptions of homosexuality shifted from abominable committed acts to an individual biological characteristic (Foucault 1979; Greenberg 1988). German and French doctors Johann Ludwig Casper (1852) and Ambroise Tardieu (1857) advanced the first suggestions that homosexuality was congenital. Less than a decade later, German jurist Karl Heinrich Ulrichs articulated the first comprehensive medical conception of homosexuality (Herrn 1995; Kennedy 1997). Soon after, a number of prominent physicians, including Westphal, Benkert, Ellis, Carpenter, and Hirschfeld, advanced the view that homosexuality was biologically innate and a “natural” feature of human sexuality. Many of these physicians, with intentions of improving the social and legal status of homosexuals, characterized homosexuality as an innate biological feature (Greenberg 1988). Other late-nineteenth century physicians, however, combined medical advancements with emerging theories of degeneracy to situate homosexuality outside the realm of sexual normalcy (Charcot and Magnan 1882; Féré 1899; Forel 1905; Krafft-Ebing 1965 [1886]; Moll 1891; Moreau 1887; Tarnowski 1886). Austrian psychiatrist Richard von Krafft-Ebing (1965 [1886]) advanced the most influential of these positions in his

popular work *Psychopathia Sexualis*. Although Krafft-Ebing later changed his position to argue that homosexuality was a harmless and natural variant of human sexuality, his early positions defined heterosexuality as the biological norm and ostracized homosexuals as a class of biological degenerates (Makari 2008).

Evolving conceptions that homosexuality was something people *were*, as opposed to something that people *did*, were present in early biological theories of crime, including the popular works of Cesare Lombroso (Woods 2013). Lombroso embraced principles of biological determinism to argue that crime was a natural phenomenon rooted in the physical constitutions of individuals, and assumed that external physical features mirrored internal moral states (Gibson and Rafter 2006). Influenced by Darwin's theory of evolution, Lombroso utilized Darwin's concept of "atavism" to describe criminals as biological throwbacks to a lesser-evolved, more primitive human (Lombroso 2006 [1878]). Although early biological theories of crime are now viewed as antiquated, two important themes emerge from Lombroso's writings that demonstrate the multidimensional stigma attached to LGBTQ people in early biological perspectives on crime. First, homosexual men ("pederasts") emerged as a distinct type of "insane criminal" marked by inferior pathology. In the first edition of his popular work *Criminal Man*, Lombroso (2006 [1876]) identified "pederasts" based on physical attributes, mannerisms, and clothing that failed to conform to gender norms. He viewed pederasts as odd and strange. In later editions, Lombroso (2006 [1889]) incorporated Krafft-Ebing's conception of homosexuality as a sexual inversion to classify pederasts as a type of "insane criminal." His statement that "sexual inversion...often shapes the person's entire psychology" (2006 [1886], p. 273) reflects how emerging late-nineteenth-century conceptions of homosexual identity infiltrated into early modern criminological writings to stigmatize homosexuals as a distinct class of criminals.

Second, the patriarchal sexual ideology of late-Victorian society shaped Lombroso's treatment of female sexual intimacy between women. Lombroso characterized women as the "weaker sex" (2006 [1878], p. 128) with "weak and delayed" sexualities (Lombroso and Ferrero 2004 [1893], p. 171). He invoked principles of biological determinism to argue that women's biology prevented them from having a pronounced sense of eroticism, which in his view caused lesbianism to be uncommon. Lombroso described lesbianism as a form of "sexual perversion" (Lombroso and Ferrero 2004 [1893], p. 176), but he did not view lesbianism as a distinct type of criminal identity. Although Lombroso acknowledged a connection between prostitution and lesbianism, his conception of female sex criminality was largely shaped by societal demands on women to uphold gendered expectations. For instance, female adultery was one of the main female sex crimes that Lombroso discussed in his writings, which society then defined as a married woman having sexual relations with a man who was not her husband (Warnke 1999).



## *Psychological Perspectives on Crime*

The history of the relationship between LGBTQ populations and the psychological and psychiatric professions is marked with tension. From the 1950s until the 1970s, homosexuality was widely understood as a mental illness in the professions (Bayer 1981; Kitzinger and Coyle 2002). This pathological view was reinforced by the inclusion of homosexuality as a mental disorder in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM) from 1952 until 1973.

Psychoanalytic and psychopathological perspectives on crime developed before the 1980s showcased the debate over whether homosexuality should be considered a crime, mental illness, both, or neither. Psychoanalytic perspectives, which originated from the work of Sigmund Freud, displayed more favorable attitudes towards homosexuality. A cohort of psychoanalytic criminologists advocated strongly against the criminalization of homosexuality based on Freud’s (1905, 1911) characterization of homosexuality as a non-harmful and natural variation of psychosexual development (Alexander and Staub 1931 [1929]; Friedlander 1947). Even in these more favorable writings, however, psychoanalytic criminologists resisted embracing non-conforming sexual and gender non-conforming behaviors in youth. Relying on Freud’s concept of sublimation, these criminologists argued that children’s inclinations to engage in non-conforming sexual or gender behaviors could, and should, be altered during the early stages of psychosexual development through proper education and programming (Aichorn 1935; Alexander and Staub 1931 [1929]; Friedlander 1947).

More hostile attitudes towards homosexuality appeared in psychopathological perspectives on crime, which focus on mental illness. Freud’s position on homosexuality prevailed in the psychiatric profession until the 1940s, when a group of researchers engendered a major shift in the profession that homosexuality and gender non-conformity were mental illnesses that could, and should, be cured (Bergler 1956; Bieber 1962; Rado 1940; Socarides 1968). As pathological conceptions of homosexuality and gender non-conformity gained force, they shaped the treatment of LGBTQ people within the legal and political spheres. The clearest example of this treatment was the wave of “sexual psychopath laws” that swept across the United States from the late-1930s until the early-1970s. Between 1946 and 1959, twenty-nine states enacted such laws, which often provided for the indefinite commitment of LGBTQ people into psychiatric facilities (Eskridge 2008). In addition, ten states created special government commissions to investigate the problem of sex crimes and sexual psychopathy (Freedman 2006). Although these committees investigated homosexuality to varying degrees, the simple fact that homosexuality itself fell within the scope of sex crime research demonstrated the influence of pathological conceptions of homosexuality on the treatment of LGBTQ people in criminological research and the criminal justice system more broadly at the time.

During the mid-1970s, pathological conceptions of homosexuality lost force in the psychiatric profession. Homosexuality was removed from the DSM manual in 1973, and twenty-one U.S. states repealed their sexual psychopath laws during the 1960s and early 1970s (largely as a result of adopting the American Law Institute's Model Penal Code). Two factors contributed to this shift. First, an increasing body of empirical research, especially from the behaviorist perspective, discounted the notion that homosexuality was a disease (Ford and Beach 1951; Hooker 1956, 1957, 1958; Kinsey 1948, 1953; Szasz 1970). Second, gay and lesbian organizations—including the Mattachine Society and the Daughters of Bilitis—started to gain political influence and advance the social status of gays and lesbians in the United States. Official publications sponsored by early gay and lesbian organizations, such as the *Mattachine Review*, provided a public forum for emerging research that discounted orthodox pathological conceptions of homosexuality. The advocacy approach of gay and lesbian political organizations took a more radical turn during the 1960s, as demonstrated by the popular Stonewall Riots of 1969. These more radical followers prioritized combating the “gay is sick” stigma, and protested frequently at psychiatric professional meetings to eliminate that stigma (Barnhouse 1977).

Even after pathological conceptions of homosexuality lost force, some forensic psychiatrists continued to stress the connection between homosexuality and sexual criminality. In 1984, for instance, British forensic psychiatrists collaborated to release a co-edited volume on forensic psychiatry (Craft et al. 1984). While the investigators did not characterize homosexuality as a criminal status *per se*, they stressed that “the lifestyle of males with homosexual preferences may inevitably put them at risk of contravening the law” (Craft et al. 1984, p. 65). The investigators also emphasized that “[w]hile psychiatrists and others may disagree about the deviancy of homosexual activities, the law is quite clear that boys, young men and indeed the public at large, should be protected against ‘unnatural acts’” (Craft and Craft 1984, p. 403). These statements show that the stigma of the sexual deviancy framework persisted in forensic psychiatric perspectives even during the late-twentieth-century.

Other major psychological perspectives on crime that gained popularity after the 1970s, when anti-sodomy and sexual psychopath laws lost force, largely omit discussions of sexual orientation and gender identity. Personality trait theories, for instance, focus on the structural components of the human personality. Three models of personality have been widely used to study crime: (1) Eysenck's (1977) Psychoticism-Extraversion-Neuroticism (PEN) model, (2) Tellegen's (1985) three-factor (T-3) model, and (3) Costa and McCrae's Five Factor Model (FFM) (McCrae and Costa 1990). With the exception of Eysenck, each of these personality theorists neglected sexual orientation and gender identity in developing their models; criminologists who later tested and refined these models also neglected these concepts. When briefly discussing homosexuality in his criminological application of the PEN model, Eysenck (1977, p. 77) recognized that societies differed in terms of whether it was criminalized, stating that it was “a crime in some American states but not in Germany.” Eysenck (1977, p. 35) also

acknowledged that “[i]f homosexuality is a crime in England but not in France, then criminologists would be engaged in quite different pursuits on the two sides of the Channel. This, they argue, is absurd.” These statements reflected the changing legal attitudes towards homosexuality, but their focus centered on homosexuality as a disputed type of deviance.

Moreover, sexual orientation and gender identity are largely omitted from developmental and life course (DLC) theories of crime, which focus on the development of criminal and antisocial behavior during a person’s life span. DLC theories gained popularity in the 1990s, and rely mostly on longitudinal research (Catalano et al. 2005; Farrington 2003, 2005, 2006, 2010; Hawkins and Catalano 1992; Hawkins et al. 2003, 2008; Lahey and Waldman 2005; Lahey et al. 2006, 2008; Laub and Sampson 2001, 2003; LeBlanc 1997, 2005, 2009; LeBlanc and Frechette 1989; Moffitt 1993, 2006; Moffitt et al. 2001, 2002; Sampson and Laub 1993, 1995, 2003, 2005, 2009; Thornberry 2005; Thornberry et al. 2009; Thornberry and Krohn 2001, 2005; Thornberry et al. 2003; Wikström 2005, 2010). DLC theories exclude sexual orientation and gender identity as demographic constructs, but often include constructs that capture other demographic differences, including age, socioeconomic status, sex (male/female), and race/ethnicity. Many discussions of sexual behavior and gender within DLC theories also assume that their subjects are heterosexual and/or have gender identities that conform to binary conceptions of biological sex.

In fairness, it is possible that a small number of LGBTQ subjects in the longitudinal studies that form the basis of existing DLC theories motivate the omission of sexual orientation and gender identity. We do not know, however, what proportion of the participants in those studies identify as LGBTQ. This omission might also have been influenced by a lack of recognition that being LGBTQ was a non-deviant, demographically relevant difference when the bulk of those longitudinal studies were designed from the 1960s until the 1980s. Regardless, the omission of sexual orientation and gender identity from DLC theories raises questions over their unique applicability to the experiences of LGBTQ people today, especially given that LGBTQ youth are coming out in greater numbers and at earlier ages (Fein-Zachary and Lacava 2008; Shilo and Savaya 2011).

### *Sociological Perspectives on Crime*

The origins of modern sociology are typically traced to the late nineteenth- and early twentieth-century writings of Durkheim, Marx, and Weber that sought to explain the process of modernization and its influence on Western social life (Healey 2001; Hughes et al. 2003; Morrison 2006). In spite of the emerging conceptions of “modern homosexual identity,” each of these key thinkers neglected sexual orientation and gender identity (and sex/gender more broadly) in their writings (Plummer 2000; Seidman 1996). One major factor contributing to

the neglect of sexual orientation and gender identity from early Classical theories of sociology is that theorists likely viewed these concepts as individual conditions that had no bearing on social structure or organization (McIntosh 1968; Seidman 1996).

Given this context, it is unsurprising that sexual orientation and gender identity are neglected in most social structure theories of crime—the first of two major categories of sociological perspectives on crime. Social structure theories view structural conditions of society such as poverty, unemployment, racism, and poor education as key determinants of crime. Sexual orientation and gender identity are largely omitted from the conceptual development and empirical testing of each of the three main types of social structure theories: (1) social disorganization theories (Lowenkamp et al. 2003; Park and Burgess 1921, 1925; Sampson and Groves 1989; Shaw and McKay 1931, 1942, 1969; Veysey and Messner 1999), (2) anomie and strain theories (Agnew 1992, 2006; Merton 1938, 1957; Messner and Rosenfeld 1994), and (3) subcultural theories (Cloward and Ohlin 1960; Cohen 1955, 1966; Miller 1958; Wolfgang and Ferracuti 1967). Sexual orientation and gender identity bore the stigma of sexual deviancy the few times they were discussed. In developing his subcultural theory, for instance, Cohen characterized homosexuality as a form of “sexual immorality” (1955, p. 22) and described homosexuals as a “community of deviants” who had “in common a propensity to some activity that is stigmatized and penalized by the larger society” (1966, pp. 86–87). Consequently, there is a need for macro-level sociological investigations of crime that characterize and discuss homophobia and transphobia as structural conditions of society (Woods 2014).

Most sociological-criminological engagement with sexual orientation and gender identity has operated at the micro-level in the second category of sociological perspectives on crime—social process theories. Social process theories view criminality as a function of the socialization process and the interactions that people have with different social institutions, including peer groups, families, and schools (Siegel 2011). Consistent with the homosexual deviancy thesis, social process theories of crime have focused largely on the ways in which socialization processes sustain homosexuality as a pattern of sexual deviance.

Social learning theories, which view crime as learned behaviors, have mostly characterized homosexuality as a form of sexual deviance learned and sustained through environmental interactions. For instance, in articulating his “differential-reinforcement” theory, Jeffery (1965, p. 295) stressed that “[t]he homosexual selects a male rather than a female as the sex object because of his past conditioning in the sexual area.” Moreover, Akers (1973) viewed homosexual subcultures as a mechanism of reinforcement for homosexuals to continue engaging in their deviant sexual patterns. More recent social learning criminological studies published after anti-sodomy and sexual psychopath laws lost force omit any discussion of sexual orientation and gender identity concepts (e.g., Akers 1998).

Social control theories, which focus on why people refrain from committing crime, also discussed homosexuality insofar as characterizing it as a form of sexual deviance. For instance, Reiss’s (1961) popular sociological study examined a

specific form of male prostitution in which adult homosexual males (“queers”) hired delinquent youth hustlers (“peers”) for sexual services. Reiss concluded that norms within the youths’ peer groups defined sexual transactions in ways that inhibited the peers from viewing themselves as sexual deviants. This conclusion reflected the established stigma against homosexuals as sexual deviants in society at the time. Similarly, in articulating his drift theory, Matza (1964) described homosexuality as a type of deviance, and characterized homosexual subcultures as types of deviant subcultures that reinforced the behavior of its members. Later social control theories developed after anti-sodomy and sexual psychopath laws lost popularity in the United States omit discussions of LGBTQ populations entirely (Gottfredson and Hirschi 1990; Hagan 1988; Hirschi 1969).

### *Critical Perspectives on Crime*

Critical perspectives on crime have barely engaged with critical queer theories. The sexual deviancy framework has also governed most discussions of sexual orientation and gender identity in this school of criminological thought (Woods 2014).

The dominance of the sexual deviancy framework in early critical perspectives on crime is showcased in societal reaction and labeling of crime, which examine the process by which societies come to define certain behaviors and people as deviant (Siegel 2011). These theories came to the fore of criminology during the 1950s and 1960s, when sociologists drew upon the interactionist framework of George Herbert Mead (1934) to study deviance. Lemert (1951) used the “homosexual” as an example of a deviant status, and identified homosexuality as a type of deviance sustained through associations of people with similarly deviant sexual preferences. Moreover, in his popular book, *Outsiders*, Becker (1963, p. 30) stressed that the homosexual “makes deviance as a way of life” and “organizes his identity around a pattern of deviant behavior.” Becker also identified “the homosexual community” as an “organized deviant group” (p. 38). The only popular societal reaction and labeling theory developed after the 1980s was John Braithwaite’s (1989) “shaming reintegration theory.”<sup>4</sup> Braithwaite’s sole mention of homosexuality was governed by the sexual deviancy framework. In his view, most crimes in contemporary societies were supported by a strong social consensus, but a small number of victimless crimes were not supported by an

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<sup>4</sup> In the year that Braithwaite released his theory, Western Australia decriminalized homosexuality under the Law Reform (Decriminalization of Sodomy) Act of 1989. However, decriminalization laws had been enacted previously in other areas of Australia. For instance, South Australia became the first Australian jurisdiction to decriminalize sodomy in 1972. In 1976 and 1980, some aspects of homosexual behavior were decriminalized in Australian Capital Territory and Victoria. In 1983, Northern Territory decriminalized homosexual acts between men in 1983, and New South Wales in 1984 (Bull et al. 1991).

overwhelming consensus. Braithwaite identified homosexuality as an example of a crime in the latter category, which demonstrates the lingering stigma of the sexual deviancy framework.

In other areas of critical criminology, there is little to no engagement with LGBTQ populations or sexual orientation and gender identity concepts. Consider social conflict theories, which view the norms embodied in the criminal law as reflections of the values of dominant social groups. Social conflict theories largely omit considerations of sexual orientation and gender identity, despite the fact that LGBTQ political organizations were gaining national prominence when the bulk of these theories were developed from the late-1950s until the late-1970s (Dahrendorf 1959, 1968; Sellin 1938; Turk 1966, 1969, 1971; Vold 1958; Vold and Bernard 1979, 1986). The sexual deviance framework framed the few discussions of homosexuality in social conflict perspectives. For instance, the second edition of *Theoretical Criminology*, released after Vold's death, characterized the "battle for gay rights" as a battle in which "two groups are attempting to define each other as deviants" (Vold and Bernard 1979, p. 279). The same edition also mentioned that "[o]pponents of 'gay rights'... want homosexuals to be officially recognized as deviants... and proponents of gay rights want official recognition that those who practice such discrimination are deviants" (Vold and Bernard 1979, p. 278).

Further, radical (Marxist) perspectives on crime also largely omit sexual orientation and gender identity concepts, which might be explained by the broad exclusion of sexuality and gender in Marx's writings (Bonger 1916; Chambliss 1984, 1988; Quinney 1970, 1974a, b, 1977). The few discussions of homosexuality in popular radical perspectives emerged in the context of the debate over the criminalization of homosexuality (Chambliss 1984, 1988; Quinney 1970). To date, there is no comprehensive radical analysis of crime that considers how sexual orientation and gender identity relate to capitalist production or the occurrence of crime in capitalist societies. This gap in the literature further supports the need for macro-level analyses of crime that engage with sexual orientation and gender identity differences.

Few feminist criminological perspectives have focused on the experiences of queer and transgender women, but there has been greater engagement with sexual orientation and gender identity in this area of criminology. Generally, this engagement has taken two forms. First, some feminist perspectives have drawn attention to specific areas of LGBTQ victimization, including sexual harassment (MacKinnon 1979) and bias crime (Messerschmidt 1993; Stanko 1990). This research has been useful in advancing the understanding of LGBTQ people's experience of crime, but their scope is limited to specific areas of victimization. Second, some feminist perspectives have articulated a need to deconstruct a heterosexist social order that subordinates LGBTQ people (Collier 1998; Messerschmidt 1993). Although perceptive, these calls have remained at a highly abstract level and invite more detailed consideration.

In the 1990s, a new trend in feminist criminology emerged that focused on the role of men and their performance of masculinity in offending (Collier 1998; Messerschmidt 1993). As Messerschmidt (1993, p. 14) explains, this enterprise

focuses on “men as men and boys as boys.” 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. Consequently, this enterprise has yet to further the understanding of how gender norms may lead LGBTQ people, and LGBTQ people who identify as male in particular, to commit crime (though see Panfil, this volume). It also does not provide much insight into how race, class, and religious differences may intersect with sexual orientation and gender identity to shape motivations for offending (see also Johnson, this volume).

Left-realism emerged in the United Kingdom during the 1980s in response to the law and order criminal justice policies of Conservative Prime Minister Margaret Thatcher (Kinsey et al. 1986; Lea and Young 1984; Matthews and Young 1986; Taylor et al. 1973; Young 1986). Left realists criticized criminological frameworks for being overly abstract and impractical under the new conservative administration, and rejected the notion of Marxist criminologists that members of the working class were concerned with crimes of the rich. Left realists called for practical solutions to address crime, which in their view disproportionately affected working-class people.

In calling for this shift, early left-realist perspectives ignored LGBTQ people. The few included discussions of homosexuality focused on whether homosexuality was a form of deviance (Pearson 1975; Taylor et al. 1973). One plausible reason for the omission of LGBTQ populations in early left-realist perspectives is that left realists attempted to explain changes in crime rates. The instruments used to measure crime rates then excluded, and largely continue to exclude, sexual orientation and gender identity as demographic constructs. Therefore, early left realism may serve as an example that shows how the omission of sexual orientation and gender identity in crime data drives the neglect of LGBTQ populations in criminological theory. More recent left-realist perspectives still largely omit sexual orientation and gender identity, but some authors have briefly discussed anti-gay bias crimes and essentialism in recognizing homosexual identity and subcultures in late modernity (Young 1999; Young and Matthews 1992).

## **Moving Forward: “Queering” Criminology**

This overview has demonstrated a need for theoretical and empirical advancements to bring the experiences of LGBTQ people out of the shadows in the field of criminology. Executing an enterprise to “queer” criminology, however, is not as simple as it might seem, and raises a number of complex questions, including: What should be the goals of such an endeavor? Should queer criminology provide guidance on the assumptions that criminologists make about sexual orientation and gender identity? What methodological implications does queer criminology have for criminological research? Although queer criminologists will confront these questions and identify new ones in the future, I conclude this overview by



discussing some of these questions that may pose potential obstacles to building momentum for a queer criminological enterprise.

One potential challenge stems from conflicting definitions of the term “queer” itself. Although academics and community activists disagree over its precise meaning, the term “queer” has been generally used in two ways (also see discussion by Ball, this volume, regarding “queer” meanings). 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” (Jargose 1996). Second, the term “queer” has been used to challenge and subvert phenomena that are viewed as stable and determined. Based on this view, “queer” can debunk the notion that sex, gender, and sexuality are essential and fixed identity concepts. “Queer” may also challenge the stability of concepts, methods, and assumptions of conventional social science research (Plummer 2005).

The tension between these two definitions poses a potential catch-22 situation: 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 perpetrate the subordination of individuals with sexual orientations and gender identities who do not identify with, or fit within, accepted definitions of lesbian, gay, bisexual, and transgender terms (see also, this volume, Ball; Johnson). On the other hand, if queer criminology accepts the second meaning of the term “queer,” then it risks diluting demographically-relevant social differences to the extent that it may discount the experiences of people who identify with, and experience marginalization on the basis of, those differences.

Individual criminologists may prefer identity-based over deconstructionist paradigms, or vice versa. As a discursive space in the field, however, I argue that queer criminology should encourage research under identity-based *and* deconstructionist paradigms. On the surface, this position may seem internally inconsistent. In my view, however, embracing both lines of research facilitates a tension that is both productive and meaningful. Regarding identity-based approaches, many LGBTQ people view sexual orientation and/or gender identity as central features of their lives—in addition to race/ethnicity, class, and religion (see, for example, Panfil, this volume). Criminological research that includes constructs capturing sexual orientation and gender identity differences can assist in explaining how those differences may shape LGBTQ people’s experiences of crime, both in terms of victimization and offending (e.g., Conover-Williams, this volume). Scholars and advocates have criticized mainstream lesbian and gay social movements for perpetuating their own forms of marginalization based on gender, class, and race (Chasin 2001; Hutchinson 2000; Spade and Currah 2008; see too, this volume, Ball; Johnson). Deconstructionist paradigms can help to identify which individuals do and do not receive recognition in criminological research that utilizes identity-based models of sexual orientation and gender identity. In challenging basic assumptions about the organization of sexual orientation and gender



identity, queer theories can further problematize how sexual orientation and gender identity is conceptualized in criminological research that uses traditional social science methods. Therefore, embracing the tensions that arise from contested meanings of the term “queer” builds diversity in the discourse on the criminologically-relevant experiences that are shaped by sexual orientation and gender identity.

Although the enterprise of queer criminology attempts to bring sexual orientation and gender identity issues to the fore of criminological inquiry, it cannot neglect how intersecting differences of race, gender, class, and religion shape LGBTQ people’s experiences of crime, both in terms of victimization and offending (Woods 2014). These intersections can cause a queer woman of color to experience marginalization on the basis of her sexuality and a transgender woman of color to experience marginalization on the basis of her gender identity in different ways than a white gay man experiences marginalization on the basis of his sexuality (Pharr 1977; Smith 1993). This observation is especially valuable given the dearth of criminological research on queer women, transgender individuals, and LGBTQ people of color. Critical race scholarship—especially theories of intersectionality (Crenshaw 1991)—offer valuable frameworks to investigate intersections of race/ethnicity, class, age, religion, sexual orientation, and gender identity in criminological contexts. Encouraging intersectionality approaches in the queer criminological enterprise assists in capturing the range of LGBTQ people’s experiences of crime, and inhibits it from becoming an exclusive criminal justice movement for economically well-off, white, gay men. Other criminological areas, especially those that focus on particular social groups, can also gain from queer criminological perspectives that embrace intersectional approaches. For instance, engagement with queer criminological perspectives could assist criminology scholars and criminal justice practitioners in those other areas to recognize and to address the needs of particular subsets of LGBTQ victims and offenders in sensitive and effective ways.

The call to “queer” criminology also raises important questions about the assumptions that criminologists should make about the nature of sexual orientation and gender identity. One of the largest controversies involving these concepts is whether sexual orientation and gender identity are social constructions, innate biological characteristics, or a combined product of environmental and biological factors (Stein 1992). The moral and political implications of the nature-nurture debate are immense. Social constructivist explanations of sexual orientation and gender identity discount the view that being LGBTQ is an immutable sickness or an innate manifestation of biological degeneracy. However, rooting the causes of sexual orientation and gender identity in patterns of socialization might facilitate the use of aversion therapies to “cure” LGBTQ people. The implications of the biological view are just as great. If scientists discovered that sexual orientation and gender identity had biological origins, then governments might be more willing to grant full legal protections to LGBTQ people on the basis that sexual orientation and gender identity are “immutable characteristics.” Grounding sexual orientation and gender identity in biology, however, might inspire eugenics practices and

enable parents to prevent their newborn children from being LGBTQ. Many scholars believe that both biological and societal factors are relevant, and advocate for the full equality of LGBTQ people regardless of ontological and epistemological considerations.

The nature-nurture debate raises challenges to “queer” criminology because of the incredible diversity of theories and methods in the field. Some criminologists emphasize biological, psychological, or sociological factors exclusively in their explanations of crime, whereas other criminologists emphasize a combination of one or more of these factors. If queer criminology takes a particular position on the nature-nurture debate, then it risks isolating entire schools of criminological thought. Again, this does not imply that individual criminologists should refrain from making specific assumptions about the nature of sexual orientation and gender identity. But as a discursive space, queer criminology should provide room for a diversity of evidence-based assumptions to thrive, and to come into conflict or complement one another. Such diversity can enable criminologists to think critically about why they hold specific assumptions about LGBTQ people, and combat assumptions about sexual orientation and gender identity in the field that are grounded in outdated conceptions of LGBTQ people as sexual deviants.

Perhaps the greatest challenge of queer criminology is engendering a shift within the field that enables criminologists to engage with sexual orientation and gender identity in ways that do not further stigmatize LGBTQ people. Careful attention to nuance and tone is essential for queer criminology to be successful. A stigma still attaches to being LGBTQ today, and drawing attention to LGBTQ people’s experiences of crime, especially in terms of offending, runs the risk of further marginalizing people on the basis of sexual orientation and gender identity, as well as race and class. Queer criminology must equip criminologists with the tools to explore how various circumstances shape LGBTQ people’s experiences of crime without inherently labeling them as victims, or as criminals, on account of their sexual orientations and gender identities. This task is not easy given that the treatment of LGBTQ people in the field of criminology has been shaped largely by their perceived statuses as criminal sexual deviants.

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