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Article (Accepted Version)

Gilani, Sabrina (2020) On the discursive-material enactment of criminal violence: how death and injury come to matter to the criminal law. *Law, Culture and the Humanities*. pp. 1-19. ISSN 1743-8721

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On the Discursive-Material Enactment of Criminal Violence: How Death and Injury Come to Matter to the Criminal Law¹

Abstract

This article seeks to challenge the prevailing view that violence is legally actionable because human bodies are capable of experiencing pain, injury and death. Drawing on literature in the area of new materialism, this article demonstrates how pain, injury and death are not ontological properties of the flesh-and-bone body, but rather, they are the effects of how violence is made sense-able, *knowable*, as part of the criminal legal process. Here, I examine four of the materializing practices through which violence becomes sense-able to us: crime scene photography, forensic pathology, legal judgements, and bodily performance. If the effects of criminal violence can be traced to the discursive practices by which we observe, measure, think and speak about bodies, it becomes much harder to sustain the view that human violence is exceptional because the human body is special.

Keywords: Posthumanism, Agential Realism, Posthuman Violence, Criminal Violence, Onto-Epistemological Body, Karen Barad, new materialism.

Introduction

Several years ago, in a postgraduate course for which I was a guest lecturer, we were discussing the legal implications of high-tech industries such as virtual reality and robotics, and I asked my students whether we could expect human-machine interactions to attract criminal legal attention. Namely, did we foresee a future in which violence directed at or inflicted by intelligent machines or avatars in virtual reality – say virtual rape or robotic murder² - would need to be criminally regulated? As expected, many of my students found the suggestion offensive. They argued that violence against machines, against *things*, no matter how

¹ I am immensely grateful to Dr. Bal Sokhi-Bulley (Sussex) and Dr. Lucy Finchett-Maddock (Sussex) for their comments on an earlier version of this paper. My sincere thanks also go out to Stephen K. Martin for offering recommendations during the planning stages of this paper. All remaining errors are solely my own.

² A number of authors have already identified these as emerging issues that require legal attention Hallevy, *When Robots Kill: Artificial Intelligence under Criminal Law* (Boston, Northeastern University Press, 2013).

much they resembled humans, could never compare to an attack against *real* bodies (i.e. bodies made of flesh and bone). Real bodies ‘feel pain’, they said, real bodies suffer, real bodies can, and do, *die*. For my students, it was these properties of the flesh-and-bone body – the capacity to experience pain, injury and death – that justified the criminalization of violence.

My first thoughts were that pain, injury and death, as concepts, were not as straightforward as my students were making them out to be. Often their ‘wrongness’ and our desire to limit their presence are context-dependent. We have evidence that at least some people find meaning and pleasure in their real or perceived pain and suffering.³ Some of us see injury as a form of self-expression⁴ and disagree on precisely what constitutes ‘injury’ in the first place⁵. Many of us do not agree on the precise boundaries between life and death; we describe certain types of experiences as a ‘fate worse than death’⁶ or a kind of ‘social death’⁷. We cannot even agree on the physical manifestations of death. Is it the cessation of brain activity? Is it organ failure that results in permanent loss to circulatory or respiratory function? Is it an irreversible loss of consciousness, or simply just a loss of awareness?⁸ And certainly, all of these debates have informed the criminal law in one way or another. So, if the meaning of pain, injury and death shifts based on context and personal experience, how can we think of them as properties of the body? And if they are situated, body-interior processes, how can we be certain that they actually exist in order to justify punishing its inflictors?

This article draws on a very specific understanding of how pain, injury and death exist, namely that they are brought into being by the very practices that make them sense-able (and thus intelligible) to us as embodied entities. This article, therefore, puts the spotlight on material arrangements that, in most legal accounts of criminal violence, remain in the background, as passive data that is interpreted by people who are party to the legal process. Here, however, I show how this data itself moves us; how these material arrangements

³ Gross, 'The pleasure of pain', *Forensic Examiner* 15 (2006), pp. 56.; Pitchforth, 'Emotional Response to Auditory and Visual Stimuli', (2010).; Favazza, *Bodies under siege: Self-mutilation and body modification in culture and psychiatry* (JHU Press, 1996).

⁴ First and Fisher, 'Body integrity identity disorder: the persistent desire to acquire a physical disability', *Psychopathology* 45 (2012), pp. 3-14.

⁵ Featherstone, 'Body modification: An introduction', *Body & Society* 5 (1999), pp. 1-13.

⁶ Patsavas, 'Recovering a criptestemology of pain: Leaky bodies, connective tissue, and feeling discourse', *Journal of Literary & Cultural Disability Studies* 8 (2014), pp. 203-18.

⁷ Sweeting and Gilhooly, 'Dementia and the phenomenon of social death', *Sociology of Health & Illness* 19 (1997), pp. 93-117.

⁸ Halley and Harvey, 'Medical vs Legal Definitions of Death', *JAMA* 204 (1968), pp. 423-5.

do not simply imply or evidence pain, injury and death, but actually *constitute it*. How they, as Schuppli argues, affectively engage us.⁹ It is clear then that I follow a materialist tradition that equates meaning with meaning-making;¹⁰ whereby matter and events have no meaning, no reality, that is separate from the practices through which we study them, know them. The current research draws on new materialist methodologies, particularly the work of Karen Barad, to address a contemporary social issue. I believe that there might be some cynicism amongst those writing in the area of law (corporeal feminists perhaps being the exception),¹¹ that the ethics of non-anthropocentricity that is embraced by new materialist and posthumanist theory could be useful for restructuring social institutions that have historically been established for human societies, with ‘human’ interests in mind. This article is then a testament to the idea that it is possible to critique the ‘human’ at the core of these institutions without denying the relevance and significance of their presence.

In the first part of the article I consider three different discursive-material practices: crime scene photography, forensic pathology and legal judgements. In the last sense, I do not consider legal judgements in terms of its interpretation of events, but how the words of judges actually visualize criminal violence, bring it into being. I also, in this first section, consider how the lived realities of pain, injury and death are performed by those who suffer criminal violence. I explain how the victims’ bodies give us a material account of how the effects of violence are borne out in the day-to-day. I analyse how, through these practices, violence is made audible, visible, odoriferous, tangible for the purposes of criminal regulation and argue that it is these practices that give pain, injury and death tangible form, ‘being-in-the-world’ meaning, as more than just abstract, body-interior, concepts. This *matte*ring of pain, injury and death happens through a number of collaborations between different technologies, techniques and technologists – pain may be enacted through an interaction between flesh and flash photography in one instance, or by the radiographic images of brain processes in another. Each practice gives us a different account of pain’s existence as a temporally and spatially situated *thing*. Consequently, we cannot describe pain, injury and death as properties

⁹ Schuppli, *Material Witness: Media, Forensics, Evidence* (Cambridge, MA, MIT Press, 2020). pp. 4-5.

¹⁰ As suggested by Barad in her reading of Bohrian quantum physics; that concepts are not “ideational but rather actual physical arrangements” Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, Duke University Press, 2007). p. 147..

¹¹ Murphy, 'Feminism on Flesh', *Law and Critique* 8 (1997), pp. 37-59.

of the body, any body, but rather as discursive-material enactments that arrange the body in relation to other bodies, matter, and ideas so that they become sense-able to the rest of us.

In the second part of the article I draw on these findings to challenge the idea that the criminal law should not apply to nonhuman violence because nonhuman bodies are incapable of feeling pain and/or experiencing injury and death. I argue that, in making these claims, my students were wrongly mistaking *how we come to know* the body, for what the body *is*. I draw specifically on the work of new materialists such as Barad, Braidotti, Haraway and Mol and their ideas about the materiality of phenomenon, the material arrangement of bodies, and practice and performativity as embodied engagement, to consider how a practice-oriented understanding of pain, injury and death (pain, injury, and death as socio-material phenomena) can produce a more inclusive, posthuman, understanding of criminal violence.

The Discursive-Material Enactment of Criminal Violence

When a body or weapon makes forceful contact with another body, the consequences of that action is felt by the body that is dealt the blow. This body knows what violence *is* by seeing the knife that perforates their skin, watching the blood leak out of their arm, feeling the physical pain and fear as this happens, and living the (emotional, psychological, physical) changes that come about as a result of this act. This act is *real* because it is *sense-able*. But for the rest of us, who are not present in that moment and cannot therefore sense that particular act of violence, we may find it difficult to affirm its presence, its existence. This becomes particularly problematic when we are charged with the task of determining whether an act of violence is legally punishable which, in most common law jurisdictions, requires us to make judgements about whether the violence was harmful. So how does an act of violence, an act that its legal arbiters are never part of, have never physically felt the effects of, come to matter? How does it come to harm?

The reality of criminal violence is based on the extent to which the rest of us can be made to see, touch, smell and hear it; when it mobilizes our senses and causes us to feel and behave in a particular way.¹² These *materializing practices* bring criminal violence into being; they *enact* it. And our belief in its existence is

¹² Gerdes, Wieser and Alpers, 'Emotional Pictures and Sounds: A Review of Multimodal Interactions of Emotion Cues in Multiple Domains', *Frontiers in Psychology* 5 (2014), pp. 1351.

strengthened, our feelings and behaviours reinforced, when our affective engagement with it is shared by others. As Baerveldt and Voestermans note, “norms are norms not by virtue of their reflective articulation, but precisely because of their affective nature. As affective beings, we are already in a world that makes normative demands on us and others”.¹³ So the question becomes, what sorts of practices bring criminal violence into being, for us?

Criminal law theorist, Joel Feinberg, claims that the harmfulness of criminal violence stems from its potential to cause a loss to one’s welfare interests, one’s stake in the well-being of their bodies, of themselves.¹⁴ In his view, violence is wrongful on the basis that all human beings share an interest in maintaining their own physical health, “the integrity and normal functioning” of our bodies, avoiding disfigurement, the absence of pain and suffering, and avoiding fear and anxiety. For the most part, we have an interest in maintaining our physical health and existence.¹⁵ In short, violence is wrongful because it causes pain, injury and death. So clearly, violence that is criminal must be enacted in a way that allows us to visually and aurally identify harm in the form of pain, injury and death. I argue, that the pained, injured, dead body that attracts the criminal law’s attention, what I refer to as the bio-juridical body,¹⁶ is enacted through discursive arrangements of images, sounds, smells, and tactile stimuli that allow us to visually and aurally confirm the presence of violence. Accordingly, criminal violence and the bio-juridical body are co-constitutive, they are both co-enacted by the investigative, forensic, judicial processes that materialize violence for the purposes of regulating it. But criminal violence also has a ‘lived reality’, it is performed and materialized by the bodies that endure it, sometimes in ways that may contradict the manner in which it is enacted by forensic pathologists, crime scene photographers, and judges.

¹³ Baerveldt and Voestermans, 'Culture, Emotion and the Normative Structure of Reality', *Theory & Psychology* 15 (2005), pp. 449-73.

¹⁴ Feinberg, *The Moral Limits of the Criminal Law: Volume 1 Harm to Others* (New York, Oxford University Press, 1986). pp. 37-8.

¹⁵ *Op. cit.*, p. 37.

¹⁶ I have developed this term using Barad’s understanding of the onto-epistemological body as the body that is produced by the very modalities that we use to study it. In this case, the ‘biological’ body that is the target of criminal violence is produced by the juridical processes by which its pain, injury and death are enacted. Barad, p. 381.

The crime scene photo is perhaps the first visual snapshot of the aftermaths of an act of violence. Meant to give investigators and pathologists information about the crime scene, crime scene photos put us face-to-face with battered, oozing, ashen and immobile bodies;¹⁷ bodies displayed in contorted, unnatural and unexpected positions, and often on public display.¹⁸ Special lighting, particular kinds of lenses, camera flashes, coloured filters, techniques of bracketing,¹⁹ operate to make explicit the parts of a scene that matter. Wounds and bruises become pronounced. Bites, tears, terrified and frozen faces are framed, isolated, and enlarged. With richer and more intense colours, sharper and clearer images, these visualising practices enact criminal violence differently than oral testimony.²⁰ They show, in a way that language cannot, that bodies rupture, they spill out, they leak into their surroundings in bits and pieces. They show us what happens to bodies when they remain outdoors, exposed to heat, wind, nonhuman animals, oxygen and water; they show bodies in fragments and in states of disintegration.²¹ It is no surprise then, as indicated by a number of researchers, crime scene photographs have the potential to evoke extreme emotional reactions, and controversially sway jury opinion about the culpability of the individual on trial, not on the basis of *what* they show but *how* they show it.²²

Crime scene photographs enact violence not only by reference to bodies, but space. They provide visual data about the arrangement of the scene of violence itself. Items haphazardly strewn across rooms, sheets pulled from beds, bodies arranged in unnatural positions, enact criminal violence as disordered and chaotic.²³ Images of blood-spattered walls and bullet fragments scattered across floors bring about a criminal violence that is coercive and forceful and involves struggle. In some instances, it is the space in

¹⁷ Egan, Ted Bundy Crime Scene Photos, CrimeOnline, (2018) 2020.

¹⁸ Redmond, 25 Vintage Murder Scenes from Old New York, New York, All That Is Interesting (ATI), (2018) 2020.

¹⁹ Duncan, Advanced Crime Scene Photography (Houston, TX, CRC Press, 2015). pp. 61-2.

²⁰ Busch, 'Photographic Evidence', DePaul L. Rev. 4 (1954), pp. 195.

²¹ Thompson, 'The Role of the Photograph in the Application of Forensic Anthropology and the Interpretation of Clandestine Scenes of Crime', Photography and Culture 1 (2008), pp. 165-84.

²² Op. cit.; Bright and Goodman-Delahunty, 'Gruesome Evidence and Emotion: Anger, Blame, and Jury decision-making', Law and human behavior 30 (2006), pp. 183-202.

²³ Egan, Jeffrey Dahmer Crime Scene Photos, CrimeOnline, (2019) 2020.

which violence is shown to have occurred (rather than a violated body) that determines its ‘criminal’ nature.²⁴

Interestingly, one of the concerns voiced by victim advocates in the United States is that crime scene photographs produce a desubjectified, dehumanized bio-juridical body, and that living photographs of the dead victim should thus be permitted in homicide trials.²⁵ Interestingly, what these claims suggest is that, in the context of criminal violence, our understanding of what constitutes death and life comes down to bodily performance; dead bodies are ones that lie there, motionless, often “in portions” and fragments while living bodies are ones that smile, demonstrate emotion, act, and move. As one juror noted:

the picture of her dead, her eyes open. That was another shocking thing too... You don’t think of these things when you see a dead body on TV or in the movies or whatever. You usually don’t see them with their eyes open, you see them closed. Here is this lifelike looking face, looking at you, but this person is dead.²⁶

How we *know* death, therefore, does not relate back to the body’s ontology, but the socio-material practices through which death is represented – as motionless bodies with open eyes – representations that may run counter to the viewers expectations of how dead bodies should behave based on how they have seen dead bodies act, for example, on television. Photographs give a durability and tangibility to violence that even the physical body of the victim cannot sustain because bodies *heal*, bodies *forget*, bodies disintegrate and *disappear*. Our consumption of crime scene photography takes place visually, with our bodies, but in causing us to experience the effects of an act of violence viscerally, emotionally (e.g. as ‘shock’), it also takes place *through our bodies*.²⁷

²⁴ Bell, 'Abortion Crime Scene Photography in Metropolitan London 1950–1968', *Social History of Medicine* 30 (2017), pp. 661-84.

²⁵ Rychlak, 'I see Dead People: Examining the Admissibility of Living-Victim Photographs in Murder Trials', *Vand. L. Rev.* 69 (2016), pp. 1423.; Singh, Kumar, Nanra and Kumar, 'Why Is The Crime Scene Photographed?... There Is Not A Single Answer!', *Internet J Forensic Sci* 5 (2012), pp. 1-10.; Wyatt and Whitley, *Murder Victims have Rights, and Jury Should See their Picture*, Tennessee, 2015).

²⁶ Antonio, 'Stress and the Capital Jury: How Male and Female Jurors React to Serving on a Murder Trial', *Justice System Journal* 29 (2008), pp. 396-407.

²⁷ Which explains our definition of these images as ‘gruesome’, obscene, and offensive, because they have the potential to evoke disgust and visceral, sometimes violent, bodily reactions in those who view these images. Thomas, 'Utah Rule of Evidence 403 and Gruesome Photographs: Is a Picture Worth Anything in Utah', *Utah L. Rev.* (1996),

Crime scene photographs are not merely transcriptions of *a reality*, a visual encoding of a given, immutable past, but parallel realities. Nagosky explains how one of the evidentiary disadvantages of the digital versus traditional photograph is that it is not accompanied by an ‘original’ or its negative which can help prove the content of the picture. What he alludes to is the idea that photographs (and the image they portray) can have multiple ‘realities’.²⁸ Because they reflect existing political discontents²⁹ and are sometimes shot using the aesthetic trends of the time,³⁰ they enact a bio-juridical body – by which I mean a pained, injured, dead body - that is *situated* in a certain space and time, culture and history; a bio-juridical body that derives its meaning from the performance of photography itself. As Bell explains, the contents of a crime scene photo (even when bodies are absent from the image itself) tells us something about how criminal violence exists. In the context of her research, an empty living room, littered with buckets, and sponges – things that are out of place – enacts illegal abortion as a clandestine, ‘backstreet’, dangerous-precisely-because-it’s-banal, kind of violence.³¹ In this way, crime scene photographs do not simply mirror a reality, but actually enact the reality(ies) they transcribe.

Forensic Pathology

Forensic pathology enacts a very different kind of criminal violence than crime scene photography. Like crime scene photographers, forensic pathologists study the crime scene for clues about the cause and manner of death and injury. Their practice is scripted, in the sense that it is regulated by legal instruments like the *Human Tissue Act* (2004) and the *Chief Coroner’s Guidance* and institutions like the Home Office Register of Forensic Pathologists, all of which govern how bodies may be handled. The pathologist studies criminal violence by looking at what happens on the surface of the body, within its interiors, and by taking account of relationships between the body, its constitutive parts like hair, nails, and skin, and the surrounding environment.

pp. 1131, Douglas, Lyon and Ogloff, 'The impact of graphic photographic evidence on mock jurors' decisions in a murder trial: Probative or prejudicial?', *Law and human behavior* 21 (1997), pp. 485-501, Antonio, pp. 396-407.

²⁸ Nagosky, 'The Admissibility of Digital Photographs in Criminal Cases', *FBI L. Enforcement Bull.* 74 (2005), pp. 1.

²⁹ Bell, pp. 661-84.

³⁰ Bell, 'Crime scene photography in England, 1895–1960', *Journal of British Studies* 57 (2018), pp. 53-78.

³¹ Bell, pp. 661-84.

By examining the body's decomposition with reference to patterns of insect infestation and reproduction,³² the deposit of fatty acids and soil,³³ and the body's exposure to environmental conditions such as wind and rain,³⁴ forensic pathology pinpoints the approximate moment a subject ceases to exist. They enact a criminal violence which implies that 'dead' bodies react with insects, nature, and climate in a way that living bodies, bodies that can 'act' and 'move' and 'think', do not, would not. These ways of knowing and showing the victim's (non)existence produce an understanding of human history – the temporal parameters of human life – that is inextricably entangled with the nonhuman world. Remarkably, forensic practices show, contrary to the purposes for which they are usually employed by the criminal law, that the body continues to act, continues to have the potential to affect and be affected by other matter, even after the cessation of 'life' in the way that the criminal law understands it.³⁵

Similar to the way crime scene photography operates, forensic pathology also shows us a criminal violence that is disordered and chaotic. This is evident in the way that pathologists process a crime scene. Blood spatter analysis, for instance, with its focus on velocity, trajectory, intensity and force, using words like 'direction of travel' and 'speed' to describe the flow of blood,³⁶ and studying blood drops as evidence of body movement,³⁷ enacts criminal violence as a frenzied, *active* event. This scene contrasts dramatically to pathological observations about lawful violence.

- (6) The orientation and arrangement of the wounds over the left wrist are typical of self-inflicted injury. Also typical of this is the presence of small so-called 'tentative' or 'hesitation' marks.

³² Lord and Rodriguez, 'Forensic Entomology: The Use of Insects in the Investigation of Homicide and Untimely Death', *The Prosecutor* (1989), pp. 41-8.

³³ Vass, Bass, Wolt, Foss and Ammons, 'Time Since Death Determinations of Human Cadavers using Soil Solution', *Journal of Forensic Science* 37 (1992), pp. 1236-53.

³⁴ Lord and Rodriguez, pp. 41-8.

³⁵ In her study of videographic evidence, Susan Schuppli interestingly highlights how dead bodies 'act' as digital objects not only by corroborating or refuting the testimonies of defendants and witnesses during a criminal trial, but through an affective engagement with their viewers. In this way, these digitized bodies produce a reality of the criminal event that does not require supplementary human explication or intervention. Schuppli, pp. 169-95.

³⁶ Akin, 'Blood Spatter Interpretation at Crime and Accident Scenes: A Basic Approach', *FBI L. Enforcement Bull.* 74 (2005), pp. 21.

³⁷ *Op. cit.*, p. 23.

- (8) Other features at the scene which would tend to support this impression include the relatively passive distribution of blood, the neat way in which the water bottle and its top were placed, the lack of obvious signs of trampling of the undergrowth or damage to clothing. The location of death is also of interest in this respect as it is clearly a very pleasant yet relatively private spot of the type that is sometimes chosen by people intent upon self-harm.
- (9) Many of the injuries over the left wrist show evidence of a well-developed vital reaction suggesting that they have been inflicted over a reasonable period of time (minutes rather than seconds or hours) before death.³⁸

As paragraphs (8) and (9) of the forensic report indicate, violence that is not criminal (e.g. self-inflicted) presents itself through a static and ordered environment (e.g. ‘passive distribution of blood’, ‘neat way in which the water bottle and its top were placed’, ‘lack of obvious signs of trampling’). Lawful violence is methodical and tentative, ‘inflicted over a reasonable period of time’. In the way that scenes are observed and measured, components of the body – for example the blood – appears agentic; it moves, *tells a story* and *affects* in cases of criminal violence, but just ‘sits there’, waiting to be seen and explained when it comes to lawful violence.

Forensic pathology involves the study of criminal violence through the performance of invasive medical examinations, where bodies are split open, organs are studied and weighed. The body is investigated as a unit, but also as a constellation of parts (hair, nails skin), each acting differently to the surrounding environment. It is common practice for pathologists to record a found body’s internal temperature, decomposition rate, and rigor mortis, all of which enact death as a cold, immobile, rigid, disappearing body. Pathologists have many tools at their disposal. Technologies such as magnetic resonance imaging (MRI), positron emission tomography (PET), and computerized tomography (CT), all of which create images of

³⁸ Hunt, Statement Witness: Forensic Pathology Report for David Christopher Kelly ed. Justice, London, Home Office, 2003), pp. 13-4.

the body's insides – providing visual knowledge of its anatomy, physiological processes, and cellular activity. These technologies use three-dimensional detail to provide viewable information about the structure of organs and tissue, brain activity, and the (non)performance of the digestive, respiratory and circulatory systems.

Through the use of contrast media and fluoroscopes radiographic images draw our attention to fractures, lacerations, and abnormal bodily processes. By using special dyes in the process of x-raying, organs can be made to look denser, allowing viewers to visually link (and thus locate) certain kinds of criminal violence (i.e. rape) to certain parts of the body (i.e. the female genital tract).³⁹ This demonstrates to what extent the 'science' of forensic pathology is co-materialized with crime and the sociocultural body. These images tell us how bodies *should* work, and when they no longer work. They, at once, enact death as loss of circulatory or respiratory function, the cessation of brain activity. And, as Annas' reference to the *Schiavo* case demonstrates, these visual technologies can give us a very different, even contradictory understanding, of human life (and its cessation) than other material sources of knowledge like the photograph.⁴⁰ The visual knowledge that radiographic images impart have the potential to overwhelm the oral testimony of experts who explain what these images show.⁴¹ They, in essence, generate a picture of what animacy and injury is, at least in terms of (human) physicality, and they often do so by treating bodies as things that are embedded in, and in constant motion with, their environment.

Legal Judgements

Criminal violence is also enacted by talking about it; spoken words make violence audible and visualisable. And the words that are used, how they connect things that they speak about, all have an effect on the kind of criminal violence that is brought into existence. As Barad claims “a *performative* understanding of discursive practice challenges the representationalist belief in the power of words to represent pre-existing

³⁹ Scott, 'X-ray Pictures as Evidence', Michigan Law Review 44 (1946), pp. 773-96.

⁴⁰ Annas, 'Foreword: Imagining a New Era of Neuroimaging, Neuroethics, and Neurolaw', American journal of law & medicine 33 (2007), pp. 163-70.

⁴¹ Op. cit., p. 168.; Dumit, 'Objective Brains, Prejudicial Images', Science in Context 12 (1999), pp. 173-201.

things”.⁴² Accordingly, I am not speaking about legal judgements as the law’s description of what has happened in a particular context of violence, but as a performance of what violence becomes.

There is no doubt that in each case here he battered his victim to death with that heavy hammer...The heads were smashed with repeated blows from that hammer and in the case of the daughter in addition he tied around her neck that ligature...that material ligature, so tightly that he could not remove it himself and I think even the ambulance men later had difficulty in removing it.⁴³

You remember [Dr. Bowen] told you that [the victim] had twelve separate lacerated wounds to his head, did not indicate necessarily to him twelve separate blows but certainly more than six blows. Not only were there these lacerations all over his head and face but the skull had been fractured, the facial bones had been fractured. The Doctor’s words ‘the entire facial bones were extensively fractured. There were broken fragments of denture in his mouth and his jaw had been fractured...’... That was what was done by the defendant.⁴⁴

The judge’s words draw distinctions between the different agencies at work. Certain objects are given attention and scope, the hammer becomes an object of the law precisely because of its ability to fracture, and its material constituents (the steel head, the wooden handle) are only relevant to the law to the extent that they produce the effect of fracture.⁴⁵ The judge’s words draw distinctions between objects and subjects by empowering some agencies the potential to speak (‘the Doctor’s words’), to control (‘that is what was done by the defendant’), some to be wielded into action (the hammer), and others to passively lie there, bones fractured, ‘fragments of dentures in his mouth’.

The judge’s words do not focus on the same agencies (e.g. blood) and activities (splattering) as forensic pathology, yet they yield a similar enactment of death as broken, battered, fragmented bodies located in

⁴² Barad, 'Posthumanist Performativity: Toward an Understanding of How Matter comes to Matter', *Signs: Journal of women in culture and society* 28 (2003), pp. 801-31.

⁴³ R v. Gittens The National Archives, Supreme Court of Judicature, 1982) 862/A2/83, pp. Summing Up p. 7, para. C-D.

⁴⁴ The Queen v. Alan Wight, 1987) Trial Transcripts, pp. Summing Up p. 5, para. C-D.

⁴⁵ And these material consequences and constituents would be very different if, say, a carpenter was studying and talking about a hammer, where the strength of its head and its capacity to drive and shape wood would be what matters.

space. Through the words of the judge violence happens through the ‘blows’ and ‘lacerations’ the body endures, by the stamping that produces ‘fractured bones’ and ‘fragments of dentures’.⁴⁶ Pain and injury are enacted as scalar activities quantified by reference to between ‘six and twelve blows’. By focusing its attention on certain activities, the number of blows inflicted on heads, the striking of the hammer, the words of the Doctor, the judge’s words enact a different kind of criminal violence than forensic pathology and crime scene photography. For one, the words of the judge establish people - not spaces, environments, and nonhuman animals - as the subjects of violence, as the things that act and move and affect.

But the words of the judges do not stand alone. They are, of course, scripted by the statutes under which a defendant is charged, and of course by what has already been said by other judges in previous cases, and also by what has been said by other judges in other jurisdictions. Thus, there is an *incorporeal* dimension to every act of criminal violence that is visualized by the law. Violence is not only what is said by the judge, but also what is not said but nonetheless operates in the background as constraints on what *can be said*. The English law of rape, and its definition of rape as penile penetration, for instance, limits how bodies can be brought together in word within the confines of the courtroom. Thus, the judge’s words make visible the kind of violence the law itself sees. What ‘matters’ here is that people wield hammers that fracture bones and that subjectivities disappear when bodies break in irreparable ways. But we cannot mistake how the law knows violence as the way in which violence (and its constituting bodies, matter, and ideas) exist. For, as we have seen in the previous sections, the agencies and objects that matter shift depending on the modalities by which violence is studied.

Now, clearly, what is also relevant here is how violence becomes ‘criminal’ once subjected to the law’s gaze. Violence is not criminal at the moment it takes place, when one body connects with another. There is no inherent truth as to the lawfulness or unlawfulness of violence apart from the pronouncement of judges and juries. *Criminal* violence is brought into existence through the scripted words of the judge that direct the jury about the legal requirements for finding culpability, and when jury members deliver the verdict of ‘guilty’. But, perhaps, one could argue that it is not even at this point that violence becomes ‘criminal’

⁴⁶ Though authors such as Ramachandran problematizes the classification of this particular example as ‘injury’, given that it does not concern the body but rather property Ramachandran, ‘Assault and Battery on Property’, *Loy. LAL Rev.* 44 (2010), pp. 253.

because, in many cases, appeals are filed, cases are retried, verdicts may be overturned. When new evidence becomes available, new objects, activities, and interactions may come to matter in the filing of appeals and the performance of new trials. Certainly, one could also say that criminal violence is enacted at an entirely different moment for forensic pathology (e.g. when their investigations yield evidence which suggests an unnatural cause of death). And so, what is worth making very clear here, is that it is not the properties of the body that yield a finding of criminal violence (or violence itself). It is how bodies are performed, the agencies which are spotlighted, the activities that are materialized by criminal legal practice, the ideas that operate in the background as constraints on these performances and which enact the kind of violence the law wants us to see.

The Lived Reality of Criminal Violence

Criminal violence is not only mattered discursively, but also performatively. It has a *lived* reality, a 'becoming-violated', where the body takes centre stage as the target of criminal violence. Certain kinds of conduct, and the body's intra-action with particular kinds of matter (pressure, enzymes, gasses) cause blood vessels to break, blood to pool, skin to discolour, skin to break open, the insides of bodies to leak, faces to contort, bones to break, voices to grow shrill, eyes to tear up, bodies to swell, breathing to stop, pulses to disappear, muscles to stiffen, tissue to decompose, bodies to stink. The body does many things to *perform* violence, to make visible, audible, olfactible its presence. In some contexts, it carries out these performances in collaboration with other matter, leaking across walls and tables, disintegrating through intra-active processes between enzymes and organs, bacteria and tissue, making sounds and producing odours which must be heard and inhaled in order to *be*. Performances which we, as the audience, as individuals who *encounter* them with our own bodies, categorize as pain, injury and death. But the body becomes-violated in different ways. Sometimes the threat of force, the battering of bodies, does not produce shrill screams, but silence.⁴⁷ Sometimes the application of extreme force does not cause bodies to break open or skin to discolour, but leaves lesions on the brain.⁴⁸ Sometimes becoming-violated does not

⁴⁷ Pierce-Baker, *Surviving the Silence: Black Women's Stories of Rape* (New York, WW Norton & Company, 2000). pp. 32-40.

⁴⁸ Adamsbaum, Grabar, Mejean and Rey-Salmon, 'Abusive Head Trauma: Judicial Admissions Highlight Violent and Repetitive Shaking', *Pediatrics* 126 (2010), pp. 546-55.

affect blood circulation and respiration, but results in a permanent loss of wakefulness.⁴⁹ Bodily performances have the potential to drive legal understandings of pain, injury and death, manifesting in categories such as psychological injury, emotional damage, 'brain-death', which suggests that the criminal law has recognized the body's agency in enacting violence in multiple ways. But what this also shows is that the criminal law is perfectly able to recognize that violence can have multiple realities.

Importantly, as Mol suggests, "the reality of living with [criminal violence, for instance] isn't exhausted by listing physicalities" like bruising, screams, and odours. "Apart from being a physical reality" criminal violence "has a *meaning*" for victims.⁵⁰ The physicalities of violence shape the sufferer's future conduct and interactions. The fear violence causes prevents people from leaving their homes⁵¹ and changing jobs or leaving the city they live in.⁵² The pain violence causes stops people from engaging in intimate sexual relations⁵³ and to attempt suicide.⁵⁴ The bio-juridical body appears very differently here than in crime scene photographs and radiographic images. These are bodies that avoid certain kinds of activity, settings, environmental conditions, and relationships. These are bodies that report self-abuse,⁵⁵ and a kind of *living*, 'social death', whereby the insides of bodies continue to function, but sufferers report feeling that they are unable to move or control its actions.⁵⁶ In the way that violence is performed by bodies, pain and injury do not simply appear as tissue damage or bruises, but as fears, anxieties, anger, and guilt that cause bodies to behave and interact with others differently than they may have before. Accordingly, pain, injury and death are not only socio-material phenomenon by virtue of their discursive constitution and representation, but because their existence relies on how bodies perform them; how bodies conduct themselves in relation to other bodies, things, and the environment.

⁴⁹ McLean, 'Legal and Ethical Aspects of the Vegetative State', *Journal of Clinical Pathology* 52 (1999), pp. 490-3.

⁵⁰ Mol, *The Body Multiple: Ontology in Medical Practice* (Durham, NC, Duke University Press, 2002). pp. 7-8.

⁵¹ Meyer and Taylor, 'Adjustment to Rape', *Journal of Personality and Social Psychology* 50 (1986), pp. 1226.

⁵² Qureshi, *Rape: Social Facts from England and America* (Stipes Publishing Company, 1979).

⁵³ Meyer and Taylor, p. 1226.

⁵⁴ Walker, Archer and Davies, 'Effects of Male Rape on Psychological Functioning', *British Journal of Clinical Psychology* 44 (2005), pp. 445-51.

⁵⁵ Sansone, Chu and Wiederman, 'Self-Inflicted Bodily Harm Among Victims of Intimate-Partner Violence', *Clinical Psychology & Psychotherapy* 14 (2007), pp. 352-7.

⁵⁶ Winkler, 'Rape as Social Murder', *Anthropology Today* 7 (1991), pp. 12-4.

Criminal Violence and the Posthuman

My analysis in the preceding sections is meant to show that pain, injury and death - as the effects of criminal violence - do not have an underlying reality, or singular, universal meaning. They are not effects which emerge as a result of particular features that human bodies possess. Pain, injury and death, within the context of criminal violence, are enactments that take place through an accumulation of and communication between different practices and performances including (but not limited to) forensic pathology, crime scene photography, legal judgements, and bodily performance. Barad refers to this process of accumulation and communication as one of causal *intra*-action, 'intra' in the sense that discursive practices are themselves indeterminate, open-ended and flexible.⁵⁷ According to Barad's theory of agential realism, it is the discursive practices - what she refers to as 'apparatuses' (because they involve the observation, measurement, and study of phenomena using specific technologies and techniques) - by which we study a particular phenomenon - forensic pathology or forensic science - that separates out and draws boundaries around the objects and relationships that matter. Thus, our apparatuses determine how criminal violence is enacted, what it *becomes*. In drawing its 'agential cuts', or the boundaries which set out the subjective and objective 'things' of criminal violence,⁵⁸ these apparatuses not only determine how we come to see pain, injury, and death, but also how we come to see the bio-juridical body (the kind of body that *can be* pained, injured, and killed). These apparatuses convey to us, among other things, that a pained body is one that has a brain that can be mapped; an injured body is one that has bones that can be broken; a dead body is one that has organs which can stop operating. Consequently, as she explains, "practices of knowing are specific material engagements that participate in (re)configuring the world".⁵⁹

Taken separately each of these apparatuses yield a different kind of criminal violence: a lived criminal violence, a judicial, pathological, aesthetical criminal violence. But together, as material practices that are collectively part of the criminal law process, they begin to give both criminal violence, and its bodies, structure and form.⁶⁰ Nevertheless, the sedimentation of these relationships into determinate boundaries,

⁵⁷ Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*, pp. 170-8.

⁵⁸ *Op. cit.*, p. 175.

⁵⁹ *Op. cit.*, p. 91.

⁶⁰ *Op. cit.*, p. 142.

physical properties (e.g. as fleshed bodies, as steel hammers) need not imply 'closure'.⁶¹ Just as the effect of fracture can be brought about even if hammer heads are made of titanium or tungsten, the effects of death or pain can be enacted even if bodies are not flesh. It is our *practices* that bring matter and its specific properties into being.

We have, until now, limited our study of criminal violence to human bodies, justifying our choice to do so by pointing to the human body's ontology. Yet, rapid technological development, ecological changes, environmental degradations, have made it clear to us that we can no longer treat ourselves and our bodies as exceptional, discrete, separate-from-the-world, self-contained beings. These developments affect our physicality and sociality. Thus, while the memory of these past materialisations, ones that gave 'the human' the specific form and meaning we have become accustomed to, will remain inscribed within our practice, they *can be* overwritten; we *can become* something other than what we have always been. For new materialists such as Barad, Braidotti and Haraway, our existence, in the face of these changes, is crucially dependent on our openness towards a non-anthropocentric ethics that sees being human as an embedded practice; entangled with the multiple (human and nonhuman) agencies at work within the universe.⁶² We must consider human experience and human phenomena as interlinked with the nonhuman. For new materialists, this shift in thinking requires that we direct our attention to the material conditions of our existence, and develop a more ethically-sound politics which recognizes that matter has vitality, it has agency, and thus has the potential to move us in ways that may be contrary to our interests and desires.⁶³

So, going full circle, how does all of this relate back to the initial concern about my students saying that avatars and robots cannot be the perpetrators or victims of violence because their bodies are incapable of being harmed? Well, I believe here that my students were mistaking epistemology for ontology; treating the ways in which bodies are *being done* as if they were indicative of how bodies *are*. And this outlook isn't surprising. Latour, Barad, and Haraway have all noted in one form or another, that we wrongly focus on

⁶¹ Barad, 'Diffracting Diffraction: Cutting Together-Apart', *Parallax* 20 (2014), pp. 168-87.

⁶² Haraway, *The Promise of Monsters: A regenerative Politics for Inappropriate/d Others* ed. Grossberg, Nelson and Triechler, New York, Routledge, 1992); Braidotti, *Posthumanism* (Cambridge, Polity Press, 2015).

⁶³ Attala and Steele, *Body Matters: Exploring the Materiality of the Human Body*, Cardiff, University of Wales Press, 2019); Coole and Frost, *New Materialisms: Ontology, Agency and Politics*, Durham, N.C., Duke University Press, 2010).

the steadfastness of ‘matter’ rather than mutable, plastic, flexible kinds of ‘mattering’,⁶⁴ the processes by which we enact ourselves and the world around us. Through this article I have sought to draw attention to these processes of mattering with the intention that we might, more critically, engage with the idea of criminal violence as a phenomenon that could include, indeed *does include*, more than just human bodies.

The idea that robots, artificial intelligence, and avatars can never *be human* irrespective of how many human behaviours they exhibit treats ‘being human’ as something separate from looking and acting human; as if being human was determined by some metaphysical essence that human beings possess, rather than a subjective decision to recognize bodies as ‘human’ based on our sensorial encounters with them. Our history is littered with examples of how the measure of one’s humanity is founded on ideas about how bodies should look, smell, behave, and speak.⁶⁵ While our bodies may sense things in its interior – chemical, molecular, cellular processes – these body-interior processes are only accessible to the rest of us (indeed even to the experiencing body itself) to the extent that they can be made visible, audible, olfactible and tangible. Even when our bodies actually sense pain, injury or death, these internal sensations have significance and meaning for us as embodied entities, bodies that are *in the world*, because they have an effect on how we interact with the world around us. As Mol explains, what *is* pain other than a sensation which makes it impossible for us to “climb stairs” and “go shopping”?⁶⁶ And what gives a reality to the things happening inside our bodies are the various discursive-material practices that bring the inside outward, for others to sense, encounter, and interact with. Scarry writes:

When one hears about another person’s physical pain, the events happening within the interior of that person’s body may seem to have the remote character of some deep subterranean fact, belonging to an invisible geography that, however portentous, has no reality because it has not yet manifested itself on the visible surface of the earth... Vaguely alarming but unreal, laden with consequence yet evaporating before the mind, because not available to

⁶⁴ Latour, 'Why has Critique Run out of Steam? From Matters of Fact to Matters of Concern', *Critical inquiry* 30 (2004), pp. 225-48.; Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature* (New York, Routledge, 1991).; Barad, 'Posthumanist Performativity: Toward an Understanding of How Matter comes to Matter', pp. 801-31.

⁶⁵ Tullett, 'Grease and Sweat: Race and Smell in Eighteenth-Century English Culture', *Cultural and Social History* 13 (2016), pp. 307-22.; Bregin, 'Representing the Bushmen: Through the Colonial Lens', *English in Africa* 27 (2000), pp. 37-54.; Lowrey, 'Dead to the World: Embodied Gender Transgression and the Loss of Humanity', *eTopia* (2008).

⁶⁶ Mol, p. 20.

sensory confirmation...the pains occurring in other people's bodies flicker before the mind,
then disappear...⁶⁷

But it is not just the pain of others, even our own pain dissipates unless it has material consequences; unless it prevents our bodies from acting in certain ways, or shapes the way that others relate to us. The reality is that even our own humanity is a series of material arrangements and engagements. Our humanity is not defined by some immaterial, metaphysical essence – animacy, sentience, a soul, or whatever one may call it. It is defined by what our bodies do, how they relate to the world around us, and what other bodies see, hear, smell, taste, touch our bodies doing, namely how we relate to one another as embodied entities. But also, “as a consequence of how we become related to our surroundings within such movements, traces of their surrounding doings become inscribed in our bodies and influence the shaping of our actions in future encounters within our surroundings”.⁶⁸ All matter, our bodies included, are always open to (re)configuration, what DeLanda refers to as matter's potential for ‘morphogenesis’; we are part of an iterative ‘becoming’ of the world.⁶⁹ Since the body is always in a state of transition it is “in an immediate, unfolding relation to its own nonpresent potential to vary”. As a result, we are faced with the “paradox” that there is always “an incorporeal dimension of the body”⁷⁰ which alludes us; a body that once was and a body that does not yet exist but is in the process of becoming.

These conclusions suggest that, perhaps a more inclusive way of thinking about robotic, machinic and digital violence, is to recognize that all bodily phenomenon – including violence - irrespective of the kinds of bodies it involves (human and nonhuman), refers to the body's material engagements with the world and how those engagements are observed, measured, thought about, and spoken of. From this perspective,

⁶⁷ Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York, Oxford University Press, 1985). p. 3.

⁶⁸ Shotter, 'Agential Realism, Social Constructionism, and our Living Relations to our Surroundings: Sensing Similarities Rather than Seeing Patterns', *Theory & Psychology* 24 (2014), pp. 305-25.. Attala and Steele's *Body Matters* undertakes a series of investigations that consider the co-constitution of bodies, matter, and the environment Attala and Steele.. For many new materialists this brings a special kind of focus on material relations as agential processes, or as Bennett notes, the idea that matter possesses ‘vitality’ Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham, Duke University Press, 2010), Barad, 'Posthumanist Performativity: Toward an Understanding of How Matter comes to Matter', pp. 801-31, Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming* (John Wiley & Sons, 2013)..

⁶⁹ DeLanda, 'Immanence and Transcendence in the Genesis of Form', *The South Atlantic Quarterly* 96 (1997), pp. 499.

⁷⁰ Massumi, *Parables for the Virtual: Movement, Affect, Sensation* (Duke University Press, 2002). pp. 3-5.

violence becomes posthuman; both mindful of the 'human' that has served to drive contemporary politics until now, but also conscious of the fact that what constitutes the human relates back to us, and the socio-material practices that we engage in to bring that human into existence. So when my students say that robots and avatars cannot be harmed because they do not feel pain or experience mortality, what they must realize is that it is our anthropocentric discourses that tell us that violence can only harm when it leads to: organs that fail, brains that become inactive, bodies that contort, bones that break, odours that surface, tears and screams that emerge, bodies that avoid certain spaces, places, and relationships. Pain, injury and death mean very little to us apart from these representations and performances. Violence becomes 'criminal', to us, when we believe that, in certain contexts (e.g. in the absence of consent), these representations and performances breach acceptable limits about how we relate to one another and the world around us. This, we say, 'harms us'. Thus, criminal violence refers to how we are made to encounter bodies, through our senses, and how we believe those encounters affect our relationships to one another and the surrounding universe.

If all violence refers to the body's material engagements with the world, then recognising human-on-nonhuman violence, and vice versa, is not about equating nonhuman bodies to human ones. It is about recognising that bodies are not the stable, determinate, self-contained ways of existing that we believe them to be. For what is a better example of this than metal and digital bodies that can perform tasks the same way flesh-and-bone bodies do? There is no static, physical, 'human'. Rather, humanness is distributed; it proliferates across material arrangements that we may, through our practices, recognize as 'human' or 'human-like'.⁷¹ And this, here, is important because it also recognizes our potential - as stable-for-the-time-being material arrangements of cells, water, minerals, proteins - to mutate, to change without compromising our *humanness*. Hayles has remarked that we, as a species, have always been, to some extent, 'posthuman' - that we have never existed *alone*, as self-contained, self-sufficient, fixed entities - but, this is perhaps even more so apparent today than ever before.⁷² We live in a world of smart environments, sex robots, fitness trackers, and digital living spaces. Technology not only shapes our lived reality, but also our physicality.

⁷¹ The perfect example is how we have used the techniques and technologies of neuroscience to show how animals have certain 'human' qualities such as animacy and sentience.

⁷² Hayles, *What Does it Mean to be Posthuman?* ed. Nayar, Chichester UK, Wiley-Blackwell, 2010), pp. 19-28.

Cryogenics, prosthetic limbs,⁷³ artificial skin,⁷⁴ all of this speaks to the social and physical plasticity of the human body. If our cognitive functions, moods, and behaviours can be performed by machines, and if our bodies and its biological processes can be swapped out for technological, synthetic, manufactured alternatives, what precisely *is* a human being?

Perhaps then what might be a more fruitful way of thinking about humanity is not in terms of bodies but processes, “thinking through flows and interconnections”.⁷⁵ We do not stand separate from the world around us, subjects in a world of objects, but are entangled within it. Subjectivity and objectivity are therefore not inherent categories of matter, but iterative processes. Barad writes:

Agency is ‘doing’ or ‘being’ in its intra-activity. It is the enactment of iterative changes to particular practices – iterative reconfigurings of topological manifolds of spacetime-matter relations – through dynamics of intra-activity. Agency is about changing possibilities of change entailed in reconfiguring material-discursive apparatuses of bodily production, including the boundary articulations and exclusions that are marked by those practices in the enactment of a causal structure.⁷⁶

Thus, the human shifts through a series of movements, a series of practices, that slowly, steadily, and continuously reconfigure the boundaries, limits, and exclusions of humanness. As a result, in studying human phenomena – like criminal violence – we should refrain from concentrating our attention on a singular, bodied, notion of the human, for both the sociality and physicality of the human is consistently being challenged and reformulated. Rather, we should direct our gaze to the apparatuses, the material practices – through which that change takes place. In earlier sections of this paper I demonstrated how those material-discursive practice ‘mattered’ – how they jointly brought both the bio-juridical body and the effects of criminal violence into being. The fact that many of these practices relied on studying the body by reference to interactions between flesh, insects, and the environment – even when the physical body was

⁷³ Morimoto, Onoe and Takeuchi, Biohybrid Robot Powered by an Antagonistic Pair of Skeletal Muscle Tissue, 2018) 3.

⁷⁴ Burke, Yannas, Quinby Jr, Bondoc and Jung, 'Successful use of a Physiologically Acceptable Artificial Skin in the Treatment of Extensive Burn Injury', *Annals of Surgery* 194 (1981), pp. 413.

⁷⁵ Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*, p. 2.

⁷⁶ Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*, p. 178.

no more – suggests that there is a reality to criminal violence that both takes account of, yet exceeds the (allegedly) self-contained, inner processes of the ‘human’ body. In light of this, one could possibly say, that our practice of criminal violence has always, already been, posthuman, and it is simply time for us to finally recognize this.

Conclusion

It has never been my intention to argue that the criminal law should apply to nonhuman bodies. This paper was more meant to encourage us to think about precisely *why* and *how* it applies to human ones. In this paper, I have argued that the wrongfulness of violence, the idea that violence harms, cannot be traced to the human body’s ontology, but rather the modalities through which we observe, measure, talk about, and think about the human body. Here I have analysed only a few of those modalities: crime scene photography, forensic pathology, legal judgements and bodily performance. I have argued that these material-discursive practices, when looked at more closely, expose precisely to what extent our bodies, and the violence they experience, are enacted by bringing flesh into contact with a number of different tools, technologies, and ideas. Humanoid robots, artificial intelligence, and avatars, I believe, have helped to provoke a critical re-imagining of human existence as a process of becoming, or better yet, a becoming-*with* (technology, environment, climate, insects, animals, machine, etc). We are relational beings because for us to ‘be’, we must *be* in the world. And to that end, one could also argue that our embodied experiences, including criminal violence, are also relational. Criminal violence is not rooted in a property of our bodies – sentience, or animacy, or agency – but filters down to choices that we have made, practices that we have undertaken, about how to relate to the world around us. And if this is the case, as I believe it is, then precisely the kinds of conduct which constitute criminal violence can also change. A posthuman understanding of criminal violence, therefore, would reimagine it as a series of enactments that make sense-able the moral concern and responsibility we feel we ought to have to other bodies and matter around us. And once we realize this, we can begin to see how our agency is not determined by the extent to which our bodies maintain a fixed, impervious, self-contained existence, traceable to some celestial or metaphysical arrangement of the universe, but the extent to which they are continuously able to become-*with* the universe. As Braidotti writes, “the point is not to know who we are, but rather, what, at last, we want to become, and

how to represent mutations, changes and transformations” towards that end.⁷⁷ In the context of criminal violence, then, we cannot think about criminal violence using binary divisions like ‘human’ and ‘nonhuman’, for that produces an inaccurate picture of precisely what criminal violence entails. Even human criminal violence involves non-human components – insects, the wind, microscopes and radiographic machines. I propose, instead, that we imagine criminal violence as posthuman, both mindful of but not enslaved by the conventional categories of human and nonhuman, and the associated idea that bodies are singular, self-contained and bounded entities. Criminal violence is a series of material enactments that *can* represent ‘mutations, changes, and transformations’ of the historically human. All that this requires, then, is a desire on our part to be more than just human.

⁷⁷ Braidotti, *Metamorphoses: Towards a Materialist Theory of Becoming*, p. 2.

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