SECTION 1

RETHINKING CRITICAL CRIMINOLOGY
Page left blank intentionally
Beyond Criminal Law and Methodological Nationalism: Borderlands, Jurisdictional Games, and Legal Intersections

David Moffette and Anna Pratt

Criminology occupies a peculiar place among the social sciences as it adopted as its unifying object of study that which is pre-defined in and created through law. Indeed, the jurisdictional distinction between acts that are subject to criminal laws and others that are regulated by administrative laws was, to a great extent, adopted by criminologists. And despite early encouragements to move criminology beyond its traditional boundaries by expanding its guiding problematic from crime to ordering (Shearing 1989), much of the criminological scholarship produced in the last fifty years has continued to privilege the study of crime—socially constructed or otherwise—and the criminal justice system over that of other ordering practices and regimes.

Studying the complex intersections between the domains of criminal justice and immigration regulation forces us to challenge this crime-centric approach. This field of study is rather new. The Chicago School of sociology—so influential in criminology—had of course paid attention to immigration, but it had done so with a problematic assumption that migration is a cause of social disorganization, a claim that has now been challenged empirically (see Lee et al. 2001). However, it was only in the late 1990s that scholars began researching the intersections of immigration and criminal legal regulation, a field initially dominated by legal approaches (e.g., Kanstroom 2004; Miller 2005), with but a few criminological exceptions (e.g., Pratt 2005; Welch 1996).
For the most part, the regulation of immigrants by various state and non-state actors has not been the object of much criminological inquiry until recently.

While alternative framings exist, a great deal of recent scholarship analyzes these dynamics through the concept of “crimmigration” (e.g., Chacón 2015; Stumpf 2006; Van der Woude et al. 2017). As explained by Stumpf (2006, 376), this concept highlights the way that “immigration law today is clothed with so many attributes of criminal law that the line between them has grown indistinct.” While this focus on convergence is a useful endeavour in many regards, we find it limiting. Indeed, despite some key works that have sought to specify the nature of the intersections and divergences (e.g., Aas 2014; Chacón 2015), or that have attended to the “asymmetric incorporation of criminal justice norms” into immigration law (Legomsky 2007, 469) and the “ad hoc instrumentalism” that characterizes actors’ decisions to cherry-pick the legal categories they deploy (Sklansky 2012, 157), much of the scholarship insists on documenting the many points of convergence instead of attending to the gaps, cracks, and fissures that run through the interactions of immigration and criminal justice regimes. This preoccupation with convergence hides from view the heterogeneity, contingency, and multiplicity of ordering and bordering practices, including the important ways that jurisdiction brackets and authorizes different legal powers and practices (Blomley 2014). The guiding focus on the merging of criminal justice and immigration law also pushes into the background the many other legal and quasi-legal regimes that are engaged in bordering practices and that contribute to the regulation and punishment of immigrants. In this chapter, we avoid metaphors of “merger” and “convergence,” choosing instead to study what we think can be most helpfully understood as an assemblage that comprises the “legal borderlands” of the domains of immigration and criminal justice: sites of inter legality filled with “nonsynchronous, unequal, and unstable interplays between various laws, techniques, and normative regimes” (Moffette 2018a, 156).

The notion of legal borderlands brings us to a second and closely related limit of criminology. We hope that the project of doing criminology at the borderlands can help us to avoid and challenge the often unquestioned “default scalar setting” of much criminological research: the nation-state (Valverde 2010, 240). This is important analytically and politically as the methodological nationalist trap often
leads to the “ongoing re-production and re-fetishization of those same naturalized ‘national’ formations” (De Genova 2013, 251; see also Wimmer and Glick Schiller 2002). And yet, despite efforts by scholars contributing to the growing fields of global and transnational criminology (e.g., Bowling and Sheptycki 2012; Larsen and Smandych 2007; Sheptycki 2000) and green criminology (e.g., Brisman 2015; Lynch and Stretesky 2010), working on crimes and harms of globalization (e.g., Franko Aas 2013; Rothe and Friedrichs 2015) or producing research on local-level legal regulation (e.g., Goodman et al. 2017; Valverde 2011; Varsanyi 2010), the nation-state remains firmly embedded in criminology. The focus on the state as the singular holder of sovereignty, even if for the purpose of its critique, often hides from view the ways that sovereignties are always plural, partial, contested, and incomplete (Aoki 1998; Sassen 2009). In this chapter, we draw from our experience studying bordering practices, including at physical borderlands (Moffette 2013; Pratt 2016), to propose ways to help avoid the discipline’s methodological nationalism and privileging of crime and criminal justice.

This programmatic chapter suggests ways to develop scholarship located in the “borderlands” where different jurisdictions, legal regimes, and academic disciplines intersect. In the following subsections, we define what we mean by doing criminology at the borderlands and present the notion of jurisdictional games (Valverde 2009, 2015) as a conceptual tool that is useful in this endeavour. We then provide two empirical vignettes that illustrate the kind of research that we have in mind: (1) the Canada-US Shiprider program that allows binational boat patrols to operate at and across the US-Canada border and (2) the multi-scaler governing of unauthorized immigrant street vendors by port authorities and municipal, regional, and state police in Barcelona. The first vignette is based on document analysis and interviews conducted by Anna Pratt with officers working for the Royal Canadian Mounted Police (RCMP), US Coast Guard (USCG), and US Customs and Border Protection (CBP), and with members of the community in Akwesasne Mohawk Territory. The second vignette is based on ethnographic observation, document analysis, and interviews conducted by David Moffette with municipal civil servants at the Barcelona Security Commission and the Immigration, Interculturality, and Diversity Commission, as well as with a city councillor and a member of an advocacy group working with street
vendors. Both of these vignettes raise questions of sovereignty, jurisdiction, and discretion.

In the conclusion, we return to the notion of borderland criminology to make recommendations for future research. The chapter contributes to the book by arguing that to move beyond insecurity and exclusion, criminologists need to move beyond a focus on crime, criminal law, and the nation-state.

Doing Criminology at the Borderlands

While our research owes much to what has been called “border criminology” (Bosworth 2017) or the “criminology of mobility” (Pickering et al. 2015) since we study bordering practices and the governing of immigration, our call for doing criminology at the borderlands should, in part, be taken metaphorically as an invitation to all criminologists to locate our work in an intellectual space that sees the boundaries between disciplines, legal regimes, and states as blurry, uncertain, and shifting.¹

Borderlands are physical, geopolitical, legal, linguistic, and cultural third spaces bridging the lines that officially separate countries, people, cultures, and identities. Gloria Anzaldúa (1987), Akhil Gupta and James Ferguson (1998, 18) propose that we understand borderlands as “a place of incommensurable contradictions” and that “the term does not indicate a fixed topographical site between two other fixed locales (nations, societies, cultures), but an interstitial zone of displacement and deterritorialization that shapes the identity of the hybridized subject.” Borderlands are also sites for the performance of contested sovereignties (Donnan and Wilson 2010; Dudziak and Volpp 2006) and the dramatic manifestation of state power and racialized violence (Rosas 2006), yet they are always fragile (Rosas 2006). The governing of mobility in borderlands also relies on discretionary acts and non-acts (Heyman 2009), on racialized risk knowledges (Pratt and Thompson 2008), and on jurisdictional games (Moffette 2018b; Pratt 2016). Our call for doing research in the legal borderlands thus evokes a joint commitment to interdisciplinary, interlegal, and post-national inquiries. As such, border research that endeavours to decentre formal law and the nation-state promises to furnish findings and insights that will be useful and applicable to criminological research undertaken in a variety of other contexts as well.
**Jurisdictional Games**

One way to denaturalize state sovereignty and the distinction between different types of legal regimes is to look at jurisdiction as an ongoing practice of governing through legal bracketing (Blomley 2014; Ford 1999; Valverde 2009, 2015). Indeed, not only are crimes historically and socially constructed, but the whole division of law into different realms is also the product of an active process of boundary-making. As Mariana Valverde (2009, 141) explains, “the allocation of jurisdiction organizes legal governance, initially, by sorting and separating” objects and realms of law in a way that eventually seems natural and hides from view the tensions and contradictions inherent to legal orderings. This work of jurisdiction is an ongoing performance. As Shaunnagh Dorsett and Shaun McVeigh (2012, 4) explain, “jurisdiction is derived from the Latin *ius dicere*—literally to speak the law … it declares the existence of law and the authority to speak in the name of the law.” The enactment of jurisdiction is thus a matter of asserting legal power—or refusing it—continuously and in various concrete local instances.

To understand jurisdiction as performative means that we need to study it as discourse and as a set of practices. In his work on territorial jurisdiction, Richard Ford (1999) likens jurisdiction to a tango, a type of dance with a set of rules that defines the role of each partner to negotiate when one should step forward and when one is to let their partner make the move. Jurisdiction therefore must be enacted; it encompasses practices whereby legislators, courts, and anyone who wants to summon the law make claims about the “where,” the “who,” the “what,” the “when,” and the “how” of law (Valverde 2009), and provide rationales for why an act or a person, in a particular place and time, falls under the authority of a particular body and should be treated according to this or that kind of procedure. The game of the jurisdictional distribution of authority is thus always performed through negotiations over what belongs to immigration law, criminal law, or other legal regimes; negotiations over what falls under municipal, provincial, or federal authority; what is American and what is Canadian; and so on. Studying “jurisdiction as a bundle of practices” (Ford 1999, 855) means looking at the ways that various actors—from judges to street-level bureaucrats, zoning bylaw inspectors, police officers, coast guard officers, Indigenous activists, and
anyone claiming that they have rights or that their neighbour’s fence is too high—are continuously making jurisdictional claims. It also means that in most situations, a variety of laws, regulations, and authorities could apply, and actors are able to deploy different kinds of legal or quasi-legal resources depending on the outcomes that they are hoping to achieve, using what David Sklansky (2012, 157) might describe as a kind of “ad hoc instrumentalism.”

We suggest that research focused on these jurisdictional games can be productive in three ways. First, “thinking jurisdictionally” (Dorsett and McVeigh 2012, 42) can help us make sense of the multi-scalar, multi-actor, and multi-jurisdictional socio-legal regulation of people and things in many contexts today. Second, it allows us to shift our focus from crime, criminal law, and formal criminalization to instead look at how the recourse to aspects of criminal law is but one of the many options that actors have in the multi-jurisdictional ordering of people and things. Third, looking at jurisdictional games also helps us to move away from an understanding of sovereignty as seated solely at the heart of the state and instead invites us to study jurisdictional claims to multiple forms of both territorial and non-territorial sovereignty as they are made and unmade in everyday practices. Indeed, this approach works well with a pluralist notion of sovereignty, understood as “the discursive [and practical] form in which a claim concerning the existence and character of a supreme ordering power for a particular polity is expressed,” an ordering which asserts “to provide a continuing source and vehicle of ultimate authority for the juridical order of that polity” (Walker 2003, 6).

In order to illustrate the analytical potential of our approach and concepts, we now turn to two empirical vignettes from our respective research.

**Governing Waterways: The Canada-US Shiprider Program at the Maritime Borderlands**

*Introduction to the Shiprider Program*

A few years ago the U.S. Coast Guard snapped a photo of a Great Lakes smuggler smiling at their camera with his middle finger in the air, “flipping us the bird,” as one frustrated officer defined his contemptuous gesture. The smart-ass smuggler knew the
Coast Guard was powerless to retaliate. They had pursued him at high speeds, but he had managed to make it into Canadian waters—and he knew exactly where the borderline was... So the Coast Guard, observing the rules of national sovereignty, was unable to pursue this guy, and he knew it. (Kenny 2007, 1)

The iconic image of the cocky criminal flagrantly mocking the USCG while speeding across the international border into Canada captures the kind of scenario that the Canada-US Cross Border Maritime Law Enforcement Program—known more commonly as Shiprider—officially aims to prevent. First introduced on an occasional basis in 2005 to respond to cross-border maritime crime and security threats, Shiprider re crafts binational cross-border maritime law enforcement through an unprecedented reconfiguration of jurisdictional practices that effectively “removes the international maritime boundary as a barrier to law enforcement” (RCMP 2014: n.p.). Shiprider vessels are jointly crewed by designated and specially trained RCMP officers and USCG officers who all have the authority to enforce both Canadian and American laws on either side of the international border under the host country’s direction and laws. Under the consequential amendments to the RCMP Act contained in the 2012 Integrated Cross-border Law Enforcement Operations Act, specially trained USCG officers are designated as supernumerary special constables in Canada who enjoy the same enforcement powers as RCMP officers. In turn—though not entirely equivalently—Canadian officers are designated as US Customs officers working with the USCG, under the enforcement authority of the US Code of Federal Regulations. Whereas traditional cross-border jurisdictional practices require maritime law enforcement authorities of one nation to stop and if possible “hand off” a pursuit at the border, a Shiprider vessel can pursue and interdict vessels with “seamless continuity” across the border.

We are now quite used to preclearance programs that deter territorialize sovereignty by creating spaces of US sovereignty in Canadian airports, effectively extending the US border into Canadian space (Salter 2006). Shiprider goes even further. By empowering US officers to enforce Canadian laws, and vice versa, on either side of the border, Shiprider disconnects enforcement authority from both national territory and national sovereignty. Traditionally, national jurisdiction—understood as the authority to speak the law (Dorsett and
McVeigh 2012)—is deeply embedded in the continuously constituted relations of the legal trinity of nation-statehood: sovereignty, territory, and jurisdiction (Ford 1999; see also Pratt and Templeman 2018). Shiprider is a jurisdictional game-changer. It repackages this authority into a portable resource that travels with the shiprider through space and time within, across and beyond the territorial borders of the two participating sovereign nation states, as it patrols the marinescapes of the Canada-US borderlands (Pratt 2016). So, in contrast to the extraterritorial deployment of national sovereign powers in designated preclearance zones within another country’s territorial border—as in international airports, for example—when American shipriders cross over the international border into Canadian territory, they effectively become Canadian RCMP officers who are empowered to enforce Canadian federal legislation for the duration of their presence in the country. Conversely, when Canadian shipriders cross over the international border into US territory, they effectively temporarily become American Customs officers who are empowered to enforce US Customs legislation. With Shiprider, not only is authority a portable and mobile resource but—simultaneously—sovereignty assumes a kind of spatial and temporal convertible quality like a cloak to be cast on and off by shipriders as they enter different national territories.

**Scaling Up: Shiprider and the Unsettling of National Sovereignty**

Different dynamics come into view depending on the scalar lens of the analysis. If we “scale up” our analysis to understand Shiprider in relation to national, transnational, and international developments, Shiprider’s unprecedented reconfiguration of jurisdictional practices can certainly be regarded as a North American example of emergent transnational security arrangements within a shifting topography of border control that begins to decouple territory and sovereignty. It is by now well established that a new geography has accompanied globalization. Scholars have examined the emergence of sovereignty without territoriality (Appadurai 1996), spatial “boundedness” (Paasi 2009, 213), and “geographies of exclusion” (Hyndman and Mountz 2008, 250) that push borders beyond their official boundaries. Understood within the wider context of globalization and securitization, Shiprider’s binational jurisdictional practices appear to be yet another example of transnational policing.
arrangements that are escaping “from their earlier frame within distinctive national regimes” (Walters 2009, 2).

While distinctly one-sided Shiprider agreements between the US and Caribbean and Latin American nations have proliferated since the early 1990s (Brown 1997; Ferguson 2003; Robinson 2009; Watson 2003), USCG and RCMP authorities have offered reassurances that the Canada-US Shiprider Agreement is fully reciprocal and leaves the sovereignty of both nations intact (RCMP interview 2014; USCG interview 2014, 2015). Nonetheless, the steady expansion and securitization of increasingly integrated Canada-US border policies since the 1990s has often been regarded as signalling the erosion of sovereignty or the emergence of “new,” “merged,” “shared,” or “dispersed” forms of sovereignty, effectively “conceding sovereignty to gain sovereignty” (Kent 2011, 803). Critics regard Shiprider as a threat to Canadian and US sovereignty insofar as it extends and connects the crime and security mandates of both nations, raising troubling questions, at the scale of the nation-state, about accountability, privacy and information sharing, due process, and civil rights (Gilbert 2007; Kitchen and Rygiel 2015). These are of course important and pressing concerns. However, were the analysis and the critiques to end here, much would be missed.

Scaling Down: Shiprider and the Local Enactment of Jurisdiction in Akwesasne

While Shiprider certainly displays globalizing and securitizing features, neither of these two broad paradigms shed much light on Shiprider’s operations and effects in the local waterways of its patrols. To do this, we must “scale down” in our analytical focus. In 2006, on the west coast of Canada and the United States, the Shiprider program was piloted and now permanently operates in the Strait of Juan de Fuca and the Georgia Basin, waterways that flow through the Salish Sea and surrounding basin. Here, the traditional territory of Coast Salish peoples covers 72,000 km², which was divided in 1848 by the Canada-US international boundary that many Coast Salish people still refuse to recognize (Miller 2012).

At the same time, Shiprider was also piloted in the waters of the St. Lawrence River that flow through and around Akwesasne Mohawk Territory. In stark contrast to the language of “seamless continuity,” here 140 km of waterway, including three rivers—the St. Lawrence, the Raquette, and the St. Regis—flow around some 432 islands through
Canada and the United States. These include the provinces of Ontario and Quebec and the state of New York, multiple municipalities within those, as well as 80 km² of reserve land that is part of the territory of the Akwesasne Mohawk Nation that extends across the St. Lawrence River and the international border to include the St. Regis Mohawk reservation in New York State. While often represented in policy and in mainstream media as a kind of lawless “black hole” (Kershaw 2006: n.p.), this region is actually thoroughly intersected by a host of varied and deeply contested socio-spatial boundaries, legal and quasi-legal regimes, and jurisdictional practices. Here, diverse national, subnational, and transnational authorities—including both the settler-imposed elected band council and the traditional First Nations’ governing bodies—operate at different overlapping and frequently conflicting scales.

These complexities require an approach that does not focus narrowly on the nation-state—the “default scalar setting” of much criminological and legal analysis (Valverde 2010, 240). The concept of interlegality (De Sousa Santos 1987) shifts attention toward the coexistence of multiple legal and quasi-legal regimes that operate at different scales (local, national, global, private, public) in the same spaces. To understand the nature, operations, and effects of Shiprider in this local “multi-layered jurisdictional patchwork” (Varsanyi et al. 2012, 138), it is necessary to attend to the “scope” of border governance effected through Shiprider, which includes both the “unpredictable interactions of governing orders working at different scales” (Valverde 2010, 240), as well as the jurisdiction that is deployed or claimed. The delicate nature of balancing these issues of governance and jurisdiction were cautiously alluded to by a CBP officer in 2017: “Akwesasne … it’s just a very … it’s a unique area. It has its own challenges in terms of jurisdiction and depending on what understanding you have of who, you know, who controls the particular waters or what laws are to be enforced in those areas—from whether it be a provincial, state or federal—so, I would say, conversations continue with the First Nations” (CBP interview 2017).

Were the analysis to end at the scale of the nation-state, or were it to be scaled up further to examine Shiprider as an example of emergent transnational policing arrangements and international governance regimes, it would be insufficient. Such an approach would effectively remove from view the specific ways that Shiprider’s mobile patrols enact Canadian and American sovereign settler authority in
local contexts where binational border enforcement strategies transect Indigenous territories in which local communities contend with and refuse imposed colonial-settler boundaries that relegate sovereignty to the historical past (Feghali 2013; Luna-Firebaugh 2002; Pertusati 1997; Singleton 2009). Shiprider was introduced at the level of national policy to combat the problem of cross-border smuggling in the marine environment. However, “smuggling” has long provided the occasion for the assertion, defence, and contestation of different versions of sovereignty through the deployment of jurisdiction (Simpson 2008). In contrast to the view that Shiprider represents a threat to Canadian (or American) sovereignty, when we scale down our analysis and endeavour to think jurisdictionally, we can begin to see the way that Shiprider patrols operate as a mobile marine jurisdictional technology of settler sovereignty that not only asserts but prioritizes state national and binational sovereign jurisdictions over and against Indigenous ones in the ongoing effort to order Indigenous people in space and time (Ford 2010). As summed up bluntly by one member of the Akwesasne community: “The only reason they wanted the Shiprider program was to figure out how they could get the native people” (Akwesasne Community Member interview 2016).

Finally, when we scale down and begin to unravel the jurisdictional games that are at play in the local terrain of cross-border maritime law enforcement on the St. Lawrence River, we can see how Shiprider is but one relatively small player. These games have been ongoing and involve a multitude of diverse national, subnational, and transnational land and marine settler authorities and partnerships, as well as varied forms of Indigenous governance systems, all of which operate at different, overlapping, and conflicting scales.

In the case of the Shiprider program, it is clear that “doing criminology at the borderlands,” as we suggest, can help to produce accounts that unsettle our well-established methodological nationalism by scaling down to bring into view multiple and contested sovereignties. In addition, the recognition that jurisdiction is not simply an abstract and technical legal construct but rather a collection of practices, directs important attention to what might be described as a dynamic, spatiotemporal “mash-up” (Valverde 2015, 50) of multiple actors and multi-scalar forms of knowledge, mutable powers, and dynamic practices that intertwine to enact jurisdiction in the daily frontline work of cross-border maritime law enforcement.
This sensitivity for doing research that decentres those categories and that pays attention to the interlegal and messy actualities of governance can also be productive in contexts that may be less easily understood as borderlands. In the next section, we turn to the multi-actor, multi-scalar, and multi-jurisdictional governing of unauthorized immigrant street vendors in Barcelona to show how a city itself can, in some ways, be a borderland.

**Governing Street Vending: Urban Policing and the City as Borderland**

*Presentation of the Barcelona Case*

[Stopping street vendors from selling in the Port of Barcelona] should belong to the Port Police, but it’s obvious that they don’t have the effectives to do it. So they ask for help and the [municipal and Catalan police] go, and what we do is what is called “saturating.” What does it mean? If [police] set up here, [street vendors] don’t go, but they go there. Is it a solution? No … It’s being always on the move, it’s like a balloon that you squeeze here and it balloons there. But in a way it’s about not leaving zones of impunity. (Barcelona Commissioner of Security interview 2016)

At first glance, urban policing of unauthorized street vending—a simple violation of municipal bylaws regulating the use of public space—seems much less spectacular and far more straightforward than chasing people defined as “smugglers” across international borders, as in the case of the Shiprider program. But Barcelona, much like any big urban centre, is crisscrossed by a number of symbolic, material, and jurisdictional boundaries, and much can be gained by studying the practices of the various actors involved as ways of performing the border, that is, as forms of borderwork.

Since 2015, unauthorized street vending has become a political issue in Barcelona after conservative journalists, the police, and some business people denounced the progressive municipal government for not effectively dealing with the presence of some four hundred to one thousand immigrant street vendors who make a living selling fake luxury purses, Barça football jerseys, brand-name sneakers, and
Beyond Criminal Law and Methodological Nationalism

other goods to the nine million tourists travelling to Barcelona every year (Ajuntament de Barcelona et al. 2016). As a response to the criticism, elected officials devised a strategy aimed at dealing with what they saw as a problem of public order and public perception: a “tough-on-street-vending” discourse backed by a crackdown on Barcelona’s street vendors—also called manteros, a nickname that comes from the blanket, or manta, on which they display their goods. While officials maintain that this policing work has nothing to do with immigration, the self-organized Union of Barcelona’s Street Vendors has described these practices as manifestations of racial profiling, immigration control, and enacting borders.

Indeed, while selling products without the proper licensing is managed as a municipal bylaw violation, the issue is multilayered. Many vendors are recent immigrants from Senegal living in Spain in violation of the Alien Act (Ley de extranjería), and many sell knock-off copies of luxury-brand products, which is a criminal offence. To rid the city of its street vendors, authorities require the help of (a) Urban Police officers (Guàrdia Urbana) to repress bylaw violations, but also of (b) Catalan Police officers (Mossos d’Esquadra) to act as judiciary police and criminally prosecute the selling of counterfeit goods, (c) National Police officers (Cuerpo Nacional de Policía) to apply the Alien Act and prevent the import of counterfeit merchandise, and (d) Port Police officers (Policia Portuària) to intervene on the territory they control. Manteros thus find themselves at a juncture where various legislative frameworks intersect to govern their presence in the city and in the country.

Three Sets of Legal Intersections

As mentioned, the governing of street vending is primarily a matter of municipal law. The unauthorized selling of goods in a public space is a violation of section 70 of the Bylaw on the Use of Streets and Public Space of Barcelona and section 50 of the Bylaw on Means to Encourage and Guarantee the Civic Sharing of the Public Space in Barcelona. So when municipal police officers claim that their work has nothing to do with immigration control, they are right: they have officially no authority over foreigners as foreigners. And yet they regularly set up checkpoints at the turnstiles of major subway stations to intercept African immigrants circulating with big blankets, tied up in the shape of a bag, which they use to carry their merchandise. Manteros have pointed out the material and symbolic similarities between
identity controls that are specifically targeting Black people at the exit of a transport hub leading to the downtown streets and traditional forms of border control. In fact, the Commissioner of Security for the City of Barcelona explained: “Now, in the first place, immigration is not … the Guàrdia Urbana’s responsibility, so we don’t go around looking for people without status to deport them. This is a problem for the state. But it remains true that if in the course of our activities we find someone who’s wanted or who doesn’t have papers we bring this person to [the National Police’s Alien Affairs Brigade] for them to do what they have to do. Most of the time. Every time there is a criminal offence, for instance” (Barcelona Commissioner of Security interview 2016). Here we can see the first set of intersections, between the Barcelona Urban Police applying bylaws and the Spanish National Police enforcing the Alien Act. While city administrators present themselves as pro-immigrant and critique some of the harsh consequences of the Alien Act, municipal police officers can nonetheless rely on the cooperation of their National Police colleagues to enforce this law as a strategy for intervening in a problem of everyday urban policing.

The fact that the Urban Police more readily contact the National Police’s Alien Affairs Brigade when there are aggravating factors such as the commission of a crime is important, because the selling of counterfeit goods (such as fake Gucci bags or Nike shirts) is a criminal offence under Section 274 of the Criminal Code. This, technically, brings in a third police force as it is the Catalan Mossos d’Esquadra who are supposed to act as the main judiciary police and are brought in for the criminal prosecution part of the multilayered legal ordering of manteros. However, according to the Commissioner of Security:

Those who should take care of this right now are the Mossos. But in fact, 90 percent of those interventions are conducted by the Guàrdia Urbana. Why? Because it’s also a problem of public space, the commission of a criminal offense in a public space. … But it’s like if you told me that someone is selling illegal substances in a public space and that it’s a problem of street vending. It’s not a problem of street vending. It’s the commission of a crime! (Barcelona Commissioner of Security interview 2016).

Therefore, what the activity is called has an impact on who should be in charge of prosecuting it and, based on interest, police forces can
decide to bounce the “problem” to their colleagues or to claim jurisdiction over it. Asked by the city administration to refrain from criminally charging *manteros*, municipal police officers nonetheless train their own experts in identifying counterfeit goods because, while merchandise for sale without a permit can be seized until the owner pays a fine, counterfeit products will be destroyed as goods proceeding from criminal activity—and thus taken off the streets. The second set of intersections can be seen here, between the Barcelona Urban Police, applying bylaws and at times the Criminal Code, and the Catalan Police who are asked to be more active in exerting their authority as judiciary police.

Finally, there is a third set of jurisdictional intersections at play, one that is more territorial. At the bottom of the pedestrian street La Rambla lies the Port of Barcelona, an area where fancy yachts—small floating spaces under the jurisdictions of the flags they fly—and international cargo boats lower their anchors and where tourists go for sunny strolls. Ports are governed by the Spanish state, a power that is often delegated to autonomous communities, such as Catalonia, except in the case of “ports of interest to the state” such as the Port of Barcelona. Here, the Port Authority (Autoritat Portuària) and the Port Police are in charge. This geographic and jurisdictional border—separating the two sides of the street adjacent to the port along much of the seaside in the downtown core—means that the side of the street on which a *mantero* decides to sell their merchandise will determine who has the authority to intervene. This was strategically exploited by street vendors who, after being pushed out of La Rambla and the subway in 2015 and 2016, moved to the port area where the municipal Urban Police could not intervene without engaging in multi-corps interventions alongside Port Police officers. This strategy of evading control shows that *manteros*, too, are able to engage in jurisdictional games and make use of this border in the city to temporarily escape the authority of the municipal police—a strategy that reminds us of the example mentioned in the Shiprider case study of the “smart ass smuggler” mocking the US Coast Guard as he speeds into Canadian territorial jurisdiction (Kenny 2007, 1). This strategy only worked temporarily, however, until these multi–police corps operations were eventually deployed to force *manteros* to move again.
The Study of Interlegal and Multi-Scalar Terrains

For criminologists wanting to do work “at the borderlands” there are three important lessons that can be drawn from both of these vignettes. The first is that what we described cannot be captured simply as “crimmigration”—a criminalization or securitization of immigration (Stumpf 2006). Instead, both cases neatly display the analytical force of Boaventura De Sousa Santos’s (1987, 288) observation that “socio-legal life is constituted by different legal spaces operating simultaneously on different scales and from different interpretive standpoints,” so that “one cannot properly speak of law and legality but rather of interlaw and interlegality.” This has consequences for how we think of legal—and non-legal—regulation and should encourage us to decentre criminal law.

The second lesson is that the traditional legal understandings that map jurisdiction in largely spatial terms—for example, as either municipal, provincial, or federal—hide the multiplicity and variety of spatio-temporal dynamics, authorities, and practices of governance that enact jurisdiction in the everyday. For example, when investigated more closely, Shiprider’s jurisdictional practices are much messier than is implied by such representations of legal lines of authority. Similarly, while municipal law does play a role in the ordering of Barcelona’s street vendors, we cannot simply reduce the city to the municipal. As suggested by Valverde (2009), the scale of the “urban” promises to better capture the complexity and heterogeneity of governance at play. Indeed, “[t]he urban is a myth, a desire and an ideal as well as a set of experiences; it is a kind of place, perhaps, but one that has a distinct temporalization; it is also a legal assemblage that has always been shot through with non-urban knowledges and powers and rationalities, both public and private” (Valverde 2009, 153). Like the waterways patrolled by Shiprider, the urban is also a site that is crisscrossed by dynamics that unfold at local, national, regional, and global scales, where governance is profoundly interlegal and, at times, transnational. Understanding both cities such as Barcelona and international waters such as those patrolled by Shiprider as multi-scalar terrains can help us to avoid the pitfalls of methodological nationalism without denying either the importance or the complexity of state power and violence.
Finally, the third and closely related lesson that we draw from our vignettes relates to the richness of empirical detail that derives from the local study of jurisdictional games at the borderlands. Investigations of the local enactments of jurisdiction round out our understanding of the complicated dynamics of governance at work in different contexts. For example, Akwesasne is commonly represented by a multicoloured map that displays the spatial bracketing of the different scales of federal, provincial, state, and First Nation’s jurisdictions over the territory. This spatial representation of legal lines of authority “from above” effectively conceals the dynamic mash-up of spatio-temporal jurisdictional authorities, powers, and practices that enact jurisdiction on the water. As explained by Valverde (2015, 84), as an “anti-politics machine,” the legal technicality of jurisdiction hides from view “the substance and qualitative features of governance.” What this means in the local terrain of Akwesasne is that urgent and hotly contested questions about the nature and effects of colonial territorialization, dispossession, and displacement are transformed into “seemingly mundane and technical questions about who has control over a particular spacetime” (Valverde 2015, 85).

In the example from Barcelona, the empirical investigation of local enactments of jurisdiction reveals the practices of dispersal policing (Walby and Lippert 2012) and forced mobility (Tazzioli 2018) in the everyday bordering practices of local actors. We often think of borderwork as a set of practices that aim to contain and immobilize. In many instances, this is the case. Border fences, identity checkpoints, immigration detention, all work in that way. But, as Tazzioli (2018) argues, borderwork can also rely on strategies of forced mobility. In the case of Barcelona, since it is not possible to fully eliminate manteros as there is a demand for what they sell and a lack of other jobs for many of them, authorities adopted a strategy of dispersal policing to limit big gatherings and to make street vending as invisible as possible, especially during the high seasons of tourism. The city official we quoted at the start of the Barcelona vignette compares the practice to squeezing a balloon: you put pressure on manteros in the subways, they must eventually disperse, and later they resettle on the Rambla. You then pressure them there and they end up going to the port. Eventually, he explains, you try to saturate the space with officers of various corps so that there is nowhere to set up for more than a few minutes. This is certainly a strategy of limiting access, but the dispersal policing on the streets and in the subways of Barcelona
is also premised on imposing a frenzied pace (Griffiths 2014) of forced mobility on *manteros* through multi-scalar and multi-jurisdictional moves involving multiple actors.

**Conclusion**

In this chapter, we argued that criminologists should try to decentre both criminal law and the nation-state to unsettle the “default scalar setting” of much criminological and legal research (Valverde 2010, 240). We suggested that this could be done by engaging in what we called “borderlands criminology”—that is, doing research that is situated at the crossroads of different legal and quasi-legal regimes, scales, and jurisdictions, which is careful not to reify any of them, while also being attentive to the interlegal and multi-scalar jurisdictional games at play in governance. This call for doing criminology at the borderlands emerges from our own work in “border criminology” (Bosworth 2017) and we offered two brief empirical vignettes from cases that we studied to illustrate what we have in mind. Even as our vignettes discussed the work of police officers who may mobilize criminal law, they also illustrated how municipal bylaws or immigration law may be more central to some strategies of legal regulation, how actors such as port authorities or custom officers also need to be considered, and how state sovereignty is a concept much less obvious than it appears.

As a contribution not only to this book, but to the field of criminology more broadly, this chapter can be read as an invitation to heed the encouragement, articulated some thirty years ago by Clifford Shearing (1989, 175), that criminologists cast off the “straight jacket of crime-ology” and its trappings to promote the broader enterprise of criminology as the study of social ordering. This is a clear challenge to criminology, but not one that questions its relevance. Instead, we should consider with Shearing (1989, 117) that “[c]riminology, in this sense, is a label like pottery. A potter makes pots and pots are an important feature of her business. But pots are not all she throws and no one who calls her a potter would think they are or should be.” We invite criminologists to step outside the bounds of their disciplinary label to investigate the (b)ordering practices and processes that are at play beyond the national criminal justice system.
Notes

1 In this, our approach shares some common ground with Randy Lippert and Kevin Walby’s (2019) approach to the study of “policing and security frontiers.”

2 For a detailed discussion of the operations and effects of Shiprider patrols in Akwesasne Mohawk Territory, see Anna Pratt and Jessica Templeman (2018).

3 Respectively Ordenança de ús de les vies i els espais públics de Barcelona and Ordenança de mesures per fomentar i garantir la convivència ciutadana a l'espai públic de Barcelona.

4 For an example, see: https://blogs.mcgill.ca/humanrightsinterns/files/2015/07/Map.png.

Bibliography


Beyond Criminal Law and Methodological Nationalism


Van der Woude, Maartje, Vanessa Barker, and Joanne Van der Luen, eds. 2017. “Crimmigration in Europe.” European Journal of Criminology (Special Issue) 14 (1).


**Interviews Cited**

Akwesasne Community Member, 2016.


Royal Canadian Mounted Police Officer (RCMP), 2014.

United States Customs and Border Patrol Officer (CBP), 2014.

United States Customs and Border Patrol Officer (CBP), 2015.
Legislation Cited


Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. [Ley de extranjería]

Ordenança de ús de les vies i els espais públics de Barcelona. Butlletí Oficial de la Província de Barcelona, Diputació Barcelona, 11 de gener de 1999.

Ordenança de mesures per fomentar i garantir la convivència ciutadana a l’espai públic de Barcelona. Butlletí Oficial de la Província de Barcelona, Diputació Barcelona, 18 de juny de 2015.


Page left blank intentionally