Edited by George Pavlich and
Matthew P. Unger

Accusation

Creating Criminals

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Framing Criminal Accusation

George Pavlich and Matthew P. Unger

Imagine, across millennia if you will, that Socrates is resting peacefully at home when he hears a commotion outside. His everyday routines are starkly arrested as he goes outside and is accosted by an oral summons, in the presence of two witnesses, to meet with the king archon on a specified date at the Royal Stoa. As Plato's *Euthyphro* indicates, on the appointed day he faces three accusers (Meletus being the principle one) after bumping into his friend (Euthyphro) at the portico of the Royal Stoa. Offering an unusual, if brief, glimpse of the setting for framing processes of accusation under Greek law, Plato recalls that Euthyphro was there to accuse his father for homicide, while Socrates was to hear and question the formal accusations brought against him. Seemingly at the preliminary hearing *(anakrisis),* Socrates' accusers (according to Xenophon) charged him with being "guilty of the crime of not honouring the gods that the City honours," "of introducing other, new deities" and "of corrupting young men" (Brickhouse and Smith 2002, 87). Through such accusations, they rhetorically reassembled and described Socrates' critical philosophies as wrongdoing to the detriment of the "public." For his part, the king archon claimed only to determine whether the charges were lawful. Finding them to be so, he forwarded the "case" to a jury trial. Successful accusations at preliminary hearings, as Johnstone (1999) notes, had to be couched in ways that rendered past actions legible to legal authority. In the event, on the basis of the accusation, the archon figuratively opened the court's door, whereupon Socrates confronted a jury

of some five hundred men, the majority of whom decided that he was guilty and sentenced him to death by hemlock.

While Socrates' trial and defence has been the topic of much discussion (see Brickhouse and Smith 2002), the decisive initiating accusations within Greek legal processes are less often referenced – despite their pivotal role in marshalling selected subjects to face the law. This oversight has proved to be a tenacious one. Nowadays we still pay relatively scant attention to the accusations that stand figuratively between everyday relations and legal institutions, even as they carve entryways that potentially generate unlawful subjects and identities (Pavlich 2000). To be sure, historical studies have highlighted the significance of accusation for defining witchcraft (e.g., Ladurie 1987; Larner 2000), and a large literature on Emile Zola's famous *J'accuse* points to its devastating social effects (see Zola 1998). Yet few socio-legal scholars focus on accusation as a vital entryway to criminal justice. Atypically, Ericson and Baranek (1982) analyze how criminal justice institutions deprive the accused of effective voice, while Sumner (1990) helpfully notes the role of social censure in fashioning deviance. However, the conceptual field is underdeveloped, even in criminology, where the very terms "crime" and "criminology" derive from the Latin *crīmen,* which refers not only to crime as such, but also to processes of accusation (Negrier-Dormont 1994, 12).

The oversight is consequential, especially when one considers that today's vast criminal justice systems – together with a pervasive focus on crime and its causes, or criminals and their punishment (Simon 2007; Simon and Sparks 2013) – are key products of initiating processes of accusation. The creation of criminalized subjects, that is, follows rituals of accusation locatable in governmental nodes of subject formation, social defence, criminal codes, policing, community controls, courts, and prisons. Accusation regulates entry to expanding and disproportionately populated criminal justice institutions – the object of many convincing critiques addressed to the immense socio-economic and political costs of delineating "criminals" to be punitively excluded through legally sanctioned "cultures" of control (O'Malley 2010; Garland 2002) and mass incarceration (Simon 2014; Brown 2009; Wacquant 2009). At the same time, a legal culture that obsessively valorizes crime control and increasingly governs through crime (Simon 2007; Simon and Sparks 2013) is, at root, dependent on oft-overlooked patterns of criminal accusation.

By way of remedying the oversight, the chapters of the following collection address different aspects of the dynamics surrounding moments of

criminal accusation. They do so through quite different lenses, the significance of which is vital to opening debate on a field ripe for further development. More specifically, they critically examine how accused subjects emerge through ideological, rhetorical, philosophical, political, cultural, social, and criminal justice orders, and how accusatory processes render these subjects as potential "criminals" or "wrongdoers" for law. Focusing attention on the subtleties of criminal accusation allows us to underline several important and timely matters: past and emerging patterns of accusation that create criminals; broad political logics of accusatory apparatuses; the continued influence of colonial patterns of accusation, and the imperializing powers of authorized accusers; ideologies and phenomenologies of subjection that arise from self-accusation; and the size and disproportionate profiles of exclusionary criminal justice networks. From these, one may ponder several consequential issues. Could we, for instance, imagine a politics of recognition that allows for accusations against unequal and crimenogenic social structures rather than individual subjects? Learning from colonial and imperial experiences, is it possible to democratize how people are selected as targets for criminal justice? Is it possible to avoid accusation entirely, or is it so primordial as to be constitutive of subjects and their ongoing identities, whether in relation to crime, law, or ethical self-formation?

Approaching Criminal Accusation

Ideas and rituals of accusation have, over millennia, recognized, identified, and defined subjects, especially in relation to criminal law. Etymologically, the verb "accuse" derives from the Latin *accusare,* "to blame, find fault with, to charge with a crime, to make (things) the substance of a charge" (Oxford English Dictionary, online edition, 2015, full entry), or to "call someone to account for their actions" (Ayto 1991, 5). That term combines the prefix *ac-* (to) with *causa* (legal action, or suit at law), "to lay one's charge" (Skeat 1961, 72). The semantic lineage of such terms as "accuse," "accuser," "accused," and "accusation" variously imply ritualized pathways calling subjects to "account for their actions." The net effect is potentially to redefine categories of identity, identification, and personhood as wrong or criminal (Agamben 2008). The matter is muddied somewhat when one considers that the "accusative case" (the object of a verb in English) also derives from *accusare,* but according to Ayto, it "arose originally owing to a mistranslation" of the Greek verb *aitiāsthai,* which referred to a grammatical case denoting

"causation," but it also meant "accuse" (Ayto 1991, 5). Moreover, the term "crime" derives from the related *crīmen,* which meant "charge, accusation, matter for accusation or blame, reproach, offence, misdeed" (OED, online edition, 2015, full entry). Without overplaying the hand of etymology, this diverse terminological lineage helps us gain a foothold from which to approach the following essays on criminal accusation and the emerging field to which they contribute.

Staking out conceptual markers for this field is no easy matter, especially since development of the conceptual terrain is still very much a work-in-progress. However, to frame discussion, one might say that most chapters in this book echo a form of the following idea: "All societies produce strangers; but each kind of society produces its own kind of strangers, and produces them in its own inimitable way" (Bauman 1997, 17). A tenacious instance of such bordering and ordering reciprocally produces subjects and strangers as the "criminally accused" through rituals of accusation that call "persons" to account for "criminal" actions. When situated at liminal thresholds between the everyday flows of life and the heterogeneous depersonalizations of criminal law, accusatory rituals summon subjects before law's multiple and changing entryways. Authorized agents of accusation – accusers – make various, and not always visible, decisions that channel those selected as "the accused" to law. In the context of criminal justice, such selections define law's objects – targets – and so its jurisdiction (Dorsett and McVeigh 2012). In this manner, a local politics of recognition generates pools of subjects from which criminal identities are potentially fashioned, and this comprises the foundations for criminalization. With such basic matters in mind, we think it possible at least to allude to the background of three thematic stakes variously engaged by the chapters that follow.

Analyzing Accusation: Logic, Ritual, and Grammar

When reflecting on the nature of accusation in the public law of the late Roman republic, Cicero and other rhetoricians (e.g., Quintilian) argued that there is something intrinsic about how one was to accuse another of a crime, and how the accused was to defend that charge (Cicero and Watson 1986; Quintilian 2010; Powell and Paterson 2004). Professional orators, with knowledge of rhetoric appropriate to law, were thus called upon to accuse or defend. They drew on the services of professional informers

(*index* – later known as a *delator* in the Principate) to generate information about the accusation (Riggsby 1999; Harries 2007; Rutledge 1999). Structures of rhetoric were key to understanding the perceived nature of accusation, which was characterized as an intense activity, often devastating family names, reputations, social standing, characters, livelihoods, etc. For that reason, Cicero considered accusing others to be a seedy business, at best a "necessary evil" to instill fear and so deter people from committing public wrongs. Even so, as Rutledge notes, "There was something inherent in accusation, according to Roman rhetoricians, which was either violent by nature or which could easily lead to such an impression. Recognition of this fact led them to develop what was tantamount to a theory of accusation" (Rutledge 1999, 562). If accusation had a "violent" nature, it was practically implemented through precise rhetorical forms of oratory for juries (Powell and Paterson 2004). Hence, Quintilian's (2010) analysis of oratorical forms appropriate to accusers calls for devious manipulations and unremitting attacks on the credibility, character, and devious motives of those accused. Equally, Cicero's (2006) reflections on defence oratory show how to organize the accused's response as well as the counterattacks on accusers, using a defensive arsenal to discredit accusers and to reframe accusations as slander or calumny.

If such thinking ascribes a somewhat fixed or absolute nature to accusation, the following chapters offer a more contingent, historical framing of the concept. Nevertheless, they engage accusation as a concept distinguishable by the ways that it borders and orders social contexts. Accusatory bordering may be understood variously, including through the rhetorical, ideological, legal, ethical, colonial, governmental, cultural, and social dimensions of what is involved in becoming an accused, an accuser, or indeed an authorized agent overseeing rituals of accusation. Rather than ascribing an essence to the concept, the essays refer to historically changing grammars, or perhaps logics, of how accusation is deployed in contexts wherein it generates subjectivities and subjugation.

Hence, most chapters allude to the discourses – criminal codes, apparatuses, ideologies, philosophies, and colonial enunciations – that surround forms of accusation. Differentiating itself from conventional jurisprudential discussions of pretrial criminal procedure and accusation, this collection does not focus on what the law has to say about the procedural dimensions of accusation through case analysis. Rather, the chapters engage the narrative, symbolic, ideological, aesthetic, and cultural dimensions of ideas and

practices by which specific subjects are contextually accused of crime. They also highlight the effects of such rituals on processes of subjection and subject creation associated with specific domains of accusation. In this respect, one might say that the chapters are less concerned with the *law,* and more with something like the *lore,* of accusation (Pavlich 2006).

Without mimicking conservative, functionalist anthropological uses of "lore," one might evoke the concept to signal discursive and social patterns by which accusatorial relations are historically deployed. Foucault's (2014) lectures on avowal may perhaps be taken as offering a version of this "lore" of accusation, referencing as they do the changing juridical contexts and the truth-telling regimes they support. As well, accusation requires various forms of avowal, or obligatory ways of speaking the truth in context. Here the lore of accusation rules through the creation of accusing and accused subject identities, and the truths that may or may not be uttered in law. One might say that accusatory "technologies of self-formation" help to generate accuser and accused identities in accusatorial regimes of truth telling, and these govern through versions of what is enunciated as the truth. Approaching matters of truth is delicate, and this is why Foucault (2014, 20) distinguishes between two ways of engaging the terrain. The first involves quests to understand – along the lines of Kant – conditions under which a statement may be taken as true, while the second – a "critical philosophy" – is directed not to verifying claimed truths, but, rather, focuses on local ideas, rituals, and relations that require subjects to adopt specific avowal and truth-telling practices. Foucault's neologism "veridiction" (from *veri* - truth; *diction* - speaking) gives a clue to orientation.

From this perspective, the chapters ask specific sorts of questions. What authorized rituals and ideas of accusation spawn local conceptualizations of accused and accuser, and with what socio-political effects? What kinds of justice do particular forms of accusation prefigure? What language games, rhetoric, discursive or ideological processes are used to enable particular forms of accusation? In specific contexts, what constitutes a "proper" accusation, and with what effects? Who may legitimately be accused, by whom and of what? Focusing on different grammars or logics of accusation, for instance, the two opening chapters by George Pavlich and Mark Antaki seek to name and examine the oft-overlooked emergence of historically framed accusatory processes and their subjects, but without attributing an eternal essence to accusation.

Genealogies, Colonial Legality, and Criminal Accusations

A consistent thread across many of the chapters deals with several overlooked dimensions to the political contexts that accuse subjects of crime. Many address themselves to what might be called a politics whereby specific subjects are "recognized" as suitable targets to face criminal law's force. This raises various sorts of question, including what kind of political logic is contextually at play? Or what effects do specific apparatuses, ideologies, or technologies of self-formation have on the creation of accusatorially produced subjects (accusers, accused, and juridical agents)? A broader implication of such approaches is to challenge conventional ideas of accusers or the accused as predefined, ahistorical beings. Accusers and accused do not face each other as fixed, a priori beings; on the contrary, they are mutually constituted subjects that surface out of the processes of authorized, local forms of criminal accusation. In other words, far from accepting either as fixed, or ontologically distinctive, identities, regardless of the accusing process, the chapters propose different lenses with which to assess a complex politics of recognition that allows given accusatory processes to shape accuser and accused identities, with enormous consequences for the participants.

One of the ways that this politics works is through discussions of actions rendered as criminal through colonial and imperial versions of criminal law. In addition, this politics identifies specific subjects as potential "criminals," to be recognized and rendered as "the accused." Through these intersecting and complexly related political domains, surrounded by codified law, accused colonial subjects were recognized and so created within domains of accusation. Diverse forms of accusation spanned a ritualized bridge between lore and law. Framing accusation as a political and discursive matter, specifically one that identifies individual subjects as those alleged to have committed particular kinds of wrongdoings, that bridge shows how the identities of accuser, accused, and agents of accusation are fashioned at moments of accusation.

This boundary-forming politics is also intimately involved with framing versions of the imperial and colonial sovereign, the orders in whose name these operate, and their particular relation to subjects. The chapters by Renisa Mawani and Keally McBride highlight the mutually constitutive relationship between the politics of recognition and sovereign rule, and how subjects apprehend such governance. In many ways the chapters show how a bordering accusatory politics at the heart of imperial and sovereign forms

of rule operates. They explore *inter alia* relationships between the politics of recognition, the mutability of frames of governance, and the determination of the subject of accusation. Both point to significant consequences of contextually sanctioned ways of avowing, or truth telling, on the part of different subjects who make, oversee, or respond to accusations of wrongdoing. As well, one might detect in the genealogical focus of McBride, Mawani, and Pavlich attempts not only to carve a history of the past, but also to evoke images of a past that problematize accusation today.

Criminal Accusation as Discourse: Subjectivization, Truth, and Ethics

Recognizing another thematic stake in the collection's references to the grammar and rhetoric of accusation, several chapters implicitly indicate subtle sorts of subjection that come to light when exploring connections between accusation and the accusative case in English. If the latter refers to the object of a verb, then might we not consider accusatory acts in relation to the objects that surface in their wake? Taking this possibility seriously, and perhaps to its extreme, Levinas (1997) reformulates accusation as a primordial, "preconceptual" dimension of all selves, not just those accused before the law. Such accusations are primary in that they happen in advance of language (i.e., are "pre-conceptual"), serving to shape passive nothingness into active or free selves. In *Otherwise Than Being,* Levinas (1997, Chapter 4) describes how a primary (ethical) domain of accusation, before any legally sanctioned accusation, creates subjects. In his view, to emerge as a self, to become a subject at all, is always already to stand accused by amorphous others who frame the context into which we are born. Passivity encounters accusing others, and a self emerges only through responses to their call. The face of the other, that is, calls "me" to account (accuses me), and the ensuing responses to such accusations fashion a self, a subject. Thus, the self who subsequently chooses freely, or acts wilfully, is the effect of transcendental accusations by others. Levinas here separates becoming (ethics) from being (ontology), and renders the former primordial to the latter (see Ricoeur 2004). The free, active, and wilful being, the self, is born of a passive and obligated responsibility to others.

Consequently, the self is accused, persecuted, and held hostage through "transcendent" accusations that remain beyond immediate experience or particular conceptualizations. Being accused by, responsible to, or obligated to the other is conceptually prior to being an active, free self. There is no

temporal "before" a primary accusation – the self emerges from a preconceptual passivity that is accused by an amorphous but ubiquitous other. Leaving Levinas aside, one might here reference a background to Antaki's question (Chapter 2, this volume) about what it would mean to "decline" accusation, and whether that is even possible without annulling the self. At least, the question suggests the significance of understanding differences between philosophical and legal conceptions of accusations. As well, Matthew P. Unger queries whether we can think of accusation as a kind of forgetfulness that points us to the perspective of a ubiquitous responsibilization and ethical grounding of the subject.

Another take on the subjection involved in accusation and law is reflected by James Martel's reference to Althusser's concept of "interpellation," through which ideological state apparatuses subtly shape the historical appearance of subjects that stand before any legal accusation, a point affirmed in Kafka's novels. The oft-cited "In the Cathedral" chapter (9) of *The Trial* alludes allegorically to a gatekeeper and a man from the country who stand "before" the law, evoking complex threshold relationships that appear to open legal pathways but never actually do so. Focusing on the centrality of accusation to these texts – something again surprisingly overlooked in many analyses – Agamben (2008) postulates an intriguing reinterpretation that foregrounds the accused's role in supporting or nullifying the law. Briefly, he argues that the main character of Kafka's *The Trial,* Josef K., may not, as many surmise, refer to the author as such but rather to the Roman word *kalumnia* (calumny). More specifically, he thinks it evokes a false accuser, who in times past would be marked by branding a "K" (for *Kalumniator*) on his forehead. This was a serious matter for Roman society, because false accusers challenged the very foundations of its law, which relied on truthful accusations. This is why accusers had to swear an oath that their accusations were neither false, nor conveyed in duplicitous collaboration with the accused.

Referring to this lineage, Agamben argues that the character K. allegorically stands for a false self-accuser in ways that give particular currency to the opening lines of *The Trial:* "Someone must have been telling lies about Josef K., he knew he had done nothing wrong but, one morning, he was arrested" (3). Through the intricacies of *The Trial,* it seems that K. knows the court has not accused him, but rather it is he, K., who has slandered or falsely accused himself. As a false accuser, on this interpretation at least, K. surfaces as a protagonist who by that very false accusation brings the

entire matter of law into question. Agamben argues then that legal guilt or innocence is ultimately only ever the product of a framing accusation, and more specifically in the novel, a false self-accusation: "the accused, insofar as he slanders himself, is perfectly aware of being innocent, but, insofar as he accuses himself, is equally well aware of being guilty of slander, of deserving his brand. This is the Kafkaesque situation par excellence" (Agamben 2008, 14). This interpretation aligns with (and probably influenced) his wider conception of law as that which includes subjects only as excluded subjects (Agamben 1998, 2005). Law has force, but is devoid of meaning; it is thus entirely open, allowing subjects to frame themselves as they please in relation thereto, but the law always assumes guilt. Yet why falsely accuse oneself as a way to encounter law? Agamben's response is that it provides a way of calling into question the very principle of the trial, of the law. In his words,

> The gravity of slander is ... a function of its calling into question the principle itself of the trial: the moment of accusation. For neither guilt (which, in ancient law, is not necessary) nor punishment define the trial, but rather, the accusation. Indeed, the accusation is, perhaps, the juridical "category" par excellence (*kategoria,* in Greek, means accusation), that without which the entire edifice of the law would crumble: the implication of being in the law. The law is, that is to say, in its essence, accusation, "category". And the being – implicated, "accused" in the law – loses its innocence, becomes a *cosa,* that is, a cause, an object of dispute. (Agamben 2008, 15)

So, Agamben here understands that accusation is foundational to law, that there is no such thing as law without accusation, and – following his reading of Kafka – self-accusation. As such, he argues that a slanderous false self-accusation is tantamount to calling law into question (2008, 16), and this explains the subtlety of K.'s self-slander, for through it he calls into question a law that includes him only through his exclusion. If the self-accusation is false, and allows the accuser and accused to "coincide," then the law itself is called into question: "The only way to affirm one's innocence before the law (and the powers that represent it: the father, marriage) is, in this sense, to falsely accuse oneself" (Agamben 2008, 16). Whether or not one agrees with Agamben's interpretation of Kafka, it intriguingly highlights accusation's basic relation to law,

especially criminal law, and to the manner in which the law's exclusionary inclusion might be annulled. This theme is evident in the way Martel references Kafka's *Amerika,* in Antaki's consideration of what the effects of accusation might be, and in Unger's notions of self-accusation. In addition, by examining crisis as a constituent part of accusation, Jennifer Culbert suggests that accusatory practices highlight law's concealing of these exclusionary practices. Both Culbert and Unger suggest that a certain kind of self-accusation is necessary to reveal law's aporias and concealments, what Unger suggests is a forgetfulness of the ethical encounter with the other. These chapters suggest that examining the discursive auspices of accusatory practices leads one to see both the legal and violent auspices of accusation while revealing potentialities for the latter's undoing and reframing.

Summaries of Contributions

George Pavlich's chapter opens the volume by examining how criminal accusation acts as a gatekeeper to different historical arenas of criminal justice, plying a trade that selects and decides who to admit as the criminally accused. It thus plays a founding role in the production of criminal identities and the supply of subjects to criminal justice arenas. Highlighting intersecting historical forms of criminal accusation indicates not only how entryways to criminal justice systems are sustained and expanded, but also how rapacious and punitive cultures of mass punishment are fed. Yet for all that, criminal accusation – and especially the politics thereof – has yet to attract sustained review. In an attempt at redress, his essay draws on Foucault's (1980) concept of an apparatus *(dispositif)* to highlight elements of three political logics that have shaped current apparatuses of criminal accusation: sovereignty, discipline, and biopolitics. By highlighting differences and overlaps between these apparatuses, Pavlich shows how their combined political logics sustain hybrid accusatorial practices that today isolate accused subjects through moral, disciplinary, and virtual selections. In tandem, such heterogeneous apparatuses of criminal accusation provide a complex source that populates vast criminal justice arenas. Naming the apparatuses, as this essay does, provides a way to engage a shadowy politics that sustains a prevalent and exclusionary criminal justice ethos, thereby refusing a docile pessimism that yields, in despair, to claims about the necessity of current arrangements.

Mark Antaki follows with a critical examination of Pavlich's earlier efforts to understand and delineate a field of study directed toward accusation specifically as a previously understudied yet critical gatekeeper to the judicial system. Antaki investigates how one might decline accusation as a way of reframing the foundations and capacities of the criminal justice system. By focusing on the "grammars" of accusation, Antaki evaluates the philosophical foundations of crime as an entryway into rethinking the assumed structures of criminal judgment. Antaki employs Heidegger's work to extend Pavlich's critique of the ontology of *crīmen,* which depends on the assumption of the discreteness of the accuser and accused. Antaki takes up Pavlich's call to rethink the ontology of criminal accusation to, in contrast, examine criminal judgment as an ethical relation between the accuser and accused.

By examining how the "grammars and practices" of accusation structure both the accused and the accuser, inasmuch as order and disorder "co-appear," Antaki argues that we can begin to rethink the ethical dimensions of accusation's existential comportment; the aim is to build the philosophical foundations of a restorative justice, or a justice that ameliorates the disproportionate incarceration of different populations. Finally, in turning to another thinker, Linda Meyer (2010), Antaki further extends Pavlich's turn toward an ethical interpretation of accusation. He does so by examining the possibility of different grammars and languages of crime that lend themselves to reconciliatory, merciful, and restorative ontologies.

Renisa Mawani's chapter discusses a famous event in British colonial history involving a branded outlaw and radical who highlighted British colonial law's paradoxical and ambiguous nature. Mawani examines the flightiness of the British colonial legal project by showing how fluid its apparatuses were – they changed in arbitrary and basic ways to accuse Gurdit Singh of being an internal outlaw. Singh became known for his involvement in the 1914 chartering of the ship *Komagata Maru* from Hong Kong to Shanghai, Moji to Yokohama, and finally to Canada to highlight the racist and shifting legal frameworks that perpetuated the domination of Britain over British Indian subjects. The chapter describes how, during a time of heightened anticolonial activities in India, new laws were formed in Canada and India so that Singh could be accused as an individual who threatened the sovereignty of British rule. Upon landing in Vancouver, Singh and the British Indian migrants aboard the *Komagata Maru* were refused entry.

Mawani then traces the criminal accusations that framed Singh as a revolutionary and seditionist.

Mawani's analysis of Singh's writings and voyage highlights the contingent nature of accusation and how it works to identify subjects. Accusation emerges through legal as well as social, cultural, and aesthetic conditions of a time. Posing a threat to British domination in India, Singh's case brings to the fore the far-reaching political use of criminal accusation. Singh's charge depended not so much on what he actually did, but on what he represented. Accusations often unfold through contested representations that seek to ascribe character traits and legal transgressions to those accused. Indeed, as Mawani's chapter shows, Singh's criminal accusation depended both upon capriciously recalibrating British law's jurisdiction and framing his character in ways that made the charges appear warranted. Such legal mutability discloses the contingency of criminal accusation, and how it works in advance of – while serving to justify – dominant discursive frameworks of law. Mawani's close reading of Singh's text brings her to an evaluation of the curiosity of Singh's respect for the law even while remaining subject to its accusative gaze. On this matter, the chapter notes a coincidence with Derrida's (2008) analysis of Nelson Mandela, showing how the latter also admired the law while remaining critical – as a prisoner – of its contingencies and mutability.

Keally McBride's contribution to this volume examines the vicissitudes of accusation in a movement to create comprehensive codification in the British colonies during the mid-nineteenth century. She presents a detailed analysis of colonial codification at the time when James Fitzjames Stephen was hired as barrister to develop legal codes, possibly as a mid-nineteenth-century response to Britain's waning power in its colonies. McBride examines some paradoxes of codification as central to the imperial project even when the push to codify England's own law had failed. She scrutinizes a specific case of colonial rule in Jamaica's struggle for autonomy, where a prominent Jamaican politician, William Gordon, was accused of inciting a rebellion that led to the massacre of many Jamaicans. This incident reflected the paradoxes inherent in code-based accusatory practices in this colony; far from developing universal justice, as was envisaged, the use of codes to locate criminals made apparent the despotic nature of colonial rule. The paradox of codification in the colonies revolved around this matter: while codified legal systems were defended as ways to restrain despotic rule, they licensed discretionary forms of tyranny through an expedient use of criminally accused subjects.

McBride's work allows us to recognize various logics of accusation used to frame clashes between colonizers and colonized. This illuminates a basic element of accusation – namely, that it exercises power through cycles of violence and misrecognition, while at the same time reinforcing the gaze of the accuser and, equally, the structures of domination that seek to govern. As such, the technology of accusation Edward John Eyre employs to justify Gordon's death reflects the contingency of accusation that hypostatizes both colonial power structures and images of the proper colonial subject.

James Martel provides an interesting framing of criminal accusation by reading Kafka's sprawling, ambiguous, and unfinished first novel *Amerika* alongside Louis Althusser's well-known conceptualization of ideology through the term "interpellation." However, he does not offer a conventional reading of Althusser's understanding of how ideology, through the famous example of the hailing police officer, subjectifies individuality. Instead, Martel understands this hailing as an accusation that emerges from a fundamental misrecognition. By introducing the term "misinterpellation," Martel reveals several paradoxes at work in the logic of the relationship between the law and the law's subjectification of individuals.

Martel examines how criminal accusation reflects ideological conditions through the exercise of RSAs (repressive state apparatuses) and ISAs (ideological state apparatuses), and the manner in which the truth of accusation resides not in the truth of its calling, but in the mistake that reifies accusatory agencies as natural and inevitable. The mistake, the one in ten times that the system blunders, is in fact what justifies the system but also reveals its indifference to whom it accuses and inaugurates within the legal system. Following Judith Butler's (1997) amendment of Althusser's concept of interpellation, Martel focuses on an apparent contradiction: even in societies that attempt to reduce criminality, the legal system provides conditions of possibility in which each of us are always already "primed" to hear the call of ideology. In this way, we are always already guilty in the eyes of the law, awaiting the subjectivizing call of accusation.

This potential of inherent guilt before the act of accusation situates Martel's interpretation in line with current systems of biometric accusation. Through current forms of technological cataloguing of biological, ontogenetic, and psychological characteristics in databases awaiting activation through the input of criminal acts, we are always already judged on the basis of our potentiality for criminality. In this way, criminal, juridical, and legal institutions subjectivize citizens through Boolean biopolitical frameworks

that serve to constrain and judge before actual crimes are committed (see also Chapter 1 below). It is this inadvertent aporia that Martel speaks to when he describes the logic of the legal framework functioning in terms of desire, in its expanding necessity to enclose and frame populations in ever more sophisticated and insidious forms. Martel does see, however, the potential for a subversive form of subjectification within Kafka's novel. It is telling, indeed, that the alternative titles for Kafka's *Amerika* were "The Man Who Disappeared" and also "The Missing Person," since these indicate the repeated failures of the main character, Karl, to create his own subjectivity in a system that misrecognizes him. By introducing Walter Benjamin's understanding of guilt – a guilt that binds us to the social world – Martel suggests a new form of subjectification based on a politics of living together, rather than a biopolitics that enframes individuals with the potential for accusation.

Jennifer Culbert's essay explores how conceptions of crisis prefigure practices of criminal accusation. Such conceptions both disclose social conditions of normativity and, at the same time, conceal mundane "wrongs" that are not criminalized – what she terms "the banality of evil." Her chapter opens with a violent scene on a bus in Baltimore, where a fourteen-year-old male shot and killed an innocent bystander, missing his intended target. Culbert focuses on a curious *New York Times* story of the event that highlights not that the criminal act of the young person was exceptional, but that it was routine. By drawing from Hannah Arendt's (1992) thesis of "the banality of evil," Culbert seeks to address what she calls a "crisis of judgment" provoked by the manner in which certain "world-destroying activities" fall below the radar of criminal accusation. What this highlights is how accusation is intimately intertwined with normalizing social processes that reify criminality. By extension, Culbert examines a paradox at the centre of criminal accusation in circumstances that obfuscate how a wrong is framed within the judicial sphere. In other words, Culbert argues that there is a distance between the social construction of criminality and world-destroying activities. This reinforces the manner in which accusation, as a gatekeeper to the criminal justice system, is prefigured by historically situated discourses of normality and abnormality.

Indeed, accusation then frames not only the individual who committed the crime, but also present absences – what becomes occluded are those relation-destroying activities that seem too banal to report. Accusation becomes a sort of "false consciousness" that portends a field of what is

considered wrong and/or criminal. Because what is occluded in criminal judgment is just as important as what or who is the subject of such judgment, Culbert's chapter allows us to consider the normative imperative in accusation and the possibility of new, non-exclusive, models of governance. By drawing from Meyer's (2010) text on ethics and criminality, Culbert suggests that our implicit complicity in the banality of wrongs committed and experienced allows us to reframe criminality in terms of an abuse of the inherent ethical obligation to others.

The final chapter in this collection, by Matthew P. Unger, examines Albert Camus's *The Fall* in order to interpret accusation as a kind of governance that forgets the ethical necessity of our social being. Unger reads this novel through Levinas's *Otherwise Than Being* and Ricoeur's early work on accusation and punishment. He tries to understand an ethical quandary within accusation referenced by *The Fall.* The main character in the novel, Jean-Baptiste Clamence, labels his profession as judge-penitent: a modern-day John the Baptist who, having recognized his own lack of innocence, calls all to accuse themselves for their own inherent shared guilt. Unger argues that Jean-Baptiste has been given an implicit choice of direction in this form of self-accusation: to recognize his own authentic recognition of the ethical grounding of his social constitution, or to use this recognition as another form of self-deception that perpetuates his separation from others. Camus's critique of contemporary moral consciousness suggests that we are not able to see how self-accusation can highlight one's innate solidarity with all others. The more that Jean-Baptiste uses symbols and techniques of accusation to maintain his separation and elevation from others, the more his form of self-accusation leads to a layered form of self-deception. Unger, however, reads another possibility that understands self-accusation through Levinas and Ricoeur: contemporary accusatory practices may be seen as a form of forgetfulness driven by a self-accusation that exposes the basic, ethical grounding of our sociality. The notion of self-accusation hinted at by Camus, Levinas, and Ricoeur, Unger argues, can help us to uncover a way to develop an ethical understanding of accusation.

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