

I FOUNDATIONAL ISSUES OF JUSTICE

Although crime has long been a concern in the United States, you may be surprised to learn that it ranked among the least important issues facing Americans today. According to findings from the 2010 General Social Survey (GSS), a sociological survey of demographic characteristics and attitudes of U.S. residents, crime ranked dead last among a number of responses to the question, “Which of these issues is the most important for America today?” Top-ranked issues included health care, education, the economy, and terrorism. Even poverty and immigration ranked higher than crime, according to the data.

Despite this, Americans have strong opinions about how to handle criminal offenders, whether the criminal justice system is working, and what we should do to fix the “crime problem.” For example, in an earlier GSS conducted in 2006, a sizable percentage of respondents (37 percent) felt the government was “quite unsuccessful” or “very unsuccessful” in controlling crime. Not surprisingly, then, a majority (55 percent) believed we should “spend much more” or “spend more” on the police and law enforcement, even if this meant a tax increase to pay for it. And in the 2010 survey, nearly 63 percent of respondents claimed the courts were “not harsh enough” with criminals while a mere 13 percent said the courts were “too harsh.” Consistent with this, only about 22 percent of respondents expressed “complete” or “a great deal of” confidence in America’s courts and the legal system.

Where do these views about our criminal justice system come from? How have they changed over time? Explaining public attitudes requires an understanding of the inner workings of the criminal justice system itself, including the police, courts, and corrections, both today and historically. Central to this task are the following questions: What is criminal justice? What purpose does our criminal justice system serve? What does it mean for a state to be just? We argue part of the answers to these questions must be found in the theories, the organization, and the practices of criminal justice. As you will soon learn, the readings in this volume attest to the fact that this is no simple matter. A starting point for discovery, however, is the simple fact that criminal justice is essentially about a system for the implementation of punishment. For this reason in Part I, Foundational Issues of Justice, we begin by exploring different perspectives on the study of criminal punishment. The essays included in this part identify various approaches to the study of punishment and dif-

ferent factors that may influence the operation of the criminal justice system. Collectively, these readings will introduce you to the key foundational issues of justice.

HUMAN BEHAVIOR AND CRIME CONTROL

The lead essay by Francis T. Cullen and Karen E. Gilbert, “Criminal Justice Theories and Ideologies,” provides a toolkit for thinking about the control of crime and answering questions such as the following: Why does our criminal justice system function as it does? What is the goal of criminal justice? Cullen and Gilbert present two schools of criminological thought, the classical and the positivist, which have dominated thinking about crime and criminal justice for the past two hundred years. As they describe, these schools offer contrasting understandings of human nature and behavior, ways to curtail crime, and the focus and purpose of social control.

Central assumptions of the classical school, for example, include the idea that human beings are both rational and possessed of free will, and thus can be held responsible for their actions. Likewise, it is believed that humans are governed by the principle of utility; that is, they seek pleasure or happiness and avoid pain or unhappiness. As such, the goal of punishment is primarily the prevention of crime, which is achieved by making punishment just severe enough for the pain or unhappiness created by the punishment to outweigh the pleasure or happiness obtainable from the crime.

The positivist school, in contrast, stresses determinism rather than free will as the primary impetus to human action. That is, positivists generally assume that crime is determined by factors largely outside the control of the individual. Whatever the source of these factors, be they biological, psychological, or sociological in nature, it is believed that because criminals do not freely choose to commit crime, it is inappropriate to punish them for their behavior. Instead, the state should attempt to rehabilitate offenders.

A solid understanding of these schools is necessary, as Cullen and Gilbert note, because “. . . the unique sets of assumptions of two predominant schools of criminological thought give rise to vastly different explanations of and prescriptions for the problem of crime.” In other words, the two schools of thought translate into quite different strategies for public policy on crime and punishment.

But an understanding of criminal justice cannot rest on an examination of these theoretical models alone. The role of political viewpoints in the advocacy of particular policies toward crime must be incorporated. Cullen and Gilbert therefore also delineate three modern political ideologies—conservative, liberal, and radical—which reflect vastly differing assumptions and value stances concerning crime and criminal justice, ideologies that foster conflict in society over contemporary criminal justice policy. The central point emphasized here is that criminal justice practices have been, are, and will continue to be informed by schools of thought as well as by political ideology.

PERSPECTIVES ON PUNISHMENT

Scholars have long been interested in the ways in which we think and talk about punishment in society. In this part’s second reading, “Sociological Perspectives on Punishment,”

David Garland introduces us to what he refers to as “the sociology of punishment,” or a framework for analyzing punishment’s social forms, functions, and significance in society. In his essay, Garland notes sociologists conceptualize punishment as a social institution. From this perspective, punishment is understood as a cultural and historical artifact that may be centrally concerned with the control of crime but that is nevertheless shaped by an ensemble of social forces and has a significance and range of effects that reach well beyond the population of criminals. Along these lines, sociological perspectives on punishment raise important questions: How do specific penal measures come into existence? What social functions does punishment perform? How do penal institutions relate to other institutions? How do they contribute to social order or to state power or to class domination or to the cultural reproduction of society? What are punishment’s unintended social effects, its functional failures, and its wider social costs?

In addressing these questions, Garland surveys major sociological interpretations of punishment, including perspectives by Durkheim, Marx, Foucault, and Elias, and identifies the resources that social theory offers for the understanding of punishment. With each perspective, he sets out the distinctive questions that are raised, summarizes the major themes, and identifies the insights each has to offer for understanding modern punishment. Much of this discussion is elaborated upon in his well-known book, *Punishment and Modern Society*.

The previous readings all raise questions regarding the value systems that underlie our criminal justice system. What are these underlying value systems, and perhaps more importantly, what *should* they be? These questions are explored at length in Herbert L. Packer’s essay, “Two Models of the Criminal Process.” Here Packer introduces two theoretical models, the crime control and the due process, which represent two separate value systems that, he asserts, compete for priority in the operation of the criminal process. In the crime control model, the repression of criminal conduct is the most important function to be performed. This model thus requires that primary attention be paid to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure dispositions of persons convicted of crime. Alternatively, in the due process model, the most important function of criminal justice should be to provide fundamental fairness under the law. As such, this model requires that primary attention be paid to reliability and accuracy rather than efficiency.

The crime control and due process models afford a convenient means for discussing the operation of a process whose day-to-day functioning involves a constant series of adjustments between the competing demands of different value systems. According to Packer, these models force us to consider the following questions: Where on a spectrum between the extremes represented by the two models do our present practices fall? What appears to be the direction and thrust of foreseeable trends along each such spectrum? In short, which value system is reflected most in criminal justice practices today, and which will be in the future?

CRIMINAL JUSTICE THEORY

As will become apparent while reading this volume, scholars have produced significant knowledge about the workings of the criminal justice system. But there is a lot we do not

know. One of the most deficient areas of study involves theories of criminal justice. According to some scholars, there is, in fact, no overarching criminal justice theory. Unlike the study of crime, the study of criminal justice has been dubbed an atheoretical enterprise. Yet theory lies at the heart of any social science discipline. Theory influences the questions asked, the selection of phenomenon under study, the observations themselves, the way in which data are collected, and the interpretation of those data.

In the final reading in this part, "Criminal Justice Theory: It's Time to Ask Why," Peter B. Kraska and John J. Brent underscore the need for criminal justice theory. Kraska and Brent suggest *the* imperative task for the field is to develop a well-recognized, easily accessible theoretical infrastructure, similar to that employed in other fields such as sociology. To that end, Kraska and Brent first define theory and theorizing, and explain how theory and ideology differ. They then suggest that theories of criminal justice might be conceived of as metaphors, for example, criminal justice as a system, criminal justice as politics, criminal justice as industry, criminal justice as oppression, or criminal justice as myth construction. As such, a useful first step in mapping the vast terrain of criminal justice theory, they argue, is to identify and elucidate the basic tenets of the various theoretical metaphors or orientations that attempt to make sense of criminal justice phenomena. Building on this discussion, Kraska and Brent then offer eight theoretical orientations for organizing existing thoughts on the control of crime. You will recognize many of these orientations (e.g., sociology of punishment, crime control versus due process, etc.) from earlier readings. These orientations will be extremely useful to keep in mind as you continue to study the operation of the criminal justice system as well as its key components, including the police, the courts, and corrections, in the parts that follow. Let the journey begin!