

lowing up on the example in question 1, one might argue that the rate of executions in a state might be a function of four things: state laws regarding capital punishment, local legal culture, the proportion of voters who are politically conservative, and the volume of violent criminal activity within the state. Remember that in posing independent variables, it is important not only to identify factors that occur prior in time to the dependent variable, but also that the proposed causal connection is plausible and measurable.

3. If you have answered the first two questions, you have selected a unit of analysis and one characteristic or aspect of that unit, which is the dependent variable, and one or more independent variables. You are on your way to constructing a theory. Now, thinking about your emerging theory in the context of the three chapters in this section, answer the following three questions:
 - Does your theory meet the definition of criminal justice theory as outlined by Snipes and Maguire in chapter 2? Why or why not? If not, can you change the theory so that it does?
 - Could your theory be examined using the comparative approach, as outlined by Howard and Freilich in chapter 3? If not, could it be modified so that it could be examined in that way? If, instead, you feel this theory applies in only one nation, culture, or political system, why do you think so?
 - Does your theory concern any aspects of “justice” as discussed by Castellano and Gould in chapter 4? If not, is there a related dependent variable that would have a stronger connection to the explanation of levels or qualities of justice? Is it necessary for criminal justice theories to deal with justice, even if they do not deal with crime?

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FOUNDATIONS OF CRIMINAL JUSTICE THEORY

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INTRODUCTION

Criminal justice has been developing as an academic field since the appearance of several influential studies and the inception of its first doctoral program in the 1960s (at the University at Albany). There are now about three dozen programs in the United States and Canada. As the field continues to grow, there is a need to track its evolution, identifying those shortcomings and inconsistencies which may affect its future growth. We will argue that criminal justice as a discipline suffers a serious flaw: There is no common understanding or teaching of theory. Instead, programs consist of scattergun approaches to study, with little effort toward unity and coherence beyond very basic organizational divisions such as police, courts, and corrections. Other social sciences do not suffer from such a fundamental flaw. For example, sociology programs teach doctrinal theory, typically in a two-semester sequence. Criminology, as an interdisciplinary field, offers nicely bounded areas of theory with a common enterprise (to explain criminal behavior). Anthropological theory is well established and heavily integrated into graduate curricula. By contrast, scholars in criminal justice, even some who are quite prominent, still lack a coherent vision of what theory entails. Some even confuse domains, not accurately differentiating criminal justice from criminology. If insiders are disoriented, outsiders are even more at a loss: When pressed, few noncriminal justice scholars can identify what the field stands for or attempts to study. Part of this

can be attributed to its newness; however, part can also be explained by our failure to carve out clear boundaries and to develop a focused theoretical foundation. This chapter begins to do this, thereby opening the avenue for scholarly discourse on criminal justice theory.

THE STATE OF CRIMINAL JUSTICE THEORY

Criminal justice theory is underdeveloped for several reasons. Chapter 1 has already isolated some of these reasons, so we will only discuss them briefly. First, criminal justice has often been confused with criminology, where some view criminal justice as applied criminology and others see it as subsumed within criminology (Pelfrey 1980, 52).¹ Criminology studies *criminal behavior*, whereas criminal justice, at its most basic level, is meant to study official *response* to such behavior. While theoretical criminology consists of research based on similar goals and driven by a strong framework (such as strain, culture, or control theories), criminal justice lacks any such shared orientation. Second, and related to the first, since criminal justice is often viewed as an *applied* field whose mission is to educate criminal justice practitioners (in so-called “cop shops”), the role of theory has been downplayed.² Third, criminal justice is taught in departments as diverse as criminology, sociology, political science, public affairs, law, psychology, philosophy, and various other hybrid programs. Thus, the very structure of the field, including its location within universities, its reward structures, its preferred publication outlets, and its diverse disciplinary background, all interfere with its ability to develop a coherent “league of its own.”

Perhaps the biggest question is whether criminal justice represents enough of a unitary, cohesive, or coordinated domain to deserve its own field of study. One helpful way of exploring an answer to that question is to trace the development of the “contemporary criminal justice paradigm” as described by Samuel Walker (1992). In the late 1950s and early 1960s, based on the pioneering work of the American Bar Foundation, scholars began to look at criminal justice in two new ways. First, based on intensive field research, they discovered the important role of discretion in the criminal justice process (e.g., J. Goldstein 1960; Lafave 1965). Second, and not independent of the first, they began to conceive of criminal justice for the first time as a “system” (Blumberg 1967). Before this, in what Walker (1992) calls the “progressive era paradigm,” criminal justice was viewed as a more legalistic, formalized process consisting of a series of independent institutions, including police, courts, and corrections. The work of these institutions was in some ways related, but essentially separate. The new “systems perspective” recognized that

these institutions are interdependent upon each other in a variety of fashions. At the simplest level, police outputs become court inputs, and court outputs become correctional inputs. This conception of criminal justice as a series of outputs and inputs became particularly popular following the report of the President’s Commission on Law Enforcement and Administration of Justice in 1967 (President’s Commission 1967a; and see Duffee 1990). This systemic approach, which focuses on the importance of discretion and the interplay between the various facets of the system, is what Walker (1992) calls the “contemporary criminal justice paradigm.”

However, not all scholars agree with this systemic approach. Many have argued that criminal justice is not a system, but a loosely integrated and coordinated set of institutions with separate but related duties and goals. Duffee (1990) rejects portions of the systemic approach to criminal justice for several reasons. He challenges the assumptions that criminal justice systems are uniform across localities, that criminal justice agencies within a locality are well integrated, and that there is any integrated control mechanism available at a system level. He further argues that many criminal justice analysts “gloss over” the differences between systems in order to stress their commonalities. Others argue that criminal justice does not function as a system since each component is governed by “perverse incentives” (Wilson 1983),³ that components serve functions that are unrelated to criminal justice (police officers deal with vehicle accidents, and courts attend to torts and contract disputes), or that the criminal justice process is not *structured* as a formal system.⁴

Therefore, the debate over the domain of criminal justice is enmeshed in another debate about whether the criminal justice system is actually a system. We argue that criminal justice might best be described as a loosely coupled system, with features like the separation of powers and checks and balances built in for various reasons. For example, police and prisons in most developed countries are based in the executive branch, and the courts in the judicial branch. Some argue that criminal justice institutions should remain separate so that they maintain an equitable distribution of power. In the United States, for example, the Fourth Amendment generally prevents the police from searching citizens’ homes without prior judicial approval. In developing countries without these types of checks on police power, police may be used as agents of oppression by the ruling classes (e.g., Arthur 1988; Clinard and Abbott 1973).⁵ Thus, Wright (1981) argues that goal conflict, rather than hindering the effectiveness of the criminal justice system, serves a variety

of beneficial roles, such as maintaining system stability and ensuring an even distribution of power among component institutions.

Furthermore, critics of the systemic perspective who focus on the differences between criminal justice institutions may not realize the importance of the *informal* linkages which occur between actors and networks in these institutions. These informal linkages are a central theme in exchange theory, described generally by Blau (1964) and applied to criminal justice by Cole (1970). Exchange theorists argue that much of what occurs between organizations can be attributed to informal exchanges between actors from different organizations. Thus, for example, although the formal linkages between courts and police departments may be tenuous, there exists a much more powerful set of informal linkages between police officers, prosecutors, and judges. These linkages are forged on a daily basis, as the actors from each organization find themselves in repeated contact with one another (e.g., Feeley 1991).⁶ One example of such linkages is Eisenstein and Jacob's (1977) "courtroom workgroup." Although the actors brought together in the courtroom — judges, defense attorneys, prosecutors, and police officers — are from different institutions, have different goals, and are formally arranged in an adversarial relationship, they often bind together in mutually convenient, *informal* networks. This perspective is important because it helps us to understand the complex relationships between the component institutions of the criminal justice process.

It is precisely that these linkages across institutions exist that gives criminal justice its own domain. Aside from one's stance on the systems debate, criminal justice involves relationships between several different institutional areas, all of which participate in formal social reaction to crime. Although the study of criminal justice relies heavily on the application of theories from other academic disciplines (such as sociology, organization theory, anthropology, and political science), the domain of criminal justice is large and complex enough to justify the existence of a separate academic field. Having now explored the foundations and current understanding of what *criminal justice* is, we now move into a discussion of what criminal justice *theory* is. We first discuss the two most common misrepresentations of criminal justice theory.

WHAT CRIMINAL JUSTICE THEORY IS NOT

Many scholarly efforts at criminal justice theory either abuse the traditional scientific notion of "theory" or address substantive areas that are not in the scope of "criminal justice." It is surprising to find that scholars

misuse the term "theory" so frequently. Theory has been the building block of scholarly inquiry since the birth of the scientific method. Theory is to scholars as clay is to sculptors and lumber to carpenters: It is the raw material of science. Plenty of definitions of "theory" have been offered throughout the history of science. One of the most respected authorities of theory development in modern social sciences is Dubin (1978), who delineates four elements which must be present for a theory to be complete: what, how, why, and who, where, when (see Whetten 1989, for a review).

What refers to the factors that explain some phenomenon, the set of independent variables. Scientists strive to make "what" comprehensive (including all relevant factors) and parsimonious (excluding trivial factors). How refers to the causal relationship between the set of independent variables and the outcome variable: What is the direction of the relationship, is it linear? Why involves the process by which the independent variables influence the phenomenon being studied. Such processes may be social, psychological, economic, historic, and so on, but must help us understand why an independent variable (often denoted as X) influences a dependent variable (Y).

The what, how, and why elements are sufficient for establishing the basic structure of a theory, but to make the theory more complete it is necessary to qualify it with who, where, and when limitations. To what extent will the theoretical propositions hold up with different types of people, different locations, and different time periods? In other words, to what extent is the theory generalizable?

Bacharach (1989, 498) importantly differentiates the elements of a theory (as in Dubin) from the boundaries of a theory:

Values are the implicit assumptions by which a theory is bounded. Theories cannot be compared on the basis of their underlying values, because these tend to be the idiosyncratic product of the theorist's creative imagination and ideological orientation or life experience. This may explain why perpetual debates such as those between Marxists and Structural Functionalists have made so little progress over the years.

Confusing the boundaries of theories, such as ideologies, with theories themselves, is the largest problem suffered by past criminal justice "theories."

Let us take as an example Braithwaite and Pettit's (1990) republican theory. The gut of the theory is that "while there are many goods or values engaged in social and political life, a single goal for the criminal

justice system can be the basis of a sophisticated policy.... The goal in question we describe as republican or civic freedom; in a word, 'dominion'" (Braithwaite and Pettit 1994, 765). The theory also consists of theorems, such as, "The criminal justice system should implement a presumption in favor of parsimony ... " and, "The system should be designed, not primarily to punish offenders but, rather, out of community-based dialogue, to bring home to them the disapproval of others ... " (Braithwaite and Pettit, 1994, 767).^{7*}

Republican theory is not scientific theory, it is an ideological perspective. Theorists may adopt this perspective, and include these values as the bounds by which they develop criminal justice theories. Some of Braithwaite and Pettit's theorems may qualify as theories — or at least as theoretically grounded hypotheses, because they explore the effect of different policies on dominion — but in whole, "republican theory," like "retribution theory," is a philosophical perspective, not a scientific theory. Normative theory is crucial to the field, but should be kept separate from traditional scientific theory, which addresses why something in the world may cause or influence something else, and the reasons or processes underlying the chain of effects.

A second problem suffered by many "criminal justice theories" is that they are not theories of criminal justice. Criminal justice, as the reader will recall, is the study of the official response to crime. In *Theories of Criminal Justice: A Critical Reappraisal*, Ellis and Ellis (1989, ix) set out to "critically re-examine several of the most prominent approaches to the *philosophy* of criminal justice" (emphasis added). Their discussion focuses on the "three main types of theories of criminal justice" (1989, xxxi): deterrence, rehabilitation, and retribution. Deterrence and rehabilitation do not focus on the official response to crime; instead they focus on the effect of different types of criminal justice interventions on crime. Crime is the dependent variable, and criminal justice response to crime is an independent variable. As Akers (1992) points out, the study of something means that the "something" is a dependent variable. Thus, in a study of criminal justice, we would expect the dependent variable to be criminal justice, not crime.

The first step in furthering criminal justice theory is to eliminate these sorts of labeling errors, such that what we call criminal justice theory is truly criminal justice theory. In advancing this effort, we begin by discussing some ambiguous areas in the definition of criminal

justice theory, proposing several tests for distinguishing satisfactory from unsatisfactory theoretical endeavors.

WHAT CRIMINAL JUSTICE THEORY IS

Criminal justice theory is the study of the official response to behavior that may be labeled criminal. We suggest that a series of four tests must be passed before an endeavor may be classified as criminal justice theory.

Dependent Variable Test

As pointed out repeatedly in this chapter, criminal justice theory must explain response to a behavior, not attempting to explain crime itself in any way. The phenomenon being studied must take place after some behavior has occurred, and must be a reaction to that behavior.

One might ask whether a study of official response to potentially criminal behavior must involve actual behavior (i.e., decisions, actions) exhibited on the part of the criminal justice system or its actors, or whether nonbehavioral concepts such as attitudes, ideologies, and philosophical orientations should be considered as dependent variables worthy of study? We think it is necessary to maintain a generous definition of response when setting parameters on what constitutes criminal justice theory. Responses do not necessarily have to be behavioral. Most response concepts that are not behavioral can be theoretically linked to behavioral responses. For example, a theory that explains judicial attitudes toward white-collar criminals may employ such attitudes as an intermediate variable, where the theorist ultimately wishes to explain severity of punishment of street criminals. Even if a theorist does not link a nonbehavioral response variable to an ultimate behavioral response, the theory can still be classified as legitimate criminal justice theory.

Reasonableness Test

The problem with defining criminal justice as the official response to crime is that it is the official response itself that transforms behavior into "crime." If an incident occurs in which the criminal justice system responds to a certain behavior by *not* labeling it as a crime, this may be just as theoretically relevant as if the system had labeled it criminal. Hence, criminal justice includes our response to deviance, as long as one believes that the form of deviance being studied has a reasonable chance of being labeled criminal. By broadening the definition of criminal justice in this fashion, we incorporate into its domain studies

* Pg. 756–757 from "Not Just Deserts: A Republican Theory of Criminal Justice" by Braithwaite, J. and Pettit, P. (1990). By permission of Oxford University Press, Inc.

that, for example, seek to understand why legislatures criminalize some behaviors and not others.

Parts-of-a-System Test

We have already mentioned the debate about whether criminal justice is a system. In light of the uncertainty as to whether it is a system, it would be inappropriate to require criminal justice theory to study only systemic responses. Studies of the police, judicial, and correctional response to potentially criminal behavior may all be considered criminal justice theory. In fact, the dependent variable may be any type of response, as long as the possibility of the invocation of the formal criminal justice system is relevant to the theory. Thus, legislative, media, victim, and public responses to potentially criminal behavior may all be classified as legitimate dependent variables.

The Valid Theory Test

In an earlier section we laid out the basic properties of scientific theories. Valid criminal justice theories must conform to these standards, as they cannot be exempt from the requirements of social science theories in general.

Table 2.1 summarizes the definition and tests of criminal justice theory. A proposed theory must pass all four tests to be considered legitimate criminal justice theory. Research failing on any dimension

Table 2.1 *Criminal Justice Theory: Definition and Tests*

| | |
|---|--|
| X | Criminal justice theory is the study of official response to behavior that may be labeled criminal. |
| X | The Dependent Variable Test indicates that response to potentially criminal behavior must be the dependent variable studied; in no way can the potentially criminal behavior itself be the dependent variable. |
| X | The Reasonableness Test indicates that the behavior to which the response applies must have a reasonable chance of being labeled criminal, such that the formal criminal justice system is invoked. |
| X | The Parts-of-a-System Test indicates that as long as the entity responding to the behavior is integrally tied to the criminal justice system, the "official" part of the definition is met. |
| X | The Valid Theory Test indicates that the theory conforms with traditionally accepted social science standards of theories, as delineated by such scholars as Dubin (1978). |

might of course still be quite valuable, but probably either belongs in nontheoretical criminal justice areas⁸ or perhaps another field altogether. Criminal justice institutions may be used as arenas in which theories that do not employ criminal justice as a dependent variable are tested, but one must remember that this does not make them criminal justice theories. Studies that examine the policy implications of criminological theories (such as deterrence) should probably be considered applied criminology rather than criminal justice theory. Our aim is not to debase work that fails these tests in any way, but to suggest that the range of *legitimate criminal justice theory* should be narrowed in scope to exclude these works.

EXAMPLES OF CRIMINAL JUSTICE THEORY

Having discussed what criminal justice theory is and is not, we now review some work that we do consider to be criminal justice theory. We are careful to avoid condensing criminal justice theory into too simple a typology that presents a narrow perspective of the field. On the other hand, our aim is not to present an encyclopedic accounting of every possible type of criminal justice theory. Thus, following the principle of parsimony, we pose seven dimensions along which criminal justice theories may lie and provide examples within each dimension: (1) historical vs. nonhistorical; (2) organizational perspective; (3) sociopolitical perspective; (4) objective vs. subjective; (5) type of response; (6) level of explanation; and (7) institutional arena.

There are certainly other dimensions along which theory could be measured, but we think these dimensions capture substantial variation in criminal justice theory. They are not mutually exclusive dimensions, and any given theory can be classified somewhere on the continuum (or in some cases, in one of the categories) in each dimension. Another reason for using these dimensions as a method of reviewing some criminal justice theory is that several of our suggestions for future directions in criminal justice theory involve integrating approaches within these dimensions.

Historical vs. Nonhistorical

Theories may "freeze time" when explaining criminal justice phenomena, or they may attempt to explain either the source (origination) or development of criminal justice responses over time. This dimension applies to virtually any area of theoretical enterprise. To the extent that a theory inherently or explicitly relies on our understanding of a phenomenon in different historical periods (or over time), it is historical theory.

One example of a historical theory of criminal justice is Robinson and Scaglione's (1987) theory of the police. Their dependent variable is the origin of the police institution. Whereas most theories of the police may ask how the police respond to behavior that is potentially criminal, their theory asks why the police even exist to respond to such behavior. Their primary independent variable is the extent to which a society is class-dominated. As a society moves from kinship-based to class-dominated, it is more likely to develop a formal police institution to deal with forms of threatening behavior. Robinson and Scaglione support their theory with anthropological examples of societies in different historical eras, at different places along the kinship-class dominated continuum, and with different types of police functions.

Nonhistorical theories are plentiful. One such example is Klinger's (1994) notion that a nasty demeanor exhibited by a suspect toward police influences the likelihood of arrest, not because of the demeanor itself, but because it is frequently viewed as an illegal act (resistance) by the police officer. Although this notion could easily be expanded into a historical theory (for example, by arguing that police over time are becoming more likely to label resistance as crime), as it stands now, it is an ahistorical theory of police behavior.

Organizational Perspective

Although criminal justice theory has adopted frameworks from many disciplines, two of the most influential have been organizational and sociopolitical perspectives. Although organization theory is massive, it is arguable that three organizational approaches have had (or will have) the most dramatic impact on criminal justice theory: the rational-goal model, the functional systems model, and more recently, the institutional model.

Feeley (1973) has provided an eloquent description of the first two organizational perspectives, as adapted from Etzioni (1960). Feeley merges Etzioni's goal model with Weber's rational-legal model, forming a rational-goal model of the criminal justice system. This perspective is preoccupied with formal goals and rules, and the assumption is that it is possible to approach goals (such as organizational effectiveness) with rational organization and procedures, as characterized by Weber's vision of the formal bureaucracy. As applied to criminal justice, this model "[implies] an elaborate apparatus which processes arrests according to highly defined rules and procedures undertaken by 'experts' who perform the functions ascribed to them by highly defined

formal roles, under a rigorous division of labor, and who are subject to scrutiny in a systematic and hierarchical pattern" (Feeley 1973, 410).

Theories within the rational-goal perspective might employ criminal justice effectiveness or efficiency as the dependent variable, and the rationality of procedures and decisions as the independent variable. One example of such a theory may be the effect of judicial compliance with *In re Gault* on the effectiveness of the criminal justice system (Lefstein, Stapleton, and Teitelbaum 1969). The problem with most theories employing the rational-goal model is that they *assume* effectiveness (an ambiguous term in these theories) is influenced by such factors as judicial compliance, and the theorists spend their efforts simply assessing the extent to which compliance exists and inferring the extent to which the system is effective. These theories are tautological, because they define effectiveness by such factors as compliance, and then measure compliance to determine effectiveness. Some theories stemming from the rational-goal perspective may squeak by our proposed tests of criminal justice theory, but they are generally not well-constructed theories.

According to Feeley (1973, 413–14), whereas the rational-goal model deals with "the *rational organization* pursuing its single set of goals," the functional-systems perspective has to do with "*rational individuals* who comprise the system ... prosecutor, defense counsel, police, defendant, clerks ... pursuing their various individual goals." This perspective results in much more complex theories than those stemming from the rational-goal model, because individuals often have different, and frequently conflicting, goals from organizations. Unlike the rational-goal model, the functional-systems model pays special attention to nongoal functions, such as the activities and means by which workers carry out their jobs. This approach recognizes that organizations have other needs besides furthering their goals, in ensuring their survival.

Probably the best example of a theoretical area within the functional-systems perspective is exchange theory (Blau 1964), which has to do with the effect on organizational outcomes of informal linkages between actors within and between organizations, and between organizations themselves. An excellent example of exchange theory applied to criminal justice is Eisenstein and Jacob's (1977) *Felony Justice*, which examined court outcomes — particularly rates of plea bargaining — finding the strongest influence on these outcomes to be characteristics of the courtroom workgroup, which is comprised of actors with different interests (defense attorneys, prosecutors, judges) but who recognize the need for smooth maintenance of the system. The stronger these linkages (the more familiar and stable the workgroup is), the more

rationalized the court processes are, with greater plea bargaining rates and fewer trials.

The functional-systems perspective has probably had more impact on criminal justice theory development than any other organizational model. It allows one to study a criminal justice actor, with his or her own interests, in the context of an organization, with its own interests and goals, and attempt to explain what is produced by the interaction between the individual and organization.

Whereas the functional-systems perspective explores the relationship between individuals and organizations, the institutional approach is interested primarily in how organizations interact with their social, political, and economic environments in producing outcomes. The introduction of modern institutional theory (Meyer and Rowan 1978) into the organizational theory literature has prompted significant research in the area of criminal justice, but only in very recent times (Crank and Langworthy 1992; Crank 1994; Mastrofski and Ritti 2000). According to institutional theory, organizations face environmental pressures to which they must succumb in order to survive; however, at its core the organization lacks commitment to these changes, and responds by engaging in such practices as the adoption of ceremonial structures. Police departments can be viewed as institutionalized organizations, and the development of community policing within a department may be a ceremonial response to (1) the public's demand for better (or different) policing and (2) the department's economic survival (Crank 1994). Removal of police chiefs after negative incidents (such as the Rodney King beating) may also be viewed as a ceremonial or institutional response (Crank and Langworthy 1992).

Sociopolitical Perspective

Many of the sociopolitical perspectives that have been adopted when forming criminal justice theories stem from conflict and consensus (Hagan 1989b). Conflict and consensus are two contrasting perspectives of the nature of society, and more specifically, the role of government in society. According to the consensus perspective, government's role is to reconcile the interests of different groups of people, and in normal society the government is able to do so. Society forms a broad consensus about what sorts of behaviors are pathological, and defines them as criminal, punishing those who commit the behaviors. This perspective is influenced strongly by Durkheim, and adopts the view that crime is functional for society: Since it is deviant and abnormal it brings the common public together in attempting to extinguish it.

On the other hand, the conflict model sees society as divided into interest groups between which there will always be conflict, as they compete for power, prestige, and material goods. The government is unable to reconcile all their differences, so it represents the interests of the most powerful groups, which attempt to continually preserve their position by oppressing the less powerful. Conflict theory is strongly influenced by Marx, who believed that at the very basis of society is class struggle between the "haves" and "have nots." From the conflict perspective, the criminal justice system is used to define and carry out laws in such a way that, as one book title says, "The rich get richer and the poor get prison" (Reiman 1984).⁹

An example of a consensus theory of criminal justice is Gottfredson and Hindelang's (1979a) examination of the effect a behavior's "seriousness" — as measured by the degree of harm to the victim — has on whether the victim reports the crime to criminal justice officials. From their perspective there is a widely held consensus that behavior past a certain threshold of seriousness belongs on the turf of the criminal justice system. Their article was written in response to Black's (1976) *The Behavior of Law*, which did not claim to be in the conflict vein, but made many assertions which are clearly compatible with conflict theory.

Conflict theory has been generated at all points of the criminal justice process: generating laws, reporting crimes, arresting, prosecuting, and sentencing offenders, and holding parole hearings. Myers and Talarico's (1986) study of sentencing in Georgia is an excellent example of a conflict theory that goes beyond asking the standard question: "Are minorities discriminated against in the criminal justice system?" Myers and Talarico (1986) examined the influence the interaction of a county's racial political representation and an offender's race within that county has on the offender's sentence. In counties where blacks had political control, whites were actually more likely to get prison sentences than were blacks. In counties where whites had political control, blacks were more severely sentenced than were whites.

Although conflict theory has perhaps been more commonly explored in terms of criminal justice discrimination once a behavior has been labeled criminal, the most broad-based conflict theories examine the beginning of the criminal justice process — namely, the formulation of laws. McGarrell and Castellano (1991), drawing from three theories (Chambliss and Seidman 1982; Galliher and Cross 1983; Scheingold 1984), have formed a trilevel, integrated conflict theory of the criminal law formulation process. At the first level, highly differentiated social structures lead to more conflict, and thus an increased number of behaviors being defined as criminal. Intertwined with high social

differentiation are cultural attitudes reinforcing myths of crime. Factors at the first level produce actual crime, and hence victimization, fear, and concern, and result in a punitive response by the criminal justice system. Because fear of crime, along with media attention, results in increased enforcement of laws defining behavior as criminal, it actually brings about more crime. Triggering events are the third level of influences on legislative policy. In this “unstable and volatile public policy arena ... [a] slight dislocation, a random event, a vocal political opportunist, or a disgruntled governmental bureaucrat, can trigger events which mobilize the political arena to consider and enact crime legislation and policy” (McGarrell and Castellano 1991, 188). Once new law is passed, making even more behaviors illegal, the amount of crime and criminal justice is increased, and the feedback cycle continues.

Even though some scholars (such as Hagan 1989b) believe that conflict and consensus theories can only take us so far in exploring criminal justice phenomena, there is little evidence of abatement in their use by criminal justice scholars. Because research in the conflict vein has focused very little on the exact processes by which discrimination occurs, there is still much room for theoretical development and elaboration in conflict approaches to justice.

Objective vs. Subjective Perspective

Whereas the conflict and consensus perspectives relate to fundamental views of our political and social system, another dimension on which theory may be classified relates to our fundamental views of reality. Although it has been discussed by ancient philosophers, the question of whether objective realities exist or reality is socially constructed by observers has only been influencing social science theory for the past three decades.¹⁰ A highly influential work by Burrell and Morgan (1979) divides the entire field of organization theory into four paradigms, organized along two dimensions. One of these dimensions ranges from objective to subjective (the other ranges from radical change to regulation). To Burrell and Morgan (1979), and many modern organizational theorists, a scholar's view on whether reality is objective or subjective substantially drives his or her theoretical work in social organization.

According to Burrell and Morgan, if a theorist who is examining the world without trying to change it adopts an objective approach, he or she is operating within the functionalist paradigm. A theorist who adopts a subjective stance is operating within the interpretivist paradigm. Much criminal justice theory has been driven by both of these paradigms. From a functionalist standpoint, the world is treated

“as if it were a hard, external, objective reality” (1979, 3). A theorist approaching criminal justice as such would consider crime to be a social fact. In contrast, theorists working in the interpretivist paradigm view the world as comprised of “the subjective experience[s] of individuals in the creation of the social world...” (1979, 3). To subjectivists, facts are rarely facts; instead, they are part of a constructed reality. The same behavior is seen as “crime” to some but not to others. Some argue that behavior is observable, but can be construed in multiple ways; others argue that the very nature of subjective perception implies that any “objective” behavior is itself unobservable.

Versions of conflict theory that argue that behavior is more likely to be labeled criminal under certain power conditions and crime is more likely to be seen as serious under certain power conditions do fall into the interpretivist paradigm because they imply different realities depending upon one's position of power. On the other hand, a broader approach to crime within the interpretivist paradigm is constructionism. The constructionist view suggests that different realities may exist for different people, but it is possible to manipulate the commonly accepted reality through a variety of techniques. Unlike conflict theory, from the broader constructionist standpoint crime may be constructed for reasons other than power and prestige incentives. Rafter (1990) cites Gusfield's (1963) treatment of Prohibition and Erikson's (1966) work on the Puritans' behavior toward deviance as classic examples of moral incentives to construct realities. More recently, Gusfield (1981) has shown how moral crusaders (Mothers against Drunk Driving) have been able to bring such behavior as drunk driving more into the realm of the criminal justice system, by defining it as criminal behavior rather than as *traffic negligence*.

The objective-to-subjective continuum can be used to classify many more types of theories than those addressed above. For example, crime rates have been viewed not as measures of real crime, but as an output of organizational outcomes, or varying organizational realities, such that the Uniform Crime Report rate may reflect more about the criminal justice agencies that collect data rather than about crime itself (McCleary, Nienstedt, and Erven 1982).

Type of Response

Although we have already mentioned some of the different types of responses that serve as subjects for criminal justice theory, there is enough variation in this area that it deserves some elaboration. Criminal

justice theorists have studied lawmaking, decisions, attitudes, ideologies, structures, styles of behavior, and routines — all as outcome concepts.¹¹

Development of Laws

McGarrell and Castellano's (1991) theory (described earlier in this chapter) is aimed toward explaining the formulation of laws, which determine what sorts of behavior are criminal in our society. Most of the theoretical literature on lawmaking is guided by consensus, conflict, or constructionist perspectives.

Decisions

Probably the most studied dependent variable in criminal justice theory pertains to the gap between what laws have been formulated and what enforcement actually occurs. Only since the mid-1970s have scholars recognized and begun to study discretion (Walker 1992). The most commonly studied forms of discretion are the decision to arrest, the decision to prosecute, and the sentencing decision. Gottfredson and Gottfredson (1988) have provided what is probably the most comprehensive overview of research on discretionary decision making in the criminal justice system. Theories about the decision to report a crime also fall into our scope of criminal justice theory because the outcome is (or might be) the invocation of the formal criminal justice system.

Attitudes

Attitudes are usually studied as intermediate variables, with the assumption that they eventually influence behavioral response. Of course, there has always been debate in social psychology on the extent to which this assumption is true (Ajzen 1982, 1987; Schuman and Johnson 1976). The study of attitudes is often done in conjunction with the study of culture. For example, Church (1985), in testing a theory that court participants form legal cultures to cope with organizational demands, measured the similarity of attitudes of the various courtroom actors toward such concepts as disposition time and negotiation. He explicitly stated that in doing so he was assuming that attitudes translated into behavioral patterns. Nardulli, Flemming, and Eisenstein (1985), on the other hand, studied the same outcome, but looked at behavioral patterns instead of attitudes. Both have their shortcomings: Church (1985) had to infer that behavior resulted from process (the process was established with cultural attitudes); Nardulli and his colleagues (1985) had to assume process (a model of legal culture) from behavioral outcome patterns.

Ideologies

Whereas attitudes usually contain rather specific (or at least easily identifiable) targets, ideologies are more general philosophical orientations. In the realm of criminal justice, examples of popular ideologies are retribution (believing criminals should get what they deserve) and rehabilitation (believing we should try to help reform criminals). Some have summarized the primary ideological dimension in criminal justice as simply liberal ("soft" on crime) versus conservative ("tough" on crime) (Walker 1985). One example of a criminal justice theory studying ideologies is Duffee's (1990) *Explaining Criminal Justice*. Duffee holds that the extent to which a local criminal justice system is Moralistic (promoting retribution) or Welfare-oriented (promoting rehabilitation) depends on the community's independence from nonlocal sources and the degree of cooperation within subsystems in the community. Much theory is also generated at explaining ideological orientations of individual actors in the criminal justice system.

Structures

We have already noted that structures are another type of response, or at least are intermediate variables preceding behavioral response, in criminal justice theory. Examples of theories of structure in criminal justice are Langworthy's (1986) and Maguire's (2003) studies of police organizational structure, DiIulio's (1987) examination of correctional organization structure, and Eisenstein and Jacob's (1977) work on court structure.

Styles of Behavior

Other than making law or decisions about what will be done with people engaging in potentially criminal behavior, criminal justice actors also exhibit a variety of overt behaviors in their work. Scholars have explored differences in the behavioral styles exhibited by criminal justice actors in their day-to-day work. For example, Muir (1977) has looked at police officer styles in dealing with suspects among others (see Snipes and Mastrofski [1990], for a review of other work in this area). He forms a typology of four styles of officers (Avoiders, Enforcers, Reciprocators, and Professionals). The behavioral styles officers adopt are developed from their capacity to project themselves into the circumstances of others, and from their ability to integrate the use of coercion into their moral framework. Carter (1974) has developed a similar typology for prosecutors, forming four types: Teachers, Analysts, Competitors, and Crime Fighters. The style of behavior a prosecutor develops depends on his or her commitment to due process and crime control.

Routines

In addition to discrete decision making, criminal justice theorists frequently study the formation of routines — methods formed by justice system actors to deal with the processing of cases. In this research, the process by which a case is handled is an outcome variable in itself, regardless of the final disposition. Prominent examples of this type of theoretical research include Waegel's (1981) study of how police detectives respond to organizational pressures in developing routines for slotting, selecting, and investigating cases, and Sudnow's (1965) analogous study of methods public defenders develop to classify cases. These studies typically involve examining the organizational influences on the routinization of response to potentially criminal behavior.

Level of Explanation

One could classify criminal justice theories as micro or macro, but this distinction is rather arbitrary (Alexander, Giesen, Munch, and Smelser 1987); levels of explanation range from small units, such as individuals, to large structures, such as societies. It is safe to say that the predominant level of explanation employed in the "progressive era paradigm" described earlier in this chapter (Walker 1992) is the individual. The dependent variable is frequently the behavior or attitudes of individual actors within the criminal justice system. The set of independent variables includes individual attributes, and may also include variables at higher levels of explanation, such as characteristics of the city or region in which they reside. Other examples of higher levels of explanation include situations, groups, or subcultures (such as police subcultures or courtroom work groups), local organizations (such as police departments), communities, local governments, state governments, and criminal justice agencies, and so on.

Most theories use the same level of explanation for both independent and dependent variables. It is rare for a higher level of explanation to be explained by lower level concepts. For example, we would not typically explain variations in state incarceration rates using the characteristics of individuals. More commonly, lower-level phenomena are explained by concepts at that level and higher levels. For example, R. Worden's (1994) explanation of police use of force draws upon concepts at the individual, situational, and organizational levels, to predict use of force at the individual level. In other words, when a police officer decides to use force against a suspect, the decision is motivated by characteristics of the individual officer and suspect (such as age, sex, temperament, etc.), characteristics of the situation (such as whether the suspect is resisting arrest), and characteristics of the police organization (such as

the departmental policies on use of force). Theories like this, in which one or more of the independent variables are from a higher level of explanation than the dependent variable, are known as "contextual" theories. There is now a great deal of innovation emerging in the statistical modeling techniques used to test such theories (e.g., Bryk and Raudenbush 1992).

Institutional Arena

Theories of criminal justice may study areas directly located in the criminal justice system (as we think of it), or collectivities more indirectly related to criminal justice. In the first category are police, courts, and corrections. In the second category are legislatures, interest groups, executive decision-making bodies, media, victims, potential victims, community groups, and citizens-en-masse, among others. Some criminal justice theories are entirely contained within one institutional arena. Others examine responses to potentially criminal behavior that cross arenas in some fashion. Earlier in the chapter we discussed the exchange perspective, in which these different arenas and their environments are intrinsically connected. This seems to be the direction in which much criminal justice theory is moving, and as we will discuss in the conclusion, it is a movement from which we expect valuable contributions.

Another type of systemic theory does not so much address linkages between institutional arenas as it tries to explain criminal justice in such a broad fashion that it applies to any arena. Donald Black's (1976) *The Behavior of Law* is one such theory. His concept of law as a dependent variable is meant to apply to many aspects of the criminal justice system, including public perceptions of the seriousness of crime, victim reporting of crime, police use of arrest, prosecutorial decision to charge, judicial sentencing severity, and parole board decisions. In each of these cases, there will be more or less law, and Black believes five types of variables will explain the variation in law.¹²

FUTURE DIRECTIONS

Stephen Fuchs (1993)¹³ presents a theory of scientific change, in which he argues that competition (present in almost any academic discipline) leads to scientific change, but the type of change depends on task uncertainty and mutual dependence. Task uncertainty refers to the degree of ambiguity there exists in how scientists perceive their mission. Mutual dependence pertains to the extent to which individuals in the particular field are socially integrated. The field of criminal justice is characterized by high task uncertainty and low mutual dependence:

high uncertainty because there is little consensus on such basic ideas as what constitutes criminal justice theory, and low dependence because instead of a core group of scholars focusing on criminal justice, research is done by scientists and practitioners working in a number of different domains, often ignorant of each other's work. This combination, Fuchs (1993, 946) argues, produces a fragmented scientific field:

Such fields lack the strong and dense networks necessary to produce facts, and so they engage in informal conversation instead.... There is not a great deal of confidence in the possibility to become scientific and objective, and so the self-understanding of weak fields is skeptical and critically reflexive.... Lacking unified research fronts that could define the overall direction of the discipline, weak fields do not really believe in the continuous progress of knowledge, and so there is a strong tendency to look back to the classics instead.^{13*}

Fuchs's description of a fragmented scientific field describes the current state of criminal justice as an academic discipline. Fuchs also proposes that high task uncertainty and high mutual dependence result in the potential for "permanent discoveries," similar to Kuhn's (1970) notion of revolutionary change. In order to advance to the point where dramatic shifts in paradigm can occur, such that the state of theory can more fully develop, criminal justice as a field would need to become more integrated. Interested scholars would have to begin to guide the field, forming some consensus on where theory should go, such that theoretical research could proceed in a more organized and less fragmented fashion.

In this chapter, we have shown that scholars in criminal justice cannot even agree upon what criminal justice is and what constitutes criminal justice theory. We have tried to present an initial framework for understanding criminal justice theory, one which will certainly be met with criticism, but which at least might spur the field to some meaningful discussion. Because criminal justice theory is so fragmented (as should be recognized from our brief review), it seems to us that integration will be important in the development of a more cohesive theoretical enterprise. Several of the dimensions along which we have classified criminal justice theory are ripe for integration.

Sociopolitical perspectives that are seemingly bipolar may actually be compatible if brought together in the right theoretical context.

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Conflict notions may apply under some circumstances, and consensus under others. Durkheimian theory suggests that certain conditions (such as war) can create social solidarity. Under certain political environments and idiosyncratic historical processes, then, a consensus perspective may be appropriate in explaining criminal justice phenomena. In other times and circumstances, the conflict perspective may better explain the same phenomena. An integrated theory would develop a framework for predicting when conflict and when consensus concepts would more powerfully explain our response to potentially criminal behavior. Objective and subjective perspectives again seem too opposite to bring together, yet postmodernists have begun to do just this. For example, Giddens's (1979) theory of structuration proposes that we subjectively construct structures, but after this process occurs, these structures have objective properties that can in turn influence those who constructed them. Given that crime is partly subjective and partly objective, and that both behavior and our response to behavior feed off each other reciprocally, it seems that structurationism might be very relevant to our understanding of crime and criminal justice.

Criminal justice theories explain many different types of responses, but certainly these responses are related to each other, and these relationships can be explored in integrated theory. Attitudes, behaviors, ideologies, and decisions undoubtedly affect each other. As criminal justice theory progresses, it should begin to explore the relationships between multiple response types rather than just one response type at a time.

Criminal justice theorists are already bridging levels of explanation, as they develop contextual theories that use more than one level of independent variables. On the other hand, very rarely do theories examine the interactional relationships across levels. In other words, the magnitude and nature of an effect of individual level attributes on some response might depend on where that individual is positioned in a higher-level context (such as group, organization, or society). For example, overzealous, aggressive police officers may behave differently toward potential suspects if they are in innovative and progressive police departments than if they serve in departments with organizational styles more compatible with their own.

Finally, we have already stressed the need to link institutional arenas when developing criminal justice theory. Of all the possible types of integration discussed above, this has probably been the most common in recent criminal justice theory. Much remains to be done.

This chapter has attempted to demonstrate how weak the state of criminal justice theory is, but also has suggested that it can be salvaged.

If criminal justice theory is to come into its own right, scholars who are highly motivated toward its furtherance must begin to organize, settling on parameters and basic definitions, and beginning to forge its future. The various chapters in this volume provide an exemplar for the stages of theory building in criminal justice.

NOTES

1. See also Akers (1992, 10), arguing that confusion between these fields of study may have impaired the academic standing of criminology among sociologists.
2. Several evaluations of criminal justice education in the early to mid-1970s noted that criminal justice curricula were too oriented toward professional training. Brandstatter and Hoover (1976, 47), for example, argued that criminal justice programs “include far too many professionally oriented courses” and “place undue emphasis on curricula designed to train students to perform specific operational tasks.”
3. These perverse incentives can lead to interagency conflict, as is often portrayed by the media. As the Weasel, in Wambaugh’s *The Glitter Dome* complained, “Times are pretty goddamn bad ... when cops started using the same lies to each other that they should save for the real Enemies in the judiciary” (Wambaugh 1981, 142).
4. Some take this perspective one step further, arguing that because the ever-present conflict between the component institutions hinders the effective functioning of the justice process, the system should be reorganized. In *Organizing the Non-System*, Skoler (1977) argues that the separate criminal justice institutions should be unified and integrated so that they will coordinate more smoothly.
5. In some countries, such as Uganda and Zambia, the police are closely linked with the military force. Although this type of merger may enhance the crime control function of the police, it probably detracts from the due process functions.
6. The importance of informal relationships among groups of actors, both within and between organizations, now occupies a central role in organizational theory. The study of these informal relationships is known as network analysis. From a network perspective, the structure of an organization can only be fully understood by observing the numerous networks of relationships both within an organization, and with actors from other organizations (Nohria 1992). Of particular interest to criminal justice is the networking which occurs between actors at the *border* of different organizations that work together. From the network perspective, Nohria argues, “the environment consists of a field of relationships that bind organizations together.” This environment, known in organization theory as an “interorganizational field” (DiMaggio and Powell

1983, 148; Warren 1967), is where actors from different organizations perform “boundary spanning” roles (Lipsky 1980; Reiss and Bordua 1967) which enhance the reliance of each organization upon the other.

7. From *Not Just Deserts: A Republican Theory of Criminal Justice* by J. Braithwaite and P. Pettit, 1990, pp. 756–57. By permission of Oxford University Press, Inc.
8. Or it may belong in that murky area of “normative theory” which is valid theory but not traditional scientific theory, and is best organized under “philosophy” or similar nomenclature.
9. For a review of different versions of conflict theory, and for an integrated conflict theory, see Vold, Bernard, and Snipes (1998).
10. Berger and Luckman’s (1966) *Social Construction of Reality* is often hailed as the seminal piece spurring much discourse and theory in this area.
11. Although this is probably not a comprehensive list of potential outcomes for legitimate criminal justice theory, it probably covers at least nine-tenths of existing theory.
12. Black calls these dimensions stratification, organization, culture, morphology, and social control. His book consists of a number of hypotheses between various aspects of each dimension and the amount of law.
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