

# Criminal Justice Theory: Toward Legitimacy and an Infrastructure

---

*Peter B. Kraska*

Within Criminal Justice/Criminology, "theory" is generally assumed to be concerned with crime and crime rates. Studying criminal justice is tacitly, and sometimes explicitly, relegated to the narrow role of evaluative and descriptive scholarship. This article explores the reasons for our field's failure to recognize the importance of developing an accessible and well-recognized theoretical infrastructure not about crime, but criminal justice and crime control phenomena. It examines the complexity of our object of study when theorizing criminal justice and the efficacy of organizing criminal justice theory using multiple "theoretical orientations." The conclusion stresses the essentiality of criminal justice theory, with particular emphasis on academic credibility, quality research, informed practices, and sound pedagogy.

*Keywords* Criminal Justice theory; academic legitimacy; criminological theory

Criminal justice is an academic discipline in practice but not yet in theory. (Marenin & Worrall 1998)

## Introduction: A Serious Disciplinary Deficiency

Theory lies at the heart of any social science discipline (Bernstein, 1976; Flyvbjerg, 2001; Garland, 1990). It defines the parameters for how we think about our objects of study, and provides us the lenses through which we filter our subject matter in order to make sense of complex phenomena. It gives us our organizing concepts, frames our research questions, guides our scholarly

Peter Kraska is Professor of Criminal Justice and Police Studies at Eastern Kentucky University. His recent research interests include the nature and importance of real-world theory as examined through the government's response to the Hurricane Katrina disaster, the trend to criminalize risky and negligent behaviors as an adaptation to late-modern social conditions, and a continuation of study into the blurring distinction between the police and military in the wars on drugs and terrorism. Correspondence to: Peter Kraska, Department of Criminal Justice and Police Studies, Eastern Kentucky University, Richmond, Kentucky 40475, USA. E-mail: peter.kraska@eku.edu

interpretations, and is an unavoidable presence in crime control policy, practice, and decision-making. Criminal Justice/criminology does not have a recognized and readily accessible theoretical infrastructure about the criminal justice system and crime control—a serious disciplinary deficiency voiced by numerous leading scholars (Bernard & Engel, 2001; Clear, 2001; Crank, 2003; Cullen, 1995; Duffee, 1980, 1990; Hagan, 1989; Marenin & Worrall, 1998; Sullivan, 1994; Zalman, 1981).

A criminal justice theoretical infrastructure would involve a well-organized and usable collection of explanatory frameworks targeted at making theoretical sense of *criminal justice and crime control phenomena*. “Criminal justice” would be a multi-faceted object of theorizing and, as discussed in detail later, would range from explaining individual practitioner decision-making to the exponential growth in power and size of the criminal justice apparatus over the last 30 years.

This article’s overall objective is to start the process of re-orienting our discipline to approach the study of criminal justice/crime control as a legitimate and essential object of theorizing in and of itself; a second “dependent variable” for our field alongside crime and crime rates. While still acknowledging their interconnections, crime *and* criminal justice would be treated as dual objects of study—as opposed to approaching criminal justice phenomena as the mere outcome or effect of crime.

To accomplish this end, this article first exposes the default assumption that theory-work in our field refers generally to “crime theory.” Second, it deconstructs the related assumption that criminal justice studies is an a-theoretical pursuit—merely fulfilling our field’s “how to” and “what works” function. Third, it outlines the highly complex and multi-faceted nature of “criminal justice” as an object of theorizing. The fourth section examines the large volume of literature, found in a number of sub-areas of study, which could be credibly re-conceptualized as criminal justice theory. Finally, it presents a workable model for constructing a theoretical infrastructure, relying on the identification and categorization of major “theoretical orientations” already present in our discipline, as opposed to pursuing a single, testable “criminal justice theory.” It concludes by discussing the benefits of normalizing criminal justice theory in crime and justice studies, for our research and scholarship, criminal justice and crime control practices, and as an integral part of quality pedagogy.

### The Crime Theory Default

There can be no doubt that our field of study has a clearly defined, albeit highly contested, theoretical project. Countless journal articles and books have for at least the last 70 years constructed, tested, debated, and organized theory. The problem lies not in the amount and quality of work but, rather, in the object of study.

Our discipline, with some important exceptions reviewed later, assumes by default that theory-work is reserved for the why of crime and crime rates. Within our leading scholarly journals, theory development and testing is targeted primarily at explaining crime (Bernard & Engel, 2001; Cullen, 1995; Hagan, 1989; Henderson & Boostrom, 1989). Our "theory" textbooks focus almost exclusively on the why of deviance, crime, and delinquency (Henderson & Boostrom, 1989). Even the majority of our "Introduction to Criminal justice" textbooks, which have the criminal justice system as their explicit object of study, dedicate nearly all their discussion of theory to theories of criminal behavior. Our undergraduate and graduate degree programs, even within criminal justice departments, assume that the theory component of their curriculum should concentrate almost exclusively on the why of crime. "Teaching theory," as part of a criminology/criminal justice curriculum, refers almost universally to teaching crime theory (Henderson & Boostrom, 1989).

Overall, it is taken-for-granted that our central object of theorizing in crime and justice studies is crime. Pursuing a recognized and usable theoretical infrastructure about criminal justice—despite the frustration for this state affairs voiced by leading scholars in the field over the last three decades—has not been an acknowledged priority and certainly does not constitute a recognized theoretical project (Bernard & Engel, 2001; Crank, 2003; Cullen, 1995; Duffee, 1980, 1990; Hagan, 1989; Henderson & Boostrom, 1989; Marenin & Worrall, 1998; Zalman, 1981).

### Why Not Criminal Justice Theory?

#### Criminal Justice Studies: An A-Theoretical Endeavor

The tradition that assumes crime theories suffice as a theoretical foundation for studying criminal justice has been perhaps the central barrier for the development of a theoretical infrastructure. One tactic has been to employ theories of crime in developing *models of criminal justice functioning*. Einstadter and Henry (1995) demonstrate clearly how criminal justice functioning interrelates with our conceptions of why crime occurs. And while this use of crime theory certainly sheds considerable light on our understanding of criminal justice functioning, even these authors concede that it does not constitute the development of theories of criminal justice: "Our concern here is not theories of social control per se, but the models of criminal justice that are implied by and that are logically consistent with particular theories of crime causation" (Einstadter & Henry, 1995:3).

The objective of modeling, then, has been to demonstrate the utility of crime theory by examining the type of criminal justice system implied by particular theories of crime. Although our conceptions of crime no doubt help guide our reaction to crime, this exercise does not constitute the development of explanations targeting specifically the behavior of, and difficulties facing, criminal justice practitioners, historical trends in crime control practices, the

behavior of criminal justice bureaucracies, or the movement toward privatizing crime control—in other words, *theoretical frameworks about criminal justice and crime control behavior*.<sup>1</sup>

The fixation on “criminal justice implications” of crime theory exposes a related reason for criminal justice theory’s lack of development. It reinforces the deep-seated notion rooted that studying the why of crime is a *higher-order intellectual pursuit* than studying criminal justice (Marenin & Worrall, 1998; Sullivan, 1994). Studying criminal justice has not been recognized as a valuable theoretical project in and of itself; it is viewed as merely the pragmatic dimension of the master-task of explaining crime (Dantzker, 1998; Gibbons, 1994; Maxfield & Babbie, 2005; Jeffery, Myers, & Wollan, 1991). Zalman (1981) pinpointed accurately the historical underpinning of this assumption: limiting the study of criminal justice to applied concerns, and designating crime studies as our theoretical dimension, represented a solution to the conflict during the 1970s between those advocating an “applied/professional” versus “academic/theoretical” paradigm for our field.<sup>2</sup>

Consequently, studying criminal justice has been assigned the limited role of developing the most effective and efficient crime control practices through applied, policy, and evaluation research. Theory-work is relevant to criminal justice only insofar as theories of crime causation lead to more effective crime control policies and tactics (again, treating criminal justice behavior as simply the independent variable which affects crime). Embedded in this thinking is the presumption that studying crime control and criminal justice is strictly a “practical,” as opposed to a theoretical, endeavor concerned only with the “what works” and “how to” of crime control.<sup>3</sup>

## CJ Theory as Credible and Beneficial

Of course, there is nothing inherent in the study of criminal justice and crime control phenomena that precludes quality, rigorous, and intellectually stimulating

1. Some theories of crime, in fact, imply policies that fall outside the realm of criminal justice functioning. Elliott Currie’s work, for example, uses an economic theoretical framework in constructing decidedly non-criminal justice solutions to the crime problem.

2. Marvin Zalman’s (1981) manuscript, prepared for the *Joint Commission on Criminology and Criminal Justice Education and Standards*, provides a highly nuanced historical overview of the interconnections and distinctions between theoretical work targeting crime versus that which focuses on crime control/criminal justice.

3. I discovered first hand the entrenched nature of this assumption on a visit to the office of the National Institute of Justice. When discussing a theoretical issue with a newly graduated PhD from a highly respected doctoral program, I could tell he was hesitant to participate. When I asked why, he told me proudly that he concentrated only on studying “criminal justice” and did not bother himself with “theory.” He emphasized that his doctoral training was in “criminal justice”—which he viewed as an a-theoretical, strictly practical endeavor. Of course, the social/philosophy science literature has clarified for three decades now that even applied/policy research is inherently imbued with, and can benefit from, theory—and that practical study can inform theory (Bernstein, 1976; Carr & Stephens, 1986; Denhardt, 1984; Fay, 1977; Habermas, 1972, 1974; Popper 1963).

theoretical scholarship and research. It is as valid as the well-established tradition of theorizing our political, educational, medical, or military institutions. The intellectual box built around the study of the criminal justice institution is a disciplinary construct maintained by a set of unquestioned assumptions. Numerous academics in our field have demonstrated, in fact, that inquiring into the why of criminal justice and crime control is at least as intellectually challenging, interesting, and fruitful than the why of crime (a few examples include Crank, 2003; Duffee, 1980, 1990; Christie, 2000; Garland, 2001a, 2001b; Kraska, 2001; Marx, 1988; Miller, 1996, 1998; Quinney, 1974; Simon & Feeley, 1994; Young, 1999).

Theorizing criminal justice is not just a fascinating intellectual pursuit. The scholars cited above view it as beneficial in two other important ways. First, understanding the why of criminal justice behavior is crucial for the effective development and implementation of policy and reforms. A second benefit just as important involves not the control of crime but crime control. Whereas much of our field focuses on crime as our central problem, and criminal justice measures as a potential solution, these scholars concentrate on our reaction to crime as the focal concern. Keeping track and making theoretical sense of trends in crime control, or the growth in size and power of the criminal justice system, is as important as it is for crime itself. Many analysts, for example, view the government's "war on drugs" as more problematic than the drug crimes themselves.

### Clarifying Our Object(s) of Explanation: Complexity Begets Perplexity

Despite the interconnections noted above, delineating between theorizing crime and criminal justice is not difficult. Most crime and justice scholars can appreciate the qualitative difference between explaining crime versus explaining crime control. The former theorizes law-breaking and harmful behavior. The latter concentrates on making theoretical sense of criminal justice and crime control phenomena, such as the behavior of criminal law, organizational behavior among sub-institutions within the formal criminal justice system (police, courts, corrections, and juvenile justice), overall trends in the entire criminal justice apparatus, and the private sector's crime control activities.

Separating these two objects of study in this manner highlights another important barrier to criminal justice theory. While our field has struggled with the intricacies of clearly identifying *crime* as an object of study, doing the same for *criminal justice* is even more complex. The terrain of possible foci when theorizing criminal justice is vast—ranging from explaining individual practitioner behavior to explaining the growth of the CJS over the last 100 years. It has in fact expanded significantly in the last 10 years with criminal justice analysts looking beyond the confines of the formal legal system. Studying criminal justice today now includes examining non-governmental crime control and punishment phenomena (e.g., the private sector), and governmental entities not normally involved in criminal justice functions, such as the military (Cohen,

1985; Duffee, 1990; Garland, 2001a; Kraska, 2001). To an even greater extent than crime theory, therefore, theorizing criminal justice has a multifaceted set of "dependent variables."

These might include theorizing criminal justice practitioner behavior, the system's subcomponents, its historical development, or perhaps explaining its steep growth in power and size over the last 30 years, a central objective of Garland's (2001a) latest book, *The Culture of Control*. It could also focus on contemporary trends and issues in crime control practices such as privatization, militarization, federalization, the expansion of surveillance, racial profiling, erosion of constitutional safeguards, or trends and issues related to the "wars" on terrorism and drugs. More conventionally, criminal justice theory could seek to explain the behavior of criminal justice policy, agency behavior, and the why of practitioner and organizational decision-making.

These varied and important objects of explanation should demonstrate that explanatory frameworks, other than those provided by crime theories, are not only possible but also needed. Traditional criminological theories, despite their obvious interconnection with criminal justice practice, are not designed to function as explanations for criminal justice system or crime control behavior.

### Criminal Justice Theory as an Unrecognized Presence

I have been careful to frame the problem addressed here as one of recognition and accessibility. If we conceive of criminal justice theory as a body of literature attempting to make theoretical sense of the various objects of study noted above, the problem also lies in the labels we use to identify particular areas of scholarship.

Labels signify well-guarded intellectual territory. And as we have already established, the label "criminal justice studies" is associated with a-theoretical research and writing. Accordingly, even groups of scholars targeting their theoretical efforts explicitly on criminal justice phenomena would likely resist having their work identified as "developing *criminal justice* theory." They would instead label their endeavors "theories of social control" (sociology-proper, socio-legal studies, and sociology of punishment), theories of "late-modern trends in crime control" (punishment and governmentality studies), theories of "oppression" (critical criminology), or theories of public organization (public administration)—not "theories of criminal justice." Despite a lack of recognition and conscious pursuit of a theoretical project, there exists a substantial amount of theoretical work about criminal justice phenomena that can be conceived credibly as criminal justice theory.

One good example is the rigorous theoretical work in socio-legal studies and in the sociology of punishment. Here, we have a rich intellectual project targeted at theorizing recent shifts in the crime control apparatus (see, for example, Bauman, 2000; Garland, 1997, 2001a, 2001b; O'Malley, 1999, 2000; Rose, 2000; Simon, 1995; Simon & Feeley, 1994). Theorizing criminal justice in

this instance is contextualized within the field of *social control*, which probably accounts for why this highly informative body of work has not had a significant impact on mainstream criminal justice and criminology literature and textbooks. Its influence is starting to take hold, though, particularly in the works of David Garland (“The Culture of Control”) and Jonathan Simon (“The New Penology” and “Governing Through Crime”).

Another interesting example can be found in “critical criminology.” For the last 25 years, “critical” scholarship has examined the State’s oppression of marginalized groups (women, poor, racial minorities, homosexuals) via the criminal justice system. This body of work could in fact be viewed legitimately as far more concerned with developing theories of crime control, specifically oppressive State behavior, as opposed to crime behavior (see, for example, Arrigo, 1999; Barak, Flavin, & Leighton, 2001; Mann, 1993; Martin & Jurik, 1996; Miller, 1996, 1998; Milovanovic & Russell, 2001; Parenti, 1999; Reiman, 2001; Sheldon, 2001). This is the reason critical criminological theory fits awkwardly into traditional crime theory textbooks—the bulk of its explanatory attention concentrates on the behavior of the law, the government, and/or the State. Richard Quinney’s *Critique of Legal Order* (1974), for example, stands out as one of our field’s two explicit theoretical treatises targeting the criminal justice system; the second is David Duffee’s (1980, 1990) *Explaining Criminal Justice*. However, as illustrated in the following quote, labeling Quinney’s early work as “criminal justice theory” would probably not sit well with the author.

The forces behind this massive accumulation of data and information are generally motivated toward greater state control. ... The purpose of criminal justice studies is less to understand the oppressed than it is to render the control of the oppressor more efficient (Quinney & Wildeman, 1991: 82).

### Developing a Useful Infrastructure

If we ignore labels, then, and only concentrate on that work in the field which attempts to make theoretical sense of criminal justice and crime control phenomena, it becomes apparent that a large body of work could be characterized as “criminal justice theory.” Scanning the crime and justice literature for works attempting to make theoretical sense of the criminal justice system and trends in crime control reveals numerous possibilities.

Socio-legal studies and critical criminology by themselves comprise a massive literature. An impressive and growing body of feminist scholarship has also significantly influenced our understanding of the criminal justice and crime control phenomena (see, for example, works by Chesney-Lind, 2001; Danner, 1998; Jurik & Martin, 2001; Mann, 1995; Martin & Jurik, 1996; Miller, 1998; Price & Sokoloff, 1995; Renzetti & Goodstein, 2001). Other well-known examples that explicitly theorize the behavior of criminal justice phenomena include Barlow, Barlow, and Chircos’s (1993), Barlow, Barlow, and Johnson’s



(1996) body of work examining economic forces and criminal justice growth, Black's (1976) *The Behavior of Law*, Christie's (2000) *Crime Control as Industry*, Duffee's (1980) *Explaining Criminal Justice*, David Garland and Jonathan Simon's work noted above, Hagan's work on loosely coupled systems (Hagan, Hewitt, & Alwin, 1979; Hagan, 1989), Liska's (1992) work on social threat/social control, Packer's (1968) *Limits of the Criminal Sanction*, Reiman's (2001) *The Rich Get Richer and the Poor Get Prison*, and Scheingold's (1984) *The Politics of Law and Order*.

In addition, a substantial body of theoretical scholarship concentrates on the behavior of different components of the criminal justice apparatus, including:

- the police (Crank, 1994; Ericson & Haggerty, 1997; Kappeler 1999; Kraska & Cubellis, 1997; Manning, 1977, 2001; Marx, 1988; Robinson, Scaglione & Olivero, 1994; Sheptycki 2000; Shearing & Stenning, 1987; Skolnick 1994);
- the courts (Feeley, 1979; Hucklesby, 1997; Nardulli, Eisenstein & Flemming, 1988; Wice, 1985);
- corrections (Foucault, 1977; Garland, 2001c; Marquart & Crouch, 1985; Mauer, 2001; Simon, 1993; Welch 1995); and
- juvenile justice (Bernard, 1992; Cicourel, 1995; Singer, 1996).

### Criminal Justice Theoretical Orientations

Given this large body of literature, the initial task for our field is to develop a well-recognized, easily accessible theoretical infrastructure. Bernard and Engel (2001) provided us with one attempt at an organizational schema for criminal justice theory. Their article categorized and organized a broad range of scholarship around the various dependent variables that might comprise the larger object of study, "criminal justice." The advantages to this approach were that it first successfully delineated the various levels of theorizing possible in explaining criminal justice phenomena. Second, it managed to encapsulate a large body of previously disconnected scholarship into a coherent whole. This approach's primary drawback, however, was that it did not help identify and categorize our field's explanations. A more familiar organizational schema designed around the "independent variables," or, as Marenin and Worrall (1998) put it, the "determining forces of criminal justice," is still needed.

The difference in crime theory is that we have readily identifiable theorists that have posited specific, and sometimes testable, theories about crime and delinquency. The fact that our field has few readily identifiable theories of criminal justice, and that the object of study is so varied, does not preclude steps toward developing a recognized infrastructure. Still, the complexity of our object of study, as well as the lack of a coherent theoretical project, necessitates a broader and more abstract approach, similar to that employed in other disciplines such as sociology, education, public administration, and organizational studies



(Carr & Stephens, 1986; Craib, 1984; Denhardt, 1984; Morgan, 1986; Ritzer, 1983).<sup>4</sup>

Sociology, for example, usually maps its theoretical terrain by taking a broad gaze at its intellectual landscape. In viewing the activity of theorizing as occurring on differing levels (see, for example, Craib, 1984; Flyvbjerg, 2001; Giddens, 1987; Ritzer, 1983), theoretical typologies are usually organized around the broad-based labels “theoretical frameworks” or “theoretical orientations,” as opposed to specific theories ready-made for testing (see, for example, Morgan, 1986; Ritzer, 1983; Turner, 1978; Wagner, 1984). Tittle (1994) employed just such a schema in criminology when categorizing “theories of formal social control”—which are explanatory frameworks targeting the criminal justice system—using what he termed “foundational perspectives” and “theoretical orientations” (he used both concepts synonymously).<sup>5</sup>

A useful first step in mapping the vast terrain of criminal justice theory, therefore, would be to identify and elucidate the basic tenets of the various “theoretical orientations” that attempt to make sense of criminal justice phenomena. A theoretical orientation is simply an interpretive construct: *a logically coherent set of organizing concepts, causal preferences, value-clusters, and assumptions that work to orient our interpretations and understanding of criminal justice phenomena.*<sup>6</sup> The goal would not be to develop a single, testable criminal justice theory; on the contrary, the objective would be to illuminate the multiple theoretical lenses (broad-based interpretive constructs) crime and justice scholars employ for helping us understand the behavior of the criminal justice system and trends in crime control.<sup>7</sup>

Several theoretical orientations in our field are easily identified, the “systems” theoretical orientation being the most obvious. Most academics would agree that the system’s framework has dominated our field’s thinking and research about criminal justice. The network of governmental agencies responding to our crime problem is universally known as the criminal justice “system.” The system’s framework is derived from the biological sciences,

4. A strong argument could be made that sociology does not have a coherent theoretical infrastructure, despite the large number of scholarly books, textbooks, and journal articles attempting to do so. The difference in criminal justice studies, however, is that our field does not have even one book, and only a few articles (cited above). Developing an infrastructure constitutes an ongoing project in sociology; our field thus far has no explicit project.

5. Tittle (1994) identified four theoretical orientations: consensus; conflict; socio-psychological; and bureaucratic.

6. All theoretical orientations contain within their organizing concepts and assumptions a particular value cluster. The systems orientation, for example, carries with it the value assumptions of structural functionalism. Rational-legalism holds inherently conservative values in that it assumes without question the legitimacy of the law and its just application. The Oppression orientation, on the other hand, is highly skeptical of governmental power and emphasizes the repressive nature of formal crime control measures for marginalized groups. A clearly articulated theoretical infrastructure could go a long way toward acknowledging and clarifying the myriad value positions intertwined in criminology/criminal justice scholarship (Crank, 2003; Flyvbjerg, 2001).

7. I could cautiously call these paradigms. The notion of “paradigms,” however, is at this point overused and loaded with ambiguous meanings.

Parson's structural functionalism, and organizational studies. It has a strong reformist element, emphasizing the importance of enhancing criminal justice system coordination, efficiency, rational decision-making, and technology.<sup>8</sup>

Numerous other possibilities exist. I have recently identified and detailed the basic tenets and associated literature of eight theoretical orientations targeting criminal justice phenomena. Table 1 is a small excerpt of a larger schematic found in *Theorizing Criminal Justice* (Kraska, 2004).

Table 1 summarizes eight theoretical orientations, constructed as metaphors, which are routinely employed in our field. These orientations include criminal justice as: (1) Rational-Legalism; (2) System; (3) Crime control vs. Due process; (4) Politics; (5) the Social Construction of Reality; (6) Growth Complex; (7) Oppression; and (8) Late-modernity. The orientations' basic features are noted underneath. The process of identifying our discipline's major theoretical orientations is undoubtedly subjective; the orientations examined are meant to be likely options, out of numerous possibilities.<sup>9</sup> The two orientations reviewed above, the Systems and Oppression frameworks, are obvious choices. Our field has in fact traditionally limited itself to fixating on the tension between the supposed polar positions of the Systems and Oppression orientations (often simplistically dichotomized into "consensus vs. conflict perspectives").<sup>10</sup>

The other six orientations listed in Table 1 demonstrate that a greater range and depth of explanatory frameworks exists in crime and justice studies. The Social Construction of Reality (SCR) orientation is a solid example. In just the last 15 years, SCR has become a central and essential fixture in theorizing and de-mythologizing mainstream knowledge about criminal justice and crime control behavior (see, for example, Cicourel, 1995; Cohen, 1972, 1985; Crank, 1994; Kappeler, 2004; Kappeler, Blumberg, & Potter, 2000; Rafter, 1990; Surette, 1998; Zatz, 1987).

8. Kraska (2004, p. 44) notes that there are actually two different strains of the systems theoretical orientation in our field.

Perhaps the best way to avoid confusion is to divide the application of systems thinking into two strains. The first we could call an open system strain. ... It is a more unadulterated use of the systems theoretical framework than that found in sociology and the hard sciences. ... The other strain sees the criminal law apparatus as a closed system and thus applies systems theory in a limited way. Heavy emphasis is placed on improving the technical efficiency of the crime control function through new technology and minor adjustments in rules and policies.

9. Space limitations obviously prohibit a complete description of, and justification for, each theoretical orientation. Table 1 demonstrates this approach's potential. Establishing a recognized body of theoretical orientations should be a long-term, ongoing developmental process. See Kraska's (2004) work for a detailed discussion of each theoretical orientation, along with relevant examples from the crime and justice literature.

10. See Duffee (1990) for an insightful discussion of the unproductive nature of this dichotomy and a review of the scholarship that demonstrates its flaws and limitations. I am also aware that pure system theory accounts for conflict; however, our field's use of system's theory has been drawn predominantly from "consensus" assumptions. See Kraska (2004) for a more complete discussion of the two different strains of system theory evident in criminology/criminal justice.

Table 1 Criminal justice theoretical orientations

Major Features	Rational/Legal	System	Packer's C.C. vs. D.P.	Politics	Social Construction	Growth Complex	Oppression	Late-Modernity
<b>Intellectual Tradition</b>	neo-classical; legal formalism	structural-functionalism; biological sciences; organizational studies	liberal legal jurisprudence; legal realism; socio-legal studies	political science; public admin.	interpretive school; symbolic interaction; social construction	Weber; Frankfurt School; critical public administration	Marx; feminism; critical sociology; race studies	Foucault; governmentality literature; postmodernism
<b>Key Concepts Employed</b>	rational-legalistic; rule-bound; taken for granted	functional; equilibrium; efficiency; technology; external forces; open system; closed system	value-cluster; efficiency, crime control values; due process values; needs-based values	ideology; conflict; symbolic politics; policy making/ implementing; State, community	myth; reality; culture; symbols; legitimacy; moral panic; impression-management institutional theory	bureaucracy building; privatization profit; complex; technical rationality; merging complexes	dangerous classes; gender; patriarchy; racism; class bias; conflict model; structural thinking; dialectics; praxis	actuarial justice; neo-liberal politics; exclusive society; safety norm; incoherence in CJ policy
<b>Why the Rapid CJ Expansion in the last 30 years?</b>	legal reaction to increased law-breaking (forced reaction theory)	cj system reacting to increases in crime (forced reaction theory)	pendulum swing toward crime control values; choosing punitiveness	politicians exploiting problem; politicized drug war; shift in ideology	moral panics; media exploitation; run-away cultural process; crime as scapegoat	dynasty building; growth complex; merging private with public; CJ with military	control of threatening groups; marginalized used as scapegoats; crisis in state legitimacy	crisis in state sovereignty; risk averse society; growth complex; moral indifference

Table 1 (Continued)

Major Features	Rational/Legal System	Packer's C.C. vs. D.P.	Politics	Social Construction	Growth Complex	Oppression	Late-Modernity
<b>Assumptions About Agency and Practitioner Motives</b>	well intended; protecting; serving; rule following; law abiding; professionalism	rational decision makers; efficient; adapting to external forces	responsive to politics; interest-based; ideological pulls; power-players	constructing problems for existing solutions; reacting to moral panics; culturally bound; managing appearances	self-serving; power-building; quest for immortality; means over ends; bureaucratic survival; technical over moral thinking	institutional racism, sexism, classism; often unaware of oppressive end-result of their own activities	navigating through massive transformations, late modern forces; good intentions, disturbing results
<b>Issues of Concern</b>	deterrence; defending the virtues and honor of the cjs	abuse of discretion; cutting-edge technology; streamline/centralize operations	Federalization; symbolic ideological intensification	media/bureaucrat/political exploitation; mythology; symbolic policies; war rhetoric; images of race/gender	exponential growth; private/public; military/police blur	violence against women; drug wars impact on marginalized; racial profiling	growth of system; changes in social control; rise of surveillance society

Its roots are found in symbolic interactionism and the interpretive school. It begins with the premise that reality is *socially constructed*: the result of an intricate process of learning and constructing language, symbols, meanings, and definitions of situations through interacting with other people and through our individual and collective experiences. In being skeptical of mainstream thinking about criminal justice, the Social Construction of Reality framework asks us to investigate the *myths* associated with criminal justice and crime control thinking, study the formation and maintenance of occupational cultures, scrutinize how certain behaviors and situations come to be reacted to as “crime,” and dissect the way in which public and private-based crime control tactics are produced. It would interpret the rapid expansion of the criminal justice apparatus in the last 30 years, for example, not as a result of worsening crime but rather as a result of moral panics, media and governmental distortions, and the political manipulation and exploitation of these distortions (Kappeler, 2004).

Packer’s well-known interpretive construct has also generated a good deal of scholarship targeted at making theoretical sense of the criminal law apparatus (Kraska, 2004). It concentrates on the driving force of “value-clusters” (“crime control” vs. “due process”) to affect the type of justice administered by the criminal justice system as well as the behavior of criminal law in general. Following the lead of Duffee and O’Leary (1974), we can broaden the explanatory power of Packer’s model to include “need-based” values (Longmire, 1981). These include the social service function found in a large percentage of police work, as well as the courts/corrections responding to the rehabilitation, restitution, and reintegration needs of offenders and victims. The pull of the pendulum between the three competing poles of crime control, due process, and needs-based value-clusters is a powerful explanatory framework for making theoretical sense of criminal justice behavior and issues.

As mentioned earlier, the socio-legal and sociology of punishment literature have been developing an impressive body of work labeled here the “Late-Modern” theoretical orientation. This theoretical lens situates the criminal justice apparatus (broadly defined) within macro-shifts associated with the current era of human history labeled “late-modernity.” Criminal justice and crime control phenomena are best explained as adaptations to late-modern social conditions. Five late-modern conditions frame this orientation:

- the rise of “actuarial justice” and the influence of the “risk society;”
- neo-liberal shift in macro-politics;
- increasing contradictions and incoherence in crime control policy;
- the decline of sovereign state’s legitimacy; and
- the ascendance of an “exclusion” paradigm for “managing” those perceived as posing a “safety” threat in an increasingly security-conscious society.

The Late-modern orientation is probably the most theoretically vigorous pursuit of criminal justice/crime control phenomena in the literature today.

## Conclusion: The Essentiality of Criminal Justice Theory

Given the breadth and depth of scholarship within the theoretical orientations discussed, it should be a straightforward task to re-orient our field to pursue criminal justice theory as a legitimate and essential enterprise. Tradition will likely be the central barrier. Our discipline, for reasons of political convenience rather than intellectual rigor, erroneously bifurcates itself into the theoretical pursuit of explaining crime (criminology), and the practical inquiry into what to do about crime (criminal justice studies). Overcoming this tradition will require an acknowledgment that our field's scholarship is rich with quality theoretical work targeting criminal justice and crime control phenomena, and that the purposeful pursuit of developing a body of criminal justice theory is essential to our disciplinary credibility and relevance.

The case has been made repeatedly over the last three decades that academic legitimacy in criminal justice studies will only come with a recognized and useable theoretical infrastructure (Bernard & Engel, 2001; Clear, 2001; Crank, 2003; Cullen, 1995; Duffee, 1980, 1990; Hagan, 1989; Marenin & Worrall, 1998; Sullivan, 1994; Zalman, 1981). The "theoretical orientation" approach outlined above holds promise in organizing a wide, diverse, and even competing body of thought and literature into a useable and coherent whole. Its boundaries would be fluid enough to allow for the development and inclusion of other orientations while simultaneously constructing some disciplinary parameters.

Criminal justice theory is essential for four other reasons. First, a multi-faceted theoretical awareness about criminal justice is essential for credible and quality research. Crime and justice scholars carry out numerous types of research developing and testing theory, evaluating policy, or describing phenomena. Regardless of the type, all research is influenced by and involves in some way theory. Theory influences the questions asked, the selection of the phenomenon under study, the observations themselves, the way in which quantitative or qualitative data are collected, and the interpretation of those data. Ignoring its presence only renders us ignorant to its influence.

Second, examining the why of criminal justice behavior yields important insights into its irrationalities, missteps, and disconcerting implications. Numerous criminal justice issues guide our analysis: the criminal justice apparatus's steep growth in size, power, and punitiveness; controversial new initiatives in the wars on terrorism and drugs; and disparities in the treatment of minorities, women, and the poor. Each of these objects of study necessitates a scholarly scrutiny of immediate causes as well as their larger theoretical context (cultural, political, economic, and sociological forces). Of course the level at which this scrutiny is carried out will vary—ranging from a critique of a single administrative practice, to perhaps a wholesale critique of the criminal justice growth complex (see theoretical orientation #6). Theoretically based scrutiny focused on criminal justice and crime control should not be misconstrued as inappropriately "critical." It is simply approaching criminal justice as a "research problem"—similar to how we study crime.

Third, criminal justice theory is essential for informed and effective practice. Theoretical orientations are the lenses through which all those involved in the community of criminal justice—policy-makers, media, criminal justice administrators and personnel, and even academics—engage in action. It is an integral part of the everyday world of criminal justice practice. Theory informs and guides practice, just as practice informs theory (Carr & Stephens, 1986; Lewin, 1951). Their interplay is critical to developing and implementing informed, effective, and responsive policies and practices (Morgan, 1986).

The fourth reason is the most important for bringing about substantive change. Criminal justice theory is essential for a quality education in our field of study. How is it that we have entire academic degree programs dedicated to the study of criminal justice, and yet most programs' curricula do not address explicitly its theoretical forces and underpinnings?<sup>11</sup> Our students, and especially those students in graduate programs aspiring to work in academe, must have a solid grasp of both the "why of crime" and the "why of criminal justice and crime control." Criminal justice theory should become a normalized presence in our criminal justice and criminology degree programs, our textbooks, and our doctoral training.

The time appears right to elevate criminal justice theory to its proper place and work toward an academic discipline not just in practice but also in theory. Nothing less than our disciplinary integrity is at stake.

## Acknowledgments

This article was partially funded by a grant from Eastern Kentucky University's "Justice and Safety Research Program." Since the idea for this article came to me when studying for doctoral comprehensive exams in 1987, I would like to thank those Sam Houston State University professors that inspired this line of thought—Rolando del Carmen, Trey Williams, Sam Souryal, and especially, Dennis Longmire. I would also like to thank Chester Britt and the reviewers (especially reviewer #2) for substantially improving this piece.

## References

- Arrigo, B. A. (1999). *Social justice/Criminal justice: The maturation of critical theory in law, crime, and deviance*. Boston: Wadsworth.
- Barak, G., Flavin, J. M., & Leighton, P. S. (2001). *Class, race, gender, and crime: Social realities of justice in America*. Los Angeles, CA: Roxbury.

11. There are no doubt professors who teach about the why of criminal justice in various courses; however, there is no acknowledged place in CJ curriculums for this pursuit. I have found a few CJ programs that have courses titled "criminal justice theory," but the course descriptions make it clear that they are actually just traditional crime theory courses.



- Barlow, D. E., Barlow, M. H., & Chircos, T. G. (1993). Long economic cycles and the criminal justice system in the U.S. *Crime, Law and Social Change*, 19, 143-169.
- Barlow, D. E., Barlow, M. H., & Johnson, W. (1996). The political economy of criminal justice policy: A time series analysis of economic conditions, crime and federal criminal justice legislation. 1948-1987. *Justice Quarterly*, 13, 223-241.
- Bauman, Z. (2000). Social issues of law and order. *British Journal of Criminology*, 40, 205-221.
- Bernard, T. J. (1992). *The cycle of juvenile justice*. New York: Oxford University Press.
- Bernard, T. J., & Engel, R. (2001). Conceptualizing criminal justice theory. *Justice Quarterly* 18, 1-30.
- Bernstein, R. J. (1976). *The restructuring of social and political theory*. London: Methuen University Press.
- Black, D. (1976). *The behavior of law*. New York: Academic Press.
- Carr, W., & Stephens, K. (1986). *Becoming critical: education, knowledge and action research*. London: The Falmer Press.
- Chesney-Lind, M. (2001). Out of sight out of mind: Girls in the juvenile justice system. In C. M. Renzetti & L. Goodstein (Eds.), *Women, crime, and the criminal justice: Original feminist readings*. Los Angeles, CA: Roxbury.
- Christie, N. (2000). *Crime control as industry: Toward GULAGS, western style* (3rd ed.). New York: Routledge.
- Cicourel, A. V. (1995). *The social organization of juvenile justice*. New Brunswick, NJ: Transaction.
- Clear, T. R. (2001). Has academic criminal justice come of age? *Justice Quarterly*, 18, 709-726.
- Cohen, S. (1972). *Folk devils and moral panics: The creation of the mods and rockers*. London: McGibbon & Kee.
- Cohen, S. (1985). *Visions of social control*. Cambridge: Polity Press.
- Craib, I. (1984). *Modern social theory: From Parsons to Habermas*. Brighton, UK: Wheat-sheaf Books.
- Crank, J. P. (1994). Watchman and community: Myth and institutionalization in policing. *Law and Society Review*, 28, 325-351.
- Crank, J. P. (2003). *Imagining justice*. Cincinnati, OH: Anderson.
- Cullen, F. (1995). Fighting back: Criminal justice as an academic discipline. *ACJS Today*, 13, 1ff.
- Danner, M. (1998). Three strikes and it's women who are out: The hidden consequences for women of criminal justice policy reforms. In S. L. Miller (Ed.), *Crime control and women: Feminist implications of criminal justice policy* (pp. 131-156) Thousand Oaks, CA: Sage.
- Dantzker, M. L. (1998). *Criminology and criminal justice: Comparing, contrasting, and intertwining disciplines*. Boston: Butterworth-Heinemann
- Denhardt, R. B. (1984). *Theories of public organization*. Pacific Grove, CA: Brooks/Cole.
- Duffee, D. E., & O'Leary, V. (1974). Models of correction: An entry in the Packer-Griffiths Debate. *Criminal Law Bulletin*, 7, 329-352.
- Duffee, D. E. (1980, 1990). *Explaining criminal justice: community theory and criminal justice reform*. Prospect Heights, IL: Waveland Press.
- Einstadter, W., & Henry, S. (1995). *Criminological theory: An analysis of its underlying assumptions*. New York: Harcourt Brace.
- Ericson, R. V. and Haggerty, K. D. (1997). *Policing the risk society*. Oxford: Clarendon Press.
- Fay, B. (1977). *Social theory and political practice*. London: Allen & Unwin.
- Feeley, M. (1979). *The process is the punishment: Handling cases in a lower criminal court*. New York: Sage.

- Flyvbjerg, B. (2001). *Making social science matter: Why Social inquiry fails and how it can succeed*. Cambridge: Cambridge University Press.
- Foucault, M. (1977). *Discipline and punish: The birth of the prison*. New York: Pantheon.
- Garland, D. (1990). *Punishment and modern society: A study in social theory*. Chicago: The University of Chicago Press.
- Garland, D. (1997). Governmentality and the problem of crime: Foucault, criminology, sociology. *Theoretical Criminology*, 1, 173-214.
- Garland, D. (2001a). *The culture of control: Crime and social order in contemporary society*. Chicago: The University of Chicago Press.
- Garland, D. (2001b). Epilogue: The new iron cage. *Punishment and Society*, 3, 197-199.
- Garland, D. (2001c). *Mass imprisonment: Social causes and consequences*. Thousand Oaks, CA: Sage.
- Gibbons, D. C. (1994). *Talking about crime and criminals: Problem and issues in theory development in criminology*. Englewood Cliffs, NJ: Prentice-Hall.
- Giddens, A. (1987). *Social theory and modern sociology*. Stanford, CA: Stanford University Press.
- Habermas, J. (1972). *Knowledge and human interests*. Translated by J. J. Shapiro, London: Heinemann.
- Habermas, J. (1974). *Theory and practice*. T. McCarthy (Trans.). London: Heinemann.
- Hagan, J. (1989). Why is there so little criminal justice theory? Neglected macro- and micro-level links between organizations and power. *Journal of Research in Crime and Delinquency*, 26, 116-135.
- Hagan, J., Hewitt, J. D., and F. Alwin (1979). Ceremonial justice: Crime and punishment in a loosely coupled system. *Social Forces*, 58, 506-527.
- Henderson, J. H., & Boostrom, R. L. (1989). Criminal justice theory: Anarchy reigns. *Journal of Contemporary Criminal Justice*, 5, 29-39.
- Hucklesby, A. (1997). Court culture: An explanation of variations in the use of bail by magistrates' courts. *Howard Journal of Criminal Justice*, 36, 129-141.
- Jeffery, C. R., Myers, L. B., & Wollan, L. A. (1991). Crime, justice and their systems: Resolving the tension. *Criminologist* 16, 1ff.
- Jurik, N., & Martin, S. (2001). Femininities and masculinities, and organizational conflict: Women in criminal justice occupations. In C. M. Renzetti & L. Goodstein (Eds.), *Women, crime, and the criminal justice system: Original feminist readings*. Los Angeles, CA: Roxbury.
- Kappeler, V. E. (1999). Reinventing the police and society: The spectacle of social control. In V. E. Kappeler (Ed.), *The police and society: Touchstone readings* (pp. 481-493). Prospect Heights, IL: Waveland Press.
- Kappeler, V. E. (2004). Inventing Criminal justice: Myth and Social Construction. In P. B. Kraska (Ed.), *Theorizing criminal justice: Eight essential orientations*. Grove, IL: Waveland Press.
- Kappeler, V. E., Blumberg, M., & Potter, G. (2000). *The mythology of crime and criminal justice* (3rd ed.). Prospect Heights, IL: Waveland Press.
- Kraska, P. B. (2001). *Militarizing the american criminal justice system: The changing roles of the armed forces and police*. Boston: Northeastern University Press.
- Kraska, P. B. (2004). *Theorizing criminal justice: Eight essential orientations*. Long Grove, IL: Waveland Press.
- Kraska, P. B., & Cubellis, L. J. (1997). Militarizing Mayberry and beyond: Making sense of American paramilitary policing. *Justice Quarterly*, 14, 607-629.
- Lewin, K. (1951). *Field theory in social sciences*. New York: Harper & Row.
- Liska, A. E. (1992). *Social threat and social control*. Albany: State University of New York Press.
- Longmire, D. R. (1981). A popular justice system: A radical alternative to the traditional criminal justice system. *Contemporary Crises*, 5, 15-30.

- Mann, C. R. (1995). Women of color and the criminal justice system. In B. R. Price & N. J. Sokoloff (Eds.), *The criminal justice system and women: Offenders, victims, and workers*. New York: McGraw-Hill.
- Manning, P. K. (1977). *Police work: The social organization of policing*. Prospect Heights, IL: Waveland Press.
- Manning, P. K. (2001). Theorizing policing: The drama and myth of crime control in the NYPD. *Theoretical Criminology*, 5, 315-344.
- Marenin, O., & Worrall, J. (1998). Criminal justice: Portrait of a discipline in progress. *Journal of Criminal Justice*, 26, 465-480.
- Marquart, J., & Crouch, B. (1985). Judicial reform and prisoner control. *Law and Society Review*, 16, 557-586.
- Martin, S. E., & Jurik, N. C. (1996). *Doing justice, doing gender: Women in law and criminal justice occupations*. Thousand Oaks, CA: Sage.
- Marx, G. T. (1988). *Undercover: Police surveillance in America*. Berkeley: University of California Press.
- Mauer, M. (2001). The causes and consequences of prison growth in the United States. *Punishment and Society*, 3, 9-20.
- Maxfield, M. G., & Babbie, E. (2005). *Research methods for criminal justice and criminology*. Belmont, CA: Wadsworth.
- Miller, J. (1996). *Search and destroy: African-American males in the criminal justice system*. Cambridge: University of Cambridge Press.
- Miller, S. L. (1998). *Crime control and women: Feminist implications of criminal justice policy*. Thousand Oaks, CA: Sage.
- Milovanovic, D., & Russell, K. (2001). *Petit apartheid in the U.S. criminal justice system*. Durham, NC: Carolina Academic Press.
- Morgan, G. M. (1986). *Images of organization*. Newbury Park, CA: Sage.
- Nardulli, P. F., Eisenstein, J., & Flemming, R. B. (1988). *The Tenor of justice: Criminal courts and the guilty plea process*. Urbana: University of Illinois Press.
- O'Malley, P. (1999). Volatile and contradictory punishment. *Theoretical Criminology*, 3, 175-196.
- O'Malley, P. (2000). Criminologies of catastrophe? Understanding criminal justice on the edge of the new millennium. *The Australian and New Zealand Journal of Criminology*, 33, 153-167.
- Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford, CA: Stanford University Press.
- Parenti, C. (1999). *Lockdown America: Police and prisons in the age of crisis*. New York: Verso Press.
- Popper, K. R. (1963). *Conjectures and refutations*. London: Routledge & Kegan Paul.
- Price, B. R., & N. J. Sokoloff (1995). *The criminal justice system and women: Offenders, victims, and workers*. New York: McGraw-Hill.
- Quinney, R. (1974). *Critique of legal order: Crime control in capitalist society*. Boston: Little, Brown & Co.
- Quinney, R., & Wildeman, J. (1991). *The Problem of crime: A Peace and justice perspective*. Mountain View, CA: Mayfield.
- Rafter, N. H. (1990). The Social construction of crime and crime control. *Journal of Research in Crime and Delinquency*, 27, 376-389.
- Reiman, J. (2001). *The rich get richer and the poor get prison: Ideology, class, and criminal justice*. Boston: Allyn & Bacon.
- Renzetti, C. M., & Goodstein, L. (2001). *Women, crime, and the criminal justice system: original feminist readings*. Los Angeles, CA: Roxbury.
- Ritzer, G. (1983). *Contemporary sociological theory*. New York: Knopf.
- Robinson, C. D., Scaglione, R., & Olivero, J. M. (1994). *Police in contradiction: The evolution of the police function in society*. Westport, CT: Greenwood Press.

- Rose, N. (2000). Government and control. *British Journal of Criminology*, 40, 321-339.
- Scheingold, S. A. (1984). *The politics of law and order: Street crime and public policy*. New York: Longman.
- Shearing, C. D., & Stenning, P. C. (1987). *Private policing*. Newbury Park, CA: Sage.
- Shelden, R. (2001). *Controlling the dangerous classes: A critical introduction to the history of criminal justice*. Needham Heights, MA: Allyn & Bacon.
- Sheptycki, J. (ed.) (2000). *Issues in transnational policing*. London: Routledge.
- Simon, J. (1993). *Poor discipline: Parole and the social control of the underclass, 1890-1990*. Chicago: University of Chicago Press.
- Simon, J. (1995). They died with their boots on: The boot camp and the limits of modern penalty. *Social Justice*, 22, 25-48.
- Simon, J., & Feeley, M. (1994). Actuarial justice: The emerging new criminal law. In D. Nelken (Ed.), *The futures of criminology*. Thousand Oaks, CA: Sage.
- Singer, S. (1996). *Recriminalizing delinquency: Violent juvenile crime and juvenile justice reform*. New York: Cambridge University Press.
- Skolnick, J. H. (1994). *Justice without trial: Law enforcement in a democratic society*. New York: Maxwell Macmillan.
- Sullivan, R. R. (1994). The tragedy of academic criminal justice. *Journal of Criminal Justice*, 22, 549-558.
- Surette, R. (1998). *Media, crime, and criminal justice: Images and realities*. Belmont, CA: Wadsworth.
- Tittle, C. R. (1994). The theoretical bases for inequality in formal social control. In G. Bridges & M. Myers (Eds.), *Inequality, crime, and social control*. Boulder, CO: Westview Press.
- Turner, J. H. (1978). *The structure of sociological theory*. Homewood, IL: Dorsey Press.
- Wagner, D. G. (1984). *The growth of sociological theory*. Beverly Hills, CA: Sage.
- Welch, M. (1995). *Corrections: A critical approach*. New York: McGraw-Hill.
- Wice, P. B. (1985). *Chaos in the courthouse: The inner workings of the urban criminal courts*. New York: Praeger.
- Young, J. (1999). *The exclusive society: Social exclusion, crime and difference in late modernity*. London: Sage.
- Zalman, M. (1981). A heuristic model of criminology and criminal justice. Chicago: Joint Commission on Criminology and Criminal Justice Education and Standards.
- Zatz, M. S. (1987). Chicano youth gangs and crime: The creation of a moral panic. In P. B. Kraska (Ed.), *Theorizing criminal justice: Eight essential orientations*. Long Grove, IL: Waveland Press.