

Politics of Criminal Justice

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Abstract

The apparent disjuncture between the reality of crime and government responses suggests that criminal justice is not simply a technical response to crime. If criminal justice were guided by technical choices, gun death would equal gun control, gun violence would be considered a public health crisis replete with public resources, and the political will to solve it. Instead what we know from the social sciences is that criminal justice tends to be caught up in morality plays about human nature and political competition over the distribution of public goods, including, but perhaps especially, security, where special interests rather than the public interest tend to hold sway. The significance of studying the politics of criminal justice lies in its capacity to account for and explain the disjuncture. Key issues for future research will be scholars' ability to close this gap.

INTRODUCTION

Barely a month after the incident at Sandy Hook Elementary School, the second deadliest mass shooting in the United States, a high school majorette was fatally shot on Chicago's South Side, a week after performing President Barack Obama's Inauguration. These brutal events unfortunately illustrate how much politics shapes the nation's response to crime and violence. Violent crime is real in America, but all too often the politics of criminal justice distorts rational and pragmatic responses. Debates about "gun rights," for example, end up protecting people with guns but fail to protect people from violence. Lisa Miller has identified this dynamic as the American *security gap* where the state's uneven response to violence (over and under-enforcement) often creates conditions of insecurity, particularly for those most affected by crime, ethnic and racial minorities in disadvantaged neighborhoods.

The apparent disjuncture between the reality of crime and government responses suggests that criminal justice is not simply a technical response to crime. If criminal justice were guided by technical choices gun death would equal gun control, gun violence would be considered a public health crisis replete with public resources and the political will to solve it. Instead what

we know from the social sciences is that criminal justice tends to be caught up in morality plays about human nature and political competition over the distribution of public goods, including, but perhaps especially, security, where special interests rather than the public interest tend to hold sway.

The significance of studying the politics of criminal justice lies in its capacity to account for and explain the disjuncture between the reality of crime and public policy. Key issues for future research will be scholars' ability to close this gap. Public criminology, a type of civically engaged scholarship, may provide a way to close the gap.

FOUNDATIONAL RESEARCH

Émile Durkheim, a pioneer of sociology as a discipline, lay the foundation for contemporary studies of the politics of criminal justice. To Durkheim, crime and punishment reflected the very core of society, that is, the deeply held shared moral beliefs that bind people together. Likewise, the rituals of criminal justice provided effective mechanisms to reaffirm these social bonds, the backbone of social life. What is crucial here is how Durkheim emphasized the active role of the public in the rituals of criminal justice: It was the third parties, the onlookers, the public that gave penal sanctioning its force and social significance. This line of reasoning experienced a renaissance with the publication of David Garland's *Punishment & Modern Society*, a master work that inspired a new generation of scholars to study criminal justice as a complex social institution, embedded in broader cultural, economic, and historical contexts, paying particular attention to public sentiment and the political configurations of criminal justice.

Pushing this field forward, scholars such as Jonathan Simon, Katherine Beckett, David Garland, Franklin Zimring, Marie Gottschalk, Loïc Wacquant, and others developed sophisticated accounts of how and why politics shapes American criminal justice, specifically to account for the rise of mass imprisonment and subsequent decline of social welfare. By tracing how the War on Crime displaced and devalued the War on Poverty in the 1960s, Simon (2007) has argued that the very apparatus of government has been reconfigured to "govern through crime:" the logic of crime control has colonized nearly all areas of public life, emphasizing risk management, security, and punishment over the provision of public goods. In her analysis of politics and media, Beckett (1997) showed how electoral politics hijacked the substance and trajectory of crime policy, taking it out of the realm of professional expertise and introducing a more fever-pitched and fear-driven national discourse on crime that demanded more punishment. Garland (2001) similarly documents the collapse of a penal welfarist approach to crime, emphasizing the social causes of crime, as it was replaced by

a neo-liberal approach that emphasized individual responsibility and moral failing where the only solution to crime and social disorder was increased penal sanctioning. In her historical and political analysis, Marie Gottschalk (2006, 2012) pinpoints the role of special interests in expanding the state's capacity to punish going back to the 1920s with the creation of the Federal Bureau of Investigation. She shows how unlikely alliances between liberals and conservatives throughout the twentieth century, including law enforcement, law and order proponents, crime victim's movements, and the women's movement, played a pivotal role in building the carceral state.

But rather than solve the crime problem, the prison boom has had a wide range of negative effects on the life chances of those groups most affected by crime and violence, ethnic and racial minorities (Clear, 2008; Petersilia, 2003). Bruce Western (2006) has rigorously documented the extent of these collateral damages, including such high levels of inequality (i.e., unemployment, family break up, disenfranchisement) for those most affected by mass imprisonment as to call into question the very meaning of citizenship in the United States. Similarly, Jeff Manza and Christopher Uggen (2006) have shown how felon disenfranchisement and other civil penalties associated with imprisonment have hollowed out the quality of citizenship for thousands of former felons and their families.

Despite varying emphasis on state theory, political interests, and citizenship, this body of work has contributed to the widely accepted view that politics is central to the dynamics of criminal justice in the United States. Together it provides a benchmark for all further inquiry on the subject.

CUTTING-EDGE RESEARCH

There are at least three major streams of research that extend foundational work in significant and promising ways, including research on: racial politics, democratic politics, and global politics. Each approach asks us to rework taken-for-granted assumptions about the nature, character, and effects of politics on criminal justice.

RACIAL POLITICS

Michael Tonry (1995) and Loïc Wacquant have advanced our understanding of criminal justice by incorporating racial politics. Wacquant has argued that the rise of neo-liberalism and its associated penal state cannot be understood without an analysis of its racial dynamics. "Hyper-incarceration," as he has redefined "mass incarceration," specifically and disparately impacts racial and ethnic minorities at six times the rate of whites and has become

the functional equivalent of the ghetto, a social institution designed to maintain racial hierarchies and social inequality (Wacquant, 2000, 2009). Likewise, Michelle Alexander calls the contemporary era of black incarceration: *The new Jim Crow*. Similarly, Naomi Murakawa (2008) has argued that law and order politics must be understood as a backlash against the growing success of the US Civil Rights Movement (also see Murakawa & Beckett, 2010). The racial dynamics in criminal justice are indisputable and must be taken into account if we are to fully grasp its social significance and underlying causal mechanisms.

DEMOCRATIC POLITICS

The emerging literature on comparative penal sanctioning (Cavadino & Dignan, 2006; Lacey, 2008; Savelsberg, 1994; Sutton, 2004) and subnational crime control (Barker, 2009; Campbell, 2012; Greenberg & West, 2001; Miller, 2008, 2013; Lynch, 2009; Page, 2011; Schoenfeld, 2010) advance our analytical frameworks for understanding the political process itself. For example, Nicola Lacey shows how criminal justice policies, specifically penal practices, are shaped by particular political institutional arrangements rather than general trends. She also argues that the politicization of crime itself depends on specific features of the political context with significant variation across OECD countries (also see Lappi-Seppälä, 2008).

In an innovative analysis of the politics of the prison guards' union in California, Joshua Page develops the concept of the "penal field" to show how the relative position of key actors, including access to resources and symbolic capital, significantly shapes the trajectory of public policies. In her multi-level case studies, Lisa Miller found that the character and demands of the politics of criminal justice changed dramatically by level of government. On the city or municipal level, she found that African Americans, often portrayed as passive victims to mass imprisonment, were actively engaged in crime control politics but tended toward more holistic approaches, including demands for restrictive gun control and employment programs. But as crime control traveled to the federal and national level, special interests and lobbyists dominated the debate, often to the detriment of cross-cutting approaches favored by local minority residents. This author found that the type of institutional context had major consequences for the type of crime control: More open and deliberative forums tended to support penal moderation (Barker, 2009; also see Green, 2006; Loader and Sparks, 2012; Rowan, 2011) whereas more closed contexts with lagging or blocked public participation tended toward more punitive approaches. Taken together, this new work on politics challenges a conventional view that public participation necessarily leads to harsh justice. It suggests

instead that forums for public participation could be expanded rather than contracted to support more democratic and more moderate crime control policies.

GLOBAL POLITICS

With her focus on globalization, Katja Aas has taken the field into path-breaking directions. This work has opened up criminology's traditional focus on domestic politics to better account for the effects of transnational governance and global politics. It has shown how criminal justice tools such as surveillance, detention, and confinement are implicated in strategies of global governance to monitor, regulate, and separate elite global citizens from "crimmigrant" others, those deemed unworthy and threatening (Aas, 2011; Melossi, 2012). The growing literature on the criminology of mobility has shown how the politics of the affluent Global North increasingly relies on criminal justice to regulate, block, confine, or expel migrants from the Global South (Weber & Bowling, 2008; Weber & Pickering, 2011). Mary Bosworth has contributed to the development of this field by bridging theories of sovereignty and legitimacy with migration control. As Garland identified the pivotal role domestic penal sanctioning plays in reaffirming state sovereignty, Bosworth has argued that increased migration control functions in a similar way (Bosworth, 2008) and has become a major strategy of governance in the United Kingdom (Bosworth & Guild, 2008). This work makes a clear and strong case that the politics of criminal justice should be conceptualized and analyzed in global context, in ways that go beyond domestic politics and even a comparative perspective, if we are to fully explain the reach and power of criminal justice.

KEY ISSUES FOR FUTURE RESEARCH

AGENDA

Taken together this work has provided theoretical rigor and a wide range of empirical evidence to show that politics is indeed central to the operation and meaning of criminal justice. Researchers have spent the past two decades identifying, documenting, and explaining more precise mechanisms of politics to account for the substance and trajectory of criminal justice policies. There is still work to be done and a number of outstanding issues for future research.

Despite the breadth and depth of research activity in this area, more could be done to systematize our collective knowledge on the topic. It is especially pertinent to close the communication gap between different research traditions that have at times traveled along parallel tracks. By increasing

collaboration and collating findings from both qualitative and quantitative traditions, researchers would be in a stronger position to advance our conceptual, theoretical, and analytical tools as well as identify dead ends and weak claims. This process would also improve interpretations of the data and possibly make the field more relevant to public debate.

Specifically, more could be done in the areas of cutting-edge research on racial politics, democratic politics, and global politics to refine conceptualizations of key concepts and develop theoretical models that better link key factors and varying levels of analysis together. When researchers use the concept “politics,” it is not always clear we are talking about the same thing or measuring the same process. Some may use the term to capture something about the “politicization” of crime while others may use it to describe institutionalized decision making or governance. We need more precise analytical frameworks that not only identify significant factors in politics but the relationships between the players, institutions, and outcomes. Field theory, historical institutionalism, and formal modeling may provide fruitful avenues forward.

It is also fairly clear that most of the academic debate about the politics of criminal justice is referring to the American or British context. Researchers in this area could make a more earnest attempt to systematically incorporate knowledge about political systems outside the United States and Britain, to incorporate what we know about Japan, China, Brazil, the Nordic countries, the European Union, Russia, the Middle East, for example, and to recognize what we think we know as general phenomenon is really a cultural and historical specific product. Global mobility and global politics necessitate that we broaden our view. Comparative criminology offers a bridge into this domain.

PUBLIC CRIMINOLOGY

As noted, there is a gap between the reality of crime and government responses. Public criminology seeks to close that gap by participating in public dialogue about crime and penal sanctioning with informed social science research. Christopher Uggen and Michelle Inderbitzen (2010) and Ian Loader and Richard Sparks (2011) have been at the forefront of this debate, urging researchers to view criminology and related fields of inquiry as civic enterprises. If we return to the mass shooting noted in the beginning of this entry, we can immediately see the relevance and urgency of public criminology. In the aftermath of the shooting, the National Rifle Association, a powerful special interest group with deep pockets and entrenched allies, proposed placing armed guards outside children’s schoolhouses as a solution to gun violence. Shortly after, Aaron Kupchik (2010), sociologist and

author of *Homeroom Security*, wrote an op-ed and testified at a House Summit on Youth Violence, explaining how and why increased police presence in public schools is a bad idea since it reframes the learning environment as a place of crime and insecurity and often has negative effect on youth development. The securitization of schools expands rather than contracts concerns about crime and violence. This particular example is one of many in which public criminology can play an important role in communicating social science research in an informative way to address pressing social concerns in real time.

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