

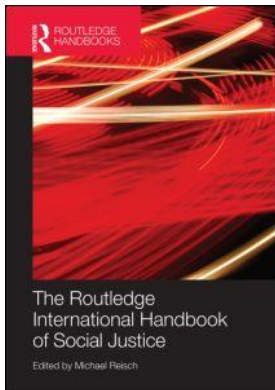
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SOCIAL JUSTICE AND CRIMINAL JUSTICE

Frederic G. Reamer

Introduction

Crime is an international challenge. Although patterns of criminal conduct and societal responses vary tremendously, every community in every land has some degree of concern about the risk and impact of murder, rape, robbery, assault, theft, financial crimes, and so on. True, crimes that are well known in some communities are unfamiliar in others. For example, white collar crimes involving fraudulent hedge funds are a distinct possibility in Western nations with complex banking and investment industries in ways they are not in non-industrialized communities in remote parts of the world that do not have this financial apparatus. But most serious crimes are familiar to most nations and communities.

The ways in which societies define, prevent, and respond to crimes vary, leading to a wide range of social justice challenges. For example, some nations prosecute and imprison homosexuals (Mondimore, 1996), while such practices are unheard of in other areas of the world. Flogging prisoners is widely accepted in some Asian countries but considered reprehensible in most others (Moskos, 2011). Although there have been earnest efforts to eliminate bias and discrimination in the criminal justice system across nations, oppressive, dehumanizing conditions persist and require ongoing attention; these conditions need not be viewed as inevitable or intractable.

Criminal justice clearly involves far more than the prevention of crime and the apprehension, conviction, punishment, and rehabilitation of offenders. Certainly it is important to understand these core components of the criminal justice system (crime prevention, law enforcement, adjudication, corrections); however, fully grasping modern-day criminal justice requires a rich analysis of complex social justice issues that shape various societies' approaches and responses to crime.

The nature of social justice: implications for criminal justice

Social justice is a complex topic with diverse meanings. In its broadest sense, social justice refers to the fair allocation of human rights, protections, opportunities, obligations, and social benefits. Social justice also entails acknowledging and addressing social and economic inequalities, and seeking to eliminate discrimination and oppression associated with race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political

belief, religion, immigration status, and mental or physical disability (Barker, 2003). Ideally, efforts to promote social justice include both large-scale social change activities, such as reducing income inequalities, homophobia, and workplace discrimination, and fair treatment of individuals (for example, ensuring that gay or lesbian domestic violence victims receive the same protections in courts of law as their heterosexual counterparts, and that children born to immigrant parents have access to education and healthcare). That is, social justice can be promoted “wholesale” or “retail.”

This distinction is particularly important in the area of criminal justice. Viewed broadly, some crimes can be understood as a function of pervasive, structural inequity, such that some individuals commit acts of theft, vandalism, and embezzlement because of their deep-seated oppression and subjugation (Reamer, 2003). Wholesale changes in income and resource distribution, and drastic reductions in institutional racism, for example, may be required to prevent and reduce crime significantly. Viewed more narrowly, true social justice requires the fair and equitable treatment of individual criminal suspects and inmates. Social justice at this retail level requires that criminal suspects not be tortured during interrogations in order to extract a confession, criminal court defendants receive fair trials, and prison inmates be treated humanely during their incarceration.

Without question, in recent years we have witnessed remarkable advances in the promotion of social justice across the criminal justice spectrum. Police departments worldwide have worked diligently to reduce citizen harassment, discriminatory practices, and corruption. There are noteworthy efforts among many police departments to enhance the quality of ethics training and relationships between police and citizens (Delattre, 2011; Perez & Moore, 2013). Further, many court systems throughout the world have taken ambitious steps to enhance the legal rights of criminal court defendants, minimize the likelihood of wrongful conviction, reduce discrimination in sentencing, and meet the needs of people whose criminal conduct is a function of mental illness and addiction (Bedner, 2008; Brett, 2010; Butts & Roman, 2004; Gardner, 2011; Kovalev, 2010; Lessenger & Roper, 2010; Miller & Perelman, 2009; Nolan, 2002; Ross & Graham, 2011). Many departments of correction have also worked diligently to prevent inmate abuse and discriminatory actions on the part of staffers (Amend, 2008; Gibbons & Katzenbach, 2006; Hayton & Boyington, 2006; Gojkovic, Brooker, & Owen, 2010; Klenowski, 2004; Othmani, 2008). Indeed, these are successes to be celebrated.

Despite these impressive efforts, in many nations criminal justice is saturated with social injustice. In contrast to social justice, social injustice entails various forms of dehumanizing and coercive domination, oppression, discrimination, and exploitation. In the criminal justice context, examples include police brutality and discrimination, coerced confessions by suspects, knowingly wrongful prosecutions and convictions in criminal court, and prison inmate abuse.

In *Confronting Injustice and Oppression*, Gil (1998) argues that several key assumptions underlie analyses of social injustice, all of which are relevant to criminal justice:

- Relations of domination and exploitation within and among human societies, whenever and wherever they exist, and unjust ways of life enforced and shaped by such relations, are results of human choices and actions. While not contrary to human nature, oppression and injustice are not inevitable expressions of it.
- Societies that initiate conditions of injustice, on small scales and local levels, tend to extend these relations and conditions also beyond their population and territories. Such oppressive practices and tendencies intensify gradually and acquire momentum as a result of cycles of resistance by victims and reactive repression by perpetrators, as well as through competition for dominance among different oppressive and unjust societies. Eventually, conditions of injustice penetrate and permeate most branches of humankind all over the globe.

- Relations of domination and exploitation and the coercive processes by which they are established, maintained, and extended within and beyond societies, come to be reflected not only in social, economic, cultural, and political institutions, and in all spheres of everyday life, but also in the consciousness and behavior of their victims and perpetrators.
- Conditions of injustice and their gradual expansion were never, nor are they now, inevitable. People have often challenged these destructive practices and conditions (pp. 4–5).

Although Gil's discussion did not focus on criminal justice phenomena per se, his assertions about the nature of injustice and oppression pertain. Unjust and oppressive practices in criminal justice are the result of human choice and action; yet, they are not inevitable and can be challenged. Over time unjust and oppressive practices in criminal justice—in police departments, courts, and correctional facilities—have spread from local to global settings. Consistent with Gil's observations, unjust and oppressive practices in criminal justice settings have permeated daily life and the consciousness and behavior of both victims and perpetrators.

Injustice in criminal justice: the evidence

Sadly, evidence of injustice and oppression can be found throughout the criminal justice system: in law enforcement, the judiciary, and corrections.

Law enforcement

Police work is a noble and honorable profession. The vast majority of law enforcement officials conduct their work with integrity and dedication, accompanied by daunting personal risk. However, the data are compelling: Throughout the world there are numerous, noteworthy instances of police discrimination and brutality (Johnson & Cox, 2004/2005; Dean & Gottschalk, 2011; Harris, 2010; Hassell & Archbold, 2010; Kane & White, 2009; Kleinig, 1996; Newburn, 1997). As Dean and Gottschalk (2011) conclude from their analysis of police conduct in Norway,

The great majority of police officers are committed to honourable and competent public service and consistently demonstrate integrity and accountability in carrying out the often difficult, complex and sometimes dangerous activities involved in policing by consent. However, in every police agency there exists an element of dishonesty, lack of professionalism and criminal behavior.

p. 16

Based on their extensive review of research, Kane and White (2009) assert that police misconduct occurs in several key forms: police crime, police corruption, and abuse of authority:

- *Police crime* occurs when officers use their positions of public trust to violate existing criminal statutes. Examples include stealing contraband from police evidence lockers and extorting money from legitimate business owners for police protection.
- *Police corruption* involves officers who use their position or authority to engage in profit-motivated misconduct for personal gain. Police taking money from illegitimate businesses in exchange for non-enforcement is an example of corruption.
- *Abuse of authority* includes physical abuse (e.g., police brutality and/or excessive force), psychological abuse (most often in the context of police interrogations), and legal abuse (generally in the form of perjury to achieve an organizational goal or to protect corrupt enterprise).

Considering a broader political context, there is ample evidence that some oppressive and corrupt regimes have used police authority to punish and silence their ideological opponents. Prominent examples include the use of police authority during apartheid in South Africa (Shaw, 2002) and under the former Soviet Union (Shearer, 2009), the Pinochet regime in Chile (Kornbluh, 2004), and the Kim Il Sung regime in North Korea (Cha, 2012).

Some scholars argue that police officers and officials who are unethical and engage in misconduct are “bad apples” who sully the reputation of otherwise honorable police departments and law enforcement agencies (Dean & Gottschalk, 2011; Harris, 2010). This so-called “rotten-apple theory” contrasts with analyses that focus on organizational dynamics and culture that contribute to police misconduct (Ivkovic, 2009). For example, Dean and Gottschalk (2011) posit that comprehensive explanations of police misconduct must include individual, group, and organizational factors.

Individual factors focus on the individual qualities of police officers and officials, for example, the ways in which their personalities, family histories, and personal relationships correlate with decisions to engage in misconduct. Group characteristics include the influence of the ways in which police are socialized beginning with their days in the police academy. From this point of view, some police learn to protect their own from allegations of misconduct, even when they have evidence to the contrary. Organizational characteristics focus on the ways in which administrative leaders shape and foster a culture that condones or encourages misconduct, sometimes within the context of an “us” (police) versus “them” (criminals) mentality; that is, the ends (protecting the public and solving crimes) may justify the means (misconduct). Individual, group, and organizational factors intersect with police misconduct, police corruption, and predatory policing to produce nine patterns of behavior and motives for engaging in unethical conduct (Dean & Gottschalk, 2011).

“Police misconduct” categories

- 1 “*Overzealous*” motive—involves an individual who projects a police persona as a tough, non-nonsense, hard-talking image of efficiency which at times can spill over into behaviors which violate established rules, policies and/or procedures for lawful policing and hence lead to police misconduct.
- 2 “*Misguided*” motive—involves an individual who has acquired through inappropriate socialization within the police culture a set of unprofessional ideas about police work such as being cynical, mistrusting, and having out-of-sync priorities with the mission of policing which leads them to ignore and/or disobey what they see as hindering rules, policies, and procedures.
- 3 “*Unethical*” motive—involves an individual who feels secure and/or protected enough in their role of a police officer within the organization to knowingly violate established ethical standards and/or engage in illegal risk-taking behaviors to achieve their goals.

“Police corruption” categories

- 4 “*Opportunism*” motive—involves an individual who has developed an “us and them” mentality towards the public and cynicism about the value of the job which is manifested in a desire to look after one’s self by taking opportunities, as they present themselves, to misuse police powers for personal satisfaction.
- 5 “*Condoning*” motive—involves an individual who either by commission knowingly engages in the misuse of police power or by omission turns a blind eye to other police who misuse

police authority because of the unwritten code of silence that implicitly guarantees protection for deviant police by relying on other officers to join in and/or, at least, keep quiet about incidents of corrupt practices.

- 6 “*Obstructionism*” *motive*—involves an individual who not only indirectly condones at a group level unethical and/or corrupt practices but who also actively obstructs such practices coming to light by covering them up through omission (i.e., police don’t prosecute police) or commission (i.e., failure to investigate incidents properly by internal audits/ethical standards unit) and as such represent integrity failures within the organization.

“Predatory policing” categories

- 7 “*Greed*” *motive*—involves an individual who has perverted the role of policing as promoting law and justice to one of self-seeking exploitation of opportunities to prey on others for financial and personal gain.
- 8 “*Collusion*” *motive*—involves an individual who colludes with others by banding together to maximize benefits through exploiting opportunities for profit.
- 9 “*Connected*” *motive*—involves an individual who actively networks within policing and/or outside the organization to forge links with the criminal underworld in order to maximize profit-sharing through exploitation on others.

Although some police officers actively choose to engage in unethical behavior and misconduct, others seem to cross the moral line unknowingly or without explicit awareness of their wrongdoing. As Johnson and Cox (2004/2005) claim, “officers do not necessarily intend to act outside the law, but they fail to recognize the boundary between right and wrong in the enforcement of law” (p. 69).

The judiciary

Many, but not all, nations recognize the importance of due process and the rule of law during judicial proceedings. In principle, due process during criminal proceedings affords defendants a number of basic rights and has several key elements: notice of hearing, an opportunity to be heard in a competent tribunal, and the right to defend oneself. In the United States, for example, the Constitution protects criminal defendants from self-incrimination, cruel and unusual punishment, and double jeopardy. The Constitution also guarantees the right to legal counsel when individuals face criminal prosecution (Samaha, 2008). Many other nations afford criminal defendants similar protections (Findlay, Odgers, & Yeo, 2009; Reichel, 2012).

Unfortunately, the rights of some criminal defendants are violated at different stages of judicial processing: the decision to prosecute, during trial, and at sentencing. This can occur in individual cases (for example, when a prosecutor who is campaigning for re-election is unusually aggressive with a high-profile case) and because of more systemic bias and discrimination in the criminal justice system. Most scholarly discussions focus on alleged racial bias, which may be unintentional, among some prosecutors (Smith & Levinson, 2012). Prosecutors wield enormous power and enjoy remarkable discretion with respect to their decisions to file criminal charges, support or oppose bail, disclose potentially exculpatory evidence to defense counsel, offer or accept a plea bargain, challenge potential jurors, and recommend prison sentences. Although the vast majority of prosecutors are principled, earnest professionals who practice law with impressive integrity, some engage in misconduct or fall prey to human biases that

taint their judgment. For example, Smith and Levinson (2012) highlight the influence of implicit racial bias during the prosecutorial process:

Implicit racial bias describes the cognitive processes whereby, despite even the best intentions, people automatically classify information in racially biased ways. Since the late 1990s, a vast amount of research on implicit bias has demonstrated that a majority of Americans, for example, harbor negative implicit attitudes toward blacks and other socially disadvantaged groups, associate women with family and men with the workplace, associate Asian-Americans with foreigners, and more. Furthermore, researchers have found repeatedly that people's implicit biases often defy their awareness and self-reported egalitarian values

pp. 797–798

There is empirical evidence to suggest that, at least in some jurisdictions, minority defendants receive less favorable pretrial detention determinations than their white counterparts. Similar to a prosecutor's decision to charge, this finding might be partially driven by implicit racial attitudes and stereotypes. In the bail context, in addition to the stereotype of the black defendant as hostile and prone to criminality, which itself could lead to inflated bail requests, implicit racial bias might also operate through a functionally distinct mechanism—namely, the implicit devaluation of the defendant. One major factor in all bail determinations is the strength of the defendant's ties to the community, including employment situation.

p. 814

Extensive research documents the potentially powerful influence of racial and ethnic stereotypes (Ayres & Waldfogel, 1994; Bagenstos, 2007; Davis, 1998, 2007a, 2007b; Devine, 1989; Gilbert & Hixon, 1991; Levinson & Young, 2010; Radelet & Pierce, 1985; Rudman & Ashmore, 2007; Rudman & Lee, 2002). Based on their comprehensive review of research on implicit stereotypic associations based on race, Smith and Levinson (2012) found reasons to be concerned about possible bias among prosecutors:

Considered together, over a decade of research on implicit racial bias shows that racial stereotypes can be activated easily and can lead to powerful and biased decision-making. In the case of prosecutorial decision-making, there is significant reason to be concerned that implicit biases could similarly lead to discriminatory results.

p. 805

Further, Davis (2007b) argues that prosecutorial bias may be the result of complex, sometimes subtle dynamics associated with racial bias manifested by police at the point of arrest and detention:

Race often plays a role in the decision to detain and/or arrest a suspect. In addition, policy decisions about where police officers should be deployed and what offenses they should investigate have racial ramifications. A white defendant with no criminal arrest or conviction record may have engaged in criminal behavior. If he lives in a community that resolves certain criminal offenses (drug use, assault, etc.) without police intervention, he may be a recidivist without a record. Likewise, a black defendant who lives in a designated "high crime" area may have been detained and

arrested on numerous occasions even if he has not engaged in criminal behavior. Thus, the existence or nonexistence of an arrest or conviction record may not reflect criminality. A prosecutor without knowledge of or sensitivity to this issue may give prior arrests undue consideration in making charging and plea bargaining decisions.

p. 209

In addition, there is compelling evidence of judicial misconduct and discrimination in sentencing once defendants have been prosecuted in criminal court. Judicial misconduct occurs when judges use insulting or inappropriate humor, denigrate lawyers, use racist speech, engage in sexual harassment, accept gifts or bribes, and misuse alcohol (Bell, 2009). Based on his comprehensive review of relevant empirical research, Miller (2004) concludes that most examples of bad judging can be grouped into the following categories: (1) corrupt influence on judicial action; (2) questionable fiduciary appointments to represent minors, incapacitated persons, and other vulnerable parties; (3) abuse of office for personal gain; (4) incompetence and neglect of duties; (5) overstepping of authority; (6) interpersonal abuse; (7) bias, prejudice, and insensitivity; (8) personal misconduct reflecting adversely on fitness for office; (9) conflict of interest; (10) inappropriate behavior in a judicial capacity; (11) lack of candor; and (12) electioneering and purchase of office. Documented cases of judicial corruption include tipping suspects about search warrants; hindering execution of arrest warrants; blocking the filing of charges; reducing bail; overlooking requirements for changes in legal status; fixing parking tickets; dismissing moving violations; taking care of driving-under-the-influence cases for acquaintances; issuing corrupt rulings in civil and criminal matters; granting special access privileges to lawyers with pending cases; directing cases to a friendly judge and lobbying the judge to whom the matter is assigned; and altering outcomes by tampering with or fabricating official records. Evidence demonstrates that unethical judges receive various rewards for influencing cases: goods, sex, debt relief, cash, or the satisfaction of helping out family, friends, lovers, employees, elected officials, and colleagues (Miller, 2004).

Corrupt judges have appointed friends and allies as criminal defense counsel, court evaluators, guardians, receivers, trustees, mediators, referees, special counsel, or special masters (Miller, 2004). Judges have been known to abuse their authority in order to avoid legal process, punish enemies, pursue political ambitions, conduct business ventures, and run personal errands. They have also used public funds for personal expenditures; falsified expense records for travel, meals, and lodging; facilitated bogus reimbursement requests by staff; imposed their religious beliefs when ruling on motions or rendering legal opinions; misused the franking privilege regarding postage expenses; required criminal defendants to contribute to judges' pet charities in lieu of fines; and wasted public funds for unnecessary expenditures, such as travel to seminars of questionable relevance and value.

In a number of egregious cases, unethical judges have disregarded the limits of their authority and engaged in personal investigations of alleged wrongdoing; summarily tried defendants without allowing them to prepare a defense; sentenced them to jail before conviction; forced cases to trial for inappropriate reasons; become personally involved with litigants; ordered witnesses arrested; engaged in improper *ex parte* contacts with parties and witnesses; inappropriately held people in contempt for offenses such as whispering, napping, tardiness, truancy, sassiness, and wearing annoying tee shirts; denied people the opportunity to respond to citations for contempt; summarily banned people from their courtrooms; and intimidated people by threats of contempt. There are a number of documented cases involving judges who displayed bias and prejudice against African Americans, Hispanics, Jews, Catholics, Italian Americans,

English, Danes, Yugoslavians, Japanese, undocumented immigrants, homosexuals, poor people, unwed mothers, and people on welfare (Miller, 2004). For example, a New York State Supreme Court judge was sentenced to prison after admitting that he solicited a \$115,000 kickback in exchange for approving a multi-million-dollar court settlement (Glaberson, 2002). In another celebrated case, a former Superior Court Judge in California was sentenced to prison after admitting that he had a sexual affair with the wife of a criminal court defendant the judge had sentenced (Rosenzweig, 2000).

Among the most troubling forms of injustice involve discrimination and bias in sentencing. This occurs when judges are influenced by defendants' extra-judicial characteristics, such as their race, ethnicity, nationality, and sexual orientation (Bushway & Piehl, 2001; Jordan & Freiburger, 2010; Nolan, 1997; Petersilia, 1985). Discrimination and bias can also occur systematically, particularly when statutes and strict sentencing guidelines to which judges must adhere lead to unjustifiable disparities.

Controversy surrounding racial disparities in prison sentencing surfaced notably in the United States in the mid-1980s, especially when University of Maryland basketball star Len Bias died in 1986 of a drug overdose while celebrating having just been chosen by the Boston Celtics in the NBA draft (Mauer, 2004). Most commentators assumed Bias's death was the result of a crack cocaine overdose, which led to ambitious legislative activity in the U.S. Congress designed to create harsh penalties for the drug. The following year it became clear that Bias had, in fact, not died from crack, but from an overdose of powder cocaine. However, in 1988, legislation established stiff mandatory penalties for possession or sale of even small amounts of crack (Mauer, 2004). The federal legislation established significantly different penalties for the two forms of the drug. For crack, the possession or sale of as little as 5 grams mandated 5 years in federal prison, while the sale of 500 grams led to the same sentence. This discrepancy led to remarkable racial disparities in sentencing, since crack cocaine has been far more popular in the African American community.

In a prominent and methodologically ambitious meta-analysis of 71 studies of the impact of race on criminal court sentences, Mitchell (2005) found that African Americans generally are sentenced more harshly than Whites—independent of offense seriousness and defendant criminal history—and that unwarranted racial disparities persist. This meta-analysis focused on five types of sentencing outcomes: (1) imprisonment decisions; (2) length of prison sentence; (3) sentence severity; (4) discretionary lenience; and (5) discretionary punitiveness. Discretionary lenience refers to sentencing decisions that involve punishing a defendant in a more lenient manner than ordinary (e.g., downward departures from sentencing guidelines, stays of sentence). Discretionary punitiveness refers to sentencing outcomes where a defendant was sentenced more harshly than typical (e.g., upward departures, enhanced sentencing provisions for eligible repeat offenders). As Mitchell (2005) concludes,

these findings undermine the so-called 'no discrimination thesis' which contends that once adequate controls for other factors, especially legal factors (i.e., criminal history and severity of current offense), are controlled unwarranted racial disparity disappears. In contrast to the no discrimination thesis, the current research found that independent of other measured factors, on average African Americans were sentenced more harshly than whites.

p. 462

Empirical research also indicates that sentencing outcomes can be affected by judges' own race and ethnicity. King, Johnson, and McGeever (2010) analyzed data from the 1990–2002 biannual

waves of the State Court Processing Statistics Survey of Felony Defendants in Large Urban Counties (SCPS) in the United States. The SCPS survey is administered during the month of May in even-numbered years in approximately 40 of the 75 most populous counties in the United States. For each county, felony cases filed during the month of May are tracked until final disposition or until one year elapses. The survey captures a sizeable proportion of criminal cases processed in a given year because the sampling frame (75 largest counties) accounts for a third of the U.S. population and half of the reported crimes in the country. The authors' analyses were based on more than 50,000 cases. They conclude that more racial diversity among lawyers results in less racial disparity in criminal sentencing.

Racial disparity in death penalty cases has also received considerable attention. Tabak (1999) has summarized compelling evidence of racial disparity in U.S. courts. The independent U.S. General Accounting Office (GAO) found that in over 80 percent of the studies it reviewed, the race of the victim correlated with getting the death penalty, i.e., that for otherwise similar homicides committed under otherwise similar circumstances and where defendants had similar criminal histories, a defendant was several times more likely to receive the death penalty if his victim were White than if his victim were African American. In the most validly conducted studies, the defendant was four or five times as likely to get the death penalty if the victim was White than if the victim was African American. Tabak argues that these results were remarkably consistent across data sets, time periods, states, and analytic techniques.

In the United States, federal sentencing guidelines offer less judicial discretion and fewer opportunities for departure compared to most state guidelines systems (Everett & Wojtkiewicz, 2002). Sentences are based on a table developed by the federal sentencing commission that consists of a matrix with six categories of criminal history arrayed along the horizontal axis and 43 levels of offense seriousness down the vertical axis. The appropriate sentence range for each class of convicted persons is determined by finding within the sentencing table the intersection of the criminal history category and the offense seriousness level. Formally, judicial discretion under the guidelines is limited to sentencing within the range. In practice, the sentencing decision is influenced by plea bargaining negotiations between prosecution, defense, and often the probation officer. At the time of sentencing, the judge may accept or modify the sentence recommendation of the prosecutor and probation officer. In all circumstances, the guidelines clearly specify the factors which may legitimately be considered when determining the sentence (Everett & Wojtkiewicz, 2002).

In a major study of sentencing bias (Everett & Wojtkiewicz, 2002), the authors examined data from the Monitoring Database created by the U.S. Sentencing Commission. The authors' analysis shows that Whites are more often sentenced for less harshly sanctioned economic offenses (shorter sentences), while African Americans are more often sentenced for more harshly sanctioned drug offenses (longer sentences); this difference in offense type accounts for part of the overall race difference in sentencing severity. Disparities persist even when the seriousness of the offense is taken into consideration, suggesting that race and ethnicity of the offender are critical variables.

Sadly, prisons throughout the world are known to house some wrongfully convicted, innocent inmates. Among the best known efforts to identify and assist wrongfully convicted inmates are the Innocence Project at Yeshiva University in New York City and the Center on Wrongful Convictions at Northwestern University in Evanston, Illinois. The Innocence Project was founded in 1992 by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University to assist prisoners who could be proven innocent through DNA testing. To date, 292 people in the United States have been exonerated by DNA testing, including

17 who served time on death row. These individuals served an average of 13 years in prison before exoneration and release.

Since its founding following the 1998 National Conference on Wrongful Convictions and the Death Penalty, the Center on Wrongful Convictions has been instrumental in the exonerations of 34 innocent men and women. Before the founding of the Center, members of its staff were instrumental in 14 additional exonerations. Of the 48 individuals who were exonerated, 13 had been sentenced to death. In all, they spent 478 years behind bars for crimes they did not commit.

Comprehensive social justice reform in the judiciary also requires focus on crime victims. For too long, victims were invisible and sometimes abused during judicial proceedings. This has been true especially in sexual assault cases where, too often, both police and prosecutors have questioned and challenged victims' accounts and been suspicious of their motives and judgment—a phenomenon known as “blaming the victim” (Ryan, 1976; Suarez & Gadalla, 2010). In recent years, however, many courts have implemented ambitious victims' rights programs to ensure that victims are protected from the accused; notified of judicial proceedings and included in them; offered restitution, when appropriate; and treated fairly and with dignity (Davis, Lurigio, & Herman, 2012).

Corrections

Once offenders are incarcerated, they run the risk of institutional abuse and discrimination. A number of studies have documented the prevalence of inmate victimization (Beck & Johnson, 2012; Chonco, 1989; Davidson-Arad, 2005; Gaes & Goldberg, 2004; Maitland & Sluder, 1998; O'Donnell & Edgar, 1998; Wolff, Blitz, Shi, Bachman, & Siegel, 2006; Wolff, Blitz, Shi, Siegel, & Bachman, 2007; Wolff, Shi, & Siegel, 2009; Wooldredge, 1994, 1998). In an ambitious survey of inmate victimization in a sample of 7,528 of male and female prisoners in the United States, Wolff et al. (2009) found that while percentages of inmate-on-inmate physical victimization are equal for male and female inmates (21 percent), male inmates report a significantly higher percentage of physical victimization by staff than do females (25 percent vs. 8 percent). Female inmates report roughly equal percentages of sexual (24 percent) and physical (24 percent) victimization independent of type of perpetrator. By contrast, males are far more likely to experience physical than sexual victimization (35 percent vs. 10 percent). Sexual victimization is more common between female inmates (inmate on inmate) than between female inmates and staff (staff on inmate), but the reverse is true for male inmates. Nearly 40 percent of male and female inmates reported some form of victimization during a six-month period.

Although most corrections staffers behave professionally, throughout history both adult and juvenile prisons have been the scene of horrific, sometimes subtle, forms of abuse (Phelps, 1999). For example, a prominent U.S. Department of Justice study (Beck & Johnson, 2012) estimates that nearly 10 percent (9.6 percent) of former state prison inmates report being sexually abused during their most recent detention. About half of all prisoners reporting abuse were victimized by corrections staff. Female staffers were by far the most likely perpetrators. Among survivors of staff sexual misconduct, 79 percent were males reporting sexual activity with female staff. Additionally, female inmates were more than three times more likely to be victimized by another prisoner than were male inmates. Female prisoners identifying as bisexual or lesbian were twice as likely to be abused by staff as prisoners identifying as heterosexual (8 percent for both bisexual and lesbian inmates versus 4 percent for heterosexual inmates).

Nearly a third of prisoners (32.4 percent) reported staff sexual harassment, for example, during showers and searches or while undressing. The vast majority of prisoners abused by staff were

abused multiple times (86 percent) and by multiple perpetrators (47 percent). Almost one in five boys under the age of 18 (18.6 percent) held in adult facilities were sexually abused by staff (Beck & Johnson, 2012).

Capital punishment

Perhaps the most compelling and persistent social justice issue concerns capital punishment. Public policy on capital punishment has fluctuated throughout the world. Many nations permit capital punishment, while others prohibit it (Reamer, 2005). According to Amnesty International (2012), 40 countries on average during the mid-1990s were known to carry out executions each year; while during the first years of the 21st-century executions were reported in 30 countries on average. Most recently, 25 countries reportedly executed prisoners in 2008, while 19 countries did so in 2009. In 2010, 23 countries were known to have carried out executions. The number of countries that prohibit capital punishment in law or practice has substantially increased over the past decade, rising from 108 in 2001 to 139 in recent years.

Death penalty proponents typically cite the appropriateness of a retributive response to heinous crime. As David Gelernter—the Yale University professor who was severely injured by one of Theodore Kaczynski’s bombs—asserts: “We execute murderers in order to make a communal proclamation: that murder is intolerable. A deliberate murderer embodies evil so terrible that it defiles the community” (1998, p. 26). Proponents argue that offenders who commit heinous crimes deserve the ultimate penalty and the public has a right to impose it as a reflection of its collective rage and vengeance. As Brettschneider (2001) notes in his reflections on executing convicted murderers, death penalty supporters focus on the cruel acts of the criminals being executed, hoping to horrify the public into support for the penalty. This horror is at the root of what is perhaps the most commonly invoked argument for the death penalty: the need for revenge. Although the victim cannot feel the satisfaction of revenge, proponents of the family can experience it vicariously. Many supporters of the death penalty often cite the need to protect family members or children as part of their defense for the punishment. It is not a great leap to claim that imagining oneself or one’s own loved ones in the position of the victim would lead to an even greater emotional need for vengeance and for a feeling of vindication during the execution of a murderer (p. 17).

In contrast, death penalty opponents typically advance several key arguments (Bidinotto, 1998; Costanzo, 1998; Johnson, 1998; Permanent Deacons, 1998; Ryan, 2012; van den Haag, 1995):

- Mercy is ethically superior to revenge or vengeance.
- Execution is inhumane and undermines the sacredness of life.
- The death penalty does not alleviate the fear of violent crime.
- The death penalty does not protect society more effectively than other alternatives, such as life imprisonment without parole.
- The death penalty does not restore the social order breached by offenders.
- All human life—even that of a killer—has intrinsic value, so that it is immoral to kill another individual under any circumstances.
- Society’s response to a crime should not necessarily be proportionate to the harm caused by the criminal (an eye for an eye, a life for a life).
- The death penalty does not effectively deter serious crime.
- The death penalty is not imposed with fairness and discriminates against the poor and ethnic and racial minorities.

- The death penalty is not imposed in such a way as to prevent the execution of innocent death-row inmates. For example, the Center on Wrongful Convictions at Northwestern University School of Law (2012) has compiled a list of 18 cases where “there is such overwhelming doubt of guilt that the only rational inference to be drawn from reading them together as a collection is that almost all, if not all, of the defendants were innocent.”

Pursuing justice in criminal justice

In recent years, criminal justice professionals in many locales have made major strides in their efforts to promote social justice and integrity. We have witnessed significant gains in fairness in every component of the criminal justice system. Many police departments have undertaken ambitious projects to reduce racial profiling and discrimination, and prevent police corruption and misconduct. Both adult and juvenile court administrators and justices have implemented comprehensive sentencing guidelines to enhance fairness and reduce bias. They have also pursued innovative court programs to protect victims and provide enlightened services to defendants whose criminal conduct is a function of their mental illness and addictions. Further, many corrections departments and facilities have worked hard to prevent inmate abuse by staffers and other inmates.

A good example of innovative practices is the St. Louis County (Missouri) Municipal Mental Health Court, which was created in 2001 to pay special attention to the mental health needs of criminal court defendants who struggle with mental illness (Linhorst et al., 2009). Staffers, attorneys, and judges actively seek court dispositions that avoid incarceration and provide much-needed mental health services. Another impressive innovation is the ambitious effort by the Portland (Oregon) Police Bureau (2009) to provide its staffers with rigorous training to prevent racial profiling. In response to concerns, police officials invited a national expert to speak with Bureau command staff and police advisory committees about racial profiling; trained officers on cultural competency, conflict resolution, crisis intervention, and ethical decision-making; launched a new recruitment campaign aimed at attracting a diverse pool of applicants; and surveyed citizens about their perceptions of police stops and racial profiling. These are heartening developments.

Yet, despite these noteworthy improvements in the administration of criminal justice and the professionalism of most practitioners, nagging and troubling forms of injustice persist. Some laws are themselves unjust, for example, those that define homosexuality as a prosecutable offense. Some police officers abuse and harass citizens and behave unethically. Some judges discriminate in their sentencing practices, mistreat defendants, and are corrupt. Too many inmates are victimized by staffers and each other. Clearly, much work remains if the criminal justice field is to be known for its promotion of social justice rather than its injustice.

Toward that end, criminal justice professionals must continue their earnest pursuit of fair and ethical policies and practices. Although it may seem hackneyed, it is important to state that law enforcement personnel must treat citizens fairly and without bias and abuse. Judges must strive to avoid discriminatory sentencing and any hint of judicial misconduct. Prison administrators must do everything within their power to prevent inmate abuse and staff misconduct. This is easier said than done, of course.

As an overarching guide, criminal justice professionals would do well to look to one of the world's most ambitious statements of human rights: the United Nations' *Universal Declaration of Human Rights*, adopted by the UN General Assembly in 1948, which resulted from the experience of the Second World War. With the end of that war, and the creation of the United

Nations, the international community vowed never again to allow atrocities such as those of World War II to happen again.

Those very same principles and commitments can be extended to the criminal justice realm. The UN Declaration highlights the guiding force of pertinent social justice concepts: human dignity; nondiscrimination; personal security and safety; humane treatment free from cruelty, torture, and arbitrary arrest and detention; equal protection under the law; presumption of innocence until proven guilty; and freedom of opinion and expression.

One way to promote social justice within criminal justice is to reduce, where possible, the adversarial nature of relationships citizens have with law enforcement officials, participants in the judicial process (for example, lawyers), and corrections officials. Throughout modern history, criminal justice has been afflicted by an adversary culture, mistrust, and conflict. One relatively recent innovation designed to enhance cooperation and minimize conflict is therapeutic jurisprudence, which emerged in the 1980s (Wexler & Winick, 2003). Therapeutic jurisprudence is generally described as the use of the law and legal mechanisms as a therapeutic agent rather than an adversarial, conflict-ridden tool.

According to Freckelton (2008), therapeutic jurisprudence has been “described as one of the major vectors of a growing movement in the law towards a common goal of a more comprehensive, humane, and psychologically optimal way of handling legal matters” (pp. 578–579). Principles of therapeutic jurisprudence—which emphasize the law’s impact on an individual’s emotional life, psychological well-being, and fairness—can be applied fruitfully in every stage of the criminal justice process. They can be used to enhance constructive relationships between police and citizens, the judiciary and criminal defendants, and corrections staffers and inmates. When feasible, criminal justice professionals can look for opportunities to use therapeutic jurisprudence protocols to prevent conflict, promote procedural justice, facilitate mediation, protect crime victims, and promote alternative dispute resolution. Such steps can go a long way toward enhancing social justice in criminal justice.

A case that unfolded in Ottawa, Canada provides a useful illustration of therapeutic jurisprudence (Wexler, 2011). An attorney and his “director of therapeutic solutions” worked with a criminal court defendant’s mother in canvassing the neighborhood and producing an affidavit, with attached neighbor letters supportive of a sentence that did not include incarceration. The neighbor letters asserted that they would not fear for their safety if the defendant was to live with his mother, and that they would be willing to report him if he violated imposed probation conditions.

Another illustration involves an attorney who is an expert in fetal-alcohol spectrum disorder. The attorney works with young adult defendants diagnosed with fetal-alcohol syndrome in an effort to negotiate sanctions that include appropriate treatment and restitution rather than incarceration (Wexler, 2011).

An important form of therapeutic jurisprudence is restorative justice. Restorative justice is a victim-centered response to crime that provides opportunities for the victim, the offender, their families, and representatives of the community at large to address the harm caused by the crime (Umbreit, 2000). Restorative justice is based on a belief that an important goal of the criminal justice system should be to restore victims who have been harmed or injured by offenders. More specifically, restorative justice stresses the importance of:

- providing opportunities for more active involvement in the process of offering support and assistance to crime victims;
- holding offenders directly accountable to the people and communities they have violated;
- restoring the emotional and material losses of victims, to the degree possible;

- providing a range of opportunities for dialogue and problem solving to interested crime victims, offenders, families, and other support persons;
- offering offenders opportunities for competency development and reintegration into productive community life;
- strengthening public safety through community building (Reamer, 2005; Umbreit, 2000).

A good example of an innovative program is the Waterloo (Ontario, Canada) Restorative Justice Approach to Elder Abuse Project (Groh & Linden, 2011). The project is a collaborative effort involving seven community agencies in the Kitchener–Waterloo area of Southwestern Ontario. Staffers draw on restorative justice options—including mediation, sentencing circles, healing circles, and community conferencing—to address issues involving physical violence, psychological harm, financial exploitation, and neglect. A principal goal of the project is to avoid adversarial proceedings among family members and caregivers.

Promoting social justice also requires keen focus on broader political and economic phenomena that are linked with crime. We know quite well that persistent poverty, racism, oppression, economic exploitation, and other forms of injustice often precipitate some forms of crime. Ambitious, forceful attempts to promote social justice require explicit attention to these broad societal issues, in addition to our efforts to protect the rights of individual citizens, crime victims, and offenders.

Pursuing justice is a noble ideal. It is perhaps ironic that the criminal justice field requires significant social justice reforms. There is little doubt that thoughtful, principled professionals have a good understanding of what justice requires; however, political will and a collective commitment to genuine reform are more elusive. The challenge going forward is to convert our grasp of what social justice means into a lived reality that is truly just. As Martin Luther King, Jr. said in a letter he penned to fellow clergymen in 1963 while incarcerated in the Birmingham City Jail, “injustice anywhere is a threat to justice everywhere.”

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