

# **Toward Justice**

Broadening the Study of Criminal Justice

**Kristi Holsinger and Lori Sexton**



**TOWARD JUSTICE**  
**BROADENING THE STUDY**  
**OF CRIMINAL JUSTICE**

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# Toward Justice

Designed as a text for Criminal Justice and Criminology capstone courses, *Toward Justice* encourages students to engage critically with conceptions of justice that go beyond the criminal justice system, in order to cultivate a more thorough understanding of the system as it operates on the ground in an imperfect world—where people aren't always rational actors, where individual cases are linked to larger social problems, and where justice can sometimes slip through the cracks. Through a combined focus on content and professional development, *Toward Justice* helps students translate what they have learned in the classroom into active strategies for justice in their professional lives—preparing them for careers that will not simply maintain the status quo and stability that exists within our justice system, but rather challenge the system to achieve justice.

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There are so many aspects to admire and respect about *Toward Justice*, including the authors' clear and engaging coverage of expansive topics, the untangling of seemingly simple concepts such as "justice," the timeliness of such a book, and the remarkable included activities and exercises. But more than anything, I appreciate how *Toward Justice* provides students with hope, concrete strategies and potential solutions, and with some of the leadership, creativity, and responsibility necessary to advocate for social and legal justice.

**Joanne Belknap**, *Professor of Ethnic Studies,  
University of Colorado-Boulder*

This book is dedicated to all of the Capstone students  
who have changed the way we think—and  
teach—about justice. Without you, this  
book wouldn't exist.

# Journals Cooperation Sheet

The editors of this book would like to express their gratitude to the Taylor and Francis Journals division for providing the following articles for publication:

## *Criminal Justice Studies:*

“A feminist analysis of the American criminal justice system’s response to human trafficking”

“Build to sustain: collaborative partnerships between university researchers and criminal justice practitioners”

“Pretrial detention and guilty pleas: if they cannot afford bail they must be guilty”

“Race, neighbourhood context, and risk prediction”

“Women in policing: changing the organizational culture by adopting a feminist perspective on leadership”

“Worlds apart: The views on crime and punishment among white and minority college students”

## *Journal of Human Behavior in the Social Environment:*

“The Ecology of Homelessness”

## *Justice Quarterly:*

“Broken Windows or Window Breakers: The Influence of Physical and Social Disorder on Quality of Life”

“Perceived Criminal Threat from Undocumented Immigrants: Antecedents and Consequences for Policy Preferences”

“Serious Youth Violence and Innovative Prevention:  
On the Emerging Link Between Public Health and  
Criminology”

“Where the Margins Meet: A Demographic Assessment  
of Transgender Inmates in Men’s Prisons”

*The Justice Professional:*

“A writing-intensive approach to criminal justice education:  
the California Lutheran university model”

*Women and Criminal Justice:*

“Women and Drug Use: The Case for a Justice Analysis”

Without their generous cooperation, *Toward Justice: Broadening the Study of Criminal Justice* would not have been possible.



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# Part I

## Understanding Justice

The purpose of this book is to encourage Criminal Justice and Criminology (CJC) students to consider justice in the broadest possible sense. You might be asking yourself, why this broad focus on justice? The answer is simple: criminal justice is not the only kind of justice that matters. Criminal justice systems (CJSs) don't operate in a vacuum. They work alongside other governmental and nongovernmental agencies, operate in different cultural contexts, and affect diverse groups of people. Ignoring the context around the CJS—acting as though the CJS is a closed system—prevents us from seeing the many factors that affect the CJS in diverse ways. In order to understand criminal justice in context, we need to first *see* the context. Once we understand the context, we can identify the relationships between the criminal justice system—its components, processes, and people—and outside forces and institutions.

One way in which we limit our view of the CJS is by failing to see the people who are caught up in the system and the contexts in which their lives unfold. The CJS is not a machine that blindly processes identical individuals; it consists of people enforcing written strictures against other people, individuals making decisions and exercising discretion, consciously and unconsciously, that impact the lives of others. When we ignore the people on both sides of the equation, we are unable to see how their identities, experiences, and cultures shape their perspectives on the world and the ways they behave; how their material circumstances affect their life chances via blocked opportunity or inequality; and how the CJS protects or fails them.

What does all of this mean? Consider a woman who is arrested for drug possession and doesn't have enough money to make bail. This sounds like a criminal justice issue, right? Now consider that this woman has a child. When the woman is arrested and detained, her child is left with no one to care for her and is swept into the foster care system. When we zoom out on this picture to see the CJS in its surrounding context, suddenly a wealth of new information becomes available to us. Even with the addition of a single detail (the woman has a daughter), we've already involved another governmental agency, impacted another human being—a juvenile at that—and invoked the economy, social stratification, and inequality. We haven't even begun to consider elements like race, ethnicity, sexual orientation, religion, ability status, geographic region, or the many other elements that impact our lives.

This book will help you to make sense of the myriad factors that affect the CJS, but are all too often regarded as falling outside its purview. Consider this book a roadmap to justice—but not the type you get when you plan your route via Google maps, perfectly zoomed in to contain only the path that you will take from point A to point B, planned out for you in the most efficient and logical way. This book is more like an old-school, paper map that needs to be unfolded and examined bit by bit, one that provides more information than you think you need. We have some ideas of how you, as a CJC student, can achieve justice once you finish your degree. But that is not for us to decide. Instead of prescribing a route for you to take from here to justice (as if it were that simple!), we wrote a book that maps the terrain of justice so you can plot your own course. We begin, in Chapter 1, with a critical examination of justice—what it is, the forms it can take, and the complicated relationship that it has to the law in general and the CJS in particular. In Chapter 2, we turn our attention not to justice, but to injustice. We discuss the many forms that injustice can take and the complex interrelationships between the various social problems that we face in our society today. We place a particular emphasis on social and economic inequality, two factors that undergird much of the injustice that we see (and sometimes fail to see) around us. In Chapter 3, we tackle the knotty issues of social status, privilege, and oppression. As in Chapter 2, this chapter has an in-depth focus on a particular type of injustice that abounds in criminal justice: racism. We briefly consider the nature, causes, and manifestations of racism, as well as its implications for criminal justice.

# Chapter 1

## DEFINING JUSTICE

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### INTRODUCTION

Before you read any further in this text, stop and ask yourself what justice means to you. How would you define the word itself? When was the last time you stopped to think about the meaning of the word “justice”—or have you ever? Although college classes across multiple disciplines—criminology, sociology, and urban studies, for example—touch upon various justice-related issues in the context of criminal justice (CJ), they often do not spend much time exploring the complex, abstract, and sometimes contradictory notions of justice as a concept in and of itself. Similarly, when criminal justice is examined, it is not often situated within the larger framework of justice studies. This chapter will provide a starting point for you to explore the concept of justice (and the related concept of *social justice*). We will consider how both concepts have emerged and evolved over time, and provide contemporary and historical examples of how they have been realized in our society and how we have sometimes fallen short. It is impossible to provide comprehensive coverage to such broad, frequently addressed, but seldom explicitly defined concepts. Beginning to think about criminal justice as first and foremost a *justice* issue (rather than the reverse) will allow for a deeper, broader, and more critical consideration of how these concepts make sense within the field of criminal justice.

In the 1960s and 1970s, when the academic discipline of criminology was young, it was critiqued for focusing predominantly on the individual offender and ignoring larger social, political, economic, and historical contexts (Capeheart & Milovanovic, 2007; Southerland, Merlo, Robinson, Benekos, & Albanese, 2007). Criminal justice as a discipline is best known for its focus on describing and understanding how systems and subsystems operate, and less on articulating the overarching goals of the systems or evaluating whether justice has been achieved by these systems (Arrigo, 2008; Klofas, 2010). In this book, we consider criminal justice and criminology as two parts of the same field, which we will abbreviate as CJC studies. (This is not to be confused with the abbreviation “CJS,” which we use to refer to the criminal justice system.)

There have been calls within CJC studies for developing a more philosophical approach to better understand the concept of justice, one that educates on the inequality and failures of current systems of justice and provides a closer examination of the relationships between offenders, victims, agents of social control, and the community (Arrigo, 2008; Hunter, 2011). Criminal justice policies can actually perpetuate injustice, so a critical focus must be given to how justice is administered and thoughtful attention given to the underlying principles and goals of criminal justice systems.

Given the critical justice issues that are faced by criminal justice practitioners, policymakers, and academics, developing a deeper understanding of justice as a CJC student will be useful. If you have not completed the activity noted in the introduction to this chapter, take a minute to write down how you would define the word “justice.” As we explore this concept, you will be able to categorize how you defined justice, and see how that definition could be expanded. You may find that justice has multiple, overlapping, and at times even seemingly contradictory dimensions.

## CATEGORIZING TYPES OF JUSTICE

There are many ways to understand the different aspects of justice; one useful approach is to categorize justice into discrete types. For instance, an important distinction that can be drawn is between *formal or procedural justice* and *distributive or substantive justice*. *Formal justice* is also referred to as corrective or rectificatory justice, a nod to the main goal of making unjust situations right, meaning to “rectify” them. Formal justice is frequently the purview of criminal justice courses because it is the basis of our legal system, which outlines procedures to be followed to ensure that justice is served (hence the name *procedural justice*). The rights afforded to all people who are involved in the CJS—from their first interaction with the police, through their court proceedings, all the way to what we refer to as the “back end” of the system where sentences are carried out, often in prison or community corrections—are born of this type of justice. It is important to remember, however, that “law” and “justice” are not one and the same. Laws were created to mediate relations between people, and they are not immutable representations of justice. Many laws have been protested and broken when they were deemed unjust (Hurlbert, 2011). It is important to remember that such seemingly outdated (and clearly unjust) elements of our nation’s history as slavery, Jim Crow, and Japanese internment were, at one time, enshrined in law.

*Distributive or substantive justice*, on the other hand, deals not with the process by which justice is achieved, but rather with the outcome: the distribution of goods, rewards, burdens, and opportunities in society. This type of justice recognizes that sometimes it is necessary to treat different people differently to achieve justice. Looking at the world with a distributive lens requires an examination of whether everyone’s needs are met according to a baseline, agreed-upon standard of what individuals should receive. Access to nutritious food, health care, housing, or education could, for example, be deemed basic rights that should, on some

level, be provided to all people. Because our CJS focuses on process rather than outcome (e.g., the right to a fair and speedy trial), the substantive rights that distributive justice emphasizes are often considered secondary to criminal justice issues.

Weisheit and Morn (2015) propose a different way of breaking down the multifaceted concept of justice. They delineate four components of justice: equality, merit (also referred to as desert), need, and fairness. Equality is defined as all people having equal rights and equal access to resources. Any efforts that take the most disadvantaged into account would be based on this notion of equality and equal opportunity. Merit refers to getting what one deserves, whether it is recognition and rewards or punishments and consequences (deserts). For example, military and political actions in response to the terrorist attacks of September 11, 2001, were rooted in this type of justice. The concept of need is about providing access to basic resources for those who find themselves most in need. Providing shelter and food to the homeless is an example of attending to justice needs. Fairness involves treating equals equally and, when necessary, treating unequals unequally. For example, hiring preferences that are given to a group that has historically experienced disadvantage can help to achieve fairness.

In her taxonomy of justice, Hurlbert (2011) also includes ethical practice, which is defined by the concepts of moral righteousness, virtue, and altruism. Any attempts to make society a better place, from helping others or behaving altruistically on a personal level, to civic engagement (e.g., political or religious efforts in pursuit of justice) and public action (e.g., social justice activism), would fall into this category. This perspective on justice prioritizes ensuring that the most marginalized people in a society are valued and protected. Consequently, many examples of ethical practice take the form of advocacy for or engagement with marginalized groups. Take, for instance, the acts of volunteering at a soup kitchen, participating in a protest against human trafficking, or attending an event to raise awareness about racial disproportionality in incarceration rates. All of these efforts use individual action to achieve justice for oppressed or marginalized people.

A very closely related concept—one that is central to our discussion of justice in this text and essential to any comprehensive conceptualization of justice—is *social justice*. The use of the term social justice in the United States came into prominence at the end of the 19th century. Using the categories discussed previously, social justice is most closely related to distributive justice. Social justice is governed by the basic structure of society or the major institutions that allocate (or bring about an allocation of) rights, opportunities, and resources (Rawls, 1971). Social justice deals with fairness and equality of opportunity for groups or classes of people. Implicit in this definition is an expectation that those with power will consider and attend to the needs of those who are not in power. A just society attempts to diminish significant disparities between groups even if it requires a redistribution of resources to ensure fairness in meeting basic needs (Weisheit & Morn, 2015). Social justice is the broadest form of justice and relates to “whether people have access to the things they need to live a secure and dignified life” (Hurlbert, 2011, p. 19). Social justice focuses on discrimination against groups based on characteristics such as class, race and ethnicity, gender, sexual



identity, as well as the provision of basic human rights, and justice related to the environment. Hulbert (2011, p. 19) sets forth this ideal definition of social justice:

Social justice is a set of ideas, values and social practices to ensure that all persons and groups enjoy economic security, can participate effectively in democratic decision-making, exercise mutual respect and caring for one another and live their lives in ways that protect and sustain the natural environment for future generations.

## HISTORY OF IDEAS ABOUT JUSTICE

One commonality between these many different types and forms of justice is that they all concern the relationship between individuals and the complex structures and institutions of society. This was not always the case, however. Less than 200 years ago, justice was thought of primarily as a characteristic of individuals, rather than societies, with a focus on individual property rights. The application of justice to institutions began largely through the concerns for individual rights in criminal courts in terms of providing fair trials and appropriate punishments (Barry, 2005). The evolution of the concept of justice only broadened from there.

The roots of justice can be seen in philosophical, religious, and moral thought. Ancient philosophers set the stage for the discussion of issues related to justice. In Greece, philosophers such as Socrates, and his students, Plato and Aristotle, developed “ethical theory” that focused on what it meant to be a just person, and how “human excellence” required possessing moral virtues, such as acting courageously, justly, and in moderation (Parry, 2014). These ideas were linked to achieving personal happiness, and became the basis for moral psychology (Parry, 2014). These early ideas about justice did not include the concept of equality, as people were not viewed as inherently equal or deserving of equal shares (Reisch, 2002).

Concepts of justice are present in the teachings and literature associated with Buddhism, Christianity, Hinduism, Islam, and Judaism. In Medieval times, theologians and philosophers often drew on religious texts with Saint Augustine and Thomas Aquinas being a few of the many influential writers. Philosophical thought on this topic greatly expanded by focusing on justice in politics, economics, and public life through the work of Thomas Hobbes (1588–1679) in the United Kingdom, David Hume (1711–1776) in Scotland, Immanuel Kant (1724–1804) in Germany, and John Stuart Mill (1806–1873) in England, again, just to name a few. This work helped solidify what came to be known as “natural rights” and ideas about “the pursuit of happiness” and is reflected in such documents as the U.S. Declaration of Independence. Throughout the 17th and 18th centuries in the West, ideas about justice were also linked with the scientific revolution, which sought to establish universal truths that stood separate from religious beliefs (Reisch, 2002).

One contemporary American philosopher, John Rawls (1921–2002), became a leading figure in the development of moral and political philosophy. In explaining his theory of justice, Rawls poses the following question: Assuming that some