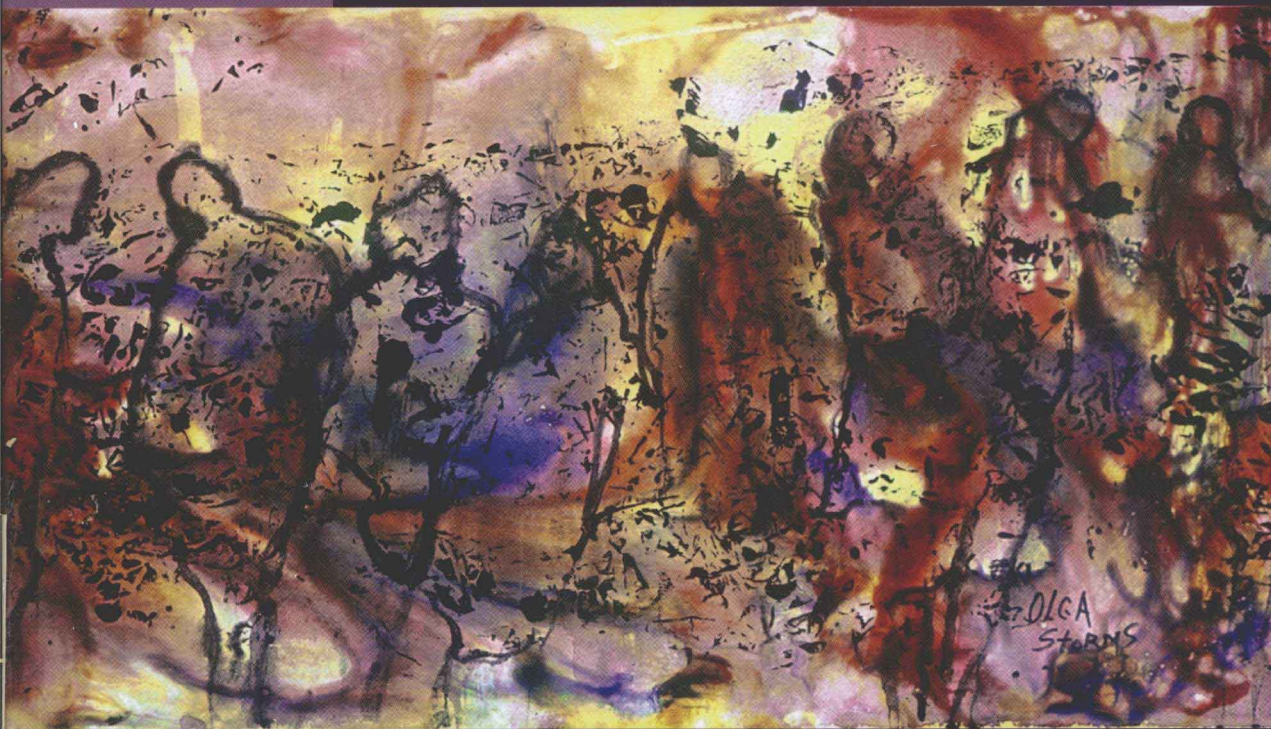


*Critical
Issues in*
CRIME
AND
JUSTICE

Thought, Policy, and Practice



Mary Maguire | Dan Okada

EDITORS



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Mary Maguire

California State University, Sacramento

EDITORS



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Preface

The creation of a single volume that spans the breadth of information contained in any institution's criminal justice major curriculum offers a bold challenge. A certain level of arrogance goes into conceiving a project such as this: In an academic endeavor that has become so popular, the presumption that one volume can capture the spirit, breadth, and vigor of this field is indeed daunting. We have considered direction and content, ideology and relevance, and we believe this work is a worthwhile addition to the world of academic criminal justice and criminology.

A growing number of capstone courses are required throughout virtually every academic discipline offering a major. Because of the ideology, perspective, direction, and vision of both the department housing the course and the professor delivering it, different philosophies and pedagogies guide their direction.

However, perhaps unique is the fundamental belief that soon-to-be college graduates should be able to demonstrate the knowledge they have acquired through an integration and synthesis of their course work. A highlight of the capstone experience might be the creation of a final project, an individual illustration of the synthesis of their undergraduate curriculum. Another might be, very simply, a curriculum-based opportunity to juxtapose, correlate, and integrate the perspectives and information learned in all courses taken by any one student—in short, the major's final examination. This collection aims to support a variety of capstone iterations.

Topics included span the gamut of a traditional criminal justice or criminology curriculum. Most major curricula include components of crime theory, law enforcement, jurisprudence, corrections, and organizations. The essays included here broadly represent those areas.

Students have been known to declare a major after having been influenced by popular culture and the media. The "If it bleeds, it leads" ethos of modern information dissemination routinely highlights the exploits of criminal justice practitioners and the need to conquer those who would cause them harm. These depictions, while often titillating and perhaps noteworthy, are just as often extraordinary and atypical. They overly dramatize or sensationalize human misery and suffering. Our students become fascinated with the possibility of

engaging a world glamorized as violent or confrontational so that their attitudes must likewise be aggressive and decisive rather than thoughtful or reflective. Some will see the social complexities more clearly. Students are torn by the perception that practitioners take action but academics regard and wait. What is the right approach? This is the yin/yang of academic criminal justice.

This is also the real world that academic criminal justice seeks to understand, contextualize, examine, and consider. While the work of the academic must be general and uncertain, the events we examine are specific, even personal. We hope the journey you take with us is informative, provocative, even exciting—for criminal justice is all these things, both inside the classroom and out.

Acknowledgments _____

Our heartfelt gratitude goes to our executive editor, Jerry Westby. Not only is Jerry a pleasure to work with, his publishing wisdom and guidance made this a much better book than it would have been otherwise. Many thanks also to the tireless efforts of his assistant, Eve Oettinger, who possesses the unique skill of moving mountains with a whisper. We also thank our copy editor, April Wells-Hayes, for her stellar attention to detail. Another note of thanks goes to the very talented Olga Storms, who generously donated her art to the cover. Lastly, we thank the reviewers, whose efforts and expertise provided insight and feedback that helped to shape this book into its current form: Barbara Sims, Pennsylvania State University, Harrisburg; Richard M. Hough, University of West Florida; Robert M. Baggett, University of North Florida; and Michael Leiber, Virginia Commonwealth University. Obviously, any errors in judgment, analysis, or interpretation are ours alone.

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1

Introduction

The Many Voices in Justice

Mary Maguire

Dan Okada

American culture is fascinated by crime. College and university criminology and criminal justice departments continue to multiply, and classes are packed with students eager to learn. The *CSI* and *Law and Order* franchises are among the most popular of all mainstream and cable network television programs; both are regularly programmed to fill time slots virtually every day and night. Even though society places crime and deviance outside of accepted and expected social frameworks, their prohibition makes them inherently interesting. The media adage “If it bleeds, it leads” suggests a fascination with misery and human suffering. Network newscasters refer to “slow” news days as those without homicides or with few crimes. Airplane crashes and instances of homicide do not happen very often, but when they do, viewing audiences are riveted to their chairs.

How has this allure with human failing and despair served the criminal justice system and the study of criminology over the years? For some, this attraction with what might be called deviance (but in many cases should be referred to simply as difference) fosters curiosity and motivates questions that call for deeper understanding. For others, it creates discomfort with the status quo and fosters a need for moral entrepreneurship. Some are comfortable with the stretching of social boundaries, while others believe that stasis is maintained by holding firmly to traditional social norms. Those with different philosophical and cultural persuasions bring competing pressures to bear on elected officials to reform or to maintain an accepted standard. Because criminological concerns are often third-rail issues for policymakers (gun control,

legalization of marijuana, prison sentencing, funding for law enforcement as well as for inmate programs), the louder voice among constituents is often what guides policy development. In other words, it is not necessarily clear evidence or even the consequences to individuals or communities that motivates criminal justice policy; rather, it is the policymaker's allegiance to the ideology of his or her constituents, however well- or ill-informed they may be.

A historical perspective illustrates these sometimes conflicting ideologies as they have alternately become the dominant way of thinking and the driving force of criminal justice policy. Legal scholar Michael Tonry (1996, 1998, 2001, 2004) has written at length about paradigm shifts in criminological and justice thinking and action. He notes that the proverbial criminal justice pendulum, which is often based on a "moral panic" (2004), swung from the reform-minded due process/offender's rights policy initiatives of the 1960s to the crime control model's "tough on crime" mandatory minimums of the 1980s. The reform ideology evaporated when multiple forces converged to shift policy to accord with the crime control model.

A catalyst of this shift was Martinson's (1974) "What Works" article, which reported that prison programs were not effectively rehabilitating prisoners. Martinson's findings, although they were later revised, were used to justify a change from indeterminate to determinate sentencing. If inmates could not be rehabilitated, imprisoning them for a determined amount of time seemed to be a reasonable option. Almost simultaneously, in May 1973, what became known as the Rockefeller drug laws went into effect in New York. These draconian measures stipulated that a prison sentence for selling 2 ounces or more of heroin, morphine, cocaine, or marijuana would carry the same prison term as second-degree murder: a sentence of 15 to 25 years to life. This new, punitive framework paved the way for the development of a "tough on crime" mentality across the nation, with the resulting adoption of mandatory minimums and harsher sentences across a broader range of offenses.

The paradigm shift that occurred in the United States from reform to retribution resulted in the largest prison system in the world. With more than 7 million people on probation, in jail or prison, or on parole at the end of 2007 (Bureau of Justice Statistics, 2009), 1 in every 100 Americans was under some form of correctional supervision (Pew Charitable Trusts, 2009). Clear and Cadora (2003) highlight the unintended consequences to some communities that were inhabited by more residents who had been in prison than not. Disadvantaged communities with high numbers of residents returning from prison are more likely to accept and take on the prison culture, thus exacerbating problems in those already vulnerable neighborhoods. In essence, with the ideological shift to retribution, we have created our own tautological social problem. With our get-tough crime policies, we have created a system impervious to attempts at outside intervention. By increasing the number of convictions and the terms of prison sentences, we have weakened community structures and created a prison system that is almost too large to be sustained, even in the best of economic times.

Just as a number of factors converged in the 1970s to create the shift to retribution, a number of factors are converging today to swing the pendulum back, an unsustainable prison system being one of them. Prison systems across the country were nearly at maximum capacity in the previous century, and overcrowding has continued into this century with state resources further co-opted and diverted to fight the War on Terror. This has placed untenable pressure on an already strained system. With the housing market collapse of 2008, economic conditions mandated that most states cut public funding for many governmental services, including law enforcement and corrections. With fewer state and federal resources available, conversations about the legalization of marijuana began in California (in direct contrast to the thinking that brought about the Rockefeller drug laws), as have negotiations for early inmate release. Sentences for crack and for cocaine, which were historically disparate, have been equalized and now stand simply as guidelines, not mandates, in most states. Retributive policies are under closer assessment in the light of worsening economic conditions.

With a cursory inspection, it is clear that the drift of criminal justice practice and policy has been barely affected by empirical evidence, by cost-effectiveness, or by beneficial or even fair practices. Evidence-based program assessments have been few. The fate of individuals who engage in deviant and sometimes criminal behavior is the result of the choices they make and the political winds of the time. In many cases, sanctions are not based on what is best for the individual, for the victim, or for the long-term health and safety of American communities. The waning of the “tough on crime” position is a consequence of the economic conditions of the time. Its passing is accompanied by no acknowledgment of ideological or practical failure, by no plan for effecting positive change in disadvantaged neighborhoods anywhere. Simply put, the ideological changes that in turn change laws and lives are not proactive. Criminal justice legislation is reactive and, as such, debilitating to many communities and cultures.

How should we, as criminal justice and criminology professionals, respond to the conundrums of the justice system as it interfaces with the changing social, political, and economic times? Clearly, our fascination with crime and deviance alone is not enough to develop and/or sustain improvement in our justice system. Historically, we have been guided by the vocal families of victims of rare, albeit heinous, crimes. We have also been guided by various stakeholders, such as labor unions, victims’ rights and other political action groups, academics, and enterprising political leaders. Although each group has a point of view worthy of attention, beneficial contributions through non-collaborative action are not enough. One could speculate that what is missing is the appropriate dose of interdisciplinary study and research, thoughtful and articulate reflection, and reasonable action, leading to effective social policies in the service of that responsible evidence.

This text, *Critical Issues in Crime and Justice: Thought, Policy, and Practice*, brings multiple and varied voices together to discuss the contemporary issues