The Handbook of Social Control

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Edited by

Mathieu Deflem

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Introduction: Social Control Today

Mathieu Deflem

The concept of social control has a long history in the social sciences, dating back to the very earliest days of the institutionalization of the discipline of sociology. In an earlier volume of this series of Wiley handbooks that concerned the concept and area of deviance (Goode, 2015), I provided a comprehensive overview of social control, along with a review of its main theoretical perspectives and areas of empirical research (Deflem, 2015). It will suffice in this Introduction to first briefly summarize from that work. I will then, more importantly, situate the chapters of this handbook in that context to provide a general overview to this volume as a more or less coherent collective.

Perspectives of Social Control

When the concept of social control was introduced in the late 19th century, it was defined in terms of the whole of institutions that provided the foundations of social order in modern societies characterized by increasing levels of individualism and diversity (Carrier, 2006; Deflem, 2015; Martindale, 1978; Meier, 1982). This notion of social control as the foundation of social order in modern societies was most famously developed from an institutional viewpoint by Edward A. Ross (1926), and found a micro-theoretical expression in the work of George H. Mead (1934). Since those early days, however, social control has come to be conceived more specifically in terms of the control of norm violations, including informal norms in relatively small social settings, as well as more and more highly formalized norms in large-scale societies. To this day, the term "social control" has multiple connotations, ranging from very broad concepts of social order (Gibbs, 1994; Janowitz, 1975) to very specific understandings within a particular theoretical tradition (Black, 1997; Cohen, 1985). Yet, for the purposes of this volume, the chapters will show, the emphasis is primarily on social control in relation to deviance and/or crime. Such a criminological understanding, however, does not prevent an informed perspective of social control within a broader – both social and sociological – context.

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

In view of the theoretical differentiation in sociological thinking, it is instructive to distinguish between at least three relevant conceptions of social control in terms of deviance and/or crime (Deflem, 2015). First, in sociological crime-causation theories, primary attention goes to the causes of crime, with a related focus on social control as a functional response to crime. Second, crime-construction theories devote central attention to social control as criminalization in a broader process of the labeling of deviance. Third, conflict-sociological perspectives build on the constructionist viewpoint to articulate social control as part of a broader study (and critique) of society. From these various theoretical perspectives, social control provides a central framework from which social scientists, especially in criminology and sociology, can study institutions and practices involved with the control of crime and/or deviance (Chriss, 2013; Cohen, 1985; Garland, 2001; Melossi, 1990; Pfohl, 2009).

The delineated understanding of social control in terms of crime and/or deviance is by far the most widespread manner in which the concept is used today. On occasion, the term is also applied to other social behavior of a more or less problematic quality, such as illness and poverty, in order to contemplate on the social-control functions of institutions such as medicine and charity (van Leeuwen, 2000). Yet, the center of attention in studies of social control mostly rests with the control of crime and deviance at multiple levels of analysis, ranging from the level of the interaction order to the macro-level of multiple institutions involved with the administration of law, policing, and punishment. Recently, the sociological study of social control has especially focused on the influence of technological advances in crime control, typically under the heading of a new field of so-called "surveillance studies," and has additionally centered attention on the influence of processes of globalization, such as the response to international terrorism. It is within this intellectual tradition that the chapters in this volume demonstrate the rich heritage of the major relevant perspectives of social control to provide an overview of the most important theories and dimensions of social control today.

An Overview of the Chapters

Within the suggested context, the present *Handbook of Social Control* provides an overview and discussion of selected perspectives and dimensions of social control today. The volume includes 32 chapters on various aspects of social control, divided over seven thematic parts: Theories and Perspectives; Institutions and Organizations; Criminal Justice; Law Enforcement and Policing; Punishment and Prison; Surveillance; and Globalization. The chapters reflect the theoretical and methodological diversity that exists in the study of social control, and are thematically diverse within the scope of the volume.

Part I, Theories and Perspectives, contains several chapters clarifying the most salient theoretical and conceptual issues involved with the social-scientific study of social control. These chapters trace the development of the concept and its place in sociology and criminology, and devote attention to specific conceptualizations and perspectives of social control from a variety of approaches and theoretical frameworks. James J. Chriss does a great job of tracing the intellectual journey of the concept in American sociology, while Robert Meier unravels the connections between deviance, social control, and criminalization. Expanding on the notion of social control in more specific theoretical contexts, Javier Treviño elucidates the conception of law as social control since E. A. Ross, while Bradley Campbell and Jason Manning explain the more contemporary understanding of social

control from the viewpoint of (Donald Black's) pure sociology, and Steven Hutchinson and Pat O'Malley do the same in terms of (Michel Foucault's) twin notions of discipline and governmentality.

Part II, Institutions and Organizations, considers the various societal organizations and agencies that, at multiple levels of governance, are involved with the planning and execution of social-control mechanisms for a variety of objectives. At the upper level of societal organization, the modern state takes a central place, but at lower levels, a host of intermediate institutions engage in social-control practices as well. This part focuses on multiple contexts among them, including organizations, psychiatric-care institutions, juvenile justice, and social movements. Focusing on social control in organizations, Calvin Morrill and Brittany Arsiniega show the role of social control as both a dependent and an independent variable in organizational research. Focusing on two special domains in which control is exercised, Bruce Arrigo and Heather Bersot unravel some of the dynamics of psychiatric control, while Shelly Shaefer untangles the web of juvenile justice. Sherry Cable offers a useful concluding reflection to this part by focusing on the role of social control in relation and, usually, in opposition to social movements of various kinds.

It is important that this handbook is conceived as a social-science work on social control, rather than a criminal justice administration book focused on technical issues of professional expertise. But it would be absurd to leave out relevant contemplations on the role of criminal justice in society. Rather than merely describing systems of criminal justice, however, Part III, Criminal Justice, focuses on analyzing the patterns and dynamics of criminal justice practices and mechanisms, such as the relevance of race, gun control, crime prevention, and the development of restorative justice. There is no getting around some very definite and oftentimes problematic characteristics of criminal justice. In the United States, in particular, but elsewhere as well, one cannot be blind to the relevance of race and the role of guns – aspects tackled in the respective chapters of April D. Fernandes and Robert D. Crutchfield and of Gary Kleck. Broader trends of criminal justice today must also involve consideration of restorative justice, addressed in the chapter by Rachel Rogers and Holly Ventura Miller, and of the role of risk and prediction – which, from rather different angles, are explored in the chapters on crime prevention by Kristie Blevins and on actuarial justice by Gil Rothschild-Elyassi, Johann Koehler, and Jonathan Simon.

Ever since Max Weber first proposed his theory of the state, the institutions of police and military have been central topics of reflection as among the most critical means of coercion. The transformation of policing in terms of crime control and order maintenance, as well as its professionalization, stands among the most relevant dynamics. Part IV, Law Enforcement and Policing, addresses various issues concerning the function, organization, and practice of policing. Among the topics presented are the history of the police function, the role of technology in policing, counterterrorism policing, and police ethics. Massimiliano Mulone starts off this part, as one must, by tracing the historical origins of the institution and practices of policing, while James Willis's chapter, with similar necessity, discusses the role of technology in policework. At least since September 11, likewise, it would be unwise to not consider the role of policing in counterterrorism, which I and co-author Stephen Chicoine explore in institutional terms on a national and global level, and which Derek Silva analyzes with regard to radicalization as a new central framework of counterterrorism. Finally, the chapter on police accountability and ethics by Toycia Collins and Charles F. Klahm serves a more than useful role in this handbook, given current discussions of police violence and police legitimacy.

Part V, Punishment and Prisons, considers another critical aspect of the criminal justice system within the broader constellation of social control. At least since the seminal work of Emile Durkheim, social scientists have rightly contemplated the transformation of punishment toward less severe but more manipulative forms, as well as toward the generalization of the deprivation of liberty in the form of the modern prison system. This part of the handbook devotes chapters to the most important components of these dynamics, including the history of incarceration, the dynamics of prison culture, the problem of mass incarceration, the resistance of abolitionism, and the death penalty. Ashley Rubin traces the history of the prison as a series of overlapping periods in which new templates of imprisonment diffuse. Next, Laura McKendy and Rose Ricciardelli discuss prison culture in terms of the tensions between collectivism and individualism. Roy Janisch looks at the important problem of mass incarceration, while Nicolas Carrier, Justin Piché, and Kevin Walby consider the altogether different but highly related problem of abolitionism and decarceration policies and programs. Paul Kaplan, finally, examines the death penalty from an informed social-science viewpoint that is intent on analyzing the facts of the case of this most peculiar form of social control.

Technology plays a central role in our daily lives and in many facets of the social order, including indeed social control. In recent years, much work has been conducted in this area under the heading of "surveillance" and a new field of surveillance studies. The chapters in Part VI, Surveillance, analyze relevant aspects of what is often called the surveillance society. Stéphane Leman-Langlois starts off the discussion, appropriately, by focusing on the role of technology. Kiyoshi Abe next analyzes the shifting boundaries of surveillance in its manifestation in public spaces. Turning to the limits of surveillance, James Walsh discusses the potentials and restrictions of countersurveillance strategies, while Anna Rogers discusses the more or less playful and critical ways in which surveillance is treated in various forms of popular culture.

It has been a truism for quite some years now to observe that the world is getting smaller as its varied localized events become more and more interconnected. The world of social control has not remained unaffected by these globalizing trends. Certain developments of an international and transnational character in matters of social control have intensified, and others have changed qualitatively. Part VII of this handbook, Globalization, focuses on such border-transcending – yet also border-affirming – phenomena associated with social control. Indicating the continued relevance of national borders, the chapters by Alexander Diener and Joshua Hagen and by Samantha Hauptman discuss the dynamics of border control and immigration policies, respectively. Turning to dimensions of global social control closely related to political affairs of violence and war, Michael Jenkins and John Casey discuss the major forms of international peacekeeping, while Joachim Savelsberg and Brooke Chambers bring our handbook to a close by providing an informed analysis of more and less formal dimensions of social control designed and enacted in terms of violations of human rights.

Objectives

This *Handbook of Social Control* may be justified both because of its academic usefulness and because of its pedagogical value. Indeed, existing edited volumes that explicitly deal with social control from a criminological and sociological viewpoint are by now several years old. Among them, for instance, are the collections of articles and chapters

on social control edited by Jack Gibbs (1982), Donald Black (1984), and Stanley Cohen and Andrew Scull (1985), all of which were published some 3 decades ago. A similar edited volume, on social control and political order, is now more than 20 years old (Bergalli & Sumner, 1997).

More contemporary edited volumes on social control are available, yet they either address a wide and rather incoherent variety of different components of control (Chriss, 2010; Downes et al., 2008) or are, instead, focused on more specific aspects, such as punishment (Blomberg & Cohen, 2012; Deflem, 2014; Simon & Sparks, 2012), policing (Deflem, 2016), and surveillance (Ball et al., 2014; Deflem, 2008; Norris & Wilson, 2006). Likewise, many of the existing handbooks and encyclopedias in the area of social control are very broad in scope, dealing with a wide variety of aspects and approaches to the study of crime and/or deviance and its control (Albanese, 2014; Bruinsma & Weisburd, 2014; Inderbitzin et al., 2015; Tonry, 2013), while others are more specialized, focusing on such issues as policing and punishment (Reisig & Kane, 2014; Tonry, 2000).

Therefore, because of its distinct focus on the concept of and theories associated with social control, this handbook fills a void that scholars of crime, deviance, criminal justice, and related areas and issues should appreciate. It also fits well with the related handbooks published by Wiley-Blackwell, such as the volumes edited by Erich Goode (2015) on deviance, by Alex Piquero (2015) on criminological theory, and by Austin Sarat and Patricia Ewick (2015) on law and society. Pedagogically, as well as academically, our *Handbook of Social Control* hopes to fulfill a distinct and unique – yet complementary – role.

The preparatory and editorial work involved in bringing this handbook to fruition has a history too long and unnecessary to be recounted here in any detail. Suffice it to say that the economics of academic publishing are presently undergoing rather drastic changes. Originally conceived as an encyclopedia, the volume was redesigned as a handbook following a series of events far beyond the realms of intellectual consideration. Eventually, these revisions and delays were most fortuitous, as they enabled this handbook to appear in the series of Handbooks in Criminology and Criminal Justice that is so ably edited by Charles Wellford. From submission of a proposal to the final review of this handbook's chapters some 1,129 emails later, I am grateful to Dr. Wellford for his graciousness in evaluating the idea of the volume on nothing but sound academic grounds. As this project moved to completion, I also thank the many fine folks at Wiley who oversaw its production. Finally, of course, I am grateful to the invited authors for writing their chapters and to the reader who will enjoy the fruits of their labor.

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Part I
Theories and Perspectives

1

Social Control: History of the Concept

James J. Chriss

This chapter provides an overview of the concept of social control in the history of sociology. Social control emerged in the late nineteenth century at roughly the same time as the establishment of American sociology, with Edward A. Ross being the main innovator of the concept. A parallel movement in Europe (represented in the thought of Emile Durkheim and Max Weber) focused on the larger problem of social order rather than social control per se. By the 1950s, Talcott Parsons sought to bring into alignment the broader concept of social order with the narrower one of social control by way of the development of a general theory of social systems that specified four functions operating across all levels of human reality. The analytical requirement of four functions implied that social control appeared concretely as four basic types: informal, legal, medical, and religious. By the 1980s, the consensus within sociology saw a further simplification of the Parsons schema into three basic types of social control: informal, legal, and medical (with religious control now being subsumed under informal). The trend over time has been that the most ancient and fundamental system of control – informal control – has waned and become somewhat imperiled in the face of the growth of both legal and medical control.

Ross and Early American Sociology

During the 1960s, the criminologist Travis Hirschi was a graduate student at the University of California at Berkeley. Early in his doctoral training, Hirschi took a deviance course from Erving Goffman, in which the latter provided an overview of the history and current status of social control. It was Goffman's opinion that the reason social control was on the decline (circa the early 1960s) was that it had become synonymous with sociology. As Hirschi explained, "There was nothing you could not study under the rubric of social control" (quoted in Laub, 2011:300).

According to Hirschi, Goffman traced this view of social control as a broad and unmanageable mélange of sociological topics to Edward A. Ross, who had published a series of articles on social control in the *American Journal of Sociology* beginning in 1896. Ross later

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

collected this series and included them in the first book ever published on the topic of social control, *Social Control: A Survey of the Foundations of Order* (Ross, 1901a). The complexity and diffuseness of Ross's pioneering conceptualization is readily evident in a paper he published titled "The Radiant Points of Social Control" (Ross, 1900).

Specifically, Ross (1900) argued that social control radiates from multiple points, which flow ultimately from power. Yet, power becomes more focused and nuanced as it is coupled with prestige, and the power–prestige system gives rise to 10 radiant points of social control:

- *Numbers:* the crowd;
- *Age:* the elders;
- *Prowess:* the military;
- *Sanctity:* the priests;
- *Inspiration:* the prophet;
- *Place:* officialdom (or the state, claiming control of a sovereign territory);
- *Money:* the capitalists;
- *Ideas:* the elite;
- *Learning:* the mandarins; and
- *Individual strength* (even with lack of prestige in any of the preceding areas): the individual.

This was around the same time that American sociology was founded as an academic discipline, initiated largely as a result of the publication in 1883 of Lester F. Ward's two-volume *Dynamic Sociology* (Ward, 1883). (Indeed, Ross dedicated *Social Control* to Ward, and later married his niece and named his third son Lester Ward Ross.) Ward and the other founders of American sociology – William Graham Sumner, Albion Small, Franklin Giddings, and Charles H. Cooley being the most prominent – were equally concerned with social control, although they utilized different terminology and concepts, such as telesis, psychic factors of civilization, regulation, social organization, consciousness of kind, folkways and mores, social bonds, assimilation, adaptation and aggregation, cooperation, human association, primary and secondary groups, and – influenced most directly by Gabriel Tarde (1903) – imitation.

Why did social control emerge as an overriding concern in early American sociology? A standard explanation is that American society was born into conflict, which created a tapestry of recurring challenges to the social order (Meier, 1982). A short list of key historical events and trends would include the American Revolution, the settling of the western frontier, and the Civil War and the period of Reconstruction leading to the Gilded Age and a later Progressive Era. And laced throughout the major historical events were steady population growth, concerns over immigration, labor strife, and the transition from a largely rural to an increasingly urban way of life.

As the sociology of knowledge would predict, Ross and other early American sociologists developed social control in response to the fear that rapid social change was systematically and inexorably releasing individuals from the traditional controls of family and community. This concern was also informed by Herbert Spencer's (1860) pioneering conceptualization of society as an organism, which depicted individuals not merely as random or isolated units within the larger whole, but as aggregates fulfilling particular functions for the operation of the social system. This stood as an early solution to the problem of explaining how collective or corporate action was possible among an increasingly disparate and diverse

American citizenry. Ross acknowledged that levels and types of social control in any society wax and wane over time, but saw the stability and flux of social control as two sides of the same coin. According to Ross (1901b:550):

> The function of control is to preserve that indispensable condition of common life, social order. When this order becomes harder to maintain, there is a demand for more and better control. When this order becomes easier to maintain, the ever-present demand for individual freedom and for toleration makes itself felt. The supply of social control is evoked, as it were, by the demand for it, and is adjusted to that demand.

But who, exactly, is making this demand for social control? For Ross, this would depend on the particular radiant point of control pertinent to the situation, as well as the nature of the parties to the action. Ross (1901a:62) argued there are three possible attitudes toward social control, namely, those of the actor, the victim of the action, and bystanders to the event (Martindale, 1966:283). This reflects the standard utilitarian view of human action launched by Hobbes and later formalized and refined by Bentham and Mill. It views social control as a dependent variable; specifically, as a reaction by victims (or agents or guardians acting on their behalf) to pains imposed by a person or group. Ross further argues that for control to be social, the reaction must have the whole weight of society behind it. From this perspective, actions of lone or isolated individuals are illegitimate or, at the very least, suspect. The most ancient, primitive radiant point of control is the individual, but a situation in which individuals are imposing their will on others returns us to the state of nature, where "might makes right." It is nature's method whereby organisms utilize whatever resources are available in the struggle for survival. Here, there is no "ought," no morality, no right or wrong, but merely expedience (success or failure). The march of civilization leads inexorably to the development of systems of rules and regulations whereby, at least in the earliest stages of this development, the group reigns supreme over the individual. The effort to explain this movement from premodernity to modernity is especially evident in the work of two founders of European sociology, Emile Durkheim (in France) and Max Weber (in Germany).

Durkheim and Weber

Ross's vision of social control was grounded in a Midwest parochialism that reflected the idea of "American exceptionalism," referenced primarily by the lack of indigenous feudal institutions in the United States. This absence of an aristocracy created a more diffuse "township" model of control, which was sustained by the system of federalism as outlined in the US Constitution (Hamilton & Sutton, 1989). This was a form of decentralized power that rejected the idea of domination by a sovereign, whether by way of kingship, aristocracy, or other authoritative systems of ruling. Both Durkheim's and Weber's thoughts on social control were informed by European formalism with regard to the nature of the state, authority, and domination, and hence parted ways with the early American contributors to the subject (Melossi, 2004).

Durkheim (1984) did, however, argue that between the mass society of modernity and the individual stood certain intermediary formations that provided new forms of organic solidarity. In the new industrial society, Durkheim sees the division of labor as the modern source of social solidarity. He argues against the notion that people become merely cogs in

the machinery of the industrial juggernaut, falling prey to dulling routine and bureaucratic overregulation. Rather than a debasement of human nature, Durkheim suggests that with the increasing differentiation of tasks in the division of labor, men and women are not separated from each other and their own humanity, but are put in a position of having to rely on one another more than ever before. That is, with the onslaught of work specialization, workers become more dependent on their co-workers, and, to a great extent, are more generally tied into the community because of this specialization. In this sense, workers are not simply an appendage of a machine.

Durkheim (1984) realizes as well that rules of division are not enough to create the kind of solidarity founded on sameness and cultural homogeneity seen under the older mechanical solidarity. For example, class wars have been waged because of an overly regulated or forced division of labor. The caste system opens itself up to the fact that many will experience tension between their positions founded on inheritance and the social functions they believe they can fill. So, "for the division of labour to engender solidarity, it is thus not sufficient for everyone to have his task; it must also be agreeable to him" (Durkheim, 1984:311).

Therefore, the distribution of natural talents is essential, because if labor is assigned otherwise – as in the forced division of labor – then what is produced is friction, not solidarity. The division of labor must be established spontaneously, by virtue of each individual's initiative. That is, those who are most capable of moving into a particular occupation will no doubt do so. Since, obviously, there is a natural inequality of talent and capacities, there must be reflected a parallel social inequality. Where mechanical solidarity was characterized by homogeneity and external equality, organic solidarity is similarly characterized by external inequality.

Because it is essential that there be harmony between the division of labor and the spirit of spontaneity, to deal with the frictions that could result from the social inequalities inherent in the modern system, there must be simultaneously an effort put forth to initiate and continue the work of justice. This would be accomplished primarily through the formation of organizations that deal specifically with worker-related issues. Thus, a complete system of agencies must emerge along with the division of labor to ensure the continued functioning of social life. This is conceptualized by Durkheim as the birth of the corporation.

Durkheim's thought concerning how social control is shifting from the informal realms of family, friendship, and community toward intermediate groups of the civil society – with the corporation standing as an important new form of control within modern or organic solidarity – easily moves toward an even greater emphasis on systems of power and organization in the guise of the state. Max Weber's theory of the shifting of the nature of legitimate authority from earlier to modern times is consistent with Durkheim's theory of the shift from an earlier mechanical solidarity to a modern organic one.

Weber specifies three types of legitimate authority, namely, traditional, charismatic, and legal-bureaucratic. The most ancient form is traditional authority, which rests on an established belief in the sanctity of long-standing traditions and the legitimacy of those exercising authority under them. Members of societies in which traditional authority prevails give their obedience to the masters (tribal leaders and fathers in patriarchal society), not to any enacted legislation (Weber, 1968).

Charismatic authority rests on devotion to the exceptional qualities or exemplary character of an individual person. Charismatic persons are said to be endowed with supernatural, superhuman, or exceptional powers or qualities of magical or divine origin.

As Weber (1968:241) explains, "In primitive circumstances this peculiar kind of quality is thought of as resting on magical powers, whether of prophets, persons with a reputation for therapeutic or legal wisdom, leaders in the hunt, or heroes in war."

Finally, legal-bureaucratic authority rests on the belief in the legality of rules and the right of those in positions of authority to issue commands. This is a modern, rational system of control that eliminates the whim or caprice of the ruler in favor of the institutionalization of rational authority. This rational authority is carried out by specialized control agents vested with the coercive power of organizations or states, thereby providing greater predictability of human behavior through the bureaucratization of official rule-making and control processes (Wood, 1974). To reiterate from the preceding discussion, Weber's work illustrates a European strand of theory concerned with the growth of formalism, and especially the growing reliance on law in modern society. Rather than fealty based on the particular characteristics of authorities (as was the case for the elders wielding traditional authority under mechanical solidarity), in modern society persons obey commands of law officials and bureaucrats on the basis of the legitimacy of the positions they hold, which is grounded in an established and preexisting set of rules for office-holding. Weber (1978:39) describes the state as an extended political authoritarian association, namely, "an institutional enterprise of a political character, when and insofar as its executive staff successfully claims a monopoly of the legitimate use of physical force in order to impose its regulations." This is considered a more rational form of authority to the extent that achievement (a publicly available record of one's training for a position) prevails over ascription (one's personal characteristics).

Talcott Parsons: Functionalism and Control

Early in his career, Talcott Parsons did more than any other sociologist to introduce the thought of Durkheim and Weber to English-speaking audiences. By the 1950s, Parsons was the preeminent American sociologist, having published two highly influential books in *The Social System* (Parson, 1951) and *Toward a General Theory of Action* (Parsons, 1952), the latter of which included a number of coauthors. Although the four-function AGIL schema would not be fully developed until the 1960s (see, e.g., Parsons, 1961), in these early works there are clear indications that he was seeking to create an analytical strategy for the simultaneous establishment of the structural and functional aspects of all things of relevance to sociological observers.

Although Parsons did not set out to develop a specific theory of social control, it is clearly the case that, located within the expansive edifice of the general systems theory that he built from the ground up (starting with the unit act), the problem of social order includes four types of social control, coinciding with four functions (adaptation, goal-attainment, integration, and latent pattern maintenance) that operate in and across all levels of reality. Unlike the elitist approach to social order, which focuses on the hierarchical distribution of force, and unlike the Marxist economic approach, which emphasizes property relations even over the organs of violence (the state) or normative elements (ideology), Parsons developed a normative approach to the problem of social order, which synthesized elements derived primarily from Weber and Durkheim (Etzioni, 1961).

Like many of his predecessors, Parsons (1951) defines social control as any attempt to counter deviance, and goes on to argue that along one analytical dimension, the conceptualization of deviance and its control can take either a situational or a normative focus.

Along a second analytical dimension, deviance can involve a disturbance of the total person (an individual orientation), or it can involve disturbances in particular expectations (a group orientation). When considering deviance from these two axes – situational–normative and individual–group – four distinct kinds of social control emerge.

Where there is a disturbance of the total person from a situational focus, Parsons interprets this as a problem of "capacities" for performing specific tasks or roles in a situation. Persons who are healthy can generally perform tasks or roles in particular situations, and this is the conformity situation. Persons who cannot perform in these situations, who lack the capacity to get things done as expected, are considered ill or sick. Hence, deviance within the individual-situational configuration is illness, and it is here that medical control prevails.

Where there is a disturbance of the total person from a normative focus, Parsons interprets this as a problem of commitment to values. The conforming situation is a "state of grace" or "good character." Conversely, the deviance situation is sin or immorality. The salient form of social control here is religious control.

When the disturbance shifts from the individual level to the group-expectations level, two additional forms of social control emerge. Again, we need to consider this level first from a situational and then from a normative focus. Within the group-situational focus, disturbance of group expectation in particular concrete settings leads to poor social bonding or rejection of significant others (such as estrangement from primary groups). Hence, the general category of deviance produced here is disloyalty to or detachment from the group. As a result, the salient form of social control is informal control.

Finally, when considering the group level from a normative focus, deviance is the problem of a lack of commitment to norms. Here, Parsons is referring to lack of commitment to legal norms, and of course the type of deviance generated here is crime or illegality. This means that the form of social control most salient to the group-normative dimension is legal control.

From this, we can easily derive which of the four functions are associated with which types of control. Medical control fulfills the adaptation function, as this involves the capacities of the human organism to adjust and adapt to his or her environment. Insufficient mental or physical capacities limit the individual's ability to perform expected roles, and hence illness is the form of deviance with regard to the function of adaptation.

Parsons argued that law fulfills an integrative function for society, but this cannot be defended. Law uses the medium of power, seated in the polity, to extract compliance from individuals or groups through coercion or its threat. Law does not assure integration first and foremost; instead, that is the work of group living and everyday life – that is, of informal control. Law attempts to steer persons to pursue goals that are defined as legal and legitimate, using strong inducements such as the threat of arrest or incarceration if criminal laws are violated. Hence, legal control fulfills the function of goal-attainment, *not* integration.

The integration function of social control is fulfilled by informal control. The bonding of individuals to one another within the context of groups and interpersonal relationships creates a tapestry of solidarity and stability that makes it difficult for properly bonded individuals to violate group expectations (Chriss, 2007; Hirschi, 1969). This is Durkheim's notion of the precontractual basis of contract, and it is the foundation for all other forms of order and control beyond those of the primary group (Parsons, 1935). Finally, the latent pattern-maintenance function of social control is fulfilled by religious control. Religion encompasses the realm of ultimate values, providing guidance for the thoughts and actions of the true believers in this world, who, if they remain devout in following the teachings of their religion,

are promised salvation or grace in the afterlife. For true believers, the realm of ultimate values transcends all other earthly concerns and pursuits, trumping even the informal norms of everyday life that constitute informal control. In this way, Parsons is able to distinguish religious control from informal control, in the process establishing it as a fourth category of control within his schema (Chriss, 2013).

From Four to Three Forms of Social Control

The Parsons formulation makes the case that four distinct forms of social control must exist to coincide with the four functional exigencies operating across all levels of reality. Consistent with the scientific goal of parsimony, later conceptualizations of social control reduced the four categories favored by Parsons to three: informal, legal, and medical control (see, e.g., Chriss, 2010, 2013). In essence, religious control – Parsons' fourth category – is subsumed under informal control. This tripartite view of social control has been influenced most directly by Egon Bittner (1970), who argued that across human history, three basic forms of legitimate coercive force have appeared.

The most ancient form is informal control or self-help. In modern parlance, this could appear under the legal category of self-defense. Self-help is the condition of enforcing norms and reacting to deviance within the context of the everyday lifeworld, where actors are not acting in any official capacity as representatives of some political body; that is, they are acting only under the auspices of their status as fellow human beings. Informal control is the condition of the earliest human groupings, first appearing as small, nomadic bands (the savage horde being the most primitive) and then evolving into more organized structural assemblages such as clans and tribes. Within such groups, membership was by blood or religious affiliation (e.g., under totemism), and those within the group formed strong attachments and held antipathy toward those on the outside. In its infancy, informal control was associated with strong in-group solidarity and equally strong out-group hostility, a condition aptly described by Sumner (1906) as "ethnocentrism."

Over time, layered over the system of informal control evident since the very beginning, other, more formalized systems of control have emerged. The two most basic are medical control and legal control. Legal control is well understood and unproblematic. It emerges with the written word and the rise of the state. This is law embodied in statutes and backed by the coercive power of the state. For the most part, law is derived from informal control; that is, from the customs and habits of a people (e.g., Bohannan's (1965) idea of law as the "reinstitutionalization of custom"). In the simplest form of the argument, persons come together out of the contexts of their everyday lifeworlds and designate a particular set of norms that are considered so vital to the well-being of the community that they are textualized – that is, codified into statutes – and backed by a constabulary force that sits at the ready to do the bidding of the state whenever a violation occurs. The establishment of a constabulary or police force occurs later than the establishment of laws and the courts, because in the more primitive state, there is no specialization of enforcement tasks (Chriss, 2013). That is to say, enforcement is diffuse rather than centralized, and it is sufficient that, say, all able-bodied men of the community are expected to respond to the watchman's call that something is amiss.

Finally, the third basic category is medical control. Notice that within the criminal justice system, there are three basic subsystems, consisting of police, courts, and corrections. The corrections system is the back end, ostensibly designed to punish those found guilty of

criminal violations or to hold defendants awaiting trial. This is the function of restraint or custody. The custodial function constitutes a continuum running from treatment at one end to punishment at the other. Custodial confinement aimed at punishment is legal control, while custodial arrangements aimed at the treatment of individuals deemed ill is medical control. As Parsons noted with regard to the institutionalization of the sick role, although sickness is a form of deviance, for the most part persons are not held accountable for their illness, and therefore treatment makes more sense than punishment. As formal systems of control, both legal and medical control always involve the intervention of a third party acting in some official capacity (Arvanites, 1992).

On the custody continuum, pure forms of medical control involve persons self-identifying as ill and seeking treatment professionals to alleviate their symptoms. In medical control, then, persons voluntarily place themselves into the care of a medical professional for treatment of some mental or physical condition. For example, one aspect of the sick role is that patients are obligated to "seek professional help" if they have symptoms of an illness, and in exchange for this show of good faith they are temporarily relieved of social-role obligations – at work, at school, within the family, and elsewhere – so that they may recuperate. However, there are many hybrid conditions beyond the pure voluntary-seeking of medical help, including forced medical care, which may occur with or without the intervention of legal actors. An example of the use of legal force within a custodial arrangement in order to obtain treatment outcomes is the commitment hearing. In particular, involuntary civil commitment is one of the more interesting examples of the hybridity that can occur along the custody continuum (Ng & Kelly, 2012).

Norms and Sanctions

All known human societies have systems in place to regulate the actions of their members. Beyond the most primitive savage-horde stage, human beings banded together for mutual support against hostile environments and threats from the unknown, including other human beings. Sociology is the scientific study of human association, and within the myriad associations forged between groups of human beings, there arise rules for conduct, that is, norms. First the informal norms of custom and habit, then with societal development, the setting aside of those norms considered so vital to the well-being of the community that they are embodied in statutes and enforced by a special body of control agents, that is, a constabulary force. The norms and eventual laws of any particular society do not simply magically appear. Instead, they arise over (typically) a long period of time, and the form they take has much to do with the history of development of the society within which they are located. Overwhelming evidence suggests that societal development goes in the direction from primitive informal rules for conduct (the norms of custom and habit) to more formalized edicts coinciding with the rise of written language (for, otherwise, codification into a body of laws, or textualization, is not possible).

Closely connected with the idea of norms – rules of conduct, whether tacit (informal control) or codified, textualized, or otherwise formalized (medical and legal control) – are sanctions. Sanctions represent societal responses to deviance or norm-violation. Positive sanctions – a smile, a pat on the back, a raise – are given as rewards for conformity. Negative sanctions – a frown or glare, the silent treatment, a fine – are given as punishments for deviance. This idea of sanctions flows most directly from the utilitarianism of Jeremy Bentham (1998), who assumed that human beings are rational creatures that are endowed with a

hedonic calculus whereby attempts are made to maximize pleasure and minimize pain. From this, Bentham developed a general theory of sanctions, consisting of four main types: natural, social, legal, and supernatural (as summarized in Hirschi & Gottfredson, 2005).

The earliest, most primordial sanctions are the natural sanctions. Natural sanctions represent all the negative things that can befall human beings in their interaction with a physical environment. These include scrapes, cuts, burns, fall, bites, and so forth. The first thing primitive human groups had to contend with and on some level conquer were the threats to life and limb emanating from the realities of a harsh physical environment. This condition represents the importance of evolutionary learning and upgrading, as members of the group develop collective responses to protect themselves and fellow members from injury and untimely death. Sumner (1906) notes that these most primitive ideas of how to navigate the conditions of harsh physical environments give rise to folkways, namely, shared ideas and beliefs concerning proper conduct within shared (clan, tribe, or kinship) settings. Human groups that were unsuccessful in coping with natural sanctions – especially with regard to the project of protecting the weakest and most vulnerable members of the group – disappeared within a generation or so as their bloodlines failed to be extended.

For those human groups that successfully managed natural sanctions and thereby put themselves in a position of further evolutionary upgrading and adaptation, the next level of sanctions to be developed and responded to was social sanctions. With the development of the human brain and greater cognitive power, human beings slowly pulled themselves out of the physical sphere and the struggle for survival, and their lives became as much determined by an ideational sphere which overlay notions of propriety and the "ought." This gave rise to a sphere of social control broadly referred to as "morality" – that is, of informal control – whereby prevailing notions of proper conduct emerged within particular human communities. Social sanctions are a product of human society, such as being expelled or isolated from a group because of some deviant act which violates the group's sensibilities. Rather than legal punishments, what is in play here is ostracization, gossip, avoidance, the silent treatment, and other displays of negative affect. Those who violate the sensibilities of the group may have an opportunity to return to good standing after doing a sufficient amount of remedial work, usually by way of voluntary submission to degradation ceremonies (Garfinkel, 1956).

Legal sanctions arose with the emergence of written language, as the oral traditions of the group – including its customs and folkways pertaining to permissible and impermissible actions – were committed to paper and embodied in texts and statutes. These texts clearly designate those acts that are forbidden, which members of the group may act to question, detain, and arrest violators, and what kinds of punishment may be meted out upon findings of guilt. This act of textualization into law "thingifies" the sentiment of the group, giving it an aura of neutrality and objectivity. As Durkheim (1938) suggested, the laws of a jurisdiction stand above the members of a community subject to those laws, a social fact that exerts real and palpable effects on them. Laws confront citizens as a social fact in at least two broad ways. First, setting aside certain norms as being considered vital to the well-being of the community gives the collective sentiments lying behind them an objective reality insofar as they are now documented in legal codebooks, which are real, tangible, and take up space in the world. Second, whereas informal control is diffuse to the extent that any competent member of society may apply informal sanctions against deviants, with legal control specific agents of the state are designated with the authority to intervene at much more serious and consequential levels. Police and other functionaries of the state, in their capacity as constabulary agents enforcing the laws of a jurisdiction, are vested with coercive power – one that may result in the injury or death of those arrested or detained.

Finally, supernatural sanctions are rewards or punishments that individuals receive upon their death. Tenets of the religious faith may direct true believers toward actions in this world that will allow them to attain a state of grace or salvation in the afterlife. Since the content of religious beliefs and their outcomes cannot be verified by the methods of the empirical sciences, whether or to what extent supernatural sanctions are actually applied in the ways described by the belief system must always stand as an article of faith.

Among the four sanctions – natural, social, legal, and supernatural – the time between original acts and the sanctioning of those acts varies systematically. The shortest time between act and sanction is represented by natural sanctions; for example, falling down and cutting your knee.

Like the custody continuum discussed earlier, there is also a norm continuum. The norm continuum runs from the tacit, uncodified norms of everyday life, which are passed along and inculcated through socialization and group living (located on the informal end of the continuum), to the highly formalized and textualized norms embodied in statutes and legal codebooks. The earliest, most primitive norms are the folkways of a group that develops understandings of how to deal with both natural and social aspects of the environment. Eventually, such understandings of how the world works are sedimented into higher-order "truths," known as "mores" (Sumner, 1906). Whereas violations of folkways may bring mild rebukes, violations of mores typically are met with much more severe sanctions. Examples of some of the earliest mores are taboos. These are strong directives concerning what *not* to do, such as religious taboos that warn against upsetting the gods; sexual taboos regarding whom not to have sex with; dietary taboos regarding which kinds of food to eat or avoid; and behavioral taboos directing members to engage in or avoid certain activities or other "unspeakables" (whether with regard to hunts, sacrifices, conflict, or other forms of interpersonal conduct; see Mills & Smith, 2001).

Medical Control

Mores can exist and be enforced within an oral tradition. Over time, with the emergence of written language, some of these mores become laws. In effect, all laws are mores, but not all mores are laws. Because, historically, medicine had always been practiced with regard to the limited case of tending to the illness or disease of particular individuals, for eons the medical case model resisted appropriation by government or other collective enterprises; it was simply seen as not appropriate or amenable to such application. However, as life expectancies began to rise with increasing modernization and the upgrading of medical knowledge and technologies, a higher premium was placed on health and well-being in general.

Originally, the tag "health" was applied only to the body (e.g., physical health), but later, with the rise of psychiatry as a legitimate medical specialty, there emerged the notion of mental health. Alongside physical health and mental health, by the mid-1800s the administrative wings of Western governments (primarily in Great Britain and the United States initially) began moving toward a collective understanding of health, particularly with regard to the threat of infectious disease pandemics. The move from the medical case model, attending first to the body (general medicine) and later to the mind (psychiatry and allied helping professions), was further augmented by a collective understanding of health in the guise of public health. Being under the auspices of government administration, public health began importing notions of legal accountability (by governments, by hospitals, and by private practitioners in terms of licensing) into its operation, while informal notions of propriety

(i.e., informal control) began permeating discourses regarding health and illness in general (Halliwell, 2013). With the emergence of public health, the fusing of informal notions of proper conduct and good living on the one hand with professional responsibilities of medical care (which were increasingly legalistic and bureaucratic) on the other led to a full-blown system of medical control operating alongside informal and legal control (Zola, 1972).

Beyond physical, mental, and public health, there is now a burgeoning application of the health tag to more and more areas of life. These include community, emotional, behavioral, sexual, family, adolescent, relationship, home, marital, social, heart, pet, LGBT, school, elder, minority, immigrant, prisoner, financial, and environmental health. Some of these health tags are used in a metaphorical sense to refer to an ideal state of the orderly or stable operation of some area of life, as seen, for example, in the cases of environmental and financial health. Even so, the great majority of health tags refer to literal bodily, mental, or relational health in narrowly designated areas. These health tags inexorably mix taken-for-granted notions of social well-being (informed by informal control) with professional medical diagnostic criteria for ascertaining wellness and responding to illness or disease.

Conclusion

The ascendancy of the tripartite typology of social control discussed in this chapter seeks to organize the myriad ways social control appears in the empirical social world by focusing on socialization and relationships (informal control) on one end of the norm continuum, and law and legal regulation (legal control) on the other. In between the poles of pure informality and formality, however, is a gray area into which are dumped odd cases that do not clearly meet the criteria of either. For example, a grown man skipping along in public has broken no laws, but those who are present to his actions will likely steer clear of him and come to the conclusion that he is "crazy" (or possibly just very happy). Such odd disturbances of the social fabric are the sorts of things that could become the province of medical definitions and oversight. Indeed, where informal control's broad province is relationships, and legal control's is law (including criminal, but also civil and administrative), medical control's province is behavior.

It is also clear that various processes of everyday life can ignite movements or shifts in interpretive frameworks regarding which province of control is most pertinent to a particular empirical event or set of facts. David Matza (1964) illustrated one of these processes by way of his concept of "drift." He rightly notes that the lifeworld (or everyday life) represents "freedom" to the extent that this domain of reality is organized informally by way of socialization, relationships, and tacit notions of propriety within particular group settings. Just so long as you are a well-demeaned individual who meets the broad expectations of the group, you will be left alone and will be free to pursue life projects as you see fit (Goffman, 1959). But the openness and freedom of the lifeworld allows for certain persons under certain conditions to drift toward patterns of behavior that may eventually be deemed to require more formalized oversight, of either medical or legal control (or some combination of the two).

Matza (1964:28) further defines freedom as "self-control." Lying behind self-control is the system of socialization, which inculcates appropriate need-dispositions in the personality and thereby produces well-adjusted selves (of symbolic interactionism) or egos (in the Freudian sense). Ideally, the lifeworld is populated by norm-conforming others who monitor the behavior of those with whom they interact, and who may react to those giving indications of drifting toward lines of activity that violate the sensibilities of the

group. If handled within the lifeworld itself (e.g., a mother or father scolding a child for coming home later than promised and affixing some punishment as a remedy for the infraction), the drift toward further or more severe deviance will be stifled. Indeed, the goal of punishment is conformity, although under certain conditions punishments may amplify deviance and produce defiance (Sherman, 1993). It is hoped that the mechanisms of informal control are good enough to identify, react to, and ameliorate any such drifts taking place within the cozy confines of the lifeworld. Further, it is assumed that cases of more serious delinquency that have called forth legal authorities represent a failure of the informal system to adequately control its members.

There have been no major changes in the conceptualization of social control and its three major forms (informal, legal, and medical) since the 1980s. However, there is a growing sentiment among scholars, cultural critics, media talking heads, politicians, and the lay public that informal control is under siege and that other, more formalized controls are being brought to bear to shore up frayed and tattered lifeworlds. This began a century ago with the appearance of the "family decline" thesis, whereby in its transition from a production to a consumption unit the family was seen to be systematically losing many of its original functions. This thesis was first elaborated by William Graham Sumner in his presidential address before the American Sociological Society in 1908 (published a year later). Sumner (1909:591) stated, for example, that "Part of the old function of the family seems to have passed to the primary school, but the school has not fully and intelligently taken up the functions thrown upon it."

Jürgen Habermas (1987), drawing largely from Parsons and Weber, continued this thesis with the idea of the "colonization of the lifeworld," whereby steering media from the system (power, money, and legal-bureaucratic rationality and procedures) were inexorably penetrating the lifeworld, thereby distorting communicative action among its citizens and disempowering their ability informally to decide things for themselves. This also appears in the subtle forms of nudging engaged in by Western neoliberal governments to prod individuals into socially beneficial activities such as eating more healthily, voting more often, and being more neighborly and friendly (Chriss, 2016). This is a subterranean or softer form of paternalism that seeks to reduce citizen backlash against what is perceived to be an overly interventionist and ham-fisted Nanny State.

Finally, breakthroughs in medical technologies and drug treatment (the broader process of medicalization within medical social control) have continued to expand possibilities regarding behavior modification and control that comport with the systems logics of lifeworld colonization, presumably for the betterment of the citizenry. For example, it is has been discovered that oxytocin can be used to promote prosocial behaviors and reduce aggression (Pfundmair et al., 2016). Originally used in clinical trials to treat persons on the autism spectrum, the drug's robust benefits – including increasing eye contact, providing more accurate perception of nonverbal cues, and increasing trust and cooperation – might be targeted at mass publics, thereby serving the (presumed) altruistic aim of expanding the common good.

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2

Deviance, Social Control, and Criminalization

Robert F. Meier

Deviance is a uniquely social concept. It makes sense only in the context of group expectations and evaluations of behavior within discernable social situations, and its occurrence results in predictable social reactions. Deviance can occur in small or large groups, in identifiable human communities, and across political jurisdictions. It can be an informal feature of social life or a formal designation of organizations or governmental units. Deviance creation is a process rather than an event, and the process is subject to influences both subtle and obvious.

An obituary for the study of deviance was published 25 years ago (Sumner, 1994). It was premature then, and it would be premature today – despite the fact that it isn't the only voice to have offered a memorial (Hendershott, 2002:1). Deviance is a central concept in sociology, one that gives meaning to behavior, both deviant and conforming. This chapter explores the nature and meaning of deviance, and links the notion of social control with the creation of legal norms. It sketches the process whereby evaluations rise from small groups to entire political jurisdictions. It also deals with how small-group evaluations and their deviations become large group dictates and their crimes. It is a process that involves conflict and cooperation. It is a contemporary story, but we must start at the beginning.

Durkheim's Legacy

As disciplines mature, they tend to drop their history – or, at least, they relegate it to a cherished graveyard, as not relevant to today's work. Most social sciences have yet to do this. One of the earliest sociologists, Emile Durkheim, established ideas and relationships that are relevant today. Durkheim worked intensely to launch the discipline of sociology and, in so doing, he identified what he regarded as the major subject matter of the discipline. His work on the division of labor attempted to explain the nature of social organization in large, complex societies. Simply put, Durkheim documents a process whereby an increase in population leads to an increase in social differentiation, which, in turn, leads to a structure of social stratification. But a proliferation of the division of labor refers not only to different

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occupational positions, but also to the different skills, backgrounds, values, class experiences, and traditions that people bring to those positions. Such differences can form the basis of group evaluations.

Social stratification is a system of ranked differences among statuses, incomes, and education. A system of stratification is not a system of deviance, but they do share the ranked quality. Dahrendorf (1968) views the nature of social stratification in terms of the creation of norms, the violation of norms, and the exercise of sanctions by people in positions of power. In this sense, it is only by understanding normative expectations and the sanctioning of social behavior that it is possible to understand the nature of inequalities among individual and positions. Ironically, students of stratification define their interests in terms of systems that allocate rewards (e.g., positive sanctions in the form of status attainment and wealth), while students of deviance display more interest in systems of punishment (e.g., negative sanctions in the form of a consumer boycott or legal penalties).

Social audiences commonly perceive deviance negatively (although there are obvious cases of "positive" deviance – e.g., the "genius" – as well as "negative" cases), and this is probably more likely in complex groups where there are more differences among people. But, Durkheim (1938:68–69) quickly points out, even in simple societies there are ranked differences that characterize group members. A group of monks, for example, might live closed off from the outside world in a society without major crimes, but minor behavioral deviations would generate disapproval to the same extent as delicts that are more serious. Talking too loud, not praying long enough, and being frivolous during religious ceremonies might all be the object of sanctions from other monks.

Durkheim's work on suicide is, in some ways, even more ambitious. He deliberately chose a topic that the prevailing wisdom strongly suggested was caused by psychological or individual antecedents. Durkheim's explanation focused on group interaction, and the degree to which groups were more or less integrated into their society. This integration was characterized by both internalization and regulation. Integration was affected by internal controls, such as the extent to which one believed and adhered to one's group's norms, while regulation was the result of external controls in the form of sanctions, social expectations, and group values. Social groups with high degrees of social order made use both of integration through socialization of group norms and values, and regulation in the form of societal expectations (e.g., laws).

Departures from group expectations, or deviance, are inevitable in all social groups. Since conformity is never perfect, neither is social order. Both are matters of degree. But this can set up a situation where humans are never satisfied given the tension between what they want and what society demands and is able to provide. Freud (2010) described this tension as an inherent quality of any social order that gives rise to enduring feelings of discontent among individuals.

This suggests one of the most fundamental problems in sociology: the maintenance of order in the face of societal complexity. Deviance may not be problematic in simple societies because it most often fails to present a major challenge to the existing order. Homogeneity helps to guarantee conformity most of the time. As population and the division of labor increase, what was common and "the same" becomes different. Social order in complex societies is problematic because making sure that basic things get done cannot be left to chance, but there is no alternative. Yet, things do get done: children are raised, food is grown, various occupational tasks are accomplished, all on a daily basis. How? As a result of social control, which consists in the internalization of values and the pushes and pulls of sanctions.

Durkheim's aim was to establish the legitimacy of sociology as an independent discipline. In doing so, he used the phrase "social facts" to refer to elements of human existence that differentiate humans from other living organisms. Social facts "consist of manners of acting, thinking and feeling external to the individual, which are invested with a coercive power by virtue of which they exercise control over him" (Durkheim, 1938:3). Social facts are values, norms, and entire social structures that transcend individuals. They are the very entities that make sociology not only a helpful discipline, but a necessary one. In his study of suicide, Durkheim regarded social facts as a form of "regulation." In this manner, he linked social facts with social control and deviance, and the linkage has remained ever since.

Functionalists, such as Talcott Parsons (1951), followed Durkheim's lead and explained modern industrial societies by stressing the interrelatedness of parts in the unified whole. According to Parsons, the "whole" worked pretty well. Residual problems remained, but these were minor, small-scale, and transitory. Such problems were attributed to "deviance." Deviance caused a tension in an otherwise stable system, and social control would return the system to equilibrium. Parsons associated the concept of social control explicitly with deviance. He found its essential meaning in its ability to react against deviance: imperfections or strains in stable social systems. Such reactions, called sanctions (following Radcliffe-Brown (1952) and other anthropologists who defined social control in similar terms), are of two kinds: (a) broad structural influences, or expressions of official group sentiment (formal sanctions); and (b) interpersonal influences, or evaluations of conduct (norms) related to group membership (informal sanctions). For Parsons, the relation between social control and deviance consisted in opposing processes: "The theory of social control is the obverse of the theory of the genesis of deviant behavior tendencies. It is the analysis of those processes in the social system which tend to counteract the deviant tendencies, and of the conditions under which such pressures will operate" (Parsons, 1951:297).

Parsons' perspective was a functionalist one. Features of society existed, he believed, because they were useful or necessary for the continued maintenance of the social system. Yet, linking deviance and social control as found in sanctions need not be considered only a functionalist perspective, since it can be applied in other, less conservative ideologies, including conflict views. Conflict theorists suggest that "[d]ifferent social groups use their power to enforce the standards they prefer" (Collins, 1975:17). This is a basic observation about life in modern, complex societies. Groups engage in norm promotion and encourage sanctions against those who do not conform to those norms, and this leads to the suggestion that "The next step clearly must be to abolish the field of deviance entirely, to link its materials with what is known of general explanations of stratification and politics" (Collins, 1975:17). Put differently, the study of deviance must be placed in its proper context to show the relationships among norms, sanctions, social control, and social stratification. If the critics mentioned earlier want the study of deviance eliminated, Collins wants to highlight its centrality to sociology.

The Nature of Social Deviance

There are at least two conceptions of deviance, but they might not be that different from one another. A reactivist or relativist definition of deviance holds that there are no universal or unchanging entities that define deviance for all times and in all places. Rather, "social groups create deviance by making the rules whose infraction creates deviance"

(Becker, 1973:9). Deviance is in the eye of the beholder, not in any particular action on the part of the person who may be labeled as a deviant.

In contrast, a normative definition holds that deviance is anchored firmly in the expectations and evaluations of social groups and organizations and is expressed through norms. One virtue of this conception comes from its answer to a question that stumps the reactivist definition: On what basis do people react to behavior? In other words, if deviance results only through the reactions of others, how do people know to react to or label a given instance of behavior? Norms supply the only obvious answer to this question. For this reason, the reactivist and normative conceptions may complement one another: norms provide the basis for reacting to deviance, and social reactions or sanctions reflect norms that empirically identify deviance.

There are three concepts that define deviance in a normative conception: norms, tolerance, and sanctions. *Norms* are social expectations for particular behavior in certain situations. This definition draws our attention to several features.

First, norms are social; they are held and maintained by groups of people, not individuals. A despot who makes a rule on his or her own has not created a norm. Rules can guide the behavior of those who disagree with them, but they are not norms.

Second, norms are expectations or evaluations of behavior, not behavior itself (Meier, 1981). The sociological concept of norm is not shorthand for what is "the norm" or normal. Many – maybe even most – adults begin their day with a caffeinated beverage. This may be customary statistically, but adults are not *expected* to drink a caffeinated beverage; they just do so. Norms are not what is "common." Sometimes we speak of something being "the norm" for our group, meaning what most group members do. For example, most adults (and many young adults) have cell phones. In 2010, 35% of Americans had a smartphone, and by 2016 that number had climbed to 77%, according to the Pew Research Center (Smith, 2017). Is having a smartphone a norm? No, having a smartphone is popular, but it is not what one ought to do. This suggests that the meaning of norm is better found in expectations of behavior than in actual behavior.

Third, norms are directed toward specific behavior in specific situations. People are generally expected to refrain from laughter at a funeral but may laugh in other situations. People are expected to face the door while riding an elevator, presumably to preserve the "personal space" of strangers who are also riding it. But if everyone were to face the door in another room, that could be considered deviant. Thus, it is not just conduct that is deviant, it is specific conduct in a particular situation.

Fourth, norms are relative. They vary from group to group, time to time, culture to culture, and even subculture to subculture. Alcoholic beverages might be expected to be consumed at a fraternity party but not at a Baptist picnic, because the norms of these groups are different. Clothing and style change almost every generation. About the only people with tattoos in my generation were bikers and sailors; now, tattoos are more common. But are they expected? This question is a normative one.

Many norms are woven into the fabric of social life and understood generally, while others can be found articulated in written form. A dinner table can be set any way, but if one wants to be traditional, there are certain rules of etiquette that guide one's decisions: forks on the left side of the plate, spoon and knife on the right. Even a short Internet search can find other guides to manners appropriate to various events and occasions. Most norms, however, are not written down, and people must be socialized to them by their groups.

There are problems with norms (Gibbs, 1981:ch.2), but they remain an enduring concept. Gibbs (2008:28) writes that norms are unhelpful because deviance and the norms that

define it "cannot be identified confidently and such as to realize agreement among independent observers." This is an odd statement since, as suggested earlier, norms are either written down (e.g., legal norms, corporate policies, or religious manuals) or commonly understood within the groups to which they apply. Even unwritten norms can be expressed, and the degree of agreement among groups can be measured.

Tolerance is the second concept that helps define deviance. Tolerance refers to the degree to which people and groups are willing to accept or permit behavior or attitudes different from their own. It can also refer to accepting something that one dislikes or with which one disagrees. Some religious groups, for example, are quite tolerant of other religions (e.g., Episcopalians), while others are not (e.g., Islamic State). Tolerance is not agreement; it is acceptance in the absence of agreement.

With respect to deviance, we can see tolerance in a variety of ways, including in variations in responses to surveys asking respondents to rank the seriousness of crimes. There is a large literature showing that, generally, crimes of violence are rated as more serious than property crimes, while public-order crimes are rated as less serious. There are, however, variations from time to time and place to place (Stylianou, 2003). Tolerance, itself, is a group property that varies and can be measured.

Some sociologists think that one of the biggest challenges facing modern society is living with people who are not like us (Sennett, 2012). Humans are different in many ways: religious preference, economic status, racial and ethnic background, and many other dimensions. Modern life and instant communications (e.g., social media) tend to magnify these differences; some are acceptable to some groups, while others are not. But beyond the fact that deviance is different from some other behavior or attitude, it is disvalued. It is considered to be wrong or bad or unacceptable, and there is no universal agreement on these judgments.

Sociologists use the term "differentiation" to refer to these differences among people and groups – differences noted by Durkheim. Conditions that increase differentiation likely also boost the degree and range of social stratification by increasing the number of criteria for comparing people. Such comparisons often result in invidious distinctions, or ranks, that identify some characteristics as more highly valued than others. In this sense, there is a relationship between the study of deviance and the study of social stratification in society.

> Beyond this trend toward diversity, an increase in stratification clearly seems to raise the chances that some of these rankings will reflect disvalued characteristics. Not only will some individuals fall to lower ranks as a result, but they also may feel disvalued. To the extent that society values education, it disvalues under education; to the extent that it values an occupation with high prestige (like Supreme Court justice), it disvalues one with little or no prestige (like ditchdigger). Judgments about "better" or "worse" begin the process of making judgments about deviance. (Clinard & Meier, 2016:13)

There are consequences for those individuals and groups whose behavior is disvalued. If one feels, for example, that the so-called "American Dream" has become out of reach and that others are benefitting more than oneself without clear justification for their doing so, feelings of alienation are not only understandable but perhaps inevitable (Hochschild, 2016).

Sanction is the final concept that defines deviance. Sanctions are social reactions to behavior. The content of these reactions can be either positive or negative. Positive sanctions are rewards to encourage behavior that conforms to a norm, while negative sanctions are punishments to discourage deviant behavior. Sanctions also differ according to their

Table 2.1 The Four Kinds of Sanction

	Formal	*Informal*
Positive	Raise in job salary	Praise
	Medal in the military	Encouragement
	Certificate	Smile
	Promotion	Handshake
Negative	Imprisonment	Criticism
	Dismissal from a job	Spanking a child
	Excommunication from a church	Withholding affection
		Negative gossip

source. Formal sanctions are reactions that represent official group expressions, while informal sanctions are the unofficial reactions of groups or individuals.

We can see four general kinds of sanctions by cross-classifying these dimensions: positive formal, positive informal, negative formal, and negative informal. Examples of each kind are given in Table 2.1 (Clinard & Meier, 2016:34).

Sanctions collectively are often thought of as mechanisms of social control. They encourage conformity and they punish deviance. Each has a different ability to influence behavior. It is not always the case that formal sanctions, which tend to be more severe than informal sanctions, are always more effective in eliciting conformity. Informal sanctions can be very effective too. It depends on the behavior, the situation, and who or what is doing the sanctioning. Just as norms are relative to time, culture, and situation, so too are sanctions relative to behavior, group, and context.

All of this suggests that deviance is relative – and of course it is (Curra, 2016). But it is relative not because no trait or act is everywhere and for all time deviant, but because the processes of social differentiation and social change produce alterations in social judgments. The key question is how some acts come to be judged the way they are: Why are some acts and actors deviant, when others are not? A frequent answer among criminologists is found in the concept of power: the ability to expand the range of stratified social phenomena by engaging in a process of promoting normative definitions and moral enforcement.

While norm promotion and reinforcement requires power, it is important to realize that power can reside in any number of institutions. At the same time, it is unmistakable that political power in the United States resides mainly in the ranks of the economic elite – but that elite is not monolithic. "Indeed, the history of US politics is not only (or perhaps not mainly) a history of class conflict, but also a history of intra-class conflict" (Schneider & Stepan-Norris, 2018:146). Any analysis that neglects such dynamics is doomed to simplicity.

A Note on Criminal Sanctions

Criminal sanctions are formal, negative sanctions – but they are unlike other formal, negative sanctions. Employers can fire employees and schools can expel students, but only criminal sanctions can deprive people of their liberty. All formal, negative sanctions take something away from people, and all can induce some sense of suffering in those receiving them. But criminal sanctions can take lives and confine people for long periods of time. They are punishments intended either to make symbolic statements about the value of

conforming to law or to punish offenders in order to alter their future behavior (and the behavior of the general public via vicarious punishment).

We can define "punishment" as deliberately inflicting suffering based on some principle. There are three elements to this. First, punishment is deliberate. It involves a deliberate human decision. It is a conscious, not an accidental, action. A dentist might inflict pain on a patient, but it is not deliberate; it is collateral damage of tooth repair. Being struck by lightning is painful but accidental (unless, I suppose, one believes it was the action of God).

Second, punishment involves suffering. It is unpleasant and not to be sought after. If one likes some form of suffering, it is not punishment but masochism. In this sense, punishment must be worse than what one normally experiences. Early punishments were harsh because people's everyday environments were harsh. As conditions improved, punishments lessened. Indeed, that is the history of punishment in Western societies: the lessening of corporal punishment. People seem to differ in what they consider unpleasant and in the degree to which they find it unpleasant, although it has been argued that one sanction may produce the same degree of suffering for everyone (Newman, 1985).

Third, punishment must be justified by a rationale. The normal state of affairs is the absence of punishment, and to change that condition, there must be a reason. In criminal law, the reason is the commission of a crime that invokes the criminal process. Different rationales are used to justify legal punishment, including deterrence, retribution, incapacitation, and bringing an offender into contact with the means of rehabilitation.

The Definition of Deviance

We can now define "deviance." Deviance is behavior that violates a norm beyond the tolerance of a group such that there is a probability of a sanction being applied. Note that this definition recognizes the possibility that a sanction might not be applied. Not every instance of deviance is known to the group; some criminals actually get away with their crimes, just as other deviants are able to hide their behavior or condition from others. Even if the probability of a sanction is non-zero, it might be very low, and some deviants might decide it is worth the risk of committing a given deviant act. With respect to crime, don't all criminals think they are likely to get away with it? It is not unreasonable to think that if people know or are relatively certain they will escape criminal sanction, they will be likely to act on that perception.

So, deviance constitutes departures from norms that draw social disapproval such that the variations elicit (or are likely to elicit if detected) negative sanctions. This definition incorporates both social disapproval of actions and social reactions to the disapproved actions (see also Atkinson, 2014). The key element in this conception is the idea of a norm. Norms do not simply operate undisturbed in society. They are created, maintained, and promoted, sometimes in competition against one another. Society creates norms in much the same sense that the idea of deviance itself results from social construction and negotiation (Adler & Adler, 2016).

People are considered deviant because of their behavior or conditions. People risk being labeled deviant by others when they express unaccepted religious beliefs (e.g., devil-worship), violate norms pertaining to dress or appearance, or engage in proscribed sexual acts. Certain conditions also frequently lead people to label others as deviant, including physical handicaps and violations of appearance norms (so-called "body shaming"). People whose identity as deviant results from their beliefs or behaviors fall into the category of achieved deviant status, while certain conditions may confer ascribed deviant status.

Clearly, the process of deviance is complicated and ever-changing. It is the vitality of deviance that energizes those who study it. Social change can create social conditions that create new forms of deviance or destigmatize that which was once considered deviant. To many, it was unthinkable just a decade ago that states would even consider – let alone legally enable – such behavior as the recreational consumption of marijuana.

Social Control

Social control is considered so important by some that "control" is a central notion in sociology (Gibbs, 1989). Others may not agree that it is *the* central notion, but still see social control as an incredibly important idea. Given Durkheim's legacy, social control is traditionally conceived as efforts to oppose deviance or encourage conformity to norms. While some may argue that this conception is too narrow (e.g., Chriss, 2013; Gibbs, 1989), the advantage of a narrow view of social control is that it avoids the problems of more general views that tend to see it as synonymous with social organization.

In Ross's (2009) pioneering work on social control, he picks up the thread found in the works of major theorists who asked how social order was possible in highly differentiated, complex societies. Durkheim, Weber, and Marx had no trouble explaining social order in small, heterogeneous social groups; it was self-evident that people who shared the same values and had similar life-experiences would be less likely to run counter to prevailing social norms. But when, using Durkheim's language, population increased the degree of social differentiation and the division of labor, social order became problematic. "In the community the secret of order is not so much control as concord. So far as community extends, people keep themselves in order and there is no need to put them under the yoke of an elaborate discipline" (Ross, 2009:432).

In explaining social order in complex societies, apparently everything was a possible mechanism of social control, from education to advertising (for a review of this literature, see Deflem, 2015; Meier, 1982). To make sense of all the possible mechanisms, one needed taxonomies by which to group possible influences over behavior into some conceptual scheme. No one can reasonably argue that such large societal forces are irrelevant to human behavior, but simply putting such forces into different conceptual categories fails to provide important information about the relative effectiveness of each in the long run.

Social into Legal Norms

If we can define deviance as the violation of a social norm beyond the tolerance of a group with the probability of a social sanction being applied, then we can define a crime as the violation of a legal norm beyond the tolerance of the state such that a legal sanction will be applied.

Criminalization is the process of selecting certain social norms to become legal norms (laws). Obviously, not all social norms become laws. Nor should they. The properties of laws are different from other kinds of norms. Social norms are group-specific; laws are not. Social norms apply only to those groups that hold them; laws apply to everyone – regardless of group membership – who is physically in a particular political jurisdiction (city, county, state, or nation). While social groups may all agree on the nature of social norms, laws apply to everyone in their jurisdiction, regardless of whether the people to which they apply agree with them.

Because the process of creating laws is political, laws themselves have political connotations and meanings. Laws are created by political entities (e.g., city councils, state legislatures, Congress), which leaves them subject to political processes. For this reason, laws are not accidents: they are explicit decisions by those groups authorized to make them. Even legal norms created in the decisions of judges may reflect political considerations. Many judges are elected or appointed precisely because of their political positions and previous decisions.

The selection of which social norms should be legal norms is complex and variable. The complexity derives from a very broad question, to which there can be many, conflicting answers: To what extent can the state intrude into the lives of citizens? Most people have a difficult time answering this, beyond "a little," "not at all," or "a lot." Even those who would severely limit governmental interference recognize that at least some government is not only inevitable but desirable. Individuals may be able to take care of themselves in many respects, but they cannot raise an army or provide adequate police and fire protection. Beyond these cases, of course, there is great disagreement over the role of government in citizens' everyday life. The United States has a system of public education, but some parents prefer to educate their children themselves. The government also provides for many other services, such as road maintenance, snow removal from public areas, and water and sewer services. Some citizens could perhaps provide for their own needs, but many either could not or would not.

Differences of opinion also exist with respect to other questions, such as: What is the role of government in citizen self-destructive behavior, like suicide or drug taking? Suicide is not illegal in the United States, but should it be? Might some lives be saved by deterrence or by making family members liable in some sense? Would this be a good use of law, even if it reduced the number of suicides?

There are other, similar questions. The use of many drugs is illegal in the United States, but should it be? The United States is at present in the midst of the most widespread opioid epidemic it has ever experienced. Should the government be involved in this behavior? If so, in what way? Is the criminal law the best way in which for it to intervene? Or is this a public health problem, and could the government best be utilized by marshalling resources to meet the medical needs of addicts?

These are obviously very difficult questions, and people will respond according to their different values and interests. This suggests that the criminalization process may not go smoothly or quickly. In some cases, the political process is clearly evident, while in others the motives of law makers may be more benign. But regardless of motive, criminal laws are different from social norms, not only in their visibility, but also in their impact on society. And it must be recognized that law – and the fear of legal sanctions – is only one source of pressure to conform. It must also be recognized that the criminal law as a system of punishment may not be more effective than informal sanctions in dealing with a particular behavior. Few would argue that criminal sanctions are without suffering. Indeed, it is the nature of punishment that differentiates criminal from other sanctions. We reserve some sanctions, like the deprivation of liberty and capital punishment, for criminal law violations, and do not apply them to violations of other bodies of law, such as civil or administrative law. Violations of criminal law elicit punishment.

There are a number of sources of criminalization, and these sources reflect different positions on the nature and purpose of law. Even a short history of law would include the initial appearance of written codes that constituted early law. "Prior to the advent of writing, laws exist only in the form of custom" (Wacks, 2015:3). Of course, it is entirely possible that different laws come about through different mechanisms, and there is no single view that explains the existence of all criminal laws. That said, three sources of criminalization can be identified here.

Consensus Perspective

A consensus perspective has been applied successfully to a number of laws. The consensus perspective states that laws come about in order to reinforce and amplify mores. Mores are beliefs that cut across group membership boundaries; they are those expectations that are not only widely embraced, but also very strongly held. Certain acts should be against the law because they are wrong, immoral. The consensus view best explains the existence of laws that define crimes about which there is widespread agreement: murder, rape, robbery, burglary, and arson are examples.

The consensus perspective is understandably moralistic and, at least in the United States, goes back to the Puritans, who "equated crime with sin and thought of the state as the arm of God on earth" (quoted in Stone, 2017:77). The purpose of law here is to back up moral prohibitions about which there is little dispute. In this sense, crimes are the equivalence of immoral acts. Of particular interest to early settlers in New England were sexual crimes (including fornication) and maintaining a "public house" (usually a private home where people gathered for drink and games) (Parkes, 1932). Other illegal acts included disruption of the congregation and not attending church services. Even the language framing the law was Biblical; the Code of 1648 used, almost word for word, Deuteronomy 21:18–21 in identifying and correcting adolescent rebellion (Quinney, 2008:63).

This view is inherently intuitive. Most (all?) would consider murder, rape, and other violent crimes as immoral. There simply isn't much dispute or discussion about this. But such a perspective can most easily be maintained in relatively homogeneous groups where there is consensus on basic values. The nature of other crimes may not enjoy such widespread agreement, and different views might be more applicable, especially in societies that are more complicated.

Pragmatic Perspective

Immigrants after the Puritans came to the New World less for religious freedom than for economic advancement. And, by the time of the late 1700s, the Framers of the Constitution – and the entire Western world – were well in the throes of the Age of Enlightenment. Religious influences were rejected as a source of government; indeed, it was decided that the state would not be shaped by any particular religion. The understanding was that there would be a clear separation of church and state. As the First Amendment of the US Constitution says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" The Constitution, and the formation of the United States, was based not on faith, but on reason (Stone, 2017:ch.4).

Regardless of their moral properties, crimes are dangerous. They can involve physical harm, including injury or death, financial loss, and a reduction in a community's sense of trust and cohesiveness. Because of these consequences, the community should not have to rely on informal mechanisms, such as disapproval, to prevent crimes being committed. Law helps prevent crime by responding to it when it occurs and hopefully deterring future occurrences.

This is not a recent opinion. Beccaria's view of law was decidedly pragmatic. For him, the purpose of law was to prevent crime, not to punish wrongdoers. Crime was harmful and, if nothing else, law should help citizens reduce that harm. More recent writers, such James Q. Wilson (1975) and Ernest Van den Haag (1975), have discussed the purpose and role of law

in much the same way. Crime – especially those offenses that harm people and property – is universally undesirable, and law should be implemented and enforced to reduce it as much as possible. Note that this view is no less consensual than the preceding theory. People agree on what is harmful and on the necessity of the law to help reduce that risk; what is missing is the moral tone regarding the illegal behavior. Regardless of one's view of the morality of crime, the law should be directed toward it.

Political Perspective

There is a third view of the origin and role of law that recognizes explicitly the political nature of crime. Clearly, not all laws are based either on consensus or on a pragmatic reality. There are many laws that reflect not the condemnation of all, but only the condemnation of some. Several prominent social issues reflect conflicting norms, such as gay marriage, gun control, the regulation (and deregulation) of business, and the legalization of the recreational use of marijuana (to name only a few). Shifts in the legal landscape in these instances may reflect changes in the moral landscape of various groups in society, and their ability to get their norms into the legal codes.

One example of this perspective is Richard Quinney's interest group theory of law. He begins with the observation that law is a creation and evaluation of behavior made in a political context. Legislatures and Congress are composed of politicians; by definition, laws are products of political processes. Quinney also notes that modern industrial societies are composed of many different groups with unequal levels of power. Laws describe behavior that conflicts with the interests of segments or groups that have the power to formulate and shape those laws. These groups form an "interest structure," in which they may at times come in conflict with one another over competing interests and values. The groups with the most power are able to get their interests put into the legal structure. The concept of power has been defined in a number of ways, including "as the ability of an individual, group, class, or government to achieve its purposes by causing those who disagree with them to do something they might not otherwise do" (Domhoff, 2018:10).

There are a number of examples of laws that have come about because of the conflict of interests and differential power of different groups. Legal activity related to topics about which there is strong debate would fit within Quinney's theory. Legal challenges with respect to gun control, the legalization of recreational marijuana, gay marriage, and the conflict between religious beliefs and social action are only some examples. One can cite specific groups, such as the National Rifle Association and the Brady Campaign to Prevent Gun Violence, or the Catholic Church and Planned Parenthood, as examples of groups with opposing views that are attempting to use the law to legitimize their different interests. These groups, and other battlefields in the modern "culture wars," illustrate the usefulness of Quinney's theory.

There is historical support for this view. Chambliss's (1964) account of the development of vagrancy laws traces their origins to economic interests, as do historical records of the origin of the "Carrier's Case" (Hall, 1952). While this theory cannot explain the development of laws regarding behavior on which there is consensus, it can better explain changes in the law can than the other two schools of thought.

Its deficiency, of course, is that not all laws come about as a result of power differentials. Laws that provide for social security, Medicare, and Medicaid did not evolve because older and poorer citizens were especially powerful. Even limiting the focus to criminal laws, there

are no competing groups regarding the criminalization of robbery or child abuse. Further, it is not possible to make predictions from this theory. Quinney tells us that laws come about because of groups with different levels of power, but he doesn't tell us how we can know beforehand which groups are more powerful. It is tautological to be able to identify the most powerful group only after legislation is passed. As a result, this political perspective must be reserved for only some laws, not all.

These three perspectives on criminalization are not mutually exclusive, and each does better explaining the existence of some laws than others. The consensus view may best explain those crimes about which there is widespread agreement. The pragmatic view is best at explaining *mala prohibita* crimes that arose because of the increasing complexity of society. For example, laws against traffic violations were largely unnecessary in the 19th century, but as cities, roads, and car ownership grew, they became necessary to help citizens predict one another's behavior. These crimes would likely not elicit moral condemnation, and no conception of morality brought them within the criminal laws. Changes in society did. The political or conflict view is best at explaining laws about which there is more dissensus.

Conclusion

Deviance is an elementary part of understanding social behavior, and its basis resides in group evaluations and expectations for conduct in certain situations. Reactions to deviance, whether they be informal or official group sanctions, are part of the overall process of social control. Deviance is linked to systems of differentiation and stratification, both of which can lead to ranked differences in behavior and conditions. The process of norm creation and promotion is similar to that of selecting which norms should be enacted into law. While some norms are agreed upon and represent no problem to the group, others may not be mutually shared and require processes of conflict and cooperation. The criminalization process involves selecting social norms to become legal norms or laws. There are a number of possible sources of criminalization, depending on the norm in question.

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3

Law as Social Control

A. Javier Treviño

The term "social control" first emerged in sociology when Edward A. Ross defined it as "the molding of the individual's feelings and desires to suit the needs of the group" (1896a:518). Ross later identified several mechanisms of social control, chief among them being law, which he described as "the most specialized and highly finished engine of social control in society" (1901:106). For Roscoe Pound, a one-time colleague of Ross's at the University of Nebraska, law is all about social control: "Law is but a specialized part of the whole regime of social control. Its aims are those of social control. Its ultimate justification is the justification of social control. Its agencies and sanctions are but specialized and systematized agencies and sanctions of social control" (1927:183).

Alan Hunt (1993) acknowledges that, despite serving as a unifying theme in the sociological study of law, not enough consideration has been given to the implications that flow from the "law as social control" perspective. In this chapter, I locate this perspective at the intersection of four analytical dichotomies adumbrated in Ross's writings on social control. This permits a closer examination of the impact that legal social control has "in regulating conduct and assuring to the individual, safety, and to the society, order and continuity" (Hollingshead, 1941:221).

Four Dichotomies

In contrast to the more popular conceptualization of social control as a technique intended for managing *conflicts*, Ross charged social control primarily with maintaining and contributing to *social order*. Moreover, he distinguished between *social influence*, which involves individuals being spontaneously and unconsciously regulated by group values, and intentional social ascendency, which, as a formal *institution*, regularizes social behavior. In addition to the more typical perception of social control as a mechanism to *counter deviance*, Ross saw it as *facilitating social interaction*. Finally, rather than just a repressive form that emphasizes *punishment*, Ross also considered a social control that underscores *restoration*.

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Placing law at the nexus of these dialectical characteristics reveals that *legal social control* has three overlapping and interrelated goals that have been addressed by the majority of socio-legal thinkers: *solidarity*, in that it operates to settle disputes, as well as to support the established order of a society; *continuity*, in that it acts sometimes as a social-psychological process that standardizes social life and sometimes as an institutional type of organization intended to sustain societal continuance; and *conformity*, in that it endeavors to inhibit aberrant behavior, as well as to organize and encourage desired patterns of social interaction. These goals are realized through two types of *force*, which is to say, through either retribution or reparation.

Before undertaking a discussion of how theorists have handled these considerations of legal social control during the past century or so, it is first necessary to understand what they meant by *the legal*.

Designating the Legal

The analytical determination of what is "law" has been articulated by two antithetical distinctions: positive law and living law. While *positive law* has been of primary – and, frequently, of sole – concern to Anglo-American jurisprudence at least since Bentham, the conceptualization of *living law* was of principal interest to the Eastern European legal sociologists Eugen Ehrlich, Leon Petrażycki, and, to some extent, Nicholas S. Timasheff.

Positive Law

Historically speaking, prior to the emergence of positive law (also enacted law, lawyer's law, formal law, or state law), social control was expressed in the Homeric world of Odysseus as *themis* – a sense of custom that would ensure social order and civilized existence. Out of custom emerged enacted law, which, according to L. L. Bernard, had the advantage of being "a more rational and discriminating social control," one that was "objectivated in the form of a verbal statement or code" and "added greatly to a sense of social security" (1939:560–561). Beyond this, law derives from the political apparatus and from endeavors to secure conformity with desired behavior, usually through the use or the threatened use of organized sanctions. However, even in a complex society with highly specialized structures, law never achieves complete differentiation from custom and other non-legal norms (e.g., religious norms, moral norms, economic and political directives) intended to regulate social interaction.

For his part, William Graham Sumner (1906) explained positive law's evolution – its supplementation and replacement of custom – through a similar sociohistorical process. For him, all social activity is motivated by four self-interests – hunger, love, vanity, and fear – which give rise to the mores. The chronological sequence is that these self-interests produce the mores, the mores produce institutions like the state, and the state produces positive law.

The majority of Anglo-American socio-legal thinkers, going all the way back to Austin's proposal that the sanction of law is found in the threat of a sovereign, have taken care to separate custom from positive law. More than this, they have ensured that law is always related to the political apparatus. Thus, Donald Black refers to law simply as "*governmental* social control" (1976:2). Similarly, for Pound, law involves "the systematic application of the

force of *politically organized society*" (1945:304). However, at the opposite end of the "law as social control" schema, we find the concept with which many Continental theorists – but particularly those from Eastern Europe – were most concerned, and which according to their usage, is synonymous with all social control: living law.

Living Law

The different conceptual understandings of the term "legal" between the Anglo-American and Continental traditions in the sociology of law have blurred the distinctions between legal and non-legal forms of social control. As Pound (1945) noted, in the languages of Continental Europe, the words *droit*, *derecho*, *diritto*, and *Recht* simultaneously represent what in English is meant by "right" and what is meant by "law." They also denote what can variously be translated into English as a statute, a moral good, a legal entitlement, a moral-political-legal imperative, and the judicial process. Such multiple and expansive meanings rendered by the Continental languages to designate the legal allow the Europeans to extend their analysis of legal social control beyond the formal, organized, and centralized aspects of law into areas regarded as non-legal by most Anglo-American jurists and sociologists.

In short, the Anglo-American tradition of legal social control is primarily focused on the authoritative force of positive law, whereas the Continental approach also considers the broader non-juridic designation of living law, which Ehrlich describes as "the law that dominates life itself even though it has not been printed in legal propositions" (1936:493). This latter was, for Ehrlich, a legal social control that, in the sense of an "inner order" of associations, guides people's everyday life activities. This inner order is determined by rules of conduct, or "legal norms." This means that legal social control is, by definition, a crucial part of all *social associations*, which is to say, "a plurality of human beings who, in their relations with one another, recognize certain rules of conduct as binding, and, generally at least, actually regulate their conduct according to them" (1936:39).

While this use of "legal" is unusual in English, it nonetheless helped Ehrlich and others address the non-official types of law for which the generic term "social control" is too limited and inadequate. As such, all groups have their own inner order, which consists in what Ehrlich calls "the facts of law," or those organizational rules that assign to each individual their positions and duties in a social association. In short, whereas *positive law* consists of legal propositions that are decreed by a political, organized authority, *living law* is spontaneous, experiential, intuitive, customary, unwritten, latent, and de facto.

Legal Social Control in Relation to Other Forms of Social Control

> Law as the instrument of organized society has only very slowly differentiated itself from other repressive forces, i.e., the reaction of *individuals*, the reaction of the *public*, and the reaction of the *gods*. (Ross, 1901:114)

The "law as social control" problematic typically considers law as only one of several forms of social control. Often, it is regarded as a highly specialized and advanced "engine," as by Ross and Pound. However, both Ross and Pound recognized that law must be understood as only a part of a whole process of social controls. As such, law is frequently seen as a "very

basic technique of gaining and exercising control over society" (Ziegert, 1980:62), or, more commonly, as a means of last resort. In either case, the "law as social control" approach avoids the assertion that law is central and significant in and of itself. Rather, "the situation of the discussion of law thereupon proceeds on the basis of a consideration of its relationship, first, to the social control process as a whole and second, to the other forms of social control" (Hunt, 1993:39).

For example, Bernard saw legal social control as being most strongly related to ethical control, the latter being primarily concerned with the welfare of the individual and the community. In this alliance with social ethics, law – but particularly *criminal law* – is consciously intended for "improving moral character" and "for moral and social rehabilitation and prevention" (1939:567). For Bernard, law's relationship with other social control institutions, such as education, media, and religion, is not only one of interdependence, but for greatest efficacy must be one of mutual cooperation. "To these other control agencies," Bernard asserted, "law can give as much support by its definite prescriptions as it receives from them" (1939:581).

For Talcott Parsons (1962), differentiating between legal and other types of social control is a way of better understanding them analytically. He pointed out that, in one direction, legal social control is different from mechanisms like propaganda and advertising that are aimed at *motivating* the individual, and from those like psychotherapy that operate more privately and subtly in relation to the individual. In another direction, legal social control also differs from politics and religion, which are social control mechanisms intended to *assess values* of pertinence to the entire social system.

Black, by contrast, does not make a dichotomous distinction between legal and non-legal social control. Rather he takes a "quantitative" approach and proposes that legal social control *varies inversely* with non-legal social control: "Thus, the more parental control to which a juvenile is subject, the less likely he is to be subject to law" (1976:108). Griffiths (1984) also rejects the legal/non-legal dichotomy and opts for a gradation of "legalness" in social control. In opposition to this, and given his broad view of the legal, Ehrlich (1936) does not distinguish legal social control from other forms. Indeed, he treats all instances of social control as instances of law. Thus, whereas for Pound law is all about social control, for Ehrlich social control is all about law.

The Goals of Legal Social Control

We are now ready to examine what socio-legal thinkers past and present have said about the three main goals of legal social control – *solidarity*, *continuity*, and *conformity* – and their fulfillment through *force*. In so doing, we will also review the concomitant dichotomies that uphold them: (a) conflict management/social order; (b) subjective influence/formal institutionalization; (c) countering deviance/facilitating social interaction; and (d) punishment/restoration.

Solidarity

> In explaining why *the moral solidarity of a society* is now and then broken by the brief orgy of the natural man, it is necessary to observe that there is no fixed cycle of changes through which a system of social control normally passes. (Ross, 1901:406)

Law's association with social solidarity has been recognized at least as far back as Emile Durkheim. Indeed, Klaus A. Ziegert (1980:64) maintains that "the basic feature of social control" is social solidarity, and for Durkheim this solidarity so closely corresponds to repressive law that its violation is nothing less than a threat to society itself. Alan Hunt underscores Durkheim's tripartite relationship of social control, solidarity, and law: "In Durkheim's sociology, the social control perspective is dominant, expressed in terms of his overriding concern with solidarity in which law is treated as a form of its exemplification" (1993:40). Consistent with the Durkheimian approach, Parsons likewise asserted that, "the primary function of a legal system is integrative" (1962:58).

Legal social control's integrative capacity requires the performance of a combined twofold operation: to manage conflicts and to maintain social order.

Conflict Management

> There is a *conflict* between the aims of a man and the interests of his fellows. (Ross, 1896a:522)

Because social order is threatened by discord, frustration, and competition, one of the aims of legal social control is conflict management. This function of law requires it to act as an arbiter between opposing interests and to seek to compromise differences. Black (1998) identifies this type of conflict management as involving "negotiation," which has to do with the handling of grievances, as well as "settlement," where they are handled by a nonpartisan third party. According to Bourdieu (1987), the judicial situation "neutralizes" these conflicts and transforms them from being viewed as *personal* matters to having *public* and impartial representation. As for the legal profession, Bourdieu saw it as "a social space organized around conversion of direct conflict between directly concerned parties into juridically regulated debate between professionals acting by proxy" (1987:831).

For Ehrlich, formal legal social control as defined in terms of statutes and judicial decisions is simply unnecessary in many cases, since most affairs work themselves out without any dispute. And when a dispute does arise, "it is often settled in a friendly manner either because the parties have reached a compromise or because they have renounced their claims because they dreaded the costs in time and money" (Ehrlich, 1922:141). Although Bourdieu admits that it is less than "natural" in matters of justice to resort to law, it is frequently the case that disputants forego direct effort to find an amicable solution and instead seek the services of a legal professional, whose power "is to manipulate legal aspirations – to create them in certain cases, to amplify them or discourage them in others" (1987:833–834).

Pound approaches conflict resolution somewhat differently. He sees law as a mechanism of social control that "makes it possible to do the most that can be done for the most people" (1942:64). However, since all desired resources are limited, people's demands for goods and objects will inevitably conflict with those of their neighbors. As a result, Pound always considers the totality of interests that matter most in society as a whole. Further, he argues that the balancing of social interests and the integration of pluralistic society gives rise to the "fundamental problem of jurisprudence" (1934), which is the question of how best to weigh discordant social interests. He concedes that "manifestly one cannot speak with assurance as to how we are in the end to value competing and overlapping interests" (1942:126). The challenge is to formulate a reasoned scheme for valuing interests and arrive at social consensus through compromise.

For Parsons, it is specifically the courts that provide the "institutional machinery for the settlement of the innumerable disputes and conflicts of interest" that are bound to arise in society (2007:111). Resolving disputes and mitigating conflicts constitute the bulk of the processes of legal social control, in both trial courts and appellate courts. Both types of court are involved in the larger function of social integration. On the one hand, the trial courts originally hear and decide cases, and in this way resolve conflicts between disputing citizens with varying interests. Such disputes are an inevitable part of a culturally diverse American societal community. On the other, the appellant courts, whose concern is above all for the consistency of the legal system both within itself and with the Constitution, are functionally involved with social system integration (2007:211). "This 'civilized' way of dealing with conflicts of interest," wrote Parsons, "clearly implies that there is an integrative order superordinate to the focus of conflict of the litigating parties" (2007:270–271). Moreover, he explained that procedural order is crucial to system integration, for without proper legal procedure, highly complex social systems would be unable to maintain solidarity and thus would "break down into chaos" (2007:212).

Social Order

> *For the sake of order* the law punishes violence, and *for the sake of order* it settles disputes which might breed violence. (Ross, 1901:121)

In addition to the exalted qualities that Ross attributes to law, in the final analysis he gives it primacy of place among other instruments of social control, seeing it as nothing less than "the cornerstone of the edifice of *order*" (1925:432). Thus, for the sociology of law, underlying the discussion of legal social control has always been a pervasive concern with the problem of order; that is, with ensuring the standardization of behavior and the constancy of social relations. Indeed, as Bernard noted long ago, "law is one of the most effective stabilizing factors in society" (1939:582).

It is in Timasheff's sociology, however, that we find the clearest exposition of legal social control with an emphasis on *social order*, which he defines as "a set of rules of conduct which members [of a society] are supposed to follow and the violations of which are disapproved and reacted upon by the other members" (1946:822). Indeed, Timasheff advances a social order model of society as a concrete system with a tendency toward social equilibrium:

> The role of law securing equilibrium is obvious. Criminal law inhibits drives to violate it and if the inhibition is sufficient, reinforces the totality of basic sentiments. Civil law secures and, eventually, restores that distribution of goods and services in which the social equilibrium is expressed. Constitutional law secures the distribution of dominance and submission within the social system. (1940:149)

Social order necessitates that law organizes conduct, guarantees rights, provides security, and regulates economic activity. All this is done to ensure a peaceful and profitable social coexistence. As such, Parsons contends that law serves to purposefully "mitigate potential elements of conflict and to oil the machinery of social intercourse. Indeed, it is only by adherence to a system of rules that systems of social interaction can function without breaking down into overt or chronic covert conflict" (1962:58).

Further, in focusing primarily on the integrative subsystem of society, the *societal community*, Parsons (2007) notes that its general function is to assemble a system of norms

through which a population of individuals can be collectively organized and integrated. This function is directly served by the legal system, given that it provides solidarity through the status of *citizenship*, with its complex of universal rights and obligations. In this way, law becomes the most important basis of integration for the American societal community.

Parsons also asserts that in a politically organized society like the United States, "an effective governmental monopoly of force is a major criterion of integration" (1969:49). Indeed, without governmental monopoly of the legitimate use of force (or its threat) as the last recourse in the enforcement of legal norms, there is always the potential of the "disruption of order in social relationships" (1962:60). For Parsons (1961), organized physical force as an instrument of compulsion is so strategically significant to a societal community that its governmental use and control is an indispensable condition of social order, and thus of social solidarity.

Although Durkheim linked social solidarity with repressive law, Ehrlich sees solidarity as stemming naturally from people's communal relations, from living law. Indeed, it is because people are generally engaged in the practical affairs of life that they desire to relate to one another amicably. This means that legal norms are the primary normative order that make social associations "predominantly communicative, peaceful, stable, and predictable" (Ziegert, 2009:228); they neither require verbal expression nor depend on compulsion by a state apparatus. They are the living law, which is to say, those norms that "tie participants to a network of expectations, which are dependent on each other" (Ziegert, 2002:xxx). Indeed, Ehrlich is particularly concerned with the harmonious arrangements of various social associations. He looks first to the normative structure of social associations – whose natural state he considered to be not "an order or war, but of peace" (Ehrlich, 1936:127) – and regards legislation as a last resort for maintaining social order.

Continuity

> [Several] classes of laws aim, directly or indirectly, at securing conditions of *social continuance* and happiness. (Ross, 1896a:530)

Another goal of legal social control is social *continuity* – what Pound (1927:183) describes as "the maintenance, furtherance, and transmission of civilization," and what Parsons (1954:218) recognizes as the state of a total system "*as a going concern*." Society, "as an ongoing processual existence lasting from generation to generation" (Hollingshead, 1941:220), requires that law engage in "the adjustment of relations and ordering of conduct" (Pound, 1942:65), both as an unofficial *influence* and as a purposeful *institution*. Indeed, for Black, social control may be *unintentional*, "as when adults unconsciously implant habits of behavior in their children," or *intentional*, "as when someone is punished in order to deter others from similar misconduct" (1984:4). Similarly, for Bernard, securing the continuity of societal expectations and organization occurs through two types of organized social control: "the *subjective* or relatively immaterial and intangible, which are carried only in the individual behavior, and the *objective* or material and tangible, which have externalized existence" (1926:542). Thus, legal social control provides for social continuity in two ways: as a subjective, subtle *influence* and as an objective, formal *institution*.

Subjective Influence

> Social *Influence* means the ascendency exercised over the individual by the throng of men in which he is embedded. (Ross, 1896a:519)

One way of viewing legal social control is not as a formal, objective, and rational social agency that is politically alert to unauthorized criminal and exploitative practices, but more generally and sociologically as a "normatively *guiding influence* of the social environment of individuals" (Ziegert, 1980:63).

Legal social control as subjective influence is made explicit in the writings of Petrażycki (1955). To be sure, he rejected the idea that law is a concrete, external entity that can only be found in legal codes, court opinions, law books, and other objective sources. Indeed, he regarded these extraneous manifestations of law as nothing more than naïve projections of individuals' states of consciousness. He conceived of law as having its real existence only in a person's psyche, where it takes the form of legal emotions. People obey the law because they *feel* committed to one another; they are bound by obligation. What Petrażycki called *intuitive law* emerges spontaneously from people's actions and reactions, which take place within the "imperative-attributive" structure of bilateral relationships. These relationships are legal inasmuch as it is *imperative* that the interacting parties fulfill their duties, and in the process they are *attributed* certain rights corresponding to those duties. This type of reciprocal legal social control preserves predictable patterns of social interaction. Furthermore, the law's imperative, or persuasive, influence also encourages people to behave in a socially acceptable manner. This means that law plays an educational role in promoting conventional conduct through the process of socialization. In this way, the law's educational influence promotes a uniform system of behavior and ensures the *continuation* of the social order.

Formal Institutionalization

> It is not strange that our jurists should cling to *the grave demeanor, the prolix and archaic language, the sonorous oaths, the stiff formalities, the rigid and decorous manner*, of the court of law. (Ross, 1901:112–113)

The social control perspective has depicted law variously as a "means," "mechanism," "phase," "technique," or "system," or alternatively as an "engine," "instrument," "order," or "agency." Whatever the designation, law is regarded as one of the more *institutionalized* types of social control, or as Parsons put it, law "is located primarily on the institutional level" (1962:57, n. 1). Moreover, it is through the institutionalization of legal norms, roles, and procedures that legal continuity is ensured. Indeed, in defining law as a "relatively formalized and integrated body of rules," Parsons (1960:264) conceived it as a network of consistent and universalistic norms and obligations anchored in the social structure.

Institutionalized legal social control is formal, rational, and conscious; it has a practical character, and is mechanical and utilitarian. It relies on the specialized functions of legislation and adjudication, as well as on administrative agents: judges, prosecutors, the police. This is the reason Max Weber (1968) famously underscored that the legal institution (or "order," as he called it) requires a bureaucratic "*staff*" of functionaries in charge of compliance with laws and enforcement of violations.

Similarly, Bourdieu (1987) conceived of the legal profession as an "*apparatus*" when it formalizes legal texts and codifies legal procedures. He argued that law is further objectivized and institutionalized when jurists employ the language of "neutrality and universality," which contributes to the sustainability and propagation of the legal order. Social continuity is also maintained through what Bourdieu called law's "power of form," which "regularizes" those social behaviors and relationships that are consonant with legal rules. These

procedures have a "normalization effect" that "complements the practical power" of legal social control (1987:846).

It was from Ross that Pound drew the assertion that law should be studied as a social institution. According to Pound (1942:54), law as an institution "operating in an orderly and systematic way by a judicial and administrative process" can best ensure society's continuity – the persistence of its effective social organization – by safeguarding its "*social interests*." Generally, social interests consist of claims that ensure against behaviors that threaten a society's security, institutions, morals, resources, progress, and freedom of self-assertion. The upshot is that Pound approached law as an institution of social control operating with the objective of securing and protecting society's interests and thereby contributing to the maintenance of order.

Conformity

> *Conformity to the principles of associate life* is purity, straightness, whiteness, sweetness, clearness, life, health; while nonconformity is filth, stain, blemish, deformity, disease, decay. (Ross, 1901:263)

Social control in general, and legal social control in particular, has been seen by most sociologists as necessary to ensuring *conformity* with society's norms and laws. As such, Albert K. Cohen's narrow conceptualization of social control as those "social processes and structures tending to prevent or reduce *deviance*" (1966:39) has had a persistent vitality in the sociology of deviance and the sociology of criminal law. But also in line with the notion of conformity is the related idea of legal social control as a facilitator of mutual social relations and transactions between individuals. This is the case with Ehrlich's focus on associations or the *interactions* of people involved in patterned behaviors. Associations induce their members to be in conformity with legal norms.

Countering Deviance

> We ought to expect in the normal person not, it is true, the malice, lust, or ferocity of the born criminal, but certainly *a natural unwillingness to be checked* in the hot pursuit of his ends. (Ross, 1901:4)

Considering social control, as does Black, to be "any process by which persons define and respond to deviant behavior" (1984:1, n. 1) has long been the prevailing understanding of the concept. This notion presupposes legal social control as a countering effect on nonconformity and its enforcement of behavioral norms. To be sure, Pound defined social control – including legal social control – as "the pressure upon each man brought to bear by his fellow men in order to constrain him to do his part upholding civilized society and to deter him from antisocial conduct" (1942:18). Behavioral conformity is also implied in Parsons's characterization of law as those "patterns, norms, and rules that are applied to the acts and to the roles of persons and to the collectivities of which they are members" (1962:56–57). Thus, "if social control is a check on social deviance," Ziegert contends, "what else can law be than a state check on social deviance?" (1980:63). Indeed, it is because of this association between legal social control and deviance, Ziegert reminds us, that most people equate law with *criminal* law, or in Durkheim's terms, with "repressive" law.

Facilitating Social Interaction

> The rule that *in social intercourse* one should avoid all topics that may wound the feelings of listeners aims to control them. (Ross, 1896a: 520)

According to Lon L. Fuller (1975), all general theories of sociological jurisprudence view law as "a species of control imposed from above" by an established authority. By contrast, customary law (or living law), because it arises directly from people's everyday social interactions, has as its main function the *facilitation* of those interactions. This continues to be the case even after customary law is formalized as positive law. For example, contract law very obviously guides social interaction, as it expedites and coordinates the legal relationship of two contracting parties based on their bilateral rights and duties. Similarly, traffic laws serve to coordinate transactions "by creating shared reciprocal expectations between motorists so that they may with confidence shape their conduct toward one another" (Fuller, 1975:91). Finally, this interactional function of legal social control, Fuller proposes, is also operative at the global level, given that in the course of repeated exchanges between or among nations, discernible patterns of interaction emerge, which are then codified into international law.

Thus, all social control, and certainly all *legal* social control, is, as Ziegert (1980) puts it, a "special interaction system" that upholds the basis of common interaction and social life. It does this by enacting legal norms that guide social interactions. Indeed, Parsons asserts that "*any* social relationship can be regulated by law, and I think every category of social relationship with which sociologists are concerned is found to be regulated by law in some society somewhere" (1962:57).

For Petrażycki as well, the law's imperative-attributive character allows it to *regulate* social relations by acting as a motivating force, stimulating the accomplishment of some actions. As such, law "urges us to do our duty; it gives us the power to demand what we are entitled to by law; it makes us fight for our rights when they are transgressed and it urges a subject to a sense of obligation to do his duty" (Sorokin, 1928:702). Legal social control, therefore, consists of the action ideas of right and duty that regulate social interactions between people.

For Ehrlich, it is the "norms of conduct" – those rules that regulate human behavior in a social association – and not the statutes found in the law books or enacted by legislatures that actually govern social life. The norms of conduct form the true law – the living law – that emerges naturally and spontaneously as people interact with one another in social associations.

Ziegert (2002) extends Ehrlich's notion that social associations produce their own legal social control and contends that an associations' legal norms provide individual members with a relational "reference point" that tells them not only what conduct is expected of them, but also, in relative terms, what they can expect from others. These prescribed actions and anticipated reactions among the members of an association form its inner order – what Ziegert describes as the "reflexive web of normative expectations" that constitutes the domain of law (2002:xl).

Finally, Parsons (1962) maintains that the legal system's primary function of providing an integrated citizenry is performed through the regulation of social interaction. The trial courts, through adjudication, and the appellate courts, through judicial review, coordinate the interactions of citizens with conflicts of interest by specifying the balances of rights and obligations they have relative to one another. Moreover, the legal profession, through the integrative nature of the attorney–client relationship, helps people effectively manage the tensions that arise from the conflicts of interest they have with other citizens.

Force

> The legal, social, or moral codes *actually enforced* in a community express the social will, seeing they are collective products, and intended to regulate conduct. (Ross, 1896a;529)

Pound recognized law as "social control through the *force* of politically organized society" (1937:3). In his view, people need the compulsion of legal social control to keep their aggressive, self-assertive side in balance with their cooperative social tendency. Law's controlling force, whether physical or nonphysical, involves the utilization of several measures, from restraining wrongdoers to prescribing proper conduct, and from redressing grievances to punishing criminals. Black (1976:4–6) calls such compelling responses the "style" of legal social control, and identifies four ideal types: penal, compensatory, therapeutic, and conciliatory.

Timasheff saw the force of legal social control, which he called *ethico-imperative coordination*, as stemming not only from organized social power, but also from group conviction: "Rules of behavior are created which are simultaneously ethical rules and general commands of an established power structure" (1939:248). Focusing on the established power structure of the polity, Parsons (1962) referred to the law's use of force as the problem of the "enforcement of sanctions." The social organization and formal implementation of negative sanctions – including the threat of using them when intentions of deviance are suspected – constitutes the enforcement issue of legal social control. No large complex social system can continue unless general compliance with its legal rules is binding, in that negative sanctions attach to deviance (Parsons, 1969:44–45). Such sanctions, which range from pure inducement to sheer and outright coercion (Parsons, 1962:59), both deter deviance – in part by "reminding" good citizens of their obligations of loyalty to the societal community – and punish infraction of legal norms when it occurs.

Pound, by contrast, saw the force of legal social control as containing a mixture of both repressive and restitutive sanctions. Indeed, for him, the social interests are secured by both the punitive aspects of criminal law and the restrictive aspects of civil law:

> the social interest in political progress is not secured by provisions of the penal code so much as by privileging publications with reference to free discussion of public affairs, the officials, and fair comment on matters of public interest. The social interest in the conservation of natural resources is not so much secured by prosecutions and penalties as by limitation of the enforceable liberties of use and of enjoyment of land which the civil side of the law recognizes in an owner of land. The social interest in the general morals is secured quite as much by limitations upon the recognized liberty of the individual to engage in legal transactions as by penal legislation. The social interest in the individual life is secured today largely by limitations on individual freedom of contract, making certain agreements unenforceable. Both Durkheim's repressive law and his restitutive law aim at maintaining the social interest in the general security. (Pound, 1945:307–308)

Punishment

> Legal *punishment*…is still the corner stone of the entire edifice of control. (Ross, 1896b:759)

For most sociologists, the notion of social control involves punishing rule-breaking. Indeed, afflictive punishment typifies the repressive means of preventing and eliminating undesired behavior. As the systematic application of force, legal social control employs politically organized coercion through punitive measures. This is clearly demonstrated in Weber's

popular definition of law: "An order will be called law if it is externally guaranteed by the probability that *physical or psychological coercion* will be applied by a staff of people in order to bring about compliance or avenge violation" (1968:34).

What Black (1976) identifies as the "penal" and "compensatory" styles of legal social control are *punitive* in that they are accusatory and confrontational responses that involve the taking of life, liberty, or property. The *penal* style involves the language of prohibitions, violations, guilt, and retribution (Black, 1998). Punishment is applied in criminal law when the guilty offender is condemned to suffer pain, deprivation, or humiliation. The *compensatory* style, on the other hand, is seen in tort and contract law, where the debtor must pay damages for failing to fulfill an obligation. It speaks the language of obligations, damages, debts, and restitution. An example is the law of accidental injury. In either case, the punitive and compensatory types of legal social control take forbidding and intimidatory forms. At bottom, as Sumner notes, legal social control is about administrative sanctions: "The law has to be made, interpreted, and administered by certain men; and in the end, there is a constable or soldier who is the superior of the recalcitrant" (Sumner & Keller, 1927:618).

Restoration

> [Social control] aims not at growth, but at an equilibrium, perpetually disturbed by changes in the personnel of society and hence perpetually in need of being *restored* by the conscious effort of the group. (Ross, 1896a:521)

The early sociologists, like Robert E. Park and Ernest W. Burgess, as well as Charles Horton Cooley, W. I. Thomas, and Florian Znaniecki – to say nothing of Ross – considered a wide variety of mechanisms – education, family, religion, authority, public opinion, mass communications, stratification, and propaganda – along with law, as forms of social control. But, as Robert F. Meier (1982) points out, they saw repressive social control as unnecessary to social organization. Even Pound (1942), who understood that legal social control typically has the backing of political force, acknowledged that punitive sanctions are sometimes absent in international law.

But contrary to Pound, who always considered law within the context of politically organized society, for both Petrażycki and Ehrlich, the actual norms that govern the daily lives of people have no connection with external authority or coercion. Petrażycki's "intuitive law" consists of "those legal experiences which contain no references to outside authorities and are independent thereof" (1955:57). As is typically the case with intuitive law, it involves "neither commands emanating from authorities nor normative facts of any kind" (1955:155). For example, it may be said that a husband's impulsions are imperative if "he experiences his duty and his wife's right to fidelity without even thinking about family code, religious command, or any other source establishing the obligation" (Górecki, 1975:7–8).

Black's (1976) "therapeutic" and "conciliatory" styles of legal social control are not retributive but *restorative*, in that they assist people in trouble and repair damaged relationships. *Therapy* is used in the juvenile justice system where the delinquent is a victim needing help for his or her condition. *Conciliation* is practiced in various forms of restorative justice where disputants seek to resolve their conflict and bring their relationship back into harmony.

Parsons (1962) also underscored the restorative capacity of legal social control, particularly in the case of the privileged confidential relationship that the practicing attorney has with the client. This relationship is centered on "situations of actual or potential social

conflict and the adjudication and *smoothing over* of these conflicts" (Parsons, 1962:63). Parsons identified the main function of this attorney–client relationship as that of legal social control. As a mechanism of social control, the legal profession, through the private attorney, provides a latent function in helping clients *manage the psychological strain* they experience as a result of the conflictual situation in which they find themselves. Indeed, one of the most important aspects of legal procedure is to provide ways of "*cooling off*" the client's passions aroused in legal disputes. The lawyer mollifies the client by helping him "to 'face reality,' to confine his claim to what he has a real chance of making 'stand up' in court or in direct negotiation, and to realize and to emotionally accept the fact that the other fellow may have a case too" (Parsons, 1962:68). In other words, the private attorney provides the stressed-out client with the therapeutic opportunity of tension release.

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4

Social Geometry and Social Control

Bradley Campbell and Jason Manning

Sociologists conceptualize social control in multiple ways. In one well-known conception, it is defined by its effects, and refers to any behaviors or practices that bring about conformity to social norms and mitigate deviance from these norms (Black, 1998:3–4; see, e.g., Ross, 1901). Others might define social control according to the motives behind it, such that all attempts to enforce norms and deter deviance will count, even if they are ineffective. In still another usage, social control is not defined by what effects it has on deviance, or even by how it attempts to deal with deviance; instead, deviance is defined by social control, and social control is any behavior that involves treating something as deviant (see, e.g., Becker, 1963; Lemert, 1964).

This last usage has its roots in Durkheim (1997), who famously defined crime as anything society punishes. His definition was based on the observation that what is criminal in one society might be completely unobjectionable, perhaps even praiseworthy, in another. It was also a definition that reflected his approach to the study of law. Durkheim was less concerned with why people engaged in crime than with why society would label things criminal in the first place, or why reactions to crime differed from one time and place to another. Thus, he proposed a theory to explain variation in the nature and intensity of punishment across societies and over time.

The recognition that deviance is relative – and the concern with explaining reactions to it – is also central in the work of Donald Black. For Black (1976:105), social control is any process of defining and responding to deviant behavior. This broad conception includes the activities of police and courts, but also a great many other behaviors. Indeed, we all engage in this sort of social control on a daily basis, every time we treat any conduct as rude, inappropriate, or otherwise wrong – that is, any time we express a grievance or otherwise handle moral conflict.

Beginning with his early work on law, Black has led a program of theory and research focused on explaining variation in social control. His work is unique in that, rather than using a more conventional explanatory framework like the rational choice or conflict paradigms, it involves a new and unusual paradigm of Black's own creation. This strategy

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of explanation, which Black calls *pure sociology*, explains social control by its distance and direction in a multidimensional social space – that is, by its social geometry (Black, 1995, 2002).

Black's program has proven fruitful. If we measure theorists' productivity by the number of general and testable propositions they produce, then he is likely the most prolific contemporary theorist of social control. His strategy of explaining social control by its social geometry has also attracted the efforts of a number of other scholars over the years, who have added their own findings and theoretical insights to this growing body of work. In this chapter, we present an overview of the state of the art in Blackian theories of social control. We begin by discussing the kinds of variation that these theories are meant to explain.

Variation in Social Control

Social control varies. People handle grievances using an array of techniques: divorce, gossip, genocide, lawsuits, executions, psychotherapy, and much more. They also conceive of social control in different ways, sometimes as punishment, for example, or sometimes as assistance with a problem. And they use different amounts of social control, perhaps meting out mild punishment for one offense and severe punishment for another. In other words, social control varies in form, style, and quantity (Black, 1998:5–11; Horwitz, 1990).

Most *forms* of social control fall into one of four categories: avoidance, negotiation, settlement, or self-help (Black, 1998:74–94). *Avoidance* is the reduction of interaction in response to a grievance. Consider a marital conflict. A husband and wife might temporarily stop speaking to one another, or stop having sex, or if they keep having conflicts, they might end their relationship completely and seek a divorce. Friends with conflicts might also temporarily stop interacting, or their close friendship might become a more distant one, or they might lose touch entirely. Employees might quit their jobs over grievances against their bosses, or bosses might fire their employees. Customers might stop patronizing a business, or a business might ban a customer. In collective conflicts, protesters might call for the boycott of an irresponsible corporation, or nation-states might impose economic sanctions on a rogue nation. *Negotiation* occurs when the parties to a conflict try to work out an agreement among themselves. An arguing couple might try to talk out their problems. Someone who owes a friend money might meet with the friend to discuss a payment plan. The leaders of enemy nations might hold a summit to arrive at a peaceful solution to their conflicts. If successful, negotiation may end the conflict to the satisfaction of both sides. So might *settlement*, or third-party intervention, which in its least authoritative forms resembles negotiation. Nonauthoritative settlement might involve a mediator who facilitates a discussion between the two sides, while more authoritative settlement might involve a judge who makes a decision that the parties must abide by. Both nonauthoritative and authoritative settlement occur in more informal situations as well. You would be acting as a fairly nonauthoritative settlement agent if you gently changed the subject when your two friends began to argue, and as a more authoritative settlement agent if you intervened forcefully to prevent a fistfight (Black & Baumgartner, 1983). *Self-help*, finally, occurs when one or more parties to a conflict use aggression. Rather than avoiding adversaries, or negotiating with them, or getting someone else to deal with them, an aggrieved party might take the law into their own hands, such as by destroying their adversaries' property, assaulting them, or even executing them.

Avoidance, negotiation, settlement, and self-help are the major forms of social control, but we can also divide them into multiple subforms. Avoidance and self-help, for example, can be either unilateral or bilateral. Unilateral avoidance occurs when people reduce contact with adversaries against their wishes – perhaps even without their knowledge – while avoidance is bilateral when people agree to go their separate ways. Unilateral self-help occurs when aggression is one-sided, and bilateral self-help when aggrieved parties use aggression against one another, either by mutual agreement or when one side uses aggression and the other retaliates in kind. Negotiation is by definition bilateral, since it involves mutual discussion, and settlement is trilateral since it involves third-party intervention. We can also distinguish forms of social control based on whether they are individual – where the agents of social control act alone – or collective – where they act in groups. Individuals might reduce contact with one another, but so might nation states. Individuals can negotiate, but so can groups such as management and organized labor. A settlement agent might be an individual acting alone or an agent of a group such as a government. Both individuals and groups can engage in aggression.

The *style* of social control – the language and logic used in handling deviant behavior – also comes in four main types: penal, compensatory, therapeutic, and conciliatory (Black, 1976:4–6; see also Horwitz, 1990). With the *penal* style, social control is punishment. Usually, the idea is that offenders have violated some kind of prohibition and deserve to have pain, deprivation, or some other unpleasant experience inflicted upon them because of their guilt. With the *compensatory* style, social control is payment. Someone has incurred a debt – by violating a contract, say, or by injuring someone – and needs to pay up. With the *therapeutic* style, social control is a way of helping a person. Someone's misbehavior results from an illness or some other kind of problem, and the person needs help in changing. With the *conciliatory* style, social control is also a kind of help, but it is help in restoring a relationship rather than transforming an individual. We might think of different styles being used for different offenses, and sometimes this is the case. A robbery might be punished, payment of compensation might be required when someone cheats a business partner, an alcoholic might be helped to give up drinking, and a husband and wife might be helped to improve their relationship. But multiple styles can also be employed in handling a single offense, and if we look broadly enough, we can see each style being used at some point for just about any offense. We might think of a homicide as deserving punishment, for instance, but a killer might also be required to pay compensation, and in some societies compensation is the principle way of handling homicide. A killer might also receive help for demon possession, mental illness, or some other problem that led to the homicide, or a killing might simply be one part of a conflict between two family groups that needs to be solved.

Social control also varies in *quantity*: there can always be more or less of it. Sometimes, situations that elicit reactions in other settings result in no social control at all – misbehavior is simply tolerated, as in M. P. Baumgartner's study of a conflict in an American suburb, where a Mr. and Mrs. Shephard did nothing at all when their neighbor showed up at their door completely naked and said he just wanted to give them some mail that had been mistakenly delivered to him (Baumgartner, 1988:74). And each type of social control varies in degree. Ending a relationship permanently is more avoidance than not speaking to someone for a few days, and a killing is more violence than an assault. Black's early work looked at the quantity of law, which in the US criminal justice system ranges from a call to the police, to an arrest, to a 5-year prison sentence, to a 20-year prison sentence, on up to an execution (Black, 1976).

Variation in Social Geometry

Variation in one thing can only be explained by variation in something else. The pure sociology of social control explains variation in social control by variation in social geometry (Black, 1995). Social geometry refers to the social structure of a behavior: the social characteristics of everyone involved. Social geometry varies from one instance of a behavior to the next, and we can think of this variation spatially, with every behavior having a location and direction in social space. In explaining social control, we look to the social geometry of the conflict that gives rise to it, and we think first of every conflict as having a vertical location and direction arising from various types of social inequality. One source of inequality is the uneven distribution of wealth, and we commonly describe wealthy people as having a high status and poor people as having a low status. If I have a grievance against you, and we are both wealthy, the conflict has an elevated location in social space. If we are both poor, the location is lower. If I am wealthy and you are poor, the conflict has a downward direction, and if I am poor and you are wealthy, it has an upward direction.

Wealth is one kind of social status, but other kinds, including integration, respectability, authority, and organization, work the same way. Integration has to do with one's participation in society, respectability with one's moral reputation, authority with one's place in an organizational hierarchy, and organization with one's capacity for collective action (Black, 1976). So, when someone who has a job has a grievance against an unemployed person, the conflict will have a downward direction – as it will when a law-abiding citizen has a grievance against an ex-convict, when a boss has a grievance against a subordinate, or when an organization has a grievance against an individual. Any conflict, then, is elevated or lowly, downward or upward, along a number of dimensions.

Inequality gives rise to differences in status, which we think of vertically, but we can think of other aspects of social life horizontally, with people socially closer to or more distant from one another. One type of social distance is relational distance, which has to with people's involvement in each other's lives. Relational distance has many dimensions, such as how often people interact, the scope of their interaction, and the length of their relationship (Black, 1976:40–41). Spouses are usually closer to one another than they are to other family members or friends, and much closer than they are to acquaintances and strangers, so a conflict between spouses is a very close conflict, and a conflict between strangers is a very distant one. Cultural distance and interdependence can be thought of similarly. Cultural distance has to do with similarities and differences in language, dress, cuisine, religion, ethnicity, and other cultural characteristics (Black, 1976:73–74). Two people who speak the same language are thus closer than two people who speak different languages, and people who share an ethnic identity are closer than those who do not. Interdependence has to do with how much people depend on one another – how much they cooperate both economically and otherwise. People who exchange goods and services are more interdependent, and thus socially closer to one another, than people who are economically independent (Black, 1998:45–47).

The social geometry of a conflict explains the handling of that conflict. High-status disputants handle conflicts differently than low-status disputants, and people with downward grievances handle them differently than people with upward grievances. Those who are socially close handle conflicts differently than those who are socially distant, and third parties respond to all these conflicts differently as well. The social characteristics of third parties matter too, so high-status judges rule differently than low-status judges. Likewise, third parties who are close to one party to a conflict do not behave like those who are close

to both sides, and neither acts like those who are distant from both sides. Every conflict has a social configuration arising from different dimensions of social inequality and social distances, and it is this configuration – the social geometry – that makes certain responses more or less likely.

Geometry and Form

Different conflict geometries give rise to different forms of social control. Whether social control is individual or collective, for example, often depends on whether the conflict geometry is conducive to partisanship. Whether third parties act as partisans – whether they take a side in a conflict – depends on the social distances between the adversaries and third parties, and on their relative statuses. People tend to side with adversaries they are close to and against those they are distant from, and they tend to side with high-status adversaries against low-status adversaries (Black, 1998:125–143). Forms of collective violence such as lynching, rioting, blood feuding, and gang warfare occur only when at least one side of the conflict has strong partisans who join in the violence (Black, 2004b; Senechal de la Roche, 2001). Lynchings in the Jim Crow South, which were usually responses to suspected offenses by blacks against whites, followed this pattern. Not only were the members of the white lynch mobs culturally closer to the victim of the offense that gave rise to the lynching than to the accused, due to their ethnic similarities, they also tended to have stronger relational ties, since lynchings were more likely to occur when a stranger to the community was suspected of an offense against an insider (Senechal de la Roche 1996, 1997, 2001).

Status was also important, and the system of racial oppression that kept blacks poor and otherwise low in status is one reason for the pattern of lynching. But again, not all interethnic conflicts led to lynchings, and lynchings were more likely to occur in response to offenses against wealthy and otherwise high-status whites (Senechal de la Roche, 2001:131). Riots likewise occur under conditions of strong partisanship, as do blood feuds and gang wars, but blood feuds and gang wars occur when partisanship is strong on both sides. Clans in a tribal society or gang members in modern America might respond to a killing by killing a member of the killer's group, and the killer's group might respond with a retaliatory killing. In this situation, third parties who are close to the original killer but distant from the victim, and others who are close to the original victim but distant from the killer, quickly mobilize for vengeance (Black, 2004b:153–154; Cooney, 1998:73–82).

Note that while lynchings, riots, blood feuds, and gang wars are all collective, lynchings and riots are unilateral and blood feuds and gang wars are bilateral. In general, bilateral social control is more likely when the adversaries are of equal status, and unilateral social control when they are not. Remember that organization – the capacity for collective action – is itself a kind of status, so attracting supporters increases the status of an adversary. Thus, the uneven support we see in conflicts that lead to lynching or rioting is one reason these conflicts give rise to unilateral collective violence, while support for both sides is necessary for bilateral collective violence. Other kinds of status matter, too, so any kind of inequality between the different sides of a conflict – whether of wealth, integration, authority, or anything else – makes bilateral social control less likely. Negotiation tends to be between equals, as does bilateral avoidance. Unilateral avoidance – whether expulsion or flight – occurs alongside inequality, with high-status parties expelling lower-status adversaries, and low-status parties fleeing from high-status adversaries.

Patterns of social status and social distance also explain trilateral social control, or settlement. First, settlement agents tend to be higher in status than the adversaries, since lower-status third parties will be unlikely to intervene at all. They also tend to be equally distant from the adversaries, since if they were closer to one side, they would act as partisans. The more pronounced these patterns, the more authoritative the settlement becomes. Mediation, where settlement agents simply help facilitate a discussion between the adversaries, is more likely when the settlement agents are not much higher in status than the adversaries and when they are relationally and culturally close to them. Adjudication, on the other hand, where settlement agents make decisions and enforce them, is more likely when they are much higher in status and more distant. In between falls an intermediate form, arbitration, where settlement agents make decisions that are not enforced; the geometry thus falls between that of mediation and adjudication (Black, 1998:15–17).

In hunter-gatherer societies, where people are all socially close to one another and there is little inequality of any kind, there is also very little settlement – and certainly little authoritative settlement. Among the Inuit of the Arctic, for example, the relatives of a homicide victim might take vengeance, but the group as a whole has no law to deal with it (Hoebel, 1961). Non-legal forms of settlement do occur in tribal societies, where clans are separated by some relational but not cultural distance, and where there is greater inequality. This inequality is still minimal, though, and settlement tends to be nonauthoritative. Thus, when feuding Montegrins want to end the feud, they might call a temporary truce and go to the Court of Good Men for help in solving their conflict. But they can always reject the court's suggestions and go back go feuding (Boehm, 1986). And even in societies with more inequality and more social distance, and thus more developed legal systems, people resist law whenever the geometry of the conflict is not right for authoritative settlement. In late medieval and early modern Europe, for example, land-owning noblemen were extremely high in status compared to agents of the emerging state, and they refused to take their conflicts before legal officials, preferring instead to take vengeance themselves (Cooney, 1998:31–44).

Geometry and Style

Different combinations of social distance and inequality also account for the style of social control that responds to a conflict. Penal and compensatory law are both *accusatory* styles of social control, where at least one side of a conflict accuses the other of wrongdoing, and these styles are more likely when the social distance between the adversaries is greater. The therapeutic and conciliatory styles are *remedial* rather than accusatory, though, and these are more likely when the adversaries are close (Black, 1976:47). Downward grievances – grievances against lower-status offenders – are more likely than are upward or lateral grievances to be handled with the penal style, while upward grievances are more likely to be handled with the compensatory and therapeutic styles, and lateral grievances with the conciliatory style (Black, 1976:29, 1980:109–186; Horwitz, 1990).

Modern law mostly doles out punishment or compensation, but legal systems in more intimate and egalitarian settings are more remedial. So too is social control in intimate and egalitarian settings within modern societies, such as within families, tight-knit communities, and communes. Social control can also be intimate in what might seem to be unlikely places. In what are often called post-bureaucratic corporations, for example, decision-making is less

centralized and less specialized than in traditional corporations, and the people are more intimate and equal. In these settings, there is little formal discipline, and therapy thrives. Rather than punish their employees, managers talk to them about their problems and encourage them to seek help (Tucker, 1999).

Geometry and Quantity

In Blackian theory and research, one of the most consistent predictors of the quantity of social control is social distance. Most broadly, Black proposes that *moralism is a direct function of social distance* (Black, 1998:144). Relational and cultural distance encourages harsh judgments and harsh punishments. Suspicion attaches to strangers and foreigners, and historically, being an outsider has been dangerous. Given great enough distances, the deviant's actual conduct becomes irrelevant, and someone's mere existence is treated as an offense. Thus, some isolated tribes attack strangers as a matter of course (Black, 1998:150–153). Relational and culture closeness, on the other hand, encourages toleration: "As people grow close, they 'normalize' conduct that earlier would have spurred them to action," and "people who are vicious toward foreigners will more readily forgive their own kind" (Black, 1998:89). For example, academics are less likely to contest intellectual conflicts when the offender is a close friend or colleague. Given sufficient closeness, even major intellectual theft might be tolerated (Cooney & Phillips, 2017).

We can see the relationship between distance and quantity clearly in cases of self-help. Self-help becomes more likely, more violent, and more severe as distance increases. When a conflict occurs between two solidary groups, such as clans or street gangs, the groups are less likely to turn to violence if there are cross-cutting ties between them (Cooney, 1998:67–99). The same is true for individuals (Baumgartner, 1992; Phillips & Cooney, 2005). Groups that lack such mutual social ties are more prone to violent conflict, but if they still have some degree of intimacy – such as being able to recognize one another's members as individuals – and if they share a common culture, any violence is likely to be relatively restrained. The classic blood feud, for instance, is a precise and even exchange of killings, a life for a life, often governed by some rules about who is an acceptable target and where killings can take place. Black proposes that blood feuds occur only at an intermediate degree of relational distance and between groups that are culturally homogeneous (Black, 2004b). Increase the relational and cultural distance, making the groups total strangers and ethnically distinct, and the violence will become more indiscriminate and warlike. Similar patterns are seen in other forms of self-help. Senechal de la Roche (1996, 1997, 2001) proposes that distance increases the likelihood of lynching, which again usually targets strangers or recent arrivals. Mere suspicion might be enough for members of a tight-knit community to lynch an outsider, but it often takes a history of repeat offenses for them to lynch one of their own (Senechal de la Roche, 2001). Increase distance still further, Senechal de la Roche argues, and lynching turns to rioting. Riots employ collective liability, treating all members of a racial, ethnic, or religious group as deviant regardless of their individual actions. They thus have many more victims than the typical lynching, and they typically involve more perpetrators. As social distance increases still further, the scale of self-help increases even more.

The greatest extremes of social control – including wars, genocides, and mass-casualty terrorism – usually occur between strangers from different societies, religions, and ethnic groups, separated by large degrees of relational and cultural distance and completely lacking

functional interdependence (Black, 2004a; Campbell, 2015a, 2015b; Senechal de la Roche, 1996, 2001). Even within these acts of large-scale violence, the quantity of self-help varies from locality to locality based on the degree of distance involved. For instance, during the Holocaust, genocidal violence against the Jews began later and was less intensive in areas with higher rates of intermarriage and greater cultural similarity between Jews and Gentiles (Campbell, 2009:163–164, 2015a:20–21).

The effect of social distance can be seen with other forms of social control as well. Black proposes that, within a society, law increases with social distance (Black, 1976:40–46,73–78, 1989:12–13). Thus, people are more likely to call the police against someone more distant than against someone more intimate. Rape victims, for instance, are more likely to report the crime if the attacker was a stranger rather than an acquaintance, and if they were an acquaintance rather than a friend or relative (e.g., Fisher et al., 2003; Williams, 1984). And, once reported to the legal system, crimes against intimates are treated less severely than crimes against strangers (e.g., Cooney, 2009b:156–157). Social closeness – particularly such dimensions of closeness as multiplexity and interdependence – also mitigates avoidance. Total and complete avoidance is thus more likely in relationships with a narrower scope and where parties do not rely on one another (Black, 1998:81).

Another factor that determines quantity is vertical direction. The overall volume of social control appears to be greater in downward directions. Black proposes that moralism is a direct function of superiority, such that distant inferiors attract more and harsher social control than do equals or superiors (Black, 1998:144). Superiority breeds judgment, while inferiority encourages toleration: "Social inferiors may not be subjectively tolerant of their superiors, but behaviorally they are exceptionally so" (Black, 1998:89). For instance, in-depth interviews of immigrants living in Ireland found that lower-status immigrants – those who lacked wealth, education, or employment – experienced more ethnic hostility than did higher-status immigrants, and were more likely to do little or nothing in response (Cooney, 2009a). And in the United States, immigrants are much more tolerant of slights by the cultural majority than they are of those by other minorities (Baumgartner, 1998).

We can also see this relationship in law, which Black (1976) proposes is greater in downward directions than in upward ones. Thus, courts process more cases by organizations against individuals than by individuals against organizations, and cases by individuals against organizations are less likely to succeed (see, e.g., Songer & Sheehan, 1999; Wanner, 1999). Wealth produces similar differentials, and killings of the wealthy by the poor are handled more severely than are killings of the poor by the wealthy. The greater the degree of inequality in a society, the greater the differential (Cooney, 2009b:39–50). In most societies that practice slavery, for example, the killing of a slave by his or her master is not even a crime. Masters also frequently punish their slaves with flogging and other severe violence, and it appears that violent self-help in general is greater in downward directions than in upward ones. In the span of history, far more slaves have been beaten than have rebelled. It is also historically common for servants, children, and other subordinates to be subjected to corporal punishment, while violent rebellion against masters, parents, and other superiors has been rare, and has been harshly punished when it has occurred. True, there are some particular forms of violence that are more likely in upward direction. This is the case for terrorism: a pattern of covert mass killings by organized civilians who target enemy civilians (Black, 2004a). But the casualties inflicted by the largest known acts or campaigns of terrorism pale in comparison to those inflicted by history's largest genocides, and genocide is more likely in downward directions (Campbell, 2015b).

Multidimensional Geometry

Each dimension of social geometry exerts an influence on social control. By specifying this influence, we can explain different aspects of social control, such as its severity or the degree to which it is unilateral rather than bilateral or trilateral. We can also consider the joint impact of several geometric variables at once. For instance, we might ask what forms of social control happen between individuals who are relationally close and functionally interdependent but highly stratified, or between groups that are relationally distant but culturally close and of equal status. We can thus construct multidimensional models that predict the effect of different combinations of variables. Doing so allows us to construct more precise explanations of particular forms and patterns of social control.

For example, Black (2004b) proposes a multidimensional model of the classic blood feud: a precise and even exchange of vengeance killings, tit for tat. According to his theory, such feuds occur only in conflicts between groups (e.g., clans and other kin groups) that are: (a) internally solidary, with high intimacy and interdependence between members; (b) socially equal to one another, with similar levels of wealth and group size; (c) functionally independent of one another; (d) culturally close to one another, sharing religion, ethnicity, and, often, codes about the conduct of feuds; and (e) separated by an intermediate degree of relational distance. Alter any aspect of this configuration of variables and the form of social control will deviate in some way from the classic feud. Decrease the solidarity of the groups, and the lack of strong partisanship will lead to killings going unavenged. Increase the inequality between groups, and violent self-help will become more one-sided and uneven. Decrease the social distance, and non-violent forms of social control will become more likely.

Different forms of social control require different models. A form that has emerged on college campuses in recent years is the microaggression complaint: people who take offense at the words and actions of others react by complaining in online forums that they have been subjected to a so-called microaggression, something believed to be a severe offense because it further contributes to the domination of disadvantaged minorities. Campbell & Manning (2014, 2018) propose that microaggression complaints arise upwardly across small degrees of inequality, between members of different cultural groups, and in the presence of higher-status third parties. They thus thrive on college campuses, where students from lower- and higher-status ethnic groups interact as relative equals in the presence of a paternalistic bureaucracy.

Another peculiar form of social control involves people killing themselves as a way of protesting or punishing someone else. For instance, someone might kill him- or herself to bring guilt or shame upon an abusive or unfaithful spouse. Manning (2012) proposes that such moralistic suicides are most likely to express grievances against someone who is relationally and culturally close, socially superior, and with whom the aggrieved is functionally interdependent. Moralistic suicide is therefore common among wives and children in highly patriarchal societies. While it is most common in relationships that combine closeness with inequality, a sufficient degree of one variable can compensate for the other, such that we also see suicide as a tactic of political protest by citizens against governments. Yet, if we increase distance still further, the positive relationship between distance and violent self-help leads to pure protest suicide being replaced by suicide attacks. Thus, suicide terrorism tends to share protest suicide's upward direction, but is much more likely to cross lines of nationality, religion, and ethnicity (Manning, 2012, 2015).

Using multidimensional geometry, we can specify avoidance structures and negotiation structures (Black, 1998:74–89), lynching structures and feuding structures (Black, 2004b; Senechal de la Roche, 1997). We can thus predict and explain how grievances will be expressed and how deviants will be dealt with. But we can go still further: in addition to explaining why social control takes one form rather than another, we can ask what causes it to occur at all.

Changing Geometry

All the relationships discussed so far come with an important qualification: they are expected to hold only when the nature of the deviant behavior is held constant. We do not assess the relationship between relational distance and law by comparing a verbal spat between spouses to a homicide between strangers, or vice versa. Obviously, a homicide is more likely to attract legal response than mere angry words, and the difference is great enough to drown out the effect of most geometric variables. We understand the impact of social geometry only by comparing reactions to the same sort of offense, such as by looking at variation in the handling of killing, insults, theft, and so on.

It is also important to note that these geometric relationships all operate on the assumption that a grievance has occurred; that is, someone has taken offense or otherwise defined someone else's behavior as deviant. The question is how the deviant behavior will be handled.

But why does the labeling occur in the first place? What exactly causes people to take offense? And why is it that some offenses, like homicide, are predictably treated more severely than others? According to Black's (2011) more recent theory of conflict, the key to answering these questions is to recognize that social geometry is not static, but always subject to change. Relational distance, for instance, changes whenever we grow more intimate with a new acquaintance or sever old relationships. So, too, for vertical distance: the level of equality or inequality between persons and groups is subject to change, and it fluctuates whenever anyone gains or loses social status. The behaviors and events that spark conflicts can all be conceptualized as changes in social geometry. Viewed in this light, conflict is caused by changing geometry, and deviant behaviors are labeled deviant because they alter social geometry. An employee disobeys a boss, reducing the boss's superiority by undermining his or her authority. A woman leaves her husband, causing a sudden increase in relational distance. A heretic adopts new and unconventional beliefs, growing more culturally distant from everyone else. All these acts change the geometry of social relationships, and all are likely to be treated as deviant. Changes in social geometry cause social control (Black, 2011:4–5).

Black (2011:6) proposes that the severity of the deviant behavior is a direct function of the magnitude and speed of the change. The reason homicides usually attract more social control than insults is that homicide has a greater impact on social space. An insult subjects someone to a minor act of dominance, and possibly of humiliation; it takes away at least a small degree of status. But a homicide takes everything the victim has and ever will have. It is therefore a greater change to the status structure. It also severs the relationship between the deceased and his or her associates, creating a drastic increase in relational distance. Killing is generally a more severe kind of deviant behavior because it involves a greater change in geometry. Likewise, the cold shoulder is a smaller increase in relational distance than is divorce or abandonment, so it provokes less social control in response. The greater and faster the change, the greater the social control.

The nature of the change interacts with the geometry of social space. For example, a given increase in relational distance will cause greater conflict in closer relationships than in more distant ones (Black, 2011:138–142). Intimates are likely to fight over intimacy itself, and most domestic homicide is a way of punishing an estranged partner for "the crime of saying goodbye" (Black, 2011:46). Likewise, a given increase in inequality will cause more conflict among those who are very equal than among those who are already highly stratified (Black, 2011:138–144).

Furthermore, such interactions allow us to specify which particular changes in geometry are likely to spark which particular forms of social control. Campbell (2013, 2015a) thus proposes that the fundamental cause of all genocides is some combination of increasing cultural distance and decreasing vertical distance. Genocides are sparked by encounters with a new ethnic group, or when an already subordinate group rises in status, reducing the superiority of the dominant group. Similarly, Cooney (2014) proposes that most family honor killings are a response to actions that threaten to reduce the superiority of the family over its members, of men over women, and of the old over the young. If an Arab or Turkish girl disobeys her elders by wearing Western clothing or beginning a sexual relationship with a boy not of their choosing, she is engaging in an act of rebellion. The honor killing is a form of punitive social control that crushes the rebellion. Combining theories of conflict and social control allows us to make more precise predictions about when and where each variety of social control is likely to occur (Manning, 2013).

Conclusion

Social life without moral conflict is hard to imagine. Every day, we find ourselves immersed in it. We disapprove of someone's conduct – our neighbor's noise, our roommate's messiness, our children's disobedience, our spouse's lack of affection, our boss's groping, our co-worker's laziness, our pastor's boring sermon, our students' complaints, our political leaders' lies. We object to the bad writing on what was once our favorite television show, we complain about the lack of good new movies, we express disappointment over the failings of our favorite celebrities. We get angry reading about robberies, rapes, murders, wars, and genocides. We despair over poverty and racial injustice. We might experience these things ourselves – crime, violence, bigotry – and we might despise those who have wronged us. We might even scrutinize our own lives and come to despise much of our own behavior.

And we might engage in any number of reactions to our conflicts. We gossip, and gossip, and gossip. We confront people. We complain. We report our neighbor. We avoid our roommate. We discipline our children. We divorce our spouse. We quit our job. We leave our church. We vote people out of office. We protest. We march. We boycott. We sue. We call the police. We yell. We get therapy. Some of us hit someone, kill someone, or kill ourselves.

As participants in conflict and social control, we may feel as if we are being jerked about by uncontrollable emotions triggered by the actions of others. Or we may feel as if we are applying our ethical principles in a world that too often ignores them. But however we feel, the way we evaluate things and the way we respond to them occur in predicable patterns: the same patterns that governed the moral life of our tribal ancestors and of the great empires, and that govern the moral life of every family, school, workplace, and nation today. Patterns of conflict and social control correspond with patterns of social inequality and social distance. Social geometry explains the form, style, and quantity of social control, as well as the conflicts to which it responds.

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5

Discipline and Governmentality

Steven Hutchinson and Pat O'Malley

"Governmentality" is a neologism that was introduced by French philosopher Michel Foucault in a series of lectures in the late 1970s. While it had become something of a catchword by the mid-1990s, much of Foucault's work on governmentality was not available in English until quite recently. The lecture in which he introduced the term was translated and published in *Ideology and Consciousness* in 1979 (Foucault, 1979a), but the rest of the series was not available to English audiences until 2007. Indeed, much of Foucault's work on governmentality was only published posthumously, as it had been presented mainly in oral lectures and seminars just a few years before his passing. This has made a full reading of governmentality rather difficult until quite recently, although the early translations inspired a diverse and highly influential literature, the effects of which reverberated across the social sciences.

This chapter explores what Foucault meant by "governmentality" and outlines the analytical framework and subsequent literature that the idea has inspired. It situates Foucault's most famous lecture on the subject – that which the editors of *The Foucault Effect* entitled "Governmentality" (see Burchell et al., 1991) – within the broader series of lectures in which it was given (see Foucault, 2007). These lectures, delivered in the 1977–78 academic year at the College de France in Paris, analyzed the rise and development of what Foucault first referred to as "security" and then later called "governmentality": a modern form or "art" of governance that was significantly different from sovereignty, discipline, and pastoralism, and which gave shape to a complex array of programs and techniques for governing people and things. For Foucault, these new programs and techniques – although they were diverse, often built upon existing institutions and processes, and formed over a sustained period – shared a family resemblance in that they were future-oriented, interwoven with a particular modality of power, and sought to know and govern all that which could affect the "population." Such ideas quickly led to the development of an analytical framework for revealing, mapping, and diagnosing these modern arts of government (or governmentalities); a task Foucault himself began during the lectures. Labeled variously "governmental analytics," "Foucauldian governmentality," or "Foucauldian analytics," the framework that continued to evolve after his passing rested upon a highly innovative

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understanding of power, one markedly different from that which saw power as a property, something that could be possessed, and which therefore led to a characteristic set of questions that continue to inform much work in the area. While Foucault's ideas about discipline – made famous by *Discipline and Punish* (Foucault, 1979b) – came to characterize his influence in (sociological) criminology, discipline for Foucault was just one (albeit important) modern technology of governance, and thus it must be understood in this broader context.

On Governmentality

When reading Foucault's work on governmentality, there are a number of issues that can make a simple and well-rounded understanding a little tricky. First – setting aside the various secondary interpretations of his ideas, some of which are highly problematic (see O'Malley et al., 1997; Rose et al., 2006) – many of the key works in which it appears are transcriptions of oral addresses. It was in lectures such as the *Security, Territory, Population* series from 1977 to 1978 (see Foucault, 2007) and a course "On the Government of the Living" from 1979 to 1980 (see Foucault, 1997) where Foucault spent the most time describing and explaining governmentality, situating it within a broader tranche of work. His ideas on the subject were therefore presented orally in seminar and/or lecture settings, and were never thoroughly edited and proofread for the purpose of written publication. Rather than reading a single selection of transcribed material as a definitive articulation of the notion, this suggests that his comments must be understood in sum and within the entirety of his allied lectures and seminars. This is not to say that Foucault was in any way unclear or uncertain about what governmentality was (although he did work upon and refine the notion during the lectures themselves), only that his transcribed lectures must be read as transcriptions of oral addresses, not heavily refined and proofread textual presentations made ready for publication.

Second, Foucault's work was rarely explicitly focused upon "theory" or "methodology" in the conventional sense, and any "explicitly theoretical/methodological writings are few and far between" (Valverde, 2007:161). Foucault did not consider himself a "theorist" at all, and he had little that was positive to say about the traditions and inclinations of his theoretically focused contemporaries. Nor was he overly concerned with methodology as it was then understood and practiced in the social sciences, and his descriptions of his own "methodology" are characteristically (and notoriously) brief. Of course, Foucault drew readily upon certain methodological tools that he found useful (such as Nietzsche's "genealogical" approach, which he augmented and utilized heavily), and he often criticized sociological theorization for its functionalism, institution-centrism, and limited conception of power (of which, more later). Yet, he spent little time didactically expounding a new theory, concept, or methodology, and unlike most theorists of the time, "he preferred doing research to talking about how to do it" (Valverde, 2007:161). His starting point was never a well-refined theory or methodology, or even a clear set of concepts, but always governing "practices," which he "regarded as pragmatically put together collections of governing techniques" (Valverde, 2007:161). That is, he did not set out with some worked-out theory or concept in mind, nor did he plan on producing any. Rather, the ideas and concepts that he outlined evolved organically from his analyses of governing practices; they were always flexible, continuously developed and refined, and used strategically as he went along.

Third, and related to this, Foucault was always quite critical of what he saw as the highly inflexible "definitions" and rigid concepts that had become ubiquitous at the time, particularly in sociology. Indeed, one of his foremost criticisms of the discipline was of a proclivity toward crafting well-articulated, elegant-seeming concepts that were forced upon the messy, uncooperative, and chaotic social world. In his own work, Foucault was not interested in concept- or theory-building, nor was he preoccupied with explicating and then repeating over and over again a well-refined concept or theory that would always appear and be explained in exactly the same way. Instead, he saw concepts as strategic tools for exposing that which would otherwise remain hidden, and those he developed in the course of his work were highly organic, inductively generated, and tactical, and were often used as foils against which to contrast something else: some novel element of the past or present that had yet to be exposed.

For these reasons, it can be problematic to take a snapshot of Foucault's work on governmentality – a quotation, a series of lines, or even a single lecture – and treat this as an immutable definition or operationalization of the term, or worse, as a foundational text (as happened with *Discipline and Punish*; see O'Malley & Valverde, 2014). Reading Foucault's lectures across the series, governmentality is actually explained in a number of different ways, and given the preceding points, this is not especially surprising. In fact, before the fourth lecture in the *Security, Territory, Population* series, he refers to this same phenomenon as "security" rather than governmentality, and,

> frustratingly for "governmentality" scholars, he does not explain why he changed terms. He simply walks in one day (1 February 1978) and declares that if he were able to go back and correct the theme and title of that year's lectures, he would no longer use the advertised title "*Securite, territoire, population*" but rather "lectures on governmentality." (Valverde, 2007:172)

What this suggests is that governmentality was a neologism that Foucault only began to experiment with as he was actually delivering the lectures, and that he continued to refine the idea as he moved through the series. And this is entirely consistent with his approach. For example, in the summary to *Security, Territory, Population*, Foucault says that governmentality is an "*activity* that undertakes to conduct individuals throughout their lives by placing them under the authority of a guide responsible for what they do and for what happens to them" (Foucault, 1997:68, emphasis added). In the summary to the 1979–80 course "On the Government of the Living," he says that governmentality refers to the "*techniques and procedures* for directing human behaviour. Government of children, government of souls and consciences, government of a household, of a state, or of oneself" (Foucault, 1997:82, emphasis added). Elsewhere, he makes an analogy: governmentality is to the state what disciplinary techniques are to prisons, and what biopolitics is to medical institutions (Foucault, 2007:120).

Reading Foucault's lecture on "Governmentality" as one of an entire series that covers a broad tranche of work, and interpreting his different explanations of the idea in the context of the lectures in which they appear, it becomes clear that Foucault saw governmentality as a specific "art" or form of governance that took shape at a particular historical moment, and which has since become "the common ground" for all modern forms of political thought and action (Rose et al., 2006:86). Governmentality, Foucault avers, denotes the "ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics" that allow the exercise of a very specific and yet complex form of power (Foucault, 1979a:20). That is, "governmentality" is a term Foucault uses to designate the shared commonality between an

array of governing programs and techniques that began to take form in the 18th and 19th centuries. In sum, these new programs and techniques represent and evince a new "mentality" of governance; a new way of thinking about governing people and things, which is different from sovereignty and which is intimately tied to a different form of power. If sovereignty was characterized by law as command, direct individual or family rule via learned principles, and a desire to maintain the loyalty of subjects, governmentality instead centers on a different set of objectives and rationales, a different modality of power, and a different assemblage of programs and techniques for governing people and things. Not unlike "sovereignty" (see Valverde, 2007:168–169), governmentality is therefore not a concept that needs to be heavily theorized; in a sense, it is merely the name Foucault gave to the family resemblance shared by an emergent set of governing logics and techniques. It is the novelty, the shared characteristics, and the interactions between these logics and techniques that were his primary interests.

In the early lectures of the *Security, Territory, Population* series, Foucault explored how beginning in the 18th century, authorities in Europe began to see the "population" as having its own dimensions and regularities that were independent from the state, and yet which needed to be managed (such as birth rates, death rates, and illness). That is, the individuals who inhabited a territory were no longer perceived as juridical subjects who must obey the laws of the land, or as members of a flock who should be guided using pastoral care. Instead, they were elements existing within a field of relations between people, events, and things. As Rose et al. (2006:87) put it:

> Authorities now addressed themselves to knowing and regulating the processes proper to the population, the laws that moderate its wealth, health, and longevity, its capacity to wage war and engage in labor…To govern, therefore…it was necessary to know that which was to be governed, and to govern in the light of that knowledge.

Instead of focusing upon controlling territories and ensuring the loyalty of subjects, the modern arts of government increasingly set out to govern the future, including all those risks and opportunities that could impact upon the state and its population (see also Hutchinson, 2014). This was linked to the development of a whole series of new knowledges relating to the population (like statistics), and a range of innovative techniques for governmental intervention (like crime prevention). For instance, while crimes such as theft were treated by sovereign criminal law as violations that needed to be punished, the logic of governmentality aggregated theft and situated it within a series of probable events, governing "the general problem of future thefts as it affects, not individuals, or the sovereign, but rather 'the population'" (Valverde, 2007:172).

In the later lectures of the *Security, Territory, Population* series, Foucault set out to trace the emergence of a number of different logics, programs, and techniques that were linked to governmentality, including reason of state (*raison d'état*), police, discipline, and biopolitics. The first, *raison d'état*, was a diagram that in a sense bridged sovereignty and governmentality, and served as a transitional framework for the emergence of modern governance. As it took hold in Europe in the 17th and 18th centuries, *raison d'état* displaced an earlier governing formula that was rooted in principles such as wisdom, justice, prudence, and virtue, and instead "assigned priority to all that could strengthen the state and its power," seeking to "intervene into and manage the habits and activities of subjects to achieve that end" (Rose et al., 2006; see also Hutchinson, 2014). It is through the model of *raison d'état* that the various "dimensions" of the state were conceived, articulated, and worked upon, including the "population", its wealth, and its military readiness.

Later in the 18th century, French physiocrats and German *Polizeiwissenschaft* experts developed another logic and technique, which Foucault termed "police"; one that was related to and indeed took shape within the context of *raison d'état*. Increasingly, as Foucault (2007; Lecture of March 29, 1978) demonstrated, the diplomatic-military dimension of states was being separated from its revenue-producing dimension, and both were in turn being distinguished from "police": the regulation of flows and traffic so as to produce good circulations of people, goods, and wealth within states. Put simply, police encompassed "the regulatory and preventative governance of the internal order of the kingdom" (Valverde, 2007:169). In part, this detailed historical and analytical foray – which also covered the rise of other new technologies, such as discipline and biopower – was designed to expose what Foucault characterized as the "governmentalization of the state": the processes through which governmentality (a particular art of governance with a new modality of power) reorganized and repurposed "the state."

Governmental Analytics

After the initial translation and publication of the "Governmentality" lecture in 1979, a group of scholars began to draw upon and develop Foucault's ideas, as well as Jacques Donzelot's early interpretation (see Donzelot, 1979). Donzelot, a French social historian, was particularly interested in Foucault's attempt to move the state out of its central place in political analysis, and to reframe discussions and debates about power. For Foucault, as for Donzelot, antiquated notions of (sovereign) power needed to be done away with, and a new approach was required for contemporary analysis. If governmentality was a new form of governance, as Foucault suggested, which comprised a novel form of power, then it was precisely this mode of power that should be central to contemporary inquiry. Put simply, power should no longer be seen as merely something that could be possessed, something that some person or group has, whether given or taken. Rather, power must be seen and diagnosed as a set of knowledges, techniques, relations, and apparatuses, since it is this form of power that is central to the modern arts of government. In fact, for Donzelot (1979), the term "power" should disappear altogether, given its close association to Marxist frameworks that reduced it to a property. For him,

> We would have then not a power and those who undergo it, but, as Foucault shows, *technologies*, that is to say always local and multiple, intertwining coherent or contradictory forms of activating and managing a population, and *strategies*, the formulae of government. (Donzelot, 1979:77, emphasis in original)

This early outline of a yet somewhat raw analytical framework was then developed and refined by others, including Francois Ewald (1991) and Daniel Defert (1991), although their work was not translated into English until the early 1990s. During the 1980s, an influential group of British scholars (Burchell et al., 1991; Miller, 1986; Miller & Rose, 1988, 1990; Rose, 1988, 1989; Rose & Miller, 1992) worked with and refined the approach further, using detailed empirical analyses to demonstrate that at particular historical moments, programs of governance share a certain resemblance, in that they tend to be linked to common problematizations and rationalities (ways of thinking or "mentalities," such as liberalism). In the early 1990s, the framework once again leapt forward as notions such as "governing at a distance" (Miller & Rose, 1990) were developed, and Foucault's ideas about "technologies of the self" (Foucault, 1982) were incorporated into the British governmentality approach.

The former was based upon the idea that language was one element among many that helped make reality amenable to intervention, and which assisted in the creation of networks of authorities, groups, individuals, and institutions. These networks could then act at a distance; that is, they could act "from a center of calculation such as a government office or the headquarters of a nongovernmental organization, on the desires and activities of others who were spatially and organizationally distinct" (Rose et al., 2006:89). The incorporation of Foucault's ideas about "technologies of the self," by contrast, gave rise to the notion that the subjects of governmentality also work upon themselves in particular ways, and so produce the ends of government by fulfilling themselves (see Rose, 1989, 1999). This laid the groundwork not only for analyses of grand technologies such as the Panopticon, but also for detailed empirical analyses of "little governmental techniques and tools such as interviews, case records, diaries, brochures and manuals" (Rose et al., 2006:89).

The framework that has emerged from all of this therefore seeks to reveal, map, and diagnose the myriad programs and techniques of government(ality), and it rests upon a particular perspective on power. It seeks to

> identify these different styles of thought, their conditions of formation, the principles and knowledges that they borrow from and generate, the practices that they consist of, how they are carried out, [and] their constellations and alliances with other arts of governing. (Rose et al., 2006:84)

Thus, while there is no specific set of concrete problems to which a governmental analytic is directed, the primary concern is with programs and techniques of government(ality) – the modern arts of governance – and with diagnosing these via detailed empirical analyses. Key questions include:

1. Who or what is being governed? (e.g., children, drug users, highways)
2. How are they being governed? (e.g., through disciplinary programs, through harm-reduction measures, by surveillance cameras)
3. To what end(s) are they being governed? (e.g., to increase standardized test scores, to reduce the impact of overdoses on the healthcare system, to manage traffic flows) (Adapted from Rose et al., 2006:84–85)

Further, one of Foucault's most important contributions was the refusal to identify governance as always-and-already linked to "the state" (and/or to "society," for that matter). That is, he recognized and demonstrated that a whole variety of authorities govern in different ways, at different times, in different sites, for different reasons, and in relation to different objectives. Put simply, it is not the state that is always-already responsible for governance. Nor is it (just) the case that "society" governs in particular ways. Rather, there are always multiple governing authorities, from parents, teachers, pastors, and employers to police, private security guards, human rights groups, and librarians. Indeed, liberalism – a political rationality characterized by the notion that individuals ought not to be governed too much – gave rise to a diverse array of non-political actors responsible for governing the habits of people and groups. This raises yet another set of questions, including:

1. Who is doing the governing?
2. According to what logics/rationalities is this governance being implemented?
3. What techniques are being used? (Adapted from Rose et al., 2006:85)

Governmentality vs. Social Control

One of the strengths of the analytical approach inspired by Foucault's work on governmentality is that it offered a way out of conventional sociological analysis based upon Marxism. While the concept of "social control" has a long and varied history (see generally Deflem, 2015), in the 1970s and '80s it became intimately linked to conflict perspectives and structural Marxism. Not surprisingly, key to "social control" here was the centrality of the state (including the criminal justice system), which did much if not all of the "controlling." A governmental analytic, on the other hand, provided a useful alternative, in that it allowed for a de-centering of the state and its institutions, a decoupling of "the government" and governance. In fact, one of Foucault's most oft-cited claims was that it was "time to cut off the King's head" in political theory (Foucault, 1980:120): to move away from the automatic and inherent prioritization of sovereignty, sovereign power, and the state. Instead, a governmental approach furnished analysts with the tools needed to reveal other influential authorities and technologies of governance – indeed, the vast range of programs and techniques for governing people and things.

In a similar vein, the governmental approach also enabled the de-centering of "society" (and social norms). This allowed analysts to step away not only from the state, but also from the prioritization of "society" and "social norms." In this sense, governmental analytics sought to move analysis past the inherent limitations of the (very sociological) notion of "social control," which inherently privileged "society" and/or "the state." Indeed, except for a small branch that explored the role of charities and charitable organizations in social control (see Higgins, 1980 and Spierenburg, 2004), the vast majority of the work in the area has tended to either give precedence to or focus exclusively on the role of the state. Even in the work on the role of charities, charity itself is often seen as some sort of extension or manifestation of state control.

Furthermore, Foucault himself was always rather critical of "institutional-centrism" (Foucault, 2007:116) – the prioritization of institutions in the study of the social world. As he argued in *Security, Territory, Population* (Foucault, 2007:116), it is crucial that we move "outside of the institution…off-centre in relation to the problematic of the institution or what could be called the 'institutional-centric' approach." Foucault had, of course, commented upon the place and role of institutions in the context of discipline, including the prison, the army, hospitals, and schools. Yet, what is sometimes forgotten is that his interest here was in showing that institutions can only be understood as institutions on the basis of something external and more general, like the "psychiatric order" (Castel, 1988), which is directed toward the population as a whole. That is, institutions give concrete expression to a broader order, and, while they are important, they are less so than the wide array of techniques that are coordinated through this broader order. Put slightly differently, institutions are merely collections of practices and techniques that are also found in other institutions, and which are given shape and direction by broader forms of order (see also Valverde, 2007:161).

Although it was in part a function of his time, Foucault was also quite critical of sociology generally, and of sociological concepts in particular, and he neither embraced nor engaged with the idea of "social control" as a concept. Of course, sociologists and sociologically informed criminologists have repeatedly come back to some revised version of (social) control, including – perhaps most famously for criminologists – Stanley Cohen (1985) and David Garland (2002). Other French writers, like Gilles Deleuze (1992), have done the same. But Foucault never used such a concept in his own work, nor did he engage with it to

any significant degree. And a reading of Foucault's analyses of power makes the reasons for this quite clear. First, the concept of social control is largely inconsistent with Foucault's notion of power, as the former implies a particular relationship and directionality, and is rooted in very sociological (and somewhat inflexible) notions of "states" and "societies" (where "formal" social control refers to state/government control and "informal" social control refers to social norms and values that are imposed upon people). This, in turn, is all rather inconsistent with Foucault's conception of governmentality, which is about the multiplicity of sites and forms of governance, the almost infinite ways in which governance can take shape in any particular realm, the often accidental circumstances in which this happens, and the refusal to automatically prioritize one form of governance over another.

However, perhaps the most central point of Foucault's departure from the category of social control concerns his apparent rejection of imageries of social structure. The concept of social control implies not only "social" agents that govern through possession of the power to produce conformity, but also, in consequence, a vision of order that makes change – and especially unpredictable change – problematic. In other words, how can change be understood if the focus of analysis is control? The very fact that 1960s sociology created separate areas of research and theory concerned with "social change," as if this were distinct from the "normal" social order, and engaged in interminable and seemingly insoluble debates over "structure versus agency" – both of which persist into the present – indicates how pervasive and problematic is the impact of social-control thinking. Foucault staunchly resisted such arid binaries, and he did so primarily through two linked maneuvers that were central to his thinking: genealogy and subjectification.

Genealogy

In a nutshell, genealogy is the refusal to write history that has a direction. While many sociologists have now rejected grand visions of "progress," the Whig vision of history as somehow "leading" to the present has not gone away. Marx's conception of the unfolding of the contradictions of capitalist production, Weber's concerns with increasing rationality, Durkheim's account of the increasing division of labor and its effects on forms of social solidarity: all of these remain at the core of the discipline, all imagine a present that could hardly have been otherwise, and all posit driving social forces that direct the forward march of history – and most especially the formation and development of modernity. Foucault, on the other hand, rejected both the "unfolding" model of history and the epochal accounts that are common to such work. Yet, so central are they to sociological thinking that when *Discipline and Punish* (Foucault, 1979b) was translated into English, it was widely (and mistakenly) interpreted as an account of the emergence of modernity (see O'Malley & Valverde, 2014).

A transformational rupture was imagined, where a "society of sovereignty" was replaced by a (modern) "society of discipline," and the history of imprisonment centering the Panopticon was seen as the vehicle through which Foucault mapped this transformation. In turn, this interpretation unleashed two opposing and misguided responses to the book. On the one hand, a host of "verifying" studies traced and confirmed the all-dominating role of discipline and its identification with modernity. As Donzelot (1979) complained, in such analyses, "power" became the new motor of history, and a key problem for Foucauldian scholars was how to counter such thinking. On the other hand, a storm of critiques emerged arguing that *Discipline and Punish* was a historically inaccurate portrayal of the history of

imprisonment, and thus an erroneous account of the rise of modernity. In the end, such interpretations tell us more about how locked into traditional sociological modes of theorizing were both critics and many adherents than they do about Foucault's intentions.

A genealogy, we might say, is a history without a forward trajectory, logic, or purpose, and one devoid of all-transforming ruptural events. Rather, it maps the route by which significant aspects of the present emerged through human inventiveness in assembling from available discursive and nondiscursive resources some methods of understanding and dealing with problems. In this way, the future is not determined by a certain logic, but is at least partially invented, and often somewhat accidental. Key to such development is the role of programs of government: influential ways of identifying, defining, and understanding "problems" (called "rationalities" or "logics") and of resolving them (called "technologies" or "techniques"). However, genealogical analysis says nothing about whether these rationalities and techniques – these programs of government – actually produce their intended ends. Indeed, the reverse is equally possible, and equally expected. Central to genealogy, therefore, is the role of contingency: the failure of plans; the effective opposition and resistance to them; the impact of unforeseen circumstances and mistakes; the outcomes of struggles between conflicting interpretations and unexpected contradictions – all of these play key roles in the way genealogies take their unpredictable courses. In this sense, genealogy has little or nothing to say about "control," only about the *attempt* to govern. As a result, it denies that historical necessity has "led" us to any particular place. This is central to Foucault's disruptive political vision, because it highlights the extent to which things could have been and thus *can* become different; it centers the non-necessity and mutability of the way things are.

On Discipline

In *Discipline and Punish*, Foucault sketchily maps out one of his most famous genealogies: that of discipline as a technology of government. Discipline is constituted by the establishment of a norm or ideal and by the deployment of techniques that aim to produce conformity with that norm. These techniques isolate individuals for comparison with the norm ("examination") and apply constant but minimal pressures intended to produce habits of conformity. Elements of disciplinary practices are shown to appear in all manner of sites in Europe from the Middle Ages onward. The monastic life institutionalized conformity to a strict ordering of activities structured in time by an hourly, daily, and calendric routine. The assignment of monks to cells produced an architecture of individualized governance. In the 17th century, the rise of standing armies reinforced such patterns, but it also created new problems (and invented new solutions) around how to physically order and organize masses of men, how to create obedience in the midst of disorder, and so on. The rise of factories drew together such material and intellectual resources, centering diligence and conformity to the demands of machines. These and other inventions and assemblages were drawn together, sometimes more by accident, sometimes more by design, into a "diagram of power" that Foucault termed "discipline," and which he illustrated with Jeremy Bentham's model of the Panopticon prison. Discipline did not *have* to exist (e.g., to meet the needs of capital, as some Marxists suggested; Melossi & Pavarini, 1981). Rather, it was invented and assembled piecemeal in response to diverse perceived problems of order.

Of course, it is now widely accepted that no real-world disciplinary prison, factory, or school ever looked more than approximately like the Panopticon, and many looked nothing like it (this is one of the key reasons some historians have gleefully "refuted" Foucault).

However, Foucault was not especially interested in what actually happened (with an important proviso to be seen shortly); he was more interested in the way Bentham's plan made clear the *diagram* of discipline as a central technology through which we are governed. This was a "diagram of power": a blueprint for how to govern. But, of course, things always went wrong with the plan, for all the reasons already noted. Precisely because Foucault's view of history as genealogy integrated contingencies as normal, "what actually happened" always represents a muddied picture: one that reflects the vicissitudes of life and politics rather than the perfect blueprint for governance. This focus upon "ideal knowledges," however, should not be imagined to be divorced from the "real world." Such analyses do indeed focus on empirically real programs, policies, and architectures: the Panopticon was a real, empirical proposal. In other words, it is not about dealing with academically constructed ideal types of the Weberian kind, precisely because such proposals and programs do exist empirically and play a significant role in shaping governance, albeit not always as intended.

Yet, only by attending to the "messy" operations of disciplinary institutions can the key role of contingency in the genealogy of governance be understood. Thus, while *Discipline and Punish* outlines the diagram of discipline through the Panopticon blueprint, Foucault also maps out the way in which, through unforeseen changes to the governance of prisoners, penality changed significantly from the model envisaged by Bentham. As the correctional prisons processed their prisoners, records of their operations were kept, case histories were built up, and observations were made concerning the effects of interventions on prisoners' actions and their "souls." A new "anthropology" of criminals began to emerge that was quite alien to the image that had informed the design of the Panopticon. In place of Bentham's abstract-universal rational-choice actor, prisoners came to be sorted into types, and theories were built up about the causes of offending and what techniques worked to correct them. Through such unplanned contingencies, criminology and therapeutic sanctions were developed (see Garland, 1985). Genealogy thus never confronted the "structure versus agency" conundrum that beset social-control sociology: change was always immanent, always possible, always happening. Stasis exists only in the blueprints, and even they are – usually quite rapidly – altered by multiple contingencies.

In this way, *Discipline and Punish* was an exploration of the genealogy of a technology of government – discipline – that has characterized societies over the past 2 centuries or more, shaping institutions ranging from prisons to schools, and from hospitals to factories. Yet, the idea of categorizing whole societies as "disciplinary" was something Foucault resisted. Indeed, he maintained that multiple technologies are always in place simultaneously, and that a "triangle" of sovereignty–discipline–governmentality predominates at present (Foucault, 1991). Put simply, there are no "disciplinary societies" or "societies of governmentality" (or "control societies," for that matter), only the simultaneous and interlinked operation of different governing techniques. Government mobilizes such technologies in multiple ways and in multiple combinations at multiple sites. Thus, prisons themselves are never entirely disciplinary, either: they deploy sovereign power to hold inmates in place, disciplinary techniques to correct them, statistical models to sort them into risk categories, and so on. Sovereignty therefore did not disappear with the rise of discipline, but remains as its necessary substrate. Discipline is not displaced by "the risk society," for it makes possible the gathering of actuarial data and the practical operation of risk-based techniques. Hence, no epochal vision of a "disciplinary society" or "risk society" can ever adequately understand the operation of governance; there can never be a total "triumph" of any particular telos of rule.

Genealogy, however, like discipline, is only part of the story. One of the most common misconceptions of Foucault's approach is that he argued that diagrams of power are simply translated into practice, and that their subjects internalize the subjectivities and practices they promote. This is an error of interpretation still repeated in much sociology (e.g., Woolgar & Neyland, 2013:27–30). While it can be seen how the image of prisoners as "docile bodies" presented in *Discipline and Punish* could lead to such a (mis)perception, this was meant by Foucault merely as the *intention* of regimes of governance: again, it is part of the diagram. Foucault says little or nothing about whether the subjectifications provided in government programs are actually accepted or taken on by their targets. By and large, this is not his concern. So what, then, is the purpose of the analysis of governmentalities?

"Freedom," Social Control, and Strategic Knowledge

Perhaps one of the utopian dreams concealed within the theories of social control is that freedom somehow consists in shaking it off. Either we are subjects of social control, or we are free. In this imaginary, social control "constrains": it is essentially negative, in that it curtails freedom. Hence the need for sociology to invent "agency" (which conveniently maps on to liberal imaginaries of how we are "free"), which is somehow outside of control: an unquestioned given of human existence. For Foucault, to the contrary, government is not simply constraining, but productive – and among its productions are freedoms. Simply put, there can be no utopian "escape" from government, simply because it pervades all aspects of life and does not emanate from any particular or single source. This does not mean that we are somehow set in a cage from which we can never be released or that government is in some way necessarily "bad." Foucault's vision, rather, is that all government is "dangerous," but only potentially so. Thus, while there are always "lines of flight" out of any particular regime, these too are dangerous, for they will lead to other forms of governance. It is therefore one of the key aims of governmental analysis to map out the "dangers" of governing regimes – something which Foucault terms "strategic knowledge" (O'Malley, 2008).

"Freedom" for Foucault does not mean the lack of constraint – as if that could ever exist – but rather a particular regime of government. He describes discipline as a "technology of freedom," because it is understood to provide a means by which subjects "liberated" from domination by sovereigns may avoid reverting to savagery and disorder as the Hobbesian thesis proposes. Foucault's terminology is, of course, deliberately ironic. In the dream of its progenitors, discipline produced obedient, orderly subjects who governed themselves without external coercion. Yet the analysis of discipline Foucault outlines shows the cost that is paid for this form of liberty – for example, the docility and self-denial of the habituated subject. Disciplined subjects of the Panopticon would practice diligence, thrift, obedience, and so on. Such subjects would be imagined as independent (O'Malley, 2015). But this is only one form of freedom that discipline may produce. If freedom for the 19th-century liberal meant something akin to economic independence, then for the 20th-century welfare-liberal it meant enlistment in a collective program that managed and mitigated the risks of a market society, while for the 20th-century neoliberal it means being an entrepreneur of oneself in a society governed by market principles. Christians, Marxists, hippies, feminists, even anarchists construct their own imaginaries of "freedom" together with the mind-sets, governmental practices, and techniques whereby such freedom can be produced and maintained.

The analytic of governmentality is thus a kind of grid that can be used to structure analysis of all these forms of government and how their "freedoms" are produced. This grid is formed roughly as follows:

- First, a *problematization*: the way in which some target of governance is identified as in need of change – as a "problem." This provides a diagnosis of what is wrong, an imagined future state to be aimed for, and a rationalization or justification that maps out why this is "good."
- Second, an *investigation* into the techniques, architectures, routines, and so on that are to be deployed in order to effect this change, as well as a "theory" of how they will produce their effects.
- Third, *subjectifications*: images of what kinds of subject exist, and of what kinds are to be produced.

The aim of such analysis is not to reveal some hidden agenda, or some class or social control at work. It is to map out how we are governed and how we govern ourselves; it is a strategic knowledge. But it is not a knowledge that promises a "freedom" from government, nor a new program of government that will "liberate" us from control. Foucault spent much time, for example, analyzing "techniques of the self": the ways in which "free" subjects impose regimes of self-governance in order to effect multiple forms of "self-improvement." This knowledge therefore is also not a recipe for us to be free. Rather, it facilitates the asking of a very particular question: Should we be governed thus?

Foucault's refusal to provide an answer to this question infuriates many – especially those sociologists and others who are used to theories that provide an explanation revealing how we are controlled, and an accompanying program for how we can become "free." For Foucault, the aim is not to provide yet another alternative, another regime of governance, another system of freedom that will subject us in yet other ways. It is rather to provide an analytic for understanding what can be thought of as the "costs" or "dangers" of being governed in certain ways. Lurking here is a sense that there is an underlying "freedom" to which he aspires, and toward which the construction of strategic knowledge works: the enhanced ability to identify, accept, or reject the way one is governed, to tailor a form of governance of the self, and to invent new futures – however dangerous.

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Part II
Institutions and Organizations

6

Social Control in Organizations

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Until the mid-20th century, sociologists regarded social control as both a necessary part of ensuring democratic order in society and a central analytic concern that could integrate theoretical puzzles from disparate subfields and across multiple levels of analysis (Janowitz, 1975). Over the past half century, research on social control has increasingly come to focus on social deviance, crime, and conflict. The study of social control, however, continues to be a dominant object of inquiry in organizational analysis, raising questions about power relations and social inequality. Early organizational scholarship afforded social control a prominent theoretical place as a driver of organizational performance. The rise of agency, cultural, and punishment-and-society frameworks renewed interest in social control under the rubrics of contract, meaning, and disciplinary techniques, respectively. Socio-legal theory, combined with institutional theory, added yet another layer of research on social control in corporations (Edelman, 2016). Scholars also combined socio-legal theory with interactionist and social-structural perspectives to yield research on the microdynamics of conflict management in organizations (Morrill, 1995).

Two primary questions animate this chapter. First, what do scholars mean when they invoke the concept of "social control" in organizational research? Second, how have scholars analytically framed research on social control in organizations? To answer these questions, we draw on a heuristic from Saguy & Stuart (2008) to identify three different ways of studying social control in organizations. The first and longest line of theory and research focuses on social control as an *independent variable* to explain variations in organizational behavior. The second frames social control as a *dependent variable* explained by features of institutional, organizational, and social contexts. The third considers social control as a *constitutive dynamic* of normative life in organizations. We review some research that best fits this typology. Given the space available, our treatment is neither exhaustive nor representative. Some researchers employ two or more of these perspectives within or across different projects. Although most research on social control in organizations examines capitalist or government bureaucracies, we expand our purview to include other types of organization. Our goal is to give readers a taste for broader trends in the study of social control within organizations, ranging from early to more recent work.

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Defining the Concept and Scope of Social Control in Organizations

In an early treatise on social control, Ross (1901) used the concept to mean "all of the human practices and arrangements that contribute to social order…that influence people to conform" (see Black, 1984:4). This broad definition focuses on the *social* aspects of control in organizations and the ways in which even financial aspects of running a business – such as accounting and budgeting – may have ancillary social dimensions.

We can describe social control in terms of different mechanisms that influence social behavior. Mechanisms vary in terms of their materiality (e.g., machines) and their formality (e.g., official policies or narratives). They also vary in their scope, meaning what is targeted (e.g., physical behavior and/or cognitive processes, beliefs, and norms) and whether control is preventative, reactive, or facilitative. Different mechanisms of social control can coexist in complementary or contradictory ways, can intertwine into hybrid forms, or can come to replace one another in historical succession through contestation or trial and error. In research on social control, different definitions signal underlying theoretical agendas and traditions.

Many treatments of social control draw attention to the social psychology of compliance and the motivational paradigm of why people behave as they do. Along these lines, perhaps the earliest and most pervasive mechanism of social control in organizations is relational control, which flows through social interactions in interpersonal networks to compel compliance. Sometimes called "simple" or "entrepreneurial" control (Edwards, 1979), this mechanism can feed off individual charisma (Weber, 1946) or can attach to personal capacities to punish noncompliance, both of which emerge in the give-and-take of interpersonal power relations. Relational control can also play off favored social categories based in social class, gender, sex, race, ableness, or religion, as long as these categories link to well-regarded interpersonal status and/or access to other valued resources. The desire to please a highly respected or charismatic superior illustrates one side of relational control, whereas bullying, threats, firing, and violence (even leading to death) underscore a darker, coercive side. However, social superiors are not the only actors who can mobilize relational control. Social subordinates can resort to upward relational control in the form of open resistance and revolt or of covert, tacitly coordinated actions like sabotage and subterfuge (Baumgartner, 1984; Ewick & Silbey, 2003; Morrill et al., 2003).

Variants of rationalist control are among the most well studied types of social control, focusing attention on the efficient design of control mechanisms and the economics of compliance. Rationalist technical control influences behavior through the design of efficient work techniques and machines in the labor process. These include scientific management in the late 19th and early 20th centuries and electronic surveillance of work outputs in the late 20th and early 21st. Such methods determine the pace of work, weaken social relations among workers (and between workers and overseers), and ultimately determine monetary compensation. Rationalist bureaucratic control, by contrast, influences behavior through layers of rules and policies that structure hiring, contracting, and careers (Edwards, 1979). Through the lens of agency theory, social control becomes an alignment of incentives and interests via contracting between those engaged in directives (principals) and those carrying them out (agents) (Jensen & Meckling, 1976).

While technical and agency control play off the motivating animus of material interests, rationalist bureaucratic control secures compliance via beliefs in the legitimacy of organizational rules and policies (Weber, 1946). As such, bureaucratic control spills over into another mechanism, cultural control, under which compliance is achieved through internalization of the norms of what it means to be a committed employee (Kunda, 1992).

A final form of social control operates through expert knowledge that links motivation to normal and abnormal categories (Foucault, 1977).

An alternative to the motivational paradigm conceptualizes social control as interactionally accomplished reactions to breaches of normative boundaries, specifically "how people define and respond to deviant behavior" (Black, 1984:4). Rather than conceive of social control as a means to an end (such as productivity or solidarity), the focus here is on documenting the range of mechanisms through which organizational members express complaints and grievances in organizations, including negotiation, doing nothing, discipline, gossip, avoidance, and mobilizing law (Morrill, 1995). When conceived as an emergent dynamic of social interaction, motivations, interests, networks, and power relations all remain in play, but in constantly shifting constellations (Emerson, 2015; Morrill & Musheno, 2018).

Social Control as an Independent Variable in Organizations

Organizational scholars have devoted the most attention to research on social control as an independent variable, especially its "impact on human conduct" (Black, 1984:5). In this line of research, scholars primarily ask: How does social control contribute to individual and organizational performance while reducing undesirable behavior? How effective is social control? What are the anticipated and unanticipated consequences of social control?

Research on the impact of relational control is somewhat diffuse. It often takes a historical or ethnographic bent, although some scholars use social network analysis to study contemporary dynamics. A classic example of the first tendency is Edwards's (1979) *Contested Terrain*, which tracks transformations of US workplaces over the late 19th and the first three-quarters of the 20th century through changes in social control. According to Edwards, owners exercised relational control (which he calls "simple" or "entrepreneurial" control) via workers' interpersonal loyalties. Just as often, whether in small shops or the subunits of larger organizations, relational control transformed into "arbitrary command rule by foremen and managers, who became company despots encumbered by few restrictions on their power over workers" (Edwards, 1979:33).

Research on contemporary relational control also focuses on interpersonal networks and obligations, referred to as "non-contractional relations" (Macaulay, 1963) or "relational work" (Zelizer, 2012). In these studies, the scope of relational control includes not only performance (especially the prevention of shirking), but also malfeasance committed by organizational members against their own organization and/or members of relevant social networks.

One can read Granovetter (1985) as both a theoretician and an advocate for the virtues of relational control. He argues that relational control of some sort nearly always operates in organizations, even amidst elaborate formal authority structures designed to deflect opportunism, because "concrete personal relations and the obligations inherent in them discourage malfeasance, quite apart from institutional arrangements" (1985:489). Yet, relational control need not be restricted either to being reactionary or to operating through structures of interpersonal obligations in networks. As White (1992:9) argues, "control is both anticipation and response to eruptions" in social contexts, and it is through stories told about the relationships between people that projects of control are realized (1992:65). Through these dynamics, scholars describe how managers in very diverse contemporary organizations, such as university laboratories (Huising & Silbey, 2011) and financial derivatives

organizations (Riles, 2011), engage in everyday relational control to accomplish compliance with both internal and external normative systems, including law.

These perspectives and studies suggest that a key resource needed to make relational control an effective means of compliance is information, which includes circulating stories and expert formal knowledge. Actors operating in networks who are "in the mix" enjoy what social network analysts call "betweenness centrality" (Freeman, 1978). This positionality can constitute or reinforce preexisting social hierarchies even as it facilitates the social skill necessary to motivate collaboration (Fligstein, 2001). Betweenness centrality can also aid in anticipating network disruptions, heading off attempts at resistance, and coercing or punishing lower-status members in a network. As already noted, network embeddedness and centrality of workers can also lead to relational control against bosses in the form of tacitly coordinated sabotage or overtly coordinated collective action – the former often perceived as betrayal by social superiors, but only through after-the-fact, retrospective epiphanies (Morrill et al., 2003).

If relational control depends upon the mobilization of interpersonal networks, technical control depends upon establishing strong ties between workers and techniques and/or machines via efficient design, while simultaneously weakening interpersonal networks. Edwards (1979:113) observes that "technical control emerges only when the entire production process…or large segments of it are based on a technology that paces and directs the labor process." Time-and-motion studies by engineer Frederick Taylor in the early 20th century illustrate an early instantiation of technical control: job design is tied to piece-rate incentive systems, thus avoiding both profit-sharing and unionization (Guillén, 1994:42). The other classic form of technical control is the assembly line, which established continuous, on-flow production. This was first developed by Rhode Island textile manufacturers in the latter third of the 19th century and became more well known as a feature of steel mills and automobile plants in the early 20th century (Edwards, 1979:113). In this sense, technical control operated in the crucible of collective interests and conflicts between workers and owners, enhancing the power of the latter at the expense of the former.

Although proscriptive and critical studies of Tayloristic systems and assembly lines still exist, research on contemporary technical control has moved beyond them to explore surveillance and privacy in the workplace. This research combines science and technology studies and socio-legal perspectives. It explores how organizations monitor behaviors by workers considered to be "risky, dangerous, or untrustworthy" from official vantage points – sometimes backed by law, and sometimes not (Monahan, 2010:10). Contemporary examples of technical control include drug testing, video- and keystroke-tracking software, and the remote surveillance of employees using global positioning systems and smartphone apps. These types of technical control can intertwine with relational control, as information delivered about subordinates to superiors can enhance the latter's centrality and power (Monahan, 2010:84).

Weber (1946) recognized conflicts between superiors and subordinates as a key dilemma, to which bureaucracy provided a solution via consistent rules and policies, hierarchically arrayed offices, and clear lines of authority. This resulted in those at the tops of the bureaucracy wielding enormous power. Since his pioneering work, scholars of bureaucratic control have dug deeper into what enables bureaucracies to operate effectively and efficiently, and how bureaucratic managers sustain their social power.

First, they argue that bureaucratic control enables organizational members to manage individual-level "bounded rationality" due to cognitive limitations and the complexity of their information environments (March & Simon, 1958). As such, bureaucratic arrangements

exercise a great deal of control by sorting and reducing the information that organizational members receive about decision-making, incentives, and opportunities for mobility. These dynamics facilitate organizations' ability to economize in the pursuit of collective goals, and sustain managerial power because subordinates lack access to information and authority. Second, they see a key role for legitimacy in organizational compliance. Here, the impact of influence resides in the extent to which organizational members believe organizational policies and rules are appropriate and moral (Scott, 2008:54–56). Finally, they explore both explicit control expressed through written policies and implicit control grounded in unstated premises and expectations. A key finding is that bureaucracies achieve day-to-day control of their members as much because of what *is not* explicitly stated in standard operating procedures as because of what *is* (Perrow, 1986).

The role of legitimacy and unstated premises in bureaucratic control dovetails with research on cultural control. Scholars argue that the apparent efficiency, legitimacy, and power-laden effectiveness of bureaucratic control is insufficient to secure compliance with formal rules and regulations (Etzioni, 1961). Both a scholar and a corporate executive, Barnard (1938) early on recognized the need not only for compliance with bureaucratic rules in organizations, but also for "states of mind" that could compel organizational members' commitment to organizational goals. Human-relations scholars took cues from Barnard and others to conduct applied research on the attitudes and beliefs workers developed on the shop floor, seeking control mechanisms that aligned their mental states to corporate goals. By the 1980s, cultural control, a latter-day human-relations effort, took center stage in both managerial and scholarly consciousness (Morrill, 2008). Kunda (1992:11) argues that cultural control "attempt[s] to elicit and direct the required efforts of members by controlling the underlying experiences, thoughts, and feelings that guide their actions." Central in this process is socializing those new to the workplace to abandon old identities, learn new values and expectations, and stabilize their new identities through participation in everyday rituals (Schein, 1968). The effectiveness of cultural control, Kunda (1992:11) observes, ultimately depends upon the degree to which an "employee's *self*" is claimed "in the name of corporate interest" (emphasis in original). Corporations are not the only organizations that rely on cultural control to secure their members' commitments, however. Such dynamics readily appear in a variety of non-capitalist organizations, including religious organizations, public bureaucracies (e.g., police departments), community agencies and clinics, and non-bureaucratic organizations (e.g., utopian communities and cults) (O'Reilly & Chatman, 1996). Historically, cultural control – in addition to coercive relational control backed by law – has marked efforts to sustain the compliance of slaves (Patterson, 1982).

Institutional scholars have long studied cultural and bureaucratic sources of constraint and compliance, although they rarely use the concept of social control in their research. Selznick (1969:17–18) developed and applied early institutional theory in order to understand the social evolution of organizations. He argued that large contemporary US organizations increasingly exhibited "legality," which curbed arbitrariness and abuses of social power, and extended rights-like citizenship and equality among organizational members. Contemporary bureaucratic control in organizations never realized Selznick's substantive hopes, as underscored by Edelman's (2016) research, which blends neo-institutional and socio-legal perspectives. Edelman asks why racial and gender inequalities persist in US workplaces despite more than 50 years of organizational structures and policies aimed at reducing them. She answers this using 3 decades' worth of quantitative and qualitative analyses of social-scientific and legal evidence on the interplay between legal fields and organizations. The reason for the persistence of workplace inequalities, she finds, rests in

the "societal acceptance of and judicial deference to symbolic structures" (Edelman, 2016:5). Symbolic structures are formal organizational policies and procedures that ostensibly reduce social inequalities, but empirically come to signal "symbolic compliance" with civil-rights goals while granting corporations "the flexibility to adjust those structures to accommodate managerial and business interests" (2016:106). Such interests undermine the substantive effectiveness of attempts to reduce social inequalities, even as organizational members believe they are complying with efforts to do so.

The vision of social control from an agency theory perspective strips away the relational, technical, bureaucratic, and cultural imagery of other control systems. As conceived by principal-agent theorists, agency control operates as a "nexus of contract relationships" in which each individual reflectively and rationally chooses to contribute something to an organization in exchange for something else (Jensen & Meckling, 1976:311). Agency control offered a solution to the challenges emanating from the increasing layer of managers that operated between workers and owners as business enterprises dramatically expanded their size during the early 20th century. The key question in agency theory turns on reducing opportunities for manipulating earnings and diverting resources to personal rather than organizational gain as it becomes increasingly difficult for owners to directly monitor those who manage their enterprises (Palmer, 2013:45). Scholars have investigated a broad array of agency controls, ranging from principal-agent incentive systems that echo Taylorist piece-rate systems to more sophisticated arrangements in large corporations, such as stock options (Dalton et al., 2007) and independent boards of directors (Hillman & Dalziel, 2003). Aside from ownership–management separation, scholars have studied principal-agent problems across a wide variety of social settings in which someone directs others to conduct work activities on their behalf (Palmer, 2013:45–47). As a frame for organizing corporate governance over the past 3 decades, agency control became incredibly successful as both theory and practice. However, its empirical effectiveness as social control proved otherwise, swamped by a "wave of corporate scandals" and excessive risk-taking by executives (Fourcade & Khurana, 2017:376). This research points to questions that explore social control as a dependent variable in organizations.

Social Control as a Dependent Variable in Organizations

The literature on this subject occupies considerably less scholarly space than the previous perspective. The central questions framing it primarily ask under what conditions particular mechanisms of social control emerge, persist, and/or die in organizations. To answer this question, scholars explore the broad historical, social, and institutional contexts that lead to organizations formally adopting particular social-control mechanisms. One common approach draws on Marxian frameworks or institutional theory, typically focusing on capitalist enterprises and state bureaucracies. A second line of research explores the organizational-level and microdynamics of why and how organizational members use and/or resist different social-control mechanisms.

Drawing on Marx (1967), Edwards (1979) offers a compelling historical account of the rise of particular mechanisms of social control in US capitalist enterprises. He argues that control systems arise in response to the constant collision of worker and employer interests as employers increasingly treat workers as commodities and workers try to "retain their power to resist being treated like a commodity" (1979:12). Enterprise scale, the structure of the labor process, and the collective capacities of workers and capitalists play key roles in

these dynamics. Relational control dominates when enterprises are small, production primarily relies on manual labor, and workers and capitalists are largely unorganized. Technical control emerges as enterprises grow, mechanization increases, and workers and capitalists become more organized. Bureaucratic control flourishes in association with continuous on-flow production, in large complex organizations, and when broad unionization and industry monopolies come to define economic activities. Each of these control systems is associated with dominant styles of worker resistance and counter-control. Tacitly coordinated or overt interpersonal resistance exists in relational control systems, while unionization aims at technical control. Bureaucratic subterfuge, mass unionization, and anti-monopoly movements aim at bureaucratic control, symbolic resistance seeks to subvert the dominant meanings, ideologies, and discourses proffered by cultural control, and the reduction of third-party monitoring targets agency control.

Institutional research, as already noted, offers considerable insights into the effectiveness of social control. Institutional scholars, however, devote more attention to understanding the conditions that first gave rise to the intertwining of law-like, bureaucratic, and cultural control in US corporations and other organizations. Selznick (1969), for example, argues that organizations are microcosms of larger public orders that, in the mid-20th century, became infused with moral values evolving toward less arbitrary and fairer modes of democratic engagement. In retrospect, his observations resonate with the period in which he wrote: an era of intense reform by the US "activist state" that defined multiple agendas for intervention into social inequalities of all kinds. The crowning legislative achievement of this era, the Civil Rights Act of 1964 (CRA), outlawed discrimination based on race, color, religion, sex, and national origin (Garth & Sterling, 1998).

Neo-institutional scholars have benefitted from nearly a half-century of history since Selznick advanced his arguments to pinpoint the political and institutional processes that gave rise to prominent features of bureaucratic and cultural control in the last 3 decades (Dobbin, 2009; Edelman, 2016). Social-movement activists, elected officials, and judges all played key roles leading up to the passage of the CRA. However, Dobbin (2009:1), using archival and contemporary quantitative analyses, claims that after the CRA was passed, these actors played only "bit roles" going forward, as it was frontline personnel managers operating in organizations who "concocted equal opportunity programs, and later diversity management programs, in the context of changing ideas about discrimination." Personnel managers and human resources (HR) departments, as Edelman & Suchman (1999:953) observe, transformed US organizations through the internalization of large portions of the legal system to signal legitimacy in fields infused with taken-for-granted assumptions that "rule-compliant fairness should be an attribute of private organizations as well as of public institutions." These processes led to the "legalization" of organizational governance, expanded private dispute resolution and in-house counsel, and reinvented private policing.

The transformation of US governance begs the question of why, how, and whether organizational members mobilize law and quasi-legal (law-like) social-control mechanisms in organizations in response to perceived rights violations. In the aftermath of the Family and Medical Leave Act of 1993 (FMLA), for example, Albiston (2005) conducted a state-level in-depth interview study of how organizational members who had experienced conflict over family leave, but did not go to court, mobilized their rights within their organizations. She found that institutionalized conceptions of work, gender, and disability shape whether workers mobilize their rights, reproducing gendered inequality and power relations in workplaces. In a large private university, Marshall (2003) explored the handling of sexual-harassment complaints through in-depth interviews of women who had brought their

complaints to managers. She found that managers discouraged complainants from defining all but the most egregious behaviors (e.g., physical assault) as rights violations, instead framing most complaints as poor management practices or a lack of professionalism by the offending party.

In a multi-method survey and qualitative field study of over 5000 students in public high schools in California, New York, and North Carolina, Morrill et al. (2010) found that self-identified African American and Latinx students perceived higher rates of rights violations than their self-identified white or Asian American peers with regard to sexual harassment, sexual and racial discrimination, freedom of speech, and due process in school disciplinary procedures. Regardless of ethnic and racial identification, students were more likely to take extra-legal than quasi-legal (school grievance system) or formal-legal (consulting an attorney) actions in response to self-reported rights violations. In response to hypothetical rights violations, however, higher rates of African American and Latinx compared to white and Asian students claimed they would take formal legal action against offending parties, although they reported being no more likely to do so than the latter groups in self-reported instances of actual rights violations. These three examples all underscore how gender and racial inequality condition the use of quasi-legal mechanisms of control in organizations and reproduce social inequality.

A second area of research along these lines expands the purview of social control as a dependent variable in organizations beyond the legal mobilization paradigm, exploring how people pursue grievances to any action they deem deviant. A key theoretical hub in this tradition is Black's (1984, 2011) social structural framework, which seeks to explain how social hierarchy, social ties and networks, cultural similarity or distance, and the organizational capacities of disputants (e.g., as individuals, groups, or organizations) pattern social control. In this framework, the key question is why some actions draw social control and others do not, which ultimately depends upon the social identity and positionality of those involved. Black conceives of the framework as being able to explain any mechanism of social control, with law as one among many possibilities. Morrill (1995) drew on this framework to explain how top executives like CEOs and CFOs in large organizations handle conflict among themselves. Based on participant observation and in-depth interviews in two Fortune 500 and one Financial 100 firm, and peripheral observation and in-depth interviews in ten more firms, he found that executives typically evade law and quasi-legal procedures in handling intra-firm disputes with one another, and that social control and organizational structures are isomorphic. In corporations with strong formal authority structures among top managers (e.g., banks, private utilities, and traditional manufacturing firms), executives tend to pursue their grievances against one another up and down those hierarchies; in professional firms with flat formal authority structures among top managers (e.g., accounting, architectural, and law firms), they tend to engage in a variety of nonconfrontational actions, such as avoidance and toleration; and in corporations with cross-cutting (matrix) authority structures (e.g., engineering and some high-tech firms), they tend to pursue confrontational strategies in networked groups. Tucker (1999) offers another example of the isomorphism of social control with organizational structure from his ethnographic study of a post-bureaucratic firm that exhibits a type of therapeutic cultural control in keeping with its flat authority structure, close-knit networks, and high degree of shared values and identities among organizational members.

Can social control in organizations be studied without the explicit or implicit cause-and-effect orientation of the first two perspectives in our typology? We briefly consider some answers to this question in the next section.

Social Control as a Constitutive Dynamic in Organizations

Scholars examining social control in organizations as a constitutive dynamic abandon the cause-and-effect orientations of the first two perspectives with regard to the instrumental efficacy or conditions predicting the organizational adoption or use of various mechanisms of social control. Instead, they shift the analytic focus to understand how the language and symbols used to enact social control shape fundamental social categories, identities, interests, and normative boundaries within organizations. This third perspective resonates with scholars studying law as a constitutive dynamic in everyday life (Ewick & Silbey, 1998; Merry, 1990; Sarat & Kearns, 1996).

One exemplar of the constitutive approach to social control in organizations can be found in Foucault's (1977) classic *Discipline and Punish*. On one level, Foucault intends to explain how incarceration and prisons came to substitute for public spectacles of bodily violence as the standard penal practice in contemporary societies. At a deeper level, Foucault analyzes generalized microtechniques of discipline and punishment – via knowledge generated through "expert" assessment, diagnosis, prediction, and intervention – to understand power relations in contemporary society. "Normalization" operates at the heart of social control, focusing on the transformation of the "soul" rather than the body as in earlier forms of spectacular punishment, and does so by creating social categories against which everyone and everything is measured. In some ways, Foucault's arguments resonate with Kunda's (1992) observations about how contemporary cultural control aims to "claim" the self in the name of corporate interest. Yet, Foucault's analysis penetrates more deeply into the formation of social categories that create the self, and is somewhat agnostic regarding the underlying interests served by normalization. Certainly, training is oriented toward capitalist and state interests in some general way, but there are no Wizard of Oz-like managers behind organizational curtains manipulating normalization. What Foucault (1977) describes is a network of discipline, systematically administered by legions of "experts," constituting and enveloping all individuals and groups in a broad field of action. This is not limited to corporations. The prison operates at the epicenter of these networks, which is why the techniques of social control in prisons, factories, schools, military organizations, and state bureaucracies all come to resemble one another. Normalization also defines marginals – whether criminals, the mentally insane, the poor, or the disabled – who do not favorably "measure up" to whatever categories of "normal" are proffered and must thus be disciplined. Ultimately, everyone is under the sway of discipline – the powerful and the powerless alike.

Multiple authors engaging in constitutive analysis add a robust sense of agency underplayed in the work of Foucault (1977). Vaughan (1996) argues that the deadly *Challenger* launch decision in the 1980s was not a failure of bureaucratic control and rule violations by engineers pressured to signal the continued viability of the US space program. Instead, it represents an "organizational accident" that "linked institutional forces, social position, and individual thought and action," constituting engineering agency and choices about appropriate risk levels and decision-making (Vaughan, 1996:405). In short, the *Challenger* accident resulted from active choices to interpret information and follow rules rather than ignore or break them. This same emphasis on the constitution of a broad sense of agency by social control also can be found in Ewick & Silbey's (2003) in-depth interview study of the ways bureaucratic control and legalization in public organizations constitute the knowledge that individuals use to resist those systems. Morrill & Musheno's (2018) long-term ethnographic field study of how youth handle trouble in a high-poverty public school is another illustration

of constitutive dynamics in the interplay between different mechanisms of social control. These authors found that non-coercive relational control among youth not only constitutes the stakes and substance of peer trouble, but also symbolizes youth as worthy of dignity and regard: what it means to be a valued member of the campus community. They also found that non-coercive relational control among youth is sustained when informal and formal control mechanisms "pull together."

Perhaps the most intriguing example of the constitutive dynamics of social control comes from Patterson's (1982) analysis of slavery. The effective social control of slaves requires multiple mechanisms. Ultimately, "slaves" must be transformed from human agents to "desocialized…[and] depersonalized…nonbeings," and so experience "social death" (1982:38). Through rites of passage, everyday language (e.g., the words "master" and "property"), and everyday practice, social control continually constitutes the social categories of "master" and "slave," and the master–slave relation.

Conclusion

Taken together, research across all three perspectives of social control suggests multiple general patterns and questions that implicate the intended and unintended impacts of social control, power relations, the conditions that give rise to different control mechanisms, and social change. The first is that all mechanisms of social control have limited effectiveness in influencing organizational behavior, each seemingly carrying the seeds for its own resistance and critique. Organizational members challenge relational control because of its particularism, technical control because of its social alienation, and bureaucratic control because of its constraints and ineffectiveness. Although scholars continue spinning out complex theories of agency control, they also remind us of the failures of principal-agent solutions to defeat opportunism in economic action (Palmer, 2013:63–65). Cultural control would seem immune to these critiques due to its broadened scope, especially with regard to meaning, but it can lead to individual burnout and, ultimately, what Kunda (1992:213–216) calls "unstable selves," which blur the boundaries of authenticity and inauthenticity. As discussed, Edelman (2016) found that elaborate bureaucratic and cultural control systems can lead to symbolic compliance, in which workers go through the motions but achieve few substantive reductions in social inequality.

Second, social control in organizations that has an authentic respect for members' dignity and empowerment may be most effective at influencing appropriate member behavior. Lincoln & Kalleberg (1990), for example, argue that relational and cultural control that underscores co-worker support (rather than loyalty to superiors), bureaucratic and agency control that facilitates substantive rights and accountability for worker mobility (rather than mere symbolism), and technical control that mitigates social alienation will yield sustained worker satisfaction and commitment. Mueller et al. (2001) surveyed nearly 6000 employees nationally and found that features of social-control systems, parallel to those studied by Lincoln & Kalleberg (1990), can indirectly reduce self-reported instances of sexual-harassment victimization for both women and men, because such systems compel worker empowerment to protect co-workers. Dobbin et al. (2015) offer additional insight from a quantitative and qualitative analysis of 818 US workplaces, finding that engaging frontline managers in meaningful ways to promote diversity – rather than merely limiting their discretion in hiring – will have positive effects on increasing workplace diversity. In effect, empowerment matters.

Third, social control in organizations can produce a variety of perverse outcomes, both intended and unintended. Monahan (2010), for example, observes how contemporary technical control in corporations – such as drug-testing and key stroke-tracking – often targets the most marginalized and powerless employees, ensuring that they remain in low bargaining positions with regard to better wages and working conditions. Dobbin & Jung (2010) document how agency theorists attempted to remedy the US economic malaise of the 1970s by prescribing perverse incentives that substituted the goal of profitability for corporate stability (including arguing for reducing independent boards and executive equity holding), which heightened corporate risk-taking and helped lead to the Great Recession of 2008. At its most perverse, cultural control can intertwine with bureaucratic control in military organizations to lead to mass atrocities when organizational members deeply internalize values that demand abject obedience to superiors while dehumanizing external enemies (Kelman & Hamilton, 1989).

Fourth, institutionalist explanations for the rise of legalized bureaucratic control, together with Edwards's (1979) Marxian explanations, raise broader questions about the rise and fall of different control systems in US organizations. Have dominant mechanisms of control been replaced successively, as Edwards suggests, in keeping with changes in enterprise size, labor processes, and the collective capacities of workers and capitalists? Does the last half-century of law-like bureaucratic control, coupled with cultural control, represent an end stage in control mechanisms in organizations? Barley & Kunda (1992) offer one answer to this question, through a deep dig into managerial ideologies across 150 years of US history. They argue that two contrasting images of social order define managerial ideologies: one in which "people share a common identity…[and] are bound by common values" and one characterized by "competition, individualism, and calculative self-interest" (1992:384). Based on quantitative and qualitative analyses of historical evidence, they find rationalist and cultural control alternate with each other with differing economic conditions: rationalist control prospers during economic expansions, while cultural control prospers during economic downturns. Managerial ideologies set the parameters within which control varies, and economic conditions determine when new forms of control have occurred. Guillén (1994) offers a second answer, based on comparative analyses of work and control across Germany, the United Kingdom, Spain, and the United States. He argues that the constellation of "institutional circumstances" – including the state, economy, and the collective positioning of managers and workers – provides perspectives on the problems that control is intended to solve for managers and the likelihood that particular mechanisms of control will actually be put into practice. Thus, the trajectories that scholars such as Barley & Kunda (1992), Dobbin (2009), and Edelman (2016) chart may represent but one path in the development of control in organizations across different societal contexts. These analyses also raise questions about the adoption of social control in transnational organizations and in bureaucracies that rely on burgeoning numbers of independent contractors (Barley & Kunda, 2004). Rather than alternating only between rationalist and cultural mechanisms of control, perhaps the ascendant form will be a hybrid of relational and agency control that further escapes public scrutiny in organizations.

This last, more speculative possibility points to how the use of different social-control mechanisms becomes a key site for the reproduction of social inequality. It is not simply that such mechanisms target different organizational members, further marginalizing them, but that they are unequally accessible. If HR departments largely symbolize equity remedies while ultimately indemnifying organizations against risk to managerial interests (Edelman, 2016), then, to the degree that social-control mechanisms in the organizations of

the future escape further public accountability, they may push more deeply toward the dark side of social control by explicitly discarding and stigmatizing those who try to remedy social inequality.

The constitutive perspective perhaps raises equally dark questions. In many ways, Foucault's (1977) analysis of techniques of discipline resonates with Weber's (2001) image of the "iron cage" of bureaucracy, which makes the world increasingly knowable, yet meaningless. A key question, then, becomes whether and how social control contributes not only to social order or other instrumental goals, such as organizational performance, but also to human dignity, equality, and meaning (Hodson, 2001). The research reviewed in this chapter primarily diagnoses the ills associated with the impacts of social control or provides explanations for when and how social control is used. Questions of how social control might yield dignity and equality or facilitate democratic order – to return to an earlier era of scholarship on social control (Janowitz, 1975; Selznick, 1969) – raise difficult theoretical, empirical, and value-oriented challenges. Indeed, scholars typically demonstrate how justice motives lead to resistance (itself a form of social control) against rationalist or categorical social control, but less so how social control itself can promote or signal dignity and social equality. As such, this challenge represents a future growth industry in this area of inquiry.

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7

Psychiatric Control

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Psychiatric control has a sustained and disquieting history of use in the United States. Typically, it has been deployed to manage individuals who pose a security risk to themselves and/or others within community settings or confinement facilities. This chapter critically examines three of the most enduring and controversial state-sanctioned psychiatric control practices designed to promote human well-being and public safety: solitary confinement for inmates diagnosed with mental health deficits; civil commitment for offenders classified as sexually violent predators; and juvenile waiver for youth who commit serious and violent crimes. The first half of the chapter briefly reviews the extant social science literature on each of these practices. The second half offers a radical critique of the three measures. Particular attention is directed toward the contexts in which human "risk" is managed, collective "identities" are marginalized, and the "society of captives" is promulgated (Arrigo, 2013:672), given these system-level interventions. The paradigm of psychological jurisprudence (PJ) is appropriated as a way to both reconceive and reconsider the three enumerated practices of psychiatric control. Following the Aristotelian-informed logic of PJ, three virtue-based remedies are provisionally explored: commonsense justice, therapeutic jurisprudence, and restorative justice.

Solitary Confinement

In US correctional institutions, perhaps no other means of psychiatric control is more subject to debate than solitary confinement. As a behavioral management measure, isolation traces its roots to the very beginning of corrections in the United States (Reiter, 2012). Eastern State Penitentiary, which opened in 1829 in Philadelphia, Pennsylvania, was constructed to house offenders in absolute solitude in order to promote contemplation of and repentance for one's sins while removed from the "evils" of modern society (Grassian, 2006:339). Although this highly touted model of reform inspired the design of hundreds of secure-confinement facilities around the world, the United States's early experiment with isolation was formally halted following the precedent-setting ruling

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

In re Medley (1890), and after disturbing reports of offenders being driven "violently insane" and committing suicide (Pizarro et al., 2006:12).

In the century that followed, the use of solitary confinement was limited, being principally intended as a short-term response to severe inmate behavioral issues (Pizarro et al., 2006; Reiter, 2012). As the nation shifted toward a "get tough" philosophy regarding offending in the early 1980s, however, and penal administrators struggled to manage the resulting burgeoning prisoner population – much of which suffered from undiagnosed or untreated psychiatric disorders (Haney, 2017) – the practice of segregation rapidly expanded. To contain those deemed the "worst of the worst" among the convict population, supermaximum security facilities and units (i.e., the "supermax") were constructed (Mears, 2013; Richards, 2015; Shalev, 2009).

While specific isolative conditions vary, and while correctional administrators increasingly use "antiseptic" terminology to refer to them (Alexander, 2015:4), solitary confinement typically entails segregation for 22–24 hours a day (Shalev, 2009). Although cell lights may be dimmed during nighttime hours, they nevertheless remain on in order to permit monitoring (Metzner & Fellner, 2010; Shalev, 2009). Depending on behavior, segregated prisoners may receive 1 hour of exercise time in a concrete pod or barbed-wire enclosed cell (Haney, 2003:126). In addition, those housed in solitary confinement commonly have limited or no access to treatment, programming, visitation, sensory-enhancing media (e.g., books or television), personal belongings otherwise permitted while in the general population, natural sunlight, or fresh air (Haney, 2017; Metzner & Fellner, 2010; Shalev, 2009). Further, a host of "mechanical, physical, chemical, and technological restraints are utilized to ensure minimal psychological stimulation and to control nearly every aspect of an inmate's existence" (Arrigo et al., 2011:61; see also Haney, 2003; Kupers, 2008). There are two primary types of solitary confinement: administrative and disciplinary. Administrative segregation may be imposed for an indefinite period and is normally reserved for inmates who present a safety and security risk, such as high-profile gang leaders or individuals who engage in self-injurious behavior (Haney, 2003). Disciplinary segregation, which usually entails more restrictive conditions, is employed as a time-limited response to a rule infraction (Arrigo & Bullock, 2008).

Although researchers debate whether penal institutions have become "*de facto* psychiatric facilities" (Metzner & Fellner, 2010:105; see also Abramsky & Fellner, 2003) or the "new asylums" (Ben-Moshe, 2017:272), findings suggest that there are approximately "10 times more identified mentally ill persons in prisons and jails in the United States than in mental hospitals" (Haney, 2017:311; see also Torrey et al., 2014). Further, the empirical evidence indicates that approximately one-third of convicts with serious psychiatric illnesses are held in isolative conditions (Haney, 2009). While federal courts have ruled that placing severely mentally ill prisoners in isolation violates the Eighth Amendment's protection from cruel and unusual punishment, the Supreme Court of the United States in the modern era has yet to consider this issue (Alexander, 2015; Arrigo et al., 2011). Given that incarcerates with mental health issues are particularly vulnerable within general prison populations, correctional administrators assert that segregating these individuals is a prudent measure that promotes safety and well-being for all concerned. Indeed, research indicates that convicts who openly exhibit signs of mental illness such as confusion or hallucinations are more likely to be victimized physically, sexually, and even economically (Metzner & Fellner, 2010).

While the promotion of security within penal facilities is recognized as a critical imperative, some researchers, mental health professionals, and human rights advocates question whether such security compromises the well-being of those segregated (Shalev, 2009).

Specifically, experts assert that the century of empirical evidence delineating the harmful psychological effects stemming from solitary confinement indicates that sensory and social deprivation may produce the very behavior (i.e., aggression and violence) that segregation is employed to address and designed to minimize. Although some findings suggest that segregation for a short period (i.e., 60 days or less) does not exacerbate psychiatric illnesses among those with preexisting conditions (O'Keefe et al., 2011), detractors charge that studies such as these rely on self-report data, and that the results suffer from generalizability concerns (Grassian & Kupers, 2011; Shalev & Lloyd, 2011). The deleterious mental health effects associated with solitary confinement are so common that Grassian (1983) identified what he termed the secure housing unit (SHU) syndrome. Several of these effects are worth noting: hyper-responsivity to external stimuli, panic attacks, impaired concentration and memory, obsessive thoughts, paranoia, and loss of impulse control (Arrigo & Bullock, 2008; Grassian, 1983).

In the often volatile milieu of penal institutions, those who struggle with psychiatric illnesses are more likely than those who do not to destroy property (e.g., flood their cells, start fires), to smear or throw urine and feces, and to exhibit a range of disorderly behaviors (Metzner & Fellner, 2010). The provocation of symptoms within segregation – which may impair an inmate's ability to comply with staff directives or institutional rules – increases the likelihood for additional disciplinary infractions, and these institutional rule violations typically extend a convict's time in isolation (Haney, 2003). Because convicts are in state custody, self-injurious behavior such as cutting, hanging, or swallowing sharp objects (e.g., razor blades) may be deemed "destruction of state property – to wit, the prisoner's body" (Fellner, 2006:397), resulting in further disciplinary action.

According to Metzner & Fellner (2010:105), "[m]ental health services in segregation units are limited to psychotropic medication, a health care clinician stopping at the cell front to ask how the prisoner is doing (i.e., mental health rounds), and occasional meetings in private with a clinician." Because of budget constraints, unrelentingly heavy caseloads, and the nature of solitary confinement, correctional mental health professionals are often limited in their ability to render appropriate monitoring and sufficient treatment to those inmates with arguably the greatest need. Concerned researchers, psychiatric care providers, and human rights activists contend that as long as custody trumps treatment, the struggle to ensure safe penal facilities that meet the wellness needs of those with mental illnesses will continue unabated (Fellner, 2006; Haney, 2017).

Civil Commitment

As a form of psychiatric control, civil commitment has a long and controversial history of use in the United States. Statutes permitting this type of confinement "affect the largest number of people of any of the law–mental health interactions" (Bloom, 2004:430). Fundamentally, civil commitment is designed to impose compulsory hospitalization on individuals with mental illnesses who are deemed a threat to the well-being of themselves or others (Arrigo, 1993; Bloom, 2004). Over time, the laws evolved to permit civil commitment for those who engaged in sexually violent behavior. Within the collective American conscience, perhaps no other criminal type has historically garnered as great a degree of disdain as the sex offender. Narratives for and about those convicted – or even accused – of such crimes have often cast them as sick and depraved individuals who prey upon the most vulnerable members of society (i.e., women and children) (Bersot & Arrigo, 2015). In the

1930s, the first legislation was enacted to allow placement in a mental health care unit for those classified as "sexual psychopaths," as an alternative to imprisonment (Miller, 2010:2096). By the 1960s, over half of the states in the nation, as well as the District of Columbia, had passed laws designating civil commitment for sexually violent individuals (Janus, 2006). The laws seemingly reflected the trend toward treatment at the time, and the growing reliance on the medical literature delineating explanations for deviant behavior (Duwe, 2014; Knighton et al., 2014; Miller, 2010).

However, with the dawning of the "get tough" era in the early 1980s, policy-makers and criminal justice officials were forced to confront research findings that appeared to indicate that treatment efforts were generally ineffective, and a series of judicial rulings held that key aspects of the legislation authorizing civil commitment as an alternative to incarceration violated offenders' civil rights (Janus, 2006). Consequently, these laws faded (Knighton et al., 2014). The need for more aggressive measures gained significant traction following a series of relentlessly covered high-profile kidnappings and murders in which the victims were brutally sexually victimized (Petrila, 2008; Sparks, 2008). In the wake of these undeniably shocking and reprehensible crimes, new legislation was passed – often with a victim's name attached, and with little to no opposition –to assuage public fears regarding the "worst of the worst" (Tewksbury et al., 2012:20) among offender types: the sexually violent offender.

In 1990, the first in the "second wave" (Janus, 2006:22) or the "next generation" (Deming, 2008:355) of civil commitment statutes was enacted in Washington, DC. These new regulations set an unprecedented standard in the management of individuals classified as sexually violent offenders. For the first time in history, those meeting specific criteria could be subjected indefinitely to compulsory hospitalization following the completion of their criminal sentence (Janus, 2004, 2006; Sparks, 2008). While post-confinement containment is a practice that the United States has traditionally rejected (Janus, 2004, 2006; Palermo, 2009), the "premise that sustains [sexually violent predator] civil commitment laws is that 'patients' will be treated, and once they are 'rehabilitated' (i.e., no longer psychiatrically disordered or dangerous), they will be discharged" (Arrigo et al., 2011:98; see also Janus, 2004, 2006; Shipley & Arrigo, 2001). Concerned researchers and legal experts assert that what is perhaps most troubling about compulsory hospitalization for these individuals is that the empirical evidence indicates that few are ever released (Janus & Bolin, 2008; Wright, 2008).

Currently, 20 states and the federal government permit civil commitment for those classified as sexually violent predators (Deming, 2008; Lave & McCrary, 2009). In order to be eligible for placement, an offender must meet specific criteria, principally set forth in the precedent-setting ruling of *Kansas* v. *Hendricks* (1997). These criteria include the following: (a) a conviction for a sexually violent offense against an adult or child victim; (b) a mental abnormality or personality disorder that makes reoffending likely; and (c) a mental abnormality or personality disorder that places the individual at an especially high risk for recidivating in the future (Jumper et al., 2011; Levenson & Morin, 2006). Although processes vary slightly by jurisdiction, typically the prosecutor will petition for the individual to be civilly committed prior to their release from a correctional institution. During the trial, both the prosecution and the defense will commonly call upon mental health experts to provide testimony on the degree to which a sex offender meets, or fails to meet, the criteria for sexually violent predator classification (Boccaccini et al., 2014).

In addition to the high costs associated with imposing indefinite post-confinement hospitalization (Harcourt, 2007; Levenson & Morin, 2006), some law and behavioral science experts cite definitional concerns, as well as concerns with the statutory criteria established for classifying an individual as a sexually violent predator. Specifically, critics contend that

the criteria are far too all-inclusive in their ability to identify those who are genuinely "highly likely" to reoffend (Knighton et al., 2014:294), especially when such net-widening requires intensive treatment within a secure mental health care setting (Levenson & Morin, 2006). Further, some argue that the actuarial instruments employed to determine who poses the greatest likelihood for recidivating suffer from imprecision and essentially serve to "accentuate the prejudices and biases that are built into the penal code and into criminal law enforcement" regarding those who perpetrate sexual violence (Harcourt, 2007:190). As Levenson & Morin (2006:612) note, "progress has been made in the identification of risk factors for sexual reoffense, [however] little is known about how civil commitment evaluators are utilizing knowledge of risk factors in their assessments of sexual dangerousness." Researchers contend that further investigation is sorely needed, and the debate surrounding how to manage and contain those who engage in sexually violent behavior will unquestionably continue.

Juvenile Waiver

Prior to the 19th century, juvenile offenders in the United States were processed in the same manner as adults in criminal courts. During this time, prevailing thinking dictated that individuals 7 years old and younger were incapable of forming criminal intent (Fox, 1970). As such, a juvenile offender above this age was deemed culpable (i.e., blameworthy) as an adult criminal, and was tried, convicted, and punished accordingly (Bang et al., 2016). However, as awareness regarding adolescent maturity evolved, and as knowledge about the degree to which a young person was capable of forming criminal intent grew, Progressive-era activists challenged the harsh sanctions and conditions to which youth were subjected when engaged in wayward behavior. Based on the reformists' efforts, the first juvenile court was created in Illinois in 1899 (Feld, 2004; Ruddell & Thomas, 2009).

Guided by the legal doctrine *parens patriae*, which permitted the state to act in place of the parent to promote the best interests of a child (Kurlychek, 2016; Ruddell & Thomas, 2009), the development of juvenile courts established a less formal and more empathetic systemic process designed to respond to youths' individual needs (Bang et al., 2016). Indeed, unlike their contemporaries in adult criminal courts, who provided a punitive sentence appropriate to the seriousness of an offense, juvenile court judges were principally tasked with considering any circumstances that might contribute to delinquency, such as mental health, and with delineating an individualized program designed to treat the young person, bearing in mind the current body of research on child development. Because the purpose of the juvenile court was to carefully determine meaningful ways in which to rehabilitate delinquent and offending youth and to promote their mental and physical well-being, contemplating criminal responsibility was unnecessary (Bang et al., 2016; Kurlychek, 2016). Compared to the general youth population, those who were processed through the juvenile justice system predictably had higher rates of mental health problems (Grisso, 2006), and as such, most commentators assert that the protections afforded to youth in contemporary juvenile courts are particularly important (Underwood & Washington, 2016).

Juvenile waiver, which entails transferring a youth's case to the adult criminal court, was utilized infrequently and reserved only for the most serious offenders (Bang et al., 2016). For decades, juvenile court judges made case-by-case determinations on whether or not to waive a defendant to an adult criminal court. However, following a series of shocking

high-profile violent crimes committed by youth in the 1980s and '90s, deterrence-informed legislation was enacted to address the public's moral panic over adolescents who-seemingly belied society's prevailing notions of childhood innocence (Feld, 2004; Kurlychek & Johnson, 2004). Anchoring these new policies was the alarming notion of the superpredator: "the poster child…of the youthful offender during the decade – remorseless, calculating, brutally violent and not easily redeemable" (Artello et al., 2015:2). Driven by the desire to assuage citizens' fears of youth seemingly running amok, political leaders and pundits asserted that harsh responses such as expanding juvenile waiver were prudent (Artello et al., 2015; Ruddell & Thomas, 2009).

Among the prevailing types of juvenile waiver is prosecutorial or direct-file, which gives the prosecuting attorney decision-making power in determining whether or not a young person's case ought to be transferred to an adult criminal court (Feld, 2003). What is perhaps most controversial about this type of transfer is the fact that "[n]o formal guidelines govern prosecutorial discretion in direct-file waivers…and inadequate access to proper personal and clinical records about youthful offenders may inaccurately lead to false determinations concerning the most dangerous juveniles" (Sellers & Arrigo, 2009:444).

While serious and violent offenses committed by young persons are undoubtedly disconcerting, some investigators contend that applying the same degree of moral and legal responsibility to a juvenile as to an adult is not well supported by the prevailing empirical literature (Grisso, 2006). At the core of the debate surrounding juvenile waiver is the evidence on cognitive development. Specifically, findings reveal that the prefrontal cortex is not fully developed until early adulthood (Fabian, 2011). This area is principally responsible for "abstraction and reasoning; understanding others' reactions; planning; organizing; controlling impulses; emotional regulation; understanding, processing, and communicating information; establishing, changing, and maintaining a mental set; handling sequential behavior; using knowledge to regulate behavior; and exhibiting empathy regarding how behavior affects others" (2011:739). Further complicating the controversy surrounding juvenile waiver is the evidence suggesting that youth affected by the practice are commonly "psychologically immature and have experienced a variety of negative life circumstances, which contribute to impulsive behavior, a limited perspective on life, and a propensity to engage in risk-taking to achieve short-term gains while disregarding long-term consequences" (Myers, 2016:932).

Thus far, there is little indication that the scientific evidence on cognitive development has informed or influenced policy-making regarding the appropriate response to serious and violent juvenile offending. Further, a growing number of findings suggest that the effectiveness of juvenile waiver in reducing reoffending is not especially convincing. For example, results from a meta-analysis involving nine studies revealed that only one found that the practice decreased the likelihood that a juvenile would recidivate (Zane et al., 2016). Nevertheless, leading researchers on the issue point out that the perception regarding the "worst of the worst" (Fabian, 2011:748; see also Myers, 2016) among youth who commit heinous crime prevails – particularly with respect to those who exhibit signs of psychopathy. In short, these are offenders who require monitoring and supervision within an adult criminal court system. While the debate concerning juvenile processing and placement, as well as punishment and treatment, will no doubt continue, some contend that the "manifest weight of evidence from scientific, legal, and psychological communities…may demand that youth be treated as children in every context because children *are* children in every context" (Fabian, 2011:744, emphasis in original).

Psychiatric Control: Radical Criticisms and Future Directions

Perhaps what is most problematic about these three forms of state-sanctioned psychiatric control is that scientific, legal, and policy experts all conclude that system-level interventions are needed in order to alleviate the behavioral health deficits of disordered, deviant, and/or dangerous individuals. The implication is that solitary confinement, civil commitment, and juvenile waiver are sufficiently sound or mostly necessary therapeutic practices whose intention is the well-being of troubled citizens, the safety of institutional staff, and the protection of society. What this means, however, is that human "risk" is managed, collective "identities" are marginalized, and a "society of captives" is promulgated (Arrigo, 2013:672). Stated differently, missing from this intention is any consideration for the *relational* dimensions of punishment and treatment, well-being and security, justice and social control (Weaver & McNeill, 2015).

Donati (2012) offers a similar criticism in his assessment of sociology in particular and of the social sciences in general. As he observes, "The starting point…is that the object of sociology is neither the so-called 'subject,' nor the social system nor equivalent couplets (i.e., structure and agency, life-worlds and social systems, and so forth), but is the *social relation itself*" (2012:4–5; see also Donati & Archer, 2015). To be clear, this is neither a liberal nor a conservative assessment; rather, it is a radical approach to understanding how the shared or associational facets of human existence are a source of under-examined inquiry and novel critique. Drawing upon insights from Foucault (1977) addressing the "conduct of conduct," Pavlich (2005) explains some of the political fall-out that follows from sustaining practices (explicitly, restorative justice) that emphasize system-level correctives or curatives targeted toward individual transgressors. Highlighting what he defines as the "mentalities of governance" (2005:5), he explains how institutional interventions become choreographed and how this staging is fundamentally ideological (see also Acorn, 2004). As Pavlich notes:

> These mentalities of governance entail specific political rationales; as logics of how to rule they define such matters as what is governed, who is governed, who does the governing and what governing itself properly entails. Such govern*mentalities* render particular ideas and practices (rationales and techniques of governing) understandable, conceivable, viable, and indeed practicable. (Pavlich, 2005, emphasis in original)

The disciplines of psychology (e.g., Polizzi, 2008) and psychiatry (e.g., Atterbury & Rowe, 2017) raise comparable objections. In short, control-based logics "socially construct the offender" through static categories of sense-making (Polizzi, 2008:80), and correspondingly compromise emergent meanings for "citizenship" and for the "common good" (Atterbury & Rowe, 2017:273). The consequence of such govern*mentalities* is a breakdown in social cohesion, connectedness, and reciprocity (Weaver & McNeill, 2015), in which relational moments are never owned, and the "exclusive society" (Young, 1999:1–29) persists as a manifestation of "the normalized, healthy, and inevitable conditions of coexistence" (Arrigo & Sellers, forthcoming).

In response to these combined concerns, researchers have developed a radical paradigm of theory development, empirical analysis, and praxis-based change (Arrigo et al., 2011). In the balance of this section, we summarize this paradigm and delineate how it has been used to reconceive and rethink the relational limits of psychiatric control. In this explanation, attention is directed toward a reevaluation of solitary confinement, civil commitment, and juvenile waiver. The paradigm itself is termed "psychological jurisprudence."

For more than 2 decades, the logic of PJ has been used to diagnose contemporary social issues and to investigate enduring human problems. The mental-health, law-and-society, and offender-treatment literatures make this point abundantly clear (Birgden, 2014; Fox, 2001; Small, 1993). Most recently, the acumen of PJ has been used to further a critical psychology of law (Arrigo & Fox, 2009), to advance doctrinal and/or empirical legal analysis (Arrigo & Waldman, 2015; Bersot & Arrigo, 2015), to develop clinical taxonomies (Arrigo, 2013, 2015), and to propose justice-based public-policy reform (Arrigo & Acheson, 2015). In support of PJ's analytic utility, Ward (2013) noted the following when reviewing its contributions to the social and behavioral sciences:

> [It is composed of] significant epistemological, economic, social, cultural, psychological, and ethical strands[, reminding us] that we are under the spell of…contestable, and specific [renditions of reality]…The crucial issue is [one of diagnosing] the relationship [among those cultural forces]…that reinforce, and in a sense constitute, [finite depictions of subjectivity]. By understanding how these factors dynamically interact…it may be possible to open up a conceptual space for considering alternative ways of dealing with atypical human behavior. (2013:704)

As theory, PJ conceptualizes atypical human behavior as the product of three interdependent and mutually supporting phenomena: the problems of risk, captivity, and harm. Risk refers to the management of non-pathologized difference and of the social forces of fear (often fueled by moral panic) that reduce or repress difference to sameness. The politics of sameness implies normalization, equilibrium conditions, and the legitimacy of the status quo (e.g., Greenberg, 2014). PJ maintains that such conventional reasoning often ignores or overlooks entire ways of knowing, being, and/or coexisting. However, these limits (reductions in humanness) and denials (repressions of humanness) do not simply implicate and extend to the kept (e.g., psychiatric citizens); in addition, the politics of sameness disciplines reality for their collective keepers (e.g., Foucault, 1977). This collectivity includes all those who work within the systems (institutional and community-based) of psychiatric control (Arrigo, 2015). This quality of control is what R. D. Laing (1971) meant when he wrote about the politics of experience.

Within the realm of psychiatric control, the experiences that are politicized are the relational moments of patient treatment and therapy, and of offender recovery and reentry. These associational moments could be the source of crucial insight, innovative reform, and even potential transformation. Examples of such unexamined relationality abound. Civil commitment hearings, pre-trial competency evaluations, custody classification reviews, parole-board hearings, and post-sentencing planning panels are all spaces of coexistence. These settings and contexts exemplify how human relatedness is de-vitalized and finalized through rituals and ceremonies that neutralize the reciprocal dimensions of shared experience (Arrigo & Sellers, forthcoming). For PJ, when these dimensions are continuously silenced or sanitized, the dynamism of identity is marginalized and the reductions and repressions of captivity (epistemologically and ontologically) prevail. The unreflective maintenance of such captivity is the power to harm (Arrigo & Milovanovic, 2009; Henry & Milovanovic, 1994): the power to deny shared humanness and the difference it could make (while in treatment or therapy, during recovery or reentry) if owned (i.e., imagined, spoken, and embodied). Sustaining such harm is nothing short of madness (Arrigo et al., 2011).

The theorizing of PJ acknowledges that reciprocal consciousness, intersubjectivity, and mutual power are the conceptual cornerstones by which to radically rehumanize all forms

of social control, including the psychiatric control of prisoners placed in isolative confinement, sex offenders subjected to civil commitment, and developmentally immature youth waived to adult court. As a method of analysis, PJ begins by focusing on the status of citizenship (Arrigo et al., 2011; see also Rowe, 2015): shared human flourishing as developed within the Aristotelian tradition. For Aristotle (2000), the purpose of all (co)existence is to experience excellence in how we live and in how we uniquely, collectively, and interdependently practice virtue. Experiencing this excellence builds *a society of character rather than a society of captives*. This is character whose dual intention is "citizenship justice and communal good" (Arrigo et al., 2011:6; see also Arrigo & Bersot, 2016).

In order to realize shared human flourishing, PJ examines the texts of psychiatric control (e.g., mental disability law). When filtered through the lens of Aristotelian virtue, re-reading these texts reveals how "concealed values, unspoken interests, and hidden assumptions [are] lodged within legal documents, including those texts impacting vulnerable, troubled, and distressed individuals and/or [groups]" (Arrigo et al., 2011:6; see also Birgden, 2014). Thus, as we have concluded elsewhere (see Arrigo, 2013; Bersot & Arrigo, 2015):

> [W]hen psychiatrically disordered convicts are placed in long-term disciplinary isolation, how and for whom does this practice exhibit courage, compassion, and generosity? When criminally adjudicated sex offenders are subsequently subjected to protracted civil commitment followed by multiple forms of communal inspection and monitoring, how and for whom is dignity affirmed, stigma averted, and healing advanced? When cognitively impaired juveniles are waived to the adult system, found competent to stand trial, and sentenced and punished accordingly, what version of nobility is celebrated and on whom is this goodness bestowed?" (Arrigo, 2013:687)

As method, then, PJ seeks to specify, affirm, and extol the shared dimensions of character-building existence for and about one and all.

As a praxis-based prescription for change and a corrective for atypical human behavior, PJ focuses on the promotion of trans-desistance (Arrigo, 2015), an Aristotelian-derived approach to restoring and transforming the relations of humanness (Arrigo et al., 2011). This approach acknowledges the interactive and interdependent link between thinking about (i.e., theorizing) and doing (i.e., practicing) justice as citizenship. Theory and action are inseparable from this change-oriented associational enterprise. According to PJ, reliance on three specific therapeutics helps to further trans-desistance. Each therapeutic provides a protean direction for cultivating virtue and for sustaining citizenship as a relational and remedial response to psychiatric control. These correctives include commonsense justice, therapeutic jurisprudence, and restorative justice.

Central to commonsense justice, therapeutic jurisprudence, and restorative justice is a concern for dignifying the character of all parties impacted by a civil or criminal dispute. At the same time, these three correctives function to repair the harm that follows when human relatedness is reduced to scripted forms of problem-solving and is repressed by rule-bound modes of decision-making. Stated differently, the intention of these remedies is to advance the development of personal character and to seed the experience of shared virtue (Bersot & Arrigo, 2015). The reach of this intention extends to offenders and victims, to service providers and treatment personnel, and to the communities that bind such individuals, groups, and networks together. Commonsense justice (Finkel, 1997) accomplishes this by valuing community sentiment, or the "ordinary citizen's notion of what is just and fair" (Arrigo et al., 2011:7). In this way, the law's more subjective and informal aspects of mutual

reality-claiming and -making are honored (Huss et al., 2006). Therapeutic jurisprudence realizes its intention by assessing where and how the formal rules of law can be beneficial or harmful to citizen stakeholders (Winick & Wexler, 2003). This includes legal actors and institutions working as agents of prosocial reform, guided by psychological principles and insights (Wexler, 2008). Restorative justice achieves its intention by fostering a mediated culture of reparation, forgiveness, and compassion (Van Ness & Heetderks Strong, 2014). Disclosures that are candid and dialogue that is inclusive underscore a humanistic process in which associational meanings and shared resolutions are sought (Bazemore & Boba, 2009; Umbreit et al., 2006). Thus, according to PJ, the collective effect of these three correctives "is the cultivation of an integrity-based society" (Arrigo et al., 2011:8) in which relational habits of character and communal prospects for justice radically humanize the practices of social control, including the control of psychiatric citizens.

Conclusion

This chapter critically examined three enduring and controversial measures of state-sanctioned psychiatric control: solitary confinement for inmates diagnosed with mental health problems; civil commitment for offenders classified as sexually violent predators; and juvenile waiver for youth responsible for serious and violent crimes. We began by delineating the extant social science literature pertaining to each of these measures. Next, we argued that while these three practices appear to be prudent interventions intended to promote citizen well-being, institutional safety, and the protection of society, they regretfully fail to consider the relational dimensions of punishment and treatment, well-being and security, justice and social control. We utilized the paradigmatic logic of PJ to provisionally explain how these practices might be radically reconceived and reconsidered. Finally, we proposed three curatives or correctives developed from within PJ's Aristotelian-derived virtue philosophy – commonsense justice, therapeutic jurisprudence, and restorative justice – being mindful of their potential to promote human flourishing that extends to offenders and victims, to service providers and treatment personnel, and to the communities to which all are inextricably bound.

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8

Juvenile Justice

Shelly S. Schaefer

To Morgan Geyser and Anissa Weier, Slender Man was real. According to Creepypasta Wiki, Slender Man is a faceless paranormal figure that has existed for centuries and has the ability to use his long arms and legs to ensnare his victims, resulting in death. The myth of Slender Man is that he preys on children, and he can appear to his victims at any moment, although it is alleged that he prefers the woods or suburbs, and to be near large groups of children. If you believe in Slender Man, and want to remain safe, you must prove your dedication by killing; thus, that is exactly what Morgan and Anissa planned to do in May of 2014.

At the time of the incident, Geyser and Weier were 12 years old, living in a small town in Wisconsin. As part of their plot to show dedication to Slender Man, they planned to lure their friend, Payton Leutner, into the woods after a sleepover in order to stab her. The young girls executed the plan and, after Geyser stabbed Leutner 19 times, they left their victim to die and began their trek to meet Slender Man, walking along an interstate (Hanna & Ford, 2014). Thankfully, a bicyclist came across Leutner, who was rushed to the hospital and survived. Geyser and Weier were arrested hours after the incident on charges of first-degree intentional homicide (Hanna & Ford, 2014). Given that Geyser and Weier were 12 years old at the time, the girls fell under the jurisdiction of the juvenile justice system. Because of the seriousness of the crime; however, a media frenzy ensued, questioning whether the young girls should remain in the juvenile court or be transferred to the adult criminal justice system for punishment.

If youth can be transferred to adult court, why do we have a separate juvenile justice system? What reasons are there for its continued existence? To answer these questions, we must examine the history and inception of the juvenile court and look at how our current juvenile justice system aligns (or not) with its intended purpose.

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

History of the Juvenile Justice System

The early 19th century was a time of economic growth, rapid urbanization, and high rates of immigration in the United States, which served to change ideals around child welfare, juvenile deviance, and the role of the family unit (Fox, 1970; Tanenhaus, 2004). Specifically, the introduction of Houses of Refuge in New York in the early 1800s signified a change in the plight of children. The Houses of Refuge laid the groundwork for the future juvenile justice system, and served to divert juvenile delinquents and wayward youth from the harsh punishment of the adult jail and prison system (Feld, 1999; Fox, 1970; Platt, 1969, 1977; Schlossman, 1977). In essence, they provided an alternative institution that would not only inflict punishment but also correct youth behaviors that did not align with prescribed norms of the time.

The Houses of Refuge for juvenile delinquents and wayward youth received little public resistance, as the rhetoric for their existence focused on serving the needs of children, including providing education and training (Mennel, 1972). Their continued existence throughout the 19th century was a result of the child-saving movement, which emphasized the need to protect children as a vulnerable population. As Platt (1969:27) describes, the "child savers were prohibitionists," and children required strict supervision; thus, law enforcement was used as a tool to ensure that children were not involved in deviant behavior, such as running away from home, truancy, and sexual exploration. The child savers saw such behaviors as delinquent acts, and youth exhibiting them as in need of state intervention (Becker, 1963; Berger, 1991).Therefore, white middle-class values determined which particular acts were status offenses, and the Houses of Refuge were disproportionately filled with youth from lower-class immigrant populations (Fox 1970; Platt 1969).

Capitalizing on the ideals of the child-saving movement, the progressive reformers included the rhetoric of the reformatory movement as part of their larger concerns with issues such as economic regulation, criminal justice, social welfare, and political reform. Ultimately, they embraced the child savers' philosophy regarding the protection and development of children by creating institutions that could react to issues of inadequate parenting, poverty and welfare, delinquency, and recreation for children and adolescents (Feld, 1999; Platt, 1969). The progressive movement considered the family a sacred institution, and believed the state should not be allowed to intervene in family matters; however, the progressives' adoption of the child-saving movement's ideal of the child in need of protection did allow for state intervention to address parental failures and childhood deviance under the *parens patriae* doctrine (Feld, 1999). Thus, the courts were given broad discretion to intervene on behalf of youths showing pre-delinquent or delinquent behavior, and could use Houses of Refuge and reformatories as means for support and correction to remove them from their homes (Mennel, 1972).

The progressives also supported the development of state institutions such as a state education system and labor laws. In combination with the philosophy of the child in need of protection, this led to the creation of the first official juvenile court in 1899, in Chicago, Illinois (Feld, 1999; Platt, 1969; 1977; Schlossman, 1977; Tanenhaus, 2004). The juvenile court allowed the state to intervene in the private matters of the family in order to control and morally mold children, under the guise of protecting them from exploitation (Feld, 1999; Rothman, 1980).

The Invention of the Juvenile Court and Children as Adolescents

Because progressive reformers envisioned the juvenile court as a social welfare system separate from the adult penal system, the first juvenile court followed a rehabilitative model and allowed judges to make discretionary and individualized decisions in the best interest of the child (Feld, 1999). To further disassociate itself from the formal adult criminal system, the juvenile court did not warrant specific due process and procedural safeguards, such as trial by jury and attorney presence, because the mission was to treat and not to punish (Feld, 1999). Additionally, rather than a finding of guilt, judges adjudicated youths delinquent, referring to a determination of status rather than conviction, which signals culpability. To minimize stigmatization, court proceedings were closed to the public and juvenile records were sealed (Tanenhaus, 2004).

The founding of the juvenile court was a clear and conscious departure from the adult criminal justice system. Because the early juvenile court's dispositional structure followed a social casework model and was set up to treat the whole child, judges had the ability to sentence youth to probation and/or institutions for an indeterminate period of time, in the interest of rehabilitation (Feld, 1999; Rothman, 1980). Supporting the rationale for having a separate system to treat youth were the early writings of G. Stanley Hall (1904), who promoted the idea that kids are different due to the developmental experiences of adolescence. This period is marked by emotional and behavioral upheaval, sensation-seeking, and susceptibility to peer influences, as young people develop the social-cognitive skills required for mature adulthood (Arnett, 2006; Hall, 1904). By this logic, the delinquent acts of adolescents do not warrant punishment, as adolescents are not culpable for their actions due to their developmental immaturity; instead, individualized, rehabilitative attention in the best interest of the child is warranted.

The juvenile court intervened on behalf of wayward and delinquent youth by ordering dispositions such as probation or institutionalization. Historian David Rothman (1980:219) recounts how the early probation system mimicked a family structure, and the probation officer "would have to assume the duties of an educated mother and at the same time train other family members and even neighbors to fulfill their responsibilities." The role of the probation officer in the early juvenile court was twofold: (a) to provide the necessary background information on the juvenile to the judge; and (b) to supervise the juvenile on probation (Rothman, 1980). These two charges remain the same in today's juvenile justice system, making probation officers powerful individuals in the courtroom workgroup.

Juvenile courts also had access to and regularly used juvenile correctional institutions as a means to rehabilitate delinquent and wayward youth. The juvenile court's jurisdiction extended beyond infractions of the criminal code and local ordinances to include behaviors considered inappropriate for children. Behaviors of this type (e.g., drinking, having sex, truancy, stubbornness, incorrigibility) were labeled status offenses, because the status of the individual and not the act itself defined them (Feld, 1999; Platt, 1969). Youth committing status offenses were seen as living a wayward life in need of intervention (Feld, 1999; Sutton, 1988). Thus, these offenses were prosecutable by the juvenile court, which could sentence youth to various placements and institutions for an indeterminate period of rehabilitation and reformation. Many historians note that the "cottage systems" and "vocational training schools" utilized by the juvenile court were simply the reformatories of the past given a new name, which was intended to enhance their non-penal character (Miller, 1991; Rothman, 1980).

Early Juvenile Institutions

If the purpose of the Houses of Refuge and juvenile institutions was to provide rehabilitation in the best interest of the child, the reader may imagine idyllic structures situated on rolling hills, with rooms bathed in sunlight. One might further imagine that while at these homes, programming centered on education, positive reinforcement, and recreation. This tranquil image does not seem so farfetched, given that these institutions followed the ideals of the child savers of protection and rehabilitation. However, historians such as Breckinridge & Abbott (1916) report that in the early 1900s, detention and juvenile institutions held children for unidentified reasons, keeping some for long periods without explanation. The Illinois Crime Survey of 1929 reported that the St. Charles School for boys employed a military-like regime, requiring marching, hard labor, and whippings for misbehavior (Wigmore, 1929). In addition, Platt (1969) writes that youth were placed in solitary confinement for unidentified amounts of time for misbehavior. A potentially more accurate depiction of juvenile institutions is that of Louise Bowen, quoted by Platt (1969), who describes the detention home as having "every appearance of being a jail, with its barred windows and locked doors…The children have fewer comforts than do criminals confined in the county jail. They are not kept sufficiently occupied and have very little fresh air" (Platt, 1969:151).

For juvenile females, the reformatories provided a dispositional option for judges who deemed them incorrigible or as showing wayward behavior, particularly if that behavior appeared at all related to sexual exploration. Schlossman & Wallach (1978) found that during the years 1910–20, 23 new facilities opened for wayward girls with the mission of domesticating them into marriageable women. Rehabilitative programming focused on middle-class household values and the domestic skills required to practice them. Subsequent research by Odem & Schlossman (1991) found that even as late as the 1950s, approximately the same number of females were committed to long-term custodial facilities for incorrigibility and wayward behavior as in the 1920s. Research examining the Illinois Training School in 1973 and '74 continued to find that the most frequent offense leading to commitment for females was running away, followed by incorrigibility, sex delinquency, probation violation, and truancy (Vedder & Somerville, 1975).

The Juvenile Court in Question

The juvenile court's mission to carry out individualized decision-making in the best interest of the child remained virtually untouched until the early 1960s. Qualitative research by Emerson (1969), conducted in 1966 and '67, spurred investigation into the procedural justice and the ability of the court to provide individualized treatment. Further, in 1965, President Lyndon B. Johnson convened experts in the field to examine crime and the criminal justice system in the United States. In 1967, the commission reported its findings in a publication entitled, *The Challenge of Crime in a Free Society* (President's Commission on Law Enforcement, 1967). As part of its remit, the commission reviewed the juvenile justice system, noting that "its shortcomings are many and its results too often disappointing" (1967:78). Further, it recommended implementing changes to law enforcement's interactions with youth, providing more formality in court proceedings to ensure youth's rights were upheld, using formal intervention and correctional placement as a last resort, diverting youth from the juvenile justice system, and narrowing the juvenile court's

jurisdiction. Without these changes, the commission argued that the juvenile justice system would continue to fail to achieve its goal of providing rehabilitation and justice for youth.

On the heels of the commission's report, the Supreme Court began to address juvenile court proceedings. In 1967, it decided the landmark case, *In re Gault* (1967), which led to substantial changes to the juvenile justice system (Feld, 1991). Gerald Gault, 15 years old at the time of the offense, was committed to a juvenile institution for years for making lewd phone calls to his neighbor, asking such questions as, "Are your cherries ripe today?" and "Do you have big bombers?" After the neighbor, Mrs. Cook, called in a complaint, Gerald and his friend were taken to the Children's Detention Center. No call was made to Gerald's parents, and Gerald was held in detention for days without explanation of his charges, and without the ability to cross-examine the neighbor. In addition, Gerald did not have a lawyer present, and was never notified of his right against self-incrimination. Ultimately, the juvenile court judge determined that Gault's behavior signaled a propensity for immoral acts and committed Gerald to the State Industrial School for the "period of his minority," or until age 21 (see *In re Gault*, 1967).

The Gault case forced the Supreme Court to review the punitive realities of the juvenile justice system. Supreme Court Justice Fortas wrote the majority opinion and boldly stated, "Under our Constitution, the condition of being a boy does not justify a kangaroo court" (1967:28). The Supreme Court handed down its decision and mandated elementary procedural safeguards in juvenile court, such as advance notice of charges, the right to a fair and impartial hearing, assistance of counsel, the opportunity to cross-examine witnesses, and privilege against self-incrimination (Feld, 1999). The Gault decision was a victory for constitutionalists, who had long argued that the juvenile court deprived youth of their liberty and freedom and provided them with few due-process rights under the disguise of rehabilitation and best-interest rhetoric. However, as if Justice Stewarts could see into the future, he warned in his dissenting opinion that converting juvenile proceedings to criminal prosecution would reopen the door for punishment for youth, reminding the court of the case of 12-year-old James Guild, who was tried for murder, found guilty, and executed; he noted that "It was all very constitutional."

The revolution did not stop with the Gault case. Following this decision, the Supreme Court held in *In re Winship* (1970) that juvenile courts must establish proof beyond a reasonable doubt. The Court also decided in *Breed* v. *Jones* (1975) that the double jeopardy clause of the Fifth Amendment applied to juveniles. Thus, juveniles cannot be adjudicated for an offense in juvenile court and subsequently tried as an adult in criminal court. *Breed* v. *Jones* laid the building blocks for the decision that determination of waiver to adult court must be made prior to a juvenile court adjudication. However, the juvenile court stopped short of allowing all due-process procedural safeguards to youth with the case of *McKeiver* v. *Pennsylvania* (1971), which did not grant the right of a jury trial to juvenile proceedings. In its majority opinion, the court rationalized that if too many procedural safeguards were standardized in the juvenile court, then a separate juvenile court would no longer be needed (Feld, 1991).

Along with the changes to the juvenile court's constitutional proceedings, the federal government was also dabbling in juvenile justice reform, in particular the use of out-of-home placements for youth. In 1974, the government restricted the use of residential placements to delinquency cases by passing the Juvenile Justice and Delinquency Prevention (JJDP) Act, which required states to remove non-criminal-status offenders from secure detention and correctional facilities (Feld, 1999). In 1988, amendments to the JJDP Act further required states to address issues of disproportionate confinement of minorities

(Devine et al., 1998). The Disproportionate Minority Confinement (DMC) amendment mandated that states receiving money from Part B Formula grants address disproportionate confinement of minorities in secure confinement and implement strategies to reduce minority representation at all levels of decision-making (Devine et al., 1998). Pope & Feyerherm's (1990) research also substantiated the need to address minority confinement, finding that differences in outcomes by race could not be attributed to legal factors. This pointed toward a systemic problem of differential treatment in a court system founded on justice for all.

The Juvenile Crime Boom

The next trying time for the juvenile justice system was a period spanning the late 1980s through 1994, when the number of juvenile arrests for violent crimes increased 172% and the number of delinquency case referrals to juvenile court increased 45% (Butts, 1997). With concentrated coverage of isolated yet truly appalling crimes, such as the school shootings at Jonesboro in 1988 and Columbine in 1999, and the Minnesota case of Matthew Niedere, who killed his mother and father in 2005, the American media spurred crime-control advocates to politicize the issue of juvenile crime (Myers, 2005; Polachek, 2009). Politicians responded by adopting a "get tough" platform, which they led the general public to believe would both deter juvenile offenders and lower recidivism (Feld, 2017; Redding, 2010).

This "epidemic" of violence among young people brought about a philosophical debate on the ability of the juvenile court to respond to the "superpredators" of the new juvenile crime wave (Annin, 1996). The portrayal of juveniles as "vicious and savvy" (Bishop, 2000:84) legitimized adequate (i.e., harsh) punishment to deter future crime. In response, states began passing more punitive policies and sentencing outcomes for juvenile offenders, particularly via transfer provisions: mechanisms that transfer a youth from juvenile court jurisdiction to the adult criminal court. Juvenile transfer is also called "waiver," because the juvenile court waives its jurisdiction over the juvenile and proceeds with "certification" for adult prosecution. From 1987 to 1997, all 50 states made changes to their transfer provisions, making it easier for prosecutors to directly file young adults to criminal court. Between 1985 and 1994, the number of juvenile cases waived to adult criminal court grew by 71% (Butts, 1997).

Although most states had mechanisms in place to waive juveniles to adult court prior to the late 1980s, the changes enacted from 1987 to 1997 made it much easier for prosecutors to direct file juveniles to adult court. Direct file allows prosecutors full discretion to waive youths to criminal court with no judicial review. For instance, Jeffrey Butts and Ojmarrh Mitchell (2000) report that lawmakers passed new and expanded transfer mechanisms in every year of the last 2 decades of the 20th century; in some cases, the laws moved entire groups of juveniles to adult court without a hearing in front of a juvenile judge. The changes in transfer mechanisms decreased the involvement of juvenile court judges and increased prosecutorial discretion to waive juveniles to (adult) criminal court.

Introduction of Blended Sentencing Laws

As transfer laws expanded in the 1990s, a new legislative sentence option for juveniles gained traction; blended sentencing. Blended sentences allow a judge to choose either juvenile or criminal sanctions, or to impose both at the same time – often staying the adult

criminal sanctions (Schaefer & Uggen, 2016). Some juvenile justice scholars speculate that the introduction of such laws represented a means of moderating the effects of these strict transfer laws (Redding & Howell, 2000); in other words, blended sentencing was seen as a way to shift would-be certified youth back to the juvenile court. Yet, recent research by Schaefer & Uggen (2016) finds the turn toward blended sentencing for juveniles largely parallels the punitive turn in adult sentencing and corrections, rather than reaffirming the historic individualized-treatment emphasis of the juvenile court. To date, 26 states have adopted some form of blended sentencing, with little research to suggest that youth sentenced under a blended sentence scheme are less likely to recidivate. In fact, Podkopacz & Feld (2001:1026) found that in Minnesota, blended-sentencing legislation had a net-widening effect, creating a "back door" to prison for the 35% of youth whose juvenile probation was revoked and who were forced to serve their stayed adult sentence.

Post-Juvenile Crime Boom

Juvenile crime peaked in 1994, and began a decline in 1995. Despite a 33% decrease in juvenile arrests for violent crime and a 31% decrease in property crime arrests from 1994 to 2000, the juvenile justice system had an 8% increase in youths petitioned to the juvenile court, among which there was a 17% increase in the number of cases adjudicated to placement and a 26% increase in the number placed on probation (Puzzanchera & Kang, 2017). Although we would like to believe that juvenile court responses to crime are based on actual levels of crime in society, that is often not the case. Tonry (2004) assessed crime and imprisonment rates in the adult criminal justice system and showed that crime rates were often declining when punitive policy changes were enacted. In a similar fashion, even as juvenile violent crime rates decreased from 1994 to '99, the United States continued to transfer youth to adult prisons at the highest rate in our juvenile court history (Puzzanchera & Kang, 2017).

Introduction of Intermediate Sanctions

Contemporary policies on crime have become harsher and more punitive than those in other nations, partly due to public fears and moral panic, but also due to long-term changes in social values and attitudes toward crime (Tonry, 2004). Even though crime rates peaked during the 1990s, the United States continues to produce strict crime-control measures.

As in the adult criminal justice system, changing sensibilities toward juvenile crime impacted policy and programmatic changes in the juvenile justice system (Bernard & Kurlycek, 2010; Tonry, 2004). One of most popular additions or alternatives to detention and training schools was the boot camp: a punitive correctional camp that followed a "deterrence-oriented" correctional program and imposed a military basic-training regime (Mackenzie & Freeland, 2012). In other words, the focus was less on the rehabilitation and treatment of the individual than on the "pains" of incarceration, which were intended to deter the juvenile from future offending. Mackenzie & Freeland (2012) report that by 2000, there were 75 boot camps in the United States.

Unfortunately, yet not surprisingly, boot camps did not meet the expectations of policymakers or the public. A meta-analysis by Wilson et al. (2005) found no effect on recidivism among youth placed in these programs. Further research by Lipsey & Cullen (2007), which looked at boot camps alongside other intermediate sanctions such as intensive community

supervision and electronic monitoring, also found no difference in recidivism for youths placed in these programs compared to a control group. In fact, for some youths, being placed in such programs actually increased their future criminal activity. Despite the dismal evidence that boot camps provided any positive outcome for youth, they solved one problem: they provided a custody placement option for an overburdened system (see Cronin & Han, 1994 for a full review of the research).

The "get tough" era of the 1990s particularly impacted youth of color. During this period, black and Hispanic youth were (and continue to be) overrepresented in the juvenile justice system. Bishop & Leiber (2012) state that African American and Hispanic youth are held in secure detention, formally petitioned, and adjudicated delinquent at rates disproportionate to their representation in the population. Using data from 2006, they report that 65% of all youth in correctional facilities are minorities, with African Americans four times more likely to be placed in facilities compared to whites, followed by Native Americans at three times more likely and Hispanics at two times more likely. Research over time has confirmed the cumulative disadvantage of being a youth of color and being processed in the American juvenile justice system (see Bishop et al., 2010; Pope & Feyerherm, 1993).

From Punitive to Lenient, and Back Again?

Bernard & Kurlychek (2010) argue that the juvenile justice system is entering a new cycle, where the pendulum may be swinging from the punitive back to the more lenient. Perhaps the "get tough" movement of the 1990s peaked? Bernard & Kurlychek (2010) suggest that since 2000, there have been very few altercations at the state level aimed at strengthening punitive juvenile justice policies. For example, there have been few expansions of waiver or transfer policies, and only one state has so far adopted blended-sentencing legislation in the 21st century (Schaefer & Uggen, 2016). At the federal level, the Supreme Court, in the landmark case of *Roper* v. *Simmons* (2005), declared it was unconstitutional to execute a juvenile for a murder committed under the age of 18. In writing the majority opinion, Justice Kennedy relied heavily on developmental psychology research showing that juveniles lack maturity and have a diminished capacity to understand the responsibility of their actions, that they are more susceptible to outside influences, and that they have immature judgment (Steinberg & Scott, 2003). The *Roper* v. *Simmons* (2005) decision sent the message that kids are different, particularly regarding blameworthiness and culpability for their actions.

For some, it seems a lifetime since the United States constitutionally allowed for the execution of juveniles, but in reality, it was only 12 years ago that we abolished this practice. However, the door did not fully shut on sentencing youth to death until 2012, in the Supreme Court's decision in *Miller* v. *Alabama* (2012). Prior to that case, a majority of US states allowed juveniles waived to adult court to be sentenced to life without the possibility of parole (LWOP): a natural-death sentence for juvenile murder. Barry Feld (2017) reports that of those juveniles sentenced to LWOP, 59% were *under the age of 15* at the time of sentencing. The decision in *Miller* stated that the Eighth Amendment forbids the *mandatory* LWOP sentence for juvenile homicide offenders, noting that children are "constitutionally different than adults" (Moriearty, 2014:932).

The *Miller* decision prompted appeals from the estimated 2100 individuals serving an LWOP for juvenile homicide. Because *Miller* did not require states to apply the decision

retroactively, tension at the state level mounted, as some state supreme courts ruled to require retroactive sentencing and some did not. In *Montgomery* v. *Louisiana* (2016), the Supreme Court provided a roadmap and interpretation of the *Miller* decision. The majority opinion in *Montgomery* determined that the decision was a substantive rule of constitutional law and, as such, states must comply with it. Justice Kennedy, writing the majority, offered two methods for state consideration: resentencing or the offer of parole. To date, national statistics on the number of individuals who have been paroled or resentenced under *Montgomery* do not exist, but Rovner (2017) reports that since 2012, 28 states have revised their laws to either ban juvenile LWOP or provide mandatory minimums and a chance of parole for juvenile homicide offenders, supporting the philosophy that kids are different.

Despite the decisions in *Roper*, *Miller*, and *Montgomery*, there remain areas in the juvenile justice system where youth are treated as "functional equivalents of adults": police interrogations and waiver of Miranda rights (Feld, 2006:222). *Miranda* v. *Arizona* (1966) established that police must warn suspects of their right to remain silent under a custodial interrogation. If you waive your Miranda rights, anything that you do or say can be used against you in a court of law. The legal standard for reviewing Miranda waivers does not differ between the juvenile and adult courts; thus, the courts believe that a juvenile understands and comprehends their rights at the same level as an adult. The courts have faced opposition from developmental psychologists whose research would suggest otherwise. Thomas Grisso (1980, 1998, 2013), for example, found that over half of the juveniles in his research study did not understand at least one of the four warnings in Miranda, with the most frequently misunderstood being that regarding the right to counsel. Barry Feld (2013), meanwhile, found that among 307 interrogation files studied, 92.8% of juveniles waived their Miranda rights, suggesting that the protection that Miranda offers is severely diluted in juvenile cases.

The neurobiology and developmental psychology of youth is important not only as it pertains to judicial competency, but also in terms of how contact with the juvenile justice system – particularly confinement *during* adolescence – impacts future outcomes. Some research in this area is underway. For example, Dmitrieva et al. (2012) found that youth placed in secure confinement show decreased development in the three areas that make up psychosocial maturity: temperance (impulse control), ability to function autonomously (responsibility), and hope for the future (perspective). Schaefer & Erickson's (2016) recent research expanded Dmitrieva et al.'s (2012) work by comparing the development of psychosocial maturity between confined and non-confined youth. Their results showed that by early adulthood (ages 18–25), there are significant differences between the two groups: confined youth lag in their development of perspective and responsibility. Considering that perspective and responsibility are correlated with the successful transition to adulthood, the juvenile justice system should minimize the use of confinement as an intervention during the crucial developmental time period of adolescence in order to minimize long-term effects.

Protracted confinement is not the only area of the juvenile justice system scrutinized by policy-makers and academics. Beginning in the 1990s, the Annie E. Casey Foundation funded pilot sites that adopted the Juvenile Detention Alternatives Initiative (JDAI), which reduces the use of secure detention for youth waiting charging, adjudication, or disposition. The effects of secure detention can be devastating for this age group. Research shows that youth who are detained (particularly youth of color) are more likely to reoffend, to be petitioned formally, and to receive severe (punitive) disposition outcomes, even after

controlling for offense severity and prior history (Frazier & Cochran, 1986; Mendel, 2009). In addition, even though secure detention should only be used for those who pose a significant risk to public safety, Frazier & Cochran (1986) also uncovered a level of arbitrariness to court decision-making within detention decisions, which later research showed had cumulative and discriminatory impacts for youth.

Fueled by this research, the JDAI called for the juvenile justice system to expand alternatives to detention, such as reporting centers, electronic home monitoring, and community coaches, and to implement data-driven strategies using risk assessments to determine, objectively, which youth should be placed in secure confinement. The Annie E. Casey Foundation (2013) reports that over 300 jurisdictions and the District of Columbia have adopted JDAI, resulting in a 39% reduction in annual detention admissions and a reduction in youth of color in detention (although a majority of youth in detention are still youth of color). Although JDAI has made some positive changes in the number of youth in secure confinement, it behooves the juvenile justice system to continue to reduce the use of secure detention. In a recent pre–post JDAI study using Virginia court data, Maggard (2015) found a slight reduction in length of stay pre and post JDAI (from 27.5 to 24 days), an increase in youth charged with felonies in secure detention, and an increased reliance on prior histories for detention decisions. However, the effects by race fell short of reducing disproportionate minority confinement. Maggard (2015) reports that reliance on legal variables (objective) post-JDAI implementation mattered more for white youth, meaning that non-white youth charged with a felony were significantly more likely to be placed in secure detention. In addition, pre and post JDAI, the use of prior felonies to determine secure detention did not change significantly for white youth; however, post-JDAI implementation, the odds of a prior felony resulting in secure detention for non-white youth increased by 61% (Mendel, 2009).

Looking Toward the Future

Despite the advancements in and changes to the American juvenile justice system, made with the intent of protecting youth, there remains great concern about the use of formal interventions via a court system to deal with delinquency. In some instances, a formal intervention, such as confinement, can have lasting negative effects into young adulthood (see Schaefer & Erickson, 2016). Although positive policy changes such as alternatives to confinement, abolition of the death penalty for juveniles, and recognition of racial disparity in the juvenile justice system have been made, these are all reactionary measures. We need more emphasis to be placed on prevention. Considering the strong correlation between poverty, education, and family involvement when it comes to delinquency, more importance needs to be placed on preventive programming at both the individual and the societal level (Brezina & Agnew, 2015). For example, for youth at risk for delinquency, offering preschool programming plus parental resources through the High/Scope Perry Preschool Program reduced the risk of future criminal intervention by age 27 by 50% (Schweinhart et al., 1993). Additionally, we know that the cost–benefit ratio of investing in prevention programs greatly outweighs that of reacting to and punishing juvenile delinquency.

In writing this chapter, I am not suggesting that we should do away with the juvenile justice system, or that there is not a place for juvenile correctional programs in the United States. Rather, it is imperative that institutions and programs adhere to best practices. As in

the adult criminal justice system, there is a common belief that the more punitive the sanction, the more likely it is to have a deterrent effect. Often, if a juvenile has prior offenses and/or commits a serious crime, the juvenile justice system will utilize more punitive responses, such as correctional institutions, waiver, or a blended sentence. Interestingly, a meta-analysis by Lipsey (2009) on the reduction of recidivism found that even for serious juvenile offenders, interventions that focused on intensive supervision, discipline, and deterrence could actually *increase* it. Further, Lipsey (2009) noted that intervention effects are not bounded by their context; therefore, an effective program can be implemented for juveniles in the community or through diversion, rather than confinement. Lipsey's findings suggest that there are effective programs for youthful offenders, including targeted therapeutic interventions, mentoring, and counseling. In essence, Lipsey's (2009) research suggests that implementation and fidelity are key to program success, rather than "Model Programs" (see Office of Justice Programs, 2017); even generic programs can have an effect if monitored with fidelity.

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9

Social Movements and Social Control

Sherry Cable

Compared to organizations associated with the criminal justice system, social movements are ephemeral, fluctuating collectivities. Participation is voluntary, staff is limited, membership oscillates, and the movement's persistence is typically attributable to a small cadre of activists.

The majority of social-movement theories focus on the independent variables associated with the emergence of a movement (Martin, 2012). Considering the embeddedness of institutionalized inequalities (McCarthy & Zald, 1977), movements are rare enough that it is logical to examine their emergence. Two overlapping theoretical approaches have dominated analyses since the 1970s: resource mobilization and political-opportunity theory.

Resource-mobilization analysts examine movements in the context of social structure and process, focusing on access to the resources necessary for a movement to emerge (Cress & Snow, 1996; Edwards & McCarthy, 2004; McAdam & Snow, 1997; McAdam et al., 1996; McLaughlin & Marwan, 2000; Staggenborg, 2010; Williams, 2002). Contending that movements are most likely to emerge when a new infusion of resources becomes available, they investigate the influences on movement emergence of material resources, such as funding and meeting spaces, and of the non-material resources of individuals, such as discretionary time for participation, prior experience with bureaucracies, and civic skills (Martin, 2012).

Political-opportunity theory posits that movements emerge when the normally excluded aggrieved perceive that elites are responsive to their claims. The possibility of elite support opens a new window in the political-opportunity structure (Martin, 2012; McAdam, 1982), "the dimensions of the political environment that incentivize the aggrieved to undertake collective action" (Tarrow, 1994:85). The dimensions include elite receptiveness to collective grievances, the presence and stability of elite alliances, and the relative level of state authoritarianism (Brockett, 1991; Kriesi et al., 1992; McAdam, 1996; Meyer, 1990, 1993, 2004; Roscigno & Danaher, 2001; Rucht, 1996; Werum & Winders, 2001).

These theoretical perspectives on movement emergence have generated hundreds of empirical studies and provided substantial contributions to our understanding of the

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conditions that generate movements among aggrieved groups. Movements emerge and flourish only if they withstand the social-control efforts waged by opponents to impede mobilization and avert social change. Yet, movement scholars seldom set their analytical sights on such concerted efforts by powerful others to demobilize movements. Social control is not a clearly delineated area of inquiry in movement analysis, and it is seldom featured in research reports.

In this chapter, I first describe my parameters for sifting through the movement literature in search of analytical treatments of social control, and then conduct an inventory of the tactics used by the state against political movements. I place the tactics inventory in the analytical context of unequal power relationships. Finally, I suggest a power framework for the investigation of social-control tactics, and close with some suggestions for further research.

Analytical Plan for the Literature Review

A social movement's raison d'être is to generate change. Analysts have used the nature of the desired change to differentiate among types of movements. In expressivist, redemptive, and transformative movements, activists seek internal changes, in themselves. In contrast, political movements seek external changes, in the social structure. While movements seeking internal change draw virtually no social-control attempts, political movements are frequently met with opposition by representatives of the status quo. Political movements emerge with grievances voiced by disadvantaged segments of the citizenry. Consequently, my focus is on political movements.

A political movement's claims of unequal treatment are lodged against the state as the institution that perpetuates the structure of inequalities (Gale, 1986). Accordingly, the state is the social-control agent that receives the most analytical attention. State agencies – organized manifestations of the state – are sets of political, military, judicial, and bureaucratic organizations that hold a monopoly on coercive control over citizens (Amenta & Young, 1999). The state's roster of social-control actors includes government agencies and the police, the FBI, the National Guard, judges, lawyers, and informers (Jeffries, 2002). Social control is manifested in intentionally discriminatory actions taken by the state to raise the costs of collective challenges and thereby diminish or demobilize movements (Boykoff, 2007; Earl, 2011; Goldstein, 1978; Jeffries, 2002; Stockdill, 1996).

My analytical plan is to focus on the social-control tactics employed by the state to attenuate challenges and demobilize political movements set up by the disadvantaged. In the next section, I conduct an inventory of such tactics.

Inventory of Social Control Tactics Employed by the State

I scavenged the social-movement literature for insights into the state's social-control tactics until I reached the saturation point (see Table 9.1 for the entire list of tactics). The tactics cluster into four loose categories: policing protest, surveillance, manipulation of public opinion, and threats to jobs and the economic vitality of communities.

Table 9.1 Collection of Social-Control Tactics from the Literature

Policing protest	Intimidation
Permits for rallies	Intelligence-gathering
Diversionary framing	Opinion control
Deviance narratives	Propaganda
Club with nightstick	Media manipulation
Character assassination	Blacklisting
Disinformation to media	Transfer (worker)
Containment	Manufacture consent
Constant detention: loitering, weapons charges	Informants
Threats	Public prosecutions and hearings
Physical violence	Employment deprivation
False accusations	Surveillance
Harassment	Break-ins
Assault	"Black bag jobs"
Information control	Infiltration
Workers' organizational norms of secrecy	"Badjacketing"
Workers' compartmentalization as security system	Agent provocateurs
	"Black propaganda"
Withholding information from public	Harassment and harassment arrests
Workers' Q clearance	Extraordinary rules and laws
On-the-job retaliation	Mass-media manipulation
Influence on the local medical establishment	Mass-media deprecation
Control of public meetings	Divisive disruption
Information overload	Micro-level ridicule at the interpersonal level
Discursive containment	Meso-level stigma = impairment of collective identity
Oppositional framing	
Ridicule	Macro-level threats to jobs and economic vitality
Stigma	
Impaired identity	
Discrediting	

Policing Protest

The most studied type of state social control is the policing of activists as they participate in public protests, marches, and occupations of public spaces (Boykoff, 2007; Earl, 2003). This category of tactics receives the bulk of analytical attention because "protest policing is the situation in which most protest participants actually experience repression" (Earl & Soule, 2010:77). Policing protest tactics include police officers' spatial containment of protests event and the commission of violence against activists.

Earle et al. (2003) delineate three increasingly aggressive levels of containment tactics used by police:

- police respond to a protest event but take no actions;
- police engage only in limited actions, such as directing traffic;
- police physically contain activists by erecting barriers, and arrest those who breach them.

Starr et al. (2011) also describe spatial containment, asserting that the designation of spatial zones for authorized protest disrupts protestors' activities and temporarily suspends the laws of assembly. Jeffries (2002) adds that mandating municipal permits to hold protest events is a containment tactic that does not require the physical presence of police officers.

Violence against protesters is a significant subset of policing protest, and arguably the most studied control tactic in the state's arsenal. Violent acts involve the deployment of police and other law-enforcement agencies to intimidate or physically harm activists by teargassing, beating, jailing, clubbing them with nightsticks, or shooting them (Boykoff, 2007; Earl et al., 2003; Jeffries, 2002; Wolfe, 1973). Boykoff (2007) uses two incidents to illustrate police violence: the 1970 National Guard shootings of unarmed Kent State University protesters and the police teargassing of demonstrators at the 1999 World Trade Organization.

Jeffries (2002) describes police violence against members of the Baltimore chapter of the Black Panthers in the late 1960s and early 1970s. On a single day, approximately 150 heavily armed policemen wearing bulletproof vests staged a series of raids on 17 Panther offices, homes, and nightspots. No raid resulted in gunfire, but four Panthers were arrested on weapons charges, and six were charged with murdering an informant.

Stotik et al. (1994) and Carley (1997) detail the federal government's violent acts against members of the American Indian Movement (AIM). In 1953, the government adopted a policy that withdrew Native American sovereignty on 2 million acres of land. AIM formed in 1968 to regain that sovereignty. Its demands challenged federal control of crucial natural resources beneath the land in question, particularly coal, oil, and uranium. The government's response was intimidation, assault, imprisonment, and murder. In 1973, AIM occupied the Pine Ridge Indian Reservation at Wounded Knee for 71 days. US Marshalls and FBI agents exchanged gunfire with the AIM activists, their assaults continuing even after the activists had withdrawn from the reservation. By 1975, many of AIM's leaders had disappeared into the underground; the remainder were either jailed or dead. With the leadership structure decimated, AIM officially disbanded in 1978.

Surveillance

Surveillance is a second cluster of state tactics frequently used to control movements. It entails monitoring and infiltration (Boykoff, 2007; Earl, 2003; Jeffries, 2002; Stotik et al., 1994) and is conducted by a political network of local policy, the FBI, and military intelligence (Boykoff, 2007).

State agents monitor activists to collect damaging personal information and release it in ways that obstruct movement activities and compromise individual activists. For example, civil rights activists in Mississippi were closely monitored by local law-enforcement agencies and the Mississippi State Sovereignty Commission, a state agency that informally cooperated with white-supremacist groups (Irons, 2010).

Perhaps the best-known surveillance program was the FBI's Counterintelligence Program (COINTELPRO), originally devised in 1956 by FBI director J. Edgar Hoover to discredit the US Communist Party. Efforts soon shifted to civil rights groups and anti-Vietnam War protestors. Jeffries (2002) examines COINTELPRO actions against the Baltimore chapter of the Black Panther Party between 1968 and 1971. Federal agents installed a video camera across the street from the Panther headquarters, which provided round-the-clock monitoring. In the 1960s, federal agents infiltrated movements to gather

intelligence, set up wiretaps, and open activists' mail (Boykoff, 2007). They instigated conflict among organization members through "badjacketing" (2007:287): planting suspicions that some members were informants. Employing "black propaganda" (2007:287), the infiltrators precipitated intramovement conflicts by fabricating documents purportedly issued by one organization that were critical of another. For example, an infiltrator damaged the Black Panthers' tenuous partnership with Students for a Democratic Society via documents apparently written by a Panther describing SDS members as cynical whites trying to manipulate the Panthers for their own ends. In some cases, infiltrators went even further, assuming the role of agents provocateurs to urge activists' engagement in illegal activities, including violence. Some infiltrators offered weapons and training to activists (Jeffries, 2002).

Manipulation of Public Opinion

The third cluster of state social-control tactics involves officials' manipulations of public opinion to generate opposition to movements (Cable et al., 1999; Carley, 1997; Jeffries, 2002). The state deploys its access to media to mount campaigns of disinformation that impede movement recruitment and sow public distrust of movement activists and objectives (Cable et al., 1999; Carley, 1997; Jeffries, 2002; Shriver et al., 2013). It manipulates the public by promulgating frames that denigrate activists, delegitimize movement objectives, or change the subject altogether.

State frames that denigrate activists typically capitalize on stereotypes to stigmatize them as, for example, eco-terrorists or extremists, as untrustworthy, or as having ulterior motives (Cunningham & Browning, 2004; Davenport, 2005; Ferree, 2003; Linden & Klandermans, 2006). Movement objectives are delegitimized through discursive obstruction. State agents construct frames of movement efforts that disprove or distort their arguments, sometimes by "catering to public fears" (Ferree, 2003; Koopmans & Statham, 1999; Shriver et al., 2008, 2013). They also promote frames that divert the public's attention from the activists' claims: what Freudenburg & Alario (2007) refer to as "diversionary reframing." The issue is reframed as something else altogether. Diversionary reframing is effective in "keeping problematic questions unasked, forgotten, or hidden in the shadows, away from public view" (2007:148).

Threats to Jobs and the Community

The federal government, through the Department of Energy (DOE), contracts with private corporations for the operation and management of the nation's vast nuclear weapons complex. Federal employees become whistleblowers when they report their professional, legal, moral, safety, and health concerns to supervisors or the media.

A small body of research has investigated the social-control consequences of whistleblowing, particularly at the three original Manhattan Project sites at Oak Ridge, Tennessee, Hanford, Washington, and Los Alamos, New Mexico (Glazer & Glazer, 1989; Hardert, 2001). Officials of either the DOE or, more often, the contracted corporations often retaliate against the whistleblowers (Glazer & Glazer, 1989). The primary control tactics are job threats and the contestation of the whistleblowers' claims.

The government's tactic of threatening whistleblowers' jobs takes several forms. In their study of white- and blue-collar government workers, Glazer & Glazer (1989) report

on whistleblowers' experiences of being blacklisted in their fields. Studies also document whistleblowers being unfairly laid-off and outright fired (Cress & Meyers, 2004; Glazer & Glazer, 1989). Cable et al. (1999) report a job-threat tactic unique to the federal government: revocation of a whistleblower's security Q-clearance. Many workers are required to obtain this clearance for employment, and it is granted only after an intensive background check by the FBI. If the clearance is revoked, the whistleblower is out of a job. Other apparently common tactics are demotions and task reassignments to dirty or hazardous conditions (Cable et al., 1999; Cress & Meyers, 2004; Glazer & Glazer, 1989). In 1982, for example, a scientist at Oak Ridge, on his own time, gathered soil samples on the reservation to check for mercury levels. When DOE officials were informed, the scientist received verbal and written reprimands and was demoted. The government's rationale for the sanctions was the scientist's "inability to perceive bureaucratically sensitive situations" (Cable et. al., 1999:75). In another, fairly dramatic example, a whistleblower – a cancer survivor – was reassigned to an office containing barrels of radioactive wastes for talking to the press about safety violations in handling nuclear materials. After complaining to a health scientist at the reservation, he was again reassigned, this time to conduct a chemical waste inventory in a former mercury reclamation room (Cable et al., 1999).

A sizeable subset of federal whistleblowers are ill workers who publicly express concerns that their symptoms are related to workplace exposures. They report that physicians denied their illnesses, neglected to conduct appropriate medical tests, and stigmatized them with inaccurate diagnoses such as psychological problems. Most whistleblowers at Oak Ridge, for example, reported serious obstacles to receiving adequate diagnosis and treatment for their symptoms (Mix et al., 2009). In 1995, the ill workers founded a movement organization, the Coalition for a Healthy Environment (CHE). They sought intermediary and long-term access to health care and the right to medical and disability compensation (Mix et al., 2009). A CHE member described being reassigned as punishment for standing up to her supervisors. Her new job dealt with the disposal of 55 gallon drums. She was required to lift and empty the drums of any remaining oil and chemicals, and then to crush them (Mix et al., 2009).

Analyzing Social-Control Tactics by the State

Movement analysts offer a number of dichotomous typologies of state social-control tactics. For example, Ferree (2003) distinguishes between hard and soft forms of repression; Earl (2003) describes overt and covert tactics; and others contrast intentional with unintentional tactics (Hollander & Einwohner, 2004). Such typologies have limited utility as solely descriptive categories. The loose clusters of tactics presented in the previous section are also descriptive. Both are useful, but they lack the context or grounding that would provide greater analytical weight.

The capacity to exert social control is fundamentally determined by unequal power relationships. Roscigno (2011) suggests that considerations of power begin with reflection on the bases from which it is derived. The more powerful the control agent, the greater its capacity to impose barriers to mobilization efforts by the control target. I ground this analysis of the state's arsenal of tactics on the bases of power that underlie its attempts to impede political movements.

Power and its Limits

The modern democratic state derives its power from three bases that overlap empirically but are analytically separable. The primary base of state power is political authority: power that is afforded by the government's dominant role in production processes and legitimated by the consent of the governed. The second base of power is the state's economic dominance over civil servants and, sometimes, communities: the power of a paycheck. The third base of power is the state's control of information about citizens. It has the ability to collect, withhold, distort, fabricate, and disseminate information, which it uses to discredit activists and persuade the public to accept a negative frame of movement activities.

The tactics that the state selects from its control arsenal vary with its relationship to the target: activists, employees, an economically dependent community, and the public. The state's political authority underlies the policing and surveillance tactics it uses to demobilize a movement or discredit particular activists. Economic dominance is the power base for tactics of surveillance, job threats, and threats to economic vitality, exerted to intimidate whistleblowers and residents of economically dependent communities. The state's control of information facilitates its tactical manipulation of information to persuade economically dependent communities and the public that a particular movement is ill-intentioned or wrong.

A capitalist democratic state's power to exercise social control over a target is not unlimited. It is bounded by its two paramount functions: capital accumulation and legitimation (O'Connor, 1973).

To fulfill its capital-accumulation function, the state maintains order and facilitates conditions for profitable capital accumulation through policies designed to expand production of the surplus. Examples of such policies are low corporate tax rates and high domestic subsidies. The state gains a substantial portion of its revenues from the expanded surplus and uses them to finance public projects and the military. But most of the wealth from the surplus is concentrated in the private hands of corporate elites. The outcome is institutionalized, structured inequality (Freudenburg & Alario, 2007).

The legitimation function requires the state to preserve citizens' loyalties by ensuring that their fates are not entirely determined by their positions in the market. The state's legitimacy is maintained through policies that mitigate the impacts of inequalities and shield citizens from the externalized costs of capital accumulation. Such policies include anti-discriminatory statutes and corporate regulatory laws.

The accumulation function serves corporate class interests by maintaining the power structure and institutional inequalities (Balbus, 1973). The legitimation function serves the subordinate middle and working classes by protecting them from the production externalities that an expanding surplus necessarily creates. These contradictory functions force the state to confront a perennial dilemma: how to continue surplus expansion while holding on to legitimacy. The resolution is social control.

The state prioritizes its capital-accumulation function because its survival ultimately depends on the expanded surplus. It keeps the appearance of balancing the two functions by making strategic but meaningful concessions to subordinate groups, expending a considerable portion of its revenues on entitlement programs that somewhat ameliorate the impacts of inequalities and guarantee citizens certain benefits, such as unemployment compensation, Social Security, Medicare, and Medicaid (Offe, 1984). A political movement expressing grievances over a lack of insulation from the impacts of capital accumulation

challenges the state's legitimacy. The state reacts with social control tactics aimed at the demobilization of the movement. The tactics identified earlier in this chapter are of this nature; they are *reactive* social-control tactics.

Reactive vs. Proactive Tactics and Political Conformity

Social control is "anticipatory as well as reactive"; the goals of statecraft are to "manipulate individuals and groups by controlling access to positions and resources, rewarding political conformity" (Turk, 1982:253). Anticipatory actions taken by the state are tactics of *proactive* social control, designed to avert mobilization altogether. Proactive tactics produce political conformity, or what Gaventa (1980) calls "quiescence" and Gramsci (1971) terms "consensual domination."

Political conformity is induced through the state's proactive tactic of influencing socialization processes in order to engineer acceptance and assimilation of the operating system of domination. Public perceptions of reality are shaped through constellations of institutions of cultural reproduction and representation (Crenson, 1971; Gaventa, 1980). Gramsci (1971) terms such voluntary associations, "civil society": schools, churches, business groups, political parties, the media, universities, and trade unions.

Consensual domination appears in society as political conformity. But it does not necessarily reflect the public's acceptance of domination. Conformity can result from two scenarios. In the first, it occurs through internalization processes in which individuals integrate social standards of behavior within their personalities because they believe the standards to be reasonable and appropriate. Internalization produces both attitude conformity and behavioral conformity. In the second, it occurs through compliance. Individuals conform without incorporating social standards of behavior or assimilating the system of domination. They comply only because they feel pressured to do so by threats of social control. They conform behaviorally but without attitude conformity, submitting to the legitimate power of an authority.

Compliance carries the potential of mobilization. Social-movement theories of emergence explain the realization of this potential, the shift from individual to collective grievances, with, for example, shifts in the availability of resources and political opportunities. Interpretation of movement emergence through the lens of consensual domination suggests other explanations. For example, movements emerge because decreased federal funding for entitlement programs generates greater exposures of subordinate classes to the negative impacts of capitalism's externalities.

A Power-Based Analysis

This analysis of the state's social-control tactics is derived from power relationships between the state and the target, and it distinguishes among social-control targets. The state's base of power shapes the control tactics it can deploy to demobilize activists while still maintaining legitimacy and capital accumulation.

The four clusters of social-control tactics extracted from the literature are rendered more meaningful when placed in this context of unequal power relationships. The analysis points to the normative state of subordinate classes as political conformity, or the absence of mobilization despite the impacts of institutional inequalities. This insight leads to the

distinction between reactive control tactics aimed at demobilization and proactive control tactics intended to promote political conformity. In the final section, I extend the analysis to explore its capacity for explaining social control by non-state agents.

Toward a Power Framework for Analyzing Social Control

Many movement analysts have asserted the value of investigating non-state control agents (de la Roche, 1996; Earl, 2003; Ferree, 2003; Gale, 1986; Shriver et al., 2008, 2013; Snow, 2004). Earl (2003:56) asserts that investigating social control by non-state actors "is critical to full and rich understanding of repression and protest control."

Table 9.2 provides a framework for my analysis of state social control, extending it to include three non-state social-control agents: corporations, counter-movements, and universities.

Corporations

Corporations are significant agents of social control when challenged, for example, by workers' grievances over labor issues or community grievances over environmental contamination. Corporate power bases are economic dominance, the control of information, and the protection afforded by corporate "personhood": the legal status granted by US Supreme Court rulings that accords corporations many of the rights of individual citizens. The targets of corporate social-control efforts are activists, employees, and the communities affected by their operations.

Corporate power allows for proactive social-control tactics that promote political conformity: socialization, public-relations programs, and the actions of astroturf organizations. The state's shaping of socialization processes is consonant with corporate aims: capital accumulation. The state justifies corporate operations in the same manner as it justifies its own.

Corporations, like most private-sector organizations, engage public-relations programs to manage a favorable public image. The Public Relations Society of America (PRSA) defines public relations as "a strategic communication process that builds mutually beneficial relationships between organizations and their publics" (PRSA, 2017). Corporate public-relations programs use social media to create and maintain the good will of the corporation's various publics: customers, employees, investors, suppliers, and the general public (Colgate, 2017). Ultimately, the corporate objective is to influence or change public policy in the corporation's favor (PRSA, 2017). This requires political conformity. Public-relations personnel promote political conformity by continually researching, conducting, and evaluating actions and communications through marketing, financial, and fundraising programs (PRSA, 2017) and by supporting arts, charitable causes, education, sporting events, and other civic engagements (Colgate, 2017).

Astroturf organizations are contrived grassroots movements designed by corporations or public-relations firms to promote political conformity to corporate values of individualism and free markets. These synthetic organizations seek to influence public opinion and policy-makers in ways that increase corporate profits (Beder, 1998; Lyon & Maxwell, 2004). Through astroturf organizations, corporations participate in public debates and government hearings behind a cover of community concern (Beder, 1998). They campaign to change public opinion, so that the markets for corporate goods are not threatened by challengers (Beder, 1998).

Table 9.2 Power Framework: The Social Control of Political Movements

Agent of Social Control	*Control Agent's Bases of Power*	*Targets of Control*	*Proactive Tactics (Political Conformity)*	*Reactive Tactics (Demobilization)*
State	Political authority Economic dominance Control of information	Activists Employees Economically dependent communities Public	Socialization	Policing protest Surveillance Job threats Threats to economic vitality Manipulation of public opinion
Corporations	Economic dominance Control of information "Personhood"	Activists Employees Economically dependent communities Public	Socialization Public relations Astroturf organizations	Surveillance Job threats Threats to economic vitality Manipulation of public opinion Private security forces Strike-breaking Imposed company unions Violence Formalized grievance procedures
Counter-movements	Secrecy Elite support	Activists Public	None	Surveillance Manipulation of public opinion Violence Intimidation
Educational institutions	Economic dominance Control of information *In loco parentis*	Students Employees Economically dependent communities Public	Socialization Public relations	Policing protest Surveillance Job threats Threats to economic vitality Manipulation of public opinion Formalized grievance procedures

Corporate reactive control tactics that impede mobilization include those of the state – surveillance, job threats, threats to economic vitality, and the manipulation of public opinion – plus others: policing protest with private security forces, strike-breaking, and imposed company unions (Griffin et al., 1986), violence (Gaventa, 1980), and formalized grievance procedures intended to individualize grievances – a divide-and-conquer tactic (Hebdon & Stern, 1998).

Counter-Movements

Counter-movements emerge to impede political movements through opposition to the social change they advocate. The counter-movement's base of power can be secrecy or elite support. Secrecy is the power base for the Ku Klux Klan, for instance. Klansmen typically hide their identities to protect themselves from law enforcement, although Klansmen sometimes *are* law enforcement. Elite support is the power base for counter-movements that are funded or otherwise resourced by the state or a corporation, because they side with the funder in their opposition to the change sought by activists. Counter-movements target activists for demobilization and target the public to discredit activists and delegitimize the political movement.

Counter-movements do not engage in proactive social-control tactics, since they are inherently reactive – a response to the emergence of a political movement. But they can reinforce political conformity when elite support indicates that a counter-movement is an astroturf organization.

The reactive tactics used by counter-movements include surveillance and the manipulation of the public, plus violence (e.g., by white-supremacist and skinhead groups) (Beck, 2000; Perry, 2000) and intimidation (e.g., the pro-life movement's blocking of entrances to reproductive health clinics) (Doan, 2007; Pridemore & Freilich, 2007.)

Universities

The power bases for universities are economic dominance, the control of information, and *in loco parentis*. Universities wield economic dominance because they typically employ large numbers of people and contribute a substantial portion of their host communities' revenues. Similar to the state, universities are repositories of information about employees and students, which they can use to discredit activists and persuade the public that movement activities are inappropriate. *In loco parentis* is a legal doctrine describing a relationship similar to that of a parent's responsibility to their children. It is most commonly used in relation to schools and students. The university acts as a substitute parent to students (Bickel & Lake, 1999). Although the doctrine faded in the 1960s, it has returned in the 21st century (White, 2007).

Universities' targets for social control are students, employees, economically dependent communities, and the public.

Proactive tactics used by universities to promote political conformity are socialization processes and public-relations programs. Socialization processes tend to be consistent across society's major social institutions: the political institution, the state; the economic institution, represented by corporations; and the educational institution, such as universities. Universities not only teach public relations, but feature public-relations offices in their

central administrations, which they use to design programs that promote political conformity by projecting a positive view of the institution. The objectives and methods of public relations are illustrated by the following quotes from the home page of the University of Tennessee's Office of Communications and Marketing (2017):

> The Office of Communications and Marketing is a full-service, professional office charged with managing the brand of the University of Tennessee, Knoxville.
>
> We enthusiastically promote our people and programs. We do this by working closely with you – our campus clients – to accomplish your communications goals. Learning about new efforts and achievements contributes to how we promote the university and its accomplishments.
>
> As stewards of the university's brand, we give you the framework for communicating about UT and the strategic advice to help you reach your audience.

The reactive tactics employed by universities for demobilization are similar to those of the other social institutions: policing protest in the form of spatial containment (Lammers, 1977; McCarthy et al., 2007), surveillance, job threats, threats to economic vitality, manipulation of public opinion, and formalized grievance procedures, used to individualize grievances.

Future Research

The power framework is offered as a prompt for thinking about the social control of social movements. The potential exists for integrating the framework into resource-mobilization and political-opportunity theories. For example, investigators of a political movement might address these four topics and related research questions:

1. *Agent of social control and the agent's bases of power.* How do nondemocratic states differ from democratic states in their bases of power and the reactive social-control tactics they can use against challengers? In addition to corporations, counter-movements, and universities, what other non-state institutions exert social control over some segment of the population? For example, nonprofit foundations that provide funding for political movements can use their control of resources to channel dissidents' strategies into institutional rather than radical actions.
2. *Proactive tactics of social control to produce political conformity.* Who are the intended targets of proactive social-control tactics? What is the power relationship between agent and target? What proactive tactics are used by the control agent to maintain political conformity? Resource-mobilization and political-opportunity theories expend substantial analytical focus on factors associated with movement emergence. Examining the prequel to emergence seems a reasonable extension of the theories: What was the status quo prior to the rupture in political conformity? How was political conformity maintained?
3. *Rupture in political conformity.* What caused the rupture? In theoretical terms, why did a window open in the political-opportunity structure? What resources are available to the activists?
4. *Reactive tactics of social control to produce demobilization.* Besides activists, who are the intended targets of reactive social-control tactics? What is the power relationship between agent and target? What reactive tactics are deployed by the control agent to demobilize the movement? Are there limits to the agent's power?

More research is needed that focuses on the ways in which unequal power relationships affect social-control agents, targets, and tactics. Such research would fill a significant lacuna in the social-movement literature. Even a cursory glance at a major newspaper suggests that analysts in the near future will have many opportunities to research political movements. Not only in the United States, but in Western Europe too, movement scholars now confront the obverse of what our 1960s counterparts witnessed: right-wing, populist, and nativist movements that reflect the deep political divisions characterizing this moment in history.

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Part III
Criminal Justice

10

Race and the Criminal Justice System

April D. Fernandes and Robert D. Crutchfield

The purpose of social control is to curtail and inhibit behavior deemed unacceptable, unlawful, or undesirable. As we review research on the disproportionate impact of social control institutions and mechanisms on communities of color, we have to ask if that purpose is subverted because of uneven treatment of minorities. In this chapter, we will review foundational and contemporary work on the criminal justice system, race, and ethnicity. While the manifest purpose of social control institutions is to regulate and punish deviant or criminal behavior, the research suggests that these institutions and processes frequently disenfranchise some segments of the US population. Our review begins with the first point of contact – with police, whether that be an arrest, Terry stop, or traffic stop. We then look at disparities in court outcomes of charging, conviction, and sentencing decisions. Finally, we examine the punishment phase, exploring the ways in which the social control institutions create and sustain racial and structural social inequalities. In the same section, we will also consider the collateral consequences resulting from contact with the criminal justice system. While disproportionate contact in the African American community has always been at issue, the recent police-involved killings of Philando Castile, Eric Garner, Michael Brown, and Samuel DuBose, among others, began with a simple traffic or Terry stop that then escalated into fatal violence. Such incidences highlight the need to examine all points of contact with social control institutions and agencies.

Initial Contact

The role of law enforcement in increasing racial disparities in social control has long been part of the history of race relations in the United States (Alexander, 2012). Formal social control begins with an initial point of contact, ordinarily by police: either a traffic or Terry stop, or when officers communicate with a person, possibly as a suspect. Contemporary research has shown that communities of color, and especially young African American men, are overrepresented in these stops. The common colloquial phrase "driving while black" has been used to describe anecdotal experiences of African Americans of higher

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rates of stops, searches, and arrests for minor traffic offenses. The research bears this out, largely finding a disproportionality in the rate of stops for people of color that cannot be explained by driving behavior alone (Lundman & Kaufman, 2003). More recent scholarship suggests that the term might be expanded to include "walking or standing while black," given research and anecdotal reports highlighting the probability of stops occurring anywhere from the street corner to the highway (Gelman et al., 2007; Goel et al., 2016). These points of contact, however minor, are substantial and important in discussing the full range of social control in communities of color.

Stop and Frisk

Stop-and-frisk strategies are a component of broken-windows policing. Researchers have focused on the efficacy of these stops, as well as on their impacts on communities of color. Reports from local police departments show that communities of color are more often targeted for stop–and-frisk procedures (La Vigne et al., 2012; Spitzer, 1999). The justification for this targeting typically is the efficiency and effectiveness of these stops in reducing minor disorder or drug-possession violations, which in turn helps prevent major criminal offending. The vague nature of the terms "reasonable suspicion" and "probable cause" set out in *Illinois* v. *Wardlow* (2000) make the nature of stop and frisk ripe for potential racial disparities. Scholars have shown that racial disparities do indeed exist in terms of stop-and-frisk practices, and that such efforts are often not fruitful, producing little evidence of drug contraband or weapons (Gelman et al., 2007; Goel et al., 2016; La Vigne et al., 2012). Gelman et al. (2007) focus on pedestrian stops in New York City, finding that African American and Latino residents are more likely to be stopped on the street even after controlling for criminal participation and neighborhood variability. Their results cast doubt on law enforcement's argument that these stops are used for efficiency purposes. Gelman et al.'s (2007) findings show that African Americans and Latinos who are stopped are less likely to be arrested, suggesting that such stops are justified by little more than racial bias and profiling. These findings are consistent with work that shows lower "hit rates" – evidence of drug, weapons, or property violations – when conducting vehicle searches (Goel et al., 2016). In a report for RAND, Ridgeway (2007) finds only small racial differences in rates of stop and frisk, suggesting that previously identified disparities are more a function of police practices, which may range in terms of time of day, location, and the justification for the stop. Regardless of the magnitude of the disparity, such stops represent the entrance into the system and the continuum of control, and are instructive in uncovering the potential origins of racial disparities within the broader system. In addition, scholars suggest that aggressive policing procedures such as stop-and-frisk cause more harm in terms of the erosion of public trust than they do good in terms of reducing disorder and crime (Fagan et al., 2009).

Traffic Stops

Early research on traffic stops and racial disproportionality netted inconsistent findings. More recent work has found important context-specific relationships (Engel & Calnon, 2004; Lundman & Kaufman, 2003; Pierson et al., 2017; Rojek et al., 2012; Voigt et al., 2017; Warren et al., 2006). Lundman & Kaufman (2003) find that African American males are more likely to be subjected to traffic stops, and that African American and Latino drivers

are less likely to report that a stop was justified or that their treatment during the stop was proper. Warren et al. (2006) differentiate between stops made by the highway patrol and those made by local police officers in their investigation of racial bias in North Carolina. They assert that no racial bias is found during highway stops, but that when exploring stops by local police, racial bias emerges in prompting the initial stop and in officers' justification for stops. Work by Pierson et al. (2017) explores disproportionality in traffic stops in 31 states between 2011 and 2015. Their results suggest, at baseline, that in 80% of locations, black drivers were subject to stops significantly more often than white drivers.

The outcome of traffic stops also reflects a pattern of racial bias, with scholars finding that young African American and Latino males are more likely to experience searches, citations, arrests, and use of force during routine traffic stops (Engel & Calnon, 2004; Kirk, 2008). In addition, they find that these drivers are not more likely to be carrying contraband compared to white drivers. These findings confirm more recent work on traffic stops and race, with evidence suggesting that drivers of color are treated differentially from white drivers. In their investigations of traffic stops in St. Louis, Rojek et al. (2012) expand on the existing literature by examining how the race of the officer and the racial composition of the neighborhood influence the outcome of routine traffic stops. They report that in predominately white communities, African American drivers are more likely to be stopped and searched, and that these stops are most often initiated by white officers. However, in predominately African American neighborhoods, white officers are more likely to stop and search white drivers, assuming the presence of drug contraband.

As the severity of contact and control progresses from search to arrest, the potential for escalation to the use of force increases. Smith et al. (2009) find that force is 20 times more likely to be used in arrest situations, with previous research finding that the nature of the crime is not a significant predicator (Worden, 1995). In light of recent use-of-force incidents involving unarmed African American men, the threat of and actual escalation of a stop can have substantial social control implications. The existing research shows that African Americans are disproportionately stopped and that the potential for an escalation of a routine traffic stop is more common than for their white counterparts (Goff et al., 2016; Ross, 2015). The ubiquity of cell-phone cameras has provided a window into interactions between drivers and officers, but these videos often provide only partial views of what transpired and too often focus only on the use of force, and not on the events leading up to it. The increasing use of body cameras by police departments, on the other hand, is allowing researchers to study the interactional mechanisms behind the use of force following a routine traffic stop, applying sociolinguistic analysis to the language used during the stop (Voigt et al., 2017). The results from this unique study show that African Americans are often spoken to with less respect than their white counterparts. The importance of such interactional differences and their impact on use of force cannot be overstated; they provide a window into how escalation can occur during minor traffic stops.

When residents come into contact with police, there is again the potential for escalation to the use of force, which can range from non-lethal force to police shootings. There is limited research on this topic, because data on such incidences are not routinely collected. However, the *Guardian's* website has a page dedicated to tracking the number of people killed by police in the United States (The Guardian, 2018), while the *Washington Post's* reporting and a number of research databases provide documentation on the racial disproportionality of police use of both lethal and non-lethal force. Goff et al. (2016) published a report for the Center for Policing Equity that culled data from 12 law-enforcement departments on rates of arrest for violent crime and the use of force. Their findings show that law

enforcement is more likely to use various types of force – from hand weapons to pepper spray to Tasers – on African American residents. In fact, Goff et al. (2016) find that Tasers are the second most likely form of force, which corresponds to existing research on the increasing reliance on this non-lethal method (Taylor et al., 2011). Given that these data are department-reported and only show the result of violent-crime arrests, the generalizability of these findings is limited. However, they provide yet another window into how the targeted and widespread nature of the use of force by police occurs.

Criminologists are just beginning to conduct research on the role that implicit bias plays in police officers' decisions to stop a vehicle and in the escalation of such stops. The concept of implicit bias, where individuals – including police officers – bring with them unconscious beliefs about people of different races (Fridell & Lim, 2016), helps to explain how routine encounters between members of the public and law enforcement can become tragic. Implicit bias is firmly rooted in negative perceptions of African American men and their supposed threat and link to criminal offending (Fridell & Lim, 2016). The evidence of implicit bias speaks to a systemic issue rather than a few rogue, overtly racist police officers corrupting an otherwise justice-seeking police force.

Due to the lack of systematic and reliable data on police use of lethal force, the existing research is largely conflicted in regards to the role of race in police shootings. Findings range from little to no impact (Klinger et al., 2016; Nix et al., 2017) to a central role (Legewie, 2016; Ross, 2015). Other scholars have looked at the contextual factors that may influence the use of lethal force. Ross (2015) reports that unarmed African American men are 3.49 times more likely to be shot by police than their unarmed white counterparts. These shootings have a higher probability of occurring in large metropolitan counties with low median incomes and a high proportion of African American residents. However, there are competing narratives in the empirical work, with other researchers showing that use of lethal force is influenced by individual actions of noncompliance or resisting arrest (Engel, 2003), the presence of an armed suspect (Johnson, 2011), or the rate of firearm violence in the neighborhood (Klinger et al., 2016). These results speak to the intricacies of the empirical work on the use of lethal force by police, as well as to the need for a federal database that accurately counts incidences of police violence – both lethal and non-lethal – and a systematic cataloguing of the use of any type of force, given its perceived and actual impact on communities of color.

Impact of Contact

Disproportionate levels of contact, especially within neighborhoods, have the potential to erode public trust in police and foster perceptions of harassment and targeting (Brunson & Miller, 2005; Rios, 2011). The impact of the loss of lives is clear. However, the long-range consequences of disproportionate stops and searches and the use of both lethal and non-lethal force can also be damaging to communities of color, as well as to society as a whole. Brunson & Miller (2005) interviewed young African American men and women about their experiences with law enforcement, documenting what is often perceived as unnecessary harassment and overly aggressive and intrusive policing. Respondents reported high levels of pessimism about the "protect and serve" role of police and the ability of law enforcement to care about their community. Rios (2011), in the course of traversing Oakland, California streets with black and Latino young men, witnessed and encountered similar treatment of unjustified stops, searches, and threats of arrest or violence. Rios reports that

such encounters both interrupted the movement of these young men from their homes to school or work and engendered a fear and animus toward law enforcement that played out in their unwillingness to call on police to intervene when they were victims of crime. The distrust of police can have serious implications for the efficacy and effectiveness of police departments in their proactive crime-control efforts and can erode faith in criminal justice institutions.

Case Processing

Beginning in the mid-1970s, states, and later the federal government, enacted important changes in how sentencing and the processing of criminal cases were handled. After this shift, researchers began to explore the effects of changes in sentencing procedure, the limiting of judicial discretion in felony cases, and the time related to processing of misdemeanors. A portion of this research has highlighted points in the process that both explicitly and implicitly negatively affect people of color, especially those who are economically disadvantaged (Spohn, 2013; Travis et al., 2014). Research has also examined the stages of criminal justice processing, from bail and pre-trial release to charging decisions, the likelihood of detention and conviction, and the length of sentences. This section will briefly summarize the complexity of these findings in regards to racial disparities.

The processing continuum begins with decisions on pre-trial detention. Steen et al. (2005) find that African American defendants are more likely to be incarcerated before adjudication, which Demuth (2003) partially attributes to the decision to grant non-financial releases and to the amount of bail set. Recent studies in bail amounts show that African Americans and Latinos face an inordinately severe burden when it comes to pre-trial detention, due to the inability to pay (Neal, 2012; Schlesinger, 2005). Schlesinger (2005) notes that African Americans are 24% more likely to be denied bail compared to white defendants with similar legal characteristics. For drug offenses, they are 80% more likely. The decision to incarcerate or deny bail can increase the length of time and impact of contact with the system. For those subjected to prolonged contact pre-sentencing, the ramifications for employment, education, health, and family well-being can exacerbate economic and social disadvantage.

Sentencing decisions are often predicated on a formula that considers criminal history and the type and severity of current offenses, but sentences are also influenced by organizational considerations of efficiency and processing. The complex nature of criminal justice processing makes it difficult to definitively pinpoint the role of race in the various stages of adjudication and sentencing (Ulmer & Johnson, 2004). In particular, Ulmer & Johnson (2004) point to the stark variation that exists in sentencing procedures across courts and jurisdictions. While the guidelines for assessing sentencing are defined, judicial discretion is often used to determine issues of dangerousness or threat to the community. Such determinations can be tinged with implicit bias and racial and ethnic stereotypes, disadvantaging defendants of color despite the sentencing safeguards in place (Bridges & Steen, 1998; Harris, 2009). The bulk of this research suggests that the influence of race is often conditional on demographic factors, with young African American and Latino male defendants sentenced more severely than white defendants (Spohn, 2013; Ulmer & Johnson, 2004; Ulmer et al., 2016). Other studies show that the racial differences in sentencing outcomes are more a function of current offense type and criminal history than built-in racial bias (Steffensmeier & Demuth, 2000). But even when controlling for offending history and severity of offense,

researchers find that the disparities remain, mainly in regards to judicial discretion (Mustard, 2001; Spohn & Fornango, 2009).

The discretion involved in sentencing decisions is important to understanding the potential for racial disparities in detention and sentence length outcomes. Ulmer et al. (2016) investigated sentencing decisions leading to incarceration and how they might reflect racial disproportionality. They found that disparities are most often seen in the processes of charging and conviction prior to sentencing. With the switch from judicial to prosecutorial discretion, the weight of the charge (Baumer, 2013; Shermer & Johnson, 2010) and the mode of conviction – plea bargaining versus trial – result in more severe charges for African American defendants (Johnson, 2006; Steen et al., 2005). Emerging research suggests that similar patterns and effects are also seen at more minor levels of criminal justice processing.

Recent work has focused on an often understudied part of criminal justice processing: misdemeanor charges. Given the scope of misdemeanor processing and the increase in such cases, researchers are now looking in this direction to investigate whether there are racial disparities similar to those reported at the felony level (Gonzalez Van Cleve, 2016; Kohler-Hausmann, 2013). Gonzalez Van Cleve (2016) explores how the court system in Cook County, Illinois adds another layer of disadvantage through its processing and administration of misdemeanor cases. She describes a process of "othering" that begins with separate entrances for the majority African American defendants and the mainly white court agents. While racial separation in the use of space is clear, she also highlights how segregation unfolds in the treatment and processing of misdemeanor defendants. She points to the seemingly endless waiting that defendants and their families endure, with court schedules organized and implemented based on the court agents' timetables. Defendants can be left waiting for hours for their case to be called, hoping to avoid having to call off another day of work or pay for further childcare as they await adjudication. Similarly, Kohler-Hausmann (2013) explores the misdemeanor system in New York, and what she terms its "procedural hassle." To deal with even a minor charge, misdemeanor defendants are required to constantly travel to and from the courthouse to have their case fully adjudicated. Court hearings, meetings with public defenders, and shifted court dockets often place defendants in a bind. They are faced with the difficult decision of choosing between attending to their misdemeanor conviction and continuing employment, childcare, or school. According to Gonzalez Van Cleve (2016), the penalties for leaving the courtroom before a case is called, whether for lunch, to make a phone call, or for a bathroom break, are severe; defendants can put themselves in jeopardy of having a warrant issued or having extra fines and fees levied for failure to appear. Gonzalez Van Cleve (2016) shows that these burdens are disproportionately placed on people of color, who already face substantial barriers to employment with or without a criminal record (Pager, 2003; Tienda & Stier, 1996). This recent scholarship highlights that even at the misdemeanor level, there are substantial racial disparities that occur throughout the criminal justice process, from the courtroom entrance to detention.

Punishment and Collateral Consequences

The racial disproportionality that some have found in the initial police-contact and case-processing phases of criminal justice is reflected in incarcerated populations, both in jail and in prison. Not only are people of color overrepresented in imprisonment, the subsequent

impacts of their incarceration and the criminal record that follows are compounded by already existing inequality and disadvantage (Coates, 2015; Mauer & King, 2007). Studies of mass imprisonment have focused most often on the prison boom, which increased the prison population from 400,000 in the 1970s to over 2.2 million at its height. The massive rise in incarceration, fueled by changes in sentencing practices, the War on Drugs, the passage of "tough on crime" legislation, and law-and-order policing, have maintained, and in some places exacerbated, racial disproportionality in imprisonment (Tonry & Melewski, 2008). The collateral consequences of this rapid and sustained rise in mass incarceration impact the very basics of everyday citizenship – employment, housing, health, and voting – and radiate out to family members, children, friends, and communities (Brayne, 2014; Harris, 2016; Lee et al., 2014; Manza & Uggen, 2008; Massoglia, 2008; Metraux & Culhane, 2006; Pettit & Western, 2004).

While these consequences are experienced by all individuals incarcerated in jail or prison, their impacts are often not equally distributed. The nature of American inequality and stratification means that they are often more acutely experienced by individuals and communities of color, because of their disproportionate contact, and also due to their higher rates of poverty and unemployment, lower educational attainment, and poorer health-related outcomes (Wakefield & Uggen, 2010). The consequences of criminal justice contact compound existing racial disparities on many indices of individual and community well-being. Social scientists now contend that criminal justice contact should be considered yet another generator of inequality and stratification, especially for individuals and communities of color.

Employment

The negative effects of criminal justice system contact on employment are important. Several researchers have reported detrimental effects on the ability to maintain current and obtain future employment (Pager, 2003; Pettit & Western, 2004; Western, 2006). Pettit & Western (2004) find that the life course of those who experience felony incarceration is fundamentally altered, especially in terms of job prospects. These impacts are exacerbated for young African American men without a high school diploma, who are 60% more likely to be incarcerated than to go to college or enter the military. Their restricted employment prospects result in a decrease in actual and potential earnings after re-entry (Western, 2006). Criminal records have substantial impacts on the ability to obtain future employment (Pager, 2003), especially for young African American men, who experience barriers to employment with or without a record (Pager et al., 2009). Emerging research suggests that these impacts are also at play for those with only minor misdemeanor records, due to the increased availability and ubiquity of criminal record background checks (Vuolo et al., 2017).

Housing

Imprisonment negatively affects the ability to obtain and maintain quality housing, and leads to residential instability and homelessness (Geller & Curtis, 2011; Metraux & Culhane, 2006; Wildeman, 2009). There are restrictions on obtaining housing for individuals re-entering the "free world." Policies such as the Department of Housing and Urban Development's

(HUD) "one strike and you're out" and offense-specific limitations affect where returning prisoners can live after their release. Since many of those returning to their communities have limited employment and income prospects, they face even more limits when it comes to housing. With the increased use of criminal background checks on housing applications, the difficulty of obtaining housing is doubly compounded by poverty and criminal history (Pager & Shepherd, 2008). Public housing often has a strict set of requirements for those visiting kin and kith, and especially for those seeking temporary shelter after release (Torres et al., 2016). These restrictions inhibit the ability of the family member or romantic partner to provide aid in the form of secure housing at a precarious point in the re-entry process. With such strains and restrictions comes an increasing likelihood that the re-entering individual will become homeless for a period of time following release. The work of Metraux & Culhane (2006) finds that there is a stark racial disparity in shelter use following both a prison and a jail stay, with African Americans more likely to use these services. Even more striking is that those re-entering from jail utilize the shelter for a longer period, suggesting increased difficulty with obtaining suitable housing post-jail release.

Health

The disparities in health outcomes from imprisonment shine a light on the glaring inequalities that exist outside of the jail or prison walls in disadvantaged communities of color. The access to basic health care (especially before the Affordable Care Act) is limited, at best, in such communities (Wilper et al., 2009). Therefore, prison or jail becomes a de facto health care center for those who cannot access such care in their neighborhoods. The federally mandated care in these institutions, while often limited, subpar, and difficult to access, becomes the only site for diagnosis and treatment of chronic or communicable illnesses (Binswanger, 2009). Studies have found that there are small and short-term health benefits to a prison stay due to the access to even a modicum of care (Patterson, 2010; Schnittker et al., 2011). These positives, however, are fleeting. Simply existing within the overcrowded and often unsanitary conditions in jail or prison can result in exposure to diseases, including hepatitis C, HIV, and tuberculosis (Binswanger, 2009; Massoglia, 2008). Given that communities of color are often saddled with higher concentrations of these chronic and communicable conditions, incarceration further exacerbates existing health problems and introduces new illnesses into households and communities. Furthermore, the stress and strain of living within prisons or jails can trigger or worsen mental health conditions (Schnittker et al., 2012). Health implications are not limited to the incarcerated. Lee et al. (2014) find an increased likelihood of African American women suffering from a heart attack or stroke due to the stress and strain of dealing with the realities of an incarcerated family member.

Monetary Sanctions

Monetary sanctions, or the fines, fees, and costs associated with criminal justice contact, are an extension of the social control mechanisms of the state (Harris, 2016; Harris et al., 2010). They have the potential to follow individuals, especially the poor and people of color, long beyond the time of their conviction and incarceration. These sanctions became more familiar to the general public as a result of the death of Michael Brown and the issuing of the Department of Justice's Ferguson Report (US Department of Justice, 2015). This report

revealed a court system designed less for justice, and more for revenue generation through fines and fees on the backs of the predominately African American residents of Ferguson.

In their study of the monetary sanctions system in Washington state, Harris et al. (2010) describe the reach of monetary legal sanctions. Harris (2016) reveals a system obscured within state and local statutes, where the nature of the fines and fees levied, their assessed and collected amounts, and the consequences that result from them are largely unknown and unstudied. She explores how these fines and fees and their collection procedures represent, especially for communities of color, an unfair and unjust burden that creates yet another contribution to systems of stratification, making them part and parcel of the "poverty penalties" that are often levied on people of color. Such fines and fees are a financial burden on the individual, with interest and collection fees compounding the cost of a simple infraction or misdemeanor conviction. The collection procedures and penalties for non-payment can bring the traditional social control mechanisms back into the lives of the formerly incarcerated, with driver's license suspensions, wage garnishments, tax levies, and jailing commonly used mechanisms for collecting payment or sanctioning those who cannot pay.

Developing Areas of Research

Two interesting lines of research on race, ethnicity, and social control are studies of less severe (than prison) sanctions and those addressing questions about gender and intersectionality, including work on LGBTQ people of color who have contact with the system. These are extensions of existing scholarship that will better inform our understanding of the impact of social control mechanisms and institutions on people and communities of color.

A focus on less severe forms of criminal justice contact, such as arrests, misdemeanor processing, and jail stays, has been emerging as the next horizon of work on social control (Natapoff, 2015). Research should also expand to include all forms of low-level criminal justice contact and its attendant consequences. While the contact is less severe compared to felony processing and incarceration, similar impacts on employment, education, health, and family relations have been observed (Comfort, 2003; Uggen et al., 2014). From this research, we can learn not only the realities of low-level criminal justice contact, but also the full reach and scale of the criminal justice system at all levels. Since this area of study is just developing, it will be helpful if questions about racial and ethnic differences in infraction and misdemeanor processing are explored for these entry-level forms of social control.

There has been an increase in female imprisonment, especially for women of color. Understanding this trend and its consequences is essential to understanding the criminal justice system as a social control mechanism. In addition, women of color face a unique set of circumstances that may lead to more severe consequences from either short- or long-term contact with the criminal justice system. Women of color, especially African American women, are often tasked with child-rearing on their own; therefore, incarceration can place child custody in jeopardy. Furthermore, if their parenting partner is also incarcerated, this may result in a child being placed in foster care (Roberts, 2011). Exploring why and how this expansion of social control has occurred for women of color is essential to understanding the implications of the rise in female system contact and imprisonment.

By investigating intersectionality in the criminal justice system and its attendant consequences, we will be better able to assess whether and how existing societal disparities can be compounded by institutions of social control. For instance, those who identify as LGBT are often disproportionately targeted by law enforcement and are more likely to be victims of violence and hate crimes (Mogul et al., 2011). For LGBT people of color, these disparities are often magnified by their sexual orientation or gender identity, and the discrimination that exists both in their communities and in society at large. Given the disproportionate level of contact for African Americans in general, adding identification within the LGBT community heightens not only targeting by law enforcement but also abuse and mistreatment within the carceral institution (McCauley & Brinkley-Rubinstein, 2017). Recent work shows that transgender inmates are often subjected to ridicule, sexual and physical abuse, and denial of hormone treatment in local jails and state prisons (Sumner & Sexton, 2016). The high-profile experience of Chelsea Manning and the mental health consequences of denying treatment and enduring isolation and verbal abuse highlight the need to further explore the population of trans inmates within federal, state, and local institutions, and how the system of control works to affect the mental and physical well-being of these individuals, and especially those of color.

Conclusion

The relationship between social control and race often reflects wider race relations in the United States. The complexity of the findings presented in this chapter offers insights into the ways in which control operates for people and communities of color. Research findings point to the importance of examining the institutions, practices, and processes of social control and how they can aid in achieving more equitable, just, and fair systems of policing, criminal justice processing, and incarceration.

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11

Gun Control

Gary Kleck

Gun control can be defined as a strategy for reducing violence by restricting the acquisition, ownership, possession, or use of firearms. Narrowly, this strategy takes the form of criminal laws or legal regulations imposing such restrictions. More broadly, it might also encompass the organization of voluntary turn-ins or buybacks of guns; civil suits aimed at firearms dealers, distributors, or manufacturers; public "education" campaigns designed to persuade people to refrain from acquiring or retaining guns; or regulations mandating the use of locking devices or the incorporation of such equipment into firearms designs. The form of violence intended to be controlled can encompass suicidal and criminal violence, as well as both accidental and intentional violence. Gun control is a subset of the broader set of controls that restrict common personal weapons of any type, including knives, clubs, and explosives.

Varieties of Gun-Control Policies

A variety of mechanisms might link restrictions on firearms to violence reduction, differing in terms of what type of firearms-related behavior is limited. Gun control might restrict the (a) ownership, (b) physical possession (especially in public places), (c) selling, (d) buying, (e) transferring, (f) manufacturing, (g) importing, or (h) criminal use of firearms.

Notwithstanding the foregoing, the term "gun control" as commonly used most often refers to legal restrictions on the acquisition or possession of firearms. Such restrictions fall along a continuum of strictness, from measures merely requiring a prospective gun buyer to show that they do not fall into high-risk categories, through requirements that the person show some special justification for getting a gun, to complete prohibition on the acquisition or possession of firearms. The weaponry targeted by the restrictions can encompass all firearms, or just subtypes believed to be especially dangerous or likely to be misused, such as handguns, small inexpensive handguns, so-called "assault weapons" (AWs), or large-capacity magazines (LCMs).

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How Gun Control Might Affect Violence: The Links between Firearms and Violence

Why or how might gun control reduce violence? Gun controls have most often been justified as ways of reducing homicide and other kinds of criminal violence. It is thought that any restrictions capable of reducing gun possession among violent people can reduce either (a) the number of violent acts committed or (b) the fraction of violent acts that result in someone's death. Lowering gun availability could, for example, reduce the number of attacks by smaller or weaker people against bigger or stronger people, because fewer aggressors would possess the "equalizer" of firearms and more would therefore be afraid to attack. Likewise, robbers might be less inclined to victimize better-defended "hard targets" like stores or large groups of people if they did not have the intimidating power conferred by guns (Cook, 1983; Kleck, 1997:ch. 7). If greater gun availability increases the frequency of attacks and robberies, then gun controls that reduce gun availability should reduce rates of criminal violence such as homicide, assault, and robbery.

It is possible that gun controls do not reduce the total number of violent acts, but instead reduce the fraction of them that result in a death. Fatality rates in attacks with guns are higher than in those carried out with other common weapons. Unless one assumes that strongly motivated attackers choose weapons without regard to their perceived lethality, however, some of this difference is likely to be due to stronger motivations to kill or seriously injure the victim among aggressors choosing guns, in addition to the inherent lethality of the weapon (Kleck, 1997; Wright et al., 1983:189–203). Nevertheless, if any of the difference in attack outcomes is due to the weapon itself, this implies that gun-control policies that reduced firearm possession among violence-prone people could reduce the share of assaults resulting in death, and thereby reduce the homicide rate.

Gun possession and use, among both criminals and non-criminals, are known to have violence-*reducing* effects as well as violence-increasing ones. Crime victims who use guns for self-protection during crime incidents are less likely to be injured (or to lose property) than otherwise similar crime victims who use other self-protection methods or who do not resist at all (Kleck & Tark, 2004). Further, widespread gun possession among prospective crime victims could deter some offenders from initiating criminal attempts in the first place (Kleck, 2001). More surprisingly, a criminal's possession of a gun during a crime is associated with a *lower* likelihood that the offender will attack or injure the victim, perhaps because deadly weapons enable offenders to intimidate victims into doing as they wish, making the actual inflicting of injury unnecessary (Cook, 1983; Kleck & McElrath, 1991).

Levels of gun availability do not appear to have any net effect on rates of robbery, assault, or any other crime apart from homicide (Kleck, 2015). The absence of a net effect could be due to gun availability having both crime-increasing and crime-decreasing effects, which cancel each other out. It is also possible that gun availability among criminals increases crime, while gun availability among non-criminals (especially crime victims or likely victims) reduces it.

There is more support for effect of gun levels on homicide rates (Kleck, 2015), presumably because guns increase the share of violent crimes that result in someone's death and thereby become homicides. Even this more limited claim has only mixed support, however, and macro-level studies find no net effect of gun levels on homicide rates. Individual-level studies, on the other hand – often conducted among high-crime subpopulations – suggest that people exposed to guns are more likely either to commit or to become the victims of a homicide (Kellermann et al., 1993; Kleck & Hogan, 1999). These seemingly inconsistent

findings can be reconciled if gun access among more criminally inclined people makes homicide more likely, while gun access among less criminally inclined people makes homicide less likely.

Given this complex pattern of effects of firearms on violence, the results of gun-control measures are likely to differ depending on who they are primarily targeting. Measures like background-check requirements that reduce gun possession among criminals may reduce homicide by inducing attackers to use weapons less lethal than firearms. On the other hand, measures that primarily reduce gun possession among non-criminals, whose only involvement in crime is as victims, could have crime-increasing effects by reducing the benefits of armed self-defense and the possible deterrent effects of widespread gun ownership among prospective victims. Thus, prohibitionist measures like bans on the sale or possession of small, low-cost handguns – which apply equally to criminals and non-criminals alike – could have harmful effects that equal or outweigh the benefits of denying the prohibited firearms to criminals.

Reducing suicide is also a goal of gun control. This is unsurprising, given that most fatal gun violence in America is suicide, not homicide. In 2015, 61.6% of all firearms deaths were suicides (Centers for Disease Control and Prevention, 2016). The links between exposure to guns and suicide are not as obvious as the links between guns and homicide. Indeed, most scholars who believe there is some kind of impact of gun availability on suicide do not even state how or why they believe this effect operates. The few who do address the issue invariably assert that shooting is a more lethal way of attempting suicide than any method likely to be substituted in the absence of guns.

Shooting is indeed more lethal than any other method of committing *assaults*, but it is not significantly more lethal than the next-most-common method of committing suicide: hanging. The most extensive national data available indicate that there is no significant difference in fatality rates between suicide attempts by hanging and those by shooting – both are fatal in about 80% of cases. Individual-level studies have found an association between suicide and exposure to guns, but their authors have not made serious efforts to control for confounding factors, leaving it unknown whether any of this association reflects a causal effect of guns on suicide (Kleck, 2018).

Public Opinion on Gun Control in the United States and Policy Implementation

Few Americans support very strong gun-control measures like banning the sale or possession of all guns or handguns, while strong majorities support weak measures unlikely to have any significant effect on gun violence, such as gun registration, waiting periods to buy a gun, safety training before buying a gun, or the requirement that gun owners with children keep their guns locked up (Pew Research Center, 2015). There are nonetheless a few measures of intermediate strictness that have both realistic prospects for effectiveness and majority support. Perhaps most significant, proposals to expand background-check requirements to cover private transfers, and not just transfers by licensed dealers, are supported by overwhelming majorities of the American public (Pew Research Center, 2015).

This and similar gun-control proposals with solid majority support have not, however, been enacted into law – a seeming anomaly that begs for an explanation. Even in democracies, public opinion does not directly translate into public policy. Legislatures must vote laws into existence, and US legislatures have failed to pass a number of gun-control

laws supported by a majority of the public. Many argue that this disconnect can be attributed to the political power of the National Rifle Association (NRA), an organization devoted to defending gun owners' rights (as the NRA sees them) and to blocking most gun-control efforts. Research, however, indicates that the NRA has little ability to affect the outcomes of elections, and thus the composition of legislatures. For example, an analysis of over 1000 NRA endorsements of Congressional candidates found that only four of them had enough impact on votes to alter the election outcomes (cited in Cook & Goss, 2014:187).

Instead, the NRA's power to block popular gun-control measures is likely due its large number (over 3 million) of dues-paying members, and the greater intensity of feeling on the issue among gun-control opponents than among supporters. People with more intense feelings about an issue are more likely to take politically significant actions in support of their positions, such as contributing money to organizations and political candidates who agree with them. A national survey conducted in May 2013 found that gun-control opponents were 45% more likely than supporters to have ever expressed their views on the issue to a public official, 57% more likely to have expressed an opinion on a social network like Facebook, 50% more likely to have signed a petition on gun policy, and 320% more likely to have contributed money to an organization that takes a position on gun policy (Pew Research Center, 2013:9). Thus, an intensely motivated, politically active anti-control minority has blocked policies supported more weakly by the pro-control majority.

The Effectiveness of Gun-Control Policies in Reducing Violence

Lawsuits against Gun Manufacturers, Distributors, and Dealers

Gun-control advocates have not confined themselves to implementing changes in criminal laws as strategies for reducing gun availability. Beginning in 1989, the Brady Center to Prevent Gun Violence, the nation's leading gun-control advocacy group, embarked on a campaign to organize and assist lawsuits against gun manufacturers, distributors, and dealers on a variety of legal grounds, including negligent distribution or marketing, making and selling defective firearms, deceptive advertising, and contributing to a public nuisance. The Brady Center's Legal Action Project assisted both governments and private parties in bringing suits by providing free legal assistance and expertise to plaintiffs. If these cases could be won on the merits, favorable decisions for plaintiffs might result in alterations in the way guns are manufactured, distributed, advertised, and sold. In extreme cases, these results could cause the bankruptcy of the firearms businesses due to damages awarded to plaintiffs or legal costs. Thus, gun availability – both in general and among high-risk persons – might be reduced by civil trial outcomes favorable to the plaintiffs. On the other hand, cases that were settled out of court might benefit individual plaintiffs but would be unlikely to alter the way the gun business operated. Certainly, cases that were dismissed or decided against plaintiffs at trial were not likely to produce such changes.

Few of the lawsuits, however, were won on the merits or resulted in any changes in the gun industry's operations. Most cases were dismissed before reaching trial; in others, the plaintiffs dropped their claims; still others resulted in favorable trial decisions for the gun industry. While private plaintiffs occasionally received out-of-court monetary settlements, these did not require any changes in the way gun makers, distributors, or retail dealers did business.

In 2005, most lawsuits promoted by the Legal Action Project were prohibited when the federal Protection of Lawful Commerce in Arms Act was enacted. Since the gun industry has rarely lost such lawsuits, there is no affirmative basis to believe they have had any impact on gun availability, and thus no basis to believe they have affected crime or violence.

Behavioral Interventions to Reduce Firearms Injury

Another broad strategy for reducing firearms-related injury that could be loosely regarded as gun control entails altering gun-related beliefs and practices through "education" or mass-media campaigns. Such interventions commonly involve efforts to increase perceptions of gun ownership, gun handling, and certain gun storage practices as dangerous, especially among children. A National Research Council panel reviewed "behavioral interventions targeted toward reducing firearms injury" and concluded that "of the more than 80 other programs described at least briefly in the literature, few have been adequately evaluated as to their effectiveness. Those that have been evaluated provide little empirical evidence that they have a positive impact on children's knowledge, attitudes, and beliefs" (National Research Council, 2005:213).

Another variant of educational efforts is aimed primarily at adults and involves physicians counseling patients about the dangers of firearms. Although supporters have claimed beneficial impacts in the form of safer gun storage practices or reduced gun ownership based on crude before-and-after comparisons, the only randomized control trial evaluation of this kind of program found it had no impact on either gun ownership or gun storage practices (Grossman et al., 2000).

A third form of gun-safety education involves the use of mass-communication methods, such as television and radio announcements, and widespread distribution of printed materials stressing the dangers of gun ownership or of storing guns in an unsafe manner. The most technically sound evaluation of such a program found that public education efforts in the form of safe-storage campaigns had no impact on whether guns were stored unlocked or loaded (Sidman et al., 2005). Finally, gun owners who participate in gun training programs have been found to be no more likely than other owners to store their guns locked and unloaded (Weil & Hemenway, 1992).

Firearms Safety Technology

"Gun control," construed broadly, could be taken to encompass efforts to make guns safer through technological means, such as the installation of devices designed to make it impossible for unauthorized persons to fire a gun. The National Research Council (2005) Panel on Firearms and Violence reviewed studies of the impact of firearms safety technology (mostly locking devices) and stated, "we found no credible scientific evidence… that demonstrates whether safety devices can effectively lower injury." The panel concluded that locking devices could "cause unintended injuries," because "locking devices may compromise the ability of authorized users to defend themselves" and "a lock may fail [to disengage] entirely or may take too much time for the weapon to be of use." Thus far, attempts to develop reliable "personalized" gun locks that automatically lock, and then unlock only for authorized users, have proven unsuccessful.

Gun-Control Laws

Most research on the impact of gun control on violence has focused on the effect of gun-control laws on violent crime. This rest of the chapter addresses the more important types of gun-control laws.

Bans on the Possession of Specific Gun Types

Local Handgun Bans The essential trait that distinguishes gun-prohibitionist measures from other gun-control measures is that the former are intended to restrict firearm acquisition and possession among both criminals and non-criminals, while the latter preclude only convicted felons from legally buying guns, and most non-criminals. The United States has never banned the private possession of all guns or of handguns; nor has any state. A few municipalities, however, have banned handguns. Washington, DC and Chicago, Illinois attempted to effectively ban the private possession of handguns by first requiring them to be registered, then ceasing to register any more. Residents who already had properly registered handguns could continue to possess them if they re-registered them, but no further registration of handguns would occur. As registered handgun owners died or moved away from the city, the number of legal handgun owners would gradually dwindle, eventually reaching zero.

These laws were struck down by the Supreme Court in the *Heller* (2008) and *McDonald* (2010) decisions, but it is still worth assessing their impacts on crime as a way of judging the likely effects of adopting similar bans that might prove constitutionally acceptable to a future Supreme Court. An early evaluation of the DC handgun ban concluded that it caused an immediate drop in homicide (Loftin et al., 1991), but later reanalyses that fixed problems in the initial research found that it had no impact (Britt et al., 1996). No comparable studies of the Chicago handgun ban have been conducted.

Assault Weapon Bans The 1994 Federal Violent Crime Control Act banned AWs and LCMs, although it expired in 2004. A number of states have enacted similar bans. AWs are almost entirely semiautomatic guns with "military style" features. These bans typically prohibit the manufacture, importation, acquisition, or transfer of an arbitrary list of specified models of semiautomatic firearms, as well as of firearms that have too many military-style features, but leave ownership of existing AWs undisturbed. The impacts of such laws are sharply restricted by the narrow scope of prohibited firearms and the rarity with which these guns are used in crime. For example, the gun models banned by the federal AW ban claimed less than 1.4% of the crime guns recovered in two large statewide samples, while AWs in general account for less than 1.2% of the guns used in homicide (Kleck, 1997:141–143). Complete elimination of all AWs might therefore reduce gun crimes by, at most, 1.8% – but because (a) current AW bans do not criminalize possession of AWs already in existence when they were enacted and (b) unbanned, mechanically identical guns can easily be substituted for the banned models, the maximum possible impact of such bans would necessarily be even smaller.

Bans on Large-Capacity Magazines Laws can also ban some types of gun magazine: those that hold many cartridges. AWs do not fire significantly more rapidly than other semiautomatic guns or revolvers, and any one shot from an AW is not, on average, more

lethal than a shot from other, non-AW firearms. Instead, the more likely reason that AWs might contribute to the number of deaths and injuries resulting from assaults is that they, like most semiautomatic firearms, permit the use of detachable LCMs, which allow a shooter to fire a large number of rounds (usually defined by the bans as 10 or more) without reloading. If denied an LCM, a criminal armed with a semiautomatic pistol could fire no more than 11 rounds (the 10 stored in the magazine plus one in the chamber of the gun itself) without reloading. LCM bans are based on the premise that criminals armed with LCMs can kill or wound more victims because they can fire more shots without reloading. The impact of these bans is sharply limited by the fact that very few criminal assaulters fire more than 11 rounds in a given violent incident even when they have the ability to do so. The firing of so many rounds is confined to a very small number of usually highly publicized mass shootings.

Even in these incidents, however, LCMs are nearly always irrelevant to the number of rounds fired or the number of victims killed or wounded, because most mass shooters are armed with either multiple guns or multiple magazines, and therefore can fire large numbers of rounds without reloading at all or with only a 2–4-second delay for magazine changes. Further, forcing mass shooters to reload more often does not significantly improve the chances that bystanders will stop the shooting by tackling them while they are reloading. In the most recent 10-year period studied, at most only a single mass shooting possibly involved this sort of bystander intervention in the entire United States, and even in this incident it was questionable whether the shooter was reloading when stopped (Kleck, 2016). Thus, even in mass shootings, LCM use probably does not affect the number of persons hurt. Consequently, even an LCM ban that denied LCMs to all would-be mass shooters would not be likely to have any detectable impact on the aggregate number of victims killed or wounded in mass shootings.

"Saturday Night Special" Bans These laws ban the possession – or, more commonly, the manufacture and sale – of small, inexpensive handguns, popularly known as "Saturday Night Specials" (SNSs). Unlike AWs, these weapons are used in many crimes, so laws that denied access to SNSs could affect a large number of gun criminals. It is not clear, however, that the effects of enacting such laws would be beneficial. Surveys of prison inmates indicate that, among those who had committed crimes with guns before they were sent to prison, the vast majority would have substituted some other type of gun if denied access to SNSs. Because jurisdictions with SNS bans do not ban all handguns or all guns, other types of guns still would be available for substitution. The problem is that nearly all other common types of firearms are more lethal than SNSs. Both long guns (rifles and shotguns) and non-SNS handguns are more lethal, in the sense that a shot from these other gun types is more likely to kill the victim than a shot from a SNS. SNSs are generally of smaller caliber and fire smaller projectiles at a lower muzzle velocity. The result is that SNSs inflict smaller wounds on victims than other gun types. As such, substitution of other gun types would generally increase the fatality rate arising from gunshot injuries – clearly an undesirable policy outcome. Simulations of the substitution process, assuming different rates of substitution and substituted weapons of differing lethality, indicate that with even modest levels of substitution, SNS bans and handgun bans in general are likely to produce a net increase in homicides (Kleck, 1984).

Empirical research, however, indicates that SNS bans neither reduce nor increase homicide. This may indicate that the bans do not deny SNSs to any significant number of prospective killers in the first place, so that the need for offenders to seek substitute weapons does not arise. Kleck et al. (2016) found no effect of SNS bans on rates of homicide, rape,

aggravated assault, or robbery in the United States' 1078 cities with a population of 25 000 or more, controlling for other gun laws and a variety of other variables.

Bans on the Acquisition or Possession of Guns by High-Risk Subsets of the Population

Many gun laws ban the acquisition or possession of guns by relatively narrow "high-risk" subsets of the population, such as convicted criminals, mentally ill persons, alcoholics (and persons under the influence of alcohol at the time of the attempt to acquire a gun), drug addicts (and persons under the influence of drugs at the time of the attempt to acquire a gun), and minors (usually defined as persons under the age of either 21 or 18). Other bans apply to persons in temporary statuses, such as a being a fugitive from justice or subject to a restraining order protecting an intimate partner.

The most comprehensive assessment of these bans simultaneously assessed the effects of bans on gun possession by criminals, mentally ill persons, drug addicts, alcoholics, and minors, with respect to rates of homicide, aggravated assault, and robbery. Kleck et al. (2016) found strong evidence that bans on gun purchases by alcoholics reduced homicide rates, and moderately strong evidence that this measure reduced robbery rates. Weaker evidence suggested that bans of gun purchases by criminals reduced robbery and assault rates, and that bans on possession of guns by mentally ill persons reduced assault rates. Other types of bans on high-risk persons showed no effect on any of the three violent-crime types.

A recent study carefully assessed the impact on intimate-partner homicides of five different types of domestic-violence gun laws: restraining-order laws forbidding purchase or possession of guns; restraining-order laws forbidding possession only; laws forbidding purchase or possession of guns by persons convicted of domestic-violence misdemeanors; laws forbidding only possession of guns by persons convicted of domestic-violence misdemeanors; and laws permitting law-enforcement officers to confiscate firearms at the scene of an alleged domestic-violence incident. Of these five types of gun laws, only restraining-order laws forbidding purchase or possession of guns showed evidence of impacting the number of intimate-partner homicides (Diez et al. 2017).

Background Checks of Prospective Gun Buyers

Merely declaring it to be unlawful for a category of persons to buy guns does not, by itself, accomplish the goal of preventing such people from purchasing guns. It is in addition helpful to require prospective gun buyers to submit to a check of records indicating whether they fall into a prohibited category.

The Brady Act The Brady Handgun Violence Prevention Act (the Brady Act), which became effective on February 28, 1994, is the most significant piece of federal firearms-control legislation passed since the Gun Control Act of 1968. The law's central gun-control mechanism is an instant background check on persons seeking to purchase guns of any kind – not just handguns – from Federal Firearms License holders (FFLs). It requires FFLs to check with law-enforcement authorities to see whether the prospective buyer is disqualified under federal law from buying a gun – particularly whether they have previously been convicted of a felony. The law exempts the 18 states that already had their own

gun-purchase background checks in place before 1994. It thus introduced new background checks into the remaining 32 states. It did not, however, impose background checks on prospective gun buyers seeking guns from private (non-dealer) sources.

Ludwig & Cook (2000) evaluated the Brady Act and concluded that it did not reduce adult homicides. However, this evaluation was carried out too early for any likely beneficial effects to be detected. By studying an extremely short period of time, 1990–97, they could not detect anything but the very immediate effects of the law. The Brady Act restricted new acquisitions of guns but did not immediately disarm anyone, so any homicide-reducing effects would only show up in the long run, after many would-be criminal gun buyers were denied guns. Consequently, it remains to be seen whether the Brady Act was effective.

State-Level Background Checks Before the Brady Act was implemented, many states had their own laws requiring background checks to be conducted before gun sales could be concluded. Some of these state laws are stricter than the federal law in some respects and thus could have effects above and beyond those of the federal checks. Background checks for disqualifying characteristics of prospective gun buyers are usually conducted in connection with gun owner licensing, purchase-permit, or purchase-application systems; therefore, one may gain insight into the impacts of background checks by examining the impacts of these kinds of laws. Kleck & Patterson (1993) found that gun owner licensing laws and purchase-permit laws may reduce homicide but do not affect rates of rape, robbery, or aggravated assault. Later research based on a different body of data indicated that requiring a license to possess a gun in one's home reduced homicide and robbery rates (Kleck et al., 2016). These results suggest that background checks can help prevent murders and robberies.

Gun Registration Gun-registration laws require people who acquire or possess firearms to record this fact with a governmental agency, just as car owners must register their vehicles. Most state gun-registration laws require a record of handgun purchases to be provided to some governmental agency, rather than the registration of all handgun owners.

Registration does not screen out high-risk persons from getting guns. Instead, the most common rationales that advocates offer for expecting some crime-reducing impact of gun registration are that (a) registration will aid authorities in tracing the prior history of guns used in crimes and thereby help in eventually identifying gun traffickers and other unlawful sellers of guns or that (b) registration will deter criminal use of guns because prospective offenders will believe they could be identified through registration records. The latter rationale founders on the fact that criminals almost never use guns that are registered in their own names and rarely leave their guns behind at the scene of a violent crime for police to recover. Therefore, advocates of gun registration more commonly stress the value of registration in aiding in the identification of criminal gun suppliers.

The trafficking-focused rationale, however, hinges on a dubious underlying theory of how criminals acquire guns, which emphasizes the significance of organized, high-volume gun traffickers. If such illicit dealers account for significant numbers of criminals acquiring guns, then any techniques that help identify these traffickers could have substantial potential for reducing the number of criminals who become armed with guns. Some scholars have claimed support for this "concentrated trafficking model," but this largely relies on the misinterpretation of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) gun-tracing data and what they supposedly indicate about the involvement of "point sources" of illegal guns (i.e., high-volume traffickers). The best available evidence indicates that high-volume traffickers are virtually non-existent and contribute only a negligible share of guns obtained

by criminals. More commonly, the persons who illegally sell guns are residential burglars who sell the handful of guns they steal each year. Arresting and convicting such low-volume and easily replaceable sellers is unlikely to have much effect on the flow of guns to criminals (Kleck & Wang, 2009).

One-Gun-a-Month Laws

Another type of gun-control law similarly relies on the concentrated gun-trafficking model for its crime-reduction rationale. Based on ambiguous gun-tracing data and law-enforcement anecdotes about apprehended traffickers, gun-control advocates and some scholars have claimed that a significant share of crime guns are diverted to criminals by traffickers who buy many handguns at a time from licensed retail gun dealers. Supporters of this theory assert that many licensed dealers who sell such guns do so either knowing the transactions are suspicious or not caring whether the buyer might be a trafficker or straw purchaser. Purchases of large numbers of handguns at a time from a corrupt or negligent licensed dealer are regarded as key mechanisms by which guns are diverted from legal channels to criminals. Therefore, gun-control advocates have urged the enactment of laws that forbid selling more than one handgun to a given individual within a month, based on the assumption that multiple handgun purchases are especially likely to be the work of traffickers, who will turn around and sell the guns to criminals who will use them to commit violent crimes.

It turns out, however, that most handguns purchased in bunches are never linked to any subsequent crime, and are actually *less* likely to be so linked than are handguns purchased one at a time (Koper, 2005:758). As a result, there is no sound empirical basis for the rationale that underlies one-gun laws.

Waiting Periods

Some gun-control laws are intended merely to delay gun acquisitions, rather than blocking them altogether. Some require that gun buyers who have paid for a gun and passed any required screening for disqualifying attributes must wait a given minimum period of time before actually taking delivery of the gun. Such waiting periods are usually 3 or 7 days, but can be as long as 14 days. Two justifications are commonly offered for the implementation of waiting periods. First, it used to be argued that they served as "cooling off" periods, allowing prospective buyers in the grip of a violent fury to calm down before acquiring a gun. The plausibility of this rationale is undercut by the fact that criminal aggressors rarely acquire guns shortly before committing a violent act. Even where no waiting periods are in operation, violent offenders usually have their guns long before they use them to commit a violent crime. Further, among the violent gun offenders who get guns at the last minute, few acquire them from the licensed dealers who would observe the legally mandated waiting period (Kleck, 1997).

It is also argued that waiting periods allow more time to carry out more thorough background checks. This makes little sense with regard to computerized record checks, since they can be carried out in minutes, but it is conceivable that states that still consult paper records might make use of this additional time. There is, however, no empirical evidence that more thorough, time-consuming record checks are carried out in states with

waiting periods. Empirical evaluations consistently indicate that waiting periods have no measurable effect on violent crime rates (Kleck & Patterson, 1993; Kleck et al., 2016).

Enhanced Penalties for Crimes Committed with Guns

Some gun-oriented interventions do not involve restricting access to guns, but rather attempt to discourage their use in crimes by establishing more severe punishment if offenses are committed with a gun. Firearms sentence enhancement (FSE) laws establish either mandatory minimum prison sentences for crimes committed with a gun or add on additional penalties for gun use, above and beyond the penalties for the underlying offense. The authors of a few technically primitive studies of a small number of non-randomly selected local areas have claimed to find a crime-reducing impact of FSE laws, but the best available evidence indicates otherwise. The most comprehensive and sophisticated study was done by Thomas Marvell and Carlisle Moody (1995), who concluded that there is little evidence that the laws generally reduce crime. Indeed, they found that when crime rates changed significantly after implementation of FSE laws, they were slightly more likely to *increase* than to decrease.

Restrictions on Carrying Guns away from Home

Some gun laws restrict possession of firearms away from the possessor's home, either prohibiting it altogether or requiring a special permit. Restrictions tend to be stricter regarding carrying guns on the person than on carrying them in one's vehicle, and stricter for concealed carrying than for open carrying. The strictness levels used to be far more variable across states than they are now, since the post-1986 wave of "shall-issue" or "right-to-carry" (RTC) laws. Today, at least 40 states have these more lenient carry laws, which either require a carry permit but allow most non-criminal adult residents to get one, or do not require a permit at all. At one extreme, 12 states (as of 2017) do not even require a permit for concealed carrying (e.g., Arizona and Vermont); at the other, eight states require a permit that is rarely granted (restrictive licensing, e.g. Massachusetts and New York).

Cross-sectional research comparing cities in states with differing gun carrying laws as of 1990 found that banning carrying or having a restrictive permit law on concealed carrying, compared with having permissive carry-permit requirements or no permit requirement at all, had no effect on any violent crime rate, and that similar laws concerning open carrying likewise showed no measurable effect (Kleck et al., 2016).

Gun Decontrol: Right-to-Carry Laws

RTC laws, also known as "shall-issue" laws, can be seen as a form of gun *decontrol*, in which controls over the carrying of firearms away from the carrier's property are made less strict. They typically involve changing state carry-permit laws from discretionary "may-issue" laws (restrictive licensing laws) to non-discretionary "shall-issue" laws. Under a discretionary carry-permit system, the burden of proof is on the applicant to show a special need or other special qualifications to have the permit, and the authority making this decision (often a county sheriff) has virtually unlimited discretion in deciding whether to grant the permit.

Under "shall-issue" or RTC laws, authorities are required to grant the permit to applicants who meet specified requirements (e.g., adult, resident of the state, no criminal convictions, completed gun-safety course).

There have been dozens of empirical evaluations of the effect of RTC laws on crime rates. One review of 21 studies (Moody & Marvell, 2008) found that the results were about evenly divided between those that found crime-reducing effects and those that found no net effect. Only two studies found crime-increasing effects, neither of which was published in a refereed journal, while 10 refereed studies found crime-reducing effects and nine found no effect one way or the other. This simple count, however, does not tell the full story, because nearly all of the studies finding crime-reducing effects were based on county-level crime counts known to the police that were subject to serious missing-data problems. Most analysts used panel designs to examine trends in crime before and after RTC laws were enacted, comparing the crime trends of counties in states that implemented RTC laws with those of counties in states that did not. Data from the Uniform Crime Reporting (UCR) program are missing for at least some time periods for *most* American law-enforcement agencies within the span of years examined in these studies, and most of the studies did nothing to account for this missing data. Thus, the data may seem to indicate that crime went down in a given county when the "decrease" was actually due to the fact that some of the constituent local jurisdictions in that county did not report their crime statistics to the UCR for part or all of that year – especially if the non-reporting agencies were in high-crime areas.

The only high-quality study that was completely free of this missing-data problem was the city-level panel study of Kovandzic et al. (2005). For each city, the relevant crime data could be obtained from a single municipal police force for each year, and the authors studied only cities with complete data for all the years studied. They found "no evidence that the laws reduce or increase rates of violent crime."

It is not surprising that research finds that liberalized issuance of carry permits does not measurably *increase* crime, given that carry-permit holders virtually never commit violent gun crimes in places that require carrying a gun on the person through public spaces. On the other hand, it is also not surprising that RTC laws do not *reduce* crime. Supporters of the idea that such an effect occurs assume that the laws reduce crime because prospective criminal offenders are deterred by an increased perception of risk of confronting an armed victim, which supposedly results from greater gun carrying among potential crime victims. There is, however, no direct evidence of increases in the perceived risk of confronting armed victims among likely offenders following enactment of RTC laws. The only direct evidence on the question indicates that the obtaining of carry permits does not increase the frequency of carrying. Those who get carry permits following implementation of an RTC may merely be legitimating gun carrying they were already doing before the need for a permit was enacted. The 2001 National Gun Policy Survey asked a sample of carry-permit holders, "Since you've obtained the permit (to carry a handgun), has your frequency of gun carrying increased, decreased, or stayed the same?" Only 14% responded that they had increased their carrying, 73% said their carrying had remained the same, and 9% reported that their carrying had *decreased*. There was no significant difference between the percentage who reported increasing their carrying frequency and the percentage who reported decreasing it (Smith, 2001:15). Consequently, there is no support for the assumption that RTC laws even increase the total frequency of gun carrying, never mind increasing criminals' perceived risk of confronting a gun-carrying victim. This does not necessarily mean that gun carrying by prospective crime victims has no deterrent effect on prospective offenders; it only means that whatever deterrent effect it may have probably does not increase after RTC laws are enacted.

Policy Implications

Most gun-control policies appear to have no measurable net effect on rates of crime or violence, but the minority that do seem to reduce violence are those that focus on discouraging members of high-risk groups – criminals, alcoholics, mentally ill persons – from acquiring or possessing guns. Background checks help put these restrictions into effect. The current background system in the United States could be improved by extending the checks to cover gun transfers by private parties; that is, by adopting a national universal background check, as outlined by Kleck (1991:435–437). On the other hand, banning all guns, handguns, SNSs, AWs, or LCMs does not reduce crime or violence. Worse still, banning the less lethal varieties of firearms can induce aggressors to substitute more lethal types, increasing the fatality rates of attacks.

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12

Restorative Justice

Rachel Rogers and Holly Ventura Miller

"Restorative justice" is a broad term that encapsulates an alternative philosophy for the administration of justice and entails a wide range of practices and programs (Braithwaite, 1989, 2002; Crawford & Newbum, 2003; Strang & Braithwaite, 2001). With a theoretical foundation in reintegrative shaming (Braithwaite, 1989), restorative justice argues for an alternative approach to social control that differs from modern criminal justice in several important ways. Specifically, the restorative philosophy contends that traditional control mechanisms (i.e., the criminal justice system) do not adequately address the underlying causes of crime and deviance, and thereby fail to effect desistance among offenders. A central assumption of the restorative approach is that formal social control is a last resort for effecting change in a given community. The most effective method of managing deviance is through informal means, which necessitates a stake in the community on the part of offenders. Moreover, restorative theorists suggest that crime and deviance are, to a certain extent, the result of alienation and marginalization of those who perpetrate such acts. Therefore, punitive reactions alone fall short in terms of effectiveness. Further, the adversarial nature of the traditional criminal justice system does little to effect a commitment to conformity through reintegration of offenders. Instead, participation in formal adjudication proceedings likely increases marginalization, thereby negating any cognitive transformation in terms of commitment to the community.

The ultimate goal of any system-based response to crime and deviance, including restorative justice, is desistance – or, at least, decreased recidivism. Virtually all criminal and juvenile justice-system programs are structured toward effectiveness maximization, or, in other words, recidivism reduction. However, restorative-justice proponents argue that typical responses to crime fail in their objectives and do not represent the sole option for offending behavior. A system devoted to offender integration – as opposed to segregation – that places an emphasis on the rights of victims may be better able to effect positive outcomes (Johnstone, 2011). Only through a holistic, community-based response that takes offenders and victims equally into consideration can desistance be achieved.

While restorative justice has become a popular alternative to traditional adjudication, it is actually reflective of ancient or indigenous approaches to conflict resolution (e.g., Navaho,

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

Maori) (Zehr, 1990). Several factors, including the victims' rights movement, reparative sanctioning and processes, and the advent of informal neighborhood-justice and dispute-resolution programs in the 1970s and '80s, provided the impetus for modern restorative approaches to crime and justice (Galaway & Hudson, 1990; Schneider, 1985). Restorative alternatives to traditional criminal justice have gained favor in part due to decades of criminological research that suggests punitive approaches are ineffective and in many cases counterproductive.

Restorative Justice versus Criminal Justice

Restorative approaches are rooted in several values and assumptions that distinguish them from criminal justice, the primary of which is that crime is best responded to holistically and by all concerned parties, including offenders, victims, and the larger community. Crime is viewed, fundamentally, as an offense against another person or the community, and only secondly as an act in violation of a codified norm (Braithwaite, 1989; Crawford & Newburn, 2003; Johnstone, 2011). Theoretically, restorative justice attributes crime to severed or damaged social bonds (like Hirschi's (1969) social-bond theory) between individuals or between offenders and the community at large. In order to resolve issues related to crime, these bonds must be repaired, allowing for substantive victim reparation and offender reintegration. As a result, restorative justice maintains that crime control should be the purview primarily of the community, not the bureaucratic criminal justice system. This proposition is theoretically and practically consistent with the greater efficacy of informal social-control mechanisms in general, as compared to formal methods (Anderson et al., 1977; Warner & Rountree, 1997).

Another aspect of the restorative approach that differs from traditional criminal justice is the extent to which offenders are held accountable. In the US criminal justice system in particular, accountability is generally conceived as the disposition of a criminal sentence, while the restorative philosophy instead defines it as personal responsibility on the part of the offender in taking action to repair harm (Bazemore & Schiff, 2005; Dignan, 1992; Galaway & Hudson; 1990; Roche, 2004). Other than appearing before court and either pleading guilty – typically through pleading to a lesser offense – or being found guilty at trial, offenders are not required to take actual responsibility for their actions by way of victim restitution (Miller, 2008a). Conversely, restorative justice requires that offenders take such responsibility and offer some sort of reparation to their victims, be it monetary or symbolic. For the restorative approach, social bonds can only be restored through interactions and resolution between offenders and victims.

Restorative and criminal justice approaches also have divergent views on the worthiness of punishment. Classical deterrence theory suggests that if applied with certainty and celerity, punishment can both deter crime (general deterrence) and change offenders' behavior (specific deterrence). Deterrence-based approaches, however, have generally failed to reduce recidivism, especially if they are not combined with informal methods of social control. Indeed, correctional systems typically experience recidivism rates upwards of 70% within 36 months of release, and few studies have found support for punitive measures to crime control (Lipsey & Cullen, 2007). The restorative philosophy argues that not only is punishment ineffective in changing offender behavior, it is also disruptive to community harmony and relationships. For restorative justice, the goal of sanctioning is not to deliver "just deserts," but rather to offer victims reparation and reconciliation, instill

greater offender accountability, and rehabilitate those who have committed crimes through treatment and competency development (Schneider, 1985; Umbreit, 1999; Zehr, 1990).

Criminal and restorative justice also vary in their focus of response, and in particular in terms of what they temporally emphasize. The retributive model of justice focuses on offenders' past behavior (i.e., the crime), whereas restorative models focus on the harmful consequences of offenders' behavior and places emphasis on the future. Additionally, by focusing on the consequences of behavior, as compared to the individual who engaged in the behavior, victims necessarily become a focal concern in case disposition (Strang & Braithwaite, 2001; Umbreit & Coates, 1992).

Victims' rights are embraced within the restorative framework more so than in traditional criminal justice approaches. US criminal justice in particular was conceived as, and is mainly about, the rights of the accused, as encapsulated by the Bill of Rights. Because of this, "victims' rights" are secondary in criminal justice; conversely, victims are central actors in programs rooted in a restorative philosophy (Crawford, 1996; Johnstone, 2011; Umbreit, 1999). Restorative practices are committed to victim participation in addressing crime and delinquency, and maintain that it is impossible to effectively deal with offending without the participation of victims and other concerned stakeholders. For this reason, many victims report greater satisfaction with case resolution in restorative programs compared to formal adjudication processes (Braithwaite, 1989; Umbreit, 1999). Ultimately, restorative justice offers a framework for reconciling the interests of victims, offenders, and the community through programs, policies, and case dispositions designed to meet the mutual needs of relevant stakeholders.

Theoretical Framework

The theoretical roots of restorative justice can be found in reintegrative shaming (Braithwaite, 1989), an integrated criminological theory that draws heavily from both functionalist and symbolic interactionist paradigms and relies on the conceptual fusion of several prominent explanations for criminal offending. Reintegrative shaming theory was introduced by John Braithwaite (1989) in his seminal work, *Crime, Shame, and Reintegration*, and is an integration of labeling, subcultural, control, opportunity, and learning perspectives. Braithwaite argues that while tolerance of crime is unacceptable for civil society, stigmatization of crime and criminals makes this social problem even more problematic. According to the theory, it is only through reintegrative shaming – defined as disapproval within a continuum of respect for the offender, resulting in rituals of forgiveness – that we can expect to prevent further offending.

Reintegrative shaming rests heavily on the assumptions and propositions of labeling theory (Becker, 1963; Lemert, 1967), which views criminogenic stigmatization as a marginalizing force on offenders. Traditional criminal justice characterizes offenders as fundamentally different, negative, and at odds with the larger community, pushing them toward the fringes of society and removing the presence of important social relationships and bonds. In that criminal justice processes can detract from offenders' social embeddedness, this labeling can actually become a cause of future offending, thus negating the deterrent intent of the sanction. The stigma associated with a criminal record, and especially with time spent in prison or jail, can eventually be internalized as part of one's self-concept, leading to self-labeling. Future behavior is then engaged within the context of this negative self-definition, referred to as the "self-fulfilling prophecy" (Merton, 1948).

Stigmatization also has the latent consequence of pushing marginalized offenders into criminal or delinquent subcultures (Cloward & Ohlin, 1960; Cohen, 1955), which, though negativistic, do actually offer social support to otherwise unattached or disaffected offenders. As a result, it becomes difficult for formal means of social control (i.e., criminal justice) to effect deterrence when offenders are enmeshed in a social network of antisocial or criminogenic individuals. Braithwaite (1989) proposes that reintegrative shaming can be more effective because it is more likely to draw on the conventional social bonds in offenders' lives and work to repair damaged social relationships. Any shaming of the offender should be employed in a constructive manner by those he or she regards as important; only then can reintegration and desistence be achieved (Braithwaite, 1989).

Critical to reintegrative shaming are its scope conditions: those that must exist for the predictions and propositions of the theory to be supported. Braithwaite argues that the success of reintegrative shaming rests on two key variables: the interdependency of the offender and the level of communitarianism of the society in which the process occurs. Interdependency refers to aspects of Hirschi's (1969) social-bond theory, including attachment and commitment, and is associated with employment, educational and occupational advancement, age, marital status, and sex. Communitarianism is a condition of societies that is reflective of social capital. Given these conditions, then, reintrgrative shaming will not succeed in all communities or with all individuals. Only those who are interdependent within communitarian contexts are predicted to experience success with reintegrative practices. Furthermore, Braithwaite (1989:50) also argues that reintegrative shaming and restorative justice "might only work with crimes that ought to be crimes. If a group of citizens cannot agree…that an act…is wrong, then…it should not be a crime."

In practice, the scope conditions set forth by Braithwaite are rarely considered and infrequently met. Indeed, many jurisdictions' experiences with restorative practices and programs are directed at offenses that are often trivial or low-level (e.g., truancy, drug possession) and offenders who are not sufficiently interdependent (Miller, 2008a, 2008b; Ventura, 2006; Zhang & Zhang, 2004). Restorative or reintegrative programming in the criminal justice system also suffers from implementation and fidelity issues (see Miller & Miller, 2015), such that initiatives are not truly restorative in nature and fail to meet the criteria outlined by the theory (i.e., scope conditions, victim reparation, stakeholder participation). This implementation failure, then, obfuscates any theoretical success or failure, as evaluations of such programs are instead assessments of a modified version of the theory's application, and not of the theory itself.

Restorative-Justice Programming

Programming based on restorative or reintegrative principles comes in various forms, including peacemaking circles, family-group conferencing, victim–offender mediation, youth courts, and other prevention and intervention efforts. These programs target a wide range of offenders and offenses, from lower-level crimes or status offenses such as truancy and marijuana possession to more serious violations such as war crimes, genocide, and civil strife (e.g., Rwanda, Northern Ireland). This section provides an overview of the various approaches rooted in reintegrative shaming and restorative justice.

Peacemaking circles are derived from the Native American tradition of ceremonial "talking circles," designed to foster spiritual connections among tribe members. They were first introduced as an alternative to sentencing in 1982 in Yukon, Canada (Pranis et al.,

2003). They typically begin and end with some type of formal ceremony in which participants are encouraged to share personal stories, express their emotions, and engage in a different form of communication than that used previously. While behavioral guidelines are often generated by participants or selected from a preexisting list, certain requirements are considered universal: listening and speaking from the heart, remaining in the circle, and maintaining confidentiality. Peacemaking circles may include a "talking stick," which is passed clockwise around the circle so that individuals may speak without interruption. A mutually agreed upon "circle keeper" serves as the facilitator, ensuring that all participants are heard. The circle keeper also summarizes what has been said after a round of responses, notes any progress being made, and offers guidance, when appropriate. The main objective of the peacemaking circle is consensus decision-making; that is, arriving at a resolution that integrates each participant's ideas and by which all stakeholders agree to abide. These circles are most often employed in areas with a significant aboriginal population, but they have also been used in other settings.

Family-group conferencing has been employed primarily in juvenile contexts as a means of diverting youthful offenders from the traditional court system (McCold & Wachtel, 1998). Several forms exist, including: (a) custody, where a juvenile is placed in custody after denying charges; (b) charge-proven, where a juvenile denies guilt but is found guilty in court; (c) intention-to-charge, when a juvenile is not arrested but a decision is needed on whether to prosecute or to do otherwise; and (d) charge-not-denied, where a juvenile is arrested and admits responsibility. This approach operates on several guiding principles, such as avoidance of institutionalization, consideration of age in determining culpability, victims' interests, and family-centric operation. Procedurally, conferences are typically run by a coordinator who receives cases, sends information about the process to offenders, victims, and parents, conducts in-person meetings with victims, offenders, and families, and manages the participation of concerned stakeholders. Victims may participate in various different ways, including by attending and bringing supporters, providing written, audio, or video messages, observing through closed-circuit video, or calling in by telephone.

Victim–offender mediation is facilitated by professional mediators, and has the goal of promoting offender accountability and victim reparation (Umbreit, 1999). It has a relatively long history in the United States (first used in Indiana in 1978) and Canada (first used in Ontario in 1974), and is also used in several European nations, including Norway, Finland, England and Wales, and Germany. Mediation programs have operated under different names over the past 4 decades, including "victim–offender reconciliation programs," "victim–offender mediation," and "victim–offender conferencing." Their statutory authority varies by state, with some providing comprehensive systems of victim–offender dialogue and others making little or no mention of it. They involve a face-to-face meeting between the offender and victim(s), with the purpose of: (a) conduct the mediation session; (b) sign a restitution agreement; (c) schedule a follow-up conference, when appropriate; and (d) communicate the agreement to the referring agency. Criminal justice agencies then approve any agreements either as part of a deferred prosecution program or as a stipulation of probation. Prior work on victim–offender mediation has offered inconsistent results as to its fidelity to restorative principles (Presser & Hamilton, 2006; Gerkin, 2009), level of participant satisfaction (Abrams et al., 2006), realization of victim reparation (Daly, 2004; Kenney & Clairmont, 2009; Strang, 2002), and recidivism (Nugent et al., 2003).

Despite the promises and popularity of restorative justice, widespread, rapid implementation of restorative-based programs is problematic for several reasons. First, evaluations of restorative-based programs are often quick to attribute success (i.e., lower recidivism) to

their utilization. However, questionable methodologies and suspect operationalization of concepts often characterize these studies. For example, a common feature of evaluations is the trust placed in staff assessments of the level of restorative principles incorporated into a given program. Some studies lack any measurement of restorative principles or practices, simply accepting at face-value a program's embodiment of them. Rarely do researchers investigate for themselves essentially *how* restorative programs are. In short, there exists a lack of accountability in labeling programs "restorative-based." Consequently, questions remain as to the ability of restorative approaches to produce more favorable outcomes in terms of lowered recidivism, increased victim satisfaction, increased public safety, and greater offender reintegration. The following section addresses the extant empirical literature on restorative and reintegrative practices both within and adjacent to the criminal justice system.

Literature Review

Many restorative-justice programs are based on the principles set forth by Braithwaite's (1989) reintegrative shaming theory, which emphasizes constructive shaming as social control instead of the typical practice of punitive punishment. International and domestic efforts have been instituted to adopt programs that incorporate not only reintegrative shaming of the criminal act, but also reparation of harms done to victims and/or communities (Rodriguez, 2007). Termed "restorative justice," these programs serve as an alternative to punitive punishment and traditional court hearings (Zehr, 1990). They allow for the offender, victim, and community to meet, discuss the harms done, and find solutions to the offender's actions (Llewellyn & Howse, 1998). Given the relative novelty of these programs, it is important to evaluate them for effectiveness to ensure that they are functioning based on the designated principles of reintegrative shaming and community involvement. One of the most common variables used to measure a program's success is offender recidivism. Most evaluations examine recidivism as a primary measure of program success (Latimer et al., 2005; Sherman et al., 2000), but also include variables such as offender and community perceptions regarding restorative justice, theory applications, and procedural fairness (Hipple et al., 2015; Tyler et al., 2007).

RISE/Canberra

One of the more well-known experimental tests of reintegrative shame and restorative justice was the Canberra Reintegrative Shaming Experiment (RISE), which sought to evaluate the effects of restorative-based diversionary programs on reoffending (Sherman et al., 2000). RISE also considered whether individuals who perceived treatment by the criminal-justice system as fair were more likely to obey the law in the future, in what was termed "procedural justice" (Barnes et al., 2015; Tyler et al., 2007). Researchers randomly assigned consenting Australian offenders arrested on four types of offense (drunk driving, juvenile property offense, juvenile shoplifting offense, and youth violent offense) to either a restorative-justice conference or a traditional court hearing. During conferences, offenders would meet with victims (if applicable), community representatives, and supporters (i.e., family and friends) to discuss the offense and how to make reparations to the victim(s) or to society (Harris, 2006). Across all four types of offense, conference-assigned participants perceived the process and their treatment as procedurally just when interviewed 2 years

later. Offenders in the youth-violence condition had decreased levels of reoffending, whereas those in the drunk-driving condition had a slight increase in reoffending. The findings from these studies suggest that restorative justice does not affect all offenders equally, but rather is dependent on the offense type and on offender characteristics (e.g., gender, age, delinquent peers) (de Beus & Rodriguez, 2007; Latimer et al., 2005; Losoncz & Tyson, 2007; Sherman et al., 2000).

Sherman et al. (2015), in an extension of the four Australian experiments, evaluated eight experiments in the United Kingdom involving a restorative approach implemented by police officers. Their results showed that restorative conferences reduced recidivism among offenders who had committed more serious crimes more frequently, with the greatest effect found for violent crimes. Sherman et al. (2015; see also Hipple et al., 2015) noted that in offenses without a victim present at the conference (drunk driving and shoplifting), offenders seemed to be more likely to reoffend. It is more difficult for individuals to feel shame and/or remorse for their actions if they are not confronted by a victim. Finally, although the results of this analysis show an overall decrease in recidivism rates 2 years following conference (as compared to traditional court processing), RISE participants failed to maintain these reductions over time.

Tyler et al. (2007), using the RISE data, assessed the effects of offender perceptions of procedural justice and reintegrative shaming on future reoffending. In the original RISE experiment (Sherman et al., 2000), offenders were interviewed immediately after conference completion and then again 2 years later. Police records provide data on each offender's criminal history 4 years after their restorative-justice conference. While participation did not lead to reduced levels of reoffending, it did lead to a change in the offenders' opinions regarding the law: they were more likely to see it as procedurally just and to recognize that violating it would result in additional problems. Reinforcing Sherman et al.'s (2015) charge regarding victimless crimes, Tyler et al. (2007) suggested that one reason the conference treatment did not lead to direct reductions in recidivism is because crimes like drunk driving do not necessarily involve a victim. Without a victim attending the conference, an offender may be less likely to feel remorse or guilt about their actions – a pinnacle of restorative-justice programs.

Program Elements, Offense Type, and Recidivism

In evaluating the success of restorative-justice programs, many studies have underscored the need for a better understanding of the distinct aspects of these programs (Hipple et al., 2015; Kuo et al., 2010). Without an understanding of the processes of restorative-justice programs and the extent to which they incorporate the principles of reintegrative shaming, it is difficult to ascertain why some programs lead to decreases in recidivism and why others do not. Barnes et al. (2015), for example, sought to evaluate whether the RISE conferences affected offenders' perceptions of procedural justice. Their findings suggested that, when compared to traditional court proceedings, they resulted in higher levels of offender engagement. The offender, victim (if applicable), offender's supporters, and community representatives spent more time discussing the offense and how to repair the injuries when compared to court-assigned cases.

On average, offenders in conferences were treated with more respect than those in courts; however, the amount of respect given was dependent on the offense type and on victim presence. Offenders arrested for more serious crimes tended to receive less respect from

conference personnel. Additionally, offenders in conferences where the victim was present did not receive as much respect as those in conferences where the victim was not. Conferences also allowed for the offender to spend significantly more time in the adjudication process, giving them an increased understanding of the consequences of their actions and an opportunity to participate in problem solving. The authors thus underscored the need for conferences to integrate the principles of restorative programs in order to be successful.

Using the process model of Presser & Van Voorhis (2002), Kuo et al. (2010) evaluated the RISE program and found that conference-assigned offenders participated in activities involving dialogue engagement, relationship building, and moral communication at a much higher rate than did court-assigned offenders. Additionally, consistent with Sherman et al. (2015), offenders in the youth-violence experiment appeared to be more affected by these three variables than did those in the other experiments. If a program involved these characteristics, it was more likely to be effective, according to Presser & Van Voorhis (2002). Conference-assigned offenders were also found to have a more positive view of the law following completion of the program (Kim & Gerber, 2012; Kuo et al., 2010).

Most of the best-known research on restorative justice programs either extends the RISE study or evaluates other programs that deal with offenses such as drunk driving or juvenile offenses (Wong et al., 2016). Few discuss other crimes, such as white-collar crime (Kim & Gerber, 2012; Levi & Suddle, 1989), drug-related crime (Miethe et al., 2000), and crimes linked to mental illness or comorbid disorders (Ray et al., 2011). Murphy & Harris (2007) extended prior research to the field of white-collar crime by evaluating the effects of reintegration or stigmatization on recidivism among tax offenders. Relying on Braithwaite's (1989) emphasis on disapproval in mediating reoffending, Murphy & Harris (2007) evaluated whether stigmatizing or reintegrative shame led to higher rates of recidivism, and whether offender emotions played a role. Convicted offenders who felt that the Australian Taxation Office treated them with respect and shamed their offense versus their person were less likely to have evaded taxes when interviewed 2 years later. If an offender felt stigmatized, they were more likely to violate the law again. However, among these offenders, reintegrative shaming was less likely to lead to feelings of shame, which in turn did not predict their likelihood of reoffending, as was hypothesized. Instead, another variable, "a desire to put things right," was found to better predict compliance to the tax law (Murphy & Harris, 2007). Thus, restorative-justice programs should consider the role played by emotions and other variables (e.g., shame and guilt) if they are to be effective at reducing recidivism.

Stigmatizing and reintegrative shaming have also been compared in traditional courts and mental-health courts (Ray et al., 2011). Ray et al. (2011) observed court cases in which the offenders were charged with drug possession, public-order offenses, violent crime, property crime, and traffic violations. Their results indicated that mental-health courts were more likely than traditional courts to incorporate principles of reintegrative shaming, such as showing respect to the offender and speaking to them directly rather than to their counsel. Surprisingly, however, they also found that traditional courts did not stigmatize offenders as much as was expected, something the authors suggest mat be a result of the expedited nature of traditional criminal court processes – the sheer number of cases that need to be dealt with often prevent judges and personnel from exercising as much individualized judgment and stigmatizing shame as might be expected. Although Ray et al.'s (2011) study did not evaluate a restorative-justice program per se, its results can be extrapolated to such programs. This includes the relationship between the mental-health court judge and the defendant: one that is direct, that is one-on-one, and that allows for judicial discretion and clear communication.

In contrast to Ray et al. (2011), who found that offenders who were processed through the mental-health court were treated with an emphasis on reintegrative shaming, Miethe et al. (2000) found that Las Vegas drug courts were actually more stigmatizing for offenders than traditional courts. Drug-court participants experienced higher rates of recidivism and relapse, particularly among racial minorities and those with a greater number of charges. This suggests that not all specialized courts treat offenders with respect, reintegrative shame, and understanding: drugs courts may in fact be harsher on offenders than is the traditional court system.

Meta-analyses

Latimer et al. (2005) compared studies of restorative-justice programs with non-restorative initiatives in order to assess program effectiveness. In coding the studies, the authors defined restorative justice as a "voluntary, community-based response to criminal behavior that attempts to bring together the victim, the offender, and the community, in an effort to address the harm caused by the criminal behavior" (2005). Among other outcomes, recidivism was examined as a primary measure of program effectiveness. The authors compiled 22 studies evaluating 35 individual restorative justice programs, with 32 of the programs measuring recidivism. Based on the follow-up of offenders, most were less likely to recidivate if they participated in a restorative-justice program than if they did not. Moreover, these programs were also effective at improving relationships between victims and offenders, increasing the likelihood of the offender completing their reparation plan, and improving the satisfaction felt by both victims and offenders.

In another meta-analysis by Wong et al. (2016), which compared similar programs but with a juvenile offender sample, 21 studies were evaluated for their impact on recidivism. Overall, the restorative programs were found to lead to lower rates of recidivism among these youthful offenders. However, the authors suggested that their findings may have more to do with features of the study designs than with the restorative-justice programs themselves. Studies with strong research designs (i.e., experimental designs) failed to produce strong support for a reduction in recidivism among these programs, while studies with weak designs tended to find such support. The authors also found that the only significant characteristic of the 21 studies was the ethnicity of their samples. Restorative-justice programs with primarily white offenders showed reduced levels of recidivism, while programs with primarily racial minorities failed to reduce reoffending.

Perceptions of Restorative Justice

A cornerstone of Braithwaite's (1989) reintegrative shaming theory is that communitarian nations – countries that emphasize the importance of community, like Australia – are more likely than individualistic countries – those that emphasize individual needs, like the United States – to incorporate principles of reintegrative shaming into their treatment of offenders. According to the theory, restorative justice will work only when an interdependent offender situated in a communitarianism context is successfully reintegrated. Ahlin et al. (2017) explored these concepts using a sample of US college students to gauge the level of support for restorative-justice practices and principles. Their study examined Braithwaite's proposition that younger people have fewer interdependent relationships, are less likely to follow

communitarian values, and are thus less likely to agree with restorative-justice policies. Their data suggested that American students with high social capital were more accepting of restorative-justice principles, while more conservative students were less accepting. Those who disagreed with restorative-justice principles tended to be male, in favor of punitive punishment measures, and of the opinion that the status quo of American society needed to be maintained. However, most of the sample still appeared to be in favor of restorative approaches to treating offenders – more so than samples taken from the traditionally communitarian samples in Australia and Japan. Ahlin et al. (2017) concluded that citizen values regarding restorative-justice programs should be considered when evaluating program effectiveness.

A number of studies have focused on offenders' perceptions and experiences while participating in restorative-justice programming. The original RISE experiment (Sherman et al., 2000) showed positive changes in offenders with particular offense types, but did not evaluate how the offenders perceived the program. Kim & Gerber (2012) analyzed the RISE data to gauge the perceptions of juvenile offenders randomly assigned to either the conference or court conditions. Conference juveniles who committed nonviolent offenses (i.e., shoplifting or property crimes) were more inclined to believe that the conference activities would increase their level of remorse and their likelihood of wanting to repay their victim and/or society. Offenders who were younger and more educated were more likely to express feelings of remorse, repaying the victim, and not reoffending. Although conferences did not have a significant influence on perceptions of reducing recidivism, age was the most significant predictor of the variables (Kim & Gerber, 2012). Consistent with McGarrell's (2001) suggestion, the authors argued that programs should target young offenders because they have generally positive perceptions and are less likely to have an extensive criminal record.

Similarly, Harris (2006) examined whether social shaming (i.e., disapproval) influences offender perceptions. In the RISE drunk-driving sample, offenders who participated in the conference perceived higher levels of reintegration but did not necessarily view the process as less stigmatizing. Their perceptions were dependent on whether they felt shame and/or guilt, and on the context in which they were shamed; that is to say, reintegration alone did not influence offenders if they were shamed in a non-shameful context. Thus, it is important to differentiate between feelings of shame-guilt and unresolved shame, as well as to consider the circumstances surrounding the act of shaming. There were more reported feelings of shame-guilt following conferences and more unresolved shame following court cases, suggesting that understanding the role that emotions play in offenders' perceptions of program success is vital to constructing an effective restorative-justice program (see also Hosser et al., 2008).

Conclusion

A substantial portion of the restorative-justice/reintegrative-shaming literature is derived from the RISE data and has examined outcomes such as offender and victim perception of the conference (Latimer et al., 2005), internalization of emotions (Tyler et al., 2007), and recidivism (Sherman et al., 2000, 2015). That which has evaluated other programs (see, e.g., Wong et al., 2016) has found that restorative justice is still more likely to reduce recidivism, although not as strongly as evidenced by Sherman et al. (2000). However, the literature also suggests that factors such as offender age, race, and perceptions of procedural justice may influence program effectiveness. Robinson & Shapland (2008) note that it is important for

studies of restorative-justice programs to examine not just recidivism, but also other variables, such as victim satisfaction and short- and long-term feelings of procedural justice. Indeed, while recidivism is not the only indicator of a program's success, from a policy standpoint – and especially from a system standpoint – it is the most important.

A few limitations of the extant restorative-justice literature are important to recognize. First, there is an issue of selection bias in terms of who gets referred to restorative justice programs and for what types of offense. Latimer et al. (2005), for example, cautioned that participants who self-select into the program may be inherently different than those who choose not to participate. Some prior research has suggested that most offenders referred to restorative-justice programs are those least likely to be in need of intervention to begin with – essentially, this is "cherry-picking," in violation of the risk principle (Miller et al., 2009). Additionally, other researchers Zhang & Zhang (2004) have argued that studies measuring reintegrative shaming as a single construct may lead to results that differ from those that incorporate multiple features of the restorative-justice/reintegrative-shaming approach.

Another issue, not necessarily particular to evaluations of restorative-justice programs, is the strength of the designs employed to determine program effectiveness. There are far too few randomized control trials within the restorative justice literature, and even fewer that feature mixed-methodological implementation, process, and outcome phases. A mixed-methods approach featuring both qualitative (interviews, observations) and quantitative (experimental/quasi-experimental design) techniques can better enable determinations of program fidelity and can situate quantitative outcomes findings in a broader context than can a single-method design. Often, program fidelity is virtually ignored in restorative-justice research, as noted by Miller & Miller (2016):

> Establishing program fidelity in evaluation research is critical for several reasons. First, process evaluations can generate immediate feedback to practitioners for program improvement and document program accountability in terms of whether service providers are compliant with grant conditions and treatment delivery expectations. Process evaluation also enables collection of data directly from key program stakeholders including administrators, staff, and participants, as well as observation of program activities and content to ensure consistency with intervention design. Perhaps most importantly, program fidelity research can elucidate the "black box" of evaluation, through insight into how and why a program is or is not effective. (2016:122)

There are similar deficiencies with respect to outcome analyses of recidivism in the restorative justice literature. Many restorative-justice/reintegrative-shaming evaluations do not utilize randomized control trials and instead have relied on quasi-experimental designs that are fairly weak, featuring unmatched comparison groups or (worse) within-group single-sample designs. Randomized control trials are not easy to implement in the juvenile and criminal justice systems, however, as many judges and agency administrators are reluctant to randomly assign offenders to what may be perceived as more lenient sanctioning. Where true experiments are not logistically or politically feasible, researchers should at least aim to utilize the most rigorous quasi-experimental approaches, such as regression-discontinuity and propensity score-matching designs. Additional weak designs fail to add substantive data to the extant literature and do not offer conclusive evidence as to the validity of restorative justice/reintegrative shaming or the viability of these programs. A best-practices model of restorative justice/reintegrative shaming will not be achieved until the body of research rests on strong experimental evidence, accompanied by rigorous process and implementation evaluations.

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13

Crime Prevention

Kristie R. Blevins

Formulating and implementing effective crime-reduction strategies is a quandary faced in every culture. Some level of crime control is imperative to preserve the general social order and protect individual citizens and the community. The problem is that human behavior, including criminal or delinquent conduct, is complex, as individual actions are difficult to predict. Individuals face different circumstances, possess varying physical and cognitive abilities, process information differently, and have differing levels of social and financial resources. These variations affect decision-making processes and resulting behaviors, so that any given crime-prevention strategy may work to thwart some potential offenders and not others.

A common definition of crime prevention is: "the anticipation, recognition, and appraisal of a crime risk and the initiation of some action to remove or reduce it" (National Crime Prevention Institute, 1986:2). Crime-prevention initiatives are structured efforts designed to inhibit a specific crime(s) in a given area. Crime-prevention programs may be simple or complex, and may involve differing levels of resources. Techniques used might be based in law enforcement or might simply involve making improvements in terms of stronger locks or the addition of lighting. Individual-scale situational preventive techniques often are not based in the formal criminal-justice system, although sometimes they are, such as when police offer prevention programs that include performing security surveys for commercial establishments or individual residents (e.g., City of Winston Salem, 2017) or that are focused on such crimes as identity theft, online scams, personal safety, and bicycle theft.

There are a number of different rationales for crime-prevention strategies, and there are disputes concerning how to properly classify them. Broadly, however, their structure and foundations allow them to be categorized info four broad, sometimes overlapping groups: (a) criminal justice; (b) developmental; (c) situational; and (d) community (see Tonry & Farrington, 1995). This chapter begins by reviewing each of these categories and what is known about their effectiveness, before going on to provide an overview of criticisms of crime prevention and suggestions for the future.

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Criminal-Justice Crime Prevention

Historically, large-scale crime-prevention efforts were rooted in correctional sentencing strategies. Today, there are other far-reaching organized preventive efforts, but those rooted in the official criminal-justice system are still in use as well (MacKenzie, 2006). These tactics exist principally at the back end of the system, after an offender has been convicted.

There are four primary philosophies underlying the US correctional system: (a) retribution; (b) incapacitation; (c) deterrence; and (d) rehabilitation. Retribution, which is concerned solely with punishing the offender for their wrongdoing, is the one correctional philosophy that cannot be used in the context of crime prevention. Incapacitation involves imprisoning offenders, rendering them incapable of victimizing members of free society. Rehabilitation involves treating criminogenic factors so that offenders will be less likely to commit future crimes. Deterrence theoretically should reduce levels of crime, because humans do not want to subject themselves to punishments; the supposition is that crime will be prevented either because offenders will choose not to recidivate and so endure the same or more severe sentence a second time (specific deterrence) or because potential offenders will avoid crime in the first place because they do not want to experience the punishment at all (general deterrence) (Tittle, 1980; Zimring & Hawkins, 1973).

The modern notion of preventing crime through deterrence dates back to antiquity, when Plato discussed elements of what is now known as the classical theory of deterrence. He argued that offenders should not be punished for the sake of punishment (retribution), in part because the act cannot be done regardless of the consequences. Instead, he contended that punishment should serve to prevent future wrongdoings by implementing policies that increase the cost of offending, since humans will avert pain when possible (Arieti & Barrus, 2010). In the 1800s, philosophers such as Cesare Beccaria (1818) and Jeremy Bentham (1830) endorsed the deterrence ideal in corrections. Bentham (1830) also suggested crime prevention through taking away the physical power to offend via incapacitation. As long as someone is incarcerated, he or she is incapable of harming individuals outside the prison, and additionally, the prison sentence may serve as a deterrent after release (Austin & Krisberg, 1981).

Later, Cesare Lombroso (1911) argued that more needed to be done to prevent crime. He studied criminals in an attempt to identify factors that made them different from noncriminals and posited that the key to crime prevention was to identify and address the causes of crime among classes of criminals. Based on his comparisons, Lombroso initially focused on physical and other biological features. His work led him to support the notion that some criminals could never change and thus should be incapacitated for life. Today, this idea is known as selective incapacitation, which involves identifying and imprisoning certain offenders longer than others because of their high likelihood of recidivism. Thus, there are two types of incapacitation that theoretically may serve to prevent crime: collective incapacitation and selective incapacitation.

The assumption underlying collective incapacitation is that, although they have already been convicted of law violations in the free world, individuals who are confined in prison will not be able to commit crimes outside of the secure facility for as long as they are detained (Mathiesen, 1998; Piquero & Blumstein, 2007). Selective incapacitation builds on this concept and suggests that more crime can be prevented by incarcerating persistent offenders for long periods of time. The difficulty with this strategy is twofold. First, the US justice system is based on the principle that, in general, the punishment should fit the crime, not the offender. Therefore, it is often construed as unjust if two offenders with similar

criminal histories receive different sentences for committing the same crime. Second, there is still a large margin of error in behavioral prediction. Standardized risk-assessment instruments have shown vast improvement during the last 3 decades, but even the best instruments can be wrong in a large percentage of cases (Auerhahn, 1999; Mathiesen, 1998). Additionally, when career criminals are correctly identified, it is often after their offending habits have slowed considerably, or even ceased completely (Gottfredson & Hirschi, 1986). Still, these considerations have not impeded the implementation of habitual-offender laws and sentencing schemes, such as "three-strikes" laws, which allow for longer sentences for offenders who have multiple convictions for certain types of crimes, or mandatory arrest laws for offenses such as domestic violence (Markowitz & Watson, 2015; Phillips & Sobol, 2010), which are intended to have both a deterrent and a short- or long-term incapacitation effect (Vollaard, 2012).

Evaluations concerning the effectiveness of crime prevention through deterrence and either type of incapacitation have produced mixed results. For example, studying the effects of California's three-strikes law for specific crimes, Shepherd (2002) and Worrall (2004) obtained different results concerning both overall deterrence and impact on certain crimes. Findings from an evaluation of Florida's habitual-offender law showed no deterrent effect on crime and only a small incapacitation effect (Kovandzic, 2001). Further, nationwide studies have shown no preventive returns for large economic investments in the use of prisons. The US prison population almost doubled from the early 1970s to the early '80s, yet the crime rate increased almost 30% over the same period (Messinger & Berk, 1987). Reiss & Roth (1993) estimated that it would take increasing prison populations as much as 20% to see a 1% crime reduction.

Overall, reviews and meta-analyses of the many studies concerning crime prevention through deterrence or incapacitation have shown that the effects are, at best, marginal, and that the most methodologically sound studies tend to show the least support for these strategies (Mathiesen, 1998; Pratt et al., 2006). Additionally, crime-prevention techniques based on sentencing schemes and formal sanctions for criminal behavior typically do not include delinquents in the juvenile system. This issue is significant because juveniles may account for a significant portion of dangerous crime (Piquero & Blumstein, 2007).

Rehabilitation is likely the most promising correctional intervention for crime prevention. Rehabilitative programs are designed to identify and address the criminogenic factors related to criminality. These types of program are often developmental in nature, and will therefore be discussed in the next section. While rehabilitative efforts are considered criminal-justice crime-prevention techniques if administered via the criminal-justice system, they can also take place outside of the formal system. Such developmental strategies may be sought out at an individual level or as part of a community program. Despite Martinson's (1974) grim report on the status of correctional rehabilitative programs in the 1970s, modern correctional interventions can lead to significant reductions in crime if they are designed and implemented properly, using the principles of effective intervention (Alschuler, 2003; Andrews & Dowden, 2006; Lipsey & Cullen, 2007).

Traditional criminal-justice crime-prevention strategies based in corrections have been criticized on a variety of grounds. One important critique is that many such programs are targeted at individuals who have already committed at least one crime, and that there should be other efforts to prevent people from committing that first offense. This line of reasoning, in conjunction with empirical evidence concerning offense characteristics and the logic of human reasoning, has resulted in several new crime-prevention tactics both within and outside of the criminal-justice system. Many law-enforcement agencies have

implemented voluntary programs to help residents implement target-hardening and other situational crime-prevention techniques, or are involved in other community prevention efforts. There are also an abundance of prevention strategies based on particular policing techniques. While the rationale behind these techniques is often rooted in situational crime prevention, formal policing itself is inherently based in the system, and accordingly may be classified as criminal-justice crime prevention.

Community and other problem-oriented policing strategies have been implemented in many jurisdictions after traditional policing techniques were shown to be ineffective at reducing crime (Weisburd et al., 2017). Hot-spots policing is currently one of the most popular modern crime-reduction policing strategies. Also known as place-based policing, it involves placing increased law-enforcement resources in areas where there are high levels of reported crime or of specific offenses. Geographic hot spots may include particular neighborhoods, a few city blocks, or even single addresses, and interventions are tailored to the area and can vary significantly among hot spots. One of the primary goals of hot-spots policing is crime prevention through deterrence: reducing opportunities for offending through increased levels of guardianship, which raise the risk for criminals of detection and apprehension (Braga & Bond, 2008; Nagin et al., 2015).

Robust assessments, reviews, and meta-analyses of evaluations of hot-spots policing programs have shown that the technique can be effective at preventing crime. An ample body of research has shown significant reductions in crime through hot-spots strategies that were executed based on initial problem analyses and targeted responses (Braga et al., 2014; Gerell, 2016; Weisburd, 2016). Despite its potential, however, hot-spots policing has been criticized for potentially causing displacement of crime to other locations and, more recently, for possibly contributing to biased police practices. To date, studies tend to show no evidence of significant spatial displacement of crime (Braga & Weisburd, 2006; Braga et al., 1999, 2014; Weisburd et al., 2017), and, although it may result in increased law-enforcement presence in areas with large minority populations, Weisburd (2016) maintains there is little support for the idea that hot-spots policing results in unfair practices by law enforcement.

Developmental Crime Prevention

It has been argued that significant reductions in crime cannot be achieved by situational crime-prevention methods aimed at reducing criminal opportunities because, depending on factors such as the type of crime and the specific attributes and decision-making processes of each offender, opportunities to offend are ubiquitous (Weisburd et al., 2006). Consequently, approaches designed to counteract factors associated with a propensity to engage in delinquent or criminal events should be more effective (Guerette & Bowers, 2009). Preventive programs based on this premise are known as "developmental crime-prevention strategies." Developmental programs may occur within the criminal-justice system or outside the system (e.g., schools), may serve to prevent crime by targeting individuals who have already offended (e.g., rehabilitation programs) or those who have not offended but have a high risk of doing so (e.g., juveniles), and may involve a single treatment or a combination of different types of treatment (e.g., individual, family, school) (Homel, 2005).

The goal of developmental crime prevention is to inhibit crime by providing programming to treat individual and systemic causes and correlates of delinquent and criminal behavior; that is, factors that have been empirically observed to be related to negative

behavioral patterns (Farrington, 1995; Welsh et al., 2015). Ideally, developmental programs should be provided as early in the life course as possible, in order to maximize preventive effects (Aos et al., 2001; Farrington & Welsh, 2003), but they can result in extensive crime prevention even when provided much later in life (Homel, 2005; Loeber & Farrington, 1998).

Findings concerning the effectiveness of distinct developmental crime-prevention programs are inconsistent: some result in considerable crime prevention, some yield no significant effects, and some have actually been shown to increase deviant behavior (Johnson et al., 2016). Moreover, similarly structured programs have shown varying effects depending on such considerations as setting, target clients, implementation, and treatment integrity (Chaffin, 2004). There is, however, one consistent finding concerning developmental crime-prevention programs, whether they are based on at-risk youth or on people who have already offended: treatment that is based on the principles of effective intervention reliably produces notable positive behavioral outcomes and reductions in negative outcomes such as criminal behavior, especially as compared to treatment modalities that do not corporate the principles of effective intervention (Lipsey & Cullen, 2007).

The principles of effective intervention were generated from individual studies, as well as meta-analytic and narrative reviews of correctional treatment interventions. That is, they are based on the evidence concerning what works (and what does not work) in reducing the likelihood of offending (Cullen & Gendreau, 2000). The five broad principles of effective intervention are summarized in this section, but it should be noted that the literature regarding how to properly apply them within treatment programs contains great detail and thorough guidelines for each. Additionally, effective elements of developmental programs for juveniles not yet in the system mirror the principles of effective intervention (de Vries et al., 2015).

The first two principles – risk and needs – are strongly related, because some risk factors are also considered needs. The risk principle states that, before beginning a treatment program, potential clients should be assessed for their likelihood to reoffend. Individuals with high levels of risk should receive intense treatment, while those at lower risk should receive lower levels of treatment. Risk assessments should include both static and dynamic factors known to be related to crime. Static risk factors are attributes that cannot be changed, such as age and criminal history. Dynamic risk factors, also known as criminogenic needs, can be changed. These include qualities such as antisocial attitudes, deficiencies in prosocial activities, and poor school or work performance. Such dynamic characteristics are the basis of the need principle, which states that treatment should focus predominantly on addressing criminogenic needs versus noncriminogenic needs such as self-esteem or physical condition.

The third principle, responsivity, involves matching methods of treatment with clients' learning styles and capabilities. The responsivity principle also asserts that the best treatment approaches are founded in social learning, cognitive, and behavioral theories (Gendreau et al., 2006). This idea is related to the treatment principle that maintains that programs should be cognitive-behavioral and should use social-learning methods. Additionally, according to the final principle, fidelity, programs should have high levels of therapeutic integrity, should use qualified, trained staff members, and should be subject to empirical evaluations concerning implementation and outcomes.

The importance of incorporating these principles into developmental crime-prevention programs cannot be overstated. Rehabilitative and other developmental programs that follow them can be extremely effective at preventing crime (Alschuler, 2003; Andrews & Dowden,

2006; MacKenzie, 2006; Smith et al., 2009). Put simply, there is a great deal of potential for developmental crime-prevention programs that are properly designed and executed.

Community Crime Prevention

Any type of crime-prevention program may be provided in the community, but true community crime-prevention efforts make services available to all eligible community residents or seek to improve social processes, conditions, and establishments in an attempt to reduce levels of crime (Welsh & Farrington, 2010). Put differently, preventive efforts at the community level typically target more than just individuals; they include larger units such as families, peer networks, organizations, and other groups (Hope, 1995). Welsh et al. (2015) classify community crime-prevention programs into two categories. The first involves preventive approaches that tend to be developmental in nature. This category includes community-wide programs targeted at individuals and families, such as training parents in effective techniques for preventing delinquency (Piquero et al., 2016), providing high-school students with incentives for graduating (Greenwood et al., 1996), and implementing behavior-modification programs aimed at at-risk individuals (Lipsey & Cullen, 2007). Such initiatives seek to improve the community by addressing factors known to be related to crime among individuals and small groups located within it.

The other category of community crime prevention involves programs based on social theories positing that crime and delinquency result from disorganization in social institutions (e.g., schools, families, and other societal groups) that would otherwise work to maintain social order. Programs in this category seek to increase social order by using techniques aimed at increasing social solidarity and responsibility, providing increased community services and activities, and decreasing community disorganization and physical deterioration (e.g., broken windows and graffiti). Many techniques in this category can be classified as situational crime prevention. These approaches can be cost-effective while successfully preventing crime (Welsh et al., 2015).

Another promising community crime-prevention strategy involves a popular situational preventive approach, Crime Prevention Through Environmental Design (CPTED), which has been modified to include community considerations. This version of CPTED is known as second-generation or community CPTED (Carter & Carter, 2003). It includes the design concepts of first-generation CPTED, but also incorporates community components intended to create or increase levels of structured social activities and programs and to increase neighborhood involvement (Saville & Cleveland, 2008).

The CPTED model was created in the early 1970s, when observations from criminologists and architects alike suggested that the physical layout of the immediate environment could impact the likelihood of offending in and around certain areas. Newman's (1972) guidelines for defensible space paired well with Jeffery's (1971) ideas around designing spaces in a manner that could prevent crime. Generally, the foundation for defensible-space and first-generation CPTED approaches involves correlations between the environment and human behavior. The guiding principle is that spaces should be designed and constructed in ways that promote feelings of ownership, responsibility, and guardianship through natural surveillance, whether in public housing, an individual residence, or an upscale apartment complex. Other important elements of CPTED include reducing anonymity through networks of neighbors, restricting access (including providing limited escape routes for deviants), promoting a positive image of the location, and providing

opportunities for legitimate activities. The idea is that potential criminals will be less likely to offend if a target is not appropriate and/or they think their actions might be detected (Clarke, 1997; Cozens & Love, 2015). Empirical findings have indicated that first-generation CPTED can be effective not only at reducing crime, but also at increasing property values and reducing fear of victimization (Cozens et al., 2005; Crowe, 2000).

Community or second-generation CPTED adds four important concepts to the first approach: community culture; social cohesion; community connectivity; and threshold capacity. First, it is important that communities have a culture in which residents interact, take collective ownership, and safeguard the environment. Cohesion is also key, as it allows for development of productive relationships among individuals from different backgrounds. These types of relationship often foster a sense of belonging and ownership in the neighborhood (Hipp et al., 2013). Community connectivity involves associations between residents and community agencies and organizations, which can be important in obtaining resources and providing programming to maintain or improve conditions and opportunities. Lastly, residents must understand that there is a threshold capacity for structures, land use, and actions, which means there are limits to what can and should be done in particular areas, beyond which there may be negative consequences. For example, holding too many activities in a small space at one time can result in disorder. However, advanced planning and structured protocols can prevent problems with threshold capacity (Cozens & Love, 2015). These concepts, combined with the principles of first-generation CPTED, may result in meaningful levels of crime prevention and other positive outcomes. Currently, there is a dearth of empirical evidence concerning community CPTED; more process and outcome evaluations should be conducted to examine the effectiveness of this approach.

Situational Crime Prevention

Unlike developmental crime-prevention efforts, which focus on the characteristics of offenders, situational crime-prevention strategies concentrate on the settings where crimes may occur. In general, situational efforts seek to prevent crime by reducing opportunities for offending. According to Clarke (1997:2), situational crime prevention "seeks not to eliminate criminal or delinquent tendencies through improvement of society or its institutions, but merely to make criminal action less attractive to offenders." Situational techniques can be applied for various types of crime, within or outside of the criminal-justice system, by individuals, communities, or organizations, and can be used in virtually any setting where deviant behavior might take place.

Situational crime prevention grew from perspectives offered in routine-activity and rational-choice theories. Routine-activity theory asserts that crime occurs when three things convene: a motivated offender, a suitable target, and a lack of capable guardians (Daunt & Greer, 2015; Matza, 1964; McNeeley, 2015). Both place- and offender-based studies have confirmed that motivated offenders prefer locations with suitable targets (e.g., easy access to valuables) and an absence of guardianship (Braga & Bond, 2008; Cohen & Felson, 1979; Eck & Weisburd, 1995; Weisburd et al., 2006). Rational-choice theory, like deterrence theory, is based on the tenet that humans are rational beings that weigh the costs and benefits of their behaviors and act in ways that maximize pleasure and minimize pain. Accordingly, if there are few opportunities to commit crime, or if committing a crime is more difficult than getting the same result in a lawful manner, potential offenders may choose legitimate efforts (Clarke, 1997; Cornish & Clarke, 1986; Guerette & Bowers, 2009).

The situational crime-prevention philosophy assumes that motivated offenders are pervasive and that all types of crime are somehow influenced by situational factors. The objective is thus to prevent crime by providing reasons for potential offenders not to commit criminal acts, such as by decreasing the accessibility of targets or intensifying surveillance (Clarke, 1997; Welsh et al., 2015). Cornish & Clarke (2003) provide five central approaches to situational crime prevention: (a) increase the effort it takes to commit a crime by using such measures as access control and target hardening (e.g., the use of heavy-duty locks and safes); (b) increase the risks of detection by reducing anonymity and providing guardianship through natural and formal surveillance; (c) reduce the rewards of deviant activity by removing targets or marking property with identification information; (d) reduce provocations by such means as providing separate seating for rival sports fans and proscribing crowded conditions in late-night establishments; and (e) remove excuses for committing crimes by providing written agreements and posted rules.

It is important to note that not all situational measures will have the same effects in different locations and that situational efforts should be designed and implemented for specific offenses, not for crime in general. For example, Welsh & Farrington (2009) found that camera surveillance was most effective in preventing automobile thefts, but this type of formal surveillance has done little to prevent violent crimes (Gerell, 2016). Nevertheless, a wealth of empirical research has produced findings in support of significant crime prevention using situational approaches (e.g., Braga et al., 2014; Clarke 1997; Eck & Weisburd, 1995; Gerell, 2016; Weisburd, 2016; Weisburd et al., 2017; Welsh et al. 2015). In fact, 75% of studies included in a large-scale review of more than 200 articles showed effective crime prevention through situational measures (Guerette, 2009).

Crime Prevention and Displacement

The primary criticism and debate surrounding crime prevention – especially techniques based on the situational perspective – centers around the displacement of crime. Crime displacement occurs when offenses that are prevented in one area move to a different area or somehow take a different form. There are six different, but sometimes coinciding, types of crime displacement: spatial or geographic (offenders change locations); temporal (crimes are committed at different times); target (different types of targets or victims are selected – potentially those who cannot afford security measures); tactical (offenders change the techniques they use in committing a crime); offense or activity-related (offenders switch types of crime); and offender (old criminals are replaced with new ones) (Guerette & Bowers, 2009). Although spatial displacement receives more attention than the other types (Eck, 1993), it has been argued that some crime-prevention techniques lead to offense displacement because they inherently create opportunities and increased rewards for other types of offense (Clarke, 1983). For example, the move toward electronic banking and the use of credit and debit cards has reduced opportunities and rewards for pick-pocketing, but increased them for credit-card fraud and identity theft. When possible, it is important to include measures of all types of displacement in evaluations of crime-prevention initiatives.

Crime displacement does not have to be malign, meaning that it results in increased levels of crime or more serious crime; it can be benign, meaning the overall crime rate is reduced (with a large preventive effect in one area leading to a smaller increase in crime in another) or less harm is caused to residents or the community (Guerette & Bowers, 2009). Further, crime-prevention efforts can result in diffusion – also known as the "bonus" or

"multiplier" effect – where crimes are prevented outside of the targeted area (Bowers & Johnson, 2003; Weisburd et al., 2006), likely as a result of perceptions of increased risk and reduced rewards among offenders in surrounding areas (Guerette & Bowers, 2009).

Evaluations of crime-prevention strategies that have assessed displacement effects typically report little or no crime displacement (Bowers & Johnson, 2003; Braga et al., 1999, 2014; Clarke, 1997; Eck, 1993; Roman et al., 2005; Weisburd et al., 2006, 2017). When displacement is present, it tends to be less than the benefit gained by the crime-prevention effort. Moreover, results often reveal that positive preventive outcomes have spread to surrounding areas through diffusion (Braga & Weisburd, 2006; Guerette & Bowers, 2009).

Conclusion

Causes of crime are varied and complex; individuals process information differently, face diverse circumstances with differing resources, and engage in deviant behaviors in a variety of situations for an assortment of reasons. There will never be a panacea for all crime, and it is not possible to make all targets unsuitable. Nonetheless, empirical evidence suggests that, depending how they are designed, executed, and maintained, many types of crime-prevention strategy have merit and can reduce crime, even after controlling for displacement effects. There is no doubt that prevention of crime is a desired outcome for any community, so perhaps the best approach is to integrate theoretical perspectives and continue to expand preventive efforts into more comprehensive approaches, as was done with second-generation CPTED.

Many criminological theories have been integrated to develop explanations of crimes based on both internal and external factors. Some of these explanations are complex, and include direct, indirect, and interaction effects of individual characteristics, structural factors, and situational variables (Boccio & Beaver, 2018; McNeeley, 2015). For example, levels of self- and informal social control have been shown to have significant influence on perceptions and the decision-making process (rational choice).

The decision-making processes considered as part of deterrence and rational-choice theories is not constant across potential offenders. Certain variables will affect perceptions of the rewards and risks of both legal and social sanctions, both directly and indirectly (e.g., employed or unemployed, levels of anger or depression). The concept of risk itself even varies from person to person. It has been ascertained that individuals with bonds to prosocial institutions may be deterred from crime more by the loss of respect and shame associated with the act – the social cost – than by formal punishment (Braithwaite, 1989; Pratt et al., 2006; Sherman, 1993; Tibbetts & Myers, 1999). When possible, levels of formal and informal social control should be considered as part of the decision-making process for potential offenders.

Another type of control, self-control, is one of the most important internal factors influencing decision-making processes among both offenders and victims. In studies of victims, subjects with low self-control were less likely than those with higher self-control to make positive changes in their routines that would help them avoid risky behavior or situations that increased their odds of being victimized again (Turnovic & Pratt, 2014). Similarly, offender interviews have shown self-control levels are associated with perceptions of risks and rewards. Specifically, offenders with low self-control are more likely to experience pleasure (reward) from crime and are less concerned about detection and formal and informal sanctions (risk) than are those with high levels of self-control (Nagin & Paternoster, 1993; Piquero & Tibbetts, 1996).

The fact that there will never be one specific crime-prevention strategy that works to prevent all crime should not be discouraging. The positive results concerning crime prevention though a barrage of different types of program targeted at many types of crime and in numerous locations signify that the returns of some crime-prevention programs and techniques are worth the effort and resources invested in them (Welsh et al., 2015). As has always been the case, theories of crime prevention should be based on theories of offending and factors that increase the likelihood of specific types of crimes in certain areas. Further, they should be updated to stay current with modern trends, especially in terms of opportunities (Clarke, 1997). For example, some target-hardening techniques are effective when they are first introduced because offenders have not yet developed ways to overcome them, but they become less effective over time as offenders learn how to defeat them. Biometric entry systems for access to physical locations and electronic equipment are becoming more common and are currently difficult to breach, but it is likely that there are motivated offenders working on systems to outsmart them.

Crime-prevention strategies are imperative in preserving social order, as crime harms individuals, families, communities, and entire societies. Back-end criminal-justice strategies based on sanctions alone have not produced significant reductions in crime, but other programs based in the system have had positive outcomes and show a great deal of promise. It is important to reiterate that many types of crime-prevention effort do not have to be linked to any formal agency or institution – individuals, neighborhoods, and other groups in the community can take responsibility and implement practices to prevent crime and improve conditions in their immediate environments.

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14

Actuarial Justice

Gil Rothschild-Elyassi, Johann Koehler, and Jonathan Simon

A quarter of a century ago, "actuarial justice" and the "new penology" emerged as critiques of a nascent trend in criminal justice. These critiques specifically questioned the propriety of predicted dangerousness and risk as master concepts for carceral decision-making. The notion of the new penology implied that the focus of criminal justice shifted away from the traditional concerns of criminal law rooted in the (guilt of the) individual toward (actuarial considerations concerning) aggregate groups (Feeley & Simon, 1992, 1994). Contradicting classical notions of responsibility and retributive justice, decisions concerning incarceration and release are not based primarily on a person's individual guilt in a (past) offense, but on a calculated dangerousness in view of a (future) reduction of risk to society.

Over time, however, it has become apparent that although the critique of the new penology foretold actuarialism's eventual centrality to criminal justice, its adoption has been more desultory and haphazard than originally anticipated. Substantial obstacles to actuarial-based reform can be seen to have prevailed during the 1990s and beyond. It is only in the last decade that actuarial justice has truly taken root in the United States. This development coincided with ebbing support for policies that gave rise to mass imprisonment and punitive forms of policing. In this chapter, we review the concept of actuarial justice, consider its present usefulness, and query whether the changing nature of risk in the age of algorithmic governance has rendered actuarial justice in part outdated.

Actuarial Justice at a Quarter Century

Actuarial justice will turn 25 in 2019. The phrase originated with works first appearing in the early 1990s that argued criminal-justice institutions were undergoing dramatic changes in how they conceptualized and responded to crime. Two works by Malcolm Feeley and Jonathan Simon – one, an article entitled "The New Penology: Notes on the Emerging Strategy of Corrections and its Implications" (Feeley & Simon, 1992), and another, a chapter entitled "Actuarial Justice: The Emerging New Criminal Law" (Feeley & Simon, 1994) – joined a swelling chorus that sang in minor key of a profound transformation

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among penal systems once characterized by an aspiration toward reform (Bottoms, 1983; Cohen, 1985; Irwin, 1985; Mathiessen, 1983; Reichman, 1986; Shearing & Stenning, 1984). Feeley and Simon described a penological shift from a focus on individuals – whether as deviants or as moral wrongdoers – to groups; from clinical-based judgments about dangerousness to actuarial ones; and from retribution or rehabilitation to managing permanently dangerous categories. At the heart of those transformations was the notion of "risk" – and, in particular, its expression as a quantitative prediction of future criminal behavior.

The new penology and actuarial-justice critiques captured ideas that resonated with criminologists around the globe. Some, for example, identified many similar shifts in penological discourse among practices spanning policing through parole (Kemshall et al., 1997; Lemert, 1993). Others questioned whether actuarial justice was new at all (Garland, 1996), while still others pointed to the persistence of non-actuarial forms of risk and even non-risk values as modes of penal governance (Hannah-Moffat, 1999; Lemert, 1993; Lynch, 1998; O'Malley, 1999; Robinson, 2002). Especially in the United States, where penal populism overcame nascent managerialist impulses in the 1980s, the same authors (Simon & Feeley, 1995) concluded only a short time later that actuarial justice might be little more than the penal bureaucracy's wishful thinking. If actuarialism was becoming increasingly dominant in penological and criminological *discourse*, and therefore seemed forceful in shaping formal policy articulations, it appeared much less felicitous in reorganizing *practice*. Nearly a quarter-century later, it appears that two alternative visions of actuarial justice may have crystallized. The first is the optimistic story that tells of proprietary algorithms competing for the business of criminal-justice agencies across the advanced economies, aiding in the refinement and transparency of criminal justice operations. The second, through a very different lens, questions whether this might be just another illusion of a justice-reform horizon.

This review, then, is in part a history of crime policy's future. In an important sense, by the late 1980s, actuarial practices and the logics of control they expressed already had a history. First introduced a half-century earlier by social scientists like Ernest W. Burgess and Sheldon Glueck to aid state parole and juvenile justice systems, actuarialism seemed ready for its star turn as a premier nationally relevant program for carceral governance (Hinton, 2016). Yet, by the mid-1990s, it was clear that the state's discursive embrace of actuarialism had not translated into penal practice as originally envisioned. Instead, actuarial practices – whatever their potential appeal – were either rearticulated through long-institutionalized logics of subjective-disciplinary judgments or otherwise overlooked by a carceral apparatus under little pressure to rationalize or restrain control methods. This turn away from actuarialism coincided with the advent of a politics of expansive carceral control that Simon (2007) would term "governing through crime." Those politics metastasized from the United States to the United Kingdom, and eventually extended outward throughout Europe, South Africa, and beyond (Baker, 2010; Bosworth & Guild, 2008; Super, 2016). As the centuries turned, the coming era of actuarialism seemed more distant than at any time since the mid-20th century.

In the second decade of the 21st century, however, actuarial practices and logics seem ascendant in almost every carceral sector. Examples abound in the United States: police in many cities direct officers to saturate "hot spots" where actuarial technologies predict that crime will concentrate; counties are experimenting with risk-based release instruments designed to replace bail altogether (California's legislature, for example, considered but did not enact such a measure during the 2017 session); and distended correctional systems rely on actuarial risk scores not only to decide at what security levels to house their prisoners,

but also to consider ways of accelerating their release. Under these circumstances, it is not hard to discern why actuarialism is breaking through. First, rising crime – and then terrorism – presented security risks that engendered political incentives which frustrated reform efforts and the implementation of actuarial practices based on constraining and refining carceral control. Those risks, however, have lost salience and capital after more than 20 years of declining crime in most parts of the United States and more than 15 years since the major terror attacks on New York and Washington at the century's turn. Second, without that cover, mass incarceration is facing a legitimacy crisis as grave as any since the controversies that alcohol prohibition and its perceived failures unleashed, and which inspired the first widespread criminal-justice reforms a generation and a half later aimed at treating the "criminal justice system" as a distinctive subject of social concern and site of governmental action (Mayeux, 2018). This chapter will address both of these developments.

Yet, if actuarial practices and logics are in demand, there are also real questions as to whether history is ready for them. In one sense, steady advances in social-science methods and computational power emblematize the dawn of an "algorithmic age." If this is so, then the unremitting incorporation of actuarial techniques would be consistent with the times. In another sense, however, an "algorithmic" age may mark an early exit for these quintessentially 20th-century methods. Arbitrating between these positions depends largely on what we define as "algorithmic." Actuarial decision-making is itself an algorithmic method, since it uses the inferential power of statistical analysis to derive a scoring system calculable by anyone with access to a person's biographical information. But on the other hand, some see the algorithmic age as marked by new methods and approaches to risk that escape the confines of traditional social-science methods, state data, and the obsession with recidivism so characteristic of actuarialism from its first instantiations (Hannah-Moffat, 2018). So, then, just how new, how established, and how reformative are actuarial techniques, after all?

Actuarialism in the 20th Century

Consistent with the late-Progressive Era turn toward the technocratic control of the unpredictable, actuarialism emerged within criminal justice just as social science planted its first roots in American universities. During its earliest days in the first decades of the 20th century, actuarialism resonated among academic and policy circles, yet in both it remained more aspirational than commonplace. At the University of Chicago, Ernest W. Burgess (1928) used prison records to develop parole risk factors for the Illinois parole board to use in making release decisions. For much of the century, the Illinois Department of Corrections employed a resident actuary to update and refine these risk factors and to adjust their weighting in the instruments used to determine justice outcomes (Harcourt, 2008:ch. 2). In the 1960s, the Federal Parole Commission developed a comparable system, the Federal Salient Factors Score (FSFS), for use in making parole release decisions for federal inmates (Hoffman et al., 1978). It was only with the adoption of the Federal Sentencing Guidelines (FSG) in the 1980s that the FSFS was abolished.

In the academic community, work conducted at Harvard Law School eventually eclipsed Burgess's initial forays into actuarial criminology. There, in a move that was still rare for the time, a quantitative social scientist was appointed to a full faculty slot and encouraged to do research on law and policy. From this position, Sheldon and Eleanor Glueck identified markers of persistent offending among a cohort of boys criminalized by the juvenile justice system (Glueck & Glueck, 1950). Although concern about juvenile delinquency was spiking

in the 1950s, the Gluecks' research program ultimately fizzled for want of support. The wider academic audience was still dominated by a style of research that abhorred both the Gluecks' methods (Laub & Sampson, 1991) and the low prestige that was associated with academic criminology as a whole (Koehler, 2015).

Marvin Wolfgang and his collaborators were more influential. In their study of arrest patterns among boys born during the baby-boom in one Philadelphia birth cohort, they observed that a high level of delinquent behavior attributable to a small group of boys accounted for nearly half the cohort's total crime (Wolfgang et al., 1972). Since their research arrived at a time of sustained concern about the rise of crime in US cities among the generation that made up the first wave of Wolfgang et al.'s sample, it resonated almost instantly in both academic and policy circles. Where Burgess and the Gluecks had stumbled in persuading justice policy-makers and practitioners of the value of their work, the political salience of Wolfgang et al. helped motivate many strategies aimed at the identification and control of especially prolific criminal subgroups.

Designating these early works as authentically "actuarial" is contestable, insofar as they varied in the extent to which they sought to *predict* – as opposed to merely *identify* – criminal behaviors. All the same, their acceptance in fits and starts throughout the 20th century was a function of a social science that promised it could inform the state's efforts to target and regulate problem units (Hinton, 2016). Yet, unlike the state's erratic and uncertain acceptance of actuarial technologies during that period, the social science at actuarialism's core developed in a consistent and uninterrupted fashion. In particular, it manifested a total and altogether uncritical reliance on the government's own data systems – most typically, in the form of arrest or incarceration data. The consequence was a feedback loop, established at the outset of actuarial research in criminal justice, that treated as legitimate *ex ante* the instruments and objects of penal reform that actuarial tools were designed to improve *ex post*.

Actuarialism in the Age of Mass Incarceration

Writing in the early 1990s, Feeley & Simon (1992, 1994) noted the ascendancy of actuarial practices. Yet, that insight was based on a small set of observations, most of which in fact prefigured, rather than employed, actuarial practices or logics. In the chapter wherein they first coined "actuarial justice," for example, Feeley & Simon (1994) discussed three examples – (selective) incapacitation, preventive detention, and drug-courier profiles – of which only the first was truly actuarial. The opening salvo in that line of research was a demonstration project conducted at RAND Corporation's criminal justice division, which distinguished high-rate robbers and burglars from less active ones using self-report data gathered from among Californian prisoners (Greenwood & Abrahamse, 1982). Although the RAND paper was subject to considerable criticism on methodological and ethical grounds (Auerhahn, 1999), it coincided with a similarly high-profile National Academies report on "Criminal Careers" (Blumstein et al., 1986) whose conclusions aligned neatly with a policy stance advocating the classification and control of high-rate offenders. The timing was especially propitious: both documents debuted a research program under the modernized banner of selective incapacitation that emerged as policy-makers' disaffection with criminology's meager contributions began to wane. Taken together, they claimed a high level of reliability in predicting high-rate offenders, and also offered an ambitious blueprint for reorganizing criminal justice around the principle of concentrating resources on the highest-risk units.

Only a few states incorporated the promises of the 1980s actuarial blueprints into their justice instruments. Virginia, in particular, modeled its sentencing guidelines along the lines of the predictive tools that were available, but it did so only sparingly, and it remained in the minority for some time to come. Most states – like California – pursued general incapacitation through longer sentences, or adopted a distorted version of selective incapacitation through sentencing enhancements that left prosecutors unaided when determining which of many felony arrestees should be targeted. The FSG took the same route, taking into account risk through the inclusion of criminal records as one of the two axes locating most sentences for federal felons after 1987, but only in a linear relationship that forwent any actuarially based weighting scheme. The FSG thus did not express a turn toward aggregated, rationalized risk management (Lynch & Bertenthal, 2016). What's more, early versions of the FSG recommended sentence lengths for a given profile of offense severity and criminal history based on aggregated past judicial practice, instead of any actuarial prediction of a sentence's ability to advance a stated end such as reducing reoffending. It therefore functioned more as an instrument for regularizing judicial practice to fit with the logics of control and incapacitation than as an expression of reorientation toward risk assessment or actuarial justice (Rothschild-Elyassi, 2018). When the Supreme Court considered the FSG's constitutionality shortly after its enactment in *Mistretta* v. *United States* (1989), it was this modest ambition to align judges' sentencing patterns that satisfied the Court's low-threshold "intelligible principle" standard. Consequently, prosecutors pursued their own normative agendas with wide discretion, using the hammer of life sentences to force plea agreements (Lynch, 2016).

Another related development in the 1990s was the wave of three-strikes laws that allowed courts in many instances to impose a life sentence after a third conviction for a serious or violent felony. California, where many of the initial observations that motivated early analyses of actuarial justice originated, enacted a particularly aggressive version of this enhancement in 1994. After two young girls were murdered by men with past criminal records, the victims' fathers successfully campaigned for three strikes as a ballot initiative on a platform that foregrounded the institutional failure at the heart of what appeared to be a straightforwardly preventable atrocity (Zimring et al., 2001). In so doing, three strikes harnessed the same logics of prevention, identification, and control that animated actuarial justice. More directly, it gave prosecutors unprecedented power to select whom to incapacitate, but it neither expected nor provided for any risk assessment methodology, let alone an actuarial one.

Preventive detention and drug courier profiles were ultimately even less promising than selective incapacitation as tidings of an actuarial age. In *Salerno* v. *United States* (1987), the Supreme Court definitively authorized a lower court's right to detain the accused before trial upon a determination that they posed a danger of crime. The Court's holding in *Salerno* rejected outright the position that Caleb Foote and other liberal proponents of bail reform had advocated in the 1960s, which would have anchored a constitutional right to bail on exclusively appearance-at-trial concerns. The result was a decisive endorsement of crime "risk" in penal jurisprudence that heralded a full-throated welcome call for actuarial practices and logics shortly thereafter. Judges were expected to have reasons for their decisions about whether to detain defendants, but nothing in the line of cases that followed *Salerno* dictated how to select from among the full suite of available factors that might guide such a determination (18 U.S. Code § 3142[g] provides an omnibus list of advisory factors that may guide a court's clinical determination of whether the accused poses a flight risk or a danger to the community). Instead, the approach taken in federal law for deciding which arrestees may be detained before trial emphasizes a clinical judgment by a magistrate considering a full record.

The drug courier profile that the Drug Enforcement Administration (DEA) used to identify people carrying drugs on commercial air flights was historically even less grounded in actuarial techniques than pre-trial detention. Although courts frequently cited such profiles in approving stops of suspected drug couriers, they never relied on statistical validation in finding that they satisfied the constitutional threshold of reasonable suspicion. Indeed, in *United States* v. *Sokolow* (1989) – the leading Supreme Court case – it was the defense that attacked the profile's mechanical nature, and argued that the state lacked the individualized suspicion the Court had celebrated in *Terry* v. *Ohio* (1968). The Court declined even to address the logic of a profile, and found instead that the specific facts that the agents relied on (such as flying from a source city to a destination city and hastily purchasing one's ticket last-minute with cash) were sufficient to establish the requisite standard of suspicion.

Looking back, it is more difficult to see the outlines of an actuarial epoch of criminal justice coming into view. Indeed, the bulk of the literature on actuarial justice has correctly identified that the movement toward actuarialism, although at times discursively salient, has in practice been desultory and haphazard. Feeley & Simon (1992, 1994) ambiguously toggled back and forth between risk as a way of conceptualizing the governable aspects of a critical situation and actuarialism as a method or even style of assessing and responding to risk (Maurutto & Hannah-Moffat, 2006; Miller, 2001; O'Malley, 1999). Early proponents of an ambitious reorganization of criminal justice that would be shaped by unalloyed actuarialism found few if any bedfellows at assorted stages across the justice system; after all, it would be some years still before actuarialism would begin to refashion policing. While the Supreme Court expressly sanctioned dangerousness determinations in pre-trial hearings in the 1980s, today *Salerno* looks more like a concession to the broad appeal of fear of crime over US governance in that period than it does any kind of then-incipient move toward actuarialism. Even the federal system, whose FSG rested on a style of sentencing-by-formula, still manifested a risk element that was crude and traditional at best.

Nonetheless, selective incapacitation, pre-trial detention, and drug-courier profiles remain informative examples. In particular, they point to an intellectual context that supported a rise in actuarial justice. That context found expression in three especially salient developments from outside criminal law: (a) the dominance across the first three-quarters of the 20th century of an insurance-influenced approach to liability for negligence in tort law; (b) the rise of systems engineering and operations research as tools of governance; and (c) the rise of law and economics. In many respects, these sources better fit an analysis of actuarialism's eventual suffusion in criminal justice institutions than do the examples discussed earlier.

The first factor influencing actuarial justice's rise – the dominance of an insurance-influenced approach to liability for negligence – had personally interested Simon since encountering Michel Foucault at Berkeley in 1983 (Elden, 2016). At that point, Foucault's most recently translated book, *The History of Sexuality, Vol. I: An Introduction*, had introduced the idea of "biopower" technologies. One of biopower's distinctive features was that it operated upon populations rather than individual bodies and fixed groups, as disciplinary power did. At Berkeley, Foucault discussed the role of insurance as a mechanism for extending governance to populations through new technologies of power. This included the creation of casualty and health statistics that managed social conflicts via social benefits, such as workers' compensation (Ewald, 2002; Simon, 1987). In the wake of the widespread diffusion of liability doctrine, his vision was largely complete by the 1980s, and in some respects would be rolled back in favor of less liability in the final decades of the century. Negligence, once a stigmatizing judgment on a harm-doer, had become a technical term for

the most cost-efficient loss spreader of a particular kind of repetitive loss. It was only a matter of time before policy-makers came to understand that crime was itself just a different kind of accident; law was already equipped, so the logic followed, to reduce crime's harms, and to spread its losses.

Also foretelling actuarial justice was the relatively unsung role of systems engineering and operations research in the modern criminal justice system. Stockholm Prize-winner Alfred Blumstein, then a young specialist in operations research, played a pivotal role in framing criminal justice reform problems in systems terms for the influential 1967 report of President Johnson's Commission on Law Enforcement and the Administration of Justice, and in the resulting publication, *The Challenge of Crime in a Free Society* (Mayeux, 2018). The approach promised to be a powerful accelerator of the criminal justice reform momentum that was being felt nationally in the wake of rising crime and protests against police abuse. Systems analysis aimed to clarify the criminal justice system's objectives and erode obstacles to achieving them. Yet, this approach brought to crime a managerialism that would – or, at any rate, could – become an objective or system value that elided the underlying social and political dimensions of the problem. The *Challenge of Crime* report thus exposed the connective tissue between Robert MacNamara's famously technocratic Pentagon and Vietnam strategy and the quantitative approach to criminal justice reform that had been RAND's specialty. Blumstein recently spoke to NPR correspondent Cheryl Corley concerning the *Challenge of Crime*'s 50th anniversary (Corley, 2017):

> At the time, he didn't think of the report as a revolution, "but one thing that did come out of it was a movement toward thinking of the criminal justice system as a system," Blumstein says. As the Crime Commission's director of technology, Blumstein and his group developed a flowchart, often used in criminology textbooks, that provided a visual take on how the courts, police and corrections interact.

This systems approach had a clear affinity with law and economics, which was another surging intellectual force in the 1980s. Although the most influential pieces in that tradition were more theoretical than empirical, law and economics research on crime tantalizingly coupled the observation of quantifiable effects with a real mechanism for reducing crime. Although deterrence was economic thought's original contribution to crime policy, it acquired special force upon its resurgence in the 1970s and '80s. In doing so, it contested the dominant psychopathological view of crime, which held that most people engaged in criminal conduct were non-rational actors and thus immune to deterrent threat. The argument raged for much of those decades between restoring clear deterrent signals with stricter no-frills fixed sentences on the one hand, and maintaining the individualizing flexibility of rehabilitative penology and indeterminate sentences on the other. But, in the end, it was another favorite of economists, incapacitation – the premise that an incarcerated individual will be prevented from committing any crimes during the period of incarceration – that with little theoretical fanfare ended up becoming the predominant penal rationale of the 1990s and beyond (Simon, 2014; Zimring & Hawkins, 1995). Although lacking the elegant but contested premise that penal subjects possessed the self-governing capacity that made them susceptible to deterrent threats, incapacitation appealed to economists because it was in principle quantifiable so long as the unverifiable value of the number of crimes prevented was left untroubled.

A final development from that intellectual context fills out this early 1990s path toward actuarial justice, namely that of the "underclass." The term had been popularized in academic

and policy circles thanks to William J. Wilson's (1987) *The Truly Disadvantaged*, in which he argued that dramatic structural and economic transformations in the late 20th century had supplanted the color line as the main barrier to equal treatment in the United States. More pointedly, he contended that structural dislocations were far more insuperable than traditional poverty, because of the redistribution of jobs and housing in the new metropolitan geography. As a result, those caught in the highly racialized inner-city "slums" of many large American cities lived outside the regular economy, with few if any bridges in. For Wilson, the message to policy-makers and politicians alike was that controversial race-based preferences in jobs and education – then very much the dominant conversation – would do little for this new "underclass." Instead, Wilson advocated for broad efforts to increase access to mainstream jobs through investment or desegregated housing opportunities for the poor. Although neither *The Truly Disadvantaged* nor Wilson's (1996) follow-up book, *When Work Disappears*, made much explicit reference to crime or incarceration, it was clear that both were part of the material conditions of living for many locked into the underclass.

The implications of this somber reality were variably taken up in criminological work. Conservative criminologists like James Q. Wilson and John Dilulio, for example, presumed the members of this underclass – particularly its youth – posed a great risk of violence. For center-left scholars, on the other hand, Wilson's underclass posed a different and equally unsettling thought. They imagined criminal justice as coupling an abandonment of individualization and rehabilitation with a vigorous commitment to functioning as a "waste management" system for a permanently high-risk class. Actuarial justice was ideal for this purpose: first, its methods were well suited to achieving population-level effects; second, policy-makers inherited from bipartisan concern for an "underclass" the reification of, and authorization to intervene in, a site for state intervention; third, the political construction of an underclass neutralized resistance efforts based in dignity, justice, and mercy (Tonry, 2014); and fourth, it lent legitimacy to the control of communities stigmatized by histories of racial exclusion.

Hitherto unconnected developments spanning the academy, criminal justice, and beyond pointed to something very much like actuarialism in the years to come. Once they coalesced, it appeared, they would form an anchoring rationality for carceral power in an age of mass incarceration (Rigakos, 1999). Loss spreading, managerialism, and prisons would become related techniques for managing the dangerous end of the so-called "underclass," and for realizing future savings in crimes prevented. They would therefore constitute two of actuarial justice's ontological shifts: first, in the penal subject as a dangerous criminal-to-be; and second, in the state responses best positioned for the control and management of future harms (Ashworth & Zedner, 2014).

For a while, at least, this did not happen. The strength of heavily moralistic and punitive appeals by politicians and the media from the 1970s onward rendered carceral legitimacy overdetermined as the century unfurled. In this environment, actuarialism may have seemed not only superfluous but possibly even a limiting force in concrete institutional domains. So long as crime policy distinguished itself – at least rhetorically – from the discredited approaches of individualized or rehabilitative justice, it was almost always politically successful. Moreover, if crime stayed high – and especially if it was committed by people who had already been to prison – then that served only to justify yet lengthier sentences. Finally, if there was discernible pressure to curb expanding carceral power, there was yet more counterpressure to empower frontline workers such as the police, prosecutors, and prison officers. All the while, however, actuarialism's advance would, in almost every instance, work against those same stakeholders' interests and reform efforts as the century ended.

Actuarial Justice and the Crisis of Mass Incarceration

New interest has recently emerged in actuarial justice-based reforms (Berk, 2008; Hannah-Moffat, 2013; Klingele, 2016). Unlike in the 1990s, examples abound of risk-based innovations that are actuarial in a more formal sense. Police departments have mined their own data to focus patrols on "hot spots" where crimes are most likely to occur (Perry, 2013). Private foundations have funded the development of pre-trial release instruments capable of predicting which arrestees pose a high risk of either failure to appear for subsequent hearings or commission of crime while on release (Berk et al., 2016; Kleinberg et al., 2017). Some state prison systems are using risk assessments of their prison populations to select prisoners for accelerated release to comply with court orders. Increasing reliance on probation and parole to reduce incarceration has raised interest in using risk assessment to allocate scarce supervision resources (Berk et al., 2009).

The intellectual ferment surrounding actuarialism's role in criminal justice is vibrant. Some critics question its methodological adequacy and the robustness of its evidence base (Bechtel et al., 2017; Fazel et al., 2012); others focus on the constitutional and ethical significance of actuarial risk selection, especially with regard to how it entrenches existing discriminatory patterns in criminal justice (Hamilton, 2015; Harcourt, 2008; Starr, 2014; Tonry, 2014). Yet, those critiques have not gone unanswered. Actuarialism's proponents respond that critics overstate the legal and ethical concerns that risk assessment instruments putatively raise (Rhine et al., 2015); others claim that risk assessment instruments mitigate, rather than amplify, criminal-justice disparities along dimensions including race (Skeem & Lowenkamp, 2016), age (Monahan et al., 2017), and gender (Skeem et al., 2016); and yet others claim that actuarialism's ability to increase the transparency of justice decisions will aid future reform efforts (Ferguson, 2015).

The momentum of actuarial risk assessment today coincides with an end to carceral power's overdetermined legitimacy. At the same time, a revolution in computation is making data manipulation far cheaper than ever before. The extensive use of imprisonment and arrest powers is under substantial and bipartisan criticism in the United States for the first time in decades. For example, after a period of reduced judicial discretion and mechanistic sentencing guideline systems, a modicum of discretion has come back. This is partially a function of Supreme Court jurisprudence from *Apprendi* v. *New Jersey* (2000) onward, which has expanded the set of facts that must be either contested before a jury or pleaded to. Relatedly, court decisions such as *Brown* v. *Plata* (2011) and *Ashker* v. *Brown* (2012), which detail the serious overcrowding and grave mental and medical health risks facing inmates in states like California, have made imprisonment's human and financial costs more visible, while at the same time exposing the existence of large numbers of low-risk and high-cost prisoners (Simon, 2014). Cell-phone cameras and social media have spread awareness of lethal violence by police, overwhelmingly against people of color, leading in some instances to the most widespread protests over police accountability since the 1960s. Although most states have now returned to relative fiscal normality, the era of unremitting criminal justice budget growth is over, and demands for new kinds of state spending are likely to increase (Aviram, 2016).

Mass incarceration now faces a legitimacy deficit that actuarialism seeks to address in three ways. First, it purports to identify where the state can shrink the population of those criminalized, arrested, and incarcerated, without unleashing resurgent crime. Second, and relatedly, it seeks to legitimate the identification of populations still subject to carceral control as sites for intensive state intervention. Third, some advocate that it renders transparent

criminal justice decisions that have historically been opaque and unreviewable. A common euphemism for this kind of actuarial reform is "evidence-based" or "smart on crime." Yet, neither term fully acknowledges the reliance on data manipulation and predictive decision-making at actuarialism's core.

Beyond Actuarialism: Algorithmic Justice

A lingering question for students of actuarial justice a quarter-century on is whether the original account holds up in an age of big data and algorithmic thinking. Traditional risk assessment instruments were validated on a particular sample – a "training set" – and then implemented without much regard for how closely that set mapped on to the populations in which they were being applied. Some new systems resolve this problem by equipping the instrument to train on new incoming data in real time (Berk et al., 2009, 2016). It has been suggested that this may help undercut some of the tendency of actuarial instruments in siloed data sets to remain racially discriminatory while appearing neutral (Ferguson, 2015; Harcourt, 2008; Starr, 2014). More operatively, however, it introduces a special twist to actuarial justice's legitimacy puzzle: the very system that produced an outcome as illegitimate as mass incarceration must simultaneously be treated as legitimate in producing the data on which actuarial justice-based reform efforts must rely.

Traditional systems functioned with a siloed body of data, usually collected by the very agency that the data would be used to assist. Cheap and robust computational power means that once-separate data sets can now be integrated. This may allow agencies to bring multiple sources of information to bear on the individuals they assess. Doubtless, this could lead to predictive choices that are even harder to challenge in court. It remains to be seen whether this will chill or incubate institutional bias. The same factors mean that people and organizations outside the state can apply data analysis to the construction of risk in ways that may oppose or even resist that state (Hannah-Moffat, 2018).

A quarter of a century after criminologists predicted a dramatic shift in criminal justice reasoning toward actuarial-based risk assessment, trends in the United States are only now beginning to conform. Many of the epistemological conditions for actuarial justice were already in place in the 1990s. However, criminologists underestimated the power of alternative sources of legitimacy, especially punitiveness and prosecutorial and law-enforcement expertise. The current ascendancy of actuarial logics suggests that these sources of legitimacy are now in real crisis, pushing the system to embrace its claims to "evidence-based" policy and expertise. Yet, the startling advance in computational capacities since the 1990s raises basic questions as to whether 20th-century actuarialism is equipped to handle the new dynamics that the worlds of big data and machine learning present.

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Part IV
Law Enforcement and Policing

15

History of Policing

Massimiliano Mulone

Since the pioneering works of the likes of Charles Reith (1938, 1952, 1956), Leon Radzinowicz (1948, 1956), or T. A. Critchley (1967, 1970), our knowledge of the social, economic, and political context from which the modern institution of police arose, as well as our knowledge of the other policing organizations that preceded or grew alongside the public police, have tremendously improved. Today, thanks to research by policing historians such as Philip Rawlings and Clive Emsley, we have access to much more detailed information on how the policing function was handled prior to the creation of what was termed the "New Police" in the first half of the 19th century. We also have a more precise idea of the debates and discussions surrounding the creation of the modern police, and how the necessity of such an institution was justified by its proponents and criticized by its opponents. In addition, our understanding of the slow process of institutionalization and professionalization that gave the public police the central and pivotal role it plays in the policing field today is also more rigorous.

In fact, it would be impossible in just one chapter to go deeply into the details of the history of the police or the history of policing (for anyone interested in exploring more thoroughly the diverse forms policing has taken through the ages, I would recommend *Policing: A Short History* by Philip Rawlings (2002) and some of the numerous publications of Clive Emsley (1983, 1996, 2011); the work of Lawrence (2011) and Williams (2011) could also prove useful). This is why instead of just focusing on the chronology of the diverse forms of police and policing that have occurred throughout history, this chapter will instead present some of the main issues that are associated with the study of the history of police and policing. The chapter has two intertwined goals: first, to give an overview of the basic knowledge that has been produced on the history of police and policing; and second, to discuss some of the most important issues that the study of this history has raised – issues that are still valuable today in understanding contemporary (as well as the future of) policing.

To achieve these objectives, this chapter is divided into three sections, mirroring in some ways the state of current knowledge on the history of policing, which is usually divided into three periods: (a) before the birth of what is termed the "modern police," when social

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control was more informal and the "penal" system was more victim-centered and privately driven (until approximately the mid-19th century); (b) the institutionalization, professionalization, and progressive monopolization of modern public police organizations (from the mid-19th century to the 1960s); and (c) the pluralization of security and policing, and the "rebirth" of private policing (from the 1970s onward) (Johnston, 1992). In each of these sections, one or two important issues will be identified and highlighted – issues that are critical, in my view, to understand the present state of policing. It should be noted that such a presentation is, in some ways, ideologically inclined, because it delves into one of the basic biases of our view on policing, most notably the centrality (and superiority) of the public police over other forms of policing. That being said, the structure of the chapter should be understood not as an endorsement of such a view, but as the reflection of the dominant narratives in the field. Such a perspective should not and will not impede our capacity to be critical in regard to our topic of interest.

Three points should be made regarding the content of this chapter: (a) the distinction between police and policing; (b) the geographical and cultural limits of the present overview; and, on one of the major biases in the study of the history of policing that I have already hinted at, (c) the supposed centrality and superiority of the public police. First, it is necessary to define precisely what I mean when I use the terms "police" and "policing," as so far these have been presented together. The word "police" has quite a long history, and its meaning has evolved from a relatively vague notion to an increasingly restricted one, until finally it has come to refer exclusively to the public institution for which specific powers are granted to enforce law and maintain order, as well as the people who work for this institution (the police officers). It is in this narrow sense – the public institution in charge of maintaining order and enforcing the law, as well as the employees of this institution – that I will use the word "police" here. "Policing" refers to the function itself and can be defined as "organized forms of order-maintenance, peacekeeping, rule or law enforcement, crime investigation and prevention and other forms of investigation and information-brokering" (Jones & Newburn, 1998:18). Brodeur, in a more determined effort to delimit the scope of the policing agents, proposes the following definition: "Policing agents are part of several connected organizations authorized to use in more or less controlled ways diverse means, generally prohibited by statute or regulation to the rest of the population, in order to enforce various types of rules and customs that promote a defined order in society, considered in its whole or in some of its parts" (2010:130).

Of course, the public police falls under the umbrella of such definitions, but other organizations – public, private, and hybrid – are also part of the policing family (Johnston, 1992). What should be pointed out here is that even if the police did claim to have the monopoly over policing, and even if it did succeed (at least symbolically) in gaining such a monopolistic position (Zedner, 2006a), then policing would still be much larger than the police and would still exist well outside its scope. Not only did policing precede the creation of the police, but it has always been the affair of several organizations and it has never limited itself at any moment in history to the sole public institution of the police. Therefore, as Rawlings once said, "the history of policing is not the history of the police and the history of the police is not the history of policing" (2003:67). This is a necessary standpoint for any history of the police or history of policing. That is also why the title of this chapter refers solely to policing, as I aim to present a larger picture, where the public police is presented as a moment in history – an important one admittedly – but not an end in itself.

Second – and this remark operates on a completely different level – this chapter will share one of the main limitations of the great bulk of studies on the history of policing and

on policing in general: it will focus mainly on Western democratic (and mostly Anglo-Saxon) contexts. This limitation is motivated on the one hand by a question of space, as I prefer to strengthen the coherence of my arguments at the expense of a more universal scope. The large number of histories of policing that exist throughout the world could not be dealt with in sufficient depth and with sufficient rigor in just one book chapter. It is also motivated, on the other hand, by the fact that the literature on the Western context is greater, and thus our knowledge about it is more detailed. This is a common – albeit still valid – criticism of the policing field, where most of the research is conducted by and in a Western democratic context – a situation that becomes especially problematic when universal claims are made and yet the issue is not addressed. That is why the reader should remain aware of this limitation and why a complete history of policing should look beyond this context at non-Western policing history, as well as at the development of policing in authoritarian and/or colonial contexts.

Third, and finally, it is important to point out immediately what is one of the major starting points of almost every history of policing: thinking of the modern public police as a superior form of policing as compared to other existing or possible forms. Assuming the centrality and superiority of the public police is a very important bias in the study of policing in general, and of its history in particular. Indeed, even if most academics acknowledge the existence of other forms of policing (private and public) before, during, and after the creation of the "New Police" in 1829, historians are often driven by the idea that the study of "the police before the police" should essentially, if not exclusively, be directed to our understanding of the creation of modern policing (Rawlings, 2002). Modern police is thus closely associated with the idea of progress (Reith, 1956; Emsley, 2011), and the public police seen as an ideal – as the logical conclusion of history. This assumption results from the fact that the history of policing is usually structured around this pivotal point, before and after the New Police. Again, even if I remain critical of this view, this chapter will not completely escape such a bias, given that its goal is more to reflect the current state of knowledge on the history of policing than to propose a new perspective on the history itself.

Policing before the Institutionalization of Public Police

The year 1829 is often used as the birth date of the modern police, as it was at this moment that one of the first fully publicly salaried police forces was created, in London, following the work and initiative of Sir Robert Peel. Because of the condition of their creation, as well as the principles on which they stood, it is a common view to accept the London "bobbies" as the paragon of modern policing, the model from which all the other modern police institutions were drawn (Radzinowicz, 1948; Reith, 1956). As the next section will be specifically devoted to the question of the birth of modern policing, I will not dwell too much on this topic right now. What should be said, however, is that, when 1829 came to be seen as the pivotal moment when policing came into modernity, the question of what happened before arose as well. Indeed, if the police as we know it today did not always exist (and, in fact, was a quite recent "invention"), how then was the law enforced and order maintained – and more importantly, how was security achieved – before this date?

The first historians to have shown an interest in the way security was achieved "before the police" were Charles Reith, Leon Radinowicz, T. A. Crichtley, and Melville Lee (Robinson, 1979). Even if they focused solely on the Anglo-Saxon context and uncritically took the year 1829 as the birth date of modern policing ("forgetting" about the emergence

of Paris's police in the 17th century), several important and critical observations have emerged from their pioneering research – observations that have been deepened by further inquiries. These historians revealed that the term "police" had a much wider meaning than it has today, and that the more professionalization took place, the narrower this meaning became; they identified a few occupations (constables, watchmen, thief-takers, etc.) that preceded the creation of a professional niche in policing; and they highlighted the fact that prior to the creation of the London police, policing was usually privately managed and victim-centered. From what we have learned of the way policing was delivered and organized before the 19th century, I would like to focus on these three specific points.

The first observation concerns the progressively narrowing meaning of the words "police" and "policing" through time. The word "police" is derived from the Greek "*polis*," the art of governing the city, but also from the Latin "*politia*," a political and administrative regime. Throughout history, the word in itself has had a fluctuating meaning, often referring to the notion of order, as well as to the process through which this order was reached. As Jean-Paul Brodeur pointed out, "in its initial sense, the word 'police' encompassed both a process (governance) and its outcome (order)" (2010:18). This lack of precision is reflected in the tasks that were entrusted to policing actors in these eras. When the first policing agents were created, they usually had several functions, which went well beyond maintaining order and enforcing law (the two roles traditionally associated with modern policing). For example, during the Middle Ages, the figure of the constable – designated by the public figures of the city to serve for 1 year, without pay – had a long list of responsibilities: order maintenance, law enforcement (arrest and detention of suspects), military organization, tax collection, public house regulation, control of vagrants, and so forth (Rawlings, 2002). Thus, constables were doing "police work" (in the modern sense), but also judicial, administrative, and fiscal work. The separation of executive and legislative functions was not evident, nor promoted (see, e.g., the figure of the "*magistrat*" in France). So, the way we understand police today is quite new. Indeed, it took centuries to fix the meaning of police and policing to the definition I used in the opening pages of this chapter. Two considerations can be extracted from this simple observation. First, it emphasizes the fact that policing and security are complex activities, linked to and dependent on several dimensions. Not only is the police (or even any security organization, private or public) not the sole purveyor of security – or of law and order – in our society, but it is far from the most important (family and education, for example, play more crucial roles in why people do or do not respect socially established norms). Second, not only has the word "police" gradually concentrated all its meanings into one single institution, but it has also succeeded in monopolizing the function associated with it, policing. This *tour de force* was made possible in part by the growing complexity of the tasks undertaken by the "proto-forms" of policing, like constables and watchmen, and their subsequent professionalization, which is the second point I would like to discuss here.

In the British context, the 1215 Statute of Winchester is seen as a pivotal moment for the organization of policing (Emsley, 1983; Rawlings, 2003). Indeed, this statute created a few obligations for the British population: the instauration of the hue-and-cry system, the duty for every man from 15 to 60 to carry weapons, and, of particular interest for our discussion, the creation of the night watchmen. The night watchmen were supposed to patrol the streets and guard the entrances to the town at night, in order to help prevent disorders from the inside (crime) and from the outside (invasion). They were mainly associated with surveillance and guarding functions, the hue-and-cry systems assuring the help of other citizens in case something happened. More importantly, watchmen were doing this job for free, as

they were appointed by the town bourgeoisie to serve for 1 year. As such, their functions were seen as a kind of civil obligation, necessary for the well-being of the community, and a shared responsibility. Gradually, however, townsfolk became more and more resistant to the idea of serving as watchmen, not because they did not believe in their usefulness, but because, as cities grew, the volume of work for watchmen grew accordingly. Thus, it became more difficult for people to fulfill their obligations as appointed watchmen and continue to work for a living at the same time. That is why, little by little, when people were designated as the next watchmen, some preferred to pay others to do the job for them. Thus, at some point in history, some citizens came to embrace the watchmen as a "career," being paid by those who had been designated as watchmen for the year (Rawlings, 2003). This progressive professionalization also occurred in the case of the constables, who likewise did their work for free until the complexity and sheer volume of their tasks made it impossible to stay in the role and occupy a paid job at the same time. In this case, the practice of "contracting out" became so generalized that legislation was passed to formally frame it in 1756 (Rawlings, 2003). This led to the emergence of policing experts and a professional niche, which the public police would come partially to take over.

That being said, not every policing professionalization followed such a path, from a mandatory unpaid occupation to a proper paid job and career. Others took place in a more classical context of market supply–demand dynamics. The thief-taker is one – a form worth talking about because it exemplifies the third element that I found important to identify when studying policing history, which is its privately produced and victim-centered nature prior to the creation of the modern police. Thief-takers, very common in London in the second half of the 17th century, were private individuals and/or groups of individuals who were paid by victims to retrieve stolen goods, but also to catch, prosecute, and obtain the condemnation of the criminal(s). They epitomized in some way the fact that for a very long time, crime – and the harm it caused to individual citizens – was not seen as government's and society's responsibility, but as a private problem that should be dealt with accordingly. In fact, the sidelining of the victim from the penal system is a quite recent process – although a radical one – and at these times, before the mid-19th century, retribution for a crime was something that mainly depended on the will and/or (financial) capacity of the victim(s). The private nature of criminal justice and policing must not be forgotten. Thief-takers did gradually disappear, mostly because of several corruption scandals, but also because of the rise of a new profession, the defense lawyer, which rendered obtaining a condemnation (and, thus, payment) more and more difficult (Rawlings, 2003). In other words, it became less profitable, and the profession slowly withered away.

Most police historians, tied to the idea of modern police as progress, try to read these "proto-forms" of policing as trials and errors that naturally led to the creation of the modern police as we know it today. They also draw associations with modern forms of police: the watchmen can be seen as the first patrol officer; the constable, as the first law enforcer; the thief-taker, as the original investigator. But these views reveal a misunderstanding and over-simplification of policing. First, they artificially build a false cohesion between the different forms of policing, as if they all originated from the same cause or problem and, as such, all led to the only logical and rational – modern and progressive – solution: the public police. Second, because they imply that the creation of modern policing replaced these proto-forms, which is clearly untrue: not only did the reasons behind the disappearance of thief-takers differ from those explaining the end of the night watchmen, but the latter survived the creation of the London police, with the last of the watchmen working until the beginning of the 20th century.

To conclude this first section, I would like to emphasize one important element of policing history: its intrinsic ties with the idea of the city. As I have said, the word itself originated in part from the Greek "*polis*," the art of governing the city. It should also be noted that constables, watchmen, and thief-takers all worked within city walls. Moreover, the two places where the models of modern policing were "born" (Paris in the 17th century and London in the 19th) were not just cities, but the biggest cities in the world in their respective times. All of this is not mere coincidence, but a testimony to the profound connection between the idea of the police and the social and political nature of a city. Egon Bittner (1990), for example, saw police as what society needed to maintain peace between strangers – a basic condition to ensure that a city exists. There is something here that can help us understand the rise and multiplication of modern public police organizations throughout Western democratic nations.

Indeed, when it comes to explaining the emergence of this specific form of policing and its rapid expansion, it is a common view, as I have said, to use the argument of progress and rationalization: public police was a better, more effective, more professional, less violent, and less unfair solution to security and disorder problems than was anything that had prevailed before it, hence its creation; another popular explanation is the gradual strengthening of the state apparatus (Jobard & De Maillard, 2015). These views also explain why the modern police model was such a success and why it gradually claimed a monopoly over policing functions, at least until the last decade of the 20th century. But they forget a historical fact that stands in complete contradiction to their assertions: that the modern private security industry arose and grew at the same time as the modern public police in the second part of the 19th century. Companies like Pinkerton, Wells, Brinks, and American Express were all established between 1850 and 1860. This means that if the modern police did replace something, it was not its private counterparts.

An alternative explanation could be that what happened in the mid-19th century was a weakening of informal social controls due to industrialization and the movement of people from rural to urban settings, where the mechanisms that allowed smaller communities to produce social control were not as effective (Loubet del Bayle, 2012). Hence, the necessity to mitigate this loss by creating a series of organizations, private and public, that were specifically and formally in charge of maintaining social control. As such, the advent of modern policing was perhaps just the answer to a new social reality: that the population was now living in urban surroundings, where new problems of security and disorder called for new solutions. The urbanization of life is probably one of the strongest explanations behind the rise of the modern police.

The Birth of the Modern Public Police Forces

The central institution of today's policing, the public police, needs a specific focus in this chapter. When we talk about the "birth" of an institution like the police, we should be aware that any answer to this kind of enquiry will inevitably be an oversimplification of reality. The police was produced through a long process, made up of numerous small (and a few bigger) changes throughout time. In other words, the police was not an invention or a discovery, but a progressive and slow social construction, and it is still evolving today. Of course, some moments in history play a more significant role than others, and some are considered so important that they are labeled as turning points: dates where we can clearly see a before and an after, when the social reality is significantly and durably altered. For the

police, there is what was called its "birth," or to be more precise, its "births." Indeed, it is commonly accepted that modern policing has two different origins: 1829's London police and 1667's Paris police.

The *Lieutenance Générale de Paris* was created in 1667 during the reign of Louis XIV. This police, at first directed by Nicolas de la Reynie, and then by the Marquis d'Argenson, could seem highly dissimilar to what we know today as "modern police." Its members did not wear uniforms and did not patrol the streets, and even if one of its official goals was to maintain order and enforce the law, its real objective was to keep a close eye on the population in order to prevent any questioning of the royal power. The Paris police was famous for having a large network of informants, using surveillance and denunciation to achieve its goal of defending the governing power. It was a police for the protection of the king, and was not particularly devoted to the well-being of the population; in many respects, of course, it was not a democratic policing organization. Nonetheless, this police set up a new model for policing that would fuel modern policing and that still has echoes in contemporary police forces (Brodeur, 1983).

Created at the instigation of Sir Robert Peel in 1829, the London police, on the other hand, seems to have shared a lot of characteristics with contemporary police – at least with its most visible part. Dressed in blue (to express their difference from the army, whose uniform was red), unarmed, and receiving a salary from the government, the "bobbies" were subjected to a list of principles, written by their first directors, Rowan and Mayne (Emsley, 1996). What stands out in those principles is their attachment to democratic values, through what was termed "policing by consent." Indeed, not only was Peel's project made, above all else, to serve the population, but this was thought to be possible only with the cooperation of the public. Order could only be achieved if the public was co-producing security alongside the police: a way of seeing things that in some ways echoes the community policing principles of 150 years later. Also, Peel's police put the prevention of crime, and not its repression, at the center of its mission – something that was seen as a crucial innovation in policing (Reith, 1956). The London model was quickly exported to other parts of the United Kingdom, and then spread to other Anglo-Saxon countries, such as Canada, Australia, and the United States. Soon, most of the cities in the Western world were adopting this new institution as their central way of formally dealing with the problems of disorder and crime (Jobard & De Maillard, 2015).

The differences between the Paris and the London police are striking. One was dedicated to preserving the monarch, the other to serving the population; one was invisible, wearing no distinctive outward signs, the other utterly recognizable, with its blue uniform and its street presence; one was politically driven, the other was supposed to obey the law and not the government; one was of a Hobbesian nature, the other reflected the ideals of John Locke. They did not use the same tactics or tools; they did not have the same goals; they did not have the same values or principles. They did, however, share a few common traits, outside of their public-funded nature: they both worked to preserve a specific order, and in so doing, both resorted to actions that were usually forbidden to the rest of the population. In this sense, they were both legitimate policing agents (Brodeur, 2010).

Because Peel's police look far more similar to what is known today as the public police in democratic countries, we should not be surprised that police historians highlight 1829 as the birth date of modern policing, forgetting all about 1667, or at best leaving the Paris police to its sole nondemocratic dimension (and thus not in line with the ideals of modernity and progress). The ideal of "policing by consent" was indeed often emphasized as the real innovation of Peel's police, and is why the New Police was the real first modern police

force (Reith, 1956; Robinson, 1979). But this stance reveals a deep misunderstanding by these historians of what modern policing is. Indeed – and Brodeur (1983) brilliantly showed this when elaborating the notions of high and low policing – every modern police organization possesses components of both the London model (epitomized by low policing) and the Paris model (epitomized by high policing). Some policing agencies resemble more the Marquis d'Argenson's ideal (first and foremost the intelligence agencies, like the FBI, MI6, and the French DST), others the first Metropolitan Police, but most are designed on both premises: one being to serve and protect the citizens, the other to preserve the state's interests.

Two main reflections should be made from this brief historical presentation. First, that the shape of policing and police organization is strongly dependent on the socioeconomic and political context in which it arose. Between 1667 and 1829, there lay not only the span of 150 years (which were marked by the Enlightenment, a profound modification of values and cultures in our societies), but also the significant distance of the sea. Both intervals play a role in explaining the differences described between the two police forces. The 18th century was marked by a major change in the way society and humanity were thought about – the Enlightenment – which carried, among other crucial elements that deeply transformed Western societies, a humanistic philosophy that put men and women at the center of any political project. In some ways, looking at the Paris and London police, it is possible to attribute their differences partly to the Enlightenment philosophers, Peel's proposition having decided that the police was to serve first and foremost the citizens, and d'Argenson's that it was to work against the population. Questions of territory also played a role in shaping the differences between Paris and London, the latter having been partly set up in opposition to the former (Emsley, 1996; Rawlings, 2003). Indeed, if Britain, like France, was also a monarchy in the 17th century, its bourgeoisie was much stronger, and in order to keep its advantages, it prevented the rise of the "king's police" that prevailed in the French context. It is this same bourgeoisie that for a long time resisted the creation of a public police, until the social and political context – where urban riots were lethally repressed by the army – forced the establishment of Peel's police (Emsley, 1996).

Second, one should never forget that the police is always a political actor, as well as a political agent (L'Heuillet, 2001). This is something that is usually more apparent in specific contexts, such as surveillance-linked scandals (e.g., the NSA and the Snowden case), or when mass demonstrations and social mobilizations occur (Waddington, 2007). The low and high dimensions of policing work may be more or less prominent – and, of course, more or less visible – but nonetheless they are always present. When we talk about the "political dimension" of the police, it should be noted that this doesn't simply involve the fact that most police forces "naturally" invest some of their resources into the surveillance, control, and repression of political dissent, but also – and more importantly – includes the day-to-day targeting of specific groups in the population, from the "dangerous classes" of the 19th century to the racial and social profiling that is a crucial and unresolved problem in policing today. In fact, even the "policing by consent" principle, so dear to Rowan and Mayne, was more a myth than a real embodiment in the day-to-day job of the London police (Mandeville, 1988).

From the beginning, the London police had specific "targets" in the city for reinforcing and defending an order, including specific classes of the population – especially the ones that were not working and, as such, were not participating in the budding capitalist society. Rawlings, for example, underlines the fact that "[w]orking people, it was believed, had to be closely regulated otherwise they would drift into idleness and immorality, and from there

to poverty, vagrancy and crime" (2002:57). In Canada, the 1849 manual of the Montreal police specifically defined a person threatening order as anybody who was able to work but refused or neglected to do so. This is a very important feature of the modern police, which, despite opposite claims, is a police of class (Jobard & De Maillard, 2015). One of its goals is to reproduce order, and as such to preserve existing power relations (Ericson, 1992; Brodeur, 2010). In this sense, the police is intrinsically a conservative institution.

Whatever the "true" birth date of the modern police, what is certain is that the second part of the 19th century and the first part of the 20th saw this new way of governing policing develop and grow. As its professionalization and number increased, the police was increasingly seen as the only purveyor of policing, to the point where it could claim to have the monopoly over this function in society. Even if the reality of this assertion can be (and has been) called into question, there was a moment in history where the public police was so dominant in the field of policing that it could at least be made.

Policing Today: The Rise of Private Policing

To end this overview of the history of policing – or more precisely, of the questions raised by the history of policing – I would like to talk about what has happened in the last several decades, mostly about one of the major recent change in policing: the "rebirth" of private policing (Johnston, 1992). It is now common knowledge that since the 1970s, there has been an almost constant growth in the volume and importance of the private security industry (Jones & Newburn, 2006). Recent years have seen the growing implication of private actors in public security, be it through contracting out, privatization, or the multiplication of public–private partnerships (Ayling et al., 2009). The growing importance of private actors in the production, distribution, and control of security is identified as one of the major disruptions in the way policing is achieved, especially because it challenged the (claim for) monopoly by the police on policing affairs. It is not the only one, however, as many other transformations, all more or less connected to the rise in power of the neoliberal ideology, have also had an effect: the development of new models of policing (community policing, problem-solving policing, and, later, intelligence-led policing; Tilley, 2008), the contamination of market-driven logics in public affairs (Loader, 1999; Zedner, 2006b), the rise of the culture of control (Garland, 2001), the coming of age of the Internet and the cyberworld, the establishment of the risk society (Ericson & Haggerty, 1997), and so on.

The impact of these trends on traditional policing has been the subject of numerous publications and analyses, and is still debated today within the academic world (see, e.g., Wood & Dupont, 2006). Concerning the specific topic of this chapter – the historical evolution of policing – and specifically (but not exclusively) in regard to the growing importance of private actors, there seem to be two opposed views. On the one hand, there are those who believe that what is happening today is of an unprecedented nature: that the reorganization of policing is giving birth to something new. Shearing and his colleagues, for example, proposed a new model of governance – the nodal governance – to encapsulate the contemporary organization of policing in our societies (Johnston & Shearing, 2003). On the other hand, some academics think that the advocated rupture is overstated, and that in fact there is more continuity than one might believe; if there is some real change in the way policing is achieved and organized, it is not of such a profound nature as to give birth to something completely new (Jones & Newburn, 1998).

Critical of both views, Lucia Zedner (2006a) attempts to present a third way. While each party has interesting arguments to present, she believes that both are wrong. For her, there is indeed a real change that began in the 1970s and has accelerated since the 1990s, but this change has not brought something new: on the contrary, what we are seeing today is a return to what prevailed in the 17th and 18th centuries. Zedner's argument is that the forms of policing that prevailed prior to the institutionalization of public police are gradually coming back: the security market is reminiscent of the thief-takers, rational-choice theory has echoes in classical economics, the trend toward the responsibilization of individuals in contemporary society is similar to the spirit of self-help that prevailed in the 17th and 18th centuries, and so on.

Although the arguments Zedner presents are quite appealing, and even convincing, in my opinion they fail to acknowledge one important historical point, which has already been mentioned: the fact that private policing emerged and developed as an industry in parallel to the public police institution. Further, one of the reasons behind the rise of the modern police is the weakening of traditional tools of informal social control (in particular, due to the rural exodus and the urbanization of social life), which called for the setting up of formal organizations that could fill the void left by the breakdown of the traditional community. The mid-19th century is not just the moment when the modern police was created and adopted by society, but is also a time when all sorts of formal social-control institutions – private and public – began to multiply. For a long period thereafter – at least until the Second World War – private policing (and its industry) was significantly present in the day-to-day life of citizens, at least in their workplace.

This means that if we indeed see a general disengagement of the state from social affairs today, and this disengagement results, in part, in the multiplication of private initiatives in policing – something that recalls a time when policing was more fragmented and privately driven – then the historical parallel should probably be drawn with the second half of the 19th century, and not the 17th and 18th. Moreover, there is nothing that should make us believe that we are going to have more informal techniques to react to social deviance in the future, as was the case during this time period. It seems, on the contrary, that the way contemporary society is structured will lead not to a reinforcement of past mechanisms of control, but instead to the multiplication of actors and organizations that formally deal with social control but stand – partially or completely – outside the scope of the state. Whatever the future holds for policing, Zedner's reflections highlight one simple truth: the importance of knowing history in order to understand the present.

Conclusion

This chapter presented some of the main issues related to the study of the history of policing, and what can we learn from this history in order to better understand the police today. Among the different elements that were discussed, two of them are, in my view, particularly important. First, the fact that every modern police organization is built on a mix of the Paris and the London models. If low and high policing are separate paradigms, they nonetheless coexist in each modern police force (Brodeur, 1983). This political dimension of policing is a complex one, especially since the process of professionalization of the modern police was achieved in part by claiming its independence from the political sphere (Emsley, 1996). Second, when thinking about police and policing, it should never be forgotten that the public police as a monopolistic producer of policing is a myth, or at least a very short

moment of history (Zedner, 2006a). Policing and security have always been produced by a myriad of actors, and the public police is but one of them – albeit one that reached a central and very dominant position in the field in the mid-20th century. But such a position is today threaten by the progressive withdrawal of the state and, more generally, by the profound transformations of postmodernity (Bauman, 2000). If the form taken by the New Police was shaped by the political, economical, and social context of its time, then the deep changes that are occurring today will inevitably have an impact on how policing is produced and delivered.

Studying the history of policing is a necessary task, not only because it could help us avoid repeating errors from the past, but also because it sheds light on the institutions of the present and gives us hints on how they could be shaped in the future. Regarding the specific question of what comes next, some predict the end of the public police, as policing is transformed into a pure consumer good, driven only by market forces. Others point to the growing responsibilization of people in the penal system (O'Malley, 2010), as well as the general individualization of society (Bauman, 2000). Whatever the future might hold, it seems clear that, as Zedner (2006a) has argued, the public police will be increasingly forced to share its responsibilities, and the multiplication of sources of order will be the norm – something that will partly recall what occurred in the past. That is why researchers in the field of policing should not hesitate to resort to history if they want to understand what's happening now or predict what could happen in the future.

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16

Police Technology

James J. Willis

Recent cases of black Americans being killed by police, or while in police custody, have led to the greatest policing crisis in the United States since the riots and protests of the 1960s. During that tumultuous decade, President Lyndon Johnson created his Commission on Law Enforcement and Administration of Justice. In its final report, the Commission devoted an entire chapter to technology, lamenting the regressive nature of the policing industry: "The police, with crime laboratories and radio networks, made early use of technology, but most police departments could have been equipped 30 or 40 years ago as well as they are today" (President's Commission on Law Enforcement and Administration of Justice, 1967:245). Fifty years later, President Obama's Task Force on 21st Century Policing included technology as one of its six pillars of police reform. Unlike its predecessor, the taskforce did not express reservations about the lack of technological innovation in American policing, preferring to highlight the need for policy to guide technology's adoption and implementation (President's Task Force on 21st Century Policing, 2015:31).

The reason for this difference is clear: in the intervening decades, American urban police departments (the focus of this essay) have adopted a dizzying array of technologies related to their core functions. These include technologies for surveillance and crime detection (closed-circuit television, night-vision goggles, drones, body-worn cameras), suspect identification (automated fingerprinting, DNA testing, facial-recognition software), the collection, storage, and analysis of crime-related information (record-management systems, mobile data terminals, computer databases – including those linked to license-plate readers (LPRs), crime analysis, and predictive policing), management and administration (centralized control centers, Compstat, automatic vehicle-location systems), communication (two-way radios, cell phones, e-mail), interventions (robots, body armor, conducted-energy devices), and mobility (helicopters, speed boats, armored vehicles) (Nogala, 1995:199). A virtue of Nogala's classification of technologies based on the functions of the police is its simplicity, but this is not to suggest there are not alternative schemes (e.g., Manning, 2014; Police Executive Research Forum, 2009), or that some technologies could not fall under more than one category.

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Given the many different types of technology and the different functions they serve, it is risky to generalize about their effects. I focus my discussion on information technology (IT), including predictive policing and LPRs, and on surveillance devices (body-worn cameras), because these provide insights into technology's effects on some of the areas of greatest concern to the public and to police themselves: efficiency, effectiveness, and legitimacy. There are additional reasons for selecting these technologies. The collection and analysis of information is central to police work, and so changes to information technologies have the potential to transform what the police do and how they do it, and to influence public perceptions of the appropriate use of police authority. Moreover, the rapid emergence of body-worn cameras provides a timely occasion to illustrate some of the opportunities and challenges that invariably accompany the implementation of new technologies, and a means to explore the complex nature of technology's relationship to police organization structure, behavior, and change.

This chapter begins with some definitions of social control and technology, before assessing the implications of information technologies and body-worn cameras for key performance outcomes. It then uses the case of body-worn cameras to illustrate technology's uneven effects on core organizational structures and practices, and explores some of the theoretical explanations for technology's complex relationship to organizational change. It concludes with some brief suggestions for future research.

Social Control and Police Technology

The concept of social control has various meanings in the social sciences. In its earliest manifestation at the end of the 19th century, scholars associated social control with social order, or the conditions that give rise to the organization of social life in increasingly complex, differentiated, and rapidly changing societies (Meier, 1982:25). These studies focused on the social aspects of social control, such as the contribution of primary groups to shared values, or the development of the self as part of the socialization process (Garland, 1995). Later conceptualizations placed greater emphasis on the control aspects, particularly the reaction of state institutions and mechanisms (such as the law and those responsible for its enforcement) to deviance, and how this contributed to the state's capacity to regulate itself "according to desired principles and values" (Janowitz, 1975:82). Criminologists have tended to think of social control in this narrower – although not uncritical – sense. For some, the law and its application is little more than an instrument of oppression, while for others the criminal justice system is essential to promoting social cooperation in complex societies. In this chapter, we define social control as the means that police agencies and their personnel apply to "the different aspects of norms and rule enforcement," including the prevention and discovery of criminal violations and the arrest of violators (Byrne & Marx, 2011:19).

Within this context, technology is central to social control. Indeed, technology can be considered a "power-amplifier," as "its use provides the means for certain types of action and action-results, which would not be achieved or only with a much greater effort without it" (Nogala, 1995:193). Like "social control," the term "technology" is used widely in the social sciences and has a number of different meanings. The most constrained definition considers technology as an object with certain physical properties (e.g., hardware or software), but a more expansive one (and the one used here) views it as a set of "techniques" or way of doing things applied to "some kind of 'raw material,'" which is then transformed into a predetermined product (Perrow, 1970:75, quotations in original). In the domain of

policing, people make up the raw material "to which technology is applied to produce a service or product" (Mastrofski & Ritti, 2000:185). Mobile data terminals are a technology, as is community policing. This broader definition of technology as a way for accomplishing a desired objective opens up inquiry by capturing the behavioral means (e.g., skills and knowledge) that shape how technology is used, the influence of larger social or organizational factors on technology's adoption and implementation, and the interpretive frameworks that people use to make sense of a technology's use and its effects.

The Effects of Information and Surveillance Technologies on Police Performance

While the capacity to use force lies at the core of the police role (Bittner, 1970), so too does the "production and processing of information" (Reiss, 1992:82). In order to carry out their control functions, police rely on information to identify where crime and social disorder is occurring, to understand who or what the contributors might be, to select appropriate responses, and to evaluate what does or does not work. Information is also used to sort people and events into official categories, which are then shared with external agencies, such as insurance companies and financial institutions, for the purpose of managing and detecting risks (Ericson & Haggerty, 1997). To these ends, police have adopted a wide range of information technologies over the last few decades.

Records-management systems are the "informational heart" of any police agency's operations (Dunworth, 2005:13), serving to link together many different data types, including crime and arrest records, field information reports, evidence and property information, and information from computer-aided dispatch. This information also provides the raw material for sophisticated forms of crime analysis, such as crime mapping and predictive policing. Some see the latter as an extension of data-based analytics, namely the capacity not just to analyze crime in "real time" but also to predict potential criminal activity in the future (Mastrofski & Willis, 2010:92). Mobile data terminals in patrol cars and cell-phone applications give officers ready access to this material. Moreover, access to numerous state and federal databases (e.g., the Department of Motor Vehicles (DMV), the National Crime Information Center (NCIC), the National Data Exchange (N-DEx)) and social-media sites (e.g., Facebook, Twitter, Instagram) has rapidly increased the amount of information that police can mine in order to inform their decision-making. In addition to predictive policing, one of the most recent developments in this area has been the implementation of LPRs. While these serve an important surveillance function, it is more accurate to view them as a form of IT, as the data they collect can be stored, shared, analyzed, searched, and retrieved (Byrne & Marx, 2011:19–20).

In the early 1980s, mainframe computers were fairly widespread among larger police agencies (Mastrofski & Willis, 2010:86), and over the past few decades IT in the form of databases and data systems (including their hardware and software) has advanced tremendously. For example, the adoption of personal computers for use in conveying information to a central information system has grown rapidly. In 2013, more than three-quarters of police departments serving 10 000 or more residents used electronic methods to transmit incident reports. In comparison, in 2007, less than one-third of departments, no matter the size of population they served, transmitted records electronically from the field (Reaves, 2015:6). In addition, the types of computerized information available to officers in the field have increased. In 2013, officers in about half of all local police agencies had access to

information about prior calls for service at an address and criminal histories, up from a third of all departments in 2007. Many police departments also use crime analysis to detect crime patterns and to allocate resources. A 2008 study of 600 randomly selected police agencies found that only 11% reported doing no crime analysis (Taylor & Boba, 2011). While crime analysis is not yet fully integrated into patrol officers' daily routines, it has become institutionalized as integral to police operations (Boba, 2017).

The capacity of police agencies to collect information through LPRs has also jumped. According to a recent report, as of mid-2014, close to 60% of police agencies in the United States with 100 or more officers used LPRs, a threefold increase since the Law Enforcement Management and Administrative Survey (LEMAS) asked about this technology in 2007 (Lum et al., 2016a:4). Predictive policing is not currently measured by LEMAS, so it is harder to know how quickly this innovation has spread across the US policing landscape since it was named one of TIME Magazine's 50 best inventions of 2011. However, a 2014 survey report suggests that it is growing in popularity: while only 38% of 200 responding police agencies reported they were currently using predictive policing, 70% anticipated implementing or increasing their use of this approach within the next 2–5 years (Police Executive Research Forum, 2014:50).

Interest in new surveillance technologies has also grown rapidly. Following the publication of the President's Task Force Report in May 2015, President Obama, the White House, Congress, and the Department of Justice enthusiastically endorsed body-worn cameras, providing nearly $40 million in federal funds for their widespread implementation (White & Coldren, 2017). According to a 2016 survey of 70 police agencies conducted by the Major Cities Chiefs Association and Major County Sheriffs' Association, approximately half of the agencies surveyed had started or completed pilot body-worn camera programs, and just 5% reported that they did not plan on implementing body cameras or were not going to do so after pilot completion (Maciag, 2016).

Given these developments in information and surveillance technologies and their potential to improve policing, let us look at some of their consequences for three key performance outcomes: efficiency, effectiveness, and legitimacy. It is worth noting at the outset that there are relatively few scientific studies on technology's impacts on policing, and that these impacts vary by "type of police organization and system" (Mastrofski & Willis, 2010:87; Police Executive Research Forum, 2009). Nonetheless, it is possible to glean some useful insights from the small but significant body of available research.

Efficiency

Efficiency can be defined as "the ratio of the amount of input (usually monetary expenditures or amount of employee time) to the amount of product created by that input" (Hatry, 2006:7). Applying this to policing, it seems commonsensical that increasing the quantity and speed with which information can be entered, processed, and retrieved will produce major efficiency gains in time and labor, without reductions to service quality (Flanigin, 2002:86; Nunn, 2001:222). Indeed, when asked to assess the impacts of new technologies, police officers often identify improvements in efficiency as a major boon of IT implementation (Chan et al., 2001:107–108; Koper et al., 2015). IT enables officers to run criminal-history checks more quickly, and criminal investigators to find all the files linked to a particular case in one convenient electronic location. Moreover, there is research evidence to support these impressions: Colton (1980) discovered that computer-aided dispatch

systems can reduce police response times, while Groff & McEwen (2008) found that IT can enhance reporting speed and accuracy, as well as facilitate officers' ability to identify suspects, vehicles, or places of interest.

Yet, studies also indicate a more complex relationship between technology and efficiency. Nunn's (2001) examination of the extent to which departments with higher levels of computerization were more efficient than those with medium or low levels produced mixed and ambiguous results. Higher levels of computerization resulted in higher expenditures (including per capita police wages), fewer sworn officers per capita, and a larger proportion of employees in technical positions. Some possible explanations for these effects were the increased costs of purchasing equipment and software and the higher salaries demanded by skilled technicians. The replacement of sworn officers by higher levels of computerization might suggest that IT can produce efficiency gains, as fewer officers deliver the same services. Alternatively, it may be that service is not enhanced in high-tech departments, which are simply replacing sworn officers with technical personnel (although Nunn concluded the former explanation was more likely) (2001:231). This study also helps illustrate a broader theme: the challenge of measuring the costs and benefits of IT, especially when this technology is integrated into a wide variety of administrative and operative tasks.

As for LPRs, their ability to scan hundreds of license plates and compare them instantly to a database of stolen cars or missing persons is obviously more efficient than officers conducting a manual check. However, their cost is significant (as much as $20 000 per unit), raising questions about what savings they provide (Lum et al., 2016a). Similarly, predictive policing and the implementation of body-worn cameras can require significant investment by police departments. The former can require agencies to outsource their crime data to analytics and technology companies that use sophisticated quantitative methods, including risk terrain analysis and machine-learning or artificial-intelligence algorithms, which can forecast where crime is likely to occur and identify any likely perpetrators and victims (Brayne et al., 2015). In the case of body-worn cameras, aside from the cost of the individual units (which range from about $500 to $1000), contracts for managing and storing video footage represent a major financial commitment over many years (White, 2014). There is little research on whether these new technologies make policing more efficient, although some researchers are currently studying whether body-worn cameras result in savings to case processing, and whether LPRs are cost-efficient for patrol and criminal investigations (Lum et al., 2015, 2016a).

Effectiveness

While efficiency is an important performance measure, much of the interest in assessing IT focuses on whether it is effective, especially when it comes to reducing crime. Effectiveness is defined as "the extent to which an objective is achieved, regardless of cost or other factors" (Mastrofski, 2003:46). Again, whether different types of IT (e.g., crime analysis, crime mapping) reduce crime will depend on "how officers, civilians, and analysts use technology to achieve outcomes" (Lum et al., 2016b:2). Thus, the effectiveness of technology is strongly influenced by the larger organizational context within which police work, including strategic decision-making, leadership, resources, and culture.

Some large-N research designs involving broad assessments of technology's effectiveness have yielded contradictory findings. For instance, an analysis of hundreds of millions of grant dollars distributed through the Office of Community Oriented Policing Services (COPS)

during the 1990s, many of which were used by police agencies to acquire new technologies, suggested technology did not help reduce crime (Zhao & Thurman, 2001). However, a follow-up study by the Government Accounting Office concluded that every $1 spent on COPS technology grants (for equipment and the hiring of civilians) contributed to a reduction in 17 index crimes per 100 000 people (Government Accounting Office, 2005:84).

Case studies have also produced mixed findings regarding the effectiveness of technology (Police Executive Research Forum, 2009). In a study of the implementation of new IT in a large police agency in Australia, Chan et al. (2001) found that the installation of mobile data terminals in patrol cars doubled the number of warrants executed over 2 years. Similar technology implemented in a much smaller US police agency led patrol officers to behave more proactively by conducting more traffic stops and running license plates at certain locations in order to identify suspects with criminal histories or outstanding warrants (Meehan, 1998:231–235). Other research comparing two cities that used mobile data terminals with one city that did not suggested that these terminals could improve stolen motor vehicle recoveries (Nunn, 1994). However, a study examining a service for improving the transmission of wireless data to police officers in the field found it did very little to enhance problem-oriented policing (Nunn & Quinet, 2002).

As for LPRs, there are only a few studies on their effectiveness in reducing crime, and these are inconclusive (Lum et al., 2016a). Much of the work in this area uses randomized control trials to better isolate the effects of technology on crime outcomes from confounding factors. One study tested the effects of LPR randomly assigned to "hot spots" of automobile-related crimes in two jurisdictions and found that they "did not seem to generate either a general or offense-specific deterrent effect (Lum et al., 2011:321). Another study compared LPR use and non-use by a four-officer team assigned to detecting auto theft on "hot" routes. It found that officers were more likely to detect and recover stolen vehicles when using LPR (Koper et al., 2013).

On balance, research on the effectiveness of body-worn cameras in relation to various outcomes, specifically police use-of-force and citizen complaints, is more positive than that on LPR. In one of the first randomized control trials, conducted in Rialto, California, use-of-force incidents were twice as likely under control conditions compared to when officers wore a camera (Ariel et al., 2015). There was also a significant reduction in complaints against officers with body-worn cameras, from 24 filed in the 12-month period before the trial to only 3 during the trial period (2015:524). Similar results using pre–post tests and quasi-experimental designs were reported in Phoenix and Mesa, Arizona (Katz et al., 2015; Miller et al., 2014). More recently, a large-scale randomized control trial involving police agencies in the United Kingdom and United States failed to reproduce these positive results, but this can be attributed to the failure of officers to activate their cameras when required (Ariel et al., 2016; White & Coldren, 2017).

Finally, scientific evaluations of predictive policing's effectiveness are in their infancy and do not provide a basis for drawing firm conclusions. Those studies that are available show mixed support for this technology's capacity to reduce crime. A quasi-experimental evaluation of whether police intervention in Chicago, Illinois could help reduce the risk of gun violence among high-risk populations showed poor results (Saunders et al., 2016). However, in a study using two randomized control trials in England and the United States, a predictive policing algorithm outperformed hot-spots maps produced by crime analysts. The algorithm predicted 1.4–2.2 times as much crime as analysts using criminal intelligence and hot-spots mapping techniques, and led to an average 7.4% crime reduction as a function of patrol time (Mohler et al., 2015:1400).

Legitimacy

The influence of technology on police legitimacy has received less attention than the other two dimensions. This is surprising, given the allure of technological innovation as a symbol of progress and a harbinger of science – one that can influence the "judgments that ordinary citizens make about the rightfulness of the police conduct and the organizations that employ and supervise them" (Skogan & Frydl, 2004:291). Police agencies and their officers can gain legitimacy by adopting new technologies that help them appear progressive (Manning, 2008). To the extent that these technologies are also effective in reducing crime, legitimacy may be further enhanced, but the mere appearance of implementing the latest technologies can encourage local residents and civic leaders to see the police in a favorable light. In turn, research suggests that people who see the police as legitimate are more likely to cooperate with them and comply with officers' requests (Tyler, 2004). This can help explain why police agencies are often keen to adopt new technologies even when there is little evidence that they actually work. For example, a case study of the implementation of Compstat, a program combining cutting-edge crime mapping and analysis with strategic management principles, revealed that police agencies were little concerned with learning its crime-control benefits before its adoption (Willis et al., 2007). It also revealed that departments implemented those Compstat elements that were most likely to confer legitimacy, and implemented them in ways that would minimize disruption to existing organizational routines.

Technology can also bestow legitimacy on police departments by promising greater transparency. In Chan et al.'s (2001:108) study of IT in Queensland, Australia, several police focus groups mentioned that IT had made police procedures more transparent and had allowed victims and complainants to gain faster feedback on their case's status. Much of the appeal of body-worn cameras lies in their ability to provide a "real-time" and objective video record of what transpires between an officer and a citizen – unlike a written report, which depends on an officer's recollection of events and can thus be selective and susceptible to misrepresentation and bias. This promise of greater transparency helps explain why civilians enthusiastically endorse their implementation in police agencies. In a recent survey conducted by the Pew Foundation, 80% of black Americans and a larger proportion of white Americans approved of the use of body-worn cameras to record encounters (Morin & Stepler, 2016). Proponents speculate that the use of body-worn cameras can contribute to legitimacy by helping demonstrate that a police agency has nothing to hide from its constituents, and this transparency can help assure civilians that the police are exercising their authority appropriately (White, 2014). Body-worn cameras might also encourage patrol officers to treat citizens in ways that are perceived as fair and just, thereby increasing the amount of procedural justice in street-level encounters. Research suggests higher levels of procedural justice can also increase police legitimacy (Tyler, 2004).

At the same time, it is important to recognize that technology can undermine police legitimacy. One can imagine video footage depicting officer misconduct that does not result in the officer being reprimanded or punished undermining trust and confidence in the police (Koen & Willis, 2017). Similarly, because of the correlation between race, location, and socioeconomic status, predictive policing has the potential to exacerbate already fraught relations between the police and minorities (Shapiro, 2017:459).

There are few empirical studies on the consequences of new police technologies for legitimacy, but a recent study on LPRs suggests that it depends on how the technology is used. According to a community survey in Fairfax County, Virginia, civilians are much more

comfortable with some LPR functions than others, depending in part on their purpose and on whether or not the data captured are stored. For instance, approximately three-quarters of respondents supported using LPR data to immediately check outstanding warrants, but only about half supported using saved LPR data to investigate individuals delinquent on child-support payments (Merola et al., 2014:45–46).

The Effects of Technology on Police Organization Structures and Practices

Understanding technology's effects on outcomes is important, but so is learning about its effects on police organization structure and practices. Organizational and technological change is seldom predictable (Chan, 2003, 2007; Fernandez & Rainey, 2006; March, 1981; Willis et al., 2007), and so it is important to identify how technological advances may or may not be reshaping police reform efforts.

Technology is related to organizational structures on at least two levels: the systems of positions, policies, programs, and procedures for coordinating and controlling the organization's work (structure), and what individual workers do (practice) (Klein & Ritti, 1984:101). Empirical studies suggest that different types of technology give rise to different structures and practices (Woodward, 1965). For example, an auto assembly line requires different supervisory structures, policies or regulations, and worker skills than do research laboratories in a pharmaceutical company.

When it comes to assessing the effects of technological innovations on organizational change, those who assume that organizations are designed to accomplish clearly defined goals tend to find that technologies bring about changes to the structures, practices, and culture of policing (Mastrofski & Willis, 2010:86). Thus, some see police departments as being profoundly changed by external demands for risk information in the new risk society – a change facilitated by rapid developments in IT technology (Ericson & Haggerty, 1997). According to these accounts, the purpose of foot patrol is no longer to establish order through the nightstick and face-to-face encounters, but rather to use a keyboard to document events, people, and situations through highly structured reporting forms (Ericson & Haggerty, 1997:395). This information then becomes the means of deciding how to mobilize, and who should be mobilized (e.g., local residents and business owners).

In contrast, change skeptics observe that police agencies, like other human-service organizations, do not operate like machines, but are powerfully shaped by the cultural outlooks of their employees and external constituents and the complex nature of the work they perform (Ritti & Funkhauser, 1987). For Peter Manning (2014), the role of IT as a catalyst for change tends to be of secondary importance to the obstacles that lie in the social organization and understanding of everyday police work. According to Manning, technology is significantly constrained by a reactive policing model in which officer decision-making is largely determined by the specific circumstances surrounding an individual incident in the present, rather than by crime data showing trends in the future. Policing is thus a craft dependent on intuition, non-standardized responses, and local knowledge of people and places. rather than a generalized set of technologically driven strategies based on information on crime trends and patterns (2014:2511). While Manning has at times been more optimistic about technology's future prospects, he is generally skeptical in his conclusions. In his book *Policing Contingencies*, he writes, "There is little evidence thirty years of funding technological innovations has produced much change in police practice or effectiveness" (2003:136).

Based on these different perspectives, it is difficult to predict with confidence how a technology is going to change a police organization. Combining these viewpoints, we might anticipate that new technologies will shape some aspects of the organization and not others. A recent case study of the implementation of body-worn cameras in a small police agency provides support for this perspective. Using in-depth interviews, a survey, and ridealong observations, researchers evaluated to what extent body-worn cameras were influencing police organizational structures and practices in six key areas: reporting, discretion, training, police–citizen interactions, supervision, and civilian complaints (Koen & Willis, 2017b). They found that cameras had enhanced those features of the police organization that had clearly defined goals and well-understood procedures for their accomplishment. Thus, when it came to writing reports, police officers turned to camera footage to help them recall the details of particularly "complex" cases – especially for those reports (e.g., use-of-force) that were likely to be scrutinized by others. Similarly, camera footage was used in the pre-complaint process to help civilians consider whether or not they wanted to file a formal complaint (Koen et al., 2018). On the other hand, body-worn cameras did little to change those features of police work that were less well understood, that had multiple or conflicting goals, or that had been subject to little empirical validation. Thus, footage was not integrated into department training to encourage officers to reflect critically on their performance, nor was it used by supervisors to improve the quality of street-level decision-making among officers. Similar results have been found for IT (Chan et al., 2001), Compstat (Willis et al., 2007), crime analysis (Sanders & Condon, 2017), and other analytic, surveillance, and forensic technologies (Koper et al., 2015). All these studies show that new technological innovations led to changes in some structures and practices but not in others. Generally, they were most successful in strengthening accountability through the police organizational hierarchy and in reinforcing the traditional police response of reacting to crime. The following statement by Chan et al. (2001:116) captures the overall thrust of these findings: "Our conclusion, therefore, is that information technology has transformed the structural conditions of policing in the QPS (Queensland Police Service) in some important ways, while leaving many cultural assumptions and traditional policing practices unchallenged."

Theories of Technology and Organizational Change

In their attempts to explain the uncertainty of "technologized social control" (Marx & Guzik, 2017:487), scholars have adopted a variety of approaches. Space limitations do not permit me to explore all of them here. My purpose is to highlight some of the major theories on technology in organizations, some of which have been alluded to already, including the relatively recent emergence of studies on "sociomateriality." I draw here on the conceptual scheme developed by Orlikowski & Scott (2008).

The technical/rational approach, one that seems to resonate most powerfully with police practitioners and change agents, is consistent with the Weberian or rational model of organizations that underlies most contemporary reform attempts (Mastrofski et al., 1987). New technologies are seen as self-contained entities, standing apart from those who use them, that can be readily adapted by an organization to changes in its environment. Moreover, their link to organizations and people through general cause-and-effect relationships is considered relatively unproblematic and unidirectional (Manning, 2014; Orlikowski & Scott 2008:439). When technologies are oriented toward clear organizational goals, consistent

with existing structures, supported with training, and integrated into policies and procedures, the assumption is that desirable outcomes can be achieved efficiently and effectively (Scott, 1987:31). Where objectives are less tangible and the means–ends relationships for accomplishing them are not well developed, an organization will be less likely to pursue them, because of the higher risk of failure (Mastrofski, 1998:167).

We can distinguish technical/rational explanations from other approaches that place greater emphasis on *culture*, or the meanings people attribute to new technologies within a given organizational or situational context. These interpretations shape how people think about and use technology and to what extent technology results in the construction or strengthening of non-existent or weakly developed structures and processes (Orlikowski, 2007). The focus is often on the reciprocal processes between people and technology, which constitute how they make sense of the technology, and how they use it in various circumstances. Rather than viewing technology as an "artifact" or a simple material device, they see it as a "practice," because its use "involves a repeatedly experienced, personally ordered and edited version of the technological artifact, being experienced differently by different individuals and differently by the same individuals depending on the time or circumstance" (Orlikowski, 2000:408). Because technologies are influenced by the different structural contexts in which they are implemented, and because they are used in different ways according to the variety of interpretive meanings that actors assign to them, it is unlikely they will work in entirely rational or predictable ways. Some of the theoretical explanations that fall under the umbrella term of "culture" include sense-making (Weick, 1995), technological frames (Orlikowski & Gash, 1994), and institutional theory (Meyer & Rowan, 1997).

This complex relationship between technology, organization, and practice is manifest in the emergence of sociomateriality, another means of understanding technology's effects on organizations, and the object of ongoing debate in management and information sciences concerning its utility as an explanatory framework. One of sociomateriality's major premises is that humans and technology do not have inherent properties, but acquire their properties through mutual and emergent entanglement (Orlikowski, 2010). Applying this concept of relationality between work and technology to policing, one can envision how the implementation of a new records-management system might simultaneously constrain and enable police officers' decision-making in the context of their routine patrol work. The creation of highly structured reporting requirements reduces an officer's agency, but also gives them access to information that helps them be more proactive. While it is little explored by police researchers, sociomateriality's focus on technology's physical properties and how its use intertwines with social relations and practices might reveal new insights for understanding technology and organizational change.

Conclusion

If the past is a reliable predictor of the future, we can anticipate that US police organizations will continue to adopt new technologies, which will provide opportunities to improve the effectiveness, efficiency, and legitimacy of social control. However, it is unlikely that any technology will realize its full potential without careful attention to its effects on existing organizational structures and practices. Studies that evaluate the effects of technological interventions are valuable, but these effects are in large part determined by how police organizations manage their implementation and the reactions of technology users. To more fully capture how change occurs, researchers should consider conducting in-depth site

visits in a substantial number of departments over several years. This would help capture variation in how change occurs and provide a means to better assess how technologies are adapted over time. Researchers should also eschew broad generalizations about technological change and provide more fine-grained assessments of where changes occur and why. Doing so will help with theory development and with more generalizable research on police technology.

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17

Policing Terrorism

Mathieu Deflem and Stephen Chicoine

The 9/11 attacks on the World Trade Center established terrorism as one of the most defining issues of the early 21st century. Scholars of crime and social control have approached relevant aspects of terrorism and counterterrorism accordingly (Deflem, 2015). Recently instituted counterterrorism operations involve a variety of military, political, and security measures, among which the military approach has been prioritized by the War on Terror (Deflem, 2008; Deflem & Chicoine, 2013). In addition to the War on Terror, however, counterterrorism has also involved a much broader range of other political, legal, intelligence, and law-enforcement responses. The unique contribution of police institutions to counterterrorism efforts is the particular focus of this chapter.

The various components and dimensions of the policing of terrorism can be revealed among a number of organizations on the basis of a process of bureaucratization of policing, which brings out both unique objectives of police agencies in their counterterrorism efforts and the means that are utilized in pursuit of those goals (Deflem, 2006, 2010). In this respect, it is important to note that modern police institutions approach terrorism as a crime in a depoliticized manner that is not (necessarily) related to matters of national security. The motives of terrorist conduct are separated from its consequences in terms of criminal activities involving the destruction of property and the taking of human life. As such, the policing of terrorism coexists with other – especially military and political – counterterrorism measures. Oriented toward the fight against terrorism as a crime at both the domestic and the international level, police organizations are driven to employ the most efficient means, irrespective of questions of legitimacy and legality. Of particular interest are predominantly technical methods, such as scientific measures of crime detection, linguistic issues, and technological efforts related to communications devices employed by terrorist groups and individuals. Most notable are enhanced cooperation efforts enabling swift communications among police and related security and safety organizations, both within and across (national) jurisdictions. The institution of these methods has occurred primarily on the basis of informal networks among police agencies, rather than being mandated by law or formal government policies.

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Policing activities related to terrorism have a long history, yet counterterrorism efforts around the world have changed dramatically in the wake of the 9/11 attacks, influenced particularly by a number of US agencies and policies. As a result, police institutions in the United States have had a dominant role in policing terrorism, especially through the efforts of the FBI. The development of international police organizations has further contributed to the policing of global terrorism. Even among nations that are politically at odds, the professional development of police institutions has contributed greatly to inter-agency cooperation, as this chapter will show.

Counterterrorism Policing in the United States

While the 9/11 attacks affected counterterrorism efforts around the world, they had the most dramatic effect on policing practices and organizations in the United States. US law-enforcement agencies have made many changes since 9/11, with a particular focus on fostering cooperation and coordination among relevant agencies, both within the United States and globally. Of the US organizations involved in counterterrorism, none is more important than the Federal Bureau of Investigation (FBI).

The FBI and Counterterrorism

The FBI is the primary investigative arm of the US Department of Justice. It is also the lead investigative agency for acts of terrorism. Specifically, National Security Directive 30, signed by President Ronald Reagan on April 10, 1982, made the FBI the lead agency for terrorism and terrorism-related activities (Deflem, 2010). The FBI is a decentralized organization, with a central headquarters in Washington, DC, 56 field offices located in major cities throughout the United States, and more than 400 resident agencies in smaller cities and towns. At least 165 agents – just over 1% of the FBI's 12 590-strong workforce – are stationed as legal attachés (or legats) overseas in US embassies, giving the agency a presence on every continent.

Throughout its history, the FBI has been involved in activities addressing national and international terrorism. During the 1960s and '70s, it was engaged in activities against anti-war extremist groups, such as the Weather Underground, and domestic reactionary groups, such as the Ku Klux Klan. Federal acts of the 1970s targeted air transportation and hijacking, and further influenced the role of the FBI in counterterrorism efforts, albeit indirectly. The Bureau shifted its efforts from domestic subversive groups to organized crime in the late 1970s, due to criticisms of COINTELPRO. This lasted until the mid-1980s, when an increasing number of American victims of terrorist attacks abroad reestablished terrorism as a major concern. As a result of several high-profile terrorist attacks, both domestic and abroad, the Bureau's counterterrorism activities continued to dramatically increase. In 1994, the FBI established the Counterterrorism Division, and in 1995 President Bill Clinton issued Presidential Directive 39, which declared the FBI the lead investigative agency for domestic and international terrorist attacks involving US citizens. The Anti-Terrorism and Effective Death Penalty Act of 1996 further expanded the authority of the Bureau to investigate the activities of international terrorist groups within the United States, as well as international acts of terrorism (Deflem, 2010).

The 1990s cemented counterterrorism as one of the Bureau's central law-enforcement tasks. However, after the 9/11 attacks, the Attorney General, John Ashcroft, declared the prevention of terrorist attacks its central mission (Deflem & Hauptman, 2013). Agents from other criminal divisions in the FBI were accordingly reassigned to counterterrorism responsibilities. The number of linguists and intelligence analysts employed by the Bureau have since tripled and doubled, respectively. The intelligence capabilities of the Bureau have also been bolstered, primarily through the use of National Security Letters and increased surveillance operations – with all the criticisms they bring in terms of civil rights (Kamali, 2017). In addition, several specialized programs have been incorporated alongside the Counterterrorism Division, including the FBI Terrorism Financing Operations Section, a Weapons of Mass Destruction (WMD) Directorate, and the Terrorist Screening Center, which maintains the US Government's Consolidated Terrorist Watchlist. In addition to internal developments in the FBI, several programs have been developed to foster interagency cooperation, including the Foreign Terrorist Tracking Task Force, which coordinates with the CIA, ICE, and Department of Defense, and the National Counterterrorism Center, which was established in 2004 to integrate terrorism-related intelligence (Deflem, 2010).

Among the investigative counterterrorism tools developed by the FBI, the most important is the joint terrorism task forces (JTTFs). These are intended to be the lead instruments in terrorism investigations, and are composed of agents from a variety of law-enforcement and first-responder organizations at all levels of government. Coordinated through the National Joint Terrorism Task Force, based in Washington, DC, there are over 100 local JTTFs across the United States, 65 of which were created immediately after the 9/11 attacks (Deflem, 2010). The purpose of JTTFs is to investigate terrorist activity by following leads, gathering evidence, collecting intelligence, and making arrests. In addition, they provide security to special events and conduct training.

Other Federal Agencies

The Department of Homeland Security (DHS) was established after the events of 9/11 to coordinate counterterrorism efforts, identify the necessary functions of counterrorism, and establish specialized agencies to fulfill each of those functions. As a result, for example, the administrative and enforcement functions of the former Immigration and Naturalization Service (INS) have been divided among new, more specialized agencies. While the administrative aspects of immigration are now handled by US Citizenship and Immigration Services, the enforcement functions of the former INS are split between Immigration and Customs Enforcement (ICE), which specializes in immigration-related investigations and enforcement, and Customs and Border Protection (CBP), which specializes in border-related security tasks (Deflem, 2010). These new enforcement agencies have expanded organizationally and operationally since their establishment, and play an important role in US counterterrorism.

Increasing the security of immigration into the United States was an essential counterterrorism task in the wake of the 9/11 attacks. All 19 hijackers had entered the country legally (Shutt & Deflem, 2005). In order to continue to allow large numbers of visitors and immigrants into the country, a dedicated agency was required to investigate and intercept potential terrorists. ICE was established to accomplish this task, and it has acted as the primary investigative branch of the DHS ever since. The largest DHS investigative force, ICE is headquartered in Washington, DC, and maintains 27 field offices in the United States, as

well as 50 international offices across 39 nations. ICE agents operate overseas on the basis of the legat model and are involved in partnerships with their local counterparts. ICE has over 17 000 employees operating in various specialized divisions, including investigations, detention and removal, operations, and international affairs, who oversee hundreds of special operations (Deflem & Hauptman, 2013).

Although it has become an essential part of counterterrorism efforts in the United States, ICE has also been involved in enforcement activities addressing a wide range of other criminal behaviors. The agency has been involved in the arrest of gang members, smugglers, child pornographers, and other fugitives and immigration violators (Deflem, 2010). The Enhanced Border Security and Visa Reform Act of 2002 enabled ICE to handle immigration issues through the Student and Exchange Visitor Information System, established in August 2003 (Salter, 2004). The monitoring of foreign students is accomplished with the cooperation of educational institutions, which must comply in order to accept foreign students. In addition to these responsibilities, ICE oversees several inter-agency task forces. The Border Enforcement Security Task Force involves the sharing of information among agencies to address criminal organizations that are potential threats to the security of the borders.

CBP has the primary mission of protecting the United States' borders, with a particular focus on defense against terrorists and their weapons and the security of legitimate trade and travel. In pursuit of this purpose, CBP was created from the US Customs Service, the US Border Patrol, the INS, and the Department of Agriculture's enforcement divisions. Like ICE, CBP contains several specialized divisions, including the Office of Field Operations, the Office of Border Patrol, and the Office of Alien Smuggling, as well as various programs it uses to achieve its goals. The Secure Border Initiative is designed to secure the borders, augment interior enforcement, and promote a temporary worker program. The Secure Fence Act of 2006 serves as the basis of CBP's most famous infrastructure element: the fence along the United States–Mexico border. CBP is focused particularly on the illegal smuggling of goods and humans across the border by potential terrorist and criminal organizations. In terms of illegal immigration, interior enforcement efforts have targeted those employing illegal aliens, while the temporary-worker program attempts to reduce illegal immigration and gain greater control over the border. For non-Mexican illegal aliens, the traditional practice of "catch and release," wherein those arrested at the border were granted parole until their immigration hearing, has been replaced with temporary detention.

The Container Security Initiative (CSI) was established shortly after the 9/11 attacks to ensure the security of containers entering US ports, as a matter of special concern. Containers at foreign ports must be identified and inspected as potential terrorism risks before they can enter the United States (Shutt & Deflem, 2005). In pursuit of this goal, teams of CBP and ICE agents work together with their foreign counterparts in order to detect terrorist activity at 58 foreign ports. These partnerships effectively cover 86% of all maritime containers bound for the United States. Additionally, CBP engages in joint initiatives with Canadian and Mexican law-enforcement organizations in the interest of targeting smuggling and terrorist movements across the borders of these countries. Through the Customs-Trade Partnership Against Terrorism, CBP partners with the private sector, including some 6500 private companies. Within the United States, CBP has also established partnerships with ICE and the Departments of State and Defense.

The Bureau of Diplomatic Security (DS) is of special interest in charting the US federal security response to terrorism, and international terrorism in particular. As the primary security and law-enforcement arm of the US Department of State, DS is primarily responsible for the security of the Secretary of State, US embassies and overseas personnel, and

foreign dignitaries within the United States. It also has enforcement responsibilities in matters of visa and passport fraud, international security technology, and, indeed, international terrorism abroad.

DS was created in 1985 in response to the increasing threat of international terrorism, and the danger it posed to Americans abroad. The 1986 Omnibus Diplomatic Security and Antiterrorism Act was the first time DS was directed to develop security measures specifically for protection against terrorist attacks. The Bureau has also maintained the Rewards for Justice Program since 1992, as a financial incentive to reward individuals who provide information that contributes to solving cases of terrorist attacks targeting the United States. Like other agencies, DS has increased its role in counterterrorism in recent decades, and maintains several programs to this end. For example, the Antiterrorism Assistance Program is designed to provide training to security forces in foreign countries, and the Office of Investigations and Counterintelligence protects Department of State missions from foreign intelligence agencies.

While DS has been instrumental in resolving several high-profile cases – most notably, the Rewards for Justice Program yielded information that directly led to the capture of the mastermind behind the 1993 World Trade Center bombing, Ramzi Yousef – its actions have not been without controversy (Deflem, 2010). For example, the bureau's reputation was tarnished when the investigation into the murder of 17 Iraqi civilians by employees of private security contractor Blackwater USA was undermined by limited immunity waivers given to Blackwater employees by DS agents. When the statements of Blackwater guards could not be used in court due to the waivers, the FBI took over the case. The head of DS, Richard Griffin, resigned in October 2007, and stricter rules were imposed on security contractors, including the requirement that DS agents always be present on their convoys.

Counterterrorism Policing around the World

Although the 9/11 attacks targeted the United States, the event has had an impact on counterterrorism legislation, agencies, and cooperation in nations around the world. This section provides a selective overview of national efforts to combat terrorism, illustrating the importance of unique historical, political, legal, and other factors in the development of counterterrorism measures. This overview demonstrates the importance of police agencies' variable political and legal contexts, but also highlights the importance of the 9/11 attacks as a global unifying event.

A Comparative Overview

Canada illustrates the considerable impact of 9/11 on the counterterrorism policing efforts of nations comparable to the United States (Deflem, 2010; Deflem & Hauptman, 2013). Despite the many differences between the United States and Canada, the two nations have had similar political, legal, and law-enforcement developments in the area of counterterrorism (Deflem, 2010). Historically, terrorism was not a major issue for Canada, with the exception of the Front de Libération du Québec (Quebec Liberation Front) separatist movement during the 1960s and '70s. As a result, it had not developed any major counterterrorism instruments prior to the 9/11 attacks. Since then, international terrorism has become central to Canadian security policy. In addition to increased cooperation with the United

States, Canada has created a new ministerial department, Public Safety Canada, that resembles the US DHS, to complement its Royal Canadian Mounted Police, the Canadian Security Intelligence Service, Citizenship and Immigration Canada, and the Canada Border Services Agency in counterterrorism activities. Legally, the Anti-Terrorism Act of 2001 has provided intelligence and law-enforcement services with new surveillance and investigative tools. In addition to these national developments, Canada is also engaged in cooperative efforts with the United States, has several multilateral counterterrorism partnerships, and has generally supported diplomatic and military interventions that have broad international support.

In the United Kingdom and France, counterterrorism methods are colored by the existence of domestic intelligence services (Deflem, 2010). Distinct from law-enforcement agencies, foreign intelligence services, and the military, domestic-intelligence services are proactive in their efforts against various forms of public unrest, including terrorism. Despite their role in domestic intelligence-gathering, these organizations do not have the ability to arrest individuals; for this, they must rely on law enforcement.

The United Kingdom has had a long history of terrorist activity, primarily in the form of the Irish Republican Army (IRA) and other nationalist groups. However, counterterrorism in the country shifted toward Muslim extremists in the wake of 9/11, and since then it has experienced its own high-profile terrorist attack with the July 7, 2005 bombing of the London Underground train system and several other incidents. Despite these attacks, it was the 9/11 attacks on the United States that had the most significant impact on counterterrorism in the United Kingdom (Deflem, 2010). The counterterrorism tools previously developed in response to the IRA were dramatically altered and augmented after the attacks on the World Trade Center and the Pentagon. The Anti-Terrorism, Crime, and Security Act of 2001 expanded the powers of counterterrorism agencies, and these powers have since been further expanded with additional legal measures, including a 2006 Terrorism Act that created additional terrorism-related offenses in the aftermath of the 7/7 bombings.

The United Kingdom has not created any new department to handle terrorism, but it has taken efforts to streamline and coordinate the activities of agencies involved in counterterrorism (Deflem, 2010; Innes et al., 2017). The primary agency for counterterrorism in the United Kingdom is the Security Service (also known as MI5), a domestic intelligence agency, which has expanded the scope of extremist groups and national-security threats included in its counterterrorism efforts. Alongside MI5 are the regional police forces of the United Kingdom, the most famous of which is the Metropolitan Police Service based in New Scotland Yard. In the absence of a national police force, the Metropolitan Police Service has established the Counter Terrorism Command, which investigates terrorist-related activity and proactively engages in intelligence work on extremist and terrorist groups.

France also has a domestic intelligence service that complements the counterterrorism efforts of the police. In contrast to the United Kingdom, France also has a strongly centralized national law-enforcement system. Furthermore, France has a longer history with Islamic groups, due to its colonial involvement with Algiers. This led to a move from reactively responding to terrorist activity toward a preventative strategy during the 1990s, as a result of increasing concerns over Islamic fundamentalist groups (Deflem, 2010). New and expanded counterterrorism efforts have been made since the 9/11 attacks. Notably, broad surveillance and investigative abilities have been authorized by French law. Within the French domestic intelligence agency, Direction de la Surveillance du Territoire (DST), the Central Intelligence Directorate is responsible for terrorism. This agency cooperates with the central commands of the Police Nationale, the major civilian police agency with jurisdiction in urban areas, and the Gendarmerie Nationale, a more military organization

with jurisdiction in rural areas. The Anti-Terrorist Fight Coordination Unit coordinates cooperation among these agencies, but each maintains its own distinct counterterrorism units and operations.

Canada, France, and the United Kingdom demonstrate how counterterrorism measures develop, at least in part, on the basis of local conditions and experiences with terrorism that are unique to individual nations. At the same time, globally significant events – most notably, of course, the attacks of 9/11 – have a unifying impact regardless of locally variable conditions. It is no wonder that the 9/11 attacks have made Islamic fundamentalist terrorism a central focus of international counterterrorism. Most striking is that the attacks have impacted relevant security measures in many countries in the Middle East.

In 1998, the Arab League adopted the Arab Convention on the Suppression of Terrorism, despite notable differences in the national laws of its constituent countries (Deflem, 2010). As in the other nations discussed, the 9/11 attacks impacted the counterterrorism efforts of Arab nations. Terrorism is defined broadly in these countries, and law enforcement-powers have been expanded to combat it, generally in line with the counterterrorism principles observed in other nations. In contrast to the Western nations, the typically undemocratic nature of Arab states means their anti-terrorism laws are more resolute and less constrained by considerations for individual rights and civil liberties. Despite this, cooperation between the Arab states and Western nations in counterterrorism still occurs – even between US authorities and Syrian security forces, despite Syria being designated by the United States as a state sponsor of terrorism. In addition to bilateral cooperation, many Arab states are also represented in multilateral efforts such as Interpol.

Finally, it is worth noting that specific counterterrorism policing measures can vary significantly depending on the national context, especially with respect to legal restrictions and human-rights considerations. The country of Israel is perhaps the clearest case of a national context where terrorism is approached using methods considered too extreme in other comparable nations (Hasisi & Weisburd, 2014; Metcalfe et al., 2016; Perry & Jonathan-Zamir, 2014). Likewise, the counterterrorism methods of Russia are noteworthy in this respect because they have been shown to be extremely repressive (Deflem, 2010). In Russia, counterterrorism and security practices are orchestrated through a highly centralized political command system directed by the President of the Russian Federation. Yet, despite the manifold unique characteristics of counterterrorism policing across nations, it is striking that cooperation among national police forces, at both the bilateral and the multilateral level, can nonetheless take place.

Terrorism as a Global Concern

From the preceding overview, it can be observed that there is a significant difference in how the fight against terrorism is established in political and legal terms compared to how it is carried out by the various counterterrorism agencies of a given nation. Moreover, the 9/11 attacks have been significant in the development of counterterrorism efforts around the world, including in countries that have had previous histories in dealing with a high degree of terrorist activity.

Globally, nations have developed special legislation addressing terrorism, although there are notable differences between nations with longstanding counterterrorism laws and those that have only recently adopted such policies. Despite these variations, however, terrorism is generally broadly defined by the nations of the world as threats or acts of violence for the

purpose of destabilizing the public order (Deflem, 2010). Yet, the implementation of these policies by law-enforcement, domestic intelligence, military, and other counterterrorism agencies varies greatly by nation. Considerations for individual freedoms and civil liberties restrict the actions of counterterrorism agencies in democracies. In contrast, actions against terrorist activity in nations less vested with democratic principles are significantly more ruthless and repressive. As such, it can be seen how political and legal goals can be put into a wide variety of practices at the level of counterterrorism agencies. Furthermore, variations of political structure directly impact the level of the professional bureaucratization of police agencies, and, as a result, police institutions range from being heavily politicized to possessing significant autonomy. In democratic nations, the bureaucratization of the police has flourished, with a consequent rise in police autonomy. Counterterrorism in other nations is heavily politicized, resulting in a more militaristic approach and a greater tendency toward political oppression. This has the effect of making counterterrorism efforts in these states much more centralized, where democratic nations are characterized by multiple counterterrorism organizations that are coordinated only moderately.

The 9/11 attacks have been the basis for increasing counterterrorism efforts, not only in the United States but around the world. Many nations have responded with new or renewed political, legislative, and police efforts to combat terrorist activity in the national and international sphere. These responses include new international counterterrorism agreements, new legislation or the modification of existing laws, the expansion of police powers, and a prioritization of terrorism as a law-enforcement and security issue. A further unifying factor in international efforts against terrorism has been the dominant focus on jihadist activities, but this has not excluded other forms of terrorism.

The importance of a global unifying event such as 9/11 is not insignificant in understanding the development of counterterrorism efforts around the world. The inherent political, moral, and ideological basis of terrorism complicates efforts at broad cooperation without a basis for unification. As we have seen, police organizations have *de facto* unified against terrorism by defining it as a de-politicized crime. Remarkably, high-profile terrorist attacks in other nations have not had the same impact as 9/11 on their respective counterterrorism responses. As a result, there has been an increased emphasis on cooperation and intelligence-sharing in the fight against terrorism, both nationally and internationally. Nationally, these efforts have taken the form of increased coordination among agencies, including the cooperation of law enforcement, the intelligence community, and other legal, policy, and security-related institutions. However, due to the differing historical, legal, and political conditions of different nations, the nature of their counterterrorism efforts can vary greatly (Beckman, 2007; Cherney & Murphy, 2013; Zimmerman & Wenger, 2007). Internationally, there has been a movement toward a global counterterrorism regime through various legal and political developments, although this has not resulted in the standardization of counterterrorism laws, and it has had only a limited effect on law enforcement's counterterrorism efforts. International police cooperation remains largely independent of these political considerations, and counterterrorism operations are primarily the result of the strategies developed by law-enforcement and security organizations.

International Police Organizations

Although most international police cooperation occurs bilaterally between agencies of different nations on a temporary basis for specific investigations, multilateral police organizations exist as permanent structures to facilitate international cooperation. Efforts to

establish international police organizations have existed since the early 19th century, but it was only in the early 20th that they would experience some success with the creation of the predecessor to today's Interpol. Two international police organizations are of particular note, the International Criminal Police Organization (Interpol) and the European Police Office (Europol).

The World of International Policing

International policing has a long history that is intricately related to the development of terrorism. In the early 19th century, European nations directed their police institutions to target political opponents, including democrats, socialists, and anarchists (Deflem, 2006). Based on the notion that these political dissidents were organizing across national borders, police organizations began to operate internationally as well. Early international police efforts involved stationing agents abroad or engaging in bilateral cooperation when there was a shared political interest. Importantly, in the late-19th and early-20th centuries, international police efforts shifted from political objectives toward crime prevention. Political crimes like anarchism were replaced as the focus of international law enforcement by criminal issues such as the international trafficking of prostitutes. This shift in focus led to various efforts to formally structure international police cooperation, most successfully through the organization known today as Interpol.

Interpol

The origins of Interpol date back to 1923, when the International Criminal Police Commission was established in Vienna to foster direct cooperation among police from different nations (Deflem, 2006; Deflem & Hauptman, 2013). After World War II, the organization was reformed as the International Criminal Police Organization, and it later adopted the moniker Interpol. From the beginning, Interpol was not set up as an international law-enforcement agency, and it does not have investigative responsibilities. Instead, Interpol exists as a collaborative organization in order to provide assistance to the law-enforcement agencies of member nations. It has its central headquarters in Lyons, France, and is linked with its member agencies through specialized units in participating nations, known as National Central Bureaus (NCBs) (Deflem, 2006). To coordinate member agencies and facilitate information exchange, Interpol primarily utilizes a color-coded notification system. There are six types of request, represented by six different colors. The two most common are Red Notices, which call for the arrest of a wanted person for the purpose of extradition, and Blue Notices, which request information about a person of interest's identity and criminal activity (Deflem & Hauptman, 2013).

Interpol's contribution to counterterrorism policing was historically restricted to the treatment of crimes that are typically associated with terrorist activity, rather than terrorism as such. Reflecting the importance for a de-politicized understanding of terrorism for international police cooperation, a 1951 resolution explicitly stated that Interpol would not involve itself with political, racial, or religious issues. This resolution would later be adopted formally as Article 3 of Interpol's constitution. This has not prevented Interpol from tackling terrorism as a criminal issue, beginning with resolutions passed during the 1970s regarding crimes related to terrorist activity. In a 1984 resolution, Interpol encouraged

counterterrorism efforts in member states. In 1998, after several high-profile terrorist attacks, including the 1993 bombing of the World Trade Center, it officially declared its commitment to international counterterrorism efforts in the "Declaration against Terrorism." This declaration is significant, in part, because it focused on the criminal components of terrorism that could be investigated by member agencies (Deflem, 2007).

After the 9/11 attacks, Interpol's counterterrorism efforts were significantly altered in terms of policy and organizational structure. The Interpol General Assembly drafted Resolution AG-2001-RES-05 condemning them as an attack against the citizens of the world (Deflem & Hauptman, 2013). As a result of this resolution, Red Notices for terrorists involved in the attacks were prioritized. Specialized programs were also developed to facilitate Interpol's counterterrorism efforts. The Incident Response Team was established to provide investigative and analytical support to member agencies. In 2002, the Fusion Task Force was created to assist in the identification of members of terrorist groups, as well as with intelligence-gathering and analysis. The financial components of terrorism have been a particular focus, since they directly impact the frequency and magnitude of terrorist campaigns. Other organizational changes include the establishment of the permanent General Secretariat Command and Coordination Center, and the creation of an Internet-based encrypted communications system, known as I-24/7, to facilitate rapid and secure information exchange.

Law-enforcement agencies that participate in Interpol come from ideologically diverse nations that are not always on good political terms. Despite this impediment, Interpol has been able to facilitate coordination and to connect the participating agencies. The diversity of Interpol's members does hinder international cooperation at times, and the more powerful nations continue to prefer unilateral operations to participation in the multilateral organization. The de-politicization of terrorism served as the basis for international cooperation, because terrorism was broadly and vaguely defined and because emphasis was placed on the criminal elements of terrorist activity, such as bombings, killings, and kidnappings. In recent years, however, it is notable that Interpol has de-emphasized its work on terrorism, presumably because it has been successful in attracting more and more member agencies that represent nations too diverse to establish effective cooperation. The organization of European police cooperation through Europol is very different in this respect.

Europol

International counterterrorism efforts have a long history in Europe (Bures, 2008; Deflem, 2010). In 1975, several European law-enforcement agencies formed the Terrorism, Radicalism, Extremism, and International Violence (TREVI) group to facilitate information exchange and cooperation against terrorism and related crimes. Several other partnerships also existed, including the Police Working Group on Terrorism and the Counter Terrorist Group (known as the "Club of Berne"). In 1992, the dominant multilateral police organization of Europe was established in a limited form as the Europol Drugs Unit. Extending from these historical beginnings, Europol was a direct product of the political and legislative bodies of the European Union. EU representatives supervise Europol's operations, but, like the national police agencies previously discussed, it possesses a degree of institutional autonomy that allows it to define its means and objectives based on professional expertise. Like Interpol, Europol is a network of member agencies based on cooperation and collaboration, and not a supranational law-enforcement agency (Deflem, 2007). It has been able to cooperate on counterterrorism measures by defining terrorism as a criminal issue (Tak, 2000).

Europol exists as a part of the larger political and legislative governing body that is the European Union. Therefore, EU counterterrorism policies directly inform Europol's operations. After 9/11, in June 2002, the Council of the European Union adopted framework decisions on terrorism that included important counterterrorism policy changes. The Council defined terrorist offenses as "criminal activities, or the threat to commit them, aimed at seriously intimidating a population, unduly compelling a government or international organization from performing or abstaining from any act, and/or seriously destabilizing or destroying the fundamental structures of a country or of an international organization" (Deflem, 2010:131). These framework decisions also required further cooperation among counterterrorism units for the purpose of law enforcement, enabling the formation of joint investigative teams for specific purposes. As a result, Europol expanded its counterterrorism mandate and activities, forming enhanced cooperative relationships with other agencies, including Interpol and the counterterrorism forces of non-EU nations. Mirroring their impact on many police organizations across the world, the events of 9/11 resulted in the creation of new counterterrorism organizations. A specialized counterterrorism unit, the Counterterrorism Task Force, was established at Europol's headquarters. This task force was later incorporated into the Serious Crimes Department. After the Madrid bombings of March 11, 2004, it again become an independent unit, before once more being incorporated into the Serious Crime Department, this time as the Counter Terrorism Unit (Deflem & Hauptman, 2013).

In contrast to Interpol, Europol was established within a legal framework and is regulated by a political organization. Although the political process of the European Union is sometimes ineffective for the purposes of international police cooperation, the highly bureaucratized nature of Europol facilitates the achievement of the organizational goals of law enforcement. Yet, counterterrorism is not handled by police organizations in all EU member states, as some countries rely on domestic intelligence agencies to combat terrorism. The different organizational goals of these agencies complicate effective cooperation. Also complicating cooperation is the persistence of nationality in international policing, and the focus of counterterrorism by law-enforcement agencies continues to be molded by each nation's distinct relationship to terrorism (Deflem, 2007). Despite these difficulties, Europol has in most recent years been able to keep a resolute focus on its counterterrorism mandate, in contrast to the declining significance thereof in (the much larger organization) Interpol.

Conclusion

A multitude of counterterrorism efforts have historically developed within and between nations based on a constellation of political, legal, and historical considerations. In the wake of the terrorist attacks of September 11, 2001, counterterrorism practices and policies around the world have experienced dramatic changes. In particular, these changes include an increased level of coordination and cooperation within and between nations, a focus on international jihadist terrorism, and an "Americanization" of counterterrorism. Within the context of these changes, this chapter has focused on the role of law enforcement in counterterrorism activities. Because of a historical process of bureaucratization of the police function and its organization, the professional expertise of police forces has produced a unique approach within the broader constellation of counterterrorism measures as they are enacted by other organizations. Most distinctly, police institutions approach terrorism as a crime by means of efficient methods of crime control.

While recent events concerning the global and local terrorism threat have implied that counterterrorism efforts have stepped up at all levels, it should not be concluded that such developments are undertaken effortlessly and without discord. In fact, counterterrorism measures consist in a multitude of practices and institutions, which are often not in tune with one another. At the political level, cooperation may exist only as an expression of goodwill, with ideological divisive sentiments over the causes and patterns of terrorism precluding its effective enactment. Yet, the police agencies of countries across the world – even when they are politically hostile to one another – can often cooperate more smoothly on the basis of a common professional understanding of terrorism as a crime.

The development of counterterrorism measures among police and other security organizations within nations depends upon their individual political, legal, and historical circumstances. Similarly, international cooperation among counterterrorism agencies is heavily influenced by political, legal, and historical characteristics. However, the 9/11 attacks have served as a unifying symbol for cooperation despite these differences. In terms of national policies and their agencies, international agreements and organizations, and the degree of cooperation and coordination within and between nations, the 9/11 attacks transformed the face of counterterrorism around the world. However, while they may have had a positive impact on international police cooperation, they also brought about many other measures – especially of a political and military nature – that pose a threat to the professional autonomy of police agencies. Yet, while dramatic events such as the 9/11 attacks serve as the basis for attempts to re-politicize relevant police work, counterterrorism policing continues to rely on a de-politicized conception of terrorism as criminal behavior. After the successful deployment of police in such high-profile cases as the Boston Marathon bombing of April 15, 2013 and the truck attack in Manhattan on October 31, 2017, police legitimacy may be enhanced (LaFree & Adamcyk, 2017), despite the fact counterterrorism policing practices are often criticized for their presumed negative impact on civil rights (Cherney & Hartley, 2017).

Among the globally shared developments in national and international counterterrorism practices, two major trends can be observed. First, police institutions have generally shown an increased emphasis on and facilitation of information sharing and coordination. Within nations, policies and organizations have been developed to facilitate the exchange of information and the coordination of operations to effectively combat terrorism. Some nations have established independent agencies for the primary purpose of coordinating efforts among the various agencies involved in counterterrorism. This development is mirrored in international police organizations such as Interpol and Europol, which have adopted programs to enhance coordination among police working on counterterrorism.

Second, in addition to the 9/11 attacks serving as a basis for new and renewed counterterrorism efforts, there has been an "Americanization" of counterterrorism. This development is a function of the disproportionate attention given to terrorism issues involving US police and security agencies (Nadelmann, 1993). As a result, US agencies contribute a great deal more to international police and terrorism operations than their foreign counterparts, and influence counterterrorism efforts globally through the dissemination of American law-enforcement approaches and techniques via international training programs.

In the fight against terrorism, police have cooperated on the basis of a principle of efficient crime control rooted in professional expertise. However, this focus results in police operations potentially conflicting with other approaches to counterterrorism, particularly those military operations that are part of the War on Terror. Whereas military institutions

define terrorists as enemy combatants, police agencies focus on terrorists as criminal suspects. Similarly, the efforts of law-enforcement and intelligence agencies do not always harmonize, due to different institutional objectives. Police agencies focus on investigations for the purposes of criminal charges, whereas intelligence agencies are involved in a broad collection of evidence irrespective of criminal conduct (Deflem, 2008). Such distinctions and variations in approach illustrate the complex nature of counterterrorism efforts by a multitude of relevant organizations. Factually coexisting in the world of counterterrorism cooperation, then, are the disparate structures and processes of multiple counterterrorism models in the worlds of politics, law, and policing. As terrorism will surely continue to be a significant force across national societies for many years to come, the counterterrorism role of police agencies will also likely continue to develop, and will remain an area of social control worthy of scholarly research.

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18

Police and Radicalization

Derek M. D. Silva

Modern practices of counterterrorism have been significantly rearticulated around the notion of "radicalization." Typically understood as an individual or group transitioning away from legitimate political, religious, or otherwise ideological belief toward the adoption of violent means, radicalization has recently been cast into the center of political, legal, cultural, and even academic discourses related to the prevention of catastrophic terrorist attacks. Those interested in the development of radicalization – and in practices of counterradicalization – as a dominant framework for understanding modern terrorism are thus confronted with a nascent field in which observation and analysis might thrive. While terrorism studies has grown quite quickly in the 21st century, scholars continue to encapsulate efforts to control terrorism under the banner of "counterterrorism." However, the study of new forms of governing terrorism in the post-9/11 world is equally important to our understanding of how we can control terrorism and the threat posed by it. One such budding area is the study of counterradicalization as a novel form of social control.

From the perspective of sociological criminology, terrorism is an established unit of analysis, and counterterrorism has received much academic attention. The social-scientific study of radicalization as a form of criminal and/or deviant behavior and of counterradicalization as social control, however, has yet to penetrate mainstream sociological and criminological discourses. In this chapter, I provide an informed introduction to an area of increasing concern in modern societies characterized by a preoccupation with threats of terrorism. That is, how law enforcement, as a formal agent of social control, responds to and intervenes in an observable *process* toward terrorist activity. In tracing out the emergence of radicalization as an apparatus of social control, I hope to illuminate some of the ways in which modern counterterrorism discourses influence the development of new law-enforcement interventions and therefore explore questions around how we police radicalization. The unique contributions of sociological and criminological approaches to counterradicalization thus present new opportunities for scholars to make valuable contributions to the wider field of terrorism studies.

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Academic Discourses of Radicalization

In order to fully appreciate the specific literature on police and radicalization, it is important to briefly contextualize the current state of academic scholarship on radicalization as a social phenomenon. Most research in the social sciences that analyzes issues related to radicalization tends to focus less on various dimensions of social control and more on those individuals and groups who are at risk of transitioning toward political violence. Thus, one of the main characteristics of current scholarly debate related to radicalization is how to efficiently predict who might be at risk of becoming "radicalized." The predominance and popularity of this body of work is perhaps the result of a well-documented governmental and political preoccupation with operational findings used to neutralize terrorist entities (Turk, 2004). Notwithstanding this concern, while scholarly research into radicalization has continued to emphasize the processual aspects of political violence in order to provide operational intervention strategies for government and institutions of crime control, recent work in the area has broadened in scope. These trends are reflected in the development of radicalization as a framework for understanding terrorism and its appropriation by social scientists in a variety of specialty areas, not least of which are psychology, theology, criminal justice, and political science. It is therefore useful to sketch out some of the ways in which such academic discourses approach radicalization and conceptualize it for use by those formally charged with countering terrorism.

Radicalization as a Psychosocial Phenomenon

In 2012, Arun Kundnani explored the diffusion of radicalization research across a variety of academic specialty areas. He pointed out that much of the scholarly research on radicalization focuses on its psychosocial dimensions. That is, that the process of so-called "radicalization" can be conceptualized as a cultural-psychological disposition that can be observed and intervened upon by those tasked with controlling terrorism (Kundnani, 2012). Among the most influential research in this area, by example, is Walter Laqueur's (2004) pioneering work on the future of terrorism, in which he strongly advocates for the identification of the "root causes" of a radicalized psychological disposition. Most clearly, Laqueur argues that the transition from conventional political beliefs to political violence can be observed and measured through case studies of known terrorists and by identifying common external cultural and psychological characteristics. More recently, however, psychosocial perspectives of radicalization have been challenged by skeptics who question the methodological merits of one-off, or even multi-case, case studies of known terrorists. Nonetheless, the psychosocial perspective on terrorist radicalization has proliferated in the field of terrorism studies, as exemplified by numerous academic volumes and special issues of the subdiscipline's most influential journals. In turn, psychosocial perspectives have remained institutionally and organizationally supported and recognized in public policy and by a variety of governmental institutions (see Kundnani, 2015).

Yet, over the course of the development of a specialty field of terrorism studies, especially with the growth of terrorism research in sociology, criminology, and criminal justice, critics have been skeptical of the value of psychosocial-radicalization theories, seeing them as merely reducing complex social processes to uniform risk factors and therefore lacking in methodological foundation. To some extent, this neglect of complexity is the result of a lack of empirical data, due to national security concerns and practical issues with collecting data

on known terrorists, and perhaps also to the specialty area's origins in psychology. In light of such critique, more recent academic work has introduced complexity to social-psychological perspectives on radicalization. For instance, the works of Marc Sageman (2008) and John Horgan (2009) exemplify recent efforts to include some of the cultural and social networking characteristics of radicalization previously overlooked in the psychosocial perspectives. That being said, while efforts to express the complexity involved in theorizing about radicalization have expanded in recent years, researchers positing a psychosocial process toward terrorism continue to search for causal explanations based, at least partially, on the differentiation of psychological characteristics observed in relatively small-n case studies or otherwise questionable methodologies (Kundnani, 2015). And, while scholars have continued to scrutinize this body of work, it has remained among the most influential in terms of social-policy and law-enforcement intervention strategies.

Even more recently, scholars have moved beyond relatively untested psychopathological assumptions and toward empirically sound observations firmly rooted in the nexus of theory and method (see Borum, 2011; Corner & Gill, 2015; Corner et al., 2016; King & Taylor, 2011). While these studies continue to be highly influential on government decision-making, they also explicitly ignore important dimensions of the social control of radicalization. Instead, they continue to posit that the key to preventing transitions toward violence is to understand *how* individuals and groups become radicalized, in order to target intervention strategies toward them – rather than how those considered to be at risk of radicalization are subjected to practices of social control.

Radicalization as Theological Transition

As with much of the scientific research on radicalization, scholars whose approach focuses on the theological aspects of a generalized radicalization process tend to offer prevention strategies to government authorities. The vast literature problematizing the role of theology in the so-called radicalization process has therefore been highly influential in the development of counterradicalization law-enforcement strategies. Scholars working in this area approach radicalization as a predominantly theological process whereby an individual's self-identity is viewed as a causal mechanism toward political violence, and illuminate some of the ways in which specific behavioral changes occur within "homegrown terrorists" as they are "radicalized" (Gartenstein-Ross & Grossman, 2009:29). As with much of the literature, research positing that radicalization is a mostly theological transition unsurprisingly focuses on Islam as a source of behavioral change for those engaging in political violence. Among the most influential of these are the works of Daveed Gartenstein-Ross and Laura Grossman (2009), Michael Jenkins (2002, 2006, 2010, 2011), Marc Sageman (2004, 2008), and Quintan Wiktorowicz (2005), who attempt to identify how individuals are indoctrinated into so-called violent jihadist ideologies. They argue that a legalistic interpretation of Islam employs fundamentalist believers to trust only a "select and ideologically rigid" group of teachings that view the West and Islam as irreconcilably different and therefore threatening to Muslim communities (Gartenstein-Ross & Grossman, 2009). The perceived threat posed by the West to Islam, according to these studies, is therefore the cause of identifiable behavioral changes that may culminate in violent terrorist activity.

While scholars in this area continue to assert that their research is empirically based in rigorous methodological analysis, others have documented their relative scientific weaknesses, not least of which are potential confirmation bias, a lack of control groups, failure to

establish a causal link between religiosity and terrorism despite claims to the contrary, and even concern over the validity of the criteria used to determine whether a case is to be considered as "terrorism." Scholarship of this type has therefore been critiqued for its overwhelming focus on Islam, its methodological limitations, and its reluctance to illuminate the theological characteristics of other potential religious connections to criminality (e.g., white-nationalist, Christian-influenced criminality). However, despite these well-documented criticisms – particularly audible from sociology and critical criminology – scholarship on the theological foundations of radicalization continues to be adopted by governments that seek models of risk assessment to frame their own strategies and initiatives.

Counterradicalization as a Policing Tool

Although both psychological and theological interpretations of the radicalization process offer specific tools for policing individual and group trajectories toward political violence, they do not necessarily provide analyses of the strategies they propose. The third area of scholarly debate regarding radicalization focuses on questions of how to provide agents of crime control with the appropriate tools to prevent terrorism before its manifestation. Most notable in this respect is the highly influential "Radicalization in the West: The Homegrown Threat," prepared by NYPD intelligence analysts Mitchell D. Silber and Arvin Bhatt (2007). This work suggests that there are four stages to a generalized radicalization process: (a) pre-radicalization, denoting an individual's life situation before they are exposed to "jihadist-Salafi Islam as their ideology"; (b) self-identification, the phase where individuals begin to explore "Salafi Islam"; (c) indoctrination, the period in which an individual "intensifies his beliefs, wholly adopts jihadi-Salafi ideology and concludes, without question, that the conditions and circumstances exist where action is required to support and further the cause"; and (d) jihadization, in which members of the group "self-designate themselves as holy warriors or mujahedeen" (2007:6–7). Building on the work of Marc Sageman and Quintan Wiktorowicz, Silber & Bhatt's (2007) analysis highlights the intergroup dynamics whereby radicalization is supposedly cultivated, referring to the identification of "radicalization incubators" that can be infiltrated and subjected to traditional policing strategies such as mapping, hot-spot targeting, and community policing (2007:20).

Despite the report's overwhelming influence on how the NYPD (and other law-enforcement agencies) polices radicalization in the community, scholars have noted its methodological and empirical deficiencies, including its lack of data and poor transparency (Kundnani, 2012; Silva, 2017). They have also criticized the report for focusing solely on diverse Islamic communities as being at risk of radicalization, questioning whether others might not be subjected to a similar process toward terrorism. As Kundnani (2012) puts it, pseudoscientific work in this area provides law enforcement with a "prospectus for mass surveillance of Muslim populations" by solely identifying the manifestation of radicalization among one group that seemingly shares religious beliefs. The adoption of this literature by law enforcement thus justifies targeted police interventions that focus overwhelmingly on already marginalized community groups.

This body of work, and others noted earlier, is thus part of the impetus for law-enforcement organizations' increasing interest in matters related to counterradicalization, as it provides legitimacy to a host of new (and old) strategies for police to counter novel forms of criminal behavior not previously within the purview of law enforcement. Yet, the diffusion of counterradicalization policing initiatives is not simply a result of academic legitimization,

but rather a series of interesting developments that have taken place in numerous social institutions, most notably in politics and law. It is therefore necessary to explore some of the historical precursors to the emergence of counterradicalization as a policing strategy. Before that, however, let us briefly review some recent research on counterradicalization policing within sociological and criminological circles.

Views from the Social Sciences

Notwithstanding the discussion of counterradicalization scholarship outlined in this section, modern social-scientific discourse on radicalization is not to be described solely in terms of behavioral subject matter and quests to predict risky subjects and provide tools for police intervention. By way of example, recent scholarship in sociology, media studies, and critical criminology has challenged the very notion of radicalization as used in the social sciences and in governmental policy (see Kundnani, 2015; Monaghan & Molnar, 2016; Silva, 2017). Studies of this nature tend to problematize both the construction of radicalization discourses by politicians, news media, and so-called expert analysts and the appropriation of pseudoscientific counterradicalization research by governmental authorities. For instance, O'Toole et al. (2016) have illuminated the troublesome relationships between the UK government and Muslim communities under the country's relatively new counterradicalization schema (see also Pantazis & Pemberton, 2009). Sociologists, criminologists, and those interested in criminal-justice issues have thus started to challenge the ways in which modern counterradicalization governance has emerged as a dominant framework in governmental attempts to understand and communicate about terrorism.

While this research area is still new, its growth is being driven by a relatively small group of critical sociologists and criminologists interested in problematizing the ways in which new police initiatives are impacting state engagement with already vulnerable individuals and groups. But new policing initiatives aimed at preventing radicalization are not entirely new, nor did they emerge haphazardly as the dominant governmental response to modern terrorism. Indeed, the development of counterradicalization policing is rooted in a complex historical trajectory involving the balancing of issues of national security, surveillance, privacy, crime control, and social policy. These developments warrant further analysis in their own right.

Historical Antecedents of Radicalization Policing

In the immediate aftermath of the first World Trade Center attacks in 1993, Western governments, particularly that of the United States, took an overwhelmingly reactive approach to countering terrorism. States used criminal and penal policies, military interventions, and investigative techniques to criminalize, detain, and punish perpetrators of terrorist activities targeting the West. President Bill Clinton's now infamous refusal to modernize law-enforcement and intelligence operations by launching preemptive investigations into terrorism risks is reflective of the US government's longstanding approach to terrorism as first and foremost a military concern. Similar approaches to combatting terror were often adopted in other Western liberal democracies. Canada's enactment of the War Measures Act during the 1970 "October Crisis," a period of political conflict between Québec nationalist group Front de libération du Québec and the Canadian government resulting in the

kidnapping and murder of provincial cabinet minister Pierre Laporte, illustrates the country's own application of a reactive, military-centric logic to threats of terrorism. In the United Kingdom, the government's deployment of the British Army to Northern Ireland to combat republican terrorism, known as Operation Banner (lasting from 1969 to 2007), highlights the historically reactive approach taken to counterterrorism in Europe.

Following the 2005 London Bombings, however, the UK government took a very different approach to countering terrorism. In the months following the attacks, the government passed a series of legislation and public policies directed at combating the terrorism threat through mechanisms of preemptive intervention. The Home Secretary announced 11 days after the bombing that the Home Department would fast-track an anti-terror bill, to be known as the Terrorism Act 2006, focusing not on persecuting terrorist acts but on criminalizing a series of activities that might put individuals at risk of perpetrating attacks in the first place. In the United States, following the September 11, 2001 attacks in New York and Washington, the Bush Administration passed the Uniting and Strengthening America by Providing the Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act), which enhanced domestic security and surveillance, tightened anti-money-laundering provisions, expanded law-enforcement investigative powers, and criminalized a host of activities leading up to the commission of terrorist activities. Analogous approaches have recently been adopted in Canada, where, immediately following the 9/11 attacks, the Government passed Bill c-36, later known as the Anti-terrorism Act 2001, which included provisions for "preventative arrest," expanded law enforcement's intelligence apparatus, and criminalized a series of activities in support of terrorism. Such recent legislative responses to terrorism throughout the West highlight political reconfigurations of terrorism and practices of counterterrorism around notions of preemptive intervention rather than more traditional military or penal concerns.

But these developments were not new. In fact, many Western countries have been steadily transitioning toward the prevention of terrorism – rather than its persecution – since before the turn of the century. For example, prior to 2001, the Canadian government had long used Section 19(1) of the Canadian Immigration Act to prevent individuals involved in terrorism or terrorist organizations from entering the country. During this time, however, counterterrorism initiatives remained quite significantly focuses on military and legal responses. And, while the historical antecedents of governmental strategies aimed at preventing terrorism are indeed rooted in earlier policy directives, they were also undoubtedly amplified and accelerated by the tragic events that took place in the early years of the 21st century. As noted by Mathieu Deflem (2010), the 9/11 attacks, and subsequent tragedies in London, Madrid, and elsewhere, did not necessarily bring about a complete reconfiguration of counterterrorism strategies, but indicated a transition in governmental approaches to terrorism focusing on preemptive intervention rather than military response. Governments throughout the West have since made the prevention of terrorism through counterradicalization a strategic priority for law enforcement.

Police and Radicalization

The United Kingdom is often said to be a global leader in counterradicalization strategies and initiatives (Monaghan & Molnar, 2016; Rascoff, 2012). Indeed, many of the current developments in countering radicalization in the West seem to be at least in part influenced by British approaches, not least Canada's adoption of the same name for its counterradicalization

strategy (i.e., Prevent). The rearticulation of counterterrorism practices around notions of preemption in the United Kingdom can officially be traced back to the country's development of the overarching counterterrorism strategy called Contest in early 2003. Contest represents one of the first holistic governmental initiatives for countering terrorism following the 9/11 attacks. Its stated goal is to provide disparate UK governmental agencies with an organized counterterrorism strategy. Its practices include aggressive law-enforcement and prosecution campaigns, preventative monitoring and arrest, protection of critical infrastructure, and organization of response strategies in case of terrorist attack.

Part of the Contest strategy involves a framework focusing specifically on countering radicalization. This framework, called Prevent, brings together disparate government agencies, offices, and private stakeholders under one umbrella to counter terrorist activity by identifying those considered at risk of radicalization and intervening in the processes leading up to terrorism. Prevent's official objectives include increasing communication among a host of community representatives – from law-enforcement officials to local business representatives to religious and community leaders – in order to engage and challenge ideologies that support terrorism and those who promote it. Much like the development of community policing, Prevent focuses on community–government interaction through law enforcement (Stenson, 1993). The Prevent strategy, however, utilizes communication systems within the community to govern activity for which the threat is statistically and empirically less than that of crime (the traditional focus of law enforcement) (Ericson & Haggerty, 1997). Despite the relatively minor threat posed by terrorism compared to other forms of criminality, Prevent represents an explicit and wide-reaching indication of governmental priorities vis-à-vis crime control.

Prevent therefore offers a dramatic shift in the United Kindgom's official approach to counterterrorism, based predominantly on combating the risk of *future* terrorism rather than engaging in retroactive military and legal interventions. For example, Prevent has specified a role for its Engagement Officers within local police agencies, working to develop community connections and engagement, identify risks, and share information with stakeholders to support strategic objectives. As part of this role, local law-enforcement organizations must align their own practices with Prevent's objectives. Counterterrorism policing has thus simultaneously shifted from a reactive logic to proactive, risk-based initiatives, and has also been reconfigured as a nationally coordinated, centralized, and layered approach aligned with governmental – rather than community-based – objectives. Through the Prevent strategy, law enforcement is mandated to build targeted community–police interactions, raise awareness, create new inter-agency and inter-stakeholder partnerships, and provide social support – in addition to traditional techniques of policing such as surveillance, monitoring, crime mapping, search and seizure, and arrest. The diffusion of these techniques has led to a widening of the policing apparatus in matters related to radicalization, highlighted by the fact that law enforcement increasingly cooperates with public and private stakeholders to created new specialized and targeted community interventions.

The United Kindgom is not the only Western country to adopt a nationally centralized counterradicalization strategy. Canada, for example, has modeled its own approach after the Prevent strategy, borrowing some of its foundational characteristics. For this reason, some have called Canada a "norm-taker" with respect to new models of counterterrorism policing developed in the country (Monaghan, 2015). Indeed, irrespective of the Canadian adoption of the moniker "Prevent," the development of the country's counterradicalization program has a complex history of its own. While a detailed analysis of the historical antecedents of Canada's Prevent strategy is beyond the scope of the discussion here, the

description of Canada as an innocuous follower of the British in matters of counterradicalization is perhaps an oversimplification. While the Canadian trajectory of establishing legal frameworks aimed at diffusing techniques of preemption throughout the public sphere seems, at present, to be following that of the United Kingdom, these developments have seemingly progressed mostly at the provincial, rather than national, level. Unlike in the United Kingdom, Canadian federal law mandating public organizations' engagement in counterradicalization initiatives has for the most part been difficult to establish, due in part to Canada's more layered political structure, dividing municipal, provincial, and federal governments on both substantive and legal grounds. As such, the country has been less successful in downloading responsibility for monitoring and intervening in suspicious activities related to terrorism. The development of its counterradicalization policing project has thus developed in rather disparate and disjointed ways, coupling the top-down approach of a federal counterradicalization strategy with a more bottom-up establishment of municipal strategies by local police agencies. In this respect, Canada has developed several unique methods of counterradicalization policing.

Despite some claims to the contrary, Canada might be considered a vanguard of novel policing initiatives aimed at countering radicalization. For example, in March 2015, the City of Montréal, in cooperation with the government of Québec and other public and private stakeholders, established the Center for the Prevention of Radicalization Leaving to Violence (CPRLV). The Center is the first independent nonprofit organization in North America aimed explicitly at countering radicalization. The CPRLV has established partnerships with numerous local or provincial, national, and international organizations and governmental agencies. Partnership agreements include funding arrangements, training programs, information-sharing agreements, and CPRLV-led workshops for public- and private-sector employees. The Center also offers practical training in psychosocial intervention, education, criminal justice, and public safety to companies, government officials, and other stakeholders. Developed for front-line workers and administrators, training courses developed and led by CPRLV employees offer strategies for countering radicalization in prisons, local communities, public and private organizations, and education institutions. One of the innovative features of the CPRLV is that it provides psychosocial training for individuals tasked with identifying and intervening in processes of radicalization, including police officers, social workers, teachers, and public-sector employees. Since Canada has not effectively mandated responsibility over matters of counterradicalization for many of these stakeholders, the CPRLV offers tools and strategies negotiating federal and provincial law with practices of prevention, surveillance, and intervention. For instance, the Center also provides training for negotiating provincial statues related to workforce and labor standards – including Québec's Act Respecting Labour Standards – through inter-stakeholder cooperation, information-sharing, and matters of security and privacy.

Another example of Canada's unique approach to counterradicalization is Calgary Police Service's (CPS's) ReDirect Program. The goal of the Program is to provide micro-level interventions designed and delivered in partnership by the CPS, the City of Calgary Community and Neighbourhood Services, and several private and nonprofit community organizations, in order to identify and provide support and prevention strategies for those at risk of engaging in political violence. Following identification of someone considered "vulnerable to being radicalized," ReDirect assigns a team of community representatives, social workers, and case planners to provide mechanisms of social support to the subject. As a predominantly referral-based counterradicalization strategy, ReDirect is far from a novel police initiative. However, as a multi-stakeholder approach developed in

partnership with vital community services and organizations, it represents a unique approach for local police agencies and might serve as a model for other, more localized police initiatives in the future.

Unlike both Canada and the United Kingdom, the United States has not developed a federal counterradicalization strategy. That is not to suggest, however, that counterterrorism practices in the United States have not been significantly rearticulated around notions of preemption, as the country has increasingly adopted a prevention-centered approach in matters of political violence. Reforms made to governmental structure following 9/11, particularly in the areas of intelligence and law enforcement, have made the prevention of terrorist attacks a central concern. For instance, part of the justification for the 2003 reorganization of security agencies and the creation of the Department of Homeland Security (DHS) was to increase inter-agency focus on the prevention and disruption of terrorist attacks on the United States before they occur. The DHS's mandate is to bring together several law-enforcement, security, and intelligence agencies under one umbrella, with the explicit goal of countering domestic threats to the United States. The emergence of the DHS brought with it what some have called a "forward-looking" ethos to the US counterterrorism framework – one that focuses on the preemptive intervention of terrorist plans before they can manifest (Fishman & Lebovich, 2011). Unlike in the United Kingdom, where counterterrorism is approached as predominantly a national issue, responsibility over domestic counterterrorism in the United States generally falls under the purview of the Federal Bureau of Investigation (FBI), and local law-enforcement agencies continue to develop their own autonomous counterterrorism initiatives to suit their individual needs.

Two key intelligence projects provided much of the impetus for the reorientation of local policing terrorism around notions of preemption: the FBI's "The Radicalization Process: From Conversion to Jihad" (FBI Counterterrorism Division, 2006) and the NYPD report "Radicalization in the West: The Homegrown Threat" (Silber & Bhatt, 2007). These "research" projects advocated for and informed the development of an intelligence gathering-led approach to policing that involved seeking out patterns of radicalization that might lead to violent terrorism – focusing exclusively on so-called Islamic fundamentalist terrorism. The reports have been highly influential in the development of local law-enforcement agency counterradicalization initiatives. The US law-enforcement apparatus has thus established a much more specified understanding of radicalization than Canada and the United Kingdom – one that focuses almost exclusively on Islamic communities as the subject of radicalization. Police agencies in the United States have therefore concentrated their counterradicalization attempts on initiatives that engage diverse Muslim communities through community policing. For example, in 2006, the NYPD expanded its community-engagement division and established the Community Affairs Bureau (CAB), within which were a number of new initiatives focusing more or less explicitly on migrant-minority populations. Two of these programs, the Immigrant Outreach Unit and the Clergy Liaison Program, relatively explicitly seek to establish networks of communication, information-sharing, intelligence-gathering, and surveillance within cultural- and ethnic-minority communities in New York. There is very little evidence to suggest that law enforcement in the United States is making community partnership a key feature of counterradicalization. Less focused than the United Kingdom and Canada on building private–public partnerships with community stakeholders, at least officially, law-enforcement agencies in the United States continue to operate policing-led interventions aimed at countering radicalization through community policing and traditional methods of surveillance and monitoring, search and seizure, "sting operations," and arrest and detention.

Embedding Preemption in Everyday Life

Some of the common practices involved in the policing of radicalization in the United Kingdom, Canada, and the United States include Internet monitoring, traditional community policing, crime mapping, police–community interaction, and utilization of informants (Akbar, 2013). While local and federal counterradicalization initiatives in the United States remain aligned with traditional methods of policing, other jurisdictions have developed more holistic approaches that focus on broadening responsibility over matters of counterterrorism beyond law enforcement. Law-enforcement agencies – particularly in Canada and the United Kingdom – are thus increasingly involved in the development and delivery of awareness-focused educational and social-support programs aimed at intervening in and preventing radicalization before it can manifest. This rearticulation of counterterrorism governance around preemptive intervention has been accompanied, at least in some jurisdictions, by an explicit effort to de-center the police in the policing of radicalization. While the discussion up to now has focused on the explicit goals of such strategies, it is important also to highlight some of the indirect consequences of the proliferation of new models of counterradicalization policing strategies.

Both versions of Prevent have led to substantial shifts in how police counter radicalization in their respective countries. In the United Kingdom, law-enforcement initiatives are increasingly focused on notions of police-led interventions aimed at building connections between government authorities and at-risk communities. This reconfiguration has resulted in the use of inter-agency cooperation schemas that emphasize the need for community-building through the targeted deployment of education initiatives aimed at providing counternarratives and support to individuals identified as at risk of radicalization. In London, these programs are mostly police-led, but they involve inter-agency cooperation in the form of the support provided to those they target. Those mandated to provide support include teachers and school administrators, university employees, health professionals, and local community organizations and religious leaders. Prevent has led to the proliferation of aggressive public service announcement (PSA) campaigns that embed notions of (in)security into the populace. These PSAs are now pervasive in London's transit stations, and aim to responsibilize the public with respect to reporting suspicious activities. They often include explicit references to counterterrorism as a threat. PSAs are also present at locations where large numbers of people often congregate, including football stadiums, tourist attractions, and university campuses. The goal of these interventions often reflects an overarching police strategy of embedding notions of preemption and (in)security into citizens' everyday lives. The logic of embedding preemption serves a threefold purpose: (a) it makes the population aware of the omnipresent threat of terrorism; (b) it engages communities as stakeholders in the preemption process; and (c) it constructs a populace that is capable of self-governing the terrorism threat.

Through the responsibilization of the populace vis-à-vis counterterrorism, Prevent and similar initiatives in Canada provide increased efficiency with respect to the policing of radicalization. Citizens therefore become agents of counterradicalization, and notions of preemption migrate to areas of the public sphere that had not previously held responsibility over matters of counterterrorism (e.g., schools, universities, hospitals, transit hubs). Calgary Neighbourhoods, for example has now become a central, if not a vital, stakeholder in the local counterradicalization policing project. In the United Kingdom, London has developed a robust network of cooperation between law enforcement and myriad social services, and teachers, professors, doctors, and nurses have all been legally mandated to cooperate with the objectives of Prevent.

These apparatuses embed a logic of preemption into policing strategies that are proliferating throughout Western jurisdictions in the global fight against so-called radicalization. In the United Kingdom, this logic of preemption has become an overarching security paradigm that now authorizes a host of new management and surveillance mechanisms, from law-enforcement strategies to education and health-care interventions. In Canada, similar trends also exist, but at a much more localized level. However, because of Canada's adoption of a national counterradicalization strategy, one might easily imagine a further diffusion of networking capabilities and local initiatives beyond those in Calgary and Montréal. In the United States, on the other hand, counterradicalization policing efforts are much less developed, and are driven by few localized efforts – mostly in major cities like New York and Los Angeles – although law-enforcement agencies seem to be adopting a "best practices" approach with respect to their own strategies. The spread of counterradicalization initiatives thus presents itself as an opportunity, not only for new modalities of crime control to expand and proliferate, but for new scholastic endeavors to come to understand the changing dynamics of counterterrorism. Radicalization – and practices of counterradicalization therein – represents a new way of thinking about terrorism in the 21st century, and it is therefore up to scholars within the social sciences to observe and challenge the very core of those practices. In hopes of fostering the development of such an academic debate, I conclude with a few possibilities for the future of radicalization research.

The Future of Research on Radicalization Policing

Not only have radicalization and counterradicalization yet to enter the gaze of mainstream sociology, criminology, and criminal justice as objects of investigation, but the concept of radicalization provides a bourgeoning governmental framework for understanding modern forms of terrorism and the life-course trajectories of those engaging in terrorist activities. Furthermore, as law-enforcement agencies across Western jurisdictions increasingly focus on counterradicalization as part of their professional repertoire, scholars interested in policing must continue to challenge the dynamics of police practices associated with modern counterterrorism. The emergence of radicalization presents an opportunity for social scientists interested in policing, but there are questions about how to develop such a research agenda. I thus conclude this discussion by highlighting a set of possibilities for sociologists, criminologists, and any other scholars interested in issues of criminal and social justice who want to pursue knowledge claims about new forms of terrorism policing in modern society.

Rather than presenting a dogmatic research agenda for scholars interested in these issues, I wish to propose some possible future trajectories for social-scientific radicalization research as we move further into the 21st century. This is not to suggest that such possibilities are the only – or even the most important – concerns for those interested in radicalization as a social phenomenon. I would merely like to propose three lines of inquiry that are sufficiently nuanced to establish a research agenda and that are likely to prove necessary as radicalization discourses continue to move into the center of public understandings of terrorism.

The first possibility is the development of a sociology of radicalization. Prior to 2001, sociologists (and criminologists, I might add) paid very little attention to the social-scientific study of terrorism. Following 9/11, however, groundbreaking works of scholars, such as those of Mathieu Deflem, Austin Turk, and John Kilburn, led to the development of

a subfield of sociology that had terrorism as its central unit of analysis. Scholars argued for renewed interest in the social dynamics of terrorism and proposed the application of sociological and criminological theories and methodologies to its systematic study. Since the early 2000s, social scientists have been able to illuminate the ways in which terrorism and practices of counterterrorism reconfigure social institutions, such as police, military, and intelligence organizations, and to challenge the discourses and practices that shape social and public policies in the post-9/11 context. The rearticulation of terrorism discourses around notions of preemption presents an equally fertile opportunity for the development of a subdiscipline focusing specifically on radicalization and the myriad strategies of governance established in the name of counterradicalization. Such a research agenda might focus on the reconfiguration of a number of issues of long-standing concern for sociologists and criminologists interested in policing, including (but not limited to) privacy concerns, life-course theories, surveillance, immigration, domestic and international law, penal policy and reform, crime control, propaganda, and even military operations and spending. Radicalization has become a dominant discursive device that can be used in a variety of ways depending on the particular social context. Social scientists thus have a rich corpus of data with which to test theories about the relationships between discourses and practices of governance, including the structure and organization of policing strategies.

The second possibility for sociologists, criminologists, and even those interested in broader issues of criminal justice is to continue challenging dominant tropes and narratives that entrench the so-called Global War on Terror, which, at least presently, seem to focus squarely on already vulnerable individuals and groups (namely diverse Islamic communities reduced to a single entity). Recent sociologies have indeed focused on this issue by critiquing governmental and media rhetoric related to radicalization and highlighting the increasingly narrow view of radicalization with respect to Islam (see Lindekilde, 2016; Monaghan & Molnar, 2016). Others have challenged some of the most influential governmental strategies aimed at countering radicalization, while at the same time assessing the effect of public policies on relationships between Muslim communities and the state (see Ali, 2015; O'Toole et al., 2016). While this body of work, most often found in so-called "critical" sociology and criminology, remains largely in its infancy, it indicates a growing scholastic interest in challenging some of the ways in which we communicate about, understand, and, most importantly, choose to govern (and thus police) radicalization. By challenging the narratives that shape both public understanding of modern political violence and attempts to police it, research in this area might ground new policing mechanisms in their particular social context in interesting and novel ways, and thus present an approach to policing research that is informed by sociological and criminology theories and methods.

The third possibility is perhaps not a research agenda at all, but rather a challenge to social scientists to continue the pursuit of empirically based, methodologically rigorous theorizing about radicalization. In recent years, scholarly attempts to reinforce the importance of empiricism in the study of phenomena associated with terrorism and radicalization have advanced this area of research beyond mere pseudoscience. Anecdotal evidentiary observations and single-case studies have been replaced by empirical research grounded in historically proven social-scientific methodologies. Yet, some questionable research remains influential for governmental authorities and, thus, public policy. It is important for social scientists to continue the project of developing methodologically precise and theoretically informed research agendas in order to produce the most systematic knowledge claims possible. This focus on empiricism is perhaps even more important in a cultural and political climate characterized by attempts to erode the very possibility of the truth of

scientific claims. Scholars must continue to remind themselves that the scientific method requires us to be at once rigorous and transparent in our research endeavors – only such a realization can advance scholarship in the area of police and radicalization.

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19

Police Accountability and Ethics

Toycia Collins and Charles F. Klahm IV

The crisis of confidence in police and in the legitimacy of their actions that has characterized the post-Ferguson era illustrates a vital lesson for those involved in the field: it is a tough time for policing in the United States (McLay, 2017). Indeed, a recent Gallup poll found that confidence in policing had eroded to a 22-year low, with much of the consternation centered on issues surrounding the killing of Michael Brown – and many other unarmed black men (e.g., Eric Garner) – by police (Chaney & Robertson, 2015; Jones, 2015). After the initial waves of protests sparked by the events in Ferguson, the flames were again stoked when a grand jury failed to indict the officer who killed Mr. Brown. As waves of protests challenging the legitimacy of the events that led to Brown's death reemerged across the country, President Obama commented on the "deep distrust" between communities of color and police (White House, 2014), thereby legitimizing the calls for police reform from the highest level.

These calls were nothing new, however, as the United States' history includes many dark chapters (Reichel, 1988). And, although the police are certainly not the only villain in the country's past, they are often the protagonist. For example, it was the police that tracked down missing slaves and enforced Jim Crow laws (Williams, 2015) and served as political machinists in the late 19th and early 20th centuries (Novak et al., 2017). Suffice to say, the history of policing in the United States is one tainted by periods of tumultuousness.

The country's dark underbelly is not easily forgotten by many racial groups, and is often the root cause of current tensions. Unfortunately, that history still threatens attempts at a meaningful relationship with those who are familiar with this past, and continues to affect interactions between the police and citizens across the generations. For example, research suggests that issues involving race and discrimination are passed down from generation to generation through a process of "local collective memory" (Griffin & Bollen, 2009). The notion of a local collective memory is supported by additional veins of research suggesting citizens' attitudes about police are influenced by both direct and vicarious experiences they have with law enforcement (Brunson & Weitzer, 2011).

The importance of vicarious experiences cannot be overstated in the policing context. For example, according to the Police Public Contact Survey (PPCS), police use force in

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approximately 1.4% of the roughly 40 million citizen contacts annually (Eith & Derose, 2011). Despite the rarity of the use of force, these incidents can have a very serious impact on citizens' assessments of police, especially in celebrated cases (Tuch & Weitzer, 1997). This is particularly true in the Internet Era, where social-media platforms generate far more exposure to cases such as Michael Brown's than did traditional forms of media (Brown, 2016). Moreover, complicated mathematical algorithms determine what content gets pushed to social-media users' feeds (Sullivan, 2014). Thus, not only does technology have the potential to expose more people to content, but it is capable of shaping narratives. It is no wonder, then, that the police and the public's perspectives differ on the pervasiveness of recent fatal police–citizen encounters (Morin et al., 2017). In fact, Meares et al. (2016:298) claim "the actual lawfulness of police action has at best a minor influence on public evaluations of appropriate police behavior."

The moral of the story for policing is that simply claiming officers' actions are legal in the face of perceived misconduct does not guarantee public satisfaction. For example, the grand jury's failure to indict Officer Daniel Pantaleo implicitly signaled he was justified in taking Eric Garner's life, yet learning the officer's behavior was legal incited more protests across the country (Goodman & Baker, 2014). Instances of perceived police misconduct chip away at the cornerstone of policing, which, according to Tyler (1990), is legitimacy. Assessments of legitimacy stem from how fairly people feel they have been treated by police (Skogan & Frydl, 2004). When they believe they have been treated unfairly, it compromises police legitimacy, which can lead to reduced cooperation with and support for police practices, as well as reduced satisfaction with police services (Skogan & Frydl, 2004; Sunshine & Tyler, 2003; Wells, 2007). It goes without saying that policing has a vested interest in building and maintaining its legitimacy with citizens. One way of achieving organizational legitimacy is through institutionalized codes of ethics (Long & Driscoll, 2008). Yet, simply establishing ethical standards is not the sole criterion. There must also be mechanisms in place that hold individuals who violate organizational rules or norms accountable if legitimacy is going to flourish (Walker, 2007).

Police Ethics

It is no secret that the United States' history with policing is mired in claims of corruption (Donahue, 1992). Long before the events in Ferguson, there was an increased interest in the ethical aspects of policing (Neyroud, 2003), suggesting the post-Ferguson policing predicament is by no means its beginning, nor the starting point for attempting reform. In fact, since the advent of policing in America, many attempts have been made to inject accountability and ethics into the way officers conduct themselves. Most notably, in the 1920s, August Vollmer laid the foundation for policing as we know it today by reshaping professional standards for recruits (Donahue & Felts, 1993). Still, nearly 100 years later, it is clear that, while improvements have been made, policing continues to be plagued by instances of perceived wrongdoing, bias, and discrimination. The events in Ferguson served as a catalyst for the President's Task Force on 21st Century Policing, whose central aim was to rebuild trust between police and the communities they serve.

Setting aside the tragedies that sometimes unfold during police–citizen contacts (e.g., Michael Brown), it must be realized that police possess extraordinary powers and do not necessarily have to resort to deadly force to significantly affect peoples' lives. Steinberg (2015) explains that approximately 900 000 officers have arrest powers, and they use them to arrest

more than 12 million people annually and to issue summons to at least 30 million more. Police powers extend well beyond their ability to effect arrests, however. John Burgess ascribes a very broad definition to this phenomenon by calling police power "the dark continent of our jurisprudence. It is the convenient repository of everything for which our juristic classification can find no other place" (cited by Cook, 1907:322). Included in this repository is the ability to initiate traffic stops, search and seize property, and make arrests at officers' discretion. Bittner (1970) is more specific in his analysis of police power, referring to it as the use of inviolable force aimed at controlling the behavior of citizens. Regardless of the definition, the common theme remains that the police have been entrusted with an enormous amount of power, and society expects them to wield that power in responsible, ethical ways.

Based on the enormity of the powers that have been dispensed in the hands of the police, checks and balances become necessary to guard against abuses. The public has become the viewing audience of numerous examples of perceived abuses of police power that have been caught on tape (e.g., Tamir Rice). As a result, every police officer in the United States has been forced to answer, in some way, for the decisions of their colleagues in other jurisdictions, who they will probably never meet. Long before the rise in popularity of cell phones, a camcorder recorded the now infamous Rodney King beating, which demonstrated how the ideal of equality for all is far from a reality (Hoffman, 1993). And, prior to this event, the Kerner Commission detailed the abuses of police power and overpolicing of black neighborhoods that contributed to mistrust between police and certain segments of the citizenry.

Cao & Huang (2000) claim that police abuse of power warrants special scrutiny, since it demonstrates important conflicts that arise from policing in democratic society. At the root of this conflict is the revelation that police are faced with an inherently contradictory role. While they have been given the task of enforcing the standards of right and wrong, their own behavior is often under review, judged, and scrutinized (Felkenes, 1984). Following Vollmer's lead, James Q. Wilson (1968) advocated for police professionalism, endorsing a professional model of policing that emphasized improved selection and hiring practices, better training, and the adoption of ethical guidelines (Novak et al., 2017).

In the United States, the Law Enforcement Code of Ethics (LECE) and the Canons of Policing serve as the constitution of policing, governing how officers should conduct themselves. The LECE lays out the fundamental duties of every officer, which include giving service to fellow citizens, maintaining an exemplary personal life outside the ambits of work, removing all prejudices in the discharge of duties, and remaining constantly aware and respectful of the public faith and trust attached to the job. The Canons of Policing (International Association of Chiefs of Police, 1957) provide more detail, covering 11 articles that focus on the fundamental responsibilities of the job, the limitations of authority, the obligation to be impartial as a responsibility both to one's self and to public leaders, the need to use the proper channels in executing one's duties, the level of cooperation necessary between the police and public leaders, the rules that govern conduct outside of uniform, and the need to refuse gifts that seek to encumber the fair execution of one's duties. Additionally, the Canons also address the ways in which officers should present evidence against wrongdoers and describe the correct attitude both to the profession and to those one has sworn to protect. The LECE and the Canons of Policing act as the guiding framework for the correct moral execution of police duties. However, these guides are the source of much debate and confusion among officers.

Police work is very complex and multilayered. For the most part, the skill set needed to effectively execute one's duties is multifaceted, and is most often gathered from actual experience (Bittner, 1970). Bittner says that no two police encounters are exactly alike and that officers are forced to develop an "intuitive grasp of situational exigencies" from the people they encounter in order to effectively carry out their duties (cited by Donahue & Felts, 1993:340). Because of this focus on intuitiveness and sensitivity, the need for discretion becomes an integral part of police work, which threatens any attempts at reforming ethical standards (Donahue & Felts, 1993). As a result of this conundrum, an ethical challenge emerges.

Heffernan (1982) proposes that there are two types of ethical dilemma that affect policing. The first is concerned with issues of integrity, while the second centers on the difficult decisions law-enforcement officers must make every day. With regard to the latter, Heffernan (1982) is referring to serious forms of misconduct and criminality, such as taking bribes, lying under oath, and using illegal levels of force. Research on policing in democracies across the globe illustrates some alarming trends in officers' beliefs about ethical standards. For example, Westmarland's (2005) survey of police in the United Kingdom revealed that most officers perceived misconduct as serious, but indicated they were not likely to report their peers if they engaged in it. This is consistent with research findings in the Czech Republic and Bosnia and Herzegovina (Ivkovic & Shelley, 2008) and in the United States (Weisburd et al., 2000). Among US policing scholars, this type of protectionism has been dubbed the "blue code of silence" (Westmarland, 2005:155).

In fact, among US policing agencies, this code of silence is thought to be quite pervasive. For example, the National Institute of Ethics surveyed 1016 recruits and over 1100 police officers and found both groups were very familiar with it. Specifically, nearly 80% of recruits acknowledged the code exists and over 50% indicated they were not bothered by it (International Association of Chiefs of Police, 2000). Moreover, nearly half (46%) of all officers reported having witnessed misconduct by a peer and not reporting it to their superiors (International Association of Chiefs of Police, 2000). This represents a serious problem for policing, as many officers seemingly condone this behavior.

While the aforementioned ethical issues identified by Heffernan (1982) clearly focus on integrity, his second set of ethical dilemmas centers on difficult decisions police administrators and officers often face while carrying out their mandates. These hard choices range from the decisions one must make about labor distribution, through the need to use deceit in undercover operations, to the use of deadly force. In an effort to root out or mitigate the impact of ethical violations, different scholars propose different approaches, including giving classes or training in ethical behavior (Elliston & Feldberg, 1985).

Some scholars are concerned that teaching integrity to adults is not very least feasible (Donahue & Felts, 1993). Teaching ethics is especially problematic because lessons taught in a controlled classroom environment do not necessarily mirror the lessons learned in uncontrolled spaces (i.e., in the field). Engaging students in solving ethical quandaries is at the very least superficial and has very little bearing on real-life scenarios. It is very easy to take the moral high ground in the classroom, where there is absolutely nothing to lose. Additionally, classroom examples assume that moral concerns are always presented as such. It overlooks the often subtle, peripheral character of many ethical problems.

The call to teach ethics also overlooks the reality that police operate as part of a bureaucratic structure that is sure to influence behavior (Donahue & Felts, 1993). Westmarland's (2005) analysis of police perception of ethics found that police culture plays a vital role in officers' interpretation of ethical situations. She proposes that "the demands of cop culture,

such as surrounding solidarity and loyalty" influence even what officers are willing to report (2005:155). This finding seems to support the claim that "the environment sets the conditions, rules and limitation within which the organization does business" (Stefanović et al., 2010:97). Therefore, the rules that are laid out by both the LECE and the Canons of Policing often become secondary to what is taught in the day-to-day operations of the organizational environment. Hunt's (1985) seminal work detailing how officers learn to use force supports the notion that the ideals taught in a classroom setting do not necessarily correspond with what officers learn in the field.

Such a scenario presents a real problem for officers, and for policing more generally. Police are told to act according to a set of rules that seemingly fit a sterile environment, yet in the field they witness behaviors that violate their expectations, and often these transgressions do not get reported and violators go unpunished. For ranking administrators devoted to ruling out misconduct, it becomes very difficult, because officers are unwilling to call their peers out for violating department rules. Thus, simply establishing a code of ethics and teaching officers about its importance seems to be only half the battle. The other half requires agencies to implement mechanisms for accountability and figure out how to chip away at the blue wall of silence.

Police Accountability

Police brutality and use-of-lethal-force incidents have become an important staple in the public discourse in recent years, and so too has the demand for an accurate count of how many such incidents there are within a given year. To the dismay of many observers, mechanisms for assessing accountability in the face of ethical dilemmas remain seriously underdeveloped. For example, the killing of Michael Brown in Ferguson and the subsequent demand for justice uncovered a very serious problem within the criminal-justice system: the inability of the federal government to provide definitive use-of-force statistics (Ford, 2015). Criminologists had long inferred that the mechanisms for data collection were woefully lacking and very subjective (Alpert & Fridell, 1992; Alpert & Smith, 1999), but the extent was never clearly understood. The exact depth of the issue is still somewhat unclear today. The events of Ferguson and subsequent dialogue, however, led former FBI Director James Comey to provide a glimpse into the grim reality. He admitted that "it's ridiculous that I can't tell you how many people were shot by the police last week, last month, last year" (cited by Ford, 2015).

There are approximately 18 000 police departments across the United States, and while they compile data on homicides and other reported crimes for federal authorities, the federal government has no *reliable* tabulation of citizen death at the hands of the police (Ford, 2015). Numerous media houses have since developed a systematic method of collecting such data, and the findings are perturbing. The *Washington Post's* assessment in 2015 concluded that the police had killed 986 civilians, more than double the 383 reported by FBI statistics for the same year (Somashekhar & Rich, 2016). This disparity raises serious legitimacy concerns for law enforcement, as it brings into question the ability of the current infrastructure to accurately capture police activities and hold officers accountable.

Effective policing cannot thrive without adequate means of control and accountability (Walker, 2007). Police legitimacy, which forms the basis for the maintenance of laws, order, and service delivery, also depends on it. Accountability becomes increasingly urgent in the face of tacit acknowledgments that with the enormous powers invested in the police,

oversight is required to protect against breaches. Studies that examine police–citizen interactions suggest that the meaningful relationships the police require for their successful operation can only be developed through lawful conduct and accountability to citizens (Bayley, 2002; Goldstein, 1990).

Chan (1999:253) suggests that accountability in policing is a multifaceted concept, concerned with "legitimizing the conferring of extraordinary powers upon the police by reassuring citizens that the police are not out of control or their actions free from scrutiny." Therefore, while the police have a responsibility to exert a level of control over citizens, the onus is also on them to provide explanations for the ways in which they exert that control. Along similar lines, Schlenker et al. (1994:634) define accountability as "being answerable to audiences for performing up to prescribed standards, thereby fulfilling obligations, duties, expectations and other charges." At the core of the ability to provide answers to citizens – as this relates to duties and explanations – is a process of constant evaluation (Chan, 1999). Undoubtedly, this process is hampered when use-of-force statistics are non-existent or wholly inaccurate. With inaccurate data, especially at the federal level, there is no way for agencies to compare themselves with other agencies or to hold themselves accountable. When statistics are accurate and easily accessible, they tell an important story.

For example, Gruber & Schmidt (2015) propose that mandatory reporting of reliable and objective data captured from police interactions, such as use-of-force incidents, requires local departments – and, by extension, the federal government – to understand and appreciate the patterns and trends revealed by the numbers. Ultimately, this aids in the provision of evidence-based decision-making as it relates to the development of remedial strategies for dealing with police use of force (Chan, 1999; Gruber & Schmidt, 2015). In the absence of accurate data, measurements become shrouded in inaccuracies, resources are allocated in a very piecemeal way, and the public narrative is reduced to mere claims and counter-claims that are not scientific in nature.

While the need for accurate statistics cannot be overstated, police accountability demands much more than just this. Performance evaluation is one measure that has been employed in various organizations for decades and is now being introduced into policing. Walker (2007:14) suggests that "regular evaluations are designed to identify and reward desirable performance, to identify and seek to correct performance shortcomings, and to terminate employees whose performance is substandard." Performance evaluations are premised on the assumption that employees will become more efficient when they are incentivized to do so (Burgess & Ratto, 2003). The literature shows little consensus on the issue, however. Proponents of incentivization believe that "cash compensation should be structured to provide big rewards for outstanding performance and interesting penalties for poor performance" (Jensen & Murphy, 1990). Its opponents, on the other hand, argue that such schemes are based on self-interest and hardly allow for an understanding of the employee's motivation (Vandenabeele, 2007).

Despite the lack of consensus, many police agencies have introduced performance evaluations for their officers. However, there has been very little empirical testing of their impact. Much of the debate about the effectiveness of performance reviews centers on problems with definition: the inability to correctly define the concept has hindered attempts at evaluating it (Walker, 2007). Some departments include analysis of community principles in their definition, for example, while others do not. Further, different departments conduct evaluations at different intervals, include different categories, and even employ different types of evaluation (Walker, 2007). Some agencies have begun to look elsewhere for a

means of ensuring accountability. Many have tried to find the necessary answers in various early-intervention systems (EISs).

EISs – often referred to as early-warning programs – have been a part of the public narrative since the 1970s (Lersch et al., 2006). The Rodney King beatings caused their reemergence in the 1990s, when the independent commission that was set up to examine the facts relating to the case found that there was debatably a small group of officers within the agency who were responsible for a large amount of citizen complaints and other police excesses (Lersch et al., 2006). These officers had gone largely unchecked for some time. After this finding was revealed, some agencies constructed a refined scale aimed at identifying officers demonstrating problematic behaviors (Lersch et al., 2006).

Alpert & Walker (2000) describe EIS as a program designed to identify officers that have behaviors that are problematic. In so doing, they employ systemic methodology with the aim of providing intervention and remediation. An important tenet of EIS is that it not only identifies problematic behavior, but provides individual remedial help to deal with it (Walker, 2007). The level of embrace EIS receives is contingent on department goals, and so too are the terms of reference of its use. Proponents of EIS see it as a potential tool for "engaging community groups on the issue of accountability" (Walker, 2007:16). To this end, many departments have implemented the system for some time and have tailored it to identify officers with behavioral problems that threaten the goals of the department. Others have used EIS in others way, including as a tool to identify top performers or to hold superiors accountable (Walker, 2003).

A central criticism of EIS is the lack of uniformity with which it has been implemented across departments (Walker, 2007). There is no established system in place to determine which officers would benefit from the program. Lersch et al. (2006:60) commented on a study of 571 departments using the EIS system that "73% used the standard of three use of force reports over a 12-month period as a criterion for selection into the program," while others used five. Independent groups like Human Rights Watch believe that the threshold should be kept low, to save citizens from brutality before agencies are required to intervene (Lersch et al., 2006). The watchdog group has also criticized the program for the negligible punishment handed down to officers who present problematic behavioral trends. Alpert & Walker (2000:70) note another limiting factor in the effectiveness of EIS programs: these programs are very costly and are not sustainable in many departments, so that in some agencies they have become merely "symbolic gestures with little substantive content."

The inability of policing to determine best practices has forced many departments to seek creative alternatives to counter issues surrounding accountability. In some cases, they have sought input from an oft-neglected group: citizens. Due to the illegal behavior of some in law enforcement, as well as the failure of numerous responses by the government, pushes for transparency in policing have been championed by ordinary citizens seeking more effective police accountability processes (Lewis, 2000). This need for transparency has led to the creation of external and independent civilian bodies to provide oversight. Civilian oversight refers to "governmental institutions that empower individuals who are not sworn police officers to influence how departments formulate policies and dispose of complaints against police officers (Clarke, 2009:2). The current literature that deals with the adoption and growth of civilian oversight has reported an expansion to well over 200 individual panels across the United States (Boghani, 2016).

In theory, these bodies are charged with addressing complaints that center on police misconduct, and are expected to remain impartial so that communities can trust their function. At the core of civilian-oversight bodies is the idea that citizen input will add a

level of unbiasedness that will also provide agency. However, the practice has proven quite different from what citizens expected. While oversight bodies have become very commonplace and are used as a tool to satisfy a need in some jurisdictions, often they function to pay mere "lip service to effective police accountability" (Lewis, 2000:20). Such oversight bodies are most useful in times of crisis, to allay the anxiety of citizens (Clarke, 2009). Once the crisis is removed from the public scope, they assume their usual poorly funded, politically inadequate, powerless routine. It is notable that the depressing state of civilian oversight is often a response to resistance from "rank-and-file police officers, police-department leaders and police unions" (Clarke, 2009:3). This response is known to have rather paralyzing effects on civilian-oversight bodies.

The fact that officers tend to resist civilian oversight is not surprising. Research has found that officers and citizens hold very different views on issues such as the seriousness of neighborhood problems (Sun & Triplett, 2008), support for gun policies (Morin et al., 2017), and whether fatal police–citizen encounters are isolated incidents or indicators of a larger social problem (Morin et al., 2017). While civilian oversight has certainly not provided all the answers to police accountability, it does serve an important role in validating complainant concerns and discouraging police misconduct (Finn, 2001). Despite these benefits, civilian review boards do not have broad authority (Finn, 2001), which limits their ability to significantly affect accountability measures.

Police Accountability in the 21st Century

As the world said goodbye to Michael Brown in the summer of 2014, President Barack Obama set up a commission of sorts to review the facts surrounding his death and the subsequent civil unrest. Data reviewed during that inquiry led to calls for a compromise to "bridge deep mistrust between law enforcement and the public" (Pickler, 2014:para. 5), with a 3-year spending package valued at over $263 million that included the purchase of body-worn cameras. Starting that same year, officers across the country began wearing such cameras.

This technology provides a meaningful scope for police accountability, because it captures evidence on specific incidents. While the dynamics of police accountability have typically involved a narrative of police excesses in the treatment of citizens, body-worn cameras make it possible to capture specifics about citizens' responses to and treatment of the police. Capturing both sides of the dynamic allows for a better understanding of the entire encounter. Moreover, it provides an opportunity to verify officers' and citizens' claims, ultimately serving as an unbiased witness to police–citizen interactions. McFarlin (2015:para. 5) notes that "cameras add to the amount of evidence that law enforcement can bring to court," making them an important investigative tool. Early adopters of body-worn cameras almost immediately reported dramatic decreases in complaints against officers (2015). Preliminary findings in peer-reviewed literature seem to support these claims. Studies that examined the early effects of body-worn cameras reported they were associated with reductions in police use-of-force incidents (Jennings et al., 2015), citizen complaints, and stop–question–frisks (Ready & Young, 2015). While this nascent literature points to promising results in reducing some of the catalysts for complaints about police, it is important not to prematurely make a ruling on the effectiveness of body-worn cameras. As more departments equip themselves with the technology, and rigorous social-science research explores its impact, the literature will begin to provide a more holistic assessment.

One limitation that has become very evident is that cameras are not always on, and therefore do not always capture the full extent of an encounter or of an officer's conduct. This failure of the cameras to capture (sufficient) footage has been a common criticism of the technology. For example, footage of the events leading up to the death of Alton Sterling in Louisiana were nonexistent because the cameras of both of the officers involved were dislodged (Pasternack, 2016). A month after the Sterling incident, Paul O'Neal's fatal shooting also had no meaningful footage, because the officer's camera was turned off (Pasternack, 2016). Manufacturers have been working to overcome some of the technical issues. For example, some cameras, such as Axon's Body 2 unit, have a "pre-event buffer" feature that allows for up to 2 minutes of footage to be captured prior to the camera being set to record (Axon, 2017). Similarly, Watch Guard's Vista Wi-Fi camera can be set to automatically record when an officer exits their vehicle, when integrated with the company's in-car system (Watch Guard, 2017).

Despite continued advances in technology, body-worn cameras are not infallible. Even though public discourse about body-worn cameras often includes mention of "transparency" and "accountability," these may not always be guaranteed, at least in the court of public opinion (Pasternack, 2016). This was certainly the case in the Keith Lamont Scott killing, where body-worn cameras, the police in-car camera, and the victim's wife's cell phone all captured some details surrounding the incident (Fausset & Alcindor, 2016). Despite widespread public belief that the killing was not justified, a 2-month investigation of the shooting, led by the Mecklenburg County District Attorney's office, deemed it justifiable (Fausset & Blinder, 2016). This determination fueled protests where participants expressed their disappointment with the outcome (Blau et al., 2016). Thus, it appears that body-worn cameras may not be the panacea for transparency and accountability that the President's Task Force was hoping for, although it is too early to make a definitive judgment.

Conclusion

In the United States, the LECE and the Canons of Policing have provided a very well-intentioned attempt to outline the ambits of control on police behavior. However, Heffernan (1982:32) believes that "police codes, it should be borne in mind, are, like those of other professions, essentially political documents." And, while the codes explicating behavioral expectations provide a basis for operating, they do little in and of themselves to solve the nuances of the everyday realities that the profession must grapple with. That is, when an institution aligns itself with a set of ethical guidelines, this does not guarantee that its employees will act accordingly. It requires individuals with sound ethical compasses to carry out the mandate pursuant to organizational standards. And, when institutions respond weakly to ethical breaches, it appears their codes are mere lip service and the behavior is implicitly condoned. As Walker (2007) notes, mechanisms of accountability must be present for police legitimacy to flourish.

While technology (e.g., body-worn cameras) and external oversight may result in modest strides toward perceptions of transparency and accountability, other mechanisms must also be sought. Much has been written on the "blue code of silence" and the unwillingness of officers to speak out against their peers' misconduct. In Weisburd et al.'s (2000:5) study of a nationally representative sample of US police officers, over 50% indicated that "it is not unusual for a police officer to turn a blind eye to improper conduct by other officers" and nearly 60% disagreed with the statement, "police officers always report serious criminal

violations involving abuse of authority by fellow officers." This presents a serious problem for policing, and speaks to the first ethical dilemma identified by Heffernan (1982). Ultimately, accountability should begin with officers policing themselves. When they do not, the code "undermines credibility in the eyes of the community" (Stevens, 2011:5). It is incumbent upon policing not just to denounce the "blue code of silence," but actually to encourage officers to call out misconduct.

Of equal importance is the institutional response to misconduct, especially when high-profile serious violations occur. When police agencies have clear evidence that officers have acted inappropriately, they need to respond accordingly, so that the public can begin to regain confidence in their willingness to vigorously root out bad behavior from within their ranks, just as they do in the community. Otherwise, it reinforces the notion, misguided or not, that police are free to operate without fear of accountability. For example, Ekins (2017:41) reports that 46% of Americans "believe police are not 'generally held accountable for misconduct' when it occurs," with nearly 66% of African Americans holding this view. When the public believes that police are allowed to operate as they please, it undermines the legitimacy of the institution, which negatively affects officers who go out every day and perform in an ethical and transparent fashion.

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Part V
Punishment and Prison

20

History of the Prison

Ashley T. Rubin

Punishment scholars have traditionally divided penal history into a series of discrete periods. These periods are typically associated with either optimistic reforms encouraging prisoners' rehabilitation in one way or another or pessimistic reforms abandoning rehabilitation and favoring some combination of incapacitation, deterrence, and retribution (but see Goodman et al., 2017). Each period is also associated with the rise of a particular "template" for prison – a new, replicable model of prison that spreads across the country as states copy the original (Rubin, N.D.c). Recently, however, scholars have challenged the nature of these periodizations, arguing for greater nuance and accuracy in how penal change is described over time (Campbell & Schoenfeld, 2013; Goodman et al., 2017; Rubin, N.D.c).

Rather than periodizing US prison history, this chapter describes it as a series of overlapping periods of diffusion in which a particular prison template spreads across the country. This approach resolves several problems recently pointed out with the traditional stark periodizations (Goodman et al., 2017). First, it reminds us that penal change is not instantaneous, but a process that takes time – the period between the creation of a prison template and the final state that copies it can be 50 years or more; this would cover two or three periods in traditional periodization-based histories. Second, and relatedly, it breaks the assumed relationship between the dominance of a particular prison template and a historical era (e.g., the Jacksonian Era or the Progressive Era). While reformers and prison administrators may create a prison template at the height of a particular historical era, the template might not become dominant until several decades later, when the historical era is waning or a new era has begun. Finally, a diffusion-based history challenges traditional macro-level theories that suggest significant social change is responsible for a particular prison template's dominance. In many cases, an original template can be traced to some significant change. However, because diffusion continues for such a long period, many templates are adopted long after the original conditions have subsided, forcing scholars to find other reasons for their ascendance than social change (Rubin, N.D.c). Ultimately, de-centering artificial periods and placing prison templates at the center of the analysis invites new insights about prison history.

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The Prehistory of the Prison: Toward a Template

For much of Western history, punishment was dominated by a combination of capital and corporal methods – and not by the prison as we imagine it today. While "prisons" existed in many jurisdictions, they were in fact jails ("gaols"), or local-level facilities intended as places of short-term confinement for a range of "prisoners" – debtors, vagrants, runaway servants, people awaiting trial, people awaiting punishment, and people who had been punished but still owed fees. These were not places of punishment; they were designed for administrative convenience – to ensure someone showed up to their trial or paid their fine. They were also far from the "total institutions" of later periods (Goffman, 1961). They were often permeable, such that prisoners could speak to people outside the prison and even buy or sell goods, and some prisoners were permitted to leave during the day. Prisoners were not segregated from one another, but instead men and women, old and young, criminal and non-criminal alike were held together in large rooms. They were not provided with basic services, but instead had to pay for their food and drink (alcohol was available), beg for their clothing when family or friends could not bring it to them, and otherwise pay for their stay. While confinement was expected to be short, some prisoners would inevitably stay for long periods as they accumulated significant debts to the jailer ("gaoler"). Moreover, the jailer himself was usually a private citizen, such as an innkeeper, who made part of his living by selling necessities to prisoners; he was not employed by the state. These jail-like prisons were thus quite distant from modern notions of prisons as state-run total institutions for convicted criminals' long-term confinement as punishment (see, e.g., Langbein, 1976; Rothman, 1971; Rubin, 2018; Spierenburg, 1987).

Variations of this type of facility, beyond the simple county jail, emerged across early modern England, Europe, and America. Although no single template dominated in this period, a major theme of the many variations was forced labor under some conditions of confinement. Several Mediterranean countries employed prisoners in ships or galleys, in which they were forced to row, until 18th-century naval policy made these ships and this form of convict labor unnecessary. As galleys were decommissioned and moored, French prisoners were sent to work in nearby *bagnes* or labor camps. From the mid-16th century onward in England, petty offenders and those convicted of several quasi-criminal offenses (e.g., vagrancy) could find themselves confined in a workhouse or bridewell and forced to do labor intended to convince them to return to a "proper" life of traditional labor rather than theft, vagrancy, or begging. The following century, England also added to its penal repertoire convict transportation – first to the Americas, and then, after the American Revolution, to Australia – in which convicted criminals were either sentenced to 7 years of hard labor or pardoned from their capital sentence and commuted to 14 years of hard labor; in both cases, they were essentially a kind of indentured servant leased to the highest bidder (Beattie, 2001; Melossi & Pavarini, 1981; Rusche & Kirchheimer, 1939; Spierenburg, 1987).

Even in colonial America, the few early efforts to rely on some form of confinement for petty offenders or, even more rarely, convicted criminals turned to a combination of workhouse and jail. In 1682, William Penn, founder and proprietor of Pennsylvania, passed an incredibly progressive (for the time) law restricting his colony's reliance on capital punishment and authorizing short periods of confinement (typically, a few days to a month) instead – convicted criminals would also be fined and whipped. Like a traditional jail, however, these facilities would contain a mixed population; like the bridewells, they would be run like a workhouse (meaning forced labor was expected) – the law specified, "All prisons

shall be workhouses for felons, thiefs, vagrants, and loose, abusive and idle persons" (cited in Rubin, 2018:198–199). Although progressive in its intentions, the law was short-lived (it was repealed by the British Parliament in 1718) and had little effect (only Philadelphia sought to comply, but officials had a very difficult time constructing a permanent facility that was strong and healthy enough to contain prisoners) (Rubin, 2018). Combination jails and workhouses, sometimes also called "houses of correction," were adopted in a few other colonies, including Massachusetts and Connecticut (Rothman, 1971; Rubin, 2018).

The most influential variations on the simple jail were the Dutch and German workhouses that developed over the course of the 17th and 18th centuries. Run on a household model, these workhouses received beggars, vagrants, and petty criminals, who were set to work rasping wood (in a "*rasphuis*"), in the case of men, or to spinning and sewing (in a "*spinhuis*"), in the case of women. In addition to coercing this population into a more productive and disciplined lifestyle, supervised by a house father or mother, prisoner labor was intended to help maintain household efficiency and reduce costs (but not necessarily to turn a profit).

Use of these workhouses in the Dutch Republic and various German principalities increased over this period, until they became a normal destination for a range of criminals, not just low-level offenders, and came to be recognized as places of punishment (Spierenburg, 1991). They were well-respected, much discussed, and even copied in other places. William Penn had toured the Dutch workhouses (Lewis, 1922:10) before signing his own workhouse laws, although his never came close to the originals. In the 1770s, the Maison de Force in Ghent, Belgium, was remodeled on the Dutch model. Shortly thereafter, British reformer John Howard wrote about the Dutch workhouses, inspiring the many reformers who read his work. The Dutch workhouses were thus the first recognizable template of the prison – albeit an early version of the prison – to spread beyond its home country and be diligently copied, rather than simply used as an influence.

The Birth of the Prison after the Revolution: The First Templates

Reform efforts that would actually result in something approximating a modern prison – with its population restricted to convicted criminals undergoing punishment while separated from the rest of society by long-term confinement in state-run facilities – appeared toward the end of the 18th century. The 17th and 18th centuries experienced significant social, religious, economic, political, and demographic changes. Rather than discuss these changes in detail, I will highlight two responses to them that would repeatedly bear fruit: the writings of Italian aristocrat Cesare Beccaria and British sheriff John Howard.

Using new Enlightenment-era political thought about the rights of man and government, as well as preferences for logic, reason, and rationality, Beccaria wrote a treatise opposing capital punishment in 1764. Among his most important arguments (for prison history) was that capital punishment was an ineffective deterrent against crime: death was used for such a range of offenses that juries often shied away from convicting clearly guilty offenders. A milder punishment that is always enforced, he argued, would be far more effective. Rather than severity, officials should aim for proportionality between the punishment and the offence, to avoid the appearance of unnecessarily harsh punishments.

In the following decade, working from a less theoretical and more practical angle, John Howard wrote a treatise arguing in favor of significant prison reform. While touring England's county prisons (jails), Howard had repeatedly come into contact with disgusting, unsanitary, disease-ridden facilities in which prisoners (including debtors) were starved, kept nearly or entirely naked, and abused by their fellow inmates (and obviously neglected by their jailers). In 1777, Howard called for a new, healthy, and safer design for prisons that separated prisoners by category (criminality, gender, illness, etc.) and that would be managed by a better class of jailer. Whereas Beccaria appealed to his readers' logic, Howard appealed to their sensibilities. The combination was particularly effective, especially in America, where these tracts arrived in the middle of the revolution. For the next half century (at least), American penal reformers would cite arguments made in both treatises.

The American Revolution itself – another response and source of significant social change – became an engine of penal change that would have lasting consequences for prison history (but see Hirsch, 1992). It awakened a particular sense of pride in "America" and "Americans" that was not present before the war, when colonists identified as British. One manifestation of this shift was the growing belief that capital and corporal punishments were not only unseemly – a trend that had been underway, aided in large part by changing religious norms and demographic changes – but were simply un-American. Instead, reformers argued, these punishments had been forced on the colonists by their British rulers. They pointed to Penn's earlier attempt to replace capital punishment with incarceration. Overlooking the limited nature of Penn's law and the lackluster response of the various counties to his call, Revolutionary-era reformers emphasized the fact that Parliament had repealed the law and imposed a harsher penal code in its place. Pennsylvania jurist William Bradford noted in 1793, "We perceive that the severity of our criminal law is an exotic plant, and not the native growth of Pennsylvania. It has endured, but I believe, has never been a favorite" (Bradford, 1793:20).

The new states used the need to write constitutions and penal codes as an opportunity to build in Beccarian and Howardian mandates. In 1776, Pennsylvania's constitution called for a change in its laws "as soon as may be" and for punishments that would be "less sanguinary" and "more proportionate to the crime." It also called for "houses" to "punish…by hard labor" all non-capital convicts (Commonwealth of Pennsylvania, 1776). Vermont, Maryland, and South Carolina made similar calls. When the fighting ended in the early 1780s, a few states took the opportunity to pass new penal codes that would also employ these principles. Numerous statutes in this period authorized "confinement at hard labour" as a punishment for a range of offenses that had previously been punished through corporal and some capital punishments (Rubin, 2018). The most important of these statutes also authorized specific facilities – other than in a jail or workhouse – to hold such prisoners.

Between 1785 and 1794, three states authorized the first state prisons in America as places of punishment for convicted criminals. In 1785, Massachusetts authorized a state prison at a military fort on Castle Island (in Boston Harbor). The prison at Castle Island was unique – it was a state-run (and state-funded) facility that would receive convicted criminals from across the state – specifically, anyone sentenced to "confinement at hard labor," which typically meant relatively serious offenders (e.g., those convicted of burglary or robbery). Castle Island's prisoners were ordered to be kept under military discipline and managed by the officers of the local garrison. No special buildings were authorized initially – the garrison's barracks were the expected location – but workhouses were eventually constructed. In its early days, Castle Island was intended to be a male-only facility, until proper facilities could be constructed for women (Hirsch, 1992; Rubin, N.D.b).

In 1790, Connecticut authorized the country's second state prison, to be built on top of an old copper mine. In 1773, the legislature had authorized the construction of "New-Gate Prison" as "a public Goal [sic] and Work-House, for the use of this Colony," where those convicted of serious offenses would serve out lengthy sentences of imprisonment at hard labor. Almost as soon as the prison was built, however, it was co-opted by the war effort and used to confine political prisoners. The 1790 statute rekindled this effort – again making Newgate the receptacle of the state's prisoner population – but it also authorized a wider range of offenders, some of whom could serve life sentences if they had been convicted multiple times (Rubin, N.D.b).

Finally, and most influentially, in 1794, Pennsylvania authorized Walnut Street Jail, a recently reformed county prison in Philadelphia, to become its state prison. Walnut Street had also been initially authorized in 1773, and it too had been co-opted by the war effort shortly after opening, although it had been intended to be a local facility. Influenced by John Howard, Philadelphia's very active penal-reform community advocated for a series of changes, which were authorized in 1789, 1790, and 1794. At Walnut Street, convicted criminals were to be separated from debtors and vagrants, who would live in a separate part of the facility. Men and women would be separated, as well. The facility would be reconstructed with an eye toward cleanliness and health, and it would be well maintained. The old jailer would face greater scrutiny and would receive a salary, in order to avoid past corruption (like bribery or extracting fees). Prisoners would perform hard labor, but a small portion – the most hardened offenders – would be kept in solitary confinement in a "penitentiary house" on the prison's grounds. After some well-publicized success in reducing crime and maintaining low costs in the early 1790s, Walnut Street became the receptacle for the state's prisoners (Meranze, 1996; Rubin, N.D.b).

By the mid-1790s, then, three states had offered templates for the new proto-prisons – facilities that still bore a strong resemblance to colonial jails (prisoners remained congregated) but represented a significant step toward the modern prison. However, both Castle Island and Newgate were still primitive facilities, and the conditions in both were quite bad: in Newgate, prisoners descended down a ladder into the candle-lit caverns of the mines, while Castle Island, despite its fortified position, experienced numerous escapes and constant disease (Hirsch, 1982). There was very little written about them, in part because both were in difficult-to-reach areas (a town in northern Connecticut and an island military fort) in comparison to Walnut Street (located in what was at the time the country's (and the state's) capital and largest sea port city, across the street from the national seat of government). When writers did acknowledge Castle Island or Newgate, however, they were fairly dismissive, rejecting them as eligible models. In the end, Walnut Street – well publicized by its administrators and by visitors to Philadelphia – became the model for American prisons. Between 1796 and 1822, more than a dozen states – including Massachusetts and Connecticut – authorized their own proto-prisons modeled on the Walnut Street template (Rubin, N.D.b).

The Modern Prison in the Antebellum Era: Competing Templates

In the 1810s, while some of the last states to adopt proto-prisons were busy authorizing them on the Walnut Street template, the country's oldest proto-prisons were experiencing problems that reached crisis proportions. The proto-prisons had never operated as advertised: soon after Walnut Street became a state prison, overcrowding made its operations

difficult. A series of yellow fever outbreaks and arsons combined to bring chaos to the facility. Its famous reliance on solitary confinement within the penitentiary house was also overstated, as there were too few cells for the number of offenders, and solitary was simply used as short-term punishment to maintain order (Meranze, 1996). Elsewhere, architectural and design flaws quickly led to problems. Escapes, riots, arson, and general disorder among the prisons were increasingly common – and well known. During and after the War of 1812, many commentators blamed the failing proto-prisons for a perceived crime wave. Finally, large-scale riots in New York, Pennsylvania, and other states dramatically symbolized the proto-prison's failure (McLennan, 2008; Meranze, 1996; Rubin, N.D.a).

In response, the two states experiencing the worst cases of disorder – New York and Pennsylvania – authorized bigger, stronger, and more tightly controlled facilities. Overcrowding was widely perceived to be the biggest issue the proto-prisons were facing, so new facilities were authorized in upstate New York and western Pennsylvania to supplement those in New York City and Philadelphia. The new prisons were expected to instill fear, and were built with intimidating castle-like facades. Reformers also advocated for solitary confinement, which would not only prevent the spread of disease, but would stop prisoners from colluding or otherwise further indoctrinating others into criminality, as was common (they believed) in the failing proto-prisons. While the new facilities were under construction, more large-scale riots helped to underscore their points. In New York, after a particularly big riot at the old proto-prison, a separate wing of the new Auburn State Prison was authorized to hold the worst offenders in solitary confinement for the duration of their sentence; another group of medium offenders would spend only some time in solitary; and a third group of the least-hardened offenders would only spend the night in solitary and would work during the day with other prisoners. In Pennsylvania, the new Western State Penitentiary was authorized to house all prisoners in solitary confinement (Rubin, N.D.a).

When these prisons opened, however, each ran into problems. New York's Auburn State Prison was the first. Between 1821 and 1823, it maintained a group of prisoners in solitary confinement (typically for periods of several months each). These prisoners rapidly showed signs of mental and physical deterioration, including muscle loss, higher frequencies of disease, self-mutilation, and high rates of attempted (or successful) suicide. By 1823, the governor pardoned the remaining prisoners and New York's experiment with long-term solitary confinement ended. From then on, all prisoners were maintained under what became known as the Auburn System: during the day, prisoners worked silently in factory-like settings with other prisoners, whom they were forbidden from speaking with or looking at. At night, they retreated to small solitary cells, where they remained until morning. To maintain order at all times, prisoners marched in lockstep to and from their cells, always in silence, and they wore striped uniforms to identify them as prisoners in the event of escape. Reformers and prison administrators described the system as particularly effective and orderly – it achieved the dream of total control that they had desired after the chaos of proto-prisons (Lewis, 1965; McLennan, 2008; Powers, 1826; Rubin, N.D.a).

Pennsylvania experienced other problems and similarly regrouped. When Western State Penitentiary opened in 1826, its architecture immediately proved problematic: cells were improperly ventilated and administrators were forced to give prisoners work around the prison (Doll, 1957). In the same year that Western opened, word leaked out about the disaster that had been solitary confinement in Auburn's first several years,

prompting a severe backlash against the practice. While some Philadelphia-based penal reformers remained strong advocates of solitary confinement – with appropriate modifications – other commentators supported adopting the Auburn System. Moreover, within the reformer community, opinion was divided over whether prisoners should be given hard labor (to give them stimulation and to recoup some of the costs of their incarceration) or whether labor would distract from their reflection; the latter group believed that larger, better ventilated cells, the ability to exercise, and moral education would be enough to prevent mental and physical deterioration. After intense wrangling and lobbying efforts, the legislature authorized what would become known as the Pennsylvania System. Under this system, prisoners were kept in solitary confinement for the duration of their sentence, but to avoid mental and physical deterioration, they were put to labor within their cells (performing workshop-compatible labor like carpentry, weaving, and shoemaking), given access to an attached private yard for exercise, and visited regularly by prison staff and local reformers, who also provided secular and moral education and mentorship (Rubin, N.D.a).

Both approaches sought similar goals through different means. Through physical or social isolation, the two systems sought to prevent prisoners from grouping together in riots or further indoctrinating one another into criminality. Through the discipline of labor and the reflection allowed by isolation, prisoners could become reformed (rehabilitated, in modern parlance) and re-enter society ready and able to avoid crime. The differences in their methods, however – full-time solitary versus solitary only at night, workshop-style versus factory-style labor – were significant to commentators at the time, who endlessly debated the systems' comparative merits and defects.

Not long after the Pennsylvania System became fully operational at the new Eastern State Penitentiary in Philadelphia, reformers from Boston (soon joined by others in New York and elsewhere) who had endorsed the Auburn System launched a full-scale campaign to discredit it. They claimed the Pennsylvania System would make prisoners mentally and physically ill, that it would be expensive and unprofitable (by comparison to the Auburn System), that it was cruel and inhumane, and that it would ultimately be ineffective and require alterations in practice. Philadelphia-area reformers and other Pennsylvania System supporters fired back, claiming that profit was a mean criterion on which to base a penal system and pointing out that the Auburn System enforced compliance by whipping its prisoners (Rubin, 2015, N.D.a).

The debate went on for decades, but the Auburn System ultimately won. The advantage of its early start gave other states looking to build new prisons a model to copy; by the time Eastern opened (Western was still hopeless), several had already adopted the Auburn System. Additionally, Auburn enjoyed better-organized supporters, who were successfully able to propagate their message. Finally, many commentators simply believed the myths about the Pennsylvania System – despite the fact that the Auburn System was not as profitable as its supporters said and that its prisoners also faced significant mental and physical disease. Ultimately, the Auburn System spread across the country, even reaching the less-populated and less-industrial Southern and frontier states. Although Rhode Island and New Jersey also adopted the Pennsylvania System initially, they abandoned it fairly quickly and adopted the Auburn System instead. Going into the Civil War, America's penal landscape was quite homogenous: very few states lacked a prison, and all but one (Pennsylvania) followed the Auburn System (Rubin, 2015, N.D.a).

The Post-Civil War Proliferation of New Prison Templates

The Civil War, like the American Revolution, became another engine of change. Significant post-war overcrowding, caused by disbanding troops flooding a weak job market, combined with several recessions and long-term (rapid) population growth and immigration, brought chaos to the aging facilities, which were built for comparatively small populations. In the South, entire prisons were destroyed by Union troops (who also destroyed factories and industrial facilities during the war). Additionally, the abolition of slavery removed the entire basis of the Southern economy, as well as its most important social hierarchy. Finally, with the anti-slavery movement at an end, reformers transferred their interests back into penal reform, launching another major movement. In this context, several new templates for the prison emerged and diffused across the country.

In the North, overcrowding meant that populations that had previously received little attention because of their small size (and social insignificance) suddenly became sufficiently large to garner interest (Rubin, 2014). Female prisoners in particular had long been a nuisance in prison administrators' eyes. They cost more per capita than male prisoners and were thus seen as a drain on the prison's economy. In practice, they were often ignored, left to themselves in an obscure part of the prison to prey on one another or be preyed upon by guards. With overcrowding, however, prison administrators were desperate to remove prisoners from their facilities; in this, they were aligned with penal reformers interested in the well-being of female prisoners, who had become a larger portion of the prison population. Thus, in the 1870s, states began opening separate facilities for women – the first since New York had adopted a unique separate women's facility in 1835. Some of these were modeled on traditional men's prisons (custodial prisons); others followed a reformatory model, in which female prisoners were trained according to middle-class views of how women should behave. These facilities spread across the country until the 1930s, by which time many female reformatories were little different in practice from their custodial counterparts (Rafter, 1985).

Young adults were another population that gained reformers' attention after the war, particularly as so many returning soldiers were quite young, and they were one of the largest subsets of prison populations in this period. Changing beliefs about crime and criminals also contributed to this trend. By the mid-19th century, many reformers had lost faith in their power to change society – including criminals – for the better (Walters, 1997). Prisoners especially were seen as irredeemable; people who should simply be confined or punished rather than appropriate subjects for reformation. However, the reformers were unwilling to give up on young people. From the 1860s onward, they began to call for separate facilities for young adults and first-time offenders, who were seen as capable of reformation. In this context, Zebulon Brockway successfully lobbied the New York legislature to authorize an adult reformatory, which opened in 1876 in rural Elmira. Under Brockway's Elmira System, young prisoners were given education, religion, and vocational training – their precise schedule of activities to be determined by diagnostic interviews when they entered the system. After confinement, they continued under supervision in the community, in an early version of parole. The Elmira System was the basis for other adult reformatories built until the 1920s (Pisciotta, 1994).

For the remaining population – serious or older male offenders – the prison was reimagined as a holding cell for the irredeemable. In states with multiple prisons, older Auburn-style prisons were re-designated maximum-security prisons (Rothman, 1980). Under the emerging theories of the nascent field of criminology, scholars, reformers, and administrators believed in

the "born criminal" who was congenitally condemned to a life of crime (Rafter, 1997). As with the young-adult offenders, however, not every prisoner was believed to be irredeemable. For those who were not, reformers advocated parole and probation. Drawing on experiments in Ireland and Australia, US states slowly changed their laws, authorizing early release from prison upon good behavior. Increasingly, these laws were replaced by requirements that prisoners released early continue in supervision within the community, under the watchful eye of a mentor or supervisor: the parole officer. Other convicted criminals who were deemed marginal enough cases, reformers argued, should be diverted from prison entirely, and should only experience community supervision or probation. These new templates spread across the country in the decades before and after 1900 (Rothman, 1980; Simon, 1993). In practice, parole and probation proved to be less diversionary innovations than means of bringing more people under state supervision of some kind (see Cohen, 1985).

In the South, soon after the war, states turned to new templates to resolve their twin problems of needing to rebuild prisons and to reinstitute their racial hierarchy. They began by passing draconian laws, known as "Black Codes," that harshly penalized crimes associated with African Americans, and especially slaves – in particular, behavior that had been encouraged by plantation owners, such as petty theft of vegetables or farm animals, which continued as a necessity after liberation – with multi-year prison sentences. (When similar crimes were committed by whites, they would be punished by fines or short jail stays.) Without prisons, however, some states, beginning with Mississippi, turned to convict leasing. Under convict leasing, prisoners were farmed out to entrepreneurs, who paid the state a fee to use them to perform difficult, dangerous jobs, at great profit to the lessee and great cost to the prisoners themselves. As lessees paid no penalty when prisoners died, and a healthy diet only hurt their profit margin, mortality rates were extremely high and prisoners' overall health was extremely low. This practice was adopted in multiple Southern states between the 1870s and 1890s (Ayers, 1984; Oshinsky, 1997).

Near the end of the 19th century, Southern states adopted another labor-based template for their (mostly black) prisoners: chain gangs. With the rise of Progressive Era ideology and the introduction of the automobile (and with it, the need to connect distantly spaced Southern cities by reliable roads), Southern reformers advocated ending convict lease and returning prisoners to the state. Prisoners mostly built roads (and some railroads) while chained together and wearing the Auburn-style striped uniform that designated prisoner status – with an armed (white) guard watching over them. Southern reformers argued that their prisoners, who spent their time outside in the fresh air, were far better off than Northern prisoners, who toiled away in dirty factories. Over time, however, as the number of white prisoners who ended up on chain gangs increased, (white) public opinion turned against the system, and it fell into disuse by the middle of the 20th century. By that time, another template was already in use (Lichtenstein, 1996).

Shortly after convict leasing fell way, in the first decade of the 1900s, a few Southern states built new prisons modeled on slave plantations. Situated on sprawling farms (previously plantations) of many thousands of acres, the prisons often consisted of a few barracks-style dormitories, which were racially segregated. During the day, prisoners (again, primarily African-Americans) worked in the fields, under the watchful eye once again of an armed guard or "trustee" prisoner (frequently, a white prisoner). Prisoners who failed to work hard enough, attempted escape, or otherwise misbehaved were brutally punished. These prisons, like Angola Penitentiary in Louisiana and Cummins Farm in Arkansas, continued to operate with little change throughout the 20th century and remain open today (Feeley & Rubin, 2000; Oshinsky, 1997).

Aside from the separate women's prisons, adult reformatories, and various Southern efforts to replicate slavery through the criminal-justice system, the Auburn-style prison continued to dominate the penal landscape through the end of the 19th century and into the 20th. Indeed, even after the Civil War, Auburn-style prisons continued to open as new states joined the Union and older ones attempted to solve overcrowding with more facilities. Opposition to prison labor – mostly from organized (free) labor unions, but also from other groups, including the prisoners themselves – led to new laws that prohibited states (or their agents) from selling prisoner-made goods. States were allowed to use these goods in state-run facilities (government offices, state-funded schools, etc.), but even so, the laws made significant dents in the demand for prisoner labor and made prison industries more expensive to maintain. Nonetheless, the basic principles that underlay the Auburn System continued to influence American prisons (McLennan, 2008).

Serial Prison Templates of the 20th Century

While the post-Civil War period experienced a proliferation in new prison templates, the 20th century saw innovation and diffusion converge on individual templates. Older prisons that had been built on older templates remained on the landscape – sometimes left to their original design, other times modified to fit new ideas. But they were also joined by new prisons, in several more prison-building waves – each bigger than the last – over the course of the century.

In the 1920s and '30s, states around the country (as well as the federal government) began building what became known as Big House prisons. Big House prisons were similar to the older Auburn-style modern prisons, but much bigger and had plainer architecture. Whereas Auburn-style prisons were built to host several hundred prisoners, Big House prisons were designed to hold several thousand. And whereas Auburn-style prisons often looked like castles, Big House prisons – like Stateville in Illinois or Alcatraz in California – were recognizable by their long, rectangular cell blocks that were several (four or five) stories high. Prisoners were housed one or two to a cell, with an open – but barred – front (and no privacy). Although prisoners were initially expected to remain silent, as under the Auburn System, this rule often gave way over time. Indeed, in these prisons, the prison yard became a highly social space, in which cards, gambling, recreation, and other activities became common. Particularly during the Great Depression of the 1930s, many carryovers from the Auburn System still embedded within the Big House fell away when prison industries became unsustainable and new forms of order became necessary (Bright, 1996; Jacobs, 1977; McLennan, 2008; Rothman, 1980). These prisons, with their extremely large populations, became the source of significant prisoner societies that would, when studied, form the basis of prison sociology in the late 1930s and into the 1950s (Clemmer, 1940; Sykes, 1958). But that point, however, states no longer built Big House prisons.

In the glow of the post-World War II era, states embarked on another significant prison building project. Leading the way as the new movement's bellwether, California quintupled the number of its prisons in this period. The new prisons, both in California and beyond, once again followed a new template: that of the correctional institution. Built in bucolic settings and well planted with trees, plants, and grass, correctional institutions resembled the network of community colleges and universities that the state was also building. Prisoners, or "inmates," lived in small dormitories supervised by "correctional officers" and a host of

"treatment" staff. During the day, they spent their time in some combination of educational classes, vocational training, and various forms of therapy – especially behavior modification, group therapy, and bibliotherapy (which mainly involved reading and writing) – all in the name of rehabilitation. During this period, many prisoners not only learned to read, but also became (frequently self-taught) experts in political theory and philosophy or wrote their memoirs. Some (including Radical Black prisoners Eldridge Cleaver and George Jackson) even became best-selling authors – much to the chagrin of prison administrators (Berger, 2014; Cummins, 1994). By the early 1970s, some of the strongest early advocates of the correctional institution (like California) came to reject its underlying principles and advocate for stricter treatment. Even so, a few laggard states were still building their first correctional institutions, or adjusting earlier prisons to conform to the model, well into the decade (e.g., Jacobs, 1977; Lynch, 2010).

Late 20th-Century Prisons: A Dominant Template and its Offspring

In the 1980s and '90s, states embarked on the largest prison-building boom to date, erecting more than 1000 prisons over 35 years (Eason, 2017). The new prisons were needed, in a sense, because states passed a flurry of statutes aimed at sending more people to prison for longer sentences and making it more difficult for them to leave. The new penal philosophy was risk-based incapacitation: identify the riskiest (or scariest) populations (according to highly politicized metrics) and lock them up for as long as possible. Prison populations began to climb, gradually at first in the 1970s, and then significantly so by the 1980s and '90s. Many prisons became overcrowded – so much so that most states received court orders to alleviate their overcrowding. New prisons were built, not only to accommodate the court orders but also to allow even more prisoners to be sent to prison – and because prison building had become, for one of the first times in history, politically popular (e.g., Lynch, 2010; Schoenfeld, 2010; Simon, 2007). The large, generally nondescript box-like prisons – surrounded by barbed-wire fence, bright lights, and guard towers – built in this period have become known as "warehouse prisons" because they simply contain prisoners, with no special activities or agenda beyond warehousing them for the duration of their sentence.

While the warehouse prison dominates the modern American penal landscape, it has been joined by an important variation – or rather, a more extreme version of the original: the supermaximum-security (supermax) prison. When prisoners became politically active in the 1970s, prison administrators identified the perceived ringleaders or problematic prisoners and sent them to punishment cells, where they stayed in solitary confinement. Administrators believed sending these prisoners to "lockdown" would diminish their influence over their fellow inmates and end the spread of political organizing. When prisons became more violent with overcrowding and demographic changes (Irwin, 1980), administrative support for this approach increased and the practice became routine. In the 1980s, several states – including California and Arizona – began building distinct prison units that were designed from the beginning for prisoners on permanent lockdown status. In these new facilities – concrete bunkers arranged in small (roughly 8–10 person) pods controlled and monitored electronically – prisoners would spend 23 hours (or more) each day in their solitary cells with no human contact. These facilities became particularly popular, spreading across the country; they now exist in almost every state. Some prisoners spend years in supermax; others have spent decades (Reiter, 2016).

Conclusion

Conceiving of prison history as a series of diffusions of different templates not only addresses past problems of periodization, but also yields new insights about general periods in prison history. We see that periods within prison history are not always limited to or dominated by a single template; instead, this analysis calls attention to the number of templates active at any given time and the relationship between them. Prior to the late 18th century, no approach to confinement was sufficiently developed to offer a distinct template – the Dutch workhouse, which developed slowly, eventually came the closest. In the post-Revolutionary period (1785–1820), more than one template for the early proto-prisons existed, but only one version (Walnut Street) was seriously considered and spread across the country. In much of the antebellum period (1820–60), two templates (Auburn System and Pennsylvania System) competed for dominance, and one ultimately won out; by the end of this period, the American carceral landscape appeared incredibly homogenous.

After the Civil War (1860–1920), the United States witnessed a proliferation of prison templates as regional diversity in prisons emerged for the first time (including plantation-style prisons specific to the American South). States, now hosting multiple prisons, began to send their prisoners to specialized facilities for women, young adults, and serious offenders. The 20th century (esp. 1920–70) saw the repeated rise and fall of a single prison template – first the Big House, then the correctional institution. In the late 20th century, and into the present (1980–2010), although a single template dominated (the warehouse prison), it produced an offspring of sorts (the supermax) – one that does not compete, but rather coexists with its parent template. Each era's different orientation complicates traditional narratives of discrete periods characterized by the rise and fall of a single template.

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21

Prison Culture

Laura McKendy and Rose Ricciardelli

Prisons are intended to segregate perceived "wrongdoers" from the general population, largely under the guise of securing the safety of staff, prisoners, and the public. As an institution, prisons are structured by systems of gender, displays or enactments of control, the presence of violent potentiality, daily struggles of risk mitigation, and undeniable mundaneness that result in physical, emotional, legal, and social deprivations (e.g., Bosworth & Carrabine, 2001; Foucault, 2012; McCorkle et al., 1995; Ricciardelli et al., 2015). These deprivations, referred to as the "pains of imprisonment," have been used by generations of prison scholars to explain the harm endured by men and women in closed-custody carceral spaces (Irwin & Cressey, 1977; Sykes, 1958; Sykes & Messinger, 1960). Prisoner experiences, however, change in response to the formal and informal norms shaping the prison context, which are in turn shaped by factors such as the gender of the prison population, institutional staff levels and dynamics, the availability and nature of programming, and the level of security (Ricciardelli, 2014a).

Prisoners cannot be reduced to passive beings who merely accept their circumstances. Instead, they have agency, and respond collectively and individually to incarceration. Not surprisingly, the social world in prison has long fascinated scholars, who in addition to studying the various "pains of imprisonment" (Sykes, 1958) have explored the ways prisoners co-construct the prison experience through both individual and collective responses (Clemmer, 1958; Goffman, 1961a, 1961b; Sykes, 1958). Put another way, Schmid & Jones (1993, p. 439) note that "doing time" resembles "a creative process through which inmates [prisoners] must invent or learn a repertoire of adaptation tactics that address the varying problems they confront during particular phases of their prison careers."

How prisoners respond to incarceration illustrates the dialectical relationship between agency and power – a known response from any group or individual suppressed by power and control (Foucault, 2012). Scholars seeking to conceptualize prisoners' collective and individual responses to imprisonment have used diverse concepts, including modes of adaptation (Sykes 1958), prisonization (Clemmer, 1940), secondary adjustments (Goffman, 1961a, 1961b), and "tactics" that reclaim meaning over carceral spaces (Baer, 2005). Underpinning these distinct concepts are similar attempts to understand how the sum of

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individual behaviors gives way to collective forms of prison culture. Recognizing that the development of prison culture is an inevitable outcome of carceral living, we ask: What is prison culture? How does it vary across contexts and prison populations? What purpose does prison culture serve for prisoners themselves?

Early Scholarship

Early studies on prison culture focused on how the qualities of prison life gave way to unique patterns of social interaction and unique social identities (Clemmer, 1958; Goffman, 1961a; Sykes, 1958). As a founding prison scholar, Clemmer (1958) suggested that, much as members of any society must learn to conform and behave, prisoners become "socialized" into prison culture. He developed the concept of "prisonization" to refer to "the taking on in greater or less degree of the folkways, mores, customs, and general culture of the penitentiary," which he then used to explain how prisoners became habituated to prison culture (1958:299). He argued that prisonization equipped prisoners with the social knowledge required to navigate – and hence survive – the prison social world.

The qualities of prison culture to which one must assimilate, according to Clemmer (1940), have been subject to vast discussion and theoretical debate. Early scholars were rather convinced that prison experiences were shaped by the deprivations inherent to prison life – of self, freedom, intimacy, pain, and "mortification of self" (Goffman, 1961a, 1961b; Sykes, 1958; Sykes & Messinger, 1960). They agreed that the collective response to living in subordinate and inferior positions to – and being dependent on – prison workers necessitated the construction of a situationally relevant, dynamic, and nuanced culture with specific characteristics. Perhaps in response, "deprivation theorists" argued that qualities of prison life gave way to unique social responses intended to ameliorate the pains of imprisonment. For example, Sykes (1958) argued that the "pains of imprisonment" destabilized prisoners' pre-prison identities by removing their autonomy, freedom, and agency. In response, he suggested, prisoners adapt through the development and maintenance of a prison social system, with its own set of symbols and roles. To Sykes (1958), the unofficial prisoner culture provided prisoners with social identities and facilitated social cohesion.

Sykes (1958) viewed the code as oriented around an in-group collective mentality rooted in a desire to stand opposite to institutional power. Sykes & Messinger (1960:5) described the five main tenets structuring prison culture, which they termed the "inmate code": (a) "Don't interfere with inmate interests," which encompassed "no ratting" and maintaining a "unified front" against guards; (b) "Don't lose your head", that is, stay out of unnecessary conflict, "play it cool," and "do your own time"; (c) "Don't exploit inmates"; (d) "Don't weaken" (or be weak); and (e) "Be sharp," that is, don't trust, align with, or side with prison staff (1960:6–9). The code was not merely a suggested guide for prisoner behavior, but was "asserted with great vehemence" (1960:5).

To Sykes & Messinger (1960), understanding the prisoner code was central to understanding prisoner behavior and the prison social system. They suggested that various forms of deviation from the prisoner code resulted in a typology of prisoners, where, for example, the "rat" or "squealer" betrayed fellow prisoners; the "tough" lost his cool too easily; the "gorilla" exploited other prisoners by force; the "merchant" or "peddler" exploited others economically; the "weakling" or "weak sister" could not withstand prison life; the "wolf" or "fag" resorted to homosexual relations due to the loss of heterosexual options; and the "square John" aligned himself with institutional values (Sykes & Messinger, 1960). In

contrast to prisoners who deviated from the norms of the code, there was one "type" who embodied it: the "real man" or "right guy." Within a specific carceral space, this "real man" embodies all of the most valued prisoner characteristics, or, as Ricciardelli et al. (2015) argue, the hegemonic ideal. While, in practice, prisoners adhere to the code to varying degrees, scholars consistently and uniformly agree that all pay verbal allegiance to it. This is because, Sykes & Messinger (1960) argued, all prisoners stand to benefit from the social cohesion that the code ensures. Indeed, code compliance debases formal prison rules governing prisoner behavior with informal guidelines that prescribe acceptable behaviors (e.g., honor your word, join unit members in a sit-in, give respect) versus prohibited or discouraged behaviors (e.g., inform on fellow prisoners, talk to staff).

Likes Sykes, Goffman (1961a) also considered how prisoner culture emerged in response to institutional conditions. He viewed the prison as a quintessential "total institution"; that is, "a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administrated round of life" (1961a:xiii). In the total institution of the prison, he argued, prisoners are stripped of their pre-prison selves through a series of institutional practices – "abasements, degradations, humiliations, and profanations of self" (1961a:14) – that attempt to turn individuals into "inmates." Goffman (1961a) did not, however, anticipate the success of this totalizing project, arguing that seldom, if ever, do prisoners simply accept their institutional identities.

It is from this position that Goffman (1961a) sought to understand how prisoners reestablished some level of control through "*secondary adjustments*," which he defined as "practices that do not directly challenge staff but allow inmates to obtain forbidden satisfactions or to obtain permitted ones through forbidden means" (1961a:54). Echoing Sykes, he argued that secondary adjustments were governed by the "inmate code," which provided "some means of informal social control to prevent one inmate from informing staff about the secondary adjustments of another" (1961a:55). He also interpreted prisoner roles (e.g., squealers, finks, rats, stoolies, right guys) as partially tied to adherence to these informal behavioral norms that make up the "inmate code."

As Crewe (2005) writes, Sykes (1958) and Goffman (1961a) are viewed as "deprivation" or "indigenous" theorists, in that they understand the qualities of the prison as shaping prisoner culture. They view the prison as a unique social milieu that is somewhat autonomous from broader society. Since these early works, theorists have challenged the notion that prisoner culture is shaped solely by the deprivations associated with prison life, arguing that it is in fact largely "imported" from outside cultural contexts. For example, Irwin & Cressey (1977) suggested that prison culture has its roots in criminal subcultures, or at minimum in the values, lifestyles, and behaviors that existed beyond the prison. Responding to functionalist accounts of the prison, they stated: "[w]e have no doubt that the total set of relationships called 'inmate society' is a response to problems of imprisonment. What we question is the emphasis given to the notion that solutions to these problems are found within the prison, and the lack of emphasis on 'latent culture' – on external experiences as determinants of the solutions" (1977:145).

Irwin & Cressey (1977) identified three such latent subcultures within the prison. The first is a "thief" subculture that corresponds with the values of Sykes & Messinger's (1960) "right guy" figure, including respect for in-group solidarity, reliability, trustworthiness, and keeping cool. Prisoners in this culture are committed to the broader values of the criminal world, as opposed to those associated with prison. In contrast, the "convict subculture" is more rooted in prison life itself. It is defined by "a set of patterns that flourishes in the

environment of incarceration" and "can be found wherever men are confined" (1977:147). Within this subculture, status is acquired "through the displayed ability to manipulate the environment, win special privileges in a certain manner, and assert influence over others" (1977:147). Prisoners in the "convict" subculture have long histories of incarceration, often dating back to their youth, and orient their behaviors in order to achieve status in the prisoner social hierarchy (see Ricciardelli & Moir, 2013). Finally, there is the "legitimate" subculture, made up of those who reject and distance themselves from the "convict" and "thief" subcultures. In this group, prisoners obey prison rules and stick to themselves. Irwin & Cressey (1977) suggested that these three subcultures gave way to significantly different patterns of behavior in prison. Hence, their analysis showed not only how outside culture was "imported" into the prison, but also how variation existed across prisoners according to various biographical factors.

Another author who highlights the connection between prison culture and outside forces is James B. Jacobs (1974, 1977). In line with Irwin & Cressey (1977), Jacobs argued that "much of what has been termed inmate culture is actually imported from outside the prison" (1974:395). In this sense, he was a proponent of "cultural drift" theory, which traces prisoner culture to outside cultural forces, and therefore casts doubt on the ability of prisons to reform prisoners. Jacobs' ethnography of Stateville penitentiary in Illinois emphasized the presence of ethnic-based gangs that had their roots outside the prison. He argued that "[t]here can be no doubt that the existence of the gangs in the prison is inextricably tied to their continued viability on the street" (1974:398), and noted that gang-related events on the outside had immediate effects on the inside.

Gang affiliation, according to Jacobs (1977), eased the prison experience, providing members with economic and psychological support and a prison "family" with which to identify. Although gangs served a variety of practical functions, Jacobs argued that their "psychological function" was the most important: "gangs provide a source of identification, a feeling of belonging and an air of importance" (1974:401). The connection between gang life inside and outside of the prison was such that incarceration was not a "career break," but rather a situation in which gang-affiliated role expectations were "more stringent" (1974:401). Jacobs therefore stressed the interconnection between prison and society, stating that "the relationship between the social organization of the total institution and the surrounding society needs to be much more deeply explored" (1974:408).

The importation perspective also underpins classic scholarship among authors examining women's prisons. Arguing that prison culture was shaped by outside social forces pertaining to gender roles, Giallombardo (1966) noted that, while women and men were confronted with similar "pains of imprisonment," the social environments that emerged in response were shaped by important differences. For example, she found that the violent roles that emerged in men's prison were less pronounced in women's, which she attributed to women's (arguably) less aggressive nature. Similarly, she found no female equivalent of the "right guy" in the women's prison, or the need to prove one's femininity. While Giallombardo did find several social roles that paralleled those described by Sykes in his studies of men's prisons (e.g. "the snitch," "the inmate cop," and "the square"), she also found more friendship-based roles, as well as a series of roles that constituted what she called "the homosexual cluster." Giallombardo argued that in the prison, same-sex relationships served as a "meaningful personal and social relationship," noting that, "[f]or the vast majority of the inmates [prisoners], adjustment to the prison world is made by establishing a homosexual alliance with a compatible partner as a marriage unit" (1966:282).

Since these early works, studies have focused on both the unique qualities of the prison environment and the role played by preexisting factors and outside forces in shaping prisoner adaptation. Today, as Ricciardelli (2014b) notes, "most scholars concede that both attributes of prisoners and the prison environment play a role," giving way to the "integration model," so called because of its integration of elements of "importation" (rooted in the individual) and "deprivation" (based in the environment) (Crewe, 2009). For the most part, scholars agree that prisoners reliably and uniformly pay some allegiance to the code. Interpretations diverge, however, when discussion turns to the substance of the code and the reasons and motives underlying its adoption. While variations may be partially attributed to differing theoretical standpoints, some researchers suggest that prisoner codes have evolved alongside broader changes shaping the landscape of punishment.

The Contemporary Prisoner Code

While, as Crewe (2005:178) writes, "there are few detailed, contemporary descriptions of the everyday values of the inmate community," some exceptions do exist. The existence of "prisoner codes" governing prison living continues to be noted across nations, from the United States (Trammell, 2009) to Canada (Ricciardelli, 2014b), the United Kingdom (Crewe, 2009; Jewkes, 2005), Nigeria (Onojeharho & Bloom, 1986), Israel (Einat & Einat, 2000), and India (Bandyopadhyay, 2006), among other places. Prison culture, however, is neither static nor uniform; rather, it varies with factors such as the demographic makeup of the prison population, the climate, and the degree of staffing and programming, as well as the security classification and type of prisoner, unit, and institution (Ricciardelli, 2014a). Hence, in diverse settings, researchers have produced distinct findings regarding the contemporary nature and role of prisoner culture. Scholarly interpretations therefore diverge when discussion turns to what constitutes the "code" (in its construction) and what are the reasons and motives underlying its adoption.

Crewe (2005) provides a detailed picture of contemporary prison culture in the United Kingdom. Having spent a lengthy period of time in a medium-security institution as a researcher, he was able to see the prison social world "in action," and thus provides a comprehensive description of male UK prison culture (2005:179). Based on his ethnographic fieldwork, he suggests that the "inmate code" has undergone significant changes since early depictions and is no longer marked by prisoners' opposition to the prison system, loyalty among prisoners, or personal strength and "manliness." It has become "diluted," such that in-group solidarity and anti-staff values among prisoners have become tangential, rather than central, to prison living. Crewe attributes these changes to factors such as improved conditions of confinement, which have "reduced the confrontational and depriving nature of prison life" (2005:180), the rise of prison drug use, and new administrative schemes like that of Incentives and Earned Privileges, which incentivizes individual conformity to institutional rules. Physical, social, and administrative changes in prisons, then, alter the nature and role of prison culture and the apparent need for in-group solidarity. While Crewe notes that some solidarity is expressed among smaller groups, including ethnic and regional-based groups, and that prisoners generally display more acceptance and empathy, he suggests that a focus on one's own situation has become central to the experience of imprisonment.

This self-focus and the increasingly individualized approach to incarceration has also been noted in the context of Canadian federal prisons (Ricciardelli, 2014b, 2015). In order to explore how the prisoner code has evolved in light of "the new realities of penal living," Ricciardelli (2014b:235) drew on interviews with male former federal prisoners released into an urban area of Ontario, Canada. Investigating the informal structures shaping contemporary prison living, she too found that the prisoner code has become rather "individualistic in nature and removed from notions of inmate solidarity and brotherly love among prisoners" (2014b:249). More specifically, she found that prisoners navigated everyday situations by employing strategies to mitigate the likelihood of interpersonal conflict (e.g., avoiding eye contact with other prisoners, and neither responding to nor acknowledging another prisoner who being physically harmed in an altercation). Rather than searching for social identities and forging collective solidarity, prisoners were instead committed to "minding their own business."

In contrast to Crewe's account, Ricciardelli (2014b) argues that concern for personal risk – the need to overcome vulnerabilities in prison of a physical, verbal, social, or legal form – is at the root of this individualized reorientation of the prisoner code. Adhering to the code of conduct, she found, enables prisoners to mitigate threats to their safety. These informal behavioral norms serve the latent function of creating order and some semblance of predictability. In this context, violence is underpinned by the objective of deterring future violations of the code; hence, predictable and strategic violence, used to ensure code adherence, becomes a strategy to reduce more extreme violence.

It is from this standpoint that Ricciardelli describes the five main tenets of the contemporary federal Canadian prison code, as revealed in prisoners' accounts: (a) Be neither an informant nor friendly with prison staff; (b) "Be dependable (not loyal)"; (c) "Follow daily behavior rules"; (d) Mind your own business at all times, such that you neither see nor hear what happens around you and are neither seen nor heard by others; and (e) "Be fearless or at least act tough." The more substantial changes from the code put forth by Sykes & Messinger (1960) include the movement from avoiding unnecessary violence (e.g., "play it cool") and the emphasis on maintaining a "unified front" against staff.

From Ricciardelli's (2014b) perspective, the prisoner code is adopted by prisoners in response to feelings of compromised safety and vulnerability. It functions by creating informal rules and expectations for prisoners that, when violated, can be met with severe repercussions, including victimization. She argues that prisoners' experiences and "sense of threat, risk or lack of safety may push prisoners to adopt the inmate code…as a way to create some sense of safety" (2014b:249). Unlike Sykes's conceptualization of the prisoner code as forging social cohesion, Ricciardelli finds that the "prisoner code" itself can be interpreted as a "threat" to prisoners' sense of safety, particularly if the informal norms of penal living oppose the formal norms mandated by prison officials. In such cases, prisoners may find themselves in the impossible position of trying, and often failing, to comply with two confounding sets of conduct rules.

Former prisoner Charles M. Terry (2000, 2004), writing in the US context, also describes prisoner culture as changing in light of broader transformations that have restructured the penal landscape and the makeup of the prisoner population. Terry traces cultural change to the politics of punishment in the United States and the corresponding growth in the prisoner population, both of which have undergone interconnected and rather symbiotic transformations since the 1970s. He explains that, "as the years passed I noticed that the 'convict' as I knew him seemed to be disappearing. In its place came inner-city gang members, drunk drivers, and mentally ill individuals with little understanding or appreciation

for traditional prison values" (2004:48). Terry suggests this new culture bears greater resemblance to the culture of "street life" – indicating support for the importation model – as it is "divided by gang affiliations and neighborhoods" and marked by violence.

Race

Scholars have also found contemporary prison culture is marked by racial division, particularly in the United States (Bederman, 2008; Blumstein, 1982; Carroll, 1974; Mauer, 2001; Pettit & Lyons, 2009; Pinar, 2001). For example, drawing on interviews with former prisoners in California, Richmond & Johnson (2009) found racial segregation was embedded in daily practices and reinforced by prisoners and staff alike. Racial identity, they explain, is a key factor shaping male prisoners' experiences. Illustratively, prisoners of different "races" had different sinks, telephones, and living areas and were expected to not associate with members of other "racial" groups.

Also writing in the California context, former prisoner Michael Lawrence Walker (2014, 2016) describes a similar system of racial segregation, whereby day-to-day routines are structured so as to avoid the risk of "racial contamination." According to Walker (2014), racial segregation is not only perpetuated by prisoner culture; it is reinforced and maintained by institutional practices. He notes that racial segregation as an organizational logic is justified on the grounds that separation reduces gang-based violence and is preferred by prisoners; in this sense, it operates as a "legitimate form of risk management" (2014:78). Strategies of risk management, of course, remain the underlying motivation of penal practices – the essence being to protect society from "offenders," and "offenders" from one another (see, e.g., Hannah-Moffat, 2004). This point is enveloped in the fact that prison is a high-risk and unsafe living space (Bottoms, 1999; Bowker, 1980, 1981; Crewe, 2011; Toch, 1977), and rooted in penal populist ideologies suggesting that "offenders" threaten the safety and well-being of community members (Garland, 1997, 2002; Pratt, 2007).

Age

Kreager et al. (2017), writing in the United States, note that age is another key factor changing the nature of the prisoner population, yet it is often absent in discussions of prison culture. Due to a combination of factors, including longer sentences and the aging of the baby-boomers, the prisoner population has undergone – and continues to undergo – a general "aging." Employing mixed methods to study prisoner culture in a men's medium-security prison in Pennsylvania, Kreager et al. (2017) found that many elderly prisoners, who have spent much of their lives incarcerated, experience "mature coping," defined as processes of "accepting their confinement, avoiding conflict and stress through organized routines and caring for themselves and others with increased empathy and wisdom" (2017:690). In the larger prison culture, Kreager et al. (2017) argue, older prisoners acquire status by virtue of their experience and wisdom and find positive meaning in carrying out leadership and support roles – roles that help them to cope with the pains of imprisonment.

While some authors stress how broader social and political developments have changed the day-to-day experiences of prisoners, others emphasize select continuities across time. For example, Melde (2008:67), who conducted interviews with men in a Missouri prison,

concluded that "the parallels found between life in prison today and those described in previous prison ethnographies are striking." These parallels include prison segregation – or "divisions" between older and younger prisoners – and, like Ricciardelli (2014b) noted, the rules of "doing your own time," "no snitching," and the perceived necessity of "sticking up for yourself."

Men's Prison Culture

Patriarchal norms are another feature of social living that remain evident in contemporary accounts of prisoner culture (Evans & Wallace, 2008; Haney, 2011; Jewkes, 2005; Toch, 1998). Indeed, as Ricciardelli (2015:173) notes, "internationally, researchers have found that the norms of patriarchy still apply in prisons and in such predominantly male environments, men can be both victims and perpetrators of the discourses or norms of dominant masculinities." Influenced by patriarchal discourses, such masculinities are both shaped and aggravated by the often emasculating and overtly disempowering experiences that structure life in prison (Goffman, 1961a, 1961b). This is further compounded by the undeniable ways in which prisoners become removed from many traditional "masculine" processes and expectations. Furthermore, the aggressive underpinning of penal culture encourages rather controlling, authoritative, and violent presentations of masculinities that often fall within the "cultural ideal of manhood" (Haney, 2011:131). Given that Sykes & Messinger (1960) noted that a central aspect of the prisoner code, in their classical formulation, was to be "a man," as demonstrated by showing strength, resilience, courage, and the ability to "take it" (withstand conditions of confinement), the norms and discourse of patriarchy transcend custodial living – despite any challenges in their embodiment.

In her study of federally incarcerated men in Canada, Ricciardelli (2014c) found that displays of masculinities were not only rooted in the abilities of men to overcome vulnerabilities and present masculine ideals, but functioned to determine men's status in the social hierarchy (Ricciardelli, 2015; Ricciardelli et al., 2015). At the top of this hierarchy is the "hegemonic" prisoner, who "[has] 'solid' charges, [is] 'tough,' perhaps even sentenced to life, and [is] criminally connected (e.g. knew other criminals with status)" (Ricciardelli, 2015:179). Contrasted with this are the "inferior" prisoners, who "[have] victimized women or children, snitched on other prisoners or [are] 'weak'; they [fail] to embody traits promoted in the hypermasculine environment" (Ricciardelli, 2015:179).

Variations of such findings on prison masculinities have been noted internationally. For example, in the context of the United Kingdom, Jewkes (2005) found that "manliness" was a survival mechanism for men in prison. More specifically, male prisoners undertook strategies to construct reputations of aggressiveness and strength so as to avoid victimization. Also writing in the United Kingdom, de Viggiani (2012:2) found that the need to fit into the prison social world could "mean actively reconfiguring one's public persona and learning to integrate socially with what can be perceived as an excessively performance-orientated masculine culture." He described a range of "front management tactics" that prisoners employed in order to maintain a masculine image, including prison banter and one-upmanship, body-building, displays of toughness, gaining respect from other prisoners, proving the "legitimacy" of one's charges, asserting heterosexuality, and repressing emotions.

In India, Bandyopadhyay (2006) found that male prisoners struggled with their inability to provide for or offer protection to their families. As such, they had to seek out new strategies to present their masculinities (see Hall, 2002) – strategies that extended beyond the

displays of violence and aggression that can be deconstructed into notions of male prisoners as either predators or prey, and into more inclusive and nuanced presentations of masculinities (Denborough, 1995; Gear, 2007; Lutze & Murphy, 1999; Nandi, 2002).

Women's Prisoner Culture

Researchers of contemporary female prisoner culture have also found parallels with earlier accounts, particularly when it comes to the centrality of relationships in shaping women's carceral experiences (Bender, 2015; Huggins et al., 2006; Severance, 2005). For example, Huggins et al. (2006), who studied women's experiences of incarceration in Texas, found that dyads and pseudo-family groups provided women with companionship, affection, and compassion. Likewise, Severance (2005) found that women's social relationships helped them survive the deprivations of prison life. She notes, "[i]solated from family and friends, inmates must forge functional equivalents from those available to them – other inmates" (2005:350). In a similar vein, offering a prisoner perspective, Olson (2006; see also Olson & Kunselman, 2007) notes that immersion in prisoner culture can help female prisoners "do time." More specifically, positive prisoner relationships, including friendships, family-like dynamics, and romantic relationships, enable women to find humanity in a place where it is structurally denied.

In contrast, Greer (2000) argues that female prisoner culture has, in fact, changed for several reasons, including evolving gender norms, changes in the physical infrastructure of women's prisons (i.e., the replacement of the cottage system with a more institutional-like environment), changes in average sentence lengths, growing diversity in prisoner populations, and the increased social openness of contemporary prisons relative to the total institutions of days past. As a result of these factors, Greer (2000) argues that the pseudo-familial networks described by early prison scholars, including Giallombardo (1966) and Ward & Kassebaum (1965), no longer characterize female prisoner culture. Paralleling the findings of researchers studying men's prisoners, Greer (2000) also observed a more individualistic approach to "doing time" among women.

Areas for Future Research

The principle of "doing your own time," although it creates the perfect foundation for self-focused behaviors, can also be understood as oriented toward collective understandings and solidarity among prisoners. For example, turning a blind eye to a nearby altercation may be understood as a self-focused behavior oriented toward avoiding institutional charges or being considered a possible "witness." At the same time, this avoidance may also serve a collective function; the prisoner stays out of other prisoners' issues and hence is trying to maintain peace. This begs the question whether it is truly individual or collective factors, or both, that motivate individuals to "mind their business."

Further research is needed to examine the nuances of prisoner culture in diverse settings and among different types of prisoners. For example, researchers exploring whether factors such as security level (maximum, medium, minimum), institution type (detention centers, provincial prisons, federal prisons, healing lodges, treatment centers), and sentence type/length (indeterminate, non-indeterminate) mediate the nature of prison culture and individual prisoners' experiences of the prison social world. Researchers may also seek to

understand how variables such as gender, sexuality, race, ethnicity, and disability shape prisoner social relations. Thus far, Canadian researchers have primarily explored the experiences of prisoners serving determinate sentences (i.e., those with an identified release date) who are sentenced in the context of higher-security prisons or provincial correctional centers (with remanded prisoners). Fewer researchers have looked at men or women serving indeterminate sentences, those housed in provincial facilities (non-remand), or women serving different types of sentences.

Researchers, moreover, have not yet unpacked whether the self-focus and influence on individual needs may differ according to the life trajectory – intended or desired – of the federal prisoner. For example, are prisoners who intend to return to prison (i.e., those who do not feel they can live in the community) more likely to strive toward collective solidarity and thus gravitate toward a prison subculture that is more focused on creating a prisoner community versus those geared toward doing their own time and being released?

Conclusion

Over the larger part of the last century, efforts have been made by prison scholars to conceptualize prisoners' collective and individual responses to imprisonment using diverse concepts, such as modes of adaptation (Sykes, 1958), prisonization (Clemmer, 1940), secondary adjustments (Goffman, 1961a, 1961b), and "tactics" (ways of reclaiming meaning over carceral spaces) (Baer, 2005). In essence, such concepts help scholars interpret the individual or collective behaviors and thought processes that underpin the development of prison culture. However, changes in prison administration and in the prisoner population have given way to new prisoner cultures, which may be lacking the social cohesion of earlier iterations (see Trammell, 2009, 2012). Put another way, in contemporary prison, the emphasis within prison culture appears to have shifted from presenting as unified – prisoners are neither united nor a collective – to a focus on self, personal entitlement, and bettering one's own position. At least in certain contexts, prison cultures appear to be increasingly shaped by individualism among prisoners. Thus, prisoner agency cannot be overlooked or undervalued in studies or interpretations of prison culture and prisoner adaptation to penal living. Nonetheless, while wider social, cultural, and political changes do impact prison life, certain features continue to remain prominent (Bender, 2015; de Viggiani, 2012; Huggins et al., 2006; Jewkes, 2005; Melde, 2008; Olson, 2006; Olson & Kunselman, 2007; Ricciardelli, 2015; Severance, 2005). As such, penal populist and tough on-crime persuasions may fuel political and public interest, but the degree to which they affect prisoner experiences and the informal governance of institutions remains ambiguous. Scholars continue to explore the ways new prison regulations and other political developments in the field of criminal justice are influencing prison social structures and cultures (e.g., Crewe, 2005; Hunt et al., 1993).

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22

Mass Incarceration

Roy F. Janisch

The Oxford Index defines mass incarceration as "the current American experiment in incarceration, which is defined by comparatively and historically extreme rates of imprisonment and by the concentration of imprisonment among young, African American men living in neighborhoods of concentrated disadvantage." Specifically, David Garland (2001) coined the term to characterize extraordinarily high incarceration rates in the United States. Mass incarceration is a contemporary and distinctly American development that disproportionately affects disadvantaged subgroups of the population.

A growing number of scholars, activists, and practitioners are providing alternative perspectives in their discussions in terms of understanding the confinement facilities used to incarcerate people and the types of people who fall under those policies that oftentimes further marginalize socioeconomically disadvantaged minority populations, thereby damaging communities, families, and individuals. Mass incarceration in the United States affects different communities in different ways, and not just the incarcerated person. From arrest to sentencing, minorities and their communities face disproportionate affects from sentencing policies, socioeconomic inequality, and racial bias. Given the high rates of imprisonment and racial disparity in prisons, incarceration may be significant as a generator of social inequality resulting from poor policies and entrenched, mechanistic operation of the prison and jail systems.

For instance, the social after-effects of mass incarceration do not stop with prisoners alone. They can have a significant impact on children, family members, and associates of those imprisoned. A burgeoning research literature suggests that having a family member sent to prison damages the mental and physical health of those left at home, leaving them with one less person to contribute to household support, contributing to economic loss, and increasing general stress levels. Viewed through a sociological lens, people sentenced to prison are removed from families, neighborhoods, and friendship networks, leaving their children, partners, friends, and neighbors to bear the economic burdens and social challenges in the wake of their absence. The devastation of families and communities has been enormous – especially for black Americans, whose daily lives and economic opportunities become scarcer due to their status as offender or prisoner. There is an expanding argument

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that mass incarceration is or has become a fourth method of controlling the African-American population – the first being slavery, the second Jim Crow laws, and the third inner-city ghettos. Scholars do not have a consensus as to whether or not this is true, but some evidence suggests social-control mechanisms: prison has, has had, and will continue to have adverse effects on communities. However, the argument that it only adversely affects African-American communities may be overstated, as it fails to include other minority populations, such as Latinx and Native Americans. It is imperative in this regard to understand how justice is dispensed: its theories, processes, and methods.

For yearend 2015, the Bureau of Justice Statistics (BJS) lists the state and federal prison population by offense. The federal census by offense type includes violent crime 7.4%, drugs 49.5%, property crime 6%, and public-order crime total 36.3% (with subcategories of immigration 8.0%, weapons 16.3%, and other crimes 12%). The state census is divided into violent crime 52.9%, drugs 15.7%, property crime 19%, public-order crime 11.6%, and other crimes 0.8%. Note that nearly half of federal inmates are in prison for drug offenses. This should raise a red flag for legislative officials and policy-makers, who should consider the basic theory of justice and what alternatives might be appropriate for the type and level of offense (Kaeble & Glaze, 2016).

Types of Justice

A brief overview of the types of justice will be informative for this analysis.

Distributive justice, also known as economic justice, is about fairness in what people receive. It addresses the ownership of goods in a society and takes into consideration the principles of fair play, equality, and proportionality. It assumes that there is a large amount of fairness in the distribution of goods. Equal work should provide individuals with an equal outcome in terms of goods acquired or the ability to acquire goods. Distributive justice is absent when equal work does not produce equal outcomes or when an individual or a group acquires a disproportionate amount of goods. Examples include equal pay for equal work by women. Goods can include anything from material goods to simple attention.

Procedural justice is the principle of fairness, found in the idea of "fair play." It is concerned with making and implementing decisions according to fair processes. For example, in *The Handbook of Conflict Resolution*, Coleman et al. (2000:45) state, "people feel affirmed if the procedures adopted treat them with respect and dignity, making it easier to accept even outcomes they do not like." Following this line of thought, we can explore an example initiated by the Anti-Drug Abuse Act of 1986 of the disparate treatment between crack and powder cocaine. Based on mistaken beliefs about the difference between the drugs, the Act authorized a 100:1 ratio sentencing scheme, which equated a single gram of crack with 100 grams of powder (United States Sentencing Commission, 1995). A 2002 report found that 85% of individuals sentenced under this ratio were African-American, resulting in disparate sentencing for one particular minority group (United States Sentencing Commission, 2007).

Retributive justice works on the principle of punishment and repayment. In other words, as an offender pays for their transgression to society, punishment is administered in a quotient similar in kind to the time served, which acts as a form of repayment for their transgression, in addition to a monetized form of payment as recompense. A major component residing within this construct is deterrence. The philosophical approach of

deterrence aims to reduce crime through the execution of exact and harsh punishment. It is rooted in the utilitarian perspective that individuals are guided by both pleasure and pain, seeking the former and avoiding the latter (Beccaria, 2003). Motivated by the desire to avoid pain – performed via punishment – individuals will most often refrain from acts that might lead to it, such as criminal acts. The use of punishment, justified by the deterrence approach, will not only prevent others from committing crime, but will prevent criminals from becoming repeat offenders. Ultimately, we have two types of deterrent effects: general and specific.

Finally, restorative justice involves a "complainant" (victim) seeking restitution from a "respondent" (offender) to put things back as they should be. More formally, it can be defined as "a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible. This can lead to transformation of people, relationships and communities" (Center for Justice and Reconciliation, 2017). Many international organizations and countries have seen increases in this form of justice in recent years.

Early Prison History

Since the founding of the United States, beginning with the Colonies, the country has seen continual growth of jails, prisons, and other forms of confinement. Essentially, the country embarked on the great experiment of holding people who violated a social norm as a mechanism whereby politicians can manage core social problems such as ethnic conflict and economic despair. The prison system in the United States faces numerous challenges.

Historically, the 18th century was a time of transition from corporal punishment to imprisonment. Although the process of change was most rapid after 1775, the general movement was in progress throughout the period. The Colonial period utilized two institutions, the combination of which later produced the modern prison: jails and workhouses. Jails were used chiefly for the detention of those accused of crime pending trial and for the confinement of debtors and religious and political offenders.

The legal beginnings of the reform of the Pennsylvania criminal code date back to the state constitution (Commonwealth of Pennsylvania, 1776), which directed a reform of the criminal law to the end that imprisonment at hard and productive labor might be substituted for the barbarous existing methods of corporal punishment. "The stress of the Revolutionary War postponed action for a decade, but the law of September 15, 1786, marked a notable step in advance by reducing the number of capital crimes, substituting imprisonment for corporal punishment in the case of a number of lesser felonies, and by abolishing for most purposes branding, mutilation, the pillory, whipping and the other conventional barbarities of the colonial period" (Commonwealth of Pennsylvania, 1896–1901:p. 280).

Philadelphia reformers succeeded in introducing a permanent humane criminal jurisprudence and the modern prison system. New York soon imitated and modified the Pennsylvania System, and ultimately became the model for other states wishing to implement their own prisons. According to Barnes (1921), "New York has maintained a leading place in progressive penology in this country and introduced the first institution for juvenile delinquents, the first perfected reformatory, the first notable experiment with prison democracy and the first thorough application of medical psychology to a study of the causes and treatment of crime."

At the end of 1930, the federal Bureau of Prisons (BOP) operated 14 facilities that held approximately 13 000 inmates. By the end of 1940, this had expanded to 24 facilities holding approximately 24 000 inmates. This number remained approximately the same, with a few fluctuations, for the next 4 decades.

Following World War II, the newly elected President John F. Kennedy implemented policies that favored economically disadvantaged minorities, which Morris & Rothman (1998) state "inspired a civil rights movement, which decidedly influenced the history of American prisons." This bleed over from policy was a result of the passage of the Civil Rights Act, which allowed a writ of habeas corpus for criminals to challenge convictions that violated their constitutional rights.

On July 23, 1965, President Lyndon Johnson established the Commission on Law Enforcement and Administration of Justice, producing a final report, *The Challenge of Crime in a Free Society* (President's Commission, 1967). Outlining over 200 specific recommendations, the report states:

> the Commission believes [these] can lead to a safer and more just society. These recommendations call for a greatly increased effort on the part of the Federal Government, the States, the counties, the cities, civic organizations, religious institutions, business groups, and individual citizens. They call for basic changes in the operations of police, schools, prosecutors, employment agencies, defenders, social workers, prisons, housing authorities, and probation and parole officers. But the recommendations are more than just a list of new procedures, new. tactics, and new techniques. They are a call for a revolution in the way America thinks about crime.

The way "America thinks about crime," as stated in the Commission's Report, was well-intentioned but short-lived. Reform failure, along with increased incarceration rates and sentencing reform, would cause a doubling in the prison population during the 1970s (Morris & Rothman, 1998). Before 1970, "indeterminate sentencing" provided for maximum sentences for particular crimes. After that year, however, federal, state, and local governments began implementing "determinate sentencing," providing mandatory minimum sentences for each categorical crime (Morris & Rothman, 1998). Growing efforts to establish determinate sentencing stemmed from increased skepticism over the ability to reform criminals and the conviction that criminals needed to remain incarcerated. The outcome was longer sentences and increases in the number of confinements. This trend continued through the 1990s, with prison populations doubling yet again. Soon, the criminal justice system was beleaguered by overcrowding. According to the BOP, beginning in FY1980, the federal prison population started a nearly unabated, 3-decade increase. The total number of inmates under the BOP's jurisdiction increased from approximately 25 000 in FY1980 to over 205 000 in FY2015. Between FY1980 and FY2013, the federal prison population increased, on average, by approximately 5900 inmates annually. However, the number of inmates decreased from FY2013 to FY2015 (James, 2016).

According to the Charles Colson Task Force on Federal Corrections (2016), "since 1980, the federal prison population has grown by almost 700 percent despite a steady decrease in the national crime rate over the same period. The number of people in federal prisons peaked at nearly 220 000 in 2013 before falling to roughly 196 000 by early 2016."

Contemporary US society has seen an ever-increasing warehousing of people, through mass incarceration, whom it deems undesirable and in need of being set apart from the rest

of the population. Although early indications show prisons are not effective in the reformation of prisoners, the philosophy of incarceration has become a mainstay of US politics. The primary goals of US imprisonment are isolation of criminals, punishment, deterrence, and rehabilitation. The United States is entrenched in the paradigm of punishment, with minimal resources allocated for alternatives. Recent events, such as the election of Donald Trump and the financial crisis of 2008, along with a growing body of evidence from scholars, activists, and practitioners, have begun to influence prison initiatives driven by historical inertia. According to data from the Institute for Criminal Policy Research (Walmsley, 2016), the United States constitutes 5% of the world's population but incarcerates 25% of the world's inmates. The research and advocacy group, the Sentencing Project, lists the United States as having 670 people per 100 000 incarcerated. The top 10 countries following the United States in terms of incarceration rates are as follows: "Russia 439, Rwanda 434, Brazil 307, Australia 162, Spain 129, China 118, Canada 114, France 101, Austria 93, and Germany 76" (Walmsley, 2016).

Prison Population Policy Options

The following operational parameters outline a Government Accountability Office (GAO) report that shows the BOP faces several challenges (Government Accountability Office, 2011). The use of double and triple bunking brings together for longer periods of time inmates with a higher risk of violence and creates the potential for more victims. Waiting lists for education and drug-treatment programs threaten institutional security by increasing inmate idleness, while possibly decreasing recidivism-reducing program benefits. Limited meaningful work opportunities also increase inmate idleness. Overcrowded visiting rooms make family visitation difficult. Increasing inmate-to-staff ratios may compromise institutional safety by increasing staff overtime and stress while reducing staff–inmate communication. The GAO notes that the growing federal prison population is taxing the BOP's infrastructure, which was designed to manage smaller numbers and faces increasing maintenance costs as facilities age (Government Accountability Office, 2011).

Recidivism is a primary concern for both scholars and policy-makers when it comes to prisons. Ultimately, it comes down to making informed choices in how to move forward and deciding where to invest. For instance, James (2016) reveals several possibilities for law-makers to consider:

> A review of the literature on rehabilitative programs (e.g., academic and vocational education, cognitive-behavioral programs, and both community- and prison-based drug treatment) suggests that there are enough scientifically sound evaluations to conclude that these programs are effective at reducing recidivism, which could potentially help stem growth in the federal prison population in the future. The Bureau of Prisons offers rehabilitation programs through academic, vocational education and work programs. Additionally, substance abuse, treatment, and cognitive-behavioral programs focus on promoting pro-social behavior, which constitute possibilities for reducing the federal prison population.

Furthermore, policy-makers might consider reducing discretionary funding for federal agencies, thereby restraining the growth of the BOP's appropriations, including rehabilitative services.

> The Bureau of Prisons is authorized to reduce an inmate's sentence by up to one year for successfully completing a residential substance abuse treatment program; therefore, reducing programming opportunities could hamper one of the few avenues BOP has for releasing inmates early. (James, 2016)

Successful rehabilitation of inmates would contribute to cost saving to the BOP. Another option is to transfer inmates to private facilities to serve their sentences. This option is debatable, because we have to ask whether private facilities can service prisoners at a lower rate than the BOP and whether their services are equal to – never mind better than – those offered through government-run prisons.

According to James (2016), alternatives to incarceration include house arrest, electronic monitoring, intensive supervision, boot camps, split sentences, day-reporting centers, fines, and community service. Programs such as these can provide more appropriate sanctions than either probation or incarceration and offer a higher level of offender compliance and accountability compared to traditional probation. A common argument from advocates of decreasing the use of incarceration is that it is cheaper to supervise an offender in the community than it is to incarcerate them. James (2016) says, "The Administrative Office of the US Courts reports that the average annual cost of probation supervision was $3909 per probationer in FY2014. In comparison, the average annual cost of incarceration for FY2014 was $30,621 per inmate." The lower cost of probation compared to incarceration might be the result of fewer and lower-risk offenders being sentenced to probation. Supreme Court decisions constrain judicial and prosecutorial discretion, and when measuring recidivism, we know that the data support offenders who at a higher risk of reoffending within the first year of probation. Residential re-entry centers or halfway houses act as transition locations for re-entry and provide a means of decreasing the prison population as a stepping-stone to reintegration into the community. The disadvantages associated with these facilities are that inmates can readily commit new offenses, they have lax security, and counselors may be either poorly trained, outnumbered, or in fear for their safety. These impediments diminish the effectiveness of the rehabilitative services offered through the organization and create dysfunction within the community. The federal system does not currently have parole as an option in the BOP system. It could be reintroduced, but this would inflate the number of prisoners on a technical level. For example, James (2016) reports that "Bureau of Justice Statistics found that approximately three-quarters (76.6%) of inmates released in 2005 were rearrested within five years and approximately half (55.4%) were convicted for a new crime," pointing to continued concerns over offenders and the propensity to reoffend, either by committing new crimes or by violating conditions of their parole.

Sentence reduction through the compassionate release of offenders may alleviate some prison numbers. However, the defendant must meet a set of sentence-reduction criteria issued by the United States Sentencing Commission (USSC). "Extraordinary and compelling reasons" for a sentence reduction include terminal illness, permanent physical or medical conditions, and deteriorating physical or mental health due to aging (James, 2016).

Repealing Federal Criminal Statutes for drug offenses would act as a major shift in the assignment of resources between the federal and state governments. In many instances, states have criminal penalties for individuals who commit these types of crime. As James (2016) relates:

> at a hearing on the unintended consequences of mandatory minimum penalties, one expert argued…[f]ederal drug cases should focus exclusively on the international organizations that use their profits from the manufacture and distribution of cocaine, opium and heroin, methamphetamine, and cannabis to finance assassinations, terrorism, wholesale corruption and bribery, organized crime generally, and the destabilization of our allies…Every state in the US has a great capacity to investigate, prosecute and punish the high-level local drug traffickers that operate within their jurisdiction. State and local police and prosecutors outnumber federal agents and prosecutors. State prisons far exceed the capacity of federal prisons…Almost none of the crack [cocaine] dealers that proliferate in countless US neighborhoods warrant federal prosecution. There are neighborhood criminals and their crimes are state crimes. If a state's law does not adequately punish a crack [cocaine] dealer, that is the state's problem. Inadequate state laws do not warrant wasting very scarce, powerful federal resources even on serious neighborhood criminals.

The Data

The data presented in this section show how the United States leads the world in the total number of persons incarcerated. "At yearend 2015, an estimated 6 741 400 persons were under the supervision of US adult correctional systems; about 115 600 fewer persons than yearend 2014. This was the first time since 2002 (6 730 900) that the correctional population fell below 6.8 million. The population declined by 1.7% during 2015, which was the largest decline since 2010 (down 2.1%). Additionally, the decrease was a change from a 3-year trend of stable annual rate declines of about 0.6% between 2012 and 2014. About 1 in 37 adults in the United States was under some form of correctional supervision at the end of 2015. This was the lowest rate observed since 1994, when about 1 in 38 adults (1.6 million fewer persons) were under correctional supervision in the nation." (Kaeble & Glaze, 2016).

Total Number of Adults Incarcerated in US Prisons and Jails, 2015

At yearend 2015, an estimated 2 173 800 persons were either under the jurisdiction of state or federal prisons or in the custody of local jails in the United States, down about 51 300 persons compared to yearend 2014. This was the largest decline in the incarcerated population since it first decreased in 2009. By yearend 2015, the number of persons incarcerated in state or federal prisons or local jails fell to the lowest level observed since 2004 (2 136 600).

Declines in both the US prison (down 2.3%) and local jail (down 2.2%) populations contributed to the decrease in the incarcerated population during 2015. However, 69% of that decrease was due to the drop in the number of persons incarcerated in state or federal prisons (down 35 500). One jurisdiction, the BOP, accounted for 40% of the decrease in the US prison population during the year. By the end of 2015 (1 526 800), the US prison population fell to a level similar to that in 2005 (1 525 900). In a comparison of the US Corrections System populations in 1980 and 2015, the total number of incarcerated persons in the categories prison, jail, parole, and probation were 319 000, 182 288, 220 438, and 1 118 097, respectively. In 2015, the number of incarcerated persons was 1 526 800, 728 200, 870 500, and 3 789 800, respectively (Kaeble & Glaze, 2016).

Prison Population Growth

A report by the Pew Center on the States (2010), through the Public Safety Performance Project – which conducts and publishes on key corrections trends, highlighting policies and practices –states, "For the first time in nearly 40 years, the number of state prisoners in the United States has declined. Survey data compiled by the Public Safety Performance Project of the Pew Center on the States, in partnership with the Association of State Correctional Administrators, indicate that as of January 1, 2010, there were 1 404 053 persons under the jurisdiction of state prison authorities, 4777 (0.3 percent) fewer than there were on December 31, 2008. This marks the first year-to-year drop in the state prison population since 1972."

In this period, however, the nation's total prison population increased by 2061 people because of a jump in the number of inmates under the jurisdiction of the BOP. The federal count rose by 6838 prisoners in 2009, or 3.4%, to an all-time high of 208 118.

Prior to 1972, the number of prisoners had grown at a steady rate that closely tracked growth rates in the general population. Between 1925 (the first year national prison statistics were officially collected) and 1972, the number of state prisoners increased from 85 239 to 174 379.

Starting in 1973, however, the prison population and imprisonment rates began to rise precipitously. This change was fueled by stiffer sentencing, release laws, and decisions by courts and parole boards, which sent more offenders to prison and kept them there for longer terms. In the nearly 5 decades between 1925 and 1972, the prison population increased by 105%; in the 4 decades since, the number of prisoners has grown by 705%. Adding local jail inmates to state and federal prisoners, the Public Safety Performance Project calculated in 2008 that the overall incarcerated population had reached an all-time high, with 1 in 100 adults in the United States living behind bars (Pew Center on the States, 2010).

The War on Drugs

Current US drug policy got its start when President Richard Nixon, in an address to Congress, stated, "there are anti-drug abuse efforts in Federal programs ranging from vocational rehabilitation to highway safety. In this manner, our efforts have been fragmented through competing priorities, lack of communication, multiple authority, and limited and dispersed resources. The magnitude and the severity of the present threat will no longer permit this piecemeal and bureaucratically dispersed effort at drug control. If we cannot destroy the drug menace in America, then it will surely in time destroy us" (Nixon, 1971). The Comprehensive Drug Abuse Prevention and Control Act of 1970 is the legal foundation of the government's fight against the abuse of drugs and other substances in the United States. In effect, this legislation was passed in an effort to consolidate attempts at the federal level to combat the manufacture of illicit drugs and to incorporate the drug schedules: a mechanism whereby drugs are rank-ordered relative to their degree of medical utility. The President further remarked, "enforcement must be coupled with a rational approach to the reclamation of the drug user himself" (Nixon, 1971). What we get from this two-pronged recommendation is a purported supply-side approach to reducing and eliminating illicit drugs with a simultaneous advocacy for the rehabilitation of drug users. The rhetoric associated with this idea has not produced an effective public-policy approach to the drug problem in the United States. The Drug Policy Alliance (2016) reports that "more than 50 percent of people in federal prisons are incarcerated for drug law violations with nearly

500 000 people behind bars for a drug law violation on any given night in the United States – ten times the total in 1980. Drug law violations have been the main driver of new admissions to prison for decades." Meanwhile, the Brookings Institution found that "there were more than 3 million admissions to prison for drug offenses between 1993 and 2009 in the United States. In each year during that period, more people were admitted to prisons for drug law violations than violent crimes. During that same timeframe, there were more than 30 million drug arrests" (Rothwell, 2015).

Recent reports indicate that the United States is beginning to see a decline in the overall federal prison population. However, there is still much work to be done. The last four presidents have addressed the drug problem in the country, with generally dismal results. The United States has long endorsed a supply-sided drug policy, with most of the funding going to interdiction and eradication efforts. These measures have failed, and continue to fail. The country needs to shift its drug funding toward education, prevention, and treatment. Thus, it needs to decriminalize drug use. We must be clear: decriminalization does not imply drug legalization. Drug trafficking and drug dealing need to remain criminal activities, but punitive drug laws on drug users need to be relaxed. Nadelmann (1991:20) states: "of the 750 000 drug law offenses in 1995, 75% of them were merely for use. Habitual drug use offenders, who are usually addicts face heavy fines and long prison sentences. Drug law enforcement and incarceration are extremely costly and counterproductive. Addicts have the potential to be treated and the appropriate response is rehabilitation." Furthermore:

> The National Institute on Drug Abuse estimated that in 1993 as many as 2.5 million drug-users could have benefited from treatment. Only about 1.4 million users were treated in 1993. Almost half of the nation's addicts were ignored. The government spent only $2.5 billion on treatment programs compared to $7.8 billion on drug law enforcement. The government needs to shift its funding from costly, unproductive drug eradication programs to meet treatment demands. Decriminalization does not imply opening up our borders to drug suppliers and tolerating violent drug syndicates. The supply side of the drug war should be reduced, not ignored. Violent drug gangs and large-scale drug suppliers should be targeted instead of the drug user and the minor dealer. Although spending less on interdiction will inevitably make it easier to smuggle drugs into the US, there is no evidence that the demand for drugs will significantly rise. (1991:20)

Current US drug policy, coupled with enforcement versus rehabilitation, provides an ongoing population of offenders for the overall prison system. The adage, "if you build it, they will come," holds fast, and unless the United States engages in aggressive approaches through a series of changes to laws, policies, ideologies, and practices, the prison pipeline will continue– for so long as it is economically viable for those interested in maintaining their foothold in the criminal-justice system. Reform is in the air, with a growing body of evidence among scholars and activists, and the public is growing weary of the government's lack of effectiveness. Maybe, just maybe, a paradigm shift can occur.

Drug Policy

The BJS reports that in the categories of state and federal prisons and jails, there were "40 000 individuals incarcerated compared to 469 545 individuals" serving time for drug offenses (Kaeble & Glaze, 2016). Furthermore, "sentencing policies of the War on Drugs era resulted in dramatic growth in incarceration" for drug-related offenses (Kaeble & Glaze, 2016).

Mandatory minimum sentences constitute a direct impact on length of incarceration. The effect of these policies is that, "at the federal level, people incarcerated on a drug conviction make up just under half the prison population. At the state level, the number of people in prison for drug offenses has increased ten-fold since 1980 with most of these people not high-level actors in the drug trade, and most have no prior criminal record for a violent offense" (Kaeble & Glaze, 2016).

Trends in State Spending on Corrections in the United States

The Vera Institute of Justice mission statement is "to drive change. To urgently build and improve justice systems that ensure fairness, promote safety, and strengthen communities." Lofty goals, to be sure. In a 2017 report, the Institute states: "The engine driving this growth was the enactment and implementation over time of a broad array of tough-on crime policies, including the rapid and continuous expansion of the criminal code; the adoption of zero-tolerance policing tactics, particularly around minor street-level drug and quality-of-life offenses; and the proliferation of harsh sentencing and release policies aimed at keeping people in prison for longer periods of time" (Vera Institute of Justice, 2017).

State spending on corrections reflects the costs of building and operating prison systems, and may include spending on juvenile justice systems and alternatives to incarceration such as probation and parole. It totaled $56.9 billion in fiscal year 2015, compared to $55.3 billion in fiscal year 2014, a 3.0% increase in total spending, with state funds increasing 3.1% and federal funds declining 1.4%. State spending on corrections in fiscal year 2016 is estimated to total $58.0 billion, a 2.0% increase from fiscal year 2015. State funds are estimated to have increased by 2.1%, while federal funds are estimated to have increased by 3.6%. Furthermore, although state spending on corrections increased for 2016, the growth rate has slowed. For several years, states have been making criminal justice reforms to address the cost drivers of corrections expenditures, including limiting growth in inmate populations. Many are examining their criminal-justice systems and implementing reforms to concentrate resources on the most violent offenders, while ensuring other prisoners are equipped with the tools and supports needed to successfully transition back to the community through programming and positive reintegration. These reforms include alternatives to incarceration, offering sentence credits for good behavior, other sentencing changes, parole reforms, and increased treatment to address mental-health and substance-abuse disorders. While several states have been successful in reducing the growth of their inmate populations, costs continue to increase due to programming investments, increasing inmate health-care expenditures, costly maintenance of aging facilities, and the personnel costs associated with running institutions.

The Future

According to the Office of National Drug Control Policy (2004), "the federal government issued the National Drug Control Strategy. It supported programs designed to expand treatment options, enhance treatment delivery, and improve treatment outcomes. For example, the Strategy provided SAMHSA with a $100.6 million grant to put towards their Access to Recovery (ATR) initiative. ATR is a program that provides vouchers to addicts to provide them with the means to acquire clinical treatment or recovery support. The project's

goals are to expand capacity, support client choice, and increase the array of faith-based and community based providers for clinical treatment and recovery support services. The ATR program will also provide a more flexible array of services based on the individual's treatment needs."

The 2004 Strategy additionally declared a significant 32 million dollar raise in the Drug Courts Program, which provides drug offenders with alternatives to incarceration. As a substitute for imprisonment, drug courts identify substance-abusing offenders and place them under strict court monitoring and community supervision, as well as providing them with long-term treatment services. According to a report issued by the National Drug Court Institute, drug courts have a wide array of benefits, with only 16.4% of the nation's drug-court graduates rearrested and charged with a felony within 1 year of completing the program (versus the 44.1% of released prisoners who end up back in prison within 1 year). Additionally, enrolling an addict in a drug-court program costs much less than incarcerating one in prison. According to the BOP, the fee to cover the average cost of incarceration for federal inmates in 2006 was $24 440. The annual cost of receiving treatment in a drug court program ranges from $900 to $3500. Drug courts in New York State alone saved $2.54 million in incarceration costs (Office of National Drug Control Policy, 2004).

According to Strong et al. (2016), in 2012, "the Bureau of Justice Statistics' (BJS) Census of Problem-Solving Courts (CPSC) counted 3052 problem-solving courts in the United States. The most common types of problem-solving courts were drug courts (44%) and mental health courts (11%). Most courts (53%) reported that they were established prior to 2005, including drug (64%), youth specialty (65%), hybrid DWI/drug (63%), and domestic violence (56%) courts."

While drug courts represent a step in the right direction for defendants, they are still part of a criminal-justice system that treats addiction as a crime, and once defendants enter a facility they remain stigmatized. According to Woods (2011), "drug courts perpetuate this stigma because they are based on a system of rewards and punishments. When participants act 'badly' (either by testing positive for drugs or breaking other imposed conditions that create a presumption of drug use), they are treated as pariahs, not patients. For continuing 'bad' behavior, drug court participants can be eventually incarcerated, which is the ultimate representation of societal segregation and ostracism."

Drug courts provide evidence that they do in fact work to reduce instances of recidivism. A GAO "analysis of evaluations reporting recidivism data for 32 programs showed that drug court program participants were generally less likely to be re-arrested than comparison group members drawn from the criminal court system, although the differences in likelihood were reported to be statistically significant in 18 programs. Across studies showing re-arrest differences; the percentages of drug court program participants rearrested were lower than for comparison group members by 6 to 26 percentage points" (Government Accountability Office, 2011).

The Charles Colson Task Force on Federal Corrections (2016) has articulated the following recommendations for the future of the BOP:

> Sentencing decisions and correctional interventions should be individualized. The unique circumstances and attributes of each case and each person entering the federal criminal justice system should inform the sentence and the rehabilitation programs, treatment, and services provided. Correctional policy should improve public safety. Federal corrections policies should ensure that people involved in the federal criminal justice system are provided the tools for successful release and re-entry, which will improve safety in our nation's communities.

> Incarceration, with its attendant costs to both those in prison and taxpayers, should be employed judiciously. When imprisonment is warranted, it should be used only long enough to accomplish the goals of sentencing: incapacitation, deterrence, retribution, and rehabilitation. Data and research should guide practice. Analyses to identify causes of growth should guide the creation of reforms, and best practices documented by research implemented throughout the corrections system. Reforms should both address prison growth and improve public safety outcomes while addressing the growth of the federal system will lead to fewer people behind bars. The resulting population reductions and attendant cost savings will in turn enable the BOP to better administer programming and provide a safer environment for both its staff and the people incarcerated in its facilities.

The President's Commission on Law Enforcement and Administration of Justice (1967) articulated many of the crime issues present in US society today. Summary recommendations sought to have all Americans accept responsibility for strengthening law enforcement and reducing opportunities for crime; to develop a criminal justice system that includes techniques to deal with individual offenders; to eliminate injustices in the criminal justice system in order to gain the respect and confidence of the police and garner citizen cooperation; to attract quality employees at all levels of criminal justice, with better police, prosecutors, judges, defense attorneys, probation and parole officers, and corrections officials; to foster expertise and integrity; to increase research and operational understanding in order to identify and solve problems of crime and the administration of justice, both internally and externally to the system; to provide the police, courts, and correctional agencies with the resources necessary to improve crime control over the long term; and to have citizens, civic and business organizations, religious institutions, and all levels of government take responsibility for planning and implementing those changes required in order for the criminal-justice system to be a functional mechanism in civil society (President's Commission, 1967).

Clear & Frost (2014) proclaim, "The first conclusion is obvious: the tide has turned, and the energy for penal reform is on the side of something new; the Punishment Imperative is no longer the driving force for all correctional policy talk. The second conclusion is much more subtle; a great deal of this current reform effort is unlikely to have much effect on prison populations." They further state, "In making these observations, we think we are seeing the very early days of the new paradigm." Finally, "[T]he practical question is, what will it take to do something about the problem of mass incarceration" (Clear & Frost, 2014).

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Abolitionism and Decarceration

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What is abolitionism? To answer, one first has to limit – and thus restrain – the polysemy of the term: What exactly is being indicated (and problematized) by it? Depending on one's location in time and space, abolitionism might be associated with different social movements, some from the past, others well-established and ongoing, and others only nascent. One searching for information online, but having no time to consult the millions of results generated, would likely conclude that abolitionism either is the current project of ending all forms of enslavement in the world or *was* a movement that succeeded in ending slavery in the United States and in western European colonial nations. Elsewhere than on the first page generated by an online search, abolitionism might refer to contemporary social movements animated by a desire to abolish the death penalty, prohibit the right to own and consume non-human animals, eliminate the use of fossil fuels, or end the practice of sex work – framed negatively, of course, as "prostitution" (Nagel, 2015). It could also be understood, as it is developed in this chapter, in reference to events that tend to be socially controlled through the grammar of criminalization (Carrier, 2011). Abolitionism thus indicates and problematizes practices, discourses, institutions, and power relations commonly associated to "crime" and punishment in "WEIRD" (Western, Educated, Industrialized, Rich, and Democratic) nations (Henrich et al., 2010).

In the penal field, abolitionist stances are about finding alternative means to understand and respond to social conditions and interactions that are currently criminalized and punished. Abolitionist stances can similarly entail locating new ways to perceive, feel, and conceptualize situations once we have stopped privileging the deeply entrenched perspective of political and legal systems, and their categories of "criminal" infraction and "criminal justice" – what Hulsman (1986) termed the "catascopic view." They are also about building the world anew in ways that will produce social structures and relations premised on social justice and inclusion, rather than various forms of inequality and exclusion (Davis & Mendieta, 2005).

Decarceration, in contrast, is a strategy of limitation that has roots in the liberal democratic tradition positing that criminal law ought to be restrained and used only as a last resort. "Penal minimalism" is the name given to the former doctrine, which, in the contemporary

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context of penal intensification, seems to have been abandoned by many, if not most, advanced capitalist nations. Incarceration levels are unevenly distributed across nations (Walmsley, 2016). Few countries (e.g., Norway) can be said to be still interested in an ideal of penal minimalism, displaying relatively low levels of incarceration. Some display higher, yet historically stable levels of incarceration. This is the case with Canada, for example – which stands in stark contrast to the neighboring United States of America, where, as is well known, incarceration levels have hysterically skyrocketed. In this context, a movement toward challenging mass incarceration in the "land of the free" was long overdue when Bernie Sanders threw his support behind "decarceration" in 2016, promising steps to reduce the number of prisoners as part of his platform during his quest to become the Democratic Party's nominee for President of the United States. Part of the Sanders platform to this end (Murphy, 2016) included finding alternatives to incarceration, such as drug-treatment courts.

In this chapter, we provide an overview of the main forms of abolitionism. We present the main arguments used to support abolitionist struggles, and then illustrate how many of them can be used to problematize liberal decarceration programs such as the one supported by Sanders. Before concluding, we discuss some of the usual questions addressed to abolitionists, and we engage with other queries that are not typically formulated in scholarly contributions taking on abolitionist politics and thought.

Prison, Penal, and Carceral Abolitionism

Projects limited to decarceration may be strategically supported by abolitionists (e.g., Knopp et al., 1976), but abolitionism invites us to go well beyond a reduction in the use of the prison. There are different forms of abolitionism, which can be distinguished by the ends they pursue: to abolish the prison, any use of afflictive sanctions, or any form of confinement. After having presented these ends, we synthesize the key arguments sustaining abolitionist projects, which reveals the timidity of decarceration programs.

Ends

With few exceptions (e.g., Dixon, 2014), social scientists treat abolitionism separately from anarchism, placing the emergence of abolitionism in the project to create a world without prisons, rather than in the older anarchistic problematization of authority. The birth of prison abolitionism is thus often located in the 1970s, with Mathiesen's (1974) *The Politics of Abolition* establishing itself as *the* sacred verse of the initial abolitionist carvings. Meanwhile, the establishment in 1983 of the biannual International Conference on Prison Abolitionism testified to the vitality of abolitionism as a multinational social movement. The "conference-movement" (Piché & Larsen, 2010) quickly shifted its target from the prison to all forms of legally authorized punishments, and was re-baptized the International Conference on Penal Abolitionism in 1987. We underscore that prison abolitionists have not all followed suit. Prison and penal abolitionism have been evolving in parallel. This parallelism is especially visible within the specific form of prison abolitionism found in the United States. American abolitionism has coalesced around the critique of the "prison industrial complex" (PIC) and has in some instances shown itself oblivious to penal abolitionists' most radical critiques. Moreover, prison and penal abolitionism today can *both* be found to have too narrow a focus. Carceral abolitionism contends that we also need to

problematize the detention of persons on grounds other than alleged breaches of domestic criminal legal norms, such as the confinement of other human beings deprived of political recognition owing to citizenship or accused of being threats to national security. We are thus witnessing three particular abolitionist struggles: to abolish the prison, the penal, and the carceral. What motivates these struggles? We address these motivations in this section (for a complete discussion, see Carrier & Piché, 2015a, 2015b).

Irrationality

It is now common in abolitionist literature to evoke Foucault's (1997) notion of subjugated knowledges and to position oneself as epistemically anarchistic. Yet, abolitionist motives are still largely founded on a set of truth claims through which either incarceration or all forms of criminal punishments and other forms of state repression are portrayed as irrational. The logic sustaining abolitionism is presented as cognitive, founded in reason, and supported by empirical research (Mathiesen, 2006). Even if orthodox forms of social sciences – such as criminological research dedicated to finding "what works" in carceral settings – will necessarily disagree, abolitionists typically consider the following to be uncontroversial, radically positive facts: the prison is not rehabilitative; the deterring impact of criminal sanctions is largely unknown; the criminal legal system cannot serve as a moral compass when its performance is, first and foremost, about maintaining and reinforcing social asymmetries such as those established on the basis of racialized, classist, gendered, heteronormative, and ableist categories; the majority of criminally and otherwise incapacitated individuals are erroneously considered dangerous by the state; and criminal legal systems do not shield individuals and communities from currently criminalized harms. These truth claims are mobilized to assert that it is totally irrational to continue relying on incarceration and/or criminal legal systems.

Communities

For Davis (2003:16), one ideological function of the prison is to "reliev[e] us of the responsibility of thinking about the real issues affecting those communities from which prisoners are drawn in such disproportionate numbers." Abolitionists have advanced different proposals to shift the discussion from the question of the adequate afflictive sanction to be imposed and toward concerns about adequate responses to the needs of persons and their communities. Keywords include healing, transformation, support, empowerment, solidarity, and accountability. If one follows Ruggiero (2010), then penal abolitionism is motivated by a desire to overcome the distinction between conceptions of justice centered on an "offender" and those centered on the victim. Many penal abolitionists have become fierce critics of restorative justice precisely because they do not want to restore a state of affairs that led to the problematized situation (Morris, 2000). The models of justice to innovate with are transformative ones. They are future-oriented (Scott, 2016) and need to remain sufficiently plastic to adopt the "frame of reference" of the parties involved (Hulsman & Bernat de Celis, 1982). Bianchi's (1994) assensus model and Mathiesen's (1974) notion of the unfinished both testify to abolitionists' attempts to think about alternatives to either incarceration or criminal punishments without codifying and prescribing them. Penal abolitionists are convinced that an ethics of "knowledge, proximity and dialogue" (Ruggiero,

2010) will allow for autonomous and productive definitions of and solutions to the troubles faced by communities. Prison abolitionists advance similar ethical requirements, but do not extend their corollaries. They focus on dismantling the idea that healthy communities are impossible without the incarceration of criminalized individuals. This is typically affirmed negatively: the prison is destroying communities and needs to be abolished. Empirical evidence that prisons erode communities and exacerbate inequality is a point made more broadly in criminology and criminal justice studies (Clear, 2009).

Unjustifiable Punishment

One key argument shifting abolitionism from a narrow focus on the prison toward the entirety of the penal can be summarized as follows: any form of retaliatory harm inflicted as a means to justice in response to a criminalized condition or interaction can simply not be justified morally. As Golash (2005) has argued, all consequentialist and deontological justifications of criminal punishments that have been developed since the 18th century are problematic. Consequentialism justifies punishment by what it produces – say, a "reformed" and "productive" citizen – whereas a deontological justification is retributivist – punishment is deserved, and inflicted only because the wrongdoer willed a punishable act. Utilitarian postures see all forms of punishment as ills that are morally justifiable only insofar as they prevent some greater evil. For instance, punishing a criminalized individual will be seen as justified if one convincingly speculates that it will net a reduction in the harms suffered by others in the future (while not being grossly disproportional to the alleged deed). Prison abolitionists are consequentialists: the prison is problematic because it fails in what it says it aims to do, and we need to find more productive – useful – responses to criminalized conditions and interactions. "The prison cannot be humanized," as Moore & Scott (2014:6) put it. Penal abolitionists go further. They understand punishment as a violation of the dignity of the individual via a Kantian critique of consequentialism: it is immoral to treat human persons as means to the purpose of someone else (Golash, 2005; Kant, 1999:138; Scott, 2016).

From such a perspective, all penological rationales except retribution are unjustifiable: to punish to deter, to educate, to rehabilitate, to incapacitate – all these "vocabularies of motives" (Mills, 1963) amount to an offense to the humanity of the punished individual. Formulated in acerbic tone, this critique contends that utilitarianism treats criminalized persons as beasts of burden profiting a supposedly civilized polity. However, given that the Kantian perspective associates impunity to *the* supreme form of injustice, penal abolitionists distance themselves from it: any notion of "just desert" is found wanting. Even if it were possible to come up with a retaliatory harm corresponding perfectly to the harm attributed to a penal subject – say, the killing of someone who was found criminally responsible of killing – penal abolitionism aims to debunk the deontological posture by pointing to the "absence of a general commitment to desert" (Golash, 2005:80). The profound social asymmetries and the devastating exclusions characteristic of contemporary WEIRD contexts cannot be removed from considerations about justice.

The Reality of the Criminal Legal System is Self-Referential

The strongest and, in our eyes, most radical argument of penal abolitionism is that the notion of "crime" has no ontology (de Haan, 1992; Hulsman, 1986), and thus absolutely no descriptive value (Carrier & Piché, 2015a). Louk Hulsman is probably the one who has proposed the

most compelling version of this argument, and the simplest, most elegant, "unfinished" solution to the problem it raises. The argument here is certainly not that conditions and interactions currently criminalized are not materially connected to forms of harm – although this is certainly possible. Rather, it is that criminalization is a grammar superimposed on some conditions and interactions to reduce their phenomenal complexity and to structure a peculiar – punitive – reactive modality. As Hulsman (1997:9) contends, "the cultural organization of criminal justice creates 'fictitious individuals' and a 'fictitious' interaction between them." As Foucault (2001) has discussed, our contemporary notion of "criminal justice" is the result of some important "devilish inventions," such as the prohibition on solving some conflicts by ourselves and the idea that the prime victim of what we call "crime" is the sovereign's society. Criminal law can thus be described as a tool of conflict expropriation (Christie, 1977), a self-referential machine that imposes its own construction of reality through force, and quite possibly irrespective of the experiences, needs, interpretations, and solutions advanced by the concrete human beings captured by it. Hulsman's solution is, first, to devise a new language and to avoid at all costs the notion of "crime." We should also avoid locating ourselves at a purely behavioral scale, which Hulsman & Bernat de Celis (1982:12) see as the "fundamental error" of the criminal legal system. Penal abolitionism is concerned with problematized situations, not problematic actors. Its first gesture is to develop an understanding of how problematized situations are understood and experienced, aiming, in this first movement, toward a common understanding of the situation. This is why penal abolitionists insist on an ethics of knowledge, proximity, and dialogue. The language of the "criminal justice" apparatus must be rejected as the starting point of an abolitionist posture (Coyle, 2016). As such, penal abolitionism refuses the categories of the state and displays strong affinities with contemporary anarchistic "sociations," understood as "networks of self-organizing groups providing solidarity" (Walby, 2011:294). In both cases, the critical reflex is to avoid situating the problematic event at a national or societal scale, which necessarily leads to a bureaucratized authoritarian moralism, spectacularly incompetent in its ability to understand the complexities and nuances of problematized situations, or of the experiences and needs of concrete social actors. The problem is that the perspectives of juridical and political systems on "crime," "criminals," and justice saturate the cultural objects and constructs consumed and adopted by the inhabitants of WEIRD nations.

The Prison Industrial Complex

The notion of the PIC is a key element in contemporary US prison abolitionism. It is typically defined and articulated in relation to the specific and peculiar historiography of this contemporary empire. Building on the notion of the "military industrial complex," the PIC conveys the idea of a mutualistic symbiosis between an ever-expanding list of actors, institutions, and forces, generally including politicians, legal, repressive, and penal actors, groups and corporations, media conglomerates, capitalism, colonialism, racism, white supremacy, heteronormativity, neoliberalism, ableism, and gentrification (e.g., Brown & Schept, 2017; Davis, 2003; De Lissovoy, 2013; Sudbury, 2009). The notion of the PIC highlights surplus value directly and indirectly generated by so-called correctional practices and institutions. The political lobbying of corporations such as the Corrections Corporation of America (CCA) is seen as participating in the neoliberal dismemberment of communities. Abolition's notion of PIC is polyvalent and suggests the interconnectedness of struggles for justice. The abolition of the prison is one of the conditions of possibility of social, economic, and environmental justice.

Global Carceralization

Carceral abolitionism suggests that a focus on the prison, and even on penality, is too narrow (Piché & Larsen, 2010). Similar to what is achieved by mobilizing the notion of the PIC, critics of the carceral aim to broaden the focus and to escape the confines of issues of "crimes and punishment" as traditionally defined by state apparatuses. Abolitionism has in the past been informed by critiques of the confinement of the "mentally ill" associated to the anti-psychiatry movement (e.g., Scull, 1984), and it has also clearly problematized forms of preventative detention in the penal field. What is nurturing a desire to move from penal to carceral abolitionism is not only the skyrocketing rise of preemptive measures in the penal field, but mainly the unbearable knowledge of the fate of the great many human beings detained for merely being present within (the wrong) political enclaves. Global carceralization is a recent abolitionist logic, influenced by notions of the camp and sovereign exceptionality, as notably discussed by Agamben (2005). The key argument here is that what is morally unjustifiable is not merely the punishment of criminalized individuals as a means to justice, but the very structure of sovereignty, which rests on the exclusion of forms of human life. In other words, political existence and the ability to claim to be bearing rights depend on placing naked life outside the realm of law. Struggles for justice are thus not limited to profitable practices of detention of the criminalized, nor to the infliction of retaliatory harms, but are about escaping the modern (i.e., Western) political framing of existence and solidarity.

Abolitionist Problematizations of Liberal Decarceration

If abolitionist thought and struggles are transnational, they cannot enter mainstream political discourses and debates as easily as can decarceration programs divorced from an abolitionist agenda. It is precisely when such a divorce is evident that abolitionists problematize decarceration. Before turning our attention to the usual and less usual questions forwarded to abolitionism, we wish to make more explicit abolitionist problematizations of liberal decarceration.

It should first be noted that, since the mid-1970s (Knopp et al., 1976), decarceration has been one of the strategies advocated by those working toward a world without prison. Abolitionist proposals of decarceration thus pre-date their contemporary liberal (e.g., Smart Decarceration Initiative) and conservative (e.g., Right on Crime) versions. Decarceration has been described as one of "four interrelated strategies" that form the "attrition model" for the abolition of the prison "and for building a caring community" (Knopp, 1994:206). These include: (a) a moratorium strategy aimed at "stopping the growth of the prison system by saying no to building more cages"; (b) "a decarceration strategy to release people from jails and prisons" by expanding the use of such mechanisms as parole for prisoners; 3) "an excarceration strategy that moves away from the notion of imprisonment" through community-based sanctions such as probation for the convicted and "dispute mediation" (e.g., transformative justice) as an alternative to the penal process; and (d) "a strategy of restraining the few" for those whose "behaviors would still present a real threat to public and personal safety," notably "sex offenders," who would be temporarily restrained by the "least restrictive, most human options…in the most restorative environment possible" (Knopp, 1994).

The project to relocate penal control in non-prison settings through decarceration measures might have some appeal to prison abolitionists. For them, the very idea of criminal justice – responding to "crimes" through legally authorized forms of harm – is not problematic. But decarceration as the overarching reformist agenda remains totally disagreeable to them. They can muster more than 30 years of empirical research in the penal field to show that diversion measures typically – although not always (McMahon, 1992) – result in net-widening effects (Cohen, 1985). The introduction of conditional sentences ("house arrest") in Canada in the 1990s is one of many documented instances (La Prairie, 1999). In Canada, as elsewhere, a wide range of alternatives to detention come with conditions (e.g., alcohol prohibitions), and individuals found in breach of them offend the administration of justice – a "crime" punishable by prison time (see Deshman & Myers, 2014); this is a perfect illustration of the endogenous expansion of the "system of deviancy control" (Cohen, 1985).

While abolitionists (e.g., Aubert & Mary, 2015; Ben-Moshe, 2013; Carlton, 2016; Mathiesen, 1974) do see value in negative or non-reformist reforms that improve the material conditions of the criminalized, many are also concerned about reformist reforms enhancing the legitimacy of state punishment and/or control. Some aspects of these concerns can be illustrated by returning to the Sanders proposal to achieve decarceration in part by diverting some criminalized persons through measures such as drug-treatment courts. Abolitionists are not only concerned about net-widening effects, they are also sickened by the association of coerced "therapy" (i.e., correction) with justice. Drug-treatment courts are intrusively punitive apparatuses built upon treating "addiction" under the threat of incarceration (Hannah-Moffat & Maurutto, 2012). They mobilize a responsibilizing and individualizing interpretive grid, avoiding any questions of social and transformative justice. These surveillance devices are miles away from the ethics of knowledge, proximity, and dialogue promoted by penal abolitionists, and they disable any attempts to locate sociologically problematized situations surrounding prohibited psychoactive substances. In other words, drug-treatment courts are apparatuses focused on the self-referential reality of the criminal legal system – they aim, for instance, to reduce "recidivism" – rather than being means toward understanding and responding to the needs of persons and their communities. Thus, any "decarceration" program that utilizes drug-treatment courts represents a potential pathway to the prison and penal intervention.

Usual (and Less Usual) Questions Asked to Abolitionists

Prison, penal, and carceral abolitionism are built on a core set of arguments or logics, many of which make the project of decarceration, on its own, unattractive. Attempts to shift debates beyond decarceration and toward truly abolitionist projects are typically met by head-scratching and a barrage of queries. Before concluding, we consider some of the usual (and less usual) questions forwarded to abolitionists. We do this in part to invite abolitionists to continue a set of long-standing international dialogues, but also with the hope these will be extended to remove some blind spots in abolitionist thought.

What about the "Dangerous Few"?

Typically, the first question raised by abolitionist agendas revolves around incapacitation. Abolitionists generally recognize the need, in some contexts, to temporarily incapacitate some human beings. In the mid-1980s, abolitionists could still divert the question of

"the dangerous few" and focus on the "new kind of questions" raised by abolitionism (Scheerer, 1986:10). Such an approach, even if still practiced, is no longer satisfactory. And abolitionists have fallen short in facing head-on the problem of egregious harms. The classic prison abolitionist's answer is a statement on minimalism, a proposal for radical decarceration: *almost* everybody incarcerated does not present a credible threat to others. A lot of criminological research can be used to question the ability of criminal legal apparatuses to correctly identify dangerousness. Sophisticated arguments can be developed to trouble the very notion of dangerousness and/or to support the idea that the ultimate causes of problematized situations are not reducible to a singularized wrongdoer. Yet, some forms of unspeakable harm inflicted upon individuals and groups will always threaten to give a fatal blow to "abolitionism *qua* abolitionism" (i.e., an abolitionism that is not minimalism with a different name) (Carrier & Piché, 2015b:8). Norms that coalesce around the need to recognize the value of others' life and dignity are currently constantly violated at different scales, and not so infrequently by actors who are supposed to embody the virtue of our current moral order. Rather than framing dangerousness as something present within "few" human beings, Saleh-Hanna (2015) has suggested that abolitionists should instead see the notion of the "dangerous few" as a phantasm of punitive white supremacists. She maintains that the dangerous are not few but many, and that these dangerous actors are frequently part of and/or protected by criminal legal systems. She contends that opposing abolitionism with the figures of the serial killer or the mass shooter should not lead abolitionists to come up with blueprints to manage "the dangerous few," but instead to deconstruct it.

Abolitionist thought and struggles have been mostly domestic: they have been mostly concerned with incarceration and criminal legal systems at a national scale. They have thus problematized the mass incarceration of specific groups in particular sociopolitical enclaves, such as that of Indigenous peoples in white settler societies such as Australia and Canada. Nevertheless, abolitionism has not, to our knowledge, been extended to include mass political violence and war. It has not engaged with the globalization and commodification of international criminal legal apparatuses, such as the International Criminal Court (Bonacker, 2015; Kendall, 2015), which further demonstrate the entrenched notion that impunity is injustice. Resistance to penal solutions to mass political violence has largely been enacted within transitional justice initiatives. And abolitionism has yet to engage with the enormous literature of this field, which in many ways aims to orient cognitively and normatively reflections and practices following levels of harm that cannot be compared to forms of violence criminalized by national criminal legal systems (Carrier & Park, 2013).

What Exactly is Wrong with Retribution?

Directly related to the question of egregious harms is the question of what exactly is wrong with the infliction of pain on individuals who aberrantly violate the dignity of other human beings, and who might seem unwilling or unable to meet even the most basic ethical requirements of transformative-justice initiatives. Abolitionists have used the Kantian posture to condemn utilitarian penological rationales, but have not so clearly debunked the naturalized conviction that there is a deontological imperative for retribution, and that impunity is fundamentally an injustice. We might position our norm of transformative justice as more desirable than the Kantian posture, but this does

not invalidate it, nor should it lead us to expect that others will accept this normative ordering. For instance, US prison abolitionists have been clear in their condemnation of white supremacy and the need to transform structures supporting it, but they may not have convinced even social-justice activists that punishing violent individuals motivated by racism is a political sin or morally problematic. If self-defense is posited as necessary in the face of violent racists, how can a norm of nonretaliatory harm be maintained without relying on force? If the impunity of individuals, moral persons, and state actors driven by structures of domination like racism and heteronormativity is seen as demonstrating injustice, then clearly we have not met the requirements of transformative struggles informed by penal abolitionism. The question of retribution is, in the end, a reflection of the difficulty of abandoning an interpretive frame where the singularized responsible individual occupies center stage.

Why Limit Abolitionist Struggles to the Prison?

Many abolitionists have concluded that a focus on the prison is too narrow if one wants to work toward alternative responses to problematized situations. This involves abandoning the categories of criminal legal systems, most particularly the notion of crime. In this context, it is mesmerizing that US prison abolitionism often remains locked within the confines of the prison. Brown & Schept (2017) correctly point out that abolitionist struggles ought to "destabilize" common sense surrounding criminalized objects. But they quite surprisingly limit the abolitionist disruption to severing the cultural link between crime and prison, placing the emphasis on decaceration as a principle strategy for abolitionists to undertake (2017:444). We think that, for more than 30 years now, penal abolitionists have been right in pointing out that it is not simply that we can and should do criminal justice by punishing otherwise than by incarcerating "criminals"; we can and should, further, neutralize the idea that the right response to problematized situations has to take the form of a legally authorized retaliatory harm. Certainly, contemporary US prison abolitionism has allowed abolitionist thought to expand by spotlighting categories, structures, and identities that were previously black-boxed by the first generations of non-US abolitionists. For instance, heteronormativity and racism were certainly not central in abolitionist debates before Americans mounted critiques focused on the PIC (e.g., Davis & Rodriguez, 2000). Yet, US prison abolitionism has so far shown itself unable to adequately take stock of the key contributions of penal abolitionism emanating notably from Scandinavia and Canada, or even the United Kingdom, which has its own rich history (Ryan & Ward, 2014) of abolitionist debate and activism.

Do Abolitionist Critiques Have Perverse Effects?

We have shown that one way to justify an abolitionist stance is to rely on the plethora of empirical signs that criminal legal systems are performing extremely badly when we take their stated missions at face value: to protect society, deter harmful behavior, provide rehabilitation, and the like. Documenting the failures of criminal legal systems is obviously not the monopoly of abolitionists; it is also the bread and butter of reformists and penal analysts of all political persuasions. Should abolitionists nevertheless be concerned about

the potential perverse effects of their critiques? We discuss this question from two different angles: taxpayers' expenditures and corporate wrongdoing.

We have seen that an abolitionist stance can be supported by the idea that it is irrational to continue investing in correctional endeavors within carceral settings and that the criminal legal system is ineffective (e.g., Piché, 2015). Decarceration strategies can be promoted by economists who contend that current criminal legal systems are inefficient. For instance, Salib (2017) has suggested that a less suboptimal system could be achieved by forcing "bad social actors" to work, monitoring them electronically, and remotely incapacitating disobedient bodies. Decarceration strategies can also be advocated by conservative voices advancing that taxpayers' money is wasted on the costly incarceration of (racialized) bodies. In this context, the proposal is not necessarily about punishing more efficiently, but mostly about disinvesting in costly penal practices. In both cases, penal abolitionists can rehearse their arguments against penality, while prison abolitionists may be forced to oppose these voices by promoting "humane," community-based sanctions – quite a perilous balancing act.

In a recent contribution, Alvesalo-Kuusi et al. (2017) have formulated the question of the potential perverse effects of abolitionist critiques from a different angle, that of corporate wrongdoing. They point out that if abolitionist goals might be derided as idealistic by the establishment, then they are concretized in the governance of the harms produced by corporations. Through an empirical study of law-making and fine sentences in Finland, they show how critiques of the prison are adopted by state actors to oppose the incarceration of economic elites. They do not indict abolitionists, but rather formulate an invitation to more rigorously analyze processes of co-option in political and juridical discourses and decisions "about 'the appropriate' targets of punitive measures" (2017:26).

Why Focus on the PIC?

Criminalization has been mostly excluded from the great many struggles for emancipation in modernity. By emphasizing the interconnectedness of all forms of injustice, the PIC has been one of the crucial tools in making issues of incarceration and penalization respectable struggles within US activist circles (Mayrl, 2013). Yet, the ways in which the PIC is used to nurture abolitionist politics in the United States have been largely focused on the racist and capitalistic uses of criminalization and incarceration, rather than on criminalization and incarceration as such. The PIC cannot be a notion supporting penal abolitionism, "in that the notion itself cannot properly instrument a critique of retribution and social defense" (Carrier & Piché, 2015b:28). Moreover, if the notion might be useful in garnering social-justice forces through an acute moralization of social practices in the United States, it certainly has a limited appeal for understanding and dismantling the ideology of criminal justice (Wacquant, 2010) – an ideology irreducible to capitalism and processes of racialization.

What about Authority and the State?

One motivation of abolition includes the rejection of arbitrary authorities, such as prison and carceral administrators. In this sense, abolition would seem to have something in common with anarchist thought and practice after all (Dixon, 2014). Yet, abolitionists have not always posited a clear or agreed-upon political vision for future social and political

organizing (Walby, 2011). Moreover, the connections between abolitionist groups and anarchist organizing have not been a predominant trend. As Papendorf (2006) notes, it was prisoner solidarity and anti-prison struggles that motivated the core concepts such as the unfinished and negative reforms in Mathiesen's work, not anarchist philosophy or insurgency. One element of abolitionist thought that remains to be more clearly articulated is its position on the state and the representative democratic political system. In this sense, anarchists (and here we are referring to social anarchism or collectivist anarchists and anarcho-syndicalists) historically offer clearer visions of how to abolish not only the prison, but also the state, and then how to replace political and economic systems with more just ways of organizing life. The ends that anarchists seek include abolition of all hierarchies and alienation of political and economic systems, as well as an explicitly anti-capitalist politics. Some of the language and work of abolitionists would seem to be in line with this, but not all. Recent literature on justice as failure (Dilts, 2017) and insurgent safety (McDowell, 2017) has similarly posited a future without state authority, police intervention, and alternatives to state agencies and protection. Yet, the connections to anarchist politics and critiques of the state have often remained tangential issues at best. An anarchist politics for penal abolition would view the closing of prisons and the dismantling of the criminal-justice system as one piece in a broader revolutionary struggle against the state, along with capitalist violence and exploitation. Abolition of police would in fact be a more logical place for prison and penal abolitionists to begin, given the central role of public police in criminalization; there is no more adequate political philosophy for substantiating this claim than social anarchism. Critical Resistance in the United States has recently enlarged its gaze so as to contemplate the abolition of the police. Future reflections on the ends of abolitionist thought and practice could look to social anarchism as one set of connections to build on.

Conclusion

From an abolitionist standpoint, decarceration proposals are, at best, a strategy to insert within a more ambitious project. An abolitionist posture satisfied with the release of some or many people from prisons is a penal minimalism that does not say its name. We have discussed the three forms of abolitionist thought observable in the penal field today. We have browsed through the main rationales supporting desires and struggles for modes of belonging in which the prison, the penal, or the carceral has been abolished. And we have engaged with some questions raised by such projects. We thus have seen how the accusation of idealism frequently faced by prison abolitionism can be forcefully countered by merely looking at the current governance of many harms produced by corporations for whom its acts already live in a world without prisons. Prison abolitionism is the least demanding form of cognitive and normative program. We have shown how it manifests in a peculiar form in the US context, and we hope that more US prison abolitionists will welcome our invitation to take stock of the critiques of the entirety of the penal system that have been mounted by penal abolitionists – some of which are by Americans.

The normative discourse of penal abolitionism constructs criminal legal apparatuses as institutions of injustice that must be overthrown. The very notion of "criminal justice" is seen as problematic, needing to be deconstructed and replaced. A lot of research has been conducted to show the limitations and problems associated with this old project of facing forms of harm through retaliation. Penal abolitionism aims to be unrelenting in its critiques of criminological and criminal justice concepts and practices. As Scott & Moore (2014:255)

put it, "abolitionism represents a concerted assault upon the logic of the penal rationale and its current deployment in the institutions of criminal law." It follows that penal abolitionists cannot use the terminology of existing institutions of punishment and authority.

What abolition proposes as a replacement is radical, and requires nothing less than an overthrow of existing political and economic structures and institutions. What abolition proposes as a replacement to existing institutions of punishment and authority can sometimes feel like it will always be out of reach (Mathiesen, 2008). Abolitionists conceive of this future as a real utopia that must constantly be struggled for (Scott, 2013). Moving forward, it is crucial for abolition to be broad-based and grassroots, and to start with the experiences of the persons most directly impacted by prisons and carceral mechanisms, including prisoners and ex-prisoners, in their march toward a world without police, courts, prisons, and/or other forms of social control.

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24

The Death Penalty

Paul Kaplan

The "death penalty," or "capital punishment," is the legally sanctioned sentencing and killing of persons guilty of a crime by a state government. It refers to the entire process of charging, sentencing, and killing inmates. "Execution" refers specifically to the act of ending a prisoner's life. Persons sentenced to death are called "condemned." In many countries with a death penalty, the condemned are housed in a segregated part of the prison, informally referred to as "death row."

Capital punishment has been practiced in many human societies throughout history, although it has been abolished in recent years by a significant number of countries, most notably all of the member states of the European Union. It is currently practiced regularly only in a few countries, most notably China. As of this writing, however, in the United States, 31 of the 50 states have a death penalty, with the others considered "abolitionist"; the US federal code of criminal law also includes a death-penalty statute. In *Furman* v. *Georgia* (1972), the US Supreme Court ordered that the death penalty was unconstitutional because it was too arbitrary, but it reversed itself just 4 years later in *Gregg* v. *Georgia* (1976). Analysts of the death penalty in the United States refer to the period from 1976 to the present as "the modern era." This chapter will largely focus on capital punishment in the modern era in the United States, although it will begin with some references to it practiced elsewhere.

A Comparative View of the Death Penalty

Capital punishment is distinguished from other forms of state killing, such as war deaths, fatal police actions, and paramilitary killings, and also from homicide by non-state actors. This is an important distinction, because non-judicial killings are far more common than executions. For example, in 2015, there were nearly 16 000 homicides in the United States (FBI, 2017a), and 986 police killings (Somashekhar & Rich, 2016). That same year, only 28 persons were executed, in just six Southern states (deathpenaltyinfo.org). The peak year for executions in the United States in the last 50 years was 1999, with 98 (deathpenaltyinfo.org). For homicides, the peak was in 1991, with just under 25 000 (Cooper &

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

Smith, 2011). There are no good data on police killings, but one estimation is an average of about 1100 annually (The Guardian, 2018).

Moreover, the death penalty makes up a miniscule portion of the criminal-justice system in most countries that use it, except China, which is by far the world's leader in executions. For example, in the United States, the total number of persons held in jails or prisons has hovered around 2 million since the turn of the century (www.prisonstudies.org). The incarceration rate in the United States is approximately 666, the highest in the world (all rates are per 100 000). Violent crime has decreased since peaking in the early 1990s, but is still higher than in most peer-nations – the United Nations reports that the homicide rate in the United States for the most recent year with data is between 3.00 and 4.99, as compared to between 0.00 and 2.99 for most European countries and also Canada (United Nations Office on Drugs and Crime, 2017). The total number of executions in the modern era is 1456. The total number of condemned persons living on death rows across the country stands at 2843 (deathpenaltyinfo.org). Almost none of them are likely ever to be executed.

The death penalty is thus insignificant when compared to other forms of homicide and incarceration. This is certainly the case in the United States. But what about elsewhere? Useful examples can be made by briefly looking at three other executing nations: China, Iran, and Japan.

As leading comparative death-penalty scholars Johnson & Zimring (2009) make clear, it is difficult to know exact numbers in China because executions are a state secret, but based on available evidence, analysts believe that China executes at least hundreds of persons per year, and perhaps in a peak year as many as 15 000. It is difficult to identify violent crime rates in China, but they are probably lower than in the United States. Nevertheless, if China has averaged 2500 executions per year since 1976, that would be 100 000 total: a staggering number. Johnson & Zimring (2009) thus consider the death penalty to be an "operational" part of China's criminal justice system.

According to *The New York Times*, Iran executed at least 966 people in 2015 (Gladstone, 2016), although this might represent a peak. Most analysts believe that it follows only China worldwide, and executes a few hundred persons per year (Amnesty International, 2016). Even with its status as second-most bloodthirsty, executions of a few hundred a year in Iran still make up only a small fraction of its criminal justice system. The same can be said about the other major Islamic state in the Middle East, Saudi Arabia, which, according to Amnesty International (2016), executes many dozens of persons a year.

Japan, with a population of about 127 million people and an almost non-existent violent-crime rate, incarcerates very few, with a rate of only 45 (www.prisonstudies.org). Its death row has 128 occupants, and it executes a small handful of persons just about every year, adding up to fewer than 200 in the modern era (Cornell Center, 2017).

These comparison countries demonstrate that the modern death penalty is a miniscule part of the larger pictures of violent crime and criminal justice everywhere in the world, except China. Among highly developed societies on opposite sides of the planet – the United States and Japan – capital punishment is almost non-existent. Johnson & Zimring (2009) refer to it as "symbolic," meaning that executions have essentially nothing to do with criminal justice and only matter very much to persons associated with the case. Religious states, such as Iran and Saudi Arabia, execute with regularity, but the total numbers are still quite low compared to violent crime and incarceration. In large swaths of the world – Europe, Russia, most of North and South America, large parts of Africa, Australia, and large parts of Asia – the death penalty is non-existent.

Death Penalty USA

Everywhere in the world, but perhaps especially in the United States, the death penalty garners enormous amounts of attention. It is obviously highly important to condemned persons (and their loved ones), and also probably to their victims' families. Noted sociologist of punishment David Garland (2010) argues in his book *Peculiar Institution* that the contemporary death penalty has little to do with deterrence or the incapacitation of dangerous criminals, but functions as a political football and creates a venue to talk about death. Garland suggests that talking about murder and execution provides symbolic benefits for people from many different groups. Advocates cynically support the death penalty to appear "tough on crime," or believe it can provide a retributive sense of "closure" to the families of victims and, perhaps, society.

The symbolic uses of capital punishment include the political brownie points reaped by advocates of capital punishment, but also less obvious profits to defense attorneys, such as an intense and exciting career and "even a hint of glamour" (2010:291). Garland goes as far as to suggest that talking about murder and execution can have a psychological benefit (2010:306). Justice John Paul Stevens (2010) argues in his review of Garland's book that symbolic "uses" of capital punishment are not legitimate in the same sense that utilitarian ones might be: "Deterring crime is a valid reason to punish. Neither political strategy nor deference to the mass media, however, provides an adequate justification for [execution]" (2010:2).

Capital Crimes and Capital Trials

In the United States, the contemporary death penalty is almost exclusively reserved for aggravated intentional homicide, usually referred to as first-degree murder with a "special circumstance." Special circumstances are legally defined facts about a murder that make it worse than garden-variety killings, such as multiple victims, murder-for-hire, or the killing of a police officer. A handful of states have laws making some non-lethal offenses capital crimes (e.g., treason, sex crimes against children), but there have been no executions for non-murders in the modern era (deathpenaltyinfo.org). In China, the death penalty is not limited to intentional homicide, and is sometimes even deployed against persons guilty of corruption (BBC, 2011).

In the modern era in the United States, capital trials are predicated on the principle of "guided discretion" laid out in *Gregg* v. *Georgia* (1976). The concept of guided discretion is that juries must decide life or death for defendants, but must do so in a particular legal framework that allows them to "weigh" aggravation (e.g., multiple victims) and mitigation (e.g., childhood trauma). As a result of this doctrine, almost all death-penalty trials consist of two distinct phases – the so-called "guilt phase" and the so-called "penalty phase." In the guilt phase, juries must determine whether the defendant is guilty of first-degree murder with a special circumstance, and that is all. In the penalty phase, they must weigh aggravating and mitigating factors presented by the prosecution and defense and determine whether the defendant should get life without the possibility of parole (LWOP) or death. There have been slight modifications to these processes in the modern era, but currently juries must decide between life and death in nearly all cases.

Methods of Execution

The history of methods of state killing is a study in contrast between treating the condemned with utter cruelty and treating them with respect. Putting aside pre- or early-modern practices such as Roman crucifixion or the Aztec empire's notorious human sacrifices, we can see how governments have tried to make distinctions between killing ordinary criminals and executing elites. Historian James Q. Whitman (2003) shows that, in Enlightenment-era Europe, degrading executions were historically reserved for those with low status, while aristocrats enjoyed "mild" punishments, even when being killed. Low-status offenders were hanged or sometimes mutilated to death. In the 18th century, high-status offenders were beheaded, because this was perceived to be less painful, and also more dignified (2003:111–113). The invention of the guillotine was intended to create a swift and painless death for aristocrats.

Execution methods in the United States were never applied differentially based on class – except in one sense, lynching, which is the vigilante killing of a person accused of a crime without any legal process. Usually, lynching refers to public hangings of black men by a white mob, often including torture. Of course, lynching is not sanctioned state killing, but because of its widespread practice in the United States for many decades after the Civil War and well into the 20th century, and because of the frequency of state complicity, it must be mentioned in any discussion of the death penalty in this country. As legal historian Stuart Banner (2002:229) has shown, lynching was more common than legal capital punishment in the late 19th and early 20th centuries in the South.

While Europeans distinguished between "harsh" and "mild" executions during the same time period, Americans changed their views about execution methods over time, in a progressive attempt to make state killing "more humane." For most of US history, execution meant hanging, which during the 19th century was considered the most humane method. However, with the occurrence of botched hangings (in which prisoners were accidentally beheaded or slowly strangled), authorities looked for quicker and less vividly violent ways to kill the condemned. Hence, the appearance of the electric chair and the gas chamber, both of which were intended to make executions seem less violent.

In the modern era, executions have mostly been in the form of lethal injection, although over 150 prisoners have been electrocuted, and a handful gassed, hanged, or shot (deathpenaltyinfo.org). Lethal injection is the killing of a prisoner by administering chemicals that cause death, usually in the form of a "cocktail" of two or three drugs. The standard practice is to first inject a tranquilizer that puts the inmate to sleep, then to give a paralytic to stop muscle movement, and finally to administer a drug that stops the heart from beating. The Hippocratic Oath deters medical doctors from undertaking the procedure, so the needles are inserted by prison staffers.

The theory of lethal injection is that execution is supposed to be a somber phenomenon in which the condemned is taken seriously and treated respectfully until he or she is dispatched quietly and painlessly. The US Supreme Court's doctrine of "evolving standards of decency" requires that the killing should be "the mere extinguishment of life," and nothing more. Lethal injection is supposed to be akin to euthanasia, where the prisoner is simply "put to sleep," in the same manner as we kill our pets when they are infirm. The aesthetics should follow a script, in which the condemned does not resist being strapped in, is allowed to say a few words of his or her choice in front of a small audience, and finally has a needle inserted, after which he or she peacefully closes his or her eyes and goes to sleep forever. When the process goes off-script – when prison functionaries fail to quickly or correctly

find the vein, causing blood to spurt, or when the prisoner evinces severe spasms or other signs of suffering as the drugs enter his or her system – the process becomes fraught. While the US Supreme Court has upheld lethal injection, some state courts have declared it unconstitutional. The contemporary practice of lethal injection is quite strained, as defendants challenge its constitutionality and drug companies refuse to sell their products to states intending to use them for executions.

Purposes of Capital Punishment

Theories of why to use a death penalty can be divided between the utilitarian and the moral. Utilitarian theories argue that capital punishment is a good idea because it will prevent murders. Moral theories argue that the death penalty is needed in order to maintain the moral balance of society by giving just deserts to the offender and closure to the victim. There are two primary utilitarian theories of the death penalty, deterrence and incapacitation, and one primary moral theory, retribution.

Deterrence

Deterrence takes two forms: general and specific. General deterrence refers to the idea that by punishing a guilty person, people in society will understand that bad behavior will be met with severe consequences, and will thus be less likely to undertake actions such as aggravated first-degree murder. Specific deterrence focuses on the individual bad actor and causes them pain now to deter them from acting badly again in the future. The death penalty is thus advocated in the name of general deterrence – we execute killers to deter other potential killers. This is the primary theory that the US Supreme Court has traditionally relied on when upholding the death penalty. As should be clear, it does not make sense to think in terms of specific deterrence with the death penalty, because the prisoner's execution means that there is no longer an individual offender to be specifically deterred.

Empirical research on the deterrent effect of capital punishment is not promising. Scholars have undertaken sophisticated statistical analyses to look for a measurable deterrent effect that executions have on homicides. These studies go far beyond simply comparing the homicide rates in states with and without the death penalty (such simple comparisons tend to show that states with the death penalty have higher homicide rates). But even using advanced econometric tools, researchers have not found convincing evidence that executions prevent homicides. Fagan et al. (2012) refer to scientific knowledge about deterrence and capital punishment as a "muddle."

Incapacitation

Incapacitation refers to the physical restraint of dangerous persons. The vast majority of incapacitation in the United States exists in the form of confinement in prisons and jails. Of course, the ultimate form of incapacitation is the elimination of the potentially dangerous person. This concept is frequently relied on when supporters of the death penalty argue that the "worst of the worst" must be killed to protect others, such as prison guards and other inmates. The logic of incapacitation is infallible; it is true that dead people cannot kill

others. The problem with this argument is that its benefit is miniscule when only a tiny fraction of potentially capital murderers – persons who have intentionally killed someone – receive a death sentence, let alone an execution. For incapacitation to be a practical reason to use the death penalty, the scale of the punishment would have to increase to China-like levels.

Retribution

Retribution is a philosophically slippery concept that would require an involved discussion of esoteric ethical systems, such as that of Immanuel Kant, to fully delineate. For the purposes of this chapter, retribution essentially means punishment administered by the state to a guilty party that is independent of said punishment's utilitarian effect. In other words, punishment for punishment's sake. The key idea in retribution is that punishment is "morally necessary," rather than simply a good idea for public-policy reasons. It is thus distinct from utilitarian purposes for the death penalty.

In public discourse about retribution and the death penalty, the needs of victims often become conflated with retribution, as when prosecutors or other advocates argue that a death sentence or execution is "necessary" for the benefit of victims' families. These kinds of argument sometimes invoke the concept of "closure," which is a purported benefit for the parents, siblings, and children of murder victims. The problem with "closure" is that the construct is not thoroughly understood, and thus not very well researched. Moreover, the little research available shows that many family members of murder victims do not experience any good feelings after the execution of the person responsible for their loved one's death (Madeira, 2016).

Empirical Facts about the Death Penalty

Measures of the Death Penalty

Counterintuitively, "the death penalty" can be challenging to measure. Scholars of capital punishment have long relied on executions to measure death-penalty activity. Zimring's (2003) *The Contradictions of American Capital Punishment* focuses on the seemingly large difference in executions in Southern states compared to the rest of the country. A recent influential paper by Liebman & Clarke (2011) looks to the local level to develop a theory about why a tiny number of *counties* across the country, mostly in the South, are responsible for most executions. Their argument is that the death penalty is not a matter of large regions (the South) compared to other large regions (the North, Midwest, or West), but a matter of a small fraction of counties that are more parochial and libertarian compared with others across the rest of the country. In a prominent recent book, *Executing Freedom*, Daniel LaChance (2016) devotes a section to *two specific prosecutors* responsible for a large number of executions: Johnny Holmes, who presided over Harris County, Texas (Houston), and Bob Macy, of Oklahoma County, Oklahoma (Oklahoma City). LaChance analyzes these two counties – the most deadly in the country – in a study of how masculinity and Old West values drive capital punishment. All of these important studies primarily use *executions* as the measure of death-penalty activity. But using executions to measure capital punishment is problematic.

If we think of a capital case resulting in execution as a chain, it would look something like this:

murder → charge → trial → guilt → penalty → appeals → clemency → execution

This is a crude version of the chain, which in reality would include many more sublinks. But arbitrariness is known to occur in and between each link. In the early 1970s, the US Supreme Court declared that the outcomes of capital cases were too arbitrary to pass constitutional muster. As already mentioned, the Court reversed itself after states rewrote their death-penalty laws in order to make the process more in line with requirements for due process and equal protection. Unfortunately, abundant research shows that death-penalty outcomes have remained just as capricious as they were at the time of *Furman* (e.g., Epstein, 2009; Jacobs et al., 2007; Paternoster et al., 2003; Petrie & Coverdill, 2010; Pierce & Radelet, 2010; Radelet & Pierce 2010). Because of arbitrary factors, a large number of initially capital cases fall out of the chain of capital punishment after charging, and long before execution or even sentencing.

An easy way to observe this is to compare the notoriously deadly Harris County, Texas with its neighbor, Bexar County (San Antonio); Houston and San Antonio are the two largest cities in Texas, and are only about 200 miles apart (next-door in Texas distances). Harris County has executed 116 persons in the modern era, and Bexar County, 36. Thinking in terms of execution, this is a huge difference – it is a bit more than threefold. Noticing differences like this, death-penalty scholars have made claims about their meanings (e.g., for LaChance, it would be Old West masculinity). But if we return to the metaphor of the chain, we can see that arbitrariness has probably altered outcomes, making it impossible to know what accounts for the gap in executions. It is possible that prosecutors in Bexar County have charged three or ten times as many defendants with capital murder as has Harris County in the last 40 years. If that is the case, making claims about the meanings of seemingly large differences in executions becomes problematic.

Data on charging is not non-existent. Professor David Baldus has produced some of the most influential work on the death penalty in the United States, and some of it includes data on charging, for example in its analysis of discrimination (e.g., Baldus et al., 2002). Paternoster et al.'s (2003) comprehensive study of race in Maryland's death-sentencing system includes by-county data on charging in its analysis, enabling the authors to make convincing claims about jurisdictional differences in that state. In each of these important works, race turns out to be an important factor in death-penalty outcomes at all measured stages, *including charging*.

But, for the most part, knowledge about charging is limited and ad hoc. Another way of understanding this is to compare Harris County, Texas to a big, diverse city in a different region. This author happened to learn something about capital charging in Maricopa County, Arizona while coauthoring a paper about racism and the death penalty in Phoenix (Fleury-Steiner et al., 2015). Maricopa County has executed 11 persons in the last 40 years – obviously far fewer than Harris's 116. In our investigation of Phoenix, however, we discovered a report showing that in 2006 *alone*, Maricopa County had 149 active capital cases – including 41 cases charged in that year (Dupont & Hammond, 2012:216). This information comes from defense attorneys in Phoenix, who collected the data for an unrelated project – it is unknown if those 41 charges represent a peak or a valley of charging over the last 4 decades. It could be that prosecutors in Phoenix, or Los Angeles, or Indianapolis, or Columbus – non-Southern death-penalty cities with very few executions – have been

charging people with capital murder at equivalent or higher rates than in Houston or Oklahoma City since 1976. If that is the case, it is difficult to confidently make claims about high or low levels of the construct "the death penalty" based on region.

As mentioned, all death-penalty activity in the United States combined is miniscule when compared to capital punishment in China. The difference between 11 and 116 seems huge, at first (i.e., Maricopa County versus Harris County), but when factoring in all the potential capriciousness in all of the links of the chain from charging to execution, it looks pretty small, especially when compared to the probability of thousands of executions taking place outside of the country. The difference between 11 and 116 over 40 years is nothing compared to the difference between 116 and perhaps 100 000 – a plausible figure for the number of executions in China since 1976. US death penalty scholars should remember this when making claims about capital punishment at home.

Nevertheless, if we move away from attempting to measure capital charges, we can see hard facts about sentencing and executions. Annual death sentencing in the United States hovered around 300 from the mid-1980s until about 1999 (deathpenaltyinfo.org). But a decline began in 2000, and there were only 32 in 2016: 13 in the South, 12 in the West, five in the Midwest, two in the Northeast, and none in the federal system (deathpenaltyinfo.org). As for executions, there were only 20 in 2016, all of which took place in five states in the Bible Belt (deathpenaltyinfo.org). These facts tell us that, although it is possible that significant arbitrariness blurs knowledge about the death penalty in its early stages (e.g., charging), when it comes to sentencing, it is largely a Southern and Western phenomenon, and when it comes to execution, it exists almost exclusively in the South. Since 2010, there have been 272 executions in the United States, 209 of which were in the South, accounting for 77% (most of the rest took place in the Midwest, with a handful in the West) (deathpenaltyinfo.org).

Reversals

Another important part of the empirical picture of capital punishment in the United States – and part of the explanation for disparities between charging and executions – is the striking rate of reversals in capital cases. According to the Bureau of Justice Statistics (deathpenaltyinfo.org), there have been more than twice as many reversals of capital convictions as executions in the modern era. Not all of those whose convictions were reversed were permanently removed from death row, because in some instances, their cases were re-tried and resulted in a second conviction. However, this does mean that in the contemporary United States, condemned persons are more likely to have their conviction reversed, at least temporarily, than to be executed.

Super Due Process

Reversals of capital convictions are partly due to the US Supreme Court's doctrine of "super due process," which is a legal term from Supreme Court jurisprudence re-authorizing the death penalty after its brief hiatus following *Furman* v. *Georgia* (1972). The concept reflects the idea that "death is different" and that the Constitution requires capital defendants to be afforded significantly more evidentiary leeway during trials and post-conviction procedures than non-capital criminal defendants (Barnhill, 1982). All death-row prisoners in the

United States are provided with an appellate attorney, and although they often must wait for years for that attorney, in many places the legal representation is of high quality. No state in the Bible Belt or elsewhere executes anyone quickly, nor without extensive attention from attorneys, courts, a parole board, and the governor's office. Hence, the average time on death row from sentencing to execution is about 15 years (deathpenaltyinfo.org).

Race

As already mentioned, empirical research has shown that racial bias infects the death penalty at various points in its process. It is well established by rigorous social-science research that the outcomes of capital cases favor white persons at the expense of persons of color. These studies focused on discrete populations (e.g., the city of Philadelphia over a period of years) and relied on statistical techniques that controlled for other potentially causal variables, such as the number of aggravating factors found by jurors (see Baldus et al., 1998). But even in the simplest demographic sense, without utilizing statistical procedures, data on sentencing and executions in the United States reveal racial disparities.

As of this writing, the national percentages of currently condemned persons by race are as follows (deathpenaltyinfo.org):

- 42% white;
- 42% black;
- 13% Hispanic;
- 3% other.

The national percentages of executed persons by race since 1976 are (deathpenaltyinfo.org):

- 56% white;
- 34% black;
- 8% Hispanic;
- 2% other.

The national percentages of victims in capital cases by race since 1976 are (deathpenaltyinfo.org):

- 76% white;
- 15% black;
- 7% Hispanic;
- 2% other.

Finally, the most recent US census (2010) tells us that the national demographics are:

- 64% white;
- 13% black;
- 16% Hispanic;
- 7% other.

As can be seen, there are disparities that favor whites in sentencing, executions, and victims. Death-penalty advocates have been known to counter this evidence by arguing that it is

misleading to compare the demographics of death-row populations or executions with those of the general population, and that it would make more sense to compare them to the demographics of participants in capital murder. In other words, they argue, the percentage of black persons on death row is in step with the percentage of black persons committing capital murder. For example, the FBI reports that in 2015, about 37% of murder offenders in the United States were black, while about 30% were white (FBI, 2017b). This hews closer to the national death-row demographics. A problem with this argument is that it does not account for the large percentage of cases in which the race of the offender is unknown – about 30%. Also, it seems to imply that race is somehow a causal mechanism in homicide, because "black people commit more murders than white people." Finally, drawing attention to the higher percentage of murders committed by black persons for *the purposes of justifying capital punishment* rather than attempting to identify causes of higher violent crime rates in black communities focuses on a tiny fraction of violence (capital murders) instead of widespread social problems in some communities.

Women and the Death Penalty

Almost all persons who commit capital murder, are sentenced to death, or are executed, are men; there have only been 16 women executed in the modern era (deathpenaltyinfo.org). There are not good comprehensive data on the demographics of capital murder victims, but empirical studies suggest that in cases with female victims, offenders are more likely to receive a death sentence (e.g., Royer et al., 2014).

Public Opinion about the Death Penalty

Americans have favored the death penalty for a long time. The earliest poll on the issue taken by Gallup was in 1937. With the exception of a couple of years prior to the modern era, a majority of respondents have said "yes" every year to the question, "Are you in favor of the death penalty for a person convicted of murder?" (Gallup, 2017). The peak was in 1996, at 80%. The percentage in favor has dropped steadily since then, coming in at 60% in 2016 (Gallup, 2017). A similar poll conducted by the Pew Research Center shows an even larger drop in support, down to 49% – the first time the percentage has dipped below the majority since the 1960s (Oliphant, 2016). And, when the poll question is asked differently, results tend to show less support for capital punishment. For example, in a California poll that asked whether respondents preferred LWOP or death for persons convicted of first-degree murder, 42% chose LWOP and 41% chose death (Egelko, 2010).

Innocence and the Death Penalty

The advent of the use of DNA evidence in criminal cases at the end of the 1980s radically changed the landscape of criminal appeals as the phenomenon of wrongful conviction started to become understood. As appellate attorneys learned of this new technology and used it to test evidence that had been retained in closed cases, wrongfully convicted persons began to walk out of prisons, including 159 off of death row (deathpenaltyinfo.org). Following the pioneering work of lawyers Barry Scheck and Peter Neufeld in 1992, there are

now 68 "innocence projects," or organizations aimed at helping incarcerated inmates who claim that they are factually innocent to get a new investigative review of their cases. As awareness of the problem grew, Lawrence Marshall (2004) – the Legal Director of Northwestern University School of Law's Center on Wrongful Conviction – argued that an "innocence revolution" would transform American criminal justice in potentially profound ways. Over the last quarter-century, the field of "miscarriages of justice" has matured as scholars have identified causes of wrongful convictions, such as eyewitness error, false confession, police and prosecutorial misconduct, false testimony by "jailhouse snitches," and "junk" forensic science. Famously, the governor of Illinois in 2003 commuted the whole of Illinois's death row to LWOP because he had learned that several condemned persons had been entirely innocent and only escaped death because their lawyers or local journalists had discovered that fact.

Prior to the modern era, there were numerous demonstrably wrongful executions. A few years before the "innocence revolution," Hugo Bedau and Michael Radelet (1987) produced a compendium of miscarriages of justice that identified 350 instances of wrongful conviction in the 20th century, including *23 wrongful executions*. The authors were quite prescient, intuiting that wrongful convictions were occurring with some regularity without the benefit of DNA's gold standard of forensic validity, which only emerged later. Still, an ironclad, proven wrongful execution has not been exposed in the modern era, although there are several cases where it seems very likely the government executed a person who was factually innocent. The Death Penalty Information Center (deathpenaltyinfo.org) reports on 13 examples of executions with strong evidence of innocence in the modern era.

The Diminishing Death Penalty

As already mentioned, most of the world no longer uses capital punishment. Leaving China and some religious states to one side, the death penalty is practically non-existent in the contemporary world. Japan, one of the two large, developed, wealthy societies that has the death penalty (along with the United States), has executed fewer than 10 persons annually for the past 25 years, except for 2008 when the government killed several members of a religious cult responsible for the deadly sarin gas subway attack of 1995. Even in that peak year, the total number of executions was only 15.

In the United States, all known measures of capital punishment show steep decreases since around the turn of the century, with the only gap in knowledge being charging, as discussed. Perhaps the best evidence that capital punishment is waning in the United States is that many state legislatures have written it out of their penal codes. In the modern era, nine states have eliminated the death penalty, all but one (New Mexico) in the Northeast or Midwest.

Moreover, the US Supreme Court has recently placed limits on the types of persons who can be executed. Two stand out. In 2002, the Court ruled in *Atkins* v. *Virginia* (2002) that it is unconstitutional to execute persons who have intellectual disabilities. The rules about what constitute "intellectual disabilities" are too complex to describe in this chapter, but a common practical reference point is the defendant's Intelligence Quotient (IQ) score. In *Atkins*, the defendant, Daryl Atkins, was tested for IQ and received a score of 59, which is far below the average of 100 and was considered at the time evidence of "mild mental retardation." An important distinction must be made between intellectual disability and mental illness. The former is quite limited, and refers to "limitations in intellectual functioning and

adaptive behavior" (AAIDD, 2017), while the latter covers the broad spectrum of psychological and psychiatric disorders found in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM). While mental illness can be a mitigating factor in capital cases, it does not preclude defendants from being executed as intellectual disability does. One consequence of *Atkins* has been a flurry of activity in cases where defenders and prosecutors argue about the possible intellectual disability of defendants, with each side hiring experts to test them. Not surprisingly, these experts sometimes arrive at different IQ scores.

The other key case in the 21st century is *Roper* v. *Simmons* (2005), in which the Court ruled that executing persons who were under 18 at the time of their crimes is unconstitutional. This means that while prosecutors can still charge juveniles as adults, they cannot charge persons under 18 with capital murder. An important consequence of *Roper* was the commutation of dozens of defendants' sentences from death to LWOP.

Despite significant decreases in capital punishment at the aggregate level, strongholds remain. California, with a huge population, has approximately 740 persons on its death row. Large Southern states, notably Texas and Florida, also have large condemned populations. As already mentioned, executions since 2000 are concentrated in the South, with some also taking place in the Midwest. The Northeast and West have only seen a small handful of executions since the turn of the century. An example of lingering regional high-level death-penalty activity can be seen in the recent plan by the state of Arkansas to execute eight prisoners over 4 days, two per day, for the stated reason that the government's supply of a drug used in the lethal-injection cocktail was set to expire (Cobb, 2017). Arkansas only executed four of the scheduled eight prisoners, but the plan for multiple executions on a single day received considerable media attention and illustrates, by counter-example, the generally extremely limited use of capital punishment in the contemporary United States.

Recent and Future Developments

Although the death penalty in the United States is declining, the elections of 2016 show movements in the opposite direction. Aside from Arkansas's recent rash of executions, several states have passed or introduced legislation to increase death penalty activity rather than limit or eliminate it. Perhaps most notable was the failure of Proposition 62 (to abolish the death penalty) and the passage of Proposition 66 (to speed up capital appeals) in California in 2016. Currently, legislatures in the abolitionist states of Connecticut, Delaware, and New Mexico are considering bills that would reinstate the death penalty. In perhaps the most creative move, several states have introduced legislation that creates a "hierarchy of executions methods," which list other options, such as electrocution or firing squad, should lethal injection become unviable (e.g., Mississippi's HB637 and SB2280).

It appears that, for the foreseeable future, capital punishment in the United States is here to stay – albeit in a diminished, symbolic, and regional form. Because it remains popular in significant parts of the South and Midwest, legislative abolition there is unlikely any time soon. Judicial abolition is always a possibility, but it would likely require some kind of blockbuster revelation about the practice – such as one or more proven wrongful executions – to move conservative members of the US Supreme Court to find that it violates the constitution. According to Johnson & Zimring (2009), abolition in China in the near future is probably also unlikely.

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Part VI
Surveillance

25

Technologies of Surveillance

Stéphane Leman-Langlois

Modern surveillance can be thought of as an integral component of social control. Without surveillance, social-control projects – be they originated by the state or within the community or the family – could only be distributed either generally or randomly, punishing either everyone or a few hapless subjects chosen by chance. Preoccupied with efficiency, modern surveillance singles out proper targets of social control by documenting a manifestation of a previously established conceptual link between a characteristic of its targets, such as a particular behavior, appearance, age, gender, political opinion, or ethnic group, and a particular reaction. That reaction then appears to be justified by the product of the surveillance. It should not be surprising that this definition allows for extremely oppressive and discriminatory forms of surveillance and social control, since neither contains it own limits or ethics, which have to be imposed from outside. In other words, if we want surveillance and social-control projects to be limited, we have to deliberately design them that way.

It is possible to find much broader uses of the term "surveillance," for instance when it refers to objects (e.g., keeping track of natural phenomena), to scientific processes (building and using a research database), or to pure curiosity (crowd-watching in a park). To push this further, our simple sensory awareness or our use of any information-gathering device – such as a notepad or a cell phone – could be labeled as surveillance, which would greatly reduce the usefulness of the term. In this chapter, in keeping with Rule et al. (1980), we shall only be concerned with the forms of surveillance that bear on social objects and that have social-control objectives.

The concept of "social control" also benefits from a stricter definition. Otherwise, any practice, institution, tradition, architecture, or technology that (wittingly or not) produced conformity in individuals could be understood as a form of social control. Multiple types of control can be found in schools, workplace practices, walls, gates, seating arrangements, and language. One example of the latter is the "risk" discourse in government publications, bearing on a wide range of activities such as nutrition, pregnancy, and physical activity, which threatens those adopting risky lifestyles with disease, injury, or death. We therefore need a narrower definition for "social control." In this chapter, following the seminal work of Cohen (1985), we only consider those forms of social control that are organized and aimed at behaviors deemed to be socially undesirable by those who are imposing the control.

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

Note that this does not imply that they result in actual changes in behavior: control practices may be ill defined, incompetently implemented, successfully resisted, tilted at the proverbial windmill, or targeted at vanishingly small risks such as terrorism. To a large extent, this definition matches that of *policing*, and it includes internal-revenue investigators and data analysts, security and criminal-intelligence missions, private security, investigation and data analytics, and, of course official, legally empowered police officers (Brodeur, 2010). It also includes courts, prisons, penal surveillance, and many youth "protection" programs.

We will use the term "technosurveillance" (Leman-Langlois, 2008, 2013) to refer to those practices of surveillance that are technologically mediated, whether or not the technology being used is effective, whether or not it was designed for the purpose, and whether or not humans are involved in the surveillance loop. Technosurveillance resembles what Marx (2016) refers to as the "new surveillance," although it is no longer new; more importantly, contrary to Marx, we are prepared to assume that when technologies are invested in, the objective is likely to be more that the pure gathering of information – it is the deployment of a social-control project. "Technosurveillance" also calls attention to the way new technologies and devices go well beyond the production of "better" (closer, wider, deeper, cheaper) surveillance to produce changes in the commonly held definitions of surveillance and in the processes that define its proper targets, uses, and results.

This chapter has three sections. The first will offer a quick inventory of the types of technology that are currently deployed, as well as a few that are coming soon. It should be noted that the chapter focuses on what is often referred to as "the West" or the "Global North," and deliberately excludes extremely interesting (and generally far more alarming) trends in Asia and South America in order to simplify and shorten the text. The second section explores some of the sociopolitical trends that shape the ways in which technosurveillance is being deployed, and in particular its recent transformation into a panacea capable of preventing any "antisocial behavior" – despite the fact that it is rarely seen to actually produce the expected benefits. Finally, the concluding section reviews a few instances of countersurveillance, where the watching is circumvented, defeated, or subverted.

Technical Trends

There are few riskier enterprises than to attempt to describe recent – never mind future – technical developments in technosurveillance. For one thing, it seems that developments are no longer "recent" within a matter of months, far less time than it takes to write a book chapter and have it published. However, the more fundamental problem, usually overlooked by observers, is that it is nearly impossible to sort out the newfangled from the gimmicky, the rare experiment or prototype from the widespread device, the promise from the reality, or to evaluate the actual surveillance power of any technology, especially since some extremely powerful surveillance devices are not actually branded as surveillance at all (e.g., social-networking platforms). In this section, we shall review three large areas of surveillance: dataveillance, spatial surveillance, and checkpoints.

Dataveillance

The harvesting of personal information in data systems was first referred to as "dataveillance," by Clarke (1988). Social-media surveillance is probably the most obvious example, one that most users actually engage in from time to time: it is now normal to

review someone's Facebook page prior to entering into employment, investment, or a personal relationship. Arguably (it remains unmeasurable), most dataveillance is generated by corporations, fueling the new "surveillance capitalism," where ever-increasing revenue is drawn from the collection, packaging, and resale of massive amounts of personal data (Web-browsing history, purchases both online and in brick-and-mortar businesses, keywords searched, communication data, etc.). With social media, the original collection of data is actually performed, in large part, by the surveillance subjects themselves, for entertainment purposes. This is the source of the surveillance power of social media: the hidden, nonconfrontational character of its style of surveillance, when we mostly conceive of "surveillance" as an imposition, usually from "above" on the scale of political power. Risk perception also plays a large part in our evaluation of our vulnerability on Facebook and other such platforms. In short, we tend to assign lower risk values to situations that we control, that we are familiar with, or where the potential consequences are not frightening (Slovic, 2000). This makes Facebook appear positively risk-free as far as the security of our personal data is concerned: surrounded by friends, in control of what we click or write, with the only consequence being making more friends. Of course, even the more naïve user suspects that there may be more to it: social-media companies are in fact personal-information harvesters and resellers. What is more, as Trottier (2012) has shown, social-media not only conducts its own commercially oriented surveillance but is increasingly being used for (surprisingly) intense forms of social control.

First, although the primary reason for their collection may be commercial, the vast troves of data held by corporations such as social-media comapnies and communications-services providers are available to police and other official social-control institutions. The most spectacular example of this, the US National Security Agency's (NSA's) "Prism" program, was publicly revealed by Edward Snowden in 2013, when it was shown that most of the important services providers in the United States had given the NSA access to their databases, through what were deemed overly permissive protocols.

Outside of top-secret organizations such as the NSA, most policing organizations today also use one form of dataveillance or another. In some cases, official access requires judicial oversight, but that is not the prevailing rule. The actual interception of communications is usually restricted by local laws, but where "metadata" is concerned, the rules are far less clear. Metadata has no single definition, but it is usually understood to encompass any data that is external to the contents of the communication: the phone numbers invovled, the duration, location, and time of a call, geolocation data, and the like. Since collecting it doesn't amount to a narrow definition of "communication interception," many institutions have been extremely active in harvesting and analyzing vast troves of metadata. The problem, however, is that metadata goes well beyond the "phonebook information" it is sometimes likened to in an effort to trivialize its significance. To be equivalent, the phonebook would have to contain a description of every instance of communication between two phone numbers. From that information, the astute analyst can recreate the actual content of a communication, as well as estimate the income, marital status, sexual orientation, and general health status of those under surveillance.

Second, there are many cases where the primary goal of dataveillance is in fact social control. Governments keep large databases of information on the behavior of social-services beneficiaries in order to identify freeloaders and other "undeserving poor." Air travel is monitored in order to prevent terrorist attacks – in many cases, well beyond the databases of the airlines themselves. Automated systems keep track of various suspect discussion boards in both the "Clear" and the "Dark" Web. Financial institutions use data analysis to

prevent fraud. National revenue departments are matching their data with car-insurance data to detect undeclared earnings. Utilities are closely monitoring client data to detect service theft. Copyright holders are monitoring Internet traffic to detect unauthorized distribution of intellectual property (Leman-Langlois, 2005).

Finally, the current acceleration of the digitization of everyday life will essentially convert all forms of surveillance into dataveillance. Whether or not you are *seen* somewhere is already becoming unimportant, as your own smart devices will geotag you there (and, unlike cameras, are not vulnerable to dirt, rain, fog, cobwebs, bird nests, etc.). Through our connected smart devices (for the moment: thermostats, toothbrushes, forks, bras, mattresses, light bulbs, locks, fish tanks, doorbells, television sets, Barbie dolls, coffee machines, ovens, vents, fans, blood-pressure monitors, thermometers, etc.), the least of our movements leave a trace in multiple servers. Our thoughts are no better protected: any keyword we search, any paper we browse, our tweets, our books, the words and tone of voice we use when we phone a calling center, *everything* is already available for analysis.

These interconnected practices of dataveillance may seem to amount to the information-gathering aspect of totalitarianism – total social transparency – minus only the heavy-handed social-control aspect. Yet, one key difference remains: the information is gathered and used not by a central entity such as the state, but by a multitude of individual entities, whose interests are often at odds with one another. One attempt to federate these disparate entities and to centralize *all* knowledge in the United States and, eventually, the world, was quickly canceled when it became public. The Total Information Awareness project (complete with an All-Seeing Eye of Providence for its logo) was smothered by Congress even after an attempt to rebrand it *Terrorism* Information Awareness – and even amid the high paranoia that followed 9/11 – in February 2002. The newer X-Keyscore program, also revealed by Snowden, seems to revive this total-awareness dream. X-Keyscore is a vast system of data indexing that presents the appearance of a search engine targeted on worldwide phone and Internet communications. It has survived Congress and public opinion because the NSA gave assurances that it was, by law, only mining foreign communications and only giving access to a handful of highly trained analysts. It also faces technical problems. Mining worldwide communications data, at the moment, amounts to the proverbial attempt at taking a sip from a fire hose. NSA computers can "slow down" the Internet for a few minutes so that relative searches can be conducted before the data is written over. This is why the NSA is deeply involved in the development of quantum computing. If they succeed, will we see another flip of the legal switch away from information totalitarianism?

Spatial Surveillance

The other world of technosurveillance is the surveillance of physical spaces. This usually involves more straightforward, visible – indeed, omnipresent – devices and systems. The most obvious example is without a doubt camera or video surveillance. Much has been written about it, but usually on two main aspects: whether it "works" and whether it violates privacy. Yet, there seems to be no clear answer to either question: crime-prevention effects often seem homeopathic at best, and the classic concept of privacy no longer seems to square with the everyday concerns of the vast majority of the population. Meanwhile, like common, massive, and casual fingerprinting, the visibility of cameras in the urban landscape is no longer problematic for the vast majority of citizens, with a sizable proportion simply oblivious to their presence (Leman-Langlois, 2011).

In the public discourse of politicians, security managers, and civil servants, cameras have become the panacea to almost all forms of deviance: graffiti, school bullying, bad parking skills, speeding, littering, entering public parks after hours, kidnapping, murder, terrorism, and so on. When the camera does not produce results against one of these, it is hoped that it might save us from another. Criminology has also greatly helped diffuse the idea that camera surveillance reduces crime, especially through the very popular "routine activity" theory. This theory is essentially based on rational choice and the hypothesis that being watched tends to convince us to behave in more acceptable ways – and, more importantly, that *not* being watched *encourages* us to break rules and seize forbidden opportunities for personal gain. Thus put, it is immediately obvious why this theory rapidly became popular inside police organizations, as it is compatible with one of its basic practices – patrol – as well as with the legitimizing trope of the "thin blue line."

Another important factor favoring the adoption of camera surveillance is that it is usually presented as preventative *in itself*; in other words, the camera is a manifestation not simply of surveillance, but of direct social control, through its immediate deterrent capacity. This is Foucault's "panoptic" effect: that the implied, imagined threat of punishment symbolized by perceptible surveillance artifacts causes individuals to discipline themselves (Leman-Langlois, 2006). In reality, the surveillance artifact (say, the camera) does not actually see everything, is not actually pan-optic – which generates another important requirement: the fallible workings and practices of surveillance must be hidden. Whether or not panoptic surveillance actually produces disciplined individuals, what is certain is that the panoptic logic has entirely permeated the discourse on public deviance. It is at work in the multiplication of secretive, unaccountable surveillance practices that emerge in the urban environment only as glass and plastic devices that symbolize looming punishment to opportunity-seekers and continuous protection to potential victims.

There are two main trends in visual surveillance. The first is the evolution of platforms: the familiar camera attached to a utility post is likely to slowly disappear. The current trend is toward the multiplication of platforms, with mobile telescopic posts, drones, satellites, airplanes, airships, the body, and the dashboard among the most popular. But, in the medium term, it is likely that most of these variations will disappear, in favor of moving, more or less autonomous robots, soon to be reduced to the size of insects. The second trend is the automation of monitoring. Human monitors are costly, ineffective, and easily corrupted, while robotic analysis is deemed to be perfect (or rapidly perfectible, as need arises). Robots can already recognize persons across visual fields, identify them in databases, evaluate their behavior, and sound the alarm if need be. They can also record and analyze objects, clothes (especially masks), electronic devices, license plates, and signage. The question is only whether these technologies will spread to the average city or remain in the lab.

Visual surveillance is only one type of spatial surveillance, which also includes touch-sensitive floor mats, radiation detectors, heat detectors, remote x-ray or passive milimeter-wave scanners, hyperspectral sensors, long-range microphones, RFID chip readers, and phone trackers that read a device's unique ID. Spatial surveillance seeks to impose order in certain areas deemed to be dangerous or riddled with behavioral irritants that cause various problems claimed to affect social order: slowing down traffic flows, discouraging consumers, lowering property values, and the like. Such irritants vary in legal status from the merely annoying (large gatherings, dogs) to the bylaw violating (loitering, begging) to the criminal (graffiti, open drug dealing, muggings). In all cases, spatial surveillance is not a neutral sampling of objectively determined behaviors; it is a high-tech way of reconstructing

the urban landscape as a mosaic of more or less dangerous places and more or less dangerous populations. It does this, in the first place, by simply requiring that statistical analysts, security experts, vendors, installers, clients, and financial backers sort out the spaces that need the most surveillance. This process, although sometimes bathed in science, mostly consists in applying conventional wisdom to the city grid. Second, by applying differential modes and intensities of surveillance and control, the system documents and demonstrates the original claim of dangerousness, thereby also legitimizing its own existence.

Spatial surveillance is most developed in the workplace. High-tech employers such as Amazon track their employees in order to maximize their efficiency, often via their cell phones or Fitbits, in a post-modern Talyor and Stakhanov hybrid (Head, 2014). They also do so to prevent theft, fraud, sabotage, espionage, and various breaches of collective or individual labor contracts. Office employees are also watched through the devices they use, as employers collect the IP addresses they visit, the emails they send, the phone calls they place, and in fact *anything* that they do on their computer, via keyloggers. The modern workplace will soon deploy vast numbers of robots – actual cybernetic machines and software robots – and will have the means to impose strict robotic behavioral parameters on its human employees. Until he or she is replaced by a drone, the UPS driver's behavior is monitored closely: driving speed, stops, duration of delivery, time elapsed between the opening and closing of the truck door, and so on (Head, 2014).

Checkpoints

Besides spatial surveillance and dataveillance, checkpoint security devices are another wide category of technosurveillance. The form of the checkpoint remains extremely widespread: it merely consists in slowing down a population in order to apply individual controls to its members. The simple door illustrates this. But the logic of the checkpoint, once carried over to technosurveillance, is freed of the physical requirements of form (the funnel) and location (Jones, 2009). The diffusion of the border crossing over entire territories, caused by "in-house" border-clearance programs, is a good example. In many ways, checkpoints are the purest version of what Lyon (2007) calls *social sorting*.

In December 2009, Faruk Abdulmutallab attempted to detonate a small quantity of explosives hidden in his underwear during a flight to Detroit – fortunately, without success. His toasted privates may not go down in history, but his mode of operation became a glowing signal to politicians and security tech corporations that the time was ripe to introduce body scanners – previously only used in prisons – to passenger-screening checkpoints. The US Transportation Safety Administration spent over $1 billion on scanners between 2009 and 2013. This is a classic example of a social-control measure that only imposes a cost on potential victims (air travelers) while having no effect on the intended targets (the terrorists). In this case, for three reasons: first, there are hundreds of millions times more air travelers than there are terrorists; second, the scanners do not work, at all (Mowery et al., 2014); third, if, after much improvement, they ever do, terrorists will just as easily attack elsewhere (or have the bomb passed to the secure areas by one of the thousands of airport employees who are never scanned). Be that as it may, the scanners illustrate well the powerful call to add more devices to the checkpoint – the "onion layer" theory of security – in the hopes that each new sensor will compensate for the limitations of the ones that came before. It is a boon to the security industry, of course, but its efficiency has yet to be demonstrated.

Our last important family of checkpoint technosurveillance is biometrics. Any discussion of biometrics must begin by underscoring that it is a *category* and not an object. Within this category are two distinct subsets: biometric markers and the underlying devices and systems required for their implementation. Biometric markers – fingerprints, facial or hand geometry, gait, iris (structure), retina (capillaries) and sclera (capillaries in the white of the eye), voice, and so on – are physical characteristics that, statistically, are *highly likely* to both (a) differ from one individual to another and (b) remain the same for each individual. It is important to stress that neither is certain, but merely highly probable. This uncertainty means that any biometric system must be conceived with safeguards and error-correction protocols, and not taken as the definitive, infallible key to identification (of an individual within a population in a database) or verification (of an individual against their initial enrollment identification). There must be an entire system in place in order to transform a biometric characteristic into an identification or verification tool. Sensors, routers, servers, and so on must be connected together, each introducing a cumulative potential of error, each offering vulnerabilities for attackers to take advantage of. But even with these vulnerabilities, biometrics are without a doubt the most powerful form of identification, with none of the weaknesses of passwords, tokens, and the like. This power extends, in some cases, into the more intimate aspects of our bodies: there are biometrics that can reveal our general health status, for instance, or our future risk of disease, DNA being the most obvious. As Van der Ploeg (2008) has noted, biometrics also reconnect data and dataveillance practices to the body – one of the main ways that the "cyber" is no longer a separate, abstract reality, but part of our experience of everyday life (the other being "augmented reality").

Two trends in biometrics are to be noted. First, they are very quickly becoming normal and widespread, especially through their use in cell phones and other portable devices. Second, it is likely that those that can be used at a distance (face or gait recognition and, to a lesser extent, voice recognition) will be favored in the near term.

Social and Political Trends

The defining cultural aspect of late-modern Western societies is the omnipresent discourse of insecurity. Nearly every area of existence of individuals, groups, organizations, corporations, and states is colored by the concepts and lexicon of security/insecurity. Born out of the risk discourse of the late 20th century, the (in)security discourse more clearly tilts toward a pessimistic, paranoid, and paralyzed ethos of fear. Where risk promised to be "manageable" and inevitable residual risks were minimized through the application of rational expertise, insecurity and fear assume that nothing will work short of the most extreme measures, whether or not such reactions are logical or likely to succeed. As Garland (2001) notes, this perceived insecurity is the result of a conjunction of various unrelated phenomena, some tangible (personal economic hardship), some less so ("crime"), some durable, some chronic, some spectacular but unique and short-lived. After 9/11, of course, the looming threat of terrorism grew exponentially, with profound effects on law, international relations, policing, government, and the construction of multiple social groups as suspect, incompatible with "our values," or vaguely dangerous.

In this context, "technology" (a deceptively wide term that usually means "digital information devices and systems") is a double-edged sword. In many ways, it participates in the overall feeling of insecurity, through its ever-accelerating push for change and "disruption." Disruption has, in fact, become another buzzword meant to represent small

revolutions where the old, inefficient ways of doing are replaced by new, high-tech, efficient ones that, most importantly, are remote-controlled by corporate giants. This "liquid" modernity and its floating norms (Bauman, 2000) is creating much anxiety – a fertile ground for the recent meteoric rise of extreme right politics in the West (Young, 2007:10). In contrast, technology is also a metaphor for progress, intelligence, rational efficiency, personal entrepreneurship, and, more importantly, personal, group, corporate, and state power. It is not surprising, then, that most of the technosurveillance described in the previous section serves to impose compliance with rules, to single out a range of undesirable behaviors far wider than "crime," to reinforce social structures, and to embody the need for protection against dangerous populations. Conversely, little is directed at monitoring state or corporate behavior, and that which is remains within strict interpretations of the law.

Insecurity and technology are a heady mix for those responsible for protecting the public against terrorism, crime, and uncivil behaviors. They create a world where *something* must be done, but where no simple solution exists other than the panoply of devices labeled with the "security" promise. At the same time, no one wants to have to explain why they did not install this or that "security" technology after an incident has occurred (or, worse, why they had it removed at some point in the past). This makes for an accelerating upward spiral in the technosurveillance uptake.

In the public discourse, this situation is invariably situated in a "security versus freedom" argument. On one side of the scale are security, peace, and prosperity, and on the other, "freedom" – or "privacy," since surveillance is mostly thought of as its opposite. There are many well-known arguments against this representation of the problem. For one thing, "security" is an empty category. If it is to be more than a state of mind, it can only point to systems, tactics, and strategies that have been labeled "security," in an endless self-referencial loop. Objects labeled "security" have security as a goal, not as an intrinsic characteristic. Therefore, there is no guarantee that any object imagined on that side of the scale will actually provide any security; in fact, many have opposite effects (such as police tactics that alienate officers from the community they work in). Further, many surveillance tactics create new vulnerabilities for citizens, such as the construction of massive databases that can be hacked into. There are also many instances of official mistreatment of citizens in the name of security.

At any rate, at the base of the problem is a lack of a clear definition of security. For instance, much has been written about the relation – or absence of relation – between the actual, measurable risk of victimization and the feeling of being safe. Those who feel the most insecure are almost invariably at less risk than those who feel invulnerable. Even more problematic is the simple fact that even when experts manage to produce a reasonably good analysis of risk, they find no objectively identifiable threshold between its acceptable and unacceptable manifestation, between "security" and "insecurity" – which remains a value judgment outside of scientific reach (unless the threshold is set at *zero* risk, but that is unattainable). Privacy is, of course, even less measurable. Unlike security, however, it rates extremely low on most people's list of preoccupations (Zureik et al., 2010).

In short, the image of the scale – a measuring instrument – is extremely misleading, since what it is purporting to balance are two extremely cloudy, unquantifiable non-objects. It is, however, extremely powerful in conveying governmental rationality and expertise and in defusing concerns over legal overreaching.

In many ways, a surveillance society resembles the rural village of a century or so ago, with the close proximity of its dwellings, the constant visibility, the incessant gossip, and the

stigma imposed on various deviants. Yet, it also differs on several key points. First, the modalities, the practice, and the consequences of proximity and "gossip" surveillance are known and have not changed for probably thousands of years. Technosurveillance, on the other hand, is evolving quickly, with unpredictable consequences. Already, it is often impossible to recognize. Second, while memory fades, technosurveillance not only never forgets, but it remembers better – and more – with time, since new analysis techniques can give entirely new meanings to old data. Third, in the village, surveillance tends toward an equilibrium of power, since everyone may watch everyone; this also creates reciprocity, where one knows when one is being watched, and by whom. We have seen that the panoptic logic requires the exact opposite, where the watchers are unknown and their practices kept secret, precisely to create a radical power differential. It has been argued that the panoptic model, leaving out a major development in technology called *the media*, also forgot to take into account the *viewing* done by ordinary citizens (Mathiesen, 1997), either passively consuming broadcast media or actively participating in Web 2.0. Are those millions of cell phones held up in the air counter-watching and counterbalancing state and corporate power, or are they taking selfies, browsing Netflix, and watching one another? If it is the latter, viewing is different than watching, in that it is the manifestation of social control through cultural normalization – in many ways, it multiplies the power of the panoptic watch. If it is the former, as briefly discussed earlier with respect to capturing police officers during their interventions, then totalitarian power may no longer be reachable (Brin, 2008).

Our final trend also regards the state – or, rather, its disappearance. One now common image in policing studies is that of the policing "network," where the state and its public police apparatus are but one player among others, a "node" that may no longer occupy a privileged or central position. This largely metaphorical representation of policing is the result of the "network analysis" trend in sociology and criminology, which began in the early 2000s (Whelan & Dupont, 2017). Pushed by another trope – that of the neoliberal state now "steering" (setting directions) rather than "rowing" (producing goods and services), first introduced by Osborne & Gaebler (1992) – much of the analysis concludes with the dissemination of social-control power away from (democratically elected) governments. Yet, in cases of national security, what we see is the state exerting all its power to regain or to maintain its central, if not monopolistic position as the expert purveyor of intelligence and policing. Of course, this is "high policing" (Brodeur, 2010), where the priority is the interest and protection of the state – even when it is wrapped in the language of public safety. The mild resistance of mega corporations such as Apple and Google instantly withers when confronted with the might of the NSA – or, it seems, the local police force. Only the famous case of the Apple cell phone's coded access, where the FBI attempted in vain to force the company to help it access the contents of a phone belonging to the San Bernardino terrorists in 2016, shows cracks in the national-security state's power. More depressingly, it also shows that a corporation was better at defending citizens' interests than their own government. But it definitely highlighted the need for countersurveillance tools to be provided to all.

Countersurveillance in the City of Glass

Much theory has been elaborated on – or at least glossed over – what appears to be a confusion of promise, potential, and practice. Of course, manufacturers of devices and systems have vested interests in this confusion: theirs is the world where operating systems

never crash, networks are never down or under attack, databases contain no errors, and users have god-like knowledge of their applications and no personal objectives outside of the perfectly lawful and legitimate ones set by their organization. In the real world, none of these conditions are ever united, and every system, every device, every user, and every organization is plagued with multiple imperfections, many interacting and cascading into maximum failure potential (like the police bodycams that were infected by the *Conficker* virus out of the box).

The spread of these systems, in spite of their instability and ineffectiveness, has two obvious consequences: increased revenue for the vendors, installers, operators, and so forth, and concomitant increased expenses for clients. Beyond these, it is unfortunately difficult to generalize. Some systems will produce at least some of the promised surveillance, and eventually some of the desired social control – others will not fare as well. For instance, although they are seen as ominous by may analysts, the millions of surveillance cameras installed in London have prevented little crime and caught few delinquents, but they have not been used nefariously against ordinary citizens either – in large part because they simply do not work (Saenz, 2009). Other systems collect masses of information on the wrong persons, or masses of wrong information on the right ones; yet others are transformed by mission creep and the new political priorities imposed by current events.

But the fallibility, or even the futility, of many surveillance systems and devices does not suffice, of course, as a safeguard against the overreaching of state and non-state entities and the loss of autonomy of the targeted populations. Neither does the often underlined well-meaning benevolence of the surveillance agents who are there to protect us (including from ourselves), to inform us on the risks incurred by our behavior, or to alert us to the once-in-a-lifetime fantastic now-available-but-not-for-long discounts on the objects of our desires. The fact that police force X is positively not misusing its newfangled bodycams does not reassure everyone. Yet, for reasons exposed in the preceding section, the political climate is not compatible with increased overview, higher security standards, or stricter implementation regulations.

Fortunately, there are countless ways to reduce surveillance exposure. To simplify, we can subsume them under three broad categories. The first is *circumvention*, and basically consists in modifying our activities to avoid surveillance. Assuming one recognizes benefits to modern technologies and is less than excited by the prospect of escaping to a cabin in the mountains, there are less drastic ways to escape technosurveillance. Drug dealers use "burner" phones to make interception more complex. Law-abiding citizens can to the same, and indeed *should* do the same under certain circumstances. Burner phone applications let the user change the number on their regular phone when making certain calls. But under current border-security rules it may be recommended to use an actual burner phone when traveling – or, at least, to wipe one's phones and reset them to factory state before arriving at the checkpoint. Soon, we may want to use less traceable Bitcoin for some financial transactions, or the TOR network to browse the Internet. That doing any of this makes one feel like a criminal is a great success of the new surveillance culture.

The second category is *defeat*, and encryption is its best example. In the Apple scenario, we saw a government fighting it tooth and nail: a great testimony to its power. Considered classified military technology until the late 1990s, encryption was quickly democratized when industrial powers realized both the commercial potential of the Internet and its total lack of (indeed, its incompatibility with) secure communications. The genie is now entirely out of the bottle, and encryption is seen by some as the great facilitator of criminal and terrorist communications. In order to make prevention and repression of these activities easier, the push today is for either *breakable* or weak encryption – where the strength is

enough to protect against conventional attacks by hackers but not to resist the brute force of expert computers – or algorithms that allow for "government keys" or "back doors." Encryption experts have repeatedly shown that neither of these techniques can work, since they present enough vulnerabilities to be equivalent to having no encryption at all. Yet, the average citizen today – whose entire life is now digitized – needs encryption far more than do terrorists or criminals.

The last category of countersurveillance is *subversion*, which consists in reversing or diverting the surveillance gaze toward other targets or in misusing surveillance equipment. Mann has long experimented with citizen-based camera surveillance, in one experiment taking an obvious camera to various establishments where camera surveillance was being used (Mann et al., 2002). Not surprisingly, those establishments and their employees were less than enthusiastic about seeing the tables turned. Indeed, Mann was physically assaulted by cafe employees in Paris – as many "Google Glass" early adopters have been in other circumstances. But the omnipresence of cell phones is already profoundly changing the boundaries of what is socially acceptable behavior, which now includes constantly holding up a phone in any situation to take video or stills of everything and anything. Police are now so preoccupied with being routinely recorded during their interventions that the spread of bodycams is in part legitimized as a way to *counter* countersurveillance. Here, at least, the tables do indeed seem to be turned.

The other type of subversion was spectacularly illustrated in mid-2017 with the hijacking of nearly 1 million "smart" security cameras to form an attack botnet. That smart cameras turn out not to be so smart is not surprising, given the lack of incentives for the industry to protect its devices against network-based attack vectors: its clients are not the targets of the botnets and will not spend the cybersecurity premium. But that *security* cameras are not secure gives us an idea of the vulnerability of our new "smart" world, where the Internet of things will consists in billions of unsecured, easily weaponizable devices.

We are entering a world where our behavior will be under absolutely constant surveillance, in its most minute details. However, this surveillance is the product of multiple entities, each collecting an bit or two for its own purposes, sometimes sharing it with "partners," sometimes with police or other social-control agents, perhaps under judicial supervision, perhaps not. And that is as precise as anyone can realistically be for the time being. The legal frameworks, the technologies, the practices, and our own preferences are all in an agitated state of flux. To be sure, as automated bots gain access and cross-match these data, and attach them to our bodies, we might be a turn of the key away from the most perfect form of "big data" totalitarianism. And there will be no need for gulags this time: in the digitized world, one can be digitally excluded from the social and ostracized by smart machines, which might very well be punishment enough.

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Surveillance and Public Space

Kiyoshi Abe

Social control is enacted on a targeted population and at specific locations in order to protect and ensure such societal objectives as social discussion, economic profit, cultural harmony, and political stability. As public spaces form social sites where a variety of socio-cultural groups and organizations meet and interact, they can be viewed as an interface between social control and the resistance against it, as ideas and actions constantly emerge, and sometimes harshly compete with one another. In examining relevant socioeconomic conditions, we can determine how and by what means public space is engendered in contemporary society. Within this context, this chapter seeks to clarify the distinctive character of privately owned public spaces, such as shopping malls in urban areas, in their contemporary constellation. Such mundane places may seem to function as a sort of public space where many people simply gather and enjoy themselves, but their private owners can decide how and in what way the people who visit them can be subjected to social control. While some scholars have, as a result, spoken of "the end of public space," social movements such as Occupy Wall Street have challenged this idea and point to the continued need to examine the politics of public space.

The End of Public Space?

The Commercialization of Public Space

It might be quite routine for those who live in a large city to engage in a variety of public spaces where many anonymous people gather and join together, such as public parks, in which people can enjoy spending time with their families, friends, and colleagues, or railway stations, where passengers come and go on their way to their respective destinations. While the history of public spaces in urban areas is as old as cities themselves, many scholars of urban studies have paid keen attention to the recent dramatic changes taking place in their economic-cultural conditions. A great number of studies have pointed out that the

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traditional public places, such as city halls and community plazas, have been overtaken by newly emergent commercialized spaces such as shopping malls and amusement parks (Christopherson, 1992; Kohn, 2001; Mitchell, 2003; Sorkin, 1992; Zukin, 1995). These studies have illuminated the driving force of capitalism as a main factor transforming the landscape of urban settings. While research originally focused on big cities such as New York (Sorkin, 1992; Zukin, 1995), the trend of the commercialization of public space typically embodied in shopping malls now can also be found in many non-Western nations, such as Turkey and Egypt (Abaza, 2001; Ekrip, 2002).

As the governments of many developed countries introduced the economic policies of neoliberalism under the banner of critiquing the welfare state, it greatly affected the character of urban spaces from the late 1970s onwards. As a result of global transformations caused by economic restructuring, the salient commercialization and privatization of public space occurred in many countries during the 1980s and '90s (Christopherson, 1992). Certainly, we can observe a measure of diversity concerning the impacts and effects of the commercialization of public space in nations around the world. For example, in Islamic nations like Turkey and Egypt, the commercialization of traditional spaces where the adult male had been dominant has given way to a mixing of genders, hanging out while shopping. The rise of shopping malls, which are regarded as secularized urban space, has also given the younger generations opportunities to gather together to establish their own cultural identities, different from those of previous generations. While the effects of commercialization are different in the different cultures where it has been introduced, there certainly exist strong unifying tendencies characterizing the contemporary conditions of public space. The rising popularity of huge shopping malls as a global phenomenon tells us how and in what way public spaces have changed since the 1980s.

Through their critical research on the rise of shopping malls and its effects on democracy and civil interactions among citizens, the leading scholars in the field of urban studies and geography have expressed concern over what they see as "the end of public space" (Kohn, 2004; Mitchell, 2003; Sorkin, 1992; Zukin, 1995). According to their critical assessments of the transformation of urban space, these seemingly "public" spaces are actually owned and managed "privately." Therefore, the civil values – such as freedom of speech and freedom of assembly – once found in traditional public spaces are no longer guaranteed. The reason for this development is that the owners of such spaces can legally acquire a monopoly in deciding who is allowed access and what sorts of activities are permitted. As theorists of democracy have repeatedly advocated, it is indispensable for democracy to function in such a way that everyone is equally given the right of speech and assembly in society. The ideal of the public sphere is that, being open and accessible to everyone, it enables citizens to engage in democratic dialogues concerning public affairs (Habermas, 1989). Considering the history of civil society and the democratic roles played out in the public sphere, the coming of "the end of public space" would bring about not only a transformation in the urban landscape, but also a political crisis in democratic society.

Fear of Others in Public Spaces

The commercialization of public space has promoted the image of such places as being fun, entertaining, and exciting. As in the case of theme parks and shopping malls, people can enjoy being in and engaging with the commercialized sphere. One of the main reasons why more and more urban spaces have become commercialized is that owners of these spaces can gain

more profits from privatization and commercialization. While citizens are theoretically the subject of public goods, they are actually put in the position of either consumer or client in their relation to commercialized public spaces. However, as far as the public is concerned, what they gain from activities such as relaxing in a pleasant atmosphere, being free to move around or remain in one place for a time, eating, drinking, socializing, or simply watching others is facilitated as the commercialization of public space advances. In this sense, the rationale for increasing commercialization and privatization cannot be attributed solely to economic conditions. People's desire to enjoy themselves in public space also contributes to that process.

Another factor encouraging the privatization of urban spaces seems to be the profound fear and anxiety people have over the presence of strangers in public settings. As theorists of modern urban culture have pointed out, the diversity and uncertainty of interpersonal relationships in urban settings can be regarded as a cause for attraction and fascination characterizing modern urban life. In contrast to rural communities, the modern urbanity of cities enables strangers to elegantly face and socially interact with one another, so that they can make innovations in both culture and society (Sennett, 1990, 1994). However, as a more diversified group of people comes to live in urban areas, harsher and more severe conflicts appear among different strata (based on class, race, and ethnicity). As a result of rising conflict and antagonism, relatively wealthy people are inclined to segregate themselves from other parts of the city, because they are deeply concerned that their property might be violated by unknown strangers living in the area.

Moreover, the popular idea of an association between urbanism and rising crime rates fosters fear and anxiety among the public. "Zero tolerance" policing policies, which became famous in New York when Rudolph Giuliani was mayor in the 1990s, can be understood as a typical reaction to the public's fear of unknown others. Such tighter policing and surveillance practices were widely supported and somehow welcomed by the majority of the people. This development suggests that Giuliani's conservative ideology neatly matched popular sentiments concerning the danger of unknown strangers in the community at that time.

In view of the history of urbanization and the rising conflicts concerning differences of class, race, and ethnicity, it is understandable why some critical scholars regard the emergence of "New Urbanism" since the 1990s as revanchist (Atkinson, 2013; Smith, 1996). The availability of public space and the degree of cultural exchange in urban environments were key elements characterizing cities in the past. The New Urbanism examined the growing public distrust of others in the shared urban environments and the concept of safety in public spaces. Increasing concerns among certain groups led to a segregation of urban communities. The wealthy stratum of the population was eager to segregate itself from those who were different from and dangerous for them. A common method of increasing segregation was by means of gentrification programs that converted the older parts of the city that were once the "home" of the lower class. Many of the former residents, including homeless people, were from then on identified as the unwelcome others. As a majority of the population distrusts the unknown stranger and tries to segregate itself from them, public space is regarded as nothing but the most risky and undesirable place in urban life. Revanchist urbanization is the result.

Spectacularization and Securitization of Public Spaces

The thesis of what has been called "the end of public space" seems to be plausible and persuasive when we consider the drastic changes in the urban landscape brought about by the rising commercialization and privatization of public space. However, it might be more

productive for a proper scholarly understanding to explore the sociocultural conditions of public space and to pay more attention to the dominant political trend characterizing the seemingly "public" places that are actually "privately" owned.

One of the reasons why public spaces have been privatized since the 1980s is that privatization was expected to contribute to increased profits by making these places more attractive for business. Through the gentrification and commercialization of central areas, a city could gain status as a sightseeing place for the global tourist. If the core areas in a city are considered dangerous and unsafe because of crime and poverty, it is unlikely that many tourists will visit. Alternatively, if the city can create a dazzling image of itself toward the rest of the world, the chance of its becoming a global sightseeing spot will be much higher. To be fascinating enough for world tourists, the city has to introduce a variety of policies to promote itself. One of those is the "spectacularization" of its public space (Chandler & Munday, 2011). Airports, railway stations, and city parks are typical places where many tourists pass through. Making such public space visually appealing and culturally glamorous will result in more visitors and greater profits, thanks to an increased consumption of goods and services. In this sense, transforming public spaces into impressive and spectacular settings is an indispensable strategy for a city endeavoring to be a global one. By becoming a global city, it can draw international money to boost its economy, while at the same time increasing its scope and scale on a global level.

Attractive urban places that are appealing to global tourists should be clean, safe, and comfortable enough to allow visitors to pleasantly engage in sightseeing or shopping without concern for their personal safety. If there were signs or traces reminding the visitors of the existence of homeless or other deprived people living around the tourist spot, the valuable attractiveness of the city would rapidly diminish. Therefore, it is crucial for all stakeholders, such as the municipal administrations, the private tourism industry, and the local police to make areas for sightseeing spots as "safe and orderly" as possible. For that purpose, the policy and practice of securitization of public space is introduced and implemented in many cities, aiming to enhance their value for global tourism. In the case of mega-events like the Olympic Games and the FIFA World Cup, maintaining the security of the places where visitors, spectators, and tourists gather together and enjoy themselves becomes the top priority for those responsible for their organization (Bennett & Haggerty, 2011; Fussy et al., 2011). However, as scholars of surveillance studies have pointed out (Bajc, 2016), it is not the actual security that is important, but the appearance of security: the symbolic process of securitizing events and venues. In other words, if the people who enjoy such events can believe that they are safe enough to indulge in what they want with a measure of comfort, the task of securitization is almost complete, regardless of the actual degree of threat that may be faced.

In the context of the recent privatization and commercialization of urban areas, securitization could be a sort of prerequisite for the spectacularization of public space. If those using public spaces believe they are secure enough to enjoy themselves, the visually glamorous and dazzling spectacle embodied in those spaces is worth consuming.

While it is often regretted that the public space has been eclipsed as a consequence of the privatization of urban areas, it is more instructive to examine how the conditions of public space have been changed as a result. Recognizing both spectacularization and securitization as the main traits characterizing the present public space, the following discussion focuses on the rise of "privately owned public space" – especially the shopping mall, as its typical embodiment.

Shopping Malls as a New Public Space

Prevalence of Privately Owned Public Space

As the laissez-faire economic policy of neoliberalism gained its hegemony in many advanced capitalist nations from the 1980s onward, the urban-developmental strategies adopted by their respective governments implied a trend toward deregulation and privatization. This development sounds like a mantra legitimizing the dubious ideology of neoliberalism, in stark contrast to older developmental policies that were mainly aimed at enhancing the social welfare of entire populations. The neoliberal options prioritized benefits and profits to those who had invested in developing and commercializing the urban business areas. For the municipal administrations that introduced them, the concern is not with social equality or cultural diversity, but with economic prosperity as the most important political aim.

One of the most typical cases encouraging private investment from developers is the setting up of business improvement districts (BIDs) in the central area of a city. BIDs became famous when the New York administration enthusiastically introduced them in the 1980s (Zukin, 1995). Basically, they are specialized business areas that are set up for private companies to profitably invest in and to run their business, backed by the economic policy of local governments. Developers who participate in BIDs are given special rights concerning their business. For example, they are allowed to tax themselves, giving them responsibility for public services such as garbage collection and street maintenance (Zukin, 1995:33-38). Moreover, they are given several premiums from local government. One of the most distinctive is the "exchange for floor area ratio (FAR) bonus" (Nemeth, 2009:2464). In metropolitan cities around the world, there are detailed official regulations put in place to regulate how to invest and run businesses in their core areas (e.g., concerning the height limits of newly built buildings or the total floor space usable for offices). The central objective of these regulations is to maintain the beautiful landscape and harmonious development of the central urban areas. On the logic of the "FAR bonus," if a company designates space to use as plazas, parks, or public passageways, then the government will offer them much relaxed regulation standards (higher rate of FAR). This is thus a contractual exchange incentivizing companies to set up "public" spaces in constructing new buildings in BIDs. On the one hand, by participating in this exchange, the private developers and real-estate firms can get more profit from engaging their business in BIDs. On the other, the local government can save on the expenditures involved in constructing and maintaining a part of the infrastructure needed for the inhabitants in those areas. Ironically enough, as a result of the introduction of the neoliberal privatizing policy of BIDs, the city creates a seemingly public space where anyone is allowed to enter (Smithsimon, 2008). However, while the "bonus space" that developers are requested to set up based on the FAR contract looks "public" and accessible to everybody, it is actually nothing but the property of private corporations, and is managed by them. Therefore, it is accurate to regard these places as typical cases of "privately owned public space" (Nemeth, 2009; Smithsimon, 2008).

Privately owned public spaces such as plazas and passageways constructed in the business areas of metropolitan cities reveal one of the most prominent characteristics of recent public space for modern citizens. However, the "bonus space" is not the only exemplar of privately owned public space. As studies have repeatedly underscored (Abaza, 2001; Ekrip, 2002; Kohn, 2001; Mitchell, 2003; Staeheli & Mitchell, 2006; Voyce, 2006), the rising prevalence of shopping malls in urban areas can be regarded as another typical case demonstrating how and in

what way the public space has been transformed by the dominant trend of privatization and commercialization in modern economies.

Freedom of Speech and Protection of Property

Many scholars, journalists, and critics, with a variety of interests and expertise, have spoken about the recent growth of shopping malls in highly advanced consumer societies. Sociological studies on shopping malls have mainly focused on the sociocultural transformations caused by the rising dominance of mega-scale retailing corporations. Scholars of sociology and political theory particularly worry about the troublesome conditions concerning democracy and its changing traits under the rising dominance of the capitalist economy. They have paid keen attention to the effects on democratic societies of the advent of mega shopping malls, which are today often regarded as a mundane symbol of consumerist culture (Kohn, 2004; Mitchell, 2003). According to these scholars' critical assessments, democratic ideals of both the community as a whole and citizenship standards for individuals are threatened. While the mall seems to function as a place where the members of a community gather together and socialize, it reinforces not a political, but a "consumer" (Christopherson, 1992) or "consumerist" (Voyce, 2006) citizenship. The shopping mall is overtly oriented toward consumption. The entire structure is built and decorated to maximize the spending of money, and such things as the high intensity of lighting, music, and air conditioning are all aimed at this end. It is alarming that the public embodied by the space of shopping mall is far from the ideal of a democratic citizenship that expresses its personal opinions and participates in politics.

Based on a case study of the People's Park in Berkeley, California, Don Mitchell (2003) critically analyzed how the local authorities and police regulated and controlled this public space. Through his ethnographical research, Mitchell detailed the ways that the local administrations expelled the homeless and other targeted people to establish order and safety for the public at large. As already discussed, one of the reasons why local authorities are so keen to clean and gentrify public spaces like parks is that it is very important for them to make those places attractive and spectacular for tourists. In other words, the purpose of controlling and managing spaces is aimed neither at their users nor at their inhabitants, but at outside visitors. Mitchell discerns a similar logic in the regulation of spaces at shopping malls (Staeheli & Mitchell, 2006). Even though the US shopping mall seems to be welcomed and enjoyed as a sort of "community" by its customers, there are subtle but profound mechanisms of surveillance and control aimed at the public that gathers there. As a result of the management of seemingly public spaces by their private owners, it becomes almost impossible for any opponents and dissenters to publicly express their opinions through demonstration or leafleting at these locations (Kohn, 2004).

According to studies on the political conditions of mega shopping malls (Manzo, 2005; Voyce, 2006), it seems that the privately owned public space of the retailing complex is neither democratic nor liberating, because people cannot enjoy any freedom of speech or right to assembly there. However, an evaluation of the court judgments concerning what sorts of rights should be protected at the privately owned public space reveals a more complicated history. Margaret Kohn (2004) has finely examined many court cases that have judged whether restricting the First Amendment (freedom of speech) in privately owned public spaces such as airports, postal offices, and shopping malls is constitutional. Through her analysis, Kohn starkly illuminates the changing tendency of legal judgments from the

early 19th century to the early 21st. Formerly, the "public forum doctrine" (2004:47) was supported in judgments decided by US courts. According to that doctrine, even though private properties do not belong to the people who claim their right of free speech there, they are entitled to enjoy that right in cases where those properties are recognized and utilized as a public forum that is indispensable for democracy.

Relying on the public forum doctrine concerning the legitimacy of people's activities based on the First Amendment, it could be legal for citizens to demonstrate or leaflet their religious-political opinions in places that are not their own property as far as it contributes to organizing public forums. However, following the paradigmatic judgment of *Hague* v. *Committee for Industrial Organization* (CIO) in 1939, the legal decisions of the courts have preferred the "property rights" of private owners over the "right of speech" of individuals. In other words, through a series of court judgments on what sorts of rights should be guaranteed in cases such as these, more priority has been given to the right to protect one's property than to that of freedom of speech. As a result of this change, the private company that owns a seemingly public space like a shopping mall has come to have more legitimacy in regulating what its customers should or should not do there. The introduction of surveillance measures such as CCTV with face-recognition technology throughout the property can thus be easily legitimized in turn, with the owners proclaiming it a necessary way of protecting their assets (Kohn, 2004; Mitchell, 2003).

Simulacrum of the Lost Community

There has been a proliferation of shopping malls not only in North America, but in many other parts of the world as well. One of the main reasons why malls have become popular all over the world is that the customers can enjoy their shopping more pleasantly and effectively than in conventional shopping areas. However, there seem to be sociohistorical reasons for their ascendance, too. As case studies and fieldwork research have pointed out (Kohn, 2004; Staeheli & Mitchell, 2006), the historical conditions concerning "community" have played an important role in the rapid development of mega retailing complexes in a historical process of urbanization, especially in the United States.

In the early 20th century, cities became bigger and wealthier as the process of urbanization advanced. However, this brought about a variety of problems, such as crime, unemployment, and poverty. While the economy of the city developed, the traditional community in which residents had once lived peacefully faced profound transformations that changed their everyday lives. Some wealthy people moved to suburban areas where they could enjoy themselves without being bothered by any "dangerous" neighbors. Thus, as a result of excessive urbanization and the social problems it caused, the central areas of big cities like New York came to be considered too dangerous for ordinary citizens to live in.

What is called the "New Urbanism" of the 1980s can be understood as a conservative reaction against the devastation of urban communities that occurred through the 1970s and '80s. The renovation of the community was one of the core ideas that characterized the New Urbanism. It was hoped that the inhabitants could recover their sense of a communal neighborhood by recreating a community through controlling and managing its new sociocultural environments. In other words, the ideal of "community" was rediscovered and renovated in the process of reclaiming a peaceful urban life for the majority of the population. It is easy to find a sentiment of revanchism behind this reclamation process.

Keeping the history of urbanism and its impasse in the 20th century in mind, it is understandable why a lot of mega shopping malls were built in many urban areas across the United States during this time. The privately owned public space of the mall was regarded and accepted as a sort of "community" in which people could come together without worrying about the dangers or risks caused by any unwelcome others. Inasmuch as the spaces of shopping malls were nicely spectacularized and thoroughly securitized, customers could enjoy a feeling of community with others who were similar to them. Therefore, the reason why privately owned public spaces like mega mall are so popular and beloved among the population is because they enable them to feel like part of a community, despite the controls and restrictions imposed on them by the owners in the name of protecting their property. In this sense, it is possible to discern a sort of nostalgic sentiment behind the "malling" of public space in the United States. One of the main driving forces encouraging the prevalence of mega malls was people's desire for a community that was thought to have been lost. As scholars have explained, the community was diversified and multiplied rather than lost (Delanty, 2003). However, inasmuch as a nostalgic myth of a traditional organic community that is excessively harmonious and peaceful lives on in people's minds, the commercialized space set up by private companies is welcomed as a new vision of the future.

Ease of Community or Freedom of Society?

The "Mauling" of Public Space and the Decay of Democracy

Critical studies concerning the privately owned public spaces enjoyed by those using shopping malls underscore that these enjoyable places are neither open nor liberating. This argument is defended because the basic rights of people that are indispensable for democracy are arbitrarily restricted by the owners of the malls. Even though it looks like a newly emergent community where the residents gather together and socialize with one another while shopping, the public space realized by way of spectacularization and securitization of common places is nothing less than the simulacrum of a lost community for which many people have nostalgically yearned since witnessing the destructive outcome of the urbanization of the city. As Kohn (2001) has articulated, we have seen not only a malling but also a "mauling" of public space as a result of the neoliberal policy of the privatization of urban spaces since the 1980s. To fully understand the significance of this critique of community realized through the malling of places, it is important to pay theoretical attention to the conceptual difference between "community and public" (Staeheli & Mitchell, 2006:978) or between "residential and public" (Atkinson, 2003:1841).

When common spaces are produced and managed for the community, it is not necessarily guaranteed that people dwelling there should be fully given the basic rights of citizens. Insofar as the residents of a community are satisfied with what the public space affords to them (e.g., a safe and convenient place for shopping), it does not matter whether freedom of speech is restricted by the owners of that space or not. However, if we regard the common space as a site for public discourse, then the arbitrary restriction and control of the space by private corporations appears to be an unacceptable violation against the basic civil rights of free speech and assembly. As classical works of urban studies have pointed out, the social spaces of the city should function for the purposes not only of community but also of the public (Lefebvre, 1991; Sennet, 1990, 1994). Moreover, being the space for the public is one

of the most distinctive characteristics discerned in the modern urban areas that are different from the feudal rural ones. However, when the shopping mall is accepted and welcomed as a sort of "community" by its visitors, consumers, and residents, the public trait of the urban space is subtly but fundamentally diminished.

The rationale of critique of a "mauling of public space" is that public spaces at the mall are artificially managed for the maximization of the benefits of the consumer, resident, and community, and not those of the citizen, public, and society. As a result of such manufacturing of privately owned spaces to make them look public, the shopping mall, to its residents, brings about only a consumer citizenship and the illusionary sense of being in a community. Even though they look like traditional public forums of community, the critics of shopping malls repeatedly warn us of their profoundly undemocratic and subtly exclusionary nature, which is often invisible because of their spectacular guise (Bodnar, 2015; Kohn, 2001, 2004).

It might be possible to interpret the non-public and anti-democratic traits of the spaces engendered by shopping malls as a symptom of the transformed relationship between security and freedom in the post-9/11 era. As many scholars of surveillance studies have remarked (Lyon, 2003; Molotch, 2012; Webb, 2007), it seems that people have come to prefer security to freedom in the "emergent" or "exceptional" conditions of the terrorist threat. While it is very controversial whether the calculated degrees of dangers often proclaimed by the government and police are "real" or "excessive" in deciding how and what we should prepare for, it can often be observed that the population at large is easily channeled into accepting and even believing the political slogan of the so-called "War on Terror." In the sociopolitical contexts where the threat of a potential risk such as a terrorist attack is overestimated, the majority of citizens seem to be inclined to support governmental policies and to sacrifice basic rights of privacy and free speech. In other words, after the incidents of 9/11, the trade-off between security and freedom became one of the most plausible options in legitimizing the introduction of tighter surveillance measures by government and police. As security is regarded as the paramount task for both politicians and the public, citizens will prioritize order and peace in the community where they live and, additionally, underestimate the diversity and freedom of a society that is somehow too idealized and abstract to enact. This change of the public's perception concerning the political balance between security and freedom seems to be synonymous with the "the move between the creation of spaces for the public to the creation of spaces of community" (Staeheli & Mitchell, 2006:978) in the recent development of mega shopping malls. In both cases, we can see the preference of the safety and ease of community over and against the freedom and openness of society.

The Occupy Movement and its Impact

The Occupy Wall Street movement developed in Manhattan, New York City in September 2011. The main objective of the movement was to radically question the global economic disparity that had been drastically widened under neoliberal economic policies. The slogan of this movement, "We Are the 99 Percent," plainly demonstrates how those who participate in or sympathize with the Occupy movement perceive the present socioeconomic conditions as damaging their everyday lives. While 1% of the population obtains huge amounts of wealth, the great majority of the 99% are compelled to live under severe social conditions. Wall Street is regarded as the symbol of the powerful, wealthy, and highly privileged 1 Percent elite. The Occupy Wall Street movement therefore harshly criticized Wall Street by

physically occupying its spaces and demonstrating dissent and opposition against the prevailing economic conditions.

While the Occupy movement's slogan and message attracted public attention globally, one of its most impressive and astonishing elements is the strategy of literally occupying physical places, such as Zuccotit Park in New York. Zuccoti Park is a typical case of a privately owned public space, established in the Financial District of Manhattan. The park was formerly called Liberty Plaza Park, but it was renamed in 2006 by its owner, Brookfield Office Properties. John Zuccoti is the chairman of Brookfield.

In its opposition against the recent economic conditions under which only the privileged 1 Percent can enjoy the benefits of wealth, the movement adopted the symbolic strategy of spectacularly occupying a public space where the elite business people usually enjoy their lunch or coffee with their colleagues. Such a symbolic and spectacular action as occupying the supposed "decent" places owned and used by the wealthy appealed effectively to global publics, media, journalists, and academicians. Witnessing the rise of Occupy Wall Street, several scholars who have researched the transformation of urban spaces quickly responded both to it and to related social movements (Calhoun, 2013; Kohn, 2013; Mitchell, 2015). While some scholars were a bit skeptical about the prospect for the Occupy group as an organized social movement (Gitlin, 2013), it would appear that the majority of leading scholars of urban studies recognized the energy and power in the rising tide that it represented, and how it challenged present conditions confronting the public. While the sudden uprising of Occupy in 2011, and its spread to other areas of the world, was somehow perceived by the public as surprising, what the movement politically problematized was quite understandable in the light of a series of scandals and misconducts concerning the financial markets led by Wall Street that resulted in the 2008 financial crisis. For researchers with academic interests in the relationship between space and public in urban areas, it is not only a political-economic but also a sociogeographical antagonism that is revealed by the Occupy movement, and which is in need of further research.

The core of the political challenge of Occupy Wall Street in occupying privately owned public spaces can be seen in its radical questioning of who should possess the space that everyone can access and use. According to the legal discourse prioritizing the right of property over that of free speech, those who economically own the property have the right to control it at their will. However, as the public space is also expected to be open to everyone and democratic in its nature, the complete monopoly by owners has been questioned and challenged in academic discussions concerning the legitimacy of the management of such places (Low & Smith, 2006). Protesting against the elite groups of the 1 Percent symbolically represented by Wall Street, participants in the Occupy movement made stark the political question concerning the ownership of public space. Their answer to the question was quite simple and straightforward: We, the 99 Percent, should be the owners of public space. Based on a populist understanding of politics, they dared to occupy the places that had been exploited by the wealthy 1 Percent, whom they saw as economically powerful but democratically illegitimate.

Several scholars responding to the somewhat unexpected mass-scale occupations that occurred in New York and elsewhere in 2011 have underscored the populist characters that were prominent and distinctive in the process of initiating and developing the Occupy movement, as well as in its later fading away (Calhoun, 2013; Kohn, 2013). Their apparently intentional adoption of (dis)organizing strategies such as opening the people's assembly in making their decisions eloquently shows how the participants in the Occupy movement conceive of the public, what they see as suitable forms of discussion, and how they conceive

of the public space in which they come together, discuss, eat, and enjoy life. By revitalizing the privately owned public spaces such as Zuccotti Park through its demonstrations, the Occupy Wall Street movement brought about a moment of change in people's perceptions about who and what the democratic public could be, even under the severe conditions of the neoliberal globalization threatening the basic rights of the 99 Percent.

Conclusion

More than 2 decades have passed since the events proclaiming "the end of public space" under conditions of a rising privatization and commercialization of new urban spaces. Now we can routinely observe the global prevalence and popularity of shopping malls, where a privately owned public space is welcomed and enjoyed as a substitute for residential community in the urban landscape. The mundane scenes we face in these malls might be interpreted as a sort of postmodern cynical perfection of "the end." On the one hand, the dazzling and spectacular spaces of shopping malls enable visitors and customers to feel like they are part of a community with others. Even though the traditional community plazas and town halls have disappeared as a result of excessive urbanization, the mega shopping malls have successfully taken over the public roles indispensable for the community. On the other hand, it is apparent that these spaces are thoroughly controlled for the purpose of maximizing profits for and protecting the properties of private corporations. Introducing a tight but subtle surveillance and an artfully but seemingly friendly management with respect to the behaviors of visitors and customers (Ceccato, 2016), the social spaces of shopping malls benignly repress and expel any form of potential opposition against the consumerist value that is paramount in shopping. Inasmuch as we see shopping malls everywhere, the former prediction of "the end of public space" seems to have been confirmed in more tangled, but dreadfully thorough ways.

However, as the surprisingly sudden and rapid uprising of the Occupy Wall Street movement has clearly demonstrated, the political conditions of public space are always contested and contradictory in nature. Even in the extreme cases where the democratic potentials of the public seem to be almost erased, there will emerge a moment of opposition and antagonism against the sociopolitical exploitations that are heightened by neoliberal globalization. As some scholars insisting on the political significance of a democratic public have repeatedly claimed, the values of free speech and assembly guaranteed by the US Constitution should not be understood solely as a right of the individual. Rather, it is important to appreciate the collective aspect of "the right of the people peaceably to assemble" (Gitlin, 2013:19) that is inherent in the traditional idea of the First Amendment. In other words, collective assembly among the people surely invigorates politics and fosters democracy. For collective encounters and communications among the public to occur, places where people can gather together to express their opinions to one another are indispensable. For that reason, existing public space has been highly contested, and questions concerning its proper management pose a political controversy that is not easily resolved. As the Occupy movement has vividly demonstrated, how the people can experience, live, and enjoy public space is not predetermined, even though the spectacular guise of the shopping mall seduces us to regard it as a place for private consumption and personal ease. To fully understand what is actually contested by publics and what it is they strive to achieve should be the focus of ongoing research on the nexus between public space and politics.

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27

Countersurveillance

James P. Walsh

Whether mediated by direct observation or by electronic means, surveillance – the intentional and systematic watching of others for regulatory purposes – represents an indispensible tool of social control. While recent technological innovations offer governments unprecedented opportunities to monitor publics, there is more to surveillance than initially meets the eye. In particular, the ubiquity of devices for observing, recording, and disseminating information has altered power dynamics, ensuring surveillance is potentially in the hands of all citizens.

The paragraphs that follow assess this double movement and offer a conceptual overview of countersurveillance – the appropriation of observational objects and activities to contest authority, expose injustice, and reduce, if not eradicate, social disadvantage – an issue that, despite a handful of seminal works (Huey et al., 2006; Koskela, 2011; Mann, 2002; McGrath, 2004; Monahan, 2006), remains neglected. To these ends, the concept's defining dimensions are enumerated and several concrete instances are assessed. Its ambiguities, limitations, and unintended consequences are also considered. Outlining the significance of countersurveillance as a practical activity and category of analysis enriches understandings of the evolution of monitoring practices and the cognate processes of public resistance and participation.

Before proceeding, two caveats are in order. While involving resistance to formal control systems, countersurveillance represents a distinct modality. Extant discussions of resistance have largely approached surveillance as oppressive, considering if and how it can be evaded, regulated, or abolished (see Bennett, 2010; Coleman & McCahill, 2011; Fernandez & Huey, 2009; Gilliom, 2001; Gilliom & Monahan, 2012; Lyon, 1994; Marx, 2003). Creative and public deployments of observational activities, however, reveal the possibilities of surveillance as a tool of opposition and empowerment. Additionally, rather than offering an exhaustive taxonomy, this chapter assesses efforts to challenge state power in domains constituted by and dependent upon surveillance, whether policing, migration control, or national security. Such a focus not only captures the leading targets of countersurveillance, but, given that statecraft hinges on optical arrangements to render social processes "legible"

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and amendable to intervention (Scott, 1998; see also Giddens, 1987; Haggerty, 2006), accentuates the practice's disruptive potential.

The Rise of Countersurveillance

In this chapter, countersurveillance is defined as involving grassroots deployments of "surveillance equipment" to reverse "the usual vectors of power" (McGrath, 2004:198). Alongside appropriating observational technologies to empower disadvantaged groups, the practice often encompasses surveying the powerful and turning "the eye of authority upon itself" (Pecora, 2002:347; see also Marx, 2003). In both instances, countersurveillance is closely associated with Mann's (2002) work on "sousveillance" or forms of "undersight," where "people in low places" conduct surveillance to expose and disrupt the workings of authoritative institutions typically afforded the "luxury of invisibility" (Coleman & Ross 2010:101). By enabling citizens to challenge and negotiate settled configurations of power, knowledge, and authority, countersurveillance illuminates significant struggle over the control of visibility and ways of looking. While not always realized in practice, efforts like those described in this chapter display democratic and elite-challenging potential. In particular, grassroots monitoring is designed to: confront the logic of official surveillance; deny legal authorities the capacity to operate within low-visibility conditions; and establish opportunities for scrutinizing the powerful and promoting accountability.

Despite growing interest in surveillance and challenges to its growth, analysis of its use as a mechanism of resistance and empowerment remains a peripheral field of research. Accordingly, a search of the Web of Science Social Citation Index in February 2017 using the terms "countersurveillance," "counter surveillance," and "counter-surveillance" yielded 10 scholarly works, versus 18 983 for "surveillance." This neglect is explained, in part, by the pessimistic and, at times, dystopian character of surveillance studies. Defined in relation to a "dominating, overseeing gaze" (Foucault, 1980:152), surveillance is traditionally conceived as repressive, disempowering, and the province of state experts and venues. It is always already a tool of authority, with those under observation representing an inert mass of "pawns…in an increasingly global surveillance machine" (Lyon, 2007b:463; see also Ball, 2005; Dupont, 2008).

Challenging such one-dimensional accounts, several observers have stressed surveillance's protean qualities. For Monahan (2006:515), treating surveillance as innately tyrannous risks conflating the attributes of technologies with their users' objectives, denying the extent to which monitoring devices are "underdetermined" and display multiple – and often contradictory – meanings and possibilities. As such, surveillance is situational and normatively ambiguous (Lyon, 2007a; Marx, 2012). It constrains and enables, marginalizes and empowers.

Such observations are distinctly salient, as technological advances concerning communications and information-gathering have produced a sprawling "surveillant assemblage" in which distinctions between watchers and watched are increasingly vertiginous and "no major population groups are irrefutably above or outside" the gaze of others (Haggerty & Ericson, 2000:618; see also Brin, 1999; Mathiesen, 1997). Under such conditions, citizens are not just adapting to or evading surveillance, but are inscribed in its instantiation, outcomes producing claims of a "participatory panopticon": a "bottom-up version of the constantly watch society" (Cascio, 2005, cited in Bruno, 2012:350). Whether in regard to "lateral" forms of peer-to-peer monitoring (Andrejevic, 2002) or official "controlwork" in which they are enjoined to serve as the state's "eyes and ears"

in various domains (policing, migration control, counterterrorism), ordinary individuals increasingly deploy surveillance to manage risk and insecurity (Koskela, 2011; see also Reeves, 2017; Walsh, 2014a).

Countersurveillance is a less-noticed dimension of public participation. More than producing new surveillance practices for surveying and governing populations (online tracking devices, CCTV networks, biometric registries), the arc of technological change also empowers grassroots actors. While claims of a surveillant democracy are overstated, the accessibility, inexpensiveness, and ease-of-use of many monitoring devices (smartphones, camcorders, laptops, geographic information systems (GIS), GPS devices) and infrastructures (social media and other online fora) ensure surveillance is a distributed activity that the lay public can initiate and control. Within this environment, forms of vernacular creativity, if appropriately conducted, can affect public opinion, political debate, and institutional practice.

The rise of countersurveillance is not reducible to technological change. It also represents a public reaction to contemporary social and political conditions. Transformations associated with neoliberal restructuring, whether the end of "managed capitalism," pervasive privatization, or the promotion of a "market-based sociality that valorizes entrepreneurialism and self-sufficiency" (Walsh, 2014b:281), have amplified collective anxiety. To maintain legitimacy and sublimate febrile demands for security, political officials have mobilized fears of threatening and undeserving others (domestic minorities, foreigners, criminals, welfare-recipients, terrorists, etc.) and advanced a politics of law and order involving heightened surveillance, policing, and social control (Bauman, 1999; Beckett & Sasson, 2003; Garland, 2001; Young, 1999). Despite their idiosyncrasies, the following examples of countersurveillance are united in confronting such developments. Specifically, strategic promotions of visibility are perceived as necessary to facilitate the regulation of power or the recognition and correction of disempowerment.

Citizens as Surveillors

This section analyzes practices of countersurveillance in policy fields defined by intensified social control and state power. These include the policing of urban space, migration and border control, and national security. While far from comprehensive, this discussion is designed to identify the central tendencies of countersurveillance, and highlight diversity in its scale, technological dimensions, and objectives (see Table 27.1).

Table 27.1 Forms of Countersurveillance

Activity	*Primary Technology*	*Primary Targets*	*Scale of Activity*	*Ultimate Objectives*
Video activism	Video surveillance	Law-enforcement agents	Individual	Discipline and accountability
Counter-mapping	Locational/ geospatial	Marginalized groups	Collective	Recognition and empowerment
Digital disclosure and whistleblowing	Digital/ informational	State apparatus	Institutional	Radical transparency

Video Activism

Video activism encompasses individual and collective efforts to monitor law enforcement. Here, citizens deploy their own surveillance practices and, either independently or with the assistance of the mass media, subject state officials to visibility, scrutiny, and critique (Andrejevic, 2011; Bock, 2016; Goldsmith, 2010; Wilson & Serisier, 2010).

A leading and influential example is that of Copwatch, a network of activists throughout North America, Europe, and Australia. Other organizations that employ visual technologies to promote accountability and protect citizens' rights to photograph, document, and film the activities of on-duty police officers include These Streets are Watching, the Peaceful Streets Project, Photography is Not a Crime, and Cop Bock. Conceived as a form of "reverse surveillance," Copwatch has its members coordinate street patrols in predominantly working-class and minority neighborhoods to record on-duty police behavior and prevent and expose impropriety – whether unlawful searches, racialized profiling, or brutality (Grinberg, 2011). If collected, video footage of misconduct is provided to the media, posted online, or preserved as evidence for formal complaints or prosecution (Huey et al., 2006).

Countersurveillance has also been employed to document public-order policing. Several social-movement organizations, including Black Lives Matter, Act Up, Occupy Wall Street, the global justice movement, and participants in the Arab Spring, have made tactical use of video-recording equipment to document the perceived repression of dissent and provide "defensive surveillance" against officers charged with controlling protests (Monahan, 2006:173; see also Bradshaw, 2013; Fernandez, 2008; McGrath, 2004; Wilson & Serisier, 2010).

While the mass media remains an important conduit for disseminating video imagery and expanding the size of the "witnessing public" (Coleman & Ross, 2010), social media and related Web 2.0 technologies afford alternative circuits of publicity. Evidenced in online platforms that enable the uploading of user-generated content (YouTube, Facebook, Twitter) or encourage citizen journalism (Indymedia, Reporters without Borders, Democracy Now!), activists are empowered to completely control the production, distribution, and initial interpretation of content, allowing them to bypass the mass media's gatekeeping proclivities and tendency to privilege official perspectives (Chibnall, 2013). Additionally, social media's "feral and viral" nature can rapidly transform local events into globally notorious spectacles (Goldsmith, 2010:930). Consequently, grassroots surveillance represents a contentious arena for challenging governments' monopoly in providing authoritative accounts of reality and determining what is perceptible and "socially thinkable" (Welch et al., 1998:239).

When coupled with the ubiquity of smartphones and other portable recording devices, these developments have produced a "hyperdemocratization of video activism," exemplified in instances of incidental witnessing, where content is captured and shared by unsuspecting bystanders (Wilson & Serisier, 2010:175; see also Bock, 2016; Fiske, 1996; Sandhu, 2016; Schaefer & Steinmetz, 2014). Made famous with George Holliday's camcorder footage of Los Angeles Police Department officers beating Rodney King, the random gaze of onlookers has become increasingly prominent in exposing excessive, and often racialized, state violence. According to Browne (2015:21), such practices represent the most recent iteration of a longer history of "dark sousveillance" and "freedom practices" deployed by racial minorities to challenge brutality and "facilitate survival and escape." Reflecting these developments, the American Civil Liberties Union (ACLU, 2015) has recently developed a free cell-phone application named "Mobile Justice" to encourage surreptitious monitoring of

the police. High-profile examples of amateur cameraphone footage include: the deaths of the African-Americans Oscar Grant (2009), Eric Garner (2014), Walter Scott (2015), and Philando Castile (2016) at the hands of law enforcement; the death of Ian Tomlinson, a protestor at the G20 demonstrations in London (2010); and the death of Neda Agha-Sultan during the Iranian election protests (2009). While not part of a premeditated effort to document brutality for public consumption, the decision to "shoot back" and circulate footage represents a social practice of civic engagement (Bock, 2016). In such instances, the exposure of controversial footage produced cracks in traditional systems of power, generating either shifts in public opinion, mass protests, official investigations, or institutional reforms (Goldsmith, 2010; see also McGrath, 2004).

As a political intervention, video activism is guided by instrumental and symbolic goals. It is believed the visibility cameras afford will expose corruption, promote accountability, and mobilize collective action and awareness (Sandhu, 2016). Additionally, by producing "conscious and permanent visibility" (Foucault, 1977:201), where the "police cannot be… sure that any act of brutality has not been recorded" (McGrath, 2004:199), copwatching is designed to modulate behavior and deter abuse. In expressive terms, exposing misconduct is intended to alter public knowledge by challenging commonsense assumptions regarding the exercise of police power and state coercion. In offering alternative representations and counternarratives, video activism unsettles official "image work" (Mawby, 2013) and the police's symbolic authority to act as "primary definers" of events (Hall et al., 1978).

Counter-Mapping

By enabling the "mastery of territory" (Hannah, 2000), mapping and related practices of spatial surveillance provide the logistical infrastructure of bureaucratic states, allowing the monitoring, control, and mobilization human and material resources for varied administrative purposes. According to Scott (1998:82), mapping is a constitutive activity: states "do not merely describe, observe and map; they strive to shape a people and a landscape that will fit their techniques of observation."

Recent technical advancements, whether GPS, GIS, location-based systems, or satellite imagery, have enhanced capacities to track, trace, and profile populations (Amoore & Hall, 2010; Crampton, 2011; Lyon, 2007a). The regulative significance of locational surveillance is particularly apparent in the context of border enforcement and policing. While surveillance has always been distinctly intense along states' territorial perimeters, contemporary threats of transnational terrorism and diffuse fears concerning irregular migration have produced preemptive, punitive, and technologically advanced regimes of enforcement (Aas, 2013; Walsh, 2008). Whether in relation to radar, drones, remote-sensing, or GIS, locational technologies are prominently inscribed in forward deployments of surveillance and policing (Walsh, 2013).

Such developments ensure that, for many unwanted migrants, border crossings are increasingly treacherous and often deadly. Whether in the context of the United States–Mexico border or of Europe's external frontiers, fatalities from drowning, dehydration, and exposure have skyrocketed (Weber & Pickering, 2011) – outcomes reducing non-citizens to "bare life" and collateral damage amid aggressive securitization efforts (Agamben, 1998; see also Doty, 2011). Responding to this humanitarian crisis, several activist organizations have appropriated geospatial technologies to protect migrants, promote mobility rights, and foster social recognition. With these practices of "counter-mapping," the tracking of mobilities is

intended, not to strengthen, but to disrupt territorial borders and their human consequences. Accordingly, countersurveillance is oriented toward producing an "alternative moral geography" in which national sovereignty and security are subordinated to transnational justice and hospitality (Walsh, 2010:114).

A prominent example is Humane Borders. Based in Tucson, Arizona, this organization employs GIS to monitor the geographic distribution of migrant deaths, and thereby assist in installing and maintaining water and first-aid stations throughout the Sonoran Desert. Data assembled through spatial surveillance are also used to create online maps that convey the dangers of crossing and offer migrants potentially life-saving information, whether emergency contact numbers, advice on when and where to cross, or reminders to bring sufficient food and water (Doty, 2006; Walsh, 2010).

Another relevant case is the Electronic Disturbance Theater, a collective of critical theorists and cyber-activists at the University of California San Diego. In an attempt to "hack" the border, the organization has created the Transborder Immigrant Tool, a cell-phone application and "virtual compass" that tracks users' movements, generates customized maps of the desert environment, and delimits zones of risk and danger. The device is meant to protect and empower migrants by identifying the safest routes and directing them to nearby water stations, natural springs, roads, and emergency call-boxes. Although specific to the United States-Mexico border, the application's code is open-source and freely available, in the hope it will be reprogrammed for other geographic settings (Amoore & Hall, 2010; Dijstelbloem, 2014; Walsh, 2013).

Similar efforts are found in Europe. WatchTheMed (2013) is a participatory online mapping platform and "counter-surveillance network" that works with sailors, NGOs, journalists, researchers, and migrants – and their friends and relatives – to monitor, document, and visualize fatalities and rights violations accompanying the militarization of Europe's maritime borders (Dijstelbloem, 2014). In furtherance of these efforts, the organization employs "the very same technologies" used by states – "vessel tracking technologies, satellite imagery, georeferenced positions from satellite phones" – to document failures to respond to migrants in crisis, determine which governments were responsible for effecting rescue, and "exercise a critical right to look at" the human costs of official policy (WatchTheMed, 2013). As noted in the organization's initial press release, "Border controllers, as long as you will be controlling the Med, we will be watching" (WatchTheMed, 2013).

Geospatial technologies have also been embraced as tools of macro-observation for documenting state crime and humanitarian crises. Characterized as a "global neighborhood watch," in 2007 Amnesty International developed a campaign titled "Eyes on Darfur" that utilized satellite imagery from Google Earth to enable Internet users to monitor and track patterns of genocide in South Sudan (Dupont, 2008:267). The US Holocaust Museum launched a similar initiative, known as "Crisis in Darfur," as part of its Genocide Prevention Mapping Initiative, which, through spatial observation, enables "citizens, governments, and institutions to access information on atrocities in their nascent stages and respond" (Hollinger, 2007). Finally, through a campaign named "Eyes and Ears of God: Video Surveillance of Sudan," the Slovenian foundation HOPE provides civilians in Darfur with video-equipped surveillance drones to document war crimes and human rights violations (Završnik, 2016).

Together, these interventions embody what Monahan et al. (2010) have characterized as "empowering surveillance." Here, countersurveillance is less about the reciprocal monitoring of authorities than empowering marginalized groups. Beyond enabling civil-society actors to locate and intervene in oppressive circumstances, counter-mapping is

intended to facilitate the revisualization of events, offering a "counterimage of what possible realities might look like" (Dijstelbloem, 2014:117). By exposing the human costs of state practice and enabling individuals to make their own maps, the interventions discussed here engage visibility as a tool for naming issues as public concerns and transforming subjugated knowledge into visible information that commands contemplation and action.

Digital Disclosure and Whistleblowing

The final example of countersurveillance is that of digital disclosure and whistleblowing – the online exposure and distribution of official secrets by citizens. While several organizations (OpenLeaks, Anonymous, GlobalLeaks, Cryptome, Shadow Brokers) and individuals (Edward Snowden, Thomas Drake, Katharine Gun) have engaged in such tactics to promote open government and radical transparency, WikiLeaks, which possesses "the largest independent hoard of information about governments" (Andrejevic, 2014:2620; see also Brevini, 2017), is the most noteworthy. A network of dissidents, journalists, and technologists devoted to "exposing unethical practices, illegal behavior and wrongdoing," WikiLeaks seeks to make power transparent by "eavesdropping" on covert state knowledge and practice (Benkler, 2011:318). To these ends, the organization maintains an anonymous online platform for disclosing and publicizing information from whistleblowers about political and corporate indiscretion.

While framed as addressing the perennial problem of corruption and its corrosive consequences for the participatory, deliberative, and consensual character of democratic polities, given the culture of secrecy and impunity that defines the contemporary security environment, WikiLeaks's efforts are distinctly salient at present (Walsh, 2016; Welch, 2009). The group's most notorious leak occurred in 2010 with the release of a massive cache of documents concerning US military interventions in Iraq and Afghanistan, which exposed, among other things, significant civilian casualties and cover-ups, targeted assassinations, institutionalized practices of torture, operational errors, and active cooperation with corrupt regimes (Andrejevic, 2014).

Valorized as embodying the Internet's political and transformative potential, WikiLeaks harnesses the affordances of information and digital technologies as forms of counterpower. When compared to prior eras, governments currently inhabit intractable information environments. Alongside the unprecedented abundance of material available for disclosure with the digitization of communications, information technologies have reduced the opportunity costs of whistleblowing, making it easier to ensure anonymity and to intercept, store, and retrieve information (Benkler, 2011; Fenster, 2011). Additionally, the Internet's decentralized, transnational, and networked character facilitates the rapid diffusion of leaks, making it exceedingly difficult, if not impossible, for states to censor or prevent disclosures (Andrejevic, 2014; Brevini, 2017; Fuchs, 2011).

According to Benkler (2011), WikiLeaks's activities reflect the rise of a "networked fourth estate" and new approaches to monitoring governments and producing and reconfiguring public knowledge. The organization characterizes itself as the "first intelligence agency of the people," a platform for systematic information-gathering that is intended to "keep… government[s] honest" and prevent "conspiracy, corruption, exploitation and oppression" (Fuchs, 2014:214). Through "principled leaking," WikiLeaks disrupts asymmetrical relations of visibility and neutralizes the opacity and inaccessibility that often define state decision-making and practice. Rather than direct observation, states are monitored

indirectly, and bureaucratic surveillance – "system[s] of permanent registration" in which files, reports, dossiers, and communications logs ensure "all events are recorded" (Foucault, 1977:197; see also Giddens, 1987) – is used to expose traces of official activity.

In these ways, WikiLeaks exploits the "new visibility" produced by emergent systems of information-gathering and communications. Specifically, by facilitating "disruptive disclosures," the organization reveals how:

> [T]he making visible of actions and events is not just the outcome of leakage in systems of communication…it is also an explicit strategy of individuals who know…that mediated visibility can be a weapon in the struggles they wage. (Thompson, 2005:31)

Specifically, digital disclosure and whistleblowing are devoted to lifting the veil and unsettling the relationship between secrecy and power. Such unmasking subjects the cloistered world of elites to public scrutiny, ensuring powerholders can no longer assume their activities will remain strictly confidential (Fuchs, 2014; see also Brevini, 2017; Coleman & Ross, 2010).

Digital disclosure and whistleblowing display liberal and radical objectives. Operating under the dictum that "sunlight is the best disinfectant," WikiLeaks embraces the emancipatory qualities of information and transparency. Here, the "risks of embarrassment" and specter of total visibility are intended to correct institutional behavior and provide a "motivating force…to act justly" (Fuchs, 2014:215). Moreover, through improved public knowledge, awareness, and concern, leaking provides a check on power, while, by inflicting reputational damage, disclosures of official misconduct are intended to transform public sentiment and affect, pressuring governments to respond through reforms and enhanced oversight and accountability. Consequently, countersurveillance embodies "the democratic ideals of a transparent state" espoused by philosophers ranging from Rousseau to Habermas (Welch, 2011:304).

Digital disclosure and whistleblowing also represent a strategy of interference devoted to undermining state sovereignty and centralized authority. Given that "control of information" is "the essence of state power" (Castells, 2001:169), disclosures of secretive knowledge represent a profound affront to the operational principles and regimes of visibility that modern governments are constituted by (Slaughter, 2014; Žižek, 2011). For WikiLeaks, it is held that "total transparency…will destroy the state's ability to conspire – and therefore exist" (Fenster, 2011:778). Moreover, by destabilizing efforts to maintain appearances and control conditions of legibility, the prospect of unwanted visibility unsettles authorities' symbolic power and capacity to "constitute the given" (Bourdieu, 1991:170).

Limitations and Ambiguities

While the growing body of work on countersurveillance accentuates the complexity of visibility and monitoring practices, future research would benefit from more explicit and systematic engagements with the operational and ethical consequences of surveillance from below. In particular, despite its empowering potential, countersurveillance is ambiguous and displays unforeseen and unpredictable effects. In light of such issues, Wilson & Serisier (2010:167) have admonished scholars to avoid "mirroring the technophilia of more powerful agents of surveillance" when assessing grassroots efforts, "no matter how laudable their aims." As such, the following paragraphs outline a series of concerns,

focusing on the ineffectiveness and unintended and counterproductive repercussions of countersurveillance. Considering the limitations of bottom-up monitoring is important, as fetishizing countersurveillance as a panacea to injustice risks ignoring important practical and normative hazards, as well as precluding considerations of the deeper interventions required to address the exclusionary dimensions of late-modern societies (Fuchs, 2014; Monahan, 2006).

At an instrumental level, it is questionable whether countersurveillance is not merely a disruptive, but also a positive and transformative force in society. None of the preceding interventions have initiated robust institutional change or brought about demonstrable reductions in injustice and impropriety. Migrant deaths and police brutality have shown no sign of abatement, and, in the case of WikiLeaks, the organization's actions have not promoted greater transparency (see Coleman & McCahill, 2011; Fan, 2008; Monahan, 2006; Roberts, 2012). Moreover, countersurveillance practices do not appear to have achieved their symbolic objectives of enlightening the public or generating discernable attitudinal shifts. Xenophobic hostility remains prominent in Europe and North America, and, despite several high-profile videos of police brutality, public support for law enforcement in the United States is the highest it has been since the end of the 1960s (McCarthy, 2016). While WikiLeaks's disclosures of the US war logs generated considerable scandal within the immediate term, they ultimately failed to produce sufficient outrage or pressure for reform (Brevini, 2017). In fact, support for the war in Afghanistan actually improved following the leaks, while the proportion of Americans perceiving WikiLeaks as acting in the public interest fell from 42 to 29% (Roberts, 2012; see also Quill, 2014).

Such outcomes suggest many countersurveillance activists embrace the – arguably naïve – belief that rendering visible and making information available will automatically transform popular sensibilities. While they may succeed in capturing and documenting institutional malfeasance, practitioners of countersurveillance encounter considerable challenges of intermediation or efforts to organize, publicize, and interpret images and information. It appears that the expansions in countersurveillance and mediated visibility that have accompanied the contemporary "viewer society" (Mathiesen, 1997) have paradoxically diluted the impact of bottom-up monitoring. Specifically, the ubiquity of content and the mélange of outlets and images has made it progressively more difficult to capture and sustain public attention – outcomes reducing disclosures to "microspectalces" with diminishing effects (Wilson & Serisier, 2010:178; see also Schaefer & Steinmetz, 2014). Commenting on WikiLeaks, Fenster (2011:807; see also Quill, 2014; Roberts, 2012) has noted that "Western…societies are too complex and decentralized, their publics too dispersed, and their information environments too saturated for transparency, by itself, to have significant transformative potential."

Even when generating considerable attention and awareness, countersurveillance is "subject to a complex politics of interpretation that may constrain its effectiveness as a tool of resistance" (Doyle, 2003:75). While the issue requires more detailed analysis, existing work suggests that, in the case of video activism, footage of impropriety is ineffective in promoting accountability, because images enter a dynamic information environment that activists are incapable of controlling. Whether in the context of legal proceedings, the mass media, or the court of public opinion, the processing, framing, and interpretation of video evidence tends to privilege law enforcement's professional authority (Goldsmith, 2010; Reiner, 2013). As such, the interpretations of experts and powerful institutions are favored, and encounter considerably less difficulty in sculpting public perceptions. Exerting their power as "authorized knowers" (Hatty, 1991), the police and legal professionals have

employed various strategies to deflect charges of abuse, from discounting the veracity of footage by questioning the skill, motives, and objectivity of amateur videographers to recasting wrongdoing as legal and justifiable (Brucato, 2015a, 2015b; Goodwin, 1994; Sandhu, 2016; Stuart, 2011).

Alongside questions of operational efficacy are those concerning counterproductive effects. As noted by Sandhu (2016:88), "increases in visibility do not have a steady or predictable effect on power relations" (see also Brighenti, 2007). Given that surveillance is a "fluid, ongoing process involving interactions and strategic calculations over time" (Marx, 2012:xxvi), tactics of countersurveillance not only disrupt, but also produce new power arrangements, and may result in "unintentionally reinforcing the systems of social control that activists seek to undermine" (Monahan, 2006:531).

In regard to video activism, Huey et al. (2006) have noted that the recording of police–citizen interactions may actually make it more likely that officers will rigidly enforce the law in relation to minor offenses, including narcotics violations. In addition to incriminating the less powerful, by further straining police–community relations, such outcomes are at odds with the objectives of copwatching organizations. Video footage of protests has also been confiscated by law enforcement and used for investigative purposes, including monitoring activist groups, establishing dossiers on certain protestors, and identifying suspects (Bradshaw, 2013; Wilson & Serisier, 2010). Consequently, activists may ultimately emerge as the targets of their own surveillance. Finally, despite WikiLeaks's commitments to openness and transparency, the anonymity of its sources ensures that their motivations and identities remain opaque and inaccessible. While such arrangements help protect whistleblowers from retribution, they also raise the specter of co-optation (Ross, 2011; see also Slaughter, 2014). Several governments and news outlets have argued WikiLeaks has been infiltrated by Russian operatives aiming to discredit NATO governments. In particular, it is believed that WikiLeaks's publication of thousands of emails from the Democratic National Committee during the 2016 US election was orchestrated by Russian intelligence as part of an "information war" intended to help Donald Trump win (Rutland, 2017). Consequently, rather than a tool for promoting openness and accountability, the platform increasingly reflects a form of "weaponized transparency" for advancing sectional agendas and nefarious objectives (Howard & Wonderlich, 2016).

Additionally, practices of surveillance and countersurveillance are bound together in an iterative and symbiotic relationship, each anticipating, responding to, and feeding off of the moves and activities of the other. Whether through techniques of refinement or escalation, countersurveillace is likely to be met with "counter-neutralization" strategies (Marx, 2009) – outcomes inciting a "dynamic back and forth of evasion and official response that tends to ratchet up the overall level of surveillance and control" (Haggerty & Ericson, 2006:21).

Rather than promoting accountability, it appears that efforts to film the police have produced more secretive practices by law enforcement and a greater awareness of how to avoid or manipulate their mediated visibility (Fernandez & Huey, 2009; Sandhu, 2016). In their attempts to nullify the effects of citizen monitoring, officers have sought to limit certain behaviors to institutional back regions (i.e., police headquarters), remove identification badges during protests, intimidate amateur videographers through threats of arrest and legal punishment, and seize or destroy cameras and footage (Monahan, 2006; Simon, 2012; Stuart, 2011). The police have also adapted to the presence of cameras by employing risk-averse styles of "camera-friendly" policing (Sandhu, 2016). This involves concerted efforts to alter the meaning of footage and control how photographers and members of the public

perceive their activities. By offering commentary that vindicates violent behavior (i.e., "stop resisting arrest") or consciously modifying their physical appearance and comportment to convey restraint and professionalism, such presentational strategies seek to subvert and disrupt countersurveillance by masking and concealing various forms of indiscretion and undisciplined behavior. In the case of digital disclosure and whistleblowing, WikiLeaks's activities have not produced a retreat from official secrecy, and, instead, have led governments to further exert their legal authority over whistleblowers, alter their administrative operations and use of technology, and implement stronger safeguards (Fenster, 2011; Fuchs, 2014). With such developments in mind, Quill (2014:12) has argued, the "revelation of secrets does not always prompt the call for reform or revolution, but entrenches orthodoxy further." Together, such examples underscore how countersurveillance may produce elaborations of state power, providing the "necessary provocations" for powerful institutions "to diagnose and correct inefficiencies in their mechanisms of control" (Monahan, 2006:531).

At a deeper level, visibility and transparency are not inherently democratic, and, when taken to their radical extreme, can, like their obverse of secrecy and suspicion, corrode forms of sociality essential to public life (Brighenti, 2007; Castells, 2001). By activating an ongoing dialectic of moves and counter-moves, bottom-up monitoring threatens to unleash a "surveillance arms race" and produce "a more defensive and suspicious society" defined by "an overall increase in anxiety-generating and resource consuming surveillance and counter surveillance" (Marx, 2003:161; see also Huey et al., 2006; Lyon, 2007a). In cultivating a generalized climate of suspicion, such outcomes threaten to entrench atomization, inhibit the cultivation of wider solidarities and common interests, and exonerate intensified social control.

Considering the potential hazards of countersurveillance is not meant to deny the need for greater accountability, institutional change, or shifts in public consciousness. Nor is it meant to discount the significance of growing capacities of grassroots monitoring. Despite the limitations detailed in this section, one can remain committed to correcting injustice and to making power visible and accountable without simply fetishizing countersurveillance's utopian effects. As Monahan (2006:531) reminds us, identifying ambiguities and exposing contradictions does not mean "countersurveillance practitioners should dispense with their interventionist projects, but instead that they should diligently avoid reproducing the exclusionary logics and reactionary stances of those whom they critique." In the end, while countersurveillance displays considerable potential to assist in challenging authority and the excesses of state power, such outcomes are far from guaranteed, and depend on the creative and responsible efforts of citizens.

Conclusion

The recent proliferation of countersurveillance is certain to continue. While, for reasons detailed in this chapter, unbridled optimism is unwarranted, indigenous monitoring and observation are likely to become more pervasive and sophisticated in their character, content, reach, and potential impact. The ramifications of such developments are perhaps only now beginning to be comprehended. What is clear, however, is that as countersurveillance continues to evolve, so too will the nature of surveillance itself. Although one cannot readily predict what new characteristics and dimensions surveillance will assume, and there is no inevitability to patterns of historical change, this developmental process will undoubtedly be structured and conditioned by new technological forces and political struggles and arrangements – as has been the case in the past.

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28

Surveillance in Popular Culture

Anna S. Rogers

Surveillance has become an important (if, perhaps, not yet central) concept to sociologists over the past 2 decades, in large part due to the ubiquity of surveillance technologies that now proliferate social life. While driving through tollbooths, paying for gas, withdrawing money from ATMs, and in many other parts of daily life, we know that we are being monitored and have gradually accepted surveillance as a normal part of modern-day society, even when we do not consciously acknowledge it. Surveillance has become so pervasive in contemporary social institutions that it is now fully part of our socialization process throughout our lives. Surveillance mechanisms exist in the types of toys with which children play, in online video games, and in other types of visual media.

As we become more and more accustomed to surveillance culture, it is important to ask what role(s) it plays in modern life. Surveillance expert David Lyon (2007:139) argues that while some strands of popular culture focus on the "alarmist" and "conspiratorial" nature of surveillance, others may "assure us of the realities of surveillance," even while asserting that surveillance is a necessary dimension of life today. Understanding the meanings attached to media is key to understanding how surveillance in popular culture impacts the lives of individuals. As new technologies create spaces where surveillance can evolve into something new and more powerful, scholars have studied how it changes culture, as well as the individuals who are part of it.

More than any other surveillance expert, sociologist Gary Marx (1996, 20016a, 2016b) has studied numerous portrayals of surveillance in various forms of visual media, including television, movies, music, cartoons, jokes, and even advertisements. Essentially, his conclusion is that surveillance is present everywhere in modern life, even in the realms that are meant to be fun and entertaining. Moreover, as Torin Monahan (2011:495) has argued, "surveillance is about exercises of power and the performance of power relationships." In other words, the surveillance made possible by modern technologies extends the types of control that dominant forces – such as the government, police, and capitalistic media companies – exercise over subordinate populations, in a manner that mirrors Bentham's panopticon (Foucault, 1977). It is only through understanding these mechanisms of social control made possible in our surveillance culture that human beings can hope to resist them.

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Surveillance in Visual Media

It is no surprise that, with film and television being such strong reflections of modern society, various issues of surveillance have gradually emerged as common in these media. Themes about people being watched permeate movies and television shows, which simultaneously show people playing the role of watcher. In popular culture, these themes include watching and listening to the human body, with important symbols being the eye and the ear (Barnard-Wills & Barnard-Wills, 2012; Marx, 1996).

Film and Television

Justine Gagneux (2014:443) has astutely observed that surveillance is "largely embedded within our contemporary culture (i.e., films, television, video games, advertising, and art)," and, as a result, "has transformed our ways of seeing, watching, and being seen." As numerous scholars have pointed out, surveillance – and the representations of new technologies therein – in film and television should be of central concern for social scientists, because of its increasingly pervasive nature (Altheide, 2004; Dubrofsky, 2011, 2016; Lefait, 2013; Mazumdar, 2011; Shapiro, 2005; Tetzlaff, 1991; Zimmer, 2015).

Michael Shapiro (2005:21) has asserted that surveillance is articulated in popular media, such as songs, with the political intent of "accepting, rejecting, or managing" bodies. Especially in times of "violent political contention," struggles occur between those who seek more control and those who wish to maintain the control they currently have (2005:22). Similarly, Catherine Zimmer (2015:12) has argued that "technology and ideology manifest in cinema to play a crucial role in the politics of surveillance." Exploring the theme of surveillance in George Orwell's *1984*, Sebastien Lefait (2013) has suggested that the novel is a foundational piece in surveillance literature. He also acknowledges additional cinematic pieces that laid the groundwork for the theme of surveillance that is prominent in film and television today, including Terry Gilliam's *Brazil* and George Lucas's *THX-1138*. Zimmer (2015), who, like Lefait, includes Orwell's *1984* and Lucas's *THX-1138* in her book, also discusses *The Conversation* and *Minority Report* as important Orwellian works that center on the theme of surveillance, and goes on to examine how surveillance has become a theme in cinematic horror films, such as *The Blair Witch Project* and *Paranormal Activity*.

Like Lefait's (2013) and Zimmer's (2015) works, Rajani Mazumdar (2011) has explored the impact of the "media theatre," or, in other words, the ways in which television and other media transform major tragedies into narratives that fuel the public's paranoia and the need for surveillance. Specifically, he examines three films from Bombay, analyzing the ways in which they elevate terrorist attacks to a conspiratorial level, where viewers are led to believe that holes in the narrative can be filled to reveal the "truth" about what has really happened. Building on Gordon Arnold's (2008) work on conspiracy narratives in US culture, Mazumdar (2011:144) has argued that movies use the idea of surveillance as a means to uncover conspiracy, which serves as a "seductive force [that] helps explain complex situations in a simple cause-and-effect narrative." He finds that Anurag Kashyap's *Black Friday* uses surveillance cameras throughout the city to create a sense of impending doom that leads viewers to feel that torture is justified. Raj Kumar Gupta's *Aamir* uses images of filth and disgusting interactions with food to create a "parade of stereotypes" (2011:145) that leaves movie viewers shocked and horrified at the squalor in which Muslims allegedly live. Furthermore, the movie presents the Muslim terrorist as having a ubiquitous presence in

the city, feeding a sense of paranoia and the need for control among viewers. Finally, Mazumdar finds that Neeraj Pander's *A Wednesday*, like the other two films, portrays Muslims as an ever-present enemy. The role of surveillance technology is especially important in this particular film, as a vigilante citizen attempting to protect the city from Muslim terrorists uses a variety of technologies to survey the streets as he sits atop a roof, unbeknownst to the people going about their daily lives below him. This vigilante, seen as the "common man," is able to use this surveillance to make the city safe.

The cinema is not the only area in which surveillance is a prominent theme. Rachel Dubrofsky (2011), by example, has explored the ways that women – especially women of color – are controlled via surveillance in reality television. She begins her book by asking how "racialized and gendered bodies" are surveyed in the footage captured during reality television filming (2011:1). She discusses the issue of authenticity – or, in other words, the ways in which viewers see the actions of these women and/or people as being true to their authentic selves. As a result, since women of color tend to fail more frequently than white women at finding lasting relationships and/or displaying their true emotions, whiteness is privileged in reality TV in much the way that it is throughout society. Of course, white women are not entirely portrayed in a positive light, especially in shows such as *The Bachelor*, which uses surveillance to – according to Dubrofsky – help white people fall in love (2011:29). For the many women who fail to successfully snag the coveted Bachelor, they are portrayed as not performing whiteness correctly. The women who are voted off, much like the women of color in the other shows, are portrayed in the surveillance footage as being inauthentic at the beginning of the series, when they do not show their true selves. Later, when they become far too emotional, they inadvertently reveal themselves: a process facilitated by the surveillance. In conclusion, Dubrofsky argues, viewers of reality television come to accept that "the process of surveillance makes people knowable to themselves and to others and subsequently has the potential to carry out a therapeutic good" (2011:99).

Media as Social Control

Building on the idea of using media as a form of social control, sociologist David Altheide (2004) focuses on the ways in which surveillance on the Internet has become something that users view as inevitable, particularly since the terrorist attacks in New York and Washington on September 11, 2001. Users are able to view others, and they accept that others are able to view them as well. They also know that whatever they post can be used for a variety of purposes, and they have come to passively accept that every visit to cyberspace will coincide with data about them being collected and shared, and that all of this is done for their protection. While Altheide (2004:241) has posited that the "control narrative has always been part of communication structure," he asserts that this control has expanded with the Internet. He argues that as users have grown accustomed to being surveyed online, sharing similar experiences with others has resulted in the development of a "surveillance identity" (2004:226), or an altered identity that emerges as actors realize they are being watched. While they may elect to resist, most users are willing to accept the fact that they cannot interact with others as they normally would due to the fact that the surveillance they endure is actually keeping them safe. Moreover, Altheide finds, most users do not classify themselves as being suspected of crimes like terrorism. As such, the level of surveillance that exists for Internet users has grown gradually and imperceptibly.

Altheide (2004) also explains how laws regarding Internet privacy and surveillance have impacted the surveillance culture over time. For example, the number of Internet stings – such as those conducted to catch pedophiles – has increased dramatically in recent years, because the media's regular reports on these sting missions have led to widespread acceptance that this type of surveillance protects children. As the Internet has become more and more accessible to all citizens, even the most deviant and/or illegal forms of pornography have "migrated from the liminal spaces at the margins of society" to "influence the mainstreams" (Langman, 2008). As pornography has become more visible in our culture, fear and paranoia have led to a need to control this aspect of society, especially with regard to the idea of protecting our children. According to Altheide (2004), regular citizens are now setting up their own sting operations to catch pedophiles and other deviants, thereby increasing the level of surveillance on the Web. In many cases, the surveillance of potential criminals even broaches on entrapment, and would-be crimes can lure vigilante users into expressing their intent to perform nefarious actions, leading to their prosecution.

Like Altheide, David Tetzlaff (1991) has explored social control by the media, but he focuses on how it can be seen through the lens of capitalist society. Tetzlaff asks readers to operate on the notion that hegemonic control is not guaranteed in the future, and, therefore, that something can be done now to dismantle it. He examines the postmodern world, asking how capitalistic structures of control and dominance preserve themselves. He argues that in earlier times, a unified culture, presented by the media, became a measure of control. However, in modern capitalism, the media is presenting a more fractured culture. Tetzlaff suggests that this more fractured culture is actually a better mechanism of social control, because issues of dominance of other cultures by a primary one are less discernable. While people are able to survey numerous cultures through the media, the reverse is also true. People from various cultures are also constantly being surveyed.

Surveillance in Popular Music

Surveillance is a common theme in popular culture (Marx, 1996, 2016a, 2016b; Shapiro, 2005), especially in various forms of music. To illustrate this fact, Gary Marx (1996) uses the example of the popular children's song, "Santa Claus Is Coming to Town." The lyrics of this song describe Santa as being a watcher of children. For example: "He knows when you've been sleeping/he knows when you're awake/he knows if you've been bad or good/so be good for goodness sake." This depiction of Santa tells children that they are being watched at all times, and their behaviors are being morally evaluated. Similarly, a common theme in popular music that relates to surveillance is found in songs based on religion. These talk about a god that sees all and knows all. While many of the songs portray this surveillance as non-threatening, the constant observation by an omnipresent god is stressed. For example, Marx (1996, 2016a) uses the example of "Jesus Loves the Little Children of the World," which includes the line, "They are precious in His sight," implying that the children are always in Jesus's sight.

Marx (2016a) provides examples of popular songs on the theme of constant surveillance: Johnny Rivers's 1966 song "Secret Agent Man" is a direct warning of violence – and possibly death, in the line, "Odds are you won't live to see tomorrow"; The Rolling Stones's "Fingerprint File" states, "There's some little jerk in the FBI a keepin' papers on me ten feet high"; XTC's "Real by Reel" alludes to the invasions of privacy that surveillance creates; and Judas Priest's "Electric Eye" discusses a surveillance device in space that sees everything down on earth, even the things that people try to hide.

Marx (1996, 2016a) also discusses another common theme of surveillance in popular music, which is often found in songs written about love. In most cases, these songs talk about looking for love, watching for betrayal by a partner, watching with love on the mind, and general voyeurism. Historically, male artists typically wrote these songs in reference to watching a female love interest. A popular example of this type is found in a song for the movie *Rear Window*, directed by Alfred Hitchcock. The song by Bing Crosby is called, "To See You is to Love You." Another example would be The Police's popular song, "Every Breath You Take." Sting wrote this song after a divorce, and it describes a situation where the male is watching a female with the mindset of "ownership and jealousy," as reported by *Rolling Stone* magazine in 1984 (as cited in Marx, 1996, 2016a). The song's iconic lines include, "Every breath you take/every move you make/every bond you break/every step you take/every single day/every word you say/every night you stay/every vow you break/every smile you fake/every claim you stake/I'll be watching you." Many fans view it as a romantic love song, but a quick analysis of the lyrics reveals a lover who has been/might be betrayed by his significant other. These examples all demonstrate someone who is watching others.

The intersection of the themes of surveillance and race is also worthy of attention. Marx (2016a) argues in this respect that rap is the area of popular music where the theme of surveillance is most prominent. Performers such as Tupac Shakur, Ice T, and NWA frequently have rapped about the feeling that they are constantly being watched, especially by the police. Of course, as Erik Neilson (2010) explains, rap artists have always been concerned with the idea of surveillance, and the form itself actually began using the oral tradition due to the fact that artists were resistant to the idea of being recorded. Neilson goes on to analyze Tupac Shakur's album *All Eyez on Me*, looking specifically at the song "Can't C Me." Shakur's work, like that of many other hip-hop performers, uses a number of strategies to avoid surveillance, such as the intentional misspelling/respelling of words (2010:1260). The song also uses what Neilson (2010:1261) refers to as the "call-and-response" approach, which means that it involves the whole community. In "Can't C Me," Shakur incorporates the music of legendary funk artist George Clinton. As the song progresses, the voices of Shakur and Clinton begin to blend together, making it challenging for listeners to figure out who is actually singing at various points. The song, and the album as a whole, also uses sampling of other artists and the creation of multiple personae through voice distortion to further blur the identity of the rapper. This song reflects Shakur's resistance to surveillance culture and his awareness that he is being watched.

While the theme of surveillance is most conspicuous in rap music, it is also seen in all other genres. For example, Rachel Dubrofsky (2016) has examined the music and videos of the pop artists Taylor Swift and Miley Cyrus. She asserts that the "vernacularization" of surveillance culture leads to the privileging of white artists, such as Swift and Cyrus, even in non-surveilled spaces (2016:185). She examines Swift's "Shake It Off" and Cyrus's "Can't Stop" music videos, both of which were accused of racialized displays of women of color. In Swift's song/video, the notion of "performing-not-performing" became prominent as the artist was watched on social media, with the argument that its true intention was to show that individuals can "shake off" the confines that constrain them and allow their true, authentic selves to "shine through" (2016:188). Meanwhile, in Cyrus's "Can't Stop," the same "performing-not-performing" analysis was prominent in Twitter discussions. The argument was that, again, the young women in the song "can't stop" what they are doing, regardless of attempts to control them by older individuals, because they are being their true selves.

Further, Dubrofsky argues that Swift and Cyrus use self-reflexivity as a means of expressing their "authentic selves in a surveillance society" (2016:189). In other words, they justify

their choices by "self-reflexively adorn[ing] themselves with racialized attire [as they] perform racialized identities" (2016:190), which they are only doing for humor since they are not performing and clearly know that they are white. This humor is further emphasized by Swift, who despite having the slim white body of a traditional ballet dancer, purposefully dances badly in her tutu, with a metaphorical wink to the audience she knows is watching her: an audience that knows that both she and Cyrus know they are white women, fully aware of their displays of racism – or, as Dubrofsky puts it, they are saying, "I'm so white, you know it, I know it, which makes it so funny when I try to dance like a person of color" (2016:193). Dubrofsky posits that Cyrus and Swift see themselves as living in a post-racial society in which they are on a level playing field with the women of color in their videos, while in reality, they are merely using black people and markers of black culture "decoratively" (2016:194). They use transparency in surveillance culture to push the idea of whiteness as the default, normal culture. Dubrofsky's work demonstrates the connection between surveillance of racialized bodies in the media and the cultural appropriation that frequently occurs within media.

A Society of Voyeurs?

The Internet is available to people all over the world, with more gaining access every day. It and other visual media allow people to watch others from the comfort of their own homes, which creates a reality in which the strict boundary of public and private experiences starts to blur. They also allow people to know more about other people through observing them. Before television, a person would need to be in the same physical space as someone they wanted to watch, but television opened up many different spaces that can now be viewed from anywhere in the world. People get used to both watching others and to being watched.

Being Watched and Watching Others

In recent years, people have started using social media as a way to willingly put themselves on a platform for the public to view. Television has created a tolerance to the act of being watched, which ultimately leads to a tolerable acceptance of surveillance in society. Joshua Meyrowitz (2009) has argued that there are five crucial ways that access to television changed society. First, it led to an expansion of what people could "see." Historically, a person could only see things that they witnessed first-hand. Television massively expanded what could be "seen" by average people in society. Second, it offered a way for people to know more about others' social roles, specifically, "previously taken-for-granted reciprocal social roles, including those related to differences in age, gender, and authority" (2009:35). For example, children can view the adult world and see things that adults might typically try to hide from them. Also, women can see how their gender is portrayed by and how they should interact with men. During the 1960s and '70s, women could also watch and see what happened in the public sphere that they were not given access to due to the idea of keeping the public and private spheres separate. Third, television demonstrated to people how those who are similar to and in the same locations as them are perceived by others. Fourth, people could watch other people and their interactions on television, in the privacy of their homes, which meant they could watch others on TV while having the freedom of knowing that

those they were watching could not *watch them back*. Fifth, television made it "normal" to watch other people in detail, but also "anonymously and from afar" (2009:36). Meyrowitz argues that this social phenomenon created an environment in which more people were willing to become active on social media and put themselves on display to be watched by others. Instead of being afraid of being watched by others, people may actually feel "more valued" when they know someone is watching them.

Today's technologies, such as webcams, GPS devices, cell phones with cameras, and Web sites like YouTube have created even more opportunity for people to be watched, by allowing anyone with access to the Internet and a camera technology to upload content by themselves. With all of these new technologies developing, it also makes doing surveillance easier, as well as faster and cheaper (Meyrowitz, 2009:46). To the surprise of most scholars, most citizens do not feel threatened or concerned about how easy it is to be under some type of surveillance as part of their regular daily routine. This research suggests that the reason average people are so relaxed about surveillance is because they are familiar with watching others and being watched through devices such as television and social media.

Dataveillance

Most art that portrays surveillance highlights issues related to the physical body as the subject of surveillance and how surveillance might impact identity. These representations are focused on human bodies being recorded on video or watched by others. Recent developments in surveillance are focused on collecting data information on people, rather than capturing their physical image. This type of surveillance is referred to as "dataveillance" (Barnard-Wills & Barnard-Wills, 2012:204). Even though dataveillance is on the rise, it is rarely seen as the focus of modern art related to themes of surveillance. Katherine and David Barnard-Wills explored 10 pieces of art that do explore issues related specifically to dataveillance (Barnard-Wills & Barnard-Wills, 2012). Two themes emerged from these works: some depicted issues related to "institutional and governmental dataveillance," while the rest tended to depict issues related to "qualitative data created by individuals using online technologies as part of their own identity production" (2012:205).

Dataveillance is cheaper than other, more traditional types of surveillance (Barnard-Wills & Barnard-Wills, 2012). It is used by both government agencies and private institutions to obtain a fuller depiction of an individual, such as how they spend their money and what they view for entertainment. Dataveillance is able to find information that is different from traditional surveillance information, typically including race, class, and gender. Online technologies have also made it possible for people to take on multiple identities that can be used as qualitative data, such as blogs and interactions on social media. Dataveillance is currently unable to categorize these types of datum the way it would qualitative data. Most artists who depict surveillance do it in a way that can be considered a form of protest or critique. However, they may occasionally borrow from other types of popular culture that depict surveillance (2012:206). Therefore, in response to Monahan's (2011) argument that surveillance is "inherently embedded in specific cultural contexts and calls for greater understanding of people's engagement with surveillance," Barnard-Wills & Barnard-Wills (2012:207) have maintained that art must also be considered, due to its impact on "economic or cultural capital and its circulation." Thus, they argue for the importance of studying surveillance from a cultural standpoint.

A critique of Levin et al.'s (2002) work *Ctrl [Space]* is that it is focused solely on "video cameras and physical space," and not so much on dataveillance (Barnard-Wills & Barnard-Wills, 2012:207). It is possible that dataveillance pieces were simply not found in their search. One possible reason for this could be the lack of interest in doing art that is based essentially on numbers (Ernst, 2002). While the body is an important part of the subject of surveillance in general, scholars and artists alike must also consider that dataveillance is needed in order to round out the full picture of both an identity being surveyed and those doing the surveying (Barnard-Wills & Barnard-Wills, 2012:208). The body can represent what is physically seen by the eye or surveyor, but data on individuals is also part of identity, even though it remains an invisible component.

Artworks utilizing dataveillance rather than the human body fit into three categories. The first includes pieces that focus on the "tools and institutions" related to dataveillance (Barnard-Wills & Barnard-Wills, 2012:208). The second includes pieces that focus on the actual "process and practice of institutional and governmental dataveillance." The final category focuses on "qualitative data created by individuals using online technologies as a medium of expression" (2012:208). Barnard-Wills & Barnard-Wills (2012:209) argue that artwork that does not focus on the human body acts to remind viewers that it can be "de-humanizing" when a human is reduced to nothing but a data set.These types of artwork create a "sense of loss of self and control over what is conceived of as your identity" (2012:209). Art is an important medium because it can reach wide audiences that may not be aware of the existence of dataveillance (2012:210). While the number of artistic pieces on dataveillance is small, they show how art can be useful and effective for fostering conversations on surveillance and identity (2012:211).

Surveillance in Other Visual Arts

Marx (1996), again, was among the first scholars to write that surveillance is also demonstrated in the visual arts. Recently, some artists have used surveillance and the emergence of technologies of surveillance as themes to be explored in their art. Examples of art that achieves this goal include paintings, photographs, videos, and even participatory art exhibits where the audience can simultaneously be part of the art while experiencing what it is like to be watched or be the watcher. Visual art representations can be very abstract and creative. One artist, Susan Sontag, was able to get tangible data that had been collected through a surveillance device in an effort to demonstrate what authorities are able to collect from surveillance of private citizens.

Marx (1996) has provided seven implications of this type of research on surveillance and pop culture. First, information on recent developments in surveillance can serve as an educational tool. Second, this research can foster debate in society over surveillance technology and how it should be observed. Third, these studies demonstrate how power is an important part of surveillance. Fourth, they reveal that society is worried about surveillance and "uncomfortable with naked facts and brute force of power." Fifth, the meanings of surveillance technologies are created in the context of what the surveillance is being used for. For example, the same technology can be used to spy on someone and to protect children from dangers. Sixth, these studies demonstrate the need in social-science research for examinations that uncover how people interpret and make meaning from popular culture. Specifically, are viewers interpreting the visual media in the way that the creators intended? How does popular culture impact the way people view surveillance technology?

Does society "welcome, tolerate, or oppose the new surveillances?" (Marx, 1996). Seventh, this research demonstrates existing parallels between art and science.

In line with Marx's arguments, Joanathan Finn's (2012) research on surveillance and research in the humanities asserts that it is important for artists and activists to follow the example set by sociologists and criminologists and examine the impact of surveillance culture on our society. He argues that the work being done by artists and activists is largely overlooked by social-science researchers and that scholars need to ensure that social scientists become aware of how research being done on surveillance in the humanities can inform social-scientific work. The importance of creating a dialogue between sociologists, criminologists, and scholars from the humanities is further stressed by Monahan (2011:501), who states that "the creation and study of artistic interventions are clearly fruitful" as an "[avenue] for [studying] surveillance as cultural practice." Through an analysis of Jill Magid's *Evidence Locker*, Finn demonstrates how such analyses help us generate ideas for how to actively resist surveillance culture.

At the core of Finn's (2012) analysis is an examination of CCTV, a type of surveillance technology that operates independently of time and space. In other words, police can initially be summoned to come to the scene of a crime when footage is filmed live, but the same footage can then be used by prosecutors long after the event has taken place. As such, CCTV becomes a modern version of Bentham's panopticon (2012:137), making it possible for citizens to be surveyed at all times. Magid's project involves 31 days spent in Liverpool, after which she assesses data gathered by CCTV on her movements and actions in the city. The data is published on a Web site, elucidating the fragmented ways in which CCTV captures information. First, it only captures certain frames, which means that the complete story of events unfolding in front of the cameras is never truly told. Second, since there are camera operators behind the cameras, who can move them to focus on specific individuals as they choose, the personal biases of the operators drive what will and what will not be recorded (2012:137). In addition, CCTV only records visual information, meaning that other important components of the story being captured, such as sound, are not available. Finally, Finn explains that CCTV systems operate separately from private security systems, such as those used by banks, which results in "multiple surveillance gazes" (2012:138).

Finn (2012:141) posits that the data gathered on Magid during her 31 days in Liverpool amount to little more than an "extended Facebook profile," providing an extremely limited view of what she did and who she really is. According to Finn, this work is important because it sheds light on how imprecise CCTV is as a crime-fighting mechanism. For example, at one point during the 31 days, Magid is almost mugged as she walks down the street. The wrong person is accused of the crime because camera operators focus on the wrong scene (2012:141). Finn argues that a close examination of Magid's *Evidence Locker* forces viewers of the project to ponder their own agency in a world in which surveillance and control seem to be an accepted part of our lives.

Surveillance in Comedy and Advertising

Another interesting area of popular culture that depicts surveillance is comedy. There are numerous forms of comedy that discuss surveillance, including cartoons, comics, and jokes. Marx (2016b) identifies four different themes of surveillance in comedy. The first, he calls "accommodation," which includes humor that makes surveillance part of common, everyday life. An example of this theme is found in the joke, "Two men are riding exercise bikes at a gym and one says, 'I think we are getting serious: she's springing for a credit check

and a surveillance on me'" (Marx, 2016b). He refers to the second theme as "machine-human frame breaks." These jokes are funny because they incorporate incongruent items that would never be seen together in reality. An example is Marx's description of a man who goes to an ATM to withdraw money and the ATM speaks to him as a parental/authority figure and advises him to make the "money last all weekend," and not to spend it on "foolish things" because he needs to "pay his phone bill" (Marx, 2016b). The third theme is "dystopias," and references humor that tries to shock the audience through satire (Marx, 2016b). The final theme is "reversals," which includes humor that focuses on surveillance that backfires or ends up creating chaos by doing something unanticipated. Marx describes an example of this as follows: "A couple are lying in bed and the man says, 'Not tonight, hon. It'll just wreak havoc with the motion sensors again'" (Marx, 2016b). It is important to study comedic explorations of surveillance in society because people can begin to internalize surveillance as part of everyday life, making daily surveillance a cultural norm.

Advertisements are also an important source of depictions of surveillance in popular culture. Advertisements usually are straightforward, and tend to be less creative than the illustration/cartoon examples just discussed. "This great realism," Marx (2016b) points out, "reflects their partisanship in the promotion of tangible products rather than abstract ideas, which may be illustrated in a more balanced, or at least broader, fashion." Advertisements that promote an item used for surveillance typically will only focus on the "positive aspects of surveillance" (Marx, 2016b). For example, a television advertisement for a microphone might call for people who are "curious" or interested in great sound quality to buy the product, rather than explicitly promoting a device that will allow them to spy on eavesdrop on their neighbors or family. Another tactic is to create advertisements that make the products seem more innocent, such as by depicting a camera device inside a fuzzy stuffed animal. This technique makes the product seem more user-friendly for people who may be concerned that surveillance of others is immoral or cold-hearted. Other techniques for advertising surveillance products include promoting items that are used by "professionals" or government agencies that do surveillance.

There are also products on the market that are advertised as a way to safeguard oneself against surveillance, but these are not as common as devices that allow an individual to "snoop" on others (Marx, 2016b). Thus, companies that sell viewing or listening devices make more profit. It is worth noting that, ironically, many companies sell both spying and safeguarding devices.

Conclusion

As Marx (2003:372) has stated, "humans are wonderfully inventive at finding ways to beat control systems and to avoid observation." However, as surveillance becomes less visible and more prevalent in society through new technologies and new spaces such as the World Wide Web, it becomes necessary for people to adapt their understandings of the ways in which surveillance practices are used to control them. Multiple scholars, this review has revealed, have explored the ways in which surveillance culture is growing and changing in connection with popular culture, as elsewhere. While much of this work seems to indicate that there is little to be done in order to resist the constant surveillance in modern life, it also indicates a need to understand exactly how surveillance can be used to control and coerce people, in order to reduce the means by which people are controlled by those in power. As Lyon (2007) has argued, it would be a major mistake to ignore the role that popular culture plays in exerting control over human beings within a society. In 2018, data can potentially be mined

on every move people make on the Web. Television and film contribute to the hegemonic notion that white is the default culture (Dubrofsky, 2011), and, especially in times of political turmoil, perpetuate the notion that surveillance is necessary if we wish to be safe (Arnold, 2008). Surveillance themes permeate music, the world of comedy, and virtually every other aspect of popular culture. Finally, surveillance can intersect with questions of criminality and crime control in ways that convince everyday citizens that it can be part of the protection of our society (Arnold, 2008; Langman, 2008; Lefait, 2013).

With these observations in mind, future research in the area of surveillance and popular culture must include collaborations with cultural-criminology scholars. Cultural criminology presents a framework that specifically explores the connection between popular culture and criminality, and other questions of crime and criminalization (Ferrell, 1999). Cultural criminologists focus especially on portrayals of crime in popular television and films. This perspective allows them to take images and narratives that emerge in popular culture related to crime and social control and analyze them with a view to understanding how meanings are attached to them, and the impact they might have on societal views. With the advent of reality TV and other modes of surveillance now prominent in film and television, it is a natural fit for cultural criminologists to participate in the discussion surrounding surveillance and popular culture.

Some earlier studies sought to uncover symbolism and meanings incorporated into deviant subcultures, such as youth subcultures (Hall & Jefferson, 1976), feminist subcultures (McRobbie, 1980), and kids getting working-class jobs (Willis, 1977). Others focused on how the mass media socially constructs new meanings of deviance, which lead to new types of social control (Cohen, 1972; Cohen & Young, 1973; Ferrell, 1999; Hall & Jefferson, 1976). Today, cultural criminologists are increasingly studying how the media impacts the broad culture of policing and looking at conflicts over cultural spaces, which connects back to issues related to race, gender, class, and identity formation (Altheide, 2004; Ferrell, 1999:412;).

A second area of research that is essential to the scholarly study of popular culture and surveillance is the role that surveillance plays in a capitalistic society. Tetzlaff (1991) has noted that while rebellious popular-culture heroes such as James Dean, Elvis, and McMurphy from *One Flew Over the Cuckoo's Nest* appear to buck the norms enforced upon them by conservative, capitalistic forces, in the end, they are only used to earn money for conservative publishers, studios, and music executives, who obtain even more control as they gain more money and power. While Tetzlaff admits that these ideas are extremely pessimistic, he asks readers to operate from the belief that humans can be active agents, even under the watchful eye of surveillance and control, because it is not a given that this type of surveillance will continue in the future. He concludes by quoting horror author Joe Hill, who states that our only recourse is to organize instead of sitting back and simply mourning our growing loss of privacy and freedom (1991:24). With this observation in mind, surveillance scholars from sociology, criminology, and other social sciences can join forces as they seek to examine and develop, through their various research efforts, strategies to resist surveillance and control.

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Part VII
Globalization

29

Border Control as a Technology of Social Control

Alexander C. Diener and Joshua Hagen

Humans are inherently social creatures. We are also spatial creatures, meaning we are predisposed to organize and bound space, and thereby create places. The archeological record strongly suggests that the earliest humans were already ordering space and making places. Even though they lived in small, nomadic kinship groups, they organized their encampments into functional places with designated spaces for cooking, working, and sleeping (Moore, 2012). It is hardly surprising, then, that humans carried this spatial disposition with them as they coalesced into larger social groups and, eventually, societies. Given that, it is also no surprise that the mechanics of social control within human societies have manifested through spatial practices, among which borders are the most obvious.

The concept of social control dates to the formation of sociology as an academic discipline, but it also has long-standing relevance in related disciplines, such as anthropology, history, philosophy, political science, psychology, and geography. The latter's attention to place and space is well positioned to provide unique insights into the multifaceted spatiality of social control. The delineation of spatial limits is intrinsic to any society's ability to establish, regulate, and perpetuate some semblance of social cohesion and stability (Janowitz, 1975). But, instead of lines that merely serve as passive dividers of space, borders and the attendant practices and processes of bordering should be regarded as mechanisms for social agency, especially as a means for social control.

This calculation and partitioning of space gives rise to the idea of *territory* and its operationalization as *territoriality* (Elden, 2013). Beyond delineating space and demarcating places, both concepts are invested with social power, because they allow some individual or group to define who and what is included, and under what circumstances – and, by extension, who and what is excluded. In the words of Robert Sack (1986:1–2),

> territoriality in humans is best understood as a spatial strategy to affect, influence, or control resources and people, by controlling area; and, as a strategy, territoriality can be turned on and off. In geographical terms it is a form of spatial behavior. The issue then is to find out under what conditions and why territoriality is or is not employed.

The Handbook of Social Control, First Edition. Edited by Mathieu Deflem.

This chapter demonstrates that borders and their associated practices are intrinsic to the exercise of social control; they are integral to socializing the written and unwritten rules that define the limits of acceptable behavior within specific places. The ubiquity of borders as a mechanism and venue of social control has become so intuitive as to be invisible in most everyday contexts. In comparison, borders operating in more formal, larger-scale political settings remain far more conspicuous. Yet, at any scale or setting, borders tend to function as naturalized and unquestioned features of human engagement with society and space. They are, in essence, core technologies of social control.

Elites generally initiate and dominate the processes of *de jure* bordering, but ordinary people then negotiate those borders into social practices through everyday behaviors, attitudes, and ideals. This is far from a predictable or linear process. Just as scholars have continually re-worked the concept of social control to explicate various institutions and processes promoting or impeding the internalization of customs, norms, and mores, so borders are processual in nature, evolving over time and varying with place (Deflem, 2015). And, like social control, borders fluctuate between operating as mechanisms of confrontation and cooperation, coercion and consent, often at the same time.

Traditionally, research on the establishment and enforcement of behavioral norms in modern societies has focused on the institutionalization of policing and legal systems. The processes of bordering also make integral but often overlooked contributions. The delineation of in-place and out-of-place norms, whether formal or informal, is foundational to social conformity (Cresswell, 1996). In short, borders are both reflective and constitutive of social orders, or specific sets of interrelated social relations, institutions, and values that establish, condition, and perpetuate certain sets of interrelated behaviors, practices, and beliefs among individuals and groups. Consider the multitude of socially constructed boundaries that one typically encounters during a routine day. Adults customarily leave their place of residence to commute to a place of work, crossing myriad formal and informal borders dividing private properties, municipalities, neighborhoods segregated by income or ethnicity, and public spaces, as well as various types of space designated for different modalities of transportation.

Place-making is a process of bounding space to create places for particular purposes. The assignment and enforcement of a place's purpose reflects and constitutes both the legal and the normative aspects of social control. This process tends to be experienced differently at different scales. Our experiences with norms of authority and rights at smaller scales are generally intuitive, such as with private property, workplace regulation (e.g., hard-hat areas, employee-only zones), and the cordoning off of nature (e.g., parks, preserves, natural hazards). Efforts at bordering larger-scale places are commonly weighted by political significance; therefore, provincial boundaries and especially nation-state borders are afforded a gravitas well beyond other spatial delineations. This is in large part attributable to their role in institutionalizing broadly significant identities and access to civil beneficence (e.g., citizenship, education, welfare, health care, and security). Put another way, border control constitutes one of the foundational framing practices for governmentality (Foucault, 1991).

This chapter begins with a historical sketch of borders leading to the establishment of the modern nation-state system. The following three sections explore borders as a technology of social control. The first establishes borders as part of a range of political logics and tactics, playing to different audiences and serving at once as a performance of sovereignty, a tool of regime legitimation, and a preserver of cultural and economic control. Deployed within a narrative of social benevolence, borders help institutionalize geographies of difference that perpetuate and legitimate extant regimes of social control. The second

section demonstrates how "Globalists" and "Territorialists" have adherents on the political "Left" and "Right" (Maier, 2016), which suggests that the valuation of borders commonly depends on the perspective from which they are viewed. The third section explores the role of borders and social control in the context of post-modern globalization's erosion of the ideals of territorial sovereignty. The chapter concludes with a discussion of avenues for future research pertaining to the spatiality of social control.

Borders, Territoriality, and Sovereignty

Early scholars tended to theorize borders and human territoriality as comparable to animal territoriality. In this view, human territoriality was essentially an instinctual response, and borders its primordial outcome, as groups competed for land, resources, sustenance, and even mates. Although superficially similar, human modes of territoriality and bordering differ significantly from those of animals, primarily because our territorial practices – especially our capacity for bordering – have proven so variable across time, space, and social context. In fact, such variability and flexibility probably do much to explain the ubiquity of bordering, since they are broadly applicable to a range of environments and circumstances. Rather than instinctual, borders and border control should be conceived as deliberate – although certainly not uniform – strategies aimed at controlling behavior, movement, and attitudes through the calculated organization of space, place, and society at various scales (Diener & Hagen, 2012).

Contemporary understandings of borders and border control at the state and international scale coalesced over several centuries (see Sassen, 2006; Spruyt, 1994). The process was very complex and contingent, but scholars commonly point to the Peace of Westphalia in 1648 as a convenient starting point for the codification of state borders and their standing in international law. In fact, the current international system is commonly referred to as the Westphalian system. As agreed to by Europe's major powers, this system ordered political space into a collection of states that mutually recognized one another's right of absolute territorial sovereignty over some clearly defined area and the people and things within that area. The notion of territorial sovereignty established a clear distinction, at least in theory, between domestic and foreign spheres, as well as the principle of non-interference in the domestic affairs of other states.

These Westphalian principles had numerous implications, but for border control, the most obvious was that the enshrinement of territorial sovereignty created a new and pressing need to delineate the exact extents of each state's land claims. Unlike feudalism in medieval Europe and many other pre-Westphalian systems scattered around the globe, the limits of political authority, or jurisdictions, would now be made to coincide with the limits of the state's sovereign territory. In that sense, borders evolved as a technology of social control interactively with advances in other technologies, especially cartography, navigation, surveying, geodesy, and, more recently, passports, visas, surveillance, the Internet, satellites, and biometrics. Together, they formed a spatial–technological complex that facilitated the partitioning of undifferentiated spaces and peoples into discrete states and societies.

A second major component of the Westphalian system emerged during what some scholars dubbed the "long 19th century," a period stretching from the French Revolution in 1789 to World War I in 1914. The territorially sovereign state remained the foundation of the international system, but the idea of popular sovereignty gradually replaced earlier theories of monarchical sovereignty. Put another way, the state was no longer a vehicle for

the exercise of monarchical sovereignty, but rather one for the sovereignty of the people. This transition occurred in parallel with the rise of nationalist ideologies, giving weight eventually to the notion of national self-determination expressed through a nation-state, or a state governed by and on behalf of a clearly delineated nation, generally defined by ethnolinguistic criteria. In an ideal setting, by implication, the territorial sovereignty of the nation-state would be congruent with the geographical distribution of its nation. These beliefs animated many of US President Woodrow Wilson's Fourteen Points to end World War I and subsequent peace treaties. The central tenets of the Westphalian system have their roots in Europe, but they were gradually exported through European conquest and colonialism until they became largely unquestioned global norms underpinning broad movements, such as decolonization following World War II, and foundational documents of international law, such as the charter of the United Nations.

Cumulatively, these notions (territorial sovereignty, non-interference, national self-determination) set *de facto* limits to the spatial extent of society and social control. The standard and generally unquestioned view of the political map of the world is of a mosaic of distinct societies and polities, each with its own discrete territories and borders (Diener & Hagen, 2010). In this view, borders are rather static delineations of political and social space. In other words, states are assumed to operate more or less as containers of politics, society, and, ultimately, social control (Taylor, 1994). Anthony Giddens (1987:120), for example, succinctly described the state as functioning as "a bordered power-container." Given these perspectives, it is hardly surprising that academics shifted their attention away from the study of borders and its contributions to the spatiality of social control. In the phrasing of John Agnew (1994:76–77), scholars and the general public had fallen victim to a "territorial trap" founded on three interrelated assumptions. The first regarded state territorial sovereignty as fixed and absolute in nature. The second posited a sharp and unequivocal division between domestic and foreign. The third held that states pre-dated and contained societies. This thinking grounds much of our contemporary understanding of the world and our place in it. Put another way, the state-centric territorial trap profoundly shapes our view of the world: literally and figuratively, it is a worldview.

Some of the first scholars seeking to break free from the territorial trap argued that advances in communication, transportation, and neoliberal economics were making states and their borders obsolete. The term "globalization" became a shorthand reference for these changes as scholars excitedly proclaimed that the era of the nation-state was coming to an end (Guéhenno, 1995; Ohmae, 1995). Manuel Castells (1996), for example, wrote of an emerging new world order structured around urban nodes, spaces of flows, and networks of information that would supersede the territorially-based Westphalian system and, by extension, state borders. Technological advances, especially the explosive impact of the Internet, seemed to point inexorably in that direction.

Yet, almost immediately, other scholars noted that we continue to live in a very bordered world, and will for the foreseeable future (de Blij, 2008; Nail, 2016). In fact, the early 21st century has witnessed an ongoing resurgence of wall-building and other border-enforcement measures around the world (Brown, 2010; Jones, 2012). Some scholars interpret these measures as desperate last-ditch efforts to maintain state sovereignty. Others are more circumspect, observing that borders still provide the default conceptual framework for understanding and addressing contemporary challenges, ranging from economic growth and environmental sustainability to immigration and cultural diversity (O'Dowd, 2010; Popescu, 2012). Debates about whether borders are

opening and weakening or closing and strengthening risk missing the larger point, since ample evidence can be found for both points of view and many permutations thereon, often for the same border. It is more fruitful to examine how the processes of bordering and the attendant spatialities of social control are entangled with changing modalities of power (Diener & Hagen, 2017). The remainder of this chapter will focus on these latter points and demonstrate the continued relevance of borders and processes of bordering to enactments of social control.

Theorizing Borders as Technologies of Social Control

Whether conscious of their socialization or not, individuals are products of informal social control. Expressed implicitly through particular customs, norms, and mores, the nomadic hunter-gatherers and pastoralists that dominated prehistory were socialized by a combination of informal social control and spatial deterrents to normative deviance. Exile or banishment from the group, for example, was both a social and a spatial exclusion. Through much of history, exile was considered equivalent to a death sentence, because long-term survival depended on the proximity and mutual support of one's social group (clan, tribe, city-state, ethnic community, etc.) (Simpson, 2002). Over time, however, acts of deviance came more often to be handled through incarceration or confinement (although being stripped of one's citizenship remained an option). The exercise of power over both person (prisoner) and place (prison) by an authority presumably acting on behalf of the public thus established social discipline by discursively warning against deviance and implicitly defining the limits of liberty.

Such multifunctionality evokes Foucault's (2007:108) triangle of tactics of governmentality: sovereignty, discipline, and liberalism. These are effectively logics through which governments enact power. The core premise is that they are always deployed simultaneously, although one is usually emphasized. For example, the logic of liberalism manifests in open borders and the practice of governing through freedom. But no state can dispense with discipline and sovereignty lest it cease to exist. Similarly, illiberal regimes may emphasize border barriers, but certain freedoms and liberal technologies remain. Put simply, borders are not mobility's evil other; rather, they serve as filters for all states and manifest a duality that is too rarely appreciated in contemporary scholarship. Borders are violent and protective, they are limiting and freeing, they are excluding and including. That being the case, they require a nuanced approach that acknowledges a range of political logics and tactics.

Consider, for example, how enforcing a barrier between two societies is physically impossible in the absolute. History has shown that no political border can completely cloister a society from corporeal or ideational mobility (e.g., Radio Free Europe's and Voice of America's penetration of the Iron Curtain and various defections, escapes, and infiltrations of closed societies throughout the Cold War). Moreover, global networks of trade and exchange invariably circumvent even the most hermitic states (e.g., even North Korea's leadership has made use of Hollywood movies, and the Soviet Union was part of a network of trade that included not only fellow socialist states but capitalist states as well). Rather, all political borders function as filters within broader networks of commercial, resource, corporeal, and ideational mobility. They are, fundamentally, expressions of greater and lesser social control, and by extension of permeability.

Determinations of permeability or border control are the product of complex negotiations between various actors. Government elites identify the site of a given border and

then work with multiple actors to structure it according to a specific state ideology (foreign and domestic policy) and international relations (regional and global). A border's *de jure* function is, therefore, performed for multiple audiences, while its *de facto* function reflects not only global, regional, and state practices but also the often longstanding patterns and interests of local actors. It is through these patterns that borderlands manifest as unique socio-spatial entities that at times defy the regimes of social control extolled by the state center. Borderland communities often engage so consistently and intensely with peoples on the other side of the border that they constitute distinct social groups. Some scholars point to this hybridity as evidence that trans-state dynamics are deconstructing the territorial trap (Bhabha, 1994; Hall, 1992).

At other times, borderlands constitute the "skin of the state" and serve as foils of parochial nationalisms and metaphors of state ideology set strategically in opposition to adjoining states, societies, and territories. In such cases, it is common for borders to represent both sites of focalization and synecdoches for broader contexts of social control. Focalization is the fusing of ideology with a material object (Veyne, 1992:56). Religious history is replete with such practices, but its most widespread modern manifestation is the nation-state, wherein people are regarded as inextricably bound to a particular territory (Anderson, 2006; Kaiser, 1994; Smith, 2010). Relatedly, state elites commonly focus on the borders of their respective states as material representations of authority. In Central Asia, for example, border control helps substantiate state ideology by making the abstract concept of the nation-state visible in policy, maps, and various symbols of delineation (border signs, posts, walls, fences, crossing points, passports) (Gavrilis, 2008; Megoran, 2017). The governments of the region perform their sovereignty to contrast their former provincial status in the Soviet Union. To varying degrees, and in relation to unique domestic circumstances, these efforts play to different audiences, serving at once as a performance of sovereignty, a tool of regime legitimation, and a preserver of cultural and economic control.

Once again reflective of discipline, sovereignty, and liberalism, borders are rhetorical devices through which spatial imaginaries are created. These imaginaries are mapped into reality by the establishment of border markers and foreign policies that define the state's strategic spatial intervention on behalf of the nation. Although clearly limiting and exclusionary to certain groups, materials, practices, and ideas, states deploy narratives of care and protection to generate credibility in accordance with strategic binaries between inside and outside, order and chaos, security and danger, good and evil, them and us (Megoran, 2017:27; O'Tuathail, 1996:10). It within this conflation of symbol and referent that a synecdochal transference of the border to the whole of the state occurs.

Synecdoche is defined as the part imagined as the whole. Border control, or the lack thereof, is commonly extrapolated to represent the security and well-being of the state (Maier, 2016:291–292). The spatializing of social control, therefore, links power to territory as one of a myriad of political tactics structuring governmentality. Like a computer, it can be used to make the world a more just place or to propagate inequality. The valence of any technology is relative not only to the circumstances in which it is deployed but to the actors deploying it. By depicting borders within a narrative of care for the nation, elites institutionalize geographies of difference that perpetuate and legitimate extant regimes of social control. In this sense, borders function as a modality of power that has conditioned international relations and domestic politics for centuries but is today, to a greater degree than ever before, problematized by the dynamics of globalization.

Bordering, Territoriality, and Ideologies of Social Control

Informal mechanisms of social control operate through socialization, whereby individuals are preconditioned, often subconsciously, to accept that certain behaviors are or are not permissible within specific social and spatial contexts. Formal mechanisms of social control, in contrast, generally operate through codified legal systems enforced by government (Durkheim, 1984; Lindzey, 1954; Ross, 1901). The link to government policy directs attention to the varied approaches to social control found across the modern political spectrum. Depending on the political context, the appropriateness and morality of different approaches, tactics, and technologies for regulating society have varied around the globe and throughout history, but borders as a technology of social control are deployed across the political spectrum from democratic to authoritarian contexts, from liberal to illiberal. Like any technology, borders can be put to various uses and employed for both good and bad, occasionally even simultaneously. The definition of a good versus a bad border commonly depends on the perspective from which they are viewed, however.

One might think of illiberal regimes as enacting much more restrictive uses of borders than liberal ones, but the relationship between borders and social control is too often couched within essentialized caricatures of political ideology. As adroitly noted by Charles Maier (2016:4–5), "globalization has shattered accustomed political-party frameworks. It has created a major new principle of political division that has both cut across the party systems of Left and Right with which most of the countries of the Americas and Europe have tried to regulate the allocation of state power and public goods for about two centuries." He identifies camps of "Globalists" and "Territorialists" but notes that both have adherents on the "Left" and "Right."

The globalist left demands state intervention on behalf of displaced peoples and the creation of employment opportunities beyond the global North. By contrast, the globalist right, labeled "neo-liberal," pursues policies fostering mobility (e.g., resource, commercial, ideational, and corporeal) in pursuit of an economic ordering in accordance with Adam Smith's "invisible hand" of competition and/or perhaps Darwin's principles of natural selection. As a result, neoliberals stress the imperatives of market competition and wealth accumulation by societies. The territorialist left derides the removal of trade barriers as promoting the consumption of foreign products and outsourcing of jobs. It calls for government intervention to sustain employment at home, while also advocating for territorial solutions to environmental problems (e.g., "forever wild" zones, nature preserves that exclude resource extraction, and legal accommodation for indigenous rights). The territorialist right demands strengthening borders against migration and investment in security infrastructure to combat a wide range of contemporary threats to the preservation of "national culture."

The shared context for each of these divisions is global and national systems of social control built largely, although not entirely, through the architecture of territory and borders. Often, scholars from the globalist left and right portray borders as inherently bad. They focus on "violence," whether "slow" or "fast," and the role of borders as barriers to opportunity. Conversely, the territorialist left and right – generally more populist in tone – portray borders as inherently good. They see them as providing mechanisms for security, stability, and sustainability. Yet, as noted earlier, political perspectives on borders are far from binary. Binaries, as modern social-science research suggests, although useful in structuring social control, are often strategic fabrications that mask a more complex reality. Regarding borders as a political technology of social control problematizes the traditional

political spectrum, since liberal or democratic states are as likely to deploy this technology of social control as are authoritarian or illiberal ones.

Confronting Reductionism of the Border Binary

Borders play three essential roles in relation to social control. First, they are central to institutionalizing authority. Second, they create spatial imaginaries that are internalized and naturalized. Third, they transform the very nature of material, people, ideas, and commercial practices through the spatial differentiation between internal and external. Taken together, these roles serve to legitimize enactments of social control, the permanence of spatial and social structures, and a positive valuation of legal belonging. These efforts may emanate from elites and suggest a top-down dynamic marked by a line on a map or symbolized site of division, but they are really in a constant state of flux, negotiation, and contestation. Although intentionally positioned to effect the impression of permanence and naturalness, borders, like social control, are shaped by ideology, identity narratives, elites, ordinary citizens, foreigner actors, international entities, and various institutions.

Consider, for example, how borders serve as a capillary for distributing or securing patronage. In many developing countries, offices such as Director of Border Guards and Minister of Customs are posts of great political value and potential wealth. Heads of state commonly bestow these positions upon individuals of demonstrated allegiance. Beyond this official level, there are myriad unofficial or illicit expressions of power through which the border functions as both venue and tool. In Central Asia, for example, border guards and customs officials are notorious for exploitative practices. The capacity to supplement one's income with bribes and extorted monies derives from the power to expedite, delay, or deny transit between states. This power is no less applicable on a geopolitical scale. For example, in a 2012 speech, Russian President Vladimir Putin threatened a new visa regime for travelers to Russia from the other members of the Commonwealth of Independent States. This bureaucratic impediment would have jeopardized the economies of many former Soviet states that are dependent of remittances from labor migrants in Russia. Putin's goal was to coerce these states to join the Eurasian Union – members of which, he stated in the same speech, would continue to enjoy visa-free travel (Diener, 2015:391). This action speaks to a complex process of defining the territorial extent of power and social control.

In its efforts to form a Eurasian Union, Russia sought to resurrect a quasi-imperial territorial structure in which constituent states retained nominal sovereignty but *de facto* control rested with Moscow. In a more banal sense, this is reflective of the European Union's efforts to devalue borders within the Schengen zone but *ipso facto* strengthen the Union's external borders (i.e., "Fortress Europe"). Such is the complex process of defining social control through territorial means. In 1993, David Hollinger posed the question, "How wide the circle of the 'we'?", to probe the changing scope and salience of citizenship in social, epistemic, and geographic terms at a time when the nation-state appeared less relevant than at any point in the previous 250 years and the post-modern turn afforded salience to an increasing number of identity groups – below, above, and beyond the nation (Diener, 2017). Territorializing such an array of groups could threaten not only the global system of geopolitics, but also the spatial structure through which modern collective life has been organized for centuries.

As already noted, pronouncements of a borderless world proved unfounded, but the role of borders and social control framed by territorial thinking was nevertheless altered.

Communications technology, capacities for rapid corporeal mobility, environmental awareness, expanding human rights, and transnational political organizations eroded the ideals of territorial sovereignty as an exclusive "decision space" (Maier, 2016:4). Globalization's highlighting of the advantages of Western modernity prompted the desire among peoples around the world to achieve comparable lifestyles in their countries. Increased migration flows to more developed regions brought to a head the contradiction of international law pertaining to rights to emigrate and rights to enter another country. As the Syrian refugee crisis poignantly illustrates, outside of petitions for asylum, states retain the right to limit entry. Early UN conventions recognized the right of people to flee persecution and thereby codified a ban on confinement, but failed to guarantee a place to go. Michael Walzer (1983:39–50) argues that communities "depend on closure" to maintain "the sense of relatedness and mutuality." This reflects the ideal of territory as an "identity space" and helps explain its continuing role as a catalyst for conflict (Maier, 2016:4).

In both geopolitics and the realm of intra-state identity politics, territorial conflicts remain active. These include seemingly intractable clashes over Palestine/Israel and India/Pakistan, as well as more recent contestations over Crimea and Eastern Ukraine or the South China Sea. Within states, the role of territory in preserving distinction and ways of life remains intensely palpable. It can include formal measures of concentrated othering, as in the homeland system of South Africa or the reservation system of the United States, but also manifests informally in the proliferation of gated communities and "tagging," or the use of symbolic graffiti to mark the boundaries of gang territories. For the simple reason that territory is scarce, it is also precious. And when borders define the spatiality of social control that provides stability, peace, and – particularly – prosperity for those inside, the borders of those places will inevitably be challenged by those outside. In geographic terms, "How wide the circle of the 'we'?" must continually be negotiated along a dialectic of public possibilities and private appropriation (Maier, 2016:8). In other words, the public good of social control requires the capacity to exclude (and legally constrain) those receiving civil beneficence.

The preceding historical sketch of borders as a technology of social control depicts key moments in this ongoing negotiation. A poignant question emerging today regards the degree to which abundant challenges to the social order established in part through territorial means are truly foundering. Firms clearly seek to either submerge within the local or ascend to the global in an effort to circumvent state regulation, but does this constitute something overtly new? Free cities existed in medieval Europe in large part outside the structure of the emerging state system. The British and Dutch East India Companies constituted non-state actors in only partial service to their nominally national bases. Empires have expanded and contracted over time, offering more and less expansive terrains of social control. Although varying in scale, what nonetheless seems clear is the sustained necessity of constructing territories and borders in pursuit of social control. What viable alternatives have emerged in history?

Without question, many groups have devised strategies to avoid control by governments (Scott, 2010). Hunter-gatherers, mobile pastoralists, and small-scale agriculturalists are prime examples. But are these groups without territory? Are they offering a true alternative to the existing system, or are they living off that system? There have been calls throughout history to de-border humanity. Articulating an ideal of cosmopolitanism, the ancient Greek philosopher Diogenes the Cynic proclaimed himself a "citizen of the world" (*kosmou polite*, or citizen of the comos), defying the polis as the locus of identity construction (Diogenes, 1972). The Stoics also put forth a mode of moral responsibility based on concentric circles of compassion

in which larger webs of mutual obligation extend from self and family to community, region, and ultimately the world. The Roman philosopher Plutarch advocated that "we should regard all human beings as our fellow citizens and neighbors" (see Nussbaum, 1994:13). In 1788, German philosopher Christoph Martin Wieland argued that all the peoples of the earth are members of a single family and should be treated as such (see Appiah, 2006), while Immanuel Kant's (1917:107–108) essay "Perpetual Peace" argued that "the peoples of the earth have entered in varying degrees into a universal community, and it is developed to the point where a violation of laws in one part of the world is felt *everywhere*."

Outside the European context, one may note the rise of the Baha'i faith in 19th-century Persia, whose founder Baha'u'llah (1983) proclaimed "the earth is but one country, and mankind its citizens." During the late 19th and early 20th centuries, anarchists, Marxists, and internationalists commonly protested the institutionalization of the nation-state in international law. Vladimir Illych Lenin (1974:410), for example, stated: "The full equality of nations; the right of self-determination; the merger of all workers of all nations – this is what our national program, informed by Marxism and the experience of the whole world and of Russia teaches to the workers." Even this, however, points to territoriality and borders to preserve spaces of identity.

Trans- and subnational economic, political, and communal practices have long coexisted with national territorial systems of social control, but they often do so as a byproduct of or in reliance on the system they attempt to circumvent. Global elites demonstrate a "nonchalance about territorial loyalty (they) take for granted the capacity to wall themselves off from the foreign or poor or dark-skinned intruders" (Maier, 2016:291). Their skills and wealth reduce their vulnerability to foreign competition, so that it often takes a territorial event, such as the Occupy movement or public-square demonstrations (e.g., of the Sorbonne in 1968; of Tiananmen and Leipzig in 1989; of Tahrir Square in 2013; and of the Maidan Nezalezhnosti in 2014), to jostle their moral high-ground. As Maier (2016:291) notes:

> for those who produce and exchange commodities and manufacturers or contribute to the basic and less exalted services of life – administration and military, custodial – territory remains an important principle of structuring existence in the world. The protection they derive from borders is fragile, but they are dependent on them, and their sense of national or ethnic identity remains higher.

The rise of populist politicians on protectionist platforms in the West calls for caliphal cloistering of the "Muslim world," and Russian territorial expansion in Eastern Europe and Chinese maneuvers in the South China Sea suggest borders will remain key technologies in support of both specific state ideologies and civilizational ideals of social control. Simultaneously, broad-based and small-scale identity groups find traction both in technologies of de-territorialized social media and in the cordoning of places to preserve cherished ideals, languages, and practices. Not unlike the historical efforts of specific religious groups to detach from their respective societies, various groups with a variety of motives continue to seek territorial expression of distinction around the world. This occurs both in liberal settings such as the United States (e.g., Republic of Lakota, Confederate States of America, Puerto Rico) and in illiberal settings such as Russia (e.g., North Caucasus and Siberian Regionalism). As Albert Hirschman (1970) suggested, subjection to or the inability to enact specific ideals of social control presents people with a spatial ultimatum for exit, voice, or loyalty. Today – as throughout history – the capacity to border space and create places of particular sociopolitical character remains a key technology of social control for all three.

Conclusion

This chapter began by asserting that humans are inherently spatial creatures given to ordering space and creating places. This does not mean that borders in their current forms, in either a geopolitical or an intra-state jurisdictional sense, are natural or the inevitable outcome of human socio-spatial evolution. Quite to the contrary, as many scholars suggest, the process of bordering has developed uniquely in time and space. Moreover, it reflects specific economies of power, contingencies of ideology, and expressions of agency. This is true of both those delineating and those subject to efforts to institutionalize spatial differences.

There remains a wide array of opinions on borders. Some regard them as representing an archaic system of geo-power soon to be dissolved amid an emerging world of fluid identities and free mobility. Others believe they constitute a natural structure of social and political life, without which chaos and anarchy would reign. Like social control, borders are neither inherently good nor inherently bad. They are necessities of place-making, as social control is a necessity of functional communities. No viable alternative has emerged in either case. Anarchist geographers, cosmopolitanists, and "borders as violence" theorists too often ignore the protective aspects of borders – against those seeking to do harm, and against hegemony of all sorts.

Perhaps the core failing of bordered space as a technology of social control is that boundaries tend to mark the division between idealized selves and demonized others. This is not an inherent flaw of borders, but rather an issue of their use. A domain of freedom does not have to contrast to a domain of danger. An inside realm of community need not juxtapose to an outside realm of anarchy. This is not to deny the "banality of geographic evils," as manifest in the ubiquitous inequalities of global economy and the power of place in affecting human opportunity (de Blij, 2008; Harvey, 2000:529). But as, Peter Andreas (2000:5) suggests, "there is a powerful political and bureaucratic imperative to at least project an impression of territorial control and to symbolically signal official commitment to maintaining such control." This chapter emphasizes multiple narratives in approaching borders as a technology of social control. It makes clear that temporality and social positionality play profoundly into their valuation. One must therefore always ask the questions, who uses borders, where, when, and to what effect?

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30

Immigration Policies

Samantha Hauptman

Although not a new process by any means, globalization has changed the face of migration in the post-industrial world by facilitating an accelerated rate of change in migration and communication over the last 2 decades (Richmond, 2002). The cultural impact of globalization, although integrated at varying levels in different countries, "takes place in all spheres of social existence – above all, the economic, technological, scientific, communicational, political, linguistic, and even demographic, through tourism and immigration" (Redner, 2004:21). Given the diversity of migrants and their sundry need to travel, it is evident that a new era of immigration has evolved, generating a profound concern for safety and security, and an equally neoteric level of law enforcement and social control.

At the heart of globalization are the conceptions of international human mobility and world markets (Zedner, 2010), which, during healthy economic periods, allow a qualified and fervent flow of migrant workers to deliver their services and contribute to a transnational economy. Conversely, during periods of economic decline, especially among lower socio-economic groups, the opposite holds true, as workers in wealthier countries fear competition from low-wage foreign laborers and countries move to protect the interests of their citizens, triggering a demand for more restrictive immigration and asylum policies (Martell, 2016; Richmond, 2002). Globalization, then, is routinely blamed for the loss of industry and low wages, primarily due to a competitive minority group (i.e., immigrants) that contends for limited or low-cost resources like jobs and housing (Esses et al., 2001; Wallace & Figueroa, 2012). In addition, political pressure that stems from economic downturns can give rise to protectionism, increased immigration controls and regulations on migrants, and government enactments that reduce "the influx of migrants by strengthening borders and limiting access to citizenship in the name of security" (Zedner, 2010:380). Essentially, the so-called "problem of immigration" and associated perceived threats are therefore tied to a variety of political and social discourses that stem from the inextricable link between globalization and migration.

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Themes and Issues Associated with Migration

Migration is fundamentally discriminatory in that it determines who is welcomed and who is not and exercises the power of rich states over poor ones (Martell, 2016) by using a combination of nationality, skills, education, language, and even race and religion in the vetting and selection process. With an international division of labor emerging from globalization and the transnational market, there is a clear delineation between the Global North and Global South, which both divides and widens the gap between wealthy, powerful countries and poor ones (Robinson, 2001). Both contexts, however, find migrants leaving their native countries to seek out new opportunities for a variety of social and economic reasons.

Why Migrate?

Traditionally, migration between countries has occurred for economic and political reasons and has been much more accessible to affluent or highly skilled workers whose talents are sought after and who are virtually unimpeded by the expense of travel, enabling them to readily experience the benefits of a global market (Imbert, 2004). For them, the transnational economy brought about by globalization is marked by a choice to move as a tourist or to opt to live in the state that best suits their personal needs and talents, while providing the most lucrative opportunities or preferred professional and social experiences. For those who are not among the affluent but are still relatively well-off, however, the effort required to legally immigrate has become cost-prohibitive, convoluted, and progressively reserved for a privileged few (Bloch & Chimienti, 2011). The poor, meanwhile, although also drawn by the economic opportunities afforded by globalization, do not have the power or monetary capability to relocate, and instead often endure severe hardship or use illicit means so that they too can experience the benefits of the transnational marketplace. Impoverished populations might also be forced to migrate due to non-economic reasons like war, human-rights abuses, political turmoil, or the threat of persecution, or they may even be pressured by more benign reasons like proximity (i.e., accessible or close cross-border opportunities, as exemplified by the United States–Mexico border) or reunification with family members who are already established in other countries (known as "chain migration") (Martell, 2016).

Regardless of the reason for migration, legally moving from one country to another requires formal processes that subjects migrants to a series of evaluations and vetting by the receiving country. The immigration process is therefore beset with provisions and contingencies intended to facilitate conformity to the receiving country's customs and to compel migrants to embrace and rapidly assimilate to a new culture and social norms. Although migrants choosing to initiate the vetting and selection process may knowingly take the initial step toward citizenship, in this era of globalization they may not (as was historically the case) ever intend to become full citizens. For those in temporary-worker programs, full citizenship may not even be an option (Golash & Parker, 2007). The result can be a circular migration pattern, involving repeated legal migration and the avoidance of integration or any long-term commitment to a given country (Geddes, 2015). Circular migration may be more responsive to the transnational employment market, but it may also inadvertently escalate unauthorized migration, as intense border controls increase the temptation to remain beyond lawful employment contracts and so become unlawful, rather than make costly and repeated return trips to one's home country (Motomura, 2013). Given the

diversity and complexity of the contemporary globalized economy, a system is needed whereby migrants are not tethered to just one country and rather celebrate cultural hybridity, with "new, synthetic cultural forms [that] traverse national boundaries and mix *ad infinitum*" (Aas, 2013:95, emphasis in original). Cultural hybridity emulates the free movement of workers and is one of the basic tenets of the EU model. However, given the need for interdependence and cross-border cooperation, it is also an extremely challenging proposition for immigration enforcement and control.

Sovereignty, Citizenship, and Transnationalism

Two important conceptions of migration are sovereignty and citizenship. Sovereignty implies governance over a jurisdiction, where government controls the access to, the people within, and the right to be admitted into a society, thereby clearly delimiting members from non-members (Joppke, 1999) and – where ultimate sovereignty between nations occurs – insiders from outsiders (Ariely, 2012). On the other hand, Joppke (1999) asserts that citizenship is a legal standing and that identity is dependent on shared values or so-called "common culture," which implies membership and belonging whether or not the individual is an active or civically engaged member of a given society. Both concepts are important elements in the immigrant experience as complements to a migrant's successful assimilation and feeling or sense of belonging. Interestingly, although bound by sovereignty, immigrants are compelled to accept severely reduced civic benefits while living within the cultural and political boundaries of their new country, and must be willing to accept "second-class" status (Joppke, 1999) while engaged in the formal immigration process. Immigrants may spend years being vetted in their new country while remaining ineligible for a host of social and municipal remunerations: a common practice that further alienates migrants from their new culture and social system, and inadvertently encourages transnationalism. Even for migrants who become enculturated over time, the constraints and expense of the formal immigration process may become too costly in several ways, culminating in diaspora as a permanent condition.

Transnationalism challenges citizenship, sovereignty, and even the authority of a given state (De Giorgi, 2010; Hollifield, 2004), as a nation's borders are traditionally seen as steadfast divisions between federal jurisdictions. The essence of globalization, however, defies these traditional boundaries. More than serving to protect the citizenry from foreign threats, a country's borders also symbolically safeguard culture and preserve prevailing values or a common "way of life" for its citizens or those in the in-group. At certain times (i.e., during economic downturns), gestures of exclusion – especially those targeting migrant populations – inevitably fuel frustration and hostility against anyone in society who is regarded as an "outsider" (Mendez & Naples, 2015) or part of the out-group, while at the same time increasing social cohesion and collective efficacy by clearly defining the boundaries of the in-group. As much as globalization tests border, trade, and subsequent political relationships, immigration similarly muddies traditional social divisions and identities that demarcate in-groups from out-groups.

The Perceived Threat of Migration

Globalization naturally induces multiculturalism and diversity into societies, potentially causing migrants to be perceived as threats. In some situations, this may be "fueled by nativist and antiterrorist discourses promulgated by the conservative media"

(Mendez & Naples, 2015:8). Multiculturalism entails fears of changing ethnic compositions and dilutions of existing cultures. This issue is fraught with uncertainty, and too often met with both impulsive and inadequate policy changes that may address public fears but do not tackle the problem at hand. Instead, they can cause further division between migrants and the native population.

It has been argued that when countries are unable to effectively regulate their borders and the flow of migrants that crosses them, increasingly draconian methods of surveillance and interdiction will be implemented (Chacón, 2012; Richmond, 2002), further inciting hostility against out-groups like migrants. In US society, this reaction has made migrants victims of hostility and caused them to be seen as a population in need of careful supervision and vigilant control. Europe has experienced a similar hostility, due to the policy of free movement of EU citizens between member states (Solivetti, 2005). Immigrants, as the out-group, are routinely blamed for rises in crime rates (Karstedt, 2001). Ironically, this can lead to assaults on immigrants, increasing the crime rate further (Solivetti, 2005). Regardless, the European Union has elected to enter the era of globalization and intensified migration, exemplifying a contemporary effort that directly addresses the transnational temperament and perils of an international marketplace. In this transnational agreement, each state is required to relinquish some of its sovereignty, to collaborate closely with its neighbors, and to pool administrative services and resources, especially with regard to migration.

Controlling Europe: The European Union

Since the 1990s, many countries have tightened border controls and added new constraints or conditions for migration, such as increased visa requirements, enhanced identity documentation (i.e., biometrics), and more severe penalties for violating regulations (Aas, 2013). With increased social controls and enforcement of immigrant populations, global migration takes on a transnational dimension that often blurs the line between local policing and federal military roles (Weber, 2010). These increased controls therefore necessitate transborder cooperation and agreement in order to achieve the stated goals of security and continued prosperity for all parties involved. It is under these cooperative provisions that the European Union operates, taking a hard line on immigration control and border enforcement that directly targets the basic rights and freedoms of migrants in the name of security and external border protection (Robin-Olivier, 2005).

The European Union has embraced globalization by forming a 28-country partnership that effectively requires each country to give up some of its sovereignty and pool its political and economic resources into a transnational body tha, "can give nation-states power over things they would otherwise be merely buffeted and undermined by, [namely] economic globalization" (Martell, 2016:182). In this spirit, the European Union has built alliances and collaborated not only in political and economic ventures, but also in environmental, health, and other customarily national policy issues, including immigration. The European Union's treaties are binding agreements that have created a powerful geographic and political jurisdiction, obliging members to rely jointly on one another's contribution in protecting and preserving the borders of nation states, both individually and in the larger geographic assemblage.

The European Union uses real-time information-sharing and police cooperation to effect increased border security and safety across the region, which is essential and indispensable to the preservation of the European "Area of Freedom, Security, and Justice" (Aas, 2011). Security and control of both people and borders within the European Union utilizes the

Schengen Information System (SIS), Eurodac fingerprint database, Visa Information System (VIS), and Eurosur system, each designed to increase the surveillance of travelers throughout the region. This enables a heightened collective control over the movement of migrants across both internal and external borders. However, even with this cooperative arrangement and the myriad of population-control efforts, globalization has not been entirely successful in reducing some of the problems associated with migration, including terrorism and international crimes like drug smuggling, human trafficking, and organized crime. In fact, for many EU member states, concerns regarding transnational crime, border security, internal and external migration, and social integration have reached a head. There is a dubious struggle involved in balancing security and mobility within the European Union, and members continue to debate policy that is directly focused on the criminalization of migration (van der Woude et al., 2017). Therefore, despite the cooperative efforts of EU member states, hardline enforcement policies and expanded regulations targeting migrants are the typical – if not the "necessary" – response to current themes of terrorism and national security (Robin-Olivier, 2005). The European Union's response to immigration typifies the global reaction and is consistent with US immigration policy in both structure and organization.

US Immigration Policy

Historically, US immigration law and policy has fallen under the purview of both civil and administrative law, rather than criminal law (Chacón, 2012). However, in recent years, the enforcement of immigration laws has gradually moved away from centralized federal control, forcing a more local and perhaps less conversant approach to the control of migration. This shift in focus has resulted in a criminalizing of immigration policy, or what Stumpf (2006) terms "crimmigration," which brings together the strictest components of immigration law and criminal law (see Aas, 2011; Brouwer et al., 2017; Demleitner, 2002; Legomsky, 2007; Stumpf, 2006; Welch, 2012). At its very core, immigration policy is a mechanism of formal social control, principally designed to manage the migrant population and potentially exclude or remove those in that population who violate regulations or pose a significant threat to society. In contemporary society, however, immigration policy has had to adapt, due in no small part to globalization and the many contemporaneous nuances unique to a transnational economy. As this policy adaptation has evolved into crimmigration, the mixing of local and federal enforcement has had the overall effect of positively enhancing and exponentially increasing the power of the federal government to both punish and exclude (Beckett & Evans, 2015).

Beginning in the late 20th century, US immigration policy both expanded and updated the list of immigration-related violations. Offenses that now warrant severe criminal penalties, such as deportation and detention, were at one time civil matters (Stumpf, 2006). This indicates a fundamental shift toward crimmigration. New policies have further disqualified migrants from seeking a more permanent status (i.e., legal permanent residency or "Green Card" status) and caused an increase in support for formal crimmigration control policies through additional local law-enforcement involvement (Beckett & Evans, 2015). The trend of US immigration policy toward a punitive stance on migration is not novel or unexpected, but rather a response to a progressively fragmented enforcement system that does not yet have a clear vision, especially since the 9/11 attacks. While unauthorized migration is down from previous years, there are still more than 11 million unauthorized migrants currently residing in the United States (Krogstad et al., 2017), and from a policy standpoint, that makes the issue highly politicized and public opinion conspicuously contentious.

Heightened Social Controls

It is often presumed that the barrage of hastily enacted laws following 9/11 represented the beginning of the era of new restrictions against immigrants. In fact, an unprecedented series of immigration legislation enactments aimed at drug offenders and regulatory reforms, and targeting detention and deportation (like the Immigration Act of 1990, the Anti-Terrorism and Effective Death Penalty Act of 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), began and endured throughout the 1990s (for a comprehensive review, see Miller, 2005; Kerwin & Warren, 2017; Welch, 2003). These changes to immigration policy, coupled with the declaration of a War on Terror, ushered in a new era that was ripe for an explosion of immigration enforcement following 9/11 (Chacón, 2012; Kanstroom, 2004).

Under the pretext of waging the War on Terror, fundamental changes in federal immigration law and the way that law is enforced since 9/11 have furthered the use of criminal sanctions as the preferred and contemporary method for the control of migration in US society (Chacón, 2012). While the government can exert powerful formal controls against the general population, equally powerful and public (in an informal sense) are its targeted media campaigns; both were evident in post-9/11 society (Hauptman, 2013). Therefore, in concert with the federal government's endorsement of new restrictive crimmigration policies and sanctions designed to punish unauthorized and restrict legal migration, the criminal and threatening impression of migrants, precipitated by the media and government, severely enhanced public anxiety over immigration for years to come (Sellers & Arrigo, 2016). It is these types of public campaign against specific groups in society (i.e., immigrants, especially in the post-9/11 environment and within the transnational marketplace) that often target a particular segment operating at the fringes and habitually labeled as scapegoats for a host of identifiable social anxieties (Chacon, 2011; Welch, 2003).

Media campaigns launched against immigrants following 9/11 persistently associated foreign-born citizens and migrants with a variety of crimes, stoking public fear of terrorism, immigration, and a host of associated social problems (Welch, 2006). Although it is an informal mode of social control, the omnipresence of the media and its pervasive nature in the 21st century can readily sustain concern for targeted issues and even conjure a scapegoat on for which the public to focus its negative sentiment. The federal government's new immigration regulations accentuated national security and increased the deportation of unauthorized migrants, thus inciting the public to a moral panic against immigrants (see Hauptman, 2013; Mendez & Naples, 2015; Welch, 2003), while scapegoating of particular migrant groups created a general "us versus them" mindset with regard to immigrants in general (Welch, 2006). It was therefore evident that a criminalization of immigration had materialized, whereby the federal enforcement of immigration policy and the criminal justice system had melded into a long simmering system of crimmigration (Armenta, 2016; Stumpf, 2006; Zedner, 2010).

Crimmigration in Action

The crimmigration trend received an important boost in legislation with the USA PATRIOT Act of 2001. The Act was launched primarily as a means to combat terrorism, and included new provisions for increased border control, surveillance, intelligence-gathering, and law-enforcement expenditures at all levels of government, all in the name of national security

(Hauptman, 2013). While the PATRIOT Act pertained to all US residents, most provisions and control enhancements were directed at migrants, stripping away virtually all of their rights and providing concessions that had a distinctly negative effect on migrants who were suspected of involvement in criminal activity. Under the PATRIOT Act, immigration enforcement activity was shrouded in secrecy, and the mere suspicion of terrorist activity or of the commission of a non-violent misdemeanor could warrant indefinite detention and deportation, with no legal recourse or due-process rights (Kanstroom, 2004; Welch, 2004). With focused and increased law-enforcement practices, crimmigration policy not only concerns the the arrest of migrants for a wider variety of crimes but also facilitates the surveillance, interrogation, detention, and deportation of migrants via a serious reduction in judicial review and access to due-process protections (Welch, 2003).

Recently, US and EU crimmigration policies have begun to explore new strategies for reducing and controlling unauthorized migration, concentrating not just on migrants themselves but on options that go beyond borders, emphasizing controls external to an individual migrant. These efforts have had the overall effect of externalizing border controls while internalizing social control (Bloch & Chimienti, 2011). In both the European Union and the United States, attempts to reduce the influx of external migration have included developing and boosting infrastructure in the Global South, with the aim of lowering the necessity for migration, and increasing the number of countries that require a visa to cross the border, in order to narrow legal access to external migrants. Internal strategies have centered on escalating punishments for employers hiring unauthorized migrants and diversifying surveillance by utilizing the service industry (e.g., travel agencies, health care, education providers) to monitor and report clients' and users' immigration status.

Crimmigration, then, has given rise to criminal consequences that include a broader range of crimes and harsher punishments, and even incorporates elements that are usually reserved for the criminal justice system, such as preventative detention and plea-bargaining in the deportation and detention processes (Legomsky, 2007). A robust deportation system does enable some control over unauthorized migrants, but with the addition of crimmigration and added local enforcement support, a steady increase in non-immigration-related crimes that trigger the deportation process has also materialized (Kanstroom, 2000; Legomsky, 2007). This use of enhanced enforcement is especially prevalent where migration control is combined with a plethora of advanced technologies used to track and monitor people, constituting a "formidable armory of control devices" (Richmond, 2002:716).

21st-Century Globalization: Immigration Challenges and Opportunities

Even as public discourses claim that immigration is a multidimensional threat (Chiricos et al., 2014), globalization supports a freer flow of international migrant workers, serving as a catalyst to increase productivity and stimulate growth and income (Martell, 2016). While the business sector supports a rise in migrant workers in order to maintain a strong transnational market, apprehension over what influence these new migrants will have on the receiving country's culture is one of the prevailing fears of globalization. Especially in the post-industrial Information Age, migration policy itself can "give rise to feelings of uncertainty and threaten traditional sources of collective identity" (Richmond, 2002:723) and cause a nativist population to reject any influx of migrants or outsiders. Counter to the multicultural spirit of globalization, the assertion that migration may dilute existing culture and

undermine or erode social cohesion and national identity (Martell, 2016) manifests not only in immigration policy, but also informally (e.g., in the media). Designed to exclude and punish those who have been identified as the out-group, harsh new migration and crimmigration policies induce negative attention and imply that migrants have a proclivity toward criminal behavior. The 21st-century global society must then challenge these social barriers to migration. As Richmond (2002:719–723) suggests, "one of the ironies of a multicultural world is that, as diversity increases, so does the temptation to impose uniformity," thus reinforcing the need for a universal recognition of multicultural policies and human-rights reinforcement, even for migrants.

The New Immigrants

Ideally, immigrants migrate to a new country and are integrated into a society that fosters assimilation into the social system while allowing some retention of old culture and customs. Globalization, however, has increased both the number of countries of origin and the number of destinations for contemporary migrants (Martell, 2016). With so many different cultures coming together in countries that have traditionally lived in more of a monoculture or where the natives have little experience with multiculturalism, migrants are experiencing a new resentment that is based on stereotypical concerns over out-groups and which is translated into hostility. Much of the traditional migration to the European Union, Australia, and North America has been motivated by employment opportunities and the desire to increase or improve familial economic conditions. However, in recent years, for a variety of reasons, there has been an unprecedented increase in the number of refugees and asylees seeking sanctuary in the Global North. With proximity as a prevailing factor, many are making their initial entry into homogeneous EU member states (Munck et al., 2011). The current humanitarian crisis over migrants will require transnational cooperation and new policies that oblige countries to find a way to accept migrants despite the fact that they are "very different from the host populations, not just in their languages, cultures, and identities, but also in their religious beliefs, outlooks, lifestyles, and everyday practices" (Pakulski & Markowski, 2014). Further, there is growing concern that future migrants will be using migration to escape from a host of threats in their home countries (Donato & Massey, 2016), rather than seeking employment or economic opportunities in the global marketplace. Adding fuel to the fire is the frequent and public association of immigrants with criminal activity and terrorism through media reporting, exacerbating the refugee crisis. It is therefore anticipated that further animosity toward a – for the most part – innocent and desperate migrant group will emerge in the coming years as globalization progressively takes hold in additional countries.

The tendency toward desperate and covert measures in migration is the result of the current volume of displaced migrants and the number of countries affected by political, social, and economic turmoil. Mass migration over the last several years has therefore produced the largest refugee crisis since World War II (Martell, 2016). While there is no reason to expect a curtailing of the wave of migration in the coming years, the arrival and acceptance of displaced migrants from Syria, Somalia, Sudan, Afghanistan, and other affected countries into the European Union and United States – as well as other countries in the Global North – is not sustainable. In fact, after often lengthy and perilous journeys, migrants frequently arrive to find countries unwilling or ill-prepared to receive them. Migrants are finding new ways to get into various regions, and even choosing more dangerous modes of

entry since heightened border controls and remote surveillance of traditional or easily accessible entry points have forced innovative alternative routes to emerge (Bloch & Chimienti, 2011). Therefore, especially for refugees and asylees, the real risk of increasingly restrictive migration policies is the spread of unauthorized and underground migration, augmented by a rise in supplementary criminal operations, such as human trafficking and organized crime (Richmond, 2002; Newell et al., 2017).

For migrants such as refugees and asylees, official travel documents, including visas and passports, have become both commodities and exclusionary tools, issued only to those who are willing to accept sovereignty without its customary privileges, and in some cases, citizenship without effective assimilation. Concurrently, illegal immigration documents are also considered commodities for refugees, asylees, and unauthorized migrants, as they enable social inclusion where no other possibility exists. The European Union must determine how to best to vet, screen, and place new migrants into its various member countries.

With refugees and asylees finding fewer options in the European Union and migrants from Mexico and Central American countries facing a highly politicized US border, migration will continue to be a contentious issue in both areas. Much like the United States, some European countries have raised concerns over the number of migrants (including unauthorized migrants, refugees, and asylees) reaching their borders and have adopted no-entry policies and increased deportation and repatriation. Although a predictable byproduct of globalization, the consequences of our heightened enforcement and the expanding social control of migrants are dire, and can lead to several outcomes, including exploitation, marginalization, criminalization, social exclusion, and even tragic and preventable death (Longazel & Woude, 2014).

Shifting Away from a Dystopian Forecast

Several segments of society – including the government and media – have the power to reduce the negative sentiment toward immigration and immigrants and instead aid in providing a reformed understanding of transnationalism, multiculturalism, and cultural hybridity. Unfortunately, with contemporary issues such as terrorism and globalization warranting a thorough vetting and selection process, the wholesale trend of criminalizing immigration will likely continue. Reducing transnational access to migrants such as refugees and asylees could lead to a form of social sorting, or what Richmond (2002) calls "global apartheid." Overall, contemporary trends associated with migration forecast a future that is more globalized, accelerated, differentiated, and politicized (Martell, 2016). Therefore, in this era of globalization, it may be practical to consider that migrants naturally experience cultural pluralism and become multinational – which, for them, may manifest as dual citizenship or perhaps even as a supranational identity wherein a "transnational model of citizenship makes more sense" (Martell, 2016:104).

With the most recent US immigration-related legislation efforts failing to pass (i.e., the Border Protection, Anti-terrorism and Illegal Immigration Control Act of 2005 and the Comprehensive Immigration Reform Act of 2006 and 2007) and discourses on both legal and unauthorized migration continuing, immigration policy is currently at a standstill. The primary social consequences of migration, rooted in a public concern over cultural hybridity and the propensity of migrants to practice transnationalism as a matter of convenience, must find common ground in the 21st century. The embrace of cultural hybridity in a

globalized world would bring with it an infinite number of possibilities for migrants and a new understanding of citizenship, sovereignty, and border politics. The common concern over whether globalization might dilute the national identity of the existing populace and undermine social cohesion and solidarity (Cole, 2016) would quickly diminish if some form of cultural hybridity were employed. Fear and uncertainty would be replaced with a modernized view of the tenability of multiculturalism, where assimilation and the adoption of a transnational identity would render migrants indiscernible from the general populace and thus more accepted into society as global citizens. While this is an extreme possibility, the influence of globalization on society should not be understated, and in order to effectively control the future migrant population, new immigration policies must reflect the unique idiosyncrasies and true character of the 21st-century globalized world.

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31

International Policing and Peacekeeping

Michael J. Jenkins and John Casey

The fundamental purpose of policing is to maintain and enforce social control. This occurs informally – for example, as members of the still-existing 50 000-year-old, 400-member Jarawa tribe "police" one another on India's Andaman Islands, or when a neighbor scolds a group of teenagers for being truants. Policing also commonly occurs formally – as when a uniformed Tokyo Metropolitan police officer takes a robbery suspect into custody. From ancient kin policing to the creation of international police institutions, the form and function of a policing structure is based in a community's social values and determined by the arrangement of the society it polices. Mawby's (1990) description of policing in tribal societies offers insight into the ways that groups of people create social-control mechanisms to reflect different societal structures and values. Policing may be completely informal, based on a series of taboos. When taboos are breached, or conflicts result in deaths, it is considered a private matter, and consequently private responses (such as payback or revenge killings) are condoned. Alternatively, policing in tribal societies may also occur through the more formal authority of a warrior class, out of respect for the counsel of the elderly, or by means of group mediation.

In most modern societies, local police agencies serve as one of the starkest methods of formal social control. Whether in developed democracies, where police uphold a country's generally agreed-upon principles, or in developing countries with loosely organized governments, where police violently support a certain group's push for dominance, a powerful authority fortifies police actions. Local constituencies often define what constitutes appropriate citizen or police behavior, how to handle infractions, and who has the authority to maintain peace or prevent disruption. As police and peacekeeping players become further removed from the geographic, social, and political arenas in which they operate, it becomes more difficult (and yet more crucial) to clearly define these limits and roles. This is among the most important challenges for navigating effective international policing peacekeeping operations. This chapter will explore the various ways that the formal social-control techniques of international policing interact with informal social-control mechanisms to enact peacekeeping operations throughout the world.

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Police Cooperation in Developing and Conflict-Affected Countries

When police agencies in two or more industrialized democracies collaborate, there may be organizational and cultural differences between them, but they ultimately establish relatively equal partnerships that reflect their similar economic and political situations. However, of the 193 sovereign states and territories currently recognized by the UN, only 25–30 are classified as high-income democracies. In contrast, some 49 countries are classified as "least developed." The remainder vary considerably in their economic development and political structures. As a result, the vast majority of international policing cooperation involves asymmetric relationships between countries and police agencies with substantial economic, political, and social differences that affect their understanding of social values and social-control methods.

Working with the police in developing countries has been a long-standing element of foreign aid from industrialized countries. The last few decades have witnessed a significant increase in capacity-building and assistance efforts throughout the world and in the peacekeeping role of civilian police in conflict-affected countries. This new level of foreign involvement responds to geopolitical and humanitarian concerns about the economic and social collapse of countries in crisis and to the possible threat of international and transnational crime that can originate from countries that do not have an effective enforcement capacity.

Despite the changing doctrines of the last few decades, which have swung in favor of the international "responsibility to protect," foreign involvement in policing continues to be highly controversial. While the need to strengthen internal security is widely accepted as a basic building block of development (Clegg et al., 2000), there continues to be widespread suspicion of any form of security intervention in developing countries, where a security apparatus may be seen as tantamount to a new colonialization. Moreover, the growing nexus between security issues and foreign aid has also become a cause for concern to many in the development field, who claim that the security concerns of the donating countries are taking precedence over the economic, social, and health needs of the aid-receiving countries (Howell, 2006).

Current Conditions and Democratic Expectations

There is an assumption that the ideals of democratic policing are fully and equally accepted around the world. This has multiple implications for the norm-making and -enforcing processes in a given country. Democracies are characterized by a respect for minority rights, due process of law, the rule of law, and the need for a pluralistic, multicultural society. Although the international community has promoted this assumption (especially since the fall of the Berlin Wall), there is no guarantee that democratic policing will have any positive effect on the implementation and sustained promotion of democracy. In fact, there is some research that indicates democratic police operations may help foster democratization in the short term, but undermine long-term efforts (Fortna, 2008).

While the label "democratic policing" is used to describe the aspirations for law-enforcement practices around the world, it should be kept in mind that we may not necessarily be speaking about policing in political regimes that can be fully defined as democracies (Casey, 2010). The objective is to promote policing that respects the rule of law, serves the interests

of a wider community (instead of only those of the government or a powerful elite), and does not abuse citizens with violent force or arbitrary detentions. Can this be achieved only in a country recognized as a democracy? In some of the more "benign" authoritarian regimes, where the government uses soft power (e.g., control of the press, censorship, gerrymandering, judicial pursuit of opposition) instead of hard power (brute force), and uses its power and resources to improve the material comforts of a broad range of citizens, claims are often made that the police are meeting citizens' needs and operating with widespread community consent and legitimacy. The expectations and benchmarks for exercising consent and determining legitimacy might be quite disparate. Moreover, in many other transitional countries and partial democracies, respect for human rights and the rule of law may be applied to some sectors of the community but not to others (e.g., certain ethnic groups or women might receive differential treatment). Even within democracies, the continuing cycles of police scandals and subsequent commissions of inquiry are a stark reminder that fully democratic policing is a constantly evolving challenge.

What can be expected from the police in developing or emerging countries? Bayley (2006) outlines the goals of police development and reform programs as a set of fundamental principles of democratic policing:

- Police must give top operational priority to servicing the needs of individual citizens and private groups.
- Police must be accountable to the law rather than to the government.
- Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy.
- Police should be transparent in their activities.

In the majority of developing countries, where police are generally understaffed, underequipped, and poorly trained, they often rely on brute force in their interactions with the public and provide uneven service and protection. Paradoxically, in some situations, the high quality of police human resources does not always correspond with an exceeding proficiency in delivering police services. In these cases, underlying issues of culture and attitudes counteract objective progress in securing tangible resources. For example, in some communities, it may be the case that the public's fear of the police is necessary for the maintenance of law and order.

These contrasts highlight the relativity of particular values and the difficulties faced by international organizations in implementing "democratic" change. Many view legitimacy and procedural justice as inalienable aspects of the enforcing of norms of civilian behavior in a democracy. However, local customs and conventional relationships between a formal police body and citizens might well beget outcomes that fall far short of those ideals. Failing to realize the established backdrop against which policing is set can result in a distorted notion of the quality of police in an area. When international police enter a country to help assemble or transform its police function, it should be understood that standards of democratic policing are not absolute. More democracy, in the short term, may not always be better than less democracy. In fact, the United Nations (one of the primary international bodies involved in the deployment of international police missions and peace operations) does not include in its founding charter the word "democracy," despite this being an important aspect of its many missions. Furthermore, over a third of UN members, including one of the five permanent members of the Security Council, are not electoral democracies (Mancini, 2015).

To be sure, democratic goals are worth pursuing as ends in themselves, but sometimes it is the case that change – from both a civilian and a police perspective – must come slowly if it is to endure. As Cockayne & Lupel (2011) conclude, international peacekeepers (whether military, police, or from civil society) bring with them their own habits and norms, which can diminish local norms and thereby undermine traditional authority, opening the door for potentially more criminal behavior (e.g., in the form of organized criminal elements). Ultimately, we must accept that tension exists between full democratic expectations and the reality of having to accept adequate but problematic policing (International Peace Academy, 2003). The challenges faced in many countries are considerable given their governments' inability to provide sufficient security.

Peace Operations and Peacekeeping

"Peace operations" is the generic term used to describe a range of military, police, and civilian interventions that seek to restore order and create a sustainable society after a period of war or violent civil unrest. These periods exemplify the popular Durkheimian concept of *anomie* (or a state of stark incongruity between the need for a shared set of societal values and the agreed-upon methods for upholding them). From a practical perspective, the goal of peace missions is to disarm and demobilize combatants and reintegrate them into civil society in order to reduce the risk of continued armed conflict, while at the same time nurturing support for democratic political processes and reforming the security sectors. However, as this chapter demonstrates, the process of determining whose values are worth upholding and the manner of upholding them is the crux of many controversies in international peace operations.

Peace operations generally occur under the mandate of an international organization, primarily the United Nations through the auspices of the United Nations Department of Peacekeeping Operations (DPKO). The DPKO is dedicated to assisting the member states and the Secretary-General of the United Nations in their efforts to maintain international peace and security. In order for the DPKO to become involved in an international situation, the UN Security Council must adopt a resolution stating that a peacekeeping operation is appropriate. The resolution sets out the operation's mandate and size. The General Assembly then approves or adjusts the budget for the operation – which currently runs $6.8 billion a year.

Multinational peace operations are increasingly the tool of choice in addressing crisis management, most often as a way to halt violence, address humanitarian crises, support post-conflict reconstruction, and prevent state failure. Further, these interventions respond to international and transnational crime, as weakened states are in danger of falling prey to organized criminal interests and becoming a staging ground for broader criminal activities. While a small number of high-profile international conflicts, such as those in Iraq and Afghanistan, occupy most of the headlines, there have been some 71 United Nations-sponsored peace operations around the world since 1948, with 56 since 1988. Sixteen such operations are currently underway, involving a total of 112 207 personnel (police, military, and civilians) (United Nations Department of Peacekeeping Operations, 2017a).

Peace operations generally involve *peacemaking*, *peacekeeping*, and *peacebuilding* phases. Peacemaking is technically the initial effort to halt violence and provide basic security, especially for noncombatants. Peacekeeping also refers to the deployment of international personnel to help maintain peace and security in the aftermath of war (Fortna, 2008). It can be used to describe any follow-up intervention that occurs after peacemaking has quelled a

conflict, and in this way is generally used interchangeably with the broader and more correct term of "peace operations." According to Jarstad & Sisk (2008), depending on the mission and the consent of the belligerents, UN peacekeeping can take four forms:

1. *Observational missions:* A small unarmed groups of military personnel and sometimes civilians is sent to monitor a ceasefire, movement of troops, or a special event such as an election. Their main task is to watch and report on what they observe.
2. *Interpositional missions:* Lightly armed troops are deployed, again to observe and report, but also to separate forces or help demobilize and disarm factions.
3. *Multidimensional missions:* Military and civilian forces work together to implement peace settlements. Tasks may include organizing elections, training police, facilitating economic development, etc.
4. *Peace-enforcement missions:* Military contingents are mandated to use force in order to provide security and ensure compliance with a ceasefire. Some civilians may be involved, as well as robust military forces.

In their study of 20 major post-Cold War peacekeeping operations, Dobbins et al. (2013) found 16 produced greater peace, 18 produced greater democratization, 17 produced more effective governance, 18 produced economic growth, and 18 improved efforts at human development. The number of UN peacekeepers has increased dramatically since 2004, leading some to question whether the body is overstretching its capacity. In 2011, UN Secretary-General Ban Ki Moon issued a review of peacekeeping efforts and called for a shift away from military peace operations to crisis diplomacy and peacemaking (Gowan, 2011).

Finally, peacebuilding is the continuing (post-peacekeeping) work to maintain and create a stable environment. It typically includes capacity-building projects that seek to reform the police and reconstruct and strengthen physical and institutional infrastructure. Military forces are dominant in early peacemaking intervention work, but peacekeeping and peacebuilding involve a greater participation of civilian police.

Despite a general misconception that peacekeepers mostly come from well-resourced developed countries, poorer developing countries actually provide more personnel to UN missions. In July 2016, 121 countries contributed a total of 100 746 uniformed personnel. In addition to military and police, there were approximately 18 000 international and local civilians and UN volunteers. Table 31.1 provides a list of the top 10 contributors of police to UN peacekeeping operations. Only some 4.5% of the troops and civilian police deployed in UN missions come from the European Union and around 1% from the United States, but European countries and the United States also contribute peacekeepers to missions sponsored by the European Union and NATO. Peacekeeping continues to be a dangerous activity, with some 2500 military and civilian peacekeepers killed while serving on UN missions since the first operation in 1948.

Policing in the Three Phases of Peace Operations

The three phases of peace operations, peacemaking, peacekeeping, and peacebuilding, can also be referred to by the more general terms of pacification, stabilization, and institutionalization (Bayley, 2006). During pacification, security is provided almost exclusively by the military intervention force; in stabilization, it is provided either by an international police force or by an interim local indigenous force; and in institutionalization, it is provided by a

reconstituted indigenous police force supported through external technical and financial assistance. Once the initial operation has contained the worst of the violence through military intervention, the general rule is that civilian police take on the responsibility of maintaining order. It is at this point that it becomes vital for reforms to account for and integrate local norms and behavioral expectations, to ensure a proper handoff to those entities responsible for institutionalizing police practice.

In the institutionalization phase, the policing function is transferred back to the newly functioning state, and external support is provided to build the capacity of its reestablished institutions. Although the typical roles of civilian police vary considerably depending on the mission, the stabilization and institutionalization phases typically involve the following:

- Establishing and maintaining a law-enforcement and criminal-investigation capability.
- Assisting in dismantling the old instruments of repression and reestablishing the criminal justice system, including courts and correctional institutions.
- Undertaking investigations and collecting evidence appropriate to the prosecution of alleged serious violations of human rights.
- Engaging in confidence-building within the civil community by operating impartially to enforce the law.
- Selecting and training new members of the indigenous police agency that will ultimately take over the law-enforcement role from the international police.
- Providing management support for police, with the goal of changing the culture of law-enforcement officials.
- Assisting in promoting the rule of law necessary for civil peace (Hunt, 2015; Linden et al., 2007; Mobekk, 2005).

The reality, of course, is much more chaotic than this three-phase framework. Whether the original conflict resulted from external interventions, such as in Iraq, from territorial secession, such as in Timor-Leste and Kosovo, or from internal conflicts, such as in the Solomon Islands and Sierra Leone, the three phases overlap: attempts at stabilization and institutionalization are often interrupted by flare-ups of violence that require further pacification. Despite the focus on civilian policing as the provider of security in the later phases, police

Table 31.1 Top Ten Contributors of Police to UN Peacekeeping Operations. *Source:* United Nations Department of Peacekeeping Operations (2016)

Country	*Number of Police*
1. Senegal	1339
2. Bangladesh	1148
3. Rwanda	967
4. Jordan	946
5. India	893
6. Nepal	741
7. Egypt	699
8. Burkina Faso	471
9. Nigeria	419
10. Cameroon	388

officers are usually supported by a continuing military presence, although the military tries to fade into the background as the police take on a greater role.

Moreover, while the ultimate goal of peacekeeping is to return full policing and security responsibility to a reestablished independent political regime and end the need for international peacekeepers, outcomes can vary considerably. The peacekeeping intervention in Cyprus in 1964 resulted in a brokered peace that institutionalized a division between Greek and Turkish territories that continues to the present. In international missions in South Sudan, the Central African Republic, Haiti, and Mali, peacekeepers are asked to address unique challenges, including high levels of criminal violence, trafficking, and organized crime networks, and the presence of large numbers of civilians seeking long-term protection at UN bases where the UN military forces do not have the skills and capacities to address them. In situations where violence risks escalating to a full-blown war or mass atrocities, United Nations Police (UNPOL) can be critical to maintaining security and protecting the civilian population from physical harm, filling the gap between the protection capabilities of the military and civilian components of peacekeeping missions (Sabastian, 2015).

Police–Military Relations

The role of the military is changing as a result of its increased participation in peace operations and humanitarian aid. The military forces of many countries are transitioning from a primarily war-fighting role to a range of non-combat functions. The military is important not only because of its capacity to wield deadly force, but also because it is well resourced and staffed by disciplined personnel who can potentially oversee peace operations and provide humanitarian aid in difficult situations. In countries that lack an effective government, the division between military and police during peace operations will be blurred (Bayley, 2006). During initial peace operations, the military must, among other tasks, protect refugees, arrest war criminals, protect infrastructure and national patrimony, gather criminal intelligence, break up criminal gangs, and prevent interethnic intimidation. A security gap will inevitably emerge unless the military involved in the initial intervention is willing to serve as police until the international community provides a viable civilian alternative or competent indigenous police are created. Even once civilian policing functions have been reestablished, they often need to be backed up by the combat power available through a continued military presence. As of June 2017, the United Nations provides nearly 100 000 military personnel, who come from over 120 different countries. These "blue helmets" are members of their own national armies and are sent around the world to quell unrest and foster peace. They are called upon to protect civilians and UN personnel, assist in-country police and military personnel, monitor disputed borders, and assist in implementing peace agreements between combatants (United Nations Department of Peacekeeping Operations, 2017b).

Despite the overlap of functions, international entities still seek to maintain the separation – both operational and symbolic – between military operations and civilian policing. While there is little question that initial interventions to quell violence require the combat power of the military, the mix between military and civilian police in the later stages of peacekeeping and national building continues to be debated. Each peacekeeping situation is different, but in general there is agreement on the need to build strong civilian policing capabilities in order to address law-and-order issues instead of relying on the military. One

adage, attributed to a senior US advisor to the Iraqi Ministry of the Interior, is, "If you want to build a banana republic, build the military; if you want to build a republic, build a police force" (Cha, 2003:A01). It is widely acknowledged that it can be difficult for combat units to transform themselves from war fighting to benign peacekeeping, even though the military has been working to develop more responsive rear-area operations that involve their own "warrior police" – the military police – in policing local populations (Patton, 2007).

Recruitment of the Reestablished Police

One of the major challenges of peace operations is the retention of existing local indigenous police officers, or the recruitment of new officers when those employed under old regimes are compromised. Experts generally agree that those with records of human-rights abuses must be excluded from newly formed indigenous police, as reestablished policing can quickly become discredited by association with disgraced officers and old behavior patterns may be passed on to new recruits (Bayley, 2006). At the same time, former military, militia, or police personnel may be the only people who have the training needed to quickly assume law-enforcement duties. Equally importantly, if they are not recruited to the new policing organizations, without other employment opportunities, they may use their training and experience to turn to criminal activity. Police reform in conflict-affected and transitional societies usually requires some form of vetting aimed at accounting for the role that officers have played in the past, in order to purge those who are considered unfit because of prior corrupt behavior or human rights abuses. The aim is to establish a new police agency containing only suitable officers.

In practice, however, full lustration is difficult, given that many of the power structures and relations from previous regimes remain intact, and what often emerges is a negotiated settlement that includes some form of amnesty, or a truth-and-reconciliation process in which testimony of past abuses is given as part of a request for pardon. Some security-sector reform programs have sought to begin with the creation of a *tabula rasa* or "zero point," before which past activities are not addressed, in order to limit political opposition. They often result in the transformation – instead of dissolution – of former repressive organs and paramilitary rebel forces, which can be seen as a prerequisite for buying the acquiescence of former perpetrators.

In ethnically fragmented societies where the ethnic character of the police was a factor in the conflict, the newly established agency should preferably be representative of the different ethnic groups, who should be recruited, trained, hired, and deployed together. If one group has been traditionally excluded from public service, however, it can be difficult to find qualified personnel from within its ranks, and to create the structure, processes, and organizational culture that will facilitate their integration into the new police. Also, given that violence against women and children is often of particular concern in conflict situations, police recruitment efforts need specifically to include a component for the recruitment of women, and training programs for all new recruits need to include gender-sensitivity classes.

Policing and Civil Society

Alongside the military and civilian policing components, civil society organizations (CSOs) have become key non-state actors in peacekeeping (Bah, 2013; Hunt, 2015; Roberts et al., 2010; Zanotti, 2010). These organization are also referred as to nongovernmental organizations

(NGOs), community-based organizations (CBOs), private voluntary organizations (PVOs), and nonprofit organizations (NPOs). We will use the term "CSO" to refer to the wide range of mission-based organizations separate from formal government structures.

CSOs are playing an increasingly prominent role in policy-making and service delivery, both domestically and internationally, in a wide range of fields – and peacekeeping operations are no exception. In the last 2 decades, the major intergovernmental cooperative structures have all increased their interactions with CSOs, and the United Nations has moved to a "third generation" of CSO relations that is marked by more stable collaborative arrangements and joint strategic work (Casey, 2016). The UN Department of Peacekeeping refers to CSOs variously as actors, stakeholders, and partners, and the *Civil Affairs Handbook* (United Nations, 2012) offers numerous vignettes that focus on collaboration with and between CSOs.

CSOs work in a wide variety of fields, including advocacy, education, economic development, governance, health, and humanitarian interventions. Most importantly for this discussion, they often take on community policing, civil defense, and other non-state policing roles, working in concert with the military and police to build safety and security that is more responsive to local needs and customs. There are fraught boundary and definitional issues around this, with an unclear separation between CSOs, which have broad-based support and act in the collective interests of pacification and the restoration of the rule of law, and other non-state actors such as armed militias, criminal organizations, and sectarian front organizations, which pursue their own narrow interests. Even CSOs that initially work to complement official policing efforts may at times seek to supplement them by creating parallel processes (Hunt, 2015). Local and international CSOs also adopt adversarial roles as watchdogs and critics of the military and police peacekeepers.

The role that CSOs can play is very much conditioned by the traditions and regulations regarding their role in society, both in the conflict zone and in the countries that participate in peacekeeping operations. Relations between governments and CSOs around the world range from mutual support and collaboration to outright government repression (Casey, 2016). The prior attitudes and experiences of UN staff members, peacekeeping leaders, and local government officials will inevitably influence the roles CSO are accorded, and the resources of local and international CSOs will determine what they can do. Bandarage (2011) examines the discourses around the "Norwegian Model" of peacekeeping, which is based upon advancing the role of CSOs and the outsourcing of conflict resolution at both local and international levels. It assumes that CSOs can implement strategies that government intuitions would not attempt, from policing local populations using indigenous norms to disguising secret international talks as humanitarian or academic meetings. At the same time, Bandarage's analysis demonstrates some of the criticisms of CSO work, including the accusation that international CSOs are the spearheads of a new form of colonialism and concerns about the income disparities created by foreign funding.

Marijan & Guzina (2014), discussing the role of CSOs in enhancing police legitimacy in Northern Ireland, describe how CSOs function operationally and strategically as intermediaries between citizens and police, international, and governmental bodies. CSOs have influential oversight that can help police transform from a discriminatory, abusive institution to one that respects and serves the interests of all individuals. They can also act as intermediaries between community members and local or international police organizations, as they translate community norms, customs, and behaviors into practical devices for creating more inclusive and free practices. Together, these functions ensure that proper and

lasting reforms are made. There is a caveat: CSOs must be mindful that the perception of their being too closely tied to one side or the other can draw suspicion from both, hindering their attempts at fair-minded work (Marijan & Guzina, 2014).

Capacity-Building and Reform

Capacity-building is the long-term process of crafting policing that starts once the initial peacekeeping crisis has been overcome. Capacity-building projects are also found in most aid-receiving and developing countries around the world, many of which have not been involved in violent conflict. Along with the generic term "capacity-building," there are a wide range of other labels also used for such interventions (Goldsmith & Sheptycki, 2007), including *technical assistance*, *development assistance*, and *reform*. Capacity-building activities can focus primarily on efforts to modify the knowledge, skills, and character traits of police officers and support staff (Harris, 2005), but they may also involve the underwriting of new capital infrastructure and equipment, as well as the creation of oversight mechanism and the crafting of legislative reforms to support democratic policing principles.

The separation between conflict-affected and other development and transitional situations is blurred by the fact that some aid-receiving countries are characterized by high levels of violence and the incapacity of the state and police agencies to exert control over territory. Even where there are no officially declared conflicts, the level of insecurity may be extremely high. Nevertheless, there is a distinction both conceptually and institutionally between conflict and general development capacity-building. Within the UN structures, the DPKO takes care of capacity-building as part of the later phases of peacekeeping, while the Development Program (UNDP) has the responsibility for general development programs. But the clearest indicator of the distinctions is that the majority of police development and capacity-building programs are carried out not by the United Nations, but by other international bodies, such as the Organization for Security and Cooperation in Europe (OSCE) and the Commonwealth Secretariat (an association of 57 independent states from the former British Commonwealth), as well as through direct country-to-country and agency-to-agency cooperation programs and by CSOs.

The US Department of State's Bureau of Political-Military Affairs manages the two primary US security-assistance programs focused on building international peacekeeping capacity: the Global Peace Operations Initiative (GPOI) and the African Peacekeeping Rapid Response Partnership (APRRP). The GPOI is a US government security-assistance program that works to strengthen international capacity and capability to execute UN and regional peace operations. Its vision is to "work collaboratively with US and international stakeholders to achieve and sustain operational effectiveness in peace operations and promote international peace and security." The APRRP, meanwhile, serves to build and strengthen internal and legitimate legal structures within needy countries and to generate and rapidly deploy peacekeepers in six initial partner countries: Ethiopia, Ghana, Rwanda, Senegal, Tanzania, and Uganda. Both programs are implemented in close partnership with the Department of Defense (US Department of State, 2017).

The result of this wide range of providers and complex array of projects – both from within individual donor countries and internationally – is that there is often little coordination of the capacity-building programs. The assistance provided is not always appropriate to the local context, and too often the emphasis is on foreign experts and the pre-packaged solutions they bring with them instead of sustainable programs that reflect

local realities (Mobekk, 2005; United Nations, 2004). However, international capacity-building projects are increasingly supporting local-led strategies of assessment and consultation carried out with the active participation of the various local and international stakeholders, and there appears to be increasingly effective coordination between the various projects in a given country.

Capacity-building programs for policing operate in a context of constant tension between competing priorities. The sponsors and participants in reform programs must, for example, decide whether their focus will be on seeking to strengthen police organizations alone or whether they will link to efforts to strengthen other state organizations and CSOs; whether their reform strategies will be based on implementing external models or whether they can be adapted to local realities and the local vernacular; and how much effort they should place on top-down as opposed bottom-up reform (International Peace Academy, 2003). But the most fundamental tension facing any reform program is whether its efforts are helping prop up a repressive, corrupt, and inept regime. Program managers are constantly faced with the dilemma of when to abandon a project in response to government instrumentalization.

The international community is taking seriously the complications related to capacity-building and is working to promote reform. In 2011, a report of the Secretary-General of the United Nations called for UNPOL to come up with a "comprehensive body of policy and technical guidance in order to ensure good practice and consistency of approach" between and during peacekeeping and capacity building missions (United Nations Police, 2011:9). The result was the formation of guidelines that spelled out the fundamental principles and approaches to police capacity-building and development in conflict-affected countries and crises. The 118 guidelines deal with dozens of key areas that address policing within a capacity-building situation (United Nations, 2015).

Lessons Learned: The Doctrines of Peace Operations

Given the number of peace operations since the end of the Cold War, there has been an increasing emphasis on understanding the lessons learned from past operations. Despite some successes, peacekeeping has generally not met the expectations of the international community (Hunt, 2015; Linden et al., 2007; Mobekk, 2005). Official reports often portray UN peacekeepers as inept and ineffective. As a result, the United Nations established a Peacekeeping Best Practice Unit, which has contributed to the development of a written doctrine to assist it and other supranational bodies in implementing clear, credible, and achievable mandates for peacekeeping (United Nations Department of Peacekeeping Operations, 2008).

This doctrine was developed in response to the 2000 Report of the Panel on UN Peacekeeping Operations, commonly referred to as the "Brahimi Report" (United Nations, 2000), which covers the full range of issues related to peacekeeping, including strategic analysis for the determination of intervention criteria, mission planning, and mission support. The report provides a list of 22 recommendations and concludes that the United Nations has not yet fully developed the capacity to effectively deploy and sustain peacekeeping operations. More specifically, it states that there are systemic problems caused by the considerable gaps between the security needs of a country in crisis and the capacity of international peacekeepers to effectively intervene in volatile situations; operational problems caused by the lack of appropriate personnel and sufficient resources; coordination

problems between the different components of a mission, and between international contributors and the remnants of the local institutions; and, most crucially, a lack of political will by the adversaries and the international community to come to the agreements necessary to end hostilities and begin peacebuilding (Hunt, 2015; Linden et al., 2007; United Nations, 2000).

In addition to the United Nations, other international organizations and NGOs that focus on international peace and security have made recommendations on the role of civilian police in peace operations. The Geneva Centre for the Democratic Control of Armed Forces reviewed numerous post-mission reports and interviewed personnel in preparing *Identifying Lessons in United Nations International Policing Missions* (Mobekk, 2005). This report expressed concerns about the need for a clear mandate, rigorous needs assessment, and sufficient resource allocation, and made a number of additional observations:

- Contingents typically consist of officers from a wide variety of policing backgrounds, each with different methods, standards, and doctrines. This can cause friction among the various national contingents and can lead to different methods being taught to the local police.
- Coordination and cooperation within the police component in the mission area, between the policing mission and headquarters, and among the police component and other agencies and the local population has proved problematic in international policing missions. The quality of cooperation has tended to depend on the individuals involved rather than on existing structures for coordination, cooperation, and communication.
- The international civilian police seek to instill in the local police a sense of democratic civilian policing that respects human rights and emphasizes the importance of civilian oversight and control mechanisms, but paradoxically some officers come from countries that do not have a strong human-rights record and the international sponsoring organizations themselves lack adequate accountability structures for their own staff.
- Local ownership of the entire process of training and reforming local forces is essential. Reform must reflect the realities and needs of the mission country, and it must take into consideration local socioeconomic factors. The local police forces and civil society must be consulted, and must feel that they own the processes that are so crucial for the long-term stability of their country. The international civilian police must cooperate with local police officers, politicians, and civil society, and there must be a clear understanding of the desired goals.

More recent analysis has determined that the mandates of UN peace operations have evolved due to the changing nature of conflicts around the globe. Peace operations have become more ambitions and complex, especially for UNPOL. More specifically, from meeting security gaps to promoting police reforms, UNPOL is perceived to be "mission-critical" and essential in its ability to lay the foundations for a sustainable peace (den Heyer, 2012). However, problems have surfaced in service delivery. Among them is the need for more and better personnel. Recruitment and pre-deployment training are essential to address the volume and complexity of situations presented in the field. Relatedly, field operations personnel need strategies and resources beyond those that are military and paramilitary in nature. The reliance on these strategies does little to address the complex problems endemic in conflict areas. Addressing these challenges will require a solid commitment by various organs of the United Nations, and especially police-contributing countries. Key to success

is the acquisition of knowledge about best practices and the creation of new ways to learn about peacekeeping operations. One proposed method is a deeper contextualization of a system known as "monitoring and evaluation" (M&E). This provides a framework in which to analyze UNPOL missions through an organizational-learning perspective in order to assess what is working, what is not, and how things can be improved (Hunt, 2015). Because peacekeeping is so complex, and requires such a financial commitment by so many, it will invariably be called upon to provide some solid measure of effectiveness. One can hope that this manner of M&E will serve this purpose and provide decision-makers and those in the field with the valuable information they need to serve the information needs of peacekeepers around the globe.

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32

Human Rights and Social Control

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This chapter addresses the social control of grave violations against human-rights norms. By "social control," we mean collective (or collectively backed) responses to violations of social and legal norms, "norms" being understood as counterfactual expectations. Like all other norms, human-rights norms are generated and enforced in social processes and under specific historical circumstances. Social control may be formal or informal. Formal social control includes legal control. Criminal law interventions specifically have become increasingly prominent in reaction to grave human-rights violations in recent decades. This trend culminated in the creation of the first permanent International Criminal Court in 2002. Criminal justice control is supplemented by several other formal and informal mechanisms, including truth commissions and vetting mechanisms.

In this chapter, we summarize the notion of human rights and the history of interventions against violators and the societal conditions that advanced this history. We then provide a survey of different institutional control institutions. The focus is first on criminal law responses. Here, we seek to supplement a dominant concern with deterrence by highlighting cultural effects, specifically the potential of interventions to shape collective representations and memories of human rights violations. A second focus is on supplemental mechanisms, including institutional experiments such as the gacaca courts of Rwanda and truth commissions. In the final section, we address the potential consequences of formal interventions for informal social control of human-rights violations.

Human Rights and the Criminalization of Offenses: Origins and Conditions

Much of human history did not know the notion of human rights. In fact, behaviors that are now condemned as atrocity crimes – the worst kinds of violations of human rights – were at times praised as heroic deeds, and those responsible as great state-builders (Giesen, 2004a);

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otherwise, they were – and still often are – ignored and denied (Cohen, 2001). Mass killings, enslavement, and torture frequently went hand-in-hand with conquest and colonialism. Yet, over the past few hundred years, global ideals surrounding human rights have emerged, developed, and eventually taken institutional form. This evolution includes an increasing level of intervention by the international community in domestic violations and more commonly prescribed concepts of wrongdoing and response.

Human rights are those civil, political, social, and economic rights that are granted humans independently of their citizenship. They are codified in the Universal Declaration of Human Rights (UDHR), passed by the United Nations General Assembly on December 10, 1948, in response to the atrocities committed by Nazi Germany. Human rights are associated with the right and obligation of the international community to intervene against offenses by national governments. They thus weaken the principle of national sovereignty, established by the Peace Treaty of Westphalia that ended the Thirty Years War in 1648. While most violations of human rights do not constitute crimes, and while the principle of national sovereignty is still prominent, considerable change has occurred. It has been argued that many previous centuries can compete with the 20th with regard to the level of atrocities committed, but that the 20th century is distinct in that it saw serious attempts to control grave human-rights abuses, with the aim of slowing or preventing them and of punishing their perpetrators (Minow, 1998). Some scholars even diagnose a "justice cascade," referring to the increasing tendency to prosecute offenders against human-rights norms, and to a positive relationship between human-rights trials and human-rights outcomes (Sikkink, 2011).

Origins and Developments

The process toward the development of human-rights law began early in the 19th century with the banning of the slave trade by Great Britain, followed by Spain, Portugal, and the Netherlands. A novel network of treaties set up a system of (Admiralty) courts to enforce the new norms (Martinez, 2012). In the later part of the 19th century, humanitarian law, or the law of wars, was codified in a series of international conventions known as The Hague and Geneva Conventions. These conventions were drafted by multinational conferences that initially sought to establish rules regarding the treatment of wounded soldiers and of prisoners of war. In 1949, rules were added against the deportation of individuals or groups, the taking of hostages, torture, collective punishment, "outrages upon personal dignity," the imposition of judicial sentences without due process, and discriminatory treatment. The Geneva Convention has garnered broad support across the world's nations, as is indicated by the over 190 nations that have ratified it.

Humanitarian law provided a foundation for judicial intervention, initially limited to situations of international conflicts. The International Military Tribunal in Nuremberg (IMT) against leading Nazis drew legitimacy from the Conventions, as did the Tokyo trials against Japanese war criminals. Yet, the history of Nazism had shown that even the treatment of domestic populations should not remain unchecked by the international community. Unbearable in itself, mistreatment at home may prepare yet more horrendous offenses against foreign peoples. In Nazi Germany, for example, the gassing of German children and adults with disabilities served as a training ground for the SS's involvement in the "Final Solution," the murder of 6 million of Europe's Jews and millions of members of other groups (Schmidt, 2008).

Two subsequent Protocols to the Geneva Convention, both of 1977, marked a further weakening of national sovereignty. Protocol I extended the protections of the Hague/Geneva Conventions to persons involved in wars of "self-determination," typically liberation wars, which former colonies fought against colonial powers. Thus, violations of humanitarian principles could no longer be considered the internal affairs of colonizers. Going further, Protocol II extended humanitarian protections to persons involved in severe civil conflicts, prohibiting collective punishment, torture, hostage-taking, acts of terrorism, slavery, humiliating and degrading treatment, rape, and enforced prostitution. These Protocols have also found broad support – albeit weaker, due to their more interventionist nature – with 150 and 145 signatories, respectively.

The experiences of the World War II period also gave birth to the principle that the rights that many countries guaranteed their own citizens (civil rights) be extended to all humans (human rights), independently of their citizenship. These rights were certified in the UDHR and a series of international treaties. Sovereign states would now be bound by a new and growing system of international law that was not limited to times of armed conflict. Almost simultaneously, The Convention on the Prevention and Punishment of the Crime of Genocide came into force on January 12, 1951. Under this convention, genocide, "whether committed in time of peace or in time of war, is a crime under international law which…[the contracting parties] undertake to prevent and to punish" (Article 1). Threatened with punishment were "constitutionally responsible rulers, public officials or private individuals" (Article 4).

Other conventions sought to protect the human rights of women (1979), children (1990), and indigenous peoples (1991). Yet, enforcement tended to be weak, at least through the 1980s (Sikkink, 2011). Treaty bodies created by the UN General Assembly, such as the Human Rights Council, focused on states' legal accountability. They monitored violations and worked toward solutions with accused governments, but had few enforcement powers. New regional courts, such as the European Court of Human Rights, the African Court of Human Rights, and the Inter-American Court of Human Rights, also applied a state accountability model. Treaty Bodies and courts asked states to provide remedies when violations were recorded, including changes in policies and/or reparation payments to individuals victimized by past policies. Only the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (1987) applied standards of criminal liability, like the genocide convention and the Geneva Convention before it – and, later, the Rome Statute of 1998, which established the ICC.

This situation partially changed during the 1990s. A new model of criminal liability began to supplement state accountability, even if it was preceded by the London Agreement through which the victorious powers of World War II had created the International Military Tribunal in Nuremberg. After a long hiatus caused by the Cold War between the United States and the Soviet Union, the breakdown of the latter allowed for new initiatives, including the foundation of new international criminal courts and tribunals. Different from Nuremberg or Tokyo, these new courts did not grow out of military victory. Instead, the UN Security Council established, for example, the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and a similar court for Rwanda (ICTR) in 1994. Subsequently, the Rome Statute of 1998 laid the foundation for the ICC, the first permanent international criminal court. The ICC has jurisdiction over four types of crime: genocide, crimes against humanity, war crimes, and the crime of aggressive warfare. The Rome Statute entered into force in 2002, once 60 countries had ratified it. Today, it has been ratified by more than 120. Yet, several members of the international community have refrained from doing so, including powerful countries such as the United States, China, and Russia.

In addition to international courts, a diversity of other courts are involved in the new response to crimes against human rights. First, *hybrid courts*, emerging from agreements between the United Nations and national governments, are staffed with groups of domestic and international judges who apply domestic and international law. Recent examples include courts in Sierra Leone, East Timor, Kosovo, and Cambodia, the latter a much-delayed response to the genocidal mass killings of the 1970s under the Khmer Rouge regime. Trials in such hybrid courts, typically conducted in the countries where the crimes were perpetrated, have two advantages: they allow for easier access to victims and witnesses than proceedings in international courts, while international participation may reduce (but not eliminate) the risk of partisan abuses of trials as revenge mechanisms by post-transition regimes – or, alternatively, obstruction by past perpetrators who have managed to hold on to political power under the new regime. Second, *foreign courts* may also respond to human-rights violations. Most famous is the Jerusalem trial against Adolf Eichmann (1962–64). More recently, under the new doctrine of *universal jurisdiction*, a Spanish judge charged Chilean General Augusto Pinochet and (unsuccessfully) requested his extradition from the United Kingdom. While these and other comparable proceedings may occur solely at the national level, recent studies emphasize the increasing influence of international norms upon national-level policies (Levy & Sznaider, 2010).

The creation of new legal institutions corresponds with a quadrupling of trial activity, at both the domestic and the international levels, in just 2 decades from the early 1980s to the early part of the 21st century (Sikkink, 2011). Cases tried in foreign courts remain rare, however, and domestic courts are a prominent part of international justice when they apply international humanitarian and human-rights law, often in combination with domestic law. Importantly, domestic courts now operate in the shadow of the ICC, the mere existence of which likely encourages domestic enforcement, as most countries prefer to handle cases in their own justice systems (Roht-Arriaza, 2005; Sikkink, 2011). Crucial in this context is the doctrine of complementarity that governs the ICC. The court can only take up cases if domestic courts are unable or unwilling to do so. Domestic courts, however, tend to try government and military leaders only after regime changes (e.g., Argentina, Chile, Iraq), while low-level defendants are typically targeted in cases of regime continuity. Examples are the massacre committed by a US company in the village of My Lai during the Vietnam War (Savelsberg & King, 2011) and the abuse and torture committed by US soldiers in the Abu Ghraib and Guantánamo Bay prisons (e.g., Del Rosso, 2015). In addition, penalties in these cases tended to be either mild or greatly reduced after initial sentencing.

Societal Conditions of Human-Rights Norms and their Enforcement

Recent research explores structural and cultural conditions of the emergence of human-rights norms and the intensification of enforcement. On the cultural side, scholars such as Émile Durkheim and Erving Goffman alert us to the growing status of an individual's dignity in modern society. While this dignity sets limits to the intensity and types of punishment that can be applied, it simultaneously encourages the punishment of killers, including dictators who radically disregard the "sacred" status of individuals in modern society. Reactions are further intensified by the growing sensitivity to physical violence that accompanied the pacification of domestic life to which Norbert Elias alerted us in his classical arguments about the civilizing process.

Structural changes also contributed to the growth of international criminal justice for the protection of human rights. Globalization, driven by the internationalization of economic ties and by modern technologies of communication and transportation, created a new dependency of nation states, and their leaders, on the international community. This shift is supported by the establishment of international governmental organizations (IGOs) such as the United Nations and its many sub-organizations and by the multiplication of international nongovernmental organizations (INGOs), representing a form of civil society at the global level. Five times as many organizations worked on human rights issues in the 1990s as in the 1950s. Specifically, transnational advocacy networks (TANs) have proven effective, especially when they raise issues involving bodily harm to vulnerable populations; when responsibility can be attached to specific actors; when networks are dense, involving many actors and providing reliable information flow; and, finally, when target actors show material or normative vulnerabilities (Keck & Sikkink, 1998).

While structural changes in the balance of power have thus opened up opportunities for international criminal justice intervention, continuing imbalances of power still leave their mark. Powerful countries such as China, Russia, and the United States, and their rulers, have been spared criminal justice intervention when they offended against human-rights law. Further, for the most part, only formerly powerful leaders have been indicted, and their numbers are few (e.g., Charles Taylor and Saddam Hussein), although there are important exceptions (e.g., Slobodan Milošević and Omar al-Bashir). Again, when current officials are prosecuted, typically in situations of regime stability, they tend to be low-ranking officers, both internationally and nationally.

Conditions for the Functioning of Control Institutions

Social control of human-rights offending occurs in the context of formal and informal institutions. Having spelled out a number of formal institutions already, specifics on their functioning and consequences are in order.

Organizational Conditions for the Functioning and Effects of Human-Rights Courts

Formal Security Council decisions and international treaties are only the first and necessary steps toward creating international courts. Their actual functioning depends on multiple social actors and organizational forces. Sociologist-criminologist John Hagan (2003) identified, for the ICTY, a multitude of innovative actors in the judicial field, all with different strengths (or forms of capital) and exposure to various national legal traditions.

Two brief examples must suffice. After the UN Security Council had established the ICTY, it appointed as chief prosecutor Richard Goldstone, a South African judge with impeccable human-rights credentials but little criminal law experience. Goldstone used his international contacts and continued media presence to secure a $30 million budget for the court. Later, he gained, through his diplomatic contacts, access to CIA aerial images of mass graves around Srebrenica, allowing ICTY investigators to advance their massive exhumation project. Still, after 2 years and 70 indictments, only six suspects were in custody. In this

situation, the court resorted to legally problematic hearings against defendants who were not in the custody of the court ("in absentia hearings"), undermining the legitimacy of its proceedings.

Change came only after a new prosecutor with different forms of professional capital took over from Goldstone. Canadian jurist Louise Arbour's substantial expertise in criminal law became crucial in transforming the "virtual tribunal" with its questionable "in absentia" hearings into a "real time tribunal" (Hagan, 2003:93–131). Arbour linked traditional tools of criminal law with the UN mandate by introducing sealed (secret) indictments and surprise arrests through NATO military forces. These strategies resulted in a substantial increase in the number of defendants in custody. In short, Security Council resolutions alone do not determine the success of a newly founded international criminal court. Innovative strategies, involving cooperating and competing legal actors, but also actors from the worlds of diplomacy and the military, from national governments, IGOs, and NGOs, unfold in the face of uncertain outcomes before a new type of international criminal legal practice can be institutionalized.

The organization of a court and the institutional rules under which it operates determine the incentives to engage aggressively in the prosecution of grave human-rights violations. The ICC, for example, as determined by the Rome Statute, consists of several courts or "Chambers" with a total of 18 judges, each with nonrenewable 9-year terms (Schabas, 2007). Trial and appeals chambers write opinions and thus specify future international criminal law. The prosecutor is also selected for one nonrenewable 9-year term through an anonymous vote by the member states. These arrangements are intended to protect the court against potentially massive political pressures exerted in the context of international relations. Cases can be referred to the ICC prosecutor by individual citizens of member states, by states against one of their citizens, and by the UN Security Council. The latter, for example, referred the Darfur case to the ICC, while state parties referred cases against Uganda, the Central African Republic, and the Democratic Republic of Congo.

In light of these and additional conditions, the court's activism and punitiveness will be relatively constrained. Prosecutors and judges, holding tenured and nonrenewable positions, are less likely to be responsive to moral outrage, even if public mobilization may have advanced the UN Security Council's referral to the ICC of the case of Darfur. Generally, however, given the still relatively weak institutionalization of civil society at the world level, public moral outrage is less likely to promote prosecution before the ICC than at the national level. Further, given the strong role of nation states among the court's constituents, the ICC's legal and procedural principles will often compete with diplomatic or military actors and outcome-oriented reasoning. Relatedly, due to the principle of complementarity, the ICC can only become involved in a case through Security Council referral or if domestic courts are unable or unwilling to prosecute. In addition, massive power asymmetries between states are likely to constrain the court's agenda. The United States, for example, has entered "bilateral immunity agreements" with some 100 governments that agree not to extradite US citizens to the ICC, often in exchange for international aid.

Finally, and importantly, the crimes brought before the ICC must both fall under the court's limited jurisdiction and have been committed after April 2002, specifically in states that have ratified the Rome Statute. Some actors would like to substantially expand the jurisdiction of the ICC or other criminal courts to include violations of all rights guaranteed by the UDHR. Scholar-activists have suggested, for example, that child poverty in a wealthy country could be conceived of as an offense against the Convention for the Rights of the Child. This should, in the eyes of some, result in sanctions against responsible states and in

the expansion of individual criminal liability to those whose policies have advanced these violations of international human-rights standards.

Such far-reaching demands are being challenged by scholars who, in principle, support expanded international criminal law (Hagan & Levi, 2007). They argue that tort law may, in many cases, be at least as effective as criminal law, with lower burdens of proof. They also insist that charging countries and their leaders in criminal court might isolate these countries from the international community, thereby polarizing conflict, and resulting in a loss of international influence. Another concern is that criminal law is ill suited to address larger structural and cultural forces that contribute to broader human-rights violations. Finally, human-rights problems such as large-scale homelessness among children may result from national policies enacted by legitimate governments and backed by majorities of the electorate. Who, then, is to be charged?

In the years since the ICC began its work, reception has been mixed. Trials have been relatively few in number, particularly when compared to the expenses of the organization, and its attention has been almost exclusively on the Global South: charges have been brought against African nations exclusively. This has led a number of nations to withdraw (or propose withdrawing) from the ICC, including Gambia, South Africa, and Burundi.

Further debates surrounding the ICC and other criminal justice responses to violations of human rights concern the limitations that result from a focus on individual perpetrators. Such focus risks overlooking the complex organizational settings, government agencies, and police and military units in which these actors are embedded (see Meierhenrich, 2006). Another topic of debate is the tension between a due-process orientation of courts, deemed necessary for the sake of their legitimacy, and concerns over the substantive consequences of legal decisions, often involving the survival of thousands of human beings (Savelsberg, 2017).

Effectiveness of Criminal Court Intervention against Human-Rights Perpetrators: Deterrence and/or Cultural Effects

The effectiveness of criminal justice intervention in preventing grave human-rights violations is hotly debated. Critics challenge, for example, the rise of universal jurisdiction and the power of domestic courts to try foreign citizens, as summarized in the Princeton Principles of Universal Jurisdiction and justified by the recognition that human-rights violations are offenses to all humanity. Domestic courts, critics argue, may have little sense of the harm their prosecutions might cause in a foreign country. Amnesties, truth commissions, and other transitional justice programs – and thus the successful transition to peace and democracy in that country – may be at risk.

The ICC and other international courts are further targets of critique. They are said to suppress the consideration of power necessary to assess the consequences of intervention and to balance legal accountability with political costs. Critics argue, for example, that the filing of charges against Serb President Milošević by the prosecutors of the ICTY made it harder for NATO to reach a deal with Serbia, extending the war and suffering in the Balkans in the summer of 1999. In 2011, critics challenged the ICC over its decision to charge Omar al-Bashir, Sudan's president, with genocide, at a time where his role in stabilizing relations with the newly independent South Sudan might have been crucial. In general, the concern is that perpetrators will not be willing to negotiate and cease power if threatened by criminal trials (see Snyder & Vinjamuri, 2003/2004).

Challengers of these skeptics include political scientist Kathryn Sikkink (2011), who offers an impressive new data set containing information on domestic truth commissions and domestic, foreign, and international trials for a 26-year period (1979–2004), covering 192 countries and territories. Sikkink finds that transitional justice does not typically lead to the strengthening of old forces. Further, the severity of offences and the likelihood of trials are highly correlated (thus, decisions for trials are not made lightly). Finally, and importantly, countries with more human-rights trials show greater improvements of later human-rights records, especially where trials were coupled with truth commissions. Specifically for South America, not a single case shows that holding a trial contributed to violent conflict or dislodged transition.

A recent study by Hyeran Jo and Beth A. Simmons (2016) examines specifically the effects of ICC prosecutions. These scholars find that prosecution generates both "prosecutorial deterrence" (hesitancy to commit a criminal act based on concern over legal punishment) and "social deterrence" (fear of negative social responses based upon criminal behavior). Both mechanisms contribute to reducing violence. The authors show specifically that the time following the introduction of the Rome Statute and the ICC, and the onset of prosecution, has witnessed a reduction in killings by state actors, especially those who supported the ICC and who depend on the world community. Even rebel leaders kill less, especially those who lead secessionist movements that strive for recognition by the world community (Jo, 2015). Additionally, Jo & Simmons (2016) find that ratification of the ICC within a nation mutually reinforced the authority of human-rights organizations.

The notion of deterrence, based on rational-choice ideas, has a long tradition in criminology. Research shows that the certainty of punishment is most likely to deter potential offenders, more so than its severity. Sikkink's (2011) and Jo & Simmons's (2016) explanations of the positive correlation between transitional justice mechanisms and human-rights records are consistent with this mode of thought: the next generation of political leaders and military officers will remember the shaming that their predecessors experienced as a result of criminal sanctions and truth-commission reports. As a consequence, they will be reluctant to breach human rights. Yet, what are the conditions under which past perpetration and subsequent sanctions are being remembered? Sophisticated rational-choice arguments must take learning about the past seriously, as such learning is a precondition for potential offenders considering the costs and benefits of transgressions.

A new line of academic work thus comes into play, which examines the effects of trials and other mechanisms on collective memory (Osiel, 1997; Savelsberg, 2015; Savelsberg & King, 2007, 2011; Savelsberg & Nyseth Brehm, 2015). This work builds on classic sociological ideas and on arguments made by politicians and jurists such as President Franklin Roosevelt and Justice Robert Jackson. Judge Samuel Rosenman, Roosevelt's confidant, reports about the president: "He was determined that the question of Hitler's guilt – and the guilt of his gangsters – must not be left open to future debate. The whole nauseating matter should be spread out on a permanent record under oath by witnesses and with all the written documents" (in Landsman, 2005:6).

Actors like Jackson and Roosevelt thus added a new idea to the traditional rationales for criminal trials and sanctions (retribution, deterrence, and incapacitation): a history-writing function, the construction of a collective memory of past evil that, some argue, will reduce the likelihood of future offending. We understand collective memory as knowledge about

the past that is shared, mutually acknowledged, and collectively reinforced. Its shape determines how a formerly charismatic leader will be remembered after the "degradation ceremony" of a criminal trial. Alexander et al. (2004) discuss cultural trauma (a form of collective memory concerning distressing events), which can be experienced by both victims and perpetrators of violence, emphasizing the importance of addressing violence past the individual level.

In light of such cultural effects of trials, the outrages of the Holocaust further advanced global consensus regarding the dignity of individuals. Through symbolic extension of the Shoah and psychological identification with the victims, members of a world audience became traumatized by an experience that they themselves had not shared (Alexander, 2004). In these terms, the punishment of leading Nazi perpetrators by the IMT and by subsequent trials was performative. It provided, consistent with a semiotic model of social life, images, symbols, totems, myths, and stories, and thus contributed to the formation of a collective memory of evil, to which we shall return later (also Smith, 2008).

Once it was established as a universal evil, the Holocaust served "analogical bridging" to reinterpret later events in light of this earlier trauma (Alexander, 2004:245–249). Examples are the treatment of minorities in the United States and the victimization of millions in the Balkan wars during the 1990s. In the latter case, analogical bridging occurred, famously, through the image of an emaciated Bosnian concentration-camp inmate behind barbed wire, published on the front pages of most international newspapers and magazines. Thus, building a bridge from the Holocaust to the cruelties committed in Bosnia advanced diplomatic and military intervention and the establishment of the ICTY, with great potential to contribute to new international criminal law (Hagan, 2003).

Expectations regarding the cultural effects of criminal court intervention are confirmed in recent large-scale empirical research, involving content analysis of more than 3000 media reports and interviews with journalists, foreign ministry specialists and NGO experts in eight countries (Savelsberg, 2015; Savelsberg & Nyseth-Brehm, 2015). Analyses show that legal interventions in the case of Darfur increased the likelihood that the violence was interpreted as a form of criminal violence – specifically, as a human rights crime, and (albeit, more ambiguously) that the term "genocide" was considered appropriate. Effects were especially strong when charges were filed at the highest level, against President Omar al-Bashir.

The de-legitimation of human-rights perpetrators in the collective memory is not only a consequence of criminal trials. Criminal justice mechanisms may affect memory in additional ways that also decrease the likelihood of future violations. Legal trials initiate the collection of evidence. While not all potential evidence may be admitted in the court of law, it may nevertheless be available to future historians, or directly communicated to the public through mass media. Hagan (2003), for example, documents the diversity of extra-legal expertise of forensic scientists, victim workers, journalists, and social scientists mobilized by the ICTY to uncover forensic and interview-based empirical evidence of the atrocities committed during the Yugoslav wars. News of recently opened mass graves and liberated concentration camps reached a broad public through journalistic reports, independent of the success in translating these materials into evidence in the court's proceedings. Investigatory evidence may also be used in future historical documentations, independently of its legal status at the trial (Bass, 2000).

Alternatives and Supplements to Criminal Justice Intervention

Those who invest great hope in the contribution of criminal trials to history-writing and to the formation of collective memory, however, should do so cautiously. Trials follow a particular logic. Evidentiary rules differ, for example, from those used by historians. Further, trials target individuals, not the social processes and cultural patterns sociologists might focus on when constructing the past. The actions they address are further limited by legal classification systems; producers of inflammatory rhetoric may have played central roles, but they will typically not be criminally liable. Finally, following the binary logic of criminal law, the defendant is guilty or not guilty, a gross simplification by psychological standards. These limitations have been addressed in a growing body of literature. Giesen (2004b), for example, argues that German criminal trials against former Nazis served a "decoupling" function. In light of such trials, the German people could take the position of a third party, while individual guilt was assigned to the few in the eyes of the law (see Osiel, 1997 for French collaboration; Landsman, 2005 on the Nuremberg trials; Marrus, 2008 on the Nuremberg Doctors' Trial; and Savelsberg & King, 2011 on the My Lai trial).

In light of such concerns, courts may not be in a position to appropriately write history and shape collective memory alone. In fact, they often do not act alone. Human-rights trials are, with increasing frequency, supplemented by other control mechanisms, such as truth commissions, and innovative models, such as the gacaca courts of Rwanda (Hayner, 2001; Sikkink, 2011). Further mechanisms include UN treaty bodies (see earlier), reparation programs, vetting proceedings, apologies, commemorations and memorials, and amnesties. Here, we focus on the examples of gacaca courts and truth commissions as illustrations.

Gacaca Courts

Innovative experimentation with traditional justice mechanisms holds some promise and represents a plausible divergence from formal criminal justice-based response models. A key example of experimental justice is one of the responses to the Rwandan genocide, inkiko gacaca (gacaca). The gacaca courts, while inspired by traditional justice forms, are a modern system of some 10 000 community-based judicial bodies, oriented toward retributive and restorative justice, and administered by the Rwandan state. By establishing gacaca, the state responded to a desperate situation in which up to 120 000 detainees awaited trial in overcrowded cells in this extremely poor country of just 6 million people (see Meyerstein, 2007).

The modern gacaca courts were based upon a pre-colonial form of justice; in the case of disputes within a community, respected elders would moderate discussion between the parties, and the "community" would work together to find a viable solution. Modern gacaca functioned on a similar model. Community members would gather to both bear witness and provide evidence for trials ranging from property crimes to the killings themselves (most organizers were tried in the national courts, although in some cases they were additionally tried in gacaca). Gacaca judges were elected based on their moral standing within the community and did not require formal legal training (Clark, 2010; Nyseth Brehm et al., 2014). In these proceedings, reconciliation was particularly important, as members of the perpetrating and victim groups were often expected to live side-by-side following efforts in reconstruction. Gacaca emphasized reintegration and forgiveness, lessening punishment for those who repented and aided in the legal process

(e.g., by telling families where they could find the remains of their loved ones). These themes remain central in the contemporary reconciliatory narrative.

Evaluations of the gacaca courts remain mixed (as the final court closed in 2012, understandings of their outcomes and receptions are largely in their infancy). Critics note the courts' shortcomings in certain areas of global legal consensus (such as due process and the right to an attorney), while supporters emphasize their "home-grown" relevancy to Rwanda and the breadth of justice, particularly in comparison to the high expenses of many international courts (Meyerstein, 2007; Nyseth Brehm et al., 2014). For many Rwandans, gacaca played a key role in permitting progress, both on the national and the personal levels, as showcased by generational dynamics. It aided in national reconciliation and allowed the children of both victims and perpetrators a direct understanding of how the genocide affected the lives of their family members. Such learning will, supporters hope, also provide lessons on how to avoid returning to such a troubled past.

Truth Commissions

Truth commissions have become important supplements, predecessors, or alternatives to criminal courts. They are bodies that focus on the past, investigating long-lasting patterns of abuse. They are constituted for limited periods and conclude their work with a report. They are officially sanctioned and authorized by the state (Hayner, 2001). The name "truth commission" is often misleading, as the truth is frequently well known, and only its acknowledgement is at stake. Most truth commissions have the same set of basic goals, even if the focus will vary: to bring to light and officially acknowledge past abuses; to respond to victims' needs; to set the stage for justice and accountability; to recommend institutional changes; and to promote reconciliation (Hayner, 2001:24). The Argentinean truth commission, for example, the National Commission on the Disappeared, was created in 1983 per decree by President Raúl Alfonsin, after 7 years of military dictatorship, during which tens of thousands endured arrest and torture or "were disappeared." Eventually, the commission turned its files over to the prosecutor's office and thus provided critical evidence for criminal proceedings against senior members of the military junta.

Importantly, truth commissions may contribute to accountability in ways not available to criminal courts. Instead of attributing responsibility to particular individuals alone, they examine broader patterns of abuse, thereby encouraging institutional reforms. They may thus also challenge broad sectors of society and segments of the population that carry some degree of responsibility, from bureaucrats to torturers to profiteers, all the way down to bystanders who refused to speak up. In this way, they respond to broader social conditions, which are largely inaccessible in criminal trials of high-level individuals.

Hayner (2001) additionally touches upon the cultural capacities of truth commissions. Reconciliatory initiatives can enable a space for constructive dialogue about past wrongdoings, creating wider consensus about politically charged or disputed understandings of violence, while possibly deterring future conflict. Hayner suggests a variety of dynamics on the basis of which to evaluate the success of reconciliation, such as representations of the past within the public sphere and relationships between former opponents. Although individual-level reconciliation may be improbable for some, truth commissions have the capacity to encourage national or political reconciliation, thereby promoting social healing over time. Some truth commissions, such as those in El Salvador, include recommendations for the creation of institutional bodies, which can (ideally) sustain reconciliation past the culmination

of the commission itself. Documents created by truth commissions may also include recommendations for institutional reforms addressing lasting and ingrained societal issues, with plausible preventative effects.

However, the implementation of a truth commission is not without risks. Hayner (2001) notes that institutions may be too weak to ensure the protection of those willing to speak; in some physical and temporal spaces, silence may be the cost of peace. Some truth commissions take decades to convene due to such concerns, although other key factors (like a hostile political environment) likely have a stronger role in such delays.

Not surprisingly, the overall record of truth commissions is mixed. Their functioning is contingent on the competitive games between various actors who control diverse types of material or symbolic capital, as in the case of criminal tribunals (illustrated for the ICTY above). While many truth commissions have achieved an impressive level of success, commissions in Bolivia and Ecuador did not complete their work, while those in Burundi and Zimbabwe produced reports that were never made public. The latter two, like the unsuccessful truth commission of Uganda, did not unfold in the context of fundamental regime change. In short, the institution of truth commissions is one of many attempts begun in the 20th century to address gross human-rights violations. Such attempts are crucial in mitigating the risks of future conflict. Importantly, we must not regard truth commissions in isolation, but in the context of other institutions, some of which they may in fact strengthen, including criminal justice responses.

Potentials for Informal Social Control

Informal social control does not always work against the execution of grave human-rights violations. At times, it does the opposite, as Christopher Browning's (1998) analyses of the participation of ordinary German police officers in mass atrocities in the course of World War II show. These men frequently did not abstain from participation, even when offered a way out, due to concern over sanctions by their peers. In Rwanda, informal group dynamics often played a central role in mass killings. Traditional work groups were reformed into militias, assigned the "work" of locating and killing Tutsi and moderate Hutu. Group leaders would monitor the performance of group members, directly encouraging – and, at times, threatening – those who hesitated to participate (Hatzfeld, 2003). These tasks were reinforced through messages on daily radio broadcasts, particularly through Radio Télèvision Libre des Mille Collines (RTLM), which would encourage and direct perpetrators. Such broadcasts would be paired with propagandistic musical selections, such as *Nanga Abahutu* ("I Hate These Hutu"), which would shame Hutu who did not support the genocide (RwandaFile, 2010). These different informal forces reestablished societal norms in Rwanda, working with formal institutions to make genocidal killing possible.

Yet, informal social control may also work against the execution of human-rights violations. It is likely that such control comes to bear where violations are particularly delegitimized. Here, the foundational role of formal control responses shows, and promises to multiply their effectiveness by mobilizing informal control responses. Also in Rwanda, shifting norms around violence and obedience following the genocide have become crucial within public conversations of reconciliation. Many commemorative spaces, particularly the Kigali Genocide Memorial, highlight the actions of rescuers during the genocide, emphasizing that killing was not the only option. Such spaces have reinforced new norms in the country, sharply contrasting with those from the genocide era, which included obedience to authority

and the acceptability of physical violence. Many Rwandans, interviewed by the second co-author of this chapter in the summer of 2017 – particularly those working on shaping government policy – express hope that efforts in restructuring such norms will have preventative effects and encourage reconciliation for future generations.

Conclusion

Changes in global conditions since the late 19th century, immediately after World War II, and, especially, in the late 20th and early 21st centuries have paved the way for increasing enforcement of international human-rights standards. Social control of human-rights offending has thus intensified and taken new shape. Domestic, hybrid, foreign, and international courts have increasingly applied international human-rights law, especially since the end of the Cold War. Recent systematic empirical research indicates the potential of positive outcomes. Both a deterrence function and the establishment of collective memories that delegitimize past inhumane practices appear to be at work. Yet, criminal court proceedings also face important institutional limitations. Other institutions, such as experimental forms of justice, lustration, and truth commissions, at times thought of as alternatives, may thus be important supplements to criminal justice intervention. They provide plausible opportunities to expand upon existing human-rights mechanisms on both the national and the international level. Together with trials, they can have substantial cultural effects, generating collective representations and memories that potentially delegitimize human-rights violations and strengthen the potential for subsequent formal and informal social-control mechanisms.

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