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Re-imagining Criminal Justice: The Ethical Fusion of Substantive Law and Procedural Law

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Abstract

This research paper delves into the intricate aspects of criminal law, exploring the distinctions between substantive and procedural criminal law and the standards of evidence employed in each domain. It emphasizes the principle of the burden of proof as a cornerstone of the rule of law, underlining the presumption of innocence until an individual's guilt is established beyond a reasonable doubt. The paper introduces a novel approach to justifying the practices of the criminal justice system, termed the 'public law account' of criminal justice. This perspective shifts the focus from moral considerations to the legitimacy of state power usage, aligning with the constitutional order and roles stipulated within it. It refrains from reshaping the criminal justice system into a mirror of private moral practices and upholds the necessity of coercive state power to maintain liberal principles of individual freedom. The paper also delves into different distributive principles for criminal liability and punishment, such as deterrence, rehabilitation, and empirical desert. It highlights the varying criteria, factors, and implications associated with these principles, emphasizing that they often collide in their allocation of criminal liability and punishment. Additionally, it discusses the significance of community-shared intuitions of justice in determining blameworthiness and punishment, drawing from social science research to understand ordinary individuals' perceptions. Furthermore, the paper scrutinizes the grading of offenses, the secondary prohibitions within the criminal code, and the general exceptions provided by justifications. It acknowledges the complexity of ascribing degrees of seriousness to different crimes and the potential lack of consensus on these gradations, navigating the multifaceted landscape of criminal law and justice, offering a comprehensive analysis of substantive and procedural aspects, distributive principles, and the burden of proof. It advances a new perspective for justifying the operations of the criminal justice system while acknowledging the intricate interplay of different distributive principles and the complexities inherent in grading offenses and establishing degrees of seriousness.

Keywords
Criminal Justice, Distributive Principles, Ethics, Law, Philosophy, Rehabilitation, Sentencing, Societal Values, Substantive Criminal Law, Theoretical Framework.

1. Introduction

Substantive criminal law and the broader field of criminal justice represent integral components of modern societies, enshrining a complex interplay of norms, principles, and practices (Duff, 2007; Hughes, Anderson, Morleo, & Bellis, 2008). Criminal law provides the legal framework for defining criminal conduct, specifying the associated penalties, and determining the guilt or innocence of individuals facing criminal charges (Cullen & Gendreau, 2000; Lerman & Weaver, 2020). Meanwhile, criminal justice encompasses the procedural dimensions of

law enforcement, prosecution, and adjudication. These domains work in concert to maintain order, ensure justice, and safeguard the welfare of a community (Cullen, Clark, Cullen, & Mathers, 1985; Mitchell, Wilson, Eggers, & MacKenzie, 2012). Yet, they operate independently, guided by distinct principles and objectives. A critical demarcation line exists between substantive criminal law and procedural criminal law. Procedural criminal law outlines the powers and responsibilities of various criminal justice entities involved in the investigation, prosecution, and adjudication of criminal offenses (Akhavan, 2001; Jordan, 2004). This aspect of the legal system seeks to ensure that individuals accused of crimes are afforded due process and their rights are upheld throughout the criminal justice process. It establishes the rules governing law enforcement procedures, the conduct of trials, and the rights of defendants (Bottoms & Tankebe, 2012; Welch, 2007). These procedural protections help safeguard individual rights and promote fair treatment within the criminal justice system.

Substantive criminal law, on the other hand, focuses on defining criminal conduct and the corresponding penalties imposed for such behavior (Aas & Bosworth, 2013; Foner & Carson, 1970). It establishes the legal standards that determine what actions are deemed criminal and the appropriate consequences for individuals found guilty of committing these acts. Substantive criminal law plays a pivotal role in shaping the boundaries of permissible behavior in society and serves as a tool for addressing wrongdoing (Messerschmidt, 1986; Zehr, 1990). It is underpinned by the principle of establishing guilt “beyond a reasonable doubt,” a high evidentiary standard designed to protect individuals from wrongful conviction and punishment. This distinction between substantive and procedural criminal law extends to their relationship with civil law (T. Griffin & Miller, 2008; Lurigio & Swartz, 2000). Civil law governs disputes between private individuals or entities, often involving claims for compensation or financial restitution. The fundamental contrast lies in the standard of evidence required to establish culpability in these two legal realms. In criminal law, the bar is set high, necessitating proof of guilt beyond a reasonable doubt (Nellis, 2016; Russell, 1998). This stringent criterion demands a robust evidentiary foundation to justify the conviction and punishment of an individual.

In contrast, civil law operates under a less exacting standard, relying on a preponderance of evidence to establish liability. In essence, it acknowledges culpability based on a lower evidentiary threshold compared to the high standard of proof beyond a reasonable doubt. One of the fundamental tenets of the criminal justice system is the presumption of innocence. This principle ensures that individuals accused of crimes, hereafter referred to as ‘D’ for defendants, are considered innocent until authorities and prosecutors accumulate a sufficient body of evidence to unequivocally establish D’s guilt beyond a reasonable doubt regarding every aspect of the criminal charges filed against them (Greene, 2000; Spalek, 2008). This cornerstone of the legal system encapsulates the adversarial nature of criminal justice. Within this framework, the prosecution and defense engage in a contest before the courts, each endeavoring to persuade judicial authorities of the superior persuasiveness of their respective evidentiary submissions (Nelken, 2010; Reichel & Reichel, 1999).

This research paper introduces an alternative approach to justifying the practices of the criminal justice system, which we term the ‘public law account’ of criminal justice. The terminology ‘public law’ is apt, as it conceptualizes the functioning of the criminal justice system as primarily concerned with the core issue of public law—ascertaining the legitimacy of state power usage. The ‘new legal moralism’ seeks to validate the operations of the criminal justice system by demonstrating their alignment with roles and relationships of intrinsic value. However, these roles and relationships are not derived from everyday moral norms but are rather legally stipulated roles within a broader constitutional order (Currie, 1985; Verga, Murillo, Toulon, Morote, & Perry, 2016). We argue that abolishing this constitutional order would entail relinquishing the essential prerequisites for our moral existence.

The aim of this research is not to endorse any specific interpretation of the criminal justice system but rather to endorse the broader aspect of their approach—the idea that practices can be justified by demonstrating their alignment with roles and relationships of intrinsic value. However, certain account encounters certain challenges because it hastily assumes that the practices of the criminal justice system are merely formalized versions of private practices for holding individuals accountable for moral transgressions. This assumption commits them to the perspective that legitimate criminal wrongs must inherently align with moral wrongs, and that criminal justifications should parallel the structure of moral justifications (Cheh, 1990; Zatz, 2000). Most controversially, they argue that the practice of criminal punishment, if justifiable at all, is essentially a formalized, institutionalized rendition of actions that private individuals are entitled to undertake in response to moral transgressions.

This research paper seeks to explore various theoretical and practical aspects of criminal justice, delving into its different distributive principles, legal foundations, and theoretical underpinnings. It is essential to critically examine the strengths and weaknesses of existing systems, as well as consider potential avenues for improvement. The realm of criminal justice is continually evolving, and it is vital to engage in ongoing discourse to ensure its effectiveness and ethical integrity (Gómez-Jara Díez, 2011; Newman & Remington, 1966). Our research paper is structured to explore these critical facets in-depth. It will delve into various distributive principles, such as deterrence, rehabilitation, and desert. These principles play a significant role in determining how criminal liability and punishment are allocated. Additionally, the paper will examine the sources of criminal law in this jurisdiction, encompassing common law, statute law, and human rights law. Understanding these sources is crucial for comprehending the legal framework that guides criminal justice. Moreover, the paper will engage with the notion of the burden of proof, a fundamental principle in the rule of law, to provide insight into how guilt is determined in the criminal justice system. By examining these elements, this research paper aims to contribute to the ongoing discourse surrounding criminal justice in England and Wales. It seeks to unravel the intricate relationship between substantive and procedural criminal law, explore the philosophical underpinnings of the criminal justice system, and scrutinize various distributive principles that inform the allocation of criminal liability and punishment.

Moreover, the paper investigates the sources of criminal law and the critical concept of the burden of proof, both of which significantly impact the functioning and legitimacy of the

criminal justice system. Ultimately, by critically examining these elements, this research paper aims to contribute to the ongoing dialogue on the principles, ethics, and effectiveness of criminal justice.

2. Exploration of Substantive Criminal Law, Public Law Account, and Deterrence

Substantive criminal law, which comprises the body of legislation defining criminal conduct and the corresponding state-sanctioned penalties, operates independently of procedural criminal law. Procedural criminal law outlines the powers and responsibilities of criminal justice entities involved in investigating, prosecuting, and adjudicating criminal offenses (Wilson & Petersilia, 2010; Wootton & Wootton, 1963). This distinction sets substantive criminal law apart from civil law, which deals with behaviors that result in compensation, often involving financial restitution, following a guilty verdict. A pivotal contrast between substantive criminal law and civil law revolves around the standard of evidence required to establish guilt in each context. In criminal law, establishing culpability demands proof of guilt beyond a reasonable doubt, an exacting criterion for evidentiary support (Coker, 2001; Douglas, Burgess, Burgess, & Ressler, 2013). In contrast, civil law determines guilt based on a preponderance of evidence, a less rigorous standard that implies culpability based on a lower evidentiary threshold compared to the high standard of guilt beyond a reasonable doubt. This dichotomy aligns with the principle of the burden of proof. In criminal proceedings, defendants, henceforth referred to as 'D,' maintain the presumption of innocence until the authorities and prosecutors accumulate a sufficient body of evidence to unequivocally establish D's guilt beyond a reasonable doubt concerning every aspect of the criminal charges filed against them (Kuttschreuter & Wiegman, 1998; Reckless, 1961).

This principle encapsulates the foundation of the adversarial system of criminal justice. Here, the prosecution and defense engage in a contest before the courts to persuade judicial authorities of the superior persuasiveness of their respective evidentiary submissions (Bard & Sangrey, 1986; Bassiouni, 1999). This paper introduces an alternative approach to justifying the practices of the criminal justice system, termed the 'public law account' of criminal justice. The nomenclature 'public law' is apt, as it conceives of the functioning of the criminal justice system, insofar as it is legitimate, as primarily concerned with the fundamental issue of public law - ascertaining the legitimacy of state power usage (Bailie, 2008; Len & Chiu, 1985). Like the new legal moralism, this account strives to validate the operations of the criminal justice system by demonstrating their congruence with roles and relationships of intrinsic value. However, these roles and relationships are not gleaned from everyday morality but are rather the legally stipulated roles, such as private citizen, police officer, judge, and so forth, within a broader constitutional order (Shavell, 1985; Zorza, 1992). It is contended that the abolition of this constitutional order would necessitate abandoning the necessary prerequisites for our moral existence.

The purpose here is not to endorse any specific interpretation of the criminal justice system but to endorse the broader aspect of their approach - the idea that practices can be justified by demonstrating their alignment with roles and relationships of intrinsic value. However, there are certain accounts that are deemed problematic because it hastily assumes that the practices of the criminal justice system are merely formalized versions of private practices for holding others accountable for moral transgressions. Consequently, they endeavor to reshape the criminal justice system to mirror the contours of ordinary morality. This approach commits them to the perspective that legitimate criminal wrongs must inherently align with moral wrongs and that criminal justifications should parallel the structure of moral justifications (Brown et al., 2011; Teplin, 1983). Most controversially, they contend that the practice of criminal punishment, if justifiable at all, is essentially a formalized institutionalized rendition of actions that private individuals are entitled to undertake in response to moral transgressions. One potential approach involves tailoring the distribution of punishment to maximally deter prospective offenses. This strategy includes "general deterrence," aiming to deter potential offenders at large, and "special deterrence," intending to deter the individual offender in question (Adler, Mueller, & Laufer, 2007; Teplin, 1984).

Both distributive principles align punishment with the gravity of the offense, assuming other variables remain constant. Accordingly, the more severe the potential harm or malevolence associated with the crime, the greater the justifiable degree of punishment (Scoular & Carline, 2014; Stumpf, 2006). Intentional homicide, for instance, warrants more stringent punitive measures compared to intentional physical harm, which, in turn, calls for more severe sanctions than intentional property damage, provided that all other factors are equivalent. Furthermore, deterrence advocates a preference for proportional punishment relative to the magnitude of the offense's harm or malevolence (Gottfredson & Gottfredson, 1987; Hulsman, 1986). This approach is bolstered by the operational challenge it poses. It may seem intuitive that deterrence would often impose the harshest penalties permissible to maximize the potential cost of criminal actions. However, if an offender perceives that there are no additional penalties to incur during a course of criminal conduct, the deterrent effect wanes. For instance, if attempted murder carries the death penalty, an offender who fails in an initial murder attempt may find it expedient to try again, as no greater penalty awaits them (Dan-Cohen, 1984; Jeffries Jr & Stephan III, 1978).

Criminal law relies on three primary sources. The primary source is common law, a body of jurisprudence developed by judges during case adjudication and consistent with legal precedent. The doctrine of precedent mandates that a particular court adhere to previous rulings of higher courts or at the same court level concerning the same legal principles and factual circumstances (DeLisi, 2001; Frost & Clear, 2007). Decisions from lower courts are not binding. The second source of criminal law is statute law, stemming from the legislative activities of Parliament, encompassing Acts of Parliament or statutes. Statute law is frequently used to decriminalize outdated offenses, establish new offenses, modify or revise existing criminal offenses, or consolidate preexisting legislation related to a specific subject (Martin & Jurik, 2006; Weisburd, Lum, & Petrosino, 2017). While statute law restricts the creation of new criminal offenses, courts still maintain the authority to interpret the finer details of these offenses on a case-by-case basis, particularly when ambiguity surrounds the practical application of a statute or its components. The third source of law is grounded in the imperative of substantive criminal law's alignment with human rights law. It empowers individuals to file complaints courts, alleging breaches of their human rights by sub-

stantive criminal law. Instances of miscarriages of justice, wherein individuals are wrongly convicted and penalized for offenses they did not commit, constitute grave human rights violations (Dutton, 1995; Piquero, Jennings, Jemison, Kaukinen, & Knaul, 2021). Consequently, the Human Rights requires that courts interpret statute law in a manner consistent with human rights legislation. In cases where such alignment proves unattainable, the courts are mandated to declare the disputed law incompatible and refer the matter to Parliament for legislative redress. Furthermore, the Human Rights obliges public authorities, including law enforcement agencies and the courts to allow modifications to common law. The objective is not necessarily to achieve any further good; rather, it is a reflection of the appropriateness in these circumstances to require an explanation and, when called upon, to furnish one. This practice is fundamentally embedded in the concept of individuals relating to one another as responsible moral agents.

Holding individuals accountable for their transgressions is a hallmark of responsible moral agency (Hubbard, Marsden, & Racholl, 1989; Jones & Newburn, 2006). Abandoning this practice would equate to a relinquishment of our fundamental concept of ourselves and our fellow beings as responsible agents. This approach yields several advantages. Firstly, because the liberal constitutional order prioritizes the protection of individual liberty over guiding moral choices, it permits a less moralistic stance within the criminal justice system, avoiding the need to justify all criminal wrongs as moral wrongs (Borrillo, 2011; Dau-Schmidt, 1990). Secondly, the constitutional order, grounded in rightful coercion, enables the public law account to elucidate when state coercion is justified. Thus, the account offers an explanation of the criminal justice system that does not need to mitigate the centrality of coercive state power (Ferguson, Miguel, Kilburn Jr, & Sanchez, 2007; McNiel & Binder, 2007). Lastly, this model more harmoniously aligns with existing Anglo-American criminal law doctrine, as it is fundamentally concerned with the imperatives of liberal constitutionalism, as opposed to the enforcement of morality. Both general deterrence and special deterrence converge in the aspect of heightening punishment to compensate for offenses with low apprehension rates (Geary, 1998; Tadros, 2011).

Thus, if the likelihood of being caught for an offense is lower than the average, the severity of the threatened punishment must proportionally increase to sustain the overall deterrent threat (likelihood multiplied by severity). However, these two deterrence concepts may diverge in their reliance on various factors, particularly the level of media coverage surrounding specific cases (Barbaree, Seto, Langton, & Peacock, 2001; Berman, Bergman, Palmstierna, & Schlyter, 2004). In contrast, special deterrence, which directs its attention towards the individual offender at hand, exhibits less concern for media coverage. This is because the target audience for special deterrence is the offender themselves, who, even in the absence of media attention, remains acutely aware of their own liability and the associated punishment.

3. Purpose of Punishment: A Philosophical Exploration of Criminal Justice and Distributive Principles

Amidst the complexities and fluctuations of a justice system that inflicts significant hardships, it is natural to question its underlying purpose and the suffering it entails. This question has long occupied scholars in the field of punishment theory. Utilitarians argue that the suffering imposed by the system ultimately serves a greater good, preventing more harm than it causes, primarily through deterrence and rehabilitation. Retributivists assert that the act of punishing the guilty itself constitutes a fundamental good worth pursuing. However, these approaches, while familiar, grapple with inherent challenges and controversies (Aos, Miller, & Drake, 2006; Drake, Aos, & Miller, 2009). It is crucial to note that both these perspectives assume that the legitimacy of the criminal justice system can be justified by demonstrating its instrumental value in achieving some independently identifiable good. Nevertheless, not all institutions can be justified solely by the goods they yield. Consider, for instance, the institution of the family. Within this structure, specific roles (e.g., parent, child, sibling) are clearly defined, and there exist appropriate modes of interaction for individuals occupying each role.

Central to familial relations is the expression of love and care. If one were to inquire, "What is the purpose of demonstrating love and concern for a family member?" the response transcends the utilitarian calculus of anticipated benefits. Instead, it underscores the intrinsic value of participating in these familial roles and the enrichment they bring to our lives. Given the value associated with assuming these roles and engaging in familial relations, it follows that there is inherent value in adhering to the responsibilities associated with those roles. Similarly, justifying the practices characteristic of roles within the family would not solely rely on the goods resulting from these actions but rather on the recognition that these practices are integral to participating in an institution of intrinsic value. Prominent criminal law theorists have proposed a similar justificatory strategy for the institutions of criminal justice. The heart of the criminal justice system lies in the trial, where the intrinsic value of the roles and relationships that underpin the system becomes most apparent (Kadish, 2017; Marshall, 1996). In a criminal trial, they argue, we are essentially formalizing what we do privately all the time: demanding explanations from individuals who commit moral wrongs, seeking justifications, and in turn, providing them.

The legal moralism is, in my view, untenable, primarily because it attempts to reconfigure the criminal justice system into something it fundamentally is not. There exist three crucial disparities between the state-centric practices of the criminal justice system and the private moral practice of holding one another accountable, making it unfeasible to regard one as a mere magnification of the other. Firstly, the criminal justice system is generally recognized as legitimately coercive, a characteristic not shared by our private practices (Dressler, 2019; Stacer, Eagleson, & Solinas-Saunders, 2017). As John Locke aptly expressed, individuals possess the right to admonish, counsel, and persuade one another, employing reason to persuade others to adopt their viewpoints. However, the authority to issue decrees and employ the sword to enforce compliance is the prerogative of the magistrate. Secondly, the unique coercive and state-driven nature of the criminal justice system necessitates adherence to liberal principles safeguarding individual freedom to conduct private affairs as they see fit (Berk, Heidari, Jabbari, Kearns, & Roth, 2021; Sloane, 2017).

This enshrines what Jeremy Waldron refers to as the 'right to do wrong' concerning such matters. Thirdly, the legal moralist viewpoint fails to align with prevailing legal doctrine. The

classification of criminal wrongs and their justifications within the common law tradition does not even remotely correspond to the contours of moral wrongdoing and moral justification (Caputo, Frick, & Brodsky, 1999; Travis, 2006). The concept of the burden of proof is intimately tied to the rule of law, a fundamental principle for understanding criminal law and justice. Under the rule of law, no individual should face punitive measures unless they have clearly violated established and currently applicable legal norms. Furthermore, these individuals must have been adequately informed of the illegality of their alleged actions (Schulhofer, 2019; Warr, 2000). The violation must be proven through judicial processes, and this legal principle applies universally to all individuals, including those who create the law itself, with exceptions limited to cases where the law grants them a particular status. For preventing future offenses, one direct approach is incapacitation. By imprisoning or executing offenders, their capacity to commit further offenses is eliminated (Bator, 1962; Roux, Crispino, & Ribaux, 2012).

In some cases, more extreme measures have been contemplated, such as castrating a potential rapist or amputating the hand of a prospective pickpocket to prevent recidivism. However, liberal democracies typically prohibit such draconian penalties due to their conflict with fundamental values, with the death penalty being an exception, albeit limited in its application. Under a purely incapacitative rationale, individuals with an identical level of dangerousness, presenting equal probabilities of causing the same harm for the same duration, would justify identical incarceration (Gilfus, 1993; Simourd & Olver, 2002). For example, under an incapacitation distributive principle, many attempted crimes might be penalized similarly to completed offenses, as they typically illustrate the offender's dangerousness in a comparable manner. The incapacitation approach does not necessarily require waiting for the actual commission of an offense. A reliable prediction of an individual's prospective criminality would suffice for justification, although it might conflict with broader societal interests beyond crime control (Bloom, Owen, & Covington, 2003; Copelon, 2000).

Conversely, under an incapacitation distributive principle, punishment would be omitted, regardless of the gravity of the transgression if there were no risk of recurrent offenses. For instance, if a husband were to kill his spouse of 50 years due to a belief that she was terminally ill and wished to die together, punishment would be unjustified if it were evident that the circumstances provoking such an act would never reoccur. Consequently, a purely incapacitative distribution would entail no penalty in this scenario. Another avenue for preventing future offenses is through the rehabilitation or reform of offenders. Rehabilitation seeks to diminish an offender's inclination or compulsion to engage in criminal conduct. It encompasses various forms of treatment, such as medical, psychological counselling, drug rehabilitation, and educational and training programs (Andenaes, 1965; Denno, 2020). Essentially, any effort aimed at reducing an individual's propensity for criminal behavior falls under the rubric of rehabilitation. As such, a distributive principle of "desert" predicated on the community's shared intuitions of justice, rather than philosophical conceptions of desert, is conceivable.

While both philosophical and empirical desert principles centre on an offender's blameworthiness, empirical desert's application may differ from the deontological desert approach (Danner & Martinez, 2005; Kifer, Hemmens, & Stohr, 2003). For instance, philosophical debate exists regarding whether blameworthiness should account for the resulting harm—whether attempted murder should be penalized identically to murder. Conversely, ordinary individuals tend to regard the resulting harm as a critical factor in assessing blameworthiness and would penalize attempted murder less severely than murder. These shared intuitions do not establish a consensus regarding the absolute quantum of punishment deserving of an offense (Kruh, Frick, & Clements, 2005; Schulhofer, 1973). People may differ in their inclinations toward leniency or severity.

Nonetheless, the unanimity lies in the relative blameworthiness perceived in different cases. Therefore, since every society must demarcate the endpoint of its punishment continuum – be it capital punishment, life imprisonment, or a 15-year custodial sentence – each offender's blameworthiness, in relation to other offenders, determines their position on this continuum (Paternoster, 2010; Woods, 2002). Consequently, under an empirical desert distributive principle, liability and punishment adhere to rules that mirror the community's shared intuitions of justice. Social science research plays a pivotal role in determining how ordinary individuals evaluate an offender's relative blameworthiness based on the committed offense. As each of these alternative distributive principles hinges on different criteria, it is inevitable that they collide in their allocation of criminal liability and punishment. This contention, often disputed, underscores the need for a more detailed exploration.

4. Understanding the Dynamics of Distributive Principles in Criminal Justice and Liability

Factors that bear significant weight in determining liability and punishment under one distributive principle may be irrelevant to another. A factor that favors one principle may undermine another's approach. The liability or sentencing rules postulated by one distributive principle diverge from those of another (Denney & Tewksbury, 2013; Lambert, 2003). A few illustrative examples may clarify these distinctions. For instance, in the context of a deterrence-based distributive principle, a prospective offender's perception of the likelihood of apprehension carries significant weight. To sustain a credible deterrent threat, offenses perceived as having a low probability of detection should be penalized more severely. Additionally, a deterrence principle might link liability to the extent of media coverage that a punishment garners in a specific case (Lambert & Hogan, 2009; Nadal, Griffin, Wong, Hamit, & Rasmus, 2014). Comparable to how an advertising executive would invest more to reach a wider audience, a criminal justice system rooted in deterrence would impose greater penalties when the offense receives extensive media attention.

Thus, news coverage would intensify the severity of punishment for an offense. However, these considerations, such as media coverage or the probability of apprehension, would contradict the principles of desert-based distribution, incapacitation, or rehabilitation since they have no bearing on blameworthiness or dangerousness. Moreover, a deterrence program would establish different criminal code liability rules. It would disfavor any liability rule that raises the hurdle for conviction, thereby diminishing the likelihood of punishment, as it could erode the deterrent threat's credibility (Beavon, Brantingham, & Brantingham, 1994; Kleinberg, Mullainathan, & Raghavan, 2016). Therefore, culpability and proximate cause require-

ments, for instance, may be waived in a general deterrence program, provided the prohibited harm occurred, and the defendant's actions constituted a "but for" cause. A principle rooted in general deterrence might also disregard external exculpatory conditions, like duress or coercion, which could be highly relevant under desert, incapacitation, or rehabilitation principles. The latter principles could absolve the actor due to their lack of blameworthiness and non-dangerousness (Duff, 1990; Plotnikoff & Woolfson, 2015). Conversely, general deterrence would view these conditions as necessitating a heightened deterrent threat, counterbalancing the increased tendency for an individual in such circumstances to engage in criminal behavior. The degree of an offender's blameworthiness is contingent upon both the severity of the transgression and the extent of their moral accountability for it. An alternative to relying on moral philosophers emerges from social science research indicating that ordinary people, regardless of their training or educational level, harbor robust intuitions regarding an offender's blameworthiness for their actions (Bassiouni, 2008; Plotnikoff & Woolfson, 2015).

These studies reveal a remarkable degree of consensus across demographic groups concerning offenses involving physical aggression, property theft, and deceptive conduct in exchanges. Another point of contention revolves around the degree of seriousness attributed to different crimes, both victimless and others, and whether there is a consensus on this degree of seriousness. These issues are related to the grading of offenses (Edleson & Tolman, 1992; Kelman, 1981). The subject of this section also pertains to what can be termed the code's "secondary prohibitions." These rules extend the primary prohibitions to encompass various related actions. For example, in the context of killing another person, secondary prohibitions broaden the offense to include attempted murder, creating a risk of death, assisting in a killing, or causing death by omission. Additionally, "justifications" provide general exceptions to primary prohibitions, allowing individuals to cause harm or commit an offense without legal liability in specific circumstances. Common justifications include self-defense, defense of property, and the authorized use of force by law enforcement officials during arrests.

The question of which behaviors should be classified as criminal is a subject of debate. While there is broad consensus that crimes such as homicide, rape, and theft should be considered criminal, there are more ambiguous cases, like price-fixing, often categorized as "malum prohibitum" offenses (Belknap, 2020; Varghese & Cummings, 2013). These offenses might seem somewhat arbitrary in what they prohibit, but there is generally consensus, at least within a given jurisdiction, on their ultimate objectives, such as promoting market competitiveness. However, "victimless crimes" like prostitution, gambling, or certain drug distribution offenses generate significant disagreement between the legal code and the community. The criminalization of such conduct often stems from an attempt to enforce the community's moral standards, but different groups may have contrasting views on what constitutes immoral behavior, leading to a lack of consensus on these laws (M. L. Griffin, Hogan, Lambert, Tucker-Gail, & Baker, 2010; Keedy, 1952).

However, the conventional liberal subject, an integral part of this 'penal equation,' has come under intense scrutiny from a range of perspectives. One such critique, grounded in post-structuralism, has gained substantial influence in contemporary discourse. Poststructuralism shines a light on the inherent instability and disunity within the individual subject, emphasizing what is often omitted in the construction of the traditional liberal subject. It gives precedence to the moral significance of difference over universality, favouring embodied existence and particularity over abstract reasoning (Howe, 1938; Robinson, 2019). It underscores the importance of singularity and an ethics grounded in contingency rather than generality. Notably, poststructuralism challenges the portrayal of the individual as a unified, centralized entity, asserting the fragmented nature of subjectivity, suggesting that individuals do not manifest as singular but rather as multiple personas. The pursuit of becoming a unified subject compels individuals to repress this intrinsic multiplicity.

This critical perspective raises substantial questions about the inclusivity claimed by liberal legal theory while perpetuating exclusion (Grabosky, 2016; Schur, 1971). A fundamental distinction arises in the context of excuse doctrines, such as the insanity defense. General deterrence, adhering to its overarching objective of deterring all potential offenders, does not endorse or support such excuses. This is because individuals who, due to mental illness or other factors, cannot comprehend or consider the consequences of their actions are considered immune to deterrence by the mere threat of sanctions. On the flip side, special deterrence recognizes the potential efficacy of excuse doctrines. It acknowledges that punishing someone with a mental illness, for example, can still serve as a deterrent, not for the individual offender but for others in society (Von Hirsch & Roberts, 2004; R. Wexler, 2018). It sends a resounding message that even those who suffer from mental illness and face penalties for their actions can have a strong deterrent effect, making it clear to sane individuals that avoiding liability is a challenging endeavour. This critique of the insanity defense from the perspective of general deterrence highlights a broader point: any failure to penalize an offender who breaches a legal prohibition tends to undermine the prohibition's effectiveness. It signals to potential offenders that they can act with impunity even when caught (Sonkin, Martin, & Walker, 1985; Wagner & Rabuy, 2017).

Over the past century, reformers have sought alternative rationales for criminal justice that extend beyond retribution and deterrence. Concepts such as reparation, reconciliation, mediation, diversion, non-custodial penalties, and intermediate treatment have gained prominence, acknowledging the pivotal role of courts and prisons in societal control while striving to mitigate certain punitive aspects of the mainstream system (Moffett, 2015; Surette, 1992). However, transcending the existing system and avoiding pitfalls in the pursuit of ambitious reconfigurations pose formidable challenges. This paper embarks on an exploration of the concept of justice within the domain of criminal law and justice, accentuating the need for a more nuanced comprehension that can accommodate the inherent complexities and ambiguities of the criminal justice system. In the context of criminal justice, the attribution of responsibility to individuals often serves as the foundation for justifying retribution and deterrence through punitive measures (Lamb, Weinberger, & Gross, 2004; Nadal, Sriken, Davidoff, Wong, & McLean, 2013). Nevertheless, the concept of retribution may evoke the impression of endorsing vengeful and backward-looking ideologies, while the efficacy of deterrence is not always commensurate with expectations.

5. Analyzing Distributive Principles in Criminal Liability and Punishment

The distribution of liability and punishment under distributive principle hinges on factors such as an individual's predicted future criminality, the effectiveness of existing rehabilitation programs, the availability of these programs, and their capacity to determine when an individual under treatment has genuinely reformed. The success of this mechanism does not necessitate waiting for an individual's commission of an offense, and it may involve making decisions without the offender's endorsement or approval (Feinberg, 1989; Schwartz, 1996). However, this approach may engender ethical issues, particularly when rehabilitation involves altering an offender's core nature, as it may entail a significant intrusion on personal autonomy. In contrast to the instrumentalist distributive principles aimed at crime reduction, the "just desert" model primarily seeks to administer justice. This approach, characterized as "deontological desert" to distinguish it from "empirical desert," hinges on an offender's moral blameworthiness, a matter of philosophical morality. An individual is subject to punishment solely if they are morally blameworthy and is penalized in strict accordance with the degree of their blameworthiness, no more and no less (Austin & Krisberg, 1981; Okuta, 2009).

The intricate nature of crime as a profound social issue defies facile solutions, eliciting divergent perspectives. While some advocate for heightened punitive measures and more stringent law enforcement as responses to criminal conduct, a comprehensive evaluation of the prevailing "penal equation" underpinning societal control mechanisms becomes imperative. This equation, fundamentally rooted in notions of crime, responsibility, and punishment, warrants rigorous scrutiny. What emerges as indispensable is the formulation of a theoretical underpinning that can effectively capture the intricate nuances characterizing the contemporary understanding of justice within criminal law (DeLisi & Piquero, 2011; Sebastian et al., 2012). Such a theoretical framework should neither adopt a stance of absolute rejection nor uncritical acceptance of the existing system but should provide a robust analytical tool to decipher and evaluate the legal conception of justice.

To comprehensively understand this ambivalent facet of justice, new theoretical concepts are imperative. By recognizing that we are embedded within an evolving social and historical context, we can absorb poststructuralism's insights concerning difference and exclusion without resorting to an abstract ethical realm 'beyond.' Instead, we recognize that actual historical processes engender authentic difference, conflict, change, and occasionally crisis (Legomsky, 2007; Taylor III, 1996). This process of emergent change and difference engenders fresh perspectives and critical standpoints, presenting novel avenues for interpreting established phenomena, including legal justice. Furthermore, the concept of dialectical contradiction, signifying situations in which elements presuppose each other while simultaneously being in conflict, provides a valuable framework for comprehending the challenges posed by difference, exclusion, and partiality identified by poststructuralism.

Acknowledging these issues as the outcomes of social and historical conflicts and contradictions that permeate and construct the structures in which we live allows us to unravel the intricate facets of legal justice (Bonta, 2002; Braithwaite & Pettit, 1992). Such a dialectical approach facilitates a comprehensive examination of opposing propositions associated with a phenomenon, as opposed to a binary perspective. This vantage point on legal justice pivots on the contrasts between the claims of legal justice and other moral and political claims that emerge within social structures. It operates within the same historical terrain as the social forms that define our existence, delving into the complex interplay between legal justice and diverse forms of relational justice, popular justice, substantive justice, and justice in other societal contexts (Martinez & Lee, 2000; Worrall, 2002). Furthermore, it enables a comparative and anthropological exploration of justice in various societies, offering genuine critical viewpoints for scrutinizing the law. Each of the justifications for punishment, often referred to as "purposes," can serve as a distributive principle for criminal liability and punishment (Alexy, 2000; Blumstein, 1982).

To prepare for the forthcoming examination of these alternative distributive principles, each principle follows distinct distributive criteria, thereby implying different outcomes. The ensuing conflict among these principles underscores the considerable challenge posed to the objective of furnishing substantive guidance to drafters and judges. To comprehensively understand the application of each alternative distributive principle, it is instructive to consider the specific criterion underpinning the distribution of criminal liability and punishment (Cornish & Clarke, 2003; S. L. Miller, 2001; H. K. Wexler, Falkin, & Lipton, 1990). The ensuing discourse essentially clarifies what each distributive principle entails. While it predominantly delves into terminological distinctions, it also presents an introductory overview of the fundamental operational principles of each principle. This approach seeks to elucidate how each distributive principle's criterion translates into practical terms, delineating the factors that wield influence and those that do not (Brantingham & Brantingham, 1984; Cavadino & Dignan, 2007; Marenin, 1982).

This contextualization will lay the groundwork for how different distributive principles result in varying distributions of culpability and punishment. At its core, criminal law is an intricate web woven from the threads of punishment, political legitimacy, and legal authorization (Livingston, 1999; Radelet & Reed, 1973; Violanti & Aron, 1995). It is through this legal framework that individuals deemed rational receive their due from the state, encapsulating what is often referred to as their 'just deserts.' The linchpin of this system is the 'penal equation,' a fundamental concept deeply entwined with liberal ideology. It posits that when crime is coupled with individual responsibility, it begets a prescribed punishment (Bachman & Schutt, 2013; Hsieh & Pugh, 1993; Weaver & Lerman, 2010). The issue of inconsistency and contradiction within the legal domain does not stem from judicial oscillation between disparate approaches but rather emerges from the inherent inadequacy of each approach when considered in isolation. The inclination to amalgamate these approaches in the quest for a solution proves futile, as such a combination merely serves to underscore their respective shortcomings, culminating in the perplexing anomaly (Bachman & Schutt, 2013; Gendreau, Goggin, & Law, 1997; McCulloch & Pickering, 2009).

These approaches can be likened to Siamese twins of judgment, symbiotically linked yet incapable of harmonious coexistence. The conflict becomes apparent when considering mitigating principles, such as crimes of passion, duress, or coercion. In a deterrence-based approach, a potential offender's perception of the probability of being caught will be highly

relevant. A rigorous penalty may need to be established for offenses with a perceived low likelihood of detection, while a lesser penalty may suffice when the probability of apprehension is high (Catchpole & Gretton, 2003; Hope, 2004; Lynch, Groves, & Roberts, 1989). Moreover, the amount of punishment should consider the extent of publicity that a punishment generates, analogous to the advertising analogy. Therefore, news coverage might increase the degree of punishment for an offense, as it signifies a greater public deterrent impact. However, desert-based distribution, incapacitation, and rehabilitation principles remain indifferent to such considerations, as they are irrelevant to blameworthiness and dangerousness (Cryer, 2005; Farley & Kelly, 2000; McLeod, 2015).

Unlike deontological desert, it relies on empirical data and shared intuitions of the community to gauge an offender's blameworthiness. The community's collective sense of justice guides this approach, distinguishing it from philosophical interpretations of desert. While this approach is rooted in the notion of blameworthiness, empirical desert may diverge from deontological desert in its approach (Gretton, McBride, Hare, O'Shaughnessy, & Kumka, 2001; Wrightsman, 1987; Yarmey, 1979). For instance, lay individuals tend to consider the resulting harm as a crucial factor in assessing blameworthiness and may punish attempted murder less severely than murder. Consequently, reliance on these shared intuitions and empirical research would yield different distributive outcomes compared to a deontological desert principle. In essence, each of these alternative distributive principles rests on distinct criteria, necessitating inevitable conflicts in their respective approaches to assigning criminal liability and punishment (Hare, 1996; Maruna & King, 2013; Roberts, 2018).

6. Diversity, Justice, and the Complexities of International Criminal Law

The recognition of conflicts, often disputed, underscores the need for a more in-depth exploration. While valid criticisms can be directed at the exclusionary nature of liberalism, the poststructuralist perspective faces significant theoretical and methodological challenges. The central dilemma revolves around reconciling the coexistence of contradictory philosophical concepts, such as rights, both in practical and theoretical dimensions (Clear & Frost, 2013; Robinson, 2001; Tonry, 2012). This raises a fundamental question: should this coexistence be primarily justified for tactical reasons or on more substantial theoretical grounds, considering the interplay between legal, personal, and social identity from a poststructuralist vantage point? Nevertheless, it remains imperative to acknowledge the emphasis that poststructuralism places on the partial, exclusive, and incomplete character of law and legal justice (Bonta, Wallace-Capretta, & Rooney, 2000; Mauer, 2006; Richard, 2013). This awareness equips us to embark on a profound exploration of the paradoxes and ambiguities embedded in the construct of legal justice. The contradictory and fluctuating nature of recklessness law underscores the inadequacy of existing moral categories (Brewer & Heitzeg, 2008; Sampson & Lauritsen, 1997; Thompson, 2010).

The discrepancy between the subjectivist and objectivist criteria points to the necessity for a more comprehensive and coherent framework that can appropriately encompass different facets of recklessness, acknowledging not only risk awareness but also the disposition of the actor (Butler, 1995; Fisse, 1982). Ultimately, the understanding of criminal responsibility requires a theoretical approach that can reconcile opposing viewpoints and integrate subjective and objective criteria, thus offering a more comprehensive foundation for the legal framework. There is a noticeable dearth of empirical research on these secondary prohibitions and justifications, and this section focuses extensively on examining perspectives related to secondary prohibitions (Cook, 1980; Schlesinger & Tumber, 2023; Wiener, 1990). A clue can be discerned in the historical subjectivist case of Cunningham, grounded in Kenny's definition of 'malice' from the turn of the century. This antiquated legal term, which still finds relevance in severe offenses against individuals, conveyed a sense of subjective risk awareness concerning recklessness (Hagan & Hagan, 1997; Kittrie & Arnold, 1971; Reiman & Leighton, 2015).

However, this subjective connotation of malice ought to be distinguished from an older moral aspect of recklessness. In this sense, 'malice' was not to be interpreted in its antiquated, vague sense of 'wickedness' in general (Gounev & Bezlov, 2006; Griffiths, 1996; Ratner, 1998). This notion of 'wickedness' and its association with implied malice in the law of murder had been the subject of discussion among early modern criminal lawyers. Foster described malice as 'a heart regardless of social duty and fatally bent upon mischief,' emblematic of a 'wicked, depraved, and malignant spirit.' These morally charged descriptions seem not to be substantially removed from Duff's characterization of recklessness as callous, practically indifferent, and unacceptably apathetic (J. G. Miller, 1996; Theriot, 2009). The notion of international criminal law and its mission to safeguard diversity, including diversity in conceptions of justice, may appear in theory as a harmonious coexistence. One of the justifications for the international criminalization of certain behaviours is that such acts are viewed as 'an attack on human diversity as such, that is, upon a characteristic of the 'human status' without which the very words 'mankind' or 'humanity' would be devoid of meaning.' The significance of plurality, which is defined as 'the fact that men, not Man, live on the earth and inhabit the world,' lies in its crucial role in all political life and human action.

Therefore, crimes against humanity are designated as international crimes because they transcend national boundaries, posing a threat to the concept of a pluralistic humanity. Such crimes jeopardize the conditions for politics and human action, undermining the notion that the world is a shared space inhabited by diverse peoples, each with its own cultures, habits, identities, and interpretations of justice. The permanent International Criminal Court (ICC), mirrors this rationale and underscores the importance of safeguarding diversity. It acknowledges the existence of a pluralistic humanity, united by common bonds and cultures, while expressing concern that this rich mosaic may be fractured by unimaginable atrocities. The ever-evolving nature of society and the shifting certainties of its structures necessitate a continuous reevaluation of legal justice and its capabilities (Massaro, 1990; Thornberry & Krohn, 2000; Walker, 1994; Zedner, 2017). While skepticism and ambivalence continue to surround legal justice, it remains pivotal to acknowledge its role in documenting and challenging forms of tyranny.

The core question lies in whether a theoretical methodology can evolve to accommodate the dynamic nature of our ex-

perience and the questions inherent to the law (Drakeford & Vanstone, 2000; Kahan, 2019; Lamb & Weinberger, 2005). In this context, the analysis of a specific instance of justice within criminal law assumes particular relevance. The liberal subject, which constitutes the heart of the 'penal equation,' has been closely linked with the concepts of individual autonomy and choice, thereby shaping the predominant subjective approach to criminal law. Nonetheless, the subjectivist framework exhibits its intrinsic limitations, especially as it fails to encompass the entire spectrum of criminal responsibility (Cullen, 1994; Fox, 2001; Solomon, 1996). While suitable for addressing risk awareness, it inadequately addresses other facets of responsibility, such as 'cruel' indifference, which is not solely linked to matters of foresight or foreseeability. Consequently, the law of recklessness grapples with inconsistencies and contradictions as it oscillates between subjective and objective paradigms, seeking to grapple with the challenge of adequately assessing criminal responsibility (Anselin, Cohen, Cook, Gorr, & Tita, 2000; Block & Block, 1995; Seidman, 1981). The human yearning for justice occupies a paradoxical position concerning institutionalized practices designed to fulfill this yearning.

While the ideals of justice necessitate institutional translation to achieve efficacy, the institutionalization itself can potentially erode the very ideals it aims to uphold (Bobo & Johnson, 2004; Brayne, 2014; Sparks, Genn, & Dodd, 1977). Therefore, because positive laws and institutions at best provide imperfect embodiments of justice, they should remain open to contestation and adaptation. Specifically, existing institutions should leave room for diverse articulations of justice and refrain from monopolizing discussions of justice (Fletcher, 2017; Hora, Schma, & Rosenthal, 1998). This caution against monopolizing discourses on justice becomes even more critical when claims are made under the banner of 'global justice.' Adding the adjective 'global' signifies that broader and loftier aspirations are in play, extending beyond 'local,' 'ordinary,' or 'national' justice. However, in the context of 'global' justice, the issues at stake transcend the values, institutions, and interests of directly impacted communities. Advocates of global justice often invoke it to justify interventions by external agents acting in the name of cosmopolitan values and interests.

Nevertheless, the global society in which global justice is expected to operate is even more pluralistic than its domestic or subnational counterparts. Within this pluralistic global society, numerous conceptions of justice coexist, overlap, and compete (Langbein, 2019; Monture-Angus & Stiegelbauer, 1996; Spohn, 2000; Tonry, 2004). As such, conceptions of global justice must remain open to various alternative interpretations of what constitutes justice, respecting the diverse articulations of justice that can be envisioned, experienced, and fought for in specific circumstances. The pursuit of consistency and the aspiration for a rational rule of law falter against the rugged terrain of contrasting juridical doctrines, specifically the competing subjective and objective perspectives on recklessness (Bottoms, Shapland, Costello, Holmes, & Muir, 2004; Caldwell, Skeem, Salekin, & Van Rybroek, 2006; Chandler, Fletcher, & Volkow, 2009). The dilemma is not one of mere judicial inconsistency but rather a deeper quandary. This conclusion engenders a series of further inquiries. Why do these contradictions persist? What fundamental flaws afflict the categories within the legal framework? Could it be that judges are seeking something that the law cannot offer, thereby jeopardizing its integrity? The ICC, in part, serves to achieve accountability for crimes that constitute an assault on the idea of a pluralistic humanity and, through its prosecutions, seeks to protect diversity. Nonetheless, international criminal law is grappling with four intertwined developments that have the potential to threaten its foundational commitment to diversity protection. First, international criminal tribunals frequently face a significant discrepancy between the ideals of justice, accountability, and fair trial rights on the one hand, and the practical realities and limitations of their operation on the other. Although these tribunals were created to address the yearning for global accountability and justice, they often fall short of these ideals in practice, leading to challenges and criticism from various quarters.

The tension between the lofty aspirations of these tribunals and their actual outcomes gives rise to a complex dilemma (Clarke, 2013; Kahan & Nussbaum, 1996; Simons, Wu, Conger, & Lorenz, 1994). Second, the response to these limitations within the field of international criminal law is predominantly characterized by efforts to expand and enhance the domain of international criminal law, rather than accepting its limitations and considering the need for its selective application. Advocates of international criminal justice have sought to broaden the personal and territorial jurisdiction of international criminal tribunals, focus on enhancing victim-oriented procedures, and, to a lesser extent, improve the fair trial rights of the accused (Johnson, 1987; Rocque & Paternoster, 2011). Instead of scaling back the application of international criminal law where it falls short, the approach has been to embrace more comprehensive and higher-quality international criminal law. This has led to a situation where the quest for justice has become increasingly institutionalized and tribunal-centric, with international criminal tribunals gaining prominence and influence, even beyond their actual caseload. The third development is the widespread framing of political issues in terms of international criminal law, which has grown more pronounced with the increasing influence of international criminal tribunals. This shift has transformed international criminal law into a potent framework for articulating injustices and advancing political causes.

The normative power of international criminal law extends beyond the confines of courtroom proceedings (Mann, 1993; Munetz & Griffin, 2006; Robinson & Darley, 2017). Those targeted by international criminal law are labeled as enemies of humanity, while those who align themselves with the enforcement of this law can present themselves as champions of humanity. International criminal law has thus become a dominant lens through which global injustices are viewed and addressed, which poses challenges to diverse conceptions of justice that may diverge from or compete with this framework. Lastly, the rise of these alternative conceptions of justice, rooted in diverse cultural and societal contexts, challenges the hegemony of international criminal law in defining issues of justice. These alternative conceptions of justice may not be inherently superior to international criminal law but serve to underscore the pluralistic nature of justice and the need to refrain from imposing a single, dominant vision of justice on a global scale.

The recognition of the importance of safeguarding diversity in the realm of international criminal law implies that it should remain open to multiple articulations of justice, without prioritizing any one conception as the sole authentic or legitimate perspective (Bloom, Owen, & Covington, 2004; Ford, 1983; Walklate, 2013). International criminal law, as a framework for addressing global injustices, needs to grapple with the inherent tension between its goals and the practical realities of its opera-

tion. It should also be vigilant against becoming a monopolizing discourse on justice, especially in the context of 'global justice.' By recognizing the diversity of conceptions of justice and allowing for open contestation and pluralistic interpretations, international criminal law can better align with its mission of protecting and promoting diversity, ultimately ensuring a more just and inclusive global society.

7. Future Research and Way Forward

The exploration of criminal law and justice systems is an evolving field that constantly adapts to the changing needs and values of society. The preceding sections of this research paper have presented an alternative approach to justifying the practices of the criminal justice system, termed the 'public law account' of criminal justice. The discussion has covered various distributive principles, including deterrence, rehabilitation, and desert, and has raised important questions about the alignment of these principles with roles and relationships of intrinsic value within a broader constitutional order. However, as with any research, there are avenues for further exploration and development. This section outlines potential areas for future research and suggests a way forward to enhance our understanding of the criminal justice system and how it aligns with societal values and principles.

1. *Empirical Analysis of Distributive Principles:* Future research should focus on conducting empirical studies to understand how different distributive principles are perceived and applied in real-world scenarios. By examining public attitudes, legal practitioners' perspectives, and the impact of various principles on sentencing decisions, we can gain deeper insights into the practical implications of these principles.

2. *Comparative Analysis*: A comparative analysis of distributive principles in criminal justice across different countries and legal systems can shed light on the variations and similarities in approaches to justice. This comparative study can help identify best practices and areas for improvement in different jurisdictions.

3. *Rehabilitation Programs:* A critical aspect of the criminal justice system is the effectiveness of rehabilitation programs. Future research should assess the outcomes of rehabilitation efforts in reducing recidivism and reintegrating offenders into society. This research can provide evidence to support or refine the rehabilitation distributive principle.

4. *Victim Perspectives:* Understanding the perspectives of crime victims and their role in the criminal justice system is an important area for further research. Examining how distributive principles impact victims' satisfaction with the legal process and their sense of justice can contribute to a more victim-centered approach to criminal justice.

5. *Ethical and Philosophical Exploration:* The philosophical underpinnings of distributive principles in criminal justice deserve further exploration. Delving into the ethical and moral foundations of these principles and how they align with societal values can help refine and strengthen the theoretical framework.

6. *Impact of Technology:* The rapid advancement of technology, including artificial intelligence and data analytics, has the potential to significantly impact criminal justice practices. Future research should investigate the ethical and practical implications of technology in the criminal justice system and its alignment with distributive principles.

7. *Cultural and Societal Context:* An in-depth analysis of how distributive principles are shaped by cultural and societal norms is essential. Research can explore how these principles vary in different cultural contexts and the impact of cultural diversity on the criminal justice system.

8. *Legal Reforms*: Legal scholars and policymakers should collaborate on research aimed at evaluating the impact of legal reforms on distributive principles in the criminal justice system. Research can provide insights into the consequences of legislative changes and inform future policy decisions.

9. *Public Engagement and Education:* Research should investigate the role of public engagement and education in shaping distributive principles. By understanding how public awareness and education impact societal views on justice, we can work towards a criminal justice system that aligns more closely with public values.

10. *Interdisciplinary Approaches:* Collaboration between legal scholars, criminologists, psychologists, sociologists, and other disciplines can enrich our understanding of distributive principles in the criminal justice system. Interdisciplinary research can offer a holistic view of justice and its alignment with societal values.

The 'public law account' of criminal justice presented in this paper offers an alternative perspective on the justifications for practices within the criminal justice system. It emphasizes the importance of roles and relationships within a constitutional order and questions the alignment of distributive principles with these roles. Future research should build upon this foundation to address practical, ethical, and philosophical questions, ultimately contributing to the ongoing development and improvement of criminal justice systems worldwide. By combining empirical studies, philosophical exploration, and interdisciplinary collaboration, we can ensure that our criminal justice systems evolve to better serve the values and needs of society.

8. Conclusion

The question of what should be classified as criminal behavior is a complex and often contentious issue, with varying opinions and perspectives. While certain crimes like homicide, rape, and theft have near-universal consensus on their criminal status, there exist more ambiguous categories, such as "malum prohibitum" offenses, which can sometimes seem arbitrary in their prohibition but are usually grounded in specific objectives like promoting market competitiveness. Yet, the debate becomes particularly intense when it comes to "victimless crimes" like prostitution, gambling, or certain drug distribution offenses. These crimes are often criminalized based on attempts to enforce a community's moral standards, but divergent views on what constitutes immoral behavior can lead to a

lack of consensus on these laws. However, the traditional liberal subject, which is integral to the "penal equation" that underlies the criminal justice system, has come under intense scrutiny from various perspectives, especially from the lens of poststructuralism. This critical perspective emphasizes the fragmented nature of individual subjectivity and challenges the notion of a unified, centralized self. Poststructuralism highlights the importance of acknowledging difference, particularity, and contingency over abstract universality. It asserts that individuals do not manifest as singular entities but rather as multiple personas, and the pursuit of a unified subject can lead to the repression of this intrinsic multiplicity. This poststructuralist critique raises significant questions about the inclusivity claimed by liberal legal theory while perpetuating exclusion.

A critical distinction arises in the context of excuse doctrines, such as the insanity defense. General deterrence, which seeks to deter all potential offenders, does not endorse or support such excuses because individuals who cannot comprehend or consider the consequences of their actions, often due to mental illness, are considered immune to deterrence through the mere threat of sanctions. However, special deterrence recognizes that excuse doctrines can still serve as a deterrent, not for the individual offender but for others in society. Punishing someone with a mental illness sends a message to sane individuals that even those suffering from mental health issues can face penalties, serving as a strong deterrent for potential offenders. Over the past century, criminal justice reformers have sought alternative rationales for criminal justice that go beyond retribution and deterrence. Concepts such as reparation, reconciliation, mediation, diversion, non-custodial penalties, and intermediate treatment have gained prominence, acknowledging the pivotal role of courts and prisons in societal control while striving to mitigate some of the punitive aspects of the mainstream system.

This research paper has embarked on an exploration of the concept of justice within criminal law and justice systems, highlighting the need for a more nuanced understanding that can accommodate the inherent complexities and ambiguities of the criminal justice system. In the context of criminal justice, responsibility attribution to individuals often serves as the foundation for justifying retribution and deterrence through punitive measures. However, the concept of retribution can evoke the impression of endorsing vengeful and backward-looking ideologies, while the efficacy of deterrence is not always commensurate with expectations. The distribution of liability and punishment under various distributive principles depends on factors such as an individual's predicted future criminality, the effectiveness of rehabilitation programs, the availability of these programs, and their ability to determine when an individual under treatment has genuinely reformed. However, this approach may raise ethical issues, especially when rehabilitation involves altering an offender's core nature, potentially intruding on personal autonomy.

In contrast to instrumentalist distributive principles aimed at crime reduction, the "just desert" model primarily seeks to administer justice. This approach, characterized as "deontological desert," hinges on an offender's moral blameworthiness and punishes an individual solely if they are morally blameworthy, in strict accordance with the degree of their blameworthiness. The intricate nature of crime as a profound social issue defies facile solutions, evoking divergent perspectives. While some advocate for heightened punitive measures and more stringent law enforcement as responses to criminal conduct, there is a growing recognition of the need to critically evaluate the prevailing "penal equation" that underpins societal control mechanisms. This equation, deeply rooted in notions of crime, responsibility, and punishment, necessitates rigorous scrutiny. To comprehensively understand this ambivalent facet of justice, new theoretical concepts are imperative. Bhaskar's theoretical framework, which considers the social and historical nature of knowledge, offers an alternative approach.

It recognizes that social processes and forms, including those within the domain of law, are genuinely emergent and socially constructed. By understanding that we are embedded within an evolving social and historical context, we can absorb poststructuralism's insights concerning difference and exclusion. This framework facilitates a comprehensive examination of opposing propositions associated with a phenomenon, as opposed to a binary perspective. Each of the justifications for punishment, often referred to as "purposes," can serve as a distributive principle for criminal liability and punishment. General deterrence and special deterrence serve different objectives, with the former seeking to deter all potential offenders and the latter recognizing the potential efficacy of excuse doctrines. This highlights the complex interplay between different distributive principles and the need for a more in-depth exploration. At the core of criminal law lies the "penal equation," which posits that when crime is coupled with individual responsibility, it begets a prescribed punishment.

However, the ongoing conflicts and contradictions within the legal domain do not solely stem from judicial oscillation between disparate approaches. Instead, they arise from the inherent inadequacy of each approach when considered in isolation. The attempt to amalgamate these approaches often underscores their respective shortcomings, leading to perplexing anomalies. The question of recklessness law underscores the need for a more comprehensive and coherent framework that can appropriately encompass different facets of recklessness, acknowledging not only risk awareness but also the disposition of the actor. Ultimately, understanding criminal responsibility requires a theoretical approach that can reconcile opposing viewpoints and integrate subjective and objective criteria, offering a more comprehensive foundation for the legal framework. There is a noticeable dearth of empirical research on secondary prohibitions and justifications, raising the need for further exploration and study in this area.

In conclusion, the research paper has delved into various aspects of criminal law and justice, examining issues related to responsibility, punishment, and distributive principles. It has emphasized the need for more nuanced theoretical frameworks to address the complexities of criminal justice, questioned the traditional liberal subject, and explored the challenges posed by various perspectives, including poststructuralism. The paper has also raised questions about the institutionalization of justice and the role of international criminal law in safeguarding diversity. In the ever-evolving landscape of law and justice, a comprehensive examination of these issues is imperative to ensure a fair and just society that can accommodate diverse conceptions of justice.

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References

- Aas, K. F., & Bosworth, M. (2013). *The borders of punishment: Migration, citizenship, and social exclusion*: OUP Oxford.
- Adler, F., Mueller, G. O., & Laufer, W. S. (2007). *Criminology and the criminal justice system*: McGraw-Hill New York, NY.
- Akhavan, P. (2001). Beyond impunity: can international criminal justice prevent future atrocities? *American Journal of International Law, 95*(1), 7-31.
- Alexy, R. (2000). On the structure of legal principles. *Ratio juris, 13*(3), 294-304.
- Andenaes, J. (1965). General preventive effects of punishment. *U. Pa. L. Rev., 114*, 949.
- Anselin, L., Cohen, J., Cook, D., Gorr, W., & Tita, G. (2000). Spatial analyses of crime. *Criminal justice, 4*(2), 213-262.
- Aos, S., Miller, M., & Drake, E. (2006). Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates. *Fed. Sent. R., 19*, 275.
- Austin, J., & Krisberg, B. (1981). NCCD research review: Wider, stronger, and different nets: The dialectics of criminal justice reform. *Journal of research in crime and delinquency, 18*(1), 165-196.
- Bachman, R., & Schutt, R. K. (2013). *The practice of research in criminology and criminal justice*: Sage.
- Bailie, R. (2008). Criminal Justice (Northern Ireland) Order 2008. *Irish Probation Journal, 5*, 20-22.
- Barbaree, H. E., Seto, M. C., Langton, C. M., & Peacock, E. J. (2001). Evaluating the predictive accuracy of six risk assessment instruments for adult sex offenders. *Criminal Justice and Behavior, 28*(4), 490-521.
- Bard, M., & Sangrey, D. (1986). *The crime victim's book*: Brunner/Mazel New York.
- Bassiouni, M. C. (1999). *Crimes against humanity in international criminal law*: Martinus Nijhoff Publishers.
- Bassiouni, M. C. (2008). *International criminal law, Volume 1: Sources, subjects and contents* (Vol. 1): Brill.
- Bator, P. M. (1962). Finality in criminal law and federal Habeas Corpus for state prisoners. *Harv. L. Rev., 76*, 441.
- Beavon, D. J., Brantingham, P. L., & Brantingham, P. J. (1994). The influence of street networks on the patterning of property offenses. *Crime prevention studies, 2*(2), 115-148.
- Belknap, J. (2020). *The invisible woman: Gender, crime, and justice*: Sage Publications.
- Berk, R., Heidari, H., Jabbari, S., Kearns, M., & Roth, A. (2021). Fairness in criminal justice risk assessments: The state of the art. *Sociological Methods & Research, 50*(1), 3-44.
- Berman, A. H., Bergman, H., Palmstierna, T., & Schlyter, F. (2004). Evaluation of the Drug Use Disorders Identification Test (DUDIT) in criminal justice and detoxification settings and in a Swedish population sample. *European addiction research, 11*(1), 22-31.
- Block, R. L., & Block, C. R. (1995). Space, place and crime: Hot spot areas and hot places of liquor-related crime. *Crime and place, 4*(2), 145-184.
- Bloom, B., Owen, B., & Covington, S. (2004). Women offenders and the gendered effects of public policy 1. *Review of policy research, 21*(1), 31-48.
- Bloom, B., Owen, B. A., & Covington, S. (2003). *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*: National Institute of Corrections Washington, DC.
- Blumstein, A. (1982). On the racial disproportionality of United States' prison populations. *J. Crim. L. & Criminology, 73*, 1259.
- Bobo, L. D., & Johnson, D. (2004). A taste for punishment: Black and white Americans' views on the death penalty and the war on drugs. *Du Bois Review: Social Science Research on Race, 1*(1), 151-180.
- Bonta, J. (2002). Offender risk assessment: Guidelines for selection and use. *Criminal Justice and Behavior, 29*(4), 355-379.
- Bonta, J., Wallace-Capretta, S., & Rooney, J. (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. *Criminal Justice and Behavior, 27*(3), 312-329.

- Borrillo, D. (2011). Ecological crimes and environmental criminal law: Reflections on the environmental criminal law in the European Union. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD), 3*(1), 1-14.
- Bottoms, A., Shapland, J., Costello, A., Holmes, D., & Muir, G. (2004). Towards desistance: Theoretical underpinnings for an empirical study. *The Howard Journal of Criminal Justice, 43*(4), 368-389.
- Bottoms, A., & Tankebe, J. (2012). Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *J. Crim. L. & Criminology, 102*, 119.
- Braithwaite, J., & Pettit, P. (1992). Not just deserts: A republican theory of criminal justice.
- Brantingham, P. J., & Brantingham, P. L. (1984). *Patterns in crime*: Macmillan New York.
- Brayne, S. (2014). Surveillance and system avoidance: Criminal justice contact and institutional attachment. *American Sociological Review, 79*(3), 367-391.
- Brewer, R. M., & Heitzeg, N. A. (2008). The racialization of crime and punishment: Criminal justice, color-blind racism, and the political economy of the prison industrial complex. *American Behavioral Scientist, 51*(5), 625-644.
- Brown, D., Farrier, D., Egger, S., McNamara, L., Steel, A., Grewcock, M., & Spears, D. (2011). *Criminal Laws: Materials and commentary on criminal law and process in NSW*: Federation Press.
- Butler, P. (1995). Racially based jury nullification: Black power in the criminal justice system. *Yale LJ, 105*, 677.
- Caldwell, M., Skeem, J., Salekin, R., & Van Rybroek, G. (2006). Treatment response of adolescent offenders with psychopathy features: A 2-year follow-up. *Criminal Justice and Behavior, 33*(5), 571-596.
- Caputo, A. A., Frick, P. J., & Brodsky, S. L. (1999). Family violence and juvenile sex offending: The potential mediating role of psychopathic traits and negative attitudes toward women. *Criminal Justice and Behavior, 26*(3), 338-356.
- Catchpole, R. E., & Gretton, H. M. (2003). The predictive validity of risk assessment with violent young offenders: A 1-year examination of criminal outcome. *Criminal Justice and Behavior, 30*(6), 688-708.
- Cavadino, M., & Dignan, J. (2007). *The penal system: An introduction*: Sage.
- Chandler, R. K., Fletcher, B. W., & Volkow, N. D. (2009). Treating drug abuse and addiction in the criminal justice system: improving public health and safety. *Jama, 301*(2), 183-190.
- Cheh, M. M. (1990). Constitutional limits on using civil remedies to achieve criminal law objectives: Understanding and transcending the criminal-civil law distinction. *Hastings LJ, 42*, 1325.
- Clarke, S. (2013). Trends in crime and criminal justice, 2010. *Eurostat: Statistics in Focus, 18*.
- Clear, T. R., & Frost, N. A. (2013). The punishment imperative. In *The Punishment Imperative*: New York University Press.
- Coker, D. (2001). Crime control and feminist law reform in domestic violence law: A critical review. *Buffalo Criminal Law Review, 4*(2), 801-860.
- Cook, P. J. (1980). Research in criminal deterrence: Laying the groundwork for the second decade. *Crime and justice, 2*, 211-268.
- Copelon, R. (2000). Gender crimes as war crimes: Integrating crimes against women into international criminal law. *McGill LJ, 46*, 217.
- Cornish, D. B., & Clarke, R. V. (2003). Opportunities, precipitators and criminal decisions: A reply to Wortley's critique of situational crime prevention. *Crime prevention studies, 16*, 41-96.
- Cryer, R. (2005). *Prosecuting international crimes: selectivity and the international criminal law regime* (Vol. 41): Cambridge University Press.
- Cullen, F. T. (1994). Social support as an organizing concept for criminology: Presidential address to the Academy of Criminal Justice Sciences. *Justice Quarterly, 11*(4), 527-559.
- Cullen, F. T., Clark, G. A., Cullen, J. B., & Mathers, R. A. (1985). Attribution, salience, and attitudes toward criminal sanctioning. *Criminal Justice and Behavior, 12*(3), 305-331.
- Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. *Criminal justice, 3*(1), 299-370.
- Currie, E. (1985). *Confronting crime: an American challenge*: Pantheon Books New York.
- Dan-Cohen, M. (1984). Decision rules and conduct rules: On acoustic separation in criminal law. *Harvard Law Review*, 625-677.
- Danner, A. M., & Martinez, J. S. (2005). Guilty associations: Joint criminal enterprise, command responsibility, and the development of international criminal law. *Calif. L. Rev., 93*, 75.
- Dau-Schmidt, K. G. (1990). An economic analysis of the criminal law as a preference-shaping policy. *Duke LJ*, 1.
- DeLisi, M. (2001). Designed to fail: Self-control and involvement in the criminal justice system. *American Journal of Criminal Justice, 26*, 131-148.
- DeLisi, M., & Piquero, A. R. (2011). New frontiers in criminal careers research, 2000–2011: A state-of-the-art review. *Journal of Criminal Justice, 39*(4), 289-301.
- Denney, A. S., & Tewksbury, R. (2013). How to write a literature review. *Journal of Criminal Justice Education, 24*(2), 218-234.
- Denno, D. W. (2020). Gender, crime, and the criminal law defenses. In *The American Court System* (pp. 144-244): Routledge.
- Douglas, J. E., Burgess, A. W., Burgess, A. G., & Ressler, R. K. (2013). *Crime classification manual: A standard system for investigating and classifying violent crime*: John Wiley & Sons.
- Drake, E. K., Aos, S., & Miller, M. G. (2009). Evidence-based public policy options to reduce crime and criminal justice costs: Implications in Washington State. *Victims and offenders, 4*(2), 170-196.

- Drakeford, M., & Vanstone, M. (2000). Social exclusion and the politics of criminal justice: a tale of two administrations. *The Howard Journal of Criminal Justice, 39*(4), 369-381.
- Dressler, J. (2019). Exegesis of the law of duress: Justifying the excuse and searching for its proper limits. In *Criminal Law* (pp. 273-328): Routledge.
- Duff, R. A. (1990). Intention, agency and criminal liability: Philosophy of action and the criminal law.
- Duff, R. A. (2007). *Answering for crime: Responsibility and liability in the criminal law*: Bloomsbury Publishing.
- Dutton, D. G. (1995). *The domestic assault of women: Psychological and criminal justice perspectives*: UBC press.
- Edleson, J. L., & Tolman, R. M. (1992). *Intervention for men who batter: An ecological approach*: Sage Publications, Inc.
- Farley, M., & Kelly, V. (2000). Prostitution: A critical review of the medical and social sciences literature. *Women & Criminal Justice, 11*(4), 29-64.
- Feinberg, J. (1989). *The moral limits of the criminal law: volume 3: harm to self*: Oxford University Press, USA.
- Ferguson, C. J., Miguel, C. S., Kilburn Jr, J. C., & Sanchez, P. (2007). The effectiveness of school-based anti-bullying programs: A meta-analytic review. *Criminal justice review, 32*(4), 401-414.
- Fisse, B. (1982). Reconstructing corporate criminal law: Deterrence, retribution, fault, and sanctions. *S. Cal. L. Rev., 56*, 1141.
- Fletcher, G. P. (2017). The theory of criminal negligence: A comparative analysis. In *The Structure and Limits of Criminal Law* (pp. 441-478): Routledge.
- Foner, P. S., & Carson, C. (1970). *The black panthers speak*: Da Capo Press Cambridge, MA.
- Ford, D. A. (1983). Wife battery and criminal justice: A study of victim decision-making. *Family Relations*, 463-475.
- Fox, R. (2001). Someone to watch over us: Back to the panopticon? *Criminal justice, 1*(3), 251-276.
- Frost, N. A., & Clear, T. R. (2007). Doctoral education in criminology and criminal justice. *Journal of Criminal Justice Education, 18*(1), 35-52.
- Geary, R. (1998). *Essential Criminal Law*: Routledge-Cavendish.
- Gendreau, P., Goggin, C. E., & Law, M. A. (1997). Predicting prison misconducts. *Criminal Justice and Behavior, 24*(4), 414-431.
- Gilfus, M. E. (1993). From victims to survivors to offenders: Women's routes of entry and immersion into street crime. *Women & Criminal Justice, 4*(1), 63-89.
- Gómez-Jara Díez, C. (2011). Corporate Culpability as a limit to the overcriminalization of corporate criminal liability: the interplay between self-regulation, corporate compliance, and corporate citizenship. *New Criminal Law Review, 14*(1), 78-96.
- Gottfredson, M. R., & Gottfredson, D. M. (1987). *Decision making in criminal justice: Toward the rational exercise of discretion* (Vol. 3): Springer Science & Business Media.
- Gounev, P., & Bezlov, T. (2006). The Roma in Bulgaria's criminal justice system: from ethnic profiling to imprisonment. *Critical Criminology, 14*(3), 313-338.
- Grabosky, P. (2016). *Keynotes in criminology and criminal justice series: Cybercrime*: Oxford University Press.
- Greene, J. R. (2000). Community policing in America: Changing the nature, structure, and function of the police. *Criminal justice, 3*(3), 299-370.
- Gretton, H. M., McBride, M., Hare, R. D., O'Shaughnessy, R., & Kumka, G. (2001). Psychopathy and recidivism in adolescent sex offenders. *Criminal Justice and Behavior, 28*(4), 427-449.
- Griffin, M. L., Hogan, N. L., Lambert, E. G., Tucker-Gail, K. A., & Baker, D. N. (2010). Job involvement, job stress, job satisfaction, and organizational commitment and the burnout of correctional staff. *Criminal Justice and Behavior, 37*(2), 239-255.
- Griffin, T., & Miller, M. K. (2008). Child abduction, AMBER alert, and crime control theater. *Criminal justice review, 33*(2), 159-176.
- Griffiths, C. T. (1996). Sanctioning and healing: restorative justice in Canadian Aboriginal communities. *International Journal of Comparative and Applied Criminal Justice, 20*(2), 195-208.
- Hagan, F. E., & Hagan, F. E. (1997). *Research methods in criminal justice and criminology*: Allyn and Bacon Boston.
- Hare, R. D. (1996). Psychopathy: A clinical construct whose time has come. *Criminal Justice and Behavior, 23*(1), 25-54.
- Hope, T. (2004). Pretend it works: Evidence and governance in the evaluation of the Reducing Burglary Initiative. *Criminal justice, 4*(3), 287-308.
- Hora, P. F., Schma, W. G., & Rosenthal, J. T. (1998). Therapeutic jurisprudence and the drug treatment court movement: Revolutionizing the criminal justice system's response to drug abuse and crime in America. *Notre Dame L. Rev., 74*, 439.
- Howe, M. D. (1938). Juries as judges of criminal law. *Harv. L. Rev., 52*, 582.
- Hsieh, C.-C., & Pugh, M. D. (1993). Poverty, income inequality, and violent crime: a meta-analysis of recent aggregate data studies. *Criminal justice review, 18*(2), 182-202.
- Hubbard, L., Marsden, E., & Racholl, V. (1989). Drug abuse treatment. *Chapel Hill, NC.*
- Hughes, K., Anderson, Z., Morleo, M., & Bellis, M. A. (2008). Alcohol, nightlife and violence: the relative contributions of drinking before and during nights out to negative health and criminal justice outcomes. *Addiction, 103*(1), 60-65.
- Hulsman, L. H. (1986). Critical criminology and the concept of crime. *Contemp. Crises, 10*, 63.
- Jeffries Jr, J. C., & Stephan III, P. B. (1978). Defenses, presumptions, and burden of proof in the criminal law. *Yale LJ, 88*, 1325.
- Johnson, S. L. (1987). Unconscious racism and the criminal law. *Cornell L. Rev., 73*, 1016.

- Jones, T., & Newburn, T. (2006). *EBOOK: Policy Transfer and Criminal Justice*: McGraw-Hill Education (UK).
- Jordan, J. (2004). Beyond belief? Police, rape and women's credibility. *Criminal justice, 4*(1), 29-59.
- Kadish, S. H. (2017). Excusing crime. In *The Structure and Limits of Criminal Law* (pp. 503-536): Routledge.
- Kahan, D. M. (2019). Social influence, social meaning, and deterrence. In *Criminal Law* (pp. 429-476): Routledge.
- Kahan, D. M., & Nussbaum, M. C. (1996). Two conceptions of emotion in criminal law. *Columbia Law Review, 96*(2), 269-374.
- Keedy, E. R. (1952). Irresistible impulse as a defense in the criminal law. *University of Pennsylvania Law Review, 100*(7), 956-993.
- Kelman, M. (1981). Interpretive construction in the substantive criminal law. *Stanford Law Review*, 591-673.
- Kifer, M., Hemmens, C., & Stohr, M. K. (2003). The goals of corrections: Perspectives from the line. *Criminal justice review, 28*(1), 47-69.
- Kittrie, N. N., & Arnold, T. W. (1971). *The right to be different: Deviance and enforced therapy*: Johns Hopkins Press Baltimore.
- Kleinberg, J., Mullainathan, S., & Raghavan, M. (2016). Inherent trade-offs in the fair determination of risk scores. *arXiv preprint arXiv:1609.05807*.
- Kruh, I. P., Frick, P. J., & Clements, C. B. (2005). Historical and personality correlates to the violence patterns of juveniles tried as adults. *Criminal Justice and Behavior, 32*(1), 69-96.
- Kuttschreuter, M., & Wiegman, O. (1998). Crime prevention and the attitude toward the criminal justice system: The effects of a multimedia campaign. *Journal of Criminal Justice, 26*(6), 441-452.
- Lamb, H. R., & Weinberger, L. E. (2005). The shift of psychiatric inpatient care from hospitals to jails and prisons. *Journal of the American Academy of Psychiatry and the law Online, 33*(4), 529-534.
- Lamb, H. R., Weinberger, L. E., & Gross, B. H. (2004). Mentally ill persons in the criminal justice system: Some perspectives. *Psychiatric Quarterly, 75*, 107-126.
- Lambert, E. (2003). The impact of organizational justice on correctional staff. *Journal of Criminal Justice, 31*(2), 155-168.
- Lambert, E., & Hogan, N. (2009). The importance of job satisfaction and organizational commitment in shaping turnover intent: A test of a causal model. *Criminal justice review, 34*(1), 96-118.
- Langbein, J. H. (2019). Torture and plea bargaining. In *Criminal Law* (pp. 361-380): Routledge.
- Legomsky, S. H. (2007). The new path of immigration law: Asymmetric incorporation of criminal justice norms. *Wash. & Lee L. Rev., 64*, 469.
- Len, S.-c., & Chiu, H. (1985). *Criminal justice in post-Mao China: Analysis and documents*: State University of New York Press.
- Lerman, A. E., & Weaver, V. M. (2020). *Arresting citizenship: The democratic consequences of American crime control*: University of Chicago Press.
- Livingston, D. (1999). Police reform and the department of justice: An essay on accountability. *Buffalo Criminal Law Review, 2*(2), 817-859.
- Lurigio, A. J., & Swartz, J. A. (2000). Changing the contours of the criminal justice system to meet the needs of persons with serious mental illness. *Criminal justice, 3*(45), 108.
- Lynch, M. J., Groves, W. B., & Roberts, C. (1989). *A primer in radical criminology*: Harrow and Heston New York.
- Mann, C. R. (1993). *Unequal justice: A question of color* (Vol. 783): Indiana University Press.
- Marenin, O. (1982). Parking tickets and class repression: The concept of policing in critical theories of criminal justice. *Contemporary crises, 6*, 241-266.
- Marshall, T. F. (1996). The evolution of restorative justice in Britain. *Eur. J. on Crim. Pol'y & Rsch., 4*, 21.
- Martin, S. E., & Jurik, N. C. (2006). *Doing justice, doing gender: Women in legal and criminal justice occupations*: Sage Publications.
- Martinez, R., & Lee, M. T. (2000). On immigration and crime. *Criminal justice, 1*(1), 486-524.
- Maruna, S., & King, A. (2013). Public opinion and community penalties. In *Alternatives to prison* (pp. 101-130): Willan.
- Massaro, T. M. (1990). Shame, culture, and American criminal law. *Mich. L. Rev., 89*, 1880.
- Mauer, M. (2006). *Race to incarcerate*: New Press, The.
- McCulloch, J., & Pickering, S. (2009). Pre-crime and counter-terrorism: Imagining future crime in the 'war on terror'. *The British Journal of Criminology, 49*(5), 628-645.
- McLeod, A. M. (2015). Prison abolition and grounded justice. *UCLA L. Rev., 62*, 1156.
- McNiel, D. E., & Binder, R. L. (2007). Effectiveness of a mental health court in reducing criminal recidivism and violence. *American Journal of Psychiatry, 164*(9), 1395-1403.
- Messerschmidt, J. W. (1986). *Capitalism, patriarchy, and crime: Toward a socialist feminist criminology*: Rowman & Littlefield Totowa, NJ.
- Miller, J. G. (1996). *Search and destroy: African-American males in the criminal justice system*: Cambridge University Press.
- Miller, S. L. (2001). The paradox of women arrested for domestic violence: Criminal justice professionals and service providers respond. *Violence against women, 7*(12), 1339-1376.
- Mitchell, O., Wilson, D. B., Eggers, A., & MacKenzie, D. L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts. *Journal of Criminal Justice, 40*(1), 60-71.
- Moffett, L. (2015). *Meaningful and effective? Considering victims' interests through participation at the international criminal court.* Paper presented at the Criminal Law Forum.
- Monture-Angus, P., & Stiegelbauer, S. M. (1996). Thunder in my soul: A Mohawk woman speaks. *Resources for Feminist Research, 25*(1/2), 52.

- Munetz, M. R., & Griffin, P. A. (2006). Use of the sequential intercept model as an approach to decriminalization of people with serious mental illness. *Psychiatric services, 57*(4), 544-549.
- Nadal, K. L., Griffin, K. E., Wong, Y., Hamit, S., & Rasmus, M. (2014). The impact of racial microaggressions on mental health: Counseling implications for clients of color. *Journal of Counseling & Development, 92*(1), 57-66.
- Nadal, K. L., Sriken, J., Davidoff, K. C., Wong, Y., & McLean, K. (2013). Microaggressions within families: Experiences of multiracial people. *Family Relations, 62*(1), 190-201.
- Nelken, D. (2010). *Comparative criminal justice: Making sense of difference* (Vol. 1): Sage.
- Nellis, A. (2016). The color of justice: Racial and ethnic disparity in state prisons.
- Newman, D. J., & Remington, F. J. (1966). *Conviction: The determination of guilt or innocence without trial* (Vol. 278): Little, Brown Boston.
- Okuta, A. (2009). National legislation for prosecution of international crimes in Kenya. *Journal of International Criminal Justice, 7*(5), 1063-1076.
- Paternoster, R. (2010). How much do we really know about criminal deterrence. *J. Crim. L. & Criminology, 100*, 765.
- Piquero, A. R., Jennings, W. G., Jemison, E., Kaukinen, C., & Knaul, F. M. (2021). Domestic violence during the COVID-19 pandemic-Evidence from a systematic review and meta-analysis. *Journal of Criminal Justice, 74*, 101806.
- Plotnikoff, J., & Woolfson, R. (2015). *Intermediaries in the criminal justice system: Improving communication for vulnerable witnesses and defendants*: Policy Press.
- Radelet, L. A., & Reed, H. C. (1973). *The police and the community*: Glencoe Press Beverly Hills, CA.
- Ratner, S. R. (1998). The Schizophrenias of International Criminal Law. *Tex. Int'l LJ, 33*, 237.
- Reckless, W. C. (1961). *The crime problem*: Appleton-Century-Crofts New York.
- Reichel, P. L., & Reichel, P. L. (1999). *Comparative criminal justice systems: A topical approach*: Prentice Hall Upper Saddle River, New Jersey.
- Reiman, J., & Leighton, P. (2015). *Rich get richer and the poor get prison, the (subscription): Ideology, class, and criminal justice*: Routledge.
- Richard, T. (2013). Qualitative versus quantitative methods: Understanding why qualitative methods are superior for criminology and criminal justice.
- Roberts, J. (2018). *Public opinion, crime, and criminal justice*: Routledge.
- Robinson, P. H. (2001). Punishing dangerousness: Cloaking preventive detention as criminal justice. *Harvard Law Review, 114*(5), 1429-1456.
- Robinson, P. H. (2019). *Justice, liability, and blame: Community views and the criminal law*: Routledge.
- Robinson, P. H., & Darley, J. M. (2017). The utility of desert. In *The Structure and Limits of Criminal Law* (pp. 537-584): Routledge.
- Rocque, M., & Paternoster, R. (2011). Understanding the antecedents of the" school-to-jail" link: The relationship between race and school discipline. *The Journal of Criminal Law and Criminology*, 633-665.
- Roux, C., Crispino, F., & Ribaux, O. (2012). From forensics to forensic science. *Current Issues in Criminal Justice, 24*(1), 7-24.
- Russell, K. K. (1998). *The color of crime: Racial hoaxes, white fear, black protectionism, police harassment, and other macroaggressions*: New York University Press New York.
- Sampson, R. J., & Lauritsen, J. L. (1997). Racial and ethnic disparities in crime and criminal justice in the United States. *Crime and justice, 21*, 311-374.
- Schlesinger, P., & Tumber, H. (2023). Reporting crime: The media politics of criminal justice. In *The Political Communication Reader* (pp. 64-68): Routledge.
- Schulhofer, S. J. (1973). Harm and punishment: A critique of emphasis on the results of conduct in the criminal law. *U. Pa. L. Rev., 122*, 1497.
- Schulhofer, S. J. (2019). The feminist challenge in criminal law. In *Criminal Law* (pp. 115-172): Routledge.
- Schur, E. M. (1971). *Labeling deviant behavior: Its sociological implications*: Harper & Row New York.
- Schwartz, G. T. (1996). Mixed theories of tort law: affirming both deterrence and corrective justice. *Tex. L. Rev., 75*, 1801.
- Scoular, J., & Carline, A. (2014). A critical account of a 'creeping neo-abolitionism': Regulating prostitution in England and Wales. *Criminology & Criminal Justice, 14*(5), 608-626.
- Sebastian, C. L., Fontaine, N. M., Bird, G., Blakemore, S.-J., De Brito, S. A., McCrory, E. J., & Viding, E. (2012). Neural processing associated with cognitive and affective Theory of Mind in adolescents and adults. *Social cognitive and affective neuroscience, 7*(1), 53-63.
- Seidman, L. M. (1981). The Supreme Court, Entrapment, and Our Criminal Justice Dilemma. *The Supreme Court Review, 1981*, 111-155.
- Shavell, S. (1985). Criminal law and the optimal use of nonmonetary sanctions as a deterrent. *Columbia Law Review, 85*(6), 1232-1262.
- Simons, R. L., Wu, C. I., Conger, R. D., & Lorenz, F. O. (1994). Two routes to delinquency: Differences between early and late starters in the impact of parenting and deviant peers. *Criminology, 32*(2), 247-276.
- Simourd, D. J., & Olver, M. E. (2002). The future of criminal attitudes research and practice. *Criminal Justice and Behavior, 29*(4), 427-446.

- Sloane, R. D. (2017). The expressive capacity of international punishment: The limits of the national law analogy and the potential of international criminal law. In *Globalization of Criminal Justice* (pp. 315-370): Routledge.
- Solomon, P. H. (1996). *Soviet criminal justice under Stalin* (Vol. 100): Cambridge University Press.
- Sonkin, D. J., Martin, D., & Walker, L. E. (1985). *The male batterer: A treatment approach* (Vol. 4): Springer Publishing Company New York.
- Spalek, B. (2008). *Communities, identities and crime*: Policy Press.
- Sparks, R. F., Genn, H. G., & Dodd, D. J. (1977). *Surveying victims: A study of the measurement of criminal victimization, perceptions of crime, and attitudes to criminal justice*: Wiley London.
- Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. *Criminal justice, 3*(1), 427-501.
- Stacer, M. J., Eagleson, R. C., & Solinas-Saunders, M. (2017). Exploring the impact of correctional facility tours on the perceptions of undergraduate criminal justice students. *Journal of Criminal Justice Education, 28*(4), 492-513.
- Stumpf, J. (2006). The the crimmigration crisis: Immigrants, crime, and sovereign power. *Am. UL Rev., 56*, 367.
- Surette, R. (1992). *Media, crime, and criminal justice: Images and realities*: Brooks/Cole Publishing Company Pacific Grove, CA.
- Tadros, V. (2011). *The ends of harm: The moral foundations of criminal law*: OUP Oxford.
- Taylor III, W. W. (1996). No Quick Fix to Crime Problem. *Crim. Just., 11*, ii.
- Teplin, L. A. (1983). The criminalization of the mentally ill: speculation in search of data. *Psychological Bulletin, 94*(1), 54.
- Teplin, L. A. (1984). Criminalizing mental disorder: The comparative arrest rate of the mentally ill. *American psychologist, 39*(7), 794.
- Theriot, M. T. (2009). School resource officers and the criminalization of student behavior. *Journal of Criminal Justice, 37*(3), 280-287.
- Thompson, M. (2010). Race, gender, and the social construction of mental illness in the criminal justice system. *Sociological Perspectives, 53*(1), 99-125.
- Thornberry, T. P., & Krohn, M. D. (2000). The self-report method for measuring delinquency and crime. *Measurement and analysis of crime and justice: Criminal justice, 4*.
- Tonry, M. (2004). *Thinking about crime: Sense and sensibility in American penal culture*: Oxford University Press.
- Tonry, M. (2012). *Punishment and politics*: Routledge.
- Travis, J. (2006). Families left behind: The hidden costs of incarceration and reentry.
- Varghese, F. P., & Cummings, D. L. (2013). Introduction: Why apply vocational psychology to criminal justice populations? *The Counseling Psychologist, 41*(7), 961-989.
- Verga, C., Murillo, L., Toulon, E. D., Morote, E.-S., & Perry, S. M. (2016). Comparison of Race-Gender, Urban-Suburban Criminal Justice College Students Satisfaction of the Police Department. *Journal for Leadership and Instruction, 15*(1), 33-38.
- Violanti, J. M., & Aron, F. (1995). Police stressors: Variations in perception among police personnel. *Journal of Criminal Justice, 23*(3), 287-294.
- Von Hirsch, A., & Roberts, J. V. (2004). Legislating sentencing principles: the provisions of the Criminal Justice Act 2003 relating to sentencing purposes and the role of previous convictions. *Criminal Law Review*, 639-652.
- Wagner, P., & Rabuy, B. (2017). *Mass incarceration: The whole pie 2017*: Prison policy initiative Northampton, MA.
- Walker, S. (1994). *Sense and nonsense about crime and drugs: A policy guide*: Wadsworth Publishing Company Belmont, CA.
- Walklate, S. (2013). *Victimology (Routledge Revivals): The victim and the criminal justice process*: Routledge.
- Warr, M. (2000). Fear of crime in the United States: Avenues for research and policy. *Criminal justice, 4*(4), 451-489.
- Weaver, V. M., & Lerman, A. E. (2010). Political consequences of the carceral state. *American Political Science Review, 104*(4), 817-833.
- Weisburd, D., Lum, C. M., & Petrosino, A. (2017). Does research design affect study outcomes in criminal justice? In *Quantitative methods in criminology* (pp. 43-63): Routledge.
- Welch, K. (2007). Black criminal stereotypes and racial profiling. *Journal of contemporary criminal justice, 23*(3), 276-288.
- Wexler, H. K., Falkin, G. P., & Lipton, D. S. (1990). Outcome evaluation of a prison therapeutic community for substance abuse treatment. *Criminal Justice and Behavior, 17*(1), 71-92.
- Wexler, R. (2018). Life, liberty, and trade secrets: Intellectual property in the criminal justice system. *Stan. L. Rev., 70*, 1343.
- Wiener, M. J. (1990). *Reconstructing the criminal: Culture, law, and policy in England, 1830-1914*: Cambridge University Press.
- Wilson, J. Q., & Petersilia, J. (2010). *Crime and public policy*: Oxford University Press.
- Woods, G. D. (2002). *A History of Criminal Law in New South Wales: The Colonial Period, 1788-1900* (Vol. 1): Federation Press.
- Wootton, B., & Wootton, B. (1963). *Crime and the criminal law: Reflections of a magistrate and social scientist* (Vol. 1): Stevens London.
- Worrall, A. (2002). *Offending women: Female lawbreakers and the criminal justice system*: Routledge.
- Wrightsman, L. S. (1987). *Psychology and the legal system*: Thomson Brooks/Cole Publishing Co.
- Yarmey, A. D. (1979). *The psychology of eyewitness testimony*: Free Press New York.
- Zatz, M. S. (2000). The convergence of race, ethnicity, gender, and class on court decision making: Looking toward the 21st century. *Criminal justice, 3*(1), 503-552.

- Zedner, L. (2017). Securing liberty in the face of terror: Reflections from criminal justice. In *Civil Rights and Security* (pp. 231-257): Routledge.
- Zehr, H. (1990). Changing lenses. In: Scottdale, PA: Herald Press.
- Zorza, J. (1992). Criminal law of misdemeanor domestic violence, 1970-1990. *J. Crim. L. & Criminology, 83*, 46.

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