

SECOND EDITION

# U.S. CRIMINAL JUSTICE POLICY

A CONTEMPORARY READER

EDITED BY

**KARIM ISMAILI, PHD**

Vice Provost & Professor of Criminology

Bridgewater State University

Bridgewater, Massachusetts



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Jones & Bartlett Learning  
5 Wall Street  
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## P R E F A C E

This collection of essays on contemporary U.S. criminal justice policy is a response to the significant recent growth of policy-oriented research in the fields of criminology and criminal justice. As this research has expanded, it has been accompanied by a proliferation in the number of college and university courses on crime policy offered in the United States. Influenced by both of these developments, the main goal of this book is to encourage students, instructors, and interested readers to engage in dialogue about criminal justice policy and to think about the potential for criminal justice reform.

The authors invited to contribute to this book were asked to bring a policy focus to their areas of expertise. Specifically, they were asked to consider how criminal justice policy issues are framed; uncover who participates in the policy process; discuss how policy is made; consider the constraints and opportunities found in the policy process; link these findings to broader institutional, cultural, and global criminal justice trends; and grapple with what their research reveals about crime policy and democratic governance in the United States. Each essay approaches this challenge differently, yet, as will become apparent in the pages that follow, all of the results are informative and thought provoking.

If there is one theme that connects each chapter, it is that criminal justice is an extremely broad and complex policy field. It features controversial trade-offs that attempt to balance security, equity, liberty, and efficiency. It consumes the time and energy of countless individuals, whether they are involved in developing, implementing, or evaluating crime policy. And it is emotionally charged, highly politicized, and often characterized by short-term fixes rather than by decisions based on sound policy analysis.

The second edition of this book is being published at a time when various levels of government are actively engaged in reviewing the past, present, and future of criminal justice policy. While that review necessarily involves an examination of numerous policy areas, most converge on one overarching development: mass incarceration. Over the past 40 years, the United States has become the global incarceration leader. The “War on Crime” and the subsequent “War on Drugs” generated the phenomenon of mass incarceration, a troubling recent hallmark of U.S. criminal justice supported by specific policies such as mandatory minimum sentences, “three strikes” laws, and the routine jailing of probation and parole violators. As described in the recent landmark study from the National Academy of Sciences (Travis, Western, & Redburn, 2014), the U.S. penal population now stands at 2.2 million adults, a number that has grown fourfold since

the 1970s. More than half of all state prisoners are incarcerated for nonviolent crimes, and one of every nine are serving life sentences. At this time, close to 1 of every 100 adults in the United States is in prison or jail. Commenting on these facts, the legal scholar David Cole has stated, “[T]he United States...is indisputably the world leader in locking up human beings behind bars. We are less than 5 percent of the world’s population, but we warehouse 25 percent of the world’s incarcerated population. Our per capita incarceration rate is seven times greater than France’s, 14 times greater than Japan’s and 24 times greater than India’s” (Cole, 2014, p. 24).

Those who comprise the incarcerated are mostly minority men under the age of 40. They are generally poorly educated and suffer from other significant deficits such as mental illness, addiction, and poor health. The economic cost of mass incarceration has been estimated at \$80 billion in direct correctional expenses per year (Kearney & Harris, 2014). While this represents an astonishing number, it does not capture the myriad of ways that mass incarceration has cost individuals, families, and communities, especially communities of color.

There is evidence that the tide may be turning against mass incarceration. The great recession of the last decade has led federal, state, and local governments to examine their expenditures, which, in turn, has generated increased scrutiny of the costs of criminal justice. This, coupled with the continuing decreases in crime across the nation, has led all levels of government to engage in pragmatic, evidence-based criminal justice reforms that have begun to shift the tough-on-crime stance to one that is smart on crime (Cole, 2014). The essays included in this volume offer valuable insights into both the challenges and opportunities that should be considered as the nation continues to explore the potential for criminal justice reform.

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## Organization of the Book

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*U.S. Criminal Justice Policy: A Contemporary Reader* begins with an introduction that describes the context of criminal justice policy-making. The chapter presents examples of what constitutes public policy and explores alternative images of the policy process. Special attention is devoted to the political process and to the various actors that attempt to influence the shape and direction of crime policy. Following the introduction, the book is organized into two major parts. Part I explores criminal justice policy as it relates to each “component” of the criminal justice system. Beginning with two chapters on contemporary policing policy, the section moves on to analyze policy challenges and dilemmas facing the courts, corrections, and juvenile justice. Part II is designed to illustrate the breadth of criminal justice policy by exploring its intersection with other policy areas, including national security policy, immigration policy, technology policy, economic policy, international criminal justice policy, and public health policy.

Each chapter provides insight into the past, present, and future of crime policy in America. It is those insights that become the raw material for the policy learning the book aims to convey to its readers.

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## A B O U T   T H E   E D I T O R

**Karim Ismaili** is Vice Provost and Professor of Criminology at Bridgewater State University. He holds a PhD in political science from the University of Western Ontario. His areas of teaching, research, and publishing include criminal justice policy and analysis, penology, criminological theory, crime and inequality, and post-9/11 crime and security developments.



## C O N T R I B U T O R S

**Steven E. Barkan**

University of Maine

**Nicole L. Bracy**

Harder+Company Community Research

**Ben Brown**

University of Texas Rio Grande Valley

**Jeffrey A. Butts**

John Jay College of Criminal Justice

**Gregory J. DeLone**

Fayetteville State University

**Miriam A. DeLone**

Fayetteville State University

**David O. Friedrichs**

University of Scranton

**Natasha A. Frost**

Northeastern University

**Stephen Gies**

Development Services Group, Inc.

**Dana Greene**

Independent Scholar

**Jeff Gruenewald**

Indiana University-Purdue University

**Eoin Healy**

Development Services Group, Inc.  
& NYC Criminal Justice Agency

**Delores Jones-Brown**

John Jay College of Criminal Justice

**Erica King-Toler**

John Jay College of Criminal Justice

**Susan T. Krumholz**

University of Massachusetts  
Dartmouth

**Daniel P. Mears**

Florida State University

**Kevin Moran**

Bloomfield College

**David B. Rottman**

National Center for State Courts

**Olivia Salama**

University of Scranton, Class of 2014

**Brent L. Smith**

University of Arkansas

**Barbara Ann Stolz**

Georgetown University

**Susruta Sudula**

John Jay College of Criminal  
Justice/CUNY Graduate Center

**Sema A. Taheri**

Northeastern University

**Janeen Buck Willison**

Urban Institute

**Phelan A. Wyrick**

National Institute of Justice

## ABOUT THE CONTRIBUTORS

*Steven E. Barkan* is professor of sociology at the University of Maine. He is the author of *Criminology: A Sociological Understanding*, 6th edition (Pearson) and of several other textbooks and journal articles in the fields of criminology and sociology. Barkan is a former president of the Society for the Study of Social Problems and is currently president of the Text and Academic Authors Association.

*Nicole L. Bracy* is a Senior Research Associate at Harder+Company Community Research in San Diego, California. She also teaches in the School of Public Affairs at San Diego State University and in the School of Social Science, Business, and Humanities at Southwestern College. Nicole holds a PhD in Criminology from the University of Delaware.

*Ben Brown* is a professor in the Criminal Justice Department at The University of Texas Rio Grande Valley. He has conducted research in the United States, Mexico, and South Korea and published his findings in numerous scholarly journals such as *Crime & Delinquency*, *Journal of Criminal Justice*, and *Journal of Interpersonal Violence*.

*Jeffrey A. Butts* is the director of the Research & Evaluation Center at John Jay College of Criminal Justice. His work focuses on discovering and improving the effectiveness of policies and programs related to the justice system. Previously, he was a research fellow with Chapin Hall at the University of Chicago; director of the Program on Youth Justice at the Urban Institute in Washington, DC; and senior research associate at the National Center for Juvenile Justice in Pittsburgh. He has studied specialized courts for youth, drug treatment systems, and positive youth development as an intervention framework for youth justice. He is a graduate of the University of Oregon and holds a PhD from the University of Michigan.

*Gregory J. DeLone* is an Assistant Professor of Political Science and the Program Coordinator for the Bachelor of Science in Professional Studies at Fayetteville State University. He has been involved in numerous community service and research-oriented projects, including an evaluation of the Nebraska State Patrol, strategic planning assistance to the Red Cross, and an evaluation of the Minor in Possession Diversion Program for the Health and Safety Council.

*Miriam A. DeLone* is Professor and Chair of the Department of Criminal Justice at Fayetteville State University. She co-authored *The Color of Justice: Race, Ethnicity and Crime in America*, 5th edition (Wadsworth Publishing) with colleagues Samuel Walker and Cassia Spohn. Her research interests include political economy and social control; race, ethnicity, gender, and sentencing; and criminological and criminal justice theory testing.

*David O. Friedrichs* is Distinguished Professor of Sociology, Criminal Justice, and Criminology at the University of Scranton. His most recent book, co-authored with Dawn L. Rothe, is *Crimes of Globalization* (Routledge, 2015). He has served as President of the White Collar Crime Research Consortium and has received the Lifetime Achievement Award of the Division on Critical Criminology (ASC). He has been a visiting professor in South Africa, Australia, and Sweden.

*Natasha A. Frost* is the Associate Dean for Academic Programs and an Associate Professor in the School of Criminology and Criminal Justice at Northeastern University. She holds a Bachelor's degree in psychology from Northeastern University (1997) and a PhD in criminal justice from the CUNY Graduate School and University Center (2004). Her book, *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*, co-authored with Todd Clear, was recently published by NYU Press (2014).

*Stephen Gies* is Principal Investigator at Development Services Group, Inc. Currently, he is the principal investigator (PI) of two Office of Juvenile Justice and Delinquency Prevention (OJJDP)-funded evaluations. The first is an evaluation of juveniles involved in commercialized sexual exploitation; the second is an evaluation of the Girls Circle program, a gender-specific program model that attempts to increase participants' competence and personal strengths. He was past PI on two National Institute of Justice-funded projects to evaluate the utility of GPS to supervise high-risk sex offenders and high-risk gang offenders on parole.

*Dana Greene* holds a doctorate in Criminal Justice from The Graduate Center of the City University of New York. Recent publications include an essay accompanying a series of her documentary photographs titled "La Frontera: A View from New Mexico's Carceral Borderland," published in *Criminal Justice and Law Enforcement Annual*. She spent many years as an Associate Professor at New Mexico State University before becoming an independent scholar.

*Jeff Gruenewald* is an Assistant Professor in the School of Public and Environmental Affairs at Indiana University-Purdue University, Indianapolis. He studies terrorism, homeland security, bias crime, homicide, and media coverage of crime and deviance. Some of his recent work has appeared in journals such as *Justice Quarterly*, *Journal of Quantitative Criminology*, *Terrorism & Political Violence*, *Studies in Conflict & Terrorism*, *Crime & Delinquency*, and *Criminal Justice & Behavior*.

*Eoin Healy* is a Senior Research Analyst with the New York City Criminal Justice Agency and with Development Services Group, Inc. His research focuses on pretrial risk assessment, recidivism, pretrial misconduct, program evaluation, and best practices policies and interventions in the areas of criminal justice and education.

*Delores Jones-Brown* is a Professor in the Department of Law and Police Science at John Jay College, where she also directs the Center on Race, Crime, and Justice. Her research on race and policing has appeared in numerous journals and edited volumes. In 2015, she was invited to give testimony regarding policing alternatives to President Obama's Task Force on 21st Century Policing. She also testified at the United States Commission on Civil Rights on police use of force. She is the author and co-editor of four books on race and justice. A former prosecutor, her current funded research examines viable alternatives for policing contemporary urban environments.

*Erica King-Toler* is an Assistant Professor in the SEEK Department at John Jay College of Criminal Justice. She teaches courses in social justice and education with an emphasis on developing culturally competent practitioners. She is a licensed cross-cultural psychologist and has worked on training law enforcement officers, mental health providers, and medical professionals to consider the impact of race, class, culture, and gender on the work they do with consumers of their services.

*Susan T. Krumholz* received her JD from Seattle University and her PhD in Law, Policy, and Society from Northeastern University. She is a Professor of Crime and Justice Studies and President of the University of Massachusetts Dartmouth Faculty Federation. She is presently co-editing a series of textbooks in Crime, Law and Justice Studies, *Learning Through Cases*, and is the co-author of what will be the third book in the series, tentatively titled *Gender and the Criminal/Legal System*. She is most passionate about the classes she teaches at the Bristol County House of Corrections as part of the Inside-Out Prison Exchange Program.

*Daniel P. Mears* is a Professor at Florida State University's College of Criminology and Criminal Justice. His research focuses on a range of theoretical and applied research topics in criminology, criminal justice, law, and sociology; his work has appeared in *Criminology*, *Journal of Research in Crime and Delinquency*, and *Law and Society Review*. Recent studies have focused on juvenile justice, prisoner reentry, sentencing, and supermax prisons.

*Kevin Moran* is an Assistant Professor of Criminology/Sociology in the Division of Social and Behavioral Sciences at Bloomfield College, New Jersey. He is also completing a PhD in Sociology at the Graduate Center, CUNY. He once worked at the John Jay College Center on Race, Crime, and Justice and has taught sociology and criminology at three different CUNY colleges. His research interests concern the process of "going straight," or desistance from crime, as well as urban policing

policy. He has published in several journals, including *Theoretical Criminology* as well as the *British Journal of Criminology*.

*David B. Rottman* is a Principal Court Research Consultant at the National Center for State Courts. His research studies public trust in the courts, judicial decision-making, and evaluating judges. He has published over 60 articles and book chapters on topics relevant to the state courts, in addition to reports from numerous research projects. He previously worked at the Economic and Social Research Institute in Dublin, Ireland and holds a PhD in sociology from the University of Illinois at Urbana.

*Olivia Salama* is a 2014 magna cum laude graduate of the University of Scranton. She was awarded a Fulbright Scholarship in Law to Finland (University of Turku) for 2014–2015, where she investigated the policing of economic crime. She has been admitted to the Masters in Public Policy Program at the University of Edinburgh. In the summer of 2015, she presented her research at criminology conferences in Hong Kong and Brisbane.

*Brent L. Smith* is Distinguished Professor and Director of the Terrorism Research Center in Fulbright College at the University of Arkansas. He founded the American Terrorism Study in 1987 with the assistance of the FBI's Terrorism Research and Analytical Center. The project has been funded by the National Institute of Justice, the Department of Homeland Security, the DHS START Center of Excellence, the Department of Defense, and the National Memorial Institute for the Prevention of Terrorism. His publications have appeared in *Criminology*, *Justice Quarterly*, *Criminology & Public Policy*, the *NIJ Journal*, and other scholarly outlets.

*Barbara Ann Stolz* is a political scientist/criminologist whose research focuses on criminal justice policy making. She has held positions at American University and Yaroslavl State University, Russia. At the U.S. Government Accountability Office, she led projects on federal prison crowding, human trafficking, drug control, civil rights enforcement, and elections. Her publications include *Still Struggling: America's Low-Income Women Confronting the 1980s* (Lexington Books, 1985) and *Criminal Justice Policymaking: Federal Roles and Processes* (Praeger, 2001).

*Susruta Sudula* is a Doctoral Student in Criminal Justice at John Jay College/CUNY Graduate Center, where she works as a research assistant for various projects. She graduated with an MA in Criminal Justice from John Jay College of Criminal Justice, and holds a BA in Biological Anthropology with a minor in Criminal Justice from Temple University.



*Sema A. Taheri* is a doctoral student in the School of Criminology and Criminal Justice at Northeastern University. She holds a MA in Criminal Justice from Loyola University, Chicago. She has worked with corrections departments on a number of projects, including program evaluations and analyses of population trends. Her research focuses on evidence-based programming and policy within agencies of the criminal justice system, and the diffusion of knowledge through researcher–practitioner partnerships.

*Janeen Buck Willison* is a Senior Research Associate in the Justice Policy Center at the Urban Institute, where she evaluates innovative criminal and juvenile justice interventions. Her portfolio includes studies for the federal government and private foundations focused on reentry for juvenile and adult offenders, specialized courts, delinquency prevention, juvenile justice reform, mental health interventions for offenders, evidence-based practice; systems change, and the link between substance abuse and crime. Recent studies include the Assessing Policy Options (APO) project and evaluations of Second Chance Act adult and juvenile offender demonstration projects. She holds a master’s degree in Justice, Law and Criminology from American University.

*Phelan A. Wyrick* is the Director of the Crime and Crime Prevention Research Division at the National Institute of Justice, U.S. Department of Justice. He is responsible for developing and overseeing federal research, programs, and policy related to criminal justice, juvenile justice, and school safety. His contributions have been recognized through multiple departmental honors, including the Attorney General’s Distinguished Service Award in 2012 and the Attorney General’s Award for Outstanding Contributions to Community Partnerships for Public Safety in 2007.



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**Kurt Ward**

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# Thinking About Criminal Justice Policy: Process, Players, and Politics

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Karim Ismaili

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## Introduction

This chapter explores the relationship between criminology and public policy. It will argue that although criminology has been preoccupied with policy relevance since its inception (Gilsinan, 1991), contemporary criminal justice policy is all too often made without the benefit of criminological expertise. This problem is due largely to the fact that empirical evidence is easily overridden by the realities of the policy-making process. That process is complex, involves many actors, and functions under significant political and social pressure “to do something about crime.” While criminologists have excelled in thinking about the causes and effects of crime, they have only very recently begun to think seriously about the policy-making process and their role within it. In order for research on the policy process to advance, the “real world” of criminal justice policy-making must be illuminated through the accumulation of knowledge both of and in the policy process (see Togerson, 1985).

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## What Is Public Policy?

Criminology is about controlling crime and achieving justice (Lafree, 2007; Welford, 1997). It is an applied social science in which criminologists conduct empirical research aimed at understanding, explaining, predicting, and preventing crime (Lanier & Henry, 1998, p. 2). What are the causes of terrorism? How can recidivism be reduced? Why is procedural fairness central to the legitimacy of the justice system? What constitutes an effective police practice? These are only

some of the many varied questions explored by criminologists. Since one of the core responsibilities of government in the United States is to provide for the safety and security of its citizens, it follows that criminological research findings have the potential to influence how this responsibility is defined and carried out. Yet sound research accompanied by results that have been replicated over time is no guarantee that Americans will benefit from this knowledge in their everyday lives. For improvements to occur, the results must be translated into public policy.

At its most general, public policy is a decision or action of government that addresses problems and issues (The Dirksen Congressional Center, 2006). In order for a policy to be considered public policy, it is widely accepted that “it must to some degree have been generated or at least processed within the framework of governmental procedures, influences and organizations” (Hogwood & Gunn, 1984, p. 24). Unlike the vast majority of private sector policies, public policies are funded through public resources and backed up by the legal system. This latter feature is particularly important to criminal justice policy since it is the threat of sanctions—including the loss of liberty (and possibly life)—that is a defining characteristic of this policy area.

The term policy has many uses. Some examples include (Hogwood & Gunn, 1984, pp. 12–19):

- Policy as a label for a field of activity (e.g., criminal justice policy, educational policy, welfare policy, military policy)
- Policy as a general purpose or desired state of affairs
- Policy as a specific proposal (put forward by an elected leader, government agency, or interest group)
- Policy as a decision of government (often arising from a crucial moment of choice)
- Policy as a formal authorization (e.g., a specific act, statute, or executive order)
- Policy as a program of activity (e.g., a legislative package that includes a mandate, organizational structure, and resources)
- Policy as an output (i.e., what governments actually deliver as opposed to what is promised or envisioned)
- Policy as a product of a particular activity
- Policy as a theory (if we do X, then Y will follow)
- Policy as a process that unfolds over a period of time

These descriptions not only provide some insight into the sheer range of activities that constitute policy, they also highlight the importance of considering the specific context in which the term policy is used.

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## **Criminology and the Policy-Making Process**

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All public policy—including criminal justice policy—is the outcome of a process that is critical for criminologists to explore. Examining the policy process can facilitate an understanding of how the political process negotiates change, help

to identify the constraints the process places upon the translation of ideas and analysis into action, describe the degree to which various actors influence the movement of criminal justice proposals through the policy process, and provide insight into how politics determines what is and can be implemented (Solomon, 1981, p. 5). This understanding, in turn, can shed light on how criminal justice policy differs from other policy realms, uncover whether crime policy tends to change more slowly than others, provide insight into whether there are greater obstacles to innovation in criminal justice, and describe how political structure and cultural traditions affect the policy process and account for variations between nations (Solomon, 1981, p. 6).

Despite the clear potential benefits of studying the criminal justice policy-making process, it is regrettable that very little is known about how criminal justice policy becomes the way it is (Jones & Newburn, 2002, p. 179). Trevor Jones and Tim Newburn have suggested two reasons for this state of affairs: First, criminologists have tended to focus their research on the effects of policy rather than on its origins; and second, political scientists, while having a sophisticated notion of what policy is and how it comes about, have tended to neglect the field of crime control (Jones & Newburn, 2002, p. 179). To be fair, it is perfectly understandable why criminologists have been preoccupied with the effects of crime policy. Over the past several decades, these effects have been profound, particularly in the United States. Broad social transformations in governance (the rise of neo-liberalism) and politics (the emergence of a highly charged symbolic discourse about crime and the transformation of crime from a local and state issue into a federal one) have conspired to generate a “punitive turn” in criminal justice policy (Gest, 2001; Haggerty, 2004; Jacobson, 2006). The various policies associated with this turn—mandatory sentencing, private sector involvement in crime control, a victim-centered orientation to the criminal justice system, a dramatic increase in the use of prisons, etc.—have had an enormous impact on the nature of the policy research that has been undertaken by criminologists.

Unfortunately, the resulting research findings have not been influential in determining the course of criminal justice policy in the United States. Part of this failure has to do with the fact that in a society saturated with “crime talk,” criminologists have utmost difficulty in communicating with politicians, policy-makers, professionals, and the public. Criminological reasoning is now mediated and contested by a range of vociferous interest groups, activists, and a multitude of institutional actors and public opinions. And criminologists are alienated from late modern political culture because crime, policing, and punishment are, or can easily become, defining electoral issues (Chancer & McLaughlin, 2007, p. 157).

Moreover, little attention has been devoted to understanding the policy-making environment in which claims, counter-claims, and policy options are negotiated. Brownstein (2007) has described policy-making as a marketplace of claims wherein researchers compete and collaborate with lobbyists, politicians, government officials, and even other researchers. While each participant sets forth

a favored position that will result in a desired outcome, criminologists—who are socialized to conduct objective research—find themselves “at a disadvantage in a marketplace filled with others more experienced and powerful than they are” (Brownstein, 2007, p. 126). It is important to note, however, that the estrangement of criminology from the “real world” of policy-making can be reversed if criminologists learn to be effective claims makers in the marketplace of claims, where policies are made and programs implemented (p. 130).

John Laub has stated that the belief that scholarly knowledge alone determines policy outcomes is naïve (Laub, 2004, p. 18). It is increasingly the case that empirical research about crime has an uneasy relationship with the values and needs that often dominate the world of politics and policy (Hawkesworth, 1988, chap. 3). If there is one lesson to be learned from the decline of criminological influence in the contemporary period, it is that pure reason competes with politics in shaping state responses to the crime “problem” (Zajac, 2002, p. 252). Put another way, both the process and environment of policy-making play a significant role in shaping policy outcomes. As Henry Ruth and Kevin Reitz (2003) have said:

There is no doubt that data and empirical evidence supply only some of the inputs that influence the making of policy, and that they can be over-ridden by contrary moral sentiments, the tides of cultural change, the vagaries of politics, emotionalism, sensationalism, residual ignorance, and the inertial forces of laziness, habit, and vested interests. All of the messiness of real-world decision-making, even when fully acknowledged and experienced, does not diminish the importance of striving for an improved knowledge base. (pp. 39–40)

Understanding “the messiness of real-world decision-making” remains an important dimension of policy-making that could benefit from the cultivation of criminological expertise.

This book was conceived as a way to bring together a number of criminal justice experts based in universities, governments, and policy organizations devoted to meeting this challenge. It builds upon recent developments that have seen criminal justice policy emerge as a vital subfield within criminology. Over the past several years, new criminal justice policy journals have been founded to bridge “the gap between policy relevant findings and criminal justice policy” (Clear & Frost, 2007, p. 633); criminology and criminal justice conferences now regularly feature panels on a variety of policy issues; and colleges and universities have hired faculty members and designed policy-focused courses and programs based on the interest in and growth of this subfield. This intellectual and financial investment has generated a corresponding proliferation of research on a broad range of substantive policy issues. While the level of knowledge on the criminal justice policy-making process remains low, it too is evolving rapidly.

As the subfield of criminal justice policy attracts criminologists to engage in some form of policy analysis, understanding the policy-making environment in all



of its complexity becomes more central to the enterprise of criminology. Building a theoretical infrastructure that supports the accumulation of knowledge about the criminal justice policy-making process would not only open an important field of inquiry, it might also help to reverse the decline in influence experienced by criminologists (Beckett, 1997; Currie, 2007; Garland, 2001; Gest, 2001; Ruth & Reitz, 2003). The pages that follow will present a “contextual approach” that can be used to examine the criminal justice policy-making environment and its accompanying policy-making process. As will be seen, one of the principal benefits of this approach is its emphasis on addressing the complexity inherent in policy contexts.

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## Analyzing the Policy-Making Process

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Although some notable contributions to the policy-making literature have been made by criminologists (see Fairchild & Webb, 1985; Ismaili, 2006; Jones & Newburn, 2007; Rock, 1986, 1995; Stolz, 2002a), much of the thinking on this subject has originated in the disciplines of political science and public administration. The most influential view of the policy-making process to emerge is the classical perspective, which advanced rational principles as a way to rescue policy from the irrationality of politics. In this perspective, the policy-making process is depicted as a quasi-scientific enterprise that unfolds in a series of clearly defined steps (Sharkansky, 1992, p. 408):

- Define the problem that is to be the object of policy-making.
- Recognize the full collection of demands that are relevant to the decision that has to be made.
- List all policy alternatives.
- Define the resources necessary to achieve each alternative.
- Calculate the benefits and costs associated with each alternative.
- Make the decision on the basis of all relevant information in such a way as to achieve the most benefits at the least cost.

Deborah Stone (1988, p. 5) summarizes these steps in the following manner: “Identify objectives; identify alternative courses of action for achieving objectives; predict and evaluate the possible consequences of each alternative; select the alternative that maximizes the attainment of objectives.”

While this rational, sequential, and mechanistic depiction of the policy process remains powerful today, it has been challenged by alternative models that highlight the “somewhat anarchic” nature of policy-making (Jones & Newburn, 2005, p. 61). For example, “the structured interaction perspective does not assume a single decision-maker, addressing a clear policy problem: it focuses on the range of participants in the game, the diversity of their understandings of the situation and the problem, the ways in which they interact with one another, and the outcomes of this interaction. It does not assume that this pattern of activity is a collective effort to achieve known and shared goals” (Colebatch, 1998, p. 102).

Rather than being a rational enterprise, these models point to the volatility that is characteristic of the everyday policy-making process. Value differences, the role of interest groups, shifts in public mood, decisions based on political ambitions, and institutional constraints are only a few of the many challenges encountered in contemporary policy environments. Critics of the rational perspective contend that such forces make wholly rational policy action unlikely—especially in fields like criminal justice—and argue that policy research must move beyond a one-dimensional reliance on analytical/rational logic.

The late political sociologist Harold Laswell developed a contextual orientation to policy research that moves away from the narrow confines of the classical perspective by embracing the complexity found in various policy arenas. For Laswell, policy research was about making “sense of a vast and complex, often bewildering array of phenomena” (Marvick, 1977; Togerson, 1985, p. 245). He argued that the role of the policy analyst is to grapple with this “total configuration” and to recognize that the goal of understanding is never fully realized; it evolves and remains unfinished. Examples of the contextual orientation to policy research have ranged from formulations that are general to those that are very specific. Paul Sabatier (1991) presents a good example of the former:

One of the conclusions emerging from the policy literature is that understanding the policy process requires looking at an intergovernmental policy community or sub-system—composed of bureaucrats, legislative personnel, interest group leaders, researchers, and specialist reporters within a substantive policy area—as the basic unit of study. The traditional focus of political scientists on single institutions, or single levels of government will help in understanding the effect of institutional rules on behaviour and, at times, in understanding specific decisions. But it is usually inadequate for understanding the policy process over any length of time. (p. 148)

A more specific formulation of the issues to be considered in a contextual analysis of public policy is offered by Fischer and Forester (1993). Their perspective emphasizes the context-specific character of analytical practises—the ways the symbolism of their language matters, the ways the consideration of their audience matters, the ways they construct problems before solving them. In political terms . . . [it teaches] us about the ways policy and planning arguments are intimately involved with relations of power and the exercise of power, including the concerns of some and excluding others, distributing responsibility as well as causality, imputing blame as well as efficacy, and employing particular strategies and problem framing and not others. (p. 7)

Ideally, a contextual analysis of public policy would include a combination of both of these levels of analysis. The pages that follow will outline and discuss three steps that should be taken in order to understand the criminal justice policy-making process. We will begin by identifying some of the peculiarities associated with this particular policy field.

## **Step 1: Thinking About the “Peculiarities” of Criminal Justice Policy**

Observers of criminal justice have noted some peculiarities of the field that are important to consider before embarking on policy research and analysis. While these peculiarities are characteristic of criminal justice in most liberal democracies, the degree to which they influence public policy varies from jurisdiction to jurisdiction. Earlier in this chapter, the politicization of contemporary crime policy was presented as a challenge that has frustrated sound policy analysis. To this we can add two additional long-standing challenges: institutional fragmentation and the symbolic dimension of criminal justice policy and criminal law (Nagel, Fairchild, and Champagne, 1983a, p. 9).

An ongoing debate within the criminal justice literature involves the degree to which the state agencies and departments of the criminal justice process act as a coherent and unified system. Critics argue that the major components of the system—policing, courts, and corrections—carry out their respective mandates independently, generating systemic or institutional fragmentation. Diverse organizational objectives and differences in the use of discretionary powers exacerbate the fragmentation, leading many to view the criminal justice system as “a network of interrelated, yet independent, individuals and agencies, rather than as a system per se” (Griffiths & Verdun-Jones, 1994, p. 9). In such an environment, the development of coherent criminal justice policy that reflects the needs and expectations of each component of the system becomes a significant challenge. And in situations where a degree of consensus on policy is secured, difficulties can often arise at the implementation phase.

Nagel and his associates (1983a) contend that institutional fragmentation is the result of differences in training, status, and ideology among police, courts, and corrections personnel. They state:

These differences are reflected in the kinds of authority relationships that exist in the sub-system organizations. Positive sanctions and normative power are more prevalent among legally trained professionals in the system. Negative sanctions and coercive power tend to be stressed in law enforcement and, at least in relation to custodial work, in correctional organizations. All of these factors lead to diverse organizational climates that surround the different components of the system. (p. 9)

It is worth noting that institutional fragmentation can also exist within “sub-system organizations.” For example, it is not uncommon to find executive and rank-and-file police officers, or prosecutors and defense lawyers, holding contrasting views on important policy issues. Because criminal law and criminal justice policy are expected to embody fundamental principles of society, a distinctive characteristic of research in the area has been the attention devoted to analyzing the symbolic quality of crime and criminal justice (Gusfield, 1963; Hagan, 1983; Newburn & Jones, 2007). Crime and criminal justice are condensation symbols that have the potential to arouse, widen, and deepen public interest by appealing to ideological or moral concerns (Edelman, 1988; Scheingold, 1984, 1991).

They condense a number of stresses that people experience in their day-to-day lives, and are powerful because they relate to the moral, ethical, and cultural concerns of the social order (Nagel et al., 1983a, p. 11). The subject matter of crime and criminal justice is a significant source of complexity. The potential for evoking strong responses suggests that crime and criminal justice symbols are especially vulnerable to transformation for strategic purposes. As Nagel et al. (1983a) have said:

The symbolic implications of the criminal law and of law and order politics are particularly interesting because the emotional issues involved easily lend themselves to demagogic excesses. This is especially true in light of the fact that the workings of the criminal justice system are quite complex and not well understood by the public, which tends to oversimplify the issues that are involved. (pp. 11–12)

The variability of both the meaning of criminal justice and of the symbols underlying that meaning compels an analysis of the evolving material basis of the symbol, as well as the shifting socio-political environment in which it is lodged (Edelman, 1988; Hagan, 1983; Majchrzak, 1984). Newburn and Jones presented an excellent example of this sort of policy research a few years ago when they examined the popularity of the term zero tolerance in criminal justice. Zero tolerance, they argued, was widely used by politicians, policy-makers, and criminal justice officials when there was “a need to indicate strong measures and clear resolve” (2007, p. 222). In this sense, the term was deployed to “convey a mood and to impress an audience rather than in any concrete way to describe a set of policies or to frame particular objectives” (p. 236).

The preceding discussion serves as a reminder of the complexity inherent in both the policy environment and the policy-making process in criminal justice (see Figure 1–1). It is not, however, a complete description of the various forces that influence the nature and direction of criminal justice policy. In order to enhance our understanding of this environment, it is important to organize for analysis the various institutions, groups, and individuals that participate in the policy-making process. Political scientists have developed just such an organizational framework—the policy community—which captures the constellation of forces that influence the development of public policy in a variety of sectors. As will be discussed next, it is a framework that can be used to further contextualize the development of criminal justice policy.

## **Step 2: Thinking About the Criminal Justice Policy Community**

Understanding the evolution of public policy requires researchers to pay special attention to the policy-making process, to the actors involved in that process (the public, professionals, and politicians), and to the sites where participants interact and policy decisions are made. A policy community is that part of a political system that—by virtue of its functional responsibilities, its vested interests, and its specialized knowledge—acquires a dominant voice in determining government

### ■ Political Culture

- Social and Economic Characteristics
- Political Parties, Partisanship, and Ideology
- Checks and Balances/Federalism

### ■ Politicization of Crime

- Symbolic Dimension of Crime and Criminal Justice
- The Definition and Construction of Policy “Problems”
- Campaigns and Elections
- Public Opinion
- Policy Networks Within the Policy Community (*see Figure 1–2*)
- Policy Trends in Other Policy Sectors and in Other Jurisdictions

### ■ Institutional (Criminal Justice System) Cohesiveness/Fragmentation

## FIGURE 1–1 Contextual Features of the Policy Environment

Source: Reproduced from K. Ismaili, *Criminal Justice Policy Review*. 17 (2006): 255–269.

decisions in a specific field of public activity and is generally permitted by society at large and the public authorities in particular to determine public policy in that field (Pross, 1986, p. 98).

It includes all actors or potential actors with a direct interest in the particular policy field, along with those who attempt to influence it—government agencies, pressure groups, media people, and individuals, including academics, consultants, and other “experts” (Pross, 1986).

### The Subgovernment and the Attentive Public

The policy community subdivides into two segments: the subgovernment and the attentive public. The subgovernment is composed of government agencies and institutionalized associations that actually make policy within the sector (Coleman & Skogstad, 1990, p. 25). It normally consists of a very small group of people who work at the core of the policy community. The attentive public, in contrast, is less tightly knit and more loosely defined. Its composition varies, but it usually contains important, though less central, government agencies, private institutions, pressure groups, specific interests, and individuals. As Pross states, “the attentive public lacks the power of the sub-government but still plays a vital role in policy development” (1986, p. 99).

Research has demonstrated that the structure and functions of policy communities vary from policy field to policy field (Pross, 1986, p. 106; see Coleman

& Skogstad, 1990). Similarly, the relationships between actors in policy communities also vary. This reality has been captured in the concept “policy network.” It refers to the relationships that emerge between both organizations and individuals who are in frequent contact with one another around issues of importance to the policy community (Atkinson & Coleman, 1992; Coleman & Skogstad, 1990). Atkinson and Coleman have commented that the concepts of policy community and policy network “appear to possess the required elasticity” to stretch across a variety of policy sectors (1992, p. 157). They are “encompassing and discriminating: encompassing because they refer to actors and relationships in the policy process that take us beyond political-bureaucratic relationships; discriminating because they suggest the presence of many communities and different types of networks” (p. 156).

Nancy Marion (2002) has developed a useful way to organize the various actors and significant forces that shape the criminal justice policy community. Her discussion begins with the observation that both the states and the federal government develop criminal justice policy in the United States. This concurrent power effectively means that “all levels of government have the right to act to control criminal behavior and create a safe society for its citizens” (2002, p. 30). With this in mind, it is more precise to state that 51 criminal justice policy communities coexist, each reflecting differences with respect to participants, cultural traditions, and political dynamics. As a system of government, federalism implies that intergovernmental relations represent a significant feature of the policy field, especially where crime control responsibilities overlap between the federal and state governments, or when the federal government attempts to create national criminal justice policy through its “power of the purse.” While federalism represents a significant source of complexity for the criminal justice policy community, it is important to note that traits and experiences shared across jurisdictional and geographic boundaries can also serve to unite its diverse elements. As we will see, all criminal justice policy communities are encountering policy environments with increasingly diverse and rapidly maturing interest groups. All contain subgovernments dominated by a hierarchy of professional interests. And all are experiencing the pressures of an expanding attentive public.

Just as federalism provides an institutional context through which one can understand the development of criminal justice policy, so too does the system of checks and balances. Many elected officials of each branch of government are deeply involved in the criminal justice policy-making process; some are de facto members of the subgovernment. The executive branch actors of primary significance include the President (federal level), governors (state level), and mayors (local level) (Marion, 2002, p. 32). Elected members of the legislative branch, especially those serving on criminal justice legislative committees, can also be viewed as important members of the criminal justice policy community subgovernment. These individuals include elected members of Congress, state legislatures, and town and city councils (Marion, 2002, p. 34). Finally, whether elected, as they are in 39 states (see Liptak, 2008), or appointed, judges shape

criminal justice policy through the application, review, and interpretation of law. Often, underexamined judicial actors exert both a strong and steady influence on the work of the subgovernment. While not active participants in the policy-making work of the subgovernment in a conventional sense, they are, nonetheless, central to the criminal justice policy community.

Directly responsible for translating the political priorities of elected officials into public policy, appointed heads of criminal justice government departments and agencies are key participants in the policy community subgovernment. Also active in the initiation and screening of proposals for change in criminal justice policy are bureaucrats at all levels of government who have no operational responsibilities but who concern themselves with monitoring policies and advising elected officials (Solomon, 1991, p. 161). While not part of the formal criminal justice system, government departments and individual bureaucrats (or policy-makers) are important to consider in terms of their efforts to reduce institutional fragmentation. The relationships that are struck between government policy-making agencies and the various components of the justice system are essential to its smooth functioning. Bureaucrats thus engage in a precarious balancing act, at once trying to accommodate the diverse needs and demands of the various system components, along with those of politicians, interest groups, and other interested members of the public.

The criminal justice policy community is also populated by a wide range of interest groups. Each group is committed to influencing the outcome of public policy, although the degree to which they are ultimately successful is subject to considerable variation. Stolz (2002b) has identified eight distinct types of interest groups that attempt to influence criminal justice policy: Professional-, business-, social welfare-, civic-, ad hoc-, victim-, ex-offender-, and offender-oriented interest groups mobilize resources and press their respective positions at various decision points in the policy process.

The interest groups that have traditionally had the most influence on criminal justice policy are those that represent professionals and other officials involved in the operation of the criminal justice system—police associations, bar associations, judicial organizations, and correctional associations (Fairchild, 1981). As active members of the policy community subgovernment, these interest groups represent professions with an institutionalized stake in the operation of the criminal law and the criminal justice system (Fairchild, 1981). Their influence is enhanced by the high degree of public deference accorded them, especially on policy matters concerning the day-to-day operation of the criminal justice system.

According to Nagel et al. (1983a; 1983b), the power of various professional groups reduces the influence of criminal justice clients (i.e., accused, convicted, and victims of crime) on the development of public policy. The largely closed, expert-driven criminal justice system, characterized by complicated laws and regulations, frustrates and disempowers clients, who often end up turning to underfunded and overworked third parties to represent their interests in the policy process. Considering the marginalization that the clients of criminal justice

experience both in the system and in the wider society, it is not surprising that civil libertarian groups, prisoner advocacy groups, and other client-focused groups face an uphill battle in their attempts to influence the policy process. In such an environment, criminal justice policy often reflects little more than the bargaining and compromising of system players on matters of self-interest (Christie, 1993; Nagel et al., 1983a; 1983b).

### **Step 3: Thinking About Networks and Relationships Within the Policy Community**

The relationships that develop between institutionalized interests and governments are considered crucial to the policy-making process. They are relationships based on a principle of reciprocal return. Governments, for example, can ill afford to develop policy that will be met with criticism from professionals. Close ties with professional groups are cultivated to preclude such occurrences. Views are solicited and perspectives shared. Their opinions are considered vital, and their support essential (Pross, 1986, p. 98). Similarly, professional organizations exist to ensure that their positions on issues are represented at various stages of the policy process. Their involvement goes a long way toward ensuring that this objective is met. It is this close and privileged access to the policy development process that often distinguishes the influence of professionally oriented groups from other interests in the criminal justice policy community.

In cases where a crime or criminal justice issue is in the public spotlight, elected officials are particularly responsive to public concerns and pay correspondingly less attention to views of policy professionals, including criminologists. It is therefore inaccurate to state that nonprofessional interest groups are completely shut out from the subgovernment in the criminal justice policy community. The views of a number of reform-oriented interest groups are considered vital to the policy process, particularly those with an established presence in the policy community. Indeed, if there is one trend that has characterized the policy community over the past three decades, it is the increasing number of maturing interests that have developed around issues of criminal justice. Institutionalized victims' groups, groups working toward the elimination of violence against women, and other groups focused on the needs of minorities are proliferating. All are seeking to influence the shape and direction of public policy.

The "attentive public" in the criminal justice policy community is also expanding. As Fairchild (1981) has stated, "Matters of criminal law go to the heart of questions about governmental legitimacy, state authority, and other popular conceptions of right and wrong, and are thus of closer concern to many individuals than are most other legislative issues" (p. 189). This explains, in large part, the increase in the number of ad hoc and single-issue reform interests that have recently been created around various criminal justice issues.

The attentive public obtains much of its information about crime and the criminal justice system from the media. Because the coverage of crime is so prominent



in “all means of mass communications, including daily and weekly newspapers, television, radio, news magazines, and so on” (Marion, 2002, p. 39), both the quantity and nature of media imagery can have a significant influence on how crime is perceived and, ultimately, on which criminal justice policies are pursued. Katherine Beckett has argued that the coverage of crime in the media may influence the actions of both elected and unelected actors in the policy community, independent of any impact on public opinion. This theory is manifested when policy-makers interpret heightened media coverage as an indication of public concern warranting public action or as an opportunity for political exposure and/or direct political gain. The latter is especially true in the run-up to or during an election campaign. Beckett also argues that media coverage “is undoubtedly a crucial component of the context in which public opinions are formed” (Beckett, 1997, p. 78).

According to Gray Cavender (2004), depictions of crime and criminals began to change in the 1970s as a response to and reflection of rising crime rates in the United States. During this period, the media gave extensive attention to “a sense of social malaise that was defined by the belief that values were in decline and that modern life had become unpredictable and dangerous” (p. 345). This basic narrative structure continues to shape perceptions, and explains, in large part, why fear of crime continues to be high despite declines in the overall crime rate. Viewed in this light, the manner in which crime and criminal justice issues are framed by the mainstream media becomes a significant contextual feature of the policy community. As Marion (2002) has stated:

The media is important because it educates the public about crime. Unfortunately, the media’s coverage of crime events does not reflect reality. The media tend to cover crimes that occur less frequently such as mass shootings and extremely violent offenses. Although they make for good media ratings, these types of crimes are rare. In addition to misrepresenting the types of crimes committed, television shows tend to depict stereotypes of criminals, prisoners, and victims that are usually not accurate. (p. 40)

Perceptions are, by their very nature, malleable. When those perceptions relate to crime, they are rarely grounded on sound, accurate information. What remains is an apparent gulf between two related but independent domains: attitudes about crime and knowledge about crime (Roberts, 1994, p. 1). It is difficult to narrow this gulf in a policy sector where political reaction to the public’s anxiety over crime is commonplace. This is especially troubling since it is these very reactions that often reinforce and perpetuate the inaccurate perceptions held by a large segment of the population.

Figure 1–2 summarizes the criminal justice policy community described thus far. It should be emphasized that the policy community is a dynamic entity, constantly shifting and evolving to meet the needs and expectations of diverse groups and individuals with an interest in both the process and substance of criminal justice policy.

### **The Subgovernment**

#### ■ **Elected (Executive) Actors**

- President, Governors, Mayors

#### ■ **Key Elected Legislative Actors**

- Senators, Representatives

#### ■ **Major Interest/Pressure Groups**

#### ■ **Appointed Heads of Government Departments and Agencies**

- Cabinet Secretaries (U.S.)

#### ■ **Key Judicial Actors** (not active participants in the work of the subgovernment, but a major influence on the products of that work)

### **The Attentive Public**

#### ■ **Politicization of Crime**

- The Media
- Less Central Government Agencies
- Experts, Academics, and Consultants
- Interest/Pressure Groups
- Elected Officials
- Interested Members of the Public
- Private Institutions and NGOs
- Judicial Actors

## **FIGURE 1-2 The Criminal Justice Policy Community**

Source: Reproduced from K. Ismaili, *Criminal Justice Policy Review*. 17 (2006): 255–269.

## **Conclusion**

This chapter began with the observation that the policy-making process has been largely neglected in studies of crime policy. It has argued that in order for a truly policy-oriented criminology to advance, it is vital that this process be explored in all of its complexity. Drawing on Harold Laswell's call for policy researchers to come to terms with the entire complex, shifting policy universe, this chapter has proposed a contextual approach to criminal justice policy analysis. It is a form of policy analysis that insists that the researcher grapple with the complexity inherent in the criminal justice policy-making process in order to accumulate knowledge both of and in the policy process. For those interested in the criminal justice policy-making process, this complexity is both an attraction and a significant challenge. Three steps have been identified in order to meet this challenge. The first step is identifying the various "peculiar" features that are more or less

unique to the criminal justice policy environment. Step two involves organizing this environment into a policy community with a subgovernment and an attentive public. This organization not only provides shape to the policy sector, it also helps to expose patterns of power and influence. A final step requires the researcher to uncover the networks and relationships that evolve within the policy community and to consider the implications of these patterns for the development of policy. As the subfield of criminal justice policy matures, so too must its theoretical frameworks and conceptual tools. With the potential of significantly enhancing our understanding of democracy in action, the contextual approach presented here is a reflection of and response to this maturation.

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## Discussion Questions

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1. Compare and contrast the classical and contextual orientations to policy research.
2. Discuss the relationship between politics and criminal justice policy.
3. Can criminal justice policies ever be value-free?
4. Why is it important to think about the “peculiarities” of criminal justice when discussing policy?
5. Select a controversial criminal justice issue and use the policy community framework to outline the participants, networks, and relationships that will likely influence the policy-making process.

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P A R T 1

# **Public Policy and the Criminal Justice System**





# The Significance of Race in Contemporary Urban Policing Policy

Delores Jones-Brown, Kevin Moran,  
Erica King-Toler, and Susruta Sudula

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## Introduction

The difficulty in writing a policing policy chapter lies in the fact that law enforcement in the United States consists of a complex network of sometimes overlapping or competing structures and functions. U.S. policing exists at the federal, state, and local levels. It includes specialized units such as park police, forest rangers, border patrol, drug enforcement agents, and immigration enforcement officers. It serves multiple, often not-agreed-upon functions, including crime control, order maintenance, and service provision (Bittner, 1972; Zhao & Thurman, 1997). It exists in starkly different demographic and geographic contexts that are urban, suburban, rural, and international. It serves multiple constituents who may have significantly contradictory interests.

In addition, according to policing scholars, policing in the United States has changed over time and within and across various contexts. The political era, the reform era, and the community era have been described as the three major periods of U.S. policing reform (Kelling & Moore, 1988).<sup>1</sup> This three-part typology has been criticized for its failure to acknowledge the significant role of law enforcement agents in maintaining racial dominance through slave patrols and the enforcement of discriminatory laws and practices even within its own ranks (Reichel, 1988; Williams & Murphy, 1990).

Any candid discussion of policing policy in the United States must acknowledge that all roads lead to considerations of race. From the 1967 presidential report, *The Challenge of Crime in a Free Society*, and the 1968 *Report of the National Advisory Commission on Civil Disorders* to the 2007 RAND Corporation report on stop, question, and frisk practices in New York City, there is substantial

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<sup>1</sup>Oliver (2006) describes homeland security as the fourth era of security post 9/11.

evidence that, with few exceptions, virtually all implementation of police policy has significant racial effects. The causes of these race effects have been studied and debated for more than 40 years, producing volumes of theories, findings, and conclusions that are arrived at through varying personal orientations, theoretical paradigms, and social science methodologies. Few areas of consensus have emerged. There is a significant degree of divergence in thinking as to whether these race effects are warranted based on law-breaking behavior (see Alexander, 2010; Joseph, 2000; Muhammad, 2010; Rios, 2011; Russell, 1998), and there is substantial disagreement as to whether anything can be done by criminal justice agencies to reduce or eliminate them (Barlow & Barlow, 1994; Eberhardt, Purdie, Goff, & Davies, 2004; Ridgeway, 2007; Weitzer, 2005; Weitzer & Tuch, 2006; Zimring, 2011).

From a practical standpoint, it cannot validly be contested that racial and ethnic minorities make up a substantial portion of the population in places that are heavily policed. Reported data indicate that these tend to be places where crime rates and calls for police service are high. Some have questioned whether the deployment of extra police resources to those places in some way increases the official crime rate, because these extra resources appear to result in a substantial number of arrests for behaviors that go undetected, unreported, or unprosecuted in other locations (see Beckett, Nyrop, & Pfingst, 2006). The counter to that suggestion has been that the high rate of violent crime, particularly homicide, would be a cause of public concern and police attention regardless of where and among whom it occurs. But, as will be discussed later in this chapter, in an effort to interrupt patterns of violent crime commission, some urban police departments have adopted policing strategies that target low-level crime, produce racially disparate rates of arrest, and significantly increase police contact for innocent civilians from specific racial and ethnic groups (see Fratello, Rengifo, & Trone, 2013; Golub, Johnson, & Dunlap, 2007; Howell, 2009; Jones-Brown, Gill, & Trone, 2010; Jones-Brown, Stoudt, Johnston, & Moran, 2013; Levine & Small, 2008; New York State Office of Attorney General [NYSOAG], 2013; Stoudt, Fine, & Fox, 2012). The evidence regarding whether these practices directly reduce the occurrence of serious crime is equivocal at best (Baker, 2007; Fagan, n.d.; Gau & Pratt, 2010; Harcourt, 1998; Harcourt & Ludwig, 2005; Jones-Brown et al., 2010, 2013; Karmen, 2000; McCabe, 2008; NYSOAG, 2013; Thacher, 2004; Zimring, 2011).

This chapter examines the historical origins of urban policing policy and its efficacy over the last 40 years, with particular emphasis on the last two decades. As a matter of public policy, decision-making about policing is among the most crucial for urban residents. Public policy has been defined as “the rules and regulations legislative bodies and agencies *choose* to establish” (Conser, Russell, Paynich, & Gingerich, 2005, p. 10; emphasis added), or, in short, “anything that the government *chooses* to do or to not do” (p. 342, emphasis added). This chapter examines the collection of governmental choices that have been made about

how best to address issues of crime and disorder. It focuses on urban policing as a substantial portion of the nation's law enforcement resources is concentrated in cities. This is not to suggest that smaller police departments do not also utilize particular policing approaches when they are considered popular, effective, or potential sources of federal or state funding (Kraska & Cubellis, 1997).

We note that, for better or for worse, official crime statistics have become the singular measure of urban police departments' effectiveness. In this regard, in popular discourse, New York City and its police department have emerged as a success story to be emulated. Consequently, we devote a substantial portion of the chapter to a case study of NYPD's policing policies since 1994 and the maelstrom of public backlash that it has produced. Central to the controversy is disagreement over the existence of *direct* evidence supporting the belief that the aggressive, so-called "proactive" policing practices of the last two decades have had a significant independent effect on *serious* crime (see Weisburd & Braga 2006; Weisburd, Mastrofski, McNally, Greenspan, & Willis, 2003). Also at issue is the substantial racial disproportionality in the application of these police practices. A primary claim is that they unconstitutionally target racial and ethnic minorities, especially those from low-income neighborhoods, and produce collateral social and economic consequences that harm, rather than protect, low-income and racial/ethnic minority city residents<sup>2</sup> (Baker, 2007; Barta, 1999; Bernstein, 2010; Center for Constitutional Rights [CCR], 2012; Fratello et al., 2013; Howell, 2009, 2010; Stewart, 1998; Stoudt et al., 2012).

In the final section of this chapter, we advance three recommendations apropos of urban policing. First, we argue that the problem of racial bias in police decision-making may be substantially improved by the uniform adoption of multicultural competence training and the utilization of racial impact analysis before police policies are implemented. The utilization of both these techniques simultaneously addresses concerns about individual officer discretion and perhaps well-intended but ill-conceived department-wide approaches to crime reduction. In drawing on our case study of New York City, we recommend that police departments pay close attention to the constitutionality of their practices rather than narrowly and primarily focus on perceived crime reduction effects. Police tactics should be carefully monitored and adjusted to insure that they maintain their legality and integrity, as well as their effectiveness. We also suggest that, in a democratic society, it is important that public agents and agencies, like the police, engage rather than reject the difficult job of being responsive to the voices and needs of an economically, racially, ethnically, culturally, and otherwise socially diverse public. Finally, we recommend that efforts to monitor abuses of police power currently conducted by a variety of advocacy groups, community networks, and concerned academics be institutionalized in an independent

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<sup>2</sup>For example, even a record of minor offenses leads to reduced employability, and frequent court appearances lead to loss of employment.

audit body. We argue that the body be endowed with the means and authority to advise police departments about breaches of constitutionality and lawful use of force and, where appropriate, make disciplinary recommendations to address such breaches. Together, these measures can help bridge the police–community gap, increase the fairness and effectiveness of policing, and generally improve the delivery of policing services to diverse and highly policed communities.

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## **The History of Policing Race and Place**

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The strategic history of American policing has been described as falling into three general eras. During the political era, roughly the 1840s until the early 1900s, American police derived their authority and resources from local political leaders. In addition to their responsibility for maintaining order and preventing and controlling crime, police ran soup lines, provided lodging for immigrant workers, and assisted immigrants in finding work (Kelling & Moore, 1988).

These close ties to politicians and to citizens became a breeding ground for corruption, such that by the 1920s there was a call for police reform. The reform era, which lasted from about the 1930s to the 1970s (Cooper, 2005), called for the police to narrow their function to crime control and the apprehension of those who violated criminal law. Policing was expected to become a politically disconnected profession (Kelling & Moore, 1988). Under this professional model, “officers were experts; they applied knowledge to their tasks and were the only ones qualified to do the job” (Dunham & Alpert, 2004, p. 31). In addition, “the department was [considered] autonomous from external influences”; it “made its own rules and regulated its [own] personnel.” However, by the 1960s, the efficacy of the policing model touted during the reform era came under considerable attack. Outbreaks of collective urban violence, primarily involving Blacks and most often sparked by some form of uninvited police behavior, required yet another shift in police policy and function. The community era of policing was ushered in during the 1970s and is still successfully utilized in some cities today (Reaves, 2010). (See also the Office of Community Oriented Policing Services website: [www.cops.usdoj.gov](http://www.cops.usdoj.gov)). Under the community-policing model, law enforcement and community residents work together to identify and resolve problems of crime and disorder (Reisig, 2010; Reiss, 2006).

Before these three eras, the American government had chosen to form “policing” agencies to interdict another type of crime. In 1619, the American colonies began importing African slaves who sometimes ran away. The southern slave patrols, identified as the precursors to modern American policing (Reichel, 1988; Williams & Murphy, 1990), were authorized by federal, state, and local laws to capture fugitive slaves and to detain anyone who facilitated the slaves’ escape. The original federal constitution contained a fugitive slave clause in Article 4, Section 2. To enforce the slave-catching requirements, Congress enacted two versions of a fugitive slave law, one in 1793 and another in 1850 (Higginbotham,

1980; Jones-Brown, 2000; McIntyre, 1984). In the early colonial period, slave catchers were paid with private money, but as governments formed and solidified, lawmakers passed legislation authorizing payment from public treasuries.

In their official capacity, law enforcers did not provide assistance to these involuntary immigrants as they would later provide to European immigrants. These early “police” agencies were purely mechanisms for maintaining racial dominance, containment, and control. In Boston, a city credited with having one of America’s first organized urban police forces, as late as 1851, posters appeared warning blacks to stay away from watchman and police officers because they were employed in kidnapping, catching, and keeping slaves (Higginbotham, 1980). The American system of African slavery was maintained for more than two centuries, underpinned by a myriad of racially restrictive laws that applied against people, both slave and free. American police were responsible for enforcing the general criminal law as well as the laws that included racial restrictions.

The abolition of slavery did not much change the relationship between Blacks and big-city policing authorities. Individual states and local governments in the North and the South enacted racially discriminatory laws that were enforced against “negroes” and other ethnic minorities. The public and the private enforcement of these laws, and the failure of the federal judiciary to condemn them, contributed to the creation of urban ghettos, defined by the 1968 Kerner Commission report as “area[s] within a city characterized by poverty and acute social disorganization, and inhabited by members of a racial or ethnic group under conditions of *involuntary* segregation” (National Advisory Commission, 1968, p. 29; emphasis added).

Urban cities and their ghettos became the sites of significant levels of crime and disorder by people of all races (see Muhammad, 2010). However, aggressive enforcement tactics came to be focused on certain neighborhoods but not others, and on certain populations but not others. In order for the nation to maintain cohesion and legitimacy, there needed to be a governmental response. The professional policeman of the reform era might have been a viable solution if he had not been a myth. Dunham & Alpert (2004) note that “the reforms failed because the idea of policing could not be divorced from politics,” and “the character of the big-city police was interconnected with policy-making agencies that helped to decide which laws were enforced, which public was served, and whose peace was kept” (p. 31). (See also Muhammad, 2010). In the 1960s, the crime problems in major urban cities were no longer limited to individual and small group (i.e., gang) commission of interpersonal crime. Collective violence erupted in several major cities including New York, Chicago, Detroit, Los Angeles, and Newark, New Jersey. All of these large-scale violent episodes—often lasting multiple days and resulting in millions of dollars in property damage and physical harm to a sizeable number of civilians and police—have been ironically and interchangeably referred to by the contradictory terms “riot” and “civil disorder” despite being connected in some way to police behavior. The findings of the Kerner Commission

candidly acknowledged that “in practically every city that . . . experienced racial disruption . . . abrasive relationships between police and Negroes and other minority groups have been a major source of grievance, tension and ultimately disorder” (National Advisory Commission, 1968, p. 157).<sup>3</sup>

Part of the blame for urban violence and disorder was placed squarely on the shoulders of the police—not simply based on the conduct of individual officers, but also on the attributes of the attempted reform. During the reform era, police had been removed from foot patrol and placed in radio cars. They were told that, as experts, their goal was to make arrests and answer radio calls. Police had little direct contact with the people they policed. Rather than increasing their effectiveness, the loss of interaction with people resulted in decreases in case clearances<sup>4</sup> (Cooper, 2005, pp. 2–3). When police did interact with the community, the interactions created rather than fixed problems. Black civilians became highly concerned with police harassment and police brutality. In a survey conducted by the *Detroit Free Press* in 1968, police brutality was named as the number one problem. The consistent series of riots evidenced that police reform had failed in significant ways. Instead of being politically disconnected professionals, examination of the incidents found police agents who were racially prejudiced and abusive (both physically abusive and abusive of their authority) or who simply lacked legitimacy<sup>5</sup> as a controlling force.

The current controversy over policing policy in New York and other cities that adopted a New York-style approach echoes these latter concerns about prejudice and abuse. But, in contrast to reform era policies that urged police to distance themselves from the public, contemporary policy mandates that the police increase their contact with the public and almost exclusively for the purpose of investigating crime, issuing summonses, and making arrests. This represents a fundamental shift from the service-oriented, cooperative approach to policing that was part of both the political and community eras. Because these policies correlate with official statistics<sup>6</sup> that show significant and sustained declines in serious crime, supporters argue that these crime statistics are clear evidence that the policies “work.” However, these policies are also correlated with increased

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<sup>3</sup>Riots sparked by police behavior continue to occur. The 1992 Los Angeles riot, which resulted in roughly \$1 billion in property damage, followed the acquittal of LAPD officers for brutally beating an African American male, Rodney King. Since that time there have been riots in multiple cities in response to police conduct, but there has been no collective national or presidential response. The August 2014 protests in Ferguson, Missouri may become an exception.

<sup>4</sup>The number of reported crimes that result in an arrest.

<sup>5</sup>The National Research Council (2004, p. 5) defines police legitimacy as “the degree to which citizens recognize the police as appropriate and justified representatives of government.”

<sup>6</sup>Eterno and Silverman (2012) and other sources suggest that some of the crime reduction in cities is merely a matter of police departments manipulating their crime statistics by downgrading offenses and underreporting or refusing to take complaints.

complaints of police incivility and outright lawlessness, and the population of people making these complaints has expanded. In addition to Blacks, current complainants include a wide array of ethnic and religious minorities (e.g., Muslims, Latinos, South Asians, and people of Arab descent; those who are low income, especially the homeless; youth; men of all ages; women of color; and the LGBT community) (CCR, 2012; Fratello et al., 2013; Stoudt et al., 2012; Stuart, 2014).

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## The Challenge of Urban Policing

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One source has described the duty of police in society as “effectively control[ling] crime and *ensur[ing] justice*” (National Research Council, 2004, p. 2; emphasis added). Crime control may be measured by seemingly objective methods such as crime statistics on complaints, arrests, and clearance rates, but how do we measure justice? Legal philosophers such as John Rawls (1971) have associated notions of justice with the principle of equal treatment under the law. But, contemporary police practices have raised important questions about in whose interest the police police. Ideally, the answer to this question is that the police police in the best interest of all people—that is, that policing practice is distributed equitably in ways that benefit all of the law-abiding and that lead punishment is reserved for those individuals who violate the law. However, conflict theory has always suggested that police act in the interest of the politically and socially powerful (see Chambliss & Mankoff, 1976; Manning, 1988; Weitzer & Tuch, 2006) and that its very nature is oppressive to those who are politically and socially powerless.

Apropos of the tenets of conflict theory, when attended to at all, popular notions of police–community engagement in the policy-making process have involved police departments working with or soliciting input from business owners, churchgoers, homeowners, and the employed, although these groups may comprise a numerical minority in many urban neighborhoods. Economic shifts have increased the number of city dwellers who are poor; criminal justice policies, such as the War on Drugs and mass incarceration, have increased the number of residents who have experienced jail or prison confinement (Alexander, 2011; Clear, 2009; Mauer, 2006). These residents have safety needs that are similar to those of the business owners, churchgoers, homeowners, and the employed, but face many social challenges that keep them outside these four groups (see Sampson & Wilson, 1995; Wilson, 1987, 1997). Thus, often police policy is made without input from those very residents who will likely experience police contact the most.

Similarly, through immigration and migration, the racial, ethnic, religious, and cultural identities of urban residents may vary broadly. These diverse populations can place competing demands on policing services and have different normative understandings of what constitutes crime and disorder (Gau & Pratt, 2010; McEvoy, 1976; Sampson & Raudenbush, 2004). Law enforcement agencies are charged with policing these diverse populations in ways that effectively