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Introduction



Criminal justice in the United States has a rich and important history. Some people might ask, however, why they should invest time and energy in reading and writing that history. That question is merely a more specific version of one asked many years ago by the well-known historian Marc Bloch (1953): “were the nearly universal fascination of history its only justification—if it were, in short, only a pleasant pastime, like bridge or fishing—would it be worth all the trouble we take to write it? To write it, I mean, with integrity, with truth, with the utmost possible penetration into its hidden causes, and, hence, with difficulty?” (p. 8) We believe that the answer to Bloch’s question comes with an understanding of history as a living thing. By this we mean, first of all, that history is an ongoing project, subject to new interpretations and new evidence. A constant supply of new evidence and new source materials continually becomes available to historians. Sometimes these new sources challenge old interpretations, sometimes they suggest an entirely new story. Moreover, historians are constantly asking new questions of the existing evidence and making new connections that had not previously been made. What we know about the past, quite frankly, depends a great deal on what we go out looking for. Historians of prisons, for example, are today far more attentive to issues of gender and the ways in which men’s and women’s experiences might have differed from one another in the past.

It is a good example of the way in which scholarship on contemporary issues led historians to look anew at old evidence and why this text tries to bring together all of the latest developments in the historical study of the criminal justice system.

When we say that history is a living thing, we also mean that history—or the understandings of history that we carry around with us—influences the way we define and understand the present. Students, policymakers, and criminal justice practitioners are nearly always making historical observations when they talk about the present—even if they do not realize it. Consider, for example, that any description of crime or criminal justice today that involves relative statements like *more, less, new, unprecedented, or traditional*, is a statement about the present that can only be understood in relation to the past. Given that the use of history is nearly inevitable, we believe that every effort should be made to ensure that we really understand that history. Long after some of this text's details may fade from memory, we hope that students will retain a habit of thinking explicitly about history.

❖ VENTURING INTO THE PAST: MURPHY'S MONOPLANE

Novelist L. P. Hartley (2011) once wrote that “the past is a foreign country: they do things differently there,” (p. 17) by which he meant to express the profound sense of strangeness and dissimilarity between past and present. Like a foreign country, we have trouble navigating the past, speaking the language, or having a clear sense of what is happening around us. Part of the challenge for historians of criminal justice is to make sure the past does not become too strange—for if it does, then the past is severed from the present, and it loses relevance. And once that happens, we stop looking for the rich complexity we take for granted in the present and reduce the past to simple expressions of how strange and odd things once were. That would be a great tragedy, for we cannot escape our past—our modern criminal justice system cannot be understood apart from its historical antecedents.

Historians, therefore, need to make the past familiar enough to navigate. On the other hand, if the past becomes too familiar, we risk imposing our present day worldview on historical actors who may or may not have looked at the world in those same terms. When that happens, the past loses all sense of difference, and historical actors simply become older versions of our selves. And this, too, would lead history into irrelevance, for one can simply study the present if history is largely the same thing.

We can illustrate the dilemma for students of history with a single photograph.

The photo to the right was taken around 1913, by a newspaper photographer for the Bain News Service. The historical aspects of the photograph are not hard to discern. It shows Charles M. Murphy, a New York City police officer, posing in an early monoplane, built no more than a decade after the



Source: Courtesy of the Library of Congress, LC-DIG-ggbain-16436.

Wright brothers had made the world's first powered human flight.

If we search a bit for some familiarity, however, we quickly locate an interesting point of commonality with present-day criminal justice. Murphy (known as “Mile-A-Minute Murphy” for having been the first bicyclist ever to ride for one mile in less than one minute) was posing in his airplane as part of his campaign to persuade the New York Police Department (NYPD) to adopt this new technology in the service of catching criminals. “Why, of course,” said Murphy to some assembled reporters, “the aeroplane is bound to suggest itself to the police as a means of apprehending criminals” (*New York Times*, 1914). And, indeed, the NYPD, some years later, did in fact become the first city police department with an air unit (though not until Murphy had retired from the force). This aspect of Murphy's monoplane transports us from the unfamiliar (an old-Wright brothers-era flying machine) to something readily comprehensible—the use of the latest in technology by law enforcement in the service of crime control.

As familiar as that sounds, however, some strangeness remains about Mile-A-Minute Murphy's crusade for policing by air. To begin with, Murphy (along with other commentators of the time) was convinced that air-based policing would be necessary to combat what he was certain would be a wave of air-based criminality. “Crooks,” Murphy announced, would soon be able to take flying machines anywhere they wanted, swoop down, and fly away with big hauls of stolen goods. “There isn't any doubt in my mind that New York City before very long is going to hear of a big robbery in an aeroplane, made possible simply because the men who do that sort of work are of the cleverest and know how to make sure of the very latest inventions. . . Maybe a flying machine will never be employed in just that

manner, but I believe firmly that they will be used when they are more common" (*New York Times*, 1914). Of course, Murphy's vision of an airplane-aided wave of burglaries and robberies never materialized, a useful reminder that though the past can be made more familiar, it is never simply a mirror of modern thoughts and ideas.

This textbook, then, attempts to navigate what Wineburg (2001) has called the "tension that underlies every encounter with the past: the tension between the familiar and the strange, between feelings of proximity and feelings of distance in relation to the people we seek to understand" (p. 5). Toward that end, we advance here three key concepts that inform this book's approach to criminal justice history.

Concept #1: Focus on the Process of Change, Not Just Difference

As Murphy's rickety old monoplane makes clear, differences between past and present are easy to spot. We argue in this text, however, that the history of criminal justice should not be reduced to a chronicle of difference, for that reduces history to simple curiosity—interesting for its own sake but not otherwise relevant to the present day. Rather, history is about a process of perpetual change, which forces a consideration of just how and why change takes place. It is this search for the *why* that constitutes historical analysis.

To understand the processes of change (or the related question of why in other cases things stay the same rather than changing), historians need to consider questions of *historical causality*. By this, we mean general ways of explaining how new outcomes emerge. When Charles Murphy and others predicted that criminals would soon be using airplanes to rob and steal, they were probably analogizing air transportation to the changes that police had already begun observing from the automobile. If changes to transportation technology like the automobile had allowed criminals new means to find victims and escape detection, why wouldn't the airplane? That the analogy did not hold up forces the historian to consider what sorts of things might have had a more meaningful influence on the behavior of urban criminals.

One thing quickly becomes clear in studying the history of modern criminal justice in the United States: there are many different ways of explaining change and continuity. Some studies emphasize factors that are *internal* to the criminal justice system, while other studies focus on the influence of *external* forces. Likewise, some historians highlight the role of cultural and intellectual changes, while others are more likely to concentrate on the influence of structural and economic factors.

A brief example shows the challenge of locating historical causality. In the 1970s, criminal justice researcher Alfred Blumstein and his colleagues began to investigate the use of imprisonment in the United States. They observed that the rates of imprisonment had remained fairly level over the previous five decades. This notable continuity in criminal justice practice led Blumstein to develop what he called the “stability of punishment” hypothesis. Blumstein argued that society attempted to impose a relatively constant level of punishment, creating a kind of homeostatic system that would self-adjust, using prison more freely in moments of lower crime and less freely when crime went up (Blumstein & Cohen, 1973). Ironically, no sooner had Blumstein and colleagues begun to develop the stability of punishment argument, than imprisonment rates began to increase, reaching historically unprecedented levels and ushering in an age of mass incarceration (see Chapter 9). While Blumstein himself acknowledged this “radical departure” from a “prior stable pattern,” there remained the question of how to explain this dramatic change (Blumstein & Beck, 1999). Did it invalidate the previous notion of a homeostatic system, or had wholly new circumstances arisen that disrupted the formerly stable system? A vast array of studies have subsequently attempted to explain mass incarceration, offering causal factors that include rising crime rates, racism, economic and structural changes, cultural moralism and popular anxiety over crime, and the influence of law and order politics. Probably the most accurate assessment comes from Michael Tonry (2001): “No single factor, or several, can possibly explain why countries’ punishment policies and practices differ or why they change over time” (p. 526). Throughout this text, we argue for this complex understanding of historical causality in which multiple factors come together to produce change. Even when we know what happened—such as the fact that imprisonment rates were relatively stable, then they rose dramatically—hindsight is not exactly 20-20 if we cannot understand the causes at work.

Concept #2: History Does Not Move in One Direction

For much of modern history, observers of criminal justice were convinced that all of the changes they observed were part of an overall trend toward a modern, humane, and rational approach to governing society. To the extent that they believed that this movement was inevitable, they joined the ranks of those who believed in some form of *historical determinism*—in other words, that history moved in a particular and mostly inevitable direction. From the determinist perspective, the struggles and strains of individual historical actors largely took place

within a framework—whether structural, economic, political, and so on—that dictated directions and outcomes. Related to this idea is the notion that the past unfolds in a generally linear direction in which present-day conditions are the inevitable result. The past simply becomes a series of steps towards the present.

The converse of historical determinism is *historical contingency*, by which we mean that the directions of history are not wholly predictable but are subject to variations in individual choices, in peculiar arrangements of circumstance, and even to some extent, to chance itself. Throughout this text, we endeavor to strike a reasonable balance between the predictable directions of determinism and the indeterminacy of historical contingency. That balance, we argue, properly acknowledges that individuals and groups have the ability to shape and reshape the criminal justice system at various moments in history, but the ability to change criminal justice practices are bounded, to some extent, by social and economic circumstances and the influence of current procedures.

The result is a history of criminal justice that does not move in any single or predictable direction and, in fact, changes directions at various points in time. This contingent history is, in some ways, a kind of liberating force for those of us living in the present. After all, if what has been true in the past need not be true in the future, it follows that we may embrace a commitment to change and reform in criminal justice. On the other hand, historical contingency is also a cautionary tale. It reminds us that history is by no means a story of universal progress (even if we could, in fact, agree on what constituted progress in the first place) or predictable cycles. Many times in the past, changes in criminal justice have produced dark and disturbing consequences. The great harms of Jim Crow justice, for example, were not rooted in some inevitable force of history—rather, a rapidly ascendant white majority imposed Jim Crow justice upon the South in the years following the Civil War. Throughout this text, readers will observe that promising reforms meet unexpected reversals, and practical policy changes break apart on the rocks of corruption or politics. In this sense, history offers lessons both inspiring and humbling for the present day.

Concept #3: Examine Rhetoric and Reality, Ideas and Practice

Few aspects of criminal justice are easier for the historian to access and reconstruct than ideas. Ideas are reproduced in all sorts of ways—books, articles, magazines, administrative documents, public speeches, and media reports can all convey a clear sense of what the criminal

justice system was supposed to be doing, what it was intended to do, or what it was understood to be doing. But there are serious problems that can arise when historians place too much emphasis on ideas. One such problem is an obsessive focus on what we call the pioneer stories of criminal justice—the moments of inspiration and creation when new ideas are hatched. While there is nothing wrong with tracking these moments, it tends to obscure the long history between the hatching of an idea and actual criminal justice practice. Historians of technology, for example, remind us that there is a complex process between the idea of, for example, using radio waves to communicate and the social practices that resulted in millions of people in the 1920s listening to commercial radio station broadcasts on radio sets they purchased. These practices were the result, not simply of an idea, but of economics, politics, and policymaking. This holds true for criminal justice as well. Documenting the birth of an idea, like the juvenile court, does not tell us anything about the ways in which the court would be accepted and implemented in actual practice. In the case of Murphy's monoplane, his idea of applying aircraft to police work would not take off (so to speak) until years after he first made the case for crime control in the sky and, even then, not in the ways that he had originally imaged.

There are other hazards for historians who dwell too much on new ideas or dominant rhetoric. Such a focus might cause us to miss the *diversity* of practices at any one moment in time. Juvenile courts, for example, might well have been born from a common idea, but actual practice varied considerably from location to location. This variance suggests yet another problem for historians: the *divergence* of criminal justice practices from criminal justice ideas. At numerous points in the history of modern criminal justice, reformers have made the case that certain new kinds of criminal justice policies would have certain effects, and it is hard not to be attracted by these very public claims. Returning to the example of juvenile justice, we know that reformers made the case that the juvenile court would transform the manner in which young boys and girls would be processed by the justice system—and many historians, whether they are critical or supportive of the juvenile court, have accepted that idea uncritically. But, when we look at how young people were actually handled by the justice system, a more complicated picture emerges, in which we often see far more continuity in practice. Indeed, as one of us has explored in some detail (Wolcott, 2005), the most important figures in the justice system, from the point of view of the young person, remained the police, not the juvenile courts. Throughout this book, readers find numerous instances where criminal justice in practice diverged from stated intentions.

At this juncture, readers may well ask just what room is left for ideas themselves. Do they even matter? We argue in this text that they do matter—not as a guide to practice, *per se*, but as one mechanism by which practice is guided and shaped. Ideas have a way of helping to frame the world of politics and perception and of shaping the ways in which actors internal and external to the criminal justice system understood what they were doing. Ideas like progress, barbarism, professionalism, deviance, and many others have a way of influencing action. David Garland (2001) has examined this phenomenon and argues that ideas are not merely a starting point by which we judge practice but that they exist in relationship to practice, both guiding and guided by events. In this way, Garland observed, “sometimes ‘talk’ is action.” We agree, and this text takes seriously the power of ideas to influence the criminal justice system, even as we take care not to confuse ideas with reality.

❖ ORGANIZATION OF THIS BOOK

In telling the story of modern criminal justice in the United States, this text presents a series of thematic chapters, which simultaneously move the narrative forward chronologically. Consequently, the earliest thematic chapters focus on the early twentieth century and nineteenth century antecedents, while the later chapters in the text move the story forward into the middle of the twentieth century and finally to the most recent historical experience.

Chapter 2 examines the emergence of modern policing in the first three decades of the twentieth century. Police agencies attempted to manage disparate and often conflicting goals. These same tensions are at the heart of Chapter 3, which looks at the changing face of the courts as the lynchpins of the criminal justice system. During the Progressive Era, the criminal courts assumed many of their modern forms, becoming larger, more elaborate, and more bureaucratic. Just how to use that capacity, however, became an issue of central concern, and this chapter highlights the struggle between demands for crime control and social reform.

Chapter 4 provides an overview of Progressive Era developments in the punishment of criminal offenders. Inspired by the hope of bettering society, progressive reformers developed systems of probation and parole and laid out ambitious plans for managing the offender behind bars—though, in the end, actual practice often fell well short of ambition. Crime control took a distinctive turn in the South, as Chapter 5 demonstrates. The region’s distinctive political

and economic structures—including powerful localism, undemocratic one-party rule, and racist systems of labor control—helped create a repressive system of criminal justice.

Chapter 6 examines the growth of research, from the early surveys of the 1920s, through the development of sophisticated systems analysis, program evaluations, and field studies. This chapter demonstrates the interconnected nature of criminal justice professionalism as well. Chapter 7 considers two legacies of twentieth-century liberalism—often contradictory to one another—for the criminal justice system. One, the pursuit of a therapeutic approach to the criminal offender, promoted aggressive state intervention by promising to solve the underlying causes of crime. The other, a commitment to due process rights for criminal defendants, attacked discretionary state action as a threat to individual freedom and liberty.

Chapter 8 tracks the expansion of the national government's crime control capacities, from the 1930s through the end of the twentieth century. During these decades, the Federal Bureau of Investigation (FBI) became the nearest thing to a national police force. Federal prisons helped shape a national conversation about punishment, federal narcotics enforcement defined the war on drugs, and federal criminal law helped set the national crime-fighting agenda. Chapter 9 explores the rise of "law and order" politics in the 1960s and places the phenomenon of mass incarceration into historical context. The tough-on-crime decades that ended the twentieth century brought with them changes in criminal justice practice that, for better or worse, define our system today.

Chapter 10 concludes this review of modern criminal justice history by considering the processes by which the United States became embedded in global systems of criminal justice. Far from being a very recent phenomenon, transnational connections and relationships in criminal justice have a long and important history. Still, the pace of globalization has picked up over the past century, placing the United States at the center of international efforts to control organized crime, terrorism, and illicit trades.

Each chapter offers a comprehensive overview of the broad trends and major issues within a particular area of criminal justice history. Readers will observe that individual chapters conclude with a rather extensive list of references to other scholarly work. By now, we hope to have persuaded readers that the writing of criminal justice history is an active and ongoing process, and these detailed reference lists are intended to be the most comprehensive and up-to-date reporting of that work. Of course, the best in scholarship includes older work as well, and readers will find in each chapter's references a useful guide

to important classic works of criminal justice history. By listing references by chapter, rather than together at the very end of the text, we hope to give readers interested in particular subjects a helpful roadmap to further reading.

Within each chapter, two special features are included to facilitate the process of thinking about both history and criminal justice—and their connection. “Case Studies in Criminal Justice” introduces readers to some of the specific individuals whose lives and work embody the themes of each particular chapter. The case studies move beyond the broad strokes of generalization to reveal the complex experience of real people making history through their own lives. Each chapter also includes a “What’s the Evidence?” feature, designed to highlight different kinds of historical sources. These explorations are intended to introduce readers to the practical challenges involved in researching and writing history and to serve as a guide to students interested in exploring historical sources on their own. The writing of history belongs to everyone, and we hope to have inspired our readers to join with us in appreciating the value the past holds.

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