

Out-of-Control Criminal Justice

Out-of-Control Criminal Justice shows that our system of criminal justice is broken; it is out of control. The author writes that a research-based strategy is needed that builds on the insights of those who work within criminal justice or are affected by it. Such a strategy must entail continuous evaluation and improvement, so that what works can be expanded and what does not can be eliminated. *Out-of-Control Criminal Justice* identifies how systemic problems plague our criminal justice systems. It then presents a comprehensive strategy for bringing these systems under control to reduce crime, to increase justice and accountability and to do so at less cost. The strategy can be used, too, to create greater responsiveness to victims and communities, effectiveness in reducing racial and ethnic disparities and understanding of the causes and consequences of crime. After describing this new approach, the book identifies the tools needed to implement a systems solution to create a safer and more just society.

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*The Systems Improvement Solution for More Safety,
Justice, Accountability, and Efficiency*

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For Eli and his generation

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Preface

America's criminal justice system – what amounts to a series of federal, state and local systems – has much to recommend it. Yet, this system operates like a tanker with no captain: it consumes large amounts of resources, fails to reach its destination, and wreaks havoc wherever it goes. More specifically, criminal justice in America wastes taxpayer dollars, creates uncertain benefits, and consistently misses opportunities to reduce crime and improve justice. In many instances, our criminal justice systems contribute to the very problems that they are supposed to address. We end up with more crime and less justice and accountability, and we quite literally pay for these “benefits.” It is both tragic and avoidable.

In this book, I argue that we need to improve our *system* of criminal justice. Systemic change, not piecemeal change, provides the path toward greater public safety, justice, and accountability at less cost. To advance this argument, I first step outside the realm of crime and justice and focus on such policy arenas as health care, education, environmental protection, manufacturing, and the War on Terror. This detour is purposeful. It illustrates the importance of understanding systems to the creation of better outcomes. It serves, too, to show that systems problems are real and are not specific to criminal justice. The book then turns to the failures of criminal justice and how inattention to systems contributes to these failures. These observations form the foundation for presenting a systems-based approach to reducing crime and improving justice.

This approach – what I term a Systems Improvement Solution – will not magically solve all problems. It is, however, essential for diagnosis of what is wrong in criminal justice and what we need to do to create a safer and more just society. It is essential, too, for increasing accountability and

cost-efficiency. How? The approach can help policymakers and criminal justice officials and practitioners to enact better policies, programs, and practices. It can help them to make better, empirically based decisions. Continuous attention to improvement, generation of better research to understand crime and justice, revised policy based on this research, and engagement of multiple stakeholders – these steps all are central to the proposed solution. They are critical, I argue, for any effort, whatever name we might give to it, seeking to create large-scale improvements in criminal justice and, in turn, more safety and justice.

The Systems Improvement Solution offers more than an opportunity to increase the effectiveness and efficiency of policy for crime and justice. It also provides an opportunity to apply, modify, and test theories of offending, crime rates, criminal justice policy, and justice. Such work can benefit scholars in developing stronger theories. At the same time, it provides a critical platform for creating a feedback loop that can contribute to more-effective crime and justice policy. In short, the book seeks to provide an approach that can be used to create a safer and more just society and, at the same time, to advance our understanding of crime and justice.

Myriad factors inspired this book. First and foremost for me has been a long-standing concern about crime and injustice. A second factor was a trip to Disney World with my wife and son. We toured “Spaceship Earth” and, by the end, had been asked several questions through a computerized kiosk on the panel in front of our seats. Our answers were analyzed then and there, and led to an instantaneous forecast about what our future might look like. This moment made me aware of what I should already have known – collecting and analyzing data in “real time” is technologically possible. That possibility opens the door to generating data in “real time” and answering questions of critical relevance to understanding and improving safety and justice. Yet, at present, this possibility remains just that – a possibility, one largely untapped by contemporary criminal justice policymaking and decision-making.

Yet another contributing factor has been my experience of evaluating crime policies and programs, writing books and articles on crime and justice, and seeking to illuminate public views about crime and justice. In the course of undertaking that work, one thing has been clear: several decades of unrelenting growth in corrections (including probation, jails, prisons, and parole) has created a pressing need to prevent crime and promote justice in more cost-efficient and less harmful ways. A piecemeal

approach to reducing crime and meting out justice does not and will not work. A large body of theory and research underscores that point. A “way out” – a solution – requires a systematic approach, one grounded in theory, research, and evidence about what works, and in the insights and education of the diverse actors, including citizens, who contribute to and implement crime and justice policy.

Other factors that have contributed to this book are more eclectic. In examining criminological scholarship on crime and justice, one can become convinced that somehow the problems in criminal justice greatly exceed those in other policy arenas. I certainly hewed to that view for many years, until I considered the problems that plague other policy arenas. The medical system in particular stands out because it can seem that advances in medicine necessarily mean that our health care systems are exemplary. Nothing could be further from the truth. Criminal justice and health care, in fact, share much in common. Both face intensive case-processing pressures and rely on largely unexamined assumptions about the need for or benefits of various interventions. These and other problems greatly undermine their effectiveness and efficiency.

A direct prod in developing the book came from my training in sociology. As an undergraduate, I was exposed to the work of Talcott Parsons, credited with helping to found sociology and establishing a systems perspective on society. I did not understand a great deal of his work at the time. I did come to understand, however, that his approach to “grand theorizing” antagonized many scholars, perhaps rightly so. In subsequent years, I undertook work that might be likened to the “middle-range” theorizing and research advocated by Robert Merton, a student of Parsons, which arguably represents what most social scientists do in their day-to-day work lives. Even so, years later, the insight that systems matter continued to resurface in my own work and in the literature on crime, justice, and a broad array of policy arenas. It also resurfaced as I watched prison populations dramatically increase, which led me to write a book about prisoner reentry in the era of mass incarceration. The insight about systems did not mean that recourse to Parsonian “grand theory” was necessary. It did mean that a systems approach to understanding and improving safety and justice might be helpful, and perhaps even necessary.

Advances in research on cognitive decision-making provided an indirect prod for the book. This research, including work by Nobel Prize winner Daniel Kahneman has identified many ways in which intuition, unchecked by relevant information, leads us astray. Policymakers, judges, prosecutors, and the many individuals who work in criminal justice are no

exception. This phenomenon can lead to a great deal of bad policy and practice. Advances in other academic arenas served as further prods. For example, economists have provided insight into ways in which systems crash because of incomplete, incorrect, or irrelevant information. Nassim Taleb's book on anti-fragility builds on that insight to argue for the importance of developing systems that build on the best available information, that are structured to adapt to changing landscapes, and that limit knee-jerk shifts based on ideology or unusual events. In a related vein, Nate Silver's popular book on "signal" and "noise" illuminates how efforts to improve policy require that theory and research identify patterns and not be distracted by "noise."

Yet another inspiration from the book came from chairing a local school board. I frequently felt the need for "systems information" about aspects of the school. At the same time, I experienced keenly the risk of drowning in too much good information and bad information. I think that the board achieved much, but I know, too, that a great deal more could have been achieved. To do better would have required, among other things, the ability to prioritize based on good information and an ability to sift through it quickly. A failure to prioritize translates into inefficiency. That insight guides us in many walks of life. In the medical system, it clearly is more important to help someone to breathe again than to salve a small wound. In our day-to-day lives, we all have many goals that we want to achieve, yet only so much can be completed in a given day. So we prioritize, even if unconsciously. We may not prioritize well, and when that happens we pay for it, sometimes dearly. For the criminal justice system, the failure to prioritize effectively has disastrous consequences: it results in more crime and less justice at great cost. However, prioritization requires data and an ability to sort through the data to identify patterns and, potentially, needed or effective changes. We need *research*, but we also need a *process* for improving research and ensuring that policy efforts are research based and well implemented. This observation provided no small impetus for this book.

Finally, students and their views about problems in criminal justice have provided a constant source of ideas that have helped to shape the book's arguments. Many students ardently advocate for solving social problems. They advocate as ardently for policies or interventions that they believe necessary to help society. Their energy and enthusiasm are infectious. In the hands of those students who seem to be headed for political careers, one can see how specific policies, programs, and the like come into existence. Some ideas simply seem to "make sense" and, well, we have got

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to do something, right? However, the fact of the existence of some social problem or the assumed or demonstrated effectiveness of a given intervention does not help us to prioritize problems and policies. We need an approach that can help state and local governments prioritize and produce cost-efficient improvements in public safety, justice, and accountability. That approach entails, as this book argues, a systems-focused solution.

I would not have been able to complete this undertaking without the support of colleagues and friends and without the insights of a broader community of scholars, policymakers, administrators, and practitioners. Their efforts are greatly appreciated. I especially thank Dean Tom Blomberg for his friendship and his support, not only to me but also to the College of Criminology and Criminal Justice at Florida State University, which has been my home for the past decade. His enthusiasm for the melding of theory, research, and policy has helped to put the College on the front lines of scholarship and practice. Thank you to Frank Cullen, Bill Kelly, and Brandon Welsh for their time, wisdom, guidance, and friendship. That one sentence does not remotely do the sentiment justice. I owe them each a debt of gratitude that words alone cannot fulfill. Thank you, too, to Robert Dreesen for supporting the book and doing so when it was but the first trace of an idea. Thank you to Josh Cochran for fun afternoons spent brainstorming several research projects; in indirect ways, the conversations informed the present book. Thank you to Sam Scaggs for tracking down helpful source materials. Special thanks go to my wife, Emily, and son, Eli – the world is, quite simply, a brighter, more sunlit place because of them.