Social Problems and Social Control in Criminal Justice

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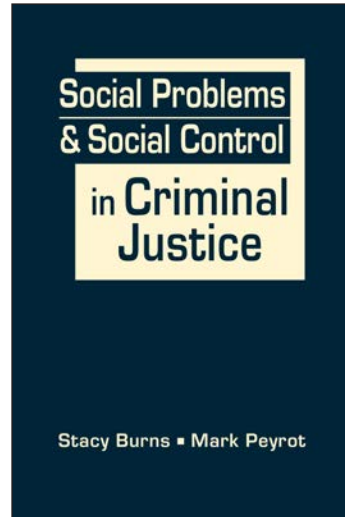
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Theorizing Social Control in Criminal Justice

Social control is one of the primary functions of government in modern nation-states. Public policy establishes standards of appropriate and inappropriate behavior and creates social institutions charged with interpreting, applying, and enforcing those standards. In particular, governments identify certain conditions and behaviors as social problems and establish institutions to prevent, mitigate, and/or remedy those problems. Thus, the development of social control institutions is largely driven by conditions identified by "moral entrepreneurs" (Becker 1963) as social problems in need of formal regulation.

Although the vast majority of sociology departments (at least in the United States) offer courses in social problems, this area generally has not been regarded as being at the core of sociology as a discipline—that role has instead been accorded to social inequality, especially race, class, gender, and more recently, sexualities. As a result, various substantive fields in sociology have developed problem-specific analyses of social problems (e.g., social inequality, deviance, criminal justice or criminology, and women's and gender studies). Such theory and research have drawn upon concepts from within a specific field to identify the prevalence, causes, and impact of particular problematic social conditions, rather than to formulate a theory of social problems that would be applicable generally across substantive fields and problems.

By contrast, this book is based on an integrated conceptual framework of institutional constructionism (described below) that specifies the processes by which social problems and social control develop over time, leading to different patterns of development. The framework identifies a series of

stages through which a social problem and its remedies may evolve (Peyrot 1984; Peyrot and Burns 2010, 2018). At each stage, there are several alternative developmental paths, and earlier events both constrain and are modified by subsequent events. An innovative component of this framework is that there can be multiple cycles of development, with an earlier remedial strategy falling out of favor and becoming defined as a part of the problem rather than a solution. This can lead to the development of a new remedial strategy through a series of stages paralleling those composing the initial cycle of development (see the stages and cycles described below). The approach we take in this book grows out of the insights of previous social problem scholars, and we next describe this history and consider how our approach fits into and adds to that scholarship.

Theoretical Models of Social Problem Construction

During the mid-twentieth century, sociologists started to develop a general theoretical model that could be applied to any social problem. Fuller and Myers (1941a, 1941b) formulated a natural history model consisting of several stages through which social problems must progress: awareness, policy determination, and reform. The model represented a shift away from a problem-focused approach in which social conditions in a field of inquiry were defined as problems by social scientists and explained by their field-specific theories. This new approach focused on the processes through which social conditions and behaviors become defined and responded to as social problems—that is, social problem construction.

The next major advance in this theoretical approach was by Blumer (1971), who proposed a model with five stages: emergence, legitimation, mobilization, policymaking, and policy implementation. In addition to greater specificity, this approach emphasized that the development of a social problem involved agency and was not a "natural" result of collective action, or an inevitable, mechanistic progression across stages. Thus, there is contingency in the developmental process: potential problems may not be identified as such, and the interplay of social actors and contextual factors may lead social problem development in unanticipated directions.

In the latter quarter of the twentieth century, there was a watershed moment in social problem theory with the 1977 publication of Spector and Kitsuse's book *Constructing Social Problems* as well as Emerson and Messinger's article on the micro-politics of trouble. Spector and Kitsuse formulated a four-stage model of social problem development: claims-making, claim legitimation/institutionalization, alternative claims-making, and alternative claim legitimation/institutionalization. The first two stages incorporated the five stages of Blumer's model, and the latter two stages went beyond the stages formulated in earlier models. The Spector/Kitsuse model

incorporated the insights that social problems are not simply social movements and could have lives beyond the original social movement(s) that created them (e.g., social problem remedies are seldom perceived to completely resolve the social problems they target, hence leading to a "second generation" of social problem development). Another insight was that social problems and their remedies may evolve over several stages—remedies may be escalated and/or de-escalated, remedial philosophies may shift, and new institutions may develop or be charged with controlling the problem. Not only could Subsequent iterations of the social problem development process take different directions, but the previous remedial approaches could come to be defined as part of the problem.

Although Emerson and Messinger's micro-politics of trouble approach had more of a micro/meso focus than the more macro approach of other social problem scholars, it detailed how earlier social problem developments could inform later developments (e.g., failure of a remedial program based on specific problem definitions calls into question the assumptions on which it was based). Social control institutions built to remedy or mitigate social problems organize shared ideas of "what the trouble is" and "what should be done about it." Social problems and their remedies are contingent, negotiated, and reflexively related. In this sense, "the trouble is progressively elaborated, analyzed and specified as to type and cause . . . [and] the effort to find and implement a remedy is critical to processes of organizing, identifying and consolidating the trouble" (Emerson and Messinger 1977, p. 122). The remedy that is implemented as a (potential) solution to the problem thus affects the very definition of the problem it addresses and may itself create new (and possibly unanticipated) problems and consequences, which must be addressed with further policy modification, or even scrapping the original program entirely.

The publication of *Constructing Social Problems* (Spector and Kitsuse 1977) led to two types of social problem scholarship (Woolgar and Pawluch 1985): (1) the analysis of claims-making activities without reference to objective social conditions ("strict" or pure constructionism), and (2) the integration of claims-making activities or social definition, along with traditional objective data on the existence and severity of the problem ("contextual" or hybrid constructionism). The former was more common in journal articles based on primary research and the latter dominated in social problems textbooks based on secondary research.

Woolgar and Pawluch noted that there was a strong tendency, even among avowed strict constructionists, to impose the scholars' own definitions of problems, rather than achieving intellectual purity in analyzing only the claims-making of social actors. Several sociologists have responded to this critique, but now it generally is conceded that there is no way to do pure constructionism (Ibarra and Adorjan 2018). Nevertheless, the Woolgar/Pawluch

critique stimulated many researchers to pursue theoretical purity, thereby operationalizing social problem "construction" as social problem "definition," with an emphasis on the creation and promulgation of cultural images and representation.

An Institutional Theory of Social Problem Development

Over the last several decades, we have developed a conceptual framework for describing the development and implementation of social problem control policies (Burns 1996, 2008, 2018; Burns and Peyrot 2003, 2008, 2010; Peyrot 1982, 1984, 1985, 1991; Peyrot and Burns 2001, 2010, 2018). In this chapter we describe the conceptual framework that guides our discussion of the several social problems analyzed in this book and provide an overview of how we will address these social problems. In what follows, we compare and contrast our approach to the two key publications that have guided our past and current work.

In an article appearing before the Woolgar/Pawluch critique that most constructionist analyses incorporated scholars' own definitions of what constitutes a "real" problem, Peyrot (1984) formulated an alternative approach, which we now term *institutional constructionism*. This approach proposes to study the construction and operation of social problem control institutions, rather than the definitions of social problems themselves. To be sure, social problem control institutions incorporate definitions of the social problems they regulate, but these are much more than subjective definitions. They are practical organizational features that shape everyday institutional operations and decisionmaking—that is, they are real structures with real consequences. Moreover, their development is driven by factors beyond claims-making, including legislation, court cases and lawsuits, bureaucratic regulations, budgets, executive department guidance memoranda, executive orders and consent decrees, and so on.

Our institutional constructionist model is derived from the stage model in *Constructing Social Problems* (1977) and loosely follows the Spector/Kitsuse recommendation for further theory development through grounded theory methodology (Glaser and Strauss 1967). One of us (Peyrot 1984) applied the four-stage Spector/Kitsuse model to a study of the development of the social control institution for substance abuse in the United States during the twentieth century. This study confirmed the four stages of Spector and Kitsuse's model of social problem development, but, following Blumer (1971), Peyrot redefined Spector/Kitsuse's stage 1 (claims-making) as *mobilization agitation* and their stage 2 (claim legitimation/institutionalization) as *policy formation*. Again following Blumer (1971), Peyrot identified two additional stages during Spector/Kitsuse's stage 2: *policy implementation* and *policy modification*. The two additional stages incorporate Emerson

and Messinger's insight that implementation transforms policy into actual structural and procedural reality. The policy modification stage distinguishes between changing the definition of the problem (Spector/Kitsuse's stage 3) and maintaining the original definition of the problem but modifying the social control program. In fact, social control agents rarely abandon a program at the first indication that the planned solution as initially implemented has not been entirely successful. Rather, policy modification intensifies efforts (e.g., increasing sanctions, enforcement), as well as making pragmatic changes to increase effectiveness and efficiency of the social control program (Peyrot 1984). This stage may last longer than the earlier ones, in part because of the tendency toward institutional inertia (e.g., entrenched bureaucrats, financial interests of corporate vendors, etc.), much like the "punctuated equilibrium" model of evolution in biology in which long periods of relative stability are interspersed with short periods of rapid change (Eldredge and Gould 1972).

Another major modification of the Spector/Kitsuse model was that rather than defining implementation of a second alternative social control approach (the "second generation") as the limit of the model's scope, our model of institutional constructionism allows for multiple cycles of social problem development. For example, Peyrot's research on substance abuse during the 1960s and 1970s identified two generations: (1) an initial punitive criminal justice approach of prohibition, and (2) a subsequent treatment/rehabilitation approach (i.e., probation before judgment, diversion, counseling, etc.). However, Peyrot did not claim that the latter would be the final stage in the development of substance-abuse social control. Indeed, since that time there have been two additional generations: a "war on drugs" (a punitive criminal justice approach) followed by the return to a treatment/rehabilitation approach (e.g., drug courts and problem-solving courts, the latter of which is discussed in Chapter 9). Some reform agitation also occurred among Trump administration officials regarding a return to a punitive criminal justice approach (see Chapter 10 on reforming marijuana prohibition). Figure 1.1 provides a visual representation of our theoretical framework.[1]

One of the major advances arising from the Spector/Kitsuse model of generations (via Emerson and Messinger's insights) is the possibility that a second generation (or any next generation in our cyclical model) entails not only a rejection of the previous remedial approach but also a characterization of the previous remedial approach as part of the problem, perhaps exacerbating the original social problem and/or generating new problems (i.e., adverse consequences, such as social inequities—see Chapters 5 and 6 on racial bias and White privilege in policing and sentencing). At a broader level, this framework allows us to study the pattern of succession in remedial approaches. In the original study of substance abuse, a pendulum effect was observed, with a reversal of the punitive criminal justice approach.

Subsequent developments in the social control of substance abuse have shown a continued back-and-forth alternation between the punitive criminal justice approach and the treatment/rehabilitation approach. However, it would be premature to propose that this is an inevitable pattern; indeed, our initial research identified *institutional accretion* as a developmental dynamic that mitigates the possibility of a simple alternation between these two states of social control.

Institutional accretion reflects the fact that new social problem remedies do not simply replace earlier approaches, but rather are grafted onto the existing social problem control institutions. For example, the first iteration of the treatment/rehabilitation approach to substance abuse did not replace the punitive criminal justice approach; users were still arrested, charged, and appeared in court, but the court gained additional possible dispositions, including counseling with or without probation (Peyrot 1984), although in the initial iteration the treatment system was only loosely coupled with the courts (Peyrot 1991). When the treatment/rehabilitation approach returned following relaxation of the war on drugs, the second iteration occurred within the institutional context of a criminal justice system that had already incorporated treatment. Therefore, the second iteration of the treatment/rehabilitation approach was centered on drug courts, which specialized in substance abuse and utilized court-supervised treatment to achieve tighter integration of treatment participation and court sanctions (Burns and Peyrot 2003, and compare Peyrot 1985).

The framework of institutional construction incorporates a second developmental dynamic—*institutional diffusion*. Our original characterization of this process in the social control of substance abuse was in terms of diffusion between social control institutions, for example, diffusion of counseling from the mental health system and into the criminal justice system. This process can also contribute to change across multiple iterations of a remedial approach, such that subsequent iterations may incorporate structural innovations that have developed in and diffused from other institutional sectors (e.g., surveillance technology). Since that time, we have identified other types of institutional diffusion (Peyrot and Burns 2018). One type is diffusion within a social control institution—for example, how the drug court model of specialized offenses/clients and court-supervised treatment has diffused to other types of specialty courts for specialized types of offenses/clients (see Chapter 9). Another type of institutional diffusion is diffusion across levels of government—that is, among local, state, and federal government (see Chapter 8 on reversing mass incarceration, Chapter 7 on demonizing sex offenders, and Chapter 5 on the different federal and state standards governing police misconduct in the use of force). The original investigation of substance abuse by Peyrot (1984) noted that the passage of federal policy on marijuana served as a stimulus for states to pass legislation

enacting severe criminal penalties for simple possession and use of even small quantities of marijuana, as well as for production and distribution of marijuana. An additional type of institutional diffusion is diffusion within a level of government (especially states)—for example, when states serve as role models for each other, with early adopters of a new legislative policy providing experience to guide later adopters.

In our most recent work (Peyrot and Burns 2018), we have formulated a simplified set of stage transitions that can be applied to a problem without reference to the entire history of the social problem control institution: *expansion* (establishing new categories of controlled behavior, i.e., policy formation and implementation), *escalation* (increased sanctions and/or enforcement, i.e., policy modification), *de-escalation* (decreased sanctions and/or enforcement, i.e., a form of alternative policy formation and implementation), and *contraction* (decriminalization or legalization). Contraction is distinguished from de-escalation because in the latter transition social control is maintained within the previous social control institution (i.e., the criminal justice system), whereas in the former it is not. Note that decriminalization/legalization does not necessarily mean that there is no perceived problem or that the problem is not regulated. Rather, it may be that regulation is implemented through an alternative system, such as civil agencies (e.g., public health or consumer affairs), citations and fines, etc. (see Chapter 10).

Our past work analyzed second generation developments in social control from the perspective of the perceived effectiveness of social control strategies, which are changed when they are considered to be ineffective even after escalation, leading to implementation of an alternative control strategy. In this book, we extend our theoretical framework to include the impact of external culture change, specifically the concern for social inequity and institutional legitimacy. While racism and xenophobia are nothing new, it is new that social control strategies themselves are being challenged, criticized, and changed because they are understood to be racist or xenophobic.

Racial and ethnic bias and violence have been endemic in the area now comprising the United States from the time that European colonialists arrived, with the genocide of Native Americans, through the kidnapping and enslavement of Africans and post–Civil War "Jim Crow" apartheid, to the confinement of American residents (and citizens) of Japanese descent in internment camps during World War II, and more recently, the separation of Hispanic children and parents at the US-Mexico border. For the most part, US social control institutions have historically supported racial bias and violence rather than seeking to control them. However, at several moments in our history, racial bias and violence have become recognized as social problems—for example, the antislavery movement (including the use of

armed forces to eliminate states' rights to enslave Americans), and the civil rights movement that peaked during the 1960s.

While racial bias and violence per se meet the institutional constructionism criteria for a social problem, it is less clear that racial bias and violence within the criminal justice system have met those criteria, at least in most locales. Initial racism remediation efforts were directed primarily to alleviating racial segregation, including access to political (voting, office-holding), housing, employment, and educational opportunities, as well as public and private accommodations (buses, restaurants, restrooms, etc.). From our institutional constructionism perspective, racism is a social condition that comes within our conceptual framework and under the purview of this book when it is defined as a social problem *within* a particular social control institution. Thus, from an institutional constructionism perspective, racism is not a single social problem, but rather a set of social problems, which now includes racial bias and violence in the criminal justice system.

Peyrot's original formulation of institutional constructionism (1984) made a formal distinction between modification of a first generation remedial strategy and implementation of a second generation (alternative) remedial strategy. This assumes a clear distinction between modification (expansion/escalation) of an existing approach and implementation of a new alternative. For example, the criminal justice system was an institution to protect all Americans from violence, yet reforms (modifications) were introduced when it became apparent that victims from disadvantaged and stigmatized groups were not being adequately protected. The creation of the legal categories of hate crimes and domestic terrorism expanded the domain of protection and enhanced the severity of punishment for violators in order to give more protection than victims previously received. The question is what defines an alternative remedial approach rather than merely a modified one. Our original theoretical formulation suggested that a truly alternative strategy defines the original remedial strategy as part of the problem, making the situation worse rather than better. But the introduction of hate-crime legislation did not suggest that preexisting criminal justice legislation was making the problem of racial violence worse, so hate-crime legislation would be classified as a program modification (expansion/escalation), rather than an alternative strategy.

In contrast, current policing and sentencing/punishment practices have been socially defined as making the problems of racial bias and violence worse, and the proposed changes in strategy are defined as targeting reductions and/or modifications in these practices. This suggests that the newly proposed policing and sentencing practices represent alternatives. However, the problems of those defined as victims under the older approach are not reduced; only the problems of those subjected to the previous social control strategies are targeted (i.e., racial minority victims of police violence and biased court-sanctioned punishment). Thus, social control agents, rather

than those previously targeted as perpetrators, became the targets of new social control efforts.

About the Book

The chapters that follow are organized according to three types of development in social control institutions: (1) *expansion/escalation* of control, including the development of new categories of controlled behavior and increased sanctions/enforcement; (2) *legitimization* of social control by regulating control agents and agencies in a quest for equity; (3) *de-escalation/contraction* of control (including reducing penalties for some controlled behaviors, hybridization by incorporating strategies from another social control sector, and legalizing behaviors to remove them from control by the criminal justice system). These types of development are interrelated—for example, reduction of social control often results from system overload created by expansion/escalation, resulting in a perceived need for system adaptation. Regulation of social control may become necessary to achieve equity in control and restore institutional legitimacy when social control agents are seen as allowing social/cultural bias to distort the functioning, fairness, and equity of the social control apparatus and its operations. In addition, external influences on these developments may exist, such as changes in economic conditions, social movements reflecting cultural change, and technological innovations (all of which are addressed in our analyses).

Part 1 contains three case studies that examine the expansion/escalation stage of social control transition in three arenas where new categories of crimes and offenses and new categories of criminals and offenders have been created and the penalties associated with these crimes or offenses have increased. In Chapter 2 we cover hate crime and domestic terrorism; in Chapter 3 we look at gun violence and mass shootings; and in Chapter 4 we take on the subject of sexual assault in higher education. Note that this stage transition takes place after the initial stages of problem development in which a social condition is formally defined as a problem and remedies for the problem are formulated and implemented.

As our institutional constructionism model predicts, during the stage of program modification stakeholder claims identify a need to strengthen existing measures for combating a problem. For example, prior to the events examined in Chapter 2 on hate crime and domestic terrorism, there were laws providing punishment for violent crimes against any member of society, including those from disadvantaged or stigmatized subgroups. Increased punishment was facilitated by creating new categories of crime (hate crime and domestic terrorism), which carried higher levels of punishment. In addition, the new categories altered the nature of the decisionmaking process regarding individual cases, bringing motive into the deliberations in ways

that differ from the legal consideration of intent/premeditation. In particular, these changes dovetail with the changes in regulation of social control to achieve equity and institutional legitimacy by focusing on the victimization of those from disadvantaged or stigmatized subgroups (see Chapters 5–7). However, some stakeholders have pushed back and tried to limit application of the new legislation, and, as we will document, this also is true of other social policy developments to address bias against racial minorities and other stigmatized subgroups.

Similarly, prior to the events examined in Chapter 3 on gun violence and mass shootings, there were laws providing punishment for prohibited possession and use of guns. Yet, there is much reform agitation regarding the need to increase punishment for gun-related crime and violence and to implement and enforce preventive measures. Our analysis examines the competition between gun industry supporters who advocate for unregulated access to guns and those who advocate for gun industry regulation, gun safety, and gun violence prevention strategies. Legislative action at the federal level has been limited, but states and localities have taken the leadership role in social control modification. Our analysis also considers the institutional diffusion of social control strategies from the motor vehicle regulatory system, which have been brought into the debate.

Likewise, prior to the events examined in Chapter 4 on sexual assault in higher education, there were laws providing punishment for sexual assault in any social sector, including higher education. However, this expansion/escalation of social control differs from the other chapters in this section because it does not expand criminal justice system control as hate crime and gun regulations do. Instead, the higher education system has expanded its own social control approach to take more responsibility for handling sexual assault among its members, with special attention to protection of the female student population. This program modification involves institutional diffusion of criminal justice–type concerns and procedures into higher education; colleges and universities are becoming increasingly involved in investigating, adjudicating, and punishing campus sexual assault using quasi-legal procedures. Use of these legal system strategies has expanded the scope of matters handled by higher education and escalated the severity of punishments administered. As a result, implementation of legal system control strategies has brought with it diffusion of the legal system concern for maintaining due process guarantees, with the attendant competition between pro-regulation and anti-regulation stakeholders.

Although parallels exist in the developments within these three social problem arenas, we do not claim that these developments are inevitable. As we shall see in subsequent sections, other social problem arenas may manifest developments that are different (in Part 2) or even opposite (in Part 3). Description and prediction of which social problem arenas do or will man-

ifest similar or different developmental trajectories is a higher-level gener-alization that is addressed more explicitly in Chapter 11 (e.g., the search for equity and social control legitimacy). Nevertheless, we can identify ways in which developments in one arena are linked to those in another arena. For example, developments in the gun-violence/mass-shooting and hate-crime/domestic-terrorism arenas seem to interact to create a positive synergy for increasing the level of social control in both arenas. In particular, the increased visibility of mass shootings, especially those targeting victims from disadvantaged or stigmatized subgroups, has contributed to an increase in the perceived need to protect members of those subgroups. Moreover, per-petrators of these hate-motivated mass shootings often make their motivation clear, not only in the choice of settings for the shootings, but also in their self-avowed motives—such as racist manifestos. Indeed, mass shootings are one of the most visible situations where hate-crime/domestic-terrorism laws are considered for use.

Part 2 examines the delegitimization and religitimization of social control. These chapters highlight the loss of popular legitimacy due to the perception of social inequity in social control institutions in three criminal justice domains. In Chapter 5, we investigate racial bias and violence in policing; in Chapter 6, we explore racial bias and White privilege in sentencing; and in Chapter 7, we look at the demonization of sex offenders. Race and other inequalities are central to a sociological approach, and this theme runs throughout this book. In this section, two chapters focus on racial inequal-ities in policing and sentencing. Although we cannot address all types of inequalities in this book, it is essential to focus on race-based institutional inequities, while also avoiding the implication that only racial inequalities are significant. Thus, this section also includes a chapter dealing with another stigmatized population—sex offenders. Some may feel it is unfair to compare those who exhibit stigmatized behavior to those who are stig-matized for their racial or ethnic heritage, but there are some important sociological parallels. Both populations have been treated unjustly by social control agents because of their alleged crimes and offenses and what those are taken to imply about perpetrators.

All the chapters in the second section examine how social control efforts have victimized supposed perpetrators. We describe the assumptions that result in their being stigmatized as dangerous and therefore deserving of the most severe forms of surveillance, regulation, and punishment. Because propensity for crime is assumed to be inherent in the character of the accused, there is no end to surveillance and supervision, even once criminal sentences have been served. But increased surveillance and super-vision are themselves forms of social control and increase the risk of being subjected to further social control, leading to a vicious cycle of increasing surveillance and punishment.

Given the strength and persistence of the stigmatization of these populations, there are significant numbers of proponents for maintaining or increasing social control of these populations. However, recently advocacy has increased for change to achieve equity by reducing or eliminating the level of sanctions and surveillance to one based on more accurate perceptions of individuals in these populations. In the current stage of these social problems, the differences of opinion regarding appropriate social control strategies result in acrimonious arguments, public protests, and sometimes violent confrontations regarding which way to go in the future. Our analysis seeks to describe the proposed alternatives, as well as the arguments presented for and against them.

In Chapter 5, we examine racial bias in policing, with a focus on use of deadly force and fatal police shootings of Black males. We examine the public outcry regarding excessive use of force by police and deadly police shootings and the Black Lives Matter/racial justice social movement that has arisen in response. We also examine the Blue Lives Matter counter-movement to protect police and other first responders, as well as competing claims regarding whether and how policing practices should be changed to reduce the risk of police excessive force and lethal shootings of Black males and others. For example, many reformers suggest that there must be legal action to regulate police use of potentially deadly force, including modification of the legal protections for such actions.

In Chapter 6, we examine racial bias in the prosecutorial and judicial systems related to sentencing. Critics claim that racial bias does not end after arrest (or shooting), but continues at every stage of the process from charging, bail-setting, adjudication, sentencing, release from incarceration, and postrelease supervision. This results in a cumulative increase in racial inequity as one moves through the criminal justice system, and reform advocates have identified multiple opportunities to reduce racial bias. This chapter also examines the counterpart to discrimination against racial minorities (i.e., White privilege) and the burgeoning social movements around removing judges who have dispensed sentences perceived as overly lenient to privileged White defendants (something also noted in our chapter on sexual assault in higher education).

Finally, in Chapter 7 we examine the stigmatization of sex offenders as dangerous and untreatable, which is used to justify indefinite civil commitment (institutional detention even after completing one's prison sentence) and intensive surveillance, supervision, and regulation if returned to the community. Again, reform advocates have provided arguments and evidence that this extent of punishment and demonization is unwarranted and unjust, that it does not reduce the problem of sex offending, and that it may in fact exacerbate it. Several remedies have been proposed to deal with this injustice, and a number of laws and court cases have led to implementation of various reform strategies, mostly at the level of state government.

While the first two sections deal with first generation social problems, the second generation of social problem development involves implementation of one or more alternative social control strategies, which generally results in a less draconian approach. Thus, in Part 3 we examine three types of reduction in criminal justice social control resulting from a profound loss in perceived effectiveness and/or institutional legitimacy: *de-escalation* (Chapter 8, reversing mass incarceration), *hybridization* with therapeutic approaches (Chapter 9, extending problem-solving courts), and *contraction* (Chapter 10, reforming marijuana prohibition). These three strategies represent increasing levels of reduction in criminal justice control of social problems. Although institutional development may not always follow or complete this sequence, for the social problems examined in this section, de-escalation precedes hybridization, and hybridization precedes contraction (legalization). Note that de-escalation does not require the existence of an alternative type of remedy; it simply involves less of the existing remedy, perhaps to a level that existed previously (i.e., a reversal of the initial path of social problem development). However, hybridization requires the existence of an alternative type of remedy to integrate with the existing criminal justice approach. And total contraction (elimination of the criminal justice control system) requires the substitution of an alternative, non–criminal justice control system—for example, like those for ownership and use of commercial products or motor vehicles.

As noted earlier, decreases in the perceived effectiveness and institutional legitimacy of a social control strategy may catalyze reform agitation. But this agitation may not be successful in triggering the creation and implementation of a new social control strategy. Proponents of the previous approach—politicians who campaigned for it, staff of existing social control agencies, private enterprises that profit from the market for goods and services required by the social control approach (e.g., for-profit prisons), and citizens who believe in the approach—are unlikely to easily reject their commitments and turn in a new direction. Indeed, as we see in our analysis of gun violence prevention, the majority of public opinion may strongly favor a new remedial approach for extended periods without corresponding government action. The likelihood of change in remedial approach is increased by other external factors that enhance the incentives for change—for example, politicians and social control agents in favor of the older remedial approach being replaced, budgetary problems in sustaining the older approach, and new industries or professions that might benefit from change to a new approach. The case studies in this section represent a confluence of all these factors, resulting in major shifts in social control strategy from a punishment-oriented approach to a variety of alternatives.

In Chapter 8, we address one of the major themes in modern social control—the difficulty in maintaining draconian criminal justice strategies

that result in mass incarceration. In addition to the often unsustainable costs of such programs, they may come to be seen as ineffective and/or inhumane. This chapter identifies factors leading to mass incarceration, including a variety of "tough-on-crime" measures (mandatory sentencing policies, "three-strikes" laws, and restrictions on early release from incarceration). More central to the chapter is the impact of new alternative sentencing approaches on reducing the number of people behind bars and on crime levels in society.

Our discussion in Chapter 9 suggests that some criminal justice–related problems are ripe for the implementation of alternative remedial strategies, and that there may be diffusion of strategies from other institutional sectors; in particular, public health–oriented strategies may be adopted. In this chapter, we investigate the growing number and types of problem-solving courts across the country today. The rationale for this strategy is that it will be better to address the criminal justice system overload and recycling of participants with unmet mental health and substance abuse treatment needs by implementing therapeutic responses designed to manage the underlying problems of those who (repeatedly) become enmeshed in the criminal justice system. The widespread growth of these alternative specialty courts reflects the diffusion of mental health strategies and practices into criminal justice and the courts, with therapeutic and less punitive strategies for people in criminal justice who have more mental-health and substance-abuse types of issues (Burns and Peyrot 2003; Peyrot and Burns 2010). Integration of treatment and social services into the courts has some history (e.g., drug courts), but that history is rather short, has not been well researched, and has undergone changes as proponents have attempted to ramp up from a "boutique" operation to an approach that is central to all criminal justice courts. It is not clear how effective problem-solving courts are or will be in dealing with problems other than drugs, or how courts will adapt this model to dealing with other problems and populations.

In Chapter 10, we examine problem contraction and the de-escalation of punishment by eliminating criminal justice control of a purported social problem, thereby diluting previously exercised social control of the arena. Decriminalization (civil rather than criminal justice control), medicalization (medical control), and legalization of marijuana reflect a contraction of social control following the enhanced criminalization, enforcement, and incarceration of drug offenders during the war on drugs. Legalization represents the broadest diminution of social control of marijuana, removing it completely from the domain of criminal justice, placing it instead under the auspices of another agency (e.g., consumer affairs) and taxing and regulating it in a manner similar to alcohol and tobacco. Nonetheless, a significant federal-state conflict of laws persists in the evolving area of marijuana control because marijuana still is illegal at the federal level, leaving much

uncertainty, ambiguity, and contingency in how various US attorneys will enforce federal drug law in their own districts.

Ending marijuana prohibition represents a relatively unique situation in the development of US social problem control.[2] State governments are rebelling against federal government laws and policies criminalizing marijuana possession, production/sale, and research by removing criminal justice sanctions and/or ceasing enforcement. In the typical social problem arena, there is little conflict between state and federal laws; either there is only one set of government controls (state or federal), or state and federal controls are complementary with cooperation between control agencies. In addition to managing the conflict between the federal prohibitions and the state-by-state decriminalization, medicalization, and/or legalization of marijuana, states must construct new systems for regulating marijuana. The latter task is made more difficult because the legal, regulated marijuana market competes with the illegal, unregulated market. Decades of black market monopoly because of marijuana prohibition allowed development of an industry designed to operate in spite of heavy government investment in prohibition. Therefore, the attempt to transition this industry into a legitimate enterprise requires continued effort to suppress illegal activity without the promise of federal support and perhaps in the face of federal interference with interstate activities, tax policy, and so on.

The breakdown of state-federal legal reciprocity highlights an emerging phenomenon in institutional constructionism—the contributions of local, state, and federal governmental activity to the development of social problem control institutions. Several chapters of this book point to the role of state and local government, beyond that of following federal guidelines and using federal subsidies to implement policies formulated at the federal level. Local and state governments have played an important role as role models and pilot sites for new social control strategies in gun regulation, higher education initiatives against sexual assault, problem-solving courts, social equity initiatives, and attempts to reduce incarceration, among others. Therefore, analysis of state-level activity is an important element of our case studies, and because there is currently no federal commitment to reform marijuana prohibition on a national level, our analysis of this social problem arena focuses mainly on the state (and local) government level.

In Chapter 11, the concluding chapter, we shift to generalizing our findings by identifying four meta-themes representing parallels observed across the development of the social problem control institutions analyzed in our case studies: conceptualization of key actors, loss of social control legitimacy, the role of the public, and the multilevel interplay of social policy changes. We also relate our analytic framework and the findings from our cases to other social problem arenas—for example, in what ways development in the lesbian, gay, bisexual, transgender, queer, and others (LGBTQ+) arena mirrors or

contrasts with developments regarding regulation of hate crime, domestic terrorism, or sex offenders. Based on the developments discussed in the book, we offer some projections about likely future trends and new directions in social problem control policy within and related to the criminal justice system. We also identify potential topics and strategies for future research.

* * *

Throughout this book, we draw primarily on published material to examine developments and insights in the sociological study of social problems and social control within the context of the criminal justice system. In contemporary societies, multiple institutions serve social control functions, but the quintessential such institution is the criminal justice system, including lawmakers, law enforcement officials, the courts, and custodial/supervisory agencies. We focus on public policy for social control that involves criminal justice institutions and issues, broadly defined, including regulation of corporate actors that might be included in strategies to control problematic behavior.

The nature of the criminal justice system changes over time, and books dealing with important topics in the field also have to evolve. We seek in this book to advance theoretical and practical understanding of emerging criminal justice issues. One such issue is how terrorism is increasingly of a domestic, homegrown variety (e.g., the rise of anti-Asian hate crimes). Others include the magnitude of the mass shootings in the United States and how this development is connected to efforts to defeat gun safety measures, the control of marijuana possession, and the now unprecedented visibility of fatal police shootings and enhanced public, media, and legal scrutiny of the actions of police. These substantive topics and others covered in this book are valuable for students seeking to engage in critical thinking about the development and operation of the criminal justice system, as well as scholars and practitioners in criminal justice and related fields who aim to connect past, present, and future social control trajectories in their research and teaching.

Although much of what we write may be applicable more broadly than to the United States, global comparisons are beyond the scope of the current work. In looking at recent developments in the United States, we devote more attention to developments in the state of California, which often acts as a "first mover" with reference to system change, due in part to the ease of using public ballot initiatives to modify state law.[3] Where relevant, we also consider developments in other states that are at the forefront of innovative policies and programs. Our research suggests that action by state governments is becoming more important in driving social change and that these forefront states provide role models and lessons learned for other states considering their own policy changes. Thus, the forefront states give us the best projections of how social problem policy might change in the future.

Our focus is primarily on institutional developments in the later twentieth and early twenty-first centuries—that is, those years in which changes are still underway and will continue to evolve, perhaps in new directions. We look most closely at events during the years of the Obama and Trump administrations, which represent both of the major political parties and their divergent philosophies. Thus, we offer little historical information beyond what was in effect prior to Obama administration policies, and that is provided primarily to give a context for Obama administration policy changes. In discussing developments during the Trump administration, we focus on the relationship between these policies and those that had been developed and implemented during the Obama administration; the major changes in policy orientation provide important insight into the process that will drive social problem development in the near future.

Our guiding conceptual framework identifies a series of stages through which social problems and social control structures evolve over time, producing different patterns of development. The social problems analyzed were chosen to represent different developmental processes and patterns, leading us to focus on those social problem arenas where current and recent change is more dramatic or likely. Our goal is not merely to describe the present state of affairs, but to identify emerging patterns that will impact how these problems develop in the near future. We believe that this way of understanding social problems and social control is applicable to a broad range of social problems beyond the specific ones addressed in this book.

While our book has a coherent conceptual foundation, the individual chapters represent a casebook approach organized around case studies of specific social problems that currently are receiving significant public attention, each of which represents one or more of the patterns identified above. Our emphasis on legislation, court cases, and executive policy actions reflects an effort to supplement the more common focus on the role of public opinion and claims-making in the development of social problem control. Discussions of our case studies blend sociological and legal perspectives and move them to the policy level by emphasizing changes in the criminal justice system, both now and in the future. Our discussion highlights connections to what is provocative, engaging, and instructive about the case for larger themes, concepts, and issues in the sociology of social problems, social control, and criminal justice.

Notes

1. Figure 1.1 represents a simplification of our theoretical model. It implies that each stage is distinct, with the different types of developmental events confined to a particular stage. However, our model suggests that each stage involves multiple types of developmental events, and that the outcomes of such events are contingent. For example, programs may be modified during implementation, and reform agitation

may begin during program modification, and so on. Moreover, the progression across stages may stall. Conversely, momentum may increase during a given stage, which increases the likelihood of progression to the next stage. Note also that the model is applicable across multiple social jurisdictions, moving forward in some while being inactive or stalled in others.

2. Recently, state repudiation of federal criminal justice laws and the radical departure from when state and federal laws were consistent has expanded beyond the marijuana arena. See our chapter on gun violence and mass shootings and the move by Republican-led states to pass laws to prevent the police from enforcing federal gun laws as a response to President Biden's gun control proposals and the potential expansion of gun control measures being proposed by Democratic legislators (Thrush and Bogel-Burroughs 2021).

3. The ballot initiative is a process of popular democracy that provides citizens of California with a way to propose and pass laws and constitutional amendments without gubernatorial or legislative support. In order for an initiative to become law, the complete text of the proposed law must be submitted to the California attorney general, which in turn is submitted to the California secretary of state. Petitions are then circulated to collect the required number of signatures from registered voters, which are then turned in to county election officials for verification. If enough signatures are obtained, the measure is placed on the California ballot and voters either approve or reject it. In recent years, there has been increased use of the initiative process in California to enact criminal and civil laws (e.g., gay marriage legalization).

Figure 1.1   Institutional Construction Model of Social Problem Development