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Seeing Crime and Punishment Through a Sociological Lens: Contributions, Practices, and the Future

*A Conversation with
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There is a rich intellectual history to the sociological study of crime and punishment that encompasses multiple and inter-related traditions.¹ Some of these traditions trace their roots to the European social theorists of the nineteenth century, particularly Emile Durkheim, Max Weber, and Karl Marx. Although only Durkheim and Weber systematically studied law (and only Durkheim actually studied punishment), all three social theorists facilitated the development of sociological research and theory on crime and punishment. Durkheim's *Suicide: A Study in Sociology*,² for example, investigated the relationship between

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¹ Although this history is too complex and our space in this article too limited for a complete recounting, it may be useful for readers to understand, in a shorthand way, some of the intellectual backdrop to our conversation at the University of Chicago Legal Forum's Nineteenth Annual Symposium, "Punishment and Crime" (Nov 13, 2004).

² Emile Durkheim, *Suicide: A Study in Sociology* 145 (Free Press 1951) (discussing how social factors affect different types of suicide, such as "egoistic suicide," "altruistic suicide," and "anomic suicide").

social integration and suicide rates, which, in turn, provided a model of inquiry for multiple generations of sociologists investigating the social causes of crime, delinquency, and social deviance.³ Similarly, Durkheim's *The Division of Labor in Society*⁴ inspired sociologists to examine the relationship between social structure and the organization of law and punishment.⁵ Weber's ideas concerning the "rationalization" of society and the legitimate bases of legal authority compelled sociologists to think comparatively and brought a historical dimension to sociological inquiry on law and punishment.⁶ Marxist sensibilities begat a small, but vibrant, industry of radical criminologists and sociologists of law and punishment who located both the causes and control of crime in the exploitation, injustice, and class conflict inherent in capitalist society.⁷

³ A notable example in this line of inquiry comes from the work of Travis Hirschi, who drew from Durkheim's concept of "anomic" suicide (in which suicide is associated with social normlessness) to formulate his "social control" theory of delinquency. See Travis Hirschi, *Causes of Delinquency* 17 (Transaction 2d ed 2002). From the perspective of social control theory, individuals with weak social ties to conventional institutions (hence weak normative regulation), such as the family or schools, are more likely to commit crime than those with strong ties. Social control theory later became "self-control" theory in which normative conformity is premised upon the effectiveness of primary socialization into mainstream values and practices. See Michael R. Gottfredson and Travis Hirschi, *A General Theory of Crime* 154–68 (Stanford 1990). Although Robert K. Merton's classic work on social structure and deviance did not cite Durkheim, his core idea that deviance and crime result from individual commitments to mainstream values to succeed in American society, coupled with a lack of means (such as education or employment) and/or blocked pathways (due, for example, to racial discrimination), echoes the theoretical logic in Durkheim's arguments that "egoistic" suicide correlates with disjunctures between normative regulations and individual goals. See Robert K. Merton, *Social Structure and Anomie*, 3 Am Soc Rev 672, 679 (1938).

⁴ Emile Durkheim, *The Division of Labor in Society* (Free Press 1964).

⁵ Perhaps the most well-known application of Durkheim's approach in this regard is Donald Black, *The Behavior of Law* (Academic 1976), where Black argues that the quantity and style of legal social control varies with the social structural locations of those involved, including social status and intimacy.

⁶ Weber's influence can be seen, for example, in Michel Foucault, *Discipline and Punish: The Birth of the Prison* 231 (Pantheon 1977). Foucault argues, among other things, that intensive rationalization, as evidenced in the designs and techniques of prisons, ultimately produces the very phenomena that these institutions ostensibly seek to control. See also David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* 167 (Chicago 2001) (drawing directly from Foucault and indirectly from Weber to document the increase and density of penal and social controls during the last few decades in two archetypically democratic societies, Britain and the United States); Bernard E. Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* 140–80 (Harvard 2001) (drawing on Foucault's work to re-examine the nature of order and broken-windows policing).

⁷ The earliest work on law and punishment along these lines is George Rusche and Otto Kirchheimer, *Punishment and Social Structure* (Russell & Russell 1939) (describing the historical interaction between punishment practices and the development of social conditions and class structure). See also David F. Greenberg, ed, *Crime and Capitalism: Readings in Marxist Criminology* (Temple 2d ed 1993) (bringing together the writings of

As influential as these theorists have been, not all sociological work on crime and punishment descends in a "top-down" fashion from these European sources. There is also a long tradition in American sociology of "bottom-up" inquiry that begins with an intensive empirical inquiry into the dynamics of crime and punishment and builds conceptual frameworks upon that foundation. Perhaps the most influential bottom-up tradition in the sociology of crime and punishment originated in the Sociology Department at the University of Chicago in the 1920s. Researchers associated with the early "Chicago School" of sociology, as it came to be known, approached the study of crime and punishment with the reform-minded concerns of the Progressive Era and the philosophical underpinnings of American pragmatism.⁸ A hallmark of the Chicago approach was intensive, qualitative fieldwork, especially aimed at understanding the relationships between social "disorganization" (such as fragmented families and community institutions) and undesirable social "outcomes" in Chicago's vast immigrant neighborhoods (including criminality, as well as chronic unemployment and homelessness).⁹ These commitments, in turn, fed into a flowering of influential field-based studies of crime and delinquency during the 1920s, 1930s, and early 1940s.¹⁰ Among the most influential of the works based

twentieth-century radical sociological criminologists with Marx's and Frederick Engels' disparate writings on crime and punishment); Douglas Hay, et al, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Pantheon 1975) (providing a historical sociological examination of crime and punishment from a Marxist perspective).

⁸ John F. Galliher, *Chicago's Two Worlds of Deviance Research: Whose Side Are They On?*, in Gary Alan Fine, ed, *A Second Chicago School: The Development of Postwar American Sociology* 164, 166–68 (Chicago 1995) (describing the development of the "Chicago School" of sociology).

⁹ Burgess, for example, directed dozens of dissertations that touched on both social disorganization and legal processing of crime among Chicago's immigrants. See, for example, William I. Thomas and Florian Znaniecki, *The Polish Peasant in Europe and America: Monograph of an Immigrant Group* (Badger 1919) (setting the tone for community-based studies of social problems that link poverty, social marginalization, and crime). Other exemplars along these lines include Nels Anderson, *The Hobo: The Sociology of a Homeless Man* (Chicago 1923) (detailing an extensive study aimed at obtaining information so that social agencies could deal intelligently with the problem of homelessness in Chicago); Harvey Warren Zorbaugh, *The Gold Coast and Slum: A Sociological Study of Chicago's Near North Side* (Chicago 1929) (providing detailed illustration and analysis of social segregation in Chicago's Near North Side during the early twentieth century).

¹⁰ Galliher, *Chicago's Two Worlds of Deviance Research* at 171 (cited in note 8) (noting the innovative fieldwork that characterized the "Chicago School" in its early days). Exemplars include Frederic Thrasher, *The Gang: A Study of 1313 Gangs in Chicago* (Chicago 1927) (describing detailed study and analysis of Chicago gangs and their habitat in the city slum); Clifford R. Shaw, *The Jack-Roller: A Delinquent Boy's Own Story* (Chicago 1930) (providing a first-person perspective of the career of a young male delinquent over a six-year period); Edwin H. Sutherland, *The Professional Thief: By a Professional Thief* (Chicago 1937) (describing the profession of theft as experienced by a person with more

on these studies were Edwin Sutherland's path-breaking book, *Principles of Criminology*, which advanced the first general sociological theory of crime causation, "differential association,"¹¹ and Clifford Shaw and Henry McKay's writings on social disorganization theory,¹² which helped establish the study of crime as a distinctive subfield in sociology.

The decade following the end of World War II witnessed another upsurge of Chicago School interest in crime and punishment that set the agenda for a great deal of subsequent sociological inquiry. The most influential Chicago students, Howard Becker and Erving Goffman, carried forth the fieldwork emphasis from the earlier Chicago School, but departed from reform-minded, community-based concerns. Instead, they investigated the dynamic and ironic interplay between the ways institutional authorities label and process crime and deviance, and how individuals embark on and sustain deviant "careers."¹³ These authors implicitly and explicitly argued that the very institutions charged with controlling deviance often produce it by labeling and creating the moral boundaries of society.¹⁴ Thus, it was im-

than twenty years of experience as a thief).

¹¹ Edwin H. Sutherland, *Principles of Criminology* 76–80 (JB Lippincott 1939). In his differential association theory, Sutherland posited that youth become delinquent when they are socialized into an "excess" of values that legitimize the commission of crime and deviance. He and scores of scholars subsequently applied this theory to all forms of criminality, including white-collar crime. See, for example, Edwin H. Sutherland and Donald R. Cressey, *Criminology* 269 (JB Lippincott 10th ed 1978) ("White-collar criminals are not intensely hated by most businessmen, are not considered outlaws, and are not ostracized in the way that even juvenile shoplifters may be.").

¹² Clifford R. Shaw and Henry D. McKay, *Juvenile Delinquency and Urban Areas: A Study of Rates of Delinquents in Relation to Differential Characteristics of Local Communities in American Cities* 435 (Chicago 1942) (detailing a study covering twenty cities and tens of thousands of juvenile delinquents, and noting the "direct relationship between conditions existing in local communities of American cities and differential rates of delinquents and criminals").

¹³ Galliher, *Chicago's Two Worlds of Deviance Research* at 171 (cited in note 8) (noting the sociology of deviant behavior and focusing on fieldwork dealing with society's "powerful and not so powerful"). By this time, the hallmark of the Chicago School-style sociology—qualitative fieldwork—had become conceptually and methodologically buttressed by Herbert Blumer's symbolic interactionism. See Herbert Blumer, *Symbolic Interactionism: Perspective and Method* (Prentice-Hall 1969) (describing "the methodological position of symbolic interactionism"). And it was substantively directed toward occupations, careers, and organizational settings by Everett Hughes. See generally Everett C. Hughes, *The Sociological Eye: Selected Papers* (Aldine-Atherton 1971).

¹⁴ See Howard S. Becker *Outsiders: Studies in the Sociology of Deviance* 19 (Free Press 1963) (advancing the basic tenets of what became known as the "labeling theory" of deviance). See also Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* 3 (Doubleday 1961) (analyzing life in "total institutions" and focusing on the effects that these institutions, such as prisons and mental hospitals, have on those on the inside). Another Chicago student, Albert J. Reiss, evokes these same perspectives in *The Police and the Public* (Yale 1971) (detailing a study on the transac-

portant for sociologists to understand the public and behind-the-scenes decisionmaking processes among organizations and authorities (such as courts, prisons, asylums, police departments, and parole agents) charged with controlling crime and deviance.¹⁵

Against the backdrop of these multiple traditions, this conversation brought together four scholars to consider and assess contemporary sociological perspectives on crime and punishment. Collectively, the participants span European and American traditions, and they have investigated both the institutions that

tions between police and citizens based on observation in Detroit and Chicago during the 1960s). Unlike Becker and Goffman, however, Reiss mixes systematic fieldwork with quantitative analysis.

¹⁵ This concern led sociologists to study, for example, the "extra-legal" aspects of sentencing decisions. See John Hagan, *Extra-legal Attributes of Criminal Sentencing: An Assessment of a Sociological Viewpoint*, 8 L & Socy Rev 357, 357-83 (1974) (reviewing "research relating to the charge of discrimination in sentencing" and examining the question of whether "extra-legal attributes of the defendant" are a basis of differential sentencing). This tradition also fed into the development of social-interaction approaches to social control decisionmaking in so-called "people processing institutions," those organizations charged with processing people with interpersonal and group problems, including crime, mental illness, and economic dislocation. See, for example, Robert M. Emerson, *Judging Delinquents: Context and Process in Juvenile Court* (Aldine 1969) (analyzing "the nature of the [juvenile] court's operation, the handling of delinquents, and the court's functions in relation to the wider social and legal system"); Robert M. Emerson, *Holistic Effects in Social Control Decision-Making*, 17 L & Socy Rev 425 (1983) (focusing on the organizational whole of social control institutions). Other influential Chicago students skirted the lines of argument taken by Becker and Goffman to pursue related, but different research programs. Lloyd Ohlin, for example, entered the institutional worlds of crime and deviance, but was explicitly reform-minded as he attempted to establish the empirical bases of organizational effectiveness. See Lloyd E. Ohlin, *Selection for Parole: A Manual of Parole Prediction* 41 (Russell Sage 1951) (describing measures of parole outcome). Later in his career, after spending time at Columbia University teaching social work, Ohlin teamed with sociologist Richard Cloward to write *Delinquency and Opportunity: A Theory of Delinquent Gangs* (Free Press 1960). This work became the theoretical underpinning of the Johnson Administration's "Great Society" social policies, which were aimed at crime prevention in the 1960s. Cloward and Ohlin, drawing in part on Merton's early work on social structure and anomie, argued that poor youth shared the same mainstream values as the middle-class—to get ahead in American society—but lacked the legitimate means to do so (such as educational and employment opportunities). Id at 108. As a result, poor youth turned to illegal means to accomplish mainstream goals. Providing inner cities with jobs and educational opportunities, the argument continued, would ultimately solve the "crime problem" besetting such areas. Id. Still other Chicago students, most notably James F. Short, departed from the qualitative fieldwork emphasis of the Chicago School to develop quantitative measures of crime causation and to test principles developed in general theories of crime, such as differential association. See F. Ivan Nye and James F. Short Jr., *Scaling Delinquent Behavior*, 22 Am Soc Rev 326 (1957) (reporting and quantitatively analyzing findings of questionnaire data collected from high school students). Finally, Chicago alum Kai Erickson pursued the idea that legal institutions play key roles in "creating" crime by setting and altering the moral boundaries of society in his functionalist historical study of the seventeenth century Salem, Massachusetts witch hunts. Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* 137 (Wiley 1966).

process crime and punishment, as well as the social causes of crime and deviance. The participants include two sociologists, John Hagan and Calvin Morrill, and two legal scholars, Bernard Harcourt and Tracey Meares. They convened on a panel at the University of Chicago Law School Legal Forum's Nineteenth Annual Symposium, "Punishment and Crime," to discuss three general questions regarding the sociology of crime and punishment.¹⁶ Along the way, they also provided illustrations of their general points about the field. The questions they pursued were:

- What does sociology uniquely contribute to the contemporary study of crime and punishment?
- How do the research practices of sociologists differ from other intellectual traditions concerned with the study of crime and punishment?
- What does the future hold for sociological research on crime and punishment?

In addition, the participants also addressed a fourth question regarding sociologists' normative agendas and value commitments, which emerged as a result of a question from an audience member.¹⁷ The panel addressed this issue at the conclusion of the conversation.

I. THE CONTRIBUTIONS OF SOCIOLOGY TO THE STUDY OF CRIME AND PUNISHMENT

Our conversation thus begins by exploring the contributions of the sociological perspective to the contemporary study of crime and punishment. In this section, we set forth what we believe to be some of the unique attributes of sociological inquiry with respect to crime and punishment, citing a few exemplars along the way.

Calvin Morrill: From my perspective, there are three inter-related tendencies that sociologists bring to the study of crime and punishment. Not every sociologist engages in these tendencies, but I think that to varying degrees these three attributes define the basic parameters of the sociological approach to crime and punishment.

¹⁶ Although we have edited the conversation for grammar and fluency, we have tried, as much as possible, to preserve the flow and vitality of the contributions of each participant as they were delivered on the panel.

¹⁷ Heidi M. Hurd, Dean of the University of Illinois, College of Law, asked the question that prompted the fourth section of this article.

The first thing that sociologists contribute is what is often called a “relational approach.”¹⁸ Rather than focus on the attributes of individuals or particular groups, what is distinctive about the study of crime and punishment from a sociological perspective is a focus on the dynamic relationships between the objects of study, whether those objects are individuals, social groups, neighborhoods, organizations, nation-states, or regions of the world. This tendency is certainly evident in Emile Durkheim’s classic work on crime and punishment in which the structures of relationships in society—principally the division of labor—determine the kinds of legal systems that societies are likely to have.¹⁹ It’s also evident in Durkheim’s work on suicide in which the relationships between individuals and groups, on the one hand, and key institutions and values, on the other, are important for explaining differential rates of suicide across different social groups.²⁰ So this relational approach is archetypically sociological, and it has significant implications. It enables sociologists, for example, to study aspects of crime and punishment that other fields miss, especially the unanticipated consequences or self-fulfilling prophecies of institutions intended to punish crime. Particularly important in this regard is how institutions that are supposed to punish crime can actually come to construct or enact the very phenomena they are intended to control.

A second important contribution that sociologists bring to the table is an attention to context: the attempt to situate phenomena in their social, cultural, and political environs, and to a lesser extent in their historical and economic contexts. This attention to context enables sociologists to create compelling narratives about crime and punishment; about how it is, for example, that law is actually implemented in particular situations or how it is that social processes and decisionmaking relevant to social control unfold via social interaction, both within the criminal justice system and outside the system in civil society.²¹

¹⁸ David Snow argues that the relational approach is a key characteristic of any sociology perspective, regardless of subfield. See David A. Snow, *The Value of Sociology*, 42 Soc Perspectives 1, 7–9 (1999).

¹⁹ Durkheim, *The Division of Labor* at 70 (cited in note 4) (discussing generally the relationship between crime and punishment to society and its judicial rules).

²⁰ Durkheim, *Suicide* at 145 (cited in note 2) (describing how factors such as religion, marriage, family, politics, war, and economy affect suicide rates).

²¹ Snow, 42 Soc Perspectives at 9 (cited in note 18) (“Whatever the object of analysis . . . it cannot be understood fully without understanding the enveloping social context.”). On narrative in socio-legal studies, see Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* 15–32 (Chicago 1998) (describing and analyzing three narratives of legality common to the stories people tell about their everyday lives).

And finally, a third tendency expressed in sociological inquiry is a concern with social hierarchies of all kinds, including power, domination, coercion, and inequality. Whether these forms of power are substantiated in racial, ethnic, gender, social class, or organizational forms, sociologists are often concerned with the influence of social hierarchies on criminal justice systems. They are also concerned—again referencing the implications of a relational approach—with how it is that criminal justice systems can reproduce or create social inequality.²² These, then, are the three things that I would say sociologists bring to the sociological study of crime and punishment: a relational approach, an attention to context, and a concern with social power and hierarchies of all kinds.

John Hagan: I would highlight three other attributes: first, perception; second, comparison; and third, change. To start, I think the perception of criminal justice is a central core aspect of understanding crime and punishment in America. This is not to diminish the importance of behavior, obviously, but to give full attention as well to perception. Second, there is the comparative aspect. One of the unique things I think sociology often brings to the table is an emphasis on what difference it makes where you are located in society, both as a member of a group and in the larger society. Chicago is a fascinating place to think about these things, because we have such a unique combination of groups in this city. We've been looking at perceptions of criminal justice in Chicago among adolescents,²³ and there's an interesting pattern showing up in our data: African-American youth perceive great criminal injustice, with Latino youth somewhere in between African-American and White youth in their views.²⁴ Third, it is important to consider change both at the micro and macro levels, change both in terms of the development of individuals through their lives and the life course, and the formative impact of ideas

See also David M. Engel and Frank W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* 1-19 (Chicago 2003) (analyzing how stories from intended beneficiaries of the Americans with Disabilities Act reveals the tensions people experience with civil rights).

²² See Becky Petit and Bruce Western, *Mass Imprisonment and the Life Course; Race and Class Inequality in U.S. Incarceration*, 69 Am Soc Rev 151 (2004).

²³ See John Hagan, Monique Payne, and Carla Shedd, *Race, Ethnicity and Youth Perceptions of Criminal Injustice*, 70 Am Soc Rev 381 (2005); John Hagan and Carla Shedd, *A Socio-Legal Conflict Theory of Perceptions of Criminal Injustice*, 2005 U Chi Legal F 261.

²⁴ See Hagan, Payne, and Shedd, 70 Am Soc Rev 391; Hagan and Shedd, 2005 U Chi Legal F 261.

and perceptions, especially in early to middle adolescence and then into emerging adulthood. And there is the changing context that surrounds all of this. We mentioned immigration earlier and the force of that in a city like Chicago, and to understand then that crime and law are always part of the changing urban scene.²⁵

Bernard Harcourt: I would like to emphasize three other attributes, each of which relates importantly to a certain kind of openness or plasticity of the sociological project: an openness, first, regarding the theorization of human behavior; second, regarding the morality or immorality of crime and deviance; and third, regarding the empirical methods used. The first, then, is an initial agnosticism about theories of action. A trait common to much socio-legal research is the complete lack of foundational assumptions about human behavior. The socio-legal approach, most often, does not found itself ab initio on certain maxims about rational action or behavioral heuristics. It is, instead, an approach that stems from a more naturalistic tradition, in part because of the important influence of sociologists such as Herbert Blumer who sought to understand and model human behavior without a priori theories of action.²⁶ The disciplinary boundaries here are soft and it would be possible to trace similar theoretical approaches to other disciplines; whether in political theory, anthropology, continental social theory, philosophy of social science, or even intellectual history.²⁷ But this first important shared attribute is the lack of any fixed and entrenched preconceptions about behavior.

What is particularly useful about this starting point is that it helps highlight the theoretical assumptions that others—often sociologists themselves, but at other times economists, political scientists, or legal scholars—bring to the table in the study of crime and punishment. It allows for a genealogical inquiry into

²⁵ See note 9.

²⁶ Consider Blumer, *Symbolic Interactionism* (cited in note 13) (describing the foundations and methodological position of the symbolic interactionist approach).

²⁷ Professor Harcourt focuses on Herbert Blumer's work here because of the sociological connection, but could equally well have pointed to the writings of the anthropologist Clifford Geertz, especially *After the Fact: Two Countries, Four Decades, One Anthropologist* 114 (Harvard 1995) (collected writings dealing with polemical concerns with behaviorism, reductionist theories concerning the study of man, and general critiques of naturalism) or the political theorist Charles Taylor, especially *Philosophy and the Human Sciences: Philosophical Papers 2*, 15 (Cambridge 1985) (discussing interpretation and its relation to explanation in the sciences of man).

their underlying theories of action. Take, for instance, the writings of James Q. Wilson and Edward C. Banfield.²⁸ It is possible to unearth, in their work, a theory of human action that relies on a notion of thick propensities to commit crime: the idea that certain individuals, because of present-orientedness, environmental conditions, and genetic makeup, have a greater predisposition to commit acts of deviance than do others. These predispositions—or sticky behavioral attributes—form the essential theoretical foundation to much of the work of Wilson and Banfield, and significantly influenced the direction of their policy analysis. After all, if we assume a thick propensity to commit crime, then there are a lot of policy approaches that are simply not going to work, such as, for instance, deterrence-based interventions. These behavioral assumptions feed into selective incapacitation policies. In this sense, socio-legal research, especially critical socio-legal research, often draws on an original agnosticism in order precisely to develop critical perspectives on the influence of behavioral theories on public policy; to explore the way that theory shapes the researcher's project.

The second attribute is a certain openness towards deviance. Here, I am thinking especially of the work of Donald Black, particularly his article *Crime and Social Control*,²⁹ as well as the early work of Jack Katz, captured well in his book *Seductions of Crime*.³⁰ A critical socio-legal approach avoids taking, at the outset, the traditional normative attitude towards deviance, and instead seeks to explore crime *and* punishment for whatever kind of rich theorizing that it can achieve.³¹ The critical socio-legal account explores the attractions of deviance, above and beyond the merely instrumental: the pleasures, the material benefits, the emotions of crime and delinquency. Crime is often, as

²⁸ See, for example, James Q. Wilson, *Thinking about Crime* xi (Basic 1975) (asserting that “the proper design of public policies requires a clear and sober understanding of the nature of man and, above all, of the extent to which that nature can be changed”); Edward C. Banfield, *The Unheavenly City Revisited* (Little, Brown 3d ed 1974) (examining many of the problems that rapid urban development during the twentieth century has produced).

²⁹ Donald Black, *Crime as Social Control*, 48 *Am Soc Rev* 34, 35–38, 41–42 (1983) (discussing self-help as a type of social response to deviant behavior, and examining the possibility of understanding crime through the sociological theory of self-help).

³⁰ Jack Katz, *Seductions of Crime: Moral and Sensual Attractions in Evil Doing* 3 (Basic 1988) (focusing “on the seductive qualities of crime: those aspects in the foreground of criminality that make its various forms sensible, even sensually compelling, ways of being”).

³¹ Again, this isn't necessarily limited to the discipline of sociology, but it is definitely characteristic of critical socio-legal scholarship on deviance.

Donald Black suggested, an expression of moral condemnation and is laced with moral righteousness.³² It is often “moralistic,” and so often “involves the pursuit of justice.”³³ The key to understanding crime, as Jack Katz suggests, may be precisely to explore, rather than ignore, “what it means, feels, sounds, tastes, or looks like to commit a particular crime.”³⁴ Much sociological research on crime and punishment reflects this deep interest in exploring the hidden underbelly of deviance.

A third important trait concerns the rich toolbox of methods that socio-legal scholars bring to bear on the empirical enterprise, which again reflects a certain openness this time in the methodological realm. The role of the symbolic and linguistic realm is extremely important to the critical socio-legal perspective, and in order to get at these dimensions the researcher must often deploy a wider range of qualitative and quantitative methods; methods that are not ordinarily or necessarily part of his or her original disciplinary training. Ronald Breiger at the University of Arizona has helped introduce and popularize numerous practice-theoretic methods to socio-legal researchers, including correspondence analysis and Gallois lattices, innovative approaches that bring together rigorous qualitative and quantitative methods.³⁵ Again, the idea is a certain openness. The openness here is to method. The empirical tools are crafted to explore the theory, rather than the theory being constrained by the method.

Tracey Meares: A sociologist brings to the table, in a way that other disciplines do not, an ecological perspective of crime. It is true that disciplines outside of sociology take seriously the notion of considering units of analysis beyond the individual in analyzing crime, such as the community. Nonetheless, sociologists take

³² Black, 48 Am Soc Rev at 34 (cited in note 29).

³³ Id.

³⁴ Katz, *Seductions of Crime* at 3 (cited in note 30).

³⁵ See generally Ronald Breiger, *A Tool Kit for Practice Theory*, 27 Poetics: J Emp Rsrch Cult Media & Arts 91 (2000) (using relations among the Justices of the Supreme Court to study the analysis of correspondences, and examining new ways to implement Gallois lattice analysis); Philippa E. Pattison and Ronald L. Breiger, *Lattices and Dimensional Representations: Matrix Decompositions and Ordering Structures*, 24 Soc Networks 423 (2002) (concerning simultaneous representation of dual relationships and focusing on vector space and lattice representations). Professor Harcourt employs these methods in *Language of the Gun: Youth, Crime, and Public Policy* (Chicago 2005). See also *Measured Interpretation: Introducing the Method of Correspondence Analysis to Legal Studies*, 2002 U Ill L Rev 979, 993 (using research on the social meanings of guns to youth as an example to illustrate the use of correspondence analysis).

a different approach to such analyses. Take, for example, the research by former University of Chicago, now Harvard, Professor Robert Sampson.³⁶ Sampson and his colleagues have undertaken a massive study of neighborhoods in Chicago called *The Project on Human Development in Chicago Neighborhoods* ("PHDCN").³⁷ PHDCN is a major interdisciplinary study aimed at deepening society's understanding of the causes and pathways of juvenile delinquency, adult crime, substance abuse, and violence. One idea behind this work is the notion that the social, economic, organizational, political, and cultural structures in neighborhoods and the dynamic changes that take place in these structures make unique contributions to crime. Thus, while individual-focused research might seek to determine what motivates an individual to offend, a more ecologically minded researcher might ask, what is it about a place that explains why high crime rates persist over time?

It is important to see that when trying to capture characteristics of a community as the unit of analysis, one does not want to simply determine the attributes of an individual and aggregate up; rather, it is critical to adopt strategies that assist one in identifying the characteristics of the place itself. So, for example, when Sampson and his colleagues studied their target neighborhoods, they sought to address this point by asking neighborhood residents to characterize their community.³⁸ Instead of asking an individual, "Would you intervene if you saw a street fight on the corner?", PHDCN researchers asked "Is your neighborhood the type of neighborhood a resident would intervene in a corner street fight?"³⁹ By asking the question in this way, the researchers expected to be able to distinguish individual-level practices from those of the neighborhood as a whole.

³⁶ See, for example, Robert J. Sampson and Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 Am J Soc 603 (1999) (assessing the sources and consequences of public disorder).

³⁷ See Project on Human Development in Chicago Neighborhoods, available at <<http://www.hms.harvard.edu/chase/projects/chicago>> (last visited Jul 22, 2005) (discussing PHDCN news, measures, publications, and funding sources).

³⁸ See, for example, Sampson and Raudenbush, 105 Am J Soc at 619–22 (cited in note 34) (describing some of the methods used for collecting data in PHDCN research); Stephen W. Raudenbush and Robert Sampson, *Ecometrics: Toward a Science of Assessing Ecological Settings, with Application to the Systemic Social Observation of Neighborhoods*, 29 Soc Methodology 1, 7 (1999) (same).

³⁹ See Sampson and Raudenbush, 105 Am J Soc at 620 (cited in note 36) (explaining a type of "measure of shared expectations for informal social control" and relating how "[r]esidents were asked about the likelihood . . . that their neighbors could be counted on to take action").

Why is the community perspective important? Well, from a policy perspective, one can imagine directly a criminal law policy in which the community, as opposed to the individual, is the target. Such a policy would not necessarily focus on punishment of individuals. It might, instead, focus upon changing the structural or normative landscape of the community in ways that enhance the community's own capacity for crime resistance. In fact, this is one way of understanding the goals of community policing.

An ecological perspective also helps us to see what is potentially problematic about some of the work on neighborhoods and crime done in other disciplines. Consider Jens Ludwig's work on public housing called *Moving to Opportunity*.⁴⁰ This research is set up to randomly assign individuals to different housing contexts in the inner city and the suburbs in order to assess whether taking an individual out of a very poor and depressed community and putting her in a much more economically vibrant community changes her life prospects.⁴¹ For example, can we determine whether this individual will be less involved with crime as a result of the move? An economist might think of this work as testing neighborhood effects, but the sociologist would say that all that is being tested is the effect of a neighborhood on the individual who moved. A sociologist would, to test neighborhood effects, apply particular policy to different neighborhoods—not individuals—and then assess differences.

II. THE PRACTICES OF SOCIOLOGY IN THE CONTEXT OF INTERDISCIPLINARITY

In light of the contributions and attributes of sociological perspectives on crime and punishment, a natural question that arises is what sociologists do that other social scientists do not. That is, what sorts of research practices do sociologists engage in that other disciplines do not and what implications do their practices hold for the study of crime and punishment? It is to this question that our panel next turned its collective attention.

⁴⁰ Helen F. Ladd and Jens Ludwig, *Residential Relocation Policies in the United States: The Moving to Opportunity Demonstration*, 14 *Netherlands J Housing & Built Envir* 61 (1999). See also Jens Ludwig, Jeffrey R. Kling, and Maria Hanratty, *Neighborhood Effects on Crime Over the Life Cycle* (Georgetown Public Policy Institute Working Paper) (forthcoming).

⁴¹ Ladd and Ludwig, 14 *Netherlands J Housing & Built Envir* at 61–62 (cited in note 40).

Calvin Morrill: Sociology, as compared to economics or psychology, and perhaps even political science, begins with a different unit of analysis. It's not that sociologists are not interested in individuals or that we're not interested in cognitive processes. In the study of crime and punishment, we often begin at the level of social interaction in groups, neighborhoods, communities, or in institutions, and work our way back to individuals. Again, this is a hallmark of the relational approach I mentioned earlier. So sociologists begin in different places than many disciplines, which, I believe, can lead one to different outcomes with respect to policy or political implications. When one begins at a social level, one is necessarily led to policy that considers, or at least thinks about social engineering (as opposed to individual-level change). Moreover, the relational approach, coupled with a concern about social inequality and power, leads more naturally to a critical stance, almost subversive, that can point towards radical social change in terms of restructuring social institutions.

I also want to pick up on a point made by Bernard Harcourt with respect to what he called the plastic set of assumptions, including the rich toolbox of methods, and the more open attitude towards deviance that sociologists at their best embody in their research practices.⁴² Sociologists often display a deep commitment to empirical analysis: in essence to closely examine what is actually going on out in the world. So we tend to collect lots of data about the world through a variety of means. This is not to say that economists don't ever collect data or that psychologists and anthropologists are not often up to their elbows in data, but sociologists who study crime and punishment have often been at the vanguard of both intensive qualitative field studies (such as in the Chicago School of Sociology) or large-scale data collections involving both self-report surveys of delinquent and criminal behavior, and direct observations of the criminal justice system in action. Many of these efforts involved innovative data collection strategies that had never been tried before in crime or punishment contexts, and led to findings that opened up new vistas for research and policy. Albert Reiss and Donald Black's observational study of 5000 police-citizen encounters in Washington, D.C., Chicago, and Boston during the 1960s provides one exemplar.⁴³ Reiss and Black's research painted a picture of police dis-

⁴² See notes 27–35.

⁴³ Donald J. Black and Albert J. Reiss Jr., *Police Control of Juveniles*, 35 Am Soc Rev 63 (1970).

cretion that was more mundane than its popular perception, but also linked more systematically to the social identities and statuses of the people processed than to the law.⁴⁴ More recently, Rob Sampson's research on space and everyday criminal behavior provides another exemplar.⁴⁵

John Hagan's reference to the perceptual, change, and comparative dimensions of sociological inquiry capture very important aspects of sociology. With respect to perception, sociologists have often been interested in how socially marginalized individuals and groups make sense of their local and more conventional or mainstream worlds. This means that sociologists often study groups and aspects of society that other fields completely ignore or think are too marginal to spend much time on. This kind of inquiry, which often involves studying so-called deviant "sub-cultures," can lead in uncomfortable directions because the researcher, almost by definition, can come to have empathy and take the perspective of those they're studying. This can become uncomfortable because those under study may be vilified and/or feared by mainstream society. Years ago, Howard Becker, in his presidential address to the Society for the Study of Social Problems entitled *Whose Side Are We On?*, called for sociologists to take the side of the socially marginalized, the socially deviant, and the oppressed.⁴⁶ His intent—and I think a lot of sociological research followed his dictum, at least in the 1960s and 1970s, and in some quarters, continues to this day—was to give voice to those who were rarely heard from in mainstream society.⁴⁷ But this stance also means that sociologists sometimes have to confront uncomfortable choices regarding morality, regarding the kinds of norms and the kinds of value commitments that they have. Some of this tendency has led to a romanticization of the socially marginal, which, quite frankly, has been less useful in understanding various social worlds. At its best, this stance,

⁴⁴ Id at 76 (noting that "[t]he great bulk of police encounters with juveniles pertain to matters of minor legal significance, that [t]he probability of sanction by arrest is very low for juvenile offenses," and that the arrest rate for black juveniles is higher than for white juveniles).

⁴⁵ Sampson and Raudenbush, 105 Am J Soc at 603 (cited in note 36) (examining the effects of cohesion among residents and the shared expectations for the social control of public space on crime rates and public disorder).

⁴⁶ Howard S. Becker, *Whose Side are We On?*, 14 Soc Problems 239, 245 (1967) ("We can never avoid taking sides.").

⁴⁷ See, for example, id at 243 ("The lack of organization among subordinate members of an institutionalized relationship means that, having no responsibility for the group's welfare, they likewise have no complaints if someone maligns it. The sociologist who favors officialdom will be spared the accusation of bias.").

championing the socially marginal, has usefully fed into political change processes to recognize or enact the rights of the oppressed or deviant.

This last point also speaks to what has been mentioned in our conversation as the more “open” attitude towards deviance that many sociologists espouse. This open attitude—which I take to mean a less absolute, more relativistic or situational approach to morality—means that sociologists don’t always approach the deviant or the criminal with the over-riding question of how “they” (those defined as deviants) can be controlled. More importantly, this open attitude can create the opportunity for sociologists to turn conventional wisdom on its head. This point is nicely illustrated by Donald Black’s idea that much of what we conventionally take to be crime is actually the pursuit of grievances and the enactment of informal social control from the vantage points of those involved.⁴⁸ In my own current research—particularly a long-term collaborative field study I’ve done on interpersonal youth conflict in a high school—I’ve looked at how youth, through conflict interactions, construct and sustain multiple kinds of indigenous normative orders.⁴⁹ The research plays off what Erving Goffman once referred to as the “bottom-up” securing of normative orders via everyday face-to-face social interaction.⁵⁰ Ironically, the normative orders created by youth themselves can threaten adult-centric orders in the sense that, to be enacted, youth typically have to break or at least challenge some set of institutionalized rules set up by adults. Peer orders also typically offer an alternative source of authority to that proffered

⁴⁸ Black, 48 Am Soc Rev at 34 (cited in note 29) (“[M]uch crime is moralistic and involves the pursuit of justice. It is a mode of conflict management, possibly a form of punishment, even capital punishment.”).

⁴⁹ See Calvin Morrill, Christine Yalda, Madelaine Adelman, Michael Musheno, and Cindy Bejarano, *Telling Tales in School: Youth Culture and Conflict Narratives*, 34 L & Socy Rev 521 (2000); Calvin Morrill and Michael Musheno, *Youth Conflict: Culture and Control in a Multiethnic High School* (unpublished book manuscript, Department of Sociology, University of California, Irvine) (the project is a multi-year team ethnography to understand how youth make sense of, constitute, and manage everyday interpersonal conflict in school).

⁵⁰ Erving Goffman, *The Interaction Order: American Sociological Association, 1982 Presidential Address*, 48 Am Soc Rev 1, 6 (1983) (“Certainly most of this order comes into being and is sustained from below as it were, in some cases in spite of overarching authority not because of it.”). See also Erving Goffman, *Interaction Ritual: Essays on Face-to-Face Behavior* (Pantheon 1967) (discussing the study of face-to-face interaction in natural settings); Erving Goffman, *The Presentation of Self in Everyday Life* 252 (Doubleday 1959) (discussing the “general notion that we make a presentation of ourselves to others” and how people arrange these performances in society); Erving Goffman, *Encounters: Two Studies in the Sociology of Interaction* 7 (Bobbs-Merrill 1961) (discussing face-to-face interaction in terms of “unfocused interaction” and “focused interaction”).

by adults (despite the fact that youths appropriate elements of adult-centric orders in these processes). But they are not, by definition, a threat to all social order. In many cases, youth strategically use and avoid conflict and violence as mechanisms to build and sustain public hierarchies and personal relationships. I don't mean to make the mistake of romanticization that I just mentioned. Youth-centric peer orders can be pretty rough for those involved. But many approaches to youth conflict, whether theoretical or policy-oriented, often ignore or deny the know-how that youth enact in their everyday interpersonal conflict. They also deny the importance of youth-centric normative orders to youth themselves, and to the functioning of organizations, such as schools, in which youth spend a lot of time. As a result, efforts aimed at intervention often fail to achieve their intended effects because of a lack of knowledge about the local worlds in which they are trying to effect change. But to take this view—embodied in an open attitude or stance toward what might be, from many perspectives, considered social deviance and dangerous—sociologists must be ready to document multiple normative orders without necessarily embracing either a position that anything goes or that such normative orders are inherently in need of reform and intervention.

John Hagan: Robert Sampson has this notion of what he calls “the cognitive landscape of criminal justice”; focusing on how variation occurs in individuals' perceptions and groups' perceptions of criminal justice across social settings.⁵¹ So some of the work that we are doing in Chicago builds on surveys of students in public high schools in Chicago. And one of the things that we've been finding is that if you array these schools in terms of the levels of integration that characterize them, or actually more accurately the extent to which they have been able to escape segregation, you see a sort of pattern in which perceptions of criminal justice, initially at least, sharpen, actually increase with increasing numbers of whites in schools, and we think this has something to do with what we call “the familiarity of the ex-

⁵¹ See, for example, Robert J. Sampson and Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 *L & Socy Rev* 777 (1998) (discussing how “structural characteristics of neighborhoods explain variations in normative orientations about law, criminal justice, and deviance that are often confounded with the demographics characteristics of individuals”).

pected.⁵² We think that in totally segregated schools and urban settings, the experience with the police is so common and expected that it tends almost to be diminished.⁵³ We do find across all these schools that youth who come in contact with the police perceive more injustice than those who do not, and there's absolutely no doubt about that; but we also find variation across the schools that shifts with the context of the schools.⁵⁴ This is something that my former colleague at Northwestern, Rick Brooks, who's now at the Yale Law School, talks about in his work,⁵⁵ and also Orlando Patterson in his book, *The Ordeal Of Integration*.⁵⁶ They talk about how exposure to other groups opens up an awareness of the kinds of injustice and mistreatment that occur in the world and how that initially can provoke a sense of outrage.⁵⁷ However, we also find in our data, as you move into the top four or five public high schools in terms of percentage of white students in Chicago, you begin to see some abatement in these perceptions: almost as if when you get to the cusp of some real level of integration there is some improvement in the perception of the surrounding social world.⁵⁸ So I think one of the things sociology can do is to open up analysis of data in ways that cross levels. We're trying to follow up with fieldwork that goes into these schools to try to get a sense of how perceptions of justice change and develop over time.

Bernard Harcourt. I would like to underscore another significant aspect of socio-legal research that is reflected well in the insightful comments of Cal Morrill and John Hagan. It is a certain type of reflexivity that is characteristic of contemporary sociology. I am referring here to the acute awareness among socio-legal re-

⁵² See Hagan, Payne, and Shedd, 70 Am Soc Rev 381 (cited in note 23).

⁵³ See id.

⁵⁴ See id.

⁵⁵ See Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Community Perceptions of Fairness*, 73 S Cal L Rev 1219 (2000) (examining African-American perceptions of racial injustice in the American legal system); Richard R.W. Brooks and Haekyung Jeon-Slaughter, *Race, Income, and Perceptions of the U.S. Court System*, 19 Behav Sci & L 249 (2001) (examining the effect of income within race on African-Americans' perception of the courts).

⁵⁶ Orlando Patterson, *The Ordeal of Integration: Progress and Resentment in America's "Racial" Crisis* (Counterpoint 1997) (discussing the economic sociology behind the "racial" problem in America).

⁵⁷ See, for example, Brooks, 73 S Cal L Rev at 1250 (cited in note 55) (providing data on the effects of various factors, such as age, urbanization, education, and information networks, on the belief among blacks that police are "gang-like").

⁵⁸ See Hagan, Payne, and Shedd, 70 Am Soc Rev 381 (cited in note 23).

searchers that they, as contemporary subjects, are also shaped by the practices that they study and that surround them; that it is not just the subjects that they study who are shaped by practices, but they themselves as well, as researchers. There is, as a result, a unique recognition among socio-legal scholars of the need to imbue their own research with an ongoing examination of their own role as researcher: of the need to take a critical, reflexive look at the very act of research. This notion of reflexivity traces, naturally, to the seminal work of Pierre Bourdieu and Clifford Geertz.⁵⁹ Bourdieu himself spoke of investigating “the effects produced on the observation, on the description of the thing observed, by the situation of the observer” in order to “uncover all the presuppositions inherent in the theoretical posture as an external, remote, distant or, quite simply, non-practical, non-committed, non-involved vision.”⁶⁰ This calls, then, for a heightened sensitivity of the researcher as subject, and it often entails a different research relationship to social phenomena, especially when they are infused with linguistic meaning.

I’ve also already mentioned the rich toolbox of qualitative and quantitative methods, and I think that this is especially important to the socio-legal enterprise.

Tracey Meares: Regarding this rich toolbox, it seems to me that sociologists are perhaps a bit more willing than other social scientists to appropriate methods that are traditionally considered “belonging” to other disciplines. So, as Bernard was talking, I found myself thinking, I suppose one could call that sociology, but perhaps it is more rightly characterized as psychology. It doesn’t really matter at the end of the day. Sociologists, like many legal academics, are willing to utilize the most appropriate tools to address the research questions at issue. For example, Larry Bobo, a sociologist, recently has become heavily involved with research on the experimental survey.⁶¹ The idea here is that

⁵⁹ See Pierre Bourdieu, *From Rules to Strategies*, in *In Other Words: Essays Towards a Reflexive Sociology* 60 (Stanford 1990) (discussing “the effects produced on the observation, on the description of the thing observed, by the situation of the observer”); Clifford Geertz, *The Impact of the Concept of Culture on the Concept of Man*, in *The Interpretation of Cultures: Selected Essays* 35 (Basic 1973) (asserting that “the image of a constant human nature independent of time, place, and circumstance, of studies and professions, transient fashions and temporary opinions, may be an illusion” and “what man is may be so entangled with where he is, who he is, and what he believes that it is inseparable from them”).

⁶⁰ Bourdieu, *In Other Words* at 60 (cited in note 59).

⁶¹ See Howard Schuman, et al, *Racial Attitudes in America: Trends and Interpretations* 58 (Harvard 2d ed 1997) (discussing the use of survey questions in studying racial

one can use the sociologist's traditional tool, the survey, and manipulate the questions within the instrument to create a kind of experimental condition. Bobo's work has focused on African-American perceptions of punishment, the death penalty and the like.⁶² By including manipulations in the survey, it is almost like having the respondents in a laboratory. I am sure that Bobo still considers himself a sociologist, but a sociologist who is interested in psychology. This openness is consistent with the notion that Bernard offered of the lack of assumptions within the discipline of sociology, which allows individuals to be more open to trying different methodologies, which in turn, will allow sociologists at least to construct their visions of crime, and therefore by implication, different policy.

III. THE FUTURE DIRECTIONS OF SOCIOLOGICAL CONTRIBUTIONS

In this section, the panel turns its attention to the future of sociological research on crime and punishment. Included in this portion of the discussion are considerations of particular research innovations and overall changes in the field that could constrain or facilitate innovation.

Calvin Morrill: Tracey Meares points out a really interesting point about Larry Bobo's work that implies a larger pattern with respect to the future directions of the sociological study of crime and punishment.⁶³ As you might guess, the plurality of method and theory in sociology does not always unfold in happy combination. Indeed, there's often enormous tension and out-and-out intellectual warfare over different theoretical positions and methodological practices in the field of sociology.

Sometimes it seems as though sociological ethnographers distrust survey researchers, who distrust math modelers, who distrust experimentalists, who distrust historical comparativists, and so on. However, the debates within methodological camps can be as conflictual, if not here so, than those between camps. But the future vitality of the field, I think, is intimately tied to these tensions, as aggravating as they sometimes can be. What these tensions do is compel sociologists to continually spell out and justify why and how they are doing what they do in their research. Thus, these differences and tensions can be functional

attitudes).

⁶² See, for example, *id* at 238 (discussing the trends of black racial attitudes).

⁶³ See *id*.

in the sense that sociology has always contained enough diversity and divisiveness that it always seems to be reexamining itself critically. This continual churning can lead to periodic renewal: a kind of creative destruction that involves innovation and the establishment of new thrusts in the discipline. These processes are also a weakness because it can be difficult for outsiders, or insiders for that matter, to figure out what is distinctively sociological. A colleague from economics, for example, once told me that sociology is so diverse, compared to her discipline, that it seemed that sociology could really be a stand-in for all the social sciences. This means that sociology can sometimes be mistaken for other social sciences or not recognized for its unique contribution towards understanding an area of inquiry or a social problem.

The field-wide eclecticism of sociology and the attention to concrete social problems that other fields sometimes miss also mean that new ideas from outside the field tend to get inside it, and that sociologists are able to take their ideas and approaches and travel outside the field to set up shop elsewhere. Sociology can travel across intellectual borders because it is so eclectic that it sometimes seems to embrace all of the diversity of social sciences at once. One of the most significant of these migrations has been the relocation of a great deal of sociological studies of crime and punishment away from their disciplinary origins to other academic locations, especially schools of criminal justice and law schools.⁶⁴ These border crossings have resulted in some really interesting research and new insights. We have two participants on this panel, Tracey Meares and Bernard Harcourt, whose appointments are in law schools, but who continually cross the borders between law, sociology, and other fields to produce some of the most innovative and interesting work in crime and punishment being done today. But there is a potential downside to these migrations, especially if scholars, perhaps over multiple generations, lose their moorings to the discipline of sociology. Right now, it is my sense that there are a diminishing number of people in the discipline of sociology who identify themselves as sociologists of crime or sociologists of criminal justice. Many people who study crime and punishment from a sociological perspective, or what passes as one, are being trained and work in schools

⁶⁴ See, for example, Richard L. Abel, *Taking Stock*, 14 L & Socy Rev 429, 429–30 (1980) (describing the development of interdisciplinary studies of society and law, including expansion to law schools, social science departments, scholarly organizations, and governmental organizations).

of criminal justice or public policy, and occasionally in law schools. And although these situations can lead to interesting work in some cases as I've noted, over time they could also lead to a narrowing of the intellectual agenda in the study of crime and punishment; a focus that may be more tied to the agendas set by government policy rather than by research agendas tied to fundamental questions, for example, concerning the causes of crime or the institutions that process crime. Susan Silbey and Austin Sarat wrote about this tendency from a law and society perspective,⁶⁵ and more recently, Joachim Savelsberg documented some of its effects on the sociology of crime and punishment with respect to schools of criminal justice and policy-related research.⁶⁶ Now there's nothing wrong with policy research. But such research is most vital when it occurs in a rich intellectual and diverse context. If a narrowing of the intellectual agenda for the sociology of crime and punishment does occur over time, it may ultimately discourage the kind of diversity that continually renews the field of sociology itself, whether in the study of crime and punishment or in other sub-fields. This will, and may already have, in my opinion, in some parts of the field lead to less interesting work and fewer theoretical and methodological breakthroughs.

But this potential problem is not the only future for the sociology of crime and punishment. Important innovations continue to occur within the sociology of crime and punishment wherever it's practiced, especially in the ways to conceive and operationalize the social contexts in which crime and punishment occur. We earlier mentioned Rob Sampson's work on the spatial contextualization of crime.⁶⁷ At my own university, University of California at Irvine, two colleagues, George Tita, who works in the Department of Criminology, Law, and Society, and Katherine Faust, who is a professor of Sociology, are using social network and Geographic Information Systems ("GIS") analysis to understand the socio-spatial relationships of gang affiliation, location,

⁶⁵ Susan S. Silbey and Austin Sarat, *Critical Traditions in Law and Society Research*, 21 L & Socy Rev 167, 171 (1987) (noting the "efforts to combine scientific method and administration that became so central a part of political science and sociology in the 1960s and 1970s").

⁶⁶ Joachim J. Savelsberg, Lara L. Cleveland, and Ryan D. King, *Institutional Environments and Scholarly Work: American Criminology, 1951-1993*, 82 Soc Forces 1275, 1277 (2004) (discussing the emergence of the specialized field of criminology and "political funding for criminological research, concentrated in federal agencies that address social conditions of crime").

⁶⁷ Sampson and Raudenbush, 105 Am J Soc at 603 (cited in note 36).

violence, and other forms of criminality in Los Angeles neighborhoods.⁶⁸ I think there are other frontiers in contextualization to explore, including the linkages between collective immigrant experiences and crime and punishment. But it is important that sociologists and other scholars work hard to sustain the natural diversity found in the field of sociology. Without it, the future of the sociology of crime and punishment will not be as rich as its past.

John Hagan: I am going to say that the big thing that is happening in sociology is that, in a very real sense, “we’re going to law school.” We now have people like Bernard and Tracey who in law school settings talk about sociology and the sociological toolkit; they make the point that it’s a user-friendly toolkit. I think that’s always been the great thing about sociology as a resource in the study of law and society—that it is “user-friendly”—it’s open to multiple methods and always puts the accent on the substantive issue rather than the intricacy of the technique, and tries to find a blended way of doing that. So I think this is a crucially important point and that this is a two-way street. The president of our graduate student association in the sociology department at Northwestern has a law degree from Georgetown. We have wonderful people who are moving back and forth between these programs. One of the most exciting things going on in law schools today is the study of international law, particularly the study of international criminal law. I think there’s really important work going on here. It’s interesting in Chicago that Cherif Bassiouni, who is at the law school at DePaul University, has played a pioneering role in chairing the United Nations Commission of Experts that led to the creation of the International Criminal Tribunal for the former Yugoslavia.⁶⁹

I think this work is extraordinarily important. When I looked at the newspaper today, I saw a little article about the American troops at Fallujah, turning back a group of refugees

⁶⁸ See, for example, George Tita, *The Advantages of Having ‘Spaced Out’ Friends: Measuring Socio-Spatial Dimensions of a High Crime Community*, Presented at the American Society of Criminology (2004); Katherine Faust and George Tita, *Networks, Neighborhoods and Drive-bys: The Social and Spatial Dimensions of the Ties Linking Gangs to Communities*, Presented at the American Sociological Association (2003) (the project applies social network analysis and various types of spatial analyses to investigate the socio-spatial relationships between crime and the spatial distribution of social relationships in a Los Angeles area neighborhood).

⁶⁹ See International Criminal Tribunal for the Former Yugoslavia, available at <<http://www.un.org/icty/>> (last visited July 22, 2005).

who were trying to escape the city, and making the point that this is in violation of an international treaty and is definable as a war crime. The United States has adopted a position of such hostility towards international criminal law and, of course, has not ratified the Rome Treaty for the International Criminal Court.⁷⁰ So what are the implications of this? There's a whole new field opening up in terms of international work on crime and punishment. As long as we can keep getting people like Bernard and Tracey on the law school faculties, we'll be on our way and doing well.

Bernard Harcourt: Here, it strikes me that there are two important features—features tied to the development of the discipline itself—that will, in all likelihood, significantly affect the future course of socio-legal studies. The first relates to the historical evolution of the discipline. During the twentieth century, the discipline saw its center of gravity shift from first, the sociology of deviance; to second, criminology; and ultimately third, to criminal justice studies. The late twentieth century experienced an outburst of interest at the college level in criminal justice programs; programs that, at many universities and colleges, have become the largest undergraduate majors.⁷¹ This historical shift has produced three subfields in the discipline that reflect very different sensibilities, intellectual and empirical, as well as in terms of policy orientation. And it produced significant tension. I think we all realize that there are, today, sharp academic conflicts between these subfields. These conflicts have distinct and well-defined cleavages along the lines of theory/practice, deviance/crime, left/right, all of which are laced with class, prestige, and elitist aspects. I will not venture to guess how these tensions will play out, but I have no doubt that the expansion of criminal justice programs will significantly affect the future of socio-legal studies.

As a historical matter, there was also, starting around the 1970s, a movement in the sociology of crime away from the larger

⁷⁰ Consider William A. Schabas, *United States Hostility to the International Criminal Court: It's All About the Security Council*, 15 Eur J Intl L 701 (2004) (discussing the differences between the 1994 draft of the International Law Commission and the final version of the Rome Statute to explain the United States' hostility towards the International Criminal Court).

⁷¹ See, for example, Ronald L. Akers, *Linking Sociology and its Specialties: The Case of Criminology*, 71 Soc Forces 1, 3–12 (1992) (detailing the history of criminology, from its roots as a subsection of sociology to its dramatic growth during the latter part of the twentieth century).

and more obvious institutions of criminal justice—the prisons, the courts—toward the more liminal institutions.⁷² In some sense, this is the somewhat ironic product of Michel Foucault's brilliant study *Discipline and Punish*.⁷³ I say ironic because the subtitle of the original text, don't forget, is "the birth of the prison."⁷⁴ But the focus was on the expansion of disciplinary practices across all fields of human intercourse, from the school and home to the hospital and factory.⁷⁵ It is precisely Foucault's work that moved so much socio-legal scholarship away from the core penal institutions of the penitentiary to the more liminal disciplinary realms of ordinary human exchange. This had the effect, I would argue, of moving a lot of the socio-legal theorizing away from the core institutions of the criminal court complex, further intensifying the tension with the more practice-oriented criminal justice programs, the general study of policing, and criminal justice program evaluation.

I will not make predictions about the future course of the discipline, but I have no doubt that the trajectory will be affected in important ways by these tensions between these three sub-fields—the study of deviance, criminology, and criminal justice programs—as well as by the conflict between those studying the core penal institutions and those exploring the liminal disciplinary realms.

John Hagan: In terms of the historical trajectory of the discipline, it is also important to emphasize that sociologists were trying to be imperialistic earlier in their history. Emile Durkheim was among the most imperial of thinkers. He tried to colonize psychology and tried to do a number of different things,

⁷² See, for example, Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* 3 (Polity 1985) (describing the focus of his work as "something a little wider and more general than the restricted criminological terrain of the formal legal-correctional apparatus for the control of official crime and delinquency"); Philippe Bourgois, *In Search of Respect: Selling Crack in El Barrio* (Cambridge 1995) (detailing an extensive study conducted on the streets of Spanish Harlem in New York City); James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (Yale 1990) (examining confrontations between the powerful and the powerless and focusing on "hidden transcripts," the discourses that take place outside of the observation of the powerful); James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale 1985) (detailing the types of weapons of resistance available to subordinate classes in small Malaysian communities, including "foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on").

⁷³ Foucault, *Discipline and Punish* (cited in note 6).

⁷⁴ Id.

⁷⁵ Id at 135 (generally discussing the effects of discipline and punishment across all parts of society).

many of which were bold failures.⁷⁶ Parsons at mid-century also tried to be more imperialistic, and actually fought against economics at Harvard in the 1930s and 1940s, and tried to limit the hold of economics on that institution, and he failed as well.⁷⁷ I think that a source of the failure is the plurality. There's just too much internal variation in sociology to allow it to transplant itself easily into other disciplines. Economics, with its emphasis on the individual, lines up so much more effectively with the individualistic bias of American culture. It's found a chord that integrates economic models with the American cultural emphasis on individualism. And so we find sociology doing better in other societies, in places like France, and I would say in the country where I spent much of my life, Canada. So we shouldn't mistake sociology's longer term struggle in the United States for its universal fate.

Calvin Morrill: I agree with John Hagan that the cultural contexts in which sociology has unfolded are extremely important. Sociology in France is literally front-page news. When an important French sociologist like Pierre Bourdieu, who tragically passed away from pancreatic cancer earlier this year, died, it became the occasion for national mourning in France.⁷⁸ His passing was certainly noted in this country and was covered in some national newspapers, such as the New York Times,⁷⁹ but his significance was not as widely understood here outside of academia or sociology. The equivalent in the United States would be the passing of a well-known politician or artist, or perhaps a well-known movie star. It's sometimes noted that the United States embodies, at least at the rhetorical level, a cultural fascination with individualism and the accomplishments of individuals. And

⁷⁶ See, for example, Durkheim, *Suicide* (cited in note 2) (explaining the individual psychology of suicide through an examination of numerous sociological factors).

⁷⁷ Consider Talcott Parsons, *Economy and Society: A Study in the Integration of Economic and Social Theory* 296 (Routledge & Kegan Paul 1956) (claiming that "[e]conomic theory cannot be the theory of processes in a total society, but only those of a differentiated sub-system of a society" and discussing an "opposition to the widely-held view in economics that utility and welfare are to be defined in the first instance in terms of individual preference lists").

⁷⁸ See, for example, Brigid Rooney, *Breaking Social Spells: Pierre Bourdieu (1930–2002) An Obituary*, 2002 Politics & Culture available online at <<http://aspen.conncoll.edu/politicsandculture/page.cfm?key=164>> (last visited Jul 22, 2005) ("Obituaries appeared worldwide in honour of his passing; in France, Bourdieu was nationally mourned as one of the great intellectuals of the contemporary era.")

⁷⁹ *Pierre Bourdieu*, 71, *Leading French Thinker and Globalization Critic*, NY Times A21 (Jan 25, 2002).

of course, the relational approach at the core of sociology really challenges people to think very differently about individuals: not as self-contained entities, but as people embedded in a variety of contexts, and in its more deterministic versions, as derivations of society. This was Durkheim's great contribution, for better or worse, and the thrust of his work was explicitly imperialist intellectually. He wanted to spread the gospel of sociology to other fields. And the good news about sociology, from his vantage point, was this: it's not that important what individuals do, because, after all, we're born into a social context and individuals are really repositories of social institutions, social mores, and cultural practices. As a card-carrying sociologist, I would certainly not go this far. And I think many sociologists would say we are interested in the dynamic interplay between individuals and their social environment, including other individuals. Really buying into a relational approach—which ultimately may be more Marx than Durkheim—means understanding multiple levels of analysis, such as how individuals, groups, organizations, neighborhoods, and the broader social institutions of society interrelate. Understanding individual decisionmakers, whether they are youths in a school or a judge in a court, as they make sense of and navigate the nexus of these interconnections is what is important. Given the popular cultural embrace of individualism, therefore, it may not be that surprising that sociology, or at least its relational approach, is not as central to American intellectual life or the broader public than it is.

The other trend that's worth noting, I think, is the movement by sociologists and anthropologists away from the courts, per se, to look at informal social control, behind-the-scenes processes, and quasi-legal structures in places where one wouldn't have looked before.⁸⁰ A lot of this work takes a somewhat ironic perspective that examines the unintended effects of law. This trend in part relates to Bernard's point about examining how law appears in tertiary institutions. One illustration of this trend can be found in my own collaborative research with Lauren Edelman, Richard Arum, and Karolyn Tyson.⁸¹ We're just beginning a study of rights in schools located in New York, California, and North Carolina.⁸² We're specifically interested in how students,

⁸⁰ See note 75.

⁸¹ See Richard Arum, Lauren B. Edelman, Calvin Morrill, and Karolyn Tyson, *School Rights: A Study of Legal Consciousness and Educational Consequences* (unpublished manuscript, Steinhardt School of Education, New York University).

⁸² See id.

teachers, and administrators conceive of and enact legal rights in their everyday practices: what is sometimes referred to as legal consciousness by law and society scholars. Our work will also examine the interplay between what I earlier alluded to as youth-centered normative orders and adult-centered normative orders. In this way, we'll be able to map the various normative orders that define the moral ecology of schools and shed some light, more generally, on the relationships and tensions between multiple normative orders in society.

At the same time, I think that sociologists continue to be interested in legal institutions as they relate directly to the ironies and unintended effects of punishment. But here again, much of the most interesting work is not in American courts, as with the earlier work on sentencing. John's work on international war crimes tribunals at The Hague that he mentioned earlier is one such recent example,⁸³ as is Bernard's work on the quality of life policy of the New York City police.⁸⁴ Tracey Meares has also been engaged in multiple efforts to understand the relationship between punishment and crime, but with a new conceptual agenda.⁸⁵ But their work also includes attention paid to the ironic and unintended consequences of policy, as well as some of the behind-the-scenes processes that feed into social control decisionmaking. Those sociologists who are studying straight sentencing work are doing evaluation research. That is, they're operating within given policy paradigms rather than generating new understandings of the unintended consequences of these policies and procedures.

Bernard Harcourt. One final point to emphasize, of course, is that the future of the discipline in all likelihood will be shaped by the research projects of certain key individuals such as Calvin Morrill, John Hagan, and Jens Ludwig, who are all here with us today, as well as Robert Sampson, Jeff Fagan, Sudhir Venkatesh and others discussed today. It does not make sense to talk about the "socio-legal" as if it were an entity itself—or even a community—rather than as a grouping of individuals who are located in sociology and law departments with different tendencies, desires,

⁸³ See note 69.

⁸⁴ Harcourt, *Illusion of Order* (cited in note 6).

⁸⁵ See, for example, Tracey L. Meares, *Norms, Legitimacy and Law Enforcement*, 79 *Or L Rev* 391 (2000); Tracey L. Meares and Bernard E. Harcourt, *Foreword to Supreme Court Review: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 *Crim L & Criminol* 733 (2000).

and very idiosyncratic attractions to research. We see this throughout the history of the discipline: the course of research is shaped by certain individuals. The study of sentencing and parole, for instance, received a tremendous boost in the late 1920s because of the research interests of Ernest Burgess here in the sociology department at the University of Chicago.⁸⁶ His individual interest in the topic and his original research generated a cottage industry of doctoral dissertations at the University of Chicago and a wealth of academic papers; it generated a full sub-field on parole prediction.⁸⁷ It is truly amazing to see how many dissertations were written here in sociology about predicting parole performance. This is a testament to Burgess, who hammered away at the topic and directed his students, including such renowned sociologists as Albert Reiss, to focus their research in similar areas.⁸⁸ Incidentally, there was no particular reason that the research was grounded in a sociology department. It was, essentially, an early form of actuarial research similar in many ways, for instance, to the prediction research conducted by Sheldon and Eleanor Glueck at Harvard Law School.⁸⁹ But there is no doubt that Burgess's individual interests in parole prediction pushed the discipline as a whole in the direction of predicting future dangerousness. In this sense, it is often difficult, or practically impossible, to disentangle the course of a discipline from the individual research projects and interests of the leading academics. The future of the discipline, in all likelihood, will depend on what Cal Morrill, John Hagan and others are working on and on which graduate students they have working with them.

⁸⁶ See Illinois Committee on the Study of the Workings of the Indeterminate-Sentence Law and Parole, *The Workings on the Indeterminate-Sentence Law and the Parole System in Illinois* 203 (Chicago 1928) (illustrating Burgess's work on parole administration in Chicago).

⁸⁷ See, for example, Charles W. Dean and Thomas J. Duggan, *Problems in Parole Prediction: A Historical Analysis*, 15 Soc Problems 450, 451 (1968) (discussing Burgess's contributions to the field of parole prediction).

⁸⁸ See, for example, Reiss, *Police and the Public* (cited in note 14) (describing interactions and transactions between police officers and citizens).

⁸⁹ See, for example, Sheldon Glueck and Eleanor T. Glueck, *500 Criminal Careers* (Knopf 1939) (tracing the careers of youthful offenders during a five-year span following the expiration of their sentences from the Massachusetts Reformatory); Sheldon Glueck and Eleanor Glueck, *Criminal Careers in Retrospect* (Commonwealth Fund 1943) (following up on their previous work and using prediction research and prediction tables within the context of the offenders during the fifteen years following the expiration of their sentences from the Massachusetts Reformatory).

IV. ON THE ROLE OF THE NORMATIVE IN SOCIOLOGICAL RESEARCH

In this section, the panel considered whether sociologists of crime and punishment were willing, like lawyers and policy makers, to strongly push normative agendas suggested by their research or whether they were more strongly committed to “scientific” analyses that avoided explicit normative questions and agendas. Sociologists have been concerned with this issue since the time of Max Weber and Emile Durkheim. Both argued that sociologists must refrain from introducing values into their work, except as Weber once wrote, in choosing which problems to study.⁹⁰ Durkheim’s position was ultimately more complex because embedded in his approach was the idea that the sociologist could empirically determine the “health” of a society and how “social dysfunctions” that threatened such health could be addressed.⁹¹ Karl Marx offered the most strident dissent among the three “founders” of sociology with his revolutionary’s credo that understanding the social inequality in any historical context provided the ultimate answer for what *should* be done about it.⁹² Our participants entered these debates in various ways, drawing from their own experiences and research in the field.

John Hagan: When I was younger I was more ambivalent. Now I just think the moral and the empirical have to be brought together. You know I teach in the sociology department at Northwestern, where Howard Becker encouraged social scientists to put our norms and views out front; to let people know what they are. I think the current work on imprisonment often makes it clear what its normative orientation is. I’d say the same is true

⁹⁰ See Max Weber, *The Methodology of the Social Sciences* 1–3 (Free Press 1949) (suggesting that “it is desirable that the assertion of value-judgments should be held to a minimum” and that “the question whether one should in general assert practical value-judgments in teaching . . . [should] only be decided with reference to those tasks which the individual, according to his own value-system, assigns to the universities”); Emile Durkheim, *The Rules of Sociological Method* 143 (Chicago 1938) (“[O]ur method is objective. It is dominated entirely by the idea that social facts are things and must be treated as such.”).

⁹¹ See, for example, Durkheim, *The Rules of Sociological Method* at 49 (cited in note 90) (“If, then, we can find an objective criterion, inherent in the facts themselves, which enables us to distinguish scientifically between health and morbidity in the various orders of social phenomena, science will be in a position to throw light on practical problems and still remain faithful to its own method.”).

⁹² See Frederick Engels, *Feuerbach: The Roots of the Socialist Philosophy* 133 (Kerr 1903) (providing Karl Marx’s theses on Feuerbach, stating that “[p]hilosophers have only interpreted the world differently, but the point is to change it”).

with regard to work on international criminal law. So I think the normative has to be out there, visible and explicit. Your question is very acute because it is a core issue in the discipline and others would disagree with my position.

Calvin Morrill: Thirty years ago, Donald Black wrote an important installment in the century-long debate about normative commitments in sociology in an inflammatory piece called *The Boundaries of Legal Sociology*, which appeared in the *Yale Law Review*.⁹³ He argued unabashedly that sociologists should keep their nose out of the normative arena, and that, as sociologists, they should only engage in positivistic descriptions and explanations of reality; but in their research, should not engage in politics or advocacy.⁹⁴ At the time he wrote the piece in 1971, he claimed that much of what passed as scientific sociology actually oozed advocacy.⁹⁵ Sociologists produced lots of data that provided the empirical foundations for critiques of the social inequality in legal institutions of all kind, especially policing, sentencing, and imprisonment. And sometimes sociologists' values were on the table for all to see and sometimes they weren't. By the way, I really recommend the piece on a number of different levels, especially if you want to read a piece of intensive normative rhetoric written in the service of anti-normative research. But that piece had a lasting impact on a lot of criminologists and a lot of sociologists. It made people angry, but it also made them think. For some sociologists, it was an important corrective that put sociology back on a proper, value-free tack. For others, it underscored what was wrong with sociology; that we weren't more willing to take a normative stance in our work. From my vantage point it highlighted how one's own values can lead to research becoming a self-fulfilling prophecy, an extension of how one would like the world to be. I think this is a problem and could make sociological data ultimately less efficacious in the policy arena. If my research becomes politics, then nobody's going to trust my data, and nobody's going to trust my explanations.

But I think Black, since his position essentially agreed with some of the founders of the field, including Weber, does reflect, to

⁹³ Donald J. Black, *The Boundaries of Legal Sociology*, 81 *Yale L J* 1086 (1972).

⁹⁴ *Id.* at 1087 ("[T]he core problems of legal policymaking are problems of value. Such value considerations are as irrelevant to a sociology of law as they are to any other scientific theory of the empirical world.")

⁹⁵ *Id.* at 1086 ("Contemporary sociology of law is characterized by a confusion of science and policy.")

some degree, a strong tendency in the field. In 2003, the American Sociological Association (“ASA”), for the first time in its history, took an official stance on a policy issue.⁹⁶ The ASA, by a two-thirds vote of its members, condemned the Iraq invasion.⁹⁷ Donald Black, who personally condemned the policy, actually has led a small movement, with the intent of creating schism in the Association, against the ASA condemnation because he believes the proclamation to be outside the boundaries of a scientific body.⁹⁸ His question is what does sociology know scientifically about the impact or the potential impact of the policy? Do sociologists have the scientific basis to condemn the policy? His complaint was that, once again, sociologists were dressing up their politics as science, which he believes should be kept strictly separate from one another.⁹⁹

So whether to pursue a normative agenda in sociology explicitly touches on fundamental tensions in the field of sociology. But I would agree with John. I tend to be more of a pragmatist, in the classic sense of the term, in terms of saying look, our values are in our research and we need to be clear about where we stand. If we study social inequality, one important reason we studying it is ultimately to facilitate ameliorating it. We want to maximize social welfare, in a general sense, and we want to make the system fairer. Sociologists must be more up front about their normative agendas and push into the policy arena more directly but they must also recognize the tensions in the multiples roles they play as social scientists and advocates. Right now, our effect on policy is at a low point. One reason for this may be the conservative turn in social policy during the past two decades and the conservative-led backlash that frames the sociologically inspired social programs of the 1960s as failures. Economists have been much more effective at accessing this conservative turn and injecting their normative commitments not only into policy, but also into public discourse itself. What sociologists need to figure out how to do is to make the normative stance in their work explicit, but in such a way that effectively helps shape public discourse, thus setting the agenda in social policy.

⁹⁶ See Michael Burawoy, *Public Sociologies: Contradictions, Dilemmas, and Possibilities*, 82 Soc Forces 1, 2 (2004).

⁹⁷ See *id.*

⁹⁸ Black’s earliest published statement regarding the role of the ASA as a scientific body appears in *The Boundaries of Legal Sociology*, 81 Yale L J 1086 (cited in note 93). His most recent statements to this effect have appeared in various distributed emails.

⁹⁹ See *id.*

Some of these developments may be occurring in American sociology. We have the example of the Iraq proclamation and the emergence of “public sociology.”¹⁰⁰ Our current ASA president is a Berkeley sociologist named Michael Burawoy. He gave a very provocative presidential address on “public sociologies” at our national meeting in 2004 that joined with a similar movement in anthropology in casting social science as a shaper of public discourse about social issues.¹⁰¹ Essentially, Burawoy discussed how sociologists can and should shape public discourse and not simply allow the assumptions of a more conservative social policy and cultural turn proceed unchecked.¹⁰² There are other developments in the field that are also intended to raise the popular consciousness about sociology and its perspective on the world. We have a new more publicly and media accessible magazine called *Contexts* that, from my point of view, is a sociological *Scientific American* designed to inject sociological insights, data, and value commitments into public discourse. But if you look at the magazine from a mainstream viewpoint, however that’s defined, you can see the liberal-left political sensibilities in the discipline. Indeed, an important part of the sociological tradition will always point toward a social change tradition.

Bernard Harcourt. My sense here is that the critical potential of socio-legal scholarship is at its greatest when we perform the type of genealogical inquiry that unearths our own underlying assumptions about human behavior. And I believe that this kind of critical enterprise can lead to a new way of evaluating or thinking about public policy. The practice of critically exploring and exposing our assumptions about theories of human action, and how these underlying assumptions shape our criminal policy analysis, destabilizes the field of criminal justice. It means that when we think about law and public policy, we can no longer proceed in the traditional manner: from neutral social science, data collection, and empirical findings to law-making and policy analysis. This traditional approach is in doubt if, as the critical socio-legal insight suggests, the policy conclusions themselves are already shaped by hidden assumptions about human behav-

¹⁰⁰ See, for example, Burawoy, 82 *Soc Forces* at 1 (cited in note 96) (“Public sociology aims to enrich public debate about moral and political issues by infusing them with sociological theory and research.”).

¹⁰¹ Michael Burawoy, *For Public Sociology*, 70 *Am Soc Rev* 4 (2005).

¹⁰² *Id.*

ior that, in turn, may themselves already be embedded in the methodological orientation towards research.

This insight, I would argue, is normatively powerful because it points to a new direction for social inquiry and for evaluating social policy. What it means is that we need to critically appraise the very methodological approaches that we use in our empirical research in order to assess the hidden assumptions about human behavior and their impact on our laws and public policies. In other words, we need to explore what it costs in terms of law and policy to believe that any one of our methodological approaches is right. We need to ask these questions: How do we come to believe that our methodological approach, our assumptions about human behavior, and our accompanying policy orientations are true, and at what cost? Once we know the answer to these questions, then and only then can we roll up our sleeves and decide which policies to adopt. This, I would argue, is the critical punch of sociological research, and it is extremely powerful.

Tracey Meares: I would suggest that criminal law offers prime opportunities for looking at least at portions of sociological theory and talking about explanations of criminal behavior. I have often used Rob Sampson's work to discuss the idea of looking at crime rates in communities, and the implications of this empirical reality for thinking about that bedrock of criminal law theory, deterrence.¹⁰³ Moreover, work in social psychology is critical for understanding perceptions of legitimacy of the criminal justice system, which is important to the study of both criminal law and criminal procedures. Here, I have in mind the work of Tom Tyler, who is the leading scholar on the study of procedural justice.¹⁰⁴

John Hagan: It is true that we tend to use sociology in the teaching of the law, but we often tend to use it as background. We tend to use it to highlight that incarceration has been going up, or we might use it to analyze changes in marriage and domestic relations—how these things are changing—and it's a kind of a lens for seeing more broadly how the law is working and how law is changing, as society moves and shifts around it.

¹⁰³ See, for example, Tracey L. Meares, Neal Katyal, and Dan M. Kahan, *Updating the Study of Punishment*, 56 *Stan L Rev* 1171, 1190 (2004).

¹⁰⁴ See, for example, Tom R. Tyler, *Why People Obey the Law* 113 (Yale 1990) (discussing the meaning of procedural justice, including the psychology of procedural justice and the influence of control).

Calvin Morrill: I would argue that we use sociology in the teaching of law more than most people and students realize. Many of the topics that students most care about in law, such as racial discrimination or social inequality, for example, are at the core of sociology. Many of the concepts that we use to think about the impact of law, to cite another example, such as unintended consequences or self-fulfilling prophecies, were invented by sociologists and have now become a part of the texture of everyday language both in and outside institutional settings. Indeed, despite our earlier comments that sociology, per se, does not enjoy as influential a place in American culture as economics or psychology, aspects of sociology have become an important part of the way that people understand the world. So we can teach law or criminal law and point out the economic or rational choice calculus in legal decisionmaking, but I believe that when we teach courses on crime and punishment, we are increasingly plugging into the traditions of sociology about the way the world works whether we explicitly refer to them or not.

I believe that sociologists are often at their best when they confront analytic or social problems that other scholars already believe have been solved. The sociologist enters the fray and says wait, let's think about this problem from another vantage point or let's review what evidence we really have on this issue. What can occur under these conditions is that the sociologist finds out that the conventional wisdom is flawed, unsupported by the evidence, which can in turn, lead to that conventional wisdom getting turned on its head. My hope is that sociologists, will be sufficiently imperial to push the sociological perspective across fields, and will be sufficiently imperial as empiricists to keep going to different sites and institutions to generate systematic evidence about them. Perhaps it is our data, as much as our concepts and theories, that will shed new and useful light on those social problems that beset society.

