

# Culture and Criminal Justice - A Theory of Relational Justice -

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# Universality as a central Aim of Scientific theories

- A central scholarly aim has been to achieve a universal understanding of criminal justice systems, its nature, its objectives, its various properties, and patterns of criminal justice systems' behavior, and why they forms and behaves in its particular ways.
- Universality is by nature is an aim of scientific understanding in any field of science, including criminology and criminal justice.
- Through out the history of studies on criminal justice, since the times of classical scholars such as Cesare Beccaria (1738-1794)
- Beccaria's vision is that criminal justice systems should be based on rationality, humanity, efficiency and reason. These features of criminal justice systems were considered universally important for all mankind.

# Theoretical Gap in Criminal Justice

- Many theories have been developed in criminology, but only very few contemporary theories have been proposed about criminal justice systems.
- The existing few theories tends to be simple classifications, not well developed to perform the substantive functions as theories. There is a large gap in criminal justice theory development.
- Criminal justice institutions are built in specific settings of various cultural and social contexts, thus the particularly prominent challenge for developing a universalistic theory of criminal justice is cultural variations.

# The Challenge of Cultural Variation

- There are 195 countries and vast many different cultures around the world across time and space.
- Each criminal justice system is built in a specific cultural, political, economic and social setting. Cultural influence is central in criminal justice systems and their behaviors.
- Important contemporary social theories and much empirical evidence have well informed the vast variations in cultures and social systems, which have important impacts on the forms and behavior of criminal justice systems. (Samuel Huntington (1996), Clash of civilization theory; Immanuel Wallerstein (1979), world system theories. ... )

# The importance of a better understanding of non-Western systems

- Must understand the philosophy, tradition, culture, and ideologies to work with non-Western systems.
- Why due process is not a significant part of the system in Iran and Pakistan
- Method of incarceration is incompatible within the indigenous systems of community justice in Africa.
- Japanese do not comprehend the sense and sensibilities of the Second Amendment and gun control in America.

# Culture relativism

- A major challenge to universality comes from the cultural relativism.
- Based on the great cultural variations, cultural relativism denies the possibility and necessity of the universality of the social science theories.
- Denying universality challenges the scientific nature of social theories and the much value of scientific theories. Most criminologists continue to pursue a universal understanding of crime and justice.
- I first examine the approaches to achieve universality.

# Solutions to the challenge of cultural variation

- A often see solution is not to forcefully confront the issues of cultural variation, that is, to just assume implicitly the universality of a theory.
- The second strategies is to claim the universality but subject the theory under test in different cultural contexts. If some part of the theories is not supported, ad hoc adjustment is proposed.
- The third strategy's is to reformulate the theories to construct a parallel version of the theory in a new social contexts, making a different version of the same theory with parallel set of concepts for different cultural settings.
- However, these strategies all a serious drawback; that is, they are logically deficient in that culture have not been explicitly built into the theory, but only minimally considered, no profound understanding of cultural variation is intrinsic part of the theory. The universality is superficial.

# Literature Review:

## - Assumed Universality in Theories

- Examining the existing criminal justice theories, the literature shows that theories achieve universality primarily by implicitly or explicitly assuming their universality; some calling for empirical tests of the theories under different cultural contexts, others keep silence on the nature of universality, and ignore making explicit claims.
- One explicit example is Hirschi. He stated that that his theory is valid and applicable cross all times and spaces.



# Literature Review:

- **Herbert L. Packer**, a celebrated American jurist has developed two theoretical models of the criminal process: due process and crime control model. They represent an attempt to abstract two separate value systems that compete for priority in the operation of the criminal process.
- The classification is primarily build on US examples and for the US systems and their operations, without an attempt to build universality across cultures.

# Literature Review:

- **Donald Black**
- Black's theory of the law (1976) is one of the most influential theories in the field of socio-legal studies. It aimed at establishing a "scientific theory" of law. Black proposes that the variation of law, defined as "governmental social control" (Black 1972, p. 1096; 1976, p. 2), is quantifiable and predictable. Its variation across social space can be explained by variations in five dimensions of social life: stratification, morphology, culture, organization, and social control (Black 1976, p. 1).
- The major weakness is that the proposed empirical associations between the broad concepts and law would change with competing alternative processes underlining the associations. The theory is not able to explain the alternative processes, and rarely considered in analyses of policy issues.

# Formal Standards: Empirical Disconnection and Logical Deficiency towards Universality

- Existing theories have many contributions but also have important weaknesses and deficiency towards Universality.
- Primarily built on the empirical reality of Western context, tests outside of Western context is very limited.
  - Assumed universality if there was an intention for universality.
- Primary Logical Deficiency: culture have never been explicitly built into the theory
  - No profound understanding of cultural variation is offered in the theory.

# Functional Standard: Lack of Utility

- A powerful universal theory for criminal justice should possess some basic substantive properties beyond the general logical and formal requirements:
  - A universal theory of Criminal justice should possess ability to describe along some essential differences among criminal justice systems. its concepts should reveal underlying essence of the states and patterns of the criminal justice systems along some major dimensions such as culture variation.
  - A theory should provide a guide for insightful explanation of current, past, and future features of criminal justice systems and their major dynamic processes.
  - It should be a useful tool for policy analyses, and suggest guidance for practical issues.
  - It should predict the changing patterns of the criminal justice, and the future trends.

# Substantive Weaknesses of Existing Theories

- Construction of the theories are largely classifications of categories. Little causal propositions.
- Descriptive Functions: The concepts tends not able to capture underlining essence of the states and patterns of the criminal justice systems along some major dimensions
- Explanative Functions: Little power to capture the dynamic processes of conflict, and contraction to capture the key processes of current, past, and future features of criminal justice systems
- Analytical Utility: Lack of potential use for policy analyses and to offer guidance for analyzing practical issues.
- Prediction Function. Little help in predict the patters and changes of the criminal justice and its the future trends.

# A Framework of Theory of Relational Justice

- Relational Justice is a universal theory of criminal justice systems. It provides an cultural perspective for understanding criminal justice systems. The theory describes primary features of the criminal justice systems, provides an explanation of the dynamic process and the changing patterns of the systems, and provides a analytical tool for policy and practice issues, and predicts the future trends of criminal justice systems, in terms of competitions and conflicts between essential underlining cultural components of the system in the world.

# Basic Premises and Approach of the theory

## *Individualism population and Culture*

- The theory is constructed using ideal types and continuums.
- The first pair of ideal types (models) are Individualism population and relationism population.
- **Individualism population** are people with **individualism traits**, with inclinations of stressing self interests, individual freedom, independence, and personal rights.
- Individualism population is a product of interactional process of bio-psycho-cultural traits with individualism cultural environment.

# *Relationism population and Relationism culture*

- **Relationism population** are people with **relationism traits**, with an intrinsic needs for relations with others, taking high importance of relationship and strong desire to be with others, seeking warm, harmonious relationships as a essential source of their happiness and wellbeing.
- Relationism population is a product of interactional process of bio-psycho-cultural traits with relationism cultural environment.
- Relationism culture is a stable, long lasting environment that socialize people into relationism and provide motivation for relational justice.
- Relationism culture show variations in different patterns. Some culture patterns stress only close relation circles such as family and close friends, while other kinds show a larger range of relationships such as communities and collectives, as far as ethics and nations.



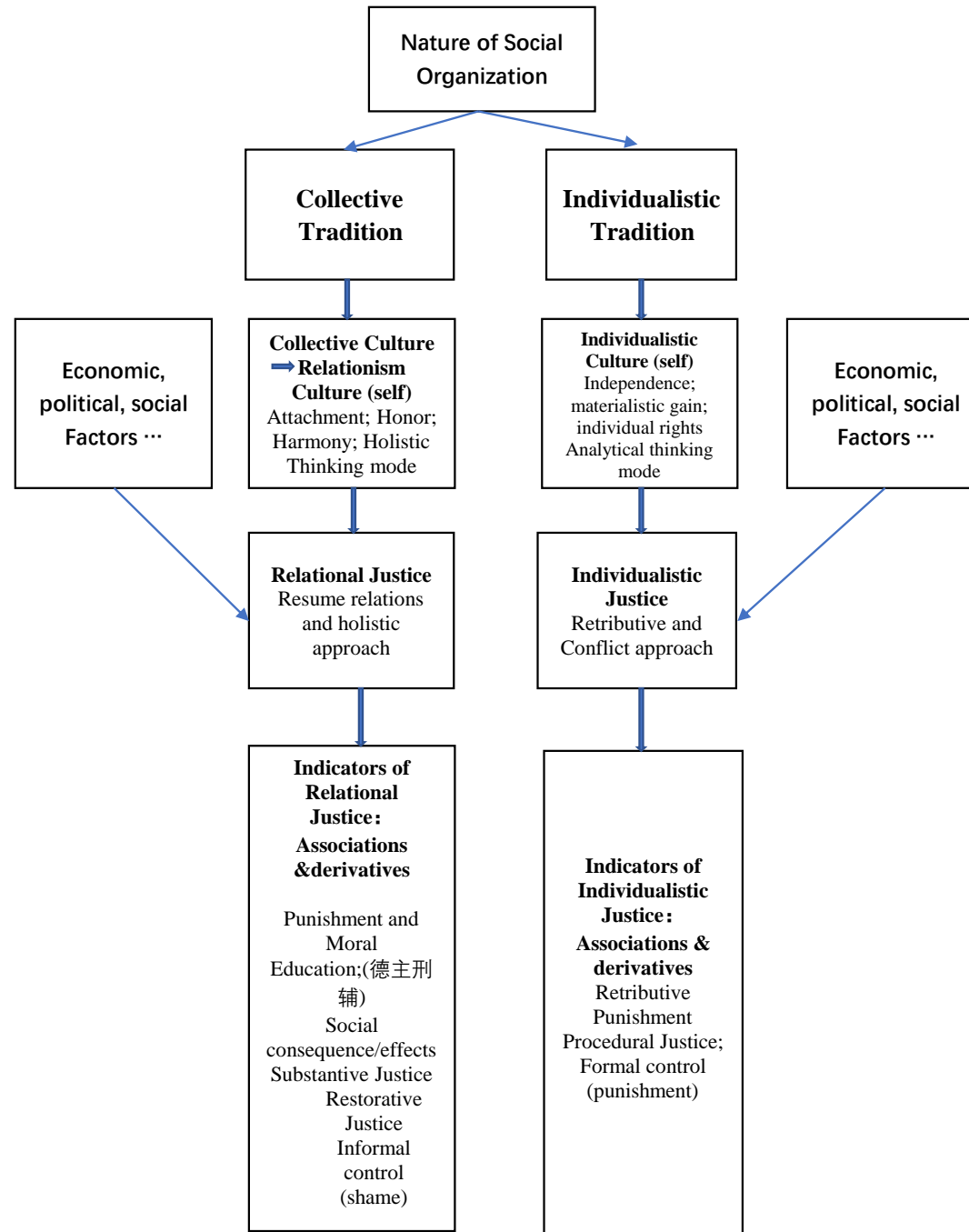
# Individualistic Criminal Justice Model and Relational Justice Model

- The second pair of ideal types are Individualistic Criminal Justice Model and Relational Justice Model.
- **Individualistic justice** and **relational justice** are models not found in the real world, but US common law systems can be said closely described by the individualistic model, while some non-Western criminal justice systems are better described by relational justice model.
- Individualistic Justice and relational justice endorse very different concept of Crime and justice, which will be explained later.
- Real US system include relational elements, while some non-Western system also include many elements of individualistic justice.

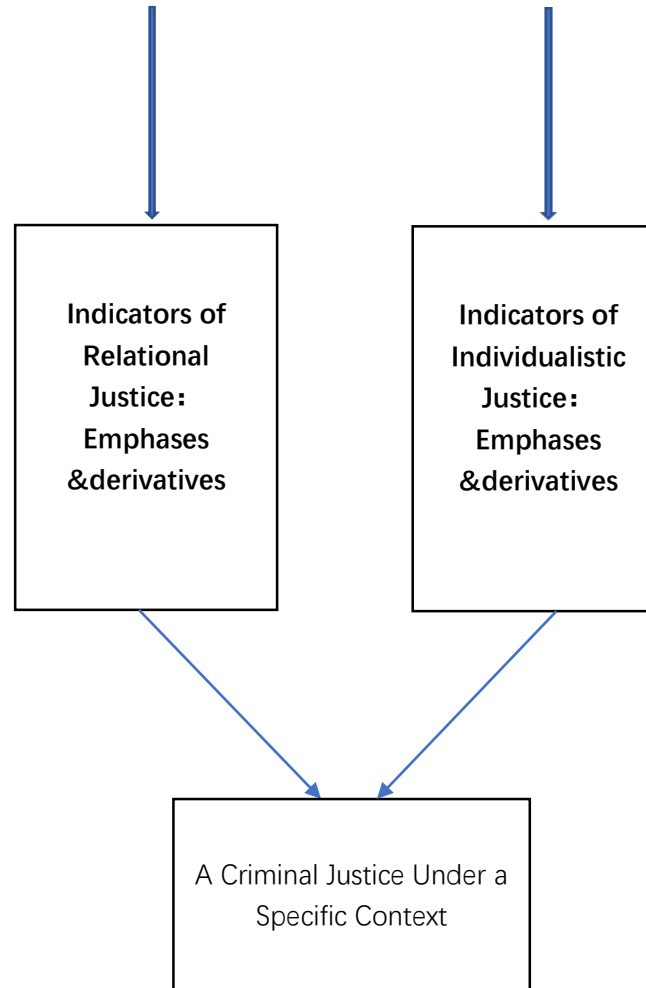
# Basic Theoretical Propositions

- My theory construct a abstract continuum with relational justice as a pole at one end of the continuum and individualistic justice as another pole at the other end.
- Any real world system is a mixture of both relational justice and individualistic justice elements, located somewhere on the continuum between the two ideal type poles.
- Individualistic justice grow out of the individualistic culture and meet the demands of individualism population.
- Relational justice grow out of the relationism culture and serve the needs of the relationism population.
- A framework of the theory is depicted in the following chart.

# The theory of Relational Justice



## The Theory of Relational Justice (Chart continue)



# Essential Propositions of relational justice theory

- The starting logical point of the relational justice theory is relational and individualistic population concentrations and their needs.
- The ideal types highlight that two populations have profound differences in their needs and demands.
- In real populations, people in the west and non-West share much more similarities than differences. However, the differences still exist to different extents under different settings.
- “Economic man” model describes the human population better for individualistic population than relational population.
- In the ideal type, the focal concern of the relationism population is RELATIONS, while individualism population is self-interests.

- Relational and individualistic population concentration interact with relational and individualistic cultures produce and reinforce different demands for criminal justice systems and operations.
- Relational population and culture prefers relational justice; individualism population and culture prefer individualistic justice.

# The Culture of Individualism

- A central proposition of the theory of relationism is that **individualistic cultural values** produce Individualistic criminal justice systems. The cultural values primarily include elements such as: independence, material success, and individuals rights. Individualistic Justice systems are also influenced by a tradition of formal and analytical thinking mode.
- In an individualistic society, individualistic cultural values and thinking mode flourish. These are consequences of **individualistic traditions**, which is the primary way of life in Western societies. I argues that Individualism is reflected and reinforced deeply by Western philosophical traditions. Individualism can be identified from classic works of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and John Bordley Rawls.

- **Thomas Hobbes**

Famous for originating “social contract theory”: individuals are greedy egoists; without the government, individuals are in a state of nature”, each would claim everything and fight against each other in a “war of all against all”. Only through “social contract” can self-interested individuals build a civil society, to whom all individuals cede some rights in order to build a commonly agreed-upon contract so that each individual can obtain protection from the government.

- **John Locke**

Founding father of classical liberalism: Selfishness is part of human nature. But human nature also includes abilities of reason and tolerance. In the natural state, all were equal and independent, people has the right to defend their “life, health, liberty, or possessions”



- **Jean-Jacques Rousseau**

Adds much into the individualistic tradition. Developed a detailed theory of human nature. His theory considers that individuals are not just wicked animals but also have goodness in them. Humanity has developmental stages, where the third stage is the optimum stage; where human are in between a brute animal and the extreme of decadent civilization.

- **John Bordley Rawls**

- Employed thought experiments inducing the famous “veil of ignorance” to derive his principles of social justice.
- Human beings are rational and reasonable, knowing what they want to achieve and willing to cooperate with others to achieve their goals.
- Instead of deriving from a “state of nature”, individuals’ original positions include a “veil of ignorance”, where we can imagine a situation where people are ignorant about their own characteristics relevant to their social standings, which may bias their choices due to advantages or disadvantages associated with these positions (1971). Under this imaginative situation, the choices made by individuals will be impartial and rational and will achieve the principle of justice, which is fairness.

- The western individualistic tradition describes human beings as independent, rational, interest-seeking creatures that defend their rights forcefully in ways to achieve material success.
- Under the influence of this tradition, individuals are the unit of the examination in concepts of crime and justice. Criminal event is the unit of analyses; social consequences are less of a concern, or even legally irrelevant in court.
- Under the individualistic tradition. Protecting offenders' rights is a central concern of justice.
- Conflicting individuals are the starting point of major theories of justice
- Individualistic culture produces individualistic criminal justice systems.

# Individualistic criminal Justice

- **Individualistic justice has three major features:**
- **1. State centered concept of crime**
- In the Western Paradigm, crime is defined as an act of individuals in violation of state criminal laws.
- The concept of crime is “state centered”, and makes an assumption that the state represents people/public interest
- Therefore, the issue is that the state must identify and punish the offender.
- However, the state does not necessarily represent public interest, since victims’ interests are often in conflict with state action and interests.

- **2. Offender centered Concept of Justice**
- State centered concept of crime logically leads to an **offender centered justice**.
- The rights of the offender in the offender centered justice system become the central concern;
- The state centered concept of crime and offender centered justice put an imbalance into legal institutions and processes.
- In state centered justice, the role of victims becomes marginalized. The imbalance is indicated by no consideration of due process for victims.
- In offender centered justice, accurately punishing the guilty offender becomes a primary objective of the system. Thus offender centered justice tends also to stress retributive punishment of offenders and being chastalized as retributive justice.

- **3. Conflict Approaches to justice**
- I characterize the Western system takes a **conflict approach to justice**.
- Justice is achieved through a **legal conflict procedural approach**.
- It is believed that the truth can only be found through an adversarial system and procedural process based on the due process.
- A key criticism is that the resources of the powerful and wealthy can often be translated into advantageous positions in adversarial processes.
- Conflict as a context may lead to concealment of truth (which is what the parties often actually do)

# Relational Criminal Justice

## 1. Relational concept of crime

- The unit of concern is the relation or group, not just the crime event or the individuals involved as a unit of observation.
- Under this orientation, crime is seen as **harm done to victims and social relations**.
- Therefore, the issue is to repair harm and resume harmony and peace, resume social relations.
- Crime is, first of all, the business of victims including the direct victim and indirect victims.

## 2. Relational concept of justice

- Concept of Justice reflects a group concern and is a relational concept. The highest objective is to **resume relations** and peace for victims, for the community, and for the offender, and thus defend public interests.
- The objective of relational justice is set by the cultural value harmony, to achieve a holistic goal of long term peace and fewer law suits for the society, and minimal recidivism.
- The important objective in reacting to crime is **Conflict Resolution**, which is the main content of relational justice.
- A fair solution to a crime should not be just a punishment based on the wording of the law, but also consider the feelings of the parties and community and meet the standard of “reasonableness”.
- Morality often plays a role along with law.



### 3. Relational approach to Justice

- Relational concept of justice and the holistic thinking style leads to relational approaches to justice.
- Specifically, the relational approach is a **Holistic substantive educational approach**. It is a set of methods including negotiation, persuasion, and education and punishment. Any methods can be adopted in a case to fit the specifics of the case in order to reach the objectives of relational justice.
- To achieve long term peace and preferable social consequences, targeting hearts and substantive truth is preferred over focusing only on the facts directly related to the case and on unified procedures.

# Association and derivatives of Relational Justice

- Societies with populations living with high relationism tend to rely on morality rather than formal laws for social control.
- Populations with high relationism tend to value substantive justice over procedural justice.
- Evidence rule,
- Double jeopardy
- Confession

# Dynamics of process and change

- Examples of hybrids models under the various social cultural context
- China's criminal justice model
- Hybrids example for restorative justice
  
- Conflicting demands between individualistic and relational population and justice
  - Examples and analyses

# the trend of development and its directions

- The theory of criminal justice should be able to analyze the trend of development of a system its direction
- The competing demands of individualistic models
- Growing individualism populations in relationism societies
- Stronger force of individualistic culture and justice backed by political, economic and social forces.
- Revival of relationism in Western societies

# Western Criminal Justice models move into Non-Western Societies

- **The trend:** world Criminal justice have become more and more similar to Western system.
- **Colonialism.** For example, The British East India Company and the British colonial power ruled India for almost three centuries, The present criminal justice system in **India** is largely the creation of the colonial government. (as well as Pakistan and Bangladesh).
  - The Indian Police Act of 1861;
  - India Penal Code of 1862;
  - Code of Criminal Procedure of 1882;
- In most of the English colonies in Asia and Africa, the common law largely remain unchanged (e.g. Hong Kong).
- Spanish colonial laws in Latin America largely remain unchanged.
- **Modernization:** Non-Western countries learning from the West countries.
- **Globalization.**

- **Global Agenda for reforms:**
  - All major international organization has international law reform programs for non-Western countries:
  - **United Nation's programs.**
  - the United Nations, the World Bank, the European Union, the United States Agency for International Development(USAID), the Canadian International Development Agency (CIDA), the UK Department for International Development, the Asian Development Bank (ADB), the inter-American Development Bank(IDB), the inter-American Commission on Human Rights, and the Organization of African Unity(OAU) in the countries of Asia, Africa, and Latin America
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- **The Futures**

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