

Culture and Criminal Justice - A Theory of Relational Justice

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Universality by nature is an aim of scientific understanding in any field of science, including criminology and criminal justice (Liu, 2016; Liu et al., 2020). A central scholarly aim has been to achieve a universal understanding of criminal justice systems, including their nature, its objectives, its various properties, and patterns of criminal justice systems' behavior, and why they form and behaves in its ways. Throughout the history of studies on criminal justice, since the times of classical scholars, for example, Cesare Beccaria (1738-1794) believed 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

There were many theories that have been developed in criminology, but only very few contemporary theories have been proposed about criminal justice systems (Liu, 2017, 2018). The existing few theories tend 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 (Liu & Miyazawa, 2017; Zhang et al., 2011).

The Challenge of Cultural Variation

It is well known that 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. Therefore, cultural influence is central in criminal justice systems and their behaviors (Liu, 2009; Liu et al., 2012; Xu & Liu, 2015). 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. ...)

To better understand non-Western systems, understanding the philosophy, tradition, culture, and ideologies is the basis to work with non-Western systems. Africa: 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 (Jiang et al., 2014). These phenomena all reflect the importance of understanding the local customs.

A major challenge to universality comes from cultural relativism (Liu, 2007;

Messner et al., 2008; Zhang et al., 2007). 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 (Liu, 2018; Liu et al., 2013; Messner et al., 2018). Nevertheless, most criminologists continue to pursue a universal understanding of crime and justice. And I first examine the approaches to achieve universality.

An 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 strategy is to claim universality but subject the theory under test in different cultural contexts (Liu, 2016; Liu et al., 2017b). If some part of the theories is not supported, ad hoc adjustment is proposed. The third strategy is to reformulate the theory es to construct a parallel version of the theory in a new social context, making a different version of the same theory with parallel set of concepts for different cultural settings (Liu, 2017). 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.

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 .

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. However, the classification is primarily built on US examples and for the US systems and their operations, without an attempt to build universality across cultures.

Donald Black's theory of the law (2010) is one of the most influential theories in the field of socio-legal studies. The aimed at establishing a "scientific theory" of law. Black proposes that the variation of law, defined as "governmental social control" (Black, 2010), 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, 2010). 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 is 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.

One is most theories were primarily built on the empirical reality of Western context, tests outside of Western context are very limited. Those theories are seeking universality, however, the typical method is to assume their theories are universal, instead of testing them based on empirical data from other different cultures or contexts around the world. Most scholars believed that there is no such a universal theory, and every theory has its contexts. But when we look at these theories, they assume they are universal without testing around the world, or they said “imply” the universal theory (Liu, 2016, 2018; Liu et al., 2020).

Another one is a primary logical deficiency that culture has never been explicitly built into the theory. Most theories discuss the measurement of concepts, prediction of results, and summary of experience and patterns. No profound understanding of cultural variation is offered in 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 (Liu, 2017; Liu et al., 2017a):

A universal theory of criminal justice should process the ability to describe along some essential differences among criminal justice systems. Its concepts should reveal underlining 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. Like Newton's laws of motion not only apply to any corner of the earth, but also provide inspiration for other theories.

A theory should be a useful tool for policy analyses and suggest guidance for practical issues, otherwise it is just talking on paper. A theory comes from empirical research and real life, which reflects a degree of social realities. These reflections can provide good references for policy makers, enabling them to formulate and evaluate policies more scientifically.

A theory should predict the changing patterns of criminal justice, and the future trends.

Substantive Weaknesses of Existing Theories

Most existing theories were constructed for categories classification, little were for causal propositions. In descriptive functions, these theories and concepts tend not able to capture underlining essence of the states and patterns of the criminal justice systems along some major dimensions. In explanative functions, they have 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. In analytical utility, they lack potential use for policy analyses and to offer guidance for analyzing practical issues. In prediction function, they provide little help in predict the patters and

changes of the criminal justice and its future trends.

Theory of Relational Justice

Relational Justice is a universal theory of criminal justice systems (Liu, 2018; Liu et al., 2013). It provides a 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

The theory is constructed using ideal types and continuums (Liu, 2022, 2024).

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* are people with *relationism traits*, with an intrinsic need 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 socializes 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.

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. The real US system includes relational elements, while some non-Western systems also include many elements of individualistic justice.

Basic Theoretical Propositions

The theory constructs an 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 (Liu, 2024).

Individualistic justice grows out of the individualistic culture and meets the demands of individualism population. Relational justice grows out of the relationism culture and serves the needs of the relationism population. A framework of the theory

is shown in Figure 1.

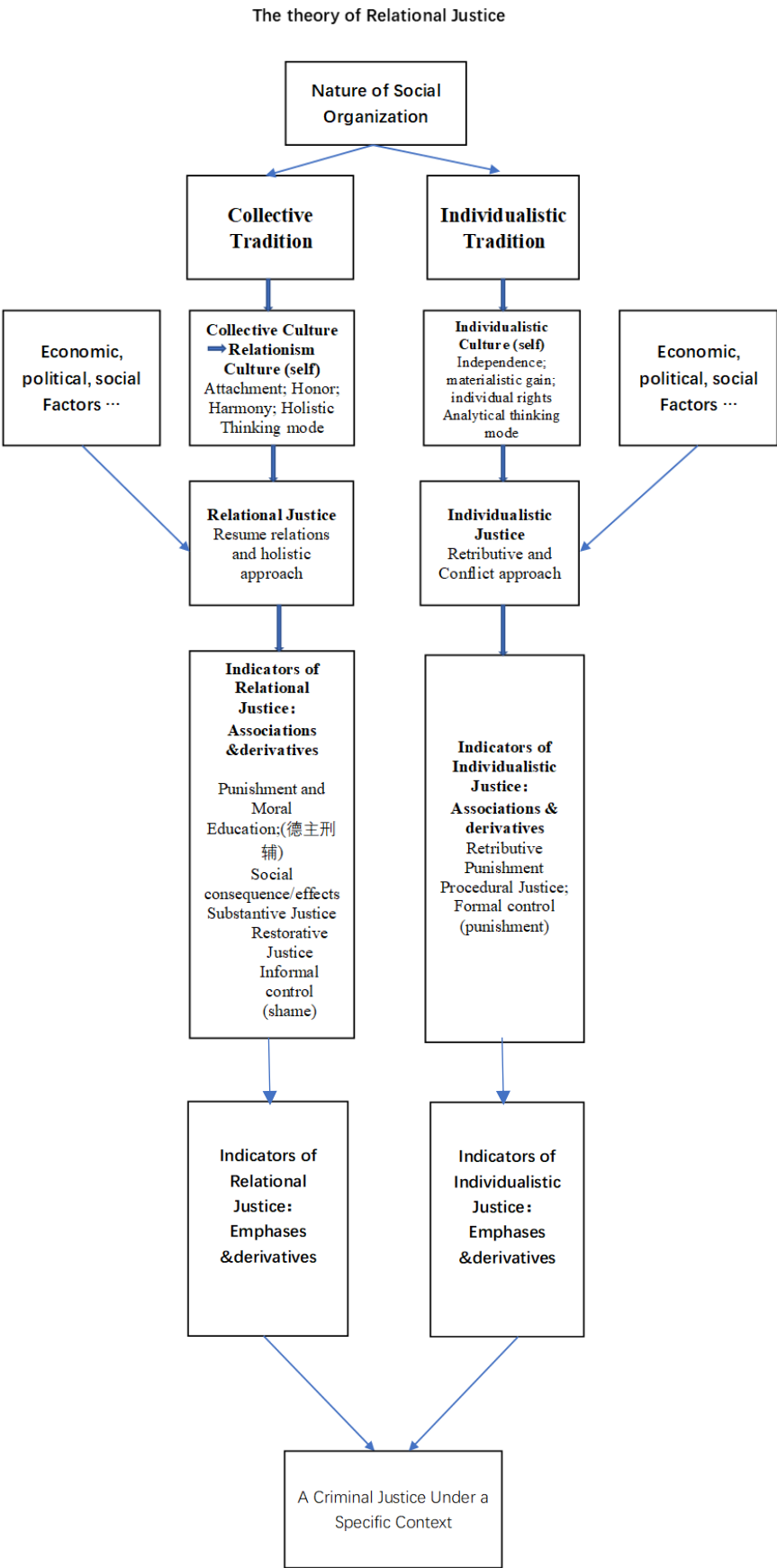


Figure 1. The theory of relational justice

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. However, 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 individualist 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 prefer 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 individual's 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 argue 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 is famous for originating “social contract theory”, he believed that 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 to build a commonly agreed-upon contract so that everyone can obtain protection from the government.

John Locke, the founding father of classical liberalism, believed that selfishness is part of human nature, however, human nature also includes abilities of reason and tolerance. In the natural state, all were equal and independent, people have the right to defend their “life, health, liberty, or possessions”.

Jean-Jacques Rousseau added much to the individualistic tradition and 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 humans 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. He believed 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 events are 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: state centered concept of crime, offender centered concept of justice, and conflict approaches to justice.

In the Western paradigm, crime is defined as an act of individuals in violation of state criminal laws (Liu, 2009, 2016, 2018, 2024). The concept of crime is “state centered” and assumes that the state represents people or 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.

State centered concept of crime logically leads to an *offender centered justice* (Zhang et al., 2011). 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 chaptalized as retributive 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 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 (Jiang et al., 2014).

Relational Criminal Justice

Relational criminal justice also has three major features: relational concept of crime, relational concept of justice, and relational approach to Justice.

The unit of concern is the relation or group, not just the crime event or the individuals involved as a unit of observation (Liu, 1999, 2004; Liu et al., 2001). 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.

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.

The 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 method can be adopted in a case to fit the specifics of the case 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.

Western Criminal Justice Models Move into Non-Western Societies

It is a trend that world criminal justice has become more and more like the Western system (Liang et al., 2019; Liu, 2021). One reason is 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), such as Indian Police Act of 1861, India Penal Code of 1862, and Code of Criminal Procedure of 1882. In most of the English colonies in Asia and Africa, the common law largely remains unchanged (e.g., Hong Kong). It is same that Spanish colonial laws in Latin America largely remain unchanged.

Moreover, modernization causes non-Western countries start to learn from the successful experience of the West countries. The rise of a country needs to learn from the successful experience of other countries, however, as far as the current situation is concerned, the developed countries are still dominated by Western countries. To achieve rapid development, non-Western developing countries can only learn advanced

technologies and systems from Western countries in order to seek development.

At last, globalization promote all major international organization has international law reform programs for non-Western countries, for example, United Nation's programs, which includes 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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