

PROSECUTORIAL DECISION MAKING IN A REPUBLICAN PARADIGM

by

PAULA E. GORMLEY

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment
of the requirements for the degree of Doctor of Philosophy,
The City University of New York.

2006

UMI Number: 3213172



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This manuscript has been read and accepted for the Graduate Faculty in Criminal Justice in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

February 21, 2006
Date

Delores D. Jones-Brown
Chair of Examining Committee

February 21, 2006
Date

Todd R. Clear
Executive Officer

John Kleinig

Keith Markus

Abstract

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Paula E. Gormley

Advisor: Dr. Delores Jones-Brown

Braithwaite and Pettit's republican theory of criminal justice provides a framework for the criminal justice system that urges practitioners to make decisions in consideration of protecting individuals' dominion. According to the theory, promotion of dominion, the absence of arbitrary interference, is the proposed goal of the criminal justice system. The theory asserts that dominion can be maximized through adherence to four guiding principles: parsimony, checking of power, reprobation, and reintegration. Domestic violence provides a substantive context in which to study this theory since dominion may play a salient role when considering the safety and needs of the parties involved in a conflicted relationship. This study attempted to determine the extent to which prosecutors consider the four principles in their case processing decisions. To this end, all county and assistant county prosecutors in New Jersey, totaling 750, were surveyed to measure their attitudes toward the republican theory of criminal justice. Data from the surveys were analyzed using structural equation modeling. In addition to the surveys,

four prosecutors and one police officer were interviewed in order to provide context for the results of the structural equation model. The results of this study suggest that prosecutors do generally agree with principles consistent with republican justice. However, prosecutors who prioritize domestic violence cases, are significantly more likely to agree with the idea of dominion promotion than prosecutors who prioritize cases not involving domestic violence.

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1

INTRODUCTION

This study is about the republican theory of criminal justice, prosecutors, and domestic violence. The objective of this study is to assess the extent to which the values reflected by prosecutors' attitudes toward domestic violence and other criminal cases (e.g., environmental crimes, homicide, child abuse) are consistent with the values reflected in the republican theory of criminal justice. The plan of this research lends itself to practical philosophy through deductive reasoning. That is, observations of the extent to which prosecutors' attitudes are consistent with the tenets of the republican theory of criminal justice have been made through an analysis of the responses to self-administered surveys and a limited number of face-to-face interviews. The responses will help define the theoretical constructs further.

The republican theory of criminal justice articulates how the criminal justice system ought to comprehensively respond to offending. In *Not Just Deserts* Braithwaite and Pettit (1990) propose that the promotion of dominion, the ideal of freedom from non-domination, be the goal of criminal justice. Braithwaite and Pettit claim that the dominion of the citizenry can be promoted through the absence of arbitrary interference from other citizens as well as the state. The authors further assert that citizens should have this freedom from domination, and criminal justice authorities should promote this arrangement to the greatest extent possible. Dominion provides the platform for realizing the theory's four sub-goals, or presumptions: parsimony (minimization of criminal justice intervention when possible), checking of power (review of authority), reprobation

(community disapproval of offending), and reintegration (recognition of the victim and offender as valuable).

According to Pettit (2003), the law provides the platform on which the absence of interference is observed and practiced. Pettit (2000) asserts that societies ought to be organized by a government of laws and not by the personalities of leaders. In law, however, decisions made solely by rules fail to take into account the need for tailoring results to the unique facts of particular cases (Davis, 1969).

Under the current law and order response to domestic violence in the United States, Mills (in Sontag, November 17, 2002) states that a paradox has resulted in which women's advocates contributed to the enforcement machine after fighting for mandatory arrests of individuals accused of abuse. One result of mandatory arrest provisions has been the removal of discretion from police officers and a greater number of arrests of both women and men when each displays physical evidence of injury. The looming issue that thus emerges from arrest concerns the extent to which the criminal justice system can effectively promote safety among victims, offenders, and society. Studies of misdemeanor arrests for domestic violence (see Chapter 3) have demonstrated that arrest may not be the most prudent response to violence in the home in terms of recidivism.

Thus, current domestic violence policies (e.g., mandatory arrest, evidence based prosecution) may not promote dominion. Braithwaite and Daly (1998) argue against mandatory arrest on the grounds that it deprives victims the empowerment to negotiate their own security with intimates and stigmatizes offenders. Historically in the United States, victims of domestic assault have negotiated with the criminal justice system through engaging justices of the peace (Cole, 1999). Although this system may not have

systematically stemmed the tide of domestic assaults, victims were at least able to control the outcomes of cases and make their own determinations about keeping their families intact.

Also, prosecutors were historically relegated to court administrators (see Chapter 4). They essentially helped cases flow smoothly through justices of the peace courts. Today, prosecutors play a central role in criminal justice administration (Johnson, 2002). They have the power to bolster a community's sense of security from crime. And of the many positions within the judicial process, prosecutors are distinctive in that they are concerned with all aspects of the system (Cole, 1973). Domestic violence cases, however, provide a daunting challenge to prosecutors since domestic violence operates within the "gray" area of crime; it is at once a societal harm,¹ yet domestic violence expresses a personal familial exchange that has historically symbolically, if not explicitly, been tolerated by political institutions: from the courts to families themselves (Buzawa & Buzawa, 1996; Cole, 1999).

Also, since domestic violence cases are mostly misdemeanors where physical harms are not likely to be visible, prosecutors must determine whether a crime has been committed and, if a crime has been determined, what charge should be leveled. As Wilson (1988) exclaims, for a prosecutor, very weak and very strong cases tend to be handled uniformly, but cases "in the middle" tend to be handled differently by each prosecutor, which may result in disposition disparity. For victims of cases "in the middle" who have definitive ideas about the outcome, the seeming caprice with which their case is decided may not bode well for them.

¹ Approximately 1.3 million women and 835,000 men are reported to be physically assaulted by an intimate partner annually in the United States (Tjaden & Thoennes, 2000).

Many victims do not want to prosecute their abusers. Domestic violence challenges prosecutorial discretion to a substantial degree especially in instances where the lack of victim cooperation has impacted case processing decisions. Victims' ambivalence about the criminal justice system and their role as witnesses often discourage prosecutors from taking action (Goolkasian, 1986). Additionally, states' historical reluctance to interfere in domestic assault has produced tentativeness toward prosecuting these cases, except perhaps the most egregious ones.

The republican theory of criminal justice specifies a parsimonious approach to criminal justice intervention. Its distinction from current conservative politics is evident in that the theory articulates that criminal justice intervention is justified only to the extent that it produces overall freedom for victims, offenders, and society. Braithwaite and Pettit (1990) seek the ideal of organizing the criminal justice system in a way that domination of victims and potential victims is minimized and dominion for victims and offenders maximized. This requires more than focusing solely on punishment. The authors propose constraining the punitive power of criminal justice authorities throughout the criminal justice system in order to reduce the net widening of liability.

Theoretical Basis of This Study

The promotion of dominion is evidenced when the four main presumptions (Braithwaite & Pettit, 1990) or sub-goals (Lacey, 1991) are promoted: the principle of parsimony, commitment to checking of authoritative power, concern with reprobation, and recognition of the need for reintegration. The republican theory of criminal justice presses criminal justice practitioners to make decisions that promote offenders' and victims' liberties, and ultimately, provide a sense of security in the larger community.

According to Braithwaite and Pettit (1990), the republican theory of criminal justice does not impose specific policy responses, but rather provides a method of inquiry for further considerations of freedom for victims and offenders. Moreover, the theory holds criminal justice authorities accountable for promotion of this freedom. The theory postulates that the state should not sanction criminal justice intervention unless there's evidence of a diminishment of dominion. In a republican schema, formal punishment, in response to the conviction of an offender found to have diminished the dominion of another, should be promulgated only when informal or less punitive interventions fail.

Figure 1.1 is a visual representation of the republican theory of criminal justice. It depicts dominion's influence on each presumption. The consequentialist aspect of the theory provides the backdrop for the relational arrangement of the model. As a consequentialist theory, republican theory demands that criminal justice authorities' decisions be contingent upon considerations of satisfying dominion promotion (Braithwaite & Pettit, 1990). Assessments about how well a decision is going to represent parsimony, checking of power, reprobation, and reintegration should always refer to promoting dominion.

Although Figure 1.1 does not represent the theory in strict statistical terms, the figure models the basic relationships. Additional variables discussed later in the paper, will be arranged around this model and will be pictorially represented in a statistical path diagram.

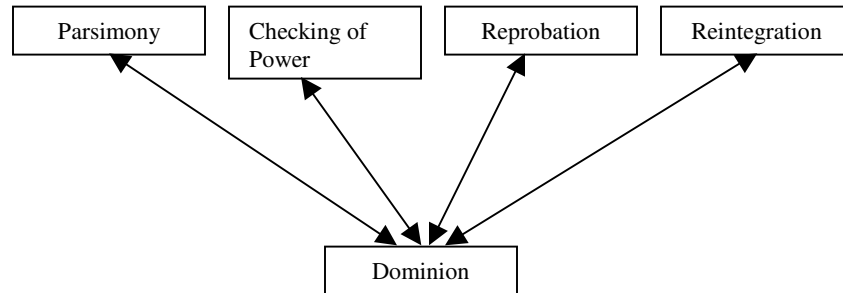


Figure 1.1: Basic model of the republican theory of criminal justice

The Normative Aspect of the Republican Theory of Criminal Justice

The republican theory of criminal justice is a normative theory located in a larger body of explanatory theories. It provides a moral basis for guiding criminal justice practitioners' actions independently of empirical facts (Braithwaite & Pettit, 1990). According to Braithwaite (2003), where explanatory theories describe the way the world is, normative theories describe the way the world ought to be. Braithwaite suggests that the republican theory of criminal justice has not gained prominence in the criminal justice literature precisely because of its normative aspect (personal communication, April 17, 2003). Nevertheless, there appears to be a quiet groundswell in the philosophical literature that encourages the marriage of normative and descriptive theory as a way to connect the patchwork of philosophy to grounded theory. Liebig (2002) calls this connectivity "practical philosophy."

Without Braithwaite and Pettit's (1990) practical application of criminal justice authorities' behavior imperative, republicanism may have been relegated to the realm of

philosophy. To the extent that philosophical reflection and political action contemplate the same norms, political action calls for reasonable public action as a response to philosophy's deliberation of ideal moral values (Barber, 2004). Braithwaite and Pettit thus offer a place where the freedom ideal can be practiced. The authors acknowledge, however, that their theory does not impose specific policy responses as much as it provides a heuristic for considerations of freedom for victims and offenders. But the authors do provide a general prescription for the role of the state. According to the theory, the state should not sanction criminal justice intervention unless there's evidence of a diminishment of dominion. In the republican scheme, formal punishment in response to the conviction of an offender found to have diminished the dominion of another should be promulgated only when informal or less punitive interventions fail. Of course this prescription may not necessarily be rendered for those committing serious offenses.

The Republican Theory of Criminal Justice

By imposing a political goal for each juncture of the criminal justice system, the republican theory of criminal justice frees itself from considering isolated goals that may cause unexpected results in other parts of the system and other institutions (Braithwaite & Pettit, 1990) such as education, employment, or family, thereby creating undesirable consequences. Unlike other theories where the main focus is on punishment, the republican theory of criminal justice provides a comprehensive explanation about how criminal justice actors ought to behave at each stage of the criminal process. Describing the criminal justice institution as a "system," however, requires some preliminary qualification. Many critics contend that the criminal structure that processes millions

annually maintains few characteristics of a system. Thus, attempts to explain this structure as a system must overcome some nearly insurmountable hurdles as varying stakeholders' goals, interests, outcomes, and decisions need to be considered, not only across subsystems at a particular level, but also across levels of government (i.e., local, state, federal).

Hagan (1989) suggests that part of the definitional problem of the American criminal justice system is that it tends to be loosely coupled in that each subsystem internally creates its own system of control, and ultimately, justice. This results from, in part, a desire to maintain individualized treatment for suspects and offenders. The loose coupling of the system is also a function of the larger pluralistic system in which divergent interests are linked to distinct goals. Limitations on previous empirical attempts to characterize the behavior of the criminal justice system have been relatively unsuccessful or unpopular. Theories traditionally used to explain the criminal justice system² have not generated large-scale empirical support.

Braithwaite and Pettit (1990) acknowledge that the disparity of goals across criminal justice subsystems means that decisions made in one subsystem of the criminal justice system can impact the decisions and behavior occurring within another. Thus, if dominion is to be promoted by the criminal justice system, then all components of the system ought to be considered in planning for its promotion (Braithwaite & Pettit, 1994).

Implications of the Current Study

The major goals of this study are twofold: to measure the extent to which the values reflected in prosecutors' case-related decisions are consistent with the values

² Consensus theory describes the influence of broadly shared values in the punishment of criminal norm violations. Conflict theory describes the influence of power imbalances in the punishment of crimes that pose threats to the existing power structure.

reflected in the republican theory of criminal justice advanced by Braithwaite and Pettit (1990), and to validate the survey designed to measure these attitudes. The journey involved in fulfilling these goals is intended to produce a further outcome: greater articulation of the theory through a more detailed operationalization of the theory's concepts. This will be accomplished by measuring prosecutors' attitudes since prosecutors comprise a criminal justice system subpopulation. It is expected that the articulation could most acutely emanate from this study's focus on domestic violence, which has historically challenged the criminal justice system's use of discretion. To satisfy each of these ends, this research examines the attitudes of New Jersey county prosecutors. Interpretation of the survey responses will be enhanced through face-to-face semi-structured interviews.

The Sample

New Jersey county prosecutors (N = 750) were purposively chosen for this study. The list of prosecutors and their work addresses was obtained from the *2004 New Jersey Lawyers Diary and Manual* which is located in the New Jersey State Library in Trenton. County prosecutors and assistant prosecutors are full-time criminal justice practitioners who are prohibited from practicing law apart from their county employment (personal communication with Deputy Attorney General Martin Mooney, April 28, 2004). The county prosecutor is the head in each county and is appointed by the governor. New Jersey is one of the few states where the prosecutor is not an elected official. Under each prosecutor, middle-level managers, known as first assistants, conduct administrative roles. The larger county offices may also have deputy first assistants, chiefs, directors, or chief assistants. Below the middle-managers are the assistant county prosecutors who

carry out the daily case processing functions (*2004 New Jersey Lawyers Diary and Manual*).

Methodology

A questionnaire used to capture attitudes toward dominion promotion and promotion of the four presumptions of republican theory, was designed and used in this study. The questionnaire consists of Likert-type statements designed to measure the content domain of the republican theory of criminal justice. In addition to capturing attitudes toward case processing decisions as they relate to the theory, demographic data, such as gender, race, age, jurisdiction, and experience level were included in the survey. Other potentially influencing factors on republican attitudes, such as case prioritization and considerations toward specific work objectives were also included. In the current study, validation of the survey was done through exploratory factor analysis, confirmatory factor analysis, and structural equation modeling.

Braithwaite (1989) espouses the virtue of ethnographic research for assessing the entirety of theories' structural and individual variables. However, he notes the superiority of other methodologies for their ability to test parts of a theory. Braithwaite praises surveys for their potential to provide superior data on the effects of macro independent variables on individual behavior for larger, randomized samples.

Survey research can further enable greater description of variables. Braithwaite and Pettit (1990) admit that their constructs are sketchy. Developing a survey for this paper has forced a level of concreteness of the theoretical concepts that a qualitative theory may not readily reveal. Creating a survey was a further attempt to make sense of the relationships existing among the concepts. The seeming dearth of empirical research

on the republican theory of criminal justice does not enable reliance on previous observations for current variable operationalization and statistical relationships. The one study found on the republican theory of criminal justice indicated that advocates for victims of sex offenses did not support republican values during the implementation of Washington's Community Protection Act of 1989 (Scheingold, Olson & Pershing, 1994).

Face-to-face semi-structured interviews were also conducted in order to provide a level of substantive understanding of the findings of the statistical analysis. To this end, five interviews were conducted and lasted from one to two and a half hours. Four interviews were conducted with prosecutors and one interview was with a recently retired police officer. The interviews followed a fairly loose format. Questions were posed, but the style was more conversational than structured. The interviews revealed several themes that will illuminate this study.

The Contribution of this Study

The literature has been abundantly clear that strength of evidence and seriousness of offense are prosecutor hallmarks in their decisions of whether to take a case further than its current status.³ Another study confirming these considerations will probably not add much insight to this already well-considered area. However, learning about prosecutors' attitudes attendant to working in a bureaucracy where the output is not always measurable and organizational profit not a prime inducer may give the criminal justice field a greater understanding regarding external factors that may influence case processing decisions. This was experienced, first, by the wealth of comments provided by prosecutors on their surveys, which indicated that, in challenging their trained

³ Some researchers do acknowledge that these reasons for deciding the convictability of a case may be proxies for prosecutors' disinclinations to take an unwinnable case (Albonetti, 1986, 1987; Frohmann, 1997)

responses to cases, republican presumptions seemed antithetical to their belief systems. Secondly, the structural equation model indicated that attitudes toward two of the subfactors (personally motivated and violent cases) related to the external variable case prioritization and one subfactor (public demeanor) related to the variable work objectives significantly influence attitudes toward the promotion of dominion.

The current study is also intended to provide a greater articulation of the theory. Although the authors make references to how the presumptions ought to benefit victims and offenders, these are idealistic benefits. The application of the presumptions to practical solutions does not seem to have been empirically measured in the theory. For example, it is clear that reprobation and reintegration are intended to promote the victim's dominion more than the offender's, but it is unclear how far, for example, a victim's community is willing to symbolically and tangibly welcome a victim back. Checking of power is intended to promote dominion for both offender and victim even though the American criminal justice system seems less equipped to address the victim's needs, due in part to the due process revolution of the 1960s and 1970s resulting from landmark Supreme Court decisions (Packer, 1968). Finally, parsimony provides perhaps the greatest difficulty for the theory. This may be due to the criminal justice system's historical reluctance to involve itself in particular areas. Whereas crimes such as homicide have traditionally been a focus of criminal justice efforts, offending behaviors embodying private arrangements, such as "disciplining insubordinate" family members, have not drawn large scale condemnation.

Parsimony urges that, in order to maximize dominion promotion, the criminal justice system ought to intervene only after careful consideration, yet, in domestic

violence cases, advocates have urged for greater intervention. Deciding the balance of harm done versus the level of criminal justice intervention has never been an easy or simple task for criminal justice authorities. This problem is especially salient in cases where the authorities become politically accountable to the public when they have not been so in the past. Thus, whose dominion (the victim or offender) deserves greater promotion becomes a rather challenging exercise for republican theorists.

The recognition of offenders' and victims' dominion provides a proper starting place in the criminal justice system for determining dominion promotion's potentially crime-preventive effects. Compared to traditional retributive, incapacitation, and deterrent responses to criminality, republican theory allows for a more sophisticated understanding of the dynamics comprising family violence, especially when victims seem disinclined to assist in the prosecution of their abusers. However, the literature is still far from conclusive regarding the best response to violence among intimates.

The republican theory of criminal justice offers another paradigm for thinking about how to respond to domestic violence. As a criminological theory, republicanism offers a way to think about intrafamilial violence that seeks other than punitive sanctions as a first response. The theory will support an environment where victims may ease out of criminal justice arrangements and proponents of battered women would not have to continue being complicit in an arrest scheme that potentially damages familial arrangements.

Research Questions

Perhaps prosecutors do not embrace high-minded ideals when making day-to-day decisions. According to Grosman (1969), when prosecutors act, they likely do so from

functional motivations. Although acts involve beliefs, prosecutors' beliefs may differ from the ones asserted by formal legal philosophy. This dichotomy between the ideal and practice may not be as much an intentional disassociation from the ideal as it is an accommodation of competing considerations, such as jail space, the completeness of a police report, or the leniency of a particular judge. If the means are unavailable to attain the goals or if the goals themselves are not clearly understood or accepted by those implementing them, then the dichotomy between the law in theory and the law in practice becomes perpetuated.

In acknowledgement of the preceding tension between ideal and practice, beliefs and organizational imperatives, the first two questions that follow pertain to prosecutors' overarching acceptance of republican ideals. These questions pertain to whether prosecutors accept the theoretical tenets as a whole or whether parts of the theory are agreeable even if the theory wholly is not.

1. Are prosecutors' attitudes consistent with republican values?
2. Do prosecutors' attitudes show support for some of the presumptions of the theory even if they don't support the presumptions of the whole theory?

The following sub-questions attempt to further understand the impact of external influences on the dichotomy between ideal and practice. The questions suggest that practical considerations may be a more significant accounting of attitudes than the inherent characteristics of prosecutors, such as age, gender, and race.

3. How do prosecutors' sociological characteristics (i.e., gender, race, and age) influence their attitudes toward republican principles?

4. What effects do lifestyle contexts (i.e., jurisdiction of employment, marital status, political orientation, length of professional experience, and domestic violence specialization) have on prosecutors' decisions with regard to republican principles?
5. To what extent are domestic violence prosecutors' compared to other prosecutors' attitudes consistent with republican principles?
6. To what extent are the attitudes of liberal prosecutors compared to those of conservative prosecutors consistent with republican principles?

Dissertation Organization

The rest of the dissertation will be organized in the following way. Chapters 2 through 4 will comprise the literature review portion. Chapter 2 provides a greater explication of the republican theory of criminal justice. It begins by detailing the philosophy of neo-classical republicanism (Pettit, 1997), and then details republicanism as it is applied to the criminal justice system. Chapter 3 describes domestic violence in the United States. The chapter begins by chronicling the history of the family and criminal justice responses to allegations of domestic assault. The chapter then articulates the role of research concerning domestic violence and the resulting policy change of mandatory arrest as a response to domestic assaults. This chapter concludes by describing subsequent criminal justice responses as alternatives to mandatory arrest. Chapter 4 discusses prosecutors. The chapter provides a brief history of their development and the impact of discretion on the prosecutor's role. The chapter concludes with prosecutorial considerations in domestic violence cases.

Chapters 5 and 6 provide the data analyses portion of this study. Chapter 5 describes the methodology used to collect the data, as well as the issues surrounding

missing survey responses. This chapter further provides a discussion about how the data were prepared for further analyses. Chapter 6 describes the steps undertaken to conduct the exploratory factor analysis, confirmatory factor analysis, and structural equation modeling. Pictorial depictions of the confirmatory factor analysis and structural equation models are also provided.

Chapter 7 ties the study together. This is the discussion portion in which the analyses are interpreted, limitations of the study addressed, alternative models of the theory offered, and future research suggested.

2

REPUBLICAN THEORY OF CRIMINAL JUSTICE

Few theories are devoted to characterizing the criminal justice system holistically, which is partially due to the fragmented processes and goals among criminal justice systems across levels of government and the subsystems found within each system (Hagan, 1989). Braithwaite and Pettit (1990) seek to fill this scholarship gap by considering a normative theory applicable to Western criminal justice systems, especially that which is found in the United States. In their republican theory of criminal justice, Braithwaite and Pettit prescribe all criminal justice authorities to invoke the proposed target of the criminal justice system: promotion of dominion. In order to promote dominion, the theory asserts that four presumptions—parsimony, checking of power, reprobation, and reintegration—ought to be adhered. These presumptions are maximized when dominion is accepted as the goal that frames all criminal justice authorities' decisions.

The evolution of the dominion ideal as the target of the criminal justice system will be illustrated from a discussion of republican freedom as it is discussed by Pettit (1997). The republican notion of freedom, juxtaposed against the currently punitive criminal justice environment, provides the backdrop for arguing in favor of the superiority of the republican theory of criminal justice. Further, the republican theory of criminal justice has provided the transition for Braithwaite's (2003) support for restorative justice as a heuristic method embodying republican ideals and providing an alternative to criminal justice interventions.

Republicanism

One of the most fundamental political structures in the United States is republicanism. Portions of its institutions (e.g., separation of offices, elected representatives, checking of powers) still coexist with other political structures in current political society. Republicanism is a multivocal concept in that the common threads that run through the republican ideal concern how citizens can be capable of self-government as well as considerations of which social conditions best promote the exercise of self-government (Sandel, 1996) for the common good. The beginning point from where one republican philosopher, Pettit, takes his version of a neo-classical republican freedom is found in Berlin's (1969) work, and continues through Braithwaite and Pettit's (1990) theory as well as Pettit's (1993, 1997, 2000, 2003) own works on republicanism. In Pettit's view, freedom from arbitrary interference is the fundamental precept of a republican negative freedom.

In Western democratic societies, the value of freedom is fundamental not only for political coherence, but also for practical effectiveness for citizenship (Barber, 2003). The idea that freedom consists in our capacity to choose our own ends in the absence of coercion is found in our social institutions, such as law, religion, marriage, education, economics, and criminal justice. Freedom further informs our current state of public philosophy (Sandel, 1996). When freedom is threatened, through say oppressive policies, then the public may diminish its support for such policies. Before embarking on a detailed discussion about republican liberty and its relationship to criminal justice, a brief depiction pointing to the two types of freedom that inform current philosophy, i.e., negative and positive freedom, will be first.

Positive and Negative Liberty

Berlin (1969) offers the most comprehensive description of the two conceptions of political liberty. First, positive liberty pertains to the wish by the individual to be his own master. That is, the individual consciously understands himself as a thinking, feeling, and active being who bears responsibility for his choices. This ideal of liberty existed until about 200 years ago when the new market economy and the ascent of the role of industry with the simultaneous practice of *laissez-faire* government resulted in the new way by which citizens came to understand their roles (Pettit, 1993). The form of liberty that subsequently emerged meant that the individual was to be unobstructed in his affairs by others, including the state, and was not necessarily guided by concern for self-mastery (Pettit, 1997). The new role of government should be only to enable the individual's attainment of his goals. This freedom ideal, called negative freedom, has been adopted by republicans.

Negative Liberty as Freedom from Non-domination

Republican liberty espouses a negative dimension. This liberty identifies the absence of liberty not when actual interference occurs but by the condition of the absence of domination (Pettit, 1997; Viroli, 1999). Republicans assert that interference alone is not sufficient for freedom's diminishment. It is the added quality of an arbitrarily imposed interference (i.e., domination) that calibrates the reduction of one's freedom. And once freedom has been diminished, it should be restored (Pettit, 1993).

Requirements for domination.

According to Pettit (1997, p.52), in any relationship of domination, three conditions must occur. Someone has the power to dominate another to the extent that: 1.

they have the capacity to interfere, 2. on an arbitrary basis, 3. in certain choices that the dominated individual is in a position to make.

First, one has a capacity to interfere when that capacity is ready to be exercised and the individual recognizes the presence of a potential victim. Even when entities merely possess the capacity for interference without practicing interference, domination may exist when the other two conditions are met. The interference has to be intentional on some level. It is not accidental and occurs at least at the level of negligence. And the interference can encompass coercion of the body, such as by restraint or punishment, coercion of the will, as in a threat of harm, or as a manipulation.

Second, an act is arbitrary to the extent that an individual or the state vis-à-vis the criminal justice agent fails to “track the interests and ideas of the person suffering the interference” (Pettit, 1997, p.55). An arbitrary act is intended to worsen an individual’s choice by changing the range of options available or by assuming control over outcomes. On the other hand, an act is non-arbitrary when the individual or agent is forced to consider the interests of the person who is or will be subjected to the interference. For the state to be non-arbitrary, it must track the interests, welfare, and worldview of the public.

Third, the dominating agent may arbitrarily interfere in some domains of the agent’s choosing without dominating in all domains. Domination can be more damaging in some areas than others and can vary in intensity. A husband, for example, may choose to dominate his wife in the home without doing so in other spaces, such a public locale.

Pettit (1997) believes that the ideal of freedom as non-domination is not something that individuals can satisfactorily pursue by relying just on their own private

efforts. Leaving non-domination to the care of individuals may lead to an unequal distribution of it. Inequalities such as those of physical health, social connections and influence, environmental location may influence the strong to manipulate or exploit the weak or those with fewer resources. The state, too, has the potential to threaten people's freedoms. As the state gains the power necessary to be a more effective protector—as it is allowed to acquire a bigger army or police force or intelligence service—it may become a greater threat to freedom as non-domination than any potential threats it seeks to remove.

In order to abate the preceding threat to domination, a properly constituted law that answers to people's general interests and ideas could prevent interference. The law necessarily involves interference and is essentially coercive, yet in a republican scheme, legal authorities should be enabled to interfere only to the extent that they are pursuing the common interests and in a manner that conforms to the opinions received among the citizenry (Pettit, 1997).

Republicans demand that negative liberty be protected through the apparatus of the rule of law, rather than exist as a function of contractual, and often private, relations. According to Pettit (1997), the rule of law⁴ establishes the level of freedom that people

⁴ Rawls (1971) gives an overview of how the rule of law organizes society. Like the liberal, the republican believes in the law as an ultimate provider of freedom. The rule of law functions as public rules intended to regulate citizens' conduct and provides the framework for social cooperation in that associations are based on expectations of an obligation to fair rules. In addition to other normative presumptions, this framework consists of the following presumptions: similar cases are to be treated similarly, there is to be no offense without law, laws are not to be applied retroactively, and some form of due process is to attach to seeking the truth. The goal of the rule of law asserts that a balance be struck between defining the acceptable citizen behavior through clearly promulgated statutes, yet vague enough to allow a level of latitude so that legal practitioners do not overly enforce the law.

An important caveat concerning the rule of law is that it reflects the culture in which it operates. The rule of law is based in, and informs reflective equilibrium by, considerations of historical precedent, traditions, relationships of citizens to government institutions, prior formal or informal arrangements, and the balance

can enjoy. The rule of law also, admittedly, puts conditions on people's liberties. While the law may not dominate or compromise people's liberty, it does inevitably condition freedom by restricting the range of undominated choice that is available to those who live under the law.

The republican conception of freedom as non-domination can be illustrated as shown in Figure 2.1. It asserts that non-domination has no beginning or end point, but rather is a cyclical process through which institutions must travel in order to continually prevent instances of domination both over and by its citizenry.

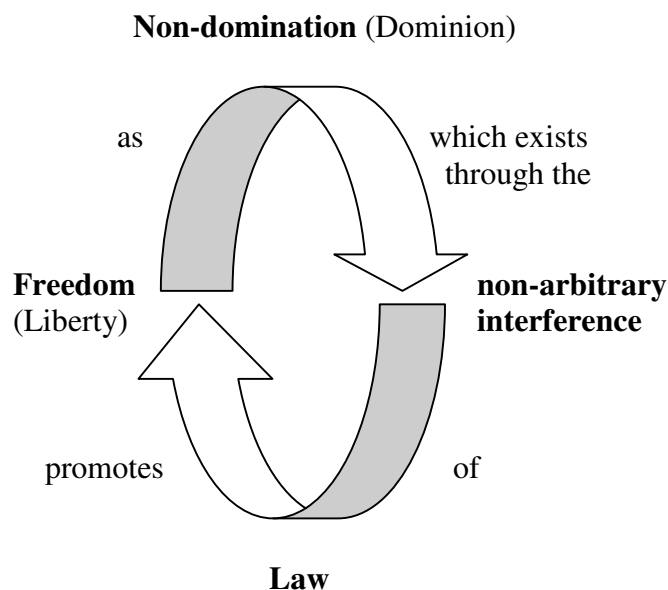


Figure 2.1: The republican conception of freedom as non-domination

Republican Theory of Criminal Justice

According to Pettit (1997), there is no evidence that the criminal justice system represents a systematic way of communicating blame or of punishing crimes in proportion to the degree of offender blameworthiness. Most criminal justice agencies impose penalties without any regard to compensation or reparation for the harm done in the offending act and without any thought of bringing the offender to appreciate and regret that harm.

Instead, Pettit reasons, the need for severe sanctioning policies seems largely symbolic. When the convicted are harshly dealt with and sentenced to lengthy periods, there is little or no scandal in that forum. When a person commits a crime, in particular, a crime with lurid details, there is every chance that the press will seize on the fact, there will be public outrage, and the government will be called upon to react harshly.

According to Scheingold (1991), governments have clear incentives for emphasizing problems as matters for crime control. It takes fewer resources to declare war on crime than on poverty, unemployment, homelessness, educational deprivation, or other sources of structural deviant behavior. Since the public seems to readily embrace the punitive terms of crime, the state, through its criminal justice entities, becomes empowered to respond harshly.

Beckett (2005) asserts that the media is the forum by which governments espouse their initiatives. As consumers of mass media, the public appears to be ready receptacles of political agendas. When politicians stop emphasizing crime, the public's concern about crime as the most important issue declines. Beckett hypothesizes that the public follows the leadership of politicians rather than politicians respond to citizen concerns.

Since politicians appear caught up in the tough-on-crime rhetoric, and insofar as the public views crime as a personal choice, crime control strategies oriented toward deterrence and punishment seem to make the most sense. Scheingold (1991) adds that the state can then readily scapegoat individuals rather than focus on its own inability to address the structural causes of crime, especially, according to Tonry (1998), when the state uses the media to excite with images of the dark side of humanity.

In light of the evidence which suggests that increased penalties have only modest effects (Tonry, 1998) while simultaneously excluding large swatches of the populace (Pettit, 1997), Braithwaite and Pettit (1990) propose a new paradigm within which criminal justice authorities should behave toward victims and offenders. The authors extend the neo-republican ideal of non-domination to the new freedom ideal of dominion. Braithwaite and Pettit call their theory the republican theory of criminal justice (the theory) and assert that the target for the criminal justice system should be to promote dominion. The republican theory of criminal justice justifies criminal justice intervention and sanctioning only when intervention will have a deterrent effect in a non-oppressive environment (Braithwaite, et al., 1990; von Hirsch, 1998).

A Consequentialist Theory

Since the republican theory of criminal justice defines a target, promotion of dominion, for the criminal justice system, it is what is called a consequentialist theory. In a consequentialist theory, the agent is prescribed to choose options that exemplify a value that promotes the stated target. The agent does not choose an option based solely on its comportment with the target, but must also consider the consequences of the option, i.e., how the option would maximally realize the value in question. This task is especially

challenging since the consequences of an option are often distant and probabilistic. When the four presumptions proposed by the theory (parsimony, checking of power, reprobation, reintegration) are honored, then the goal of the criminal justice system, maximization of the promotion of dominion, will be upheld

Dominion

Dominion is the republican conception of full citizenship (Braithwaite & Pettit, 1990) or civic freedom (Braithwaite & Pettit, 1994) and is the ideal to which criminal justice authorities should aspire. Dominion incorporates the third freedom ideal that an individual enjoy the absence of arbitrary power. In terms of positive and negative liberty, dominion is negative to the extent that it “requires the absence of an evil perpetrated by others” and positive to the extent that it “requires not just that others not actually interfere but that they do not have, and be seen not to have, the *arbitrary* [italics added] power of interfering (Braithwaite, et al., 1994, p. 765). An individual enjoys liberty if he is exempt from constraints imposed by the blameworthy actions of others.

According to Braithwaite and Pettit (1990), the full enjoyment of dominion requires three conditions. First, the individual must enjoy the same level of liberty - prospects⁵ as others in society who experience similar conditions. Given similar circumstances, individuals should not be subjected to greater constraints than others. The second condition concerns the objective, or common knowledge, component of dominion. The individual must not only be less constrained than others in similar circumstances, but that the others also have knowledge that they too are to have the same liberty-prospects. Finally, the third condition, the subjective component, urges that

⁵ Liberty-prospects mean not that individuals have the same actual prospects for freedom overall, but rather that they have the same potential for freedom, or the diminishment of freedom, in the same variable circumstances.

individual knows that he himself is also in the position to enjoy an assurance of an absence of domination.

Braithwaite and Pettit (1990) assert that maintaining the public order and preventing crimes from occurring can be an important means of promoting dominion. The dominion of the individual appears to be a looming concern for the republican for it takes non-domination of the individual to be the supreme political value. To the republican, being “able to hold your head high, look others squarely in the eye, and relate to your fellows without fear or deference” (Pettit, 2000, p. 232) is a highly valued condition. The republican conception of criminal justice demands that when a crime is committed, dominion be promoted to the state under which it existed prior to the harm (Braithwaite, et al., 1990).

According to Braithwaite and Pettit (1990), the conception of dominion as a target for the criminal justice system has two features. First, it motivates minimalism in criminal justice interventions; when in doubt, do less by way of criminal justice intervention. Since laws can be weapons, there should be a presumption in favor of parsimony. The right level of punishment should not determined by just deserts,⁶ but rather should be low whenever possible in the absence of clear evidence that crime has increased as a result of this decrementalism.⁷ In a republican framework, laws should only criminalize where criminalization promises to further overall non-domination. The

⁶ Just deserts is the concept based in retributive theory that the guilty should be punished at the level proportionate to their crime.

⁷ Decrementalism generally assumes a parsimonious approach to crime whereby incremental cuts in criminal justice intervention in each subsystem are continued up to the point where crime begins to increase. Braithwaite and Pettit (1990) justify decrementalism on the basis that it would support an increase in dominion of those potentially intruded upon by the criminal justice system without corresponding evidence that the decreasing intrusion will diminish the dominion of those who would be victims.

state should be willing to resort to criminalization only reluctantly or to the extent that criminalization is necessary for the protection of citizens.

Secondly, dominion requires a highly interventionist, but non-dominating, state policy to ensure equal liberty-prospects. For those suffering from lesser liberty prospects (e.g., immigrants, women), the theory supports policies (such as affirmative action) that elevate their liberty prospects. This concern for political and economic equality is basic to republicanism.⁸

A few more words regarding the dimensions of the promotion of dominion are in order. Promoting dominion does not lend itself to simple dichotomous considerations from criminal justice authorities: either they promote it or do not promote it. Although dominion can fail to be promoted when criminal justice intervention is arbitrary, its promotion is a matter of degree. Dominion is maximized, that is, fully restored, when the four presumptions are maximized, but even when the four presumptions are not maximized, dominion can still be promoted.⁹

⁸ Feminists have been considering the potential advantages to allying with republicanism (Phillips, 2000). Republicanism was one of the formative influences on feminism, but republicanism in its classical form, i.e., the importance of the propertied male, was not woman-friendly. The modern conception of the common good as a 'disinterested' ideal may still not coincide well with feminists' needs for careful consideration of women's voices. It appears, however, that Pettit's notion of common good and disdain for arbitrary interference (or domination) is particularly intended to promote those interests specific to the individual. As an illustration of the goal of dominion promotion, there is no exclusion of voices as the feminist movement has done. In terms of domestic violence, one side of the debate that has received seemingly far less attention has been that men's voices have been silenced, unless, that is, they have conceded their abusive behavior. The greater issue should thus be, who has access to participate as citizens in public life since one of republicanism's defining features is the elected representation of the body politic. Phillips rightly criticizes the media for "prepackaging of opinions...that discourages political dialogue and deliberation" (p.283). However, special interests have similarly co-opted parochial interests rather than allow for an open dialogue. Nevertheless, to the extent that dominion promotion is the goal of the republican conception, then there should be no reason for these two perspectives not to coincide. "Liberty, unlike power or prestige, is meant to be the sort of thing that can be achieved equally by all" (Pettit, 1993).

⁹ In their study on the legislation process influencing the Community Protection Act (CPA) of the State of Washington, Scheingold, Olson, and Pershing (1994) focused on the reintegration of sexual assault offenders and dominion of both victims and offenders. The authors looked at the role sexual assault

Although the republican theory of criminal justice calls for promoting dominion for both victims and offenders, Braithwaite and Pettit (1990) acknowledge that promoting a victim's dominion at the expense of the offender's does not necessarily result in a wholesale sacrifice of the offender's dominion. The four presumptions carefully address? Ways to promote the offender's dominion even when a presumption, for example reprobation, explicitly prioritizes promotion of the victim's dominion. The point to be made is that the state ought to make an effort to promote the dominion of both the victim and offender when a crime has occurred.

Finally, promotion of dominion appears to be an ideal that is culturally specific to Western criminal justice systems. Braithwaite and Pettit (1990) describe the resurgence of oppressive criminal justice policies and point to Australians' current support for capital punishment. The authors further illustrate retributivists' influence on presumptive sentencing policies in the United States. Under conditions such as these, promotion of dominion does well to impose a level of accountability onto criminal justice authorities, especially since Western criminal justice systems already practice the components of rights built into them. The theory attempts to bring respect for these rights, and individuals generally, back into the debate of criminal justice responses to criminality. In countries where the accused are not protected by the rule of law, equality across individuals does not exist, or state sponsored civil war, genocide, or terrorism exists, the debate about promotion of dominion may not fare well. Berlin (1958) recognized, even if

advocates played in determining the parameters of this legislation. The authors found that advocates, who were closely related to sexual assault victims, opposed reintegrative measures and instead supported punitive measures, such as increased penalties, police registration and community notification for released offenders, and "preventive detention" in the form of civil confinement after serving a criminal sentence. Advocates sought "personal dominion:" to be heard and regain a sense of control over their lives (the subjective component of dominion), and they sought to "strike a blow" for public safety, especially for women and children (the objective component of dominion).

he didn't explicitly state, a hierarchy of political needs, which may be a constructive extension of Phillips' (2000) argument for women. Without the fundamental possessions of fiscal and physical security and independence, the individual may still be relegated to the political margin. Any discussion about liberty, therefore, may have little value when extremes of marginalization, exploitation, brutality, and injustice exist.

Parsimony

Virtually any criminal justice activity involves initial costs to dominion (e.g., investigation, arrest, prosecution) while the benefits (e.g., prevention of future criminality, promotion of conflicting parties' dominion) are almost always distant and probabilistic. Braithwaite and Pettit (1990) recognize that these considerations can be near infinite, difficult to foresee since they are based on limited information and unpredictable in their occurrence.¹⁰ Parsimony urges that practitioners conduct a cost-benefit analysis in order to consider the potential costs to both victims' and offenders' dominion. In prosecution, such an analysis would suggest that prosecution occur only after consideration of the consequences of proceeding: the public benefit in preventing future crime against the costs of prosecution on the dominion of the victims, their families, and offenders.

Although the state's justification for intervention exists when someone's dominion has been diminished, the onus of proof for the state should fall on the side of justifying an intervention initiative. The presumption of intervention should be in favor

¹⁰ In domestic violence cases, Hartman and Belknap (2003) suggest that prosecutors may already engage in parsimonious decision-making. Although there has been a movement in domestic violence toward more aggressive arrest and prosecution policies, resulting in a large number of batterers referred to criminal court, "serious" prosecution of domestic violence cases may still be unlikely. Police still may be acting as the gatekeeper to the criminal justice system even in the environment of mandatory arrest laws. Since about 80% of domestic violence cases are misdemeanors (Hartman, et al., 2003), it is likely that they are largely dismissed or otherwise settled (Buzawa & Buzawa, 1996).

of less rather than more criminal justice activity. Parsimony, which concerns this presumption in favor of less criminal justice activity in the absence of a justification, is the most important presumption, the master presumption, since it, unlike the other presumptions, is relevant to the range of all criminal justice interventions.

Parsimony is a value that limits coercive criminal justice intervention to only what is strictly needed to promote dominion. Parsimony does not set a lower limit on intervention, and can thereby range from no criminal justice intervention to imprisonment (Braithwaite & Pettit, 1990; Walgrave, 2000). However, by extension, failure to promote parsimony occurs in instances when criminal justice authorities should have intervened but did not. Such instances can occur when, for example, a victim is reluctant to press charges even when significant injury has occurred, an offender is revered by the community relative to the victim or victims, or a department's resources reduce the ability, and interest, of authorities to properly intervene.

In prosecutorial decisions, the principle of parsimony can readily be observed in those affecting case processing: whether to accept a case, what to charge, whether to plea bargain, and how much to sentence. Braithwaite and Pettit (1990) recognize that the promotion of dominion requires that all victims should get the same considerations by criminal justice actors on "how far to investigate the offense, whether to prosecute, whether to convict and how to sentence" (p.77). Prosecutors must necessarily use discretion to balance victims' considerations.

Checking of Power

The second presumption, checking of power, asserts that the power used by criminal justice authorities should always be subject to review, and that victims and

offenders enjoy an assurance that the authorities not show prejudice or caprice when dealing with them. Since power should come with constraints of accountability, checking of power can assure that the subjective component of people's dominion is protected. Braithwaite and Pettit (1990) indicate that checking of power can be promoted a number of ways. Fundamentally, the promotion of dominion requires that criminal justice authorities take criminal justice rights seriously. The most important way to ensure that criminal justice authorities carefully consider individuals' rights is through authorities' recognition of certain individual due process rights, such as the right of the innocent not to be punished, the right to a fair trial, and mechanisms of complaints against authorities' decisions. Another mechanism includes requirements that prosecutors answer for their exercise of discretion.

These mechanisms provide assurances that, even if individuals are treated differently from others in similar circumstances, the difference in treatment is justified by features of the circumstance and is not the product of whim or malice. Stakeholders (those who have some direct or indirect interest in a case (Maxfield & Babbie, 2001))¹¹ should be brought into the criminal justice process and provided with the means to ensure that decisions are made in the absence of caprice.

¹¹ In domestic violence cases, stakeholders are the police, prosecutors, defense attorneys, judges, probation/parole officers, victim advocates, mental health clinicians, social workers, correctional officers, offenders, victims, offenders' families, victims' families, and the community. It is reasonable to believe that each stakeholder's interest is not compatible with the other stakeholders'. The interests of these stakeholders can be divided into those who are entrusted to hold the offender accountable for the abuse and those entrusted to protecting the offender. Such differential interests may preclude both sides from agreeing with each other. For example, Hartman & Belknap (2003) found in their study that defense attorneys had "extreme hostility" toward victim advocates and domestic violence laws which the attorneys viewed as "pandering to inconsequential feminist concerns" (p. 361). Defense attorneys also saw victims as using the criminal justice system for "weekend divorces." The defense attorneys accused victims of getting their partners arrested for domestic violence in order for the victim to be with her new partner over the weekend.

Part of the need for the checking of power presumption rests upon republicans' recognition that criminal justice authorities, as well as others who come into power, may not be corrupt, but may be corruptible. The republican tradition takes a pessimistic view toward the corruptibility of human beings. Corrupt officials likely work in a corrupt state, which, as Pettit (1997) describes it, is one in which common interests are advanced in a way that serves the interests of those who run the state (or enforce or interpret the laws) rather than the interests of the people at large (Pettit, 1997). Two conditions that promote the overall effect to make officials corruptible-proof are: sanctions and filters or screens.¹²

According to republican theory, several mechanisms exist as screens to check power. These mechanisms can be divided into external and internal accountabilities to protect against arbitrariness, which may be one result of corruption. An external mechanism to protect against arbitrariness includes the adoption of several member reviewing boards or community watch dog groups. Pettit (1997) further expounds on this notion of public accountability. Not only should the public have access to audit decisions, but decisions should otherwise be accessible through their publication. Internal accountability mechanisms include superiors' normal supervision over their subordinates and authorities' self-regulation over their own decisions.

According to the theory, another way to protect against arbitrary decisions is to inform the aggrieved party of the right to reconsideration to a higher officer.

¹² According to Pettit (1997), sanctions are instruments of control that can be deployed on an agent. Sanctions are negative to the extent that they penalize an agent for failure to choose appropriately, and they are positive to the extent that they will reward an agent for choosing an appropriate option. Screens or filters act as assurances that some agents will get to make certain choices. Screens affect opportunities rather than incentives as sanctions do. Screens include hiring and promotion procedures so that some will get to make discretionary choices whereas others will not. Screens also include complaint and appeal procedures.

Mechanisms of appeal require authorities to answer for their exercise of discretion.

Braithwaite and Pettit (1990) believe that different treatment of individuals is part of the adjudicatory process, but the treatment should not be the product of personal whim. The affected individual should be assured that a difference in treatment is justified by a publicly recognized feature in circumstances (i.e., liberty prospects).

Reprobation

Reprobation, the third presumption, requires that the criminal justice system ensure that criminality is subject to disapproval in the community. The paradigm form of reprobation involves moral reasoning with offenders. Moral reasoning involves an understanding of the wrongfulness of the act and eliciting a sense of shame about it (Braithwaite & Pettit, 1990; Walgrave, 2000) which is intended to show a deference for the victim's dominion, which has been diminished by the crime. Moral reasoning involves informal mechanisms, from public denunciation, threats of punishment, or seeking assurances of future conformity, to formal punishment.

According to Garfinkel (1956), conditions of shame and status degradation are universal to all societies. Degradation functions to publicly denounce criminal behavior. Public denunciation lends support to a collective understanding of unacceptable behavior and may reinforce group solidarity. According to Braithwaite and Pettit (1990), societies that have the capacity to mobilize disapproval can also exercise social control against those who trample upon dominion.

Braithwaite and Pettit (1990) urge that the success of reprobation relies upon socializing institutions for support. The authors distinguish socializing institutions from coercive ones which prioritize penalties and rewards according to whether the individual

adopts the behavior of the virtuous citizen. Socializing institutions emphasize the shamefulness of crime and induce the individual to adopt the habits of the virtuous citizen. The theory prefers socializing institutions because they can emphasize shame by presenting crime as shameful and unthinkable rather than merely unprofitable, and they require that institutions show citizens why the criminal justice system is intervening so that citizens understand that the coercion was imposed in response to the behavior rather than a random exercise of power.

Reprobation thus involves reintegrative shaming which, according to Braithwaite (1989), is the key to helping an individual internalize normative values and desist from future criminality. Reintegrative shaming urges that criminal justice practitioners “treat the offender respectfully and empathically as a good person who has done a bad act” and simultaneously make efforts to show the wrongdoer how valued she or he is after the bad act has been confronted (Ahmed, Harris, Braithwaite & Braithwaite, 2001, p. 4).

Reintegration

The fourth presumption, reintegration, is a result that, according to the theory, should be pursued by the criminal justice system for those who have had their dominion invaded by either a crime or a punishment. The more important target for reintegration is the victim of crime since reprobation should take care of the offender. The offender should thus provide restitution to the victim for losses due to medical expenses, missed work, babysitting expenses, property damage, and transportation costs. Community service should be considered when the offender is unable to pay restitution. Imprisonment should be used in cases against offenders who committed a very serious crime, where the community has a justifiable concern to be protected from the offender

(Braithwaite & Pettit, 1990), or when informal interventions have failed (Braithwaite & Daly, 1998).

Reintegration should also be pursued in the communities of those citizens who have had their dominion invaded by crime or punishment. The victim's dominion can be restored most effectively when the relevant community (e.g., family, work, church, friends) acts symbolically by condemning the crime and criminal to assure the victim that she is not devalued as a person and that her dominion is worthy of respect. Respect can also be restored symbolically by the offender through apology. However, the offender should support the apology through tangible compensation. Otherwise, symbolic restoration may come too cheaply (Braithwaite & Pettit, 1990). Braithwaite and Pettit (1994) emphasize that paying lip service to a victim is not nearly enough. Rather, reintegration should involve some sort of reconciliation.

Restorative justice, which will be discussed later, has become one avenue whereby offenders can demonstrate their commitment to rectifying the harm they created. Reintegration of ex-offenders also is of importance; else offenders can slip into the status of second-class citizens, lacking full-enjoyment of dominion.

Republican Theory of Criminal Justice Schematic

The republican theory of criminal justice is illustrated in Figure 2.2. The criminal justice system operates under the rubric of legitimate constitutional law. This law is necessarily applied against offenders but must be applied absent interference that is arbitrary. The non-arbitrary interference of the law is a necessary, but not sufficient condition for the maximization of dominion. In order to enjoy dominion, criminal justice authorities must also support the following presumptions: parsimony, checking of power,

reprobation, and reintegration. When these presumptions are maximized, then dominion is maximized for citizens. But it is not enough to just prescribe to the tenets of the presumptions. Three additional conditions must be satisfied for the promotion of full dominion. The individual enjoys full dominion if he experiences similar liberty-prospects that are available to other citizens, he knows that the dominion condition exists, and everyone else knows it exists for the individual and themselves.

When the presumptions are not maximized, then citizens may not experience the three conditions fully and may feel a diminished sense of safety. Citizens may learn that they will someday be subjected to arbitrary interference by criminal justice authorities. Or they may find incompatible punishments with criminality or incongruent punishments for similar offenses. Such sentiment can lead to criminogenic behavior due to frustrations associated with a loss of esteem and trust in the system. When criminogenic behavior proliferates, citizens may refuse to participate in public life and may ultimately support oppressive criminal justice interventions. When citizens support oppressive criminal justice interventions, criminal justice authorities' checks on power may be abridged in order to respond to the public's demands for greater enforcement. Responsiveness to the principle of parsimony may thus lessen, and promotion of dominion may become a diminished value, thus feeding into an endless loop of an overly punitive reaction to crime and criminals.

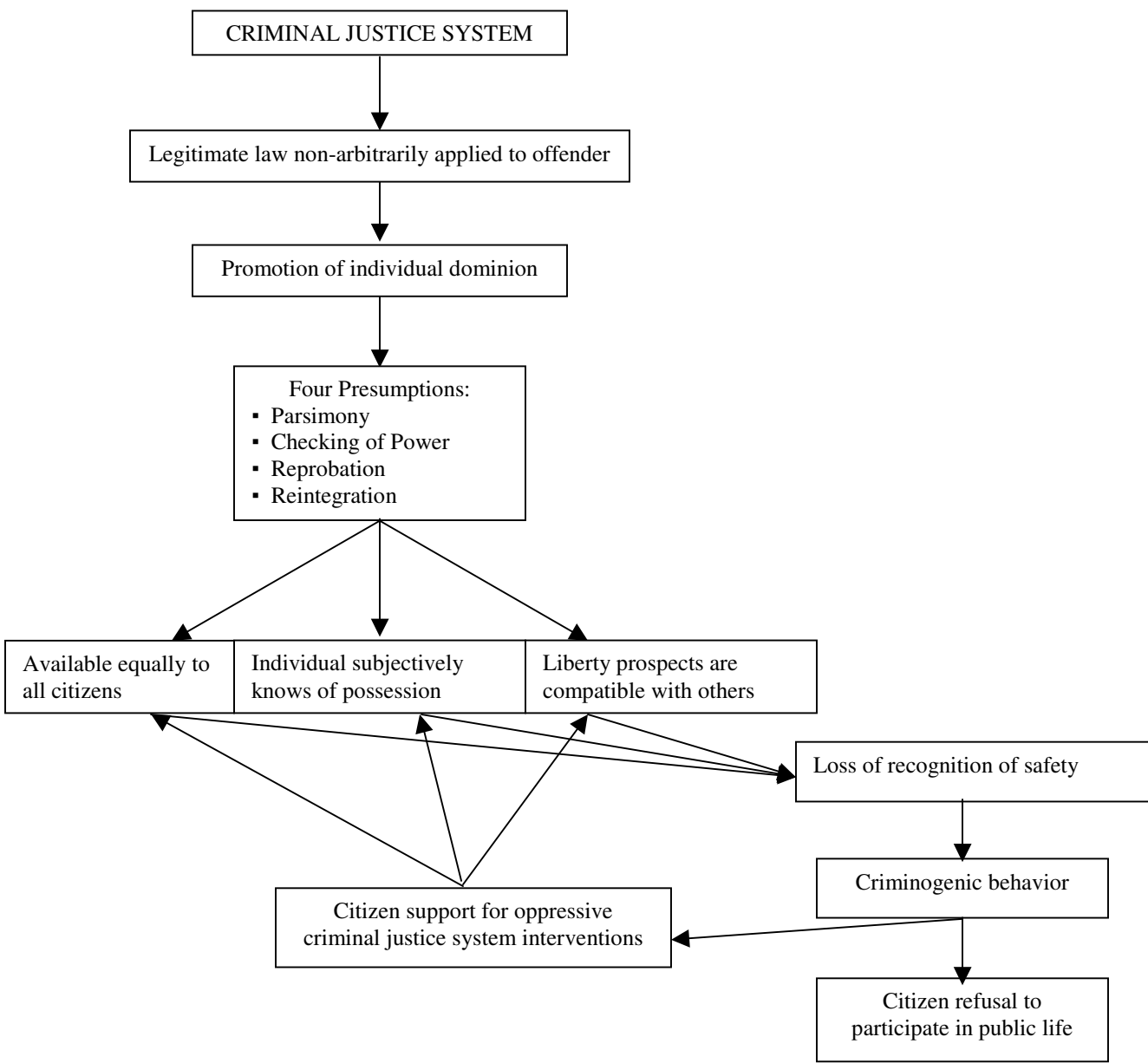


Figure 2.2: Summary of the republican theory of criminal justice

Republicanism and Restorative Justice

Since the publication of their theoretical work, Braithwaite and Pettit (2000) have supported restorative justice as the arrangement which provides the explanatory component to republicanism's normative precepts. They have argued that restorative justice supports the four presumptions in the following ways. Parsimony will be upheld because people's freedom will not be impinged upon, thereby reducing the potential for defiance effects.¹³ Checking of power is preserved since the stakeholders in a restorative conference each have the opportunity to engage the process, thereby reducing the monopolization of power in the hands of one group or individual. Restorative justice is equipped to most directly appeal to reprobative and reintegrative tenets. Restorative justice conferences are intended to communicate objections to the offense, while simultaneously maximize social support for both offenders and victims through the support of conference attendees who are friends and family.

¹³ Defiance effects indicate the level reactance against the constraint of a freedom in light of its importance.

3

DOMESTIC VIOLENCE AND THE CRIMINAL JUSTICE RESPONSE

The complexity surrounding the prosecution of domestic violence traditionally has concerned issues such as how public and private behavior should be defined, what level of abuse constitutes violence and ultimately criminality, the context surrounding the violence, and the normative criminal justice response. Historically, the state was reluctant to interfere in domestic life, resulting in women groups' denunciation that domestic violence ultimately harms the public since women across the populace could suffer at men's hands with impunity.

Defining Domestic Violence

A consensus has not been reached regarding how to define domestic violence (Mooney, 2000). Part of the problem is that both "domestic" and "violence" have different interpretations. The term domestic violence often assumes gender-neutrality, although some would prefer greater specificity. Intimate partner abuse may be preferred, or more specifically, wife or woman abuse to indicate that women are more often victims of intimate violence than men.

The behaviors that fall under the rubric of violence also diverge across studies. Some definitions include behaviors (i.e., psychological and verbal methods used to control a partner) that may not be defined as criminal (Buzawa & Buzawa, 2003). Mooney (2000) asked a sample of women (abused and not) to define the behaviors of intimates that they considered to constitute domestic violence. The women's responses are found in Figure 3.1.

Death, which was not indicated by Mooney's sample, was added as the most egregious form of domestic violence. Like weapon attacks, domestic homicide is a relatively rare event. In 2002, of the 14,054 murders reported in the United States, 5% were familial murders of wives and husbands (FBI, 2002, p.25). In New Jersey, of the 341 murders in 2002, 52 (15%) were domestic related¹⁴ (New Jersey State Police, 2002, p.204).

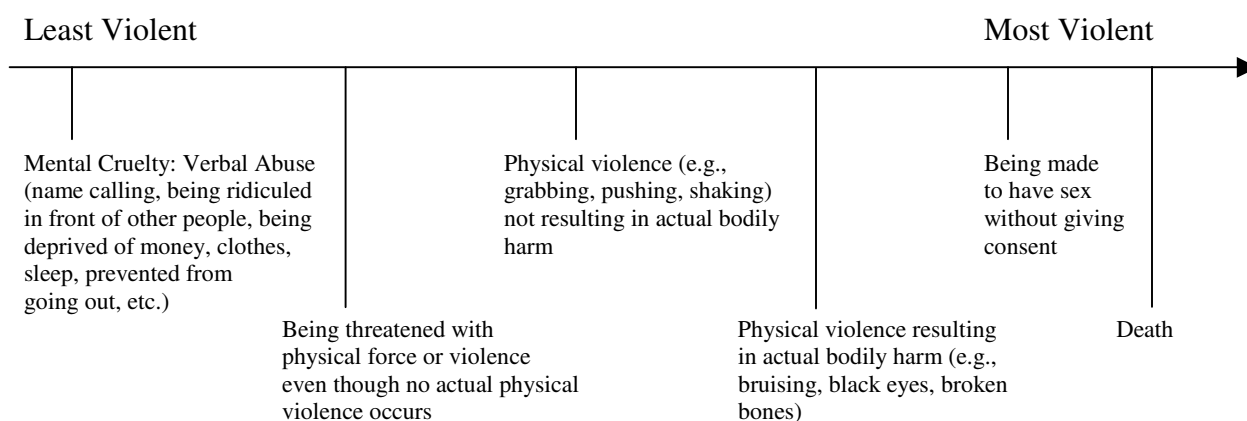


Figure 3.1: Women's definitions of domestic violence

History of the American Family

The Colonial Family

In Calhoun's (1917) extensive historical study of the early American family, he found that the earliest views defining how men and women should behave toward each other came directly from the Scriptures in Puritan colonies in the northeast. The husband

¹⁴ Domestic relationships captured in the 2002 New Jersey Uniform Crime Report are: spouse, ex-spouse, co-parent, relative, friend, and ex-friend. Only 16 homicides (5%) occurred between spouses, ex-spouses, and co-parent (those who have a child in common). Relatives, friends, and ex-friends may also include dating partners, but this is difficult to distinguish given the data.

was the patriarch and the woman was the servant and slave. There appears to be no superabundance of love in the Puritan domestic economy as male despotism was probably the norm. For Christian doctrine, family implies an equality of husband and wife though the woman is made for the man (Calhoun, 1919). There is no doubt that women were considered chattel since colonial times, although claims of the sanctioned use of abuse would typically disrupt the survival of the white race in the new territory. It was not prudent for the husband to publicly demonstrate abuse.

According to Calhoun (1918), the idea that women were chattel lasted well into the 18th century where wives had no recognized individuality. They were annexes to their husband rather than autonomous beings. When a woman left her husband, he could obtain a court order for her return, as if she were a thing rather than a person. In colonial New York for example, Dutch women were well educated and, under the law, considered equals to their husbands. But their ambition was tied to becoming better housewives. Daughters had no career prospects beyond the household and wives worked in domestic obscurity. Mothers educated their sons at home where, after 21, boys could work for wages, but girls could not. For women, marriage and procreation were necessities where simplicity of life, certainty of subsistence, and shortage of population and labor existed.

Calhoun (1918) further states that women who settled in the West had no protection against frontier perils and small opportunity of procuring a satisfactory livelihood. They were forced to marry irrespective of love. Marriage transferred the services of the wife to the husband who considered food, shelter, and clothing as adequate reward for her. Coontz (1988) adds that conditions of pioneer life did not favor the inclusion of women in the circle of privilege. Civic life, with its crudeness and

fighting, was so obviously a man's world in which women, who were ranked as dependent on men, could not be equal.

Calhoun (1917) suggests that although the Dutch settlements in early New York had a "reasonable share of domestic troubles," few cases ended in divorce or separation. He suggests that this may be due to the influence of Protestantism, greater equality in economic affairs, and the less harsh climate of the Hudson Valley region contributed to smoother domestic relations compared to the rigid doctrine of Calvinism and British stratified hierarchical relations that existed in New England.

Although women were legally the property of men, George (2002) adds that the laws did protect wives from physical abuse in marriage. In Plymouth, husbands were barred from "bodily corrections" except as self-defense. In fact, wives were accused just about as often as husbands in the law. Calhoun (1917) concurs that men were not even permitted to use hard words on their wives in the 17th century. In Anderson's (1991) view, however, the effect of early laws may have been merely symbolic since physical force was seen as necessary to ensure that women and children followed the correct road to salvation.

In fact, according to Anderson (1991), under English common law, which existed in every state but Louisiana in the mid-19th century, a man could beat his wife to the point of endangering her life without being liable to prosecution. Although the Puritans in 1641 and Pilgrims in 1672 outlawed wife beating, they did not object to the use of moderate force under religious principles to enforce rules of conduct. Buzawa and Buzawa (1996) assert that the English common law reinforced the use of force by the rule of thumb which allowed the husband to hit his wife with a rod or switch no thicker than

the width of his thumb. In Anderson's view, women were willing accept their oppressive conditions in their marriages because they were protected by the same structure.

On the other hand, in the West, according to Calhoun (1918), women had elevated status as reciprocity in the marriage was a logical consequence where woman shared in the struggle for existence with the man. Women were a scarcity, but those who moved westward stood by their husbands' sides and fought for life and children against all threats. Women further endured danger, sickness, and loneliness. Coontz (1988) sharing in the work on the trail also had the effect of threatening women's self-image as women. Not only were they expected to share in the manual work, but women often had to dispose of their belongings along the trail in order to lighten the wagon's weight. It was common for women to see clothing, dishes, and furniture strewn across the trail from previous settlers. The benefit of women's heightened status, however, provided them with suffrage that was codified in the western territories and later in the eastern states.

The Post-bellum Family

Calhoun (1919) indicates that the Southern family was transformed after the slave emancipation. The most outstanding alteration was a greater respect for the status of women. Before the war, there was no career outside of the home or opportunity for self-sufficiency. Part of the change came from the after effects of the war. There was a dearth of youngmen through death, injury, long absences for employment, and movement to other parts of the country. It was thus easier for women to secure employment than black men who had to compete with whites.

Calhoun (1919) further states that emancipation also tended to break up black families. The young deserted the aged and children. Interracial couplings did not appear

except in the densest, most poor populations. Freed black women could maintain or upgrade their status according to the prestige of their white lovers. Those who were wealthy planters stood at the top of the black social ladder compared to a clerk. Often, the white paramour took a black mistress while still married to a white wife, which could result in violence by the wife.

Parker (1997) states that by the early 1900s, the criminal justice system stopped sanctioning domestic violence. Officials may have been reluctant to process domestic cases out of concern for preventing a family's potential destitution. In San Diego in the late 19th century, for example, prosecutors preferred to avoid prosecuting domestic violence cases since married women often were financially dependent upon their husbands. Jailing a husband could lead to poverty for the family.

The convergence of the rise of public prosecution and associated costs of criminal justice intervention, as well as significant concern regarding the economic costs related to the break-up of the family through arrest, corresponded with a simultaneous redefinition of the ideal of manliness. Hatton (1999) describes the transformation of the male ideal from the man who used reason (rather than emotion) yet was also passionate in terms of aggression and sexuality, to the "masculine primitive" who was harnessing animal urges to thrive in the marketplace, courthouse, and classroom. The frontiersman and sportsman embodied this image.

According to George (2002), the simultaneous decriminalization of domestic assaults may have resulted in the public's ridicule of battered husbands¹⁵ as a social

¹⁵ Riding Skimmington is a term stemming from 1500s England and is a social mechanism used by communities to exert obedience to the norm that a husband should control his wife and that wives should show deference to husbands. It emanated from a 13th century stone carving showing a woman hitting a lying prone male with a cheese skimming ladle. As a custom, it is intended to deride the husband beater

concern about the prevalence of abuse by female partners gained public prominence. Rather than acknowledge this group, cartoons in Victorian America portrayed caricatures of beaten husbands where it was easier to humorously depict males as frail and effeminate than cope with the reality that feminine wives could dominate their manly husbands.

The rise of domestic courts.

Since family assaults were quickly becoming redefined in the law as civil matters between domestic victims and their abusers, family courts in the early 20th century were created to eliminate family troubles in a specialized forum (Buzawa & Buzawa, 1996). Although they were created of a concern for juvenile abuse and neglect, the specialized courts became the institutions where family assaults would be handled.

Courts of domestic relations, according to Pleck (1987), were alternately known as family courts and evolved as adult extensions of juvenile courts. Family courts had legal authority over domestic assault and non-payment of child support, but lawyers were generally absent from these courts. The fact-finder and final arbiter was typically the judge who often decided cases based on the recommendations of psychiatrists and social workers (Gordon, 1988; Pleck, 1987). Rather than subjecting husbands to criminal sanctions, Igra (2000) argues that defining negligent husbands as family supporters provided the courts with the legal leverage to impose some burden on husbands to support their families.

Gordon (1988) asserts that judges believed that intimates who engaged in crime against each other should not be punished as common criminals since private combatants

and scold the beaten husband. The major significance of “The Skimmington” was not the exposure of the abusing female, but the shaming of the victimized male (George, 2003).

were deemed merely ignorant, mentally deficient, or lazy. Wife beaters were characterized as drunkards who beat their wives in moments of passion with little thought to consequences. The official policy of domestic relations courts was to preserve the family by curative approaches, through reconciliation, rather than punishment. Family violence was considered a domestic difficulty rather than criminal law violation. Since few courts granted divorces, family courts did what they could to keep the family intact., again as stopgap measure to avoid a family's economic demise. Pleck (1987) asserts that wives who insisted on pressing their complaints at family court were persuaded to withdraw their complaints and get a promise from parties that they will do all they can to correct their relationship and not resort to the courts to resolve their familial problems.

However, as Pleck (1987) adds, in cases where wives persisted, judges often sent families home after reasserting the husband's authority in the household and urging wives to become more subservient, compliant, and economically dependent. In essence, judges and reformers attempted to influence lower-class and immigrant families (the predominant clients of the system) to accept a middle-class paradigm of the family dynamic that emphasized self-reliance.

On the other hand, Cole (1999) states that extremely cruel or irresponsible men threatened the public order in an environment where obedience to the husband meant protection for the wife. Uncontrolled violence exceeded the ideal of a family man who disciplined his wife in the course of maintaining family stability. In Ramsey's (2002) view, such extreme cruelty was not tolerated by the criminal justice system. Further, prosecutors who handled cases where extreme cruelty was evident could satisfy an

increasingly punitive public and simultaneously provide an image that accountability ensured that defendants did not escape their deserved heavy punishments.

Domestic murderers made easy targets for criminal intervention since they were considered unmanly, marginal individuals. These men often possessed little economic or social standing (Cole, 1999). Such targets were therefore politically uncontroversial for prosecution. In her study of wife-killings in New York City between 1879 and 1893, Ramsey (2002) found that 17 of the 34 males convicted of first-degree murder killed female intimates even though wife killing accounted for only 14% of all homicides during this same period. In 1889, four men convicted of murdering their wives or lovers were hanged in one day. Ramsey states that men who were streetwise and tough were less likely to be viewed as misaligned with masculinity norms. They were more likely to be spared the death penalty than domestic offenders who shared a heavy reliance on alcohol and the meager earnings of women.

The rise of the modern family.

According to Calhoun (1919), as men left the home for employment, such as trainmen, laborers, business men, they could not keep up with affairs of the household, such as childrearing. Paternal prestige waned as women took up the slack. The effect was a change in the dynamic of the family. It ceased to be a formal group, but instead emphasized individuation. Fathers, who lost their sense of accountability for their wives and were deprived of a sense of earning power over their children who were compelled to school or work, lost a sense of control and obligation to the family. They tended to desert their families and subsequently left the state with full responsibility.

Furthermore, Calhoun (1919) states that the desistence of the family as the arbiter of life resulted in the individual the new social unit. The liberal democratic process did away with the importance of blood relations of several generations under a ruling head and established entirely independent families built around the personal independence of the husband and wife. The entire burden of securing success of marriage and family life fell upon the capacities of two persons. American marriage became a union of two people and not an alliance of two families. The change corresponded, according to Coontz (1988), with the perception that a woman's body was her personal property. In law, for example, the age of consent was raised and the severities of punishment for rape increased thereby making people recognize that a woman should have the right to control her own body.

In Calhoun's (1919) view, the new view promoted the family's obligation to society rather than family. The state belonged to an age of civilization while the family was atavistic. And energy was being turned toward self-gratification rather than the home. The interests of the individual were detached from the home and a diminished willingness to sacrifice for the welfare of other family members diminished.

Calhoun (1919) further describes the simultaneous increase in power of social institutions. Under the old paternalism, matters were handled within the family and did not disturb the economic balance of society, especially since children did not have to leave the home to work or attend school. But as soon as the new family left the home for schooling and work, society saw how many were unfit for parenthood and began to realize the need for community care.

As family cohesion weakened, society had to assume a larger parenthood role. Family courts began springing up as the influx of immigrants into the cities corresponded with increasing crime. In the early 19th century in New York City, for example, Igra (2000) describes how women used the Domestic Relations Court to seek financial support from husbands who deserted them. This court was designed as a collection agency for economic marital conflicts and was intended to protect taxpayers' pocketbooks. The typical complainants were poor, and courts that could force husbands to pay support could thereby prevent the family from becoming dependent upon welfare. Women had to "earn" their wins in this court. Whenever possible, the court availed itself to women's free labor by requiring them to expend the time in tracking down and monitoring delinquent husbands as proof that the women actually were in dire need of court assistance.

In Philadelphia around this same time, Levenstein (2003) asserts that women, who were the most common complainants, could avail themselves to the family court by bringing civil suits in one of three ways. Unmarried women sought financial support from the fathers of their children (which was defined as criminal and handled by the criminal division); married women sought financial support against their husbands (considered civil and handled in the domestic relations division); and women charged assault and battery (considered criminal and typically brought by wives against husbands).

For Levenstein (2003) women often had to make a decision whether to seek support, thereby leaving them without protection from violence, or press criminal abuse charges and potentially be left without financial support of their husbands who were

sentenced to jail. The choice of intervention was often contingent upon the woman's level of desperation. Since the outcomes of assault and battery were so unpredictable, due to the lack of policy guidelines for judges, it was usually the most severely abused women with nowhere else to turn who pushed for criminal charges against their husbands. And the most destitute women typically pressed for financial support from the courts since a court order could make a positive difference. For employed women, few options existed since a financial support court order could not compensate for lost pay due to missed work days. The larger social environment also influenced women's legal recourse. For example, in New York City, Ramsey (2002) describes how women frequently chose to charge non-support rather than assault because the legal community considered the former more seriously.

The state's focus on non-support as the greater urgency was, according to Pleck (1987), due in part on reformers' interest in reshaping the immigrant and lower-class family along middle-class lines by restoring a husband's authority in the home through urging wives to become more subservient, compliant, and economically dependent. Gordon (1988) states that efforts to reform the family were also made through threatening, cajoling, jailing, and making home visits. Social workers attempted to quell violence in the home by influencing battering husbands.

Men, according to Gordon (1988), were rarely willing to meet with their caseworkers and were defensive about their own behavior. In search of any forum in which to influence troubled families, social workers then turned their focus on those most open to influence: the women. Woman-blaming became pervasive as workers realized that they could influence these clients. Social workers placed with women the

responsibility for getting along with a violent man. Social workers even attributed women's complaints against their husbands as the result of infantile blaming, a denial of adult responsibility, and masochism.

The Modern Family

George (2002) states that, in the 20th century, the macho and violent male portrayed in media and film images became even more dominant than previously described. Conversely, the feminist conception of violence by men against female partners became rooted in the concept that domination and social control by men over women were legitimized in patriarchal ideology. The women's liberation movement of the 1960s, George asserts, attacked and challenged societal expectations that women ought to defer to the needs of spouses and children as part of their roles as wives and mothers.

Violence in the family, however, did not cease. According to Mintz (1991), child cruelty captured the attention of radiologists and pediatricians who were finding bone fractures and other physical trauma in children. Concerns about children once again preceded those of women. State legislatures strengthened penalties for domestic violence and sexual abuse after the shock of reports of abuse against children, wives, and the elderly. As a result of a new focus on family violence at the end of the 1960s, women's groups established the first shelters for battered women and children.

The role of the family was again evolving in terms of redefining the nature of the nuclear family. The husband was no longer defined as the head and master. State legislatures could no longer designate one form of the family as a preferred form. Courts

responded to questions about divorce and child custody by avoiding issues of fault or moral fitness (Mintz, 1991).

Mintz (1991) adds that the transformations in family law have been characterized by two seemingly contradictory trends. First, courts have modified or struck down many traditional infringements on the right to privacy. Second, courts have permitted governmental intrusion into areas traditionally regarded as bastions of family autonomy. The link of these contradictions was a growing sensitivity on the part of the courts and the state legislatures toward the individual, even when family privacy is at stake (Mintz, 1991). The ironic effect of legal decisions has been a gradual erosion of the traditional conception of the family as a legal entity. Earlier law was used to reinforce relationships between spouses and parents and children, but the current trend emphasized separateness and autonomy of family members.

Ironically, according to Mintz (1991), the heightened judicial concern with protecting individual privacy has not meant a withdrawal from private affairs by courts. Courts have been willing to mediate disputes between family members where in the past, judges tended to subscribe to a tradition of noninterference in the family's internal functioning except in extreme circumstances on the grounds that legal intervention would embroil the courts in endless disputes and that legal intervention would be futile or counterproductive.

Current Issues

During the 1970s, the battered women's movement influenced changes in criminal justice responses to domestic violence. The police were unwilling to arrest offenders, and prosecutors were reluctant to accept, cases where evidentiary problems

plagued successful conviction. As described earlier, domestic courts took up the slack of the criminal courts where domestic disputes were concerned. The victim, and perhaps the children of the parties, was often the only witness to the abuse. Goolkasian (1986) notes that documentation of prior abuse, such as medical reports, police reports, photographs, or bruises was nonexistent. Before mandatory arrest laws, police responses to domestic violence mostly consisted of temporarily separating the conflicting parties. The trend toward soft policies, such as mediation and crisis intervention, took primacy in police tactics.

The Influence of Research on Domestic Violence Policy

In the late 1970s to early 1980s, feminists' cries for criminal justice interventions, along with the following events, culminated in arrests as the standard responses to violence in the home. In 1979, the New York City Police Department agreed that it would make arrests in domestic violence cases as it did in other cases of violence. And Tracy Thurman won a \$2.6 million verdict against the police in Torrington, Connecticut, which according to Mills (2003), affirmed the "importance of the police to provide equal protection over the ideal of family solidarity—of the law enforcement method over the social work approach" (Fyfe, 1996, p. 185).

The event that perhaps had the most large-scale and long-lasting influence on arrest as the new proper response to domestic violence was the Minneapolis Domestic Violence Experiment. This research provided the major impetus for policy changes in police procedure across the United States. Despite the admitted limitations to the original study, its conclusions were widely promoted by the authors. In response to this study, the

U.S. Attorney General recommended that arrest become the standard response to misdemeanor domestic violence cases.

Arrest studies.

The Minneapolis Domestic Violence Experiment (MDVE) facilitated policy changes in police procedure across the United States. A major finding of this study was that arrest significantly reduced recidivism in misdemeanor domestic violence cases, compared to police advisement (including mediation on the scene) and separation of the offender from the scene for at least eight hours (Sherman & Berk, 1984). In response to this study, the United States Attorney General strongly recommended that arrest become the standard response to misdemeanor domestic violence cases (Goolkasian, 1986). As gatekeepers to the criminal process, victims again could determination whether to institute formal proceedings against batterers by deciding whether or not to involve law enforcement. But once the police arrived, the victim no longer controlled the arrest decision. The following studies are summed in Table 3.1.

In 1984, Sherman and Berk published a landmark study, known as the Minneapolis Domestic Violence Experiment (MDVE), which was a randomized experiment measuring the deterrent effects of three police responses to domestic violence. The experimental design applied to all misdemeanor domestic assaults where both the suspect and victim were present when the police arrived. Three police responses were randomly assigned to officers who agreed to participate in the study. The three police responses were: arrest, separation based on the officer's directive to the suspect that the suspect leave the scene for eight hours, and some form of advice including mediation. Based on victim interviews and official reports collected in the six months

following the police intervention, Sherman and Berk found that arrest reduced repeat occurrences of domestic violence by a statistically significant amount. The second police response, separation, contributed significantly to the highest rate of recidivism. The third response, mediation, had no statistically significant effect on recidivism.

Following this study, five additional studies were conducted to replicate the experimental design of the MDVE. In these studies, researchers similarly randomly assigned police officer responses to misdemeanor domestic assault and measured recidivism through official data and victim interviews. Elements of the designs are indicated in Table 3.1. The results of these studies did not wholly concur with the MDVE findings that arrest alone significantly reduced recidivism.

Unlike the Minneapolis study, the Omaha replication study (Dunford, Huizinga & Elliot, 1990) found that arrest had no significant effect on recidivism when compared to mediation and separation. Based on the official data (arrest and complaint reports), arrest had no more effect on deterring future arrests or complaints than did separation or counseling. And victims whose partners were arrested were no less likely to experience repeated violence from that partner than did victims whose partners received a separation or mediation disposition from police.

The Milwaukee study (Sherman & Smith, 1992), however, found that repeat violence was significantly higher among black, unmarried, and unemployed subjects regardless of type of arrest (full (held on average 11 hours) or short (held on average 3 hours)). Future battering was also more likely if the suspect had engaged in domestic violence during the previous year. Sherman and Smith further found that short arrest had an immediate deterrent effect on the frequency of repeat violence. Short arrest's initial

deterrent effect, however, disappeared after 30 days since a significant increase in criminal behavior followed in the following 30 days. The Milwaukee study refuted the idea that mandatory arrest policies create long term deterrence, at least in inner-city poverty areas like Milwaukee's.

The Dade County findings (Pate & Hamilton, 1992) indicated that arrest alone had no significant effect on future violence. But as an interaction effect with employment of the suspect, arrest had a significant deterrent effect among employed suspects while arrest led to a significant increase in subsequent assaults among unemployed suspects. Pate and Hamilton suggested that the formal sanction of arrest was "mediated by the informal sanctions implicit in employment status" which ultimately "raise(s) serious concerns about the appropriateness and efficacy of universally mandated or preferred arrest for misdemeanor spouse abuse" (p.695).

In their Charlotte, North Carolina study, Hirschel and Hutchinson (1992) found that arrest is not a statistically more effective deterrent to repeat abuse than advising or issuing a citation for a later court appearance. Instead, the authors found that the strongest predictors of recidivism were measures of prior criminal activity, such as a local felony or misdemeanor record, a state felony record, or prior non-traffic arrests within the preceding five years. Offender-related variables, such as race, age, marital and employment statuses also were not statistically associated with recidivism. Hirschel, et al. concluded, "the hope that arrest alone could contribute to the solution of this serious problem is unfulfilled" (p. 117).

The Colorado Springs experiment (Berk, Campbell, Klap & Western, 1992) found, contrary to the findings from the Milwaukee study (i.e., arrest increased repeat

violence among unemployed and unmarried suspects), no support for the claim that arrest leads to increased violence for “bad risks” (unemployed and unmarried suspects). For suspects who were employed, not being arrested increased the odds of increased violence. The results, therefore, partially supported the MDVE. However, Berk, et al. warned against making sweeping policy decisions without considering other variables (e.g., income) which were omitted from the analysis.

The five studies that replicated the MDVE did not fully support arrest as the most effective police response to categorically reduce domestic violence recidivism. The Omaha, Nebraska (Dunford, Huizinga & Elliot, 1990) and Charlotte, North Carolina (Hirschel & Hutchinson, 1992) replication studies found that arrest was not a more effective deterrent to repeat abuse than police advisement, separation, and court citation. In the Milwaukee, Wisconsin study (Sherman & Smith, 1992), the researchers found that repeat violence was significantly higher among black, unmarried, and unemployed offenders, for suspects who were arrested and held for either three hours (short-term) or 11 hours (long-term). This study refuted the idea that mandatory arrest policies created long-term deterrence, at least in inner-city poverty areas like Milwaukee’s. The Colorado Springs experiment (Berk, Campbell, Klap & Western, 1992) supported the findings that arrest may lead to increased violence only for “bad risks” (i.e., unemployed and unmarried suspects).

Felson, Ackerman & Gallagher (2005) analyzed the 1992 to 2002 NCVS (National Crime Victimization Survey) data and found no evidence of a deterrent effect for arrest of misdemeanor domestic violence, but found that the reporting of abuse itself deters offender recidivism regardless of whether an arrest results. They suggest that the reasons

for the deterrent effect of reporting domestic violence to the police may be the realization of the costs of further violence in terms of the stigma resulting from a visit by the police for domestic violence as well as the greater potential for arrest if they re-offend.

Domestic offenders may be cognizant of the potential shame associated with their behavior before they even engage in offending. The authors did not find that arrest was a stronger deterrent for an offender with a greater stake in conformity. This research poses yet another challenge to the efficacy of mandatory arrest laws, at least for specific deterrence.

Table 3.1: Domestic violence deterrence studies

	Minneapolis, Minnesota (MDVE)	Omaha, Nebraska	Milwaukee, Wisconsin	Dade County, Florida	Charlotte, North Carolina	Colorado Springs, Colorado	National Crime Victimization Survey
Dates of data collection	1981-1982	1986	1987-1988	1987-1989	1987-1989	1987-1989	1992-2002
Independent Variable	1.arrest 2.advisement 3.separation (order to leave for 8 hrs.)	1.arrest 2.mediation 3.separation (order to leave for 8 hrs.)	1.full arrest-held avg. 11 hrs. until bail paid 2.short arrest-held avg. 3hrs./bail 3.police warning	1.arrest 2.no arrest	1.advise & sometimes separate 2.issue citation to offender to appear in court 3.arrest	1.arrest with emergency protection order (EPO) 2.EPO w/crisis counseling for suspect 3.EPO only 4.restore order at scene	1. incident not reported 2. incident reported & arrest made 3. incident reported & no arrest made
Sample	314 police responses	330 police responses	1,200 cases in 4 districts with the most domestic violence reports	907 cases	686 cases	1,658 suspects	2,564 victims of abuse by spouses, ex-spouses & other intimate partners
Collection methods	1.official data 2.victim interviews (bi-weekly for 6 months)	1.official data (new arrests/complaints) 2.victim intvws. (2x over 6 mos.)	1.hotline data (411 repeat offenders indicated) 2.victim interviews (2x over 6 mos.)	1.official data 2.victim interviews (2x over 6 months)	1.police records 2.victim interviews (2x over 6 months)	1.police records 2.victim interviews (2x over 6 months) (not used in analysis)	Secondary analysis of victimization data
Dependent variable(s)	1.offense or arrest report 2.victim report of actual or threatened assault or prop. damage	1.arrest for any crimes by same suspect and same victim 2.victim report of repeat violence or fear of injury	1.offense or arrest report for domestic violence against both the same & different victims	Aggravated battery against same victim	Arrest for any offense on same victim	Rearrest of suspects for domestic violence on same victim	Repeated intimate partner assault
Findings support MDVE?	-----	No	Partially-short arrest reduced recidivism for 1 st 30 days after incident	Partially-deterrent was dependent upon type of offender	No	Partially-arrest deterred employed suspects	No

Ford and Regoli (1992) applied the MDVE design to prosecutors in misdemeanor domestic violence cases (see Table 3.2). They randomly assigned prosecutor treatments to determine whether the treatments deterred recidivism both before case disposition and six months after disposition. A major finding of this study indicated that any prosecutorial action on a case (i.e., accepting charges and proceeding through an initial hearing in court) significantly reduced by at least 50% the chance of further violence within six months of the time a case was settled, regardless of the type of case disposition (dismissal, acceptance of diversion agreement, conviction, not guilty finding).

Table 3.2: Indianapolis prosecution experiment

Dates of data collection	1986-1987
Independent Variables	1.drop permitted (victim decides whether to continue prosecution) 2.pretrial diversion to counseling program upon which successful completion means charges would be dropped 3.prosecution to conviction with prosecutor's request for counseling as a condition of probation 4.conviction with sentencing (fines, probation, jail, & other traditional sanctions)
Sample	678 cases of heterosexual (male offender/female victim) couples
Collection method of recidivism data	1.official records 2.victim interviews 3. victim responses to the Conflict Tactics Scale
Dependent Variables	1.rearrest 2.repeat violence on same victim not resulting in arrest

Additionally, regarding the drop permitted treatment, those victims who were permitted to drop charges and actually did drop them were significantly more likely to be battered than women in the other treatments. On the other hand, victims who were permitted to drop the charges but remained committed to the prosecution of the batterer had a less than 10% chance of being battered again within six months of settlement.

Braithwaite and Daly (1998) suggest that the mere issuance of an arrest warrant may compel employed suspects to seek treatment, thereby promoting the principles of

parsimony and reintegration. Prosecutors may therefore hold their decision to intervene in abeyance if the suspect has successfully completed a prescribed intermediate intervention. Successful completion would mean dismissing an active warrant, whereby failure to complete a prescribed intervention could mean that the prosecutor enforces the warrant and processes the suspect's case through disposition.

According to the Domestic Violence Enforcement Pyramid (Braithwaite et al., 1998), a warrant issued for an offender will precede a community conference rather than an arrest, under certain conditions. If imprisonment of a violent abuser offers more protection to the victim's republican liberty, or dominion, than doing nothing, then the abuser should be imprisoned.¹⁶ On the other hand, the community conference provides a forum, comprising the victim, offender, and their families, in which both sides discuss the harm caused to the victim. The offender's family can further communicate shame to the offender.

The community conference approach may be tailored to the exigencies of the relationship and violence more readily than mandatory arrest policies. For those offenders who continue the abuse after the conclusion of the conference, imprisonment may result. The point is that the arrest warrant acts as an inducement for law abiding behavior, rather than as an instrument of "deplorable policy" (p.163).

¹⁶ The Domestic Violence Enforcement Pyramid provides ascending interventionist responses as the lower responses fail to be met by domestic violence offenders. The responses, in ascending order, are: self-sanctioning with conscience, imagined social disapproval, confrontation with family disapproval, police called and warrant issued, first community conference, second community conference with escalated interventions, third community conference with further escalation of intervention, arrest, and imprisonment (p.160).

Battered Men

The irony of the women's movement in domestic violence was that battered men were pushed to the margins. Although battered men have been acknowledged in the historical record (George, 2002), mainstream society has either ignored or continued to ridicule the male subjected female domination. Out of shame or perceived violations of male role norms, men may be reluctant to report assaults by female partners as crimes. Physical and verbal abuse have guaranteed women's strength in their dealings with their husbands, but also have had the effect of elevating women's sense of control when summoning the criminal justice system.

When it comes to intimate abuse, Mills (2003) claims that women are far from powerless and seldom, if ever, just victims. Both men and women have been found to engage in violence in their intimate relationships (Straus, 1977; Caetano, Schafer & Cunradi, 2001; Buzawa & Buzawa, 2003). In fact, about 835,000 men are reported to be physically assaulted by an intimate partner annually in the United States (Tjaden & Thoennes, 2000).

Archer (2000), who conducted a meta-analysis of sex differences in physical aggression of heterosexual partners, found that although both sexes view acts of physical aggression toward a partner more negatively when the aggressor is a man, women who are younger (14-22 years) and dating are more likely to be physically aggressive, and use such acts more frequently, than males. Males were more likely to be physically aggressive in older (23-49 years) and married (or cohabitating) samples. Archer indicates that younger women may perceive themselves as having greater control in a relationship and view aggression as less risky since they have the ability to leave their partner. This

finding, however, contradicts other research which suggests that the highest rates of violent victimization are experienced by women aged 12-29 (Heymann & Petrie, 2000).

Moffitt, Robins and Caspi (2001) found that negative emotionality (nervousness, vulnerability, proneness to worry, emotional volatility, and inability to cope with stress) in either the victim or perpetrator, or both, predicted risk for abuse in young adult couples. Women and men did not differ significantly on negative emotionality, and women (with an average age of 21) were slightly more likely than men (average age 22) to have abused their partners. When either partner was high in negative emotionality, there was an increase in his or her abuse. And when both partners were high in negative emotionality, the likelihood of mutual abuse increased.

4

PROSECUTORS

The professional role of the prosecutor has gone through a transformation in American history. Prior to the existence of the office of the public prosecutor, victims, and often offenders, controlled the flow of cases through the criminal justice system. Victims had status as being parties to their own cases and acted on their own behalves during the course of a prosecution. In the late 19th century, prosecutors gained the power to control the flow of cases into the criminal justice system. This power corresponded with a rise in discretionary decision making.

Brief History of Prosecution

The prosecutor's role existed in some form since the colonial period, although this role existed in a far less powerful capacity than today. No separate victims' rights movements existed in the American colonies, the Bill of Rights had not incorporated crime victims' rights (Cassell, 1994), and prior to the 1880s, case law had not yet established the primacy of the public prosecutor (Steinberg, 1984). Also, since the colonists believed that crime was an offense against the individual, rather than the society, the government should not actively pursue arrest and prosecution (Cardenas, 1986). Criminal cases, therefore, were initiated and often prosecuted by private citizens.

According to Cardenas (1986), before the American Revolution, the victim was the key decision maker in the criminal justice system as it existed. The victim did his own detective work or hired the sheriff to do it, paid for an attorney to draw up an

indictment, acted as his own counsel, and paid the jailer to house the offender.¹⁷ Private prosecutors, who were retained by wealthy parties in a case, would pay the justice's fees, attend pretrial hearings before justices and grand juries, organize witnesses' appearances, hire attorneys to plead cases (Steinberg, 1984), and sometimes themselves try cases (Cardenas, 1986). The number of private citizens' complaints therefore directly influenced the size of court dockets.

In the cities, such as Philadelphia and Baltimore, justices of the peace (or aldermen) controlled the flow of criminal cases. According to Steinberg (1984), justices of the peace were the primary arbiters of low-level criminal offenses. They typically heard complaints, brought cases before grand juries, set bail for offenders, and decided case outcomes. According to Cole (1999), justices of the peace in Baltimore issued peace bonds. These bonds were financial sureties used to guarantee an offenders appearance in court and desistance from criminality during the duration of a case. In the event that the offender violated the terms of the bond, the bond would be forfeited to the justice. In Pennsylvania, according to Steinberg (1984), justices of the peace relied on peace bonds in lieu of criminal sanctions as a form of arbitration in minor criminal matters.

The Decline in Private Prosecution

The decline in private prosecution in the early 19th century was attributed to a convergence of events that culminated in the rise of the office of the public prosecutor with its attendant increase in discretionary power. Jacoby (1980) states that perhaps the single most influential factor in historical forces shaping the prosecutor's role was the development of local government in rural and agrarian places in the late 18th century.

¹⁷ If the offender was indigent and could not therefore pay restitution, the crime victim could keep the offender as a servant or sell the offender's services over a period of time which was determined by the court.

McDonald (1979) adds that the emergence of an industrial society, the advent of large urban areas, an increase in crime, and the mobility of the American population.

In the cities, a great influx of people into urban areas created a marked rise in the crime rate and a corresponding decrease in community kinship (Cardenas, 1986).

Toward the middle 19th century, private prosecution became seen as an ineffective means of law enforcement against breaches of public order (Steinberg, 1984) since citizens could no longer rely on fellow villagers to assist in pursuing criminals (Cardenas, 1986).

Lawmakers became further increasingly disappointed with the ineffective way in which citizens could enforce the law to quell breaches of public order in these areas. One significant result of the riots and gang violence of the 1840s and 1850s was the professionalization of the police force with its newly established power of arrest.

(Steinberg, 1984).

Private prosecution became increasingly viewed as encouraging vindication of personal grievances (Comment, 1955-56), especially since justices of the peace, whose fees depended upon citizens' case initiations, routinely accepted cases without discerning the truthfulness of the charges alleged (Cole, 1999; Steinberg, 1984). Ramsey (2002) suggests that legislators realized the lucrative potential in taking control of cases. Fees already collected by justices, such as case bail and restitution, could be collected by the city.

Another result from justices' failure to dismiss cases was that courts were being overwhelmed with private litigation. Grand juries, to whom justices were required to return all cases not previously settled for formal indictment, often dismissed cases as petty and frivolous (Steinberg, 1984). According to Steinberg, between 1844 and 1854,

62% of assault and battery case, the largest percentage of all cases in Philadelphia, were the dismissed by grand juries.

The constituents of the justice of the peace courts were overwhelmingly poor and the least empowered (Parker, 1997). Grand jurors, judges, and journalists marveled at the ease with which those who were excluded from public life could make use of the system. In Philadelphia in the late 1840s, authorities were concerned that the “miserable outcasts of society” were abusing their rights to complain against each other, and judges discouraged abused men from initiating prosecutions for assault and battery by describing the use of the law a process for women and children (Steinberg, 1984).

Ultimately, the increasingly popular notion that crime was not a private concern between the aggressor and victim but a societal concern influenced criticism toward allowing the victim to control prosecution decisions (Cardenas, 1986). According to McDonald (1979), the result was an increased pressure on public officials to enforce the laws. The increasing urbanization transformed the whole criminal justice system from small-scale, rurally based, and privately initiated prosecutions to large-scale, urban bureaucracies in which criminal prosecutions were initiated on behalf of the state by full-time, publicly funded professionals who must dispose of large caseloads within the restrictions of an extensive legal procedure. As Cardenas (1986) noted, the victim’s right to compensation from an offense became incorporated into the civil law. The criminal law’s focus was no longer that the victim be made whole, but rather the offender’s debt to society.

The Rise of the Public Prosecutor

Since district attorneys' fees were paid by public coffers rather than private parties (Steinberg, 1984), they had no perceived private interest in the outcome of a prosecution (Cardenas, 1986). Unlike the justices of the peace who stood to make money from settling cases, public attorneys could remain neutral (Steinberg, 1984). As representatives of the state, public prosecutors could use their power to ensure justice for the innocent and punishment for the guilty, while crime victims were simultaneously pushed to the periphery as witnesses for the state (Cardenas, 1986).

According to Jacoby (1980), one event that seemed to singularly increase the stature and power of the public prosecuting attorney resulted as an outgrowth of the wider elections occurring for multiple public offices between around 1820 and the Civil War during the Jackson presidency. In Jackson's administration, greater numbers of public officials were popularly elected and the concept of decentralized government strengthened. The appointment of the prosecuting attorney by the governor gave way to elections and became the universal pattern in most states.

Steinberg (1984) states that although the prosecutor's power to drop cases was much more restricted than the justice's of the peace, the discretion that public attorneys gained from the abolishment of the justice of the peace office was significant. Prosecutors also took discretion out of the hands of the grand juries, petit juries, and private parties. Police officers and district attorneys eventually worked together to make initial screening decisions whereby they could channel some cases to court and dismiss others. Prosecutors' rise in power transcended determinations of how cases should be handled to how they could be disposed without trial.

Who are the Modern Prosecutors?

According to Fishman (1979), the field of law is rigidly stratified. Entry, professional mobility, and status level are all influenced by class origins, education, and job experience. In his study of Kings and Bronx Counties assistant district attorneys, Fishman found that prosecutors tended to enter the profession when other doors were effectively closed. According to Baker (1999) in his journalistic interviews of prosecutors, most were looking for a job in the legal field and couldn't find anything. Almost all finished school in the middle, not the top 10% academically, and did not make Law Review.

Fishman provides a hierarchical model of types of law professions. At the top are the Wall Street or Park Avenue law firms that employ over 100 attorneys and whose partners sit on boards of leading corporations and foundations and play key roles in the highest professional activities of the bar. Attorneys in these firms come from higher socioeconomic backgrounds and attended prestigious colleges outside of New York City for their undergraduate education and Ivy League law schools.

Below the largest law firms are the medium law firms that maintain an intermediate level of work, income, and prestige. They are often run by attorneys who left the large law firms. Below the medium firms are individual practitioners and small law firms.

Then there are the prosecutors. Fishman (1979) found that prosecutors' first employment choice had already limited their mobility chances and ultimate status in the profession. Their trial experience was not particularly transferable to representing corporate clients where counseling was neither more frequent nor useful for complex

civil litigation. Additionally, most litigation involving major corporate clients occurs in federal court, not state. Prosecutors in this sample thus tended to remain in the same stratum of the bar in which they began their professional careers. Although prosecutors in Fishman's sample did not view their tenure as part of a career in criminal justice, they tended to get locked into it. Nevertheless, according to one of Baker's (1999) interviewees, prosecutors need to win cases in order to keep the job and move then on to "bigger and better" things as a "real" lawyer.

Prosecutorial Discretion

Since no legislature that defines criminal conduct can incorporate all of the behavioral and attitudinal nuances in its statutory provisions (Rosett & Cressey, 1976), discretion provides a framework of law and local economics for the prosecutor to choose among alternative courses of action (McDonald, 1979). The wide variety of situations that arise in the course of an offense, including differences in the characteristics of particular offenders, forces legislators to proscribe conduct in broader than ideal terms (Miller, 1970). Policy informs discretion which is essentially the course of official conduct that a prosecutor chooses. Of course, the range of choices may be constrained by external influences (e.g., size of the jurisdiction, type of court structure, size of appropriated budget) over which the prosecutor has little or no control. McDonald (1979) states that the choice of which policy to apply is also shaped by personal considerations such as the prosecutor's own philosophy of law and his perception of his office's purposes in the law enforcement community

Davis (1969) suggests that where the law ends, discretion begins. Beyond the limits of the law, discretion may be either beneficence or tyranny: either reasonableness

or arbitrariness. Kleinig (1996) argues that this account of discretion is flawed. Public officials who mistreat citizens or fail to respect their rights as citizens are not acting with discretion. Discretion is not simply the capacity to make choices, but rather a prerogative to use judgment that is legitimately available to officials. To Kleinig, constraints are therefore built in to discretion. These constraints may derive from institutional, moral, and/or administrative norms and may be mutually supportive or in tension with each other.

Uniformity and Individualization

According to Johnson (2002), two imperatives of American justice that are often incompatible and in tension are the need to individualize case dispositions and the need to treat like cases alike in order to achieve a tolerable level of consistency, or as Rosett & Cressey (1976) refer, uniformity and diversity. According to Steinberg (1984, p.584), the notions of discretionary authority generally, and more specifically the imperative to treat each case “according to its individual characteristics” is as old as the office of the public prosecutor itself. The tension between uniformity and individualization may be characterized as administrative versus moral considerations.

Uniformity, in Johnson’s (2002) view occurs when similarly situated people be treated alike, according to the criminal codes that outlaw certain behaviors, universally seek punishment, and make the criminal behavior punishable under the law. Diversity demands that each offender be treated according to the deserved punishment, which incorporates the subdivision of offenses into grades in terms of their level of culpability or harm, a range of minimum and maximum punishments within the criminal code, and

treatment of cases to one of several outcomes, such as diversion, probation, incarceration, treatment, etc.

Johnson (2002) further proposes several sources of uncertainty regarding the consistent applicability of criminal statutes on behavior. First, although the prosecutor has the ultimate responsibility to charge in a case, many share in this decision: complaining victims and citizens, responding patrol officers, investigating detectives, witnesses, judges conducting preliminary hearings, grand juries determining whether to indict, and defendants who choose to end a case by either negotiating a guilty plea or going to trial. Secondly, an ambiguity exists regarding the circumstances surrounding bad acts from which crimes are defined. Prosecutors have to reconstruct history to discern what happened, not by direct observation, but by interpreting evidence. Finally, juries influence uncertainty because they can be unpredictable. Juries do not treat like case alike. These limits cast a shadow over the prosecutor's behavior at all stages.

Since prosecutors may never have all the information they need when deciding whether and how to proceed with a case (Byron, 1998), case information indicating increased uncertainty in obtaining a conviction at trial may decrease the probability of prosecution (Albonetti, 1986). The exercise of discretion may provide the prosecutor with a source of immediate control over case uncertainties and give the prosecutor the tool needed when negotiating obstacles during case processing.

In her study of 6,014 felony cases processed in Superior Court in Washington, D.C., Albonetti (1987) found that the probability of going forward with a case *decreases* under the following conditions: the presence of exculpatory evidence (i.e., evidence pointing to the exoneration of the accused), only one witness to the crime exists or the

witness is also the victim, the defendant is arrested at the scene of the crime (prosecutors' may believe that warrantless on-scene arrests may be the outcome of hasty police decisions), the defendant and victim are acquaintances, and the victim is viewed as provoking the offense. Albonetti also found that the only significant factor affecting the decision to go forward was when the victim and offender were strangers. Albonetti suggests that offenses between strangers fit the prosecutor's normal conception of crime. If the innocence and credibility of the victim is suspect, which may be when the victim and offender know each other, then the uncertainty of conviction may increase.

Albonetti (1987) concludes that uncertainty emerging from stereotypical perceptions of cause and effect influence the prosecutor's initial decision to go forward with a charge. Discretionary decisions, which are affected by this uncertainty, ultimately rest upon the assessment of the merit of a case, which is the probability of conviction. As Rosett and Cressey (1976) astutely note, the primary consideration for a prosecutor may be to begin with what punishment the accused deserves, and then ask whether the accused is guilty.

Charging Decisions

In Cole's (1973) view, the prosecutor's discretionary power is rarely either publicly recognized or defined by statute. The power to charge a crime may be the most powerful tool the prosecutor possesses for it is the point at which the prosecutor can tack on additional charges, dismiss charges, or charge for a lower offense than initially charged by the police. According to Davis (1969), the screening function begins with the prosecutor's decision about whether to bring charges and what charges to bring. Utz (1979) suggests that the decision to charge a crime balances upon many factors, such as

the facts of the case, policy regarding whether and which resources should be expended, politics regarding whether the prosecutor's credibility can be damaged, and ethics encompassing political orientation toward crime control responses and values embraced within an office.

Among the considerations surrounding the decision to charge a crime that Cole (1973) found in his ethnography of the Seattle, Washington prosecutor's office are: whether a backlog of cases exists in the office, whether the case may be embarrassing for the office, victim, or defendant, and whether the police conducted a proper and adequate investigation. Cole further remarks that although discretion is a formal power, it is exercised within an exchange framework of a bureaucracy.

Discussions about charging decisions and victim cooperation imply that the prosecutor has power over the victim's level of cooperation. In her study of sexual assault prosecutors, Frohmann (1997) found that prosecutors ascribed stereotypical characteristics of a neighborhood to the actors (i.e., victims and defendants who were often lower-class) who moved throughout the neighborhood, as well as the jurors who would judge the case (who were often middle-class). In this way, prosecutors could categorize actors, locations, and actions in determining whether these categorizations challenged or fit existing normative aspects of the behavior alleged. In other words, prosecutors could construct the victim's and defendant's levels of culpability in the crime. In those cases where the victim's behavior was constructed as inappropriate (e.g., she was out too late at night, was drinking in a bar, was a prostitute), prosecutors could justify case rejection on the grounds of insufficient evidence or the victim's

unwillingness to cooperate, thereby justifying rejection of a case that is believable, but in the prosecutor's perspective, unwinnable.

According to Jacoby (1980) prosecutors allocate resources in response to the external environment, such as those demands placed by the police, defense, and courts. Eisenstein and Jacob (1977) found that the nature of the courtroom workgroup (consisting of the prosecutor, defense attorney, and judge) profoundly influence discretion and ultimately the outcome of a case. In instances where the courtroom workgroup was stable, i.e., the group daily interacted with each other, negotiations among the workgroup tended to be less formal and more accommodating to the interest of each entity.

Relations with the Police

Utz (1979) concurs that more important than political context are the institutional relations between the prosecutor's office and other agencies of the county and city government. For example, the decision to initiate a prosecution is often still made by the arresting officer. And when the police decide which charges to levy, inconsistencies between probable cause for arrest and sufficiency of proof for purposes of prosecution become prevalent.

In Grosman's (1969) view, jurisdictions exist whereby the prosecutor is consulted by the police prior to laying charges, but such consultations are usually limited to charges involving major crimes like murder, complicated business violations where charges must be carefully framed, or cases that have gained substantial notoriety. Since police discretion dominates the initiation of a criminal prosecution, the prosecutor must place confidence in the competency of the officer. Eisenstein and Jacob (1977, p.54) agree

that the level of police investigative work “substantially affects the task of obtaining convictions. The police must collect evidence and identify witnesses. If they fail to do so, the prosecutor’s case is usually doomed.”

Grosman (1969) asserts that the prosecutor may also fear being manipulated by the police or the police’s informant. Police may urge a plea negotiation where they have an emotional attachment to a particular case or desire to protect an accused informant. On the other hand, prosecutors must guard against police officers who behave outside of the limits of discretionary authority. According to Heilbroner (1990) in his account as an assistant district attorney in Manhattan, prosecutors were vigilant of “dropsy” cases where police officers would arrest offenders whom they had seen drop drugs from their person. This was a means to make charges stick, and were often the result of an officer’s lying. Heilbroner admitted that he suspected that the police often lied in these cases since the accused had no way to corroborate his own story. As a result, Heilbroner felt that he was being “co-opted” by the police.

The interviewees in the current study also expressed varying levels of tension with the police whom they encountered. One interviewee described the frustration at the police who often failed to collect valuable evidence pursuant to domestic violence calls. In one instance, a police officer did not take a statement from a child who was in the bedroom when the police arrived. When probed by the interviewee, the officer stated that the child’s statement would be hearsay and not admissible in court. This interviewee stated that, unless this police officer went to law school, the officer should not be deciding what hearsay is since some hearsay is admissible under the law.

Another interviewee also complained that the police did not typically take statements at the scene of a domestic conflict. Under state law, the paperwork required to be completed takes about two hours. It then takes about another half hour to get the victim's statement, and the responding officers must call a detective to get the statement. Since the police often do not call a detective, not statement would be taken. The interviewee considered these statements, also know as excitable utterances, extremely valuable since they are taken at the time when the victim is most likely to be truthful, i.e., prior to reconsidering her or his position with regard to the case.

The Decision Not to Prosecute

A feature of the American legal system is the discretionary power to refrain from enforcement when enforcement is clearly appropriate (Davis, 1969). Academics acknowledge that the discretion to not prosecute is more powerful than decisions associated with case processing because the decision to not charge or withdraw charges is typically not subjected to review (Davis, 1969; Rosett & Cressey, 1976). On a pragmatic level, discretionary power creates a means for the disposition of a large number of cases without trial, challenge, or confrontation (Grosman, 1969).

Perhaps one the greatest considerations not to prosecute concerns the level of the victim's cooperation. According to Stanko (1991), it is frequently the victim, not the facts of the case, seriousness of the crime, or dangerousness of the defendant upon whom the prosecutor focuses for the prediction of an assured conviction. Typically, prosecutors must contend with victims who do not want to prosecute when the evidence is strong enough to push the case onward, as well as victims who want to prosecute when the evidence is weak, the case is draining on resources, or the prosecutor deems that the

victim will not be credible to a jury if the case goes to trial. In Baker's (1999) journalistic account of prosecutors, one interviewee proclaimed, "Victims to most prosecutors are more of an obstruction, a thorn in the side. A large majority of prosecutors believe that their decisions are much more important than the stupid decisions that some victims would come up with about what needs to occur" (p. 80).

Miller (1970) states that one factor influencing the decision to dissuade victims from pursuing a case is when the collateral harm to the offender resulting from a conviction is substantial. Undue harm to the suspect results when the consequences of prosecution seems harmful in relation to the criminal conduct involved or when the suspect would suffer diminished social or economic standing. According to one of Baker's (1999) interviewees, the reasons behind some offenders' crimes should be taken into consideration, rather than just apply the law objectively. This prosecutor thought that punishment should be directed toward the more serious cases.

As an example of the collateral harm of prosecution on an offender, Grosman (1969) noted in his study of Toronto prosecutors a prosecutor who came in contact with young offenders. This prosecutor assumed the role of surrogate parent. According to the prosecutor, if a young offender came from a "bad" background, the prosecutor would remand the case for a period of time to see if the juvenile behaved. The prosecutor would then speak to the juvenile in the prosecutor's office by allowing the charges to hang over the young offender's head in order to "teach him a lesson." After this informal reprimand, the charges would be dismissed.

Miller (1970) states that the decision to not prosecute is also contingent upon the costs to the system. Costs include the loss of public approval of officials when the statute

alleged to be violated is unpopular, the suspect has a reputation in the community, or the implications of the offense would reflect adversely on the police or prosecutor.

Prosecutors must therefore balance the decision to prosecute against the loss of public respect for the office. As an example, the decision is often made to specify a less serious offense or fewer than the maximum number of offenses supported by the facts when the prosecutor believes that the probable effect on sentence will be minimal. This provides added leverage for guilty plea bargaining. The prosecutor can threaten to charge later if the suspect fails to accept the offer.

Prosecution of Domestic Violence

In order to gain control of complexity issues in domestic violence cases, prosecutors often consider the overt signs of an offense when deciding how to process a case. Evidence factors are regarded as highly relevant in charging decisions (Dawson & Dinovitzer, 2001; Ellis, 1984; McLeod 1983; Myers & Hagan 1979; Rauma, 1984; Rebovich, 1996; Schmidt & Steury, 1989). Many studies on prosecutorial discretion identify strength of evidence and seriousness of offense as primary determinants of charging decisions (Albonetti 1986, 1987; Miller & Sloan, 1994; Spears & Spohn, 1997; Williams, 1976). When evidence is lacking, a prosecutor may decide to recommend a quick resolution to the case, such as plea negotiation. This is especially salient since domestic violence cases often involve only two parties and no witnesses.

Evidence.

No universal agreement of what constitutes strong evidence exists in the domestic violence literature, however. Strength of evidence has been measured in the following ways: the existence of witnesses in addition to the victim (Dawson, et al., 2001; Ellis,

1984; Myers, et al., 1979; Rauma, 1984; Schmidt, et al., 1989); statements from victims (Dawson, et al., 2001); photographs of victim injuries (Dawson, et al., 2001; Rauma, 1984); transcripts of the emergency 911 call (Dawson, et al., 2001); and medical records (Dawson, et al., 2001; Ellis, 1984; Rauma, 1984). Seriousness of offense is measured as the degree of physical injury to the victim (Dawson, et al., 2001; Ellis, 1984; McLeod 1984; Rauma, 1984; Schmidt, et al., 1989) and the use of a weapon to inflict the injury (Dawson, et al., 2001; Schmidt, et al., 1989).

Victim cooperation.

Dawson and Dinovitzer (2001) also looked at victim's cooperation as an influence on prosecutors' decisions. They found that when a victim cooperates with the prosecution, the likelihood of prosecution is seven times higher than if the victim does not cooperate. Victims' ambivalence about prosecution and their role as witnesses have often discouraged prosecutors from taking action. Some battered women are reluctant to cooperate with prosecution because of their emotional attachment to the abuser, mistrust or lack of information about the criminal justice system, or the delay and inconvenience of court appearances. Or reluctance might stem from the batterer's threats of further retaliation for taking legal action (Goolkasian,1986). Victim cooperation, therefore, is paramount.

Prosecutors may deem relationships that have high levels of intimacy as indicative that the victim will not pursue prosecution. Level of intimacy has been measured by sexual intimacy at the time of the incident (Schmidt, et al., 1989) and the relationship of victim to batterer, such as marital status (McLeod,1984; Rauma, 1984) or cohabitation with the offender (Schmidt, et al., 1989). Prosecutors have claimed that

many women do not want to prosecute their batterers, but rather just make the violent incident cease.

In their study of Sacramento County domestic violence cases, Kingsnorth and Macintosh (2004) found that victim support for prosecution may be a function of the level at which charges are filed. Filing a case as a felony rather than misdemeanor or probation violation reduced the odds of victim support by 29%. The researchers attributed the lack of support for felony filings as a two-fold concern. First, victims' primary motivation for seeking formal intervention is to end the abuse rather than punish the abuser. Second, felony conviction imposes greater costs on offenders (e.g., longer sentences and increased fines) that may ultimately be transferred to victims and their children.

In their sample of 409 domestic violence case records in Milwaukee, Schmidt and Steury (1989) found that in 45% of the noncharged cases, victim wishes was indicated as the primary reason for not prosecuting. These researchers acknowledged that they did not know whether the victim's change of heart to follow through reflects the victim's true desire or the influence of the defendant or prosecutor. While prosecutors disagree about how much a victim's wishes should influence the decision to file charges, some prosecutors' offices who have succeeded in reducing case attrition agree that once a charge is filed with the court, the decision to go forward must rest with the prosecutor and not the victim (Smith, Davis, Nickles & Davies, 2001).

Other considerations.

The focus on punishing the offender may supersede the victim's interests when domestic violence is considered a crime against the state, rather than the victim (Buzawa

& Buzawa, 2003). Yet there is no indication that resources for domestic violence cases have increased because policies mandating prosecution are adopted. Domestic violence cases must compete with cases that command more urgent political responses (Buzawa & Buzawa, 1996) (e.g., drug offenses, terrorism) where offenders are considered highly threatening to social order. Political prioritization of criminal justice responses may also be given to cases where victims are viewed as innocent and respectable (Karmen, 1996), such as child victims.

The abundance or reduction of organizational resources may provide a strong impact on how cases within a jurisdiction are pursued (Rosett & Cressey, 1976). Prosecutor offices, often dealing with finite budgets, must decide how expeditiously their resources are to be expended. A filtering process thus operates to remove those cases which the prosecutor feels will not be passed on to the next level (Cole, 1973) since standards of proof become more exacting at successive stages of the criminal process (Rossett, et al., 1976). The standard of proof of a crime for an arrest (probable cause) is less stringent than the standard required to convict an accused offender (beyond a reasonable doubt). Prosecutors agree that the availability of resources has a definite impact on how domestic violence cases should be handled (Rebovich, 1996). The problem of limited resources is one of the reasons why prosecutors possess discretion in charging and one of the most compelling reasons for decisions to limit prosecutions to the most 'valuable' domestic violence cases (Ellis, 1984).

No-drop policies were adopted in prosecutors' offices in response to mandatory arrest policies. No-drop policies¹⁸ prevent victims from dismissing charges, and in some

¹⁸ No-drop prosecution policies were developed in response to victims' reluctance to cooperate in a prosecution strategy. Two types of policies exist. In the first (hard no-drop), prosecutors are encouraged to

instances, victims are advised that if they do not appear in court, a judge may assess court costs against them (Cahn & Lerman, 1991). However, Ford and Regoli (1992) acknowledge that even with no-drop policies, the victim retains control of the prosecution through a refusal to present oneself as a persuasive witness. In her experience as a prosecutor, Hanna (1996) recounted that, although her office adopted a hard no-drop policy, she rarely initiated contempt orders for abused women who refused to come to court. Hanna acknowledged that she frequently had difficulty reconciling her responsibility to prosecute with her concern that forcing victims to participate in the prosecution process would disempower them from responding to the abusive relationship on their own.

Prosecutors have also considered evidence-based prosecution, which is the current policy in New Jersey domestic violence prosecutions. Evidence-based prosecution is unique in that it proceeds as a homicide case. In other words, prosecution is based on a presumption that the victim will not testify for the state at trial. Therefore, prosecutors try to prove the charges without the victim's testimony. Examples of evidence that aid in the investigation and prosecution of a case are photographs (e.g., injuries, property damage, crime scene), physical evidence (e.g., weapons, alcohol/drug abuse, victim's diary, clothing, phone pulled from wall, animal abuse), eye witnesses, excited utterances by the victim, abuser's statements, and expert medical opinion (Markarian, 2003, July 16).

Smith, Davis, Nickles & Davies (2001) found that the batterers most likely to be prosecuted are those with prior records and involved in incidents where other forms of

pursue domestic violence cases regardless of the victim's wishes. In the second (soft no-drop), prosecutors have the option to drop a case, with sufficient justification, if a victim desires dropping the case (Mills, 2003).

evidence were available (cases with eyewitnesses, photos, and physical evidence). They found that evidence-based prosecution fit office practices better than no-drop prosecution, which may be considered expensive. In one of the sites they studied,¹⁹ the researchers estimated that each misdemeanor prosecution averaged \$1,000.

Victim empowerment and case processing.

Mills (1998) believes that criminal justice personnel should hear the victim's story and take into account her particular circumstances, while considering her empowerment as the most important goal of prosecution. This means that the victim should decide whether she would like to actively pursue arrest and prosecution or have state representatives pursue charges on her behalf and without her active participation. Although Mills does not explicitly define empowerment, some indices of empowerment she notes are: a victim's feeling of control over the case, the victim's feeling of alliance with the prosecutor, the victim's perceived ability to assert her own will, and the victim's belief that the court process can be used to improve the victim's relationship and avoid future incidents of violence. This last attribute most closely describes the goal of republican theory.

¹⁹ The research sites were San Diego, Everett, WA, Klamath Falls, OR, and Omaha, NE.

5

RESEARCH METHOD

This study has several objectives. The overall goal is to determine the extent to which New Jersey county prosecutors' attitudes toward their roles comport with the presumptions considered in the republican theory of criminal justice. This goal will be facilitated by several additional objectives. The first objective, to operationalize the latent presumptions of the theory, was designed as attitudinal scale statements. The questionnaire created to capture the domain of the theory contains five subscales and is called the Republican Theory of Criminal Justice (RTCJ) scale. It is accompanied by a previously validated Political Orientation scale (Wald, Owen & Hill, 1988) to determine the extent to which political values influence attitudes.

The process of operationalizing the concepts leads to another objective of the study, to empirically measure the theory. Although one of the authors, Braithwaite (1989), would prefer the qualitative method over the quantitative for an exploratory study, he does acknowledge the value of the quantitative method in determining specific phenomena. And since the presumptions of this theory were rather hazy, an explicit conceptual depiction was necessary to bring clear linkages between the concepts and actual practice of criminal justice practitioners, namely the prosecutors. Since no questionnaires measuring the republican theory of criminal justice have been found from the literature review, this survey instrument was developed based on the concepts previously discussed.

Another objective relates to validation. Validation of the survey refers to, broadly, determining whether the survey instrument is measuring what it purports to measure. In

other words, does the survey measure attitudes toward the republican theory of criminal justice, is it measuring some other concept or concepts, or is there another way to more adequately measure the theory? Validation of the survey includes several steps, both substantive and statistical. Part of validation includes recognizing limitations of the survey, including the generalizability of the results of the survey's responses to a given population.

Pre-testing the Instrument

Prior to mailing the survey to the prosecutor sample, it was provided to a convenience sample of 20 professors, doctoral students, and attorneys for comment. As this sample had an expertise in the methodology or the legal profession, their comments were recorded, considered, and those that provided a substantive contribution were included in the final instrument. The questionnaire was also reviewed by John Braithwaite who suggested scaling the Prestige variable and changing wording in the RTCJ scale (personal communication, June 27, 2004).

Administering the Survey

The Survey Sample

The population of New Jersey prosecutors was purposively chosen as they represent typical cases of a group charged with applying the criminal law against offenders. The New Jersey Attorney General's office also expressed interest in this study after I conducted several observations and interviews with the Mercer County's (Trenton) Domestic Violence Unit's chief prosecutor. Although New Jersey prosecutors may not be representative of the entire population of prosecutors in the United States, they can reasonably be considered a miniature picture of the entire population of prosecutors

(Shadish, Cook & Campbell, 2002). The results of this study may not be statistically generalizable to other jurisdictions in the United States, but they may be useful for describing how New Jersey prosecutors respond to promoting dominion as a desired prosecutorial goal.

The whole population of New Jersey county prosecutors (N=750) was surveyed. Surveys were mailed to each to be self-administered. Prosecutors' names and addresses were drawn from the *2004 New Jersey Lawyers Diary and Manual* located in the State Library in Trenton. The first mailing was sent to 814 prosecutors from this list in December 2004. The 2005 list was not published until February 2005. When the 2005 list was obtained, a cross check between both lists was made and names not appearing on the 2005 list were removed from the mailing list database created from the 2004 data. The 2005, and final sample frame, consisted of 750 prosecutors. Second mailings were done for nonresponders. The third mailing included either a reminder post card or email to those from whom an email address could be obtained. Of the New Jersey population, 23% responded (n = 176).

The Interview Sample

For this study, four prosecutors and one police officer were chosen to be interviewed. The sample chosen was a convenience sample. After the advance letter was mailed to prosecutors, several were verbally asked to be interviewed and most agreed to the interview. Once the data were analyzed, these prosecutors were again asked to be interviewed and several either failed to respond to the request or declined to be interviewed. Of those who still agreed, semi-structured face-to-face interviews were conducted. Each interview lasted between two and two-and-a-half hours.

Of those prosecutors who were interviewed, the following characteristics were found. The prosecutors' experience levels ranged from five to 25 years. Two worked in the Office of the Attorney General after beginning their careers as assistant county prosecutors. The other two worked in the same county offices where they began their careers. Two of the prosecutors were women. Both previously worked domestic violence cases and were chiefs of their respective domestic violence units in their offices. One currently works in the Office of the Attorney General, as mentioned, and the other now prosecutes sex crimes. Of the two prosecutors who did not work domestic violence cases, one currently handles arson, insurance fraud, and white collar crime cases. The other is in the Office of the Attorney General. Interestingly, two of the prosecutors were teachers before they became prosecutors. One was a New York City teacher, and the other worked in a New Jersey municipality.

The police officer who agreed to be interviewed had extensive experience with domestic violence calls prior to the enactment of the mandatory arrest law in New Jersey. This interviewee's responses were used to help determine the extent to which police officers' responses to domestic violence calls comported with the republican theory of criminal justice. One of the authors of the theory, Braithwaite, has stated elsewhere that policies that impose mandatory criminal justice interventions, at the expense of the interests of victims, can ultimately harm victims (Braithwaite & Daly, 1998). As will be seen, the officer's behavior when responding to domestic violence calls prior to the institution of mandatory arrest laws indicated a sense of compassion for the needs for both victims and offenders with a simultaneous strong conviction toward protecting the victim.

All of the interviewees' responses were intended to provide further insight into and context surrounding their attitudes toward victims and offenders. For instance, the arrest studies described in Chapter 3 did not provide the sense of frustration police officers likely felt when they were unable to stop or prevent violence in the home. As Fyfe (1996) claims, police officers often see themselves as champions for the victims.

Survey Organization

The survey is divided into sections (see Appendix A). Section A of the questionnaire consists of Likert-type statements with seven response points from “*strongly disagree*” to “*strongly agree*.” Statements 1-52 were designed to capture the content domain of the republican theory of criminal justice. The questionnaire thus created is the Republican Theory of Criminal Justice (RTCJ) scale.

The Political Orientation scale (questions 53-61) is intended to measure the extent to which a respondent is either conservative or liberal in relation to some phenomenon. This instrument was borrowed from a previous study by Wald, Owen and Hill (1988) which is a ten-item, five-point scale that measured the role of churches in influencing political attitudes.²⁰ The resulting moral conservatism scale in this study had a reported alpha of .80. In the current application of this scale to the prosecutors, one item was omitted from the survey as it appeared anachronistic. The omitted item stated, “Local governments should be allowed to ban books and movies that they think are harmful to the public.” Thus, prosecutors received a shortened nine-item scale. The scale was

²⁰ The major finding of this study was that a strong association existed between the theological climate (i.e., conservative or liberal) within a congregation and the political views maintained by church members. The researchers surveyed only Protestant churches in a small geographical area (Gainesville, FL), and the results did not support the self-selection hypothesis that individuals choose to attend a church based the congruence between their personal theology and the environmental theology. Rather, the choice of church membership is based on more practical conveniences such as family tradition, locality, or the appeal of a particular minister, and the adoption of the tenets of the theological climate are ultimately due to group consensus.

further extended to seven points, but item wording, although retained in its original form, was rather problematic, which will be discussed later.

The following table indicates the questions of in the survey that correspond to their respective construct.

Table 5.1: Survey organization

Scale	Corresponding items	Number of items in scale
Republican Theory of Criminal Justice (RTCJ)		
Parsimony (P)	a3, a10, a12, a15, a18, a23, a26, r29, a37, a39, a45, r46, a50, a52	14
Checking of Power (CP)	a2, a17, a21, a22, a33, a34, a35, a40, a41, a42, a49	11
Reprobation (RP)	r1, a6, a7, a13, a19, a25, a27, a32, a36, a43, r44	11
Reintegration (RT)	a5, a8, a9, a14, a30, a31, a47, a48, a51	9
Dominion (D)	a4, a11, a16, a20, a24, a28, a38	7
Political Orientation (PO)		
Conservatism (C)	a55, a56, a57, a60	4
Liberalism (L)	a53, a54, a58, a59, a61	5
Priority (P)	ba-bp	16
Specialization	c	n/a
Objective (O)	d1-d17	17
Demographics	E-M	n/a

The second section, B, contains Likert-scale items measuring attitudes toward the priority of specified criminal case types. The range of responses was from “*least priority*” to “*most priority.*” The third section, C, contains categorical measures of the types of cases each prosecutor handled in the past year. Prosecutors were asked to choose from the list in section B. The fourth section, D, contains Likert-scale items measuring the importance of specified work objectives with a range from “*not an objective*” to “*very important objective.*” This scale was borrowed from Johnson’s (2002) study of Japanese prosecutors. However, Johnson used the items only for

descriptive purposes. Here, the scale will be analyzed for its reliability and validity. The last section of the survey measures demographics.

Race, gender, marital status, political orientation, type of county, and domestic violence prosecution experience are categorical measures. Year born, length of time working as a prosecutor in New Jersey, and total length of time spent prosecuting domestic violence are continuous variables.

Survey Variables

Demographics

Social science theories typically deal with aggregated behavior of people (Babbie, 1998) at a level that can be generalized across classes of that behavior. Classes are defined by variables. The nature of the relationship between variables lies at the heart of description of social science (Babbie, 1998). Social scientists are further interested when a given type of behavior is likely to occur. The demographic questions asked in this study are those typically sought in survey research to describe behavior (Bachman & Schutt, 2001).

Political Orientation

Although conventional thinking assumes a bipolar political orientation continuum with liberals at one end and conservatives at the other, Kerlinger (1984) asserts that political attitudes are indicated through his criterial referents theory. The theory states that political orientations are either liberal or conservative and these attitudes are not correlated with each other. What is relevant for one individual or group may not be salient for another. Liberal and conservative orientations therefore do not exist on the

same continuum. Political orientation will be measured according to prosecutors' scores on the Conservatism-Liberalism scale developed by Wald, Olson and Hill (1988).

Case Priority

When prosecutors determine that a matter needs further attention and have interpreted the case in terms of the parameters of their authority, decisions about priority must be made, such as what resources should be invested in the case; whether the case is worth pursuing at trial, or whether lesser charges should be offered in return for a plea. The availability of time, money, and personnel may be the primary considerations here. These considerations, which may be further constrained by organizational goals, moral beliefs, and/or administrative norms, help to guide prosecutors in determining how to prioritize cases (Kleinig, 1996).

A relationship case may be denigrated by a prosecutor's office because it does less violence to the public order and may therefore be perceived as belonging in family court or requiring other diversion (Buzawa & Buzawa, 1996). In their study of prosecutors and corporate crime, Benson, Cullen and Maakestad (1990) found that the enormous effort against drugs has sapped resources and enforcement, overloaded the system, and made it difficult to respond adequately to other types of crimes. Competing demands for more politically important crimes may therefore take priority. The researchers suggested, "prosecutors' reactions to corporate harms are largely shaped by factors deeply rooted in American legal culture: harm and blameworthiness" (p.362). The greater the harm and number of victims involved, the greater the reason to investigate. As has been discussed, domestic violence has been legally tolerated, if not

condoned through history. Prosecutors may therefore consider such cases as less harmful to society than traditional street crimes or financial crimes of great magnitude.

Professional Experience

In David Heilbroner's (1990) personal account of his life as a new Manhattan assistant district attorney, he recognized that the power he and his colleagues wielded over people's lives was disproportionate to his experience level. He further observed that as his classmates gained prosecuting experience, they became more law and order oriented toward offenders. Heilbroner attributed his fellow prosecutors' approach to avoidance with having to deal with the ambiguities surrounding the truth of a case.

Heilbroner further observed that, as his colleagues gained experience, they became more conformist to the office's politics, right down to the collective donning of Brooks Brothers suits for work. And although African-American and Hispanic prosecutors were more inclined to publicly acknowledge that the defendants prosecutors encountered were often poor and from minority groups, the white prosecutors rationalized their own tendency to become more punitive in their belief that "heavy sentences were doing the city good, keeping crime down, and justly punishing the guilty" (p.76). As they gain professional experience, prosecutors may therefore become more punitive, and less supportive of republican values, although the level of support may ultimately be a function of race.

Case Specialization

In their study of the influence of racial dyads in couples engaged in domestic violence, Kingsnorth, MacIntosh, Berdahl, Blades and Rossi (2001) suggested that specialized prosecutorial units facilitate decision-making norms that mitigate against case

processing decisions based on extralegal (i.e., racial composition of the couple), rather than legal, factors. Benson, et al. (1990) suggested that “specialists” (i.e., prosecutors specializing in a specific crime area) can be passionate in their prosecution against the crimes in which they specialize and appreciate the seriousness of such crimes as well as act as advocates for resources to use against it more fully than those not specializing in a particular area of crime.

The Survey Responses

In this study, 23% (n = 176) prosecutors mailed back a survey. In order to determine the extent to which characteristics of the responding prosecutors approximate the characteristics of the population of New Jersey prosecutors, gender, job title, and type of jurisdiction have been compared. In the population prosecutors, 41% (N= 308) are female and 59% (N = 442) are male. Of the prosecutors who mailed back a survey, the proportion of responding women is 45% (n = 79) and men is 55% (n = 97). The proportion of men to women in the sample fairly represents the proportion within the population.

The sample characteristic based on prosecutor’s title even more closely approximates the population than gender does. In the population, 3% of all county prosecutors are prosecutors (N = 21 who represent each county), 16% have supervisory titles underneath the prosecutor, and 81% are assistant prosecutors. In the sample, 2% of the respondents are prosecutors, 15% are supervisors, and 83% are assistant prosecutors. It may be fair to infer that the sample reasonably approximates the population of prosecutors, at least on the gender and title variables.

Also in the sample, prosecutors who indicated that they worked in an urban county comprised 48% of the sample, 37% stated that they worked in suburban counties, and 9% indicated working in a rural county. Six percent of the respondents did not answer this question. Prosecutors were asked to subjectively describe the type of jurisdiction within which they work. Although all counties, except Atlantic County, contain at least one urbanized area,²¹ prosecutors may deem type of jurisdiction according to more qualitative qualities, such as single residences, greater usage of personal cars rather than mass transportation, amount or appearance of open space, or greater homogeneity in the population. Nevertheless, eight counties (38%) comprise populations in excess of 500,000, six (29%) have less than 250,000, and seven (33%) have between 250,000 and 500,000 (U.S. Bureau of the Census, 2000). This is a crude measure, but comports with the Bureau of Justice Statistics' quantitative demarcations of a large or small district (DeFrances, 2001, 2003). If the Census measures can be considered urban, suburban, and rural, then the sample of respondents does not proportionally represent the population of prosecutor.

Another problem with missingness emerges that threatens the validity of the survey. It is possible that if the sample is not representative of the nonresponders, then a bias is introduced into the study. The anonymity of the survey responses prevents a direct comparison of certain variables of both the responders and nonresponders. However, facilitation of comparisons can be made by three of the indicators: gender, job role (i.e., supervisory or not), and county. Job role can be discerned from the returned postcards that had the respondent's name typed on it. Although a direct connection

²¹ Urbanized areas are defined as densely populated areas containing 50,000 or more people (U.S. Bureau of the Census, 2000).

between the postcard and survey could not be made, the name could be compared against the list of prosecutors' names, their location, and title obtained as the sampling frame. County is not an explicit comparison since the variable's attributes were based on the opinion of the respondent. To ask for county from respondent directly would likely have compromised anonymity.

The typical respondent in this study is a 44-year old married white male who holds a moderate political orientation, has 13 years of prosecutorial experience in an urban New Jersey county, and has had four years of experience in prosecuting domestic violence cases. Table 5.2 provides a summary of the characteristics of those who responded.

Table 5.2: Descriptive profile of the study sample

Variable	Frequency	Percent
Sex:		
Male	106	60
Female	65	37
<i>Missing</i>	5	3
Race:		
White	139	79
African-American	10	6
Hispanic	8	4
Asian	3	2
<i>Missing</i>	16	9
Marital status:		
Married	115	65
Separated	7	4
Divorced	14	8
Widowed	0	0
Never Been Married	32	18
<i>Missing</i>	8	5
Political orientation:		
Conservative	36	21
Moderate	88	50
Liberal	32	18
Other	5	3
<i>Missing</i>	15	8
County type:		
Urban	84	48
Suburban	65	37
Rural	15	9
<i>Missing</i>	12	6
Ever prosecuted domestic violence cases?		
No	33	19
Yes	138	78
<i>Missing</i>	5	3
Average Age:	44	
Average Number of Years as NJ prosecutor:	13	
Average Time spent prosecuting DV cases:	4	

The youngest respondent was 28 and oldest was 77. The age spread was 49 years, or several generations, even though the sample comprised an older group. Although 35% were younger than 39 years old, 46% were between 40 and 59, and 6% were older than 60. Interestingly, 14% did not respond to this question, possibly due to fear of recognition. The survey question asked for the year the respondent was born. That

question, coupled with the others, such as type of county in which respondent works, may have created a perceived compromise in anonymity.

Prosecutors did readily indicate their experience levels. This sample appears to have extensive prosecutorial experience, although the range varies greatly. The experience level of prosecutors in this study ranged between three months to 41 years. Prosecutors are pretty evenly split across the recoded categories. For those with three months to 4.5 years, five to 9.5 years, and 20 to 29.5 years experience, 19% reported within each of these ranges. And 37% reported between 10 and 19 years experience, double any one previous category. Of those prosecutors with 30 to 41 years of experience, about 6% reported this extensive amount of experience. Only two (1%) of the prosecutors did not answer this question.

Although the survey did not explicitly ask for supervisory experience, this data collection was inherent in the survey process. The names, titles, and work places were in the public record that contained the sample frame. Of those prosecutors who mailed back a survey, 17% had a supervisory role. It seems likely, therefore, that a substantial percentage of prosecutors with more than 10 years experience do not have supervisory roles.

Most prosecutors had experience with domestic violence cases as 78% answered affirmatively to this question, 19% had none, and only 3% did not respond at all. For those who had prosecuted domestic violence, their range of experience was from 3 months to 31 years. For those who had experience, 17% had up to one year experience, 36% had one to 9 years of experience, and 11% had 10 or more years of experience, 2%

of which had more than 20 years experience. Unfortunately, of those who had experience, 15% did not indicate the length of their experience.

Preparing the Data for Analysis

Reverse Coding

Once the data were entered into SPSS, several functions were performed in order to assess that the data were ‘behaving’ as they were intended. Variables were reverse coded if they were worded in the opposite direction of other statements measuring the same construct. The reverse coded items in Table 5.2 are preceded by an ‘r’. One variable from the Parsimony scale was reverse coded and two from the Reprobation scale were reverse coded.

In the study from which the Political Orientation scale was borrowed (Wald, Owen & Hill, 1988), the authors reverse scored the conservative items. However, Kerlinger (1984) advises against such coding schemes unless the reverse coded items have the same psychological meaning to the respondent, only in the opposite direction. For example, if liberalism represents the original coding, the question remains whether the reverse coded items represent some form of anti-liberalism. This does not seem to be the case here. Thus, the Political Orientation scale was factor analyzed with both the original coding scheme and the reverse. Since both methods produced two factors consistent with the theoretical precepts in the original study, the originally coded items were retained. For the factor analyses, liberalism and conservatism were coded in the same direction.

Skew and Kurtosis

Skew measures the symmetry of a distribution and kurtosis measures a distribution’s “peakedness.” For the continuous data, skewness and its standard error values, and

kurtosis and its standard error values were captured and analyzed. Although George & Mallery (2003) suggested that values between +/- 2 may be acceptable, Cohen, Cohen, West & Aiken (2003) state that the decision whether to transform data rests upon considerations of whether the equation of the transformed metric provides a better explanation of the phenomenon under investigation than in the raw metric and “whether overall fit is substantially improved by virtue of transformation” (p. 249). Additionally, they state that when scores have a small range, transforming data will have little effect. Since the range of values in these scales is only seven points, none of the data were transformed. However, they will be considered for trimming in future analyses if they perform poorly.

Missing Data

Missing data were checked to find whether they were MCAR, MAR, or nonrandom.²² In order to perform this check, all data were first recoded into 1 for existing response and 0 for no response. Once the responses were recoded, a new variable was completed for each to discern missing patterns in each variable. In the RTCJ and Political Orientation scales, missing data were rare. The percentages of items with complete data were in the 87.4% – 98.3% range. When computing the missing patterns according to each RTCJ subscale (Parsimony, Checking of Power, Reprobation, Reintegration, Dominion, Political Orientation), the following was found. Of each of the subscales, all items were answered in 85.8% through 94.3% of the cases. One response

²² Missing completely at random (MCAR) means that the values of the missing data matrix M do not depend on the values of the complete data matrix with no missing values Y (a theoretical comparative matrix). MAR asserts a less restrictive assumption that the missing elements of a matrix depends only on the observed elements and not on those that are missing. Missing data that are MCAR or MAR are ignorable for purposes of later data analysis. On the other hand, data that are not missing at random (NMAR) are those where the distribution of the missing data matrix M depends on other missing values of the data matrix Y (Little & Rubin, 2002). These missing data are not ignorable.

was missing for each subscale from 1.8% of the cases in the Parsimony scale to 6.9% of the cases in the Checking of Power scale. These patterns indicate no discernible pattern of missing data. The data could therefore be considered at least missing at random (MAR).

Regarding the Priority scale, 93% of responses had complete data, while 4% of respondents answered none of the items. No specific patterns emerged. Regarding the Objectives scale, about 95% of respondents completed all items whereas 2% did not respond to any items. Again, no specific missing data pattern emerged. The Demographic data, however, show a greater percentage of missingness and require greater explanatory detail. Of the demographic items, 72% answered all questions, 22% answered all but one item, 2% missed two, 3% missed three or more, and 1% did not answer any of the questions. It is quite possible that prosecutors are less likely to answer any questions that could compromise their identities.

Or a misunderstanding about research could be the issue as one prosecutor wrote on the personal information page of the survey, “Many questions can’t bear on prosecutorial functions. These (of course) don’t deserve an answer.”²³ As such, 9% of prosecutors skipped the race question, 8.5% did not answer the political orientation question, 7% did not respond to the county question, and 14% did not answer the year born question. Another 24% did not answer the total time spent prosecuting domestic violence, but missing this item is not a concern as it was a follow-on question to whether the respondent ever prosecuted domestic violence.

²³ This prosecutor did not answer the race, gender, year born, or marital status questions.

Correlation tables of missing data.

Once the previous checks were conducted, the variables were correlated with the demographic variables. Correlations greater than +/- .10 were noted. First, the correlation matrix of the missing scale variables and missing independent variables revealed much significance across the scales. Then, the missing scale items were correlated with the actual (i.e., original uncoded) independent variable values. Finally, the actual scale values were correlated with the missing independent variable values. The correlations of all but the Dominion scale of missing items with the missing independent variables revealed significant patterns. For the Political Orientation, Priority, and Objectives scales, all items within each scale were significantly above +.10. These patterns, however, largely disappeared with the additional two matrices. It is important to note, however, that the significant correlations in the Priority matrix reached +.5 and +.7 in the Objectives matrix. These are substantial correlations. In the Missing Political Orientation x Demographic variables matrix, only county appears significant across all items. In the Priority scale, only 'arson' is significant in the Priority scale x Missing demographic variable matrix. In the Objectives scale, only 'protect the public' objective is significant across the demographic variables.

In the Missing Parsimony x Missing demographic variables matrix, items 26, 45, 46, 50, and 52 are significant across the independent variables. Items 15 and 39 become significant across demographic variables, to the exclusion of the other items previously mentioned. The Missing Checking of Power x Missing demographic variables matrix indicates 'county' and 'age' as significant across items 35, 42, and 49. These effects disappear, however, in the subsequent two matrices. The Missing Reprobation x Missing

demographic variable matrix shows items 43 and 44 significant across the demographic variables, but this effect disappears for the other 2 matrices. Finally, the Missing Reintegration x Missing demographic variables matrix shows three times as significant across the independent variables. Again, these effects disappear with the other two matrices. Table 5.3 summarizes the findings.

Table 5.3: Significance across missing data correlation matrices

Scale Variable	MScale x MD Matrix	MScale x D Matrix	Scale x MD Matrix
Dominion	n/a	n/a	n/a
Parsimony	a26, a45, a46, a50, 52*	a15 across all IV's except 'county'	a39 across all IV's except 'prosecute domestic violence'
Checking of Power	a35, a42, a49*, 'county' and 'age' across most items	n/a	n/a
Reprobation	a19, a25, a43, a44*	n/a	n/a
Reintegration	a47, a48, a51*	n/a	Negative significance on a9 across all variables except 'race'
Political Orientation	All items	n/a	n/a
Priority	All items	n/a	'arson'
Objectives	All items	n/a	'Protecting the public from criminals'

*No discernible common pattern emerges among these items.

Based on these analyses, it seems that when correlating the missing data with the actual, significance can be attributed to MAR. When correlating the missing scale data with the missing independent variables, however, significant relationships appear in all scales except Dominion. Other than belonging to a particular classification of the theory, the missing items within each scale do not appear to be closely related. However, it can be noted that the majority of them are found later in the survey. It is possible that

respondents experienced maturation, which, according to Campbell and Stanley (1963), suggests that respondents were growing tired. This is a threat to the instrument's validity and will be discussed later.

Based on the foregoing, a further check on the missingness of the values in the database was conducted using binomial regression. Frequency distributions of the percent of missing data for each scale indicated a majority of responses having no missing values with a smaller percentage of values having one or more missing responses. Table 5.4 shows a breakdown of the frequencies of percent missing data.

Table 5.4: Frequency and percent of missing items per scale

Scale	% Missing	Frequency	Percent
Parsimony	0	166	94.3
	>0	10	5.7
Checking of Power	0	158	89.8
	>0	18	10.2
Reprobation	0	157	89.2
	>0	19	10.8
Reintegration	0	162	92.0
	>0	14	8.0
Dominion	0	159	90.3
	>0	17	9.7
Political Orientation	0	151	85.8
	>0	25	14.2
Priority	0	158	89.8
	>0	18	10.2
Objectives	0	160	90.9
	>0	16	9.1

Table 5.4 indicates that the majority of respondents in each scale responded to every item. Since the discrepancy between all items answered and some or none items answered is large, each percent missing variable was recoded for binary logistic regression as 1 for all items answered and 0 for one or more items not answered. Binary

logistic regression will predict the probability of obtaining a 1 (all items answered) from the regression equation (SPSS, 2003). The results follow.

The Dominion model chi-square is not significant ($p = .21$). This means that the null hypothesis that the coefficients for all terms in the model are zero cannot be rejected. Additionally, none of the missing independent variables is a significant predictor of whether someone will respond to the items in the scale. This is good news in that it indicates that the missing dominion items are not related to the missing demographic variables. It cannot be predicted from the respondent's demographics whether the respondent will respond to the items of the Dominion scale. As a further note, the independent variables explain only 13% of the variability in the missing item Dominion scale as indicated by the Nagelkerke R Square value (SPSS, 2003).

The Checking of Power model chi-square is significant at .021. Within the model, years spent as a prosecutor, domestic violence experience, and age are significant with p values of .094, .081, and .027 respectively. For each year spent as a prosecutor and each year age increases, the likelihood of nonresponse increases 64.13 and .214 respectively. For those who have domestic violence experience, the likelihood of not responding increases by 9.43.

The Reprobation model chi-square is significant at .066. The one variable that is also significant at .078 is age whereby a one year age increase increases the likelihood of nonresponse by .307. Similarly, the Reintegration model chi-square is significant at .016 and age is also significant at .002.

The Parsimony model chi-square is significant at .001 and three variables "light up" with significance. They are political orientation at .042, county at .023, and age at

.011. The combination of these independent variables explains 44% of the variance in this model.

The Political Orientation model chi-square is highly significant at .000. The variables indicating significance within the model are marital status, county, and age with significance levels of .055, .079, and .005 respectively. The variables explain 29% of the models variance.

The Priority scale is also highly significant at .007, and the only significant variable is race at .004. Finally, the Objectives scale is significant at .041 with no significant variables, and the variables explain only 19% of the model's variance. Table 5.5 indicates the level of significance of the demographic variables in each scale.

Table 5.5: Significant results from binary regression models

Scale Variable	Significant Demographics	Exp(B)
Dominion	none	n/a
Checking of Power	years as prosecutor* domestic violence experience* age**	64.13 9.43 .214
Reprobation	age**	.307
Reintegration	age**	.111
Parsimony	political orientation** county** age*	.064 .071 .073
Political Orientation	marital status* county* age**	.068 .243 .182
Priority	race**	3.676
Objectives	none	n/a

***p \geq .001, **p \geq .05, *p \geq .10

From the above table, it appears that age repeatedly “lights up” as a significant relationship in the model. That is, for each year age increases, the Exp(B) score increases

by some proportion, indicating that as the respondent ages, the likelihood of not answering the question also increases. Of the demographic variables, age had the highest frequency of nonresponses at 13.7%. The range of missing values for nonresponses to the other variables was 1.1% (number of years as prosecutor) to 9.1% (race). The significance of the age variable is interesting for survey nonresponse. Both the mean and median of the respondents are 44. This indicates that the sample who responded to the age question was older. It is possible that both those who did not respond to the question, and possibly those who failed to return a survey were older than 44, which further indicates that New Jersey prosecutors' offices retain prosecutors who spend their career in office. The average years spent as a New Jersey prosecutor is 13 years, which provides evidence of prosecuting as a career choice, rather than a jump-off point for a lawyer's career in another capacity.

Sample Size

Although a response rate of 176 cases is more than adequate for other statistical analyses, such as regression, SEM is considered a technique that often requires larger sample sizes. Kline (2005) does provide some very general sample size guidelines. Sample sizes less than 100 are considered small, 100-200 medium, and greater than 200 large. However, these are merely descriptive guidelines. The question regarding how large is adequate is subject to debate in light of other statistical considerations.

One issue concerning the adequacy of sample size is model complexity which is determined by the model's parameters (estimated relations among the observed or latent variables), which in turn are determined by the number of observations (number of variances and covariances) among observed variables. The greater the number of

parameters, the more complex the model (Marsh & Hau, 1999). If the cases to parameters ratio is less than 5:1, then the precision of results may be doubtful.

Another issue regarding sample size concerns whether solutions can converge to a proper solution (i.e., variance estimates > 0 , standard factor correlations < 1). For small samples ($N \leq 50$), Marsh and Hau (1999) suggest that a compensatory effect should take place. In other words, the ratio of indicators to factors (p/f) can compensate to create a proper solution. Although Marsh and Hau support a more is better approach to both N and p/f , they maintain that the likelihood of convergence to a proper solution improves with increasing p/f . It is therefore better to have large p/f when N is small. The authors agree that at least three items per factor are desirable to achieve an optimal ratio. In the scales summarized in Table 5.6, each contains a minimum of three items.

Marsh, Balla and McDonald (1988) caution that CFA should be used guardedly when the sample size is less than 200, but MacCallum and Austin (2000) argue that rules of thumb on sample size in factor analysis are generally invalid since factor loadings may be more dependent upon characteristics such as the communality level of the observed variables (i.e., proportion of a variable's variance explained by the factor structure). They suggest using goodness-of-fit indices not sensitive to sample size, such as the ECVI or RMSEA model fit indices, which will be discussed in greater detail in the *Results* chapter.

MacCallum, Browne and Sugawara (1996) have argued that the power of an analysis is more important than simply sample size or model complexity. The strong association between degrees of freedom and sample size renders a generally inverse phenomenon in order to achieve a power of .80, the conventional value for a study's

adequacy in rejecting the null hypothesis that the fit of the model in the population is not close. Studies with small degrees of freedom require a large sample size, whereas as degrees of freedom increase, minimum sample size necessary to maintain the .80 power value decreases. For example, a study with 100 degrees of freedom requires a minimum sample size of 164 for power to equal .80. In the current study, the degrees of freedom range from 1110 in the hypothesized confirmatory factor analysis model to 554 in the revised confirmatory factor analysis model. The large degrees of freedom indicate that a smaller sample size is required. The sample size of 176 appears adequate to reach a power of .80.

Reliability (Internal Consistency)

Scale reliability assessment is part of what Kerlinger (1984) calls “routine psychometric analysis.”²⁴ It concerns the proportion of variance attributable to the true score of the latent variable. A scale is reliable to the extent that it consists of items that share a common latent variable. Internal consistency is one measure of reliability and is concerned with the homogeneity of items within a scale (DeVellis, 2003). Internal consistency is indicated by coefficient alpha (α) as an index of content homogeneity (Crocker & Algina, 1986) and is concerned with the degree of interrelatedness among a set of statements designed to measure a single construct (Netemeyer, Bearden & Sharma, 2003). Coefficient alpha is not a measure of scale unidimensionality (Netemeyer, et al., 2003) as DeVellis (2003) asserts that a single coefficient, such as alpha, cannot adequately measure a scale containing multidimensional concepts. Nevertheless,

²⁴ The basic steps required for psychological testing or measurement include: 1. formulating research questions or hypotheses; 2. specifying operational definitions for variables; 3. developing procedures to quantify observations of each variable; 4. testing the accuracy of the procedures to be used; 5. collecting data; and 6. summarizing the data mathematically (Crocker & Algina, 1986). It should be noted that these are necessary but not sufficient steps when conducting this type of research.

Netemeyer, et al. (2003) suggest that it is possible for a set of items to be unidimensional, even when each item may not be unidimensional.

In this study, the presumptions asserted by the theory each are multidimensional. Parsimony requires prosecutors to consider alternatives to full prosecution whenever possible in order to prevent unreasonable hardship to offenders, consider the needs of victims who may be further damaged by prosecution, and seek alternatives to incarceration in the appropriate cases. Checking of Power constitutes a mandate to respect offenders' due process rights, provide internal organizational supervision, provide transparency by publishing work-related statistics and allowing external audits, and respect victims' needs by, for example, keeping victims abreast of the process where applicable. Reprobation's dimensions include publicly shaming offenders and refraining from stigmatizing the offender while denouncing the offender's behavior through some form of moral education. Reintegration includes welcoming the victim back into the community, reparation of relations between victims and offenders where appropriate, providing the victim the opportunity to confront the offender, and returning the status of full citizenship to the offender. Finally, Dominion urges for an individual's subjective feeling of safety from feelings of arbitrary domination from other individuals and the state as a result of the maximization of the previous presumptions.

As part of the internal consistency analysis, item based statistics were analyzed. They included corrected item-to-total correlations, alpha-if-item-deleted value, and inter-item correlations. Rather than assigning a minimum statistical threshold for item retention, Preacher and MacCallum (2003) assert that minimum thresholds are arbitrary and should instead be contingent upon issues associated with the particular study. Since

the current study is exploratory and no previous data baselines have been established in the literature, the decision regarding which items to retain was made relative to the performance of the other items. A low corrected item-to-total correlation ($<.30$) in other studies, for example, means that the magnitude of the relation of the item to other items or the whole scale is low relative to the other items and should be omitted. In this study, an item that had a low inter-item correlation or corrected item-to-total correlation would not be automatically deleted from further analysis if the other items in the scale also showed low correlations. In general, however, items with $<.20$ correlations were deleted from the analyses. The range of corrected item-to-total correlations in the retained scale items (see Table 5.6) was from $.22$ to $.80$.

The alpha-if-item-deleted operates more of a descriptive guideline rather than strict statistical test by indicating what the internal consistency value of a scale would be if a particular item were omitted from further such analysis. Although the alpha-if-item-deleted value was considered when deciding whether to drop an item from the scale, the final determination for item retention concerned the substantive contribution that the item made to the scale. Thus, even if dropping an item would have maximized the alpha-if-item-deleted value, the item was not dropped if it added substantively to the scale's relationship to the theory.

Netemeyer, Bearden and Sharma (2003) suggest that item deletion and retention in early studies of scale development should be simultaneously considered with reliability and item-based statistics since as Carmines and Zeller (1979) describe, a close connection exists between reliability assessment and factor analysis. The two analyses were thus

conducted simultaneously in order to pare down the scales and retain the best performing indicators of the theory.

Exploratory Factor Analysis (EFA)

Once the theoretical relationships between the concepts are specified, the empirical relationships between the measures of the concepts must be measured in order to determine construct validity (Carmines & Zeller, 1979). Since the RTCJ scale is a new instrument, EFA was first conducted in order to look at the relationships among the items. Since the items were created with the latent factors in mind, the items specified in Table 5.1 are hypothesized to load on the latent factors indicated.²⁵ The next step now is to determine whether those factors “behave” as intended.

The goal of EFA is to reduce the data to a level that would provide the most parsimonious measure of a construct. Through the EFA and reliability analyses, an iterative process was conducted in which subsequent steps were taken to remove poor performing items until a single factor emerged or the factor was subdivided into separate dimensions. When that process was completed, a correlation matrix of the items in their respective subscale was completed. A scale of each factor will be further analyzed in the confirmatory factor analysis and structural equation models. This process is further intended to capture the domain of the concepts described in the theory and maximize psychometric qualities.

²⁵ The value of the factor loading acts as a regression weight. It indicates how a unit change in the loading affects the observed variable (Long, 1983). So, for example, from Table 5.6, it can be deduced that a unit change in Dominion has a .67 unit change in item a4. The higher the factor loading of an item, the greater its correlation to its respective factor (Carmines & Zeller, 1979).

Construct Dimensionality

As previously mentioned, the RTCJ concepts (e.g., latent constructs) each contain more than one dimension. The latent constructs generally should not be considered simplistic characterizations of attitudinal measures captured by Likert scales. Although the issue of multidimensionality exists here and may confound data interpretations, it is well understood that a single unidimensional concept ties together the varied concepts captured in an attitudinal scale. In the current study, the latent constructs have already been labeled by the theory. The purpose of this research is not to rename these constructs. But if capturing a unidimensional concept for each multidimensional presumption can be made, then this is the forum. Of course it is in the hope that the tenets of the theory are not oversimplified.

Conceivable unidimensional concepts that tie together the measured items of each presumption are: parsimony-the minimization of criminal justice intervention, checking of power-accountability for authorities' conduct, reprobation-shaming offenders for their behavior, reintegration-invitation without stigmatization by the community to those affected by criminal justice intervention. Finally, dominion presents safety for citizens.

Since each set of items was designed to measure the domain of the theoretical presumptions, EFA was conducted one scale at a time rather than all items simultaneously. When more than one factor was indicated within each scale, item reduction began based on the standard deviation of the item, pattern correlation matrix, and corrected item-to-total correlations. Low standard deviations indicated low variance which meant that the respondents were largely in agreement over the item. The pattern correlation matrix indicated the strength of the item to each factor. No specific minimum

threshold was determined for factor loading values. Rather, items with low factor loadings in relation to the other items were considered for deletion. As a result, 31 items from the RTCJ scale and one item from the PO scale were trimmed from their respective scales. The one item (a54) trimmed from the PO scale concerned equality of rights for both men and women. Although this was considered a liberal item in the original study (Wald, Owen & Hill, 1988), today it is likely neither a conservative nor liberal perspective since in this sample 94% strongly agreed.

Interestingly, several sub-factors emerged from both the Priority and Objectives scales. Both scales were multidimensional. The Priority scale had a .85 alpha, even though four dimensions emerged. This indicates that even though the items loaded on these separate factors, they nevertheless were highly interrelated. Based on the commonalities of the groupings of the types of crimes, three of the factors were labeled Violent (V), Non-violent (NV), and Personally Motivated (PM). The Police Misconduct variable was trimmed from this scale as it formed its own factor with no additional loadings by other items. Of course, caution must be considered in labeling constructs. It is never possible to capture the unknown or unmeasured influences on scale items. These unknowns may actually be the prime determinants influencing a particular grouping. In this study, however, an estimation of the observed shared properties (i.e., crime types) within each factor influenced the label names.

Similarly, the iterative process of internal consistency checks and EFA for the Objectives scale culminated in the formation of three factors. Of the original 17-item scale, 10 items were retained. The three factors were labeled Public Demeanor (PD),

Office Goals (OG), and Offender Concerns (OC). The label names were intended to characterize the factors as comprehensively as possible.

In each subscale except the Reprobation and Violent crime scales, the correlations ranged from .18 to .58 and all were significant. In the Reprobation scale, item a6 (Offenders who have been convicted should receive some form of moral education) was included although it correlated less than the other items in its scale. Item a6 was retained as it provided an important substantive indication of the presumption in the theory. According to Braithwaite and Pettit (1990, p. 91), “The paradigm form of reprobation will involve moral reasoning with offenders, since this is the most direct way of inducing an understanding of the wrongfulness of the act and eliciting a sense of shame about it.” Nevertheless, the item had a medium loading on its respective factor (.44). Additionally, item a13 (Offenders are basically good people who have committed a bad act) was kept in the same scale although its factor loading was only .27 as it too identified the substantive interpretation of Reprobation. Braithwaite and Pettit (1990) have claimed that denunciation of a crime should occur in the community, and Braithwaite (1989) has elsewhere argued that the denunciation should not constitute that of the offender as a human being.

In the Violent crime scale, Environmental Crime had a positive but non-significant correlation (.09) with Narcotics Violation. Both items are retained, however, as there is no substantive reason at this point to trim either.

Table 5.6 shows that all the items had medium (.27) to substantial (.80) loadings with their respective factor. As a result of the inter-item correlations, internal consistency

scores (α), alpha-if-item deleted, and factor loadings, it can be surmised that the retained items reasonably capture the content domain of their respective factor.

Table 5.6: Summary of items retained subsequent to internal consistency and EFA analyses

SCALE	α	ITEMS RETAINED	FACTOR LOADING
REPUBLICAN THEORY OF CRIMINAL JUSTICE (RTCJ)²⁶			
Dominion (D)	.74	a4. A primary goal of prosecution should be to diminish a victim's sense of domination by others. a14. One goal of prosecution should be to help make victims feel safe from future victimization. a24. Prosecution of offenders shows the victim that the crime has been taken seriously by the criminal justice system. a28. One role of the prosecutor should be to help the public feel safe from harm. a51. Prosecutors should use their authority to free victims from feeling subjected to domination by others.	.67 .70 .58 .54 .63
Parsimony (P)	.57	a15. Case processing decisions should be based on balancing the punishment of an offender against protecting the interests of the victim. a16. The sentencing of offenders should include some sort of intermediate sanction if it will help the victim. a39. A major consideration in prosecuting a case should be the potential impact on a victim's life. a52. Prosecution should proceed only if it will cause minimal emotional hardship for the victim.	.57 .56 .60 .30
Checking of power (CP)	.67	a2. Prosecutorial decisions should be made public. a33. There should be a policy that prosecutorial decisions be released to the news media. a35. Prosecutors' offices should publicize their case processing statistics. a42. Victims should have the right to appeal a prosecutor's decision not to accept a case.	.69 .67 .60 .34
Reprobation (RP)	.52	a6. Offenders who have been convicted should receive some form of moral education. a13. Offenders are basically good people who have committed a bad act. a19. Offenders who feel shame for their criminality will be less likely to repeat the behavior. a27. The court should help offenders understand the wrongfulness of their behavior.	.44 .27 .35 .70
Reintegration (RT)	.64	a5. Performing community service helps to reintegrate offenders back into the community. a9. One goal of the criminal justice system should be to repair relations between the victim and offender. a30. One purpose of prosecution should be to help reintegrate offenders back into their communities. a31. The offender's family should be part of the prosecution process.	.48 .70 .52 .57
POLITICAL ORIENTATION (PO)²⁷			
Liberalism (L)	.70	a53. Birth control devices should be available to any adult who wants them. a58. Abortion should be a private matter between a woman and her doctor. a59. Homosexuals should be able to do what they want to so long as they don't hurt other people. a61. If a man and a woman want to live together without getting married, that's their business.	.52 .80 .62 .54

²⁶ An alpha of .74 was attained for the Republican Theory of Criminal Justice scale.

²⁷ An alpha of .70 was attained for the Political Orientation scale.

Conservatism (C)	.47	a55. There are too many shows on television that make fun of traditional family values. a56. Women are happiest if they stick to keeping a home and raising children. a60. The government should prohibit the private use of marijuana.	.42 .60 .42
PRIORITY (P)²⁸			
Non-violent (NV)	.81	ba. Arson bb. Auto theft bg. Economic crime bh. Environmental crime bk. Insurance fraud bl. Narcotics violation	.30 .78 .86 .63 .81 .42
Violent (V)	.79	bd. Career criminal bi. Gun violence bj. Homicide bn. Robbery bo. Sexual assault bp. Weapon offense	.66 .59 .77 .73 .51
Personally motivated (PM)	.68	bc. Bias crime be. Child abuse & neglect bf. Domestic violence	.41 .36 1.01
OBJECTIVES (O)²⁹			
Public demeanor (PD)	.72	d8. Having the public understand that the prosecutor's office is responding properly to crime d13. Maintaining the prestige of the prosecutor's office d14. Maintaining cooperative relations with the police	.55 .78 .79
Offender concerns (OC)	.68	d9. Rehabilitating offenders d10. Invoking remorse in the offender d12. Repairing relationships between the offender and the victim	.59 .80 .60
Office goals (OG)	.47	d1. Reducing the crime rate. d3. Discovering the truth about the case. d16. Respecting the rights of suspects. d17. Protecting the public from criminals.	.48 .36 .54 .43

²⁸ An alpha of .85 was attained for the Priorities scale.

²⁹ An alpha of .64 was attained for the Objectives scale.

6

FINDINGS

The next steps in the data analysis include confirmatory factor analysis and structural equation modeling in order to determine the extent to which the survey instrument has construct validity. This part of the analysis will be conducted using the Amos 6 (Analysis of moment structures) (Arbuckle, 2006) software package.³⁰ Construct validity is determined by modeling the data to identify which of the variables' empirical relationships are consistent with the associations asserted in the republican theory of criminal justice. Construct validity will be confirmed in part by fitting the hypothesized model drawn in accordance to the described theoretical relationships, to the data. As will be seen through the confirmatory factor analysis, the first hypothesized model will not explain the data well. A modification of the variables used in the model will, however, provide a much better explanation for the data. This chapter will provide the steps taken to find the better fitting model. Additionally, the structural equation model will illustrate the statistical relationships among the latent factors, especially those influencing the theoretical constructs.

The Republican Theory of Criminal Justice Model

Before examining some of the external influences on prosecutors' attitudes toward the presumptions of the republican theory of criminal justice, it is important to first identify

³⁰ As missing data is a ubiquitous problem with survey methods (see Chapter 5), some statistical packages will impute missing values in order to provide a full dataset for analysis. Missing data were imputed in this dataset by the full information maximum likelihood (FIML) function found within Amos 6. FIML underlies the derivation of parameter estimates based on incomplete data. The estimates are those that maximize the likelihood that the data were drawn from the population in the current study.

the basic theoretical model. In a confirmatory factor analysis, the basic model provides an adequate explanation of the data collected.³¹ The model is indicated in Figure 6.1.

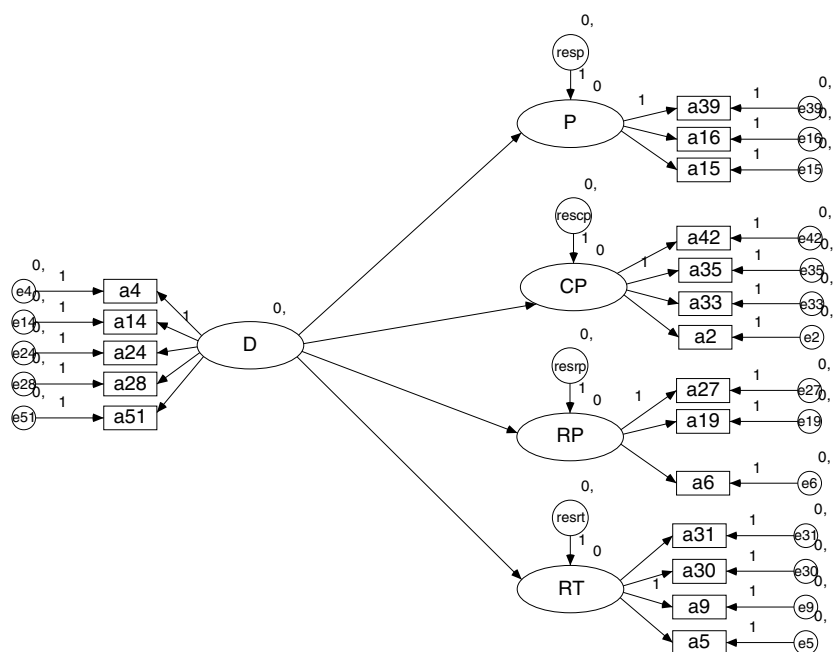


Figure 6.1: Path model depicting the republican theory of criminal justice

Path Analysis

Path analysis is a type of structural model that is used to describe observed variables.³² Both confirmatory factor analysis and structural equation models are forms of path analysis, although unlike the path model, a structural equation model includes latent variables. Confirmatory factor analysis and structural equation modeling, in this analysis, will build upon the model depicted in Figure 6.1. In the confirmatory factor model used in

³¹ In this model, chi-square equaled 203.9 with 148 degrees of freedom, $p < .000$, CFI equaled .90, RMSEA equaled .05 with a 90% confidence interval between .029 and .061, and ECVI showed appropriate values compared to the saturated and independence models. All standard errors were less than one, and the parameters, with the exception of the direct effect of Dominion on Checking of Power, were significant.

³² Observed variables are those which can be directly measured, such as the score on a test, gender, etc. Observed variables help develop latent variables, which cannot be directly measured and represent a higher level of abstraction, such as attitudes or abilities.

this analysis, all observed demographic variables were drawn as the exogenous variables (also known as independent variables) influencing Dominion, which in turn influenced the four presumptions. In addition to the demographic variables, the combined raw scores of the indicators comprising each latent variable from the survey (Liberalism, Conservatism, Public Demeanor, Office Goals, Offender Concerns, Violent, Non-Violent, and Personally Motivated) were also included as exogenous variables influencing Dominion. This model very poorly fit the data. Before detailing the empirical problems underpinning this model's fit, it is first necessary to introduce the statistical fit indicators used in this, and later, analyses, and briefly explain the premises of each.

Model Fit Indices

“Fit” indicates the extent to which a hypothesized model adequately describes the data (Byrne, 2001). Model fit indices provide an overall picture of the model's fit to the data and should be consulted prior to checking the parameter estimates, i.e., the measures of specific statistical relationships. Although several more model fit indices are available than the ones indicated in the following discussion, they may be deemed inappropriate since, for example, they affect the power of a fit analysis (MacCallum & Hong, 1997) (see discussion about power in Chapter 5) or are dependent upon the size of the sample (Marsh, Balla & McDonald, 1988).

In this study, as in all path analyses, chi-square (χ^2) provides the most basic model fit index. It is actually a badness-of-fit test in that as its value increases, the model's fit to the data becomes worse. Chi-square tests the null hypothesis that the model is correct (i.e., has perfect fit in the population), and the degrees of freedom indicate the level at which a model can be potentially rejected (Kline, 2005). In addition, the probability (p-value) represents the

likelihood of obtaining a chi-square value of the study's model that exceeds the chi-square value when the null hypothesis is true. The higher the p-value, the closer the fit between the observed model and perfect fit (Byrne, 2001).

Chi-square tests are still widely reported, but they are sensitive to sample size. Large sample sizes are critical to obtaining chi-square values indicative of a well fitting model (Byrne, 2001). Thus, several other fit indices have been designed for reporting model fit, and three of them will be described next.

The comparative fit index (CFI) ranges from zero through 1.00 and measures the covariation of the data. This index represents the relative improvement of fit of the observed model over a hypothesized model. Although a minimum value of .90 was once taken to indicate good fit, statisticians have recently advised that the minimum of .95 be attained. Nevertheless, Kline (2005) states that a CFI of at least .90 may still indicate reasonably good fit of the model.

The third index, root mean square error of approximation (RMSEA), measures the discrepancy between the observed model and a hypothetical model with optimally chosen parameters (i.e., variances, covariances) in the population. A model with a value of less than .05 indicates good fit. The precision of the RMSEA value is estimated by a 90% confidence interval. A narrow confidence interval indicates good precision. Also, the p-value, which should be greater than .50, tests the hypothesis that the RMSEA is a good measure within in the population (Byrne, 2001). MacCallum & Austin (2000) recommend the use of RMSEA especially because it is sensitive to model misspecification and its confidence interval provides information about the precision of the estimates of fit, which is not available for most of the other fit indices.

The final fit index to be included in this model analysis is the expected cross-validation index (ECVI) which measures the discrepancy between the covariance matrix analyzed in the sample and the expected covariance matrix that would be obtained in another sample of equivalent size based on the same covariance matrix. Since ECVI coefficients can take on any value, there is no pre-determined range of acceptable values. Rather, the observed model is compared against both a saturated model and a hypothesized independent model.³³ The model having the smallest value shows the greatest potential for replication (Byrne, 2001). This index is considered useful for comparing alternate models since it provides an indication of which model yields a solution with the greatest generalizability to the population, regardless of sample size (MacCallum & Austin, 2000).

The hypothesized path model in the current analysis.

As mentioned already, the originally hypothesized model which included the demographic variables and raw scores of the latent indicators fit the data very poorly ($\chi^2 = 1291.5$ with 422 degrees of freedom, $p < .000$, CFI = .21, RMSEA = .11 with a 90% confidence interval between .10 and .11, and the ECVI model value (10.15) was larger than the saturated model (7.60) and nearly as large as the independence model (10.62)).

The Office Goals, Offender Concerns, Public Demeanor, Non-violent, Violent, and Personally Motivated variables were removed in order to test a more parsimonious model, but the resulting model's fit was just as poor. The χ^2 decreased to 1070.0 with 320 degrees of freedom, $p < .000$, and the CFI value decreased to .07, RMSEA increased to .12 with a 90%

³³ A saturated model has as many free parameters as means and covariances and both chi-square and the degrees of freedom equal zero. This model will always fit the data perfectly (Byrne, 2001). The independence model is known as the null model whereby population covariances among the observed variables are assumed to be zero (Kline, 2005).

confidence interval between .11 and .13, and the default model of the ECVI index (7.76) was again greater than the saturated model (5.30) as well as the independence model (7.43).

In this model, age appeared to be the only exogenous variable to significantly influence Dominion. The standardized coefficient for age was $-.82$. Thus, for every one-point increase in age, agreement with promotion of the ideal of Dominion is expected to decrease by $.82$ points. This sentiment is reflected in Heilbroner's (1990) account of his own work as an assistant district attorney in which young prosecutors worried about becoming "too hardened." Heilbroner himself marveled at his transition from idealistic young law school graduate to a cynical prosecutor whose beliefs in the goodness of people and their ability to be reformed were perpetually challenged.

In reviewing the rest of the individual statistical parameters of the path model, several of the standard errors of the intercepts, regression weights, variances, and covariances of the variables in this model were greater than one which makes the parameter estimates inestimable (Byrne, 2001). Based on the preceding results, this model could not be interpreted.

The path model was thereby abandoned for a newly hypothesized model in which latent exogenous variables were used instead of their observed raw values, the demographic variables were dropped, and the data was analyzed with a structural equation model in lieu of the path model with observed variables.

The revised hypothetical model had a better fit of the data. In this model, the latent factor OC (Offender Concerns) was removed from the confirmatory factor analysis even though it appeared from the EFA (see Chapter 5) as a separate factor stemming from the Objectives scale. Inclusion of this factor diminished the search for a good fitting model in

light of the sample size. Also, since the indicators of OC so closely resembled the indicators already measured by Reprobation and Reintegration, it was removed from further analysis.

Study Hypotheses

The respecified model using different variables calls for hypothesizing the new relationships. The hypotheses for both the confirmatory factor analysis and structural equation model in this analysis follow.

Confirmatory Factor Analysis Hypotheses

- Hypothesis 1: Each indicator will positively and significantly load on its respective factor.
- Hypothesis 2: Liberalism will significantly covary with Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration.
- Hypothesis 3: Conservatism will not significantly covary with Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration.
- Hypothesis 4: Public Demeanor will significantly covary with Dominion, Parsimony, and Checking of Power only.
- Hypothesis 5: Office Goals will significantly covary with Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration
- Hypothesis 6: Personally Motivated will significantly covary with Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration
- Hypothesis 7: Violent will significantly covary with Checking of Power only.
- Hypothesis 8: Non-violent will significantly covary with Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration.

Structural Equation Modeling Hypothesis

- Hypothesis 9: Dominion will mediate the relationship between the exogenous latent variables Liberalism, Conservatism, Public Demeanor, Office Goals, Personally Motivated, Violent, and Non-violent and the endogenous variables Parsimony, Checking of Power, Reprobation, and Reintegration.

Confirmatory Factor Analysis (CFA)

CFA is a tool used to test the validity of a factorial structure in order to determine the extent to which items designed to measure a particular factor (i.e., latent construct) actually do so (Byrne, 2001). CFA is essentially the exercise of imposing an a priori model on the

observed data and finding a solution most compatible with that data (Kim & Mueller, 1978). Kline (2005) suggests conducting either CFA or EFA across different samples. Byrne (2001) argues against conducting *only* CFA for newly developed scales. Since the current analysis is in fact exploratory, and the complexity of the model relative to the sample size precluded admissible CFA solutions, EFA was conducted first in order to simplify the model. Future samples will continue to incorporate EFA and CFA methods until a valid instrument is attained.

The proposed CFA model (Figure 6.2), as with CFA models generally, assumed no identifiable causality among the factors (as evidenced by the curved path arrows). Rather, all factors are unanalyzed, which ultimately helps to determine where the fit of the model is best.

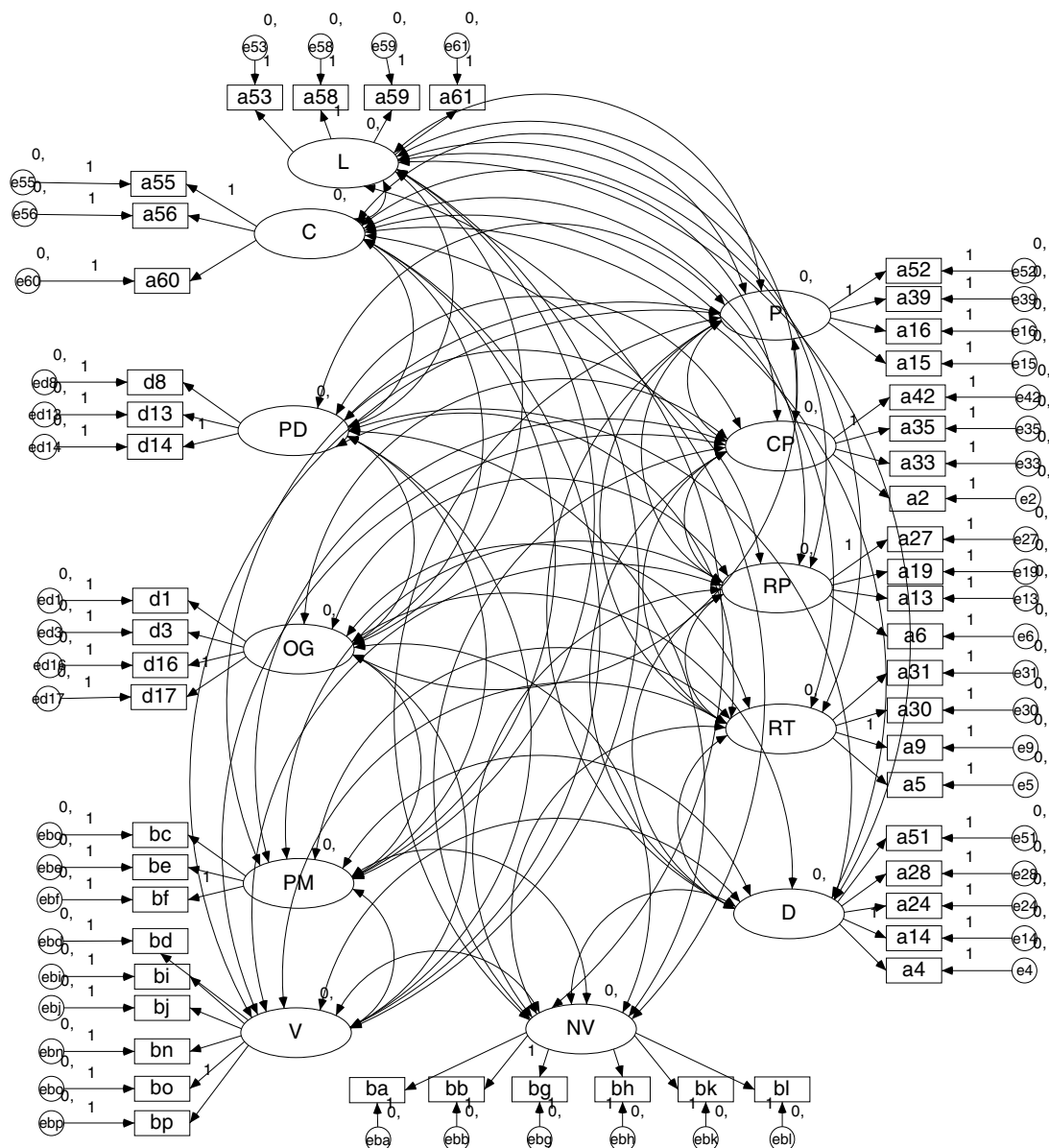


Figure 6.2: Hypothesized CFA model of the republican theory of criminal justice

The newly hypothesized CFA model showed poor overall fit of the data, although the fit was much better than in the hypothesized path model. The new model's chi-square equaled 1638.5 with 1110 degrees of freedom, $p < .000$. The CFI value was .76 and RMSEA was .05 with a 90% confidence interval between .047 and .057. Since this model showed

poor fit to the data, it was important to find the sources of the problem by examining the parameter estimates. Post-hoc analyses were thus necessary which, according to Byrne (2001), would now frame the analyses within an exploratory, rather than confirmatory, mode even though CFA procedures will continue to be used.

Post-hoc Analyses

When the hypothesized model does not fit the data, as the current case indicates, a search should commence to find a model that does. During this process, fit improvement may be guided more by empirical considerations (Long, 1983), although changing the estimation of a particular parameter must be substantively, if not theoretically, meaningful (Byrne, 2001). In addition to the model fit indices (χ^2 , CFI, RMSEA, and ECVI), there are several statistical parameters that more specifically measure a model's adequacy. The parameter estimates which will be considered in this study are squared multiple correlations, skewness and kurtosis values, direct effect values, and covariances. When the model fit indices are poor, then the researcher must trace these estimates to find the contributing sources.

Parameter Estimates

Covariances.

The covariance is the basic datum in path analysis and represents the strength of an association between two variables and their variabilities. The purpose of an analysis thus should be to understand the patterns of covariances (Kline, 2005).

With regard to the political orientation variables, Liberalism and Conservatism, the covariance path between these two was significant. But the Conservatism scale was reverse-coded. This may be evidence of Kerlinger's (1984) criterial referents theory, which states

that liberalism and conservatism are not ideologies located on opposite ends of the same continuum, but are rather very different ways of approaching a problem. What interests a liberal may not interest, or be important to, a conservative. Evidence of criterion referents is indicated in the structural equation model, discussed later, in which Parsimony, Checking of Power, and Reprobation are significantly affected by Liberalism but are not significantly affected by Conservatism. Additionally, keeping this covariance adversely affected the CFA.

During the respecification, a significant covariance between the error terms of items be (child abuse and neglect) and bo (sexual assault) was found. Child abuse and neglect victims may be likely to experience sexually abusive behavior. It is therefore not unusual that these items share some variance. Since their error terms are varying together, there is an indication of some unmeasured explanation regarding prosecutors' prioritization of these items.

Squared multiple correlations (SMCs).

The SMC represents the proportion of variance explained by the predictor variables on the variable of interest (Byrne, 2001). SMC is similar to the R^2 value in regression. R^2 is the proportion of variance explained by the regression. Items with low squared multiple correlations ($< .10$) were considered for trimming since they contributed little to the overall variance of the model.

Items contributing low variance were a13 (Offenders are basically good people who have committed a bad act) from the Reprobation scale, a52 (Prosecution should proceed only if it will cause minimal emotional hardship for the victim) from the Parsimony scale, a56 (Women are happiest if they stick to keeping a home and raising children) from the Conservatism scale, item d3 (Discovering the truth about the case) from the Office Goals

subscale (under the Objectives scale), and items ba (arson) and bl (narcotics violation) from the Non-violent cases scale.

Trimming item a56 reduced the Conservatism scale to two indicators (items a55 and a60). Kline (2005) states that although three indicators per factor is preferable, measurement models with more than one factor generally require only two indicators per factor. The reduction to two indicators in Conservatism did not pose problems for subsequent CFA iterations.

Although item a13 was originally thought to substantively capture Reprobation, a reconsideration was in order. Offenders are not generally considered good people per se according to the republican theory of criminal justice. Rather, the theory asserts that, regardless of the moral character of the offender, the behavior is that which needs to be shamed, not the offender him or herself. It is the dimension of not stigmatizing offenders that presents one of the core values of Reprobation.

Item a52 was trimmed from the model since another similarly worded item, a15 (Case processing decisions should be based on balancing the punishment of an offender against protecting the interests of the victim), more closely concerns the victims' interests in a prosecution and speaks more directly to Parsimony's core concern.

Item d3 also failed to contribute much variance to the model, which indicates that seeking the truth may be largely settled in prosecutors' approaches to case processing decisions. Johnson (2002) calls "Discovering the truth about the case" a cardinal objective for prosecutors. In his survey of 57 Seattle prosecutors, and the survey from which the Objectives scale was borrowed, 96.5% of the prosecutors ranked this objective as important. As Johnson acknowledges, prosecutors' determinations of truth may be tempered by offering

a plea negotiation once sufficient information about the offense has been collected. In cases where a plea is not settled, prosecutors look to the emergence of the truth through the trial process. Either way, prosecutors may believe that the adversarial process organically promotes truth discovery.

Finally, items d1 and d16 were trimmed since d16 contributed low variance to the model. Since d16 was trimmed, the Office Goals factor was left with only one indicator, item d1. Since this is not acceptable for a path structure (Kline, 2005), the whole factor was removed. Item d16 (Respecting the rights of suspects) may be settled in prosecutors' minds since it is part of statutes and case law.

Skewness and kurtosis values.

Items bd (career criminal), bj (homicide) and bn (robbery) from the Violent cases scale, and d17 (Protecting the public from criminals) from the Office Goals scale each had large skewness and kurtosis values and were trimmed from the model. The skewness standard errors were .19 for all four items. The kurtosis standard errors were .37 for each item. Their skewness absolute values ranged from 1.52 to 5.84 and their kurtosis values ranged from +2.84 to +37.60. The small standard errors indicate that the precision of the skewness and kurtosis values are fairly accurate in the population of New Jersey prosecutors. As with the Conservatism scale, trimming item d17 reduced the Office Goals latent variables to two indicators. This seemed to pose no subsequent statistical problems for the continued analysis. On the contrary, trimming each of these items regardless of the resulting number of indicators explained by each factor, contributed significantly to the overall fit of the model to the data.

Direct effects.

Unlike in path analysis where direct paths represent causal effects between two variables, direct paths in CFA are estimates of factor loadings which act as regression weights. In the current model, several direct paths were added when the loading of an item on a different factor was considered substantively meaningful. For the Public Demeanor and Office Goals items, paths were drawn from the republican theory latent variables that corresponded most closely with each item. Thus, factor loadings were drawn from Dominion to items d1 and d8, and Checking of Power to items d13, d14, and d16.

The only significant loading that emerged was item d8 on Dominion. It appears that this item's dual sources of variance may be due to its ambiguity and subsequent significant loadings on several factors " Having the public understand that the prosecutor's office is responding properly to crime" could mean upholding the wishes of the police, maintaining a level of professionalism, or prosecuting only those cases that improve overall dominion. Since item d8 could also be a goal of a prosecutor's office, a path was created from OG to this item. The path, however, was found to be non-significant.

Additionally, substantive concerns influenced the decision to load the Priority items (from which the Violent, Non-violent, and Personally Motivated sub-factors were divided) on different factors. Four items considered for loading on the Non-violent factor were bias crime, child abuse and neglect, domestic violence, and weapon offense. These were found to be non-significant and were thus not considered for the revised model. The Violent cases factor was considered to be related to bias crime, child abuse and neglect, and domestic violence. Domestic violence (item bf) showed to be significantly affected by Violent cases. Since this relationship is negative, it appears that prosecutors who consider cases of violent

crimes to be a priority are not likely to view cases like domestic violence a priority. In this study, according to one of the interviewees who prosecuted domestic violence, domestic violence was never a priority in her office.

The hypotheses were not entirely confirmed. According to the regression weights, the indicators did significantly load on their respective factors with one exception. Item bf (domestic violence) did load on the Violent case scale as well as the Personally Motivated scale to which the item loaded in the EFA. The covariances, however, did not act as hypothesized. Liberalism did positively and significantly covary with any of the republican scales. It covaried significantly but negatively with Checking of Power and Reprobation, but did not significantly covary with any other factor. Conservatism ended up significantly covarying with Parsimony and Reprobation and these covariances were negative. Public Demeanor did not significantly covary with any of the hypothesized scales. Office Goals significantly covaried with each factor except Reprobation and Reintegration. Personally Motivated significantly covaried with Dominion only. None of the relationships hypothesized by the Violent and Non-violent factors was significant.

Table 6.2 provides a summary of each iterative step taken toward the revised CFA model.

Table 6.1: CFA model fit indices' values and respecifications

Model	χ^2 (df), p-value	CFI	RMSEA (c.i.), p-close	ECVI (Saturated & Independent > Default?)	Respecifications
Hypothesized	1657.2 (1110), .000	.76	.05 (.048-.058), .18	yes	---
1	1528.9 (1016), .000	.77	.05 (.048-.059), .14	yes	a52 & d3 trimmed
2	1217.5 (837), .000	.79	.05 (.045-.057), .39	yes	bd, bj, bn, & d17 trimmed
3	1148.2 (795), .000	.80	.05 (.044-.057), .46	yes	a13 trimmed
4	1129.8 (794), .000	.81	.05 (.042-.056), .58	yes	D → d8 added
5	1112.2 (793), .000	.82	.05 (.041-.054), .69	yes	ebo <--> ebe added
6	951.4 (712), .000	.86	.04 (.036-.051), .92	yes	ba & bl trimmed
7	890.5 (673), .000	.87	.04 (.035-.050), .94	yes	a56 trimmed
8	783.3 (609), .000	.89	.04 (.032-.048), .98	yes	d1 & d16 (and OG) trimmed
Revised	751.8 (600), .000	.91	.04 (.027-.047), 1.0	yes	V → bf added

Based on the previous post-hoc analyses, Figure 6.3 provides the revised study model that will be referenced when conducting the structural equation model analysis.

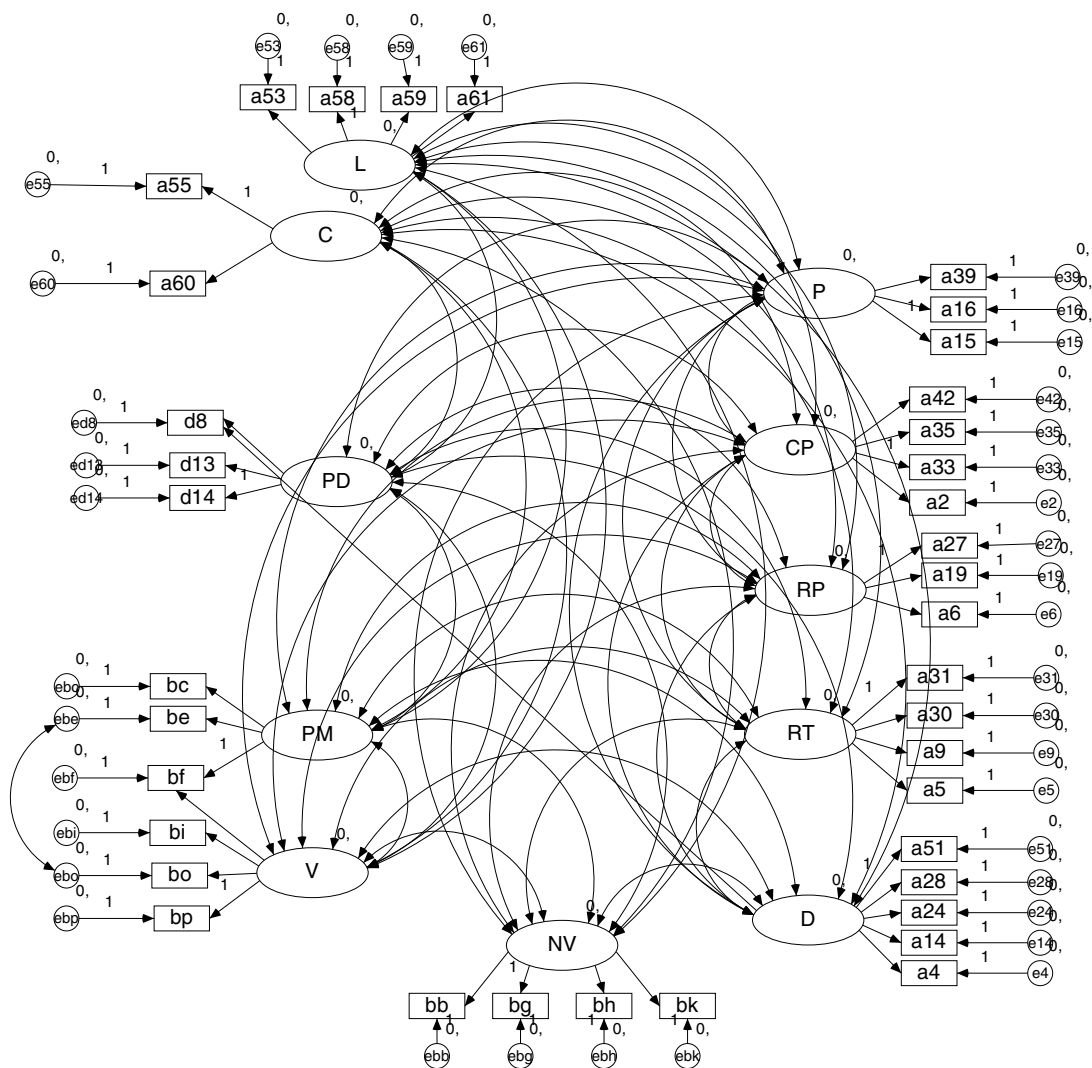


Figure 6.3: Revised CFA model for the republican theory of criminal justice

In the revised CFA model, standard errors of the regression weights, intercepts, and variances were reasonable (i.e., statistically significant and less than one) and parameter estimates were in the expected direction. Several covariances, however, were not significant. Their paths will be freely estimated in the structural equation model.

The revised CFA model should be viewed as preliminary. In order to further validate the model, it must be assessed with other independent samples (Kline, 2005; Long, 1983) developed in future studies.

Structural Equation Modeling (SEM)

The structural model specifies the causal relationship among variables that may be based upon the outcome of the CFA. SEM is one type of structural path model that specifies and estimates these relationships. The SEM model's purpose is to account for the variation and covariation of the measured (or observed) variables (MacCallum & Austin, 2000). In the following hypothesized model(Figure 6.4) , the endogenous variables are Dominion, Parsimony, Checking of Power, Reprobation, and Reintegration. The exogenous variables are Dominion, Liberalism, Conservatism, Public Demeanor, Personally Motivated, Violent, and Non-violent. Dominion acts as both an endogenous and exogenous variable. As will be shown, Dominion will partially mediate the relationships between several exogenous and endogenous variables in the SEM.

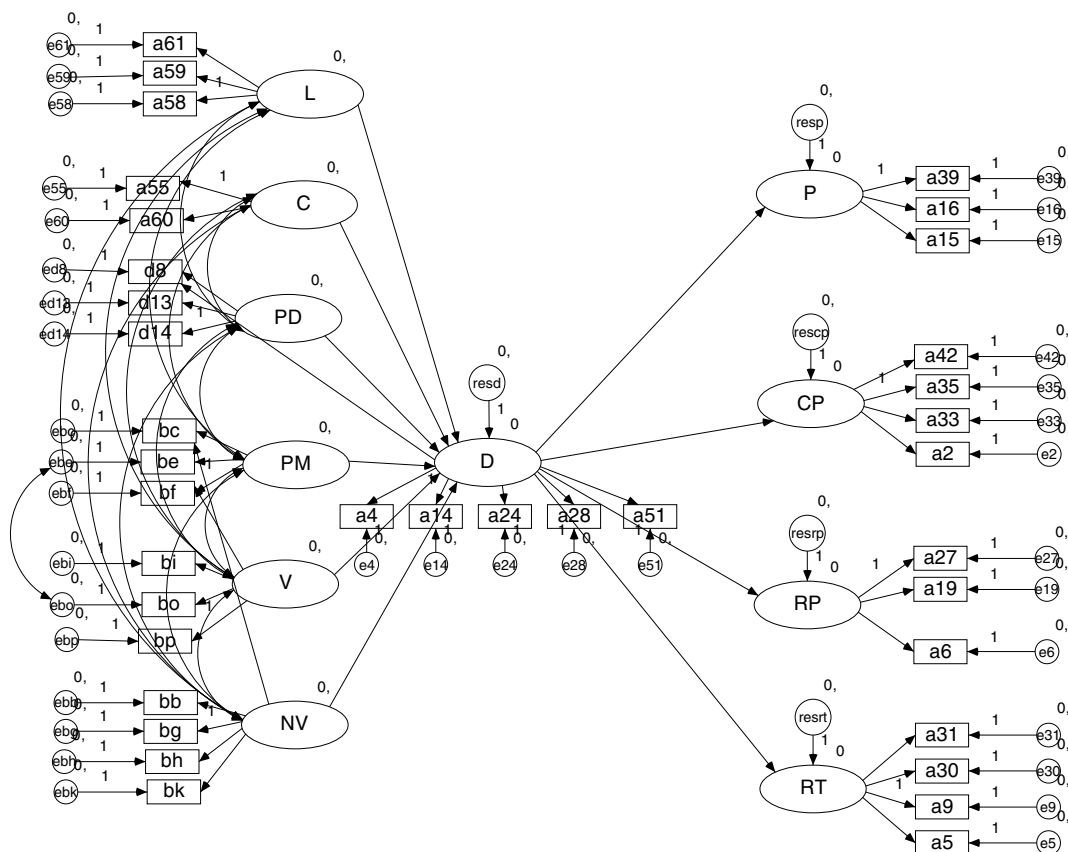


Figure 6.4: The hypothesized SEM model

The hypothesized model showed poor fit with $\chi^2 = 781.8$ (601 degrees of freedom), $p < .000$, CFI = .88, RMSEA = .04 (.033 - .049). The ECVI's saturated and independent values, however, exceeded those of the default model which is appropriate for this index. All the standard errors of the parameter estimates (regression weights, intercepts, covariances, and variances) were less than one. The directions of the effects also seemed reasonable, but the size of the effect of Dominion on Checking of Power (.08) causes some concern.

The significance of the parameter estimates will be discussed in the following paragraphs. Additionally, as with CFA, an iteration of post hoc analyses were conducted and continued until good fit was achieved. In the CFA revised model, several covariances

between the exogenous and endogenous variables were significant. In the SEM model, these covariances were added one at a time as direct effects (straight arrow paths). Those direct paths that significantly improved the fit were kept in the model.

Parameter Estimates

Direct effects.

A direct effect is measured by the standardized path coefficient which acts as a regression weight. It is interpreted in such a way that a one unit change in the exogenous (or mediator if it acts as an exogenous) variable creates a raw score difference in the endogenous (or mediator if it acts as an endogenous) variable.

Several of the exogenous variables had nonsignificant effects on Dominion. Neither Liberalism nor Conservatism significantly affected Dominion, even though their effects were positive. Public Demeanor had a significant but negative effect on Dominion. Of the Priority factors, Non-violent cases had a nonsignificant and negative effect on Dominion. Like Public Demeanor, Violent cases had a significant effect on Dominion, but the effect was negative. Personally Motivated cases significantly and positively affected Dominion. Table 6.2 provides a summary of the regression weights of the direct effects and their significance levels.

The revised CFA model showed a significant relationship between the following variables: Liberalism and Parsimony, Liberalism and Checking of Power, Liberalism and Reprobation, and Public Demeanor and Reintegration. Paths were added to the SEM one at a time to the model to reflect these relationships and determine the extent to which Dominion mediates them.

Table 6.2: Direct effects of the revised SEM model, coefficients, and significance levels

Direct Effect	Standardized Regression Weight	Significance Level
Exogenous to Dominion paths		
L → D	.06	.60
C → D	.25	.28
PD → D	-.20	.08
PM → D	.85	.00
V → D	-.57	.05
NV → D	-.10	.39
Dominion to Presumption paths		
D → P	.74	.00
D → CP	.08	.45
D → RP	.51	.00
D → RT	.32	.00
Exogenous to Presumption paths		
L → P	-.23	.01
L → CP	-.25	.03
L → RP	-.51	.00
PD → RT	-.21	.05

Dominion had significant and positive effects on Parsimony, Reprobation, and Reintegration. Dominion did not, however, manifest a significant effect on Checking of Power, although the effect was positive.

In addition to Dominion, two of the exogenous factors showed significant effects on the endogenous variables, and the effects were negative. Liberalism had a significant effect on Parsimony, Checking of Power, and Reprobation. Public Demeanor had a significant effect on Reintegration. Dominion's role in mediating these relationships will be discussed shortly.

Covariances.

In the SEM model, covariances between each pair of the exogenous variables were freely estimated. All covariances were significant except those between Public Demeanor

and Violent cases and Public Demeanor and Personally Motivated cases. The covariances are summarized in Table 6.3.

Table 6.3: Covariances of exogenous variables

Covariance	Coefficient	Significance Level
C <--> PD	.28	.05
C <--> V	.62	.00
C <--> NV	.36	.04
C <--> PM	.70	.03
L <--> PD	.29	.06
L <--> V	.50	.00
L <--> NV	.36	.05
L <--> PM	.78	.01
PD <--> V	.09	.30
PD <--> NV	.16	.09
PD <--> PM	.20	.14
PM <--> V	1.16	.00
V <--> NV	.46	.00
PM <--> NV	.98	.00
ebe <--> ebo	.30	.00

Mediation effects.

Indirect effects from exogenous to endogenous variables are measured through mediation (or intervening) variables. Statistical mediation is present when the causal influence of one variable on another is transmitted through one or more additional variables or the mediators (Hoyle & Kenny, 1999). A mediation effect must do the following: 1. show evidence of a causal influence of X on Y reflected as a nonzero value for the path between them, and 2. show a significant indirect effect of X on Y reflected as a nonzero value for path *ab* (through mediator Z) indicated by a decline in the direct effect of X on Y. If *ab* is significant and path *c* (between X and Y) remains significant, then there's evidence of both

direct and indirect effects of X on Y, and Z only partially mediates the effect. If ab is significant and c is not, then Z fully mediates the effect of X on Y (Hoyle and Kenny, 1999).

The following discussion considers Dominion's mediation between the variables in the SEM model (see Table 6.2 for the coefficients of these effects). Before the additional paths were added from L to the endogenous variables, the relationship between Liberalism and Dominion was positive (.01) but nonsignificant. The relationship between Liberalism and Dominion remained nonsignificant when Dominion acted as the mediator between Liberalism and Parsimony, Checking of Power, and Reprobation. When a path was added from Liberalism to Parsimony, the regression coefficient measuring the effect of Liberalism on Dominion increased to .06 but remained nonsignificant. The relationship between Liberalism and Parsimony remained negative (-.28) and significant. Dominion's effect on Parsimony remained positive (.74) and significant. Also, as mentioned earlier, the effect of Dominion on Checking of Power was nonsignificant. When a path was added from Liberalism to Checking of Power, the relationship between Liberalism and Checking of Power was negative (-.25) and significant, but the relationship of Dominion on Checking of Power (.08) remained nonsignificant. Finally, Dominion's relationship on Reprobation was positive and significant both prior to adding the path from Liberalism to Reprobation (.51) and after (.50).

Public Demeanor's effect on Dominion was negative and significant both before adding the path from Public Demeanor to Reintegration and after. Dominion's effect on Reintegration was also positive and significant both prior to adding the direct effect from Public Demeanor to Reintegration (.35) and after (.32). Public Demeanor's effect on Reintegration was negative (-.21) and significant.

Since Dominion's relationship to both Parsimony and Reprobation remain significant after adding the direct path from Liberalism to each respective factor, Dominion can be said to partially mediate the relationship between Liberalism and these two factors. Thus, Liberalism has a partial indirect effect on both Parsimony and Reprobation. Prosecutors' agreement with Liberalism does not fully influence or "cause" disagreement with either theoretical presumption. Liberalism's effect on Checking of Power, however, is direct. Since Dominion's relationships to both Liberalism and Checking of Power are nonsignificant, and Liberalism's effect on Checking of Power is significant, Dominion provides no mediation between Liberalism and Checking of Power. Thus, prosecutors who agree with Liberalism significantly disagree with the tenets of Checking of Power in terms of publicizing case decision statistics and information.

Dominion partially mediates the relationship between Public Demeanor and Reintegration. Prosecutors who agree that it is important that the office be publicly seen as responding properly to crime, maintain the prestige of the office, and maintain cooperative relationships with the police are significantly less likely to agree with the ideas behind reintegration. It is possible that prosecutors don't see the goals of maintaining a Public Demeanor congruent with the reintegration of both offenders and victims. Dominion's mediational role likely tempers the relationship between Public Demeanor and Reintegration.

Table 6.4 depicts the statistical steps taken from the hypothesized SEM model to find an adequate fitting revised model. The steps, and the revised model, include Dominion's role as partial mediator.

Table 6.4: SEM model respecifications

Model	χ^2 (df), p-value	CFI	RMSEA (c.i.), p-close	ECVI (Saturated & Independent > Default?)	Respecifications
Base	781.8 (601), .000	.88	.04 (.033-.049), .96	yes	---
1	777.3 (600), .000	.88	.04 (.032-.049), .97	yes	L → P added
2	773.4 (599), .000	.89	.04 (.032-.049), .97	yes	L → CP added
3	760.6 (598), .000	.89	.04 (.030-.048), .98	yes	L → RP added
Revised	756.8 (597), .000	.90	.04 (.030-.047), .99	yes	PD → RT added

Figure 6.5 presents the revised SEM model of this study.

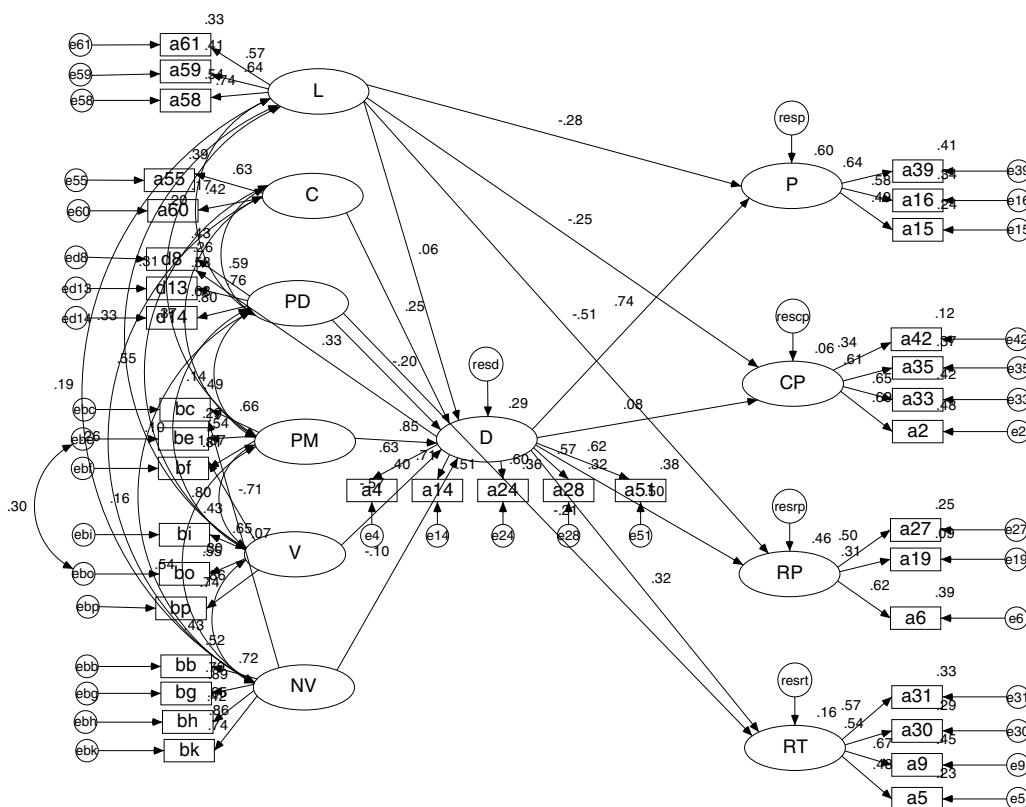


Figure 6.5: Revised SEM model

7

DISCUSSION

Dominion was hypothesized to positively influence the four presumptions of the republican theory of criminal justice. In this study, the structural equation model indicated that dominion significantly and positively impacted parsimony, reprobation, and reintegration. Prosecutors who agreed that helping victims and the public feel safe also agreed that the prosecutorial process should include a balance of punishment against protecting the victim, intermediate punishment of the offender when it's appropriate, moral education for offenders, and a consideration of the impact of prosecution on the victim. Dominion did not, however, significantly impact checking of power. The rest of this chapter provides greater interpretational detail of the findings from Chapter 6, as well as the limitations associated with this study.

The Interviews

Republican Theory of Criminal Justice Variables

Dominion.

One interviewee in this study acknowledged the importance of treating the accused with deference and respect while simultaneously offering protection to the victim. This prosecutor stated that prosecutors do a disservice when their job means only convicting offenders as such an approach is shortsighted. In this interviewee's view, "many prosecutors are too busy thinking about their next career move rather than about the victim who's right here."

This interviewee further stated that keeping victims safe is the number one goal, not punishment of the offender. The place to begin considering prosecution options to this prosecutor should be what will make the victim best off. This interviewee stated that even though the Attorney General's Office supports evidence-based prosecution for domestic violence, it is still always important to consider the victim's wishes.

For those criminal justice authorities who try to promote dominion in a professional environment that emphasizes law and order approaches, concessions would necessarily be made. For the interviewees, going around administrative, and legal, procedures were justified as a way to provide a level of safety to victims for whom the law was unable to provide.

According another interviewee, the police officer, in the pre-mandatory arrest days, the police in his sector would grant disputing couples a "divorce" when no evidence of injury existed and no arrest would be made. The officers in the department would direct one of the conflicting parties to put his or her hand on the officer's badge, and the responding officer would state, "By the power invested in me by the mayor of [the jurisdiction], you are now divorced." The officers knew that they had no legal authority to grant divorces, but they thought that the process would make victims feel safer, especially since a "divorce" meant that one of the parties had to leave the home, even if only temporarily.

One of the domestic violence prosecutors would regularly hold onto cases until she felt that they were fully investigated. As a result, she was frequently accused by her office's administration of creating a backlog of cases. In response, she learned that if she didn't enter the case into the office's statistical reporting system until an investigation was complete, then she would appear timely with her caseload dispositions, and her supervisors would not

criticize her. This prosecutor coached subsequent domestic violence prosecutors in her county to do the same.

Yet another prosecutor, who handled organized crime cases, talked about the time that a police officer was sent to the home of a well-known organized crime figure who was rumored to be making threats to harm this prosecutor's children during the course of a case involving the offender. The nature of the visit involved the police officer threatening this organized crime figure with death if the threats continued.

Parsimony.

In the SEM analysis, dominion's effect across the presumptions was not uniform. Dominion had the strongest effect on parsimony, suggesting that prosecutors who agree with decisions that consider the potential impact upon victims' well being. An indication of the influence of dominion promotion on parsimony ran through the accounts of three of the interviewees. They indicated that they had family members who were offenders or victims of crime. They each seemed to understand the proximity of criminality to their personal lives. This insight, coupled with their understanding of their profound professional power to disrupt lives, may go far in illuminating prosecutors' decisions about processing cases.

Checking of power.

Checking of power had a positive but weak relationship to dominion. The indicators of the checking of power scale included the publication of case decisions and statistics. It seems that prosecutors agree that releasing their case decisions would improve neither the public's nor victim's safety. Prosecutors may be reluctant to release case decisions as their own professional safety may be compromised. If dominion includes safety from domination in the workplace, and surely dominion's reach does, then prosecutors may see their own

dominion jeopardized by angry victims and offenders. They may also fear punishment from their superiors if case decisions that negatively reflected upon the office were publicized.

According to one of the prosecutors interviewed in this study, the county prosecutor is concerned with media representations of the office only to the extent that negative press could impact the prosecutor losing a potential judgeship upon leaving office. The concern does not seem related to the electorate, however, since the prosecutor is appointed by the governor.

Reprobation and reintegration.

Prosecutors who promote dominion in this study also support reprobation and reintegration about equally although less strongly than for parsimony. The potential for shame appears to be important for prosecutors even before they take a case. One insightful prosecutor stated,

Nobody likes having their lives torn open and having to face their friends, family, and employers. The subpoena is the greatest weapon that the prosecutor possesses because it forces people to come forward. It gives the prosecutor the ability to ruin lives. Let's say that you are in business with someone and you are forced to produce your business records because of suspicion of your business partner. You'll never trust your partner again. I don't think that younger prosecutors can understand that.

Another also recognized the potentially detrimental effects of shame when responding to domestic violence calls. The interviewee described how he would try to give the male member of the household a way to protect his dignity by appealing to the man's sense of

responsibility to his family. This interviewee recognized the shame associated with a stranger coming into the home to straighten out the household's affairs. The implication was that the head of household failed and now a representative of the state had to take care of business. This interviewee stated that he empathized with the frustration of being a black male in a poor neighborhood. At the same time, however, the police felt like the protectors of the women and children who were subjected to violence in the home.

While none of the interviewees questioned the value of incarceration in their professional experiences, the domestic violence prosecutors appeared more concerned with responding to the violence in a way that was most beneficial to the abusers and victims. To these prosecutors, empathy toward the value of negotiating relationships after the effects of criminal justice intervention was evident.

Dominion's significant effect on parsimony, reprobation, and reintegration is telling. The strong relationship between dominion and each of the three presumptions provides substantial support for the relationships articulated by republican theory. Even though the magnitude of dominion's relationship to checking of power is weaker, it is still positive and provides support for the theory.

Exogenous Variables

With the exception of cases involving personally motivated crimes, none of the exogenous variables in the SEM model significantly affected dominion. Each set of exogenous variables will be considered in turn.

Political orientation.

Both liberalism and conservatism positively impacted dominion, but the relationship was nonsignificant. This suggests that respondents' attitudes toward promotion of dominion

are weakly influenced by one's political orientation. Political orientation's weak influence indicates that prosecutors did not incorporate their political beliefs into their attitudes toward dominion. Prosecutors who agreed with the items in the liberalism scale, however, significantly disagreed with parsimony, checking of power, and reprobation. In New Jersey, prosecutors may be largely insulated from larger political influences since each county prosecutor is appointed by the governor. After confirmation, county prosecutors may not be confronted by political pressures until a governor from a different party than the incumbent gets elected. Assistant prosecutors may be even further insulated since their tenure is not threatened with the election of a new governor. Additionally, new assistant prosecutors are trained at Office of the Attorney General in Trenton. Each assistant prosecutor likely receives instruction that ensures some level of conformity across the state.

Priority.

Case type priority does differentially influence prosecutors' attitudes toward dominion. The starkest influences concern attitudes toward personally motivated cases (child abuse and neglect, bias crime, and domestic violence) which positively and significantly affect attitudes toward dominion. Attitudes toward violent cases (career criminal, gun violence, robbery, sex assault, and weapon offense) negatively and significantly influenced attitudes toward dominion. Non-violent cases (auto theft, economic crime, environmental crime, and insurance fraud) have a negative and small effect on prosecutors' attitudes toward dominion.

For violent offenses, dominion appears to be a large concern. The effects of Violent cases on dominion was not only significant, but also negative. Prosecutorssupporting

violent cases as an office priority appear to significantly disagree that dominion is an important objective.

It seems that prosecutors considering non-violent offenses as priority do not agree that dominion promotion is important. This may stem, in part, from the nature of the offenses themselves. With the possible exception of auto theft, the other offenses generally either do not have discernible victims, or the victims are organizational bodies (e.g., insurance company, credit card firm, the public). Victim considerations thus would likely be less consequential in terms of repairing relationships, so long as restitution is made.

Domestic violence perfectly loaded on the Personally Motivated latent factor with a value of 1.01 indicating that domestic violence as a priority is strongly related to the factor. It appears then that prosecutors supporting domestic violence as a priority are significantly more likely to agree would promote dominion than those handling other types of cases.

One of the interviewees indicated that, with the exception of perhaps sex crimes prosecutors, domestic violence prosecutors are different from the others in the office. In this interviewee's estimation, domestic violence prosecutors are much more patient since they have to listen to the victim's story. In many cases, the prosecutor is the first person to whom the victim is pouring tales of abuse. Prosecutors can become intimately acquainted with victims and, as a result of hearing the victim's story in great detail, may likely be empathetic toward offenders than prosecutors who handle other cases. Braithwaite and Pettit (1990) agree that the more a person knows about the facts of a crime, the less judgmental about the offender the person will be.

Objectives.

Those prosecutors who agree that maintaining a public demeanor as an organizational objective do not simultaneously agree that dominion is important, except where demonstrating a proper professional response to crime is concerned. Prosecutors concerned with maintaining the prestige of the office and cooperative relations with the police are significantly not likely to consider dominion important. Prosecutors who support public demeanor are also significantly likely to disagree with reintegration. It may be that a focus on reintegrating offenders and victims goes against what prosecutors perceive the public to support and may adversely affect cooperation from the police.

Interestingly, most of the interviewees in this study did not think that the values they embraced when performing their jobs were consistent with the values accepted within their respective offices. One prosecutor stated that while he approaches his job as doing the right thing, regardless of the potential for negative press or public criticism, his office seems more driven by external forces. This prosecutor lamented about the fluctuating political imperatives that drove the prosecution priorities of his office. According to this prosecutor, environmental crime was at one time considered a priority. As a result, investigators would be summoned to question residents who had oil spills in their yards from their cars. This prosecutor criticized the focus on these seemingly minor offenses that resulted in punishing otherwise law-abiding citizens.

One of the prosecutors who handled domestic violence cases stated that her goals were entirely incompatible with those of the office. She recounted how her bosses would criticize her for using too much of the resources in her office. For example, she would interview victims after-hours in her office. Although she would not be paid overtime, the

investigator who accompanied her would have to be paid overtime. When asked whether domestic violence cases would be less of a priority if federal funds were removed, she stated that it would likely have no effect since domestic violence was never a priority in her office. Another domestic violence prosecutor also described how she would be criticized in her office. This prosecutor stated that she would regularly be criticized by her boss for failing to dispose cases quickly. This prosecutor's frustration was stemmed from her belief that a thorough investigation was necessary in order to understand as many facts surrounding a domestic violence allegation as possible.

Limitations of the Study

Content Validity

Hindsight presents an appreciation of some of the issues that may threaten validity. Content validity concerns the extent to which an empirical measure reflects the domain of a concept (Carmines & Zeller, 1979). Since the scale items were written with domestic violence in mind, the term "domestic violence," although not explicitly indicated in any one item in the RTCJ scale, is implied. Twenty-six (48%) of the 52 items mention "victim." This is a high percentage of statements. The republican theory of criminal justice clearly promotes victim safety, but it also considers offenders' dominion as well as the dominion of citizens in the larger society.

Additionally, the questionnaire is relatively short which may negatively impact its content validity. The range of scaled statements may not contain the full domain of concepts each construct was meant to define. The main concepts of the republican theory of criminal justice are multidimensional and it was difficult to capture all of these dimensions. However, in light of seeking a greater response rate, a balance was considered whereby the survey was

kept to a length that would not impose an unreasonable amount of time on the prosecutors, thereby hopefully maximizing responses.

Regarding political orientation, the scale could have included more topical items such as immigration, gay marriage, war, abortion as a moral choice rather than a private decision with a doctor, assisted suicide, and the role of creationism in public school curricula. It was very difficult to find a scale that adequately measured relevant political topics. A new scale should be created if political attitudes are measured for future studies.

The survey also does not capture other potentially significant influences on dominion, such as extralegal influences that may impact prosecutors' decision making. At the outset of this project, the intent was to compare the legal and extralegal influences that enter the prosecutor's decision equation. Of course, this could prove to be a controversial undertaking which would most likely prevent cooperation due to the inability to gain access to willing respondents. However, although low agreement with republican values does not automatically mean an adherence to personal biases or ulterior motives in order to win at all costs, it may indicate that certain beliefs associated with a more punitive ideology (e.g., the victim's dominion is not a prime consideration in a case, prosecution should proceed regardless of the costs to the office and/or parties involved) should take precedence over republican values.

From the interviews, it was noted that perhaps one of the most telling causes of their approaches to their jobs concerned their personal experiences. This one issue may have been a powerful influence on the interviewees' worldviews and seems to go far in explaining the failure of political orientation to adequately relate prosecutors' attitudes toward the elements of the republican theory of criminal justice.

One interviewee described her parents' relationship. She indicated that her father abused her mother, but always out of the interviewee's sight. She did not know about the abuse until well after her parents' divorce. This interviewee stated that although she lived with her mother, her mother did not speak poorly of her father, and her mother continued to wear her wedding ring. When her father died, 10 years after the divorce, the interviewee attended the funeral with her mother.

Another interviewee described his childhood. His father regularly told him not to hit women. This interviewee expressed a strong desire to protect women and children in abusive homes. He stated that he felt responsible for their safety. He felt professionally responsible as a "protector of women."

One other interviewee admitted that perhaps he saw the world as "too black and white." He indicated that he came from a law enforcement family, which he implied could have explained his rigid sense of right and wrong.

Construct Validity

Construct validity concerns the extent to which "a particular measure relates to other measures [that are] consistent with theoretically derived hypotheses" (Carmines and Zeller, 1979, p.23). Measuring construct validity involves three steps. First, the theoretical relationships among the concepts are specified. Second, the empirical relationship between the measures to the concepts is to be examined. Third, the empirical evidence is interpreted regarding how it clarifies the construct validity of the measure (Carmines, et al., 1979).

In order to have construct validity, dominion should first be specified as that concept which influences the four presumptions. This is done in the theory. Second, dominion should be empirically shown to correlate with each of the four presumptions in the direction

specified in the theory. Dominion's empirical relationship to the presumptions was demonstrated in the SEM model. While dominion correlates significantly and positively with parsimony, reprobation, and reintegration, it correlates weakly with checking of power.

Part of the difficulty with this model is that the concepts are multi-dimensional. Checking of power includes not only publication of statistics as it was presented here, but also external accountability, internal supervision, and due process. It is possible that publishing statistics, in the prosecutors' world, is not an exercise that this sample values.

Reliability

Reliability concerns the consistency of empirical assessments that would be captured in repeated observations of the same phenomenon (Carmines, et al., 1979). Since the population of county prosecutors' responses was sought, generalizations of the study beyond New Jersey county and assistant county prosecutors should not necessarily be drawn. Replication of the survey should be conducted in order to consider the findings applicable to other populations. New Jersey may be an anomalous state since it is one of the few remaining in the United States whereby each county prosecutor is appointed by the governor rather than elected as prosecutors are in most other states.

Alternative Explanations for Republican Theory of Criminal Justice

Two rival hypotheses are presented for two reasons. First, they contribute to this study's better explication of the nature of the relationships and, secondly, their presentation complies with the convention of SEM. Statistically, a theoretically infinite number of model design possibilities could explain the data, and convention asserts that theoretically plausible alternative models be advanced so that the researcher has considered other explanations.

Rival hypothesis 1: The presumptions of the republican theory of criminal justice (parsimony, checking of power, reprobation, and reintegration) influence dominion. This model could be supported by Braithwaite and Pettit's (1990) assertion that when the presumptions are maximized, then dominion is maximized. By extension, when these presumptions are not considered when making decisions, then dominion will not exist. There will be a statistical correlation of zero between each presumption and dominion.

Braithwaite and Pettit (1995) acknowledge, "any explanatory theory that fails to connect with a normative concern is likely to be unguided and it will be incapable of serving policy-making at all" (p.161). This is precisely the problem with this rival hypothesis. Decisions made regarding the four presumptions are best informed by the overarching guidance of the target of dominion.

Braithwaite and Pettit (1994, 1995) assert that the goal of dominion is an axiom. The authors further indicate that the four presumptions are theorems. If dominion is to be understood as self-evident as Braithwaite and Pettit state, then criminal justice authorities, specifically prosecutors, cannot maximize the four presumptions without taking dominion as the overarching goal. Taking dominion as a goal furthermore, does not have to be an all or nothing matter. Prosecutors can support dominion in some of their decisions even if they do not consider dominion in all.

Prosecutors can pursue the four presumptions without considering dominion at all as the target to be promoted. However, pursuing any of the four presumptions with the aim of achieving a goal other than promoting dominion is inconsistent with the republican theory. For example, prosecutors may pursue a restitution policy for offenders. If they are pursuing restitution under a punitive ideal, then they may try to maximize the amount of restitution

from the offender, rather than seek an agreeable arrangement that benefits both victim and offender.

In an example of a prosecutor who practiced parsimony without taking republicanism as a goal, one interviewee stated that, in his experience, the grand jury would be used when it was not feasible to continue a case, but “too much heat” would be brought from victims or the public if his office “dropped” the case. The prosecutors would present the case to the grand jury “with an eye toward dismissal.” The evidence would be presented in such a fashion that the grand jury would not indict, and the office would continue to give the impression that it was indeed taking an aggressive stance toward crime. The prosecutor indicated that typically in these cases, the police would make an arrest, but the arrest report would be “bad,” meaning that it was incomplete or the arrest was made in the absence of probable cause.

This prosecutor appeared to be supporting parsimony, but he was hinging his decisions to drop cases on grounds other than promoting dominion. It’s possible that he realized the potential damaging effects of prosecution on the accused, but more likely, the prosecutor was concerned about preserving the professional image of his office. Since these difficult cases often included victims who wanted to pursue the case, the interviewee’s greater concern for the office’s reputation, while engendering parsimony, did not promote dominion.

Rival hypothesis 2: When dominion promotion is adhered to, it has the effect of maximizing the four presumptions, which then have the reciprocal effect of maximizing dominion. For prosecutors, the sequence of logic follows. Prosecutors pursue dominion as the overarching goal. Prosecutors cannot take dominion as the goal without pursuing the

four presumptions. Therefore, prosecutors maximize the four presumptions because they believe in maximizing dominion. Pursuing dominion is the root cause for pursuing the four presumptions and maximization of dominion is caused by maximization of the four presumptions.

Reiterating the first axiom of the theoretical relationships proposed by Braithwaite and Pettit (1994, 1995), the goal of the criminal justice system is dominion. The second axiom states that the criminal justice system should be designed so that dominion is maximally promoted.³⁴ These axioms support the theorems that the criminal justice system recognize and incorporate the four presumptions in its functions. The first axiom further states that when dominion is promoted, then values such as people's physical integrity, procedural rights, concern for equity, and freedom of movement will be promoted.

When mapping the preceding rules in a path diagram, rival hypothesis 2 does not work. Rival hypothesis 2 assumes that paths would be drawn from dominion to each presumption and then each presumption back to dominion. The addition of four extra paths from the presumptions to dominion would overly complicate the model and would likely prevent reaching admissible statistical solutions. Instead, taking dominion as the exogenous variable and the four presumptions as the endogenous variables, as they are in Chapter 6, the coefficients that refer to the paths from dominion to the four presumptions adequately represent the magnitude of the relationship between dominion and each presumption. The first axiom articulates values that result when the goal of the criminal justice system is dominion. A path model of the theory's axioms and theorems would then go further than the structural equation model presented in this study. The hypothesized model would maintain

³⁴ The third axiom states that all components of the criminal justice system systematically should plan for promotion of dominion.

dominion as the exogenous variable and presumptions as the endogenous variables arrangement. However, the presumptions would mediate the relationship of dominion to the values mentioned in the last paragraph. This research would determine the extent to which dominion promotes these values and whether the variables actually do mediate dominion's relationship to the values.

Future Research

There seems to several directions in which this study could go. One direction would be to apply the survey to another sample of prosecutors in order to provide further validation of the survey since the results of the current study are preliminary. Much more research needs to be done. Another direction would be to study authorities' attitudes in other subsystems within the criminal justice system. The public could also be surveyed to determine their level of satisfaction with the criminal justice system and subjective feelings of safety after having contact with some aspect of the system. Additionally, Braithwaite is a strong supporter of qualitative methods as a way to fully understand the complexities associated with decision making, future research should incorporate more qualitative methods, such as nonparticipant observation or in-depth structured interviews.

Yet another direction would be to compare the level of commitment to republican ideals across criminal justice systems globally. This is always a good idea with research. One way to truly appreciate the nuances and boundaries of one system is to look at another system for comparison.

Conclusion

The intention of this project was to provide some baseline information on the extent to which prosecutors agree with republican theory's conventions. One finding of this study

is that overall, prosecutors appear at least on some level to agree to dominion promotion. Having statistically demonstrated this, a few more observations can be made, particularly those that impact dominion promotion. Prosecutors are not likely to be explicitly trained, nor does the typical citizen inherently carry, a sense that the goal of criminal justice should be the reduction of arbitrary intervention. Prosecutors do not seem to demonstrate overt republican ideals in their toolboxes when they go to work. A prosecutor is more likely to consider how much punishment an offender should receive as part of the formula influencing when, for example, charging a case (Rosett & Cressey, 1976). Prosecutors do, however, understand differential approaches to certain types of offenses and offenders even if they do not collectively agree to the same extent about the proper prosecutorial approach to similar cases.

One interesting finding from this study concerns the extent to which the interviewees' approaches to their jobs reflected their personal experiences. This issue may demonstrate one of the more salient influences on their worldviews, and it seems to help explain the failure of political orientation to adequately influence prosecutors' attitudes toward promoting dominion.

Elements of republican theory exist in the practices of the criminal justice system in part from the current due process paradigm described by Packer (1968). Although the literature on prosecutorial behavior tends to emphasize elements of crime control in terms of quickly reaching case dispositions and guilty pleas as the conduit by which the speed of dispositions are maximized, concerns for due process are not incongruent for prosecutors. Packer's due process model and the republican criminal justice share the same consequentialist target of minimization of governmental intervention. For Packer, the due process model emphasizes the elimination of authorities' mistakes to the greatest extent

possible. Of course, the republican emphasizes non-domination, but the republican also seeks minimization of mistakes by urging for deliberation in decisions. Thus, the criminal justice system already manifests dominion promotion on some level when it urges prosecutors to consider the impact of the outcome of a criminal case on offenders and their victims.

Appendix A

The Questionnaire

A. For the following statements, please circle the one response to each statement that most reflects your view. When answering each statement, please think of your own feelings as the primary consideration.

	<u>Strongly Disagree</u>						<u>Strongly Agree</u>
1. The public should be made aware of serious offenders through notification procedures similar to those of sex offenders.....	1	2	3	4	5	6	7
2. Prosecutorial decisions should be made public.....	1	2	3	4	5	6	7
3. Most offenders are deterred by the threat of arrest.....	1	2	3	4	5	6	7
4. A primary goal of prosecution should be to diminish a victim's sense of domination by others.....	1	2	3	4	5	6	7
5. Performing community service helps to reintegrate offenders back into the community.....	1	2	3	4	5	6	7
6. Offenders who have been convicted should receive some form of moral education.....	1	2	3	4	5	6	7
7. The court should give victims the opportunity to directly confront their victimizers.....	1	2	3	4	5	6	7
8. Legal intervention has helped to reduce violence in the community.....	1	2	3	4	5	6	7
9. One goal of the criminal justice system should be to repair relations between the victim and offender.....	1	2	3	4	5	6	7
10. Cases where victims cooperate with the prosecutor should receive priority.....	1	2	3	4	5	6	7
11. Prosecution prevents offenders from repeating their criminal behavior.....	1	2	3	4	5	6	7
12. Victims should be informed about the potential outcomes of a case before a prosecution occurs.....	1	2	3	4	5	6	7
13. Offenders are basically good people who have committed a bad act.....	1	2	3	4	5	6	7
14. One goal of prosecution should be to help make victims feel safe from future victimization.....	1	2	3	4	5	6	7

	Strongly Disagree						Strongly Agree
15. Case processing decisions should be based on balancing the punishment of an offender against protecting the interests of the victim.....	1	2	3	4	5	6	7
16. The sentencing of offenders should include some sort of intermediate sanction if it will help the victim.....	1	2	3	4	5	6	7
17. When deciding against charging an offender, prosecutors should provide written reasons to the arresting police officer(s).....	1	2	3	4	5	6	7
18. A victim's preference for prosecution should be considered when deciding to prosecute a case.....	1	2	3	4	5	6	7
19. Offenders who feel shame for their criminality will be less likely to repeat the behavior.....	1	2	3	4	5	6	7
20. Prosecution can help return victims' feelings of safety to the level that existed prior to when the harm against them was done.....	1	2	3	4	5	6	7
21. Prosecution files should be examined periodically by community groups.....	1	2	3	4	5	6	7
22. Ideally, a victim should be informed of each prosecutorial decision during the duration of the case.....	1	2	3	4	5	6	7
23. Compared to other offense levels, prosecuting violent offenses should have the highest priority in a prosecutor's office.....	1	2	3	4	5	6	7
24. Prosecution of offenders shows the victim that the crime has been taken seriously by the criminal justice system.....	1	2	3	4	5	6	7
25. If the victim and offender are seen as equally provoking the violence, then both should be shamed for their behavior.....	1	2	3	4	5	6	7
26. Many offenses could be best dealt with informally by community groups.....	1	2	3	4	5	6	7
27. The court should help offenders understand the wrongfulness of their behavior.....	1	2	3	4	5	6	7

	Strongly Disagree						Strongly Agree
28. One role of the prosecutor should be to help the public feel safe from harm.....	1	2	3	4	5	6	7
29. When evidence of a crime exists, prosecution should occur regardless of the victim's relationship with the offender.....	1	2	3	4	5	6	7
30. One purpose of prosecution should be to help reintegrate offenders back into their communities.....	1	2	3	4	5	6	7
31. The offender's family should be part of the prosecution process.....	1	2	3	4	5	6	7
32. Prosecutors should generally seek less punitive sanctions for misdemeanants who apologize to their victims.....	1	2	3	4	5	6	7
33. There should be a policy that prosecutorial decisions be released to the news media.....	1	2	3	4	5	6	7
34. Prosecutors' offices should conduct periodic examinations of cases that were not prosecuted.....	1	2	3	4	5	6	7
35. Prosecutors' offices should publicize their case processing statistics.....	1	2	3	4	5	6	7
36. After a crime has been committed, the victim and offender should be separated for the duration of a case.....	1	2	3	4	5	6	7
37. For cases in which a victim is seen as uncooperative, prosecutors should consider plea bargaining with the offender, rather than go to trial.....	1	2	3	4	5	6	7
38. For offenders who live in the same household as the victim, the offender's imprisonment can disadvantage the victim.....	1	2	3	4	5	6	7
39. A major consideration in prosecuting a case should be the potential impact on a victim's life.....	1	2	3	4	5	6	7
40. Offenders' rights should be paramount throughout the prosecution of a case.....	1	2	3	4	5	6	7
41. Victims should be made full partners in case processing decisions.....	1	2	3	4	5	6	7

	Strongly Disagree						Strongly Agree
42. Victims should have the right to appeal a prosecutor's decision not to accept a case	1	2	3	4	5	6	7
43. The court should forgive offenders who express remorse for their criminal behavior.....	1	2	3	4	5	6	7
44. Many offenders are inherently bad people.....	1	2	3	4	5	6	7
45. Incidents should be prosecuted criminally whenever evidence of serious physical injury exists.....	1	2	3	4	5	6	7
46. Tough prosecution policies often deter offenders from committing crime.....	1	2	3	4	5	6	7
47. The victim should have input regarding the punishment that the offender should receive.....	1	2	3	4	5	6	7
48. Offenders should be made to compensate a victim's expenses.....	1	2	3	4	5	6	7
49. Releasing case processing decisions to the public will be detrimental to the safety of the victim(s) in the case	1	2	3	4	5	6	7
50. For misdemeanors, prison should be imposed only as the last resort when other intermediate sanctions (like probation) fail.....	1	2	3	4	5	6	7
51. Prosecutors should use their authority to free victims from feeling subjected to domination by others.....	1	2	3	4	5	6	7
52. Prosecution should proceed only if it will cause minimal emotional hardship for the victim.....	1	2	3	4	5	6	7
53. Birth control devices should be available to any adult who wants them.....	1	2	3	4	5	6	7
54. Men and women should have the same legal rights...	1	2	3	4	5	6	7
55. There are too many shows on television that make fun of traditional family values.....	1	2	3	4	5	6	7

	Strongly Disagree						Strongly Agree
56. Women are happiest if they stick to keeping a home and raising children.....	1	2	3	4	5	6	7
57. There should be laws against marriage between blacks and whites.....	1	2	3	4	5	6	7
58. Abortion should be a private matter between a woman and her doctor.....	1	2	3	4	5	6	7
59. Homosexuals should be able to do what they want to so long as they don't hurt other people.....	1	2	3	4	5	6	7
60. The government should prohibit the private use of marijuana.....	1	2	3	4	5	6	7
61. If a man and a woman want to live together without getting married, that's their business.....	1	2	3	4	5	6	7

B. For the following items, please circle the priority for prosecution that you believe each type of crime should have in your office.

	Least Priority						Most Priority
(a) Arson.....	1	2	3	4	5	6	7
(b) Auto Theft.....	1	2	3	4	5	6	7
(c) Bias Crime	1	2	3	4	5	6	7
(d) Career Criminal.....	1	2	3	4	5	6	7
(e) Child Abuse & Neglect.....	1	2	3	4	5	6	7
(f) Domestic Violence.....	1	2	3	4	5	6	7
(g) Economic Crime.....	1	2	3	4	5	6	7
(h) Environmental Crime.....	1	2	3	4	5	6	7
(i) Gun Violence.....	1	2	3	4	5	6	7
(j) Homicide.....	1	2	3	4	5	6	7
(k) Insurance Fraud.....	1	2	3	4	5	6	7
(l) Narcotics Violation.....	1	2	3	4	5	6	7
(m) Police Misconduct.....	1	2	3	4	5	6	7
(n) Robbery.....	1	2	3	4	5	6	7
(o) Sexual Assault.....	1	2	3	4	5	6	7
(p) Weapon Offense.....	1	2	3	4	5	6	7

C. From the list on the previous page (section B), please indicate (by letter) the type(s) of case(s) that you have prosecuted in the *past year*.

Other cases: please specify: _____

D. Below are statements about prosecutor work objectives. For each statement, please circle how important you believe it is to achieve each of the following objectives when resolving cases.

	<u>Not an Objective</u>					<u>Very Important Objective</u>
1. Reducing the crime rate.....1	2	3	4	5	6	7
2. Maximizing the punishment imposed on criminals.....1	2	3	4	5	6	7
3. Discovering the truth about the case.....1	2	3	4	5	6	7
4. Prosecuting only those who have really committed crimes.....1	2	3	4	5	6	7
5. Treating similar cases alike.....1	2	3	4	5	6	7
6. Efficiently disposing of as many cases as possible.....1	2	3	4	5	6	7
7. Convicting as many defendants as I can.....1	2	3	4	5	6	7
8. Having the public understand that the prosecutor's office is responding properly to crime.....1	2	3	4	5	6	7
9. Rehabilitating offenders.....1	2	3	4	5	6	7
10. Invoking remorse in the offender..... 1	2	3	4	5	6	7
11. Getting the public to condemn the criminal in order to prevent crime.....1	2	3	4	5	6	7
12. Repairing relationships between the offender and the victim1	2	3	4	5	6	7
13. Maintaining the prestige of the prosecutor's office.....1	2	3	4	5	6	7
14. Maintaining cooperative relations with the police.....1	2	3	4	5	6	7
15. Giving offenders the punishment they deserve.....1	2	3	4	5	6	7
16. Respecting the rights of suspects.....1	2	3	4	5	6	7
17. Protecting the public from criminals.....1	2	3	4	5	6	7

Personal Information

E. Which group do you most identify with?

- White
 African-American
 Hispanic
 Asian
 Other: please specify: _____

F. What is your gender?

- Male Female

G. What year were you born? _____

H. What is your marital status?

- Married
 Separated
 Divorced
 Widowed
 Never Been Married

I. Which of the following best describes your political orientation?

- Conservative Moderate Liberal Other: please specify: _____

Work Experience

J. Which of the following best describes the county that you currently work in?

- Urban Suburban Rural

K. How long have you worked as a prosecutor in New Jersey? _____ Year(s)

L. In your career as a prosecutor, have you ever prosecuted domestic violence cases?

- Yes No

M. If you answered **yes** to the above question, what is the total length of time that you prosecuted domestic violence? _____ Year(s)

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