

# Open Access to Criminal Justice Scholarship: A Matter of Social Justice

**Authors:** Allan Scherlen; Matthew Robinson

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## Abstract

The paper argues that criminal justice scholarship disseminated through the traditional journal subscription model is not consistent with social justice. Adoption of "open access" principles in publishing benefits both authors and readers through broader and more egalitarian dissemination of criminal justice literature. Moreover, when viewed in light of social justice theory, open access is a more just method of scholarly communication. After providing a brief outline of the history and basic aspects of open access, the paper uses the framework of the social justice theories of John Rawls and David Miller to argue why open access is more just than traditional subscription models of publishing and why criminal justice scholars and their associations must consider the importance of supporting open access initiatives and promoting the dissemination of scholarship as widely as possible if they are concerned about attaining justice for criminal justice scholarly literature.

## Introduction

The discipline of criminal justice concerns itself first and foremost with issues of "justice," but ironically the process for the dissemination of scholarship within the discipline of criminal justice is inconsistent with theories of social justice articulated by justice theorists, John Rawls and David Miller. Currently, criminal justice societies, like those of most other academic disciplines, publish articles in journals that have been outsourced to large corporations which maintain a profit by limiting access to scholarship through ever-inflating subscription barriers. Traditional models of disseminating knowledge through subscriptions served scholarship well through the twentieth century but are now limiting the potential for authors' impact and readers' access.

Since the advent of the Internet, the ways scholars create and share academic research have rapidly changed. Throughout the late 1990s and into the 21st century, scholars in various fields began to realize that they could create an academic journal and distribute it on the web for a minimal cost, while others found that they could post their published

papers on their own websites. Meanwhile, commercial publishers discovered that the power of digital technologies allowed them to turn academic journal publishing into a profitable business. The traditional paper journal was rapidly becoming obsolete in the face of online innovations, while new methods for digitally sharing journal articles, research data, and other findings were promising to better serve the advancement of knowledge and to benefit both authors and readers more effectively.

Developments in new knowledge sharing technologies coupled with concern over the alarming inflation rate of journal subscription prices over the last 20 years led to a variety of innovations that have come to be referred to as "open access." These initiatives have dealt in one way or another with freeing reader's access to academic research literature from financial obstacles of the traditional subscription model of journal publishing, so anyone who has access to the Internet can access scholarship. Three major manifestations of "open access" that have emerged are: free open access academic journals, free access to the back files of some subscription journals, and permissions by subscription journals for authors to self archive on a website or in an e-repository.

Many criminal justice scholars and practitioners may be unaware of this growing development in scholarly communication that is changing how we think about sharing research and revolutionizing our traditional notions of academic publishing. Scholars, publishers, and organizations within criminal justice must now become aware and address the issues around open access for at least two reasons. First, it will benefit them with more online readers and more professional impact; second, it will benefit students, practitioners in the field and less fortunate researchers around the world who cannot afford to pay for subscription access to cutting edge, criminal justice journal literature. It is thus natural that, since justice is at the core of what criminal justice scholars pursue, they and their supporting associations address the justice of opening access to their own literature.

In this paper, we introduce the open access movement and discuss its implications for social justice. After examining two contemporary statements by major social justice thinkers, we then argue that limiting access to information by criminal justice societies is inconsistent with these theories of social justice. Conversely, we argue that the open access movement is consistent with social justice.

## **What Is Open Access?**

### **Background - Corporate Journal Publishing and the Internet**

The origin of open access can be traced both to the advent of the Internet providing the means of more easily and widely disseminating scholarly information and to a reaction to the rising cost of subscription journals, especially in the areas of science, technology, and medicine.

Since the 1960s, the number of journals available for a given discipline has steadily increased. For example, in 1960, the discipline of economics was served by approximately 30 journals (almost all of which were produced by scholarly associations). By 1980, there were 120 titles (half of which were published by corporate publishers), and by 2000 the number had risen to over 300 (two-thirds of which were corporate published) (Willinsky 2006). Today, a handful of corporate publishers produce a growing portion of academic literature. For example, as of December 2006, three publishers - Reed Elsevier (with over 2,000 journal titles), Taylor & Francis (with over 1,000 titles) and Springer (with over 1,700) - controlled about 60 percent of the research indexed in ISI Web of Science citation index (Willinsky 2006). Expanding the list of the largest journal publishers, we should add John Wiley (which recently acquired Blackwell for 1.08 billion dollars and can now boast a combined catalog of 1,250 journals).<sup>1</sup>

Since the mid-1990s, subscription prices for journals published by corporate publishers, especially in the areas of science, technology, and medicine, have been inflating at alarming rates. For example, McCabe (2002) reports that between 1988 and 1998, the subscription cost of biomedical journals published by corporate publishers increased by 224 percent, compared to 129 percent for journals from nonprofit publishers. From 1986 to 2002, the Consumer Price Index rose 64 percent, while journal prices rose 227 percent. Thus, a typical research library spent 227 percent more on journals in 2002 than in 1986, but the number of titles purchased increased by only 6 percent.<sup>2</sup> Journal inflation continues to increase at a rate of 6-12 percent annually, and this has to some degree been responsible for the 6 percent decrease in the purchase of books by research libraries between 1986 and 2002.<sup>3</sup>

A number of university libraries post the cost of their most expensive journals. Cornell University did a study of the rising cost of journals back in 1998 and found that subscriptions to the 312 research journals studied were as high as \$5,000 a year.<sup>4</sup> In 1997, Yale noted 27 journal titles that cost over \$4,000. The following subscription prices were among the most expensive journals to which they subscribed: *Journal of Physics* at \$22,497, *Brain Research* at \$14,919, and *Comparative Biochemistry and Physiology* at \$7,398.<sup>5</sup> The average subscription price that a university library paid for an academic journal in 2005 was \$484.97.<sup>6</sup>

In criminal justice and criminology, respectively, the national associations of record are the Academy of Criminal Justice Sciences (ACJS) and the American Society of Criminology (ASC). Each provides journals to their members as part of the cost of membership. For ACJS, that cost is \$75, and for ASC, the cost is \$90. ACJS provides two journals through Routledge Journals - *Justice Quarterly* and the *Journal of Criminal Justice Education*. The 2006 institution subscription rate for *Justice Quarterly* was \$482.<sup>7</sup> The 2006 institution subscription rate for the *Journal of Criminal Justice Education* was \$372.<sup>8</sup> ASC provides two journals through Blackwell Publishing - *Criminology* and *Criminology & Public Policy*. The 2006 institution subscription rate for *Criminology* was \$240, which includes a subscription to *Criminology & Public Policy*.<sup>9</sup>

One must keep in mind that though the cost of academic journals continues to inflate into the three, four, and even five digits, the cost of much of the research upon which the articles are based was born by grant funding agencies, authors' home institutions, and authors themselves. The labor for peer review of submitted articles is also generally done gratis by academicians in the field.

There are over 24,000 peer-reviewed research journals in the world across the disciplines, publishing well over 2.5 million articles a year (Harnad *et al.* 2004). But since library budgets are limited, they can afford only a small fraction of those journals each year. Yet, Harnad warns that we must be careful not to suggest open access as a solution to the problem of dealing with rapidly rising subscription costs, the so-called "serials crisis." There will continue to be a gap between the volume of literature available and the financial ability of libraries to acquire as much as they would like. As Harnad and colleagues (2004) have noted, there is a difference between "the journal-affordability problem" and the "article-access/impact problem." The latter problem is a by-product of the proliferation of journal titles and the serials crisis. The article-access/impact problem states that since so few of the 2.5 million articles published every year can be accessed by many people, the impact of those articles is diminished. Open access promises to provide more access to this growing body of literature to those who need immediate access to it.

The evolution in scholarly publishing, in which a few corporate publishers have come to dominate the journal publishing world with ever inflating subscription prices, is further complicated by bundled deals where libraries are increasingly under pressure to contract for collections of publishers' titles rather than individual titles. This trend is becoming economically unsustainable. The result of such a corporate model ultimately is that library institutions' budgets are strained, library resources for other materials must be cut, and researchers and students have diminishing access to relevant scholarship.

Those who look to interlibrary loan (ILL) as an alternative to the inflating cost of electronic journals are discovering this window in many cases to be closing. The decision by academic journal publishers to migrate from paper to electronic format has diminished the ability of institutions that cannot afford the cost of subscription to borrow them from other institutions through traditional ILL mechanisms because many electronic journal license agreements can restrict subscribers' rights to lend copies to other institutions (Chou and Zhou 2005).

### **Defining and Differentiating Open Access**

Though open access has come to represent a spectrum of means to provide free access to scholarly literature, the basic principles were codified by definitive statements made by three influential proclamations: the Budapest (February 2002), Bethesda (June 2003) and Berlin (October 2003) definitions. Essentially, open access, paraphrasing the Budapest statement, is defined as free availability of scholarly literature on the public Internet, permitting anyone to read, download, copy, distribute, or print the full text without restrictions (other than to give authors control over the integrity of their work and the right to be properly acknowledged and cited).<sup>10</sup>

While the Budapest definition of open access may represent the pure ideal, there are many variations on the theme. In addition to the growing list of peer-reviewed, freely available academic journals on the Internet, other developments have occurred in the spirit of open access. These include, for example: the willingness of a growing number of publishers to provide free access to all or portions of their back issues; publications which provide selected articles of each issue for free; and publications which offer authors the option of paying a fee to make their scholarship open access in an otherwise subscription only journal. Even initiatives to produce low cost, low priced journals - though not strictly open access - have been put forward as at least being in the spirit of "open access."

Discussions around open access are often fraught with fear and anger over what some perceive as attempts to destroy the peer review system, discard the protections of copyright or to make scholarship less rigorous. Proponents of open access will argue that they are not asking for research literature to be placed in the public domain or even to reform copyright law. Nor are they asking that all scholarship (e.g., books) be open access. They also are not appealing to do away with peer-review or academic associations. On the contrary, these could both be reinvigorated by the broad acceptance of, support for, and involvement in open access by academic associations. Open access is instead based on the assertion that the traditional model of academic journal publishing be modified or augmented so that scholarship will be more accessible to wider audiences.

The call for open access, it must be understood, is not a call to shun subscription publishers or for libraries to cancel their journals. In fact, ironically, it can be argued that one of the greatest contributors to open access is the giant publishing conglomerate, Reed Elsevier. Not only does Reed Elsevier allow its authors to post the final versions of papers on websites and e-repositories, it also provides free electronic access to the citations and abstracts of its 2000+ journals. Along with a number of other publishers, Elsevier has also agreed to make its journals open access to a list of institutions and countries in some the most impoverished areas of the world.<sup>11</sup> Though this effort is to be lauded, only a fraction of those in developing countries in need of access to current scholarship, unfortunately, are reached through these assistance efforts.

### **Open Access Journals**

The most direct and purest form of open access is the so-called "gold path," scholarship published in an open access journal, freely available to readers on the Internet. Financial support for such journals may entirely come from an academic institution or a scholarly or professional association. In the case of Science, Technology, and Medicine (STM) open access journals, funding often is also acquired by asking that a portion of the research grant funding be directed toward publishing costs. The goal of open access is to shift thinking away from charging readers toward considering the dissemination of scholarship as part of the cost of research that should be included in funding requests from research grant agencies and/or one's departmental funding requests similar to how professional travel funds are allocated.

The Public Library of Science journals, *PLoS Biology* and *PLoS Medicine*, are perhaps the most widely known open access journals, having quickly garnered respect in their disciplines along with a flurry of press coverage at their inception. More than 2,500 open-access journals in wide-ranging fields are currently listed in the *Directory of Open Access Journals* (DOAJ) which indexes open access journals on the web.<sup>12</sup> A search of the DOAJ database, freely available online, will reveal that among the 2,500 open access journals indexed, a small but growing number of peer-reviewed open access journals in criminal justice have already become available on the web.<sup>13</sup> Open access journals perform peer-review and then make the resulting approved scholarship free to the world. New open access journal benefit from open source, journal management systems, such as Open Journal Systems (OJS), and from organizations, such as SPARC, that provide advisory service for new open access journals.<sup>14</sup>

### **Open Access Archives**

Since the early 1990s, researchers in physics have shared their research freely online through arXiv.org before publication. Open digital archives such as arXiv.org, PubMed Central, and a rapidly growing number of institution-based e-repositories enable authors to ensure their works are available for fellow researchers and the public, and thus assure a free flow of scholarly communication. Depositing one's scholarship in a properly designed e-repository rather than on a personal website assures that the scholarship will have a persistent address (URL) over the long term and have searchable metadata (conforming to universal standards across repositories), and that the scholarship will be properly preserved and accessible to the entire world in the future. Today, over 90 percent of academic journal publishers permit authors some form of self-archiving.<sup>15</sup> Since the great majority of academic journals now permit self-archiving by their authors either on the author's website or in the author's institutional e-repository (IR), much of the responsibility for making journal literature open access has been shifted to the authors. By depositing a digital copy of scholarship on a website or in an IR, they can make the item accessible to anyone who searches the web using Google or a special repository search engine such as OAIster.org.

The number of universities around the United States and in other countries implementing institutional repositories is rapidly growing every year. In a survey distributed to 123 American Research Libraries (ARL) members in January 2006, 43 percent of the respondents said they have an operational IR, and 35 percent said they are planning to implement one by 2007 (Bailey 2006). Studies clearly show that authors' research impact (that is, the amount to which their scholarship is read, used, and cited by others in their own research and applications) is dramatically increased by making the scholarship open access through the act of depositing the research in an electronic institutional repository (Harnad *et al.* 2004).

The US National Institutes of Health (NIH) Public Access Policy in recent years has directed that its funded researchers deposit their final peer-reviewed manuscripts in PubMed Central, NIH's online digital archive. NIH also permits grant funds to be used to pay journal publication fees. The US Congress is also taking a growing interest in

ensuring access to federally funded research. For example, on May 2, Sen. John Cornyn, R-Texas, introduced the bipartisan Federal Research Public Access Act of 2006 (FRPAA) which would require that research supported by major government funding agencies (with research budgets of more than \$100 million) be made freely available online within 6 months of publication. This legislation is pending as of this writing.<sup>16</sup> There is a growing alliance of citizens in the United States seeking to have tax-funded research openly available to the public after publication.<sup>17</sup> This access would primarily be accomplished through archiving the research in freely accessible e-repositories.

### **Open Access and the Public Good**

In addition to citizen concern for access to taxpayer-funded research that is blocked by subscription tolls, there is a growing consensus among scholars across disciplines in favor of providing open access to as much scholarly communication as possible, not only because it is the best means of disseminating the knowledge of a discipline and advancing research but also because it benefits the public good. Opening access to scholarship for users around the world promises to benefit people in numerous ways.

Open access, for example, permits a doctor doing research in Malawi to find the latest medical research and for the rest of the world to read the research they publish in a journal of that region. Open access allows a county official writing a proposal for a change in jail policies in a rural county in the United States to find current academic discussion on the topic. Open access permits a professor who does not happen to work in a well-funded institution to have ready access to the scholarship they need now rather than waiting for an interlibrary loan or hoping an email to the author will result in a copy. Open access results in better-informed citizens, better-informed patients, more currently informed scholars, and more academic equality for researchers around the world. Thus, opening access to academic journal literature is key to promoting a more just system of scholarly communication in all the disciplines. We now turn to an examination of theories of justice and an application of these theories to the justice issue of opening access to criminal justice scholarship in particular.

## **What Is Social Justice?**

Social justice is generally equated with the notion of equality or equal opportunity in society. Although equality is undeniably part of social justice, the meaning of social justice is actually much broader. Further, "equal opportunity" and similar phrases such as "personal responsibility" have been used to diminish the prospective for realizing social justice by justifying enormous inequalities in modern society (Berry 2005). The most recent theories of and scholarly statements about social justice illustrate the complex nature of the concept.

Two of the most prominent statements about social justice, each of which posits its own theory of social justice, are John Rawls' (2003) *Justice as Fairness* and David Miller's

(2003) *Principles of Social Justice*. While neither of these theories can be considered an exhaustive treatment of the subject matter, each offers a complex theory of social justice that illustrates its broad meaning. Both conceptions of social justice are similar, so there is significant overlap between the main ideas of the theorists; this is likely due to the fact that they are founded on like principles and based on previously posited theories from significant historical political philosophers (Brighthouse 2005).

## **John Rawls' "Justice as Fairness"**

Beginning with John Rawls, his theory of social justice is referred to as "justice as fairness." Rawls (2003) set out to sketch a theory of social justice that would answer the questions: "once we view a democratic society as a fair system of social cooperation between citizens regarded as free and equal, what principles are most appropriate to it?" and "which principles are most appropriate for a democratic society that not only professes but wants to take seriously that citizens are free and equal, and tries to realize that idea in its main institutions?"<sup>18</sup>

Rawls' theory of "justice as fairness," aimed at answering the above questions, can be summarized with two primary principles. They are:

1. Each person has the same indefensible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all<sup>19</sup>; and
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity<sup>20</sup>; and second, they are to be to the greatest benefit of the least-advantaged members of society<sup>21</sup> (Rawls 2003:42-43).

According to Rawls, these principles are ordered, meaning the first principle (the "equal liberties principle") should be achieved before efforts to achieve the second principle are attempted. Further, the first part of the second principle (the "equal opportunity principle") precedes the second part (the "difference principle"). The ordering of the principles suggests that, to Rawls, equality is the most important element of social justice. Equality means a fair distribution of each of the capacities needed "to be normal and fully cooperating members of society over a complete life" (Rawls 2003:18).

Just because Rawls' conception of social justice values equality, this does not mean that equal outcomes will be achieved in society, or that they even can be. In fact, Rawls' second principle asserts that inequalities in society are acceptable as long as they meet two conditions. First, as per the "equal opportunity principle," inequalities are acceptable if every person in society has a reasonable chance of obtaining the positions that lead to the inequalities. An example would be equal opportunity to achieve any job. Rawls (2003:43) specifies that "fair equality of opportunity" requires "not merely that public

offices and social positions open in the formal sense, but that all should have a fair chance to attain them."

Second, as per the "difference principle," inequalities in society must be organized so that they are to the greatest benefit of the least advantaged members of society. After explaining that today's economic inequalities are simply not acceptable, Rawls (2003:59-60) explains the difference principle this way: "To say that inequalities in income and wealth are to be arranged for the greatest benefit of the least advantaged simply means that we are to compare schemes of cooperation by seeing how well off the least advantaged are under each scheme, and then to select the scheme under which the least advantaged are better off than they are under any other scheme."

By the least advantaged, Rawls is referring to those who lack what he calls "primary goods" (Rawls 2003:53). Primary goods, according to Rawls, include

things needed and required by persons seen in the light of the political conception of persons, as citizens who are fully cooperating members of society, and not merely as human beings apart from any normative conception. These goods are things citizens need as free and equal persons living a complete life; they are not things it is simply rational to want or desire, or to prefer or even to crave. (Rawls 2003:58)

Such goods include:

- the basic rights and liberties: freedom of thought and liberty of conscience, etc.;
- freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them;
- powers and prerogatives of office and position of authority and responsibility;
- income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be; and
- the social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence (Rawls 2003:58-59).

It should also be noted that Rawls (2003:13) acknowledges the importance of "human rights" as well. He writes: "A just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political (domestic) regime, not necessarily democratic but fully respecting basic human rights." Human rights are expansive and include rights in the following areas: general freedom; dignity; life; liberty; security; equality before the law; fair and public hearings by independent and impartial tribunals; presumption of innocence until proven guilty; freedom of movement and residence; right to seek and gain asylum from persecution; right to a nationality; the right to marry and have a family; right to own property; *freedom of thought*, conscience and religion; *freedom of opinion and expression*; freedom of peaceful assembly and association; the right to participate in government; the right to social security; the right to work by free choice and to have protection against unemployment; the right to equal pay

for equal work; the right to rest and leisure; the right to an adequate standard of living, including "food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age "; *the right to education*; the right to participate in the community and "to enjoy the arts and *to share in scientific advancement and its benefits*"; the right to the "*protection of the moral and material interests resulting from any scientific, literary or artistic production of which [one] is the author.*" Additionally, people enjoy freedom from slavery or servitude; torture or cruel, inhuman or degrading treatment or punishment; discrimination; arbitrary arrest, detention, or exile; arbitrary interference with privacy; among many others.<sup>22</sup>

Those rights that we have emphasized relate to open access of knowledge and scholarship. Since Rawls emphasizes human rights in his theory of justice as fairness, and since some of the human rights relate to access to knowledge and benefits of scholarship, Rawls' theory of justice as fairness is directly relevant to issues of open access.

We can use Rawls' theory of "justice as fairness" to determine if any process or outcome is consistent with social justice. When a process or outcome does not comport with any of Rawls' principles, we can conclude that it is not consistent with social justice. That is, something is not consistent with Rawls' conception of social justice if it interferes with any person's indefensible claims to equal basic liberties (the "equal liberties principle"); or if inequalities in society are not attached to offices and positions open to all under conditions of fair equality of opportunity (the "equal opportunity principle"); or if inequalities in society are not arranged to the greatest benefit of the least-advantaged members of society (the "difference principle").

### **David Miller's "Pluralistic Theory of Social Justice"**

David Miller's theory comprises a wider range of concepts than that of John Rawls. The theory is pluralistic or circumstantial because different parts of his conception of social justice are more or less relevant depending on the circumstances (Miller 2003:62-63).

To Miller, social justice deals with the distribution of good and bad in society, and more specifically with how these things should be distributed within society.<sup>23</sup> Miller (2003:1) explains that when "we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of persons, enjoys fewer advantages than that person or group of persons ought to enjoy (or bears more of the burdens than they ought to bear), given how other members of the society in question are fairing."

Given this conception of social justice, it is not surprising that Miller's theory focuses on the concepts of need, desert, and equality. Need is a claim that one is lacking in basic necessities and is being harmed or is in danger of being harmed and/or that one's capacity to function is being impeded (Miller 2003:207, 210). Desert is a claim that one has earned reward based on performance, that superior performance should attract superior recognition (Miller 2003:134, 141). Equality refers to the social ideal that society regards

and treats its citizens as equals, and that benefits such as certain rights should be distributed equally (Miller 2003:232).

Miller's (2003:25) theory asserts that whether need, desert, or equality takes precedence depends on which "mode of human relationship" is being considered. This is because "we can best understand which demands of justice someone can make of us by looking first at the particular nature of relationship." A "mode of human relationship" refers to the different kinds of relationships that people have with one another.

Miller (2003:26) specifies three basic modes of human relationships, including the solidaristic community, instrumental associations, and citizenship. A solidaristic community "exists when people share a common identity as members of a relatively stable group with a common ethos" (e.g., family relations). In this mode of human relationships, the principle of distribution according to need is most relevant:

Each member is expected to contribute to relieving the needs of others in proportion to ability, the extent of liability depending upon how close the ties of community are in each case. Needs will be understood in terms of the general ethos of the community. Each community embodies, implicitly or explicitly, a sense of the standards that an adequate human life must meet, and it is in terms of this benchmark that the much-contested distinction between needs, which are matters of justice, and mere wants is drawn. (Miller 2003:27)

Instrumental associations exist when "people relate to one another in a utilitarian manner; each has aims and purposes that can best be realized by collaboration with others" (e.g., economic relations). In this mode of human relationships, the principle of distribution according to desert is most relevant:

Each person comes to the association as a free agent with a set of skills and talents that he deploys to advance its goals. Justice is done when he receives back by way of reward an equivalent to the contribution he makes. A person's deserts, in other words, are fixed by the aims and purposes of the association to which she belongs; these provide the measuring rod in terms of which relative contributions can be judged. (Miller 2003:28).

Finally, citizenship refers to "members of a political society" in "modern liberal democracies" who

are related not just through their communities and their instrumental associations but also as fellow citizens. Anyone who is a full member of such a society is understood to be the bearer of a set of rights and obligations that together define the status of citizen.

In this mode of human relationship, the principle of distribution according to equality is most relevant because everyone in the society is deemed equal in terms of certain rights (Miller 2003:30).

Because of the citizenship mode, rights play a significant role in Miller's theory of social justice as they also did in Rawls' theory. Miller (2003:13) explains that

a central element in any theory of justice will be an account of the basic rights of citizens, which will include rights to various concrete liberties, such as freedom of movement and freedom of speech an extensive sphere of basic liberty is built into the requirements of social justice itself.

As noted in the discussion of John Rawls, the meaning human rights is well understood, and includes rights in dozens of areas, including several related to open access to knowledge and scholarship.

Miller does not build a theory of social justice that requires one to emphasize either need, desert, or equality over the others; rather, he presents a theory whereby the three are in balance with one another. Because people's views about justice are pluralistic and "very often people decide what a fair distribution consists of by balancing claims of one kind against claims of another," it follows that "the social context in which the distribution has to be made - or more precisely how that context is perceived by those making the judgment - will determine which principle stands out as the relevant principle of justice" (Miller 2003:63).

A significant issue, though, is which should take precedence when there are conflicting demands and expectations for processes that aim to accommodate need, desert, and equality, as well as for outcomes that satisfy need, desert, and equality. Miller prioritizes need above desert, and desert above equality, although he also points out that at times, desert can take precedence over need (as in the case where the needy are not seen as deserving) (Miller 2003:76-78). Miller is careful to point out that "[m]erit of any sort should only be allowed to govern the distribution of a certain range of goods and services, and in particular *not* those goods and services that people regard as necessities, such as health care" (Miller 2003:200, emphasis added). To the degree that access to knowledge is such a necessity, claims based on need ought to take priority over claims based on desert.

We can use Miller's pluralistic theory of social justice to determine if any process or outcome is consistent with social justice. When a process or outcome does not comport with any of Miller's principles, we can conclude that it is not consistent with social justice. That is, something is not consistent with Miller's conception of social justice if it interferes with one's necessities or hurts one's capacity to function, if it interferes with claims based on desert, or if it impedes equal opportunity or treatment.

## **How Current Criminal Justice Publishing Is Inconsistent with Social Justice**

In this section of the paper, we utilize Rawls' and Miller's theories to determine if current publishing agreements in criminal justice are consistent with social justice. Here, we show how publishing in the criminal justice discipline is inconsistent with the Rawls' equal liberties principle, equal opportunity principle, and difference principle. Further, we illustrate how criminal justice publishing is inconsistent with Miller's principles of need, desert, and equality. We conclude by showing how open access publishing is more consistent with social justice.

### **Equal Liberties Principle**

With regard to the relationship between open access and Rawls' equal liberties principle, international law suggests that all human beings have a right to knowledge. Further, human beings and societies have an equal right to benefit from advances in knowledge. And finally, all individuals have the right to benefit from their own work.

Some of these rights are stated in at least three separate documents: (1) the Universal Declaration of Human Rights; (2) the International Covenant on Civil and Political Rights; and (3) the International Covenant on Economic, Social, and Cultural Rights. Starting with the Universal Declaration of Human Rights, Article 19 states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to *seek, receive and impart information and ideas through any media* and regardless of frontiers" (emphasis added). Further, Article 27.1 reads: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to *share in scientific advancement and its benefits*" (United Nations [1997c](#), emphasis added). Similar wording is found in Article 19.2 of the International Covenant on Civil and Political Rights.

Article 19.3 of that document shows clearly that restrictions on this right merely for economic gain are not acceptable:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals. (United Nations [1997a](#), emphasis added)

Additionally, Article 13.1 of the International Covenant on Economic, Social, and Cultural Rights states: "The States Parties to the present Covenant recognize *the right of everyone to education*. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education *shall enable all persons to participate effectively in a free society*, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of

peace" (emphasis added). Article 13.2 adds that education should be *free to all* and *generally available and accessible to all* (United Nations 1997b, emphasis added).

Another article, Article 15.1 goes on to explain:

The States Parties to the present covenant recognize the right of everyone: To take part in cultural life; To *enjoy the benefits of scientific progress and its applications*; To *benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*. (emphasis added).

Finally, Articles 15.2-15.4 read: "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the *conservation, the development and the diffusion of science and culture*" (United Nations 1997b, emphasis added).

From the above passages, it is clear the restricting access to knowledge is not consistent with the equal liberties principle. A more just arrangement would allow greater access to scholarship in order to assure the protection of the liberty of knowledge.

### **Equal Opportunity Principle**

Similar to the argument above with regard to the equal liberties principle, all human beings are owed an equal opportunity to access scholarship. Restricting access to knowledge by limiting access to scholarship interferes with the realization of Rawls' principle of equal opportunity.

The passages of international law cited above make it clear not only that do human beings enjoy the *right* to knowledge in all its forms, but also that this right is an *equal* right. The assertions found within the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights that *everyone* has the right to freedom of opinion and expression (including seeking, receiving and imparting information and ideas through any media and regardless of frontiers) and a right to equal education exemplifies the importance of equality.

From the above passages, it is clear the restricting access to knowledge is not consistent with Rawls' equal liberties principle. A more just arrangement would allow greater access to equal opportunities in order to assure the protection of equal rights to knowledge.

### **Difference Principle**

With regard to Rawls' difference principle, inequalities in access to information are clearly not to the benefit of the least advantaged. In fact, inequalities in access widen the gap between those who have access to information and those who do not, for the reason that some are permitted to further advance while some are not. This is true at the individual level, group level, community level, organization level, and society level. That is, differential access to information harms disadvantaged individuals, the groups and

organizations to which they belong, the communities from which they come, and the societies of which they are members.

The fact that publishing agreements benefit the well off - large, wealthy corporations - is not consistent with Rawls' difference principle. Nor is the inequality acceptable because the inequality is not explained by any differential claim based on merit or desert. Large corporate journal publishers have not done anything to earn the right to distribute knowledge created by the scholarly pursuits of individual authors, who would seem to have the most sound merit- and desert-based claims to reward. Additionally, large corporate journal publishers have not earned the right to limit access to this knowledge. Finally, state and federal governments, who fund scholarship of individual authors through salaries, benefits, and grants, deserve access to the scholarship produced by authors.

Current publishing arrangements in criminal justice do the most harm to those who are already least advantaged. The least advantaged include those suffering from criminal victimization at the hands of common street criminals and elite individuals and corporations, as well as the mostly reactive and failing agencies of criminal justice (Robinson 2005; Sheldon 2000). If criminologists and criminal justices are to actually impact policy through their scientific work, it must be made accessible to all, especially to those who can most benefit from their work (e.g., policy-makers and the masses who elect them into power). The normal game and expectation of publishing for the sake of publishing must be challenged if our research is ever going to impact real-world policy. Current criminal justice publishing arrangements are inconsistent with Rawls' difference principle.

## **Need**

Given the general purposes of science, access to knowledge assists people with their own personal and professional advancement and thus the ability to satisfy their basic needs. An example is higher education which allows its participants to better meet their own needs. Differential access to education, which includes access to knowledge, interferes with people's basic abilities to satisfy their needs and is thus inconsistent with Miller's principle of need.

At the society level, with advancement of individual citizens comes a greater enjoyment of benefits by a larger segment of the population. Thus, differential access to information harms societies by interfering with the ability of societies to advance. Ultimately, this leads to the maintenance of significant gaps between first- and third-world countries.

In terms of research into crime and responses to it, differential access to knowledge generated by experts assures that the needs of some will not be met as readily as others. Restricting access to criminal justice scholarship interferes with the ability of criminal justice agencies and their employees to adjust, rethink, and retool their existing policies, as well as to create new and more effective ones. Thus, current criminal justice publishing arrangements are inconsistent with Miller's principle of need.

## **Desert**

As noted above, all human beings deserve access to knowledge. Thus, any interference with this right is unjust. Publishing arrangements that restrict access to information people deserve by way of being human beings as well as citizens is not consistent with social justice. Criminal justice publishing agreements interfere with Miller's principle of desert.

Further, international law shows that scholars in all fields (including criminal justice) have earned the right to access the knowledge they create as well as that being created by others in their fields. The current publication approach in criminal justice makes such access impossible, as authors often must assign copyrights to publishing giants that limits the use of and access to their own work. Further, we all suffer from not being able to access articles and other works unless we subscribe to certain journals and pay fees to do so. None of this is consistent with social justice. Scholars, as the creators of the knowledge published in our associations' journals, deserve the right to publish their work freely, to access it later without restriction, and to make their work as widely available as possible through self-archiving.

Beyond this, authors are not benefiting financially from their work by assigning copyrights to large corporations. Instead, large corporations are benefiting - not because of claims rooted in differential desert or merit - but instead from their already prominent place in society. This is also inconsistent with Miller's principle of desert. While large journals publishers assist with the dissemination of scholarship to large audiences - a practice beneficial to academic societies as well as society in general - any restrictions on the accessibility of this scholarship are inconsistent with social justice.

## **Equality**

As suggested above, access to knowledge in the current approach is arranged in an unequal fashion. Subscription policies are unequal in terms of who benefits from them, and societal inequality is being widened by them. These are violations of Miller's equality principle.

People of the United States, as citizens, enjoy certain equal rights. And as human beings, we enjoy other rights as well, including those found in the international agreements discussed above. Citizens in other countries have these same human rights. Current criminal justice publishing rules and procedures violate these rights and are thus violations of Miller's equality principle.

Finally, related to each of the above principles, limited access to knowledge assures that our work will have less influence on real-world policy. Even those few journals that have been created in order to explicitly be policy-relevant are not widely read by policy-makers, in part because they are not accessible to them. One outcome of this limited access is a continuation of criminal justice policy being created for ideological and philosophical reasons rather than being impacted and directed by scientific evidence. This

assures further suffering for members of society at the hands of both criminals and criminal justice agencies, for current criminal justice practices do not significantly reduce criminal victimization nor do they often achieve justice (Reiman [2006](#); Robinson [2005](#); Shelden [2000](#)).

## **How Open Access Is Consistent with Social Justice**

The open access movement - online open access journals and author self-archiving - is more consistent with the conceptions of social justice by Rawls and Miller. Because open access does not interfere with any person's indefensible claims to equal basic liberties (the "equal liberties principle"), it is consistent with social justice. Further, open access does not violate the "equal opportunity principle" and in fact assures for greater equality of access to information. We also believe that open access is to the greatest benefit of the least-advantaged and thus is consistent with the "difference principle." That is, open access publishing aims to benefit all equally, which over time, will assist the least advantaged in catching up to the most well-off in society (who have long benefitted from greater access to knowledge in all areas of life).

Additionally, open access does not interfere with anyone's necessities and does not hurt anyone's capacity to function. Open access also does not interfere with desert (but instead rewards it to a higher degree) and does not impede equal opportunity or treatment. Therefore, open access is consistent with social justice.

Beyond *not* violating the principles of social justice posited by Rawls and Miller, open access advances the principles of justice found in these scholars' theories of social justice. It does this by promoting (in both theory and practice) liberty, opportunity, and equality of access to information for all, as well as proper reward for individuals who produce scholarship. It is also better able to meet the needs of citizens for information, as well as meet appropriate claims of merit by scholars who deserve it. Open access also is consistent with the international laws the US has signed and to which it is bound.

## **Conclusion**

In this paper, we outlined the open access movement, introduced two main theories of social justice, and applied the main principles from the theories of social justice to the modus operandi of criminal justice publishing. By doing so, we determined the specific ways in which current criminal justice publishing practices are inconsistent with social justice. Our main finding was that publishing in the criminal justice discipline is inconsistent with John Rawls' equal liberties principle, equal opportunity principle, and difference principle, as well as David Miller's principles of need, desert, and equality. Finally, we concluded that open access publishing is more consistent with social justice.

It is a crucial time in the evolution of publishing for criminal justice associations. We, as criminal justice scholars concerned with practicing justice ourselves, have the opportunity to set an example for other disciplines in the area of open access. This can entail moving toward opening access to our own journals as much as possible, educating association members on open access alternatives, and making articles already published in subscription-based journals open access by encouraging our members to self-archive them in e-repositories.

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## Notes

1. See Lenzini [2006](#).
2. See the "The Economics of Publishing," University of California Office of Scholarly Communication Website. Retrieved February 2007, from [http://osc.universityofcalifornia.edu/facts/econ\\_of\\_publishing.html](http://osc.universityofcalifornia.edu/facts/econ_of_publishing.html)
3. See the American College and Research Libraries "Scholarly Communications Toolkit" for more information on journal inflation. <http://www.ala.org/ala/acrl/acrlissues/scholarlycomm/scholarlycommunicationtoolkit/faculty/facultyeconomics.cfm>
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10. A key web-based reference source was created and is maintained by Peter Suber. It provides a thorough "guide to the terminology, acronyms, initiatives, standards, technologies, and players in the open-access or free online scholarship (FOS) movement" is the Guide to the Open Access Movement (<http://www.earlham.edu/peters/fos/guide.htm>). For another excellent source of basic information on open access initiatives and changes in scholarly communication, see the "Create Change" website (<http://www.createchange.org/>) developed by the Association of

Research Libraries (ARL) and SPARC (Scholarly Publishing and Academic Resources Coalition) which is supported by the Association of College and Research Libraries (ACRL), all retrieved 18 February 2007.

11. The Association of Learned and Professional Society Publishers reported that sixty percent of publishers participate in some form of assistance program to aid developing countries. Willinsky 2006:78).

12. The *Directory of Open Access Journals (DOAJ)* (<http://www.doaj.org/>) freely available on the web, is maintained by Lund University Libraries. It is the most important directory of open-access journals, and currently contains over 2,500 journals. The aim of the *DOAJ* is to "increase the visibility and ease of use of open access scientific and scholarly journals thereby promoting their increased usage and impact." It "aims to be comprehensive and cover all open access scientific and scholarly journals that use a quality control system to guarantee the content."

13. A keyword search in the Directory of Open Access Journals (*DOAJ*) for journals related to criminal justice excluding the term law conducted in January 2007 revealed the following 12 open-access journals in criminal justice: (1) *African Journal of Criminology and Justice Studies*, (2) *Applied Psychology in Criminal Justice*, (3) *Champ Penal* (French/English), (4) *Edwardsville Journal of Sociology*, (5) *ERCES Online Quarterly Review*, (6) *International Journal of Criminal Justice Sciences*, (7) *Journal for Crime, Conflict and Media Culture*, (8) *Journal of Criminal Justice and Popular Culture*, (9) *Law, Social Justice & Global Development*, (10) *Revista CENIPEC* (Spanish) (11) *Revista Española de Investigación Criminológica* (Spanish), and (12) *War Crimes, Genocide and Crimes Against Humanity*.

14. SPARC, the Scholarly Publishing and Academic Resources Coalition, <http://www.arl.org/sparc/> is "an alliance of universities, research libraries, and organizations. The coalition was an initiative of the Association of Research Libraries (ARL) started in 1997 to be a constructive response to market dysfunctions in the scholarly communication system"

15. See the SHERPA database of individual publishers' policies on permissible self-archiving at <http://romeo.eprints.org/>

16. See description of the Federal Research Public Access Act of 2006 (FRPAA) Bill at <http://cornyn.senate.gov/public/index.cfm?FuseAction=Home.SiteMap>

17. A major organization in this struggle is the The Alliance for Taxpayer Access which is described on their website as: "A diverse and growing alliance of organizations representing taxpayers, patients, physicians, researchers, and institutions that support open public access to taxpayer-funded research." See <http://www.taxpayeraccess.org/> (retrieved February 20, 2007)

18. Rawls (2003:5-6) develops his theory for a democratic system of government, and he assumes that society comprises a fair system of social cooperation between free and equal citizens. He also assumes that society is well organized and regulated by a public perception of justice. Further, he assumes that society is guided by rules and procedures that are publicly recognized and agreed to, that the rules specify fair terms of cooperation and are rooted in the notion of reciprocity or mutuality so that each person has a chance to promote their own advantage or good. Thus, his theory is aimed at determining the "political conception of justice for specifying the fair terms of cooperation between citizens regarded as fair and equal and as both reasonable and rational (Rawls, 2003:7-8).

19. This can be called the "equal liberties principle."

20. This can be called the "equal opportunity principle."

21. Rawls calls this the "difference principle."

22. For other examples, see the Universal Declaration of Human Rights, Covenant on Civil and Political Rights, Covenant on Economic, Social, and Cultural Rights, and other similar documents. "A Summary of Agreements on Human Rights." Retrieved 5 January 2007, from <http://www.hrweb.org/legal/undocs.html>

23. Miller (2003:4-6) develops his theory for a democratic system of government, and he assumes that society is a living organism comprised of individuals, groups, and so forth who believe in social justice because it specifies the institutional arrangements that allow for full contributions by and well-being of members of the society. Further, his theory assumes a bounded society with members; that there are specific institutions to which the principles of social justice apply; and that the state is the agency capable of changing structures when necessary.