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## **DEVIANCE TO DETERRENCE: FUNCTIONALIST PARADIGMS OF CRIMINAL LEGAL SYSTEMS**

AUTHORED BY - A R VARAVARNINI

Functionalism is the view that mental states—such as beliefs, desires, and the experience of pain—are wholly determined by their functional role, that is, by their causal relationships with other mental states, sensory inputs, and behavioural outcomes. [1] Functionalism emerged primarily as an alternative to behaviourism and the identity theory of mind. It deals with the fundamental nature of mental states. Functionalists contend that rather than focusing on the components of mental states, we should instead look at what they do. In terms of familiarity or "reception," functionalism dominates among philosophers of mind and cognitive scientists.

The functionalism idea contends that a mental state is more closely related to what it accomplishes than to its physical composition. Functionalism differs from traditional mind-body dualism in this way. René Descartes, for example, believed that minds are made of a unique material called *res cogitans* (the thinking substance.) Additionally, it sets functionalism apart from modern monisms like the mind-brain identity thesis of J. J. C. Smart<sup>1</sup>. According to the identity hypothesis, mental states are certain types of biological states, namely states of the brain, and hence presumably need to be formed of specific types of materials, specifically brain materials. Functionalism differs from behaviourism in that it acknowledges the existence of interior mental states rather than just assigning psychological states to the entire organism, as does B. F. Skinner's theory. According to behaviourism, a creature's mental states are solely determined by how it reacts (or is predisposed to react) to stimuli<sup>2</sup>. Functionalists, on the other hand, often hold that diverse internal or psychological states might result in the same actions and that internal and psychological states can be identified with a "finer grain" than behaviour. Functionalists believe that mental states are created by the actions of their internal states, not only by the actions of the creature of which they are a part.

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<sup>1</sup> Smart, J.J.C: "Consciousness and Awareness", *Journal of Consciousness Studies*, 11, 41-50, 2004.

<sup>2</sup> Delprato, Dennis & Midgley, Bryan D.. (1992). *Some Fundamentals of B. F. Skinner's Behaviorism*. American Psychologist.

Even while functionalism is neutral between materialism and dualism, many materialists find it particularly appealing since they think it is highly likely that any states that can fulfil the tasks in issue will be physical states. If this is the case, the Psycho-Physical Identity Thesis, which maintains that each form of mental state is identical with a certain type of brain state, can be replaced by functionalism as a materialistic alternative. This thesis implies that no creatures with brains different from our own can share our feelings, thoughts, and desires, regardless of how similar their behaviour and internal structure may be to our own. As a result, functionalism, with its assertion that mental states can be realised in multiple ways, has been seen as offering a more inclusive, less chauvinistic" — theory of the mind that is compatible with materialism.

Functionalism, a theoretical framework originating in sociology, has found application in various disciplines, including law. In the realm of criminal law, the interplay between functionalist principles and legal structures is complex and multifaceted. The integration of functionalism into the study of criminal law provides a nuanced understanding of the multifaceted relationship between legal structures and societal functions. Foundational theories by Durkheim, Merton, and Parsons, along with seminal works, have shaped the discourse. Key concepts such as social integration, institutional functions, and manifest/latent functions elucidate the intricate mechanisms at play. Recent developments, including neofunctionalism and critical perspectives, contribute to the ongoing dialogue, ensuring that functionalist analyses of criminal law remain relevant in an ever-evolving societal landscape.

At its core, functionalism posits that societal structures and institutions serve specific functions to maintain social order. Applied to criminal law, this perspective contends that legal systems exist not merely for punitive purposes but to fulfill essential societal functions. Durkheim, a pioneer in functionalist sociology, argued that crime is inherent in society and serves functions such as boundary reinforcement and social cohesion. Durkheim's seminal work laid the groundwork for understanding the functionalist perspective in the context of crime. He proposed that crime is a normal aspect of society, functioning to define societal boundaries and reinforce shared values<sup>3</sup>.

Structure functionalism, which dominated American sociology in the late 1940s and early 1950s,

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<sup>3</sup> Émile Durkheim's "The Division of Labor in Society" (1893)

was summarised by Merton. Merton's "paradigm of functional explanation" enables the development of a wide range of hypotheses that adhere to the three axioms or postulates<sup>4</sup>. It defines the functional analysis's observation, categorization, and comparison procedures. Merton's strain theory examined how societal structures, including the legal system, contribute to criminal behaviour. Additionally, it describes the type of information about which functional assertions can be made. Merton expanded functionalist thought by introducing the concept of anomie, a state where societal norms and individual aspirations are misaligned. Anomie occurs "when there is an acute disjunction between the cultural norms and goals and the socially structured capacities of members of the group to act in accord with them"<sup>5</sup>This dichotomy mostly leads to manifestation of criminal behavior, therefore the deviance is present in all societies; and deviance itself may have functional, dysfunctional or 'non-functional roles to play'<sup>6</sup> Merton contends that sociologists need to be methodologically astute, knowledgeable about the structure of an inquiry, the nature of reasoning, and the needs of a theoretical framework. According to his main argument, empirical research does more than only validate or disprove ideas; it also goes beyond the passive function of validating and testing theory. The framework that Merton's work on functionalism offers for succeeding functionalists makes his work about utmost significance. Additionally, it brought functionalism into a field better suited to the study of an item's effects on the social structure as opposed to dealing just with an item's intended and positive functions. Parsons contributed to the functionalist framework by emphasizing the role of legal institutions in maintaining equilibrium within society<sup>7</sup>. He argued that legal systems provide a mechanism for conflict resolution and societal adaptation.

## Key Concepts in Functionalism and Criminal Law

### 1. Social Integration and Regulation

Functionalism posits that legal systems contribute to social integration by setting normative boundaries. Laws regulate behavior, providing a framework for individuals to coexist harmoniously. Criminal law, in this context, serves as a tool for maintaining social order. The concept of social integration and regulation within the framework of functionalism and criminal

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<sup>4</sup> Robert K. Merton's "Social Structure and Anomie" (1938)

<sup>5</sup> Merton 1968: 216

<sup>6</sup> Non-functions are consequences that are simply irrelevant to the system under consideration. Included here might be social forms that are "survivals" from the earlier historical times (see Ritzer 2011: 246)

<sup>7</sup> Talcott Parsons' "Social Structure and Dynamic Process" (1937)

law is rooted in the idea that legal systems play a crucial role in fostering cohesion within a society and regulating individual behavior. This key concept encompasses several dimensions that contribute to the overall functioning and stability of a community. For functional indispensability, that specific tasks must be performed for a community to operate<sup>8</sup>.

Social integration refers to the process by which individuals within a society develop a shared sense of belonging and attachment to a common set of values, norms, and institutions. In the context of criminal law, the legal system becomes a central mechanism for promoting social integration by establishing a universally applicable set of rules and standards.

**1.2 Regulatory Function:** The regulatory function of criminal law is instrumental in maintaining social order and preventing disintegration within a society. Laws act as explicit guidelines that prescribe acceptable behavior and outline consequences for violations. The legal system, through its regulatory function, establishes a framework that governs interactions between individuals, ensuring a level of predictability and stability. This regulation is essential for preventing conflicts, resolving disputes, and fostering a sense of security among the populace.

**1.3 Normative Framework:** Criminal laws contribute to the establishment of a normative framework that defines the boundaries of acceptable conduct. By codifying societal norms into legal statutes, the legal system reinforces shared values and expectations. Individuals, guided by these norms, internalize the societal standards set by the legal system, promoting a sense of unity and collective identity. The normative framework also serves as a basis for resolving conflicts and addressing behaviors that deviate from established norms.

**1.4 Social Solidarity:** The existence of criminal laws fosters social solidarity by creating a common ground for collective action and response to criminal behavior. When legal norms are violated, the legal system's response reflects a collective stance against actions deemed harmful to the community. This shared response reinforces a sense of unity and shared purpose among individuals who abide by the law, contributing to the overall cohesion of the social fabric.

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<sup>8</sup> Davis, K. Human Society is an elementary work written from this perspective

**1.5 Symbolic Integration:** Beyond its practical implications, criminal law plays a symbolic role in symbolizing the collective values and identity of a society. Legal principles and statutes serve as symbolic representations of shared beliefs and aspirations. The act of upholding these laws, through legal proceedings and enforcement, reinforces the symbolic integration of individuals within the broader social context.

**1.6 Prevention of Anomie:** Functionalism suggests that a well-functioning legal system prevents anomie, a state of normlessness or breakdown of social norms. Criminal laws act as a bulwark against anomie by providing a structured framework for addressing deviant behavior. The clear delineation of acceptable and unacceptable conduct reduces the likelihood of individuals feeling disconnected from societal norms, contributing to overall social stability.

## **2. Institutional Functions**

The legal system is viewed as an institution with specific functions beyond punishment. It functions as a deterrent, preventing potential offenders from engaging in criminal behaviour. Additionally, through the judicial process, it aims to rehabilitate offenders and reintegrate them into society. The concept of institutional functions within the framework of functionalism and criminal law revolves around the roles that various institutions play in maintaining social order, upholding legal norms, and contributing to the overall stability of a society. This key concept delves into the specific functions performed by institutions, particularly within the criminal justice system, and how these functions align with the broader functionalist perspective.

**2.1 Legal Institutions:** Legal institutions, including courts, law enforcement agencies, and legislative bodies, form the backbone of the criminal justice system. These institutions collectively serve the function of interpreting, applying, and creating laws. Courts adjudicate legal disputes, law enforcement agencies enforce laws, and legislatures enact and amend laws. The seamless functioning of these legal institutions is crucial for ensuring justice, resolving conflicts, and maintaining societal order. Legal systems, principles, rules, institutions, and concepts can be understood only as functions of human behaviour<sup>9</sup>.

**2.2 Socialization and Norm Transmission:** Institutions within the criminal justice system

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<sup>9</sup> COHEN, *supra* note 8 at 72

contribute to socialization by transmitting societal norms and values. For example, courts act as forums where legal norms are reinforced through judgments and precedents. The legal process itself becomes a mechanism for educating individuals about the consequences of deviant behaviour, reinforcing societal expectations, and discouraging future criminal acts.

**2.3 Punitive Functions:** One of the institutional functions of the criminal justice system is the imposition of sanctions for criminal behaviour. Courts determine appropriate punishments, and correctional institutions carry out sentences. This punitive function serves both a deterrent and rehabilitative purpose. It aims to deter individuals from engaging in criminal acts through the fear of consequences and, simultaneously, seeks to rehabilitate offenders to prevent future criminal behaviour.

**2.4 Conflict Resolution:** Institutions within the criminal justice system play a crucial role in resolving conflicts that arise from criminal activities. Courts provide a formalized venue for the resolution of legal disputes, ensuring a fair and impartial process. The institutionalized nature of conflict resolution contributes to the overall stability of society by preventing individuals from resorting to vigilantism or engaging in personal retribution.

**2.5 Functional Interdependence:** In a functionalist perspective, institutions within the criminal justice system are viewed as functionally interdependent components of a larger societal structure. Each institution has a specific role, and their effective collaboration ensures the smooth operation of the criminal justice system. For instance, law enforcement agencies investigate alleged crimes, courts determine guilt or innocence, and correctional institutions carry out sentences. This interdependence contributes to the overall functioning and stability of the legal system.

### **3. Manifest and Latent Functions**

The concept of manifest and latent functions is a central tenet of functionalist theory, providing a nuanced understanding of the intended and unintended consequences of social institutions<sup>10</sup>. In

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<sup>10</sup> According to Merton, a system is said to be functioning when "those observed consequences which provide for the adaptation or adjustment of a given system" are noticed, and a system is said to be dysfunctional when "those observed consequences which reduce the adaptation or adjustment of the system." In other words, activities that maintain social life are considered to be functional, while those that do not dysfunctional. By separating apparent

the context of functionalism and criminal law, exploring manifest and latent functions allows for a comprehensive analysis of the roles played by legal institutions and the broader criminal justice system.

**3.1 Manifest Functions:** Manifest functions refer to the explicit, intended, and readily observable outcomes of social institutions. In the realm of criminal law, the manifest functions of legal institutions are those that are openly acknowledged and pursued. For example:

- **Adjudication of Guilt or Innocence:** Courts, as legal institutions, have the manifest function of determining the guilt or innocence of individuals accused of criminal acts. This function is overt and aligns with the primary purpose of delivering justice through fair and impartial legal processes.
- **Punishment and Rehabilitation:** Another manifest function is the imposition of sanctions, including punishments and rehabilitation efforts, aimed at maintaining societal order and preventing future criminal behaviour. These functions are explicitly recognized components of the criminal justice system.

**3.2 Latent Functions:** Latent functions, on the other hand, are the unintended or less overt consequences of social institutions. In the context of criminal law, latent functions may arise inadvertently or go beyond the explicitly stated goals of legal institutions. Examples include:

- **Social Stratification:** The criminal justice system, despite its manifest functions of upholding justice, may inadvertently contribute to social stratification. Certain groups may be disproportionately affected by criminalization, leading to unintended consequences such as the reinforcement of existing social inequalities.
- **Creation of Deviant Subcultures:** The imposition of criminal sanctions can lead to the formation of deviant subcultures within society. Individuals who have gone through the criminal justice system may face challenges in reintegrating into mainstream society, potentially fostering the development of subcultures with values and norms distinct from those of the broader community.

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and latent functions, Robert Merton created structural functionalism.

**3.3 Interplay of Manifest and Latent Functions:** Functionalism emphasizes the interplay between manifest and latent functions, recognizing that social institutions often serve multiple purposes, both intended and unintended. In the context of criminal law:

- **Deterrence and Stigmatization:** While the manifest function of criminal sanctions is deterrence and rehabilitation, the latent function may involve stigmatization. Individuals with criminal records may face societal stigma that extends beyond the explicit goals of the criminal justice system.
- **Social Order Maintenance:** Manifest functions, such as conflict resolution and punishment, contribute to the maintenance of social order. However, latent functions may include the reinforcement of power structures and social control mechanisms.

**3.4 Social Integration and Conflict:** The interplay between manifest and latent functions influences social integration and potential conflict. If the manifest functions align with societal values and expectations, social integration is likely. However, conflicts may arise when latent functions result in unintended consequences that deviate from shared norms.

## **Evolution of Criminal Law Through a Functionalist Lens**

### **1. Structural Functionalism**

Structural Functionalism, a foundational sociological theory, offers a comprehensive framework for understanding the intricate web of social structures and their functions within a society. Originating in the early works of scholars like Emile Durkheim, this perspective views society as a complex organism with interdependent parts, each contributing to its stability and functioning. At the heart of Structural Functionalism lies a set of fundamental principles that shape its approach to the study of society.

- **Organic Analogy:** Structural functionalists often use the analogy of the human body to describe society. Just as organs perform specific functions to maintain the health of the body, social institutions work together to ensure the well-being and stability of society. People were therefore interchangeable, temporary occupiers of social positions. Its roots can be found in the research of two anthropologists, Radcliffe-Brown and Malinowski. In contrast to Malinowski's focus on persons, Radcliffe-Brown viewed individuals as

unimportant.<sup>11</sup> Both authors embraced functionalism in their field research because they believed it to be a useful approach for analysing communities that were "anthropologically weird."<sup>12</sup>

- **Interconnectedness:** Social institutions, such as family, education, religion, and law, are viewed as interconnected parts of a larger system. Changes in one institution can have ripple effects throughout the societal structure.
- **Manifest and Latent Functions:** Actions and structures have both manifest (intended) and latent (unintended) functions. While manifest functions are recognized and expected, latent functions may not be immediately apparent<sup>13</sup>.

While Structural Functionalism has contributed significantly to sociological thought, it is not without its critiques. Critics argue that Structural Functionalism presents a static view of society, focusing more on order and stability than on change and conflict. The theory has been also been accused of promoting a conservative ideology by emphasizing the importance of existing social structures and institutions. Some argue that Structural Functionalism neglects the role of individual agency and the potential for social change driven by collective actions<sup>14</sup>.

## Contemporary Relevance

In the contemporary sociological landscape, Structural Functionalism continues to influence research and analysis. Researchers explore how educational institutions function to transmit cultural values, socialize individuals, and prepare them for their roles in society. The theory remains relevant in understanding how social institutions contribute to stability and integration in the face of diverse and dynamic societal challenges. While newer theories have emerged, elements of Structural Functionalism, such as the focus on institutions and their functions, persist in various sociological inquiries.

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<sup>11</sup> Goldschmidt 1996:510

<sup>12</sup> Malinowski researched the inhabitants of Trobriand Island in his book *Argonauts of the Western Pacific*. Again, a Pacific people, Radcliffe Brown investigated the Andaman Islanders. In their writing, both authors explore the key ideas of functionalism, notably functional unity, universality, and irreplaceability. They both claim that the essence of functional analysis is best illustrated through their field research. But until Merton's meticulous examination, which was published in his work "Manifest and Latent Functions," which was later reproduced in *Social Theory and Social Structure*, the nature of functional analysis remained obscure rather than a problem (Merton, 1968)

<sup>13</sup> *Social Theory and Social Structure.*, Robert K Merton (1949)

<sup>14</sup> *The Concept of Conscience and Durkheim's Division of Social Labour*, Susan Stedman Jones

In conclusion, Structural Functionalism provides a lens through which we can unravel the complexities of societal structures and their functions. Despite criticisms, its historical evolution and contemporary relevance showcase its enduring impact on the study of society, offering valuable insights into the interconnected mechanisms that shape our social tapestry.

## 2. Systems Theory

Systems theory, a comprehensive framework that examines the interrelationships and interdependence of various elements within a complex system, has found profound applications in diverse fields. In the realm of criminal law, this theoretical perspective offers unique insights into the functioning, evolution, and adaptation of legal structures. This essay delves into the intricacies of systems theory, highlighting its foundational concepts and exploring its implications for understanding the dynamics of criminal justice.

At its core, systems theory posits that a system is a set of interconnected and interdependent components working together to achieve a common goal. This holistic approach emphasizes the relationships and interactions among these components, rather than isolating them in isolation. In the context of criminal law, this means viewing the legal system as an integrated whole, where legislative, judicial, and enforcement components function collaboratively.

Applying systems theory to criminal justice involves recognizing the key components that form the system. Legislation, law enforcement agencies, courts, correctional facilities, and rehabilitation programs constitute integral parts that operate synergistically. Understanding how changes in one component can affect the entire system is essential for comprehending the systemic nature of criminal law. Systems theory acknowledges the existence of hierarchies and subsystems within a larger system. In criminal law, this implies recognizing the hierarchical structure of legal institutions, from local courts to supreme courts, and understanding how each level contributes to the overall functioning of the legal system. Examining subsystems such as juvenile justice or specialized courts provides a nuanced understanding of the system's complexity.

Beyond the internal dynamics of criminal justice, systems theory extends to the interconnectedness of social systems. It considers how external factors, such as cultural norms,

economic conditions, and political influences, interact with the legal system. This holistic perspective sheds light on the broader societal context in which criminal law operates.

In contemporary criminal justice research, systems theory serves as a lens through which scholars examine issues such as criminal profiling, policy effectiveness, and the impact of legal reforms. Understanding the legal system as a complex, adaptive entity allows for more informed discussions on reforms and improvements. In conclusion, systems theory provides a holistic and dynamic framework for comprehending the intricate workings of criminal law. By viewing the legal system as an interconnected and adaptable entity, scholars and policymakers can gain deeper insights into its functioning, evolution, and potential areas for improvement. The application of systems theory enriches the discourse on criminal justice, fostering a nuanced understanding of the complex interplay of factors shaping legal systems.

Case studies offer a tangible lens through which to examine theoretical frameworks in action. In the context of functionalism and criminal law, selected case studies can illuminate how functionalist perspectives shape legal systems and responses to criminal behaviour.

### **The Prohibition Era in the United States (1920-1933)**

The Prohibition era provides a compelling historical case study to explore the interplay between functionalism and criminal law. The implementation of the 18th Amendment, which prohibited the manufacture, sale, and transportation of intoxicating liquors, aimed to address social issues associated with alcohol consumption. However, the unintended consequences, such as the rise of organized crime and the proliferation of illegal speakeasies, demonstrated the systemic impact of legislative changes. Functionalism helps analyse how the legal response to a perceived social ill resulted in the emergence of alternative, albeit criminal, structures to fulfil societal needs for alcohol consumption<sup>15</sup>.

### **The War on Drugs**

Initiated in the 1970s, this campaign aimed to eradicate drug abuse by implementing strict legal measures. However, the functionalist perspective allows for an examination of unintended

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<sup>15</sup> Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (New York: W.W. Norton & Company, 2016), 11-13.

consequences, such as the growth of drug cartels, the overcrowding of prisons, and the perpetuation of systemic issues related to addiction. Evaluating the societal functions served by the criminalization of drug offenses and its impact on the criminal justice system provides valuable insights through a functionalist lens.

### **Proactive Policing in New York City (1990s)**

This approach aimed to address minor offenses to prevent more serious crimes, aligning with functionalist ideas of maintaining social order. Examining the impact of strategies such as "stop and frisk" through a functionalist lens allows for an exploration of how the criminal justice system responded to perceived threats to social cohesion, highlighting both successes and criticisms of this approach.

### **White-Collar Crime and Corporate Regulation**

The Enron scandal (2001) provides a contemporary case study that delves into the interplay between functionalism and criminal law in addressing white-collar crime. The collapse of Enron, a major corporation, revealed regulatory gaps and prompted legal responses aimed at safeguarding the financial system. Enron used its standing, credit, and energy industry knowledge to lure investors and trade partners.<sup>16</sup> Functionalism helps analyse how legal mechanisms adapt to address emerging threats to societal functions, in this case, the stability of financial markets.

These representative case studies showcase the dynamic interaction between functionalist perspectives and criminal law across different historical and contemporary contexts. By examining the unintended consequences, systemic adaptations, and societal functions served by legal responses, scholars and policymakers can gain a deeper understanding of how functionalist theories influence the evolution and functioning of criminal justice systems.

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<sup>16</sup> U.S. Commodity Futures Trading Commission. "[CFTC Charges Enron with Price Manipulation and Other Illegal Acts](#)"

## Conclusion

Functionalism, as a theoretical framework, holds multifaceted implications for criminal law. By integrating sociological and psychological perspectives, this examination seeks to unravel the complex interplay between functionalist theories and the legal system. Sociological insights shed light on the structural and systemic aspects, while psychological perspectives offer a nuanced understanding of individual behaviours within the functionalist paradigm. This integration aims to provide a comprehensive view of how functionalism shapes, influences, and responds to criminal law dynamics.

Sociological perspectives emphasize the structural functions of legal systems within society. Durkheim's seminal work on social integration and regulation underscores how criminal law serves as a mechanism to maintain social order. The integration of sociological insights extends to examining how legal norms and institutions shape societal norms, contributing to collective values and expectations. Additionally, exploring the manifest and latent functions of criminal law from a sociological standpoint unravels the intricate ways in which the legal system influences and reflects broader social structures.

Psychological perspectives delve into individual behaviours and motivations within the functionalist framework. Examining beliefs, values, and societal norms from a psychological lens allows for a nuanced understanding of how individuals internalize and respond to legal norms. The foundational role of mythology in shaping cultural beliefs, as explored in psychological literature, aligns with the symbolic reservoirs of meaning present in functionalist perspectives on criminal law. Furthermore, psychological studies on narratives of transformation and metamorphosis contribute insights into how individuals navigate the psychological challenges inherent in legal processes and societal expectations.

The fusion of sociological and psychological insights enriches the understanding of the impact of functionalism on criminal law. By examining the societal structures that functionalist theories emphasize through a sociological lens, one can appreciate how these structures influence individual perceptions and behaviors. Moreover, the psychological examination of how individuals interact with and internalize legal norms offers a nuanced perspective on the micro-level processes within the broader functionalist framework.

The integration of sociological and psychological perspectives offers a holistic and nuanced understanding of the impact of functionalism on criminal law. By bridging the macro-level structures with micro-level individual experiences, this approach enriches scholarly discourse and informs policymakers about the multifaceted dynamics at play within the functionalist paradigm in the realm of criminal justice.

