

The Money and Politics of Criminal Justice Policy

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To anyone who has questioned the process.

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Preface

When people think of criminal justice, a number of ideas come to mind. Typically, none of these ideas are wrong, but they only paint part of the picture. Criminal justice comprises a myriad of philosophies, organizations, and systems, making it challenging to define. Whether speaking of criminal justice in the context of education or government, its meaning is multifaceted. At a very basic level, one may argue that a criminal justice system is designed to increase social control, through both proactive and reactive means. Specifically, a system of criminal justice should protect its citizens from harm (proactively) and enforce control by punishing those who have violated the law (reactively). In the United States, theoretically, the system is assumed to provide the same rights and protections to all; however, some may argue that money has immense influence on the system. For example, some argue the more money and privilege a person has, the more likely they are to receive protection by the criminal justice system, yet escape liability when they are accused of a crime. Moreover, the cost of crime control can be exorbitant, making it challenging for the criminal justice system to operate within its budgetary confines.

Defining Criminal Justice

Unfortunately, this description only scratches the surface of the complexities of the criminal justice system. The criminal justice system incorporates multiple roles that encompass all stages of social control, from the enforcement of criminal law to the various methods used to punish and/or rehabilitate those who have been convicted of violating these laws. While the system would ideally function independently of political and monetary influence, their influence is evident within each stage of the system. Even more problematic is that at times, money both obstructs and facilitates the goals of the system. There is a symbiotic relationship between those who have money and the system: each relies heavily on the other.

Within this text, our goal is to provide readers with a critical analysis of the relationship among money, politics, and the criminal justice system by examining the influence of money and politics on the agencies and processes that criminal justice comprises. Each of the chapters that follow addresses how money and politics influence an agency (e.g., police departments) or a stage in the criminal justice process. However, before we provide a brief description of each chapter, we would like to provide some background information that we believe is necessary to understand our perspective on these issues.

Regarding the formation of law, many philosophers from the Age of Enlightenment have argued that humans should willingly relinquish part of their sovereignty to the state in exchange for societal protection from harm, an idea known as the social contract. Decisions regarding what behaviors should be prohibited operate through utilitarian ideals that are best administered through a democratic process. If the majority of citizens believe that a behavior is harmful, legislation should be enacted prohibiting the behavior and, on the other hand, those behaviors that are deemed acceptable should continue to be lawful.

Why is there such a divide on the meaning of criminal justice? Theoretically, justice should be representative of objectivity and righteousness. Yet, attempting to implement justice through a formal system muddles its meaning, primarily because of individuals' varying status and power. Contrary to the ideals of Enlightenment thinkers, some Marxist theorists would argue that notions of a social contract are a farce and what behaviors are legal or prohibited is dictated by the ruling elite. In many instances, the ruling elite will purposefully criminalize behaviors in which the working class or poor are likely to engage for purposes of further strengthening the control that the ruling elite exerts upon society.

Politics and the Constitution

Political power coupled with opposing political views also diminishes the objectivity of the criminal justice system. Acts that seem universally wrong (such as killing or raping an individual) can result in incredibly different punishments. These punishments boil down to the context of the act, the law, and the predominant political beliefs during the time period in which the act occurred. For instance, if a killing was premeditated or particularly brutal, the offender could be sentenced to life imprisonment, or depending on the circumstances, could be put to death. On the other hand, a killing that occurred

when a person was in the heat of passion is classified as manslaughter, not murder, and carries a more lenient penalty. Sometimes, killing another human being is not seen as an act of evil. Killing during war not only does not warrant punishment—it can be revered as a heroic act. Additionally, if person A killed person B because person B was threatening them with deadly force, this would be considered self-defense, and not only would the person who committed the killing not be punished, their actions would typically be considered justified under the law.

When we deconstruct the details of varying punishments for varying crimes, it becomes difficult to justify the proposition that notions of crime and punishment are universal or somehow based on what Aristotle called “natural law.” If principles of law are not universal or based upon some universal notions of justice, then perhaps we should look to other sources of law. One such example is the supreme document of law within the United States (the Constitution). This document is so sacred that a signed copy of it is on display in the National Archives in Washington, D.C., in a bulletproof case with inert gases inside to preserve it. The document is so well protected that it can even be lowered into a bomb shelter to ensure it will be preserved for future generations (a little more extreme than a sign at a museum that reads “do not touch the paintings”). Yet the Constitution was written exclusively by white men who owned property (often referred to as the “Founding Fathers” or the “Framers”), the elite among the only class of people eligible to vote at the time. The Constitution replaced the former Articles of Confederation, which many people at the time believed had established an ineffective form of government that relied too heavily on the individual states and gave little authority to the federal government. The Constitution established a stronger central government, but still left some power to the individual states. Support for this change in government was not universal. Supporters of the Constitution were known as “federalists,” and opponents of the Constitution were intuitively called “anti-federalists.”

Within Article Five of the Constitution, the Founding Fathers outlined the process by which the Constitution could be changed, known as “amending” the Constitution. Thus, before it could even be ratified, the Constitution actually had to be amended. Some people who were fearful of a powerful central government had complained that the Constitution had failed to include a list of basic rights for citizens. This argument was quickly addressed by the addition of ten amendments to the Constitution, which are collectively known as the Bill of Rights. The Bill of Rights confers, among others, the seemingly sacred privileges of freedom of speech, the right to remain silent, and the pro-

tection against cruel and unusual punishment. Yet there are many exceptions to these amendments. Seemingly, everyone knows that a person cannot claim freedom of speech while yelling “fire” in a crowded theatre. The right to remain silent (“nor shall [a defendant] be compelled in any criminal case to be a witness against himself” is the actual text in the Fifth Amendment) only applies to spoken testimony, and any recordings, writings, fingerprints, and/or DNA evidence can be used against a person at trial. Regarding the protection against cruel and unusual punishment, the United States Supreme Court and other lower courts often interpreted this protection based upon the standard of “evolving standards of decency.” Essentially, the Court tries to consider what the views of contemporary society are and if the punishment is essentially cruel and unusual within a modern society.

After the Constitution was ratified, it was amended seventeen more times. Among the changes were the Thirteenth Amendment, which outlawed slavery, the Fourteenth Amendment, which granted equal protection to people regardless of race, the Seventeenth Amendment, which made United States Senators directly elected by the people instead of by state legislatures, and the Nineteenth Amendment, which gave women the right to vote. The Twenty-First amendment actually *repealed* the Eighteenth Amendment, which had prohibited the manufacture or sale of alcohol within the United States. Thus, although the Constitution may well have been enacted “in order to form a more perfect union,” it was not universally enacted at the time; many people in the United States were excluded from taking part in creating the document; and the meaning of the words found in the document have often been disputed and required interpretation by the courts. If the document was in fact sacred and based upon universal rights or natural law, perhaps it would be clearer in its meaning and would not have to be interpreted so frequently. Additionally, society’s ever-changing values have required changes to the Constitution.

Law, Social Control, and Criminal Justice

If we cannot ascertain a sense of natural law or what is right/wrong through societal beliefs or government, perhaps the only place left to look is religion. Many people have argued that legal codes reflect religious beliefs and values. Indeed, the Ten Commandments, at least in so-called Judeo-Christian countries like the United States, have often been claimed by religious leaders and some politicians as the foundation of any legal code. In countries such as Saudi

Arabia, legal codes are partly, if not entirely, based on religious doctrine found in the Qur'an and Hadith. The United States, which was founded by people who most often had Judeo-Christian beliefs, can certainly claim some inspiration in various religious texts. Murder, theft, and many other behaviors are described as "crimes" in the Christian Bible. Although some actions, such as adultery, would probably be considered immoral in contemporary society, it is unlikely that a person would be prosecuted for them—unless the defendant was a member of the United States military. Some actions, such as worshipping idols or practicing magic, would be considered immoral by only a small minority of Christians in the United States, a country that encourages religious freedom. Although we still might look to religion to identify what behaviors should be considered a crime, the proper punishment for these crimes is another story. In the Bible, the most often prescribed punishments are death, monetary fines, or corporal punishment. Incarceration, one of the punishments used in modern times, was unknown in biblical times.

Although we often look to concepts of universal rights or natural law, constitutions and legal codes, or religion for inspiration in deciding what is morally right and wrong, as well as criminally right and wrong, the ultimate answer is settled through a political process. Based upon American legal principles, before a person can be punished by the state, there must first be a law that prohibits the behavior and there must be some stated penalty for the violation. This cannot occur unless a legislature passes a bill and a governor or the president signs the bill into law. If a proposed law is vetoed by the executive, then a legislature, through a supermajority vote (usually $\frac{2}{3}$), can override the veto and the bill becomes law. In some states, like California, laws can be enacted by ballot initiative. For this to occur, a sponsoring citizen will be required to collect a certain number of signatures in support of the proposed initiative from other citizens who are registered to vote. If enough valid signatures are gathered, the ballot initiative will be put up for a vote at the next election. If a majority of voters approve of the initiative, it becomes law.

Not only must law be created within a political process, but criminal justice issues can also become central in many political elections. In 1992, for example, while running for president of the United States, Bill Clinton often advocated that 100,000 additional police officers should be hired to help control burgeoning levels of crime.¹ In 1995, the state of New York reinstated the death penalty after an eighteen-year absence. Reinstating the death penalty had been one of the central pledges on which Governor George Pataki had based his campaign.² In 1993, while running for governor of Virginia, George Allen's cornerstone campaign promise was to establish parole for incarcerated

offenders.³ Aside from these examples, gun control, sex offender registries, drug testing of welfare recipients, restoration of voting rights for people with felony convictions, victim's rights, and many other issues have become important issues in political campaigns. Not only are these issues important to the general social welfare, but some criminal justice personnel—including judges, attorney generals, county sheriffs, and district attorneys—occupy elected positions. For the most part, candidates for these positions will be judged solely based on the positions they take on issues relating to the criminal justice system.

So how do politics affect a person's beliefs about the criminal justice system? Elliott Currie equated political views with criminal justice beliefs by contrasting "due process liberals" with "crime control conservatives."⁴ Using Herbert Packer's notion that competing values inform the operation of the criminal justice system, what he labeled as "crime control" and "due process" models of criminal justice,⁵ Currie argued people who tended to be more liberal were more likely to value human rights and believe that governments should be less punitive towards people who broke the law. People who were more conservative would believe that the ultimate goal of the criminal justice system is to reduce crime and keep people safe. If that meant diminishing everyone's civil rights, doing so was to achieve the goal of less crime.⁶ Yet, in reality, such easy distinctions are rare. Although the Republican Party has traditionally been known as the "law and order" party, that distinction has recently waned, as more Republicans call for repealing mandatory sentences for low-level drug offenders and the end of "three strikes and you're out" laws. Beginning with the election of Bill Clinton, Democratic candidates for major state and national offices have endorsed tactics associated with a crime control model. Further complicating the picture is the fact "libertarians" or "progressives" can be found in both political parties. Libertarians are typically people who advocate for limiting government power in nearly all segments of society—economic, education, etc.—while progressives typically see government as the solution to social ills and advocate for increased government intervention in social problems. In recent times, Libertarians have complained about everything from what they consider harsh drug laws to policies that allow law enforcement to stop and frisk people with little provocation. To Libertarians, these are examples of unnecessary government infringement on people's liberty. Progressives actually agree with libertarians' opinions on these issues, but for entirely different reasons. To them, rather than sending drug offenders to jails and/or prisons, the country should embrace drug prevention measures such as expanded, state-sponsored drug rehabilitation. Regarding stop and frisk policies, while sup-

porting them in theory, progressives worry that such tactics unfairly target racial or cultural minorities and the poor. Thus, political affiliation affects people's views of the criminal justice system in ways beyond the simple "crime control" or "due process" models posited by Packer.

Historical context is also important for understanding how political attitudes shape the passage of laws. Just like anything else, attitudes toward issues in criminal justice trend and vary over time. For instance, not so long ago, if a man had sex with a woman against her will, this situation was not really thought of so much as a crime against the woman, but instead as a crime against her father or husband (if she was married). Generally, members of society believed that if people knew the woman was no longer a virgin, regardless of whether it was by choice, a father would have a difficult time marrying off his daughter. If the woman was married, she was considered the property of her husband and the rape had caused his property to become damaged. Social attitudes about rape eventually began to change where both men and women perceived rape as a violent crime and the woman as the victim (not her husband or father), which led to rape being punishable by death until 1972, when the Supreme Court ruled that the death penalty for rape was unconstitutional. In contemporary America, the punishment for rape (or lesser sexual assaults) can vary from probation to life imprisonment.⁷

Speaking on drug policy, the historian David Musto argued that American attitudes towards drugs are akin to a swinging pendulum. Some historical periods have been marked by more tolerant attitudes towards drugs, while other periods are marked by stricter control of drugs. Musto noted that the late 1960s and 1970s were the most recent period of relative tolerance for drugs like marijuana. It was during those decades that many states relaxed sentencing policy and some even decriminalized possession of small amounts of marijuana for personal use. The 1980s saw a backlash against drug use, partly as a result of the perceived excesses of the time. Much tougher sentences for drug offenders became the norm and decriminalization all but disappeared.⁸

Similar shifts in attitudes have also occurred regarding what should be the proper punishment for crime. Although many Americans believe incarceration is both the norm and has existed for a long time, neither is the case. Further, policies resulting in mass incarceration are quite recent as well. Prior to the 1980s, rehabilitation—rather than deterrence, incapacitation, or retribution—was the guiding philosophy behind criminal sentencing policy.⁹ However, which of these justifications for criminal sanctions you believe is the most (or least) important is often shaped by your political views.

As stated earlier, money matters; it has an immense influence on criminal justice policymaking. Prisons and jails do not appear out of thin air—they cost money. Money is not only required to build these facilities, but also to maintain and staff them, and ensure the inmates living in them have access to the basic necessities of food, clothing, and medical care. Not only do we provide money to support prisons and jails, but for all other aspects of the criminal justice system as well: probation and parole officers, police officers, judges, prosecutors, clerks of the courts, and countless other people who are paid salaries and benefits (e.g., medical and other benefits like retirement or disability pay) for their work in law enforcement, the courts, and corrections. All of these expenditures account for significant portions of local and state budgets (which can be cut during economic slowdowns or enhanced during periods of economic growth).

Although criminal justice expenditures can be the target of budget cuts and some people may even question the need to spend so much money maintaining the criminal justice system, there is another rationale for preserving the system. The criminal justice system creates jobs—a *lot* of them—not only for the people who work in the system directly, but also for those who support and provide secondary benefits to the system. When facilities need to be built, this will require architects, construction companies, and perhaps most importantly, workers who actually construct the facilities. Uniforms worn by inmates and prisoners alike must be manufactured by textile companies. Food for inmates helps employ farmers. Automobiles for police officers are manufactured by domestic car companies. The list of industries that both support and are aided by the criminal justice system is endless. Cuts to budgets for the agencies that make up the criminal justice system hurt not only the agencies themselves, but also the ancillary industries. Most directly, budget cuts can make criminal justice workers' jobs tougher by limiting resources or, if the cuts are severe enough, cause them to lose their jobs. A well-funded criminal justice system will keep many people employed, many of whom are registered voters. Budgets cuts directly affecting them might result in decisions made at the ballot box to support—or not support—political candidates. Few politicians would ever want to appear to *not* support the men and women who make the criminal justice system work!

Now that we have considered some potential monetary benefits of the criminal justice system, it is time to consider some of its negative monetary costs. What is the most basic need of any criminal justice system? People who break the law and warrant punishment. Without inmates in a correctional facility, all you have is an empty building. Without people breaking laws, a police officer

in a car is just a man or woman with nothing to do. The fewer the number of people who break the law, the less need there is for a criminal justice system and, certainly, the fewer the people whom governments will have to pay to prevent and prosecute crimes. Yet, before we start to argue that more people breaking laws and being punished is economically beneficial, there are a number of things we must consider. First, regardless of whether certain acts are legal or illegal, there is still a monetary cost attached to them. Shoplifting, for example, costs companies money that, in turn, causes prices to rise as they attempt to replace that lost revenue. Therefore, regardless of whether shoplifting is legal or illegal, there is still a cost associated with the act. Second, even when a direct monetary cost of crime does not exist, a social cost does. We must remember that people who commit crime are human beings—fathers and mothers, sons and daughters—and may have others who depend on their emotional and financial support. Although society may be safer by incapacitating these people through locking them up in prison or jail, having them languishing in jails and prisons makes them a drain on the economy. Not only does the government have to pay money to house these people, but also they are not adding their labor to the economy (the economic benefits of prison labor is an issue we will discuss in a later chapter). Prisoners are neither spending nor making money outside the prison walls or jail cells; they are certainly not paying taxes. Furthermore, these people are not financially supporting their families. If an incarcerated parent is the sole custodial parent, children may be forced to live with relatives or into the foster care system. Thus, not only have we punished the offender who is incarcerated, we have also punished his or her family as well. This has a negative effect in the short term, but this lack of support and displacement could contribute to the criminogenic behavior of family members down the road.

Now that we have briefly discussed how politics and money affect criminal justice, we must consider one more issue before concluding this chapter. At what point do we find a phenomenon a problem? A similar question should be, after defining a phenomenon as a problem, how do we determine that something in the criminal justice system is not working and requires some change to the system? For instance, relative to other public places, schools have always been safe places, even today. However, if we listen to the media, whose presence and scope of coverage seems to be ever expanding, school shootings almost seem to be frequent, and always increasing in frequency. Although school shootings are certainly tragic, these incidents are *not* common. Similarly, the media also depicts numerous other criminal behaviors as either bizarre or increasing. These constant reports, if believed, can make us feel like we are

not safe anywhere. This is not surprising though. If you look hard enough in a country of over 370 million people within a world of over six billion people, you are likely to find most anything.

Politics and Crime in America

As previously mentioned, our purpose in writing this book is to provide readers a critical analysis of the role played by money and politics in criminal justice policy. By critical, we mean not accepting the status quo, but instead questioning it and trying to uncover its inner workings. We will not, however, advocate any particular political ideology.

Our first goal is to analyze how political issues affect policy. In many instances, we will present criminological/criminal justice research to illustrate how the political framing of an issue is more important than actually considering whether a particular policy choice is sound because it works. In doing so, we endeavored to be as unbiased as possible, although bias is never completely overcome. Regarding money, we first want to show that money matters in the criminal justice system. There are not only costs from the commission of crime, but there are also costs associated with preventing and prosecuting crime. Beyond this, we want people to understand that the criminal justice system is an industry like any other. Crime is a multi-billion-dollar industry. The criminal justice system is one of the nation's largest employers. One common urban legend is that some scientist invented a gasoline combustion engine that would allow a car to drive 90–100 miles on a single gallon of gas. Consumers have not been able to purchase this engine because an oil company promptly bought the patent. If a fuel-efficient engine of this caliber were available, oil companies could potentially lose profits. Now, we are not suggesting that a cure for crime is out there, or if it were, that it is being suppressed. Yet the criminal justice system is an industry and many of the decisions that are made or the process itself can be more about collecting money or keeping people employed than actually promoting justice, even if we could develop a satisfactory definition of what exactly justice is.

We have organized the book in the following manner: In Chapter 1, "Government & Politics within the United States," we discuss the nature of government and politics in the United States. Of specific concern is the American system of federalism, whereby the federal government and state governments share governance. While criminal justice was primarily a state responsibility at the founding of the United States, the federal government has had a con-

tinuing role in, and influence over, criminal justice, which has important implications.

In Chapter 2, “The Political Economy of Crime,” we present various criminological theories that examine the role of politics and money in the criminal justice system. The purpose here is to ground readers in different theoretical explanations that scholars have developed to explain why money and politics play a large role in creating law and policy, and effects of money and politics on the day-to-day operation of the criminal justice system.

In Chapter 3, “A Brief History of the United States Criminal Justice System,” we provide a condensed history of how criminal justice policy developed in the United States. This evolution is hardly accidental—money and politics have played a role since the beginning.

In Chapter 4, “The Cost of Crime,” we provide analysis of what the true cost of crime in the United States is. As we describe in the chapter, figuring out the true costs of crime can be a difficult exercise since some costs, such as federal and state budgets for criminal justice, are easy to obtain, but other costs related to crime are not so easily determined.

In Chapter 5, “The Mythology (and Reality) of Crime and Justice in the United States,” we describe some of the myths that have developed about crime. What we mean by mythology is the fact that there are many different faulty or inaccurate reasons disseminated to justify various phenomenon within the criminal justice system.

In Chapter 6, “The Politicization of Crime and Justice in the United States,” we describe different types of interest groups in the United States that are both interested in and help to shape crime policy. While we cannot provide any definitive answers, we can say that these groups certainly have an effect on the criminal justice process and the formation of policy.

In Chapter 7, “The Political Economy of Policing,” we identify the different public and private agencies that engage in policing. We also examine how police budgets are developed, the costs of policing for society, and who actually profits from policing. We explore various political issues that affect the practice of policing as well in the chapter.

In Chapter 8, “The Political Economy of Courts,” we identify the different public and private agencies that make up the American criminal court system, including how budgets are developed for courts, what costs society incurs from courts, and who actually profits from courts. We also describe various political issues affecting the administration of courts.

In Chapter 9, “The Political Economy of Corrections,” we turn our attention to the different public and private agencies involved with corrections in

America. Again, we examine how budgets are developed for corrections, what costs society incurs from corrections, and who actually profits from corrections. Likewise, we also describe the various political issues that affect the practice of corrections.

Chapter 10 concludes the book. In this chapter we summarize what we believe are the most important points we have made in the book, as well as examine what the future may hold for the criminal justice system.

Notes

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