

Criminal Injustice

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*How Politics and Ideology
Distort American Ideals*

Matthew B. Robinson



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Preface

“The discrepancy between American ideals and American practice creates a dry rot which eats away at the foundations of our democratic faith.”

—Helen Gahagan Douglas

The “criminal justice system” is the term used to describe the inter-connected agencies of the police, courts, and corrections. Its assumed goals are to reduce crime in society while simultaneously protecting the rights of those being processed through the system. We call these goals *crime control* and *due process*, respectively—both ideals held deeply by American citizens. Unfortunately, the criminal justice system sometimes fails to meet these ideals in the real world.

Americans expect to live safely (crime control) as well as to be treated fairly by our government (due process). In fact, a quick examination of the two documents most famously cited as examples of American ideals—the US Declaration of Independence and the US Constitution—shows this to be the case.

This is from the US Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.¹

Some of the key words from this document—which we used to declare our independence from Great Britain—include equal, Rights, Life, Liberty, and the pursuit of Happiness. Each of these terms relates directly to public safety or crime control (such as Life and the pursuit of Happiness, both of which are threatened by crime) and equality or due process (such as Rights and Liberty, which must be protected as a person is processed through the criminal justice system).

And this is from the US Constitution:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.²

1. National Archives (2012). The charters of freedom. Declaration of Independence. Retrieved December 1, 2012 from: http://www.archives.gov/exhibits/charters/declaration_transcript.html.

2. National Archives (2012). The charters of freedom. US Constitution. Retrieved December 1, 2012 from: http://www.archives.gov/exhibits/charters/constitution_transcript.html.

Some of the key words from this document—which represents the foundation of our government—include Justice, domestic Tranquility, common defence, general Welfare, and Liberty. Each of these terms also relates directly to public safety or crime control (such as domestic Tranquility, common defence, and general Welfare), and equality or due process (such as Justice and Liberty). Tranquility (which means peace) and Welfare (which refers to “being well”) are obviously threatened by crime, and crime fighting ideally helps provide for our common defence. Yet, the war on crime must also respect Justice by protecting our Liberty because Americans also value their freedom from unwarranted government interference in their lives. In fact, a review of the Bill of Rights, shown in Table A, illustrates that half of them deal with how government is to deal with people accused of crimes!

Table A. Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have

been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Americans clearly value public safety and justice for these values have been enshrined in our nation's founding documents. To achieve these goals, we created a criminal justice system, a network of agencies that, unfortunately, sometimes falls short of these ideals when it comes to actual practice.

Why does this happen? In this book it is suggested it is because of the influence of politics and ideology on criminal justice practice. *Politics* refers to governing decisions about how to deal with social problems and distribute resources in society, and *ideology* means the beliefs and values that guide political decisions and underlie our societal institutions. Law-making is obviously impacted by politics because lawmaking is a political process (we even call the people who make the law politicians!). And laws largely determine whose ideology becomes the dominant one in society.

Here are some examples. Should we outlaw and prevent gay marriage or tolerate, condone, and even celebrate it? Should we continue with our prohibitive approach towards drugs such as marijuana by arresting, convicting, and punishing people who possess the drug or should we legalize drugs and regulate them for safety? Should women be able to control their own reproductive cycles including aborting fetuses or should abortion be illegal? Should we sentence murderers to death and execute them or is there a better alternative? Should we criminalize killings by corporations (e.g., deaths by defective products) or should we ignore them? Answers to such questions determine whose beliefs and values (i.e., whose ideology) dominate in America. It is politicians who make these determinations for us, and they do this by creating criminal laws at the state and federal level of government.

Because all criminal justice activity stems from the criminal law, it is a fact that criminal justice practice is also impacted by politics and ideology. As will be shown in this book, politics and ideology often distort America's ideal goals of crime control and due process, oftentimes resulting in ineffective and unfair criminal justice policies. That is, politics and ideology distort the ideals of Americans found in the Declaration of Independence and the US Constitution.

This book will demonstrate how this is true and argues that the main problem with criminal justice practice is that it does not target the most harmful acts in America; instead it focuses heavily only on a handful of harmful acts committed by certain groups of people under certain circumstances. This occurs because of who makes the law and who pays for it; these people create laws and policies that benefit them and their financial backers rather than "the people" more generally. Further, media coverage of crime and criminal justice reinforces myths of crime (including who is dangerous and who is not) which helps maintain the focus of criminal justice agencies on street crime rather than on other forms of harmful behavior that actually cause far more damage to society.

Innocent Bias

The most important concept in this book is the term *innocent bias*. Innocent bias is unfairness in criminal justice that exists because of unfair criminal laws. It is called "innocent" because it does not emerge from intentional discrimination on the part of individual police officers, prosecutors, or other agents of criminal justice. Instead, innocent bias occurs when criminal justice agents innocently enforce biased criminal laws.

The main bias of the criminal law is this: Only some harmful or dangerous acts are defined as *crimes*—behaviors that violate the criminal law. An even smaller number are legislated as *serious crimes*—supposedly the most harmful and common of these crimes (e.g., murder). A much larger number of harmful or dangerous acts are perfectly legal, and still others are illegal but not vigorously pursued by criminal justice agencies. This is unfair or biased because it means that only some criminals are held accountable for the harms they inflict on other people.

It also turns out that those people we hold accountable for their harmful behaviors are very different than the ones we do not hold accountable for the harmful behaviors they commit. Specifically, the people we arrest, prosecute, convict, and punish for crimes and serious crimes tend to be young, poor, minority males, while the people that are rarely processed through the criminal justice system are older, wealthier, white males (the very same people who create the law and own the mainstream media).

This does not occur because individual police officers, prosecutors, and other criminal justice officials are biased against people based on their race, ethnicity, social class, age, or sex; instead it occurs because in the United States, we define harmful acts of some groups as crimes more than others—these are the acts focused on by the criminal justice system.

Further, some forms of harmful behavior are featured in the mainstream media while others are generally ignored, which keeps out attention focused squarely on only certain kinds of harms. If you think of the criminal law and media coverage of crime as spotlights—beams of light that direct our attention to some harmful behaviors—both are shining directly on only a small fraction of harmful behaviors; the rest continue in the

darkness. One goal of this book is to bring light onto these behaviors so that those people who commit them will be held accountable for them, in the interests of justice and fairness.

Chapter by Chapter

The book offers six chapters. In Chapter 1, the main argument of the book is introduced and summarized. The *criminal justice system* is defined and its ideal goals of reducing crime and doing justice are discussed. Then, the arguments of scholars who are more critical of criminal justice and believe it is designed to do very different things are examined; these scholars assert that the criminal justice system is aimed at oppressing people of color, poor people, and/or women. The argument of this book is that oppression based on class, race, and gender can occur without being intended just because of the political and ideology nature of the criminal law and criminal justice policy.

In Chapter 2, the terms politics and ideology are defined and two conflicting political ideologies in the United States—conservatism and liberalism—are examined. This chapter shows that the conservative ideology has had the most impact on thinking about crime and especially the criminal law and criminal justice policy since the 1980s; for this reason, we've strayed from the ideals of the Declaration of Independence and the US Constitution. Specifically, it is conservatives who have created laws and criminal justice policies that do not provide for public safety or crime reduction while simultaneously eroding liberty and resulting in unequal criminal justice outcomes for poor people and people of color. Since this conservative ideology is embraced today by both Republicans and Democrats, it is not the fault of one political party or another.

Chapter 3 focuses on the two institutions that are most responsible for creating actual policy as well as shaping public opinion about crime and criminal justice—the law and the media. You'll see that lawmakers are not representative of the US population; most people do not vote and those that do are not representative of the US population; and money plays a huge role in determining who runs for, wins, and maintains office. This raises the possibility that the law does not serve the interests of the people. Further, the people who own the media are also not representative of the US population and the mainstream media are owned and operated by corporations whose main interest is generating profit. This means it is possible that our conceptions of crime created in the law and reinforced in the media are not accurate, since the law only defines some harmful acts as crimes and because media coverage of crime tends to focus on violent street crimes committed by certain people under certain circumstances while ignoring white-collar and corporate crimes.

In Chapters 4 and 5, the criminal law is examined in detail, and street crime is compared and contrasted with white-collar and corporate crime. The data in these chapters clearly show that acts of elite deviance (e.g., white-collar and corporate crime) cause far more property loss as well as death and destruction than all street crimes combined, even those identified in the criminal law as the most serious. Specifically, acts such as fraud and false advertising cause more property loss than crimes such as theft, burglary, and robbery, yet we focus on the latter while generally ignoring the former. Also, I illustrate that defective products and hazardous working conditions kill and injure more people every year than murder and assault, yet we arrest, convict, and

punish people for the latter while people who commit the former are rarely held accountable for their actions. This amounts to a serious bias implicit in criminal justice—innocent bias—one that will be found as one moves through the entire criminal justice system.

Finally, in Chapter 6, the process of innocent bias in criminal justice is examined. Each branch of criminal justice is examined, from police, to courts, to corrections, to demonstrate serious disparities in arrests, convictions, and being subjected to serious punishments. An explanation for why poor people and people of color—and especially young, poor men of color—are so disproportionately subjected to the most severe criminal punishments in America.

To the Reader

Most introductory criminal justice texts start with the perspective that the American criminal justice meets its ideal goals. They introduce and discuss main concepts and terms without offering critical assessments. I want you, the reader, to learn not only about the ideals of criminal justice in America, but also about the realities. Whereas other texts emphasize the way things are supposed to operate, *Criminal Injustice* places greater emphasis on the way agencies of American criminal justice system really operate.

This book focuses on injustice in criminal justice, an important topic for students and citizens alike to understand. Of course, people who study criminal justice and who work within agencies of American criminal justice need to gain an understanding of basic, introductory-level concepts and issues in order to become more knowledgeable and to become better employees. Many fine texts are on the market to meet this need. But this book takes a different approach: it begins with injustice as a problem.

As you read this book, I challenge you to keep an open mind. Do not allow your deeply entrenched beliefs about crime, criminal justice, or politics to interfere with your understanding of the main argument of the book. If this reading has been assigned to you, remember that you do not have to agree with the argument I put forth in this book, but you do need to understand it. In fact, I challenge you to read the book from a critical perspective, not automatically believing everything you read. Read the book from a perspective that will allow you to discover your own truth. Your own truth, after all, is the only truth that will matter to you. We live in an era where fact-checking is pretty easy to do. So, if something in the books sounds unbelievable, fact-check it and see what you learn.

Major Features

To make the book more useful for readers, several features are included. First, key terms are identified in bold at the end of each chapter. Second, discussion questions are included that can be used by instructors using the book in college classrooms to generate discussion on the most important topics discussed in the book. Third, several activities are included in each chapter to generate activities for active learning. Some of these are designed to be conducted in class whereas others are meant for students to use out of class in order to learn more. These activities should be used to make class more relevant for the real world and to increase student interest in the material.