

15 / A Radical Perspective on Crime

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THE IMPLICIT IDEOLOGY OF CRIMINAL JUSTICE

Every criminal justice system conveys a subtle, yet powerful message in support of established institutions. It does this for two interconnected reasons.

First, because it concentrates on individual wrongdoers. This means that it *diverts our attention away from our institutions, away from consideration of whether our institutions themselves are wrong or unjust or indeed "criminal."*

Second, because the criminal law is put forth as the *minimum neutral ground rules* for any social living. We are taught that no society can exist without rules against theft and violence, and thus the criminal law is put forth as politically neutral, as the minimum requirements of any society, as the minimum obligations that any individual owes his fellows to make social life of any decent sort possible. Thus, it not only diverts our attention away from the possible injustice of our social institutions, but the *criminal law bestows upon those institutions the mantle of its own neutrality*. Since the criminal law protects the established institutions (e.g., the prevailing economic arrangements are protected by laws against theft, etc.), attacks on those established institutions become equivalent to violations of the minimum requirements for any social life at all. In effect, *the criminal law enshrines the established institutions as equivalent to the minimum requirements for any decent social existence—and it brands the individual who attacks those institutions as one who has declared war on all organized society and who must therefore be met with the weapons of war.*

This is the powerful magic of criminal justice. By virtue of its focus on individual criminals, it diverts us from the evils of the social order. By virtue of its presumed neutrality, it transforms the established social (and economic) order from being merely one form of

society open to critical comparison with others into the conditions of any social order and thus immune from criticism. Let us look more closely at this process.

What is the effect of focusing on individual guilt? Not only does this divert our attention from the possible evils in our institutions, but it puts forth half the problem of justice as if it were the *whole* problem. To focus on individual guilt is to ask whether or not the individual citizen has fulfilled his obligations to his fellow citizens. *It is to look away from the issue of whether his fellow citizens have fulfilled their obligations to him.*

To look only at individual responsibility is to look away from social responsibility. To look only at individual criminality is to close one's eyes to social injustice and to close one's ears to the question of whether our social institutions have exploited or violated the individual. *Justice is a two-way street—but criminal justice is a one-way street.*

Individuals owe obligations to their fellow citizens because their fellow citizens owe obligations to them. Criminal justice focuses on the first and looks away from the second. *Thus, by focusing on individual responsibility for crime, the criminal justice system literally acquires the existing social order of any charge of injustice!*

This is an extremely important bit of ideological alchemy. It stems from the fact [that] the same act can be criminal or not, unjust or just, depending on the conditions in which it takes place. Killing someone is ordinarily a crime. But if it is in self-defense or to stop a deadly crime, it is not. Taking property by force is usually a crime. But if the taking is just retrieving what has been stolen, then no crime has been committed. Acts of violence are ordinarily crimes. But if the violence is provoked by the threat of violence or by oppressive conditions, then, like the Boston Tea Party, what might ordinarily be called criminal is celebrated as just. This means that when we call an act a crime we are also making an implicit judgment about the conditions in response to which it takes place. When we call an act a crime, we are saying that the conditions in which it occurs are not themselves criminal or deadly or oppressive or so unjust as to make an extreme response reasonable or justified, that is, to make such a response non-criminal.

This means that when the system holds an individual responsible for a crime, it is implicitly conveying the message that the social conditions in which the crime occurred are not responsible for the crime, that they are not so unjust as to make a violent response to them excusable. The criminal justice system conveys as much by what it does not do as by what it does. By holding the individual responsible, it literally acquires the society of criminality or injustice.

Judges are prone to hold that an individual's responsibility for a violent crime is diminished if it was provoked by something that might lead a "reasonable man" to respond violently and that criminal responsibility is eliminated if the act was in response to conditions so intolerable that any "reasonable man" would have been likely to respond in the same way. In this vein, the law acquits those who kill or injure in self-defense and treats lightly those who commit a crime when confronted with extreme provocation. The law treats leniently the man who kills his wife's lover and the woman who kills her brutal husband, even when neither has acted directly in self-defense. By this logic, when we hold an individual completely responsible for a crime, we are saying that the conditions in which it occurred are such that a "reasonable man" should find them tolerable. In other words, by focusing on individual responsibility for crimes, *the criminal justice system broadcasts the message that the social order itself is reasonable and not intolerably unjust.*

Thus the criminal justice system serves to focus moral condemnation on individuals and to deflect it away from the social order that may have either violated the individual's rights or dignity or literally pushed him or her to the brink of crime. This not only serves to carry the message that our social institutions are not in need of fundamental questioning, but it further suggests that the justice of our institutions is obvious, not to be doubted. Indeed, since it is deviations from these institutions that are crimes, the established institutions become the implicit standard of justice from which criminal deviations are measured.

This leads to the second way in which a criminal justice system always conveys an implicit ideology. It arises from the presumption that the criminal law is nothing but the politically neutral minimum requirements of any decent social life. What is the consequence of this?

Obviously, as already suggested, this presumption transforms the prevailing social order into justice incarnate and all violations of the prevailing order into injustice incarnate. This process is so obvious that it may be easily missed.

Consider, for example, the law against theft. It does indeed seem to be one of the minimum requirements of social living. As long as there is scarcity, any society—capitalist or socialist—will need rules preventing individuals from taking what does not belong to them. But the law against theft is more: it is a law against stealing what individuals presently own. *Such a law has the effect of making present property relations a part of the criminal law.*

Since stealing is a violation of law, this means that present property relations become the implicit standard of justice against which criminal

deviations are measured. Since criminal law is thought of as the minimum requirements of any social life, this means that present property relations become equivalent to the minimum requirements of any social life. And the criminal who would alter the present property relations becomes nothing less than someone who is declaring war on all organized society. The question of whether this "war" is provoked by the injustice or brutality of the society is swept aside. Indeed, this suggests yet another way in which the criminal justice system conveys an ideological message in support of the established society.

Not only does the criminal justice system acquit the social order of any charge of injustice, it specifically cloaks the society's own crime-producing tendencies. I have already observed that by blaming the individual for a crime, the society is acquitted of the charge of injustice. I would like to go further now and argue that by blaming the individual for a crime, the society is acquitted of the charge of complicity in that crime! This is a point worth developing, since many observers have maintained that modern competitive societies such as our own have structural features that tend to generate crime. Thus, holding the individual responsible for his or her crime serves the function of taking the rest of society off the hook for their role in sustaining and benefiting from social arrangements that produce crime. Let us take a brief detour to look more closely at this process.

Cloward and Ohlin argue in their book *Delinquency and Opportunity*¹ that much crime is the result of the discrepancy between social goals and the legitimate opportunities available for achieving them. Simply put, in our society everyone is encouraged to be a success, but the avenues to success are open only to some. The conventional wisdom of our free enterprise democracy is that anyone can be a success if he or she has the talent and the ambition. Thus, if one is not a success, it is because of their own shortcomings: laziness or lack of ability or both. On the other hand, opportunities to achieve success are not equally open to all. Access to the best schools and the best jobs is effectively closed to all but a few of the poor and begins to open wider only as one goes up the economic ladder. The result is that many are called but few are chosen. And many who have taken the bait and accepted the belief in the importance of success and the belief that achieving success is a result of individual ability must cope with the feelings of frustration and failure that result when they find the avenues to success closed. Cloward and Ohlin argue that one method of coping with these stresses is to develop alternative avenues to success. Crime is such an alternative. Crime is a means by which people who believe in the American dream pursue it when they find the traditional routes barred. Indeed, it is plain to see that the goals pur-

sued by most criminals are as American as apple pie. I suspect that one of the reasons that American moviegoers enjoy gangster films—movies in which gangsters such as Al Capone, Bonnie and Clyde, or Butch Cassidy and the Sundance Kid are the heroes, as distinct from police and detective films whose heroes are defenders of the law—is that even where they deplore the hero's methods, they identify with his or her notion of success, since it is theirs as well, and respect the courage and cunning displayed in achieving that success.

It is important to note that the discrepancy between success goals and legitimate opportunities in America is not an aberration. It is a structural feature of modern competitive industrialized society, a feature from which many benefits flow. Cloward and Ohlin write that

... a crucial problem in the industrial world ... is to locate and train the most talented persons in every generation, irrespective of the vicissitudes of birth, to occupy technical work roles. ... Since we cannot know in advance who can best fulfill the requirements of the various occupational roles, the matter is presumably settled through the process of competition. But how can men throughout the social order be motivated to participate in this competition? ...

One of the ways in which the industrial society attempts to solve this problem is by defining success-goals as potentially accessible to all, regardless of race, creed, or socioeconomic position.²

But since these universal goals are urged to encourage a competition to weed out the best, there are necessarily fewer openings than seekers. And since those who achieve success are in a particularly good position to exploit their success to make access for their own children easier, the competition is rigged to work in favor of the middle and upper classes. As a result, "many lower-class persons ... are the victims of a contradiction between the goals toward which they have been led to orient themselves and socially structured means of striving for these goals."³

[The poor] experience desperation born of the certainty that their position in the economic structure is relatively fixed and immutable—a desperation made all the more poignant by their exposure to a cultural ideology in which failure to orient oneself upward is regarded as a moral defect and failure to become mobile as proof of it.⁴

The outcome is predictable. "Under these conditions, there is an acute pressure to depart from institutional norms and to adopt illegitimate alternatives."⁵

In brief, this means that the very way in which our society is structured to draw out the talents and energies that go into producing our high standard of living has a costly side effect: it produces crime. But

by holding individuals responsible for this crime, those who enjoy that high standard of living can have their cake and eat it. They can reap the benefits of the competition for success and escape the responsibility of paying for the costs of that competition. By holding the poor crook legally and morally guilty, the rest of society not only passes the costs of competition on to the poor, but they effectively deny that they (the affluent) are the beneficiaries of an economic system that exacts such a high toll in frustration and suffering.

Willem Bongers, the Dutch Marxist criminologist, maintained that competitive capitalism produces egotistic motives and undermines compassion for the misfortunes of others and thus makes human beings literally *more capable of crime*—more capable of preying on their fellows without moral inhibition or remorse—than earlier cultures that emphasized cooperation rather than competition.⁶ Here again, the criminal justice system relieves those who benefit from the American economic system of the costs of that system. By holding criminals morally and individually responsible for their crimes, we can forget that the motives that lead to crime—the drive for success at any cost, linked with the beliefs that success means outdoing others and that violence is an acceptable way of achieving one's goals—are the same motives that powered the drive across the American continent and that continue to fuel the engine of America's prosperity.

David Gordon, a contemporary political economist, maintains "that nearly all crimes in capitalist societies represent perfectly *rational* responses to the structure of institutions upon which capitalist societies are based."⁷ That is, like Bongers, Gordon believes that capitalism tends to provoke crime in all economic strata. This is so because most crime is motivated by a desire for property or money and is an understandable way of coping with the pressures of inequality, competition, and insecurity, all of which are essential ingredients of capitalism. Capitalism depends, Gordon writes,

... on basically competitive forms of social and economic interaction and upon substantial inequalities in the allocation of social resources. Without inequalities, it would be much more difficult to induce workers to work in alienating environments. Without competition and a competitive ideology, workers might not be inclined to struggle to improve their relative income and status in society by working harder. Finally, although rights of property are protected, capitalist societies do not guarantee economic security to most of their individual members. Individuals must fend for themselves, finding the best available opportunities to provide for themselves and their families ... Driven by the fear of economic insecurity and by a competitive desire to gain some of the goods unequally distributed throughout the society, many individuals will eventually become "criminals."⁸

To the extent that a society makes crime a reasonable alternative for a large number of its members from all classes, that society is itself not very reasonably or humanely organized and bears some degree of responsibility for the crime it encourages. Since the criminal law is put forth as the minimum requirements that can be expected of any "reasonable man," its enforcement amounts to a denial of the real nature of the social order to which Gordon and the others point. Here again, by blaming the individual criminal, the criminal justice system serves implicitly but dramatically to acquit the society of its criminality.

THE BONUS OF BIAS

We turn now to consideration of the additional ideological bonus that is derived from the criminal justice system's bias against the poor. This bonus is a product of the association of crime and poverty in the popular mind. This association, the merging of the "criminal classes" and the "lower classes" into the "dangerous classes," was not invented in America. The word "villain" is derived from the Latin *villanus*, which means a farm servant. And the term "villain" was used in feudal England to refer to a serf who farmed the land of a great lord and who was literally owned by that lord.⁹ In this respect, our present criminal justice system is heir to a long and hallowed tradition.

The value of this association was already seen when we explored the "average citizen's" concept of the Typical Criminal and the Typical Crime. It is quite obvious that throughout the great mass of middle America, far more fear and hostility are directed toward the predatory acts of the poor than the rich. Compare the fate of politicians in recent history who call for tax reform, income redistribution, prosecution of corporate crime, and any sort of regulation of business that would make it better serve American social goals with that of politicians who erect their platform on a call for "law and order," more police, less limits on police power, and stiffer prison sentences for criminals—and consider this in light of what we have already seen about the real dangers posed by corporate crime and business-as-usual.

In view of all that has been said already, it seems clear that Americans have been systematically deceived as to what are the greatest dangers to their lives, limbs and possessions. The very persistence with which the system functions to apprehend and punish poor crooks and ignore or slap on the wrist equally or more dangerous

individuals is testimony to the sticking power of this deception. That Americans continue to tolerate the gentle treatment meted out to white-collar criminals, corporate price fixers, industrial polluters, and political-influence peddlers, while voting in droves to lock up more poor people faster and longer, indicates the degree to which they harbor illusions as to who most threatens them. It is perhaps also part of the explanation for the continued dismal failure of class-based politics in America. American workers rarely seem able to forget their differences and unite to defend their shared interests against the rich whose wealth they produce. Ethnic divisions serve this divisive function well, but undoubtedly the vivid portrayal of the poor—and, of course, the blacks—as hovering birds of prey waiting for the opportunity to snatch away the workers' meager gains serves also to deflect opposition away from the upper classes. A politician who promises to keep their communities free of blacks and their prisons full of them can get their votes even if the major portion of his or her policies amount to continuation of favored treatment of the rich at their expense. Surely this is a minor miracle of mind control.

The most important "bonus" derived from the identification of crime and poverty is that it paints the picture that the threat to decent middle Americans comes from those below them on the economic ladder, not those above. For this to happen the system must not only identify crime and poverty, but it must also fail to reduce crime so that it remains a real threat. By doing this, it deflects the fear and discontent of middle Americans, and their possible opposition, away from the wealthy. The two politicians who most clearly gave voice to the discontent of middle Americans in the post-World War II period were George Wallace and Spiro Agnew. Is it any accident that their politics were extremely conservative and their anger reserved for the poor (the welfare chiselers) and the criminal (the targets of law and order)?

There are other bonuses as well. For instance, if the criminal justice system functions to send out a message that bestows legitimacy on present property relations, the dramatic impact is mightily enhanced if the violator of the present arrangements is propertyless. In other words, the crimes of the well-to-do "redistribute" property among the haves. In that sense, they do not pose a symbolic challenge to the larger system in which some have much and many have little or nothing. If the criminal threat can be portrayed as coming from the poor, then the punishment of the poor criminal becomes a morality play in which the sanctity of legitimacy of the system in which some have plenty and others have little or nothing is dramatically affirmed. It matters little who the poor criminals really rip off.

What counts is that middle Americans come to fear that those poor criminals are out to steal what they own.

There is yet another and, I believe, still more important bonus for the powerful in America, produced by the identification of crime and poverty. It might be thought that the identification of crime and poverty would produce sympathy for the criminals. My suspicion is that it produces or at least reinforces the reverse: *hostility toward the poor*.

Indeed, there is little evidence that Americans are very sympathetic to criminals or poor people. I have already pointed to the fact that very few Americans believe poverty to be a cause of crime. Other surveys find that most Americans believe that police should be tougher than they are now in dealing with crime (83 percent of those questioned in a 1972 survey); that courts do not deal harshly enough with criminals (75 percent of those questioned in a 1969 survey); that a majority of Americans would like to see the death penalty for convicted murderers (57 percent of those questioned in November 1972); and that most would be more likely to vote for a candidate who advocated tougher sentences for law-breakers (83 percent of those questioned in a 1972 survey).¹⁰ Indeed, the experience of Wattergate seems to suggest that sympathy for criminals begins to flower only when we approach the higher reaches of the ladder of wealth and power. For some poor ghetto youth who robs a liquor store, five years in the slammer is our idea of tempering justice with mercy. When a handful of public officials try to walk off with the U.S. Constitution, a few months in a minimum security prison will suffice. If the public official is high enough, resignation from office and public disgrace tempered with a \$60,000-a-year pension is punishment enough.

My view is that since the criminal justice system—in fact and fiction—deals with *individual legal and moral guilt*, the association of crime with poverty does not mitigate the image of individual moral responsibility for crime, the image that crime is the result of an individual's poor character. My suspicion is that it does the reverse: it generates the association of poverty and individual moral failing and thus *the belief that poverty itself is a sign of poor or weak character*. The clearest evidence that Americans hold this belief is to be found in the fact that attempts to aid the poor are regarded as acts of charity rather than as acts of justice. Our welfare system has all the demeaning attributes of an institution designed to give handouts to the underserving and none of the dignity of an institution designed to make good on our responsibilities to our fellow human beings. If we acknowledge the degree to which our economic and social institutions themselves breed poverty, we would have to recognize our

own responsibilities toward the poor. If we can convince ourselves that the poor are poor because of their own shortcomings, particularly moral shortcomings like incontinence and indolence, then we need acknowledge no such responsibility to the poor. Indeed, we can go further and put ourselves on the back for our generosity and handing out the little that we do, and of course, we can make our recipients go through all the indignities that mark them as the undeserving objects of our benevolence. By and large, this has been the way in which Americans have dealt with their poor.¹¹ It is a way that enables us to avoid asking the question of why the richest nation in the world continues to produce massive poverty. It is my view that this conception of the poor is subtly conveyed by the way our criminal justice system functions.

Obviously, no ideological message could be more supportive of the present social and economic order than this. It suggests that poverty is a sign of individual failing, not a symptom of social or economic injustice. It tells us loud and clear that massive poverty in the midst of abundance is not a sign pointing toward the need for fundamental changes in our social and economic institutions. It suggests that the poor are poor because they deserve to be poor, or at least because they lack the strength of character to overcome poverty. When the poor are seen to be poor in character, then economic poverty coincides with moral poverty and the economic order coincides with the moral order—as if a divine hand guided its workings, capitalism leads to everyone getting what they morally deserve!

If this association takes root, then when the poor individual is found guilty of a crime, the criminal justice system acquits the society of its responsibility not only for crime *but for poverty as well*.

With this, the ideological message of criminal justice is complete. The poor rather than the rich are seen as the enemies of the mass of decent middle Americans. Our social and economic institutions are held to be responsible for neither crime nor poverty and thus are in need of no fundamental questioning or reform. The poor are poor because they are poor of character. The economic order and the moral order are one. And to the extent that this message sinks in, the wealthy can rest easily—even if they cannot sleep the sleep of the just.

Thus, we can understand why the criminal justice system creates the image of crime as the work of the poor and fails to stem it so that the threat of crime remains real and credible. The result is ideological alchemy of the highest order. The poor are seen as the real threat to decent society. The ultimate sanctions of criminal justice dramatically sanctify the present social and economic order, and *the poverty of criminals makes poverty itself an individual moral crime!*

Such are the ideological fruits of a losing war against crime whose distorted image is reflected in the criminal justice carnival mirror and widely broadcast to reach the minds and imaginations of America.

Notes

1. Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs* (New York: The Free Press, 1960), esp. pp. 77-107.
2. *Ibid.*, p. 81.
3. *Ibid.*, p. 105.
4. *Ibid.*, p. 107.
5. *Ibid.*, p. 105.
6. Willem Bongers, *Criminality and Economic Conditions*, abridged and with an introduction by Austin T. Turk (Bloomington, Indiana: Indiana University Press, 1969), pp. 7-12, 40-47. Willem Adrian Bongers was born in Holland in 1876 and died by his own hand in 1940 rather than submit to the Nazis. His *Criminalité et conditions économiques* first appeared in 1905. It was translated into English and published in the United States in 1916. *Ibid.*, pp. 3-4.
7. David M. Gordon, "Capitalism, Class and Crime in America," *Crime and Delinquency* (April 1972), p. 174.
8. *Ibid.*, p. 174.
9. William and Mary Morris, *Dictionary of Word and Phrase Origins*, II (New York: Harper & Row, 1967), p. 282.
10. *Sourcebook*, pp. 203, 204, 223, 207; see also p. 177.
11. Historical documentation of this can be found in David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971); and in Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Pantheon, 1971), which carries the analysis up to the present.