



CRIME AND WEALTH

READINGS IN THE POLITICAL
ECONOMY OF CRIMINAL JUSTICE

John C. Curtin
Editor

CRIME AND WEALTH:

READINGS IN THE POLITICAL ECONOMY OF CRIMINAL JUSTICE



FROM

The Criminal Justice Program Faculty
College of Behavioral and Social Sciences
San Francisco State University

JOHN C. CURTIN, EDITOR

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This book of readings from the
Criminal Justice Program Faculty
at San Francisco State University
is dedicated with love to our Aggie Bears,

Allison Hughes-Ting
Kelly Malone
Michelle Anderson
Colleen Kavanagh

*Suum quoque tribuere.
In memoriam,*

*Earl Warren
Hugo Black
William Brennan
William Douglas
Thurgood Marshall*

Once, there were giants . . .

Preface

The readings here have been gathered together for the edification of our students. To a considerable extent, the articles were written for the same audience and purpose.

The term “academic” is used widely to refer to events, procedures, and particularly to patterns of thought, which lack reality; the academic world is contrasted with the real world in such usage. As a university faculty, we have no power whatever to prevent that usage, but we strive to reduce the likelihood that people familiar with our curriculum, courses, and personnel will regard the term in that fashion. In that intention, there is some arrogance and a considerable amount of pride in the academic enterprise we have developed, and we offer no apology except that we are proud of our subject matter and our students rather than ourselves.

Explicitly and implicitly, and with varying degrees of emphasis, the strategic subject matter of this book is

political economy. For the most part, the vehicle in which we have conveyed our subject matter has been criminal justice, for that is what we profess. However, as we endeavor in our classrooms and in our other publications, we have tried to call attention to topics and contexts beyond criminal justice systems and their components as one means of communicating our enthusiasm for our subject matter and for the teaching-learning process.

We are a teaching faculty. That does not mean that we eschew research, writing, publishing, and professional associations, but it does mean that we hold our work in classrooms as the most important dimension of our academic status. It is an article of faith among us that the essence of any university lies in the interactive patterns it promotes between professors and students. As faculty, the intellectual development of our working class students at San Francisco State University is our primary commitment, worthy of our best efforts.

The Criminal Justice Program Faculty,
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San Francisco, California
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Introduction

POLITICAL ECONOMY IN THE LIBERAL ARTS

"Culture followed money. It always does."
—Robert Hughes, *American Visions*

The university throughout the United States is an important social institution which simultaneously reflects and influences American culture. Illustrations are legion but one example lies in the connection between the organization of academic subject matter and public policy. An instance of the connection is the relationship of the organization of the study of politics and the study of economics into separate disciplines on the university side of the equation and, as public policy, the official position of the U.S. Immigration and Naturalization Service (INS) in which it is insisted that coming to the United States to escape political persecution is permissible but attempting to get in for purposes of economic gain is prohibited. Arguably, both the university and immigration suffer from the same basic and fatuous separation into a virtual dichotomy of what, in fact, is a unified and coherent study of human behavior, namely, political economy.

In the main, university organization of subject matter throughout the world features a rejection of the American norm of Political Science and Economics as separate disciplines. For whatever reasons that norm emerged and has persisted, the fact is that, throughout higher education in the United States, it remains far more likely that undergraduates will be encouraged to regard the divorce of the study of politics and the study of economics as entirely reasonable and unregrettable. Indeed, that particular norm of American higher education has developed into such powerful status as a paradigm as to have made it altogether probable that undergraduates will not think about the separation at all.

With that in mind, it is not only important but essential at the outset of an anthology on the political economy of criminal justice, in the United States and comparatively, to stress the intellectual distinctiveness of the approach in an American university. Swimming

upstream is arduous always, and the chances of success are enhanced by awareness of the current.

Perhaps the most elementary observation on political economy as an approach to the study of human behavior in any context, criminal justice systems or any other, is that all of the primary and prerequisite characteristics of intellectual perspective *per se* hold for political economy. Any distinguishable perspective is a point of view, a way of construing a body of subject matter, and, through usage and time, it is relatively easy to lose sight of the necessary distinction in kind between outlook and object. A map, any and all maps, always is a representation of territory; the map never becomes the territory. The sculpture is the artist's aesthetic abstraction in graphic form of the object sculpted, but it is not the object. The resemblance between Michelangelo's David and the actual appearance of human males was never the artist's point; the statue is a three-dimensional representation of the human male form as an abstraction in the mind of the sculptor. Aesthetically, the greatness of the work of art lies in its reflection of the form, but most men do not look much like David and Grecian urns do not convey the meanings in Keats' poem. $E=Mc^2$ was Einstein's 1905 insight into the nature of the physical world represented in the language of mathematics and elementary particle physics, and the formula has withstood the tests of scientific rigor throughout the century, but the formula cannot become the world it represents.

Steinbeck told a marvelous story which illustrates so clearly what happens when the essential distinction between outlook and object gets lost. A woman whose house looked out on the ocean phoned the biological laboratory at Stanford University one day to inquire about the furry, brown mammals she observed swimming in the water beneath her deck; the woman

wondered whether they were California sea otters. The curt academic reply was that they could not be sea otters because the University had declared the sea otter extinct.

Political economy, then, is a point of view, a perspective, and that means among other things that it incorporates an abstraction of the reality it represents. That particular abstraction, albeit a blend, is more emphatically scientific than artistic or aesthetic, that is, it is a way of thinking about the world which reflects a stronger inclination to approximate the reality it represents than to idealize that reality. Not the ideal human male form but how men appear to the senses; not some way in which human development might work but an approximation of how it does work. Furthermore, that particular abstraction includes an assumption, strictly as a matter of procedure, which is to say, strictly as a matter of faith, that the reality approximated exists independently of, thus, provides a standard for measuring, the accuracy of the approximation. The physical universe is not an idea, primarily, but a reality susceptible to analysis by means of reason and the senses; the reality is the ultimate test of any representation of it. The term by means of which to refer to that cardinal assumption of science is empiricism, the doctrine according to which physical reality can be approximated productively through the use of reason and the senses. Political economy is empirical; it is not sublime in the manner of art but it is distinguishable from art on grounds of its empiricism.

A study which proceeds from an empirical perspective will reflect an image of development in which physical reality is understood to be the base within and from which norms emerge, are tested, and are reinforced or rejected, more or less. Short of gross intellectual inconsistency in which procedures are inappropriate to an empirical outlook, there is no way whereby norm-derivative abstractions can be considered more powerful or causally prior to physical reality susceptible to understanding through reason and the senses. Thus, political economy involves an appreciation of human development as a process in which images in the mind stem from and flower or wither according to physical soil. Most fundamentally, norms are to be understood as outcomes rather than causes of human development. To be sure, norms develop into powerful influences upon human behavior, but they are outcomes of empirical circumstances for all that. Theory generates research, as T. S. Kuhn has shown through his analysis of paradigms in science, but theory does not cause, in any fundamental way, the physical reality theorized. Plea bargaining has developed into the particular adjudicative procedure employed most frequently throughout criminal process in the United States, and that development has been accompanied by intense controversy over the impact and questionable equity of the pattern, but there can be no serious argument over whether the norms of the controversy have emerged and become

more or less influential from within the basis of adjudication itself.

There are no less than three salient reasons why it is important to understand that political economy incorporates a view of physical reality as a base from and within which norms develop. One reason is that, in any intellectual endeavor, literacy requires a working familiarity with the foundation on which outlook and object have been constructed. Another reason is that, despite the abundance of empirical evidence, the reality of physical base leading to normative superstructure remains either ignored or denied often, and not merely in the humanities where, arguably, aesthetics constitutes a home for such views, but in the behavioral and social sciences as well. Functionalism, the doctrine of presenting results as though they were causes, labeling theory, in which the argument is that social behavior results basically from stigmata, and symbolic interactionism, according to which human behavior proceeds from mental images, are instances of that ignorance or denial. The third reason it is important to stress the image of human development within political economy as a physical base to normative superstructure is that the theory begs the issue of the nature or function of social norms, and that point warrants particular amplification.

Seen from the perspective of political economy, social norms function to rationalize development generated fundamentally by material forces, and that holds whether the norms subsidize or criticize development. Norms develop into discernible forms such as ideology and dissent but, in all forms, norms amount to abstract analysis after-the-fact of materially-driven conditions. Wealth and class structure have been the engine of social development through all of the recognizable epochs of human pre-history and history, a narrative unified essentially by the motif of populations struggling to survive materially in habitat by organizing themselves into coping patterns suited more or less well to resources. In that narrative, norms have developed to rationalize those patterns and the material engine which powered them.

It is an error frequently made to regard the designation of wealth and class structure as the engine of social development as economic determinism: In political economy, the designation is neither economic nor deterministic. Rather, the cause to effect sequence is understood to be indeterminate, that is, probabilistic, an ordering of probabilities as greater or lesser, and material development is taken for granted as implicitly, intricately and inherently merged with politics. Distinguishable forms of wealth have developed throughout human history—shelter, water, mountains, iron, gold, land, capital—and each form has demanded its peculiar class strata, a division of labor imposed structurally or historically as corollary to a particular form of wealth. Hunting-gathering societies constituted one example of the pattern, landed nobility and serfs another.

For not less than two centuries, a decidedly conservative estimate of time, the fundamental material engine of social development throughout the world has been capital, and capital has mandated a class strata of capitalists and labor. Capital development follows a reasonably straightforward exchange of capital for labor, and, from opportunity through costs to profit, the entire process is predicated upon the productive power of capital to generate industry, employment, the production and consumption of goods and services, the hegemonic values and beliefs required to sustain development, and increasing sums of capital as profit to those who own the original investment. As Lincoln remarked in his second inaugural address, capital and labor are productive only in tandem, and in tandem, the productive power of capital development is immense. By then, Lincoln knew that the Union had won the Civil War on the basis of capital development.

As a political economic developmental process, capitalism offers few guarantees, if any, but it does establish reliable probabilities, given the tandem of capitalists and labor. It is likely, for example, that as capital accumulates in the form of profits, wealth will become increasingly concentrated into fewer and fewer hands; larger fish will eat smaller fish and the owners of larger capital sums will absorb lesser competitors. It is likely as well that the material inequities associated with increasingly concentrated capital will be rationalized throughout the social mainstream by means of values and beliefs which dress and arrange inequity in the guise of necessity, virtue or, at the very least, costs rendered acceptable when measured against opportunity. Then, too, it is likely that norm-derivative dissent will develop, by means of which to criticize inequity and the entire process of capital development. Finally, it is likely that controversy between values held by the mainstream and those advanced in the form of dissent infrequently will hinge upon deliberate analysis of capital development and, with far greater frequency, will be limited to norm-derivative arguments. In that norm-derivative form, controversy will reinforce and subsidize capital development and its inequities. On no less significant an account than the extent to which it clarifies developing material reality, political economy will be disdained more often than not, and that, too, is a probability engendered ultimately by capital.

As this essay is being written, the concentration of wealth in the United States has reached proportions which appear literally incredible, but, those proportions are eminently reliable through empirical inquiry. The top 1% of the total population of the nation owns or controls slightly more than 40% of the total wealth, and the top 2% control approximately 65% of that wealth. Empirically, that reality has been documented by such an abundance of evidence as to preclude serious argument. Discussion of the meaning and significance of that

reality remains serious indeed. What does the concentration of wealth in the United States at the dawn of the twenty-first century explain? In political economy, the answer is, everything or nearly everything. To reiterate, that sense of comprehensive explanatory power found in materialist analysis is not economic determinism; it is political economic indeterminacy applied contextually across the spectrum of American society.

One such context is criminal justice and, topically, it is the subject matter with which this anthology is concerned. Here, criminal justice is understood to be an institutionalized and essentially unified social process of overlapping stages: investigation, accusation, adjudication, sentencing, and disposition. The major institutions of that process are law enforcement, the criminal courts, and the prison industry, and those institutions are connected to ancillary patterns such as probation, parole, juvenile justice, drug treatment, privatization, victims' rights, half-way houses, on and on through a litany of secondary functions. In Criminal Justice as an academic rubric at San Francisco State University, scholarly emphasis has been placed upon the essential unity of the social system, that is, upon institutional connections which link policing, the courts, and corrections into a single chain. Thus, Criminal Justice is not synonymous with Criminology, the study of the etiology of criminal behavior, nor Administration of Justice or Police Science, the academic preparation of students for careers in law enforcement, nor any criminological considerations in Sociology, disparate courses rooted intellectually in analysis of social structure *per se* and arrayed topically to reflect interests in law, incarceration, and deviance.

Pedagogically, that is, as a teaching-and-learning process, Criminal Justice at San Francisco State incorporates a comparative approach. Students are taught how, and encouraged to regard analysis of any issue comparatively, by considering several distinctive perspectives on that issue rather than only one view in particular. The principal illustration throughout the curriculum is comparative analysis of three models of criminal process: crime control, due process, and class justice. Underlying that salient example, the pedagogy has been designed deliberately to challenge more so than to reinforce belief, to explore alternate explanations more than to fixate intellectually upon any single account, to discourage training anyone for anything in favor of education, literacy, and intellectual sophistication to a degree commensurate with higher education itself. Thus, political economy is offered as theoretical underpinning of class analysis of criminal justice systems, not as a doctrinaire answer to any question about those systems.

This anthology, then, has not been intended to be regarded by anyone as either a sacred or profane text. The contributions, separately and as a whole, connect political economy as a perspective to an array of contexts

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PART ONE

Comparative Political Economy



COMPARATIVE POLITICAL ECONOMY: EDITOR'S INTRODUCTION

The notion that unless a cultural phenomenon is empirically universal it cannot reflect anything about the nature of man is about as logical as the notion that because sickle-cell anemia is, fortunately, not universal, it cannot tell us anything about human genetic processes. It is not whether phenomena are empirically common that is critical in science . . . but whether they can be made to reveal the enduring processes that underly them. Seeing heaven in a grain of sand is not a trick only poets can accomplish.

—Clifford Geertz, *The Interpretation of Cultures*, [Basic Books: 1973], 44.

Comparison is a *sine qua non* in science, a necessity, something without which there can be no science. But comparison, for all its necessity in science, is a gross index. For example, what is likely to be learned about and as a result of comparison in one scientific discipline may be very different from the probable lessons emanating from that source in another discipline and there is more more than a little support on empirical grounds that discrepancy in the lessons likely to be learned from comparison in the behavioral and social sciences is far greater than in the physical and biological sciences. Throughout the varied particulars of the practice of the social sciences which are essentially anthropological in paradigm and methodology, *e.g.*, Anthropology, Sociology, Social Psychology, the cardinal lesson most likely to be learned from comparison is a nearly absolute relativism by means of which the universe is imagined as a practically endless array of variations about which what is to be noticed ultimately is contingency, the ways in which one thing is related to another. When History is implemented as a scientific discipline rather than or at least more so than as part of the humanities, historians manage frequently to teach the lesson that phenomena are unique in time and space to a point where there are no lessons. Psychological disciplines, *e.g.*, Psychology, symbolic interactionist Sociology, often have institutionalized the lesson that human development emanates from the mind of the individual. The political disciplines, *e.g.*, Political Science, Government, Economics, International Relations, far more often than not convey the salient impression that

human behavior is a function of vested interests and little, if anything, more.

In political economy, as a scientific discipline, comparison is to be understood as the empirical predicate for holistic integrity, as the only reliable methodology by means of which the particulars can be connected accurately to the whole, as the surest route leading to a tolerably realistic sense of how the world works. To be sure, there are ancillary lessons to be had along the way, lessons of great significance such as literacy and an appreciation of the range of human behavioral variation, but ancillary for all that. Ultimately, in political economy, comparison is a necessary condition of empiricism itself: If it is to be assumed that the universe is primarily material and that material phenomena are susceptible to reliable understanding by means of reason and the senses—in a word, empiricism—then it follows that phenomena must be analyzed simultaneously for the ways in which they are discrete and for the ways in which they are common—in a word, comparatively. If not heaven, then human development must be seen in a grain of sand.

Comparative Political Economy, or even with lower case, is a redundancy. The political economic study of human development is comparative, necessarily and inherently. However, “comparative” is used in two distinguishable although related ways: In one, the term refers to comparing human development in different political economic contexts as, for instance, comparing abortion regulation in the United States and in the Republic of Ireland, or comparing criminal

procedure in France with that in the United States. In another sense, the term is used to refer to comparison of practices or institutions within a political economy as, for example, comparing distinctive models of racism or comparing sociolinguistic similarities between law makers and law breakers in the United States. It is modestly important to be aware of moving from one usage of "comparative" to the other. A university curriculum in Criminal Justice, for example, would be incomplete without work in more than the political economy in which the university was located, and such a curriculum would be inadequate if it included no attention to diverse patterns within its own political economy. But the essential lesson is the necessity of comparison *per se*, in either and both usages.

Sometimes, that lesson can be learned by means of familiarity, as in a parable where the abstractions are set commonly, *e.g.*; explaining an ethical precept to fishermen by a story about fishing, explaining political economy to students by a story about their school. Other times, the great lesson of comparison can be had efficiently by arranging it in esoteric contexts to which attention may be called by unfamiliarity, *e.g.*, explaining political economy by a story about religious practices in Brazil, explaining justice by a story about the issue of sovereignty for Native-Americans. Probably, it is wise to listen and read both about what is familiar and what is unfamiliar.

MODERN POLITICS, ECONOMICS, AND POLITIC—NOT POLITICAL—ECONOMY

JOEL J. KASSIOLA

The problem is, of course, that not only is economics bankrupt but it has always been nothing more than politics in disguise . . . economics is a form of brain damage.

—Hazel Henderson¹

I would like to begin this essay with an explanation of its title and epigraph since both may be puzzling or disturbing to the reader: what could I mean by the insertion in the title and what is Henderson driving at with her derogatory remarks about economics, the most highly respected member of the social sciences? I aim to convey in the title a point that goes to the heart of the nature of political economy: any inquiry worthy of the name “political economy” must be, in its essence, genuinely political. Such inquiry must go beyond the current, standard (neoclassical) economic analysis which pays superficial attention, if any, to political concepts, issues, reasoning, and, especially, political values.

While this prescription pushes the discussion back to the meaning of the category “political,” this is desirable since this concept is obviously a core component within political economy analyses. Furthermore, the category has itself been a matter of contention throughout the 2,500 year tradition of Western political thought since Plato. To examine what political economy involves necessarily raises the problem of the nature of the two domain-defining concepts and realms of human experience: “economics” and “politics,” and invokes their respective contemporary studies. I believe that an examination into the basic conceptual elements of political economy will prove useful in comprehending the applications of this mode of analysis contained in this volume, as it addresses the

nature and value of the institutions of criminal justice; policies and practices of adjudication and punishment; and how wealth, class and race affect the criminal justice system in contemporary America.

Henderson, in her quoted critique of modern economics, is referring to the so-called “neoclassical” study of economics, which currently dominates the field, and significantly for this discussion, has made a concerted effort as a discipline to appear nonpolitical. This dominant school of economic thought seeks to avoid values, especially political and moral values, in its effort to attain the honorific status of a science in our present age, still logical positivist, wherein the natural scientific method is accorded almost a monopoly regarding knowledge claims and achievements (the other positivist-approved domains of knowledge being mathematics and logic). Neoclassical economists have rejected the normative tradition in economics in its pre-classical and classical forms. An analyst of economic theory describes this development within economic thought as follows:

positivists have tended to eschew [normative discourse] as an alien element and an intrusion into economic theory *qua* scientific discipline,

1. Hazel Henderson, *The Politics of the Solar Age: Alternatives to Economics*, (Garden City, NY: Anchor Press/Doubleday, 1981), p. 124, fn. 11; and p. 181.

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concerned (it is said) with positive statements about what is and not with what *ought* to be.²

Another economist, discussing the role of the political phenomenon of value-laden ideology within modern economics, confesses that:

economists are generally uncomfortable with the question of ideology... for the problem challenges, professional identity and belief in the discipline's collection of tools, concepts, research procedures and analyses. Given the economists' desire for status as "scientists" the very notion of ideology [and values] is threatening.³

The rejection of both political and other forms of normative discourse by modern neoclassical economists should be contrasted with this statement by Thomas Malthus, the prominent 19th century British political economist. Famous for his claim about human population increasing faster than the available food supply, Malthus wrote, in his *Principles of Political Economy* (called by this commentator on his work, "the first textbook of political economy"):

It has been said, and perhaps with truth that the conclusions of Political Economy partake more of the stricter sciences than those of most of the other branches of human knowledge... There are in Political Economy great general principles... [but] we shall be compelled to acknowledge that the science of Political Economy bears a nearer resemblance to the science of morals and politics than to that of mathematics.⁴

It is important to note that classical economics, beginning with Adam Smith in the late 18th century, was known as "political economy" and was not termed "economics" until 1890 when Alfred Marshall's text, *Principles of Economics*, was published.⁵ At that time, politics and morals explicitly pervaded its analyses, as Malthus's passage reveals. It was not until the advent of neoclassical economics in the late 19th century that the

practitioners of the field of economics attempted to separate it from its value-based predecessors. The neoclassical school definition of the domain and methods of inquiry still dominate most of our contemporary economic thinking and research. Therefore, to most current economists, the foundations of their discipline are contained within neoclassicism and its revolt against the earlier, normatively political and moral political economy.⁶

When we understand the origin of the modern field of study known as "economics," the key relation between this relatively young field (as compared to political science and moral philosophy) and politics, including political and moral values, becomes clearer, illuminating Henderson's attack upon economics in its neoclassical version. As a result, I hope, the reader will better comprehend the need for the large overlap of subject matter and methodology between these two fields (especially with the recent popularity within political science of the rational choice model of explaining human behavior borrowed from economics). Such overlapping fields should produce a fully equal composite discipline of political economy. One partner should not be privileged (as is the case with economics, owing to its greater social status and reputed scientific rigor, as well as the perception of its greater practical—read "monetary"—benefit), and the other should not be overlooked or suppressed (alas, as is true for the inescapable political realm within modern social life, including the crucial role of political values and their study within political theory).

The contemporary study of economics is presented to both the student and scholar of society (social scientist) as almost totally separate from both politics and the study of political science. While economics is the much newer field, with political science and political theory considered to have been founded by the ancient Greeks, most prominently by Plato and Aristotle, the economic mode of social inquiry has much more social recognition and respect within both the public and scholarly communities. I cite the fact that economics is considered to be the most rigorously scientific (and mathematized) field within the social sciences (this part of the neoclassical economics' agenda of seeking scien-

2. Maurice Dobb, *Theories of Value and Distribution since Adam Smith: Ideology and Economic Theory*, (Cambridge: Cambridge University Press, 1973), p. 15, emphasis in original.

3. Warren J. Samuels, "Ideology in Economics," in Sidney Weintraub, ed. *Modern Economic Thought*, (Philadelphia: University of Pennsylvania Press, 1977), 469.

4. Thomas Malthus, *Principles of Political Economy* quoted in Herman E. Daly, *Steady-State Economics: The Economics of Biophysical Equilibrium and Moral Growth*, (San Francisco: W.H. Freeman, 1977), p. 3, fn.

5. See, Daniel Bell, "Models and Reality in Economic Discourse," in Daniel Bell and Irving Kristol, eds. *The Crisis in Economic Theory*, (New York: Basic Books, 1981), p. 47.

6. For a sample of the vast literature on the neoclassical economics revolution, see, Dobb, op. cit., William J. Barber, *A History of Economic Thought*, (New York: Penguin Books, 1977), and Adolphe Lowe, *On Economic Knowledge: Toward a Science of Political Economy*, Enlarged Edition, (Armonk, New York: M.E. Sharpe, 1983).