# The Socio-Economics of Crime and Justice


EDITOR
Brian Forst

# THE SOCIO-ECONOMICS OF CRIME AND JUSTICE


*EDITOR*
*Brian Forst*

*M.E. Sharpe*
ARMONK, NEW YORK
LONDON, ENGLAND

**Library of Congress Cataloging-in-Publication Data**

The socio-economics of crime and justice / Brian Forst, editor.
p. cm.—(Studies in socio-economics)
Includes bibliographical references and index.
ISBN 1–56324–074–2.—ISBN 1–56324–025–4 (pbk.)
1. Crime—Social aspects—United States.
2. Crime—Economic aspects—United States.
3. Criminal justice, Administration of—Social aspects—United States.
4. Criminal justice, Administration of—Economic aspects—United States.
I. Forst, Brian.
II. Series.
HV6030.S63 1993
364.2—dc20
93–23797
CIP

Printed in the United States of America

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48–1984.

∞

BM (c) 10 9 8 7 6 5 4 3 2 1
BM (p) 10 9 8 7 6 5 4 3 2 1

# Foreword

Attention to public safety is the first duty of the state. In many areas, however, the American government no longer discharges this duty effectively. The prison population, already the highest among the industrial nations, is growing, but crime has not been curbed. Criminals swing through turnstile courts; courts are overwhelmed, and the streets remain unsafe.

Behind the cops-and-robbers news about some drug dealer captured this week and the fine police work by this or that agent lies the fact that millions continue to use illegal drugs and open markets often exist for those who cater to this illicit clientele.

Moreover, in some areas public authorities seem to have abandoned any attempts to provide public safety. A typical example is the response of the police to a wave of carjacking in late 1992. Drivers were jerked out of their cars—in a growing number of instances, shot—and their cars taken away at gunpoint. Carjacking has been particularly scary to the citizenry because it occurs at unpredictable places and times and hence leaves people with the feeling that they are not safe any place, any time. The police response has been to tell people to lock their cars from the inside, to leave a front light on, so that when they come home they can see if anybody is lurking about, and so on, all suggestions that together amount to the message—you are on your own; there's not much we can do to protect you.

A citizenry that feels abandoned is a dangerous sociological mix. Sooner or later some politician will be elected who promises to be "strong" against crime if he or she will just be allowed a free hand. We already have a rising chorus calling for shooting drug dealers on sight, for "suspending the constitution until the war against drugs is won," and for more vigilantism. We badly require constructive, well-thought-out, workable treatments of crime.

The social sciences have a major role to play in attending to this social need. This volume offers no quick solutions or easy answers, but it does provide some of the best social science thinking on the subject, and does so largely in a new vein, that of socio-economics.

The underlying conceptual issue here concerns the qualities of human nature and the sources of social order. Some neoclassical economists and other social

scientists who share the neoclassical paradigm (for example, specialists in the fields of law and economics, public choice) have argued that criminals are not different from the rest of us, that the same people could just as easily become reliable bank tellers if their cost and revenue flows were structured differently. We are all said to be driven by self-interest, and criminals are people who find that given their circumstances crime pays better than, say, going to work. All we need to do is to change the probability of being caught and serving time—increase the costs—and criminals will desist.

Socio-economics sees, in addition, social structures that disadvantage some groups of people and isolate them from the dominant culture, failure of the educational system, and defects in the community mechanisms whose goal is to introduce the young into the prevailing values of their society and encourage adults to abide by the values of their peers.

The reader will find here an unusually rich and varied attempt to grapple with these issues, either directly by explaining the underlying assumptions about persons and society, the place of culture and institutions, or indirectly by dealing with the implication of social forces and crime. I know of no better way to broach our subject while avoiding simplistic, often dangerous solutions.

Amitai Etzioni

# Contents

# List of Figures and Tables

**Figures**



**Tables**

# The Socio-Economics of Crime and Justice

# 1

BRIAN FORST

# Socio-Economics, Crime, and Justice

Is crime essentially a rational pursuit, as many have argued, or is it practiced largely out of nonrational motives? This question has more than just curiosity value. How we deal with offenders and how we go about preventing crime in the first place are matters of profound social consequence throughout the world.

In the United States alone, tens of thousands of people lose their lives to crime each year; hundreds of thousands of additional lives are damaged, many beyond repair. The Department of Justice estimates the total costs of crime and justice to be in the hundreds of billions of dollars each year.[1] If we can come to better understand why people commit crime, we may be better able to control crime and reduce its terrible consequences.

Throughout most of the twentieth century, our primary response to the problem of crime has been to expand police and court resources and to increase substantially our prison and jail populations. That approach has not been adequate; many see it as counterproductive. Crime has not gone away. By most objective standards it has resisted containment, leaving society with the worst of both worlds: high crime rates and huge prison populations. It is becoming increasingly clear that ever more criminal justice resources generally, and more prisons in particular, are by themselves no solution at all.

## Contemplating Crime

Social problems of such magnitude require, perhaps above all else, careful reflection. That is the central message of James Q. Wilson's *Thinking About Crime*, one of the most influential books on crime and what to do about it in this century.[2] Wilson recalls that when a presidential commission called on criminologists and sociologists to guide public officials to a response to rapidly rising crime rates in the mid-1960s, those thinkers certainly offered some reflection, but they were unable to provide much more than beliefs without solid empirical support. "Social scientists did not carry the day."[3]

Wilson observed that policy makers were interested particularly in information about "the consequences of differences in the certainty and severity of penalties on crime rates" and that "to an increasing extent, that inquiry is being furthered by economists rather than sociologists."[4] The economists' advice was based on the conventional neoclassical model: Assume that offenders are responsible persons who respond to incentives just like people who engage more exclusively in legitimate activities; raise the cost of committing crimes by increasing the likelihood and severity of punishment, and the supply of crimes committed should decline.

This theory was supported with some statistical evidence. The evidence consisted of analyses of nonexperimental data on crime rates, sanction levels, and other prospective determinants of crime, with observations both across jurisdictions and over time. The analyses generally revealed an inverse relationship between the levels of crime and punishment. Scrutiny of this evidence, however, raised serious questions about both the accuracy of the data and the validity of the methods used to derive inferences about deterrence.[5] The economists were well in front of the criminologists in producing sophisticated statistical reductions that impressed policy makers, but the court of scholarly opinion on the worthiness of the evidence for policy purposes has to this day been mostly skeptical.

This is not to suggest that the econometric approach is incorrect. Clearly, if no one were imprisoned, the number of crimes committed outside of prisons would increase, and if everyone were imprisoned, it would decline to zero. In between, however, the possibilities are countless and the estimates of deterrence highly unreliable.

The question of imprisonment has to do primarily with whether society is served, on balance, by greater use of prisons and jails for various classes of offenders. A utilitarian might frame the question as follows: What sentence minimizes the total cost of crime and punishment for each class of offense and offender, taking into account the deterrent and incapacitation effects of each punishment option for that class of offense and offender and all the pertinent criminal justice costs and costs to prospective victims? Such a question is useful primarily for making explicit the relevant parameters of the problem of imprisonment. Our knowledge of the values of those parameters is too hopelessly incomplete to allow us to base real-world imprisonment policy on such ponderings.

## The Insufficiency of the Neoclassical Economic Model

The question of imprisonment has dominated the crime-and-justice policy debate for too long. It is not an unimportant question; reliance on imprisonment may indeed be bad policy, and decisions to imprison some offenders and not others certainly stand to be vastly improved. But the question of imprisonment has preoccupied policy makers at the expense of crime-and-justice issues that may

be more critical. Even if one accepts the model of neoclassical economics—and there is ample reason not to ignore it—it is in order to question whether it is *sufficient* to view official sanctions as the sole, or even the principal, component of the cost side of the decision-to-commit-crimes calculus.

There is nothing about the economic model that suggests that it should be restricted to the deterrent effect of formal punishment, excluding sanctions imposed informally by individuals and society, but that is nonetheless how it has been traditionally applied.[6] For most people, *informal* social sanctions weigh heavily in the calculus of costs, too, as do moral considerations that are *internal* to the decision maker, considerations that induce people not to commit crime even when they are certain they would not be caught.[7] People often "do the right thing" even when that means faring less well than they would otherwise.

Amitai Etzioni has made the point as follows:

> The position advanced here is *not* the opposite of the Public Choice or the neoclassical position. The I&We paradigm does *not* hold that people simply internalize their society's moral code and follow it, impervious to their own self-interest, or allow it to be defined by the values of their society. The position is (1) that individuals are, simultaneously, under the influence of two major sets of factors—their pleasure, and their moral duty (although both reflect socialization); (2) that there are important differences in the extent each of these sets of factors is operative under different historical and societal conditions, and within different personalities under the same conditions. Hence, a study of the dynamics of the forces that shape both kinds of factors and their relative strengths is an essential foundation for a valid theory of behavior and society, including economic behavior, a theory referred to as socio-economics.[8]

The case for the insufficiency of the neoclassical model has been made by others as well. Jane Mansbridge, for one, has assembled an impressive collection of essays in *Beyond Self-Interest*, essays that

> reject the increasingly prevalent notion that human behavior is based on self-interest, narrowly conceived. [The essays] argue for a more complex view of both individual behavior and social organization—a view that takes into account duty, love, and malevolence. . . . When people think about what they want, they think about more than just their narrow self-interest.[9]

One of the more compelling chapters in the Mansbridge volume is by Robert H. Frank. Frank begins his essay by reviewing the mutually self-destructive pursuit of vengeance by the Hatfields and McCoys in the late nineteenth century. He then observes that we ignore our narrow self-interest as we

> trudge through snowstorms to cast our ballots, even when we are certain they will make no difference. We leave tips for waitresses in restaurants in distant cities we will never visit again. We make anonymous contributions to private charities. We often refrain from cheating even when we are sure we would not be caught. We sometimes walk away from profitable transactions whose terms

> we believe to be "unfair." We battle endless red tape merely to get a $10 refund on a defective product. And so on.[10]

These notions of the insufficiency of the neoclassical model had received empirical validation specifically in the domain of criminal behavior several years earlier. Grasmick and Green interviewed 390 persons, focusing on two basic aspects of deterrence or self-interest—the certainty and severity of punishment—as well as a third motive, the moral justification for behaving within the law. They found both of those aspects of deterrence to be significantly correlated with the moral justification for refraining from illegal behavior. Grasmick and Green thus obtained evidence in support of the basic notion that both self-interest and moral commitment influence one's predisposition to commit crime.[11]

James Q. Wilson, despite his acknowledgment of the strength of the economic approach to analyzing crime and justice, had been among the first to recognize the insufficiency of the neoclassical model in explaining crime. Wilson has identified "character"—largely ignored by that model—as the central determinant of criminal behavior. In a 1985 *Public Interest* essay, Wilson bemoaned the contemporary emergence of self-expression over an old-fashioned morality that emphasized self-control and other-regardingness; he noted that the neoclassical model failed to address this core determinant of behavior:

> What economics neglects is the important subjective consequence of acting in accord with a proper array of incentives: people come to feel pleasure in right action and guilt in wrong action. These feelings of pleasure and pain are not mere "tastes" that policy analysts should take as given; they are the central constraints on human avarice and sloth, the very core of a decent character. A course of action cannot be evaluated simply in terms of its cost-effectiveness, because the consequence of following a given course—if it is followed often enough and regularly enough—is to teach those who follow it what society thinks is right and wrong.[12]

What can be said about this critical dimension—character—that has been so long overlooked by the neoclassical model? Suppose we agree that the development of "decent character" is the hallmark of a healthy society; what then are the essential characteristics of such a society?

In a healthy society, families and communities establish social sanctions that impose costs that are greater than those imposed by the criminal justice system. In a healthy society, the criminal justice system is properly viewed as a last resort, offering a safety net that deals with people who, for one reason or another, lack an effective internal system of moral beliefs—people whose experience of social sanctions from within a family or community unit is insufficient, or who experience the sanctions but do not respond to them as other people do.

The question that is more important than imprisonment has to do with the moral dimension, the question that asks: What developments explain the decline in the effectiveness of social sanctions? What can be done to restore the prominence of social

sanctions over criminal sanctions for large portions of our society? Is it possible to overcome one of the tragic ironies of crime, its tendency to destroy the very communities and families that were once successful in controlling it?

This book focuses on such questions. We do not deny the importance of punishment as a necessary sanction to maintain social order. Nor do we intend to suggest, as have others before us, that the primary choice is between punishing offenders and rehabilitating them. The issue at hand has more to do with areas in which *society* can be rehabilitated than it does with the rehabilitation of offenders. We seek insights that will lead to the restoration of a social integrity that, throughout the history of humankind, has been far more effective than punishment in preventing crime.

The chapters that follow offer a tapestry of perspectives on crime and justice—from economics to sociology, from philosophy to the law—focusing on the nonpunitive side of the issue. A common thread runs through the tapestry: that our ability to meet the immense challenge of crime revolves around our ability to restore a fundamental sense of compassion and strengthen basic social institutions—the family, the school, the community. This approach to crime control, which has been largely overlooked by those who shape public policy, is likely to be more effective in the long run than the punitive approach on which we have come to rely so extensively.

We can prefer this approach for another, more compelling reason: it conforms more closely to basic standards of decency and humanity. Most humans prefer environments in which people are sensitive to the needs of others, irrespective of concerns about crime.

Although the media tend to suggest otherwise, serious crime is still the exception rather than the rule in most neighborhoods. It is the exception in rural and suburban communities throughout the United States and in metropolitan areas throughout most of the world. Serious crime is still a relatively infrequent occurrence even in many big-city neighborhoods in the United States. The epidemic nature of murder rates in so many of our inner cities—the spectacle of a Middle East battlefield being safer for Americans than some inner-city locations—is, in fact, the exception.

It is, nonetheless, an exception that cannot be ignored. One cannot ignore the fact that homicide has become the leading cause of death for young black men. Nor can one ignore the fact that crime has destroyed much of the residential and commercial vitality of our cities. The horror of such an extraordinary level of serious crime, and its vast costs, captures our attention; crime cannot be ignored. It deserves the best thinking we can give.

**Organization of the Book**

This book addresses the problem of crime and our response to it in four stages. We discuss, in Part I ("Foundations"), fundamental principles underlying crime

and justice. In Part II ("The Community in the Human"), we consider forces that shape human behavior generally and the inclination to commit crime in particular. In Part III ("Offenders and Offenses"), we focus on specific classes of offenders and offenses. We conclude, in Part IV ("The Criminal Justice System"), by examining the three principal components of the criminal justice system. Let us look at each of these sections in more detail.

### *Foundations*

In Part I we consider pertinent foundations of crime and justice: philosophical, economic, and legal. Hugo Bedau's chapter on philosophy, justice, and punishment provides a thoughtful survey of the standard justifications for criminal sanctions. Noting that the classical Cartesian "foundations" approach offers little promise for the development of sentencing policy, Bedau reviews the dominant themes that have shaped the debate over criminal sanctions up to the present time: the retributivist or just-deserts model, and the consequentialist or utilitarian model, which includes general and special deterrence, incapacitation, and rehabilitation. Bedau then states the fundamental justification for punishment: the authorized deprivation of a person's rights supported by the judgment that that person criminally violated the rights of others. Bedau develops the argument that sanctions based on such a justification are more likely to be liberal, nonpaternalistic, and respectful of individual autonomy than sanctions not so grounded.

The next chapter, by Llad Phillips, reconsiders the economic model of crime and justice. Phillips begins by citing the work of those who laid foundations for the neoclassical theory of criminal behavior: Jeremy Bentham and Gary Becker. He observes that cross-disciplinary approaches—such as Albert Hirschman's exit-voice-loyalty model and Jack Katz's sensual-rewards-of-crime theory—tend to be richer in explanatory power than the neoclassical economic model. He notes that the neoclassical model is too parsimonious; among other things, it ignores moral suasion and assumes that tastes are given and that the offender population responds to incentives as a somewhat homogeneous group.

Phillips does not reject the neoclassical model; indeed, he argues that it offers a framework to explain such important forces as altruism within the family, which can strongly induce individuals to avoid participation in criminal activity. He cautions, however, that the decline in the family unit and growth in economic inequality represent serious threats to the transmission of altruistic behavior in society and, in turn, to the very peace and prosperity of humankind.

Chapter 4, by Graham Hughes, addresses the limits of the criminal law. He describes a desperate preoccupation of lawmakers and criminal justice officials with an alphabet soup of draconian laws, such as those aimed at drug "kingpins" involved in Continuing Criminal Enterprises (CCE) and those aimed at offenders involved in Racketeer Influenced and Corrupt Organizations (RICO). Noting that