

THE ENIGMA OF POLITICAL CRIME

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Nicholas N. Kittrie and Eldon D. Wedlock, Jr. (eds.). *The Tree of Liberty: A Documentary History of Rebellion and Political Crime in America*. (Baltimore: Johns Hopkins University Press, 1986). xlviii + 714 pp. Bibliography, index. \$39.50.

American law has consistently refused to recognize the notion of political crime or to accept political motives as a defense for criminal behavior. The validity of this traditional view is directly challenged in *The Tree of Liberty*, a volume that is at once striking and problematic.¹ The editors, Nicholas N. Kittrie and Eldon D. Wedlock, Jr., contend that America's success as a political democracy is the result of conflict rather than consensus. They develop the thesis that "political criminality is an integral part of an ongoing historical process . . . which accounts for many of the liberties and for much of the societal diversity for which America is most admired" (p. xxxviii).

The Tree of Liberty is primarily a source book that uses excerpts from a wide variety of documents to illustrate the theme of political criminality. The editors have compiled a collection of statutes, proclamations, judicial opinions, arguments of counsel, letters, and speeches spanning American history from the time of the execution of Quakers in seventeenth-century Massachusetts to contemporary legislation dealing with airplane hijacking. The material covers such familiar episodes as Bacon's Rebellion, the Sedition Act trials, the fugitive slave controversy, the San Francisco vigilantes, the Pullman Strike, the assassination of prominent figures, and civil rights demonstrations. The editors devote considerable attention to the American Revolution, which they see as "the first major collaborative . . . manifestation of political crime in America" (p. 39). Likewise, many examples are drawn from the Civil War period and the era of intense anticommunist sentiment following World War II. Perhaps the most innovative aspect of the collection is the inclusion of numerous items pertaining to the regulation and mistreatment of American Indians, a topic that has not received adequate scholarly attention.

¹ Stimulated by the turbulent events of the late 1960s, several scholars have explored the related topic of political violence (Brown, 1975; Hofstadter and Wallace, 1971; Rubenstein, 1970). For a study of political trials, see Belknap, 1981.

As might be expected in a book designed to break new ground, *The Tree of Liberty* is replete with conceptual problems. A central difficulty is with the definition of political crime. The editors view political crimes so broadly as to render the concept almost meaningless. Thus they include actions prompted by religious, racial, or economic concerns as well as those directed against private institutions and groups. Moreover, the editors are concerned not only with challenges to authority but also with governmental responses. Kittrie and Wedlock correctly note that criminal prosecutions may be initiated to achieve political objectives. In addition, they treat control techniques such as loyalty oaths, confiscation of property, expulsion of aliens, and surveillance measures that seek to curtail behavior but do not constitute criminal sanctions. Although the editors maintain that their book is exploratory in nature, such an assertion does not absolve their neglect of major issues. The open-ended character of their study does little to differentiate supposed political crime from ordinary criminality. Are self-serving arguments about political motive to be accepted at face value? Precisely what does it mean to classify some offenders as “political”? Should political criminals escape punishment?

Another problem is that the editors denigrate the prospect of peaceful change in American society. Seeing peaceful adjustment as a “myth” (p. xxix), they stress that “the reader . . . should not hasten to dismiss political criminality as an effective tool for accomplishing policy changes . . .” (p. 483). This attitude is troublesome on two counts. First, many of the most sweeping social reforms—for example, the abolition of child labor, the passage of the income tax, and the adoption of workmen’s compensation—were achieved without any significant crime or violence because reformers were able to appeal to a broad public. The editors are far too quick to dismiss this proud reform tradition. Second, one could sharply question whether crime and rebellion have in fact achieved significant social and political change. Throughout American history most insurrectionary violence has been conspicuous only for its failure. Indeed, disturbances often serve merely to strengthen the status quo. For example, Shays’ Rebellion really aided the forces of order in promoting the federal Constitution. The celebratory tone toward political criminality adopted by Kittrie and Wedlock is misplaced.

Further, *The Tree of Liberty* fails to assess the social costs that could arise from acceptance of the doctrine of political criminality. To permit political arguments to justify criminal behavior would be a prescription for anarchy. What criminal conduct could not be so explained?² This is a matter of great consequence at a time when terrorists regularly advance political arguments to justify in-

² For example, Eldridge Cleaver (1968: 14) sought to justify rape in political terms. He asserted: “Rape was an insurrectionary act. It delighted me

discriminate killing and kidnapping. Kittrie and Wedlock picture political crime as a weapon of persons excluded from the mainstream of society, but this is at best only partially accurate. The leaders of the Southern secession movement, for instance, were hardly denied access to the political process. In fact, there is a profoundly antidemocratic feature to many political crimes. Impatient with the slow process of democratic change, dissatisfied individuals or groups may seek to impose their values on the majority. Arguably the government, as a representative of the citizenry, has a duty to protect society against such strife and uphold generally shared views. Moreover, any recognition of a special status for political crime could well backfire and instead provide a cloak for elements using violence to oppose social and political reform.

Lastly, it is not apparent what audience Kittrie and Wedlock hope to reach with *The Tree of Liberty*. While the collection of documents may prove a convenient reference work for scholars, many of the edited materials are well-known and otherwise available. Reflecting heightened judicial interest in civil liberties, the twentieth-century material relies heavily on court opinions. In addition, the volume would hardly seem suitable for classroom use, since none of the incidents of crime or rebellion is developed in sufficient detail to provide an adequate basis for discussion. The net effect for most students would be a incoherent blur.

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- BELKNAP, Michael R., ed. (1981) *American Political Trials*. Westport, CN: Greenwood Press.
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that I was defying and trampling upon the white man's law, upon his system of values, and that I was defiling his women"

CLEAVER, Eldridge (1968) *Soul on Ice*. New York: McGraw-Hill.

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RUBENSTEIN, Richard E. (1970) *Rebels in Eden: Political Violence in the United States*. Boston: Little, Brown.