PART ONE

Backgrounds: The Traditional Schools of Criminology

CHAPTER ONE

Introduction

Criminology as a field of study is well documented in a long line of excellent and distinguished textbooks, both European and American, going back many decades.[1] This book is an attempt to focus attention on the logic and on the implications of certain theoretical positions common to much of the thinking and writing in the field. The principal theories commonly used to explain the many known facts of criminality form the center of attention and constitute the problems discussed in this book.[2]

The explanation of criminal behavior is not independent of or dif-

1. A few of the recent, readily available American textbooks in general criminology may be mentioned: Edwin H. Sutherland and Donald R. Cressey, *Criminology*, 10th ed., Lippincott, Philadelphia, 1978; Gresham M. Sykes, *Criminology*, Harcourt Brace Jovanovich, New York, 1978; Daniel Glaser, *Crime in Our Changing Society*, Holt, Rinehart and Winston, New York, 1978; Elmer H. Johnson, *Crime, Correction and Society*, 4th ed., Dorsey Press, Homewood, Ill., 1978; Gwynn Nettler, *Explaining Crime*, 2nd ed., McGraw-Hill, New York, 1978; Sue Titus Reid, *Crime and Criminology*, Dryden Press, Hinsdale, Ill., 1976; Stephen Schafer, *Introduction to Criminology*, Reston Publishing, Reston, Va., 1976; Richard Quinney, *Criminology*, Little, Brown, Boston, 1975; Martin R. Haskell and Lewis Yablonsky, *Criminology: Crime and Criminality*, Rand McNally, Chicago, 1974; Don C. Gibbons, *Society, Crime, and Criminal Careers*, 2nd ed., Prentice-Hall, Englewood Cliffs, 1973; Walter C. Reckless, *The Crime Problem*, 5th ed., Goodyear, Pacific Palisades, Ca., 1973; and Herbert A. Bloch and Gilbert Geis, *Man, Crime, and Society*, 2nd ed., Random House, New York, 1970.

2. Some recent criminology texts focus on theoretical material: Daniel Glaser, ed., *Handbook of Criminology*, Rand McNally, Chicago, 1974; Ian Taylor, Paul Walton, and Jock Young, *The New Criminology*, Harper & Row, New York, 1973; Stephen Schafer, *Theories in Criminology*, Random House, New York, 1969; and Hermann Mannheim, *Comparative Criminology*, Houghton Mifflin, Boston, 1965.

ferent from the explanation of noncriminal behavior. Attempts to formulate more satisfactory theories of human behavior in general are the principal content of the whole of human behavior sciences, namely, biology, medicine, psychiatry, psychology, social psychology, and sociology. But theories can be viewed only in relation to some intellectual and cultural frame of reference. And it is the case, perhaps, that what sometimes passes for theory is primarily a characteristic of this more general and basic orientation.

It must of necessity be admitted that with the best intentions, and despite much industry and effort, human behavior is still not completely understood. No scheme of theoretical concepts can account for the full range and complexity of human behavior. It therefore should come as a surprise to no one that current theories of criminality are often questionable and leave much to be desired from the standpoint of adequacy and of scientific validity. Thus, for example, just as few serious students are completely satisfied that Freudian psychology adequately explains all aspects of ordinary human behavior, so students of criminology have a similar reaction to the application of these concepts to the explanation of criminal behavior.

A theory is part of an explanation. Basically, an explanation is a "sensible" relating of some particular phenomenon in question to the whole field of knowledge. The "whole field of knowledge" is the background of contemporary culture—the world of information, beliefs and attitudes that make up the intellectual atmosphere of any people at any particular time or place. Thus, when modern man sees a railroad engine move itself along the rails, he "explains" this phenomenon, not in terms of life or spirit or animism but in terms of his knowledge of steam, mechanics, and scientific laws. Primitive man also had explanations that could enable him to account for the movement of the engine—but all he needed to explain it was an adaptation of the familiar ideas of spirit or demons.

In the broad scope of intellectual history,[3] there have been two basic approaches to the problem of explanation—one is spiritistic or

3. No specific historical documentation as to authors, books, and interpretative disagreements seems necessary for the purposes of general orientation here intended. The materials are out of the common storehouse of histories of philosophy and of social thought that has been drawn on for generations. The interpretative continuity and condensations are those of the present author (V.), though no special claim to originality is to be implied. It is only hoped that the discussion is not too brief, and not too inaccurate.

demonological, the other is naturalistic. Both these approaches are ancient as well as modern.

1. DEMONOLOGICAL EXPLANATIONS

The principle behind all demonological explanation is some otherworld power or spirit. By definition and common consent, the essential element of spirit is that it transcends this world, is not bound by material-physical restrictions, and operates in ways not subject to the control or understanding of the finite mind of man. Since spirit is itself unexplainable and not to be understood, it is the perfect explanation for all other difficult to understand phenomena. The principle of explanation is basically the same—otherworldly power, whether ancient or modern.

Primitive and preliterate animism held that spirit, power, or influence infuses every object and being and operates in ways that control their behavior. Hence magic becomes a practical way of doing something to affect the conduct of objects or beings. Magic is thus essentially an action program to control objects or persons through effect on their spirits or influence.

Hebrew and Christian traditions present the organized thinking of the time of an Omniscient, Omnipresent, All-powerful God. Thus, God in Old Testament stories is reported to have stopped the sun, to have created the rainbow, to have tumbled the walls of Jericho, and to have made possible the miracle of the Egyptian exodus. In all this, there is no explanation other than that an all-powerful spirit can do anything it wants to do. And *that* is a sufficient explanation.

The Middle Ages in Europe saw a fusion of the intellectual conceptions of demonism and the political and social organization of feudalism. The Inquisition reflects the resulting theocracy—it was a period of witch-hunting. The frame of reference for the explanation of events was one that to a very large extent ignored the natural world. Thus, babies were born by the will of God; men became kings, priests, or paupers by His will; and men died because God wanted them. European thought, especially in the field of criminology, was tremendously influenced by the syncretism of an earlier German paganism and the ideas and conceptions of early Christianity—thus the practice of wergild; compensation for crime and for

sin; trial by battle; trial by ordeal; compurgation; testimony under oath; miraculous signs or omens to indicate guilt or innocence; and so on. All these involve ideas of the influence and significance of otherworldly powers. Ritual and procedure developed to determine guilt or innocence, but the principle of explanation is still the operation of an otherworldly power. Crime, or criminal behavior, in this view is then simply evidence of that which everyone knew and accepted as possible and probable, namely, that the individual had become possessed by the Devil.

Contemporary spiritists and pietists maintain this same attitude. Thus there are prayers for rain, for the recovery from illness, for the protection of loved ones, and so on, in which the action formula of primitive magic operates as usual. The prayers are something to do that will affect the all-powerful spirit, and for the Omnipotent Spirit any action demanded is possible. Some contemporary divine healing practices are completely primitive and magical in this sense. Thus the curing of disease by prayer and faith and the laying on of hands; the healing sessions of crusaders at which literally piles of crutches and aids for invalids accumulate and are exhibited to show that all that is needed is faith. The explanation offered for these cures is the operation of spirit, testimony to the effectiveness of otherworldly powers.[4]

2. NATURALISTIC EXPLANATIONS

In naturalistic theories, the explanation is a more minute and particular description in terms of the objects and events of the material and physical world. Demonological explanations make use of the principle of otherworldly power to account for what happens; naturalistic explanations make use of ideas and interpretations of objects and events, and their interrelation within the existing world. There is no place for otherworldly power, or spirit, and no matter how unsatisfactory, the explanation must rest on what is known or assumed to be true of the physical and material world of fact. This approach to the problem of explanation is also ancient as well as modern.

The early Phoenicians and Greeks knew material, "this-world" explantions far back in their history. Among the Greeks there was a

4. Some contemporary scientists are offering naturalistic explanations for these events. See, for example, E. Fuller Torrey, *The Mind Game*, Emerson Hall, New York, 1972.

relatively well worked out atomic theory by the fifth century B.C. In keeping with this approach is Hippocrates' (460 B.C.) dictum that the brain is the organ of the mind, with a definitely physiological explanation of thinking. Physical and material explanation was the order of the day for Anaxagoras, or Democritus (420 B.C.)—for example, the latter's idea of an indestructible unit of matter (atom) as central to his explanation of the world around him. With Socrates, Plato, and Aristotle, the ideas of unity and continuity come to the fore, but the essential factors in all explanations remain largely physical and material. By the first century B.C., Roman thought had become thoroughly infused with the naturalism of the Greek scholars. Lucretius (99–55 B.C.) in *De rerum natura*, not only reflects the idea of progress, but utilizes an atomic materialism that has little reliance on demons or spirits.

Roman law fuses the demonism of the Hebraic tradition and the naturalism of the Greeks to give a natural basis for penalties as well as for rights. The Hebrew doctrine of divine sanction for law and order based on the will of Jehovah merges with Greek naturalism and appears in Roman law as a justification based on the nature of things. Thus, the rule of kings by divine right as part of Divine Law becomes a natural law looking to the nature of things for its principal sanction.

Later ages saw a persisting naturalism. In spite of the prevalence of demonology and witchcraft, and the honored practice of hunting witches so characteristic of the middle period of European history, mechanistic and naturalistic explanations persisted. The sixteenth and seventeenth centuries saw the coming to fruition of a whole school of materialistic, mechanistic writers, such as Hobbes, Spinoza, Descartes, and Leibniz. The phenomena of man and his affairs were discussed as a physicist studies his material, impersonally and quantitatively. Thus Spinoza sought to formulate mathematical equations to express the principal social relations—the beginning of the so-called social physics. Modern social science continues this naturalistic emphasis. The disagreements of social scientists are well known, but they at least have this in common, that most of them try to find their explanations within the known world of physical and material fact.

Modern thought that calls itself scientific has abandoned demonology as a frame of reference against which the adequacy of various

explanations of crime may be judged. Within the naturalistic approach, however, one may readily distinguish three essentially different and in many ways contradictory thought systems that provide the basic frame of reference for the theories and research involved. The differences among these thought systems are so fundamental that the definitions of the terms "crime" and "criminal" by a particular criminologist will generally depend on the frame of reference he holds. The frame of reference will also strongly influence the approach the criminologist takes to the study of crime and his conception of the tasks that are appropriately performed within the discipline of criminology. Because of these fundamental differences, communication between criminologists who hold different frames of reference is often difficult. Critics probably more often pass judgment on research efforts from the viewpoint of their own particular frame of reference than from the viewpoint of considerations involving more generally methodological integrity and intellectual honesty. These three viewpoints within the naturalistic approach will be identified and briefly described in the paragraphs that follow.

3. CLASSICAL CRIMINOLOGY

First, there is the view that intelligence and rationality are the fundamental characteristics of man and the basis for the explanation of human behavior, individual and collective. Intelligence makes man capable of self-direction. He is no longer a creature driven by spirits or possessed by devils—he is master of his fate, captain of his soul, a creature capable of understanding himself and of acting to promote his own best interests.

This is the frame of reference of all classical thought—in philosophy, psychology, religion, politics, law, and economics. Rationalism, hedonism, utilitarianism, *laissez-faire*, the social contract, and many others, are all words that draw their meaning from an intellectualistic conception of the nature of man. Under such a conception, societies are formed as they are because man reasons and decides to make them according to patterns that seem good to him—either monarchal or republican, totalitarian or democratic. The League of Nations or the United Nations are thus sometimes conceived of as derived from man's attainment of intellectual maturity. The key to progress under this system of thinking is intelligent behavior brought about

by careful training and education—man thus controls his own destiny, as an individual and as a society.

Within this frame of reference, crime and criminals are usually seen from a strictly legal point of view.[5] Crime is defined as the commission of any action prohibited by criminal law, or the omission of any action required by it, and a criminal is defined as any person who commits a crime. Crime is seen as the product of the free choice of the individual, who assesses the potential benefits of committing the crime against its potential costs. The rational response of society is to increase the costs and to decrease the benefits of crime to the point that individuals will not choose to commit a crime. The task for criminology is seen as designing and testing a system of punishment that would result in the minimum occurrence of crime. Thus, this perspective is concerned with the question of deterrence, including both theories and empirical studies measuring how differences in the content of law or the administration of justice affect the occurrence of crime.

4. POSITIVE CRIMINOLOGY

Second, there is the view that man's behavior is determined by factors beyond his control, where those factors are either biological or cultural. This view implies that man is not a self-determining agent free to do as he wishes and as his intelligence directs, but a creature so limited in his behavior that it is more accurate to say that his intelligence can operate only to find it desirable that he behave as his basic biological organism or cultural situation has already determined that he is to behave. Thinking is as likely to be rationalization as reasoning, and it becomes increasingly difficult to distinguish between the two. Man has changed and developed, not primarily because of his intelligence, but through a slow process of biological or cultural evolution.

This view point tends to diverge into two strongly opposing camps. "Biological determinists," on one hand, believe that man's social organization has developed as a result of his biological evolution—hence, social evolution is subsequent to but essentially paral-

5. Clarence R. Jeffery, "The Structure of American Criminological Thinking," *Journal of Criminal Law, Criminology and Police Science*, 46:663–64 (Jan.–Feb., 1956).

lel with, and presumably a product of, biological evolution.[6] Individual human characteristics and behavior are therefore to be understood as reflecting this common biological heritage. "Cultural determinists," on the other hand, believe that man's behavior, despite his full range of identification with the world of biology, in all aspects important to understanding him as a human being, is always related to and somehow reflects the characteristics of the social-cultural world in which he happens to function.[7] They hold that the world of culture may be thought of as relatively independent of the world of biology in the sense that change in one does not mean a corresponding or an immediate change in the other. Cultural change, or evolution, is conceived of as operating in accordance with the peculiarities and special characteristics of cultural phenomena rather than with the limitations of biology per se. Hence, biology is not the producer of culture, nor do biological explanations underlie cultural phenomena.

This is the viewpoint of positivist thinking, as it exists in philosophy, sociology, history, and many sciences. The positivist rejects value-oriented explanations, and focuses on measurable aspects of the subject matter in an attempt to establish cause and effect relationships. Within this viewpoint, the task for criminology is seen as an analysis of the causes of criminal behavior through the scientific study of the physical, social, and cultural characteristics of criminals. Positivists find it difficult to work within the framework of strictly legal definitions of crime, since the law frequently distinguishes between legal and illegal actions on the basis of extremely fine points ("technicalities") that have no bearing on the idea of causation. The law also groups actions into legal categories when those actions have no causal relationship to each other. For example, the term "manslaughter" incorporates both voluntary and involuntary killings.[8] There is simply no way to analyze what "causes" manslaughter if it is

6. See, for example, Edward O. Wilson, *Sociobiology: The New Synthesis*, Harvard University Press, Cambridge, 1975, for a general defense of this position.

7. See, for example, Leslie A. White, "Culturological vs. Psychological Interpretations of Human Behavior," *American Sociological Review*, 12:686–98 (Dec., 1947), for a short review of some of the problems of cultural interpretations with a spirited defense of cultural determinism as a basic approach. He insists throughout that culture must be studied *as culture*, not as the acts of individual human organisms.

8. Hermann Mannheim, *Comparative Criminology*, Houghton Mifflin, Boston, 1965, pp. 33–34.

defined in this way. Therefore, positivist criminology has tended to be associated with various "natural definitions" of crime, where these definitions focus on the characteristics of the behaviors themselves, rather than how the behavior has been defined by the criminal law.[9] For example, Mannheim defends the view that criminology should study all antisocial behavior, whether it is legally a crime or not.[10] Sutherland regarded crime as behavior that is harmful to society and used this definition to pursue his studies on white collar crime.[11] Sellin defined crime in terms of violations of group conduct norms,[12] and the Schwendingers defined it in terms of violations of basic human rights.[13] Cressey found it necessary to replace a variety of legal categories of financial crime with the concept of criminal violation of financial trust.[14] He claimed that this definition included all forms of criminal behavior that were similar from an economic and sociological point of view, but excluded other forms of criminal behavior. He was then able to proceed with a causal analysis of this behavior.

5. CRITICAL CRIMINOLOGY

Third, there is the frame of reference of critical thinking, which is emerging at the present time in a variety of disciplines, including political science, economics, sociology, and philosophy. Those who hold this view do not attempt to answer the questions whether man's behavior is free or determined. Rather, they focus on the processes by which man creates the social world in which he lives. Critical criminologists, for example, would maintain that the phe-

9. Jeffery, op. cit. pp. 664–66.

10. Mannheim, op. cit. pp. 14–15.

11. E. H. Sutherland, "White Collar Criminality," *American Sociological Review*, 5 (1): 1–12 (Feb., 1940). Each edition of Sutherland's text contains the statement "Obviously, legal definitions should not confine the work of the criminologist; he should be completely free to push across the barriers of legal definitions whenever he sees noncriminal behavior which resembles criminal behavior." E. H. Sutherland and D. R. Cressey, *Criminology*, 9th ed. Lippincott, Philadelphia, 1974, p. 21. In the 10th edition (1978, p. 23), Cressey has qualified the statement by adding the following: "It is an error, however, to call such noncriminal behavior *crime*, no matter how repulsive it may be."

12. Thorsten Sellin, *Culture Conflict and Crime*, Social Science Research Council, New York, 1938.

13. Herman and Julia Schwendinger, "Defenders of Order or Guardians of Human Rights?," *Issues in Criminology*, 5 (2): 123–57 (Summer, 1970).

14. Donald R. Cressey, *Other People's Money*, The Free Press, Glencoe, Ill., 1953.

nomenon of crime is socially constructed when a society defines certain actions and people as criminal, and that any of a wide variety of people and actions may, at one time or another, be the subject of these definitions. Thus, crimes and criminals are not independent phenomena that can be identified and studied objectively by the social scientist—these exist only to the extent that they are identified as such by the society. The critical criminologist therefore studies the processes by which particular sets of people and actions become defined as criminal at particular times and places.[15]

Because this view may not be as readily understandable as the classical or positivist views, a simple example is presented to illustrate the type of questions that are asked by the critical criminologist. Consider the traffic law violation of speeding. A classical criminologist might attempt to measure the effect of different enforcement and punishment policies on the incidence of speeding behaviors. A positivist criminologist might study the physical, social, and cultural characteristics of speeders to determine the causes of their behavior. A critical criminologist, on the other hand, might study the set of people defined as speeders by the police and the courts, and might attempt to determine how this particular group had been selected out of all the people who drive cars. Thus, he would study not only the driving behavior of individuals, but also the patrol practices of the police, the use of "speed traps," the policy in some places of not giving tickets to people who drive only a few miles over the speed limit, the effect of the reduction of the speed limit on interstate highways from 70 mph to 55 mph, and the effect of the use of "citizen band" radios on enforcement.

The same type of question can be asked about any criminal offense, from shoplifting to murder. In each case, a particular set of people is selected from the general population by the agencies of social control, and these people are officially defined as criminals. In order to understand why and how these sets of people are constituted, the critical criminologist studies not only the behavior of the person defined as criminal, but also the behavior of the agents of social control.

The critical criminologist argues that the volume of crime and the

15. Cf. Gresham M. Sykes, "The Rise of Critical Criminology," *Journal of Criminal Law and Criminology*, 65 (2): 206–13 (June, 1974), for a general discussion of the emergence of this perspective in criminology.

characteristics of criminals are determined primarily by how the law is written and enforced. Most people convicted of crime are poor, but not because poverty "causes" crime. Rather, the critical criminologist would argue that actions typical of poor people are much more likely to be legally defined as crimes, and the laws applying to such crimes are much more likely to be enforced. Burglary, larceny, armed robbery, and auto theft are crimes typically committed by the young and the poor, and the laws applying to these crimes are strictly defined and enforced. Fraud, embezzlement, and corruption are crimes typically committed by wealthier adults, but the laws applying to these crimes are neither defined nor enforced as strictly. The fact that more wealthy adults are being convicted of crimes today than ever before does not reflect changes in the behavior of this group, but changes in the definition and enforcement of laws applying to white collar crimes. In general, both rich persons and poor persons can be vicious, brutal, greedy, and deceptive, but the poor person with these characteristics is much more likely to find himself defined as a criminal than is the rich person.

Critical criminologists consider the terms "crime" and "criminal" as labels applied to certain actions and people, and they see their task as analyzing the processes by which those labels are applied. Two relatively distinct approaches are found within this viewpoint. Those who take the "interactionist" approach attempt to determine why certain people and actions are defined as criminal in a given society by studying the meanings crime has for that society. They also study the meanings crime has for the agents of social control and for the people who are defined as criminal. Finally, they study the meanings the social processes of defining someone as a criminal has for these groups.

Those who take the "conflict" approach, on the other hand, focus on the question of power in the definition of crime. Conflict criminologists argue that different people have different degrees of power to influence the enactment and the enforcement of laws. In general, those who have greater degrees of power are better able to define as criminal the actions that conflict with their own values and interests. At the same time, they are able to prevent the definition of their own actions as criminal, even when those actions conflict with the values and interests of other, less powerful people in the society. Thus, in a rough sort of way, crime is the inverse of power: the more

power a particular set of people has, the less likely it is that they will be defined as criminal, and vice versa.

6. THE EXPLANATION OF CRIME AS A FUNCTION OF THE FRAME OF REFERENCE

It must be obvious from the preceding discussion that crime will be explained differently, depending on the frame of reference. Each approach usually regards itself as self-sufficient, none falls back on any of the others for confirmation or verification; each approach considers its explanations most nearly adequate, none welcomes or accepts the criticism of another. The meaning of theories and supporting research is taken from within the general point of view; abandon a point of view and its theories and axiomatic assumptions become useless and meaningless.

Thus, science with its naturalistic approach has abandoned demonism and its satisfying circular logic. To the demonist this shows not that his theory and frame of reference are incorrect or inadequate but that the scientist is in error and is unable to recognize merit and good logic when he encounters them. The demonist does not need, and has no interest in, the naturalistic explanation of behavior; he is satisfied that he already has a more satisfying and adequate explanation.

Something very similar is true of those who reject demonism, accept naturalism, but have different frames of reference as to how nature operates. The rationalist holds on to the central idea that man can learn and profit from his understanding to the extent of modifying his behavior, individual or collective. On the mechanics of this conception, the rationalist builds his theory of individual and social progress. His faith in science is largely that through it man will be able to build himself a better world. To admit that intelligence is limited, that man cannot achieve that which he plans but only that which nature has prepared him for, that his behavior is "determined" for him by influences (biology and culture) not subject to his intelligence and control, is to negate the rationalist's whole conception of the nature of man and of his world. Rather than do that he insists that he is right, that his view is the more adequate, that he can implement it with a constructive action program for control, that the determinist must be wrong because he has such a hopeless view.

Crime, therefore, is judged in terms of degree of deliberateness, motive, intent, and understanding of right and wrong, not in terms of its dangerousness or social significance. Behavior, in this view, may be controlled by law and decree, since man, knowing what is right and lawful, will reason that it is unwise and undesirable to do wrong (crime).

The determinist, in turn, rejects both demonism and the somewhat qualified free will of the rationalist, yet the biological determinist can see no sense or meaning to cultural determinism, and vice versa. To the out-and-out biological determinist, the world of culture is only an extension of the world of biology. Sociology to him is a specialized branch of biology. The explanation of crime, therefore, lies in the nature of the individual—indeed, most so-called scientific studies in criminology are devoted to establishing significant differences between individuals who commit crime and individuals who do not. To the research worker who operates within this frame of reference, that research alone will seem good that seeks to establish such differences.

Similarly, the cultural determinist tends to minimize the significance of individual differences, especially their possible biological and hereditary basis, and views the phenomenon of crime as an aspect of the differences that exist among groups and organizations in the community. Such a view does not deny individual differences; it simply does not see that such differences are important in the explanation of crime any more than in the explanation of other social group (cultural) phenomena, such as the political parties, churches, or nations to which individuals belong. To the research worker with that orientation, studies that seek to determine differences in the individuals concerned seem to be as beside the point in the analysis of crime causation as they would be in the explanation of why some people are Democrats and others Republicans.

Finally, critical criminologists see both positivist and classical criminologists as fundamentally misinterpreting the phenomenon of crime. The positivist approach of studying the cultural or biological characteristics of criminals to determine the causes of crime makes no more sense to critical criminologists than would an approach of studying the characteristics of beauty contest winners to determine the causes of beauty. Beauty is in the eye of the beholder, so that different characteristics are considered beautiful in different socie-

ties. The differences between winners and losers in a beauty contest reflect primarily the characteristics of the selection process and the criteria used by the judge to define beauty. Similarly, the characteristics of criminals are seen as reflecting the characteristics of the criminal justice selection process and the criteria used by the system to define crime. The classical approach of studying changes in crime rates to determine the effectiveness of various punishment and enforcement policies makes no sense to critical criminologists either. This approach is based on the assumption that changes in crime rates reflect changes in the occurrence of criminal behaviors. The critical criminologist maintains that crime rates are primarily a function of the way laws are written and enforced, so that there is no set relationship between changes in the crime rate and changes in the occurrence of criminal behaviors.

In the chapters that follow, the implications of some of these general propositions will be examined in much more detail. The organization of materials followed, and the order and arrangement of the theoretical positions discussed, have been adopted primarily for the sake of convenience and clarity. No necessary characteristic of separateness, or of mutual exclusiveness, one theory from another, should be inferred. Some theoretical positions are logically incompatible; others are notably interdependent. This general circumstance should be sufficiently clear from the discussion itself, so that a more formal outline of interrelationship need not be presented at this point.

RECOMMENDED READINGS

Hermann Mannheim, *Comparative Criminology*, Houghton Mifflin, Boston, 1965. A thorough presentation of criminological theory and research focusing on the positivist search for the causes of crime.

Stephen Schafer, *Theories in Criminology*, Random House, New York, 1969. A historical review of criminological theories focusing on the philosophical search for insight into the problem of crime.

Ian Taylor, Paul Walton, and Jock Young, *The New Criminology*, Harper & Row, New York, 1973. A presentation of sociological criminology from a neo-Marxist perspective.

Leon Radzinowicz, *Ideology and Crime,* Columbia University Press, New York, 1966. A brief account of the development of attitudes toward crime from the eighteenth century to the present, with implications for a pragmatic position on the problem of crime.

Daniel Glaser, ed., *Handbook of Criminology,* Rand McNally, Chicago, 1974. A collection of original articles, covering a wide range of topics in general and theoretical criminology.

Edwin H. Sutherland and Donald R. Cressey, *Criminology,* 10th ed., Lippincott, Philadelphia, 1978. The preeminent textbook in general criminology.

Clarence R. Jeffery, "The Structure of American Criminological Thinking," *Journal of Criminal Law, Criminology and Police Science,* 46:658–72 (Jan.–Feb., 1956). Discusses classical and positivist criminology and proposes an "outline for the study of criminology," which is a precursor of critical criminology.

Clarence Ray Jeffery, "The Historical Development of Criminology," in Hermann Mannheim, ed., *Pioneers in Criminology,* Patterson Smith, Montclair, N.J., 1972. A more detailed history of the development of criminological ideas through 1970, including a discussion of the decline of positivism and the ideas that are taking its place.

Eugene Doleschal and Nora Klapmuts, "Toward a New Criminology," *Crime and Delinquency Literature,* 5 (4): 607–26 (Dec., 1973). Analysis of the development of criminology in the classical, positivist, and interactionist schools.

Don C. Gibbons and Peter Garabedian, "Conservative, Liberal and Radical Criminology: Some Trends and Observations," in Charles E. Reasons, *The Criminologist: Crime and the Criminal,* Goodyear, Pacific Palisades, Ca., 1974. Another analysis of the three stages of criminological development.

Travis Hirschi and David Rudisill, "The Great American Search: Causes of Crime 1876–1976," *Annals of the American Association of Political and Social Sciences,* 423:14–22 (Jan., 1976). Developments in criminology over the last 100 years.

CHAPTER TWO

The Classical School: Questions of Administration and Law

The literature of criminology often refers to the classical, the neo-classical, and the positive schools of criminological thought. These terms or labels are used to designate some important ideas and names in the long history of trying to understand, and trying to do something about, crime. The classical school, usually associated with the name of the Italian scholar, Cesare Bonesana, Marchese de Beccaria (1738–94), and its later modification, the so-called neo-classical school, are very similar as far as basic ideas and conceptions about the nature of man are concerned. Both represent a sort of free-will, rationalistic hedonism that is part of a tradition going back many centuries.

The positive school, on the other hand, marks the beginning in the study of crime causation of an emphasis on the nature of the criminal person rather than on the nature of the criminal act per se. Because of this emphasis it is also referred to as the scientific school, the Italian school, or the Lombrosian school, in association with the name and nationality of one of its early and most earnest and industrious advocates, Cesare Lombroso (1836–1909). The classical school represents the development, and application to thinking about crime, the ideas and intellectual frame of reference that in Europe preceded the application of scientific methods and experimental procedure to human behavior. The positive school represents the first formulations and applications to the field of criminology of the point

of view, methodology, and logic of the natural sciences to the study of human behavior.

1. PRE-CLASSICAL WRITERS AND IDEAS

The backgrounds of classical law involve the whole scope of preceding intellectual history, which had developed a theory of society and a philosophy of origins and engendered a great deal of discussion about the relationship between the individual and the group. These themes or problems had been the concern of the writers of antiquity. The more immediate background for Beccaria included the scholasticism of St. Thomas Aquinas and theories of the social contract writers. This is obviously not the place for any full examination of these writings, but it may be helpful to list some of the more important names, with dates, to suggest something of the developing sequence:

PRE-CLASSICAL WRITERS

St. Thomas Aquinas (1224–74)
Dante Alighieri (1265–1321)
Niccolò Machiavelli (1469–1527)
Martin Luther (1483–1546)
Jean Bodin (1530–96)

SOCIAL CONTRACT WRITERS

Thomas Hobbes (1588–1679)
John Locke (1632–1704)
Charles de Secondat, Baron de Montesquieu (1689–1755)
François Marie Arouet Voltaire (1694–1778)
Jean Jacques Rousseau (1712–78)
Marie Jean Antoine Nicolas de Caretat, Marquis de Condorcet (1743–94)

CLASSICAL SCHOOL AND NEO-CLASSICAL INTERPRETERS

William Blackstone (1723–80)
Cesare Bonesana, Marchese de Beccaria (1738–94)
Jeremy Bentham (1748–1832)
Samuel Romilly (1757–1818)
Paul Johann Anselm von Feuerbach (1775–1833)
Robert Peel (1788–1850)
Pellegrino Luigi Edoardo Rossi (1787–1848)
René Garraud (1849–1930)

It is evident from this list that Beccaria wrote in a period when the theology of the Church Fathers and the doctrine of the divine right of kings were pitted against the intellectualism and rationalism of the social contract thinkers. People of that time were familiar with and accustomed to accept, as a matter of course, the general thought pattern and arrangements suggested in the following outline.

1. Man had originally existed in a state of Nature, Grace, or Innocence.

2. Man's emergence from this state involved the application of his *reason* as a *responsible* individual:

a. According to the Doctrine of the Fall (Sin in the Garden of Eden), all mankind lives in suffering and pain because the first human pair chose to disobey Divine injunction.

b. Under social contract theories, individuals come together and contract to form a society; that is, presumably, they consider the pros and cons—what to gain and what to lose—and come to deliberative agreement to live together in a society, each giving up something to gain something else.

3. Human will was accepted as a psychological reality, a faculty or trait of the individual that regulates and controls behavior:

a. In general, the will was free—that is, there were no limitations (except those obvious to common sense such as willing to fly or to walk on water and so on) to the choices an individual could make.

b. God and the Devil could influence will—and so apparently could nature, i.e., impulses or instincts, yet in specific action of the individual the will was free. Thus:

i. Montesquieu found that society results from four impulses or desires: peace, hunger, sex, and social desires (sociability).

ii. Rousseau made desire for companionship the basis for the formation of society.

iii. Hobbes conceived of fear as an elemental drive causing men to form societies and accept the necessary restraints. All these, apparently, affected the will, yet in individual action, the choice was free.

iv. Voltaire recognized that will may be strong or weak, thus influencing behavior, but still did not question the basic doctrine of will, as the motive, or mainspring, of human behavior.

4. The idea was accepted that the principal instrument for control (affecting the will to behave) of behavior is fear—especially fear of pain.

5. Punishment (i.e., infliction of pain, humiliation, and disgrace) as a principal method of operating to create fear was necessary to influence the will and thus to control behavior.

6. Society had the right to punish the individual, and to transfer this right to the political state exclusively for execution. This follows logically with the state as the strongest practical authority.

7. Some code of criminal law, or better, some system of punishments for forbidden acts, was accepted. With the growth and development of the national states, the limited controls of the feudal chiefs was replaced, with centralization in the realm of the law, the courts, and the police.

These were the established ideas of the time. There was dissatisfaction and protest, but they were directed against procedure and personal abuse, not the basic frame of reference of the thought pattern of the time. Beccaria was such a "protest" writer who sought to restate the conditions under which acts should be called crimes, as well as to reformulate the appropriate punishments. He nowhere questioned the psychology of the day or the explanation for human behavior then current; he merely sought to reform the system of punishments.

2. BECARRIA AND THE CLASSICAL SCHOOL

The name most definitely associated with the classical school is that of the Italian mathematician and economist Cesare Bonesana, Marchese de Beccaria, whose wide range of interests led him to examine and offer suggestions for the reformation of the correctional system of his day.[1] Born in Milan, Italy, in 1738, he was educated at the Jesuit College at Parma and early in life showed great ability in mathematics. From the writings of Montesquieu, apparently, he became interested in politics and economics. He was an intimate friend of Alessandro Verri, an official of the prison in Milan, and as a result frequently visited that institution and became interested in the reform of criminal court procedure and of correctional practice.

1. An account of the life and work of Beccaria may be found in Elio D. Monachesi, "Pioneers in Criminology: Cesare Beccaria (1738–94)," *Journal of Criminal Law, Criminology and Police Science*, 46 (4): 439–49 (Nov.–Dec., 1955), reprinted in Hermann Mannheim, *Pioneers in Criminology*, Patterson Smith, Montclair, 1972, pp. 36–50.

This led to the publication of his *Dei delitti e elle pene* (Livorno, 1764), perhaps his most famous book, which was translated into English and published under the title *Essay on Crimes and Punishment* (London, 1767). His career, otherwise, was that of a university professor and government official whose ability in mathematics led to a number of original and brilliant applications of quantitative methods to the field of social and political study.[2] His general thought followed that of the French rationalists, and his economic thought was not far from that of his illustrious English contemporary, Adam Smith (1723–90), who has been called "the father of quantitative economics."[3]

Beccaria, in common with his contemporary intellectuals, protested against the many vagaries and inconsistencies in government and in the management of public affairs. In keeping with this basic orientation, he proposed various reforms to make practice more logical and rational. He objected to existing practices in connection with criminal justice on many grounds, but especially to the capricious and purely personal justice the judges were dispensing and to the severe and barbaric punishments of the time.

The historic process under which individualization of punishments had grown up need not be examined here in any great detail. It must be remembered, however, that the practice of discretionary penalties was commonplace. Judges did what the law could not well do, differentiate in terms of the circumstances and special considerations of a particular case. Thus, judges exercised the power to add to the punishments prescribed by law penalties in keeping with their personal views of the special circumstances involved. This arbitrary and tyrannical practice of power, in which the judges took the part of one class in its struggle with the members of other classes in a society rapidly becoming mobile and fluid, was the substance against which much of the protest writing of the period was directed. It was, after all, only 20 years before the French Revolution, the climax of such protests, with the consequent overthrow of much of the smug complacency of the status quo.

In the light of the preceding discussion, it is interesting to look at

2. See *Encyclopedia of the Social Sciences*, Macmillan, New York, 1930, vol. II, pp. 488–89.

3. See Charles Gide and Charles Rist, *History of Economic Doctrine*, Heath, Boston, 1913; also *International Encyclopedia of the Social Sciences*, Macmillan and The Free Press, New York, 1968, vol. II, pp. 37–38.

Beccaria's ideas as expressed in his own words in relation to some of the basic principles of his system of justice. Thus, he says, with reference to[4]:

1. The formation of a contractual society to escape war and chaos[5]:

   The sum of all these portions of the liberty of each individual constituted the sovereignty of a nation; and was deposited in the hands of the sovereign, as the lawful administrator. But it was not sufficient only to establish this deposit; it was also necessary to defend it from the usurpation of each individual, who will always endeavor to take away from the mass, not only his own portion, but to encroach on that of others. Some motives, therefore, that strike the senses, were necessary to prevent the despotism of each individual from plunging society into its former chaos. Such motives are the punishments established against the infractions of the laws. I say that motives (punishments) of this kind are necessary; because experience shows that the multitude adopt no established principle of conduct; and because society is prevented from approaching . . . dissolution . . . only by motives that are immediate objects of sense and which being continually presented to the mind, are sufficient to counter-balance the effects of the passions of the individual which oppose the general good.

2. The source of law being the legislature, not the judges,[6]

   The laws only can determine the punishment of crimes; and the authority of making penal laws can only reside with the legislator, who represents the whole society united by social compact. No magistrate can . . . with justice inflict on any other member of the same society punishment that is not ordained by laws. . . . No magistrate, even under a pretence of zeal for the public good, should increase the punishment already determined by the laws.

3. It is the true function of the judge to act only in the determination of guilt; penalties are matters of law,[7]

   Judges, in criminal cases, have no right to interpret the penal laws because they are not legislators. . . . Who is then the lawful interpreter? The sovereign; that is, the representative of society and not the judge

4. Cesare Beccaria, *Essay on Crimes and Punishment*, 1st Am. ed., Stephen Gould, New York, 1809. A current edition, translated by Henry Paolucci, is available from Bobbs-Merrill, Indianapolis, 1963.

5. Ibid. pp. 5–7.

6. Ibid. p. 11.

7. Ibid. pp. 13–17.

whose office is only to examine if a man have, or have not, committed an action contrary to the laws . . .

There is nothing more dangerous than the common axiom: *the spirit of the laws is to be considered.* To adopt it is to give way to the torrent of opinions . . . Every man hath his own particular point of view and at different times sees the same objects in very different lights. The spirit of the laws will then be the result of the good, or bad, logic of the judge; and this will depend on his good or bad digestion; on the violence of his passions; on the rank and condition of the accused, or his connections with the judge; and on all those little circumstances which change the appearance of objects in the fluctuating mind of man. . . .

The disorders that may arise from a rigorous observance of the letter of penal laws are not to be compared with those produced by interpretation. . . . When the code of laws is once fixed, it should be observed in the literal sense, and nothing more is left to the judge than to determine whether an action be, or be not, conformable to the written law. When the rule of right, which ought to direct the actions of the philosopher as well as of the ignorant, is a matter of controversy, not of fact, the people are the slaves of the magistrates.

4. The right of the state (i.e., the sovereign) to punish,[8]

Every act of authority of one man over another, for which there is not an absolute necessity, is tyrannical. It is upon this, then, that the sovereign's right to punish crimes is founded; that is, upon the necessity of defending the public liberty, entrusted to his care, from the usurpation of individuals; and punishments are just in proportion as the liberty preserved by the sovereign is sacred and valuable.

5. There should be a scale of crimes and punishments,[9]

A scale of crimes may be formed of which the first degree should consist of those which immediately tend to the dissolution of society; and the last, of the smallest possible injustice done to a private member of society. Between these extremes will be comprehended all actions contrary to the public good, which are called criminal. . . . Any action which is not comprehended in the above mentioned scale, will not be called a crime, or punished as such.

6. Pain and pleasure as basis of human motivation,[10]

8. Ibid. p. 12.
9. Ibid. pp. 23–24.
10. Ibid. p. 31.

Pain and pleasure are the only springs of action in beings endowed with sensibility. Even amongst the motives which incite men to acts of religion, the invisible legislator has ordained rewards and punishments.

7. The act not the intent is the measure of injury done by crime,[11]

They err who imagine that a crime is greater or less according to the intention of the person by whom it is committed.

8. Fundamental principle of criminal law rests on positive sanction,[12]

Every member of society has a right to do anything that is not contrary to the laws without fearing any other inconvenience than natural consequences.

Beccaria emphasized many other ideas as well. He said, for example, that prevention of crime is more important than punishment for crime committed; that punishment is desirable only as it helps prevent crime; that desirable criminal procedure calls for the publication of all laws so the public may know what they are and so that it (the public) may be led to support their intent and purpose; that torture and secret accusations should be abolished; that trials should be speedy; that in punishment, not severity but certainty and celerity will have the greatest preventive effect; that capital punishments should be abolished; that the use of imprisonment as a punishment should be greatly extended and the prisons improved by offering better physical care and by classifying inmates as to sex, age, and kind or degree of criminality.

Beccaria's little book was well received by his contemporaries. Voltaire wrote an introduction for the French edition, and later the French legislators applied many of his ideas in the famous French Code of 1791. Gillin discussed this effort in the following words[13]:

It attempted to apply Beccaria's principle of "equal punishment for the same crime." It adopted his suggestions that crimes should be arranged in a scale, that to each crime the law should affix a penalty, and that the legislators should make the law, while the judges should only apply it to the cases that came before them for trial. On the other hand, it failed to

11. Ibid. p. 26.

12. Ibid. p. 32.

13. John L. Gillin, *Criminology and Penology*, 3rd ed., Appleton-Century-Crofts Co., New York, 1945, p. 229. Reprinted by permission of Helen N. Gillin.

adopt methods whereby the injustice inherent in the application of "equal punishment for the same crime" should be prevented. While in that dictum Beccaria had in mind the abuse of arbitrary punishments by the judges and the favoritism shown the powerful by the courts, in actual practice in the French courts it was extended to accused persons who were unequal in another sense—the insane and the sane, the minor and the adult, the idiot and the person of normal intelligence. In this code there was an attempt not only to legislate on every crime, but to fix by statute the penalty for each degree of each kind. Nothing was left to the judgment of the court, except the question of guilt. There could be no abatement for extenuating circumstances, no added penalty for the heinousness of the way in which a particular crime was committed. The punishments were as absolutely fixed as they had been in the Salic Law more than a thousand years before, although they were not quite on the same basis.

It seems fair, therefore, to characterize the classical school as administrative and legal criminology. Its great advantage was that it set up a procedure that was easy to administer. It made the judge only an instrument to apply the law, and the law undertook to prescribe an exact penalty for every crime and every degree thereof. Puzzling questions about the reasons for or causes of behavior, the uncertainties of motive and intent, the unequal consequences of an arbitrary rule, these were all deliberately ignored for the sake of administrative uniformity. This was the classical conception of justice—an exact scale of punishments for equal acts without reference to the individual involved or the special circumstances in which the crime was committed.

As a practical matter, however, the Code of 1791 was impossible to enforce in everyday situations, and modifications were introduced. These modifications, all in the interest of greater ease of administration and still in process to some extent, are the essence of the so-called neo-classical school.

3. THE NEO-CLASSICAL SCHOOL

The greatest practical difficulty in applying the Code of 1791 came from

1. The ignoring of individual differences and circumstances of particular situations. This was the ideal; it probably never was a reality, but obviously was a point of controversy.

2. The fact that the Code was set up to treat first offenders and repeaters exactly alike on the basis of the criminal act committed, not on the basis of what kind of individuals they were.

3. The fact that minors, idiots, the insane, and other incompetents were treated as though they were competent—on the basis of the act committed, not the personality of the offender—in determining guilt and recommending the punishment that should be imposed.

No society, of course, will permit its children and other helpless incompetents to be treated in the same manner as its professional criminals. The French were no exception. Modifications in practice began, and soon there were revisions of the code itself.

The code of 1810[14] tipped the lid just a little in permitting some discretion on the part of the judges. In the Revised French Code of 1819, there is definite provision for the exercise of discretion on the part of the judges in view of certain objective circumstances, but still no room for consideration of subjective intent.

The set, impersonal features of even this revised Code Napoleon then became the point of attack for a new school of reformers whose cry was against the injustice of a rigorous code and for the need for individualization and for discriminating judgment to fit individual circumstances. These efforts at revision and refinement in application of the classical theory of free will and complete responsibility—considerations involving age, mental condition, and extenuating circumstances—constitute what is often called the neo-classical school.

Thus, the neo-classical school represented no particular break with the basic doctrine of the nature of man that made up the common tradition throughout Europe at the time. The doctrine continued to be that man is a creature guided by reason, who has free will, who therefore is responsible for his acts, and who can be controlled by his fear of punishment. Hence, the pain from punishment must exceed the pleasure obtained from the criminal act; then man's *will* will determine for him the desirability of noncriminal conduct. The neo-classical school may be said, therefore, to represent primarily the modifications necessary for the administration of the

14. In addition to the *Revolutionary Code* of 1791, other Napoleonic codes of the period often mentioned are *Code de procédure civile*, 1806; *Code de commerce*, 1807; *Code d'instruction criminelle*, 1808; the *Code pénal*, 1810; and the revised *Code pénal*, 1819.

criminal law based on classical theory that resulted from practical experience and, to some extent, modern behavior science.

In summary, it may be said that the neo-classical school was characterized by

1. Some modification of the doctrine of free will—the freedom of the will to choose could be affected by

a. Pathology, incompetence, insanity, or conditions that make it impossible for the individual to exercise free will;

b. Premeditation, which is introduced as a measure of the freedom of the will. This involves various absurdities, however. If premeditation does measure free will, the first offender would have to be considered more free to choose than the repeater, who is bound by habits, and should therefore suffer heavier punishments.

2. Acceptance of the validity of mitigating circumstances. These might be physical (weather, mechanical, etc.), environmental, or the mental condition of the individual.

3. A modification of the doctrine of responsibility to provide for a mitigation of punishment, with partial responsibility. The chief reasons for holding the individual only partially responsible would be insanity, imbecility, age, or other conditions that could affect knowledge and intent at the time of the crime.

4. Admission into court procedure of expert testimony on the question of the degree of responsibility, of whether the accused was capable of choosing between right and wrong. The celebrated device for this is the *hypothetical question*, which recites all the main facts of a case and then asks the expert to testify as to whether in his opinion the accused, in the light of all the facts recited, was capable of choosing between right and wrong and therefore responsible for his conduct.

4. IMPLICATIONS AND LIMITATIONS

The neo-classical view of man is, with minor variations, "the major model of human behavior held to by agencies of social control in all advanced industrial societies (whether in the West or the East). . . ."[15] Its widespread acceptance in contemporary legal systems is probably a result of the fact that this view provides support for

15. Ian Taylor, Paul Walton, and Jock Young, *The New Criminology*, Harper & Row, New York, 1973, pp. 9–10.

the most fundamental assumption on which those systems are based. Classical criminology provides a general justification for the use of punishment in the control of crime. Since punishment for that purpose has always been used in the legal system, it should not be surprising that this theory is adhered to. To a certain extent, then, classical criminology was accepted because it explained and justified existing practices, while at the same time, it provided a blueprint for extensive reform of those practices. In contrast, legal authorities did not so readily accept the later positivist theories, since these implied that the appropriate response was not to punish crime, but rather to address its causes.

In addition, classical theory was attractive to legal authorities for a more general reason. It is based in social contract theory, which holds that all men have a stake in the continued existence of the authority structure, since without it society would degenerate into a "war of all against all." Since crime contributed to this degeneration, it was ultimately in the best interests of all people, even criminals, to obey the law. .Social contract theorists saw crime as a fundamentally irrational act, committed by a person who, because of his short-sighted greed and passion, was incapable of recognizing his own, long-term best interests.[16] The fact that crime was concentrated in the lower classes was taken to be a symptom of the fact that these classes were filled with irrational, dangerous people.[17]

The ease with which the classical system of justice could be administered rested largely on this view. It supported the uniform enforcement of laws without questioning whether those laws were fair or just. Specifically, social contract theorists did not take into account the fact that some societies are unfair and oppressive, and that specific groups within the society may not consent to it. It is clear, for example, that the Jews did not consent to the social contract represented by Hitler's Third Reich and that they did not have a stake in its continued existence. In fact, there are many forms and types of social contracts, and in any particular form, some men will invariably receive greater benefits than other men. For some groups, the costs of adhering to the social contract may be few and

16. Ibid. p. 3.

17. See, for example, the discussion of Locke's view of the irrationality of the lower classes in C. B. MacPherson, *The Political Theory of Possessive Individualism*, Oxford University Press, New York, 1962, pp. 232–38.

the benefits great; for other groups, the costs may be great and the benefits few. The latter group will probably have less allegiance to the social contract, a fact that may be expressed in the form of a higher crime rate.

That is a far different perspective than the view that high crime groups are filled with irrational and dangerous people. Rather than relying solely on punishments, it would imply that an additional way to reduce crime is to make the costs and benefits of adhering to the social contract more uniform among the different groups in society. This option was not attractive to the social contract theorists who were themselves members of the propertied class. Thus, they addressed the problem in such a way as to justify the existence of inequalities. Hobbes, for example, argued that lower class persons could adhere to the social contract if they were taught to believe that the status quo was inevitable.[18] Locke maintained that all persons were obligated to obey the laws of society, since all gave their "tacit consent" to the social contract. But he also argued that only persons with property were capable of making the laws, since only they were capable of the fully rational life and only they would defend the "natural right" of the unlimited accumulation of property.[19]

Beccaria, on the other hand, did not attempt to justify status quo. His basic view was that it was natural for all men to seek their own advantage, even at the expense of the common good, and that this was the source of crime.[20] Thus, he did not share the view of the social contract theorists that criminals were essentially irrational. He was fully aware of the massive injustice the law could bring upon the poor, and the fact that the law itself could create crime, writing[21]

> What man of any sensibility can keep from shuddering when he sees thousands of poor wretches driven by a misery either intended or tolerated by laws (which have always favored the few and outraged the many) to a desperate return to the original state of nature—when he sees them accused of impossible crimes, fabricated by timid ignorance, or found guilty of nothing other than being true to their own principles, and sees them lacerated with

18. Ibid. p. 98.
19. Ibid. pp. 247–51.
20. Beccaria, op. cit. p. 5.
21. Beccaria, Paolucci Translation, op. cit. p. 43.

meditated formality and slow torture by men gifted with the same senses, and consequently with the same passions?

and[22]

To prohibit a multitude of indifferent acts is not to prevent crimes that might arise from them, but is rather to create new ones. . . . For one motive that drives men to commit real crime there are a thousand that drives them to commit those indifferent acts which are called crimes by bad laws. . . . The majority of laws are nothing but privileges, that is, a tribute paid by all to the convenience of some few. Do you want to prevent crimes? . . . See to it that the laws favor not so much classes of men as men themselves.

Thus, Beccaria was not solely concerned with the establishment of a system of punishment. He recognized the problem of inequality in society, and implied that it was wrong to punish lawbreakers when the laws themselves were unjust. This aspect of Beccaria's writings is sometimes ignored, so that classical criminology is identified with the social contract position that crime is essentially irrational.[23]

In sum, classical and neo-classical theories represent an abandoning of the supernatural as a principle of explanation and as a guide to criminal procedure. To that extent, they mark the beginning of a naturalistic approach to human behavior. They substitute for the view of man as a puppet of the supernatural the idea of man as a self-determining being, acting on the basis of reason and intelligence and therefore responsible for his behavior. The break with this system of animistic, self-determining, free-will kind of thinking came with the positive school, which is usually associated with the name of Lombroso and his Italian pupils. This school is more accurately described as the extension to criminology of some of the ideas of human behavior then beginning to dominate biology, medicine, psychiatry, psychology, and sociology.

Although positivism has been the dominant perspective in criminology since the time of Lombroso, substantial interest in the classical perspective revived, beginning in the late 1960s. This revival of interest underlies the dramatic shift, in recent years, away from the

22. Ibid. p. 94.

23. For example, see Taylor, Walton, and Young, op. cit. pp. 1–10.

positivist-oriented indeterminate sentencing structures and back to the determinate sentences similar to the French Code of 1791.[24]

Two principal branches of contemporary classicism can be identified. The whole question of deterrence has been the subject of voluminous literature in criminology in recent years.[25] Here an attempt has been made to develop the classical perspective in the light of modern knowledge of the human behavioral sciences, as well as through empirical studies of the effects of certainty and severity of punishment on crime rates. While deterrence theory and research has been dominated by criminologists and sociologists, the other branch of contemporary classicism has been dominated by economists. The field of economics holds a view of man that is quite similar to that of the classicists. For example, economic theory holds that a person analyzes the costs and benefits when he decides to buy a hamburger instead of a T-bone steak, or to buy a Volkswagen instead of a Cadillac. The costs and benefits include not merely monetary factors, but factors such as taste, comfort, prestige, and convenience. Econometric techniques[26] have been developed to analyze these factors in terms of the resulting economic choice. Beginning with an article by Gary S. Becker in 1968,[27] many economists have approached crime as a similar economic choice. They have therefore applied their techniques to the analysis of criminal behavior, as well as to the choices of the criminal justice system.

The revival of classicism seems to reflect, at least in part, dissatisfaction with the positivist orientation of searching for the causes and cures of crime. Those who favor abandoning "treatment" (i.e., positivism) and returning to "punishment" (i.e., classicism) argue that

24. For an excellent review of the developments in determinate sentencing, see the entire issue of *Corrections Magazine*, 3 (3) (Sept., 1977).

25. For a review of theoretical issues, see Franklin E. Zimring and Gordon J. Hawkins, *Deterrence*, University of Chicago Press, Chicago, 1973; Johannes Andenaes, *Punishment and Deterrence*, University of Michigan Press, Ann Arbor, 1974; and Jack P. Gibbs, *Crime, Punishment, and Deterrence*, Elsevier, New York, 1975. Gibbs book reviews the empirical studies, as does Alfred Blumstein et al., *Deterrence and Incapacitation*, National Academy of Sciences, Washington, D.C., 1978. For a briefer but very thorough presentation of both theory and empirical studies see E. A. Fattah, "Deterrence: A Review of the Literature," *Canadian Journal of Criminology*, 19 (2): 1–119 (Apr., 1977).

26. This term refers to the use of mathematical techniques to test and apply economic theories. See Richard F. Sullivan, "The Economics of Crime: An Introduction to the Literature," *Crime and Delinquency*, 19(2): 138–49 (Apr., 1973).

27. Gary S. Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy*, 76(2): 169–217 (Mar.–Apr., 1968).

such a move would be more effective in reducing crime rates.[28] It might be pointed out, however, that one of the principal reasons the positive school emerged in the first place was dissatisfaction with punishment as a method of dealing with crime. Whether the return to a punishment philosophy would result in more effective methods of crime control remains to be seen.

RECOMMENDED READINGS

Cesare Beccaria, *On Crimes and Punishments,* tr. by Henry Paolucci, Bobbs-Merrill, Indianapolis, 1963. A small book, easily read, which continues to hold a great deal of force.

Jeremy Bentham, "An Introduction to the Principles of Morals and Legislation," in *The Works of Jeremy Bentham,* ed. by John Bowring, Russell & Russell, New York, 1962. Bentham's basic ideas on crime and punishment.

Hermann Mannheim, ed., *Pioneers in Criminology,* Patterson Smith, Montclair, 1972. Contains brief accounts of the lives and works of Cesare Beccaria (by Elio Monachesi, pp. 36–50), Jeremy Bentham (by Gilbert Geis, pp. 51–68), and criminal law reformer Edward Livingstone (by Joseph Mouledoux, pp. 69–83.)

Coleman Phillipson, *Three Criminal Law Reformers: Beccaria, Bentham and Romilly,* Dutton, New York, 1923, reprinted by Patterson Smith, Montclair, 1970. A more detailed account, focusing on the application of classical theory to the problems of reform.

Marcello T. Maestro, *Voltaire and Beccaria as Reformers of Criminal Law,* Columbia University Press, New York, 1942, reprinted by Octagon, New York, 1972. A thorough account of Beccaria's work, establishing the influence of Voltaire.

Andrew von Hirsch, *Doing Justice: The Choice of Punishments,* Hill & Wang, New York, 1976. A modern attempt to construct a uniform punishment system in the face of widespread sentencing disparity, similar to the efforts of Beccaria and Bentham.

The Twentieth Century Fund Task Force on Criminal Sentencing, *Fair and Certain Punishment,* Background Paper by Alan M. Dershowitz, McGraw-Hill, New York, 1976. Another modern attempt to address the same problems as did Beccaria and Bentham.

28. See, for example, James Q. Wilson, *Thinking About Crime,* Basic Books, New York, 1975 or Ernest van den Haag, *Punishing Criminals,* Basic Books, New York, 1975.

Marcello Maestro, *Cesare Beccaria and the Origins of Penal Reform,* Temple University Press, Philadelphia, 1973. The first full biography of Becaria in English, with an excellent bibliography and a foreword by Norval Morris.

CHAPTER THREE

The Positive School: Search for the Causes of Crime

The century between Beccaria and Lombroso marks a shift in man's thinking about himself that is of such magnitude that it can well be considered an intellectual revolution. During this century, the logic and basic methodology of objective, empirical, and experimental science became well established. Investigations, and their interpretations, began to provide a new intellectual approach, a new system of explanation of all phenomena, including man with his rich equipment of thought and emotion and his accumulated heritage of history, custom, tradition, mythology, and religion. Answers to the old, old question, What sort of creature is man?, began to be given using ideas compatible with the frame of reference of objective science.

Developments in biology rapidly led to the identification of man with the rest of the animal world. Darwin's attack on the problem of origins in terms of a carefully documented study of development or continuous growth—evolution—brought about the final break with the thought of the past. In his *Descent of Man* (1871), he presented evidence that man was the same general kind of creature as the rest of the animals, except he was more highly evolved or developed; he therefore had more skill, ability, and so on, but nevertheless he was indissolubly linked with the animal past. His ancestors were other animals not as highly evolved as *Homo sapiens*, but which nevertheless formed a continuous link with the earliest and simplest forms of animal life. Similarly among men, some were thought of as less

highly evolved or developed than others—in other words, some were nearer their ape-like ancestors than others in traits, abilities, and dispositions.

This was the intellectual atmosphere of educated people in Europe and America in the last half of the nineteenth century. Animal experimentation was becoming an accepted way of learning about man in physiology, medicine, and even in psychology and psychiatry. If the new objective approach to human behavior led to abortive absurdities, such as the phrenology of Gall and Spurzheim, it also led to an accumulation of data of the kind other investigators could use as a basis for further study, not simply as background for opinions and judgments. Man was beginning to appear to science as one of many creatures, with no special link with Divinity. Perhaps even more important, he was beginning to be understood, not as a self-determining creature who could do anything he made up his mind to do, but as a being whose conduct was determined by his biological and cultural antecedents. Lombroso was a part of, even a creature of, this intellectual world. He made use of it in his thinking about crime just as Beccaria had made use of his particular world 100 years or more before.

1. CESARE LOMBROSO

Born in Venice, of a Jewish family, Cesare Lombroso (1835–1909) was educated in medicine and became a specialist in psychiatry. His principal career was academic, as a professor of legal medicine at the University of Turin. His name came into prominence with the publication of his book, *L'uomo delinquente* (*The Criminal Man*), in 1876 in which he proposed that the criminal was a biological throwback to an earlier evolutionary stage—a man more primitive and savage than his noncriminal counterpart. The idea that some men might be reversions to an earlier form of life (i.e., atavistic) was originally suggested by Darwin, who had written: "With mankind some of the worst dispositions which occasionally without any assignable cause make their appearance in families, may perhaps be reversions to a savage state, from which we are not removed by many generations."[1]

1. Charles Darwin, *Descent of Man*, John Murray, London, 1871, p. 137.

Lombroso's theories will be discussed in more detail in a later section dealing with the development of various biological explanations of crime. But as a "founder" of a school of criminology (the positive school), Lombroso's name is something of an anomaly. It has been his fate to be known principally for his earliest formulation of a physical criminal type theory, but that certainly is not the basis of the positive school. The real basis of positivism in criminology is a conception of multiple factor causation, the factors being natural to man and his world, some biological and others environmental. No doubt stimulated by his distinguished pupils, Ferri and Garofalo, Lombroso did much by way of documentation of the effects of many of these factors. With this effort went, as a matter of course, many changes in the original simple evolutionary explanation of crime in terms of atavism and degeneracy. Yet some discussions of Lombroso's work deal almost exclusively with his born criminal type and ignore the later changes and elaborations.

The growth of his thinking is evident from the increase in the number of pages in successive editions of *L'uomo delinquente:*

1st edition, 1876, 1 volume, 252 pages;

2nd edition, 1878, 1 volume, 740 pages;

4th edition, 1889, 2 volumes, 1,241 pages (vol. I, 660; vol. II, 581);

5th edition, 1896–7, 3 volumes, 1,903 pages (vol. I, 650; vol. II, 576; vol. III, 677).

(1st edition published in Milan by Hoepli; other editions in Turin by Bocca)

Thus, 252 pages may have sufficed for an exposition of his original doctrine of evolutionary atavism as the explanation of crime, but 20 years later he needed over 1900 pages to include all the items and elements that appeared to be related to crime causation, running all the way from climate, rainfall, the price of grain, sex and marriage customs, criminal laws, and banking practices to national tariff policies, the structure of government, church organization, and the state of religious belief. The change in his thinking is very evident in his last book, published in 1911, two years after his death, under the title *Crime, Its Causes and Remedies.* This was specially prepared by Lombroso for the American reader as a summary of his life work.

It includes discussions of a great many factors related to crime causation, of which by far the largest number are environmental rather than biological.

It is clear, therefore, that Lombroso's later, more mature thought included many factors other than the physical or anthropological. He maintained that there are three major classes of criminals: (1) *born criminals*, to be understood as atavistic reversions to a lower or more primitive evolutionary form of development, and thought to constitute about one-third of the total number of offenders; (2) *insane criminals*, i.e., idiots, imbeciles, paranoiacs, suffers from melancholia, and those afflicted with general paralysis, dementia, alcoholism, epilepsy, or hysteria (strange bedfellows, to be sure); and (3) *criminaloids*, a large general class without physical stigmata, not afflicted with recognizable mental disorders, but whose mental and emotional makeup are such that under certain circumstances they indulge in vicious and criminal behavior (a concept perhaps not very different from the grab-bag category of psychopathic personality of later psychiatric and psychological theories). Lombroso conceded that well over one-half of all criminals were not born criminals in the sense that he used the term, nor were they insane or epileptic, but their defects were more subtle and involved—these he called criminaloids.

By the time of Lombroso's death in 1909, it was evident that his theories were too simple and naïve. Anthropology had more and more abandoned the Spencerian conception of uniform, linear, evolutionary types with man as the end product (and the nineteenth-century Englishman as the capsheaf of nature's perfect handiwork), and then the notion of the criminal as a physically atavistic type became quite meaningless. Psychiatry and psychology were already marshaling evidence to show that the relationship between crime and epilepsy, or between crime and insanity, was much more complex and involved than Lombroso had assumed—that they might be related only in the most casual and incidental manner.

By way of summary, the following points should be noted about Lombroso's work:

1. He consistently emphasized the need for direct study of the individual, utilizing measurements and statistical methods in anthropological, social, and economic data.

2. He began with the basic assumption of the biological nature of human character and behavior:

a. He first conceived of the criminal as a throwback to a more primitive type of brain structure, and therefore of behavior.

b. He later modified this to include general degeneracy or defectiveness.

c. He never claimed that the "born criminal" constituted more than 40%, probably less, only about one-third of the total criminal population.

3. With successive years of study, discussion, and contact with critics, he modified his theory and method more and more to include all kinds of social, economic, and environmental data. Through it all, he always attempted to be

a. 'objective' in method, often statistical;

b. 'positive' in the sense of deterministic;

c. faithful to the basic idea of cause as a chain of interrelated events, not the more familiar and popular doctrine of self-determinism of human behavior, to say nothing of the demonistic or vital dynamic doctrines often used to escape the implications of unpleasant facts in a deterministic system.

Present-day positivism in criminology has developed its own system of ideas in which little remains of Lombroso per se. Other writers[2] had anticipated his views and constructed somewhat similar formulations long before he came on the scene. Because of these earlier authors, Lindesmith and Levin have argued that Lombroso should not be considered the founder of positive criminology.[3] In particular, they point to the analysis of criminal statistics carried out by A. M. Guerry (1802–66) and Adolphe Quetelet (1796–1874).[4] Quetelet focused on the observation that the French national crime statistics, which had been compiled since 1825, were remarkably constant from one year to the next. He argued that this regularity was caused by various natural factors, such as age, sex, and climatic conditions. Guerry attempted to account for different crime rates in

2. See Havelock Ellis, *The Criminal*, 2nd ed., Scribner, New York, 1900, for a discussion of Lombroso's predecessors. Ellis mentions more than 20 authors who had previously explored in part the probable relation between physical character, mental traits, and criminal behavior. Several editions of this book have been reprinted.

3. Alfred A. Lindesmith and Yale Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42:653–71 (1937).

4. For a discussion of Quetelet and Guerry, see Leon Radzinowicz, *Ideology and Crime*, Columbia University Press, New York, 1966, pp. 29–42.

different localities, as well as changes in the crime rates of a single locality, by analyzing differences in general social conditions and in legislation. Both these men studied crime from the perspective of analyzing its causes, but both focused on social rather than biological conditions. Lindesmith and Levin speculated on why Lombroso's work received so much more attention[5]:

It may be that the theory of the born criminal offered a convenient rationalization of the failure of preventive effort and an escape from the implications of the dangerous doctrine that crime is an essential product of our social organization. It may well be that a public, which had been nagged for centuries by reformers, welcomed the opportunity to slough off its responsibilities for this vexing problem.

Radzinowicz made a similar comment[6]:

It served the interests and relieved the conscience of those at the top to look upon the dangerous classes as an independent category, detached from the prevailing social conditions. They were portrayed as a race apart, morally depraved and vicious, living by violating the fundamental law of orderly society, which was that a man should maintain himself by honest, steady work.

In spite of these criticisms, Lombroso's name is one that will long be remembered as important in the development of criminological thought. As Professor Sellin has well said:[7] "Any scholar who succeeds in driving hundreds of fellow students to search for the truth, and whose ideas after half a century possess vitality, merits an honorable place in the history of thought."

2. ENRICO FERRI

The most widely known of Lombroso's pupils was probably Enrico Ferri (1856–1928). Born in the Italian province of Mantua, Ferri attended the University of Bologna where he became interested in

5. Lindesmith and Levin, op. cit. p. 670.

6. Radzinowicz, op. cit. pp. 38–39.

7. Thorsten Sellin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42:896–97 (1937). This is a "critical comment" on the article by Lindesmith and Levin cited in footnote 3.

statistics, especially as applied to the study of crime. He continued his studies in Paris where he made a recognized contribution to the analysis of French crime for the period 1826–78. In this analysis, he made comparisons between French statistics and those available for Italy. For the latter he drew upon the work of Fornasari de Verse, whom he thus brought to public attention. This stimulated further effort on the part of others, notably W. A. Bonger, a Netherlander, whose *Criminality and Economic Conditions* (translated by H. P. Horton, Boston, Little Brown, 1916) represents a school of thought quite different from the biological determinism of the early work of Lombroso.

The basic cast of Ferri's thinking on the mainsprings of human behavior appeared in his earliest major publication, in 1878 when he was 21 years old, *The Theory of Imputability and the Denial of Free Will.* It was an able analysis of and attack on the favorite explanatory concept of the time, and foreshadowed much of the general view of causation and control of human behavior that was to characterize his life work. After his year of study in France, Ferri returned to the University of Turin, where he became a pupil of Lombroso. The two men complemented one another's thinking to a considerable extent. Ferri was a young socialist who, although interested in Lombroso's ideas of basic biological causation of crime, nevertheless consistently placed more emphasis on the interrelatedness of social, economic, and political factors in a situation always made up of many factors. Lombroso gave Ferri a more mature and balanced conception of objective or "positive" methodology. In his long and active life, he never indulged in demonological, other-world-powers explanations of events or of human behavior, and similarly, he avoided the convenient self-deterministic, "man can do anything he wants to do" cliché of the classical school.

By 1884, at the age of 27, Ferri had developed his ideas in two major publications: *L'omicidio-suicidio* (Rome, 1884) and his most famous work, *La sociologia criminale* (Turin, 1884). The latter was a revision and reformulation of his earlier *I nuovi orizzonti del diritto e della procedura penale* (*New Horizons of Criminal Law and Penal Procedure*) (Turin, 1881). His famous fourfold classification of criminals as insane, born, occasional, and criminal by passion first appeared in *The Homicide;* his expanded thought on the whole problem of crime was developed in his *Criminal Sociology.* His original

thesis was that crime is caused by a great number of factors classified as (1) physical (race, climate, geographic location, seasonal effects, temperature, etc.); (2) anthropological (age, sex, organic and psychological conditions, etc.); and (3) social (density of population, customs, religion, organization of government, economic and industrial conditions, etc.). In his more fully developed thought, he discussed a large number of *équivalents des peines* (substitutes for punishment), or more accurately, preventive measures. Among these he mentioned free trade, abolition of monopolies, inexpensive workmen's dwellings, public savings banks, better street lighting, birth control, freedom of marriage and divorce, state control of the manufacture of weapons, provision for marriage of the clergy, establishment of foundling homes, provision for public recreation, and so on, through a long list of social betterment measures. His preventive measures were in line with the political theory to which he subscribed—that the state is the principal instrument through which better conditions are to be attained.

Active in politics, Ferri was soon elected a deputy to the Italian Parliament by the Socialist party. In 1890 he changed universities, going to the University of Pisa as professor of criminal law, and thus, paradoxically, taking over the position held for so long by the great Italian leader of the classical school, Francesco Carrara (1805–88). The height of Carrara's career had been his effort in securing the adoption of a consistent, classically oriented penal code for the newly unified Italy, the Penal Code of 1889. So great was the prestige of Carrara, and so deeply ingrained were the views of the classical school, that Ferri found himself unable to influence Italian legal thinking. In a discussion of Ferri, Vincenzo Manzini concludes: "It is in part due to the influence of Carrara that the ideas of Lombroso, as developed by Ferri, never made serious headway in Italy."[8]

Ferri continued his political activity as a socialist, and was soon (1893) dismissed from his university position. He founded the Socialist paper *Avanti* in 1896 and did not return to academic life until 1904, when he was made professor of criminal law at the Royal University in Rome. As a visiting professor in various European and South American universities, his influence was considerable. He visited Argentina and contributed much in counsel and inspiration to

8. Vincenzo Manzini in *Encyclopedia of the Social Sciences*, Macmillan, New York, 1931, vol. III, p. 234.

the reformation of the penal legislation of that country. The result was the Revised Penal Code of 1921, a compilation essentially "positive" in approach and procedure.

After Mussolini came to power, Ferri was asked to undertake the preparation of a new penal code for Italy. This gave him the opportunity to put into legal practice the theories he had developed in his years of research and scholarship. The result, usually called the Ferri Project or the Ferri Draft of 1921, was a document in keeping with the author's positivistic theories and socialistic orientation. It denied moral responsibility and rejected the concept of punishment or of retribution for moral culpability. As such, it was too radical a departure from the classical doctrines of the past and was, therefore, rejected by the Italian Chamber of Deputies. This effort marked the height of his political influence. With this rejection, he came more and more to accept the Mussolini program of practical compromises. Before the end of his life there were those who felt that the great socialist-liberal had become a fascist. Hence, the harsh judgment of C. Bernaldo de Quiros, "At the end of his life, old and infirm, he assented to Fascism."[9]

The end of Ferri's career, assent to Fascism, highlights one of the problems of positivistic theory, namely, the ease with which it fits into totalitarian patterns of government. It is centered on the core idea of the superior knowledge and wisdom of the scientific expert, who, on the basis of his studies, decides what kind of human beings his fellow men who commit crime are, and who, on the basis of this knowledge and scientific insight, prescribes treatment without concern for public opinion and without consent from the person so diagnosed (i.e., the criminal). There is an obvious similarity between the control of power in society advocated in positivism and the political reality of centralized control of the life of the citizen by a government bureaucracy indifferent to public opinion. This is further exemplified in the life and work of Garofalo.

3. RAFFAELE GAROFALO

Raffaele Garofalo (1852–1934) is considered the third great Italian positivist. Born in Naples of a family of Spanish origin, though of the

9. C. Bernaldo de Quiros, "Enrico Ferri," in *Encyclopedia of the Social Sciences*, Macmillan, New York, 1931, vol. VI, p. 188.

Italian nobility, young Garofalo turned to a university education in law and a career in government. At a relatively early age he became a magistrate in the Italian courts and held a number of important positions in various parts of Italy, in which he achieved considerable distinction. He held the position of professor of criminal law at the University of Naples and was later named a Senator of the Kingdom. In 1903, he was appointed by the Minister of Justice to revise the code of criminal procedure, but this project had to be abandoned because of the political difficulties of the Italian government.

An active, prolific writer, Garofalo produced a succession of books and monographs on the subject of crime and criminals from 1880 on. The titles of his books, *Criminal Attempt by Insufficient Means; Indemnification of Persons Injured by Crime; The Socialist Superstition; International Solidarity in the Repression of Crime,* give some clue to the range of his interests and scholarship. He is best known, however, for his major work, *Criminology,* first issued as a monograph in 1880 and then expanded and published in regular book form in 1885. It has been reprinted and revised a number of times and translated into French, Spanish, and Portuguese. An English translation was published in the United States in 1914.[10]

Like Lombroso and Ferri, Garofalo was a self-conscious positivist, rejecting the doctrine of free will and supporting the position that crime can be understood only where it is studied by scientific methods. Since science deals with universals, he attempted to formulate a sociologic definition of crime that would be such a scientific universal, one that would "designate those acts which no civilized society can refuse to recognize as criminal and repress by means of punishment."[11] Such acts would constitute *natural crime;* that is, they would be offenses violating the two basic altruistic sentiments common to all peoples in all ages, namely, the sentiments of *probity* and *pity.* His "natural" definition of crime, as formulated by Gillin, is as follows[12]:

Crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an "injury to so much of the moral sense as is repre-

10. Raffaele Garofalo, *Criminology,* Little, Brown, Boston, 1914. (The bibliographical notes are from the translator's preface, p. xiii.)

11. Garofalo, op. cit. p. 33.

12. Quoted from John Lewis Gillin, *Criminology and Penology,* 3rd ed., Appleton-Century-Crofts, New York, 1945. This in turn is an adaptation and quotation from Garofalo, op. cit. p. 33–34. Reprinted by permission of Helen N. Gillin.

sented by one or the other of the elementary altruistic sentiments of probity and pity. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community—a measure which is indispensable for the adaptation of the individual to society."

Quaint as the terminology is, it still clearly indicates a psychological orientation rather than the physical-type orientation of Lombroso, whose approach had become known as "criminal anthropology." Garofalo did not identify with either Lombroso or Ferri, though he examined many of their ideas and offered numerous criticisms.[13] He conceded that his own work could be included in the school of criminal anthropology only on condition that "it be granted that of this science criminal psychology is the most important chapter."[14]

Having had a distinguished career as a magistrate, Garofalo was naturally concerned with reforms in criminal procedure and in the practical problem of what to do with the criminal. In a chapter,[15] "The Law of Adaptation," he outlines in detail a theory of punishment based on the simple Darwinian principle of adaptation with elimination of those unable to adapt. Society, like any natural body, must similarly eliminate those who show by criminal behavior that they are not adapted to civilized life. Three means of elimination are suggested: (1) *death* for those whose acts grow out of a "permanent psychologic anomaly which renders the subject forever incapable of social life"; (2) *partial elimination,* including long-time or life imprisonment and transportation for those "fit only for the life of nomadic hordes or primitive tribes," as well as the relatively mild isolation of agricultural colonies for young and more hopeful offenders; (3) *enforced reparation* for those lacking in altruistic sentiments who have committed their crimes under exceptional circumstances not likely to occur again.

Garofalo argued that his theory of punishment met the three basic conditions necessary to make it an effective instrument of public policy, namely, (1) that it satisfied the deep-seated public demand for punishment of the offender simply because he committed a crime; (2) that its general principle of elimination was sufficiently intimida-

13. Cf. Garofalo, op. cit. pp. 132–34, for criticisms of Ferri's classification of crime.

14. Ibid., author's preface, p. xxx.

15. Ibid., Part II, Ch. IX, pp. 370–408.

ting to contribute to deterrence; and (3) that the social selection resulting from its operation offered hope for the future by slow eradication of the criminals and of their progeny. In support of this last point he referred to the low crime rates in contemporary England and ascribed them to the effect of earlier harsh capital penalties, which had killed off most of the English criminal stock—hence, there was now no progeny of similar moral degeneracy to bedevil English society. He also noted the large proportion of failure when the reform of criminals had been attempted, notably in certain institutions in France and at the Elmira Reformatory in New York.[16]

His pessimism about reformation was a logical deduction from the data before him, and he should not be condemned for following a consistent line of thought, even though it led to conclusions not in accord with much popular sentiment of the time. Whether the hypothesis of psychological degeneracy of the moral anomaly type, which he assumed, was justified after a full examination of all the information known about criminals is quite another matter. Later research and scholarship have tended to say "no," but it must still be recognized that Garofalo was consistent and logical in the application of his point of view.

In the light of these ideas about the nature of the criminal and the course of action necessary for his ultimate control, it is not surprising to find that Garofalo managed to "adapt" to the Mussolini regime in Italy.

4. CONTEMPORARY POSITIVISM

The mistake must not be made of identifying positivism in criminology too closely with the specific theories of these early writers. "Positive" and "Italian" have sometimes been used as synonymous terms.[17] This is clearly a mistake. The essential point in positivism is the application of the scientific method to the study of the criminal and his environment in an attempt to determine the causes of crime. It must not be confused with the particular emphasis of one investigator or another (such as Lombroso's or Garofalo's biological approach or Ferri's economic one).

16. Ibid. p. 401.

17. For example, as used in Gillin, op. cit. p. 245 ff.

Positivism is based on several assumptions. First, by searching for the *causes* of crime, it is assumed that man's behavior is determined, at least to a certain extent, by forces beyond his control. Thus, the view of man in positivism necessarily entails at least a degree of determinism. Second, the search is for the causes of *crime*, as opposed to the causes of other human behaviors. Thus, it must be assumed that, at least to a certain extent, the causes of crime differ from the causes of other behaviors. Because of this assumption, the search for the causes of crime often takes the form of a search for the differences between criminals and noncriminals. Some theorists propose that the differences are biological or psychological or social, whereas others emphasize a "multiple factor approach," which combines elements of each. But the differences are then used to explain why one person becomes a criminal while another does not.

Most contemporary scientific criminology is positivistic in method and in basic formulations. In the chapters that follow, the major theories of crime causation within this frame of reference will be examined. If it seems that the evidence often turns out to be negative (or at least inconclusive) under careful examination, it must not be concluded that such results defeat the interests of a developing scientific criminology. It is just because the formulations of positivism are specific and thus susceptible to investigation that so many of these theories have been disproven. Earlier theories, formulated in terms of spirit-power, free will, or other vague generalities not susceptible to investigation or proof, are in no way superior merely because it has been impossible to disprove them. Failure to disprove a theory does not establish its validity; rather, it more often points to the fact that such theories are outside the scientific system of thought.

The failure of positivistic criminologists to establish the causes of crime reflects the fact that there is as yet no adequate theory of human behavior, either criminal or noncriminal. But there are reasons beyond mere historic interest for studying older theories of crime, even those that have been discredited. Such theories normally have been based in intuitive notions about crime and criminals, many of which retain their popular appeal even at the present time. It is only by studying these theories and the methods by which they have been tested that popular preconceptions about

crime that do not stand up can be discarded and contemporary issues and questions can be raised. What will be attempted in the following chapters, then, is a clarification of what is known and what is not known, with discussions as to what may reasonably be concluded from present information.

RECOMMENDED READINGS

Cesare Lombroso, *Crime: Its Causes and Remedies*, 1912, reprinted by Patterson Smith, Montclair, 1968. Lombroso's final work, emphasizing both biological and environmental factors in the causation of crime.

Gina Lombroso-Ferrero, *Lombroso's Criminal Man*, 1911, reprinted by Patterson Smith, Montclair, 1972. A concise presentation of the work of Lombroso, written by his daughter for American readers. Also of interest are the original "Introduction" by Lombroso, and the new "Introduction to the Reprint Edition" by Leonard D. Savitz.

Enrico Ferri, *Criminal Sociology*, Little, Brown, Boston, 1917, reprinted by Agathon, New York. Ferri's basic work in criminology.

Raffaele Garofalo, *Criminology*, 1914, reprinted by Patterson Smith, Montclair, 1968. Garofalo's basic work.

Hermann Mannheim, ed., *Pioneers in Criminology*, 2nd ed., Patterson Smith, Montclair, 1972. Contains an excellent thorough discussion of the work of Lombroso (by Marvin E. Wolfgang, pp. 232–91) and briefer accounts of Raffaele Garofalo (by Francis Allen, pp. 318–40) and Enrico Ferri (by Thorsten Sellin, pp. 361–83).

Francis A. Allen, "Garofalo's Criminology and Some Modern Problems," in his *The Borderland of Criminal Justice*, University of Chicago Press, Chicago, 1964. Garofalo's concepts of "natural crime," of criminal characteristics, and of social defense are discussed.

Alfred A. Lindesmith and Yale Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42:653–71 (1937). A detailed attack on Lombroso's work and his position in criminology, with a "comment" by Thorsten Sellin on pages 896–97.

Enrico Ferri, *The Positive School of Criminology*, edited with an introduction by Stanley E. Grupp, University of Pittsburgh Press, Pittsburgh, 1968. Three lectures by Ferri on a critique of the classical school, the causes of criminal behavior, and remedies for crime.

PART TWO

Positivist Theories Centering on Peculiarities or Abnormalities of the Individual

CHAPTER FOUR

Theories Related to Physical Appearance

Behind all physical type theories is the general idea of biological differences in behavior. All biological explanations rest on the assumption that *structure determines function*. Individuals behave differently because of the fundamental fact that they are somehow structurally different. Presumably, too, if there could be complete observations, or complete measurements, all differences between individuals would reduce to some kind of biological difference—and all differences in behavior would be due to some kind of individual structural difference.

Given this theoretical orientation, the logic and the methodology of research studies follow an easily understood pattern. Efforts to prove or to rationalize the more particularistic theories become a series of variations on a general theme of establishing, or failing to establish, significant individual differences. Measurement and statistical manipulations therefore become an inescapable and a necessary part of the research methodology in this whole area of theoretical interpretation.

One of the older "scientific" approaches in criminological theory has emphasized physical and biological abnormality as the distinguishing mark of the criminal. In this approach, the criminal is viewed as somehow characteristically different, abnormal, defective, and therefore inferior biologically. This biological inferiority is thought to produce in the criminal certain physical characteristics

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that make his appearance different from that of noncriminals. Early criminologists studied the physical appearance of criminals in an attempt to identify these characteristics. The real explanation of criminal behavior, in this view, is biological defectiveness and inferiority—physical and other characteristics are only symptoms or stigmata of the more fundamental inferiority.

1. FORERUNNERS OF PHYSICAL TYPE THEORIES: PHYSIOGNOMY AND PHRENOLOGY

The belief that unusual physical characteristics mark off the evil and socially obnoxious person is of ancient origin. Thus, Homer describes the thoroughly despicable Thersites as equally unattractive in physical form:

> One eye was blinking, and one leg was lame;
> His mountain shoulders half his breast o'erspread,
> Thin hairs bestrew'd his long misshapen head.
>
> *The Iliad*—Pope's translation.

Havelock Ellis describes the examination by a Greek physiognomist of the venerable Socrates. Upon hearing that the diagnosis showed that his face revealed him as brutal, sensuous, and inclined to drunkenness, Socrates admitted that such was his natural disposition but that he had learned to overcome these tendencies.[1]

Physiognomy—judging character from facial features—was a recognized study in the Europe of Cesare Beccaria. Eleven years after his *Essay on Crimes and Punishment* (1764), Johan Caspar Lavater (1741–1801), the Swiss scholar and theologian, published a four-volume work on physiognomy entitled *Physiognomical Fragments* (Zurich, 1775), which in its way received perhaps fully as favorable attention as the now better-known work of legal reform produced by Beccaria.

This work of Lavater systematized many popular observations and made many extravagant claims about the alleged relation between facial features and human conduct. The unfavorable trait indicator of beardlessness in men, or the opposite, the bearded woman, was

1. Havelock Ellis, *The Criminal*, 2nd ed., Scribner, New York, 1900, p. 27.

noted, as was the significance of a "shifty" eye, a "weak" chin, an "arrogant" nose, and so on. Details of these classifications are of little importance now.[2] The principal significance of physiognomy lies in the impetus it gave to the better organized and logically more impressive view that has come to be known as phrenology.

The eminent European anatomist, Franz Joseph Gall (1758–1828), is generally given credit for the systematic development of the doctrines of phrenology, though he did not originate or make much use of that term. In 1791, he first started publishing materials on the relations between head conformations and the personal characteristics of individuals. Closely allied with Gall in the development of phrenology was his student and onetime collaborator, John Gaspar Spurzheim (1776–1832). It was Spurzheim rather than Gall who carried their doctrines to England and America, lecturing before scientific meetings and stimulating interest in their ideas.

All writers on phrenology were concerned with and devoted their efforts to an elaboration of what was basically Aristotle's idea of the brain as the organ of the mind. Three basic propositions underlie their formulations:

1. The exterior of the skull conforms to the interior and to the shape of the brain.

2. The "mind" consists of faculties or functions.

3. These faculties are related to the shape of the brain and skull; hence, just as the brain is the "organ of the mind," these "bumps" are indicators of the "organs" of the special faculties.

Gall listed 26 such faculties; Spurzheim increased the number to 35.[3] Their lists included faculties described as amativeness, conjugality, philoprogenitiveness (love of offspring), friendliness, combativeness, destructiveness, acquisitiveness, cautiousness, self-esteem, firmness, benevolence, constructiveness, ideality, and imitativeness. These were said to be grouped into three regions or compartments, one the "lower" or active propensities; another the moral sentiments; and the third the intellectual faculties. Crime was

2. Cf. Erik Nordenshiöld, *The History of Biology*, Knopf, New York, 1928.

3. For a history of phrenology, as well as a defense of its use in modern times, see Sybil Leek, *Phrenology*, Macmillan, New York, 1970.

said to involve the lower propensities, notably amativeness, philoprogenitiveness, cobativeness, secretiveness, and acquisitiveness. These propensities, however, could be held in restraint by the moral sentiments or the intellectual faculties, in which case no crime would be committed. Character and human conduct were thus conceived of as an equilibrium in the pull of these opposite forces. Animal propensities might impel the individual to crime, but they would be opposed by the higher sentiments and intelligence. Just as other organs were strengthened by exercise and enfeebled by disuse, so were the "organs" of the mind. Careful training of the child, and even of the adult, in right living would strengthen the "organs" of desirable faculties and inhibit through disuse the lower propensities with their concomitants of crime and vice.[4]

The important role played by phrenology in the practical affairs of the time must not be overlooked by the student. Phrenologists were the *medicine men* of their day, lecturing for fees to an eager public, counseling and advising on public and private welfare, conducting seminars (the forerunner of today's workshops) for the instruction of lay leaders, and providing a "scientific reading of character" (for a fee) to those who sought guidance. Itinerant lecturers (possibly better understood as entertainers) spread over the countryside, as ubiquitous as the lightning rod or sewing machine salesmen of the day, instructing the public with a curious mixture of moral homiletics, demonstrations of hypnotism or mesmerism, and the practice of character reading according to the phrenological method.

Experts and laymen alike applied the convenient categories of phrenology to account for the fortunes, or misfortunes, of themselves or their friends. The formal reports of various public institutions had recourse to this terminology in accounting for the behavior of their inmates. Thus, in the *Annual Reports* of the Eastern State Penitentiary of Pennsylvania, some use of these concepts of causation (changing and modifying the list of terms used as the years went by) were made for nearly 75 years following the opening of the penitentiary in 1831. A concrete example may help to illustrate the point. In the report for 1856, the "predominant passions" accounting for the crimes of 416 prisoners were listed as follows[5]:

4. Arthur E. Fink, *The Causes of Crime: Biological Theories in the United States, 1800–1915*, University of Pennsylvania Press, Philadelphia, 1938, pp. 8–9.

5. *Twenty-seventh Annual Report*, Eastern State Penitentiary of Pennsylvania, 1856, p. 42.

Propensity	*Number*	*Per Cent*
Jealousy	1	0.2
Combativeness	14	3.4
Amativeness	34	8.2
Destructiveness	72	17.3
Acquisitiveness	295	70.9
Total	416	100.0

The Eastern State Penitentiary did not abandon the phrenological frame of reference for its reports on crime causation until after 1904.[6]

In the perspective provided by the 100 years or so since phrenology was discredited as a scientific discipline, it is interesting to note that the most serious obstacle to its general acceptance was the implication of the deterministic nature of its analysis. If human conduct were the result of the organs of the mind incorporated in the cells and tissues of the brain, which followed laws of heredity and of growth and decay, then logically man's fate was in the hands of his physiology. It was the need to show that man was still master of his fate (as well as to respond to criticisms of the fatalistic position implied by his earlier work) that led Gall to publish his *Des Dispositions innées de l'âme et de l'esprit du matérialisme* (1811), in which he argued that phrenology was not fatalistic, that *will* and *spirit* were basic and supreme in the direction and control of human behavior.[7]

The obvious scientific criticism of the phrenological theory of crime is that it is hypothetical. Phrenology disappeared as a scientific discipline because no one was able to substantiate with verifiable data its conceptions of physiological "organs" of the mind or their relation to particular types of behavior. But it was rejected and opposed by teachers, preachers, judges, and other leaders who influence public opinion, not because it was unscientific but because it tended to contradict one of the period's most cherished ideas, namely, that man is the master of his own conduct and capable of making of himself what he will. This is the same objection that has been made to all subsequent deterministic theories of human behavior.

6. Fink, op. cit. pp. 154–55, fn. 6.

7. *Encyclopedia of the Social Sciences*, Macmillan, New York, 1931, vol. VI, p. 548.

2. CRIMINAL ANTHROPOLOGY: LOMBROSO TO HOOTON

Cesare Lombroso (1835–1909) is the conspicuous illustration of a writer who made the idea of physical criminal type an important part of his earlier theory of crime causation. The general theory was one of degeneracy, the physical characters or "stigmata" were simply indicators of inadequacy and degeneracy. The evolutionary theory of the time gave a further indication as to the nature of the degeneracy: it was atavistic, that is, a reversion to an earlier form of animal life. In other words, the criminal type resembled lower or more ape-like ancestors, and the stigmata of criminality were the characteristics assumed to belong to these earlier evolutionary forms.

Though only of historic importance now, it is interesting to note some of the stigmata that were supposed to reflect the degenerate and atavistic "type" of man who became a criminal[8]:

1. Deviation in head size and shape from type common to race and region from which the criminal came
2. Asymmetry of the face
3. Excessive dimensions of the jaw and cheek bones
4. Eye defects and peculiarities
5. Ears of unusual size, or occasionally very small, or standing out from the head as do those of the chimpanzee
6. Nose twisted, upturned, or flattened in thieves, or aquiline or beak-like in murderers, or with a tip rising like a peak from swollen nostrils
7. Lips fleshy, swollen, and protruding
8. Pouches in the cheek like those of some animals
9. Peculiarities of the palate, such as a large central ridge, a series of cavities and protuberances such as are found in some reptiles, and cleft palate
10. Abnormal dentition
11. Chin receding, or excessively long, or short and flat, as in apes

8. This is a partial listing adapted from the basic work by Gina Lombroso Ferrero, *Criminal Man According to the Classification of Cesare Lombroso*, Putnam, New York, 1911, pp. 10–24; reprinted by Patterson Smith, Montclair, 1972, and summarized by John Lewis Gillin, *Criminology and Penology*, 3rd ed., Appleton-Century-Crofts, New York, 1945, p. 79. Reprinted by permission of Helen N. Gillin.

12. Abundance, variety, and precocity of wrinkles

13. Anomalies of the hair, marked by characteristics of the hair of the opposite sex

14. Defects of the thorax, such as too many or too few ribs, or supernumerary nipples

15. Inversion of sex characters in the pelvic organs

16. Excessive length of arms

17. Supernumerary fingers and toes

18. Imbalance of the hemispheres of the brain (asymmetry of cranium)

In an examination of a group of 383 Italian criminals for stigmata such as these, Lombroso found 21% who had only one such anomaly; 43% had five or more anomalies, hence as many as five in any individual was taken as the minimum indication of physical criminal (degenerate) type. This was considered a statistical indication of the proportion of criminals who were of "born criminal type." But if Lombroso found that only 21% of criminals showed only one anomaly checked against such a general list, he also found that a more careful control group comparison, as indicated in the results given in Table 4-1 (considering anomalies of the skull only), of criminals and Italian soldiers did not directly substantiate the earlier glib generalizations on physical characteristics of criminals.

TABLE 4-1 Percentage Distribution of Skull Anomalies Found by Lombroso[9]

Conditions as to Anomalies of Skull	Criminals Guilty of Homicide and Sentenced to: *Penal Servitude*	*Imprisonment*	Noncriminal Italian Soldiers
	$N = 346$	$N = 363$	$N = 711$
No anomalies of skull	11.9	8.2	37.2
One or two anomalies	47.2	56.6	51.8
Three or four anomalies	33.9	32.6	11.0
Five or six anomalies	6.7	2.3	0.0
Seven or more anomalies	0.3	0.3	0.0
	100.0	100.0	100.0

9. Cesare Lombroso, *L'uomo delinquente* (The Criminal Man), 4th ed., Bocca, Torino, 1889, p. 273, as quoted by Enrico Ferri, *Criminal Sociology*, D. Appleton, New York, 1900, p. 12.

Though not impressive from the standpoint of supplying valid statistical proof of Lombroso's contentions, this table nevertheless illustrates the evolving methodology of scientific research in criminal anthropology. Lombroso deserves respectful credit for utilizing the method of control group comparisons in the application of statistical methods to his problem. He was no statistical expert, even for his day, and it remained for others to make more exact and careful application of more adequate statistical methodology to the problem of physical differences between criminals and noncriminals.

Such a study was made in England by a group of investigators usually identified with the name of Charles Goring and the famous book entitled *The English Convict: A Statistical Study.*[10] Begun in 1901, it involved careful measured comparisons of approximately 3000 English convicts and large groups of noncriminal Englishmen. The study covered a period of eight years, and involved the assistance and cooperation of many persons such as wardens, prison physicians, and other professionals. Notable among the last-named was the statistical expert Karl Pearson. Because of the enormous amount of work involved (this was before the day of computers or calculators) in making the extensive computations and necessary interpretations, the study was not completed and published until 1913.

The convicts studied were all recidivists (and therefore assumed to constitute a thoroughly criminal type of person), and there were comparisons with university undergraduates (Oxford and Cambridge), hospital patients, and the officers and men of units of the British army, notably the Royal Engineers.

The study had originally been conceived in response to a challenge by Lombroso to have an impartial committee study 100 born criminals, 100 persons with criminal tendencies, and 100 normal persons.[11] Lombroso offered to retract his theories if the physical, mental, and psychological characteristics of the three groups were found to be identical. This challenge was never really met, since Lombroso's opponents said it was impossible to distinguish between the three groups accurately.

10. Charles Goring, *The English Convict: A Statistical Study*, His Majesty's Stationery Office, London, 1913. This has been reprinted by Patterson Smith, Montclair, 1972.

11. Edwin D. Driver, "Introductory Essay" in Charles Goring, *The English Convict*, Patterson Smith, Montclair, 1972, p. vii.

Goring's study, begun a number of years later, was strictly a comparison between a group of convicts—persons convicted of crimes and imprisoned—and a group of unconvicted persons, so that no attempt was made to distinguish between born criminals, persons with criminal tendencies, and normal persons. Also, the methodology relied totally on the use of objective measurements of physical and mental characteristics. Lombroso himself had objected to total reliance on measurements, maintaining that many anomalies were "so small as to defy all but the most minute research."[12] He argued that these could be detected by the eye of the trained observer, but could not be measured. Finally, the study, as it evolved, went well beyond any attempt to prove or disprove Lombroso's theories, as Goring advanced his own theory of hereditary inferiority. Goring's theory will be presented in a later chapter, and in this chapter we will concentrate on his attempt to disprove Lombroso's theory that criminals were of a distinct physical type.

Lombroso had asserted that criminals, compared with the general population, would show anomalies (i.e., differences or defects) of head height, head width, and degree of receding forehead, as well as differences in head circumference, head symmetry, and so on. Goring, in comparing prisoners with the officers and men of the Royal Engineers, found no such anomalies. There were no more protrusions or other peculiarities of the head among the prisoners than among the Royal Engineers. Goring also compared other characteristics, such as nasal contours, color of eyes, color of hair, and left-handedness, but found only insignificant differences. He compared groups of different kinds of criminals (burglars, forgers, thieves, etc.) on the basis of 37 specific physical characteristics. He concluded that there were no significant differences between one kind of criminal and another that were not more properly related to the selective effects of environmental factors.[13]

The one general exception to his conclusion was a consistent "inferiority in stature and in body weight." The criminals were one to two inches shorter than noncriminals of the same occupational groups, and weighed from three to seven pounds less.[14] Goring was

12. Cesare Lombroso, *The Female Offender*, Unwin, London, 1895; quoted in Goring, op. cit. p. 16.

13. Goring, op. cit. pp. 196–214.

14. Ibid. p. 200.

satisfied that these differences were real and significant, and he interpreted them as indicating a general inferiority of a hereditary nature. This interpretation agreed with his general thesis of hereditary inferiority (as measured by comparisons of mental ability and various other indices of hereditary influence) as the basis for deviant conduct.[15]

Goring has been criticized for being too anxious to disprove Lombroso's theories.[16] Supporters of Lombroso maintained that Goring had actually found significant differences between criminal and noncriminal groups for a variety of measures, but that he minimized these differences by "correcting" them for such variables as age and stature. When the differences were still significant after "corrections" had been made, Goring impugned the validity of the original data. Other assessments of Goring's work have generally found more support for Lombroso's theories than Goring admitted.[17]

Goring considered Lombroso's work unscientific. He argued that "the whole of Lombroso's enterprise was conducted . . . with the unconscious intention of stamping a preconceived idea with the hall mark of science"[18] and that it could not be considered an impartial investigation into the truth or falseness of Lombroso's theory. He also criticized Lombroso's willingness to declare that people who had never been involved with the law were criminals solely on the basis of their physical appearance.[19] Goring himself maintained that the use of the term "criminal" should reflect a legal reality—a person who has broken the law and been convicted—rather than any vague ethical or moral conception of "the kind of men who, whether they have or have not committed crime, we believe to be criminal at heart."[20] Finally, he argued that even if specific differences did exist between the criminal and the noncriminal, this would not indicate that the criminal was abnormal. Rather, the criminal was "a selected class of normal man" whose "qualities may present extreme degrees

15. Ibid. p.287, especially Table 119.

16. Edwin D. Driver, "Charles Buckman Goring," in Hermann Mannheim, ed., *Pioneers in Criminology*, Patterson Smith, Montclair, 1973, p. 440.

17. Driver, "Introductory Essay," op. cit. p. v.

18. Goring, op. cit. p. 16.

19. For example, he states that "on one occasion [Lombroso] pointed out, as an example of the criminal type, a youth who had never appeared in a court of justice: 'he may not be a legal criminal,' was the airy utterance, 'but he is a criminal anthropologically.' " Ibid. p. 15.

20. Ibid. p. 21.

from the normal average."[21] Goring's point is similar to saying that professional basketball players are not tall because they are an abnormal anthropological type, but because they are selected at least partially on the basis of their height.

The seriousness with which the quest for evidence of a physical-criminal type has been taken by many scientific investigators is often overlooked by college students today. Arthur E. Fink, in his *Causes of Crime: Biological Theories in the United States, 1800–1915,* reviewed the work of more than 35 authors who published a much larger number of studies bearing on the subject.[22]

But in spite of these numerous and extensive efforts to show that criminals were somehow physically different from noncriminals, the weight of expert and informed opinion was against the proposition of a physical-criminal type. The general conclusions of Goring on the matter came to be accepted by most modern criminologists. Goring wrote[23]:

> We have exhaustively compared, with regard to many physical characters, different kinds of criminals with each other, and criminals, as a class, with the law-abiding public. . . . Our results nowhere confirm the evidence [of a physical criminal type], nor justify the allegation of criminal anthropologists. They challenge their evidence at almost every point. In fact, both with regard to measurements and the presence of physical anomalies in criminals, our statistics present a startling conformity with similar statistics of the law-abiding class. Our inevitable conclusion must be that *there is no such thing as a physical criminal type.*

Goring's conclusions stood essentially unchallenged until E. A. Hooton, a Harvard anthropologist, undertook an extensive research project on physical type that reached different findings. He reexamined Goring's work and extensively criticized his methology and conclusions. Hooton's language was positive and to the point[24]:

21. Ibid. p. 24.

22. Fink, op. cit. pp. 99–150. Some of the more important studies reviewed in this work are August Drahms, *The Criminal: His Personnel and Environment,* Macmillan, New York, 1900 (reprinted by Patterson Smith, Montclair, 1971); Frances Kellor, *Experimental Sociology,* Macmillan, New York, 1901, pp. 35–49; and Hamilton D. Wey, "Criminal Anthropology," *Proceedings of the National Prison Association,* 1890, pp. 274–91.

23. Goring, op. cit. p. 173. (Italics in the original.)

24. E. A. Hooton, *The American Criminal: An Anthropological Study,* Harvard University Press, Cambridge, 1939, vol. 1, p. 309. This edition has been reprinted by Greenwood Press, Westport, Ct.

Criminals are organically inferior. Crime is the resultant of the impact of environment upon low grade human organisms. It follows that the elimination of crime can be effected only by the extirpation of the physically, mentally, and morally unfit; or by their complete segregation in a socially aseptic environment.

The Hooton study was well financed and involved large numbers as well as an elaborateness of detail in measurement and analysis, which, on the surface at least, seemed very impressive. Hooton's total group included over 17,000 people from ten states; about 14,000 were prisoners and the rest a noncriminal control group. Among his findings, the following may be conveniently summarized as representative of his conclusions[25]:

1. In 19 out of 33 measurements there was "a significant difference between criminals and civilians." (p. 229)

2. "Criminals are inferior to civilians in nearly all their bodily measurements." (True for every offense group.) (p. 229)

3. "Low foreheads, high pinched nasal roots, nasal bridges and tips varying to both extremes of breadth and narrowness, excess of nasal deflections, compressed faces and narrow jaws, fit well into the picture of general constitutional inferiority." (p. 306)

4. Physical inferiority is significant principally because it is associated with mental inferiority. (pp. 307–8)

5. The basic cause of the inferiority (probably) is due to heredity and not to situation or circumstance. (p. 306)

6. Dark eyes and blue eyes are deficient in criminals, and blue-gray and mixed eyes are in excess; homogeneous irides relatively rare, zoned and speckled irides in excess; eyefolds are in excess, but eyebrows that are thin to very thin occur more frequently. (p. 301)

7. Tattooing is more common among criminals than among civilian controls. (p. 301)

8. Thin lips and compressed jaw angles occur more frequently; marked overbite less frequently among criminals than among civilians. (p. 302)

9. The ear of the criminal tends to a slightly rolled helix, and a more perceptible Darwin's point than that of the civilian; also more extreme variations of ear protrusion, and the criminal ear tends to be small. (p. 304)

25. Hooton, op. cit. Page references in the text are to vol. I.

10. Low and sloping foreheads, long, thin necks, and sloping shoulders, are similarly in excess among criminals in comparison with civilians. (p. 304)

A very extensive portion of Hooton's work is devoted to the elaborate comparison of one group of criminals with another on the basis of type of offense. Thus, he describes in great anthropological detail the characteristics of different types of criminals, such as murderers, thieves, robbers, and rapists. He concludes that his data show that tall thin men tend to be murderers and robbers; tall heavy men are killers and also commit forgery and fraud; undersized men are thieves and burglars; short heavy persons commit assault, rape, and other sex crimes; whereas men of "mediocre" physique flounder around among the crimes (as in everything else) with no specialty.[26]

In all this description of criminal types, Hooton ignores the far-reaching implications of the simple but well-known fact that at least one-half of his prisoners had been in prison before and that in their previous commitment, a very large proportion had been convicted of a different type of crime than the one involved when he studied them. Thus, Hooton found a group of men convicted of robbery (in several degrees); they were his robbers. But had he looked back to the records of the crimes committed at an earlier sentence, many of his present robbers would have been thieves or sex offenders or forgers or something else. Had he carried out this elementary step of good research methodology, it is not improbable that most of his type differences would have been compromised, if not dissipated entirely. He might even have been forced to abandon some of his extravagant conclusions.

Hooton's work immediately stirred up controversy and critical reaction. The reviews were mostly unfavorable,[27] though some were in at least partial agreement.[28] The principal criticism centered on

26. E. A. Hooton, *Crime and the Man*, Harvard University Press, Cambridge, 1931, pp. 376–78. This is a one-volume popularization of the more elaborate three-volume work cited above; it has also been reprinted by Greenwood Press, Westport, Ct., 1968.

27. See the following particularly pertinent reviews: E. H. Sutherland in *Journal of Criminal Law and Criminology*, Mar.–Apr. 1939, pp. 911–14; J. Shalloo in *Annals of the American Academy of Political and Social Science*, Sept. 1939; E. B. Reuter in *American Journal of Sociology*, July, 1931; Waldemar Kaempffert in *The New York Times*, Oct., 1, 1939; T. C. McCormick, in *American Sociological Review*, Apr., 1940.

28. See defenses of Hooton by H. B. Warner in *Federal Probation*, Feb., 1940; A. H. Compton in *Scientific Book Club Review*, Jan., 1939; also the more extended articles by William B. Tucker, "Is There Evidence of a Physical Basis for Criminal Behavior?" in *Journal of Criminal Law and Criminology*, Nov.–Dec., 1940, pp. 427–37.

his rationale for translating physical differences between the criminal and the noncriminal groups into evidence of inferiority in the criminal group. Unless there is independent evidence of the inferiority of certain kinds of physical characteristics, conclusions regarding inferiority must be drawn from the association with criminality. This is a nice illustration of circular reasoning—use criminality to discover the inferiority, then turn around and use the inferiority to explain or account for the criminality.

A second criticism was that Hooton obtained but tended to disregard many differences just as great, or greater, than those between criminals and noncriminals. Thus, there were differences between samples taken in different states, between different occupational groups, between groups measured by different investigators, and so on, which were just as great, or even greater, than those found between criminals and noncriminals or between some of the different types of criminals he discussed at length. He ignored or failed to correct for most of these differences.

Finally, Hooton argued that physical inferiority is inherited, but presented little or no evidence for his claims. As is well known, the state of physical development is greatly influenced by previous conditions of nourishment and other environmental factors. Thus, the 11-pound difference in weight he found between the civilians and the prisoners can take on significance only under conditions of a known, standardized diet. This necessary control was ignored.

For perspective on the Hooton study, it is necessary to associate it with the so-called constitutional school in biology and psychology. The basic assumption is that constitutional (hereditary) differences denoting superiority or inferiority of organisms are reflected in established individual biological or psychological differences. The differences Hooton found were therefore taken as clear indicators of biological inferiority on the part of criminals, and this constitutional inferiority then became the most important element in accounting for such inferior individuals. Within this frame of reference, Hooton's conclusions are natural and logical. He could scarcely reach other conclusions without changing his frame of reference. Since his empirical data throw no light on the adequacy, or inadequacy, of his theoretical approach, it follows that he uses his frame of reference to make meaningful the empirical data he has collected. That is an inescapable problem in practical research procedure.

From today's perspective, Hooton's frame of reference may appear to be naive. It is important to keep in mind, however, that without the monumental work undertaken by Hooton, it would not be possible to dismiss his ideas so easily. It is even more important to keep in mind the fact that contemporary studies of crime also are carried out within frames of reference. The empirical data used to support these studies today may be seen as irrelevant in the future if the frame of reference is once again changed.

3. BODY TYPE THEORIES: KRETSCHMER TO CORTÉS

Some of the more interesting attempts at relating criminal behavior to physical characteristics are the so-called body type theories. The body type theorists argue that there is a high degree of correspondence between body type and mental type, or temperament. It should be recalled that Lombroso had attempted to establish some relation between mental disorder and physical characteristics. Many others, before and after Lombroso, have made similar attempts.

One of the best known of the body type theorists is Ernst Kretschmer[29]; he identified three body types: the *leptosome*, or *asthenic* type, was tall and thin; the *athletic* type had well-developed muscles; and the *pyknic* type was short and fat. The 1955 German edition of Kretschmer's book[30] has an entire chapter, *Konstitution und Verbrechen* (Constitutional Types and Crime), in which his interpretations and conclusions are said to be based on a statistical analysis of 4414 cases. The treatment, nevertheless, is in the form of verbal generalizations and assertions without specific reference to statistical information. No detailed statistical analysis is presented. There is said to be a preponderance of the athletic type

29. Ernst Kretschmer, *Körperbau und Charakter*, Springer-Verlag, Berlin, 1921; 2nd ed., same publisher, 1922. English translation of second edition by W. J. H. Sprott, under the title *Physique and Character*, Kegan Paul, Trench, Trubner, London, 1925, and Harcourt, Brace, New York, 1926. A slight revision and enlargement of this English edition was published in 1936 by The Humanities Press, New York. This revision of the English edition was reprinted in 1973 by Cooper Square, New York. In the meantime there have also appeared several editions in German that so far have not been translated into English. In 1955, there appeared what is listed as the "twenty-first and twenty-second" edition, published by Springer-Verlag, Berlin, Göttingen, and Heidelberg. This edition has been extensively revised and enlarged. New material has been introduced, past criticisms of the method and theory involved are met, and quantitative and statistical findings on the prevalence of the various types are included whenever possible.

30. Ernst Kretschmer, *Körperbau und Charakter*, 21/22 Auflage, Springer-Verlag, Berlin, Göttingen, and Heidelberg, 1955, ch. 17, pp. 331–57.

in connection with crimes of violence; of the asthenic (leptosome) type in connection with petty thievery and fraud; the pyknic type tends to deception and fraud most generally, or next in frequency, crimes of violence. The *dysplastic*, or *mixed* type, is said to tend to offenses against decency and morality, though this type also involved in crimes of violence. No mutually exclusive relationships are claimed, only general tendencies to the predominance of certain types in certain general classes of offenders.[31] No specific comparisons appear to have been made with samples of the noncriminal population not under treatment for mental illness. It is therefore impossible to determine what differences or peculiarities of type, if any, characterize the criminals studied.

The later work of William Sheldon,[32] especially his book on delinquent youth, represents a considerable methodological improvement in the application of "constitutional" theory to human behavior problems. Sheldon takes his underlying ideas and terminology of types from the fact that man begins his life as an embryo that is essentially a tube made up of three different tissue layers, namely, an inner layer or endoderm, a middle layer or mesoderm, and an outer layer or ectoderm, and he constructs a corresponding physical and mental typology consistent with the known facts from embryology and the physiology of development. The endoderm gives rise to the digestive viscera; the mesoderm to bone, muscle, and tendons of the motor-organ system; the ectoderm to connecting tissue of the nervous system, skin, and related appendages. Sheldon's basic type characteristics of physique and temperament are briefly summarized in the following scheme[33]:

Physique	*Temperament*
1. *Endomorphic:* relatively great development of digestive viscera; tendency to put on fat; soft roundness through various regions of the body; short tapering limbs; small bones; soft, smooth, velvety skin	1. *Viscerotonic:* general relaxation of body; a comfortable person; loves soft luxury; a "softie" but still essentially an extrovert

31. Ibid. pp. 338, 346–49.

32. William H. Sheldon (with various associates), *Psychology and the Promethean Will*, 1936; *Varieties of Human Physique*, 1940; *The Varieties of Temperament*, 1942; *Varieties of Delinquent Youth*, 1949; *Atlas of Man*, 1954. All published by Harper, New York and London.

33. The schematic arrangement of basic types has been constructed by the present writer (V.) from the discussion and elaboration of characteristics in Sheldon, *Varieties of Delinquent Youth*, op. cit. pp. 14–30 inclusive.

2. *Mesomorphic:* relative predominance of muscles, bone, and the motor-organs of the body; large trunk; heavy chest; large wrists and hands; if "lean" a hard rectangularity of outline; if "not lean" they fill out heavily	2. *Somotonic:* active, dynamic, person; walks, talks, gestures assertively; behaves aggressively
3. *Ectomorphic:* relative predominance of skin and its appendages, which includes the nervous system; lean, fragile, delicate body; small, delicate bones; droopy shoulders; small face, sharp nose, fine hair; relatively little body mass and relatively great surface area	3. *Cerebrotonic:* an introvert; full of functional complaints, allergies, skin troubles, chronic fatigue, insomnia; sensitive to noise and distractions; shrinks from crowds

According to Sheldon, the types are not to be considered entities, but rather degrees of interrelation, or tendency, for one or another type to predominate. Each is therefore given a value on a scale from one to seven, and the resultant type descriptions, both physical and mental, are given as three numbers instead of the customary wordy confusion of the usual psychiatric characterizations. A person whose somatotype is 6-1-3 would be strongly endomorphic, whereas 1-7-2 would be strongly mesomorphic and 3-2-6 strongly ectomorphic. Throughout, the avowed purpose is not that of obtaining results, but of developing the methodology of an "operational psychiatry."[34]

Sheldon presented individual case histories, uniformly written according to a rigorous case outline, of 200 young males who had had a period of contact, during the decade 1939–49, with the Hayden Goodwill Inn, a small (capacity 80), somewhat specialized, and unusual type of rehabilitation home for boys in Boston, Massachusetts. He found that these youths were decidedly high in mesomorphy, and low in ectomorphy, with the average somatotype being 3.5-4.6-2.7. Sheldon had earlier studied 200 college students, who were apparently nondelinquents, and had found that the average somatotype was 3.2-3.8-3.4. The difference between these two groups with respect to mesomorphy and ectomorphy is significant ($p = .001$).[35]

The definition of delinquency used in this study, however, is so specifically related to the problem of developing a methodology for a more objective psychiatric classification that it has only an incidental

34. Sheldon, *Varieties of Delinquent Youth*, op. cit. p. 96.

35. Juan B. Cortés, *Delinquency and Crime*. Seminar Press, New York, 1972, p. 14.

(and superficial) resemblance to the customary usage of the term in criminology. Sheldon speaks of "biological delinquency,"[36] "mental delinquency,"[37] and "primary criminality,"[38] not as aspects of behavior judged to be criminal in the usual legal or sociological sense, but as factors to be rated in accordance with the extent to which observed behavior conforms to that which a particular constitutional type might be expected to produce. Thus, one of his cases,[39] an extreme mesomorphic athlete, "a really healthy looking tomcat,"[40] whose sexual activity resulted in numerous cases of "trouble," is not judged delinquent, but rather the opposite, because "he seemed to transmit a fairly good physical stock."[41] Subsequently, Sutherland reexamined Sheldon's figures, classifying each youth according to the seriousness and consistency of his delinquent behavior, as reported in the case history.[42] This classification showed that the most delinquent of the youths were significantly more mesomorphic than the least delinquent.[43]

As is to be expected, Sheldon accepts with but few reservations, and quotes with approval, the more spectacular findings of the Hooton study.[44] His general approval of the basic premise of the Hooton interpretation is explicit and emphatic[45]:

> Hooton . . . considers it a datum of common sense that there are structurally superior and inferior human organisms, and that a relationship must exist between structural and behavioral inferiority. Hooton has searchingly looked for, seen and tried to objectify his report on such a relationship. . . . His report is couched in a somewhat different frame of language from that used in the present project, but without question the general impression he gathered from his 15,000 criminals was similar to our impressions

36. Sheldon, op cit. pp. 782–819.

37. Ibid. pp. 820–83.

38. Ibid. p. 679.

39. Ibid. pp. 476–79.

40. Ibid. pp. 477.

41. Ibid. p. 478.

42. E. H. Sutherland, "Critique of Sheldon's *Varieties of Delinquent Youth*," *American Sociological Review*, 18:142–48 (1951).

43. Cortés, op. cit. p. 17.

44. Sheldon, op. cit. pp. 751–52. Sheldon quotes from E. A. Hooton, *Crime and the Man*, op. cit. pp. 374–88.

45. Ibid. p. 752. (Italics in the original.)

from ten years of observation at the Hayden Goodwill Inn. *It can be summarized in a single sentence: Where essential inadequacy is present the inadequacy is well reflected in the observable structure of the organism.*

The association between mesomorphy and delinquency was also found in a study by the Gluecks, who compared 500 persistent delinquents with 500 proven nondelinquents.[46] The two groups were matched in terms of age, general intelligence, ethnic-racial derivation, and residence in underprivileged areas. Photographs of the boys were mixed together and then visually assessed for the predominant body type.[47] By this method, 60.1% of the delinquents but only 30.7% of the nondelinquents were found to be mesomorphs.[48] The analysis included a study of 67 personality traits and 42 sociocultural factors, in order to determine which of these were associated with delinquency.[49] The Gluecks found that mesomorphs, in general, were "more highly characterized by traits particularly suitable to the commission of acts of aggression (physical strength, energy, insensitivity, the tendency to express tensions and frustrations in action), together with a relative freedom from such inhibitions to antisocial adventures as feelings of inadequacy, marked submissiveness to authority, emotional instability, and the like."[50] They also found that those mesomorphs who became delinquent were characterized by a number of personality traits not normally found in mesomorphs, including susceptibility to contagious diseases of childhood, destructiveness, feelings of inadequacy, emotional instability, and emotional conflicts.[51] In addition, three sociocultural factors—careless household routine, lack of family group recreations, and meagerness of recreational facilities in the home—were strongly associated with delinquency in mesomorphs.[52]

The Glueck study has been criticized because there was no control for the rapid body changes that occur in adolescence, because

46. S. Glueck and E. Glueck, *Physique and Delinquency*, Harper, New York, 1956.

47. This procedure is discussed in S. Glueck and E. Glueck, *Unraveling Juvenile Delinquency*, Harvard University Press, Cambridge, 1950, pp. 192–96.

48. Glueck and Glueck, *Physique and Delinquency*, op. cit. p. 9.

49. For a complete list of these traits and factors, see Glueck and Glueck, *Physique and Delinquency*, pp. 27–31.

50. Ibid. p. 226.

51. Ibid. p. 221.

52. Ibid. p. 224.

the method of somatotyping involved only visual assessment and not precise measurements, and because the delinquent population included only institutionalized youth.[53] In an attempt to overcome these problems, Cortés used a precise measurement technique to somatotype 100 delinquents, of whom 70 were institutionalized and 30 were on probation or under suspended sentence. He also somatotyped 100 private high school seniors who had no record of any delinquency, and 20 institutionalized adult felons. He found that 57% of the delinquents were high in mesomorphy, as compared to only 19% of the nondelinquents.[54] The mean somatotype of the nondelinquents was 3·9-3·5-3·5, the mean somatotype of the delinquents was 3·5-4·4-3·1, and the mean somatotype of the criminals was 2.8-5.4-3.1.[55]

In order to determine whether body type was associated with temperament, Cortés had 73 boys who were clearly classified as to body type (i.e., whose predominant rating was at least 4.5 and exceeded the other two ratings by at least one-half unit) describe themselves in terms of a set of traits associated with the three temperaments. Table 4-2 presents the results of this experiment, and shows that physique is clearly associated with self-description of temperament. This procedure was repeated with 100 college girls and with the 20 convicted adult felons, and similar results were obtained. Finally, using McClelland's Test for Need for Achievement,

TABLE 4-2 Intercorrelations among the Primary Components of Physique (Parnell's Method) and Self-description of Temperament[56]

	Components of temperament		
Components of physique	Viscerotonia	Somatotonia	Cerebrotonia
	($N = 47$)	($N = 38$)	($N = 51$)
Endomorphy	+.510**	−.138	−.269
Mesomorphy	−.389*	+.694**	−.369*
Ectomorphy	−.150	−.256	+.430*

*, **, Significant at $p = .01$ and $p = .001$ respectively.

53. These criticisms are reviewed in Cortés, op. cit. pp. 19–21.

54. Ibid. p. 28.

55. Ibid. p. 30.

56. Ibid. p. 53. Reproduced by permission of the author and publisher.

Cortés found that mesomorphy was associated with need for achievement (n Ach) and with need for power (n Power), as revealed in Table 4-3.

TABLE 4-3 Correlations between Physique, Need for Achievement, and Need for Power[57]

Motive	Condition	*N*	Endomorphy	Mesomorphy	Ectomorphy
n Ach	Nondelinquents	91	+.150	+.537****	−.195
	Nondelinquents	100	+.165	+.353***	−.273***
	Delinquents	100	+.012	+.200*	−.056
n Power	Nondelinquents	100	−.083	+.092	+.080
	Delinquents	100	−.061	+.230**	+.032

*, **, ***, ****, Significant at $p = .05, .02, .01$, and .001, respectively.

The standard sociological criticism to findings such as these is that differences in behavior reflect the effects of social selection processes and that differences in attitude reflect the effects of social stereotyping. For example, Gibbons is quoted as criticizing the Glueck's study as follows[58]:

These findings were the result of careful measurement, so that there is little question as to their accuracy. However, a sociologist would be quick to point out that a process of *social selection*, rather than biological determinism, probably explains the results. In other words, it is not unlikely that recruits to delinquent conduct are drawn from the group of more agile, physically fit boys, just as "Little League" baseball or "Pop Warner" league football players tend toward mesomorphy. Fat delinquents and fat ball players are uncommon, because social behavior involved in these cases puts fat, skinny, or sickly boys at a disadvantage. If so, the findings reflect the workings of social factors, not biology.

Cortés reacts strongly to this type of criticism[59]:

It is exasperating to find this type of objection again and again (in practically all books written by sociologists). For one thing, nobody nowadays

57. Ibid. pp. 88, 101. Reproduced by permission of the author and publisher.

58. Don C. Gibbons, *Delinquent Behavior*, Prentice-Hall, Englewood Cliffs, 1970, pp. 75–76, quoted in Cortés, op. cit. pp. 39–40. (Italics in original.)

59. Cortés, ibid. p. 40. (Italics in original.) Quoted by permission of the author and publisher.

speaks of biological *determinism;* but, second, the fact that there may be a process of social selection, does not detract in the least from the relevance of many other variables. Who makes this selection? Why is this particular selection made and not an entirely different one? Is it not, as Gibbons concedes, because fat, skinny, or sickly boys are at a disadvantage? Do physique and constitutional factors play no role whatsoever in baseball, boxing, or football? It is his last sentence that shows more clearly the one-sidedness of this point of view: "the findings reflect the workings of social factors, not biology." The proper and logical conclusion for the entire paragraph, after the explanation he advances, should rather be: "the findings may reflect the workings of *both* social *and* biological factors". Human behavior, as most scholars in the field do not hesitate to recognize, is biosocial in nature, that is, it has *both* biological and social causes. As Eysenck has written, "It is time the pendulum started swinging back from an exclusive preoccupation with social causes to an appropriate appreciation and understanding of biological causes."

His own conclusion is equally strong[60]:

> Delinquents and possibly criminals differ from nondelinquents and noncriminals in being *physically* more mesomorphic, more energetic and potentially aggressive *temperamentally*, and in showing higher need for achievement and power *motivationally*.

Cortes's conclusion may be criticized on several counts. The small number of subjects in the experiments makes such a broad generalization at least somewhat questionable. The differences in mesomorphy between the groups in this study may reflect differences in socioeconomic class rather than in criminality, since the nondelinquent group was from a private high school, and thus probably upper class, whereas most criminal and delinquent groups are predominantly lower class.[61] The experiments did not actually measure the temperament of the different body types, but measured self-perception of temperament, and no theoretical case is made that those who perceive themselves as energetic (mesomorphs) are more potentially aggressive than those who perceive themselves as tense and anxious (ectomorphs). The study does not directly relate delin-

60. Ibid. p.348. (Italics in original.)

61. Cortés, ibid. p. 89. The author states that the nondelinquents "belong to higher social backgrounds, possess greater intelligence, and are more favored by many other variables. . . ."

quency and criminality to temperament and motivation. Rather, delinquency and criminality are shown to be related to mesomorphy, and mesomorphy is shown to be related to certain temperaments and motivations. The experiments linking mesomorphy to the "energetic" temperament included only 7 delinquents and 20 adult criminals, an extremely small sample. It was found that mesomorphy was related to a higher need for achievement, but no significant differences between the delinquent and nondelinquent groups were observed.[62] Delinquents were significantly higher in need for power than nondelinquents, but no significant differences were found between body types of the nondelinquents.[63] This appears to be rather a mixed bag of results to support such a strong conclusion.

4. SUMMARY

Physical type theories turn out to be a more or less sophisticated form of shadow-boxing with a much more subtle and difficult to get at problem, namely, the constitutional factor in human behavior. There is no clear evidence of physical type, as such, having any consistent relation to legal and sociologically defined crime. Improved research techniques may help clarify the issue in the future.

Yet it is by no means certain that organic inferiority may not be a factor contributing to unfavorable selection in the human struggle for existence—those who fail to maintain themselves may be expected to be the less vigorous and the less able. Some, but by no means all, crime represents failure in the competitive struggle for existence. Some crime may be rather a form of successful aggressive adjustment. Extent of operation as a selective factor is likely to be the best clue to a more definite answer to the question of how important physical type really is. Present findings tend to be negative.

RECOMMENDED READINGS

Charles Goring, *The English Convict: A Statistical Study,* 1913, reprinted by Patterson Smith, Montclair, 1972. Of particular interest is the excellent Introductory Essay written for the reprint edition by Edwin D. Driver, as well as the Introduction to the Abridged Edition of 1919 by Karl Pearson.

62. Ibid. p. 89.

63. Ibid. p. 102.

Gina Lombroso-Ferrero, Enrico Ferri, Sante de Sanctis, William A. White, H. D. Newkirk, and Paul Bowers, "Charles Goring's *The English Convict:* A Symposium," *Journal of Criminal Law and Criminology,* 5:207–40, 348–63 (1914–15). Contemporary discussions of Goring's work, including many criticisms.

Edwin D. Driver, "Charles Buckman Goring," in Hermann Mannheim, ed., *Pioneers in Criminology,* Patterson Smith, Montclair, 1972. An overview of Goring's principal ideas and methods in their historical context.

Earnest A. Hooton, *Crime and the Man,* Harvard, Cambridge, 1939, reprinted by Greenwood Press, Westport, Ct. 1968. Hooton's one-volume popularization of the three-volume *The American Criminal.*

Harry L. Shapiro, "Earnest A. Hooton," *International Encyclopedia of the Social Sciences,* Macmillan and the Free Press, New York, 1968, vol. 6, pp. 511–13. An overview of Hooton's life and work.

J. S. Wallerstein, "Biological Inferiority as a Cause for Delinquency," *Nervous Child,* 6:467–72 (1947). Hooton's findings reviewed and analyzed.

William H. Sheldon, *Varieties of Delinquent Youth,* Harper, New York, 1949. Sheldon's study of 200 delinquent youths, in which Sheldon concludes that they are "decidedly mesomorphic."

Edwin H. Sutherland, "Critique of Sheldon's *Varieties of Delinquent Youth,*" *American Sociological Review,* 16:10–14 (February, 1951). Sheldon's data do not justify his conclusions, according to Sutherland.

Sheldon Glueck and Eleanor Glueck, *Physique and Delinquency,* Harper, New York, 1956. The Gluecks study of 500 persistent delinquents and 500 proven nondelinquents, focusing on body structure.

Juan B. Cortés, *Delinquency and Crime: A Biopsychosocial Approach,* Seminar Press, New York, 1972. Presents the author's studies and reviews other investigations into the influence of body type on criminality.

W. L. L. Rees, "Constitutional Psychology," in *International Encyclopedia of the Social Sciences,* op. cit., vol. 13, pp. 66–76. Reviews the general issues raised in this chapter.

CHAPTER FIVE

Theories of Mental Deficiency and Feeblemindedness

Next to physical type as an indication of constitutional inferiority, mental deficiency probably has been the most widely utilized concept for the explanation of crime. Several theories of crime causation have been based on the belief that criminals are less intelligent than law-abiding citizens. As the simple but bold hypotheses of the early physical type theorists crumbled one by one (e.g., physiognomy, phrenology, atavism), the idea persisted, nevertheless, that there was a constant element that characterized criminals, namely, low intelligence.

The basic hypothesis of those who promulgated the concept that criminality was the conduct of people of low intelligence continued to be that of constitutional inferiority. The general logic of their theory remained unchanged: Criminals are people characterized by certain stigmata of constitutional inferiority. The shift in emphasis from physical differences as an indication of criminal type to mental differences was not difficult to make, for both preserved the image of the criminal as an inferior person.

The earliest mental differences to which relatively precise measuring techniques were applied were associated with intelligence—whatever that much-used word was supposed to mean at the time. With the development of mental tests (or intelligence tests, as they came to be known), aspiring research workers began to apply such tests to many different groups and to draw inferences from their

comparisons. Early testing of the intelligence of prisoners generally verified the hypothesis that criminals (or at least those who were incarcerated) were mentally inferior. Later, more ambiguous results were obtained, and for a time the image of the criminal as feebleminded, or as below average in intelligence, fell into disrepute. In the 1970s, however, there was renewed support for the criminological theories based on the idea of inferior intelligence, particularly as applied to juvenile delinquents.

The object of the present chapter is to explore somewhat more critically the significance of these changes in inferences relating to intelligence and crime.

1. BACKGROUND AND RELATED TERMINOLOGY

The language and literature of all people have words to describe, and stories to illustrate, the conduct of the "fool," i.e., the "dull-witted," the "slow," or the "stupid" individual whose understanding is no more than that of the young child. Similarly, the senseless behavior of the insane has been described in the folklore and the literature of peoples the world over.

Under the general explanatory principle of demonology, such phenomena were ascribed in many lands to possession by the devil. Persons who today would be recognized as insane or severely retarded were believed, like the leper and the epileptic, to be under the power or influence of the evil one, and, as such, were "accursed" by God. The hopeless victims were often banished as "unclean" and forced into exile and relatively certain death. This story is so well known that it needs no retelling.[1]

In the rationalist transition from demonological explanations to naturalistic ones, ideas about these afflictions were modified. Instead of being explained as people "accursed by the Deity," they were explained as "curses" of nature. Inheritance and "family line of descent" became the naturalistic way of accounting for such misfortune. Like father, like son, the saying goes, and if it was not the father who was seen as the source of insanity or feeblemindedness, then it was the mother, a grandparent, or some other relative.

1. See, for example, the biblical injunction that lepers dwell apart and call from afar, "Unclean, unclean." Leviticus 13:45–46 and Luke 17:12–13. Although in the case of leprosy this can be associated with the fear of contagion, there is evidence that the insane and the retarded were looked upon and treated in similar fashion.

The latter decades of the nineteenth century saw an almost universal acceptance of the general proposition that people are first and foremost biological beings and that their biology is closely related to the rest of the animal world. The evolutionary theories of Charles Darwin, Herbert Spencer, and others in the last century, led to an emphasis on the biological nature of mankind. The tendency of people to attempt to live harmoniously in social groups, to recognize political authority, to accept a social contract, was thus conceived as having developed with, and in the same manner as their biology: that is, as "evolution" from more elementary ancestors.

In this view, social evolution, i.e., the origin and growth of social groups and the development of civilization itself, tended to be viewed as an aspect of, and essentially as the result of the evolution of the biological organism. The same logic applied in the case of such afflictions of man as feeblemindedness and insanity. Hence the prevalence of explanations in terms of atavism, constitutional inferiority, innate depravity, and similar concepts.

Early usage included within the category *insane* the type of persons otherwise called feebleminded, morons, idiots, imbeciles, simpletons, and fools.[2] The distinction between the "mentally deficient" and the "mentally deranged" seems to have been introduced independently by a French psychiatrist, Jean E. D. Esquirol (1772–1840),[3] and an American, Isaac Ray (1807–81),[4] about the year 1838. Ray, for example, distinguished between those mental faculties that functioned abnormally subsequent to their development (mania and dementia, in his terminology) and those that either had never developed or were defective in development (idiocy and imbecility—the idiot being defined at the time as one who was without reasoning ability, and the imbecile as one whose development had been arrested at an early stage).

Ideas about such "faculties of the mind" have changed greatly

2. For a brief account of the history of the use in criminology of the single category to cover both the insane and the retarded, as well as the emotionally disturbed, and the subsequent differentiation among these types of persons, see A. E. Fink, *Causes of Crime: Biological Theories in the United States, 1800–1915*, University of Pennsylvania Press, Philadelphia, 1938, pp. 211ff.

3. Jean Etienne Dominique Esquirol, *Des Maladies mentales* (1838), tr. by E. K. Hunt as *Mental Maladies*, Lea & Blanchard, Philadelphia, 1845; also *Des Illusions chez les aliénés* (1832), tr. by Liddell as *Observations on the Illusions of the Insane*, Renshaw & Rush, London, 1833.

4. Isaac Ray, *A Treatise on the Medical Jurisprudence of Insanity*, C. C. Little & J. Brown, 1838, pp. 68–95; reprinted by Harvard University Press, Cambridge, 1962.

since then, but the essential point of Ray's distinction remains. *Mental deficiency* or *mental retardation* continues to be thought of as representing a far lower than average potential for the development of intellect. This is sometimes due to a genetic disorder, as in Down's syndrome (or mongolism), or it may be present in a person who is apparently physically normal, but whose mental capacity is limited as the result of some shortcoming or failure in the developmental process. On the other hand, in instances of *mental derangement* or *mental illness,* the deficits are of entirely different character. The mentally ill person may have a normal or above normal intelligence, but has an emotional disturbance that impairs his ability to function. In the extreme case, the mental ability has become curiously warped and twisted so that the reasoning leads to very different conclusions than those arrived at by an ordinary individual. At the present time, the terms *mental retardation* and *mental illness* are employed with the same general idea of the essential distinction first pointed to by Esquirol and Ray.

The publication of the report on the Jukes family by R. L. Dugdale (1841–83) in 1875 focused attention on heredity as a basic factor in individual misfortune as well as in community "social problems."[5] Later, several additional studies of "degenerate families" appeared, which added to the argument that "degeneracy" and "innate depravity" were causes of crime.[6] In these elaborate case studies, the excessive prevalence of feeblemindedness was noted as part of the story of general "degeneracy," but no use was made of any precise measures, and there were no comparative statistical studies of "normal" families as controls. The prevalence of hereditary degeneracy was generally established by such criteria as alcoholism, fornication, prostitution, and illegitimacy, and the methods used for the determination of insanity and mental deficiency were far from rigorous.

These popular studies of degenerate families probably supported

5. Richard L. Dugdale, *The Jukes*, Putnam, New York, 1877; reprinted by Arno, New York, 1970. The original publication was an appendix to the 1875 Annual Report of the Prison Association of New York. Dugdale was an investigator and field agent for the Prison Association at that time, and thus obtained the materials for this study as part of the normal discharge of his routine duties. Note that the fourth edition of the book, which appeared in 1910, had an introduction by Franklin Giddings.

6. Among the most important studies were H. H. Goddard, *The Kallikak Family*, Macmillan, New York, 1912; A. H. Estabrook, *The Jukes in 1915*, Carnegie Institute, Washington, D.C., 1916; A. H. Estabrook and C. B. Davenport, *The Nam Family*, New Era Pub. Co., Lancaster, Pa., 1912.

the commonsense, man-on-the-street conclusion that criminals are what they are because they do not know enough to understand the hazardous nature of criminality or the satisfying rewards of a law-abiding life. But critical scientific judgment requires more exact and systematic procedures than were possible in such case studies before any considered conclusions can be drawn. Accurate comparisons call for exact measurements, and therefore the critical investigation of the relationship between crime and mental ability could come only after the development of intelligence tests and their applications to this problem.

2. INTELLIGENCE TESTING AND CRIME

The systematic observation and recording of individual differences has been a principal concern of experimental psychologists. The exact measurement of individual differences in "reaction time" has long been a commonplace in the psychological laboratory. Other and often more subtle differences have also been studied, such as the ability to memorize, to complete or to straighten out sentences, to complete pictures, to recognize the meanings of words, and to do mental arithmetic. A variety of attempts have been made to measure these differences. For example, in 1880, a German psychologist, H. Ebbinghaus (1850–1909), devised a test of the ability to memorize so that the differences observed among individuals in this respect could be expressed on a numerical scale. This is the essential idea of an intelligence test, the object of which is to express numerically differences among persons in their ability to perform a variety of "mental" operations that, taken together, are considered "intelligence" or an indicator of intelligence.[7]

The distinguished French psychologist Alfred Binet (1857–1911) first took intelligence testing out of the laboratory and applied it to

7. For a short factual account of the development of intelligence tests, see the article by Robert L. Thorndike, "Intelligence and Intelligence Testing," in *International Encyclopedia of the Social Sciences*, Macmillan and the Free Press, New York, 1968, vol. VII, pp. 421–29. Also, see textbooks on psychological testing and chapters on this subject in general psychology texts, such as Lee J. Cronbach, *Essentials of Psychological Testing*, 3rd ed., Harper & Row, New York, 1970, pp. 197–226; Philip H. DuBois, *A History of Psychological Testing*, Allyn and Bacon, Boston, 1970; David A. Goshin, *The Search for Ability*, Russell Sage, New York, pp. 19–44; Frank S. Freeman, *Theory and Practice of Psychological Testing*, Holt, Rinehart and Winston, New York, 1962, pp. 1–23; Gardner Lindzey, Calvin S. Hall, and Richard F. Thompson, *Psychology*, 2nd ed., Worth Publishers, New York, 1978, Ch. 12, pp. 351–78.

the persisting problem of retardation in the Paris schools. In 1892, he became assistant director of the then recently founded psychological laboratory at the Sorbonne (he became director in 1894, holding that position until his death) and began his lifelong quest for a "scale" to measure intelligence, not as homogeneous, but as possessing many aspects and variations. He therefore tried to find many different types or kinds of performances, or problems, in which intelligence would be displayed. Since he conceived of intelligence as native ability rather than "learned behavior," he searched constantly for mental tasks that would be common to all children and yet would not be likely to be encountered as the subject matter of instruction in the school or the home.

In 1904, Binet became a member of a commission to formulate policy for the administration of special classes in the public schools of Paris. Here he set about to construct a scale of tests with which to better diagnose feebleminded students and slow learners in the schools. In this task he had the valuable assistance and collaboration of Théodore Simon, the medical officer of the Paris schools. Their first scale of tests appeared in 1905, nearly 15 years after Binet had started to give serious attention to the problem. The *Binet-Simon Scale of Intelligence* (also known as the *Binet-Simon Intelligence Test*) was revised in 1908 when the concept of "mental age" was added. A final revision appeared in 1911 just before Binet's death.

With the success of the Binet-Simon scale in Paris, numerous revisions, extensions, or adaptations were made in many lands. In the United States, probably the best known and most widely used has been the *Stanford Revision and Extension of the Binet-Simon Scale*, developed by Lewis M. Terman. Binet's 1908 scale consisted of 54 individual tests arranged in order of difficulty so that the easiest test might be passed by a child of three, with the most difficult requiring the ability of an average adult. The *Stanford Revision* consists of 90 tests, similarly arranged in order of difficulty from the three-year-old level to that of the "superior adult."

In its original formulation, intelligence quotient, or IQ, was determined as a function of the mental age of the person being tested. Although this method has now been discarded in favor of one employing means and standard deviations,[8] the concept of mental age

8. For a discussion of this method of computing IQ, as well as a discussion of the problems of the "mental age" method, see Cronbach, op. cit. pp. 215–18.

added an interesting but muddled chapter to the problem of determining the intelligence levels of adults through measurement. To understand its effect on criminological literature, it will be helpful to review the essential points in the story of the use of these ideas in mental testing and in the testing of criminals.

The idea of mental age is basically sound common sense in the case of children. Obviously, an average nine-year-old can comprehend and solve more difficult and more abstract problems than an average eight-year-old. This is also true of other ages, since with each year, ability increases. Hence, a mental age of nine on tests is the level of difficulty in test material mastered by an average nine-year-old.

The IQ was simply the ratio of mental age divided by chronological age, and multiplied by 100 for ease of numerical representation. Thus, in our illustration above, $IQ = MA/CA \times 100$, or substituting $9/9 \times 100 = 100$. That is to say, average or normal ability at every age level is $IQ = 100$, or more accurately, is the case when the mental age and the chronological age are the same.

For adults, some arbitrary age, such as 16, must be assumed to represent the level of full mental development beyond which additional years do not bring additional ability. No one would expect the 28-year-old to be brighter and more able than he was at age 27, or 26, yet when did his mental age cease advancing with chronological age? One of the widely followed practices of the earlier American mental testers was to assume that the normal or average adult mental age was 16 (as a result of scattered test results on a few adult groups without adequate standardization). Accordingly, when the IQ was to be determined for anyone beyond chronological age 16, that figure rather than the subject's actual chronological age would be used as the denominator in the equation for the computation of the IQ score.

The early mental testers were also faced with the problem of assigning an appropriate mental age test score to the definition of feeblemindedness. This matter was crucial if there was to be an effort to determine the correlation between this state and criminal behavior. One of the most logical and widely followed definitions came out of the experience of H. H. Goddard at the New Jersey Training School for the Feeble Minded at Vineland. He gave intelligence tests to all the inmates at the institution and to all new inmates on

admission. This testing program disclosed no inmate with a mental age over 13. Goddard therefore made the seemingly logical and obvious inference that mental age 12 (IQ 75, on the assumption that full mental ability is reached at chronological age 16) marked the upper limit of feeblemindedness, since clearly no one would be committed to an institution for the feebleminded who was not thought by the community to be feebleminded.[9]

With such standards as bases for comparisons, Goddard and many other psychologists gave intelligence tests to the inmates of prisons, jails, hospitals, and various other public institutions. In Goddard's book, *Feeblemindedness: Its Causes and Consequences,* there is a list of many such studies of the intelligence of criminals. In these studies, the proportions said to be feebleminded varied considerably. At one extreme, a study found 89% to be feeble-minded; at the other extreme, only 28% were so found. The median study, in Goddard's list of studies, had 70% of prisoners diagnosed as feebleminded.[10] Inasmuch as this is significantly higher than the percentage in the entire population, and even 28% would be a high figure, it was concluded that low intelligence and criminality were related. Even if the point were made, as many criminologists were later to do, that the prison population is not representative of the criminal population, but rather that portion of it of the lowest social class, being least capable of escaping the clutches of the law and least able to avoid a verdict of guilt at trial, nonetheless the figures produced by Goddard would apparently have established a relationship between criminality and low intelligence as measured by IQ. This putative relationship was to be challenged, however, by the more general testing of large cross sections of the male population that took place with the conscription in World War I.

Intelligence testing in World War I began against the background of this frame of reference for determining those fit for military service. Following Goddard, the Army Psychological Corps at first made the conventional assumption that those of mental age 12 or below were feebleminded, and therefore not fit for military service. As a later analysis was to show, this procedure led to a diagnosis of

9. H. H. Goddard, "Feeblemindedness and Delinquency," *Journal of Psycho-Asthenics,* 25:168–76 (1921).

10. H. H. Goddard, *Feeblemindedness: Its Causes and Consequences,* Macmillan, New York, 1914, p. 569; reprinted by Arno, New York, 1972.

feeblemindedness for a distressingly large proportion of the draft army. As analyzed by Zeleny, these proportions were as shown in Table 5.1.

TABLE 5-1 World War I Draft Army Intelligence Distribution[11]

IQ Equivalent (Base age: 16)	Below mental age indicated	Percentage of draft army in this category
81.25	13	47.3
75.0	12	30.3
68.75	11	17.6
62.5	10	10.0
56.25	9	5.3
50.0	8	2.1

The patent fallacy of assuming that nearly one-third of the population (as represented by the draft army) should be considered feebleminded was generally recognized. Thus Goddard wrote, soon after the war, "The most extreme limit that anyone has dared to suggest is that one percent of the population is feebleminded."[12] And again, a few years later:

> The war led to the measurement of intelligence of the drafted army with the result that such an enormous proportion was found to have an intelligence of 12 years and less that to call them all feeble minded was an absurdity of the highest degree. . . . We have already said that we thought 12 was the limit, but we now know that most of the twelve, and even of the ten and nine, are not defective.[13]

Despite this experience, and despite the frank change of mind of men like Goddard, many of the early testers of prisoners' intelligence continued to report their results in terms of IQ groupings and percentage feebleminded. The interpretation generally given was the conventional one of assuming normal mental age to be 16

11. L. D. Zeleny, "Feeblemindedness and Criminal Conduct," *American Journal of Sociology*, 38:564–76 (Jan., 1933), especially p. 569. The tabular arrangement with IQ equivalents are by the present writer (V.). Reproduced by permission of the publisher, the University of Chicago Press.

12. H. H. Goddard, "Feeblemindedness and Delinquency," op. cit. p. 173.

13. H. H. Goddard, "Who Is a Moron?" *Scientific Monthly*, 24:41–46 (1927).

years, and the mental age of 12 years and below to be feebleminded.

Characteristic of this phase of intelligence testing research with criminals were the efforts and the conclusions of F. H. Kuhlman, for many years Director of the Division of Research, Minnesota State Board of Control. In the 13th, 15th, and 16th *Biennial Reports of the State Board of Control*, for the years 1926, 1930, and 1932, respectively, he published in considerable detail the results of his testing program for the Minnesota institutions, including those for the prison and the reformatory. Some of the findings from these several studies are summarized in Table 5-2.

TABLE 5-2 Intelligence of Minnesota Prisoners on Kuhlman IQ Scores[14]

	Stillwater Prison		St. Cloud Reformatory	
Years	% of total in IQ 0–74	No. of Cases	% of total in IQ 0–74	No. of Cases
1925–26	42	880	25	803
1929–32	49.2	943	31.0	1130

Kuhlman's interpretation was explicit and positive, as given in the discussion of the 1925–26 report[15]:

In the general population a relatively very small percentage have an I.Q. of 0–74. If intelligence had been no factor at all in the commission of crimes, a relatively very small percent of the population in the institutions should fall under this I.Q. classification of 0–74. The percentages . . . should run parallel with the percentages of the general population that fall under the successive I.Q. classifications, giving much the larger percentages as of average or near average intelligence (I.Q. 100), and very small percentages for the two extremes of low and high.

The Kuhlman findings, however, do not check out when mental age, and not IQ, is used as the standard of comparison. In 1934–35 the present writer (V.) with Kuhlman's permission, examined his original worksheets, compiled at the time of the routine admissions

14. *Biennial Reports* of the Minnesota State Board of Control for the years 1926, 1930, and 1932, St. Paul, Minn.

15. *Biennial Report* of the Minnesota State Board of Control for 1925–26, St. Paul, Minn., p. 55.

examinations given during the calendar years 1930–32, and comprising a total of 1077 Stillwater and 1127 St. Cloud cases. The median mental age for the Stillwater group was 13 years and 1.2 months; for the St. Cloud cases it was 13 years and 11.2 months. The median mental age of the World War I draft army had been 13 years and 1.8 months.[16] In other words, the median mental age of the draft army and of the prisoners at Stillwater was found to be almost identical; at St. Cloud the median mental age was actually about seven months higher than that of the draft army. These are the same tests and the same institutions (but not quite the same time period) as those presented in Kuhlman's tables; the difference reflects the use of mental age rather than IQ as the standard of comparison.[17]

In an unpublished report of this study, the present writer (V.) stated:

When the results are plotted on graph paper there is apparent a high degree of uniformity throughout the three curves (i.e. for the draft army, and for Stillwater and for St. Cloud). It is especially pertinent to note that no concentration of population for either institution occurs at the lower ends of the curves. The apparent concentration in the I.Q. group 0–74 tends to disappear when mental age is taken as the standard of comparison. It is entirely possible that this concentration reflects no more serious condition than the inaccuracy of the arbitrary base age chosen (16) for converting mental age into I.Q. scores.

If one applies Kuhlman's reasoning to the World War I draft army, then the criterion that indicated from 42 to 49% feebleminded for the prison at Stillwater would have placed 30.3% of the draft army in the same classification. If mental age eight (IQ 50) is taken as the criterion of feeblemindedness, then 3.3% of the admissions to Stillwater during 1929–32 would have been diagnosed feebleminded

16. The basic report on the World War I psychological testing program, in full detail, was published under the title "Psychological Examining in the United States Army," as vol. 15 of the *Memoirs of the National Academy of Sciences*, edited by Robert M. Yerkes, U.S. Government Printing Office, Washington, D.C., 1921.

17. L. D. Zeleny (op. cit.) actually carried out a project that applied a uniform criteria of feeblemindedness based on mental age to the results of a large number of studies (163 studies; over 61,000 offenders) of "criminal intelligence." He determined on the basis of these studies that there were approximately 1.8 criminals below mental age eleven for every draft man below that mental age. Assuming that this ratio held true for other mental ages, Zeleny estimated that since 2.1% of the draft army had fallen below mental age eight, approximately 3.8% of criminals would fall below this mental age.

instead of the 49.2% so diagnosed with IQ 74 as the dividing line. When mental age eight was used it should be recalled, 2.1% of the draft army was diagnosed as feebleminded.

Publication of the results of World War I testing gave the first good sample of distributions obtained when intelligence tests are given to the general population.[18] Inevitably, this led to a new and quite different theoretical perspective on the whole problem of the relation between criminal behavior and mental deficiency or even simply low intelligence.

One of the first to document this difference in emphasis was Carl Murchison.[19] He compared the results on the Army Alpha test of prisoners in five states with groups of World War I draftees. In this comparison, he found not criminal inferiority, but actually a consistently better performance by prisoners than by the draft army soldiers. Even before Murchison, Calvin P. Stone[20] had published similar results from a similar comparative study in Indiana. Herman Adler and Myrtle Worthington studied the inmates at the Illinois State Prison at Joliet and concluded that they ranked higher on the Army Alpha test than did World War I soldiers.[21] Later, Simon Tulchin compared Illinois inmates at the prison at Joliet and at the reformatory at Pontiac with Illinois soldiers in the World War I draft army.[22] In this more accurate comparison of differences in the distribution of intelligence as measured by tests, only statistically nonsignificant differences appear in the performance of Illinois prisoners and the Illinois soldiers.

It appears, therefore, that whereas F. H. Kuhlman and many of his colleagues had asserted that a definite condition of mental inferiority is a general characteristic common to all criminal groups tested, more specific comparisons of test performance, group by group, criminal with noncriminal, on the same tests profoundly

18. *Memoirs of the National Academy of Sciences*, op. cit. pp. 790–91.

19. Carl Murchison, *Criminal Intelligence*, Clark University Press, Worcester, Mass., 1926, Ch. 4.

20. Calvin P. Stone, "A Comparative Study of the Intelligence of Three Hundred Fifty-three Men of the United States Army," *Journal of Criminal Law and Criminology*, 12:238–57 (1921).

21. Herman M. Adler and Myrtle R. Worthington, "The Scope of the Problem of Delinquency and Crime as Related to Mental Deficiency," *Journal of Psycho-Asthenics*, 30:47–57 (1925).

22. Simon H. Tulchin, *Intelligence and Crime*, University of Chicago Press, Chicago, 1939; reprinted by University of Chicago Press, 1974.

modified this earlier assertion. When such comparisons were accurate, only relatively slight differences between the inmates and the general population were demonstrated. Feeblemindedness, therefore, largely disappeared as the basis for an explanation of criminality.

3. LATER STUDIES: DELINQUENCY, RACE, AND IQ

Although it is no longer believed that large numbers of criminals are feebleminded, the IQ of criminals and delinquents has become embroiled in a more recent controversy concerning the relationship of intelligence to race. Blacks, on the average, score about 15 points lower than whites on IQ tests. Some scholars have used the difference in IQ scores to explain the difference in crime and delinquency rates between the races. Their arguments have generally focused on the issue of delinquency rather than crime in general, and it is there that the stronger case has been made.

However, these arguments must be considered in the context of the overall controversy about the meaning of IQ scores. The controversy concerns such issues as whether IQ tests really measure "intelligence" or whether they measure such other factors as academic achievement or "test-wiseness"; if they actually do measure intelligence, whether the tests are "culturally biased" so that the intelligence of minority groups is underreported; and if there is a real difference between the intelligence of blacks and whites, whether this difference is the result of genetic or environmental influence.[23]

The seeds of this controversy are found in a 1967 speech before the National Academy of Sciences by William Shockley, a winner of the Nobel Prize for physics for his role in the invention of the transistor.[24] Shockley speculated that the differences in IQ between blacks and whites might be solely the result of genetic differences,

23. Some recent works discussing this controversy include Paul L. Houts, ed., *The Myth of Measurability*, Hart, New York, 1977; Paul R. Ehrlich and S. Shirley Feldman, *The Race Bomb*, Quadrangle, New York, 1977; N. J. Block and Gerald Dworkin, eds., *The IQ Controversy*, Pantheon, New York, 1976; J. C. Loehlin, G. Lindzey, and J. N. Spuhler, *Race Differences in Intelligence*, Freeman, San Francisco, 1975; Ashley Montagu, ed., *Race and IQ*, Oxford University Press, New York, 1975; Carl Senna, ed., *The Fallacy of I.Q.*, Third Press, New York, 1973; R. J. Herrnstein, *I.Q. in the Meritocracy*, Little, Brown, Boston, 1973; and H. J. Eysenck, *The IQ Argument*, Library Press, New York, 1971.

24. W. Shockley, "A 'Try Simplest Cases' Approach to the Heredity-Poverty-Crime Problem," *Proceedings of the National Academy of Sciences*, 57(6): 1767–74 (June 15, 1967).

and that these genetic differences might also explain the differences in poverty and crime rates between these groups. He also suggested that "IQ test results may actually be a deeper measure, at least on a statistical basis, of a distribution of some more fundamental social capacity." He did not actually argue that the all-genetic model was correct, but he did urge that a National Study Group be set up to research the problem and to make recommendations, if the IQ-Poverty-Crime problem was found to be related to genetic differences.[25]

In 1969, Arthur Jensen published a lengthy article in which he positively argued many of the points on which Shockley had only speculated.[26] Specifically, he contended that IQ tests do measure a factor that is important for performance in Western industrialized societies, and that about 80% of the individual differences on this score are determined by genetic rather than by environmental differences. He concluded that remedial education programs had failed for precisely this reason. This article set off the large IQ controversy just mentioned.

In the field of criminology, there have been several studies in which delinquent and criminal groups were found to have lower IQs than comparable nondelinquent and noncriminal groups.[27] However, much more work has been done on the question of school performance. Many studies have found that those who do worst in school are most likely to become delinquent.[28] Although this might

25. Several such committees were set up. They concluded that this problem merited study, but denied that it was especially urgent. See "Recommendations with Respect to the Behavioral and Social Aspects of Human Genetics," *Proceedings of the National Academy of Sciences*, 69:1–3 (1972). By 1977, however, the question had become so volatile that one scholar, Herbert C. Kelman of Harvard, argued that it would seem advisable "to forgo research at this time on genetic differences in intelligence among racial groups." See Herbert C. Kelman, "Privacy and Research with Human Beings," *Journal of Social Issues*, 33(3): 169–95 (1977).

26. A. R. Jensen, "How Much Can We Boost IQ and Scholastic Achievement?" *Harvard Educational Review*, 39:1–123 (1969).

27. Lis Kirkegaard-Sørensen and Sarnoff A. Mednick, "A Prospective Study of Predictors of Criminality: 5. Intelligence," in Sarnoff Mednick and Karl O. Christiansen, *Biosocial Bases of Criminal Behavior*, Gardner, New York, 1977, pp. 267–73; D. J. West and D. P. Farrington, *Who Becomes Delinquent?*, Heinemann, London, 1973; B. P. Frost and R. Frost, "The Pattern of WISC Scores in a Group of Juvenile Sociopaths," *Journal of Clinical Psychology*, 18:354–55 (1962).

28. See, for example, Lis Kirkegaard-Sørenson and Sarnoff A. Mednick, "A Prospective Study of Predictors of Criminality: 4. School Behavior," in Mednick and Christiansen, op. cit., pp. 255–66; Kenneth Polk and Walter E. Schafer, eds., *School and Delinquency*, Prentice-Hall, Englewood Cliffs, 1972; Lamar T. Empey and Steven G. Lubeck, *Explaining Delinquency*,

appear to substantiate the correlation between IQ and delinquency, other studies have found that poor school performance persists even when delinquents and nondelinquents are matched for intelligence.[29]

The use of school performance to explain differences in delinquency rates between white and black youths was first suggested by Travis Hirschi. He examined the police records of over 3600 boys in Contra Costa County, California, and demonstrated that, when boys from all-white high schools were eliminated, there was a strong relationship between delinquency and "academic competence" as measured by the Verbal Achievement Scores of the Differential Aptitude Test (DAT). An examination of Table 5-3 (from Hirschi) shows that official delinquency rates are similar for both blacks and whites who have similar DAT scores, and that boys with higher DAT scores have fewer official offenses. The concept of academic competence is a much narrower one than the concept of intelligence, and relates

TABLE 5-3 Number of Official Delinquent Acts by Race and Differential Aptitude Test Verbal Scores (in percent)

	DAT Scores							
	0–9		10–19		20–29		30 and above	
Number of Official Offenses	Negro	White	Negro	White	Negro	White	Negro	White
None	52	58	65	74	78	81	100	94
One	20	23	19	11	8	15	0	6
Two or more	27	20	15	15	15	5	0	0
Total	99	101	99	100	101	101	100	100
	(470)	(128)	(194)	(231)	(40)	(130)	(9)	(53)

Source: Hirschi, op. cit. p. 80. Copyright © 1969 by The Regents of the University of California; reprinted by permission of the University of California Press. These data do not include boys from all-white high schools.

D. C. Heath, Lexington, 1971; Kenneth Polk and David S. Halferty, "Adolescence, Commitment and Delinquency," *Journal of Research in Crime and Delinquency*, 4:82–96 (July 1966); and Delbert S. Elliot, "Delinquency, School Attendance and Dropout," *Social Problems*, 13:306–18 (Winter, 1966).

29. J. J. Conger and W. C. Miller, *Personality, Social Class and Delinquency*, Wiley, New York, 1966; V. B. Cline and A. S. Wangrow, "Life History Correlates of Delinquent and Psychopathic Behavior," *Journal of Clinical Psychology*, 15:266–70 (1959).

specifically to school success rather than to general ability. Hirschi remarks that "(t)he present data suggest, then, that differences in academic achievement go a long way toward explaining Negro-white differences in delinquent activity."[30]

In 1976, Robert Gordon published an extensive analysis of delinquency rates and concluded that they were best explained by variations in IQ.[31] He focused on the concept of the prevalence of delinquency, which he defined as the proportion of an age-cohort that have (do or will) become delinquent according to a specified criterion by a given age. An example of a prevalence question would be: What is the proportion of boys who have ever been to a juvenile court among boys who are now 18.0 years of age? In a review of the literature, Gordon found nine studies that gave 56 prevalence rates for white boys and girls.[32] These rates ranged in seriousness from rates for commitment to training school down to rates for all youths found in police records for at least one minor difficulty, including traffic violations such as overtime parking. When arranged according to their seriousness, these rates were remarkably consistent, with the exception that areas with populations somewhere below 44,000 had considerably lower rates. That is, cities with populations over 44,000 apparently have similar delinquency prevalence rates among white youths for all levels of seriousness.

From this finding Gordon made the following analysis. First, he disagreed with the widely held belief that urbanization should be

30. Travis Hirschi, Causes of Delinquency, University of California Press, Berkeley, 1969, p. 80.

31. Robert Gordon, "Prevalence: The Rare Datum in Delinquency Measurement and Its Implications for the Theory of Delinquency," in Malcolm W. Klein, ed., *The Juvenile Justice System*, Sage Publications, Beverly Hills, Ca., 1976, pp. 201–84.

32. These studies are T. P. Monahan, "On the Incidence of Delinquency," *Social Forces*, 39:66–72 (Oct., 1960); J. W. B. Douglas et al., "Delinquency and Social Class," *British Journal of Criminology*, 6:294–302 (July, 1966); J. C. Ball et al., "Incidence and Estimated Prevalence of Recorded Delinquency in a Metropolitan Area," *American Sociological Review*, 29:90–93 (Feb., 1964); J. C. Ball, *Social Deviancy and Adolescent Personality*, University of Kentucky Press, Lexington, 1962; R. J. Havighurst et al., *Growing Up in River City*, Wiley, New York, 1962; S. R. Hathaway and E. D. Monachesi, *Adolescent Personality and Behavior*, University of Minnesota Press, Minneapolis, 1963; R. A. Gordon, "An Explicit Estimation of the Prevalence of Commitment to a Training School, to Age 18, by Race and by Sex," *Journal of the American Statistical Association*, 68:547–53 (Sept., 1973); A. J. Reiss, Jr. and A. L. Rhodes, "The Distribution of Juvenile Delinquency in the Social Structure," *American Sociological Review*, 26:720–32 (Oct., 1961); and Center for Studies of Crime and Delinquency, *Teenage Delinquency in Small Town America*," Research Report 5, Publication No. (ADM) 75–138, U.S. Government Printing Office, Washington, D.C., 1974.

considered a cause of delinquency. Gordon argued that city size probably acts as a "releaser" of delinquent behavior, rather than as a stimulant of it, so that the potential for delinquency is inherent in the youth himself. The delinquency is held in check in smaller, tight-knit communities, but is "released" once a certain level of anonymity within a larger city is reached. That would explain why delinquency rates do not increase as cities become larger. Second, Gordon argued that delinquency prevalence rates for black youths probably are also consistent within cities with populations over a certain number and that these rates have been shown in several studies to be substantially higher than the rates for whites. He maintained that the higher delinquency rates in larger cities can be adequately explained by the higher proportion of blacks in the population.

Third, Gordon suggested that IQ level might account for the consistency of delinquency prevalence rates for white youths, as well as for the differences between the rates for white and black youths. He cited Jensen to the effect that IQ is largely a biological factor, and quoted several studies that support the hypothesis that delinquency is related to the biology of the individual. He pointed to the similarity between the distribution of IQ scores and the distribution of delinquency, and demonstrated that court record data from Philadelphia and national rates for commitment to training schools could be duplicated merely by assuming that all youths (both black and white) with IQs below a certain level, and no youths above it, became delinquent. He did not argue that such a relationship between IQ and delinquency actually exists, but that this coincidence "virtually necessitate(s) that there be some more reasonable functional relationship within sex between IQ and delinquency that is common or nearly common to both races." He went on to argue, without supporting data, that the delinquency rates of several other racial groups are also related to IQ. Japanese, Chinese, and Jews have maintained low delinquency rates despite their minority group status and generally low economic position, and these groups are said to have somewhat higher IQs than whites. Mexican-Americans are said to have both delinquency rates and average IQs somewhere in between those of blacks and whites.

Additional support for the association between IQ and delinquency was presented by Travis Hirschi and Michael Hindelang,

who reviewed a number of studies on the subject.[33] They found that low IQ was at least as important as social class or race in predicting official delinquency and that it was more important in predicting self-reported delinquency;[34] that delinquency is consistently related to low IQs within races and within social classes so that, for example, lower-class delinquents are more likely to have low IQs than lower-class nondelinquents;[35] and that the principal sociological theories of delinquency "have been saying for some time that IQ should be related to delinquency for the same reason social class is, or should be, related to it."[36] They argue that IQ as an explanation of crime and delinquency has been ignored in criminology because a strong bias against it arose in the early part of this century. At that time, IQ as an explanation of crime and delinquency was strongly associated with the physicians (such as Goring and Goddard) who had dominated the field of criminology since the time of Lombroso. The sociologists who were beginning to take over the field were eager to focus attention on the effects of social conditions and away from the characteristics of the individual. Over the previous 20 years decreasing proportions of criminals and delinquents had been reported as feebleminded because of the repeated lowering of the "normal"

33. Travis Hirschi and Michael J. Hindelang, "Intelligence and Delinquency: A Revisionist Review," *American Sociological Review*, 42:572–87 (1977).

34. The term "official" delinquency refers to delinquent behaviors that have been recorded in the official records of criminal justice agencies and thus have become part of official delinquency statistics. "Self-reported" delinquency refers to delinquent behaviors reported by juveniles anonymously on questionnaires, and includes much behavior that is not known to criminal justice agencies.

35. The studies cited with respect to delinquency within social classes are Reiss and Rhodes, op. cit.; Hirschi, *Causes of Delinquency*, op. cit.; Marvin Wolfgang, Robert M. Figlio and Thorsten Sellin, *Delinquency in a Birth Cohort*, University of Chicago Press, Chicago, 1972; and D. J. West, *Who Becomes Delinquent?*, Heinemann, London, 1972. The studies cited for delinquency within races are Wolfgang et al., op. cit.; Hirschi, *Causes of Delinquency*, op. cit.; James F. Short, Jr., and Fred L. Strodtbeck, *Group Process and Gang Delinquency*, University of Chicago Press, Chicago, 1965; and Jackson Toby and Marcia L. Toby, "Low School Status as a Predisposing Factor in Subcultural Delinquency," Mimeo, Rutgers University, New Brunswick, N.J., 1961.

36. Hirschi and Hindelang, op. cit. p. 579. Support for this statement is derived largely from a review of Albert Cohen's *Delinquent Boys*, The Free Press, New York 1955. Cloward and Ohlin's theory (*Delinquency and Opportunity*, The Free Press, New York, 1960) is said to predict that higher IQ youths are more likely to become delinquent; labeling and conflict theories are said to be consistent with the low IQ argument, since the system is seen as discriminating against these youth; Sutherland's "differential association" theory (Edwin H. Sutherland and Donald R. Cressey, *Criminology*, Lippincott, Philadelphia, 1978, pp. 80–83) is "strictly silent" on the matter; and "social control" theories are consistent with this view, although they have not emphasized it in the past.

mental age. Hirschi and Hindelang state that Sutherland "called attention to this twenty-year trend—which, in fact, continued for another 30 years—and allowed his readers to conclude that it would continue until the initial claims of difference between delinquents and nondelinquents had no foundation in fact."[37] The difference between these two groups never entirely disappeared, however, and seemed to stabilize at about eight IQ points.

4. IMPLICATIONS AND CONCLUSIONS

It seems clear that, whatever IQ measures, it is correlated with school performance, both of whites and blacks, and seems to be further correlated with juvenile delinquency. But it is still necessary to explain why persons with low IQ scores become delinquent more frequently than those with high scores. The explanation one accepts will depend to a large degree on his views of what IQ tests measure.

Gordon, for example, assumes that IQ tests measure some form of abstract reasoning or problem-solving ability and that this ability is largely inherited. Given this perspective, he argues that

> there would be many possible causal connections mediating between IQ and delinquency. In theory, for example, the low IQ child–low IQ parent dyad is fraught with potential for poor socialization outcomes, and the inappropriate or erratic child-rearing practices often found within the families of delinquents are plainly suggestive of inadequate cognitive analyses of the interpersonal child-rearing task.[38]

Hirschi and Hindelang also believe that IQ tests measure innate ability, but argue that IQ influences delinquency through its effect on school performance. That would imply that low IQ may be correlated with juvenile delinquency, but not with adult criminality. It is possible that youths who perform poorly in schools become truants, have more time on their hands for vandalism, and drift into criminal activities. On the other hand, it may be that adult criminality requires planning, cunning, knowledge, even abstract reasoning, to a far greater extent than juvenile depredations. This would be con-

37. Hirschi and Hindelang, op. cit. p. 580.

38. Gordon, op. cit. p. 269.

sistent with the thrust of the work of Albert Cohen,[39] who insisted that youthful crime is not merely crime committed by persons under a given age, but that it has special characteristics of its own, particularly in being negativistic, malicious, and nonutilitarian.

Other interpretations that are based on the assumption that IQ tests measure innate ability might also be mentioned. For example, it is reasonable to expect that the more foolish and stupid practitioners of crime will be less able to avoid detection than their more clever associates. It is also possible that brighter criminals and delinquents may receive more lenient treatment from the police and the courts.[40] Finally, it is also possible that the antisocial actions of persons with generally lower IQs (such as street crimes) are more likely to be defined as crimes and vigorously prosecuted than the antisocial actions of persons with generally higher IQs (such as white collar crimes).

In an alternate approach, it could be argued that IQ tests do not actually measure innate ability, but instead measure qualities that are related to the dominant culture. That would hold that IQ tests are culturally biased—that is, the type of information and skills that are required for a child to do well on an IQ test are much more likely to have been acquired by urban, white children than by rural or black children.[41] Jane Mercer illustrated the meaning of "cultural bias" by constructing a test of simple behavioral tasks related to intelligence, such as being able to tie one's own shoes by the age of seven.[42] The test was given to samples of lower-class blacks and

39. Cohen, op. cit., particularly pp. 24–32.

40. Hirschi and Hindeland, op. cit. pp. 582–83, argue that there is no empirical support for either of these contentions. But a recent study of 50 delinquents with superior intelligence found that they received more lenient treatment from the courts. See Gavin Tennent and Dennis Gath, "Bright Delinquents: A Three Year Follow-up Study," *British Journal of Criminology* 15(4): 386–90(1975).

41. In order to demonstrate this bias, mock IQ tests have been constructed that are explicitly biased in favor of, rather than against, these groups. For a test favoring rural children, see M. E. Shimberg, "An Investigation into the Validity of Norms with Special Reference to Urban and Rural Groups," *Archives of Psychology*, 104 (1929). Some questions from this test are reprinted in Loehlin et al., op. cit. p. 67. For a test favoring black children, see Adrain Dove, "The Chitling Test of Intelligence," partially reprinted in Ehrlich, op. cit. pp. 72–73.

42. Jane Mercer, "IQ: The Lethal Label," *Psychology Today*, Sept., 1972, pp. 44–47 ff. For a critique of Mercer, see Robert A. Gordon, "Examining Labelling Theory: The Case of Mental Retardation," in Walter R. Gove, ed., *The Labelling of Deviance: Evaluating a Perspective*, Halsted-Wiley, New York, 1975, pp. 35–81.

Chicanos, and middle-class whites, all of whom had IQs below 70. Of the blacks, 91% were able to pass the test, of the Chicanos, 61% passed, whereas none of the whites did. This would indicate that many blacks and Chicanos may be much more intelligent than would appear from their IQ scores.

The question of whether IQ tests are culturally biased is extremely complicated, and no attempt will be made here to review all the arguments.[43] Nor will an attempt be made to review the arguments about whether IQ is predominantly genetic and inherited, or whether it is the result of the person's environment. It might be mentioned, however, that those who have argued the genetic position, including Jensen, for a time relied heavily on studies of identical twins raised apart, and in particular on a study of Sir Cyril Burt of 53 pairs of such twins.[44] The similarity of the IQs of these twins was part of the evidence used by Jensen as the basis for his argument that IQ is 80% inherited. A reexamination of Burt's study, however, which began a few years after his death in 1971, revealed that it suffered from numerous severe methodological problems, and that the data may actually have been fabricated.[45]

An argument can also be made against the genetic basis of IQ as an explanation of delinquency by considering the history of the dominant delinquent groups. In their monumental study of delinquency in Chicago,[46] Clifford Shaw and Henry McKay found that, in successive waves of immigration,

one European ethnic group after another moved into the areas of first settlement, which were for the most part inner-city areas, where their chil-

43. Discussion of the issues on cultural bias may be found in all the works cited in footnote 23.

44. C. Burt, "The Genetic Determination of Differences in Intelligence," *British Journal of Psychology*, 57:137–53 (1966).

45. Jensen himself, as early as 1974, was one of the first to challenge Burt's work, citing some 20 specific instances of flaws. See also Leo J. Kamin, *The Science and Politics of IQ*, New York: Halsted-Wiley, 1974; N. Wade, "IQ and Heredity: Suspicion of Fraud Beclouds Classic Experiment," *Science*, 194:916–19 (Nov. 16, 1976); "A Taint of Scholarly Fraud," *Time*, Dec. 6, 1976, p. 66; "Epitaph for Sir Cyril?" *Newsweek*, Dec. 20, 1976, p. 76. For a summary of the Burt episode, see Gardner Lindzey, Calvin S. Hall, and Richard F. Thompson, *Psychology*, 2nd ed., Worth Publishers, New York. p. 370. For a discussion of the wider problem of fraud in science, with brief mention of Burt, see Harriet Zuckerman, "Deviant Behavior and Social Control in Science," pp. 87–138, in Edward Sagarin, ed., *Deviance and Social Change*, Sage, Beverly Hills, 1977.

46. Clifford R. Shaw and Henry D. McKay, *Juvenile Delinquency and Urban Areas*, University of Chicago Press, Chicago, 1969, pp. 374–75.

dren became delinquent in large numbers. As these groups became assimilated and moved out of the inner-city areas, their descendants disappeared from the Juvenile Court and their place was taken by offenders from the groups which took over the areas which had been vacated. . . . During the first decades of this century a large proportion of the offenders were the children of German or Irish immigrants. Thirty years later a large proportion of the offenders were the children of the Polish and Italian immigrants who replaced the German and the Irish in the inner-city areas. . . . More recently large segments of the second- and third-generation Polish and Italian population have been moving out from the inner-city areas and are being replaced by Spanish-speaking peoples and some of the new Negro and white migrants from the South.

If blacks and Hispanics are merely the latest in a long line of ethnic groups whose children have been overrepresented in the juvenile court, then it seems unlikely that the apparently higher delinquency rates are due to any genetically determined inferiority, whether in IQ or anything else. It is interesting to note that other attempts have been made to identify as racially inferior those groups whose children had high delinquency rates. This practice goes back at least as far as the 1820s, when delinquency in New York was seen primarily as the result of inferior racial stock of the Irish.[47] After IQ tests were developed at the beginning of this century, they were used in an attempt to demonstrate the racial inferiority of the Southern and Eastern European peoples who were then immigrating to the United States. For example, in six separate studies, Italian-American children were found to have a median IQ of 84, or 16 points below the United States average; this is almost identical to the median IQ of black children today.[48] As a result of these and other similar studies, the Johnson-Lodge Immigration Act of 1924 was passed, with the explicit intention of limiting the immigration of these "biologically inferior" people.[49]

Thus, the use of IQ tests in the attempt to demonstrate the ge-

47. Harold Finestone, *Victims of Change*, Greenwood Press, Westport, Ct., 1976, pp. 17–36.

48. R. Pinter, *Intelligence Testing: Methods and Results*, Holt, New York, 1923, cited in Ehrlich and Feldman, op cit. pp. 50–51. Of course in 1923, mental age was still being used in IQ testing, and the various newer and more sophisticated testing techniques had not yet been developed, but this does not affect the point made above, that IQ has long been used in the United States to demonstrate racial inferiority.

49. Leo J. Kamin, "The Politics of IQ," in Houts, op. cit. p. 60. This article contains a good discussion of this way of thinking.

netic inferiority of certain groups is nothing new. The current studies will require reinterpretation if black and Hispanic peoples, like their immigrant predecessors, are eventually assimilated into the nation's population and their children are no longer overrepresented in the juvenile courts. The most that can be said at the present time is that IQ tests have functioned, since their development, as a somewhat accurate predictor of delinquency. Youths who did poorly on these tests have had higher probabilities of becoming delinquent. But whether delinquents are actually less "intelligent" than nondelinquents is not at all clear.

Certainly, adult criminals are not severely or mildly retarded; they are not feebleminded. Some adult criminals no doubt have low IQs. But as an explanation of crime in general, "low intelligence" has a number of problems. It does not account for fluctuations in crime rates in the population at large or within a specific group, and it fails to take into account white collar crime, organized crime (particularly its leadership), and political crime, all of which require considerable intellectual ability.

If there is no significantly large proportion of criminal feebleminded, or of criminals with excessively low intelligence, then we must look for other factors for a general explanation of criminality. Some of these other factors that may affect criminality and may be relevant in the formulation of criminological theories will be discussed in later chapters.

RECOMMENDED READINGS

Richard Dugdale, *The Jukes: A Study in Crime, Pauperism, and Heredity*, Putnam, New York, 1877. Reprinted by Arno, New York, 1970. The original story of a "degenerate" family.

Samuel H. Adams, "The Juke Myth," *Saturday Review*, 38:48–49 (Apr. 2, 1955). Dugdale's methods and conclusions are roundly criticized.

Philip H. Dubois, *A History of Psychological Testing*, Allyn and Bacon, Boston, 1970. A brief, easily read, thorough work.

N. J. Block and Gerald Dworkin, eds., *The IQ Controversy*, Pantheon, New York, 1976. A book of readings containing many of the most significant arguments on both sides of the issue.

Jane Mercer, "IQ: The Lethal Label," *Psychology Today*, Sept., 1972, pp. 44–47 ff. A discussion of the meaning of cultural bias on IQ tests.

Robert Gorden, "Prevalence: The Rare Datum in Delinquency Measurement and Its Implications for the Theory of Delinquency," in Malcolm W. Klein, ed., *The Juvenile Justice System*, Sage, Beverly Hills, 1976, pp. 201–84. Differences in IQ are said to explain differences in crime rates between racial groups.

Travis Hirschi and Michael J. Hindelang, "Intelligence and Delinquency: A Revisionist Review," *American Sociological Review*, 42:571–87 (Aug., 1977). A review of current literature arguing the importance of intelligence in the causation of delinquency.

Nathan S. Caplan, "Intellectual Functioning," in Herbert C. Quay, ed., *Juvenile Delinquency*, Van Nostrand, Princeton, 1965, pp. 100–38. A review of the studies of the intelligence of delinquent groups, concluding that delinquents on the average score about eight IQ points lower than nondelinquents.