PART FIVE

Criminological Theory Applied to Specific Types of Crime

CHAPTER FIFTEEN

Victimless Crimes

There are a number of behaviors that are widely prohibited by law but that do not have a victim in the traditional sense of the term. Bedau names four characteristics of so-called "victimless crimes," although they do not apply in every case.[1] First, there is consensual participation of all the persons involved in the crime, although in the case of abortion this is true only if the fetus is not considered a person. Second, no participant in the crime complains to the police, although a non-participant may do so. (The absence of a complainant-participant makes these laws difficult to enforce.) Third, the participants generally believe that they are not harmed by the crime, although other people believe that they are. Fourth, the crimes generally involve the willing exchange, among adults, of strongly desired but legally proscribed goods or services, although crimes like public drunkenness or narcotics use do not have this characteristic. These behaviors are often explained in terms of deep-seated personality defects or deviations, but this type of explanation

1. Hugo Adam Bedau, "Are There Really 'Crimes Without Victims,'" in Edwin M. Schur and Hugo Adam Bedau, *Victimless Crimes: Two Sides of A Controversy*, Prentice-Hall, Englewood Cliffs, 1974, pp. 66–76. Bedau questions the validity of the concept. An up-to-date, realistic review of the main facts and issues involved in connection with these major social problems as crimes may be found in Gilbert Geis, *Not the Law's Business*, U.S. Government Printing Office, Washington, D.C., 1972; for a social-problem type discussion see the appropriate chapters in Robert K. Merton and Robert Nisbet, eds., *Contemporary Social Problems*, 3rd ed., Harcourt Brace Jovanovich, New York, 1971.

does not account for their definition as criminal behavior. As in other forms of crime, it is not generally the behavior as such that makes it criminal, but rather some aspect of the reaction to it by other groups of people who have to meet the same basic personality questions in their own lives.

Of special significance to police and law enforcement officials everywhere, because of the large numbers involved and the widespread distribution of offenses, are the following: (1) drunkenness and related offenses; (2) vagrancy and begging; (3) gambling; (4) prostitution; (5) other adult consensual sexual offenses; and (6) drug and narcotic law violation. These will be examined briefly in this chapter, not as social problems per se, but rather as explorations of some of the conditions and circumstances pertinent to theory and to treatment either as crime or as personality problems. A number of different aspects related to this approach will be explored, with first attention to some understanding of the probable (or possible) numbers of individuals involved.

1. POLICE STATISTICS AND OTHER STATISTICS ON FREQUENCY

Police figures in these matters cannot be taken to mean anything as to the frequency of occurrence of the behavior in the community, but they give a rough idea of the relative importance of these categories of crime in the total work-load of handling complaints and prosecuting cases in the United States. Table 15–1[2] presents the frequency figures for "persons charged" in 1976 for each type of non-traffic offense. Thus, from a police standpoint, drunkenness and related behaviors account for 43.6% of non-traffic offenses; vagrancy, gambling, sex offenses, and drug-law violations, as a group, another 7%, for a total of over 50% of all non-traffic offenses.[3] How many more individuals are involved in similar behavior, but not "held for prosecution," no one knows, for there are no reliable sources of information. It seems reasonable to assume, however, that a very

2. Cf. Federal Bureau of Investigation, *Uniform Crime Reports for the United States, 1976*, U.S. Government Printing Office, Washington, D.C., 1977, Table 54, p. 217.

3. That percentage has been decreasing rapidly in recent years. In 1956, these categories accounted for over 70% of all persons held for prosecution, according to the first edition of this book (pp. 142–43). 1972 was the first year in statistical recording history that American police arrested fewer drunks than serious crime offenders (*Criminal Justice Newsletter*, December 10, 1973).

TABLE 15-1 Persons Charged (Held for Prosecution), All Non-Traffic Offenses, 1976

Offense Category	Number	Per Cent
Drunkenness	202,349	16.8
Driving while intoxicated	127,736	10.6
Disorderly Conduct	122,652	10.2
Violation of Liquor Laws	72,264	6.0
Subtotal	525,001	43.6
Vagrancy	4,720	.4
Gambling	6,259	.5
Prostitution	7,718	.6
Sex Offenses (except forcible rape and prostitution)	7,227	.6
Narcotic drug laws	58,523	4.9
Subtotal	84,447	7.0
All other non-traffic offenses	594,432	49.4
Total	1,203,880	100.0

much larger number engage in similar behavior but manage to escape police attention.

Some of the guesses and estimates occasionally made about the number so involved are interesting and worth noting in an effort to obtain a clearer perspective on the problems needing explanation, if criminological theory is to be at all adequate. Each category will be examined in turn.

Drunkenness. It is conservatively estimated that there are five million alcoholics in America, and as many as nine million "problem drinkers."[4] This figure does not include millions of "spree drinkers" who are not addicted, but who get roaring drunk from time to time.

Vagrancy and begging. A popular magazine writer[5] asserted that there were 400,000 men living on Skid Row in the United States in 1952. But it would appear that that number has been decreasing in recent years, as various welfare and pension programs made it possible for increasing numbers of these people to settle down.[6] A survey

4. Edward M. Brecher, *Licit and Illicit Drugs*, Consumers Union, Mount Vernon, N.Y., 1972, p. 260.

5. J. Ellison, "The Shame of Skid Row," *Saturday Evening Post*, 225:13–14 (1952).

6. Theodore Caplow, Howard M. Bahr, and David Sternberg, "Homelessness," *International Encyclopedia of the Social Sciences*, Macmillan and the Free Press, New York, 1968, vol. 6, pp. 498–99.

of Skid Rows in 41 major American cities in 1963 estimated that their combined populations were under 100,000.[7] In addition to this group, however, there are about one million migratory workers, a great many of whom are not fully self-supporting.[8]

Gambling. No one knows how many people gamble, but guesses and estimates abound. A survey by the University of Michigan's Institute for Social Research found that 60% of all Americans had made some type of bet during 1974, and that 50% had engaged in commercial betting.[9] The National Gambling Commission states that Americans gamble $17.7 billion legally each year, and up to $39 billion illegally.[10] The President's Commission on Law Enforcement and Administration of Justice, however, estimated the total annual revenue from illegal gambling may be as high as $50 billion,[11] and one writer estimated that the total volume of betting for all types of gambling in the United States was about $500 billion per year.[12] And so the guesses go; all, however, agree that a considerable proportion of the population regularly indulges in gambling behavior, and that the money involved (some say "losses," but like business generally, what is one man's loss becomes another man's gain) reaches enormous sums, and is literally "big business."

Prostitution. For obvious reasons, no one knows with any degree of accuracy how many women there are who practice, or have practiced, prostitution in any city or country in the world. But there have been guesses and estimates. The President's Commission on Law Enforcement and Administration of Justice estimated that there were about 45,000 prostitutes in this country in 1967, with an annual income of $225 million.[13] Other estimates, however, go as high

7. Donald J. Bogue, *Skid Row in American Cities*, University of Chicago Press, Chicago, 1963.

8. Louisa R. Shotwell, *The Harvesters*, Doubleday, Garden City, 1961. See also Nels Anderson, *Men on the Move*, University of Chicago Press, Chicago, 1940.

9. Quoted in "An Update on Victimless Crimes," National Council on Crime and Delinquency, Hackensack, 1977.

10. Ibid.

11. *Task Force Report: Organized Crime*, U.S. Government Printing Office, Washington, D.C., 1967, p. 3.

12. John Scarne, *Scarne's Complete Guide to Gambling*, Simon and Schuster, New York, 1961.

13. *Task Force Report: Crime and its Impact*, U.S. Government Printing Office, Washington, D.C., 1967, p. 53.

as 500,000 prostitutes, with an annual income of approximately $1 billion.[14] Convicted prostitutes account for around 30% of the population of women's jails, and in some cities more than 50%.[15] Kinsey estimated that almost 70% of the total adult white male population of the United States has had some experience with prostitutes.[16] No one has even attempted to guess at the possible extent of informal, clandestine practices of exchanging sexual favors for valuable considerations, which amount to about the same thing as prostitution.

Adult consensual sexual offenses. This category includes such offenses as adultery, fornication, illicit cohabitation, bigamy, incest, anal or oral copulation, bestiality, homosexuality, pornography, and obscenity. Kinsey estimated that 95% of the adult male population has violated these laws at one time or other.[17] But many of these activities are no longer illegal in particular jurisdictions, so the overall percentage may be lower now.

Narcotic and drug law violations. Under the Harrison Narcotics Act, any sale, purchase, or possession of drugs, except on rigidly controlled prescription by a licensed physician, constitutes a criminal violation. In 1967, the Federal Bureau of Narcotics recorded 62,045 active narcotics addicts in the country.[18] Dumpson, however, has argued that these statistics are not accurate, since they do not include pre-adult violators or a large group of drug users who are not addicts.[19] Clausen estimates that there are between 100,000 and 200,000 opiate (heroin, morphine, etc.) users in the United States,[20] although other estimates range up to one million.[21]

It is obvious from even this cursory review that there is little relation between the police figures for frequency of crime as measured

14. Charles Winick and Paul M. Kinsie, *The Lively Commerce: Prostitution in the United States,* Quadrangle, Chicago, 1971.

15. "An Update on Victimless Crime," op. cit.

16. Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control,* University of Chicago Press, Chicago, 1970, p. 20.

17. Ibid. p. 16.

18. Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs,* U.S. Government Printing Office, Washington, D.C., 1968, p. 23.

19. James R. Dumpson, "Mobilizing Our Resources to Combat Drug Addiction Among Adolescents," *Proceedings,* American Prison Association, New York, 1952, pp. 107–17.

20. John A. Clausen, "Drug Use," in Merton and Nisbet, eds., op. cit. p. 205.

21. Marie Nyswander, *The Drug Addict as a Patient,* Grune & Stratton, New York, 1956, p. 13.

by "persons held for prosecution" and the numbers of persons currently believed to be engaged in the activity. In all of the above-named categories, the activity itself may be a crime (i.e. using drugs, gambling, etc.) in addition to the possibility that there may be some special provocative or sustaining relation between other crimes and this particular behavior (drunkenness and sex crime, for example). Statistics on such interrelationships are not available, and guesses and opinions are probably not worth repeating. Some of these interrelations, however, will be discussed in the following sections.

2. EXPLANATIONS AND CONTRADICTIONS

The offenses discussed in the preceding section are crimes legally, because the behavior involved is contrary to the historically prevailing system of morals and contrary to the existing ideas of what constitutes proper conduct for an individual in ordinary life situations. In each case, there is a degree of moral condemnation presumed to be involved in what otherwise becomes relatively trivial and petty misconduct, usually considered only a misdemeanor and not a felony. If and when the moral condemnation of the behavior decreases, or disappears entirely, police activity in law enforcement loses public support and becomes a meaningless gesture instead of the direct and explicit expression of community concern and condemnation.

Two general kinds of explanations of these offenses are prevalent: *One*[22] attempts to explain why these behaviors are considered criminal and looks to the changing world of ideas and events with changing definitions of what is and what is not acceptable in personal behavior; *the other*[23] attempts to explain why certain individuals

22. For interpretations typical of this view, see, for example, Donald T. Dickson, "Bureaucracy and Morality: An Organizational Perspective on a Moral Crusade," *Social Problems*, 16(2): 143–56 (Fall, 1968); William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems*, 12(1): 66–77 (Fall, 1964); Joseph Gusfield, *Symbolic Crusade*, University of Illinois Press, Urbana, 1963; A. R. Lindesmith, "A Sociological Theory of Drug Addiction," *American Journal of Sociology*, 43:593–613 (Jan., 1938); and E. H. Sutherland and Harvey J. Locke, *Twenty Thousand Homeless Men*, Lippincott, Philadelphia, 1936.

23. Cf. Helen H. Nowlis, *Drugs on the College Campus*, Anchor, New York, 1969; Peter Laurie, *Drugs: Medical, Psychological, and Social Facts*, Penguin, Baltimore, 1967; James H. Bryan, "Apprenticeships in Prostitution," *Social Problems*, Winter, 1965; Harold Greenwald, "The Social and Professional Life of the Call Girl," in Simon Dinitz, Russell R. Dynes, and Alfred C. Clarke, *Deviance*, Oxford University Press, New York, 1969; Eva Bene, "On the Genesis of Male Homosexuality," in William A. Rushing, *Deviant Behavior and Social Pro-*

participate in these activities, and generally looks to the nature of the individuals involved as somehow unstable, immature, incompetent, or inferior.

Typical of the first approach is the illustration of what has happened to the formerly commonly prosecuted offenses of blasphemy and heresy. Both have disappeared from the categories of crimes calling for police control, though both types of behavior persist in the community. But ideas and events in the world at large have changed and we no longer seek to make men religious by law and police action. Various individuals and organizations are now urging that "victimless crimes" also be decriminalized,[24] and there appears to be substantial movement in that direction. For example, twenty-five states have now decriminalized public drunkenness, eight states have stopped arresting people for possession of small amounts of marijuana, and a number of states have legalized various forms of gambling, including the state lotteries.[25] It would appear that we are in a process of transformation in the matter of control of personal habits and morality represented by these categories of petty crimes, as they appear in America today.

Explanations in terms of the nature of the individual offender include numerous well-worn concepts and expressions such as "escape from reality," "escape from an intolerable situation," and "homosexual component in symbolic substitute behavior." The least complicated application of the individualistic approach is perhaps that which places the emphasis on personal inadequacy and incompetence. The misbehaving individual is termed a failure in interpersonal relationships, or as having been relatively unsuccessful in some area of competition deemed important by the individual, and therefore seeks "escape" into the condemned behavior. Thus, for example, the man who is a business failure turns to drink, and before long, becomes a vagrant and a down-and-outer who, sooner or later, will be ready to try anything "to get away from it all" in the happy release of illusion-building alcohol.

cess, Rand McNally, Chicago, 1969; Donald E. Larsen and Baha Abu-Laban, "Norm Qualities and Deviant Drinking Behavior," *Social Problems*, Spring, 1968.

24. Cf. Morris and Hawkins, op. cit. p. 3; Sanford H. Kadish, "The Crisis of Overcriminalization," *The Annals*, 374:157–70 (Nov., 1967); National Council on Crime and Delinquency, "Crimes Without Victims: A Policy Statement," *Crime and Delinquency*, 17(2): 129 (Apr., 1971).

25. "An Update on Victimless Crime," op. cit.

This approach, which attempts to explain why the individual participates in the behavior, can be seen to be related to the positivist perspective in criminology, with its search for the causes of crime. The other approach, which attempts to explain why law and police action are used to control the behavior, is related to the critical perspective. Whatever may eventually be determined to be the most nearly adequate explanation of the behavior involved, criminological theory must still account for the many differences and variations in the methods used to regulate and control these highly individual and personal aspects of community living. Nations and civilizations do not generally approve of or encourage the individual conduct involved in these offenses. But many nations avoid legal definitions of the behavior as crime. They rely instead for control on the more indirect influences of custom, convention, and standards of good taste. The penalties under such a system of control are the informal ones of personal disgrace coupled with social disapproval and ostracism rather than official legal penalties of fines and sentences to jail or prison.

A question related to the classical perspective may also be raised: Which system of control regulates conduct most successfully? No objective answer is presently possible, since there is inevitably a tendency to group self-approval (ethnocentrism) in any appraisal of the results. Quite obviously, however, when the behavior is not defined as crime (regardless of how disgraceful or abominable it may be considered to be), there will be no criminal offenders. Is there a greater, or a lesser, amount of the offensive behavior in the community under one system of control than under the other? Ethnocentric self-appreciation, rather than meaningful comparable information, clouds the issue at the present time. Culturally different political and national groups tend to rationalize and defend the system that they are used to, and that reflects their national characteristics.[26]

3. ECONOMIC AND CULTURAL CONSIDERATIONS

This whole group of offenses obviously manifests numerous involvements with the economic, social, and political organization of the

26. See the provocative materials in William Graham Sumner, *Folkways*, Ginn, New York, 1906, especially his famous Chapter 15, "The Mores Can Make Anything Right and Prevent the Condemnation of Anything," pp. 521–32.

particular national group under consideration. That is, many aspects of the behavior penalized as criminal are quite directly and simply reflections of economic and cultural patterns in the nation generally, regardless of what can or cannot be said of the individual involved. Some of these economic and cultural aspects are indicated in a general descriptive way in the paragraphs that follow.

1. A commercial transaction for gain is usually involved. Thus, the merchandizing of alcoholic beverages, for example, can be highly profitable.[27] Drunkenness is a by-product of this activity, though it obviously is not specifically caused by it any more than by many other economic interests of everyday living. The consumer of alcohol pays out money for a product he wants. The same general situation prevails in the supply and distribution of narcotic drugs, and is also true of the economics of prostitution. Even in connection with gambling, vagrancy, and begging, there is, as a fundamental condition of the offense, an exchange of money for some kind of consideration.

2. There is often an opportunity for gainful employment. Prostitution, for example, must be recognized as a 'job' for those involved in its practice just as significantly as if they were rendering some other service for pay. There are a great many jobs involved in the serving of alcohol as a beverage. Gambling is a more or less profitable "profession" for some gamblers, and casinos and gambling joints need large crews of workers to service the trade, as is true of a railroad or any other service industry. The moderately successful beggar, whatever else he may be, is gainfully self-employed.

3. There is always an element of specific cultural definition that distinguishes criminal behavior from similar non-criminal behavior. Wagering and gambling are penalized, but risk-taking in business and industry is the "American way." Sex favors for pay is punishable in the case of prostitution, but "making a profitable marriage" is often recognized as a sensible and legitimate way of getting ahead. Begging for personal income is disreputable, but begging for the Red Cross or for a church is laudable community service activity, and so on. The differences are always peculiar to a culture and in-

27. One estimate is that one out of seven dollars Americans spend on food substances is spent on beer, wine, and liquors. See Samuel A. Miles, ed., *Learning About Alcohol*, National Education Association, Washington, D.C., 1974, p. 10.

volve rationalizations of many kinds acceptable to that particular culture.[28]

4. The behavior experiences characteristic of this group of offenses often provide a subtle measuring scale for "separating the men from the boys." Youth must learn to "carry his liquor like a man"; he must "learn about women" or be laughed at, pitied, and ridiculed; he must not be a "sissy" or "chicken" before what is said to be genuinely hazardous, such as trying drugs or risking his possessions on the turn of a card or in making his way from coast to coast "without spending a cent"; and so on.

5. There is often an opportunity for developing professional skills with corresponding status rewards among associates and fellow operators. The great majority of the participants in these criminal activities are not thought to be either clever or particularly skilled, but nevertheless the normal "success goals" of the American cultural tradition urge the individual on to attempt to become a "big shot" in the "racket." This is especially true in the case of gambling, prostitution, and drug rings. The bigtime operator is condescendingly patronizing toward the beginner, reflecting widely prevalent cultural standards in American life generally.

6. There is often identification with what is thought to be the cool or sophisticated lifestyle as opposed to the "country bumpkin" quality of innocence and naïvete. Such admiration is clearly a culturel rather than a personal characteristic. In all of these offense types there is advice, if not outright exhortation, to wise-up. Even the besotted drunk may feel superior to the innocent adult who does not know what life is like. Or the prostitute, who has a female social worker while on probation, may feel both superior to and sorry for the "poor old maid" who "doesn't know the score."[29] Similarly, the gambler has general contempt for the "sucker" he fleeces, and some users of drugs take satisfaction in the fact that they have had "experi-

28. For an illustration of the rationalization of prostitution as a way of life, see the case of the self-styled "missionary prostitute" in W. I. Thomas, *The Unadjusted Girl*, Little, Brown, Boston, 1923, reprinted by Patterson Smith, Montclair, 1969; also James H. Bryan, "Occupational Ideologies and Individual Attitudes of Call Girls," *Social Problems*, 13(4): 441–50 (Spring, 1966).

29. This is a paraphrasing of attitudes expressed to the writer (V.) by inmates at a number of different state and federal institutions.

ence" and are not innocent "bumpkins" like the minister or school teacher who "just doesn't know what it's all about."[30]

7. There is usually normal identification with and often some participation in "pressure group" politics. Both "professionals" and others who practice the gambler's art agitate and vote for an "open town"; both the people who drink and those with "liquor interests" are politically active against prohibition legislation; and the "vice lords," their workers, and their patrons help to keep the town "open." This is business and politics "as usual."

The principal thing to remember in connection with these and similar elements generally associated with this group of offenses is that they cannot be explained in terms of individual differences. Yet the cultural elements mentioned above, by no means a full list, are characteristically part and parcel of this whole area of criminal offenses. The cultural definition of the behavior is not only antecedent to and the principal element in the explanation of the particular legal codes in effect, but cultural definitions similarly prescribe the role of the criminal violator, and in turn give character and a meaningful sense of place in the status hierarchy of those whose behavior is considered to be in violation of the law.[31]

4. IMPLICATIONS AND CONCLUSIONS

The offenses that have been discussed in this chapter are by far the most frequent of those handled in law enforcement activity. In fact, they account for approximately 50% of all non-traffic offenders handled by the police and the courts in the United States. How are these offenses to be accounted for? If criminological theory is unable to account for this group of offenses, it can make no claim to adequacy or completeness of coverage.

Theories in terms of individual differences are quite inadequate and inapplicable for the explanation of the many important economic and cultural elements involved in these crimes. Similarly, cultural and environmental theories fail to account for the miserable derelicts who are so prominent among those prosecuted for these of-

30. Cf. Charles Hamilton, ed., *Men of the Underworld*, Macmillan, New York, 1952, especially Part III, "Guide to the Underworld," pp. 105–32.

31. Cf. Alfred Hassler, *Diary of a Self-Made Convict*, Regnery, Chicago, 1954.

fenses. Some kind of eclectic syncretism of theories of individual characteristics, and of theories of social and economic influences, is in order, but a "multiple factor" approach combining specific elements from several different theoretical approaches does not give a satisfactory general theory. Such eclecticism tends to give particularistic theories for specific cases, but no general basis for application to all cases.

There are probably those who would say that a unique explanation is necessary for every case of crime, because every case is quite unlike any other case. If, however, generalization is not possible beyond the individual case to a whole class of cases, no theory can be advanced or analyzed.

It would be possible, of course, to eliminate many criminal offenses by simply changing the law so that such behavior would no longer be defined as criminal, but the problem behavior would remain and would have to be dealt with some other way. Basic differences and conflicts in community public opinion within the states, and within the nation, are held in an equilibrium of political compromise by the present laws. Changing the legal definitions would imply an anteeedent change in ideas and opinions within the political community. Control of the problem behavior, on an informal community reaction and opinion basis, presumably would be successful only if there was sufficient unity of sentiment so that law became unnecessary. Such unity of sentiment seems not to be prevalent in the ordinary American community.

After many years of penalizing these areas of behavior as crime, we still have the problem behavior with us, and we have as well a large number of persons being officially designated as criminals for participating in the behavior. Furthermore, there is widespread recognition of the fact that the behavior is much more prevalent than would appear from prosecution and conviction statistics. Penalizing behavior in these areas as crime does not seem to have been particularly successful in controlling or eliminating the problem behavior.

It is entirely possible that we have a larger proportion of our population involved in these behaviors than is the case in some countries that do not include them under the criminal law. Behavior in these several areas is criminal because we so define it, but if we did not penalize it as criminal, would the behavior become rampant and

out of control? That is the dilemma confronting present-day thinking and practice.

RECOMMENDED READINGS

Edwin M. Schur, *Crimes Without Victims: Deviant Behavior and Public Policy,* Prentice-Hall, Englewood Cliffs, 1965. A discussion of abortion, homosexuality, and drug addiction suggesting that key aspects of these problems are directly or indirectly attributable to their legal proscription.

Gilbert Geis, *Not the Law's Business?,* U.S. Government Printing Office, Washington, D.C., 1972. An examination of homosexuality, abortion, prostitution, narcotic use, and gambling focusing on whether victimless crimes can be considered socially harmful.

Edwin M. Schur and Hugo Adam Bedau, *Victimless Crimes: Two Sides of a Debate,* Prentice-Hall, Englewood Cliffs, 1974. A philosopher and a sociologist present two perspectives on the rationale for decriminalizing victimless crimes.

Sanford H. Kadish, "The Crisis of Overcriminalization," *The Annals,* 374: 157–70 (Nov., 1967). An examination of the questionable functions of the criminal law concerning victimless crimes and the costs of using law enforcement to control the behaviors.

Edward M. Brecher, *Licit and Illicit Drugs,* Consumers Union, Mount Vernon, N.Y., 1972. A review of historical, medical, pharmacological, sociological, psychiatric, and psychological literature on legal and illegal drugs, and a critical examination of drug laws, policies, and attitudes.

Jacqueline P. Wiseman, *Stations of the Lost,* Prentice-Hall, Englewood Cliffs, 1970. A vivid depiction of Skid Row alcoholics and the recurring situations that they face.

Donal E. J. MacNamara and Edward Sagarin, *Sex, Crime, and the Law,* The Free Press, New York, 1977. Approaches the problem of sexuality and crime from the legal, sociological, and psychological perspectives; reviews current literature on the subject, and discusses recent changes in laws and mores.

Charles Winick and Paul M. Kinsie, *The Lively Commerce: Prostitution in the United States,* Quadrangle, Chicago, 1971. The first comprehensive study of prostitution in almost fifty years.

U.S. Commission on the Review of the National Policy toward Gambling, *Second Interim Report*, U.S. Government Printing Office, Washington, D.C., 1976. Overview of gambling in the United States; review of existing federal gambling statutes and of legal gambling industries, and recommendations on future policies of the federal government.

President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Drunkenness*, U.S. Government Printing Office, Washington, D.C., 1967. An overview of the legal aspects of drunkenness.

CHAPTER SIXTEEN

The Organization of Criminals for Profit and Power

A colorful, more or less commonsense vocabulary has come into existence as a result of newspaper writers and other interpreters of the current scene trying to convey to their readers some understanding of certain specialized kinds of criminal activity. Well-written, hard-hitting books like Sondern's *Brotherhood of Evil* (1966), Maas' *The Valachi Papers* (1968), Cressey's *Theft of the Nation* (1969), Talese's *Honor Thy Father* (1971), and Teresa's *My Life in the Mafia* (1973) have not only documented many of the lurid details of gangster control of crime, but they have also had a strong influence on the general acceptance of the idea of crime as an organized business, conducted for profit.[1] Words and phrases such as the professional criminal, organized crime, the syndicate, the mob, the gang, the brain, the fix, and the fence run through these accounts with considerable consistency of meaning and implication. What is this activity? If it is illegal, why is it not promptly suppressed? What causes it?

These and many other questions have been discussed in numerous books and articles dealing with various aspects of this relatively commonplace, yet subtle and elusive side of the general crime

1. Frederic Sondern, Jr., *Brotherhood of Evil*, Farrar, Straus, and Cudahy, New York, 1966; Peter Maas, *The Valachi Papers*, Putnam, New York, 1968; Donald R. Cressey, *Theft of the Nation*, Harper & Row, New York, 1969; Gay Talese, *Honor Thy Father*, World, New York, 1971; Vincent Teresa, with Thomas C. Renner, *My Life in the Mafia*, Doubleday, Garden City, 1973.

problem.[2] This activity will be the focus of attention in this chapter. Primary concern will be with the relation of this kind of collective behavior to criminological theory rather than with any extended discussion of the activity itself.

1. THE PROFIT MOTIVE IN CRIME

In normal society nearly everyone works with someone else to earn a living. Everywhere men have been interested in getting a maximum return for a minimum expenditure of effort and energy. It is axiomatic that this urge has been a useful spur to self-improvement and to the realization of a more abundant life. This drive is said to be a basic reason for the organization of business and the coordination of specialized efforts to achieve a higher level of industrial production.

The incentive of a greater return for the more intelligently coordinated effort of many individuals is one of the essential considerations underlying the so-called profit motive in business and in industry. Organization, specialization, and coordination of activity are but a few of the commonplace virtues associated with skillful management of business and industry. The result is increased production and greater earnings; in short, increased profits for everyone connected with the activity.

The incentive of a more effective and profitable return for work done is also the key to understanding organization in the field of crime.[3] Organized crime is always interested in obtaining more money easily and with a minimum of effort. It is a particularly virulent form of the common desire to get rich quick. The motivation, in this general sense, is largely the same as that of legitimate business, except that organized crime operates outside the law rather than within the law as business generally tries to do.

2. Extensive bibliographies dealing with the subject of organized crime may be found in Lowell L. Kuehn, "Syndicated Crime in America," in Edward Sagarin and Fred Montanino, eds., *Deviants: Voluntary Actors in a Hostile World*, General Learning Press, Morristown, 1977, pp. 214–19, and James A. Inciardi, "Vocational Crime," in Daniel Glaser, ed., *Handbook of Criminology*, Rand McNally, Chicago, 1974, pp. 381–401. A glossary of underworld terms is presented in Cressey, op. cit. pp. 343–55.

3. The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime*, U.S. Government Printing Office, Washington, D.C., 1967, pp. 1–5; also Daniel Bell, "Crime as an American Way of Life," *Antioch Review*, 13:131–54 (June, 1953).

2. DESCRIPTIVE TERMINOLOGY

The language used to describe the organization of criminal activity is not very uniform or precise. In general, however, the terms or technical phrases reflect something of the degree of complexity of organization involved and something of the magnitude of the operations performed. The minimum unit of cooperative effort is the *partnership* of two or three working together to "pull" a particular "job." At the other extreme is the large circle of influence and subordination that operates similarly to that in any business organization; it is often referred to as the *syndicate* or the *combination*. "Organized crime" thus refers to the entire spectrum of criminal activity between these two extremes, and not merely to the "syndicated crime" of such large associations as the Mafia or the Cosa Nostra.[4]

Organized crime must be distinguished from the efforts of the large number of individual operators, petty thieves, drunks, disorderly persons, and others who try their hand at crime, but without much effect. Part of their difficulty stems from their wasteful, inefficient, and unsystematic way of going about their criminal activity. Organization brings with it planning, leadership, division of labor, cooperation, and a form of social structure that gives personal status and a place for the individual in the world of his associates. Loyalty to his group and the sharing of responsibility for large-scale action involving many other individuals and careful attention to the timing and the details of a special task, become the individual's bond of communality with his fellow criminals in a normal action-pattern type of group. This is the social-psychological reality of the organized group in crime.[5]

The individual operator, in committing crime, is severely limited both to the type of job he may attempt and to the skills and services

4. Kuehn, op. cit. pp. 159–63; also Edwin H. Sutherland and Donald R. Cressey, *Criminology*, 10th ed., Lippincott, Philadelphia, 1978, pp. 282–95.

5. Cf. Edwin H. Sutherland, *The Professional Thief*, University of Chicago Press, Chicago, 1937; Werner J. Einstadter, "The Social Organization of Armed Robbery," *Social Problems* 17:64–83 (1969); Peter Letkemann, *Crime as Work*, Prentice-Hall, Englewood Cliffs, 1973; Neal Shover, "The Social Organization of Burglary," *Social Problems*, 20:499–514 (1973); and Carl B. Klockars, *The Professional Fence*, Free Press, New York, 1974. See also Edwin M. Lemert, "The Behavior of the Systematic Check Forger," *Social Problems* 6:141–49 (1958), reprinted in Edwin M. Lemert, *Human Deviance, Social Problems and Social Control*, Prentice-Hall, Englewood Cliffs, 1967, in which it is argued that "systematic check forgery . . . contains the seeds of its own destruction" because the professional forger works alone and lacks social support from his peers.

he can bring to any criminal activity. He may need lookouts and decoys as well as someone to provide an alibi for him. Hence, there are relatively few proficient criminals who really work alone.[6] Most form partnerships, with two or three persons who work together, sharing risks and dividing profits. Some kinds of crime, such as picking pockets, call for a team of two or three, each with specialized duties. Such teams often become mobs; that is, small groups, often of several teams, working together with coordination of activities and cooperation in arranging for fixes and in dealing with fences to dispose of the loot.

Such combinations of individual criminals can be considered as varied forms of "intimacy groupings," in which all the individuals working together know each other personally. As these groups become larger and are identifiable as specialty groups devoted to crime as a way of life, with sufficient manpower and skill to take care of all the contingencies that may arise in the course of any job undertaken, they take on the characteristics of criminal gangs.[7] The gang specializes in violence, intimidation, and fast profit. There is great emphasis on loyalty to the group, much identification with "the boys," and generally a concern with specialized types of crime calling for extensive manpower, great mobility of all the members, and significant "connections" to help protect and cover up all related activity. Burglary, large-scale bank robbery, kidnapping for ransom, and so on, are some of the common crimes typically carried out by gangs. A gang usually does not involve itself in small-time or petty crimes, but goes after the bigger jobs in which the "take" is expected to be worth the risk and to yield enough for everyone to get something in the "pay-off."

The criminal gang is characteristically an action group. It operates as a group. Its form of organization is therefore generally not unlike that of any simple, small-scale military unit. There must be a recognized head or leader (commanding officer) with a cadre of subordinate officers (lieutenants, sergeants, corporals) and a working force (privates) who are expected to carry out the several and varied assignments made by the leader. As in a military unit in battle, every-

6. The following analysis can be compared to Donald R. Cressey's in *Criminal Organization: Its Elementary Forms*, Harper & Row, New York, 1972, pp. 18–80, where he proposes six levels of criminal organization, identified by key positions in their structure.

7. See the discussion of "professional heavy crime" in Inciardi, op. cit. pp. 345–61.

one has a specific assignment or job, and everyone participates in active combat; but only the commanding officer may give orders or make major decisions about the course of action to be followed.

The individual for whom crime has become the regular and accepted way of earning a living is sometimes called a professional.[8] To be considered a real professional, he must have some degree of skill and competence in criminality beyond that of the beginner and especially beyond that of the stupid dolt who may try to live by crime but has no talent for it. Being professional means not only earning a living by criminal activity, but also following a way of life with a set of attitudes and rationalizations that support such activity. With the idea of professionalization in any field goes the notion of acquiring the required skills, the instilling of professional attitudes, and the subscription to a code of conduct or ethics, the violation of which leads to disgrace and expulsion from the profession. Any real professional man is proud of the profession he practices and is loyal to its code of conduct.

The same basic ideas apply when "professional" is applied to crime and the criminal. The professional criminal must be distinguished from the merely habitual criminal, whose activity, although repetitive and habitual, has no other element of a profession. A lawyer habitually practices law; a doctor is in the habit of practicing medicine. We do not, however, speak of them as habitual lawyers or doctors, but as professional men of law or medicine. Similarly, the term habitual criminal is descriptive of a less specific and less meaningful vocational identification with crime than is true of the professional. Such a person is often a repeater in crime, but essentially a failure in the practice of crime as a vocation and a way of life. He frequently gets caught, yet wants to work at crime and associate with other criminals; but he often is not good enough to be trusted with any important assignments. Consequently, he sometimes has to work at legitimate employment between jobs and prison terms. The merely habitual criminal, who has been caught several times, has no place and no status among truly professional criminals. Shoplifters, pickpockets, and "con" men, together with an upper crust of thieves specializing in very expensive jewelry and the like, are among the more clearly skilled and well-established "professionals" in crime.

8. See Inciardi, "Vocational Crime," op. cit. pp. 300–45; also his *Careers in Crime*, op. cit. pp. 5–82; also Cressey, *Criminal Organization*, op. cit. pp. 46–47.

3. CRIME AS BUSINESS: SYNDICATES, RACKETS, AND POLITICAL GRAFT AND CORRUPTION

The term "organized crime" is frequently used to refer only to the activities of highly organized, large-scale associations of criminals, and not to the less organized, smaller criminal organizations described above. For example, the President's Commission of Law Enforcement and Administration of Justice stated that organized crime "involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments."[9] They distinguish three principal aspects of organized crime activity[10]:

> The core of organized crime activity is the supplying of illegal goods and services—gambling, loan sharking, narcotics, and other forms of vice—to countless numbers of citizen customers. But organized crime is also extensively and deeply involved in legitimate business and in labor unions. Here it employs illegitimate methods—monopolization, extortion, tax evasion—to drive out or control lawful ownership and leadership and to exact illegal profits from the public. And to carry on its many activities secure from governmental interference, organized crime corrupts public officials.

Although these activities are interrelated, a somewhat artificial distinction will be made, for the purposes of discussion, between the criminal syndicate, organized for the provision of illegal goods and services, and the rackets, involved in the invasion of legitimate organizations. Both forms of organized crime will be discussed, along with the political graft and corruption associated with them.

In contrast to the criminal gang, which is an active, mobile group directly involved in crime activity, the *criminal syndicate* is a relatively stable type of business organization. Its business is to in-

9. *Task Force Report—Organized Crime*, op. cit. p. 1. See Donald R. Cressey, "The Functions and Structure of Criminal Syndicates," in *Task Force Report*, Appendix A, pp. 25–60, for a detailed presentation of this structure. See also the discussions of formal organizations in Cressey, *Criminal Organization*, op. cit. pp. 1–17, and in Sutherland and Cressey, op. cit. pp. 282–85. Francis A. J. Ianni rejects this model of organization, maintaining instead that criminal syndicates are organized along "family" or "kinship" lines, or are similar to small businesses rather than to huge corporations. See Ianni's *A Family Business: Kinship and Social Control in Organized Crime*, Russell Sage, New York, 1972 and *Black Mafia: Ethnic Succession in Organized Crime*, Simon and Schuster, New York, 1974. This debate is discussed in Kuehn, op. cit. pp. 184–97.

10. *Task Force Report*, op. cit. p. 1.

tegrate and coordinate existing crime opportunities, practices, and personnel into a smoothly functioning, large-scale enterprise devoted to the assurance of a high level of profits for the organization. The word syndicate is taken directly from the language of legitimate business. Webster defines a syndicate as "an association of persons who combine to carry out a financial or industrial project."[11] *The Oxford Universal Dictionary* defines it as "a combination of capitalists or financiers, entered into for the purpose of prosecuting a scheme requiring large resources of capital, especially one having the object of obtaining control of the market of a particular commodity."[12] The significance of the term in the present context lies in the fact that it represents an important, large-scale combination of capital and skilled personnel devoted to criminal activity. This may make it a very powerful influence in the local community, or in the state, and sometimes even in the nation. Like the truly "big business" corporation on which it is patterned, it can afford to buy the best talent available in services and in technical skill that it may need, but may happen not to be able to furnish directly from within the organization.

The syndicate is in the business of providing forbidden and illegal services or commodities desired by customers who are able and willing to pay for what they want.[13] Illicit sex, drugs, alcohol, loans, and gambling are the main staples sold to willing customers at prices high enough to give a substantial profit to management after meeting all the costs of carrying on the business. Wartime rationing of food, gasoline, rubber tires, and other scarce commodities offered brief opportunities for the syndicates during World War II, but the time-span was too short and the controls too uncertain to bring about the kind of extensive organization devoted to the black market that there had been in connection with prohibition legislation and the Eighteenth Amendment.[14]

11. Webster's Collegiate Dictionary, 2nd ed. G & C. Merriam, 1947, p. 1012.

12. *The Oxford Universal Dictionary*, 3rd ed., 1944, rev. with addenda, 1955, The Oxford University Press, printed in the United States by the Conkey Division of Rand McNally, p. 2112.

13. See Cressey, *Theft of the Nation*, op. cit. pp. 72–108, "Demand, Supply, and Profit."

14. See Marshall B. Clinard, *The Black Market*, Holt, Rinehart and Winston, New York, 1952, for a book-length analysis of criminality in connection with wartime rationing experiences in the United States.

The crime syndicate flourishes only because people with money in their pockets are willing to pay the price asked for the service provided or the commodity sold. No one is forced to patronize a crime syndicate and there is no compulsion on the public to contribute to its profits. In this sense, it is a business organization, functioning on merit, and profitable only when it can give the customer what he wants at a price he is willing to pay. He may be asked to pay an outrageous price for what he wants, but that is equally true of many legitimate commodities. The syndicate must also keep the customers coming without the support of the advertising ballyhoo of the mass media.

The *racket* in crime is the systematic practice of extortion under threat of some kind, usually of personal injury or of property damage. Typically, the racketeer insists on being "cut in" for a percentage of the returns from some existing, profitable enterprise under threat of some penalty for refusal. If the business is illegal, or only marginally within the law, the opportunities for the racketeer are normally greatly increased, since no appeal for redress can then be made to the police or other public authorities.

Racket operations are almost infinitely varied and extensive as to the kind of business enterprise that may be vulnerable.[15] An illustration of one of its simplest forms is the so-called "protective association" that forces retail business establishments to pay high dues and regular "fees" for the privilege of operating without molestation. The "hazards" against which the merchant is "protected" are interference by "enemy" gangsters, but in actuality are mostly those originating with and under the control of the racketeers themselves. Should the merchant refuse to go along with the demands made on him, he may find his windows broken, his shop bombed, or his goods damaged. In case of continuing obstinacy on his part, beatings, eye-gouging, and so on may be used as more effective arguments of persuasion. The "sales talk" of the racketeer may include the suggestion that the added costs of "protection" be passed on to the customers, thus making it a more profitable business both for the merchant and for the protective association.

15. For detailed accounts of specific racket and syndicate operations and for interpretations of "who worked what racket," see especially accounts like those of Sondern, op. cit. and Cressey, *Theft of the Nation*, op. cit. as well as Ralph Salerno and John S. Tompkins, *The Crime Confederation*, Doubleday, Garden City, 1969; Ed Reid, *The Grim Reapers*, Regnery, Chicago, 1969; and Fred J. Cook, *The Secret Rulers*, Duell, Sloan and Pearce, New York, 1966.

The so-called "labor racketeer" has become relatively well known in the area of union-employer relations. Waterfront racketeering in great port cities like New York or San Francisco has become widely recognized and actively investigated for many years. For example, according to Johnson's *Crime on the Labor Front* (1950),[16] the port of New York had a floating labor force of over 20,000 men, each of whom was only occasionally and irregularly employed in the loading or unloading of ships' cargoes. There were no permanent jobs, only a succession of different jobs as ships came and went. This put the hiring-hall boss in a strategic position to say who would or would not work. Also, he was in a position to play favorites and give the jobs to those who would "kick back" part of their pay to him and keep their mouths shut.

An investigating committee in 1951 found non-existent employees on the payroll; their pay was collected by "stooges" who turned it over to the racketeers in charge of the union hiring halls.[17] Much attention was given to "cleaning up" the waterfront, both by leaders of organized labor and by the government, but later stories in the *New York Times* present evidence of continuing racketeer influence.[18]

Political graft and corruption are always intimately related to the effective organization of crime.[19] The politician or bureaucrat, especially in the anonymity of city life, can easily become corrupt and a ready and willing partner with various organized criminal elements. The primary tool for this corruption is money, either offered as a direct bribe, kick back, or payoff, or in the more subtle form of a "campaign contribution."[20] In return for this money, the criminal expects to receive various forms of "protection" from the criminal

16. Malcolm Johnson, *Crime on the Labor Front*, McGraw-Hill, New York, 1950. For a detailed discussion of labor racketeering, see Senator John McClellan, Senate Select Committee on Improper Activities in the Labor or Management Field, *First Interim Report*, S. Rep. No. 1417, 85th Cong., 2nd Sess. 1958; *Second Interim Report*, S. Rep. No. 621, 86th Cong., 1st Sess. 1959; and *Final Report*, S. Rep. No. 1139, 86th Cong., 2nd Sess. 1960. See also Kuehn, op. cit. pp. 179–81 and Cressey, *Theft of the Nation*, op. cit. p. 95–99.

17. Ibid. p. 107.

18. *New York Times*, Sept. 5, 1958, p. 1; Sept. 2, 1959, p. 58; Nov. 2, 1961, p. 58; March 30, 1967, p. 1; Dec. 21, 1968, p. 73; March 9, 1969, p. 90; and May 27, 1979, Section E, p. 7.

19. *Task Force Report*, op. cit. p. 6. For detailed discussions of this corruption, see Cressey, *Theft of the Nation*, op. cit. pp. 248–89; Stuart L. Hills, *Crime, Power, and Morality*, Chandler, New York, 1971, pp. 119–29; and Clark Mollenhoff, *Strike Force: Organized Crime and the Government*, Prentice-Hall, Englewood Cliffs, 1972.

20. See Alexander Heard, *The Costs of Democracy*, University of North Carolina Press, Chapel Hill, 1960, pp. 154–68.

justice system. Police may simply look the other way, prosecutors may dismiss cases, and judges may suppress evidence, issue favorable instructions to the jury or find the defendant innocent, or impose minimal sentences. More subtle forms of protection may also be provided. Police may deliberately use illegal or unconstitutional methods in making arrests in order to ensure that the charges will be thrown out in court. Or they may selectively enforce the laws against all but a certain group, thereby granting those groups a virtual monopoly in crime. Criminals may be tipped off when search warrants are issued or raids are planned, police investigating units and prosecution units in the district attorney's office may be deliberately underfunded and overworked; and anticrime legislation may be defeated or watered down. Finally, governmental officials can make decisions that result in massive profits for legitimate businesses controlled by organized crime. Zoning regulations can be altered, resulting in windfall profits in real estate deals. Construction contracts may be awarded to companies who did not submit the lowest or best bid. Liquor licenses may be granted to some people, but not to others. The list seems to be almost endless.

This, in brief, is the general nature of the unholy alliance between the corrupt political machine and organized crime that all too often has characterized local, city, and county government in the United States.[21] The problem must not be confused with that of the occasional personal dishonesty among individual politicians in their dealings with other individuals, ostensibly businessmen, who are connected with criminal gangs and syndicates. The problem lies in the widespread corruption and favoritism of a group of politicians who are accustomed to working and maintaining contacts with organized crime syndicates that can well afford to pay for special services or special immunities. The cooperation of numerous individuals is usually involved in obtaining approvals and signatures necessary for government action of any kind, and therefore corruption and

21. For some detailed specifications on the contemporary linkage of crime and politics in American cities, big and small, see such studies as George Amish, *The American Way of Graft*, The Center for Analysis of Public Issues, Princeton, 1976; Larry L. Berg, Harlan Hahn, and John R. Schmidhauser, *Corruption in the American Political System*, General Learning Press, Morristown, 1976; David Caputo, *Organized Crime and American Politics*, General Learning Press, Morristown, 1974; John Gardiner, *The Politics of Corruption*, Russell Sage, New York, 1970. See also Gardiner's "Wincanton: The Politics of Corruption," in *Task Force Report*, op. cit., Appendix B, pp. 61–79.

graft involving public officials is seldom a matter of a few individuals. It is not so much a question of individual or personal dishonesty as the chicanery, double-dealing, and general dishonesty on the part of a whole clique or group of government officials—thus the phrase "corrupt government"—joining the criminal syndicate to exploit a relatively inarticulate and essentially helpless general public. Any sense of personal wrongdoing on the part of individual public officials in these situations seems to have been blunted by the psychological support of the group situation, whereby they have the acceptance and assurance of support of fellow officials. What so many others do without self-incrimination cannot be really so very bad is the usual justification of individuals in such situations.

4. UNDERWORLD COMPETITION AND GANG WARS

Only the spectacular aspects of organized crime usually come to public attention. Such an incident was the sensational St. Valentine's Day "massacre" in Chicago in 1929 in which seven members of one criminal gang were lined up against the inside brick wall of a garage and executed by gunmen from a rival gang. Since that time (as well as before it), there have been many other incidents, such as the killing of Albert Anastasia in a barbershop in midtown Manhattan in October, 1957[22]; the "Gallo-Profaci War" in New York in the early 1960s[23]; the shooting of Joseph Columbo at the Unity Day rally of the Italian-American Civil Rights League in June, 1971[24]; and the killing of newspaper reporter Don Bolles in Arizona in June, 1976.[25]

The details of these bloody affairs do not contribute to an understanding of why these killings occurred. The explanation of the violence is to be found in the fact that the businesses involved were both illegal and enormously profitable. It is a commonplace of any business activity that when there are good profits to be earned there will be competitors trying to get in on the return. Our system of

22. See Salerno and Tompkins, op. cit. pp. 295–97 for a discussion of the circumstances of this killing.

23. See ibid. pp. 131–48 for a detailed account of this war.

24. See "The Mafia Back to the Old Days?," *Time*, July 12, 1971, pp. 14–23.

25. See Martin Tallberg, *Don Bolles—An Investigation into His Murder*, Popular Library, New York, 1977.

private profit economy has a long history of dealing with the problem of the proper control of the conditions of competition. How avoid monopoly and yet not suffer from "cutthroat" competition?

Within the area of legitimate enterprise, law, government, and the courts restrain, guide, and control the competitive process. But under the law, successful combinations in industry, business, and finance can eliminate and wipe out their competitors. This is clearly an important aspect of why big business is big. Thus, in the story of the automobile industry in the United States, numerous competitors have disappeared in the consolidations and mergers that have resulted in today's Big Three. There is still competition in the automobile field, but it is controlled and regulated in many ways. For example, Buick, Oldsmobile, and Chevrolet, onetime independent competitive companies, are now competitive units within General Motors. The competition that remains now never becomes cutthroat, because all three are under a common general management with a genuine pooling of resources and engineering skills that would have been impossible for the small, independent company.

The situation is strikingly similar in the case of the underworld combination or syndicate. This element of order and control is precisely what these forms of organization bring to underworld business enterprises. Since the profits from these activities are enormous, really of "big time" proportions, involving between $6 and $7 billion annually from gambling operations alone,[26] there will inevitably be competitors trying to "muscle in" on the lush take. Yet the activities are illegal and under cover, so no appeal can be made to recognized channels for redress or protection against unfair methods of competition. Police protection, therefore, must be informal, private, and supplied by the underworld itself. Competitors are brought into line by direct interference and intimidation. The goon squads of gunmen employed for this work are better understood as the enforcers of underworld decrees and decisions. There are always critical questions, in this shadowy world, of where the orders come from, who has the authority to give orders, and whether or not orders should be obeyed. Uncertainties about the answers to these critical questions

26. *Task Force Report*, op. cit. p. 3. This is equivalent to the total profit of the twelve largest industrial corporations in the nation, according to Lawrence J. Kaplan and Dennis Kessler, *An Economic Analysis of Crime*, C. C. Thomas, Springfield, 1976, p. 35.

are resolved through direct battle—gang war—and through peace conferences that here, as in the world of nations, follow after wars.[27]

It is as an incident in the battle between competing underworld organizations that the sensational and bloody St. Valentine's Day massacre becomes understandable. As the story came to light, it seemed that in the Chicago of that day the sale of illicit alcohol and the control of brothels and of the "dope trade" involved two principal underworld groups or gangs with numerous more or less independent operators affiliated with each. There was a South-side organization under the control of the notorious Al Capone (after a series of mysterious, but convenient killings and disappearances of such other leaders as "Big Jim" Colosimo and Johnny Torrio) and a North side group, the "Bugs" Moran mob. There was really big money in the profits from the various enterprises, and the Capone syndicate proceeded to establish a monopoly. This was resisted by the Moran group through a long series of battles and killings on both sides, but resistance collapsed when seven of the principal gunmen and "organizers" for the Moran group were summarily executed on St. Valentine's Day in 1929. The power of the Bugs Moran mob declined rapidly after that significant defeat, and it was soon merged with and became part of the larger Capone empire. Both Bugs Moran and other prominent members of his gang were thus reduced from the status of independent businessmen to that of employees of a larger combine in which they took only their permitted percentage or commission while passing on most of the profits to the top command of the Capone syndicate.[28]

Other cities have had their underworld mergers and consolidations. The stories are all more or less the same except for names and details.[29] The basic reason for the whole sorry mess was the solid economic fact of big money in profits and the need to establish tighter monopolistic control over an illegal enterprise to enlarge the profits and to see that the right people got a share of the easy money.

27. Cf. Cressey, *Theft of the Nation*, op. cit. pp. 29–53, "War, Peace, and Peaceful Coexistence."

28. For a succinct account of the Al Capone story see Reid, *The Grim Reapers*, op. cit. pp. 245–51. A more detailed account may be found in John Kobler, *Capone: The Life and World of Al Capone*, Putnam, New York, 1971.

29. See Reid, op. cit., for accounts of organized crime in a number of different cities.

5. INTERRELATION OF THE UNDERWORLD AND THE UPPERWORLD

As social structures, the underworld of crime and the upperworld of business and politics are, in many ways, essentially two sides of the same coin. The nature and character of the underworld, in any given city or county, is clearly a reflection of the kind of business integrity and political morality that is characteristic of the dominant elements of the community. When community leaders ask few questions about the nature of the practices followed in connection with their own sources of profits, it may be expected that there will be considerable tolerance for various kinds of political favoritism that would be rejected by leaders in another community.[30] It is a truism of social interaction that one of the more corrupting influences in government is that of personal friendships and primary group contacts.[31] The behavior of friends, or behavior tolerated by friends, somehow seems less reprehensible than it might otherwise seem to be. This thin line between what is proper behavior, what is frowned upon, and what is wrong, in the interrelations of private and public morality, appears to be one of the vulnerable chinks in the armor of public morality today.[32]

Because business is competitive and because profits increase when competition is eliminated, there is normally a continuous struggle between the various economic units for power and for a more favorable place in the world of everyday business. This competition may become a desperate struggle for survival. Help from questionable sources may then be welcomed, provided the competitive position of the business is improved. Such assistance is likely to be on an exchange of favors basis: help will be given provided noninterference with the operation of the racket is promised. If the promise is broken there will be trouble; there may be threats, beatings, even murder. No tears are ever shed for the competitor who loses his business, either in the community of legitimate activities or in the underworld.

An early formulation of the idea of a basic structural relationship

30. Cf. William J. Chambliss, "Vice, Corruption, Bureaucracy, and Power," *Wisconsin Law Review*, 1971, pp. 1150–73.

31. Robert E. Park and Ernest W. Burgess, *Introduction to the Science of Sociology*, University of Chicago Press, Chicago, 1924, pp. 330–31.

32. E. S. Atiyah, *The Thin Line*, Harper, New York, 1952.

between business activity (with its supporting world of government and politics) and criminality came out of the empirical studies of Enrico Ferri and Fillipo Poletti, discussed in an earlier chapter,[33] that were carried out using French and Italian data nearly a century ago.[34] Poletti's basic proposition, that increase in legitimate activity increases the opportunity and the incentives for criminal activity, carries with it the implication that both legitimate business and criminality are interdependent and interrelated parts of the normal structure of society. It would follow from this that the same general explanations that are useful in understanding one are similarly useful in understanding the other.

6. IMPLICATIONS FOR THEORY AND FOR CONTROL

One basic fact stands out from this discussion, namely, that organized crime must be thought of as a natural growth of or as a developmental adjunct to our general system of private profit economy. Business, industry, and finance all are competitive enterprises within the area of legal operations. But there is also an area of genuine economic demand for commodities and services not permitted under our legal and social codes. Organized crime functions in this area. It, too, is competitive, and hence must be organized to protect itself and to compete.

With two parallel systems of competitive business activities in the same community, there are obviously many opportunities for profitable deals to meet the threat of competition. Thus, for example, a legitimate business enterprise in competition with another may utilize the services of a labor-boss racketeer to call a strike in a competitor's establishment in order to gain a business advantage. Such collaboration obviously is advantageous to the racketeer as well as to the business profiting from the misfortunes of its competitor.

The whole area of organized crime is clearly one in which individual differences can be written off as of little theoretical significance.

33. See Ch. 8, pp. 172–75.

34. Fillipo Poletti published his formulation in book form in 1882 after several years of work and discussion in several shorter papers. See his *Del sentimento nella scienza del diritto penale*, Undine, 1882. This work is cited and interpreted with quotations translated into English by Morris Ploscowe, "Some Causative Factors in Criminality," *Report on the Causes of Crime*, vol. I, pt. I, pp. 5–161 (especially pp. 113–15) of No. 13, Report on National Commission on Law Observance and Law Enforcement, Washington, D.C., June 26, 1931.

This kind of criminal activity, and its organization as an economic system, seems clearly to be an aspect of the competitive struggle for favor and position in the economy. Many of the more violent struggles are between elements of the underworld, one gang against another, rather than between the underworld and upperworld groups. In the struggle of one business with another, a business may, and apparently often does, seek the assistance of the underworld. As long as they are useful to one another, their interdependence continues and both become established in normally functioning social structure.

There is an underlying mutual trust and confidence, both in the business ability and in the personal integrity of fellow operators, that appears to be the principal cohesive factor within an underworld organization. There can be no legal incorporation or other binding contract; there can only be the code of the gentleman whose word is as good as his bond. In this the parallel is strikingly similar to that of the legitimate business world. A California executive may telephone a New York broker or wholesaler to negotiate an important business transaction. There will be no hesitancy about arrangements provided there is mutual trust and confidence. This is the heart and core of legitimate business activity, even more than written agreements and court orders.

In the underworld, even more reliance is placed on a man's reputation for keeping his promises. He must be dependable. This was dramatically pointed out to the Kefauver committee[35] by the well-educated lawyer-gambler Sidney Brodson of Milwaukee.[36] The somewhat emotional, self-righteous indignation that was the committee's reaction to this testimony[37] entirely overlooked the essential truth of Brodson's contention that the most valuable asset a bookmaker has is his reputation for integrity and honesty in covering all bets. With that reputation, he can accept bets over the telephone

35. The official title of the committee was "Special Committee to Investigate Organized Crime in Interstate Commerce" of the United States Senate, 81st Congr. 2nd Sess. The membership of the committee consisted of the following senators; O'Conor (Md.), Hunt (Wyo.), Tobey (N.H.), Wiley (Wis.), with Kefauver (Tenn.) as chairman. It was established May 3, 1950, and filed its final report May 1, 1951. An authoritative digest and summary of the voluminous detail of the main report is available in the modest little book by Estes Kefauver, *Crime in America*, Doubleday, New York, 1951.

36. Kefauver, ibid., p. 164.

37. Ibid. p. 165.

coast to coast, and his business will grow and prosper. If he welshes on his obligations, he is as much out of business as would be the legitimate businessman who breaks business agreements made over the telephone.

From the standpoint of control, organized crime seems to be more significantly affected by the economic facts of supply and demand and the fads and foibles in consumer habits than by much legislation and sporadic attempts at formal control.[38] It must always be remembered that underworld businesses are as capable of failure (as businesses) as are those of the legitimate business community. There is the same obligation to "keep up with the times" as there is for business and industry in general. In the long run, this may turn out to be a more fundamental and a more significant control than explicit legislation and the customary sporadic police drives.

RECOMMENDED READINGS

Donald R. Cressey, *Theft of the Nation*, Harper & Row, New York, 1969. An analysis of the nationwide alliance of 24 "families," the linkages that bind them, the persons occupying key positions, and the illegal activities they control.

Francis A. J. Ianni, with Elizabeth Reuss-Ianni, *A Family Business: Kinship and Social Control in Organized Crime*, Russell Sage, New York, 1972. A detailed and intimate portrayal of one Italian-American criminal "family."

Francis A. J. Ianni, *Black Mafia: Ethnic Succession in Organized Crime*, Simon and Schuster, New York, 1974. A study of the black, Puerto Rican, and Cuban crime syndicates that are replacing the Italian-American "families" in New York and New Jersey.

Donald R. Cressey, *Criminal Organization: Its Elementary Forms*, Harper & Row, New York, 1972. The formal and informal organizational structures of criminals, from the nationwide syndicate to the "task forces" organized for specific crimes.

President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime*, U.S. Government Printing Office, Washington, D.C., 1967. An overview of organized crime in the United States, with important appendices on the functions and structure of

38. Cf. Kuehn, op. cit. pp. 206–11.

organized crime (Donald R. Cressey) and the political control of one city by organized crime (John A. Gardiner).

James A. Inciardi, "Vocational Crime," in Daniel Glaser, ed., *Handbook of Criminology*, Rand McNally, Chicago, 1974, pp. 299–401. A detailed history of professional crime from fifteenth-century Europe through the gangs of the early American West to contemporary organized crime; extensive bibliography.

Peter Maas, *The Valachi Papers*, Putnam, New York, 1968. A personal account of the growth of the Mafia from the 1920s by one of its loyal soldiers turned informer.

Harvey Aronson, *The Killing of Joey Gallo*, New American Library, New York, 1973. The life and death of one gangster.

Lowell L. Kuehn, "Syndicated Crime in America," in Edward Sagarin and Fred Montanino, eds., *Deviants: Voluntary Actors in a Hostile World*, General Learning Press, Morristown, 1977, pp. 157–219. An excellent overview of the major issues in the study of organized crime.

CHAPTER SEVENTEEN

White Collar Crime

Within the general area of a conflict theory of crime, a specialized aspect of social and economic conflict is represented in the characterization "white collar crime." The term has been in frequent use in the literature of American criminology since the December, 1939 presidential address before the American Sociological Society by the late Edwin H. Sutherland, in which he used it as the title for his remarks and in which he outlined many of its ramifications.[1] There has been no official or legal definition, however, and the term remains somewhat ambiguous and controversial. It nevertheless relates to some special aspects of criminal behavior that have important implications for criminological theory. Thus, this whole problem will be critically examined in this chapter.

1. WHAT DOES THE TERM MEAN?

Obviously, the practice of chicanery, corruption, and crime on the part of respected and highly placed persons in the community had been known and commented on long before Sutherland discussed it. Yet it seems that at about the time of his address there was more emphasis on this aspect of criminality. An early, well-known text-

1. Edwin H. Sutherland, "White Collar Criminality," *American Sociological Review*, 5:1–12 (Feb., 1940).

book, *New Horizons in Criminology* by Barnes and Teeters,[2] first published in 1943, opens with a discussion of "the revolution in the nature of crime" and goes on to describe as "white collar crime" a large variety of commercial transactions of questionable ethics as well as racketeering and organized crime. Since that time, practically every contemporary textbook in the field has had a chapter or a section devoted to white collar criminality.

Sutherland's interest in the crimes of the well-to-do began to take on the form of systematic research shortly after the appearance of the first edition of his *Criminology* in 1924.[3] The second and third editions (the title changed to *Principles of Criminology*), in 1934 and 1939, respectively, included scattered references and comments on such crimes, but his 1939 presidential address was his first extended and systematic formulation of data and theory in this highly explosive, controversial field. In 1945, in his article, "Is 'White Collar Crime' Crime?,"[4] he responded to criticisms of his 1939 formulation. In 1949, he published a book-length study, *White Collar Crime*,[5] reporting in some detail the data from many years of research as well as his considered discussion of the theory and its implications. In the posthumous volume *The Sutherland Papers*,[6] is included an address given before the Toynbee Club of DePauw University in the spring of 1948 entitled "Crime of Corporations," which summarizes with numerous dramatic illustrations the argument and the findings that, together with other material from his files, became the 1949 volume *White Collar Crime*.

Sutherland addressed himself to the problem of crime in modern business practices. He argued that the usual reports, which picture the criminal populations as made up largely of lower-class, economically underprivileged persons, give a misleading and essentially false impression of noncriminality on the part of the upper classes, including respected and highly placed business and political per-

2. H. E. Barnes and N. K. Teeters, *New Horizons in Criminology*, 3rd ed., Prentice-Hall, Englewood Cliffs, 1959.

3. E. H. Sutherland, *Criminology*, Lippincott, New York, 1924.

4. E. H. Sutherland, "Is 'White Collar Crime' Crime?" *American Sociological Review*, 10:132–39 (Apr., 1945).

5. E. H. Sutherland, *White Collar Crime*, Dryden Press, New York, 1949.

6. Albert Cohen, Alfred Lindesmith, and Karl Schuessler, eds., *The Sutherland Papers*, Indiana University Press, Bloomington, 1956.

sonages.[7] More explicitly, white collar criminality was said to take place most frequently in misrepresentation of the financial statements of corporations, in manipulation of the stock exchange, in the bribery of public officials to secure desirable contracts or immunities, in bribery in commercial transactions, in misrepresentation in advertising and salesmanship, in embezzlement and misuse of trust funds, in dishonest bankruptcies, and so on. The Chicago gangster Al Capone was quoted as calling such practices "the legitimate rackets"[8] in which respectable people could participate in contrast to the more familiar and violent types of rackets characteristic of the underworld.

In delineating the meaning of the term, Sutherland always remained close to the idea expressed in an early article in which he defined it as "a violation of criminal law by the person of the upper socio-economic class in the course of his occupational activities."[9] In other words, white collar crime involves deliberate deceit and dishonesty, legally recognized as injurious to the public with suitable penalties provided, but practiced nevertheless for private gain in defiance of codes and laws designed to regulate and control such activities.

The crucial question, however, concerned the criterion used to determine whether a violation of the criminal law had occurred. The criterion normally used was conviction in criminal court. But Sutherland argued that "white-collar criminals are relatively immune (from criminal conviction) because of the class bias of the courts and the power of their class to influence the implementation and administration of the law. This class bias affects not merely present-day courts, but also, to a much greater degree, affected the earlier courts which established the precedents and rules of procedure of the present-day courts."[10] As a result of this class bias, the crimes of the upper class are generally handled differently than the crimes of the lower class. Thus,[11]

7. E. H. Sutherland, "White Collar Criminality," op. cit. p. 2.

8. Ibid. p. 3.

9. E. H. Sutherland, "Crime and Business," *The Annals of the American Academy of Political and Social Science*, 217:112–18 (Sept., 1941).

10. E. H. Sutherland, "White Collar Criminality," op. cit. p. 7.

11. Ibid. pp. 7–8.

The crimes of the lower class are handled by policemen, prosecutors, and judges with penal sanctions in the form of fines, imprisonment, and death. The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors and by administrative boards or commissions with penal sanctions in the form of warnings, orders to cease and desist, occasionally the loss of a license, and only in extreme cases by fines or prison sentences. Thus, the white-collar criminals are segregated administratively from other criminals and; largely as a consequence of this, are not regarded as real criminals by themselves, the general public, or the criminologists.

In order to compensate for this class bias, Sutherland argued that official conviction statistics must be supplemented by evidence of criminal violations from other sources. Specifically, Sutherland included hearings before regulatory commissions, civil suits for damages, and various other procedures outside of criminal court prosecution and conviction. All such actions resulting in decisions against a person or corporation, Sutherland insisted, should be taken as instances of conviction of white collar crime, since such decisions are sufficient proof of violation of law and of the carrying on of a practice legally defined as injurious to the public. Similarly, in his view, civil suit judgments in which the injured party has been more interested in restitution or damages than in punishment would be considered as evidence of white collar crime, as would settlements made by surety companies of embezzlement cases in which prosecutions as crime usually do not occur because such prosecution interferes with the recovery of funds taken. Also he would include as white collar crime procedural findings of "unfair labor practices," "infringement on patents," and "discrimination between buyers."

White collar crimes should not be confused with ordinary crimes committed by upper-class people. If upper-class people commit murder, robbery, rape, ordinary theft, or other crimes under the ordinary criminal law, they are simply ordinary criminals and are prosecuted as such; in no sense are they "white collar criminals" merely because they happened to be upper-class persons. Sutherland cites as an example of white collar crime the finding that 40% of the ice cream samples tested routinely by the Indiana Division of Public Health during the summer of 1934 were in violation of the law.[12]

12. Ibid. p. 4.

This kind of behavior is an evasion of regulation and a violation of law and is carried on as a part of an occupation or a business in order to secure greater profit and without concern for the injury inflicted on the public. Sutherland maintained that the reason this kind of behavior was not handled through the criminal courts was that "because of their social status (white collar criminals) have a loud voice in determining what goes into statutes and how the criminal law as it affects themselves is implemented and administered."[13] Thus, he called these actions crimes, even though no criminal conviction had been obtained, and even though in some cases no criminal law was violated, but rather civil law or administrative regulations.

Other writers have followed Sutherland's thinking and terminology in published analyses of research on certain specific problems of improper business practice. Notable among such reports, frequently designated as "studies in white collar crime," is the analysis of the government's rationing and price control program in World War II by Marshall Clinard, published in 1952 under the title *The Black Market*.[14] This is the story of violations so numerous and so extensive that they constituted in reality an alternate or a second channel of supply for scarce goods. Since such a channel of supply was illegal, it had to be kept "under cover," hence the descriptive term black market. Political opponents of the policy of government control of goods and prices have preferred to call this activity "the free market," claiming that it represented the more realistic economic fact of price regulated by the law of supply and demand.

Regardless of descriptive phraseology or political ideology, the fact remains that the violators of price regulations during and after the war often included some of the better-known and more highly respected commercial establishments of the community. Is the violation of this kind of legal provision on the part of respected and well-established persons to be called crime? Or is it only "sharp" business practice, generally consistent with the basic ideology of business for private profit?

Unflattering as the picture presented by Clinard of the nation's experience with wartime price control legislation is, the same general pattern of systematic avoidance and violation was found to be

13. Ibid. p. 8.

14. Marshall B. Clinard, *The Black Market*, Rinehart, New York, 1952.

equally true in the more specific and searching study of the wholesale meat industry in Detroit by Frank E. Hartung.[15] There, for example, 82 concerns (many of them the old established and respected dealers of the area) were found guilty of 195 violations for the period December 1942, through June 30, 1946. The "illegal side-payments" for some concerns, in terms of the value of the total transactions, ran as high as 15% in addition or beyond the established ceiling price. This unofficial "mark-up" represented a comfortable profit advantage over and above the possible profits of competitors who observed the regulations and consequently had less meat to sell. Of the 132 persons involved as defendants, only two had previous criminal records, and these records were not related to business connections or to price control violations. The Hartung study seems to indicate clearly that much of the meat industry in the Detroit area operated with knowing and systematic violation of legal regulations for the purpose of greater profits despite the national emergency.

Other systematic patterns of law violations have been documented. Groves,[16] in an attempt to determine the extent of noncompliance with income tax reporting, conducted detailed studies of specific types of income in specific locations. His most definitive results came from a study of rent from residential dwellings owned by individuals in one Wisconsin city. Compliance with income tax laws in Wisconsin was believed to be good because of strong overlapping federal and state tax administrations. In spite of this fact, Groves found that gross rents were consistently underreported and expenses overreported, so that the total net rent reported for income tax purposes was only 50% of what he estimated the total net rent to be.

Geis[17] described the 1961 antitrust conspiracy in the heavy electrical equipment industry in which 44 executives from 29 electrical

15. Frank E. Hartung, "Study in Law and Social Differentiation: As Exemplified in Violations of the Emergency Price Control Act of 1942 and the 2nd War Power Act in the Detroit Meat Industry," unpublished Ph. D. dissertation, University of Michigan, Ann Arbor, 1949. A brief report on findings and implications of this study, together with a "discussion" by E. W. Burgess, was published under the title, "White Collar Offenses in the Wholesale Meat Industry in Detroit," *American Journal of Sociology*, 56:25–34 (July, 1950).

16. Harold M. Groves, "An Empirical Study of Income-Tax Compliance," *National Tax Journal*, 11:241–301 (Dec., 1958); reprinted in Gilbert Geis and Robert F. Meier, *White-Collar Crime*, rev. ed., Free Press, New York, 1977, pp. 197–205.

17. Gilbert Geis, "The Heavy Electrical Equipment Antitrust Cases of 1961," in Geis and Meier, op. cit., pp. 117–32.

companies were indicted for conspiring to fix prices and divide markets over a period of eight years. The men involved, who were leading members of the community, either described their actions as in a "gray area," or admitted that their actions were illegal, but insisted that they were not "criminal" or "unethical" or "against the public interest." Nevertheless, they went to great lengths to cover up their actions, using code words, assumed names, blank stationary, secret meetings, and other tactics. Geis described the actions as "flagrant, criminal offenses, patently in contradiction to the letter and the spirit of the Sherman Antitrust Act,"[18] and concluded that the explanation of this criminal behavior lay primarily in learning and associational patterns, as described by Sutherland's differential association theory.

Ralph Nader's first book, *Unsafe at Any Speed,*[19] documented the complete disinterest of the automobile industry in producing safer cars and their resistance to acknowledging and repairing serious safety hazards once they were discovered. In particular, the book focused on the General Motors Corvair, and the injuries and deaths associated with several of its features. Later, other Nader-sponsored studies covering many other areas of white collar crime and abuse were published.[20]

Several studies have dealt with the coal mining industry. Gerald M. Stern and Kai T. Erikson have each written books on the Buffalo Creek flood, which occurred in 1972 in Logan County, Kentucky.[21] The Buffalo Mining Company had for years used this creek as a dumping ground for mine wastes, and had eventually piled up a massive "dam" of slag with a huge lake behind it. When this make-

18. Ibid. pp. 118–19.

19. Ralph Nader, *Unsafe at Any Speed,* Grossman, New York, 1965.

20. See, for example, James Bruce and John Draper, eds., *Crash Safety in General Aviation Aircraft,* Center for Study of Responsive Law, Washington, D.C., 1970; John C. Esposito and Larry J. Silverman, *Vanishing Air: The Ralph Nader Study Group Report on Air Pollution,* Grossman, New York, 1970; Mark J. Green, Beverly Moor, Jr., and Bruce Wasserstein, *The Closed Enterprise System: Ralph Nader's Study Group Report on Anti-Trust Enforcement,* Grossman, New York, 1972; Claire Townsend, *Old Age: The Last Segregation (Ralph Nader's Study Group Report on Nursing Homes),* Grossman, New York, 197 ; James S. Turner, *The Chemical Feast: Ralph Nader's Study Group Report on The Food and Drug Administration,* Grossman, New York, 1970; and David Zwick and Mary Benstock, *Water Wasteland: Ralph Nader's Study Group on Water Pollution,* Grossman, New York, 1971.

21. Kai T. Erikson, *Everything in its Path: Destruction of Community in the Buffalo Creek Flood,* Simon and Schuster, New York, 1976; and Gerald M. Stern, *The Buffalo Creek Disaster,* Vintage, New York, 1976.

shift dam suddenly collapsed during a rainstorm, 125 people died and over 1,000 homes were destroyed. The company eventually settled the claims of the survivors for $13.5 million. Harry M. Caudill has described the explosions in the Scotia coal mine in Letcher County, Kentucky as "perhaps the most foolish" tragedy in the history of coal mining in the United States.[22] The Scotia mine was a remarkably profitable operation with a dismal safety record. The mine had been cited for 652 safety violations up to the time of the explosions, which killed 26 men in March, 1976, and for over 500 more violations since then.

Finally, numerous instances of political and business frauds, bribery, and corruption have come to light during the late 1960s and early 1970s. An objective and detailed overview of many of these scandals may be found in the book *Corruption in Business.*[23] Included are such cases as the ITT and Associated Milk Producers contributions to the Nixon reelection campaign in return for favorable administration decisions; other illegal corporate contributions to political campaigns; the Watergate affair; the Agnew resignation; bribery and corruption of foreign governments by leading American corporations in order to obtain contracts; securities frauds and abuses, such as the Robert Vesco case in which International Overseas Services, Ltd. was looted of $224 million and the Equity Funding case in which $2 billion of fake insurance was written to increase the value of the company stock; antitrust actions against such conglomerates as IBM and AT&T; the grain export scandal; and land fraud scandals.

2. THE CONTROVERSY: IS IT CRIME?

The term white collar crime remains controversial in criminology because of its use in describing behaviors that do not result in criminal convictions, and in some cases that do not even involve violations of the criminal law. Five years after introducing the term, Sutherland felt impelled to defend it in the article, cited earlier, "Is 'White Collar Crime' Crime?"[24] In this article, he first presented

22. Harry M. Caudill, "Manslaughter in a Coal Mine," *Nation*, 226:492–97 (Apr., 23, 1977).

23. Lester A. Sobel, ed., *Corruption in Business*, Facts on File, New York, 1977.

24. E. H. Sutherland, "Is 'White Collar Crime' Crime," op. cit. pp. 132–39.

some of the findings of his study of the violations of law by 70 major American corporations, truly a major segment of contemporary economic enterprise.

His defense reiterated the original thesis that these violations constituted crime because (1) they were recognized in law as injurious to the public; (2) there were appropriate legal sanctions prescribed as penalties for such violations; and (3) the behavior involved was generally "willful" and "intentional" in the sense of not being accidental and as not happening without awareness on the part of the offenders. As "proof" to support his argument, Sutherland offered data on "decisions against" the 70 corporations. In addition to the three well-recognized criminal penalties of fine, imprisonment, and punitive damages, he included in his statistical analysis stipulations, desist orders, and injunctions maintaining that these also were "designed to produce suffering,"[25] and therefore were really penalties for crime.

With this inclusive type of definition, Sutherland's analysis of the violations of the 70 corporations gave the following distribution: There was a total of 547 adverse decisions, an average of 7.8 decisions per corporation with each corporation having at least one decision against it. Forty-nine, or 9%, were decisions by criminal courts (clearly indicative of crime by any definition); 473 were "decisions that crimes were committed" (presumably in terms of the expanded definition of crime noted above); the remaining 25 adverse decisions were to be understood presumably as indicative of "unlawful behavior" that nevertheless, by the criteria used, should not be counted as criminal.[26] The same type of definition and general line of reasoning underlies the statistics on violations reported in the previously mentioned studies by Clinard[27] and Hartung.[28]

However one may judge such an analysis, the conclusion seems inescapable that systematic violations of laws and regulations designed to control business operations are often an accepted part of an otherwise respectable business practice. This is not so much a question of fact as of interpretation: Should such violations be con-

25. Ibid. p. 135.
26. Ibid. pp. 132–35.
27. See Clinard, op. cit.
28. See Hartung, op. cit. pp. 25–34.

sidered crimes to be treated in terms of a criminal code, or should they be taken to be less heinous than crimes and more properly be considered civil wrongs subject to control through the agencies of civil procedure? This is the basic question of social policy at issue in all controversial discussions of the term white collar crime.

In criminology, the controversy has centered on two principal kinds of criticism: (1) insistence that the ambiguity and the uncertainty of definition is so great that the term is useless for research purposes and (2) objection to the tendency to ignore the legal distinctions between civil and criminal actions.

Paul W. Tappan[29] was most outspoken in voicing objection to the term on the grounds of ambiguity. He pointed to the impropriety of introducing what he said tends to become purely personal definitions of what is socially injurious. It is necessary, obviously, to do more than condemn such offenses in the abstract; it is equally necessary to specify what particular type of deviation, and in what degree for each type, shall be considered criminal. This, Tappan insisted, the criminal code does better and more explicitly than any nonlegal system, such as the "system of private values" in the area of economic ethics that are the principal component of the popular extension of the term, white collar crime. He therefore argued that a basic requirement for meaningful research is definitive terminology, so that the categories of enumeration and analysis do not overlap. This he found impossible with the many interpretations available as to what should be considered white collar crime and what should be taken to be something else.[30]

In statistical studies of white collar crime, any official action, civil or criminal (mostly the actions of administrative commissions or boards), that has been undertaken by government administrators to bring about compliance with regulations is usually considered evidence of criminality. Thus, a "desist order," a purely civil action, is usually counted as an instance of criminality and interpreted as the equivalent of "conviction of crime." This tendency to count all violations of all kinds of laws and regulations as crime, provided there is a penalty attached, brought forth a critical protest from Professor E. W. Burgess in his "Comment" on the Hartung analysis of the

29. Paul W. Tappan, "Who is the Criminal?" *American Sociological Review*, 12:96–102 (Feb., 1947).

30. Ibid. pp. 99–100.

Detroit meat wholesalers. Burgess insisted that a distinction must be made "between crimes recognized by law for generations and disapproved of by the mores . . . [and] new offenses as the result of recent legislation or regulations by government agencies carrying with them a penalty for violation."[31] He added the offhand sociological definition: "A criminal is a person who regards himself as a criminal and is so regarded by society," and declared that the white collar "criminal" did not fit the definition.[32]

In response to Burgess's comment, Conklin has argued that[33]

> To suggest that white collar crime should be defined by the attitudes of the perpetrators would logically imply that murders and rapists should also be questioned about their attitudes toward the criminality of their acts. It is the law rather than the opinion of the offender which defines behavior as criminal or noncriminal.

In addition, the comments by Burgess and Tappan concerning the ambiguity of the white collar crime concept and the failure to distinguish between civil and criminal law miss the fundamental point Sutherland had raised. Sutherland insisted that his analysis of white collar crime was "an attempt to reform the theory of criminal behavior" rather than an attempt to reform society.[34] If a theory of criminal behavior is to be scientifically adequate, then it must explain all behaviors that have the same essential characteristics, whether or not the behavior has been defined as a crime by the criminal justice agencies. After reviewing upper-class white collar crimes and the common crimes of the lower class, Sutherland concluded that "The crimes of the two classes differ in incidentals rather than essentials. They differ principally in the implementation of the criminal laws which apply to them."[35] Because criminologists did not consider the activities of upper-class persons as crimes, their theories of criminal behavior have been focused almost exclusively on poverty and the personal pathologies associated with poverty. But these theories

31. E. W. Burgess, "Comment," *American Sociological Review*, 56:32–33 (July, 1950).
32. Ibid. p. 34.
33. John E. Conklin, *"Illegal But Not Criminal,"* Prentice-Hall, Englewood Cliffs, 1977, p. 10.
34. Sutherland, *White Collar Crime*, op. cit. p. v.
35. Sutherland, "White Collar Criminality," op. cit. p. 7.

could not explain white collar crime, which differed only in incidentals and not in essentials from the common crimes of the lower class. Therefore, Sutherland argued that conventional theories of crime were invalid, and that "a theory of criminal behavior which will explain both white-collar criminality and lower-class criminality is needed."[36]

3. THE PROBLEM: HOW TO EXPLAIN WHITE COLLAR CRIME?

Sutherland argued that, from the point of view of the individual, white collar crime as well as lower-class crime could be explained by the theory of differential association and, from the point of view of society, both could be explained by anomie and culture conflict theories.[37] He offered case histories to demonstrate that white collar criminality was learned in a process of association with employers and coworkers who defined such behavior favorably. He also demonstrated that illegal practices devised by an individual or a firm soon diffuse throughout the industry as the competition adopts the practices in what is clearly a learning situation. Finally, he argued that white collar criminals act in isolation from significant unfavorable definitions of their behaviors. Media representatives and governmental officials who define other behaviors as crimes (that is, those of the lower class) do not so define these white collar behaviors, both because they are often engaged in the same behaviors themselves and because they are often intimately connected in a profitable web of alliances with the "criminals." Any isolated individual who unfavorably defines these behaviors may be discounted by being labeled "socialist" or "communist."

Although differential association theory was used to explain how the individual became involved in white collar criminality, Sutherland used anomie and culture conflict theories to explain the presence of that criminality in society. Anomie theory described a lack of standards for regulating business practices that had been caused by the rapid economic changes associated with the decline of the free competition system and the rise of governmental regulation. A period of uncertainty resulted in which neither the business commu-

36. Ibid. p. 12.

37. Sutherland, *White Collar Crime*, op. cit. pp. 234–56.

nity nor the general public was certain of the forms they wished that regulation to take, and the resulting "normlessness" was the source of much criminality.

Culture conflict resulted because the set of standards and norms for acceptable business practices that had evolved in the business community was quite different from that held in the political community. In a formulation directly comparable to his differential association theory, Sutherland argued that crime resulted when the organization that favored violation of law was more powerful than the organization against it. The business community was strongly united in favor of white collar criminality, but the political community was weak and uncommitted in their organization against it. This explained the prevalence of white collar crime in society. The obvious implication was that illegal business practices would continue until the political community was effectively organized against it.

Another approach to the explanation of white collar crime was taken by Clinard[38] in a provocative discussion of possible theories accounting for wartime violations of rationing regulations. One by one he rejected, because they were inconsistent with the known facts, the traditional and seemingly obvious explanations of violations, such as those outlined below[39]:

1. Individual differences in biological or psychological characteristics like feeble-mindedness or psychopathy, and in environmental misfortunes such as poverty, upset homes, or lack of education;

2. Situational factors of the differential economic pressures of possible profits with limited supplies;

3. Situational factors involving the size and reputation of the business establishment involved; that is, there appeared to be no clear difference between large and small places, or between the well established and the more clearly marginal;

4. The situational factor of differential association, either

(a) with a criminal element or involvement in underworld activities and traffic, or

(b) with other businessmen especially involved in war-time violations as a matter of everyday living.

38. Marshall B. Clinard, "Criminological Theories of Violations of Wartime Regulations," *American Sociological Review*, 11:258–70 (June, 1946).

39. Ibid. p. 269.

His discussion concluded with the expression of a preference for theories in terms of differences in personality pattern and with a call for intensive research in the area of the personality type of white collar criminals.[40]

A similar position was taken by Walter C. Reckless,[41] who for many years emphasized the role of "personality factors" in crime causation and looked to differences in the individual for explanations of whether or not a person becomes criminal. As is to be expected, from this point of view, he therefore took strong exception to the idea that there is anything of any special significance for criminological theory involved in the problems of white collar crime. In such crime, too, he felt there must be a definite personality component as the deciding condition that makes the violator enter, and the non-violator shun black market activities.[42] The Norwegian study by Aubert[43] seemed similarly to conclude that white collar crimes are as varied and as incapable of inclusion under general principles of explanations as are other crimes. Instead of general principles of explanation, he suggested specific explanations for specific crimes, each somewhat different from the others.[44]

Such specific explanations have been offered for several specific types of white collar crime. Cressey[45] studied 133 embezzlers and other violators of financial trust. He found that the crime occurred (1) when persons in a position of financial trust believed that they had a financial problem that had to be kept secret, (2) when they became aware that their problem could be secretly solved by violating the trust, and (3) when they conceived of rationalizations for their actions so that they did not violate their images of themselves as worthy of trust. Unlike Clinard, Cressey did not reject Sutherland's theory that the crime was caused by an overabundance of association with persons who define the behavior favorably.[46] He found, how-

40. Ibid. p. 270.

41. Walter C. Reckless, *The Etiology of Delinquent and Criminal Behavior*, Social Science Research Council Bulletin No. 50, New York, 1953, p. 62.

42. Walter C. Reckless, *The Crime Problem*, 2nd ed., Appleton-Century-Crofts, New York, 1955, p. 223.

43. Vilhelm Aubert, "White Collar Crime and Social Structure," *American Journal of Sociology*, 58:263–71 (Nov., 1952); reprinted in Geis and Meier, op. cit. pp. 168–79.

44. Ibid. p. 271.

45. Donald R. Cressey, *Other People's Money*, Free Press, Glencoe, 1953.

46. Ibid. pp. 147–51.

ever, that the embezzlers could not identify specific persons or agencies from whom they had learned the behavior patterns and concluded that differential association theory as it applied to crimes of financial trust could not be empirically verified.[47]

Quinney[48] studied 80 pharmacists in Albany, New York, 20 of whom had been officially detected by federal or state investigators as violating prescription law or regulation. These pharmacists were asked to evaluate the importance of certain goals and activities in their occupation in order to determine whether they were more oriented toward a professional or a business role. Quinney found that none of those strongly oriented toward a professional role were prescription violators, whereas 75% of those strongly oriented toward a business role were. Quinney suggested that the conflict between roles may underlie violations in a number of other professions.

Leonard and Weber[49] pointed to the structure of the market as an explanation of the antitrust conspiracy in the electrical equipment industry. Specifically, the tactics could never have succeeded unless the bulk of the industry was concentrated in a few companies who could easily get together, and the demand for the products was such that the buyers would not limit purchases if prices increased. They then use the idea of market structure to analyze forces that generate crime in the automobile industry. There are only four automobile manufacturers in this country, and all of them exert intense pressure on their dealers to achieve high volumes in new car sales. This results in lower new car profits, which are then made up by various illegal practices primarily concentrated in the service departments. Quality of dealership repairs is further depressed because the manufacturers encourage a system of paying "flat rates" for jobs, which encourages rapid and superficial work. Finally, warranties are designed primarily to encourage new car sales, and servicing of cars is actually discouraged. Extensive paperwork is required before the

47. Cressey, "Application and Verification of the Differential Association Theory," *Journal of Criminal Law, Criminology and Police Science*, 43:43–52 (1952).

48. Richard Quinney, "Occupational Structure and Criminal Behavior: Prescription Violations by Retail Pharmacists," *Social Problems*, 11:179–85 (Fall, 1963); reprinted in Geis and Meier, op. cit. pp. 189–96.

49. William N. Leonard and Marvin Glenn Weber, "Automakers and Dealers: A Study of Criminogenic Market Forces," *Law and Society Review*, 4(3): 407–24 (Feb., 1970); reprinted in Geis and Meier, op. cit. pp. 133–48.

dealer is reimbursed by the manufacturer, reimbursement is only two-thirds of the going rate for the work, and reimbursement may be denied after the work has been performed. One manufacturer even held a contest with prizes and bonuses for the region in which the warranty costs were lowest. All these forces combine to encourage unethical and illegal automobile dealership service practices.

This quest for specific explanations must not overlook the more fundamental fact of deep-seated and widely diffused ideological differences and uncertainties in the population. Extensive non-conformity of the type discussed above is not so much a matter of particular legal definition as to whether specific acts are to be viewed as criminal wrongs, not civil wrongs, but rather as a reflection of the more basic question of how people think and feel about the role of government in the affairs of private life. The traditional American view, from the earliest days of the republic, has been firmly set against government interference in business transactions. The "American way" has been dedicated to a glorification of the "free market," where the price paid automatically becomes the measure of effective demand; where scarce items are automatically high-priced and become unavailable to anyone unable to pay "the going price"; and where the primary goal of business is to maximize profit.[50]

Whether this is or has been a good or bad economic philosophy is not the question. The problem for criminological theory concerns the difficulty of enforcing laws a significant and powerful segment of the population opposes. The American experiment with national prohibition of alcoholic beverages was an objective demonstration of this elementary fact.

In retrospect, it seems clear that the American effort at price control and rationing was something less than completely successful, in part certainly because a very large and influential portion of the population simply did not believe in or accept as valid any such conception of the proper role of government activity. Persons of the caliber and character of the late Senator Robert A. Taft of Ohio may not lightly be accused of having raised their voices in defense of crime

50. One bank vice-president stated: "The goal of a business corporation is to make a profit . . . *more fully*, the only goal of a business corporation is to make the *maximum possible profit* . . . *Completely*, the only goal of a business corporation is to make the maximum possible profit *over a long period.*" Cited in Fred J. Cook, *The Corrupted Land*, Macmillan, New York, 1966, p. 93.

and criminal practices.[51] His long and bitter fight against price control legislation in the form finally enacted was not that of a "mouthpiece" defending crooks and criminals. It was rather that of a responsible public official who spoke for a large and important segment of the population that did not consider such legislation the proper exercise of government authority. He sought to defend what he conceived to be the American way of life. This basic fact of difference in political and economic ideology must not be overlooked in any discussion of the violations of price regulations as white collar crime.

The parallel between price control enforcement and prohibition is too close to be dismissed as coincidental. In both cases, there was a clear violation of the law; there was an earnest effort expended by government agents to bring about compliance; there was an extensive battery of legal coercion brought to bear on the offender, running all the way from civil and administrative findings and penalties to prosecutions in the criminal courts; and there was a similar story of cumulative failure in the sense that the whole phenomenon of lawlessness or non-compliance increased in magnitude with each passing month despite the best efforts of government in enforcement. In both cases, the "criminality" was controlled finally by abandoning the law. The practices that had been condemned and prosecuted were again made legal and "respectable."

Sutherland had used culture conflict theory to explain the presence of white collar crime in society. These two cases are clearly explained by that theory. Efforts to enforce prohibition and price control legislation failed because those who organized in favor of law violation were so strong that they crushed those who organized against it. Whether enforcement efforts against today's white collar crime will prevail is yet to be determined. Because of recent increases in public support, it seems highly unlikely that there will be any dismantling of enforcement efforts in the near future, as happened with prohibition and price control. On the other hand, it also seems unlikely that enforcement efforts will become so powerful that they will be able to overwhelm those who favor law violation.

51. See the brief quotations of Senator Taft's views in Clinard, *The Black Market*, op. cit. pp. 108–10, 322–33. For the more complete expression of his views, see the several reports published as "Hearings before the Senate Committee on Banking and Currency," 77th Cong., 1st Sess., 1941; 78th Cong., 2nd Sess., 1944; 79th Cong., 2nd Sess., 1946.

Rather, like enforcement efforts against lower-class crimes, there will probably be a protracted struggle between relatively balanced forces, with neither side routing the other.

A final point to be noted is the important one that regulations concerning illegal business activities have generally not been regarded by the community as of the same kind, to be handled in the same way, as those involving lower-class crimes. The persons who argue in favor of the term white collar crime are really asking for a change in the cultural attitudes and conceptions of the community as a whole so that such behavior will be viewed as criminal rather than as a kind of misconduct to be handled by noncriminal procedures. The real plea is for a change in the attitudes about what is to be considered right and wrong in business practice. Thus, the debate over white collar crime is actually part of the conflict between those in favor of violation of these laws and those opposed to it. Supporters of the white collar crime concept are, at least in part, seeking to increase the power of those in favor of obeying these laws, by increasing the public awareness of the consequences of law violation. This is the social reform aspect, which, in spite of Sutherland's denials, was clearly implied in his work.

4. IMPLICATIONS AND PROSPECTS

The implications for criminological theory are clear and relatively self-evident. The problem is not primarily one of terminology or of proper legal definition, but rather one of deep and far-reaching differences in the political and economic ideology of the various segments of the population. Sutherland was not only seeking a reformation of criminological theory, but he was also urging a reformation in the mores and culture of America so that violation of laws regulating business transactions would be viewed as "crime" rather than as less serious misconduct. What has been demonstrated is the obvious fact of widespread cultural diversity as to norms and standards of honesty and integrity in the conduct of business affairs, and the conflict between these norms.

From the standpoint of meaningful theoretical explanations, the individual differences–personality factor explanation is clearly no more applicable to the behavior Sutherland called white collar crime than it is to other forms of cultural diversity. So far, neither psychol-

ogists nor sociologists of the personality factor persuasion have had anything pertinent to offer by way of accounting for cultural differences. Explanations of crime that depend on individual psychopathy seem absurd when offered for the carefully planned illegalities of the businessman seeking to increase his profits by ignoring the law. The simple fact of the matter is that the business community does not view violation of laws regulating business transactions as being as serious as the violations of laws governing ordinary criminal activity. Because this segment of the population has substantial influence on the legislative enactment of laws, the majority of such violations are viewed as civil wrongs, as violations somehow less serious than those of the criminal law covering theft, forgery, burglary, and so on. The basic difference in the enforcement of the law bearing on business transactions reflects the power this group has in influencing the policies of the criminal justice system. In countries in which the business community has less influence, one finds a different situation. For example, in the Soviet Union, white collar criminals are executed for offenses for which a person in America would ordinarily receive only a probation and restitution sentence or a short jail sentence.[52]

The problem of resolving the conflicts of values held by different groups in society at large transcends present information or skill. Many techniques have been tried with no pattern of success so far evident. Persons who reject a particular belief or cultural doctrine also reject efforts (coercive or "helpful") to make them conform. Just as penal coercion often fails to "reform" ordinary criminals because their life orientation remains untouched, so the crackdown on white collar crime represented by law enforcement in this area of business practice often leaves everybody concerned unchanged as to the political and economic values of the business-for-private-profit culture.

As has been said, Sutherland's plea for the "reformation of the theory of criminal behavior" was really a plea for the reformation of cultural values, for change in the mores of economic activity. But anyone who can provide a blueprint for accomplishing the desired change in a community's culture can rest assured of immortal fame. It is, like walking on water, a neat trick, if you can do it!

52. See George Feifer, "Russia Shoots its Business Crooks," *The New York Times Magazine*, May 2, 1965, pp. 32–33ff; reprinted in Gilbert Geis, ed., *White Collar Crime*, 1st ed., Atherton, New York, 1968, pp. 320–26.

RECOMMENDED READINGS

Edwin H. Sutherland, *White Collar Crime,* Holt, Rinehart and Winston, New York, 1961. A landmark work in criminology, ahead of its time, and still not fully appreciated.

Gilbert Geis and Robert F. Meier, eds., *White-Collar Crime,* rev. ed., Free Press, New York, 1977. A book of readings with many important selections concerning the study of white collar crime.

John E. Conklin, *"Illegal But Not Criminal,"* Prentice-Hall, Englewood Cliffs, 1977. An excellent, short, and readable synthesis of existing material on white collar crime.

Carl B. Klockars, "White Collar Crime," in Edward Sagarin and Fred Montanino, *Deviants: Voluntary Actors in a Hostile World,* General Learning Press, Morristown, 1977, pp. 220–58. A history of the criminological study of white collar crime, bringing out its radical implications for the field.

M. David Ermann and Richard J. Lundman, eds., *Corporate and Governmental Deviance,* Oxford University Press, New York, 1978. A book of readings focusing on the deviant activities of organizations.

Lester A. Sobel, ed., *Corruption in Business,* Facts on File, New York, 1977. An objective reporting of the numerous business frauds and scandals disclosed during the late 1960s and early 1970s.

Kai T. Erikson, *Everything in Its Path: Destruction of Community in the Buffalo Creek Flood,* Simon and Schuster, New York, 1976. A sociological study of the effects of this avoidable disaster on the survivors.

Neil H. Jacoby, Peter Nehemkis, and Richard Eells, *Bribery and Extortion in World Business: A Study of Corporate Political Payments Abroad,* Macmillan, New York, 1977. A non-judgmental study of the problem faced by American corporations when foreign political figures demand payoffs.

Herbert Edelhertz, *The Nature, Impact and Prosecution of White-Collar Crime,* U.S. Government Printing Office, Washington, D.C., 1970. Focuses on the problems of detection, investigation, and prosecution of white collar crime.

PART SIX

Criminological Theory in Relation to Research and to Correctional Practice

CHAPTER EIGHTEEN

Theory as the Basis for Research

The frequently used, often loaded word "research" is the English form of the French *recherché,* meaning a search or quest, and when used as a verb, quite literally "to search again."[1] But it is obviously impossible to search with any degree of effectiveness unless one knows what one is looking for. In the search for explanations of crime, it is the underlying theory of criminality that determines what it is that one is looking for. In other words, "research in criminology" can find only that which the theory of criminality underlying the project makes it possible to look for. It is this problem of the interrelation of research and theory that will be the center of attention in the pages that follow.

1. SEMANTICS AND THEORY: HOW DEFINE THE TERMS?

Terminology in any field of study tends to be difficult in formulation and in interpretation. In criminology, the most elementary concepts, such as "crime" and "criminal," continue to be the subject of discussion and disagreement. When meanings for either term are provided, they tend to become linked to formulations consistent with some general theory of criminality. Circularity in terminology is therefore not uncommon. Concepts may be so defined as to make

1. Cf. *Webster's Collegiate Dictionary,* 5th ed., G. & C. Merriam Co., 1947, p. 847; Heath's *French-English Dictionary,* 1903, p. 466.

an underlying general theory more consistent and probable; for example, delinquency as a logical expression of hostility toward parents, or a group of boys, about whom one knows only that they held up a gas station are described as a "cultural subgroup" in keeping with more general theory.

Meanings, however, cannot be just assigned to terms or concepts. There must be some correspondence with the world of reality. But it is precisely the presence of extensive uncertainties, disagreements, and contradictions in the social-cultural world of men and of organized groups of men that leads to variations and confusions in terminology. No multiplication of verbal definitions so far has been of much help in bringing about greater uniformity in the meanings of the words used or in reducing the contradictions in the behavioral elements involved.

There are three principal directions from which the problem of defining crime may be approached. In general, the *legal* definition approaches crime as behavior contrary to the criminal code; that is, the commission of any behavior forbidden by criminal law or the omission of any behavior required by it. The *natural* definition attempts to define categories of behavior as criminal, based on the characteristics of the behavior itself rather than on the legal status of that behavior, so that crime will be amenable to scientific analysis. The *labeling* definition approaches crimes and criminals as particular events and people so classified by the official law enforcement agencies of the society.

Research in criminology invariably depends on one or another of these definitions, or some combination of them, and the definition chosen will reflect the ideological orientation of the researcher, as well as the type of research he is doing. In general, the legal definition has been used in classical criminology, in which the effects of punishment and enforcement policies on crime rates are studied. In these studies, it is presumed that the official statistics represent some form of measurement of the actual incidence of illegal behaviors in society at large—that is, some form of measurement of what is defined as crime. Positivist criminology, in which the causes of criminal behavior are studied, has generally been associated with various natural definitions. In these studies, it is presumed that crime is the product of certain individual or social characteristics and that, therefore, criminal behaviors have some "natural" similarity to

each other beyond the fact that they are prohibited by law. Finally, critical criminology has generally been associated with the labeling definition. The criminalization process is the focus of study in critical criminology because the terms "crime" and "criminal" are considered labels applied by official agencies. The relevant question is why these labels are applied to some people and events and not to others.

Each of these definitions has a strong, intuitive appeal, and each seems a reasonable way to define crime. But when used as a basis for research, each is associated with serious problems. The problem with using a legal definition is that if crime and criminals are defined solely in terms of behavior contrary to the criminal code, then so many actions and people would be criminal that it would not be possible or desirable to identify them all. So many laws are on the books that most people are continually violating one or another of them, whether they know it or not. For example, L. M. Hussey estimated on the basis of a study in Philadelphia that the average citizen commits enough crime on an average day to warrant five years in prison and fines of $2,895.67.[2] In addition, numerous studies have found that normal, law-abiding citizens knowingly and deliberately commit serious crimes much more frequently than has been generally imagined.[3]

On the other hand, the problem with using a "natural" definition of crime is that these definitions often do not state the specific behaviors to be included within the concept. To define a concept means to describe it exactly, to determine its precise limits so that it can be distinguished from all other concepts. But if crime is given a natural definition as "antisocial behavior," no precise statement is made about which behaviors are considered "antisocial" and which are not. Two scientists, each studying antisocial behavior, may have vastly different ideas of what antisocial means. A second problem with natural definitions is that they do not necessarily correspond with the common definition of crime as an action contrary to the criminal code. All antisocial behaviors are not necessarily illegal, and

2. L. M. Hussey, "Twenty-Four Hours of a Lawbreaker," *Harpers*, March, 1930, pp. 436–39; reported in Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology*, Prentice-Hall, Englewood Cliffs, 1945, p. 102.

3. Cf. Roger Hood and Richard Sparks, *Key Issues in Criminology*, McGraw-Hill, New York, 1970, pp. 11–79.

all illegal behaviors are not necessarily antisocial. If one accepts the common uses of the term, then the study of antisocial behavior, even though it is a worthwhile endeavor, constitutes a separate, although overlapping discipline from the study of crime.

Finally, the problem with the labeling definition is that it encompasses only those individuals identified by the criminal justice system, whether or not they actually were involved in any criminal behavior and whether or not there are other people who have been involved in similar or worse behaviors. Barnes and Teeters state that convicted criminals "are, for the most part, the stupid, unlucky, or inexperienced minority of those who commit crimes."[4] Tappan (who disagreed with it strongly) characterized this view as contending that[5]

> convict classes are merely our "petty" criminals, the few whose depredations against society have been on a small scale, who have blundered into difficulties with the police and courts through their ignorance and stupidity. The important criminals, those who do irreparable damage with impunity, deftly evade the machinery of justice, either by remaining "technically" within the law or by exercising their intelligence, financial prowess, or political connections in its violation.

Thus, none of the three definitions provides a really satisfactory basis for the study of crime. It is possible to argue that some combination of the above definitions, such as a natural-legal definition, would provide such a basis. On the other hand, it seems that each of the three definitions contains some aspect of the meaning of the term "crime," and that none contains its entire meaning. Consequently, it may be best to conclude that criminology, as the science of crime, will encompass research based on each of the three definitions, as well as various combinations of them.

2. WHAT SHOULD BE STUDIED IN CRIMINOLOGICAL RESEARCH?

In the preceding chapters, many of the principal areas of inquiry in the search for explanations of crime have been reviewed. It is evident from these descriptions that there is no generally accepted

4. Barnes and Teeters, op. cit. p. 84.

5. Paul W. Tappan, "Who Is the Criminal?" *American Sociological Review*, 12:96–102 (Feb., 1947).

outline or guide as to what should be studied, nor is there any general agreement on how criminological research should be conducted. To obtain a perspective on criminological research, then, it should be useful to review these areas of inquiry.

These studies may be described as having followed, generally, two major lines of endeavor, more or less as illustrated by the following schema:

A. Studies in which crime is considered to be a function of individuals and their situations, that is,

1. Studies of the traits and characteristics of the individuals who have committed crimes or who have become delinquent:

(a) Analysis of physical or physiological characteristics;

(b) Analysis of mental characteristics as in studies of intelligence and criminality;

(c) Analysis of mental characteristics as in studies of "personality disorders" of delinquents and criminals.

2. Studies of crimes (criminal acts) committed by individual criminals:

(a) Analysis of distribution of offenses by various classifications;

(b) Study of victims, for example, who gets murdered?;

(c) Studies of the cost of crime.

B. Studies of the criminal group, or of crime as a function of culture, that is,

1. Studies of the criminal group functioning as a group:

(a) Study of juvenile gangs and juvenile delinquency as a function of boys' groups;

(b) Study of organized crime—gangs, mobs, and the criminal underworld;

(c) Studies of corruption and scandals in government in relation to the control of power and interplay with organized crime groups.

2. Studies of crime in relation to the cultural values of the groups involved:

(a) Study of nationality and "racial" trends in criminality;

(b) Study of the social and economic "reformer" as criminal—conflict of codes and values;

(c) Study of certain accepted business practices in which the law is intentionally violated—that is, of the "white collar" criminal.

3. Studies of specific problems faced by the criminal group:
   (a) Social disorganization in a high crime neighborhood;
   (b) Lack of legitimate economic opportunity;
   (c) Middle-class bias of schools against lower-class youth;
   (d) Unshareable financial problem of trust violator.

4. Studies of the processes by which specific groups are officially defined as criminals:
   (a) Studies that focus on the meaning of crime to criminals, to criminal justice personnel, and to other groups in society;
   (b) Studies of crime as a function of the power of some groups to criminalize others.

From the standpoint of general theoretical orientation in relation to research methodology, these studies have been of two kinds: (1) studies that have sought to establish (quantitatively if possible) significant differences between criminal and noncriminal individuals; (2) studies that have sought to portray the total interrelationship of individuals, events, and changing perspectives in the generation of crime. Or, more simply, they have tended to be statistical studies of individual or group differences or case studies and theories about individuals or groups in action. The differences in theoretical orientation are such that there is little significant interrelation or overlap of methods. In relatively few studies have adaptations of both techniques for the same study (i.e., statistics and case study) been seriously tried, though there have been some exceptions such as, for example, the Gluecks' *Unraveling Juvenile Delinquency*.[6] More commonly, the studies have been limited to one type of methodology.

In studies of the first type, statistical differences between the two groups or situations can frequently be established, since the phenomena being studied (the traits and characteristics of individuals) lend themselves quite readily to measurement. The problem for theoretical criminology grows out of the fact that establishing such differences does not establish the validity of the theory that assumes that such differences explain other differences in characteristics or functions of the group. Demonstrating the existence of such dif-

6. Sheldon Glueck and Eleanor Glueck, *Unraveling Juvenile Delinquency*, The Commonwealth Fund, New York, 1950.

ferences may merely confirm the condition under which the measurements were made. The relationship of established differences between the individuals of two groups to the functioning of those groups remains a matter of assumption and does not become fact by further verification of the existence of such individual differences or of corresponding differences in the behavior of the groups.

An illustration from the general field of individual and group differences may help clarify the problem. There are well-known and easily observed language differences between the people of Sweden and the people of Italy. How is one to account for (explain) this language difference? One might make careful comparisons between the frequencies of measured traits or characteristics of a randomly selected sample group of 1,000 Swedes and a similarly selected sample of 1,000 Italians, and then relate the observed differences in measured traits to the dominant language of each group. There would then be found to be many more fair-complexioned, fair-haired, blue-eyed, and tall individuals among the Swedes than among the Italians. Alternatively, there would be found to be many more darker-complexioned, dark-haired, brown-eyed, and short individuals among the Italians than among the Swedes. Group differences between the individuals in measured traits would be relatively easy to establish, and the differences would correlate significantly and consistently with the language difference of the two groups. But it is a well-established fact of linguistics and of history that the language in each case is the product of the group's past experience. Each nation has developed its own language as a result of its own historical past. Language, thus, is a cultural product. It is not specifically related to any particular trait or characteristic of the people who use the language.

Such a study of the traits and characteristics of the individuals involved in a situation of known group differences illustrates the condition in which it is possible to apply a normally sound research technique, and to correlate individual differences and group differences, yet find that the results are both pointless and meaningless, because the theory on which the research is based cannot be applied to the problem at hand.

The same kind of problem confronts anyone attempting to do criminological research. The traits and characteristics of the individuals known to have been involved in crime are relatively easy to

study with considerable precision. Individual differences between criminals and noncriminals may be established, for some traits, within the limits of statistical probability. But such traits and characteristics are related to crime causation only on the basis of a theory in which it is assumed that crime is an aspect of individual behavior. It is not the fact of the correlation, but the theory under which the correlation is interpreted that makes such "data" seem relevant to the study of crime causation.

If, on the other hand, the point of view is seriously maintained that crime is not primarily an aspect of individual behavior but is instead a cultural product—like language—then all the careful accumulation of data and of research studies correlating the traits of individuals with criminality is pointless. Cultural characteristics are not explainable in terms of the traits and characteristics of the individuals in the culture. If crime is a form of culture, it needs to be explained in terms of preexisting culture; that is, in terms of previous group living and group experience that has built up a "way of life" that is the identifiable reality in the behavior ordinarily called crime.

One methodology used to portray cultural phenomena is a combination of descriptive and developmental history, usually called a "case history" or a "life history document." Well-known illustrations of such in the criminology field are those associated with Clifford R. Shaw and his associates, *The Natural History of a Delinquent Career,*[7] *Brothers in Crime,*[8] and *The Jackroller.*[9] Somewhat different in format are the studies of professional criminals, such as Sutherland's *The Professional Thief.*[10] There are also a number of case histories in which the widespread corruption connected with underworld power is presented; these include Ianni's *A Family Business*[11] and Talese's *Honor Thy Father.*[12]

7. Clifford R. Shaw and Maurice E. Moore, *The Natural History of a Delinquent Career*, University of Chicago Press, Chicago, 1931.

8. Clifford R. Shaw, Henry D. McKay, and James F. McDonald, *Brothers in Crime*, University of Chicago Press, Chicago, 1938.

9. Clifford R. Shaw, *The Jackroller*, University of Chicago Press, Chicago, 1930; reprinted by the University of Chicago Press in 1966.

10. Edwin H. Sutherland, *The Professional Thief*, University of Chicago Press, Chicago, 1937.

11. Francis A. J. Ianni and Elizabeth Reuss-Ianni, *A Family Business*, Russell Sage, New York, 1972.

12. Gay Talese, *Honor Thy Father*, World, New York, 1971.

Another method for presenting cultural theories of crime involves systematic studies of the criminal group in action. Many of these studies have been done with the juvenile gang, including Thrasher's *The Gang,*[13] Whyte's *Street Corner Society,*[14] and Yablonsky's *The Violent Gang.*[15] Cultural theories may also be presented without a specific study having been carried out by the author. These theories rely on the general state of knowledge in the field, as well as on the author's personal experience, and derive additional support from their intuitive appeal. In the field of delinquency, such studies would include Cohen's *Delinquent Boys,*[16] Cloward and Ohlin's *Delinquency and Opportunity,*[17] and Matza's *Delinquency and Drift.*[18]

The difficulty with these methods is also closely related to their theoretical orientation. There is always the danger that the observer will select out of the totality of impressions and information principally those items and events that fit his conception of what he should be looking for. Or more specifically, there is always the possibility that the observer (the writer) will be able to see and report only those events and situations his theory of criminality prepares him to see.

3. PROBLEMS OF INCOMPLETE OBSERVATION: PARTICULARISM VERSUS ECLECTICISM

Clearly many of the studies of the past have been only partial explorations of a larger field of interrelations. If those who have tried to study crime had only known what to look for, and if they had known how to record their observations, a more simplified and consistent body of knowledge called criminology might have been developed long ago. Studies of traits and characteristics of individuals and reports on "life histories" are different methodologies trying to get at different aspects of the common problem of criminality.

13. F. M. Thrasher, *The Gang,* University of Chicago Press, Chicago, 1936.

14. William Foote Whyte, *Street Corner Society,* University of Chicago Press, Chicago, 1955.

15. Lewis Yablonsky, *The Violent Gang,* Penguin, New York, 1970.

16. Albert K. Cohen, *Delinquent Boys: The Culture of the Gang,* The Free Press, New York, 1955.

17. Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs,* The Free Press, New York, 1960.

18. David Matza, *Delinquency and Drift,* Wiley, New York, 1964.

Research has tended to be divided between meaningless specifics, on the one hand, and broad generalizations, on the other. Statistical studies of the traits and characteristics of criminals have the advantage of making possible specific comparisons, but have also the serious disadvantage that only those parameters that have been selected for observation can be compared. Inferences or conclusions based on such comparisons are necessarily limited to the items recorded. This condition is often deplored as "particularism"—a tendency in theory and in explanation to focus attention on a particular aspect or facet of the whole about which information has been obtained or is somehow otherwise available.

But life situations—specifically, crimes—are complex and continuous. They are not confined to predetermined items on a schedule, and therefore if they are to be reported in any kind of complete form they must be described as they occur, not as imagined in advance and organized for a statistical schedule. The end result of such thinking about individuals and situations involved in crime is a running account of events as they occur, a descriptive story ordinarily called a "case history" or a "life history."

But problems of comparison and of generalization confront the student who would use case histories no less than the student who uses "empirical" studies in quantitative form. Human behavior, including criminal behavior, is constantly changing, and any given report inevitably will be more like a snapshot than a movie of what transpired. The basic problem is that the high degree of complexity and the changing life experience far transcend present systems or methods of reporting or recording what has happened. One way to avoid incomplete reporting is to assume that everything is interrelated, with no priority of influence or any hierarchy of importance among the factors noted. This is the general idea underlying "multiple factor" ideas or explanations of causation. There is no limit to how many factors may be involved or to how the factors may be interrelated. A famous demonstration of the logic of this position is the work of Cyril Burt,[19] in which he advanced an inclusive list of 170 factors conducive to delinquency. Such inclusiveness militates against both accurate comparisons and significant conclusions.

19. Cyril Burt, *The Young Delinquent*, 4th ed., University of London Press, London, 1944, p. 600.

4. CONSEQUENCES: THE THEORY HELD DETERMINES RESEARCH DESIGN

The basic problem in connection with these reflections on research methods is simply that the general theory of crime held by the researcher will determine for him both his problem and his procedure in studying the problem. If he looks to the nature of the individual as the locus of the varied factors assumed to be related to crime, he will make some kind of statistical comparison of the individual differences between criminals and noncriminals. If, on the other hand, he looks to the nature of the social organization and the divergent cultural valuations of different groups in the population for his explanations, he will have to describe and evaluate groups in action, interpret their cultural values, and account for their course of action relative to a special area of social experience called crime.

No system of statistical enumeration has as yet been devised that can picture quantitatively a group in action, a culture in the course of defining and redefining situations in process. Hence, the researcher with this orientation of necessity resorts to a form of verbal description that is historical and genetic in character. This has, in the past, been the best source of information about conflict groups in action. In dramatic form, this is illustrated by the simple, yet impossibly complex task of describing in a meaningful way, through a statistical treatment of traits and characteristics, the Bugs Moran–Al Capone gang wars that brought on the St. Valentine's Day massacre in Chicago in 1929.[20] Statistical methods simply do not record the kind of information that appears to be of principal importance in understanding crime as a form of group warfare. And again, information about the traits and characteristics of the participating individuals does not account for the battle conditions or lead to an understanding of the tactics used.

By far the greater proportion of work has been devoted to establishing individual differences between those assumed to be criminal and those classed as noncriminal. The many statistical studies of traits and characteristics of individuals have been carried out under various assumptions about which traits or characteristics might be expected to differ between the two groups. Nearly always there has

20. Cf. Arthur B. Reeve, "The King of the Rackets," *The Golden Age of Crime*, Mohawk Press, New York, 1931, pp. 52–66.

been general overlap of measurements, and only very slight differences in central tendencies have been established. Repetition of such studies has only demonstrated the same general condition already described. Clearly, further repetition based on the same theoretical orientation can only supply further instances of the fact already well established. This follows because the information collected, i.e. measurements of individual differences, is a function of a theory of the significance of individual differences and remains largely nonapplicable to questions of other involvements. Or, to put the problem in other words, information on individual differences in traits and characteristics tells one nothing about the group memberships, loyalties, or commitments of the individuals involved and nothing about the group conflicts that may be more closely related to the factors that set the stage for many kinds of crime.

5. IMPLICATIONS

It is obvious from the preceding discussion that continuation of research on individual types and characteristics cannot be expected to accomplish much more than some further degree of refinement in technique and possibly some increase in the accuracy of the comparisons. But the main outline of what can be expected from such studies is already apparent.

Equally obvious is the fact that future research must deal with the problem of how to describe and interpret the facts of social and economic conflict that seem to be related to the problem of crime. Crime as an aspect of the struggle for the control of power between different elements and political segments of the population of a community is a frightening thought to many. It suggests that its explanation lies in the nature and structure of the community itself. It is therefore likely to be much less upsetting as well as much less hazardous, as a professional occupation, to do research on the personality characteristics of individuals involved in ordinary crime than to explore the actual reality of the struggle for the control of power in the community. In that struggle, as in any war, there is always the danger that any investigator may get to know too much; that what started out as non-involved, impersonal description and observation may become an instrument of attack for one side or the other.

A further question also must be noted, namely, that of the loyal-

ties and values of the criminologist as a scientist. His technical skills are very likely to be relatively independent of his loyalties and group values. It may then be a question of whether he wishes to work for, and to identify himself with, a specific group or segment of society (they may be expected to bid for his services, and to pay well for work performed), or whether he accepts some general mandate or call to unselfish public service. For the sake of the future of the social structure we now support, it is to be hoped that his choice will be that of the role of a servant of the public.

RECOMMENDED READINGS

Hermann Mannheim, *Comparative Criminology,* Houghton Mifflin, Boston, 1965, Part Two: Research and Methodology, pp. 71–198. A detailed discussion of research and methodology in general, as well as in such specific areas as statistics, prediction studies, case studies, typologies, experimental methods, and operational research.

Marvin E. Wolfgang, Leonard Savitz, and Norman Johnson, eds., *The Sociology of Crime and Delinquency,* Wiley, New York, 1962, Sec. III: Methods and Techniques of Analysis, pp. 69–141. A book of readings with selections including "Social Causation," "Multiple Factor Approaches," "Problems in Prediction Methods," "The Case Study Technique," "The Correlation Technique," "The Ex Post Facto Technique," and "The Experimental Technique."

Sue Titus Reid, *Crime and Criminology,* Dryden Press, Hinsdale, Ill., 1976, Ch. 4, "Research in Criminology," pp. 80–100. A brief but thorough review of the methods and problems in criminological research.

James A. Inciardi, Alan A. Block, and Lyle A. Hallowell, *Historical Approaches To Crime: Research Strategies and Issues,* Sage, Beverly Hills, 1977. An introduction to some of the strategies used in historical research.

Claire Selltiz, Lawrence S. Wrightsman, and Stuart W. Cook, *Research Methods in Social Relations,* 3rd ed., Holt, Rinehart and Winston, New York, 1976. An excellent introductory text in research methodology.

CHAPTER NINETEEN

Criminological Theory in Relation to Prevailing Correctional Practice

There is an obvious and logical interdependence between what is done about crime (confinement or treatment of offenders, environmental measures to prevent crime, decriminalization of specific offenses, etc.) and what is assumed to be the reason for or explanation of criminality (criminological theory). But practical measures cannot wait on theory—society must do something about crime. Theory therefore often may be little more than subsequent rationalization of and justification for the practices established as a consequence of what at the time was deemed a practical necessity, and not rational deliberation and knowledge of cause and effect. This problem is found particularly in the area of corrections, that is, the area in which society responds to the problem of crime by dealing specifically with the criminal rather than with such factors as the social environment or the law. In this chapter, some aspects of the interrelationship between theory and practice in corrections will be explored and some of their implications for future developments will be briefly examined.

1. TERMINOLOGY AND THE HISTORICAL SETTING

Many present-day problems in corrections grow out of or are extensions of the basic contradiction in ideas and in attitude represented by the terms *punishment* and *treatment*. *Punishment* involves the in-

tentional infliction of pain and suffering (not necessarily physical) upon an offender by official authority for the sake of some value assumed to inhere in this practice. It is the deliberate infliction of pain upon an offender for the sake of some good assumed to be produced by the pain. It must be distinguished from the pain or suffering resulting from events in nature, as in accidents or other misfortune, or as associated with surgery and other remedial action, in which pain is incidental to the treatment and not an objective of treatment. The infliction of suffering as an objective in itself can produce benefits only if offenders (or potential offenders), as a result of this suffering, reevaluate their actions and choose not to continue committing crimes. That is the process described in classical criminology, so that the concept of punishment is generally associated with the classical school.

Use of the term *treatment* has come into corrections through the analogy with medicine. A sick patient is *treated* to the end that he may recover from his illness and be restored to normal functioning. He is not *punished* for having become sick, nor to teach him a lesson so that he will not again become sick. The treatment varies with each case depending on the diagnosis of what is wrong, which is in turn based on the accumulated knowledge about the disease or condition and on experience with the appropriate action to be taken for different kinds of illnesses. By the same logic, the term in corrections implies a knowledge of crime causation together with procedures whereby the criminal may be studied and treated appropriately in order to control and change his behavior and restore him to normal functioning in society. Use of the term follows from the general point of view that understands crime as naturally caused, the product of antecedent conditions, circumstances, and events and therefore to be dealt with in terms of the conditions that produce it. That point of view, of course, is known as positivist criminology.

The origin of punishment is unknown. Legal codes prescribing various punishments for different crimes go far back in history. Numerous accounts are readily available, tracing in considerable detail the history and general story of these developments.[1] That story

1. Good systematic accounts are Hans von Hentig, *Punishment, Its Origin, Purpose, and Psychology*, Hodge, London, 1937; George Ives, *History of Penal Methods*, Stanley Paul, London, 1914, reprinted by Patterson Smith, Montclair, 1970; Harry Elmer Barnes, *The Story of Punishment*, 2nd ed. rev., Patterson Smith, Montclair, 1972; J. Thorsten Sellin, *Slavery and*

need not be retold here except as it may contribute to the understanding of the significance of the underlying conflict between the attitude of punishment and the attitude of treatment.

Among the oldest of the known legal codes, with schedules of penalties for specific crimes, are those of the ancient Sumerians and Babylonians. Of these, the Code of Hammurabi, the sixth king of Babylon, has been most completely preserved and most thoroughly studied. It is usually dated around 2000 B.C.; the Sumerian codes are thought to be somewhat older; and the Mosaic Code (Old Testament) is perhaps about 800 years later, or around 1400 to 1200 B.C. These three ancient systems of law are obviously interrelated and it appears that the later ones have borrowed or copied from the earlier ones.

A common element in many of the ancient codes of law that should be noted is the general attitude of revenge or retaliation, the *lex talionis*. One of the more quotable formulations of this general principle may be found in the Mosaic code in the Book of Exodus: "And if any mischief follow, thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."[2] Similarly, the Code of Hammurabi provided that if a son struck his father his hand was to be cut off; if he denounced his father or his mother, his tongue was to be cut out; and if he broke the bones of a free man his bones were to be broken.[3]

From these early backgrounds of punishment as revenge or retaliation for crime, European history shows a long series of modifications tending to soften or in other ways to mitigate the direct and simple application of the existing legal code, which through the whole period of developing social and political institutions, reflected the rule of "an eye for an eye." Notable among these devices aimed at mitigating established penalties are the historic institutions of "sanctuary" and the "right of clergy." Briefly, these practices were ways of avoiding the more severe penalty by seeking refuge in a

the Penal System, Elsevier, New York, 1976; Michel Foucault, *Discipline and Punish*, Pantheon, New York, 1977; Graeme Newman, *The Punishment Response*, Lippincott, Philadelphia, 1978. Shorter summaries may be found in nearly every recent textbook in general criminology.

2. Exodus, 21:23–25 (King James Version of The Holy Bible).

3. Chilperic Edwards, *The Hammurabi Code*, Watt, London, 1904, Ch. 4, as quoted in Mabel Elliott, *Criminology*, Harper, New York, 1952, p. 413.

church edifice or monastery or by claiming the special privilege of the "clergy" to be dealt with only by the church, usually in accordance with the much milder penalties of the canon law (except when the offense was heresy or witchcraft).[4]

Imprisonment as a penalty for crime thus replaces the more generally practiced corporal and capital penalties, and is a consequence in this long history of somehow finding ways of mitigating the harshness of *lex talionis*.[5] Though used occasionally in ancient Greece and in the Roman Empire, imprisonment appears first as a systematic penalty used by the church councils or courts for mild transgressions dealt with in the course of the Inquisition of Toulouse. From 1246 to 1248, there were 192 known sentences imposed, of which 43 were death penalties and 149, or nearly 78%, were imprisonment. Prisoners were frequently released on commutation of sentence, in recognition of what was assumed to be evidence of restoration to the faith, a possible precursor of the modern notion of imprisonment as a method of reforming the incarcerated criminal.[6]

The later spread of imprisonment throughout the world was also linked to the concept of reformation. In 1787, a group of Pennsylvania Quakers conceived the idea that if a criminal were isolated in a solitary cell, given only the Bible to read and some manual labor to do, he would reflect on his past wrongdoings and would see the errors of his ways. The group established a "penitentiary" in one wing of the Walnut Street Jail in Philadelphia, in which "penitent" criminals would be reformed. By 1835, however, the penitentiary had closed, a complete failure with a history of riots, escapes, and inmates who went insane.[7]

4. Luke O. Pike, *A History of Crime in England*, Smith, Elder, London, 1873–76, vol. II, p. 280ff. Reprinted by Patterson Smith, Montclair, 1968.

5. Norval Morris makes a similar point in "Impediments to Penal Reform," *University of Chicago Law Review*, 33:628–30 (1966).

6. George Ives, op. cit. p. 36ff.

7. For a general history of American prisons, see Blake McKelvey, *American Prisons: A History of Good Intentions*, Patterson Smith, Montclair, 1977. The history of the Walnut Street Jail may be found in Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology*, Prentice-Hall, New York, 1945, pp. 486–503; Thorsten Sellin, "Philadelphia Prisons of the Eighteenth Century," in *Transactions of the American Philosophical Society*, New Series, 43(1):326–30 (Mar., 1953); and Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773–1835*, Temple University Press, Philadelphia, 1955. Takagi challenged this interpretation of the development of the penitentiary, arguing instead that it was an effort to centralize the powers of the state in response to a fiscal crisis. See Paul Takagi,

The "treatment" imposed in the original penitentiary depended upon the presumption that crime was caused by a lack of religious training and reflection. When that treatment failed, the conception of what caused crime, and therefore what would cure it, changed. In the 1820s, a movement arose in which crime, as well as a number of other human maladies, were held to be the result of the inability of some individuals to sufficiently discipline themselves in the chaotic conditions that characterized the early years of this country.[8] The cure was to provide an artificial environment or "asylum" in which strict, precise discipline would be supplied. It was as a method of providing discipline to criminals that the use of imprisonment spread throughout the world.

By 1870, however, some penologists were arguing that discipline had also failed as a treatment. The resulting "reformatory movement" led to the establishment of educational and vocational programs as a method of curing crime; later individual counseling came into favor.[9] This third treatment mode dominates prison programs today, although the two earlier modes are still influential.

The corrections of the present day has become a practice centered on imprisonment. Lesser penalties may be imposed, such as fines and probation, but the threat back of these is generally the alternative of imprisonment. Only a few offenses, notably first-degree murder, treason, and sometimes forcible rape, still carry the possibility of the death sentence in most of the states of the United States and among most of the nations of the world. It is also true that some nations, and several states of the United States, have abolished the death penalty entirely. In many more it is seldom, if ever, used.[10]

"The Walnut Street Jail: A Penal Reform to Centralize the Powers of the State," *Federal Probation*, 39(4):18–26 (Dec., 1975).

8. David J. Rothman, *The Discovery of the Asylum*, Little, Brown, Boston, 1971. See also Barnes and Teeters, op. cit. pp. 505–45; Orlando F. Lewis, *The Development of American Prisons and Prison Customs, 1776–1845*, 1922, reprinted by Patterson Smith, Montclair, 1967; and W. David Lewis, *From Newgate To Dannemora*, Cornell University Press, Ithaca, 1965. For a contemporary account see Gustave de Beaumont and Alexis de Tocqueville, *Penitentiary System in the United States and Its Application in France, 1833*, Southern Illinois University Press, Carbondale, 1964.

9. Barnes and Teeters, op. cit. pp. 547–68. See also Zebulon Brockway, *Fifty Years of Prison Service*, 1912, reprinted by Patterson Smith, Montclair, 1969; and E. C. Wines, ed., *Transactions of the National Congress on Penitentiary and Reformatory Discipline, held at Cincinnati, Ohio, October 12–18, 1870*, Albany, 1871.

10. See Walter C. Reckless, "The Use of the Death Penalty: A Factual Statement," *Crime and Delinquency*, 15(1):43–56 (Jan., 1969).

During the same period of time in which use of the death penalty was decreasing, imprisonment was becoming the basic penalty imposed by courts world wide for the control of crime.

The practically universal adoption of imprisonment as the basis for correctional policy should be understood, in part at least, as a reflection of the great increase in material prosperity characteristic of modern times. Prisons are extremely expensive institutions to build, to maintain, and to operate. Only a world enjoying at least some relative measure of material abundance can be expected to tax itself to maintain those convicted of crime in modern prisons. The economically less comfortable or less well-to-do countries therefore naturally maintain much less elaborate and costly prison establishments than those usually found in the United States and throughout Western Europe.[11]

2. THE JUSTIFICATION OF CURRENT PRACTICE

The great historic change in corrections has been from a general reliance on corporal and capital punishments to a well-nigh universal adoption of imprisonment as the basic element in crime control. How is the use of this expensive alternative to be justified in preference to the more economical and more certain application of corporal or capital punishments? When the metaphysical and theological elaborations that sometimes get mixed up with the problem are ignored, it is really quite simple: Imprisonment *as punishment* is justified by the same logic, and by the same assumptions about the nature of man, as any other form of punishment, the principal difference being that it would usually be considered to be milder and more humane than the punishments it has replaced. As punishment, therefore, imprisonment is to be understood as the present form or stage of the long historic process of mitigating the severity and barbarity of earlier practices. *As treatment,* imprisonment similarly is justified by the same logic and assumptions used in connection with care of the physically ill, the mentally ill, or the congenitally defective. From the standpoint of either type of justification, there are a number of problems that should be noted.

When considered as *punishment,* it must be noted that incarcer-

11. Negley K. Teeters, *World Penal Systems,* Pennsylvania Prison Society, Philadelphia, 1944.

ation in a modern prison is not necessarily painful, or even especially disagreeable, although it frequently is both.[12] It must involve institutional living, to be sure, with the details of eating, sleeping, working, and playing all carefully regulated according to a centrally administered schedule, but it is not intrinsically harsh, brutal, or painful. Prison living, at best, may be not too different from that found in many other institutions in which many persons live large portions of their lives—such institutions as orphanages, boarding schools, old people's homes, hospitals, and monasteries. The only punishment aspect necessarily connected with the modern prison program is the fact of involuntary commitment, not the details of prison routine.

Earlier prisons were notoriously disagreeable places, intended simply and frankly to be approximately as horrible and frightening as the corporal and capital punishments they were replacing.[13] Hence the common earlier practice of whipping the inmate upon reception, at stated intervals while the sentence was being served, and again upon leaving—all part of the view that imprisonment constituted a form of punishment and that the business of the institution was to make prison life so frightful that men would be afraid to commit crime again. Approved modern practices have almost entirely eliminated this common earlier mixture of imprisonment and flogging as the form of prison sentence. Most civilized countries today, especially those that like to think of themselves as having progressive and advanced modern penal procedures, have abandoned corporal punishment in prison discipline. Instead, they utilize the practice of more intensive confinement, that is, further imprisonment within the prison, usually called restricted or solitary confinement.

The one aspect of modern corrections, more than any other characteristic, that has continued to be viewed in the perspective of punishment is the length of time incarcerated. Long-time incarceration is the modern serious punishment; short-time incarceration the less serious punishment. Thus, imprisonment for life has be-

12. See, for example, Jessica Mitford, *Kind and Usual Punishment*, Vintage, New York, 1973, for a general description of the problems of prisons in America or Dae H. Chang and Warren B. Armstrong, eds., *The Prison: Voices from the Inside*, Schenkman, Cambridge, Mass., 1972, for first-hand accounts of prison life by 22 inmates.

13. See, for example, the revealing account of John Howard, *The State of the Prisons*, first published in 1777, reprinted by Patterson Smith, Montclair, 1973.

come a common substitute for the death penalty for murder—and from ten to thirty days "in jail" the most common sentence for petty misdemeanors, drunkenness, vagrancy, and the like. The conditions under which either long or short sentences are served, that is, the details of the prisoner's day, are ordinarily indistinguishable. In most modern prisons, it is quite impossible to tell from the prisoner's clothing, living accommodations, work assignment, or schedule of privileges whether his offense is serious or minor. In either case, time will be served under similar conditions.

Although corporal punishment has been eliminated from most modern prisons, other forms of punishment may still be present. Prison conditions are frequently extremely inhumane and the facilities barely inhabitable, due to massive overcrowding in ancient or badly maintained buildings. Prison officials may believe, as their predecessors did, that prisons must be horrible and frightening to be effective, and may employ a variety of subtle, but nonetheless effective, methods of making them so. Even more subtle are the general pressures relating to the management of institutions, which result in the dehumanization and institutionalization of the inmates.[14] Even when prison officials are dedicated to improving prison conditions, they often find their efforts blocked by government offcials and the general public who believe punishment to be the purpose of prisons.[15]

Imprisonment viewed as a form of *treatment* of the offender is similarly paradoxical. Prison officials cannot say who they will receive; they must take those sent them by other authority. Moreover, the essential conditions of the length of sentence may be predetermined before the man reaches the institution—a condition far from compatible with the ideal of treatment. Many modern prison administrators contend, however, that it is the fact of imprisonment, not what happens within the prison, that constitutes the legal "punishment" for crime. That is, they say that being sent to prison is itself the punishment, and that the prisoner should not be further

14. See Erving Goffman, "On the Characteristics of Total Institutions: The Inmate World," in Donald R. Cressey, ed., *The Prison: Studies on Institutional Organization and Change*, Holt, Rinehart and Winston, New York, 1961; and Donald Clemmer, *The Prison Community*, Holt, Rinehart and Winston, New York, 1958.

15. Cf. Thomas O. Murton, *The Dilemma of Prison Reform*, Holt, Rinehart and Winston, New York, 1976.

punished while there. What happens to him in the daily routine of prison living is then said to be for the purpose of training and rehabilitation. The objective is to return the individual to the community a better citizen than when he entered the institution. To adopt the language of the mental hospital, upon release inmates are said to be improved or chronic cases, not reformed or rehabilitated. The change in descriptive terminology is characteristic of the shift in the point of view.

There are, nevertheless, those who argue that treatment inevitably is punitive, to some degree, and that punishment properly administered may also be an important positive factor in rehabilitation.[16] Thus, for example, Caldwell insists that "the process of reformation inevitably involves suffering, and since liberty is highly prized in modern society, imprisonment may be an exceedingly painful experience. . . . A system of punishment in which reformation is the principal purpose does not have to interfere in any way with aggressive law-enforcement . . . nor does it entail elimination of any of the discomforts, inconveniences, and disgrace involved in the arrest, trial, and conviction of a criminal."[17]

The mental hospital terminology and the attitude it is meant to reflect, it is argued, is more readily adapted to an honest recognition of the probability of recidivism on the part of those discharged from prison as improved. By an extension of the hospital analogy, prison officials are not to be blamed for the subsequent criminality of the released inmate any more than hospital officials are to be held responsible for the return for further treatment of the patient who continues to be chronically ill. Similarly, return of the criminal on a new sentence means only that there is something wrong with the individual, not that there has been any failure on the part of prison officials in their earlier treatment of the prisoner.

Yet in spite of this appealing and elusive terminology, the essential and basic condition of imprisonment is inescapable—it must be "secure" in the sense that it must make escape impossible. It is easy to understand, therefore, why early in its history imprisonment became a monstrous mass of uniformity, with every inmate experienc-

16. See, for example, Jerome Hall, *General Principles of Criminal Law*, Bobbs-Merrill, Indianapolis, 1947, pp. 475–535; also Robert G. Caldwell, *Criminology*, Ronald Press, New York, 1956, especially Ch. 18, "The Philosophy of Punishment," pp. 389–405.

17. Caldwell, op. cit., p. 405.

ing approximately the same day-to-day routine. Treatment, in the hospital sense, depends on knowledge of the disease and on the possibility of altering the program of care to fit the needs of the individual case. Such variation becomes difficult, if not impossible, in prison where the principal and determining condition is inevitably security. This is the background against which the use of such words as diagnosis, classification, individualization must be placed and against which they must be interpreted. Use of these words, and others like them, seems to make the institution sound like a hospital, like a place to treat difficult individuals, not a place to punish criminals.

3. CORRECTIONS: THEORY AND PRACTICE

Classification of prison inmates into certain rather obvious groupings, based on such commonsense criteria as sex, age, nature of the offense, and overall mental condition, is an old, well-established practice. Under criminal law, correctional administrators have been doing this, in a general way, as long as imprisonment has been used as punishment. Diagnosis, classification, and individualization of treatment, in more careful usage, must be thought of as going beyond this commonsense grouping to an analysis of individual characteristics and the setting up of different programs of day-to-day living for different individuals, which are tailored to fit their specialized circumstances. Included in this analytical diagnosis is presumed to be a realistic appraisal of the risks involved in the probable return of the inmate to society.

The present discussion is intended to focus attention on the theory of correctional classification, not on its practice. Generally in both practice and theory, it is assumed that the prison inmate has been properly convicted. Regardless of the inmate's own attitude, the assumption usually made by those who would treat him is that he is guilty as charged. In other words, those who treat such inmates carefully avoid being placed in the position of retrying the cases of the inmates in the institution. Logically, therefore, the caseworker often counsels the prisoner to accept the court verdict as correct and to adjust accordingly. That is, to see himself as others see him (the important others being the prosecutor, the jury, and the judge) is considered a first and necessary step on the road to rehabilitation.

A principal assumption as to crime causation, usually made, attributes the real difficulty to a mixed-up, maladjusted personality. To rehabilitate the individual he must be "straightened out" deep within his own personality. Earlier chapters have discussed several aspects of this individualistic orientation.[18] The difficulty with this view, of course, lies in the fact that in many kinds of criminality there is often a basic condition of the collision of interests of different groups in society. Thus, for example, violence on the picket line in front of a factory involved in a strike has little to do with the personal history and deviant personality patterns of either the pickets or the strikebreakers. The violence, and the resulting crimes, flow from conflicts in the larger society rather than from the personality of the individual.

Correctional workers, both in theory and in practice, usually ignore this social conflict aspect of criminality and seek to change the orientation and the behavior of the individuals concerned. These workers cannot change the society of which they are a part; they cannot modify the forces in conflict outside the institution; but they do hope to do something with the individuals inside the institution. Hence they ignore what they cannot manipulate, and construct a correctional theory to rationalize what they hope to do. This may well be the principal reason for the popularity of environmental theories of crime causation among correctional workers and for the frequent emphasis on the significance of traumatic experience in accounting for the psychological idiosyncracies of criminals.

Whatever the reason for the prevailing theoretical orientation, the rehabilitative activities of the modern prison generally have been of two kinds, psychological or psychiatric treatment and educational or vocational training programs.[19] What may be called "casework service" makes these more specialized forms of treatment effective in practice. The psychological and psychiatric services are assumed to be useful in uncovering the deeper frustrations and anxieties thought to underlie individual misconduct. When the individual obtains more insight into his own unconscious motivations, it should

18. Especially Ch. 7.

19. For a detailed discussion of programs emphasizing psychiatric or psychological treatment, see the readings in Robert G. Leger and John R. Stratton, eds., *The Sociology of Corrections*, Wiley, New York, 1977, pp. 301–87. For educational and vocational training programs, see Ronald L. Goldfarb and Linda R. Singer, *After Conviction*, Simon and Schuster, New York, 1973, pp. 610–74.

follow that he will be ready to seek a more intelligent life orientation than criminality. Such service provided by the institution should therefore be a positive contribution to rehabilitation. Together with this specialized service goes a general program of education and training in the trade or industrial skills needed for successful life-adjustment outside. Such training programs seek to correct the ignorance, poor habits, and lack of skill that are assumed to have been important factors in the inmate's past criminality.

These two techniques, either singly or in combination, constitute the principal components of a modern "treatment program" on which the hopes for rehabilitation are based. There are, of course, other elements more or less closely related to these two, such as free contact with religious counselors, access to a systematic recreational program, and experience with modern health services. The prison, in these respects, seeks to be as nearly as possible a place for normal community experience. These general services are subordinate to the principal treatment techniques, namely, the attempts to "straighten out" the inmate's psychological orientation so that he will really want to become a law-abiding citizen and to provide training in the practical skills and techniques needed to earn a satisfactory living honestly in modern industrial society.

An obvious question must be asked: How effective have these programs been? Numerous studies have been done on individual treatment programs with a great variety of results. In order to evaluate the effectiveness of rehabilitation programs in general, Walter C. Bailey in 1966 analyzed 100 of these reports published between 1940 and 1960.[20] He concluded that "evidence supporting the efficacy of correctional treatment is slight, inconsistent, and of questionable reliability." A much broader study was carried out by Lipton, Martinson, and Wilks in the late 1960s.[21] They undertook a six-month search of the literature for all available reports on the effects of rehabilitation programs published in English between 1945 and 1967. A large number of these studies were eliminated because of methodological problems that made evaluation impossible. The

20. Walter C. Bailey, "Correctional Outcome: An Evaluation of 100 Reports," *Journal of Criminal Law, Criminology and Police Science*, 57(2): 153–60 (June, 1966).

21. Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatment*, Praeger, New York, 1975. A shorter version of this study is found in Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest*, 35:22–54 (Spring, 1974).

remaining 231 studies were then evaluated in terms of the effect of the various programs on recidivism, as well as on other measures of offender improvement such as adjustment to prison life, vocational success, educational achievement, personality and attitude change, and general adjustment to the outside community. Although rehabilitation programs were found to benefit offenders in a variety of ways, in general these programs did not appear to affect recidivism. Martinson summarized this point as follows: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."[22]

That finding indicates that participation in rehabilitation programs apparently has little effect on whether a criminal does or does not return to crime. It does not necessarily mean, however, that most criminals do return to crime. In fact, it would appear that recidivism rates, with or without rehabilitation programs, are much lower than previously thought. Martinson and Wilks have carried out a survey of recidivism studies similar to the survey of rehabilitation studies.[23] Preliminary findings indicate that the mean recidivism rate in the 1970s is about 23%, having dropped from around 33% in the 1960s. These figures are substantially below most estimates that recidivism rates are somewhere around 60 to 70%, but are consistent with Glaser's earlier analysis of recidivism studies.[24] He had argued that the higher recidivism statistics were generally based on surveys of prison populations, which usually found that about two-thirds of the inmates in a particular prison had previously been incarcerated. That type of survey ignores the fact that repeat offenders usually receive longer sentences than first offenders, so that they tend to "pool" in the prison system, whereas the first offenders turn over more rapidly. In addition, many of these estimates were taken from maximum security institutions, where there are likely to be more repeat offenders and fewer first offenders. Glaser estimated that only about one-third of all men released from a prison system would be returned to prison within five years.

22. Martinson, "What Works?," op. cit., p. 25.

23. Robert Martinson and Judith Wilks, *Knowledge in Criminal Justice Planning—A Preliminary Report*, Center for Knowledge in Criminal Justice Planning, New York, 1976.

24. Daniel Glaser, *The Effectiveness of a Prison and Parole System*, Bobbs-Merrill, Indianapolis, 1964, pp. 13–35.

4. WHY DO REHABILITATION PROGRAMS FAIL TO AFFECT RECIDIVISM?

The questions for criminological theory that are posed by the failure of rehabilitation programs to affect recidivism rates are essentially of two kinds: (1) Is what we are doing in our prisons theoretically sound and correct, with the high degree of failure due to inadequate and unskilled implementation of the theory followed? (2) Or is what we are doing basically and theoretically unsound and therefore essentially useless in bringing about rehabilitation? Simple yes or no answers to such questions obviously have little meaning. Logically, there must be some proportion of every prison population that would necessarily have to be classified in a "very poor risk" category as far as rehabilitation goes. Yet both sentimentally and officially, we have been reluctant to accept this logical and inevitable outcome of a successful classification program; we like to think that every prisoner could possibly be rehabilitated.

If it is true that some prisoners are better risks for rehabilitation than others, then it must follow that effective treatment for one type of inmate may not be equally effective for another type. What types of inmates are there in the ordinary prison population? In earlier articles, the present writer (V.) suggested[25] four characteristically different types of inmates in the ordinary prison, with many overlapping and in-between such type classifications. Brief descriptions of these four types will be given in the paragraphs that follow.

First, there is a group of the *psychologically disturbed* for whom it may be assumed that the criminal behavior for which conviction has been obtained represents an acting-out of some deep-seated mental conflict. The behavior of such an individual is thought to be analogous to that of a mental patient, but in the case of the prisoner, the behavior is forbidden by law and defined as criminal.

No one knows, really, what should be done with inmates who fall into this category. Treatment patterned on that given in the modern mental hospital would appear to be in order, but there is no assur-

25. See George B. Vold, "For Better Prisons the Need is Basic Research," *State Government,* Feb., 1955, pp. 1–4 (published by the Council of State Governments); "Some Basic Problems in Criminological Research," *Federal Probation,* XVII (1) 37–42 (Mar., 1953); "Does the Prison Reform?" *Annals of the American Academy of Political and Social Science,* May, 1954, pp. 42–50.

ance whatsoever that this will be effective. Many patients are released from mental hospitals as "improved," but this is no guarantee that they will not soon be back for further treatment. Logically, therefore, to the extent that the prison population is made up of such unstable and disturbed people, high recidivism rates should be expected.

Second, there is the group of *unskilled, relatively uneducated, low level of ability* persons who are psychologically normal and who require sufficient skill to survive successfully and honestly in a competitive society in which the more able normally forge ahead of the less gifted. A basic difficulty with this group lies in the fact that many of these individuals are of such limited ability that no high degree of effectiveness can be achieved. The real problem, therefore, is much more one of correcting expectations than of providing more training programs. Frustration, defeat, and ineffectiveness follow as inevitable consequences of attempting to achieve above one's level of performance. This is the dilemma confronting ordinary trade training or skilled labor training programs in prisons.

The problem of correcting unrealistic expectations is by no means peculiar to the prison setting. Unrealistic expectations play an important part in the discontents and maladjustments of large numbers of persons outside of prison as well as among prison inmates. Its correction would seem to be basically a community problem. Large segments of the population inevitably are unable to achieve any particular degree of success in the competitive struggle with their fellows for a variety of reasons not subject to direct modification or control. No prison training program can hope to change markedly the individual's level of ability or modify his basic personality. Unless expectations can be brought in line with ability, only frustration and despair follow competitive effort.

Since the prison environment is largely non-competitive, sometimes such low-level of ability persons make "good" prisoners and adjust well to the required routine. But this effectiveness as individuals is not increased by this type of environment, and failure in normal competition is a not infrequent consequence upon release. Recidivism rather than rehabilitation therefore often follows release of some of these "well-adjusted," "well-trained," good prisoners. This is a type of problem the prison as an institution is not likely to

be able to solve except as it may reflect a changing sentiment in the community outside.

Third, there is a group of psychologically "normal" and educationally "average" persons *who identify with non-law-abiding persons* and who endorse a manner of living not acceptable to the political majority. There are several subgroups of this type, some of whom may be readily identified as:

1. The political offender whose views are considered "subversive" and whose theory of government and the organization of the state is in sharp variance with that in effect. The "communist" in the United States, or the "capitalist" in Russia are illustrations of the type.

2. The religious or philosophical sectarian whose views purport to be ethical and spiritual, but whose behavior nevertheless may be contrary to law and deemed dangerous and criminal. The conscientious objector who refuses military service and the objector who refuses to comply with a "godless" system of public education by the state are examples of the type.

3. The "white collar," business executive, who persists in outlawed business practices with no sense of wrongdoing or crime, only feeling that he is being persecuted by authority.

4. The "non-conformist" intellectual or professional person who, on the basis of conviction, persists in outlawed or criminal behavior. Notable illustrations are artistic and literary intellectuals who challenge established codes of "decency" in painting or in writing; similarly, professional men of medicine who flout the law in the practice of abortion or in the administration of "mercy deaths."

No technique is presently known from which it is reasonable to expect the successful rehabilitation of any of these subtypes. Education and "training programs" usually do not approach the central problem nor is the application of intensive hospital type of care based on the "sick patient" model useful. The psychological and social-psychological problem is more nearly analogous to that of making over the religious or political beliefs of an individual. Western societies have no ready formulas for the reorientation of this type of person. Our cultural and ethical ideal respecting and honoring the freedom of conscience inhibits any direct intimidation, and prohibits measures obviously designed to coerce the individual into

changing his orientation in the manner of the "brainwashing" practiced by some totalitarian countries. Yet some such technique apparently would be needed to bring about the required change in the orientation of the individual.

Fourth, there is a group of psychologically "normal" and educationally "average" persons *whose commitment to crime is that of any professional person* in his chosen field of activity. For this type of person crime is viewed as a business and managed accordingly. There are the usual business attitudes toward competitors, customers, clients, and prospects. The typical field of operation is the supplying of some illegal service or product for which there nevertheless is an economic demand (prostitutes and narcotics, for example). Such people are "in business" just as significantly as the ordinary merchant. If the individual fails in running his own crime enterprise, he usually does not "reform" and quit crime; instead, he starts to work for a more successful syndicate.

Theories of behavior underlying conventional corrections do not apply to this group. There is no training problem; the individuals are as "well-adjusted" as ordinary businessmen; they want neither counsel nor guidance. In prison they serve their time with no intention of changing their attitude or their ways. Their only expressed hope is that they will not be "dumb" enough to get caught again. Police and court activity may break up "crime syndicates," but there is no chance that imprisonment will "rehabilitate" the individual members of such syndicates who may happen to be serving time in prison. Effective rehabilitation, if it is to take place, must come from influences and forces in the community that shape and mold general life orientation. Such influences antedate both imprisonment and the behavior for which the individual is imprisoned. This is not something that can be forced on the individual during a limited period of institutional incarceration.

This brief survey of the principal types of persons in prison should help to answer questions about why rehabilitation programs fail to affect the recidivism rate. The limitations of the prison are clearly as much related to inadequate theoretical orientation as to inadequacies in practice. More adequate theory on which to base a more adequate treatment program may be expected only with more fruitful research into, and a more complete understanding of, the sources of

crime. Corrections should not be expected to lift itself by its own bootstraps.

5. IMPLICATIONS

Until recently, modern correctional practice has been characterized by nearly universal lip service to the ideal of reformation or rehabilitation. There has been a prevailing popularity of "progressive" or "hopeful" theories that reveal a deep and abiding faith in the improvability of man. Despite substantial evidence to the contrary, correctional practice has continued to function as if there were a good chance for the successful rehabilitation of every inmate who enters an institution. Such an assumption cannot be defended realistically, either in theory or as a result of practice.

At the present time, a more restricted idea of rehabilitation is making headway in the correctional field, led by Norval Morris.[26] Morris has argued that the basic problem with prison rehabilitation programs is that prisons have tried to force offenders to change by making release from prison dependent on whether they have been "rehabilitated." That puts a great deal of pressure on the inmate to "con" the officials into believing he has reformed, and it undermines genuine rehabilitation. Morris argued that sentences should be given only as a punishment for crime, never in order to rehabilitate the criminal. Once in prison, the offender should have available as many rehabilitative programs as possible, but these programs should not influence his release date. The inmate could then use the programs to improve himself if he so desired, but he would have no incentive to fake it.

The present discussion has focused on the concepts of punishment and treatment, concepts that are linked to the classical and positivist perspectives in criminology. Inkeri Anttila has presented a "third alternative" for criminal policy, which would appear to be linked to the emerging critical perspective.[27] Anttila suggests that rather than punishing or treating criminals, criminal policy in the future may attempt to control the costs of crime by controlling crime opportu-

26. Norval Morris, *The Future of Imprisonment*, University of Chicago Press, Chicago, 1974.

27. Inkeri Anttila, "Punishment Versus Treatment—Is There a Third Alternative?," *Abstracts on Criminology and Penology*, 12:287–90 (1972).

nities and crime definitions. This could entail, on the one hand, emphasizing different forms of crime prevention techniques (stronger locks, well-lighted streets, etc.), and on the other, decriminalization of those offenses in which the costs of enforcement outweigh the benefits.

A second goal for future criminal policies may be to achieve a just distribution of the costs of criminality in society. Anttila emphasizes the essentially political nature of the processes by which offenders are selected for punishment by the justice system, and states[28]:

> The more we learn about the nature of these selection processes, the less acceptable they seem to be. Among the first defects which should be eliminated are the discrimination of the socially powerless segments of society and the arbitrariness of decision-making. Decisions involving deprivation of liberty must be based on strict rules if we wish to maintain a standard of civil liberties compatible with the sophistication of our understanding of the selection process. In practice, the goal must be to guarantee to all the parties involved the ability to predict with sufficient accuracy the probable outcome of the various steps taken within the legal process.

In a comment related to the elimination of discrimination against the socially powerless, Anttila speculates that "we can expect a restructuring of the offender population, so that the relative number of persons sentenced for so called traditional crimes will decrease, while the proportion of persons sentenced for tax and business fraud, pollution offenses, misuse of public office and endangering offenses will increase."[29]

Anttila concludes[30]:

> The growing opposition to the treatment ideology is thus not in principle related to either punitive or permissive penal attitudes. By offering a wider range of action alternatives than those mainly related to the control of individual offenders, "the third alternative" will, however, attract those who are concerned about the present injustices and inefficiency of the total social control system.

Thus, criminological theory and correctional practice are related on several levels. Present practices in corrections may be explained

28. Ibid. p. 289.
29. Ibid. p. 290.
30. Ibid. p. 290.

in terms of the basic contradiction between the ideas and attitudes of the classical perspective in criminology (focusing on punishment) and those of the positivist perspective (focusing on treatment). Within the positivist perspective, new forms of treatment may be expected to follow logically only from new or improved theories of crime causation. Such theories of causation can only be expected to come from more realistic and more carefully executed basic research. Finally, to the extent that the treatment ideology is abandoned in the future, new directions in criminal policy will probably be developed from the emerging critical perspective in criminology.

RECOMMENDED READINGS

Harry Elmer Barnes, *The Story of Punishment: A Record of Man's Inhumanity to Man,* 2nd ed. rev., Patterson Smith, Montclair, 1972. A concise history of punishment for crime.

Blake McKelvey, *American Prisons: A History of Good Intentions,* Patterson Smith, Montclair, 1977. A detailed account of the development of prisons in America up to 1915, and an overview of development since that time.

Sir Walter Moberly, *The Ethics of Punishment,* Archon, Hamden, 1968. A philosophical approach to the problems of criminal punishment and treatment.

Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest,* 35:22–54 (Spring, 1974). A review of the study on the effects of rehabilitation programs on recidivism.

Norval Morris, *The Future of Imprisonment,* University of Chicago Press, Chicago, 1974. An examination of why rehabilitation has failed, and a detailed plan for a prison for repetitively violent offenders.

Gordon Hawkins, *The Prison: Policy and Practice,* University of Chicago Press, Chicago, 1976. An overview of problems in today's prisons, and recommendations for specific reforms.

Thomas O. Murton, *The Dilemma of Prison Reform,* Holt, Rinehart and Winston, New York, 1976. Prison reform always fails because, in the last analysis, both government leaders and the public believe prisons are for punishment, and therefore, they must be terrible places.

David Fogel, ". . . *We Are The Living Proof . . .*" *The Justice Model for Corrections,* Anderson, Cincinnati, 1975. An argument against rehabili-

tation and for a return to a punishment philosophy as fairer and more humane.

Ronald L. Goldfarb and Linda R. Singer, *After Conviction: A Review of the American Correction System,* Simon and Schuster, New York, 1973. A good general text in corrections.

Inkeri Anttila, "Punishment Versus Treatment—Is There a Third Alternative?" *Abstracts on Criminology and Penology,* 12:287–90 (1972). The views of a group of progressive Scandinavian criminologists who are dissatisfied with punishment and treatment ideologies.

CHAPTER TWENTY

Conclusion

It must be abundantly clear by now that explanations of crime are both varied and contradictory. It has appeared that crime is a phenomenon that may be approached from many points of view. The "theories" of crime that have been discussed reflect this. Each particular theory represents a possible approach, and reflects some special point of view, rather than any general accounting for all crime in all societies at all times. Even as there is no generally satisfactory or completely adequate theory of human behavior in general, so there is no entirely adequate or generally accepted theory of criminal behavior. Some of the lines of discussion and disagreement in this area are worth restating. This reformulation then in effect becomes a brief summary of the field.

1. DEMONISM VERSUS NATURALISM

The first and foremost condition that needs to be recognized is a basic dichotomy inherent in all explanations given for the events with which man is involved. There is always the question of (1) whether the explanation is in terms of supernatural or "other-world" powers or (2) whether it is in terms of naturalistic or "this world" influences. Only naturalistic theories have been considered in the previous discussion, because only this approach offers systematic information of the sort called for by the methods of scientific inquiry.

Belief in the supernatural is a matter of faith, not a question of information or fact. It is accepted or rejected, in terms of individual preferences, but it can never be either established or disproven by the methods of scientific inquiry. The theories of a scientific criminology can be only the theories reflecting a naturalistic orientation to the problems of causation.

2. CLASSICAL THEORIES

The earliest of the naturalistic theories of crime are those that view man as free, rational, and hedonistic, choosing his actions on the basis of his assessment of their relative costs and benefits. The rational response of society is seen as increasing the costs and reducing the benefits of crime, so that the individual will choose legal options instead of illegal ones. That view was originally proposed by *criminal law reformers* in the late 1700s, who used it as a basis for attacking the widespread disparity of sentencing in the criminal courts. Today, a new group of reformers, using the same classical philosophy are again attacking a similar problem of sentencing disparity. Also associated with this school are the *econometric theories,* which are based on the economic model of choice. Techniques for analyzing the functioning of the economy are applied to the problem of crime and the analysis of its costs and benefits. Finally, in the *deterrence theory,* attempts are made to specify the conditions under which crime will be less likely to occur and to test its assumptions by analyzing such problems as the effect of certainty and severity of punishment on crime rates.

3. POSITIVIST THEORIES

Theories that involve a search for the causes of crime have dominated criminology for the last 100 years. These theories have been of two general types: those that emphasize the nature of the individual and those that emphasize group and inter-group relations. The earliest of the individualistic theories involved explanations based on some aspects of genetic or biological difference. Initially, the proof of such biological difference was sought in the visible, measurable externals of *physical type,* the assumption being that the criminal was somehow structurally different from the noncriminal. Later

studies focused on *hereditary differences* through the studies of twins and adoptees, and on specific *biological differences* such as chromosomal abnormalities, learning disabilities, and autonomic nervous system malfunction.

Only slightly different in terms of logic, but significantly different in terms of research methods and procedures, have been the several *theories of psychological difference* between the criminal and the noncriminal. These theories perhaps may be said to have reached their greatest height in the somewhat absurd notion of the criminal as being essentially feebleminded, which condition constituted the principal explanation of his criminal behavior. Such a notion had the advantage of providing not only an explanation of the cause of the criminality but also of carrying with it the strong suggestion for a logical and necessary remedy, namely, the prevention of feeblemindedness and the elimination of the feebleminded in society. Genetic societies, or, as they were sometimes called, "human betterment associations," were organized in many places with the avowed intention of "improving the human stock" and thus reducing the widespread ills said to flow from the senseless multiplication of "the biologically unfit."

More sophisticated and complex than the earlier theories of psychological difference have been the *individualistic theories of psychiatrists.* In their theories, too, the unit of analysis continues to be the individual criminal. The behavior called crime continues to be viewed as a disorder of the individual; the treatment prescribed is generally some correction of the mental orientation of the "confused" or "disturbed" or "sick" individual who became involved in criminality. Psychiatrists probably have been less characteristically inclined toward basic biological explanations than their close cousins, the clinical psychologists, and therefore environmentally related idiosyncrasies of the individual often loom large in the psychiatric theory of crime causation. As a logical consequence, treatment is predicated on various assumptions about the beneficial effects resulting from manipulations of the individual's psyche, leading to an allegedly better understanding of himself and of his place in the world.

Theories centering on ideas of crime as an aspect of group phenomena, in which the particular characteristics of specific individuals may be quite incidental and often irrelevant, are generally less

well tested than the individualistic theories. In general, that is because it is much more difficult to formulate adequate operational definitions of the concepts, so that they can be precisely measured. Thus, these theories often rely heavily on intuitive appeal for their support.

There are three principal group theory approaches. In *social disorganization theories*, the focus is on the community in which the criminal lives, and the breakdown of the community structures that normally hold criminal tendencies in check. Crime is seen as the result of a pathological community situation, which produces "natural areas" of crime. In *opportunity theories*, unequal access to economic opportunities generated by the class structure of the society is considered. It is argued that lower class persons have less opportunity to achieve success through legitimate channels, and that they have more opportunity to do so through illegitimate channels. In theories that emphasize the *normal learning process*, the general idea that criminality reflects the normal adjustment, the accepted and expected behavior pattern of the individual in relation to his group or groups is held. That is, it is the group that is at variance with the rest of the world, not the individual. The delinquent is said to be a normally adjusted individual in a delinquent group.

4. CRITICAL THEORIES

In the third and most recent perspective in criminology, the focus is on the processes by which certain people and certain actions are defined as criminal by the criminal justice system. There is a great natural diversity of behaviors in all societies, but each society criminalizes a somewhat different portion of that diversity. The attempt is made in critical theories to analyze how and why the criminalization process occurs in a particular society. In the *interactionist* approach, it is argued that the origins of human action are to be found in the meanings those actions have for the actors. Thus, the criminalization process is examined in terms of the meanings crime has for those who are criminalized, for those who criminalize others, and for society at large. There are also the theories in which crime is considered in terms of *conflict*. That is, crime is considered to be the expression of individual behavior in the situation in which groups are in conflict with one another. The individual criminal is

then viewed as essentially a soldier under conditions of warfare; he behaves in any manner necessary to win the fight for his group. His behavior may not be "normal" or "happy" or "adjusted"—it is the behavior of the soldier doing what has to be done in wartime.

5. GENERAL ECLECTICISM AS A THEORETICAL APPROACH

Theories that are basically eclectic, in which the possibility of any single explanation is rejected, vary nearly as much as the phenomena they describe. The prevalence and respectibility of eclectic theories of crime probably are the result of a reaction to the obvious inadequacies and fallacies of the more specialized and particularistic formulations. The great weakness of eclecticism, as any sort of consistent theory, is the very broad range of ideas and information considered important in the explanation of criminality.

Rejecting general overall theories, the eclectic theorist tends to explain a particular case in terms of a wide range of possibly related information without indicating which factors are important. Every case is then explained somewhat differently from every other case, with always the strong possibility that there will be as many theoretical explanations as there are cases to explain. Extreme eclecticism is the equivalent of no theory at all, there being only individual cases. At that extreme, eclecticism is the antithesis of scientific explanations, since such explanations always go beyond the particular instance to larger and larger classes of objects of events that may be encompassed within the confines of the generalizations made. Eclecticism tends to deny the validity of making general statements out of the assorted information at hand. Logically, this can only mean that scientific theorizing in the field is impossible.

6. RESEARCH AS REFLECTION OF UNDERLYING THEORY

Research designed to help answer questions about crime and criminal behavior has the general approval of all schools of thought in criminology. But research studies can discover only what they are designed to find out. Therefore it often is the case that the theory back of such studies will determine their focus and limit the range of "new" information possible to discover.

Thus it is clear, for example, that research designed to discover

the differences between the traits and characteristics of individuals involved in crime and those of "matched samples" of individuals not involved in crime can give only information about the traits and characteristics of the individuals measured or tested. Other information will not be sought or recorded, because the study calls for comparisons of traits and characteristics. Such studies, no matter how elaborate, or how often repeated, can give no information about crime as part of the process of conflict adjustment between groups striving for control of the same highly valued enterprise. Similarly, a study in which crime is hypothesized to be the result of group conflict will give no specific information about the traits and characteristics of the individuals involved in that conflict.

Critical judgments about what is good or poor research also must be considered against the background of the theoretical orientation involved. The point of view of the critic may be more pertinently related to his evaluation of its orientation than the actual conduct of the study itself. Studies may be termed "good" or "significant" when they reflect the same basic frame of reference as that of the critic. If they do not, they are much more likely to be characterized as being of little significance. This is a basic problem with all "critical appraisals" of research in the human behavior field.

7. CORRECTIONAL PRACTICE AS REFLECTION OF THEORY

Throughout history a changing corrections has been justified by corresponding changes in the theories utilized to explain or account for crime. Until recently, modern corrections has almost universally accepted the proposition that the purpose of imprisonment is the reformation or rehabilitation of the offender. Correctional programs were no longer justified simply as applying deserved and appropriate punishment for crime. Modern prison administrators rejected any suggestion that they were supervising or operating institutions for punishment.

The logical consequence of this preoccupation with reformation as the purpose of imprisonment has been the rejection of any criminological theory that would challenge the assumption that reformation really could be expected to take place. The theories of crime most avidly supported by correctional workers were those emphasizing

individual deviance and the negative influences of an undesirable environment. The individual presumably can be "treated" and the environmental conditions similarly can be "corrected," so these theories reinforced and strengthened the conviction that prevailing practices were on the right track and could be expected to make further progress toward a brighter future.

Contemporary corrections has no program for dealing with the clash of forces in the community that may bring to the prison an assorted collection of individuals best understood as prisoners of war, as foot soldiers captured in the course of activities designed to fortify combat positions in the struggle for the control of power. Crime as a result of the struggle for the control of power does not come within the range of treatment in corrections. There is no treatment either known or available for "correcting" or for "adjusting" any of the basic conflicts that bring many individuals into conflict with the law, and which sometimes brings them to correctional institutions for "treatment."

The theory looked to for justification of correctional treatment practices has had difficulty in reconciling the discrepancy between expectations and accomplishment. The persistence of recidivism offers a serious stumbling block to a too ready acceptance of the idea of readily achieved reformation. Literally interpreted, the recidivist is a criminal who, after having experienced rehabilitation, returns to crime and ultimately to prison to be rehabilitated again. The most palatable rationalization for this chain of events is the hospital analogy. According to this, the criminal returns to crime, not because the treatment was inappropriate or ineffective, but because of the fact that upon release he was reinfected in an unhealthy, that is to say, crime-breeding, environment. As reasonable as this rationalization may seem from some points of view, it overlooks or ignores the equally possible fact that the treatment may have had no real relation to the cause of the criminal behavior in question.

8. PROSPECTS FOR THE FUTURE

What then may be expected in the future? Is there some more comprehensive kind of criminological theory in process of development so that the contradictions and inconsistencies now so clearly

evident may be resolved? There are no oracles to consult for answers. One can only venture to record some tentative and speculative guesses about future developments.

Crime must be recognized clearly as not being a single phenomenon, but as consisting of many kinds of behavior occurring under many different situations. No single theory therefore should be expected to explain the many varieties of behavior involved. One problem calling for clearer thinking in the future is the systematic and realistic delineation of the kinds or types of criminality. It should then be possible to advance a consistent and unitary theory for each type. This may correct the absurdities of extreme eclecticism, and reduce the confusion that results when one type of theory is used to explain a different type of crime.

Research of the future may be expected to focus on this problem. When meaningful, functionally operative typologies have been established, then the methods and procedures applied to one type of criminality would be recognized as of only limited applicability to other types. Thus, for example, the exhaustive attention given in the past to establishing individual differences in traits and characteristics of criminals and delinquents will be recognized as appropriate for only certain, specific kinds of criminality.

It is not to be expected that criminological theory will develop wholly adequate explanations of criminal behavior until human behavior in general is better understood. The criminal is and will continue to be a human being, and his behavior will differ only in degree and in a few special ways from that of the noncriminal. Hence, criminological theory and human behavior theory in general may be expected to develop along parallel lines.