

CRIMINOLOGY

Tenth Edition

by the late
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and
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University of California
Santa Barbara

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Preface

The revision of this edition of *Criminology* is the most extensive since the book first appeared more than fifty years ago. Those familiar with earlier editions will find essentially the same order of presentation, with modifications of some chapter titles, but substantial portions of all chapters have been rewritten.

The field of criminology has been changing at an accelerating rate in the past decade. More and more research reports and essays have been oriented to policy issues rather than to behavioral-science issues. A few years ago, most of the critical debates focused on theoretical questions about why some people commit crimes while others do not, and on why crime rates are high in some groups but not in others. These debates were allied with broader theoretical issues in psychology, psychiatry, social psychology, and sociology. Today, criminology is much more oriented to law and public policy.

It is an exaggeration to say that criminology formerly tried to *understand* crime and the methods of dealing with it, but criminology today attempts to *do something about* crime and the practices of agencies ranging from police departments to parole boards. This is an exaggeration because many criminologists continue to show deep concern for understanding the crime-generating processes in society, including those processes inadvertently set in motion by state agencies charged with reducing the incidence of crime. Research and discussion stimulated by labeling theory, structural-frustration ("opportunity") theory, differential-association theory, control theory, and conflict theory continue. Research and discussion allied with other theories about why persons and groups behave the way they do also continue: modern psychological-learning theory ("operant theory"), psychiatric theory, psychoanalytic theory, and even biological theory.

But it is not an exaggeration to say that criminology's theoretical concerns recently have been supplemented by more practical objectives—how to reduce the incidence of delinquency and crime, how to make criminal-justice procedures more rational or fair, how to influence legislation, and so on. Some of the criminological debates have thus become lively discussions of policy issues that are, or should be, of concern to all citizens—disparities in sentences, the deterrent effect of punishment, the proper role of police officers, the effectiveness of rehabilitation programs, the plea-bargaining practices of prosecutors, the closing of prisons, the abolition of the indeterminate sentence, and so on.

I have tried to capture the essence of most of these debates, especially in Part Two. Yet the tenth edition of *Criminology*, like earlier editions, has a sociological and social-psychological orientation. Part One and Chapters 13 through 15 of Part Two, especially, provide a theoretical background for understanding what the new debates (some of which are really not so new) are all about. Moreover, theoretical issues continue to be of critical importance. Obviously, every policy and program for doing something about crime is based, implicitly or explicitly, on a theory about individual or group behavior. In this edition more attention is given to radical or critical theories of crime and punishment, but I have also discussed new research papers and essays that are relevant to other theoretical and practical issues.

In its nine previous editions, the first four written by the late Edwin H. Sutherland (1883–1950), *Criminology* emphasized the organization and systematization of knowledge. This edition adheres to that tradition. The differential-association principle and other sociological and social-psychological perspectives are used in an attempt to make sense of the wide variations in criminal and delinquent behavior, and in crime and delinquency rates. These and similar principles are also used to explain the wide variations in criminal-justice policies and programs, and the differences in the behavior of the numerous state officials who are directly concerned with delinquency and crime.

Because *Criminology* organizes knowledge about criminological questions, the careful reader will have a sense of participation, of being involved. My objective is to provide students with a theoretical foundation so they can participate in criminological debates, not just observe them. Thus this textbook has a thesis. It takes a position on most issues, especially those that I have personally researched.

Many textbooks resemble encyclopedias or other reference books in that they annotate research reports and essays on a long list of topics, give definitions of technical terms, and describe technical processes without analyzing them. This promotes a tendency to “talk down” to readers or to burden them with masses of detail. *Criminology* is oriented differently. Although it has its share of purely descriptive and historical paragraphs and pages, it is a book about *ideas* rather than cops and robbers or the mechanics of criminal-law administration. Instead of confining itself to reporting what various people have written about crime and

punishment, the book attempts to make a statement about crime and punishment. Important points are reinforced by repetition, sometimes immediately, sometimes in later chapters.

It is not possible to say everything at once, nor is it possible to discuss every topic first. Obvious as these truths may seem, they severely handicap most modern criminological writers. "Criminal behavior" and "high crime rates" can hardly be appreciated by those whose knowledge of criminal-law, law-enforcement, and criminal-justice practices is deficient. Likewise, an understanding of the actions of criminal-justice institutions, agencies, and personnel requires knowledge of law violators and their backgrounds. Criminal behavior and criminal-justice processes are not divisible. We know, for example, that any law violation is likely to be termed "criminal behavior" because someone has been arrested and processed, and not solely because the person involved was observed engaging in precisely defined criminal conduct and then arrested. We also know that the personnel of criminal-justice agencies have as much to do with manufacturing high crime rates as do criminals. But because it is not possible to discuss all of this at the same time, I have chosen to focus on criminals (Part One) before examining criminal-justice administration (Part Two). Readers are advised, however, to treat Chapters 1, 13, 14, and 15 as a unit, to study these chapters first, and to refer to them when reading other chapters. (Readers who are familiar with earlier editions of *Criminology* will note that these four chapters have been extensively revised.)

Once again I have decided that Professor Sutherland's formal statement of the theory of differential association should not be modified. The theory has been found defective, and suggestions for its modification have been made. These suggestions have been incorporated in this edition. However, if considered as a "principle" rather than as a "theory," differential association continues to make good sense of most of the phenomena in the delinquency and crime area. It was a harbinger of the "conflict orientation" that is now becoming popular in sociological circles once again. The formal statement, as written by Sutherland, continues to be tested, analyzed, discussed, and extended. It would be inappropriate to modify the theory in such a way that research work now in progress would be undermined. Moreover, the "great debates" about the present statement of the theory probably are of more value to students than would be a revised formal statement that would take some of the criticisms into account. Finally, the theory in its present form has become rather basic to the thinking of American researchers, who refer to "the theory of differential association," or just "differential association," without citing Sutherland or anyone else, apparently on the assumption that readers are familiar with the theory and its origins. I continue to believe that it would not be wise to revise the statement in such a way that these references become meaningless.

One last but by no means minor point: I have neutered *Criminology*.

Criminals, prisoners, and probationers are commonly described as "he." This is not a serious error, for most criminals, prisoners, and probationers are indeed males. But it is incorrect to accept the common practice of referring to all police officers as *policemen*, and all judges, parole-board members, prosecutors, and criminologists as "he." I made this error in previous editions because I am a product of my cultural environment. In this edition of *Criminology*, the sex of most anonymous actors, especially high-status ones, is not indentifiable.

Santa Barbara, California
March, 1978

Donald R. Cressey

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PART ONE

**THE STUDY OF
DELINQUENCY AND CRIME**

1

Criminology and Criminal Law

Criminology is the body of knowledge regarding juvenile delinquency and crime as social phenomena. It includes within its scope the processes of making laws, of breaking laws, and of reacting toward the breaking of laws. These processes are three aspects of a somewhat unified sequence of interactions. Certain acts which are regarded as undesirable are defined by the political society as crimes. In spite of this definition some people persist in the behavior and thus commit delinquencies or crimes; the political society reacts by punishment, intervention, and prevention. This sequence of interactions is the subject matter of criminology.

Criminology has three interrelated divisions, as follows: (1) the sociology of criminal law, which is an attempt at systematic analysis of the conditions under which penal laws develop and also at explanation of variations in policies and procedures used in police departments and courts; (2) the sociology of crime and social psychology of criminal behavior, which is an attempt at systematic analysis of the economic, political, and social conditions in which crime and criminality are either generated or prevented; and (3) the sociology of punishment and correction, which is an attempt at systematic analysis of policies and procedures for reducing the incidence of crime.

The scholarly objective of criminology is the development of a body of knowledge regarding this process of law, crime, and reaction to crime.¹ Much of this body of knowledge will continue to come from observations of the success or failure of practical efforts to reduce the incidence of crime and delinquency. Such knowledge will contribute to the development of other social sciences, and in this

¹As suggested in the first paragraph above, this objective pertains to juvenile delinquency as well as to crime. For purposes of editorial convenience, however, the phrase *and juvenile delinquency* will not be added every time the word *crime* is used, nor will the phrase *and delinquent behavior* be added whenever *criminality* or *criminal behavior* is mentioned.

way will contribute to an understanding of social behavior. But if practical programs wait until theoretical knowledge is complete, they will wait for eternity, because theoretical knowledge is increased most significantly by determining why some practical programs work while others do not, and by observing that some practical programs have undesirable and unanticipated consequences. Years ago, John Dewey described the relationship between knowledge and practice as follows:

. . . It is a complete error to suppose that efforts at social control depend upon the prior existence of a social science. The reverse is the case. The building up of social science, that is, of a body of knowledge in which facts are ascertained in their significant relations, is dependent upon putting social planning into effect. . . . Physical science did not develop because inquirers piled up a mass of facts about observed phenomena. It came into being when men intentionally experimented, on the basis of ideas and hypotheses, with observed phenomena to modify them and disclose new observations. This process is self-corrective and self-developing. Imperfect and even wrong hypotheses, when *acted upon*, brought to light significant phenomena which made improved ideas and improved experimentations possible. The change from a passive and accumulative attitude into an active and productive one is the secret revealed by the progress of physical inquiry.²

While experimentation may increase theoretical knowledge and thereby contribute to ultimate improvements in policies, it is unnecessarily wasteful unless it is directed by the best-organized and critical thought available. Moreover, experimentation with humans, unlike natural science experiments, poses grave ethical problems, even when directed by the best-organized critical thought. The average citizen is confronted by a confusing and conflicting complex of popular beliefs and programs in regard to crime. Some of these are traditions from eighteenth-century philosophy; some are promulgations of special-interest groups; and some are emotional reactions. Organized and critical thinking in this field is therefore peculiarly difficult and also peculiarly necessary.

CONVENTIONAL DEFINITION OF CRIME AND THE CRIMINAL LAW

Criminal behavior is behavior in violation of a criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a criminal act unless it is outlawed by the state. The criminal law, in turn, is a list of specific forms of human conduct which has been outlawed by political authority, which applies uniformly to all persons living under that political authority, and which is enforced by punishment administered by the state. The characteristics which distinguish this body of rules regarding human conduct from other rules are, therefore, *politicality*, *specificity*, *uniformity*, and *penal sanction*. However, these are characteristics of an ideal, completely rational system of criminal law; in practice the differences between the criminal law and other bodies of rules for

²John Dewey, "Social Science and Social Control," *New Republic*, 67:276-77, 1931.

human conduct are not clear-cut. Also, the ideal characteristics of the criminal law are only rarely features of the criminal law in action.

CHARACTERISTICS OF THE CRIMINAL LAW

The vast majority of the rules which define certain behavior as criminal are found in constitutions, treaties, common law, enactments by the legislatures of the state and its subdivisions, and in judicial and administrative regulations. However, the criminal law is not merely a collection of written proscriptions. The agencies of enforcement are the police and the courts, and these agencies, with the legislature, determine what the law is. According to one school of thought, police and courts merely "apply" the law in an evenhanded manner to all persons who come before them. However, both the techniques used by justice administrators in interpreting and applying the statutes and the body of ideals held by them are a part of the law in action, as truly as are the written statutes.

The court decision in one controversy becomes a part of the body of rules used in making decisions in later controversies. Consequently, law students must read court decisions in order to learn law. Further evidence supporting this view that the courts as well as the legislatures make law is found whenever the nation is confronted with the problem of selecting a justice of the Supreme Court. At such times it is explicitly recognized that the nature of the law itself, not merely its administration, is determined to a considerable extent by the proportion of liberals and conservatives on the supreme bench. Also, between the courts and the legislature are intermediate agencies such as police departments. Many statutes are never enforced; some are enforced only on rare occasions; others are enforced with a striking disregard for uniformity. Enforcement and administrative agencies are affected by shifts in public opinion, in budget allocations, and in power. As a consequence, the law often changes while the statutes remain constant.

Politicality is regarded almost universally as a necessary element in criminal law. The rules of the trade union, the church, or the family are not regarded as criminal law, nor are violations of these rules regarded as crimes. Only violations of rules made by the state are crimes. But this distinction between the state and other groups is quite arbitrary. It is difficult to maintain when attention is turned to societies where patriarchal power, private self-help, popular justice, and other forerunners of legislative justice are found. This may be illustrated by the gypsies, who have no territorial organization and no written law, but who do have customs, taboos, and a semijudicial council which makes definite decisions regarding the propriety of behavior of members of the group and often imposes penalties. These councils have no political authority in the territory in which they happen to be operating, but they perform the same function within the gypsy group that courts perform in the political order.³ Similarly, early Chinese immigrants in Chicago

³See Jean-Paul Clebert, *The Gypsies*, trans. Charles Duff (London: Vista Books, 1963), pp. 123-33; and Anne Sutherland, "Gypsies, the Hidden Americans," *Transaction: Social Science and Modern Society*, 12:27-33, 1975.

established an unofficial court which had no political authority, but which, in practice, exercised the functions of an authorized court in controversies among the Chinese people. The American Cosa Nostra, labor unions, and university student associations all have legislative and judicial systems for administering the functional equivalent of the criminal law among their members.⁴ Thus, the element of politicality is arbitrary, not sharply defined.

Specificity is included as an element in the definition of criminal law because of the contrast in this respect between criminal law and civil law. The civil law may be general. An old German civil code, for instance, provided that whoever intentionally injured another in a manner contrary to the common standards of right conduct was bound to indemnify him. The criminal law, on the other hand, generally gives a strict definition of a specific act, and when there is doubt as to whether a definition describes the behavior of a defendant, the judge is obligated to decide in favor of the defendant. In one famous case, for example, the behavior of a person who had taken an airplane was held to be exempt from the punitive consequences of violating a statute regarding the taking of "self-propelled vehicles," on the ground that at the time the law was enacted "vehicles" did not include airplanes.⁵ Some laws, to be sure, are quite general, as the laws in regard to nuisances, conspiracy, vagrancy, disorderly conduct, use of the mails to defraud, and official misfeasance. The criminal law, however, contains no general provision that any act which, when done with culpable intent, injures the public can be prosecuted as a punishable offense. Consequently it frequently happens that one act is prohibited by law while another act, which is very similar in nature and effects, is not prohibited and is not illegal.⁶

Uniformity or regularity is included in the conventional definition of criminal law because law attempts to provide evenhanded justice without respect to persons. This means that no exceptions are made to criminal liability because of a person's social status; an act described as a crime is crime, no matter who perpetrates it. Also, uniformity means that the law-enforcement process shall be administered without regard for the status of the persons who have committed crimes or are accused of committing crimes. This ideal is rarely followed in practice, in part because it results in injustices. Rigid rule is softened by police and judicial discretion. The principle of uniformity demands, for example, that all armed robbers be treated exactly alike, but police officers, judges, and others take into account the circumstances of each robbery and the characteristics of each offender, a process which has come to be called *individualization*.⁷ Such use of discretion is not unlike equity, a body of rules which supplements law and which developed as a method of doing justice in particular situations where iron

⁴See Donald R. Cressey, *Theft of the Nation: The Structure and Operations of Organized Crime in America* (New York: Harper and Row, 1969), pp. 162-220.

⁵McBoyle v. United States, 283 U.S. 25 (1931).

⁶See Jack P. Gibbs, "Crime and the Sociology of Law," *Sociology and Social Research*, 51:23-38, 1966.

⁷See Chapter 15.

regularity would not do justice. In criminal law matters, legislators have conferred upon judges and administrative bodies the authority to set the length of a prison term after taking individual characteristics into account. Accordingly, much of what happens to persons accused of delinquency or crime is determined in a process of negotiation about just what the law is and how or whether it should be applied.⁸

Penal sanction, as one of the elements of the conventional definition of criminal law, refers to the notion that violators will be punished or at least threatened with punishment by the state. Punishment under the law differs from punishment imposed by a mob because it is supposed to be applied dispassionately by representatives of the state in such manner that it will win the approval of the cool judgment of impartial observers. A law which does not provide a penalty that will cause suffering is quite impotent and, in fact, no criminal law at all. However, the punishment provided may be very slight; in the courts of honor a verdict was reached, a party was declared guilty, and the disgrace of the declaration of guilt was the only punishment. In view of the difficulty of identifying the criminal law of nonliterate societies, where the institution of "the state" is not obvious, the suggestion has been made that the penal sanction is the only essential element in the definition of criminal law, and that wherever a society's rulers enforce proscriptions by a penal sanction, there criminal law exists. This is in contrast to the tort law, where the court orders defendants to reimburse plaintiffs, but does not punish them for damaging the plaintiffs.

The punitive aspects of criminal law have been supplemented by attempts to discover and use methods which are effective in reducing crime and forestalling criminality, whether they are punitive or not. Juvenile courts, for example, do not in theory determine the guilt or innocence of defendants and punish those who are guilty; they merely act in behalf of a child who is in need of help. In practice, however, except for youngsters who are called delinquent because they have been neglected, or who are "predelinquent," juvenile delinquencies are acts which would be crimes if committed by an adult. Juvenile court procedures represent an attempt to avoid labeling children criminals, but they nevertheless do not exempt youths from responsibility for acts which are crimes if committed by adults. Consequently, juvenile delinquencies continue to be punishable by law, even if the punishment is kept in the background.⁹ Similarly, the states and the federal government for a generation or two have been enacting laws for the regulation of manufacturing, commerce, agriculture, and other occupations. The persons affected by such laws are ordinarily respectable and powerful, and the legislatures have adapted criminal law procedures to the status of these persons. Violations of these laws are crimes, but they are not always tried in the criminal courts. Instead,

⁸See Arthur Rosett and Donald R. Cressey, *Justice By Consent: Plea Bargains in the American Courthouse* (Philadelphia: Lippincott, 1976).

⁹See Chapter 19.

they are handled in civil and equity courts or in administrative commissions; the conventional penalties of fine and imprisonment are kept in the background to be used only as a last resort, and coercion in the first instance consists of injunctions and cease-and-desist orders. Thus persons of social importance avoid the "stigma of crime," just as, to a lesser degree, juvenile delinquents do. The acts remain as crimes, however, for they are punishable by law.¹⁰

The conventional view is that a crime is an offense against the state, while, in contrast, a tort in violation of civil law is an offense against an individual. A particular act may be considered as an offense against an individual and also against the state, and is either a tort or a crime or both, according to the way it is handled. A person who has committed an act of assault, for example, may be ordered by the civil court to pay the victim a sum of \$500 for the damages to his interests, and may also be ordered by the criminal court to pay a fine of \$500 to the state. The payment of the first \$500 is not punishment, but payment of the second \$500 is punishment.

This distinction between individual damage and social harm is extremely difficult to make in the legal systems of nonliterate societies, where court procedures are relatively informal. Even in modern society, the distinction is dubious, for it rests upon the assumption that "individual" and "group" or "state" are mutually exclusive. For practical purposes, the individual is treated as though he or she were autonomous, but in fact an act which harms an individual also harms the group in which the victim has membership. Also, in modern society the indefiniteness of the distinction between torts and crimes is apparent when the victim of an act which is both a tort and a crime uses the criminal law as a method of forcing restitution which could not be secured with equal facility in the civil courts. Prosecutors frequently complain about the use of the criminal law as a collecting agency, especially because the victim who is reimbursed by the offender prior to trial then refuses to act as a witness.

THE SOCIOLOGY OF CRIMINAL LAW

For many centuries, philosophers of jurisprudence have attempted by deductive reasoning to determine the principles underlying the development and use of criminal law. Divine will, the will of the sovereign, nature, reason, history, public opinion, and other principles have been presented.¹¹ Sociologists have, since about 1960, taken up the search for principles, but in the name of the sociology of law. Generally speaking, sociologists have recently revived an interest in the sociology of law that flourished in the 1920s, although it was not called by that name. Many of the recent specialists in the sociology of law have taken a clue from Roscoe

¹⁰Edwin H. Sutherland, "Is 'White Collar Crime' Crime?" *American Sociological Review*, 10:132-39, 1945; idem, *White Collar Crime* (New York: Dryden Press, 1949), pp. 29-55.

¹¹See M. P. Golding, ed., *The Nature of Law: Readings in Legal Philosophy* (New York: Random House, 1966); and W. Friedman, *Legal Theory*, 5th ed. (New York: Columbia University Press, 1967).

Pound, the principal figure of "sociological jurisprudence," a school of legal philosophy.¹² This is reasonable, because fifty years ago Pound took many of his clues from sociologists like E. A. Ross, Albion W. Small, and especially from Lester F. Ward. Pound stated that a final answer to the question, "What is law?" is impossible because law is a living, changing thing, which may at one time be based on sovereign will and at another time on juristic science, which may at one time be uniform and at another time give much room for judicial discretion, which may at one time be very specific in its proscriptions and at another time much more general.¹³

Pound's statement is a call for the study of "law in action," and sociologists are beginning to respond. Pound maintained that the law regulates social interests and arbitrates conflicting interests, claims, and demands. Sociologists are beginning to see that the emergence of criminal laws, like the administration of justice, reflects the wishes of interest groups.¹⁴ In pluralistic societies, the criminal law does not merely balance various social interests; it is a balance of social interests. As Quinney has said,

First . . . society is characterized by diversity, conflict, coercion, and change, rather than by consensus and stability. Second, law is a *result* of the operation of interests, rather than an instrument which functions outside of particular interests. Though law may operate to control interests, it is in the first place *created* by interests. Third, law incorporates the interests of specific persons and groups in society. Seldom is law the product of the whole society.¹⁵

* Four principal theories regarding the origin of the criminal law as an agency of social control, and of specific criminal laws, can be discerned. Three of the theories invoke a *consensus model*, whereby a group or society expresses its will or spirit in the form of criminal law, while the fourth uses a *conflict model* consistent with the observation that politically organized society is based on an interest structure. It should be understood that our presentations of these theories are gross oversimplifications. The problem of trying to account for the origins of criminal law is but part of the very difficult task of trying to account for the origin of social order itself.¹⁶

One of the oldest theories regards the criminal law as originating in torts, or wrongs to individuals. According to this theory, harms at first produced efforts at self-redress by the injured parties and were therefore treated as injuries to particular individuals. Later, by a series of transitions, the group took charge of the

¹²Roscoe Pound, *Interpretations of Legal History* (New York: Macmillan, 1923), Chap. 3.

¹³See Edwin M. Schur, *Law and Society: A Sociological View* (New York: Random House, 1968).

¹⁴See Austin T. Turk, "Law as a Weapon in Social Control," *Social Problems*, 23:276-91, 1976.

¹⁵Richard Quinney, "Introduction: Toward A Sociology of Criminal Law," in *Crime and Justice in Society*, ed. Richard Quinney (Boston: Little, Brown, 1969), p. 25. See also idem., *The Social Reality of Crime* (Boston: Little, Brown, 1970), pp. 15-25; and *Criminology* (Boston: Little, Brown, 1975), pp. 37-41.

¹⁶See Desmond P. Ellis, "The Normative Solution," *American Sociological Review*, 36: 692-703, 1971.

transaction, and the wrongs came to be regarded as injuries to the group or to the state. These transitions included a requirement that the avenger announce an intention of seeking revenge; a requirement that the avenger secure the consent of the group before taking vengeance; regulation of the amount of injury that could be done to the wrongdoer by the injured party; limitation of time and place in which vengeance could be secured; public investigation of the merits of the case in connection with the requirements previously mentioned or independently of these; and participation of some members of the group in the efforts of the injured party to secure self-redress.¹⁷

There can be no doubt that some crimes did originate in torts and became crimes through one or more of the steps described. The theory is inadequate, however. It assumes the priority of the individual to the group, and this assumption is not justified, for it is certain that in early societies some wrongs were regarded as wrongs against the group. Such wrongs were regarded as dangerous to the group directly, as in treason and in violations of the hunting rules, or indirectly, as in sacrilege and witchcraft, which might bring down the wrath of the gods upon the group.¹⁸ Furthermore, for those crimes which originated from torts, the process is not adequately described. It is at this point, in part, that some of the other theories are concentrated.

A second theory holds that the criminal law originated in rational processes of a unified society. When harms occurred, the society, acting in its corporate capacity as a state, took action and made a regulation to prevent a repetition of them. The criminal law, like specific criminal laws, is a rational codification of the "will of the people" or of "public opinion."¹⁹ It is obvious that some criminal laws are made in a rational manner, but the theory is inadequate as a general description of how the criminal law has developed. It assumes a unity of opinion and purpose that in fact exists only as an ideal type. Further, it assumes that all the people have equal access to the political processes by which wrongs and harms are identified as such and then outlawed. Finally, it minimizes the irrational components in these processes. In modern times, at least, enactment of statutes, is frequently more an expression of emotion than anything else.²⁰ Something occurs which upsets an interest group and there is a rush to the legislature to secure a prohibition of such acts. One of the founders of American sociology, Professor Robert Park, said in one of his lectures, "We are always passing laws in America.

¹⁷See Rafael Karsten, "Blood Revenge and War Among the Jibaro Indians of Eastern Ecuador," in *Law and Warfare*, ed. Paul Bohannon (Garden City, N. Y.: Natural History Press, 1967), pp. 312-13.

¹⁸S. R. Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe* (Leiden: Harrassowitz, 1894), vol. II, pp. 327-48; H. Oppenheimer, *The Rationale of Punishment* (London: University of London Press, 1913), pp. 66-91; and E. Adamson Hoebel, *Law of Primitive Man: A Study in Comparative Legal Dynamics* (Cambridge: Harvard University Press, 1954).

¹⁹See N. Friedman, *Law in a Changing Society* (Berkeley: University of California Press, 1959); and Michael Barkun, *Law Without Sanctions* (New Haven, Conn.: Yale University Press, 1968).

²⁰See Edwin H. Sutherland, "The Diffusion of Sexual Psychopath Laws," *American Journal of Sociology*, 56:142-48, 1950.

We might as well get up and dance. The laws are largely to relieve emotion, and the legislatures are quite aware of that fact."

A third theory is that the criminal law originated in and is a crystallization of the *mores*. Customs developed with little or no rational analysis, but after persisting for a time, they achieved an ethical foundation. Infractions of such customs produced antagonistic reactions from the group, and these reactions were expressed in the form of criminal law with penal sanctions. While primitive law and the common law of England might reflect some consensus of this kind, there clearly is little general "public opinion" at the base of modern statutes which deal with airplanes, labor unions, factories, automobiles, television, and taxes.²¹

A fourth theory is that criminal law originated in conflict between interest groups. When an interest group secures the enactment of a law, it secures the assistance of the state in a conflict with a rival interest group. Indeed, an interest group or coalition of interest groups may become the state. Behavior in opposition to it, whether by members of rival interest groups or by others, thus becomes criminal. According to this theory, wrongful and harmful acts are characteristic of all classes in present-day society; the upper classes are subtle in their wrongdoing, the underprivileged classes are direct. The upper classes are politically important, and for that reason have power to outlaw the wrongful acts of the underprivileged classes. At the same time, the upper classes are politically powerful enough to define crimes and implement the criminal law in such a manner that many of the wrongful acts of the upper classes do not come within the scope of the criminal law. In this theory, the criminal law originates in the conflict of groups and in the inconsistency of the *mores*.²²

Chambliss has used this theory in an analysis of the emergence of vagrancy laws in England and the United States.²³ His thesis is that these laws emerged in order to provide an abundance of cheap labor to landowners during a period in which serfdom was breaking down. When landowners were no longer dependent upon cheap labor, and when industrialists and businessmen supplanted landowners as a powerful interest group, the vagrancy laws remained dormant. But after the turn of the sixteenth century, emphasis was placed on "rogues" and others suspected of being engaged in criminal activities, rather than on the "idle" and "those refusing

²¹See Richard C. Fuller, "Morals and the Criminal Law," *Journal of Criminal Law and Criminology*, 32:624-30, 1942; and Clarence Ray Jeffery, "Crime, Law, and Social Structure," *Journal of Criminal Law, Criminology, and Police Science*, 47:423-35, 1956.

²²See Lynn McDonald, *The Sociology of Law and Order: Conflict and Consensus Theories of Crime, Law, and Sanctions* (London: Faber and Faber, 1976); Austin T. Turk, "Law, Conflict, and Order: From Theorizing Toward Theories," *Canadian Review of Sociology and Anthropology*, 13:282-94, 1976; and Harold E. Pepinsky, *Crime and Conflict: A Study of Law and Society* (New York: Academic Press, 1976).

²³William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems*, 12:67-77, 1964. See also Barbara A. Hanawalt, "Economic Influences on the Pattern of Crime in England, 1300-1348," *American Journal of Legal History*, 18:281-97, 1974; and Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Carl Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975.)

to work." This shift reflected the increased importance of commerce in England. A new interest group of great importance to the society emerged, and the vagrancy laws were altered so as to afford protection to this group.

From this perspective, and in light of the discussion in the preceding section, crime can be seen to involve four elements: (1) a value which is appreciated by a group or a part of a group which is politically powerful; (2) isolation of or normative conflict in another part of this group so that its members do not appreciate the value or appreciate it less highly and consequently tend to endanger it; (3) political declaration that behavior endangering the value is henceforth to be a crime; and (4) pugnacious resort to coercion decently applied by those who appreciate the value to those who are perceived to disregard the value. When a crime is committed, all these relationships are involved. Crime is this set of relationships when viewed from the point of view of a social system rather than of the individual. The theory of differential association, to be discussed in Chapter 4 and later sections, can logically be derived from the notion that crime consists of this set of relationships.

No positive conclusion can be reached about the comparative efficiency of the various theories concerning the origin of criminal law. Certainly some criminal laws—such as those prohibiting sacrilege, witchcraft, and, possibly, murder—are expressions of consensus. But, just as certainly, criminal laws prohibiting vagrancy, cattle rustling, automobile theft, and discrimination against blacks and women are expressions of special interests. Research on social aspects of criminal law is greatly needed. While the medical profession is constantly engaged in research work as to the origin of diseases and the effects of treatment, the legal profession has until recently engaged in practically no research work of an analogous kind. Even now, professors of law concentrate their research work on study of what the law *is*. Four of the small number of exceptions to this approach are the analysis by Jerome Hall of the development of the law of theft in modern society, the analysis by a group of Norwegian scholars of the changes in the laws relevant to domestic servants, the analysis by William Chambliss of vagrancy laws, and the more general analysis by Leon Radzinowicz of the development of criminal law in England.²⁴

THE DIFFERENTIAE OF CRIME

The rules of criminal law contain only definitions of specific crimes, such as burglary, robbery, and rape, but legal scholars have been able to abstract certain general principles from such definitions. These general principles are said to apply

²⁴Jerome Hall, *Theft, Law, and Society*, 2d ed. (Indianapolis: Bobbs-Merrill, 1952); Vilhelm Aubert, Torstein Eckhoff, and Knut Sveri, *En Lov i Sökelyset: Sosialpsykologisk undersökelse av den Norske Hushjelplov* [A law in the searchlight: social psychological research on the Norwegian law pertaining to domestic servants] (Oslo: Akademisk Forlag, 1952); Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750*, vols. 1-4 (New York: Macmillan, 1948-1968).

to all crimes and are the criteria ideally used in determination of whether any particular behavior is or is not criminal. They are consistent with the ideal characteristics of the whole body of the criminal law—politicality, specificity, uniformity, and penal sanction—and, in fact, they may be viewed as translations of the ideal characteristics of the criminal law into statements of the ideal characteristics of all crimes. The concern is shifted from determination of the characteristics of a body of rules to determination of the general characteristics of the many specific acts described in those rules. Thus, for example, penal sanction is a general characteristic of the criminal law, and liability to legally prescribed punishment is a characteristic of all acts or omissions properly called crimes. Obviously, a set of criteria used for deciding whether or not any specific act is a crime must be more precise than statements of the general characteristics of a body of rules.

One extensive and thorough analysis of crimes has resulted in a description of seven interrelated and overlapping differentiae of crime.²⁵ Ideally, behavior would not be called crime unless all seven differentiae were present. The following brief description of the differentiae is greatly simplified.

1. Before behavior can be called crime there must be certain external consequences called a *harm*. Behavior called a crime, such as burglary or robbery, for example, has a harmful impact on social interests; a mental or emotional state is not enough. If a man decides to commit a crime but changes his mind before he does anything about it, he has committed no crime. The intention is not taken for the deed.

2. The harm must be one that has been outlawed. Engaging in antisocial, immoral, or reprehensible behavior is not crime unless the behavior has been specifically outlawed in advance. Penal law does not have a retroactive effect; there is a long-standing tradition against the enactment of *ex post facto* legislation.

3. There must be *conduct*. That is, there must be an intentional or reckless action or inaction which brings the harmful consequences about. One who is physically forced to pull the trigger of a gun does not commit murder, even if someone dies from the bullet.

4. *Criminal intent*, or *mens rea*, must be present. Hall suggests that legal scholars have often confused intentionality (deliberate functioning to reach a goal) and motivation (the reasons or grounds for the end-seeking).²⁶ *Mens rea* is identified with the former, not with the latter. The "motives" for a crime might be "good," but the intention itself might be an intention to effect an outlawed harm, a criminal intent. Thus, if a man decides to kill his starving children because he feels that they will pass on to a better world, his motive is good, but his intent is

²⁵Jerome Hall, *General Principles of Criminal Law*, 2d ed. (Indianapolis: Bobbs-Merrill, 1960). See especially pp. 14-26.

²⁶*Ibid.*, pp. 84-93.

wrong. Persons who are insane at the time they perpetrate legally forbidden harms do not commit crimes, because the necessary *mens rea* is not present.²⁷

5. There must be a fusion or concurrence of *mens rea* and conduct. This means, for example, that a police officer who goes into a house to make an arrest and who then commits a crime while still in the house after making the arrest cannot be considered a trespasser from the beginning. The criminal intent and the conduct do not fuse or concur.

6. There must be a *causal* relation between the outlawed harm and the voluntary misconduct. The conduct of one who fails to file an income tax form is failure to take pen and ink, fill out the form, and so on; the harm is the absence of a form in the collector's office. In this case, the causal relation between the two obviously is present. But if, for example, one person shot another (conduct) and the victim suffocated while in a hospital recovering from the wound, the relationship between conduct and harm (death) is not so clear-cut.

7. There must be legally prescribed punishment. Not only must the harm be identified and announced in advance but, as indicated above, the announcement must carry a threat of punishment to violators. The voluntary conduct must be punishable by law.

These differentiae of crime are all concerned with the nature of the behavior which can properly be called crime, but in making decisions about most cases each criterion need not be considered separately and individually. If the *mens rea*, conduct, and legally proscribed harm are obviously present, for example, the causal relation between harm and misconduct almost certainly will be present. In sum, the differentiae represent the kinds of subject matter with which both criminal lawyers and criminal-law theorists must deal.

There are, of course, many exceptions to the generalization that these are the elements of all crimes. Criminal-law theory is not a body of precise principles, and consequently there are deviations from that which is logical and ideal. Similarly, the criminal law in action differs from the criminal law in principle. For purposes of illustration, we may cite three major exceptions to the above differentiae.

*First, criminal intent, in the ordinary meaning of the concept, need not be present for some crimes. In some cases—the so-called strict-liability cases—the offender's intent is not considered. Instead, the person is held responsible for the results of his or her conduct, regardless of his or her intention. The handling of statutory rape is a case in point—no matter how elaborate the calculations, inquiries, or research which a male utilizes in reaching the conclusion that his female companion is above the age of consent, if he has sexual relations with her and it is subsequently shown that she was below the age of consent, he has committed statutory rape. Certain public-welfare offenses, such as traffic offenses and the selling of adulterated food, are handled under the same rule. Similarly,

²⁷See Herbert Fingarette, *The Meaning of Criminal Insanity* (Berkeley: University of California Press, 1972); see also the discussion in Chapter 8 below.

under the "felony-murder-misdemeanor-manslaughter doctrine" defendants are held criminally liable for much more serious offenses than they intended to commit. If a person sets fire to a building and a fireman dies trying to extinguish the flames, the offender is liable for murder; if the offense had been a misdemeanor rather than arson, the offender would have been liable for manslaughter.

Hall has severely criticized this doctrine and the general conception of strict liability in the criminal law. He contends that it is "bad law," stating that "there is no avoiding the conclusion that strict liability cannot be brought within the scope of penal law."²⁸ A behavioristic school in jurisprudence, however, insists that the intent can be determined only by the circumstances of the act, and that a translation of these circumstances into mental terms confuses rather than clarifies the procedure. It contends that the doctrine of *mens rea* should be greatly modified or even abandoned. In criminology, the inclusion in the concept "crime" of behavior which was not intended by the actor makes general theoretical explanation of all crime extremely difficult. No current theoretical explanation of criminal behavior can account for strict-liability offenses.

*Second, *motive* and *intention* are confused in many court decisions. In the crime of libel, for instance, motive is explicitly considered. In many states, one cannot publish truthful, albeit damaging statements about another unless the motive is good. Criminal conspiracy also frequently involves consideration and evaluation of a defendant's motives as well as intention. In most instances, however, motivation is ideally taken into account only in the *administration* of the criminal law, that is, in making a decision as to the severity of the punishment which should be accorded a criminal.

*Third, the criminal law in action is quite different from the criminal law discussed and analyzed by legal scholars. One reason is this: In reality, every criminal law is quite vague, despite the fact that each appears to be precise and rigorous in its definition of what is outlawed. Criminal laws and the "elements" of each crime are necessarily stated in quite general terms. No law-making body, far removed from occurrences of behavior "on the street," can say precisely what it is that it wants outlawed and made punishable by law. One form of burglary, for example, is a breaking into and entering the house of another at night with intent to commit a felony. Each of the essentials is a legal element of the crime of burglary—breaking, entering, house, night, intent, and felony. Also, each of the essentials seems to be a precise and specific version of one or more of the seven differentia listed above. But not one of the essentials of burglary refers to something real, in the way the word *cat* refers to something real. Consequently, police officers, prosecutors, magistrates, defense attorneys, judges, and others

²⁸Hall, *General Principles of Criminal Law*, p. 336. See also Jerome Hall, "Analytic Philosophy and Jurisprudence," *Ethics*, 77:14-28, 1966; and Colin Howard, *Strict Responsibility* (London: Sweet and Maxwell, 1963).

must necessarily decide that a specific incident is or is not *close enough* to what the burglary statute seems to outlaw.

When an incident looks something like a burglary, criminal justice personnel must ask, "With what intent did John Doe enter the house on the night of the entry?" In most cases, the correct answer is, "No one knows." Even defendants cannot always say what their intentions were. Nevertheless, criminal justice personnel must answer the question in black-or-white terms—either the defendant had criminal intent or did not.

Similarly, criminal justice personnel must decide other issues in the either-or terms of criminal law, even if the so-called elements and differentia are quite vague. For example, *night* differs from *day* only in degree, but the law in the books does not provide for the decision as to whether conduct and a harm and a *mens rea* occurring together but at daybreak or in the evening is or is not burglary. More generally, the legal institution requires that each suspect and defendant be found either guilty or not guilty; it does not acknowledge the common-sense notion that some criminals are a little bit guilty while others are very guilty indeed. Under the "living law" or "law in action" (consisting of legal decisions made in concrete cases), however, suspects and defendants are in effect held to be "guilty enough" or "not guilty enough."

Criminal justice personnel give concrete reality to law on the books by inserting folk knowledge and common sense into it. Thus they make law by giving meaning to statutes through "playing it by ear"—deciding that a specific incident does or does not resemble what the stated law seems to outlaw. For example, even a specific case involving all of the elements of burglary is not necessarily a burglary in a literal sense. Instead, it might be considered a burglary *for all practical purposes*; or it might be considered no crime at all because it does not seem to resemble closely enough, *for all practical purposes*, what the law on the books says burglary is.

It was observation along these lines that led Justice Oliver Wendell Holmes (1841–1935) to assert that judges make law rather than use it. Thus, he said, judges select appropriate law to cite as justification for the decisions they have reached.²⁹ As police officers, prosecutors, and defense lawyers "play it by ear" they also decide, first, that a case is or is not burglary, and then they find written law which supports that decision. There is, thus, a fusion of criminal law ("Is the suspect guilty of burglary?") and administration of criminal law ("What, if anything, should the state do with, to, and for this person?"). Whether a man is guilty of burglary or not depends in part on whether someone thinks he should be sent to jail or prison or sent home; if the decision is to send him home, then the elements of burglary will not be found in his case. The outcome of this decision-making process is a living law or law in action that is more just than literal enforcement of criminal statutes would be. But the same living law also makes the conduct of a

²⁹Oliver Wendell Holmes, *The Common Law* (Boston: Little, Brown, 1881), pp. 1, 27, 36. See also Holmes, "The Path of the Law," *Harvard Law Review*, 10:457–78, 1897.

"bad guy" (for example, a young, tough, black male with a prior criminal record) a burglary, and the conduct of a "good guy" (such as a middle-aged, middle-class, well-mannered, respectable, white male) a mere case of trespassing or no crime at all.³⁰

THE RELATIVITY OF CRIME

The criminal law has had a constantly changing content. Many early crimes were primarily religious offenses, and these remained important until recent times; now few religious offenses are included in penal codes.³¹ During Iceland's Viking era, it was a crime for a person to write verses about another, even if the sentiment was complimentary, if the verses exceeded four stanzas in length. A Prussian law of 1784 prohibited mothers and nurses from taking children under two years of age into their beds. The English villein (free common villager) in the fourteenth century was not allowed to send his son to school, and no one lower than a freeholder was permitted by law to keep a dog. The following have at different times and in different places been crimes: printing a book, professing the medical doctrine of circulation of the blood, driving with reins, selling coin to foreigners, having gold in the house, buying goods on the way to market or in the market for the purpose of selling them at a higher price, writing a check for less than one dollar. On the other hand, many of our present laws were not known to earlier generations—quarantine laws, traffic laws, sanitation laws, factory laws.

Laws differ, also, from one jurisdiction to another at a particular time. The laws of some states require automobile owners to paste certificates of ownership or inspection certificates on the windshield, while adjoining states prohibit the pasting of anything on the windshield. Georgia once had a \$1000 fine or six months' in jail as the maximum penalty for adultery, while in Louisiana adultery was not a crime at all.

In a particular jurisdiction at a particular time there are wide variations in the interpretation and implementation of the written law. As we suggested earlier, these variations are related to the specific characteristics of the crimes, to the status of the offenders, and to the status of the enforcers.³² Sudnow has shown that what is "burglary" or "robbery" or almost any other crime is highly negotiable.³³ Further, gross forms of fraud, such as those committed by confidence men, are

³⁰See Howard Daudistel and William B. Sanders, "Detective Work: Patterns of Criminal Investigations," chap. 8 in *The Sociologist as Detective: An Introduction to Research Methods*, ed. William B. Sanders (New York: Praeger, 1974), pp. 166-84; see also Howard Daudistel, "Deciding What the Law Means: An Examination of Police-Prosecutor Discretion" (Ph.D. diss., University of California, Santa Barbara, 1976); and Harold E. Pepinsky, "Police Patrolmen's Offense-Reporting Behavior," *Journal of Research in Crime and Delinquency*, 13:33-46, 1976.

³¹Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: Wiley, 1966).

³²See Donald J. Black and Albert J. Reiss, Jr., "Police Control of Juveniles," *American Sociological Review*, 35:63-77, 1970.

³³David Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," *Social Problems*, 12:255-76, 1965.

easily detected by the regular police, but expert investigators must deal with the subtler forms of fraud which flourish in many areas of business and of the professions. When such experts are provided by politicians interested in making subtle fraud "real crime," what has been mere chicanery is interpreted and dealt with as crime. In this sense, also, crime is relative to the status of the criminals and the situations in which they violate law.

CLASSIFICATION OF CRIMES

Because crime is not a homogeneous type of behavior, efforts have been made to classify crimes. They are frequently classified in respect to atrocity as felonies and misdemeanors. The more serious are called felonies and are usually punishable by death or by confinement in a state prison; the less serious are called misdemeanors and are usually punishable by confinement in a local prison or by fines. As a classification of crimes this is not very useful, and it is difficult to make a clear-cut distinction between the classes. Though one may agree that assaults, as a class, are more serious offenses than permitting weeds to grow on a vacant lot in violation of a municipal ordinance, the effects of permitting the weeds to grow, in a particular case, may be more serious because of the hay fever produced by the pollen and the resulting incapacitation of many people. The fact that many things which are classed as felonies in one state are classed as misdemeanors in nearby states shows how difficult it is to make a real distinction between them. Even within a single state the distinction is often vague. Moreover, a crime labeled a felony in a state's criminal code might not be viewed by the public as a more serious offense than some misdemeanors. For example, one sample of the public rated selling marijuana (often a misdemeanor) more serious than "killing spouse's lover after catching them together," and using heroin was more strongly condemned than killing someone in a barroom brawl.³⁴

The greatest objection to the classification of crimes as felonies and misdemeanors is that it is used also as a classification of criminals. The individual who commits a felony is a felon; the individual who commits a misdemeanor is a misdemeanant. It is assumed that misdemeanants are less dangerous and more susceptible to the reformatory effects of mild punishment than felons. But it is quite fallacious to judge either dangerousness or the probability of reformation from one act, for an individual may commit a misdemeanor one week, a felony the second week, and a misdemeanor the third. The acts do not represent changes in the individual's character or dangerousness.

Moreover, the definition of a crime as misdemeanor or felony is influenced by various considerations other than atrocity or dangerousness. Since 1852, when a felony was first defined in Massachusetts as a crime punishable by confinement in the state prison, at least four major changes have been made in the laws of that state determining the conditions under which a sentence is served in state prison

³⁴Peter H. Rossi, Emily Waite, Christine E. Bose, and Richard E. Berk, "The Seriousness of Crimes: Normative Structure and Individual Differences," *American Sociological Review*, 39:224-37, 1974.

rather than in a jail or house of correction. These changes, which also changed crimes from felonies to misdemeanors or the reverse, were not made because of alterations in views regarding the atrocity of crimes but for purely administrative reasons, generally to relieve the congestion of the state prison. In the administration of justice, thousands of persons charged with committing felonies successfully arrange to have the charge reduced to a misdemeanor, and the distinction between the two classes of offense is lost. Consequently there seems to be good reason to abandon this classification.

Wilhelm Bonger, the Dutch criminologist, classified crimes by the motives of the offenders as economic crimes, sexual crimes, political crimes, and miscellaneous crimes (with vengeance as the principal motive).³⁵ But no crime can be reduced to one motive. A desire for excitement or vengeance may be very important in such crimes as burglary, which Bonger classified as economic crime. The classification is clearly inadequate.

Crimes are frequently classified for statistical purposes as crimes against the person, crimes against property, and crimes against public decency, public order, and public justice. Most recorded crimes are crimes against public order or public morality, such as disorderly conduct and drunkenness; next in frequency come the crimes of dishonesty without violence. Of the persons arrested by the police in 1975, 31 percent were arrested for drunkenness or disorderly conduct or driving under the influence of alcohol. The crimes which are regarded as most serious are relatively few, according to this criterion. Homicide constituted 0.5 percent, rape 0.3 percent, burglary 6 percent, and robbery 1.7 percent, a total for these serious offenses of 8.5 percent of all arrests.³⁶ It is probable that if all cases of fraud could be recorded, fraud would rank close to drunkenness and disorderly conduct in frequency.

In a classification of crimes for theoretical purposes, each class should be a sociological entity, differentiated from the other classes by variations in causal processes. Professional crime, for instance, would be a class, or more likely a combination of classes, differentiated from other crimes by the regularity of this behavior, the development of techniques, and the association among offenders and consequent development of a group culture. Within this class might be included some cases of murder, arson, burglary, robbery, and theft, but not all of the cases in any of those legal categories.³⁷ Similarly, specific criteria for describing cases as "criminal violation of financial trust" have been developed, with the

³⁵W. A. Bonger, *Criminality and Economic Conditions* (Boston: Little, Brown, 1916), pp. 536-37. This book was first published, in French, in 1905.

³⁶Federal Bureau of Investigation, U.S. Department of Justice, *Uniform Crime Reports for the United States, 1975* (Washington, D. C.: Government Printing Office, 1975), p. 179.

³⁷See Chapter 12. See also Don C. Gibbons and Donald L. Garrity, "Some Suggestions for the Development of Etiological and Treatment Theory in Criminology," *Social Forces*, 38:51-58, 1959; Jack P. Gibbs, "Needed: Analytical Typologies in Criminology," *Southwestern Social Science Quarterly*, 12:321-29, 1960; and Marshall B. Clinard and Richard Quinney, *Criminal Behavior Systems*, 2d ed. (New York: Holt, Rinehart and Winston, 1973).

result that some, but not all, cases of embezzlement, confidence game, forgery, larceny by bailee, and other crimes are included.³⁸ The new classification avoided the error of extending a legal concept beyond its legal meaning (for example, calling all the behavior "embezzlement") and at the same time it provided a rigorous definition of the behavior being studied. Jerome Hall has made an excellent analysis of theft from this point of view.³⁹ It is not worthwhile at present to attempt a complete classification of crimes from this viewpoint. Such a classification should be based on research work rather than on *a priori* speculation.

THE CRIMINAL

Who is a criminal? An answer consistent with the previous discussion is: a person who commits a crime. However, in the democratic legal tradition even a person who admits to having committed a crime is not designated a criminal until criminality has been *proven* by means of the accepted court procedures.

But attention is directed away from serious criminological problems by the assertion that a person who commits a crime is a criminal. This is so because, as we suggested earlier, the criteria used to define and designate behavior such as burglary, robbery, larceny, and fraud are actually quite imprecise. Is a boy a delinquent if no one labels him a delinquent? How can a person be said to have violated the law and, thus, to have engaged in criminal behavior if the law is not what is in the statute books but, instead, is what is in the heads of police officers, prosecutors, judges, and others? Such questions have become of great theoretical importance in recent years, and sociological criminologists, especially, are divided on the answers. There are three different positions.

A legally oriented group is confident that statutes adequately describe criminal behavior and, therefore, that anyone who violates a statute is a criminal, whether apprehended or not. This position is at the very foundation of all modern systems of criminal justice. Criminal law and procedure require specificity in definitions, as we indicated above, and this requirement necessarily is based on the assumption that a person is a criminal or not in the same way that a person is blue-eyed or not. While adequate and of critical importance for legal purposes, this position ignores the fundamental problem of determining just how specific a law must be before it can be said to be specific.

A second group goes to the opposite extreme, arguing essentially that the law on the books is irrelevant—persons of little power are criminals according to the law in action, but more powerful people are not. Although this argument is based on the known fact that the criminal justice processes do not treat all persons equally,

³⁸Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* (Glencoe, Ill.: Free Press, 1953), pp. 19–22; idem, "Criminological Research and the Definition of Crimes," *American Journal of Sociology*, 56:546–51, 1951.

³⁹Hall, *Theft, Law, and Society*.

it fails to account for another known fact, namely that most poor and powerless people do not get into trouble with the police.

A third group takes an in-between position, holding that statutory definitions, despite their vagueness, are used as reference points by ordinary citizens and criminal justice personnel alike. Thus, most persons know it is against the law to rob, even if they cannot define robbery and, indeed, tend to confuse it with burglary. Similarly, as police officers and others categorize crimes as robberies, and label as robbers the people perpetrating them, their orientation is to the legal norms. Even though there is always some latitude in the decision as to whether a specific piece of behavior is or is not a robbery, it is not hard to tell a robbery from fraud, nor hard to differentiate robbers from confidence men or from innocent bystanders.

The third approach is used throughout the remainder of this book. The criminologist may call behavior criminal if it reasonably falls within a certain class of acts defined as a crime (for example, robbery), and the criminologist may call a person a criminal (for example, a robber) if it is reasonable to believe the person committed an act of this class. Just as there is justification for writing of "crimes known to the police" and "unsolved crimes," there is justification for writing of "criminal behavior," "unapprehended criminals," and "criminals at large," even if no one has been arrested or even detected. One who takes this position finds it possible to study the conditions in which crime arises, flourishes, and diminishes, and the conditions in which persons behave criminally and thus become criminals. Study of interaction between persons who exhibit criminal behavior on the one hand and persons who do or do not label the behavior as crime and do or do not stigmatize its perpetrators as criminals, on the other hand, is the essence of the sociology of law, the sociology of crime, and the social psychology of criminals, as well as of the sociology of punishment and corrections.⁴⁰

*This answer—that a criminal is one who can be reasonably assumed to have committed a crime—raises other questions, however, for even the criminal law does not specify the length of time a person remains a criminal after he or she has been shown to have committed a crime. Is a man a criminal only during the time he is committing the crime, until he has "paid the penalty," or during the remainder of his life? These questions are difficult to answer because we use the words *criminal* and *delinquent* to stigmatize persons. Thus, criminality is a status ascribed to persons in a process of interaction between law violators and law enforcers, so that persons are considered "criminal" for varying lengths of time.⁴¹ In public thought, the word *criminal* sometimes is used to refer only to those who have been ostracized by state officials, and the term thus is a synonym for

⁴⁰See Austin T. Turk, *Criminality and the Legal Order* (Chicago: Rand McNally, 1969); idem, *Legal Sanctioning and Social Control* (Washington, D. C.: Government Printing Office, 1972).

⁴¹See Turk, "Law as a Weapon in Social Conflict."

"outlaw." It is in this sense that Tarde, a pioneering French criminologist, stated that criminals are "social excrement."⁴²

Some criminologists restrict the term *criminal* to those persons who conform to a social type. The term then refers to the violator of law who has a body of skills, attitudes, and social relationships which signify maturity in criminal culture. This usage is analogous to the practice of reserving the terms *plumber*, *electrician*, or *preacher* for those who engage regularly and expertly in those occupations. If the term is restricted in this manner, the many occasional violators of law, even those who commit murder, are not criminals. Most of the inmates of state prisons are not *criminals* by this criterion. The use of the word *criminal* in this manner does not direct attention to most of the pertinent problems of criminology.

POSSIBILITY OF A SCIENCE OF CRIMINOLOGY

Criminology is not a science. However, those criminologists concerned with all its divisions, at least, hope it will become one as valid propositions are developed about the processes of making laws, breaking laws, and reacting to the breaking of laws, and about the interrelations among these processes. All such generalizations may be considered an outcome of the study of crime causation. Although the concept of *cause* is being abandoned in criminology, as in science generally, it continues to direct attention to the need for study of conditions under which crime and criminality originate, flourish, and decline. Indeed, unless certain changes in economic, political, and social conditions can be said to result in (that is, cause) changes in the criminal law, a sociology of criminal law is not possible. And unless researchers can say that similar conditions produce (cause) changes in crime rates and in reactions to them, neither a sociology of crime nor of punishment and corrections is possible either.⁴³

It is frequently said, however, that criminology cannot possibly become a science. According to this argument, general propositions of universal validity are the essence of science, and these can be made only about stable and homogeneous units; social processes such as lawmaking, lawbreaking, and reaction to lawbreaking are far from being stable and homogeneous, varying from time to time and place to place; therefore, generalizations about these processes cannot be made, and scientific studies of them are impossible.

The emphasis on propositions that fit all cases of lawmaking, lawbreaking, and reactions to lawbreaking is not found among all criminologists. Indeed, most of them stress statistical correlations between, say, repressive legislation, or crime rates, or imprisonment, on the one hand, and social conditions such as unemployment on the other, or else stress various factors in the personalities or backgrounds of individual lawmakers, criminals, or police officers. Most criminologists agree, however, that generalizations are of great value in the long run, and also agree on

⁴²Gabriel Tarde, *Penal Philosophy*, trans. Rapelje Howell, Modern Criminal Science Series (Boston: Little, Brown, 1912), p. 222. This book was first published, in French, in 1890.

⁴³See Chapter 15.

the desirability of organizing research studies so that specific propositions may be tested. As indicated above, it is possible for the criminologist, by selection of criminal cases, to define the subject matter of a specific study in creative ways. Similarly, it is possible for the criminologist to select specific kinds of lawmaking or law-enforcement cases for study and then to generalize about them.

Sellin implicitly acknowledged the criticism described above and suggested that criminologists study all violations of conduct norms, whether crime or not. He argued that a solid basis for a science of criminology cannot be found unless the arbitrary definitions of the legislatures are replaced by definitions drawn up by scientists and for scientific purposes.⁴⁴ Even if this be done, it is not possible to escape the evaluations of behavior which are made by groups and the labeling decisions that are made as a result. Courage, for instance, cannot be defined as a fixed aspect of behavior, for behavior which is called courageous in one situation is called cowardly in another, and the difference in the names applied to the behavior makes the behavior different. Juvenile delinquency and some forms of crime have the same attribute. Physiologically, acts can be defined apart from group evaluations; sociologically they cannot be. In this respect crime is like all other social phenomena, and the possibility of a science of criminal behavior is similar to the possibility of a science of any other behavior. Social science has no stable unit, as it deals with phenomena involving group evaluations.

A sound explanation of crime must necessarily be extremely broad and may not be especially enlightening or valuable for purposes of reducing crime rates. In medicine, a great leap forward was made principally by defining and explaining particular diseases. Similarly, in criminology the significant explanations probably will relate not to crime as a whole, but to particular types or classes of crimes, each class being precisely defined. Obviously, legal definitions should not confine the work of criminologists; they should be free to push across the barriers of legal definitions whenever they see noncriminal behavior which resembles criminal behavior, as the Schwendingers have done.⁴⁵ It is an error, however, to call such noncriminal behavior *crime*, no matter how repulsive it may be.⁴⁶

Some criminologists, generally lawyers and others not trained in social or behavioral science, do not participate in the effort to make criminology a science. Instead, they emphasize studies of the effects of penal legislation on crime. Their studies of lawmaking, lawbreaking, and the reactions to lawbreaking are attempts to determine the efficiency of criminal law and its administration.⁴⁷

⁴⁴Thorsten Sellin, *Culture Conflict and Crime* (New York: Social Science Research Council, 1938). See also Denis Szabo, *Déviante et Criminalité* (Paris: Armand Colin, 1970), p. 17.

⁴⁵Herman and Julia Schwendinger, "Defenders of Order or Guardians of Human Rights?" *Issues in Criminology*, 5:123-57, 1970. See also Thomas Ford Hoult, *Social Justice and Its Enemies: A Normative Approach* (New York: Halsted Press, 1975).

⁴⁶See Donald R. Cressey, "Foreword" to Edwin H. Sutherland, *White Collar Crime*, new ed. (New York: Holt, Rinehart and Winston, 1961), pp. 4-8.

⁴⁷See Marc Ancel, *Social Defence: A Modern Approach to Criminal Problems* (London: Routledge and Kegan Paul, 1965).

THE PROBLEM OF CRIME

The practical objective of criminology, supplementing the scientific or theoretical objective, is to reduce the amount of pain and suffering in the world. This objective is consistent with humanitarian concerns for good medical care, good nutrition, and decent housing for all. Some crimes cause obvious pain and suffering to individual victims. Other crimes harm citizens more indirectly—for instance, treason, political corruption, and business fraud. Even more generally, every citizen can in one sense be said to suffer from the huge drain on the economy caused by crime, estimated to be about \$125 billion for the United States alone in 1976.⁴⁸ This comes to about \$343 million per day, and the annual total sum involved in such property transfers and other transactions far exceeds the annual defense budget. More realistically, every citizen suffers from crime if only because huge proportions of the world's tax budgets go to maintaining police departments, courts, probation and parole departments, jails, and prisons. In the United States, this cost is officially estimated to be about \$40 million per day (\$15 billion annually), but it might be closer to \$62 million per day, or \$22.7 billion annually.⁴⁹ Much more significant is suffering in the form of uneasiness and even terror that crime sometimes produces. Sadly enough, this suffering is experienced predominantly by categories of persons who are most subject to prejudice and discrimination—those who are poor, black, Spanish speaking, female, or aged.⁵⁰

Criminals suffer too. Control of behavior by criminal law is control by deliberately inflicting pain and suffering on those who do not conform. A law without provision for such punishment, we have seen, is no criminal law at all. It follows that the amount of pain and suffering in the world will be reduced if criminologists can find some way to divert, in the name of crime prevention or something else, some of the young people who seem to be marching headlong toward the painful experience of imprisonment. It also follows that only the bare minimum of pain will be inflicted on convicted criminals if criminologists can determine what the bare minimum is and, consistently, find nonpunitive ways of dealing with offenders. For that matter, the pain and suffering experienced by criminals will be reduced as criminologists produce more good evidence in support of the notion that many existing penal laws can be repealed without increasing the pain and suffering experienced by citizens at large; decriminalization of drunkenness, gambling, certain sexual conduct, and marijuana smoking are steps in this direction.

The financial losses from fraudulent business transactions are probably many times as great as the financial losses from burglary, robbery, and ordinary larceny.

⁴⁸U. S. Congress, Joint Economic Committee, *Report*, 1976. Summarized in *The New York Times*, January 2, 1977.

⁴⁹U. S. Department of Justice, Law Enforcement Assistance Administration, *Expenditures and Employment Data for the Criminal Justice System, 1974* (Washington, D. C.: Government Printing Office, 1976), p. 2.

⁵⁰See Cora A. Martin and Ann S. Reban, *Criminal Victimization of the Aged in Texas* (Denton, Texas: North Texas State University, Center for Community Services, 1976), pp. 38–44.

Each working day trusted employees make off with over \$8 million of their employers' cash or merchandise, a total annual loss of over \$2 billion. In comparison, it was estimated that in 1965 crimes against the person resulted in a loss of approximately \$815 million. This figure takes into account the value of property taken, loss of earnings, medical and hospital expenses, and related costs. Losses from property crimes amount to about \$4 billion annually, but the cost of illegal goods and services, such as prostitution and gambling, is estimated to be about \$8 billion.⁵¹ One chain of stores has about five hundred burglaries and robberies a year, with a total loss of about \$100,000 a year. The same chain had one embezzlement which caused a loss of more than \$600,000. A management consulting firm found dishonesty in 50 percent of the assignments it undertook in one year, when there was no prior hint of dishonesty. The firm makes surveys of employee morale, performance in connection with plant layout, efficiency, and other matters which are essentially engineering in nature. In more than 50 percent of these cases they found dishonesty. The same firm unearthed more than \$60 million worth of dishonesty in one year with more than 60 percent attributable to supervisory and executive personnel.⁵² Such business losses are ordinarily passed on to the consumer in the form of higher prices.

Loss of status in the community is frequently a result of crime. The victim of rape, especially, suffers this loss, and the loss is immensely magnified by the continued publicity given to it in the newspapers. Loss of status may also be suffered by persons not ordinarily considered to be victims, such as the mother of a prostitute or the wife and children of a murderer or embezzler. The victim is sometimes immediately aware of the loss suffered, but the realization is frequently delayed. Children employed in violation of child-labor laws, for instance, may not have an immediate realization of the loss they suffer by this crime and, in fact, may never realize the relation of childhood labor to subsequent career.

In crimes of personal violence, the victims and offenders are generally of the same social group and have residences not far apart. Blacks murder blacks, Italians murder Italians, and Chinese murder Chinese. These crimes of personal violence are generally committed against persons with whom the offenders have personal dealings.⁵³ Crimes against property, however, are generally committed against strangers. They may be direct and personal, as in robbery or burglary, or may be much more general and public, as in consumer frauds, price fixing, or fraudulent advertisements. In modern society these general and impersonal crimes produce

⁵¹President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Crime and Its Impact—An Assessment* (Washington, D. C.: Government Printing Office, 1967), pp. 45-53.

⁵²Norman Jaspán with Hillel Black, *The Thief in the White Collar* (Philadelphia: Lippincott, 1960), p. 10.

⁵³Harold Garfinkel, "Research Note on Inter- and Intra-Racial Homicides," *Social Forces*, 27:369-81, 1949; President's Commission, *Task Force Report: Crime and Its Impact*, p. 82; Marvin E. Wolfgang and Franco Ferracuti, *The Subculture of Violence: Towards an Integrated Theory in Criminology* (London: Tavistock, 1967); and Richard Block, "Homicide in Chicago: A Nine-Year Study (1965-1973)," *Journal of Criminal Law and Criminology*, 66:496-510, 1976.

more suffering than do direct and personal property crimes, but there is widespread agreement that they are less serious than the direct ones. For example, one sample of citizens gave a score of 6.4, on a nine-point scale of seriousness, to "Burglary of a home and stealing a TV set," but a score of only 4.6 was given to "Fixing prices of machines sold to business."⁵⁴ Although the impersonal crimes generally represent no antagonism toward victims, they do represent a ruthless pursuit of interests at variance with the interests of the victims.

It is urged by some persons that crime makes certain contributions to society which offset these losses to some extent. For example, crime is said to promote the solidarity of the group, just as does war.⁵⁵ While it is true that a group or community is sometimes welded together by a spectacular crime of murder or rape, many other crimes both reflect and promote dissension, suspicion, and division in society. Moreover, the solidarity which is aroused by a spectacular crime or series of crimes is generally rather futile, for it is an emotional expression which soon passes. In this respect crime, like war, may have some effect in producing group solidarity, but the values can be produced more effectively in other ways.⁵⁶

Again, it is urged that we must have crime in order to prevent morality from going to an extreme. If, under an existing regime, all criminals were eliminated, the standards would be set a little higher. If those at the bottom who violated the new standards were eliminated, the standards would be set still higher. Thus the society would become more and more strict in its morality until the situation became impossible. This argument, also, is not entirely convincing. At least, many primitive groups retained essentially the same standards with practically no violations for long periods of time.⁵⁷

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⁵⁴Rossi et al., "The Seriousness of Crimes." See also Charles W. Thomas, Robin J. Cage, and Samuel C. Foster, "Public Opinion on Criminal Law and Legal Sanctions: An Empirical Examination of Two Conceptual Models," *Journal of Criminal Law and Criminology*, 67:110-16, 1976.

⁵⁵George Herbert Mead, "The Psychology of Punitive Justice," *American Journal of Sociology*, 23:577-602, 1918; A. C. Hall, *Crime in its Relation to Social Progress* (New York: Columbia University Press, 1902), pp. 1-10. See also Robert A. Dentler and Kai T. Erikson, "The Functions of Deviance in Groups," *Social Problems*, 7:98-107, 1959; Lewis A. Coser, "Some Functions of Deviant Behavior and Normative Flexibility," *American Journal of Sociology*, 68:172-81, 1962; and Pat Lauderdale, "Deviance and Moral Boundaries," *American Sociological Review*, 41:660-76, 1976.

⁵⁶See Chapter 14.

⁵⁷William J. Chambliss and Robert B. Seidman, *Law, Order, and Power* (Reading, Mass.: Addison-Wesley, 1971), pp. 19-25.

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2

Measures of Delinquency and Crime

The statistics about crime and delinquency are probably the most unreliable and most difficult of all social statistics. It is impossible to determine with accuracy the amount of crime in any given jurisdiction at any particular time. Some behavior is labeled "delinquency" or "crime" by one observer but not by another. Obviously a large proportion of all law violations goes undetected. Other crimes are detected but not reported, and still others are reported but not officially recorded. Consequently any record of crimes, such as crimes known to the police, arrests, convictions, or commitments to prison, can at most be considered an index of the crimes actually committed. But these "indexes" of crime do not maintain a constant ratio with the true rate, whatever it may be. We measure the extent of crime with elastic rulers whose units of measurement are not defined.

Ordinarily, a statistical index, such as the "cost of living index," is a compilation of fluctuations in a sample of items taken from the whole; the relationship to the whole is known, and the index serves as a convenient shortcut to a sufficient approximation of variation in the whole. But in crime statistics the rate as indicated by any set of figures cannot be a sample, for the whole cannot be specified. Both the true rate and the relationship between the true rate and any index of this rate are capricious "dark figures" which vary with changes in police policies, court policies, and public opinion.¹ The variations in this "dark figure" in

¹Donald R. Cressey, "The State of Criminal Statistics," *National Probation and Parole Association Journal*, 3:230-41, 1957; Albert D. Biderman and Albert J. Reiss, Jr., "On Exploring the Dark Figure of Crime," *Annals of the American Academy of Political and Social Science*, 374:1-15, 1967; Donald J. Black, "Production of Crime Rates," *American Sociological Review*, 35:733-47, 1970; Howard S. Becker, "Practitioners of Vice and Crime," in *Pathways to Data*, ed. Robert A. Habenstein (Chicago: Aldine, 1973), pp. 30-49; and Lois B. DeFleur, "Biasing Influences on Drug Arrest Records: Implications for Deviance Research," *American Sociological Review*, 40:88-103, 1975.

crime statistics make it almost foolhardy to attempt a comparison of crime rates of various cities, and it is hazardous even to compare national rates or the rates of a given city or state in a given year with the rates of the same jurisdiction in a different year. International comparisons are even more difficult.

CRIMES KNOWN TO THE POLICE

The crimes which are reported to the police and recorded by the police are designated "crimes known to the police." These statistics have not been established as an index of the true crime rate. Yet the decision to use this rate is probably the best way out of a bad situation, for as Professor Sellin has repeatedly pointed out, "The value of criminal statistics as a basis for measurement of criminality in geographic areas decreases as the procedures take us farther away from the offense itself."² That is, these police records are a more reliable index than arrest statistics; arrest statistics are more reliable than court statistics; and court statistics are more reliable than prison statistics.

Arrests are made in only a small proportion of all the crimes which become known to the police. For example, in 1975 arrests were made in only 11 percent of the cases of motor vehicle theft known to the police in 1496 American cities. The ratio of arrests to 100 known offenses was 99 for murder, 42 for rape, 28 for robbery, 34 for aggravated assault, 15 for burglary, and 21 for larceny-theft.³ Even within a single police department, many crimes are "lost" between recording and arrest, the exact number varying with the honesty and efficiency of the police department and with individual police officers' practices regarding handling cases informally, without actual arrest. In 1975, the police of 6449 cities who reported crimes to the Federal Bureau of Investigation "cleared by arrest" 78 percent of the murders, 51 percent of the rapes, 64 percent of the aggravated assaults, 27 percent of the robberies, 18 percent of the burglaries, 20 percent of the larcenies, and 14 percent of the automobile thefts known to them.⁴

Similar rates are reported for European countries, but statistical comparisons are hazardous because "clearance" is defined in so many different ways.⁵ No matter how defined, high clearance rates do not necessarily reflect diligent detective work on the part of the police. But because they often are viewed as indexes of police efficiency, they tend to be highly inflated. Police commonly use a technique called "slate cleaning" to improve their clearance rate. For example, a man might confess to a hundred burglaries, thus "clearing" them, in return for a promise that he will be granted a light sentence upon conviction of the

²Thorsten Sellin, "The Significance of Records of Crime," *Law Quarterly Review*, 67:489-504, 1951.

³Federal Bureau of Investigation, U.S. Department of Justice, *Uniform Crime Reports for the United States*, 1975 (Washington, D. C.: Government Printing Office, 1976), p. 176.

⁴Federal Bureau of Investigation, *Uniform Crime Reports*, p. 166.

⁵See Manuel Lopez-Rey, *Crime: An Analytical Appraisal* (London: Routledge and Kegan Paul, 1970), pp. 60-62; Karl O. Christiansen and Gram Jensen, "Crime in Denmark—A Statistical History," *Journal of Criminal Law, Criminology, and Police Science*, 63:82-92, 1972; and Black, "Production of Crime Rates."

burglary for which he was arrested. Probably not more than 5 percent of all crimes committed in the United States are cleared by means of field detective methods.

Similarly, many crimes are "lost" between arrest and prosecution. Just as some types of crime are cleared by arrest more frequently than others, some types of crime are more frequently prosecuted than others. In 1496 cities in the United States in 1975, persons were held for prosecution in 99 percent of the murder cases, 42 percent of the rape cases, 34 percent of the aggravated assault cases, 28 percent of the robbery cases, 15 percent of the burglary cases, 20 percent of the larceny cases, and 11 percent of the automobile theft cases known to the police.

In addition, many crimes are "lost" between prosecution and conviction; this process, too, is selective—some types of crime are "lost" more frequently than others. In 2925 cities in 1975, 48 percent of the persons charged with murder were found guilty, as compared to 33 percent of those charged with rape, 44 percent of those charged with aggravated assault, 36 percent of those charged with robbery, 27 percent of those charged with burglary, 44 percent of those charged with larceny, and 20 percent of those charged with automobile theft.

Similarly, it is obvious that prison statistics are not in constant ratio to the crimes committed, for there are wide variations in the use of fines, probation, and other alternatives to imprisonment. These variations indicate that if crimes known to the police are a good index of crimes committed, then arrests, prosecutions, convictions, and commitments to prison are not—at least for purposes of comparing types of crime.

However, even the number of crimes known to the police is not an adequate index of crime. There are six examples of evidence for this assertion.

1. The number of crimes known to the police is certainly much smaller than the number actually committed. National surveys done for President Johnson's Crime Commission revealed that the incidence of crime in the United States is several times the incidence of crime reported in *Uniform Crime Reports*.⁶ More recent surveys carried out by the Census Bureau on behalf of the Law Enforcement Assistance Administration have shown the same thing, as have "victimization surveys" in Canada, Australia, and several European nations.⁷ In one such survey, a sample of 10,000 households (about 22,000 persons) and 2000 businesses was drawn in each of twenty-six American cities, and respondents were asked whether they had recently been the victims of specific crimes. The results suggest that, at least for eight cities studied intensively, "crimes known to the police" as recorded

⁶President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D. C.: Government Printing Office, 1967), p. 20.

⁷For discussion of this work, see Michael J. Hindelang, *Criminal Victimization in Eight American Cities: A Descriptive Analysis of Common Theft and Assault* (Cambridge, Mass.: Ballinger, 1976); Richard W. Dodge, Harold R. Lentzner, and Frederick Shenk, "Crime in the United States: A Report on the National Crime Survey," chap. 1 in *Sample Surveys of the Victims of Crime*, ed. Wesley G. Skogan (Cambridge, Mass.: Ballinger, 1976), pp. 1-26; and Richard F. Sparks, "Crimes and Victims in London," chap. 3 in *Sample Surveys*, ed. Skogan, pp. 43-71.

in *Uniform Crime Reports* include only about half of the rapes, aggravated assaults and robberies, and about a third of the burglaries and larcenies experienced by citizens. Automobile theft, however, was not underrepresented in the *Uniform Crime Reports*, probably because this crime must be reported in order for the victim to collect insurance.⁸ The respondents said they had reported only about half of all personal robberies and about 45 percent of all household burglaries to the police; for crimes in which the victim was a business rather than an individual or a household, about 90 percent of the robberies and about 75 percent of the burglaries were reported.⁹ Studies indicate that in one year the detectives of a Chicago department store arrested two-thirds as many adult women for shoplifting as were formally charged with petty larceny of all forms (including shoplifting) by the police in the entire city of Chicago, and that store detectives turn only about 25 percent of apprehended victims over to the police.¹⁰

Victims may consider the crime insignificant and not worth reporting; they may hope to avoid embarrassing the offender, who may be a relative, school friend, or fellow employee; they may wish to avoid publicity which might result if the crime were reported; they might have agreed to the crime, as in gambling and some sexual offenses; they may wish to avoid the inconvenience of calling the police, appearing as a witness, and so on; they may be intimidated by the offender; they may be antagonistic to the police or opposed to the punitive policies of the legal system; or they may feel that the police are so inefficient that they will be unable to catch the offender even if the offense is reported.¹¹ The police themselves overlook many offenses, often because "enforcing the law" would be unfair to the suspect, because the law is vague, because booking the offender would be too much work, or because arresting the offender is too dangerous.¹²

2. The number of crimes known to the police is a reasonably accurate index of crime only if the police are honest, efficient, and consistent in making their reports. Police have an obligation to protect the reputation of their cities, and when this cannot be done efficiently under existing administrative machinery, it is sometimes accomplished statistically. Politicians up for reelection are likely to be accused of neglect of duty if the crime rate has gone up during their administration, and they are likely to be praised if the crime rate has declined. Consequently, political administrations often try to show statistically that during their term in office the crime rate declined. Individual police officers select out for recording and further processing only a proportion of the crimes, delinquencies,

⁸Hindelang, *Criminal Victimization*, pp. 396-401.

⁹Ibid, pp. 360-363.

¹⁰Loren E. Edwards, *Shoplifting and Shrinkage Protection for Stores* (Springfield, Ill.: Charles C. Thomas, 1958), p. 130; and Roger K. Griffin, "Shoplifting: A Statistical Study," *Security World*, November, 1970, pp. 21-25. For additional information on shoplifting, see Mary Owen Cameron, *The Booster and the Snitch* (New York: Free Press, 1970).

¹¹F. H. McClintock, "The Dark Figure," *Collected Studies in Criminological Research*, vol. V, 1970, pp. 9-34.

¹²See DeFleur, "Biasing Influences on Drug Arrests."

and suspected crimes and delinquencies they observe. No one knows what the proportion is in each case. It is known, however, that officers with professional training process more delinquents than those without professional training.¹³ Variations in crime rates among cities or among other jurisdictions must be interpreted with extreme caution, for the differences may be due merely to differential recording practices in the various police departments and by individual police officers.

3. The value of crimes known to the police as an index of crime is sharply limited by the fact that the ratio of crimes committed to crimes reported and recorded varies according to offense. In the first place, some offenses, such as murder, are more likely to be discovered than others. More generally, the *meaning* which people attach to criminal behaviors—how serious, harmful, or immoral they are perceived to be—also dramatically influences whether acts become known and recorded:

... We cannot use the *total* recorded criminality. We must extract from that total the data for only those offenses in which the recorded sample is large enough to permit the assumption that a reasonably constant relationship exists between the recorded and the total criminality of these types. We may make that assumption *when the offense seriously injures a strongly embraced social value, is of a public nature in the sense that it is likely to come to the attention of someone beside the victim, and induces the victim or those who are close to him to cooperate with the authorities in bringing the offender to justice.*¹⁴

4. The organization of control agencies affects the volume of crime known to the police. The sheer number of police officers obviously affects how much crime is processed, especially if these officers work during the night, when the true crime rate is likely to be high. Further, a police department with a "drug division," for example, is likely to know of more drug offenders than a department without such a division, thus creating variations in perception of "the drug problem." Moreover, police departments often organize "drives" against one kind of crime or another, thus manipulating the numbers and rates of crimes known to them.¹⁵

5. Variations in the criminal law may affect the volume of crimes known to the police, reducing the value of the measure for comparative purposes. Behavior which is a crime in one place or time may not be a crime in another place or time; the difference reduces the value of crimes known to the police for long-range comparative purposes. Further, categorization of an offense in one of the classifications used for recording may be unsystematized and irregular, so that variation in a particular offense is created when none exists in fact. Whether a suspect is charged with petty theft, burglary, or grand larceny sometimes depends

¹³James Q. Wilson, "The Police and the Delinquent in Two Cities," in *Controlling Delinquents*, ed. Stanton Wheeler (New York: Wiley, 1967).

¹⁴Sellin, "The Significance of Records of Crime," pp. 496-97.

¹⁵See DeFleur, "Biasing Influences on Drug Arrest Records."

on the whim of the police officer recording the offense. Most contemporary "kidnapping," for example, is just taking control of a victim in the course of a robbery. Magistrates pay little attention to the charges against the vagrants who come before them; as a consequence, there may be more commitments of vagrants to houses of correction in a given period of time than there are arrests for vagrancy. Similarly, comparisons of the crime rates of various countries are seriously limited by wide variations in the national legal systems. For example, *robo* in the Argentine penal code includes what the United States codes call robbery, but it also includes some kinds of behavior which the typical United States code would call burglary or breaking and entering.¹⁶ International comparisons would be of decided value in securing an understanding of criminality because these statistics show the wider variations which may not be apparent within a particular country. In Scandinavia, considerable interest has developed in a program for the international codification of criminal laws and for the development of international statistics of crime and criminals. The essential problem is to develop units that can be used for international comparisons.

6. The number of crimes known to the police must, for purposes of comparison, be stated in proportion to the population or to some other base, and the determination of this base is often difficult. United States census figures on the general population collected in the first year of a decade often must be used throughout the decade as the base for computing crime rates. Because the increasing United States population is not taken into account, the number of crimes per 100,000 population appears to increase each year throughout the decade. For example, if 1970 population figures are used to compute the crime rates for both 1970 and 1979, the latter year shows a higher rate, not because of an increase in crime, but because the population increase between 1970 and 1979 is not included in the base for the 1979 rate. Also, the population figures must be corrected for variations in age, sex, racial composition, and urban-rural composition, and much of this information is available only in the years in which the census is taken.¹⁷ Moreover, in many cases it is necessary to have other information. For instance, the number of automobile thefts in a community must be stated in proportion to the number of automobiles in the community. More generally, crimes of theft should be stated in proportion to the amount of property available to be stolen, not merely in proportion to population. Moreover, Engelmann and Throckmorton have argued convincingly that a more accurate view of all crime rates is obtained if the number of crimes is stated in proportion to the frequency of interaction among people, rather than merely in proportion to

¹⁶Lois B. DeFleur, "A Cross-Cultural Comparison of Offenders and Offenses: Cordoba, Argentina, and the United States," *Social Problems*, 14:483-92, 1967.

¹⁷See Ronald Chilton and Adele Spielberger, "Is Delinquency Increasing? Age Structure and the Crime Rate," *Social Forces*, 49:487-93, 1971.

the number of people.¹⁸ The difficulty of securing an adequate base for computing a rate is evident.

SOURCES OF STATISTICS ON CRIME IN THE UNITED STATES

Police, court, and prison statistics may be published by the agency which manufactures them, or they may be reported to a central state or federal agency which organizes, combines, and publishes the statistics from many agencies. Only rarely do the local or central agencies do more than catalog the incidence of various crimes. Computation of rates, analyses of interrelationships between various statistical facts, and the making of inferences about the statistics are left to outside research workers. The various agencies, in other words, merely take censuses of various dimensions of the criminal population, just as the Department of Commerce takes censuses of the total United States population. Some of the agencies try to identify the limitations of the statistics which they publish, but most of them do not.

Federal Reports

Since 1930, the United States Department of Justice has published a periodical bulletin on crime statistics, *Uniform Crime Reports*. The number of known crimes reported to the FBI by the police of about 3000 cities and towns is used as an index of "major" crimes (murder, rape, aggravated assault, burglary, robbery, larceny, and automobile theft), and "arrests" (fingerprint records sent to the FBI) are used as an index of other crimes. The bulletin was first published monthly, became a quarterly in 1932, was converted into a semiannual publication during World War II, and became an annual publication in 1959. Local police departments are supplied with a manual on reporting, but participation by police departments is voluntary. Consequently, not all communities are covered, and the large metropolitan centers are overrepresented. For example, the 1975 statistics are based on reports from law enforcement agencies representing 97 percent of the population living in the standard metropolitan statistical areas, but only 83 percent of the rural population; the total population represented in one set of statistics numbered 187 million, while the total population of the United States was more than 213 million.¹⁹

The *Uniform Crime Reports* have many limitations, and the FBI will not vouch for their accuracy. Nevertheless, they are persistently used as evidence about the amount and nature of crime in the United States. Table 1 shows the estimated

¹⁸Hugo O. Engelmann and Kirby Throckmorton, "Interaction Frequency and Crime Rates," *Wisconsin Sociologist*, 5:33-36, 1967. See also Sarah L. Boggs, "Urban Crime Patterns," *American Sociological Review*, 30:899-908, 1965.

¹⁹Federal Bureau of Investigation, *Uniform Crime Reports*, 1975, pp. 3, 153. For a history of this bulletin and a critique of the statistics reported in it, see Marvin E. Wolfgang, "Uniform Crime Reports: A Critical Appraisal," *University of Pennsylvania Law Review*, 111:708-38, 1963.

number of serious crimes reported as known to the police in 1975, and Table 2 shows the number of police department arrests recorded by the FBI in 1975 on the basis of the fingerprint cards sent to it. In the latter table it should be noted that only 23.7 percent of the arrests were for the seven "major" crimes and that there is a great discrepancy between the estimated number of major crimes committed (Table 1) and the number of arrests for those crimes (Table 2).

The Department of Justice also publishes statistics on commitments to state and federal penal institutions in the United States. This series, *National Prisoner Statistics*, was originally published by the Bureau of the Census, with the title *Prisoners in State and Federal Prisons and Reformatories*. In 1950 the series was transferred to the Federal Bureau of Prisons, and in 1971 to the Law Enforcement Assistance Administration. Included are data on the number of commitments to the various institutions, the number of prisoners present at the end of each year, and the number of prisoners discharged under each of the various systems of release. The annual report of the Federal Bureau of Prisons, *Federal Prisons* (formerly named *Federal Offender*), gives statistical data on persons convicted of violations of federal laws. Table 3 presents *National Prisoner Statistics* data on the recent trends in rates of commitments to both state and federal institutions.

Local coroners keep records of known homicides. Since 1900, the National Office of Vital Statistics (or a similar agency) has published in *Vital Statistics of the United States* an annual homicide rate based on these records. Until about

Table 1 Estimated Number of Major Crimes in the United States, 1975

Crime Index Classification	Estimated Crime, 1975		Percent Change over 1974	
	Number	Rate per 100,000 Inhabitants	Number	Rate
Total	11,256,600	5281.7	+ 9.8	+ 8.9
Murder	20,510	9.6	- 1.0	- 2.0
Forcible rape	56,000	26.3	+ 1.3	+ 0.4
Robbery	464,970	218.2	+ 5.1	+ 4.3
Aggravated assault	484,710	227.4	+ 6.2	+ 5.4
Burglary	3,252,100	1525.9	+ 7.0	+ 6.1
Larceny, \$50 and over	5,977,700	2804.8	+ 13.6	+ 12.7
Auto theft	1,000,500	469.4	+ 2.4	+ 1.6

SOURCE: Federal Bureau of Investigation, *Uniform Crime Reports*, 1975, p. 11.

NOTE: The estimated crime totals for the United States appearing in this table are not comparable to such totals published in *Uniform Crime Reports* in the years prior to 1959. "Negligent manslaughter" has been omitted. "Larceny" no longer includes petty offenses, and "rape" no longer includes "statutory rape."

Table 2 Total Arrests, Distribution by Sex, 1975

Offense Charged	Number			Percent		
	Total	Male	Female	Total	Male	Female
Total	8,013,645	6,751,545	1,262,100	100.0	100.0	100.0
Criminal homicide	19,526	16,611	2,915	.2	.2	.2
Forcible rape	21,963	21,748	215	.3	.3	
Robbery	129,788	120,650	9,138	1.6	1.8	.7
Aggravated assault	202,217	175,823	26,394	2.5	2.6	2.1
Burglary—breaking or entering	449,155	421,729	24,426	5.6	6.3	1.9
Larceny—theft	958,938	659,671	299,267	12.0	9.8	23.7
Auto theft	120,224	111,868	8,356	1.5	1.7	.7
Other assaults	352,648	303,903	48,745	4.4	4.5	3.9
Arson	14,589	12,942	1,647	.2	.2	.1
Forgery and counterfeiting	57,803	41,091	16,712	.7	.6	1.3
Fraud	146,253	96,249	50,004	1.8	1.4	4.0
Embezzlement	9,302	6,406	2,896	.1	.1	.2
Stolen property— buying, receiving, possessing	100,903	90,141	10,762	1.3	1.3	.9
Vandalism	175,865	161,809	14,056	2.2	2.4	1.1
Weapons—carrying, possessing, etc.	130,933	120,493	10,440	1.6	1.8	.8
Prostitution and com- mercialized vice	50,229	12,928	37,301	.6	.2	3.0
Sex offenses [except forcible rape and prostitution]	50,837	46,932	3,905	.6	.7	.3
Narcotic drug laws	508,189	438,129	70,060	6.3	6.5	5.6
Gambling	49,469	45,136	4,333	.6	.7	.3
Offenses against family and children	53,332	47,109	6,223	.7	.7	.5
Driving under the influence	908,680	835,073	73,607	11.3	12.4	5.8
Liquor laws	267,057	228,933	38,124	3.3	3.4	3.0
Drunkenness	1,176,121	1,093,103	83,018	14.7	16.2	6.6
Disorderly conduct	632,561	520,999	111,562	7.9	7.7	8.8
Vagrancy	59,277	53,080	6,197	.7	.8	.5
All other offenses [except traffic]	1,037,754	870,289	167,465	12.9	12.9	13.3
Suspicion	29,038	25,037	4,061	.4	.4	.3
Curfew and loitering law violations	112,117	89,316	22,801	1.4	1.3	1.8
Runaways	118,817	81,347	107,470	2.4	1.2	8.5

SOURCE: Federal Bureau of Investigation, *Uniform Crime Reports*, 1975, p. 191.

Table 3 Prisoners in Institutions and Received from Court, 1939-1973, Rates per 100,000 of the Estimated Civilian Population

Year	Present at End of Year			Received from Court		
	All Insti- tutions	Federal Insti- tutions	State Insti- tutions	All Insti- tutions	Federal Insti- tutions	State Insti- tutions
1940	132.0	14.6	117.3	55.5	11.5	44.1
1945	100.5	14.0	86.5	40.0	10.7	29.4
1950	110.3	11.4	98.9	46.1	9.5	36.7
1955	113.4	12.3	101.1	47.9	9.3	38.5
1960	118.6	12.9	105.7	49.3	7.6	41.7
1965	109.5	10.9	98.6	45.4	6.6	38.8
1970	96.7	9.8	86.8	39.1	5.9	33.1
1973	97.8	10.9	86.9	59.6	7.0	52.5

SOURCE: Federal Bureau of Prisons, "Prisoners in State and Federal Institutions for Adult Felons, 1968-1970," *National Prisoner Statistics*, no. 47, April, 1972, table 1, p. 2, and table 2, p. 3; and U.S. Department of Justice, Law Enforcement Assistance Administration, *Prisoners in State and Federal Institutions, 1971-1973*, NTS Bulletin—*National Prisoner Statistics*, no. SD-NTS-SFP-1, 1974.

1930, only the coroners' statistics from the New England states were summarized, but now the entire population of the United States is covered. These statistics were issued by the Bureau of the Census until 1946; now that bureau merely reprints—in *Statistical Abstracts of the United States*—the data published by the U.S. Public Health Service. Table 4 shows that the number of deaths by homicide per 100,000 adults increased in the middle 1960s and has remained rather constant since that time. However, these statistics on homicide do not necessarily show that murders and manslaughter, as ordinarily understood, have increased. Homicide includes justifiable and noncriminal violence, such as killing in self-defense, killing a prisoner who is trying to escape, and similar acts. It also includes deaths caused by negligence, now common in automobile accident cases. Because *Vital Statistics* does not report the portion of all homicides which are justifiable or due to negligence, the publication tells us little about trends in murder, as popularly understood. It should be noted further that coroners' reports pertain to medical causes of death, and not to arrests or prosecutions of persons accused of murder.

The homicide rate per 100,000 population fluctuates markedly from country to country. The United States consistently shows a rate higher than most European countries and lower than most South American countries, as illustrated in Table 5.

Statistics on juvenile delinquency are also published by the federal government, through the Children's Bureau of the Social Security Administration. Until 1955, only about 400 courts, out of approximately 3000 courts that deal with children's cases, made reports to the bureau. In 1955, the bureau revised its statistical reporting plan to include a national sample representative of all juvenile

Table 4 Number and Rate of Homicides, United States: 1930 to 1970

Years ^a	Number	Rate ^b
1930	10,331	12.4
1935	10,396	11.2
1940	8,329	8.6
1945	7,547	7.7
1950	7,942	7.2
1955	7,418	6.4
1960	8,464	6.5
1965	10,712	8.0
1970	16,848	11.6
1971	18,787	12.6
1972	19,638	13.0
1973	20,465	13.3

SOURCE: U.S. Bureau of the Census, Statistical Abstract of the United States, 1975, 96th ed. (Washington, D.C.: Government Printing Office, 1975), table 256, p. 154.

^aPrior to 1960, excludes Alaska and Hawaii. Excludes armed forces abroad.

^bPer 100,000 resident population 16 years old and over, enumerated as of April 1 for 1930, 1940, 1950, 1960, and 1970; estimated as of July 1 for all other years.

courts. The earlier Children's Bureau statistics have been criticized on the ground that a very small proportion of the population was represented, that the standards for reporting were not uniform, that definitions of delinquency vary from jurisdiction to jurisdiction, that the ages of children over whom the courts have

Table 5 Homicide Rates for Selected Countries (per 100,000 Population), 1972

Country	Rate	Country	Rate
El Salvador	29.5	Israel	1.5
Guatemala	20.4 ^a	Germany (FRG)	1.4
Mexico	14.3	Japan	1.3
Thailand	12.7	Italy	1.1
United States	9.1 ^a	France	0.9
Venezuela	7.8	Poland	0.9
Cuba	3.7	England/Wales	0.8
Canada	2.3	Norway	0.7
Hungary	2.1	Netherlands	0.5
Hong Kong	1.8	Spain	0.3

SOURCE: World Health Organization (WHO), *World Health Statistics Annual*, 1972, vol. 1 (Geneva, 1975), p. 234.

^aData for 1971.

Table 6 *Trend in Delinquency Cases Disposed of by Juvenile Courts, United States, 1960-1973*

Year	Delinquency Cases ^{a,b}	Child Population (10-17 Years of Age)	Rate ^c
1960	510,000	25,368,000	20.1
1965	697,000	29,536,000	23.6
1970	1,052,000	32,614,000	32.3
1971	1,125,000	32,969,000	34.1
1972	1,112,000	33,120,000	33.6
1973	1,143,000	33,377,000	34.2

SOURCE: U.S. Department of Health, Education, and Welfare, *Juvenile Court Statistics, 1970* (Washington, D.C.: National Center for Social Statistics, 1975), p. 11.

^aExcluded are the ordinary traffic cases handled by juvenile courts, except where traffic cases, usually the more serious ones, are adjudicated as "juvenile delinquency" cases and are reported as such.

^bData for 1960 and 1965 estimated from the national sample of juvenile courts. Data for 1970-1973 estimated from all courts reporting, whose jurisdictions included almost three-fourths of the population of the U.S.

^cBased on the number of delinquency cases per 1000 U.S. child population.

jurisdiction vary, and that there are variations in the proportions of juvenile delinquents who are referred to the courts.²⁰ Table 6 shows the recent trends in juvenile delinquency, as measured by a representative national sample.

State Reports

Generally, the states are less efficient than the federal government in making crime statistics available. In most states, one or more departments or bureaus obtain reports from a particular type of county or municipal official, but no attempt is made to use a uniform system of reporting in order to make the resulting summaries comparable. The attorney general may receive information from district attorneys; the department of correction may receive information from sheriffs; the department of public welfare from juvenile courts and welfare agencies dealing with delinquency, and so on. In a few states, the only criminal statistics are those published by individual institutions or agencies. Only thirteen states—including California, Hawaii, Louisiana, Massachusetts, Michigan, Minnesota, New York, Pennsylvania, Rhode Island, South Dakota, and Texas—have central statistical bureaus which collect and publish statistical information drawn from reports made by a variety of local, county, or state agencies. For some states, crimes known to the police, arrests, and convictions are summarized, but in most states the statistics are restricted to the number of persons admitted to probation,

²⁰See James F. Short, Jr., and F. Ivan Nye, "Extent of Unrecorded Juvenile Delinquency: Tentative Conclusions," *Journal of Criminal Law, Criminology, and Police Science*, 49:296-302, 1958.

prison, or parole. The data in Table 7 are from the Bureau of Statistics, California Department of Justice; this bureau acts as a statistical agency for the Department of Corrections.

Other Reports

Statistics on specific crimes are published regularly by some federal and state agencies, and certain private organizations maintain running accounts of the offenses committed against them. The Federal Deposit Insurance Corporation, the Treasury Department, and the Department of Justice, for example, all publish annual indexes of the number of violations of certain federal laws. Similarly, the American Bankers Association keeps records of offenses against banks; fidelity bonding companies keep records of crimes against bonded business firms, and large corporations record their annual losses to various kinds of crime. Ordinarily, the statistics reported by a single agency or private organization are not comparable with the statistics compiled and published for the entire nation or for an entire state.

Government agencies and private foundations also have promoted and con-

Table 7 Male Prisoners Newly Received from Court, California, 1970 and 1971

Offense	1970		1971		Percent Change in Rate— 1971 over 1970
	Number	Rate per 100,000 Population ^a	Number	Rate per 100,000 Population ^a	
Total	4,472	22.02	4,272	20.82	- 5.7
Homicide	421	2.08	443	2.16	+3.8
Robbery	995	4.91	962	4.69	- 4.5
Assault	329	1.62	354	1.73	+6.8
Burglary	646	3.19	637	3.10	- 2.8
Theft, except auto	326	1.61	295	1.44	- 10.6
Auto theft	139	0.69	123	0.60	- 13.0
Forgery and checks	198	0.98	208	1.01	+3.1
Sex offenses	247	1.22	243	1.18	- 3.3
Narcotics	921	4.54	781	3.81	+16.1
Other offenses	250	1.23	226	1.10	- 10.6

SOURCE: *California Prisoners, 1972* (Sacramento: Department of Corrections, 1973), p. 10.

^aEstimates of population from State Department of Finance, Financial and Population Research Section.

ducted a number of crime surveys, one general aim of which has been the discovery of the proportions of crimes not reported in the usual statistics of crime. Among the more famous surveys are the Cleveland survey, the Missouri survey, the Illinois survey, the study by the Wickersham commission, the Oregon survey, the Attorney General's survey, and the recent survey made by the President's Commission.²¹

Occasionally, a comprehensive firsthand investigation by an independent research worker produces new statistical indexes. Short and Nye long ago demonstrated that statistics compiled from reports of delinquencies by offenders are acceptable and desirable in scientific analyses, and studies of self-reported crimes and delinquencies are now quite common.²²

THE Pervasiveness of Crime in the United States

Crime is much more general and pervasive than the ordinary statistics indicate, and an entirely incorrect impression regarding criminality is formed if conclusions are based only on these statistics. Opposition to law has been a tradition in the United States. Popular rebellions against laws constitute an almost continuous series from the early colonial period to the present. Violations of many of the early laws were quite as general as were violations of the Prohibition act in the 1920s and violations of current laws prohibiting gambling, homosexual conduct, and possession of marijuana. The manufacture of nails and of other commodities in violation of English law, the sale of firearms and of liquor to Indians, smuggling and other violations of laws regulating commerce, Shays's Rebellion in 1787, the Whisky Rebellion in 1794, trading with the enemy during the War of 1812, riots against the Catholics, the Irish, and the Mormons, Dorr's Rebellion in 1841-1842, trading in slaves, harboring fugitive slaves, Negro disfranchisement, violation of antitrust laws, violation of banking laws, violation of prohibition laws, and violation of draft laws during the Vietnam War are some of these popular rebellions.²³ The earlier violations of this type cannot be measured statistically,

²¹Roscoe Pound and Felix Frankfurter, eds., *Criminal Justice in Cleveland* (Cleveland: The Cleveland Foundation, 1922); Missouri Association for Criminal Justice, Survey Committee, *The Missouri Crime Survey* (New York: Macmillan, 1926); Illinois Association for Criminal Justice, *The Illinois Crime Survey* (Chicago: Illinois Association for Criminal Justice, 1929); National Commission on Law Observance and Enforcement, *Reports* (Washington: Government Printing Office, 1931); Wayne L. Morse and Ronald H. Beattie, *Survey of the Administration of Justice in Oregon* (Eugene: University of Oregon Press, 1932); *Attorney General's Survey of Release Procedures*, 5 vols. (Washington: Government Printing Office, 1939-40); President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D. C.: Government Printing Office, 1967), pp. 21-22.

²²James F. Short, Jr., and F. Ivan Nye, "Reported Behavior as a Criterion of Deviant Behavior," *Social Problems*, 5:207-13, 1957-58. For analyses of some of the early studies using this procedure, see Roger Hood and Richard Sparks, *Key Issues in Criminology* (London: World Universities Library, 1970); and Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969).

²³See Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: Wiley, 1966).

and it is not possible to determine from the descriptions whether the number of persons involved in popular rebellions has increased or decreased.

The criminal tradition is also reflected in the fact that certain occasions are defined as holidays from morality. Halloween, New Year's Eve, election nights, spring celebrations, campus demonstrations, and important football victories are occasions of this nature. On these occasions, crimes are committed by persons who ordinarily would not commit them. These crimes may take the form of destruction of property and of assaults. Individual crimes are committed primarily in a spirit of exuberance, and they coincide with institutionalized collective behavior involving many persons. There is much evidence that the delinquency of juveniles in deteriorated urban areas is an extension of this attitude through the entire year.

Labor strikes were once very much like these moral holidays. More recently, student strikes have resembled them. There is a gathering of persons with a common interest, an attitude during the early period of the strike which is much like that of a picnic, and an exuberance which is like that of the spring celebration. Assaults and destruction of property occur on these occasions, just as on other holidays from morality.²⁴ The violation of law, however, is much more purposive in the strike than in these other outbursts. Factory workers, skilled tradesmen, farmers, and students, without much differentiation, violate the laws on such occasions. These holidays from morality are so generally recognized that penalties for lawlessness seldom result.

The fact that almost all persons have at some time deliberately committed crimes, often of a serious nature, is further evidence of our criminal tradition. In interviews, a sample ($N=2510$) of American men who were 20 to 30 years old in 1974 were asked if they had ever committed each of ten illegal acts.²⁵ Seventy percent of the men reported public intoxication and 60 percent admitted that they had driven an automobile while intoxicated (8 percent had been arrested for driving while intoxicated). The next most common of the other eight offenses was shoplifting—44 percent of the men reported this form of theft. Thirteen percent admitted breaking and entering, 6 percent admitted automobile theft, 3 percent admitted face-to-face stealing, 3 percent illegal gambling, and another 3 percent bad checks. Also, 1 percent admitted to having forged a prescription and another 1 percent confessed to armed robbery.²⁶ Overall, 31 percent of the respondents indicated that they had been arrested for an offense involving something other than a traffic violation; 8 percent had appeared in juvenile court, and 12 percent of

²⁴See the discussion by David F. Luckenbill and William B. Sanders, "Criminal Violence," chap. 3 in *Deviants: Voluntary Actors in a Hostile World*, ed. Edward Sagarin and Fred Montanino (Morristown, N. J.: General Learning Press, 1977), pp. 88-156.

²⁵John A. O'Donnell, Harwin L. Voss, Richard R. Clayton, Gerald T. Slatin, and Robin G. W. Room, *Young Men and Drugs—a Nationwide Survey* (Washington, D. C.: National Institute on Drug Abuse, Research Monograph No. 5, 1976), pp. 81-82, 90-92.

²⁶For definitions of these and the other illegal acts used in this study, see Table 12 in chap. 6.

the men indicated that they had been convicted of a crime. Four percent of the whites and 14 percent of the blacks had served prison sentences.

Significantly, this study also indicated that there is a high correlation between reported criminal conduct and the probability of being arrested, convicted, or imprisoned. Thus, the men who were arrested or who appeared in juvenile court, or who were committed to a juvenile correctional institution, were convicted of a crime, or sentenced to prison were more likely to report one or more criminal acts than those without such experiences. Table 8 shows, for example, that 78 percent of the men sent to a juvenile institution reported one or more of the listed acts, in comparison with 19 percent of those with no commitment as juveniles. The comparable figures for those who did and did not serve prison sentences are 67 and 17 percent, respectively. The data in the table suggest, in short, that a distinction should be made between the incidence of criminal *behavior* on the one hand, and the *labeling* of the person perpetrating that behavior on the other. The conclusion seems to be that labeling is by no means only "in the eye of the beholder," but flows from participating in behavior which has been outlawed.

Studies in several European countries and other American studies similarly suggest that the number of crimes committed is far greater than the number reported in crime statistics. A Finnish study showed that only 5 percent of self-reported larcenies and 1 percent of self-reported violations of alcohol laws were detected by police.²⁷ In a study of juvenile delinquencies, Short found that a group of sixty-five male college students reported that they had committed an average of 9.9 offenses against property, 12.3 behavior-problem offenses, 9.6 offenses against persons, 16.5 sex offenses, 20.8 "casual offenses," and 12.6 miscellaneous offenses. A group of ninety-four training-school boys reported that they had committed an average of 13.4 offenses against property and 19.1 behavior-problem offenses; their average number of other offenses was about the same as that of the college students. In comparison with the training-school boys, the students had only very rarely been arrested for their offenses.²⁸ One explanation for this differential lies in the fact that police and other officials use discretion in making arrests, often to the advantage of middle-class suspects who do not fit the stereotype of the "bad actor."²⁹

White-collar crimes—crimes committed by persons of respectability and high social status in the course of their occupations—also are extremely widespread,

²⁷Inkeri Anttila and R. Jaakkola, "Unrecorded Criminality in Finland," *Kriminologinen Tutkimuslaitos*, 2:5-22, 1966.

²⁸James F. Short, Jr., "A Report on the Incidence of Criminal Behavior, Arrests, and Convictions in Selected Groups," *Research Studies of the State College of Washington*, 22:110-18, June, 1954. See also Short and Nye, "Reported Behavior as a Criterion of Deviant Behavior," and Maynard L. Erickson and Lamar T. Empey, "Court Records, Undetected Delinquency and Decision-making," *Journal of Criminal Law, Criminology, and Police Science*, 54:456-69, 1963.

²⁹Aaron V. Cicourel, *The Social Organization of Juvenile Justice* (New York: John Wiley, 1968); Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," *American Journal of Sociology*, 70:206-14, 1964.

Table 8 Self-Reported Criminal Acts, by Contacts with the Criminal Justice System

Self-Reports	Arrested		Juvenile Court Appearance		Juvenile Commitment		Crime Conviction		Prison Sentence	
	(786)	(1724)	(205)	(2305)	(59)	(2541)	(303)	(2207)	(135)	(2375)
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Public intoxication or driving while intoxicated	87%	69%	87%	69%	87%	74%	89%	73%	84%	74%
Shoplifting before age 18	53	33	65	37	73	38	55	37	54	38
Other self-reported criminal acts admitted:										
None	60	89	38	84	22	81	47	85	33	83
One	23	9	29	12	24	14	26	12	26	13
Two or more	17	2	33	4	54	5	27	3	41	4
(One or more)	(40)	(11)	(62)	(16)	(78)	(19)	(53)	(15)	(67)	(17)

SOURCE: O'Donnell et al., *Young Men and Drugs*, p. 96.

but an index of their frequency is not found in police reports. Prosecution for this kind of crime is frequently avoided because of the political or financial importance of the parties concerned, because of the apparent triviality of the crimes, or because of the difficulty of securing evidence sufficient for prosecution, particularly in the cases of crimes by corporations.³⁰ Even more important, methods other than prosecution in the criminal courts are frequently used to deal with white-collar criminals—action may be taken in the civil courts or in hearings before boards and commissions. Consequently, a precise statement regarding the extent of white-collar crime is impossible. Differences in administrative procedures, however, do not justify the designation of this behavior as something other than crime.³¹ In general, underlying these failures to prosecute white-collar criminals is the lack of a developed feeling of moral indignation in the persons of power who are involved and, to some extent, in the general public.³² The reaction to robbery and assault is severe, for they involve direct sensory processes and are based on social relations which have existed for many centuries. But theft by fraudulent

³⁰For a summary statement, see Carl B. Klockars, "White Collar Crime," chap. 5 in *Deviants: Voluntary Actors in a Hostile World*, ed. Sagarin and Montanino, pp. 220-58.

³¹See Edwin H. Sutherland, "White Collar Criminality," *American Sociological Review*, 5:1-12, 1940.

³²See Vilhelm Aubert, "White-Collar Crime and Social Structure," *American Journal of Sociology* 58:263-71, 1952; John C. Spencer, "White-Collar Crime," in *Criminology in Transition*, ed. Tadeusz Grygier, Howard Jones, and John C. Spencer (London: Tavistock, 1965), pp. 233-66; André Normandeau, "Les Déviations en

advertisements and by violations of antitrust laws are recent developments which affect persons who may live thousands of miles away from the thief. Moral codes have not been developed in regard to this behavior. White-collar criminals, however, are by far the most dangerous to society of any type of criminal from the point of view of effects on human rights and democratic institutions. Ethical codes deploring such offenses have not developed, and the victims of white-collar crimes have not been able to persuade criminal justice personnel to be as indignant about white-collar crime as they are about robbery, automobile theft, and vandalism.³³

An analysis has been made of the number of instances in which seventy of the largest United States mining, manufacturing, and mercantile corporations violated, over a period of about 40 years, the laws regulating the following practices: restraint of trade; misrepresentation in advertising; infringements of patents, trademarks, and copyrights; "unfair labor practices" as defined by the National Labor Relations Act and other laws; rebates; financial fraud and violation of trust; violations of war regulations; and some miscellaneous activities.³⁴ The records reveal that every one of the seventy corporations violated one or more of the laws, with an average of about thirteen adverse decisions per corporation and a range of from one to fifty adverse decisions per corporation. The corporations had a total of 307 adverse decisions on charges of restraint of trade, 222 adverse decisions on charges of infringements, 158 adverse decisions under the National Labor Relations Act, 97 adverse decisions under the laws regulating advertising, and 196 adverse decisions on charges of violating other laws.

Thus, the official records revealed that these corporations violated the law with great frequency. The habitual-criminal laws of some states impose severe penalties on criminals convicted the third or fourth time. If this criterion were extended to corporations, about 90 percent of the large corporations studied would be considered habitual white-collar criminals. Moreover, this enumeration of official decisions is far from complete, and it is concerned with violations of only a few laws. Even a complete enumeration of all adverse decisions against all corporations would represent only a crude index of the total amount of crime perpetrated by these corporations.

Financial corporations and institutions also have a high incidence of hidden

Affaire et de Crime en Col Blanc," *Revue Internationale de Criminologie et de Police Technique*, 4:247-48, 1965; Hans Joachim Schneider, "Wirtschaftskriminalität in Kriminologischer und Strafrechtlicher Sicht," *Juristenzeitung*, 15:461-67, 1972; Klaus Tiedemann and Jean Cosson, *Straftaten und Strafrecht im Deutschen und Französischen Bank- und Kreditwesen* (Cologne: Carl Heymanns Verlag, 1973); Klaus Tiedemann and Christoph Sasse, *Delinquenzprophylaxe, Kreditsicherung und Datenschutz in der Wirtschaft* (Cologne: Carl Heymanns Verlag, 1973); and Klaus Tiedemann, *Kartellrechtsverstöße und Strafrecht* (Cologne: Carl Heymanns Verlag, 1976).

³³George C. S. Benson and Thomas S. Engeman, *Amoral America* (Stanford, Cal.: Hoover Institution Press, 1975); and Donald R. Cressey, "Restraint of Trade, Recidivism, and Delinquent Neighborhoods," chap. 8 in *Delinquency, Crime, and Society*, ed. James F. Short, Jr. (Chicago: University of Chicago Press, 1976), pp. 209-38.

³⁴Edwin H. Sutherland, *White Collar Crime* (New York: Dryden Press, 1949).

criminality. The comptroller of the currency reported that about three-fourths of the national banks examined in a particular quarter were found to be violating the national banking laws. Dishonesty was found in 50.4 percent of the national bank failures during the period 1865-1899, and in 61.4 percent during the period 1900-1919.³⁵ Some years ago, lie detector tests of the employees of certain Chicago banks showed that 20 percent of them had taken money or property from the bank, and in almost all cases these tests were supported by subsequent confessions.³⁶ A recent study of bank losses estimated that robbers took about \$27 million in 1973, while in the same year about \$150 million was stolen by bank employees.³⁷

Fraud, also, is frequently a white-collar crime. The statistics on crime in European countries show a general trend toward a decrease in crimes of violence and an increase in crimes involving fraud. It is probable that the trend is even more pronounced in America, but neither the trend nor the present extent of fraud can be determined by available statistics. It is probable, also, that fraud is the most prevalent crime in America. Misleading balance sheets, which public accountants have been able to invent and develop; wash sales, by which the value of a security is fraudulently determined; concessions in rent by real estate dealers for the purpose of fraudulently increasing the sales price of property; excessive and misleading claims made by the manufacturers, vendors, and advertisers of patented medicines, toothpaste, cosmetics, and many other articles; transfer of deteriorated securities from the banker's own possession to the trust funds under her direction; and a considerable part of present-day salesmanship and of advertising—all these examples illustrate this kind of criminality. These things represent either active fraud with the intent to deceive the prospective purchaser or else misrepresentation by silence.

Expert techniques of concealment have developed in many occupations for the purpose of preventing the purchaser from learning the defects of the commodity. Not many farmers would sell hogs with the knowledge that the hogs were infected with cholera and would die within a few days, and those farmers who did this would be regarded as dishonest, even if the misrepresentation consisted merely in silence regarding the danger. On the other hand, not many brokers or bankers would hesitate to sell securities which, by advance information, they had learned would soon be worthless, and the few who did refrain from immediate sale would be regarded as foolish. The physical disease of the hogs is more readily appreciated than the financial disease of the securities, and the effects are likely to be more definitely recognized. Defects in commodities are frequently concealed, and labels often misrepresent. Shirting of inferior quality may be filled with clay in order that the defects may be hidden until the sale is consummated. This is essentially the same principle that was used by the old horsetrader in concealing

³⁵These statistics were included in the annual reports of the Comptroller of the Currency and of the Department of the Treasury until 1923, when they were discontinued.

³⁶Fred E. Inbau, "Scientific Evidence in Criminal Cases," *Journal of Criminal Law and Criminology*, 24:1140-58, 1934.

³⁷Erich Goode, "On Behalf of Labeling Theory," *Social Problems*, 22:570-83, 1975.

the blemishes in his horses. Manufacturers offer merchants a wide variety of "list prices" for the same item, so that the merchants can advertise that they sell at a very small percentage of "list price." These cases of misrepresentation and fraud have not been subject to prosecution in most cases, for the courts have operated on the principle *caveat emptor*, which has meant that purchasers must protect themselves against ordinary dishonesty and could appeal to the courts for protection only against *extraordinary* dishonesty. President Roosevelt in 1933 insisted that the principle be reversed and *caveat vendor* be substituted, especially with regard to securities.

An immense amount of fraud is involved in insurance, both on the part of the insured and the insurers. Murders are committed, houses burned, automobiles destroyed, and sickness or injury feigned in order that insurance may be collected. Fraud in personal injury cases is unusually extensive, and was once an important source of income for unscrupulous lawyers known as "ambulance chasers," who generally worked on contingent fees. Fraud in these cases seldom results in prosecution, although murder and arson may be occasion for prosecution of those crimes as such. The insurance company is seldom free to prosecute for fraud, for it seldom has clean hands. The insurance company adopts the usual policy that "business is business" and that sentiment must be eliminated; it makes a settlement at the lowest possible figure rather than at the figure which the nature of the loss justifies. For this purpose, claim agents, lawyers, and physicians for the insurance company frequently practice misrepresentation. Physicians for the company, for instance, frequently minimize the extent of injuries, in the expectation that the physician on the other side will magnify them. Also, in many cases the claim agent collects an additional sum for settlement and divides this with the attorney for the injured party.

Fraud is also present in the legal profession. Popular feeling inclines to the belief that a lawyer cannot be successful if completely honest and that almost any law firm will take any case within its field of specialization no matter how extreme the dishonesty required for representing the interests of the client. Though absence of official statistics makes it impossible to determine the truth or falsity of this popular opinion, it probably exaggerates the extent of dishonesty in the profession. While fraud is still common, flagrant practices seem to have decreased in the past generation, due to increased "professionalization" of legal occupations. Bar associations have been organized to promote codes of ethics and to prosecute unethical and openly criminal practices. Nevertheless, the "spirit of combat" in legal trials continues to make it necessary for some lawyers to practice fraud and misrepresentation by misstatement and concealment of whole truth if they are to win cases.³⁸ Such practices generally are not grounds for disbarment proceedings by bar associations but, again, they illustrate our criminalistic traditions.

³⁸See Monroe H. Freedman, *Lawyers' Ethics in an Adversary System* (Indianapolis: Bobbs-Merrill, 1975).

Fraudulent reports of property and income for tax purposes are general. The person who reported personal property honestly would generally be regarded as a freak, for the only method by which individuals can avoid paying more than their share of taxes is by accepting the common level of dishonesty. Most citizens would probably prefer to make honest reports, if they were assured that others would do the same. Dishonesty in reporting incomes has become more dangerous, but the general methods of concealing a part of the income or making fraudulent claims for exemptions are extremely widespread.

Many churches and denominational colleges have misapplied funds, under the direction of boards of trustees composed of clergy, lawyers, and businessmen. Gifts for endowments have been used for current expenses; gifts for missions have been used for pastors' salaries; and funds have been misapplied in many other ways.

The extraordinary development of fraud in modern life has been an aspect of the drive for profits, which in itself has been regarded as one of the primary virtues, and which, for that reason, has appeared to remove somewhat the taint from illegal practices. Persons practicing fraud have ordinarily felt no pangs of conscience, for the effects of fraudulent behavior have not become apparent in individual victims known to the defrauders, but have been impersonal and diffuse. If the effects were discernible in particular persons known to the defrauders, and if the practices were not purified by attachment to the virtuous search for profits, many business and commercial practices would be clearly recognized as crimes.

Although bribery is not always white-collar crime, it is another extremely prevalent crime for which arrests are seldom made. Bribery of public officials is a crime both for the bribe-taker and the bribe-giver. Influencing private persons by giving them gifts, money, or services is not crime, but it is closely akin to bribery in effects and attitudes. Both public and private "influence peddling" may be in the form of a direct exchange of money, but it is much more frequently a concealed and indirect method of putting a person under obligation to return a service.

In many cities and states an immense amount of white-collar bribery of public officials occurs in connection with the purchase of supplies, the making of contracts, the enforcement of regulations, and the enactment of legislation. Bribery can be involved when fuel oil is purchased; when school books are selected; when roads or buildings are constructed; when land is bought for public purposes; when franchises are granted to railroads, bus companies, and other public utility companies; and on hundreds of other occasions. Agents of book-publishing companies have testified regarding their methods of bribing school boards, and many public investigations have shown the wide prevalence of bribery of public officials. In some cities, any strictly honest purchase of commodities is an oversight. Much of the wealth of some public officials was secured from these

bribes, and it came from the most important of the financial and commercial concerns as well as from agents of the so-called underworld.³⁹

Enforcement of regulations regarding insurance, banking, factories, housing, building construction, streets, garbage, public utilities, weights and measures, and most other important functions is often a matter of bargaining between the agents of the state and the agencies subject to the law. The process, once started, grows and involves firms which were previously honest. The honest firm is forced to bribe the inspector in order to protect itself against arbitrary and persecutory enforcement of laws, but the inspector's expectation of securing bribes has grown out of bribes given previously by other concerns. Campaign contributions may protect a firm against demands for petty graft and may be effective in protecting agencies and interests against laws which may decrease profits.

Corruption is extremely prevalent, also, in private business. Buyers for department stores, hotels, factories, railways, and almost all other concerns which make purchases on a large scale accept and sometimes demand gifts or money payments. In doing so, they violate the trust their employer has placed in them, although not necessarily in a criminal way. The cost of the gifts is added to the price of the merchandise being sold, so that the employer and, eventually, the consumer actually is forced to subsidize the employee. Agents of general credit bureaus and of credit bureaus of special trade associations have reported that they are frequently approached by businessmen who offer bribes if information which tends to lower their credit rating is concealed, or if their credit rating is raised. Persons who have had experience in both business and politics claim that the honesty standards among politicians are higher than they are among businessmen.

Aiding and abetting criminals is itself a crime. Although, for obvious reasons, this crime is seldom reported to the police, the number of persons who, in the course of their business, aid and abet criminals is very great. Restaurants and bars are sometimes the sanctuaries of gunmen, though the proprietors may not themselves engage in crimes of violence. Some lawyers are regularly retained to advise professional and organized criminals and to protect them in case of arrest. Such a lawyer is an essential part of any criminal organization. Certainly some part of the perjury by witnesses in trials grows out of the suggestions and instructions of lawyers. Reputable business concerns frequently purchase the proceeds of thefts with a clear realization of the source of the commodities. The manufacturers and distributors of weapons, especially of machine guns, of silencers, and of material for bombs are important assistants of criminals. All large

³⁹See John A. Gardiner, *The Politics of Corruption: Organized Crime in an American City* (New York: Russell Sage Foundation, 1970); John A. Gardiner and David J. Olson, eds., *Theft of the City: Readings on Corruption in Urban America* (Bloomington, Ind.: Indiana University Press, 1974); Alexander B. Callow, Jr., ed., *The City Boss in America: An Interpretive Reader* (New York: Oxford University Press, 1976); and Jack D. Douglas and John M. Johnson, eds., *Official Deviance: Readings in Malfesance, and Other Forms of Corruption* (Philadelphia: Lippincott, 1977).

cities and most smaller ones have persons who make a business of "fixing" cases for professional thieves. Certain police officers, bailiffs, clerks, prosecutors, and judges cooperate with these "fixers," either for direct money payments or under orders from political leaders who control appointments and elections.

The police constantly break the laws. The laws of arrest are rigidly limited, but some police officers exercise their authority with little reference to these limitations and in violation of law. If illegal arrests are regarded as kidnappings, then the number of kidnappings by the police is thousands of times as great as the number of kidnappings by burglars and robbers. The courts, similarly, are not immune from criminal contagion, and this is true especially of the lower courts.

CONCLUSIONS

The statistics on crimes known to the police, like those on arrests, prosecutions, and imprisonments, give a distorted picture of crime in the United States or in the world. In the first place, the true incidence of even ordinary "street crime" such as burglary and larceny seems to be much higher than the incidence reported in *Uniform Crime Reports* and similar compilations. In the second place, the crime and delinquency statistics that are officially assembled seem to exaggerate the difference between the crime rate of poor people and the crime rate of people who are well-off financially. Indeed, the people of the business world are probably more criminalistic than are the people of the slums. The crimes of the slums are direct physical actions—a blow, a physical grasping and carrying away of the property of others. The victim thinks of the criminal as a particular individual, and citizens generally think of criminals as individual predators who prey on individual victims. The crimes of the business world, on the other hand, are indirect, devious, anonymous, and impersonal. A vague resentment against the political and economic system which both permits and fosters such exploitation may be experienced by direct and indirect victims alike, but when particular individuals cannot be thought of as the culprits, the antagonism is not institutionalized.⁴⁰ The perpetrators thus do not feel the resentment of their victims, and the criminal practices continue, spread, and go unreported.

Sociologists in recent years have devised methods of data collection which make it unnecessary to rely upon arrest statistics and other compilations in order to study delinquency and crime. Studies using techniques such as participant observation, interviews, questionnaires, surveys of unreported crimes and victimization, and plain logical argument have given a broader perspective on the "crime problem." Sutherland and others showed, further, that statistics on white-collar crimes are not routinely assembled and that, therefore, it is a mistake to view "the crime problem" as though it were a problem dealing with "the criminal classes" in slums.

Nevertheless, the very conception of some behavior as "criminal" or "delin-

⁴⁰See Fred T. Allen, "Corporate Morality: Is the Price Too High?" *Wall Street Journal*, October 17, 1975, p. 14.

quent" depends upon conditions outside the behavior itself, making it all but impossible to count accurately, by any technique, the incidence of crime or delinquency. Put another way, whether a specific act is called a crime or something else is often a matter of interpretation and negotiation.⁴¹ At one time, sociologists analyzed what were then considered the statistical "facts" about crime, among other things. Now they are beginning to realize that the facts are not, like sticks and stones, independent of the persons who assemble them.⁴² Accordingly, criminologists no longer just study "crime" or "criminal behavior" in an objective sense; it is also necessary to study the process by which the statistical information and other facts are manufactured, assembled, and published. Some observers of this change have called it a shift toward a "sociology of criminal law" because the concern is for the process by which criminal justice personnel and others decide what is to be called crime "really" and "after all." Quinney has more accurately called the change a shift to the study of "the politics of crime."⁴³ Thus the concept of crime and delinquency statistics must be broadened to include the fact that the "measures" of crime and delinquency involve *labeling* of behavior as criminal or delinquent. As Quinney has noted:

Instead of assuming that criminal statistics indicate only the *incidence of criminal behavior* in a population, we now assume as well that criminal statistics reflect differentials in the *administration of criminal law*. These two conceptions of criminal statistics may not necessarily be regarded as mutually exclusive. A third meaning of the statistics is that they reflect a combination of the first two conceptions, a mixture of the *incidence of criminality* and the *administration of criminal law*.⁴⁴

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⁴¹See Arthur Rosett and Donald R. Cressey, *Justice by Consent: Plea Bargains in the American Courthouse* (Philadelphia: Lippincott, 1976).

⁴²See Donald R. Cressey, "The State of Criminal Statistics," *National Probation and Parole Association Journal*, 3:230-241, 1957; John I. Kitsuse, "Societal Reactions to Deviant Behavior: Problems of Theory and Method," *Social Problems*, 9:247-56, 1962; John I. Kitsuse and Aaron V. Cicourel, "A Note on the Uses of Official Statistics," *Social Problems*, 11:131-39, 1963; Donald J. Newman, "The Effect of Accommodations in Justice Administration on Criminal Statistics," *Sociology and Social Research*, 46:144-55, 1962; Stanton Wheeler, "Criminal Statistics: A Reformulation of the Problem," *Journal of Criminal Law, Criminology, and Police Science*, 58: 317-24, 1967; and Albert D. Biderman and Albert J. Reiss, Jr., "On Exploring the 'Dark Figure' of Crime," *Annals of the American Academy of Political and Social Science*, 374:1-15, 1967.

⁴³Richard Quinney, "Crime in Political Perspective," *American Behavioral Scientist*, 8:19-22, 1964.

⁴⁴Richard Quinney, *Criminology: Analysis and Critique of Crime in America* (Boston: Little, Brown, 1975), p. 21.

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3

Perspectives and Methods

Systematic study of crime rates and criminal behavior is of rather recent origin. During the medieval and early modern periods many unorganized and ephemeral explanations of crimes were stated and accepted. Probably the principal explanation during this time was that crime was due to innate depravity and the instigation of the devil. The English indictment used as late as the nineteenth century not only accused the defendant of violating the law, but also of "being prompted and instigated by the devil and not having the fear of God before his eyes." And the Supreme Court of North Carolina, as late as 1862, declared: "To know the right and still the wrong pursue proceeds from a perverse will brought about by the seductions of the evil one."

During the period when this explanation was used most frequently the conception of natural causation was not developed even with reference to such things as disease, and, of course, was not developed with reference to criminality. The idea that crime is a natural outcome of the way a society is organized, not of something outside the society, was not imaginable. Neither was it possible even to imagine that offenders and others could have the status of persons—little or no interest was manifested in motives, intentions, circumstances, or other immediate conditions of the offender or the offense. Consistently, the notion that crime and criminality can be modified by changing the economic, political, and social conditions that produce them was entirely foreign. The general principle in crime control was that of heaping tortures on the damned in accordance with divine example.

OUTLINE OF SCHOOLS OF CRIMINOLOGY

Schools of criminology have developed during the last two centuries. A "school of criminology" is a system of thought, together with supporters of that system of

Table 9 Schools of Criminology

<i>School</i>	<i>Date of Origin</i>	<i>Content of Explanation</i>	<i>Methods</i>
Classical- Neoclassical	1765	Hedonism	Armchair
Cartographic	1830	Ecology, culture, composition of population	Maps, statistics
Socialist	1850	Economic determinism	Statistics
Typological			
1. Lombrosian	1875	Morphological type, born criminal	Clinical, statistics
2. Intelligence testers	1905	"Feeble-mindedness"	Clinical, statistics tests
3. Psychiatric	1905	Psychopathy	Clinical, statistics
Sociological and social psychological	1915	Groups and social processes	Clinical, statistics, fieldwork

thought. The system of thought consists of a theory of crime causation integrated with policies of change implied in the theory. Obviously, many popular "explanations" of crime are not included in this definition. But every interventionist policy is based, implicitly or explicitly, on a theory or set of assumptions about why people commit crime. The relationship between theories and policies will be elaborated in Part 2.

The principal schools of criminology are listed in Table 9. These schools can be distinguished from each other only in the writings of the more extreme adherents, who were customarily the early writers in each school. Furthermore, the outline below cannot do justice to the many variations in each school of thought or to the interrelations among the schools. The dates of origin are approximate. Each of these schools will be described briefly, and in later chapters the more pertinent research pertaining to each school will be discussed.

The Classical School

The classical school of criminology and of criminal law developed in Italy and England during the last half of the eighteenth century and spread to other European countries and to America. It was based on hedonistic psychology. According to this psychology, man governs his behavior by considerations of pleasures and pains; the pleasures anticipated from a particular act may be balanced against the pains anticipated from the same act, or the algebraic sum

of pleasures and pains from one act may be balanced against the algebraic sum of pleasures and pains from another act. The actor was assumed to have a free will and to make his choice with reference to the hedonistic calculation alone. This was regarded as a complete explanation of crime, and no need for research on economic, personal, political, or social conditions associated with crime and criminality could be imagined.

In 1764, Beccaria made the principal application of the hedonistic doctrine to penology.¹ His objective was to make punishment less arbitrary and severe than it had been. He contended that all persons who violated a specific law should receive identical punishment, regardless of age, sanity, position, or circumstance. This policy was justified on the ground that the punishment must be precisely specified in advance so that all persons could take it into account in the calculation of pains and pleasures that would result from violation of the law. According to this school, the penalty should be just severe enough so that the pains would exceed the pleasures derived from violation of the law. But persons were not prohibited from committing crimes. Even today, criminal laws, unlike the Ten Commandments, do not prohibit citizens from engaging in fraud, robbery, murder, and other offenses. Based on the hedonistic doctrine, they simply tell state officials to punish misbehaving citizens in prescribed ways. The basic idea was, and is, that crime rates will be minimal if fear of state agents is maximal. This principle is usually called deterrence, but a more realistic name for it is terror.

The emphasis on uniform punishments for all people committing the same crime was soon modified at two points: first, children and "lunatics" were exempted from punishment on the ground that they were unable to calculate pleasures and pains intelligently; and, second, the penalties were fixed within narrow limits rather than absolutely, so that a small amount of judicial discretion was possible.

The modified classical doctrine is the essence of the neoclassical school of criminology. With these modifications, the classical doctrine became the backbone of the body of the criminal law which has persisted in popular thought and judicial decisions to the present day.²

The psychology underlying the work and policies of the classical-neoclassical school, and of much contemporary criminal law, is now generally questioned. It is individualistic, intellectualistic, and voluntaristic. It assumes freedom of the will in a manner which gives little or no possibility of investigating the politics of crime or of developing a sociology or psychology of crime and criminals. All the

¹Cesare Beccaria, *An Essay on Crimes and Punishments* (London: Almon, 1767); see also Marcello T. Maestro, *Voltaire and Beccaria as Reformers of the Criminal Law* (New York: Columbia University Press, 1942). Bentham applied the hedonistic psychology to legislation: Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: Pickering, 1823).

²The doctrines of the classical and neoclassical schools are discussed in more detail in Chapters 13, 14, and 15, and Chapters 16-27 are devoted primarily to analysis of attempts to put these doctrines into practice.

schools which developed in the nineteenth and twentieth centuries accepted the hypothesis of natural causation, and for that reason they are sometimes called positivistic.

The Cartographic School

The cartographic or geographic school used methods similar to those used in more recent years by ecologists and epidemiologists. Its originators were concerned primarily with the distribution of crimes in certain areas, both geographical and social. They saw crime as a necessary expression of social conditions. Quetelet and A. M. Guerry were the leaders of this approach in France, and they had a large number of followers in that country, in England, and Germany. The school flourished from about 1830 to 1880. In addition to analyzing distributions of general crime rates and correlating them with distributions of other social conditions, adherents of the school made special studies of juvenile delinquency and of professional crime which are comparable with those of the present century.³ The basic notion was, and is, that crime is caused by the conflicts of values arising when legal norms fail to take into consideration the behavioral norms that are specific to the lower socioeconomic classes, various age groups, religious groups, and interest groups living in certain geographic areas. Early proponents of the school also saw crime rooted in "poverty, misery and depravity,"⁴ but they tended to hold each individual criminal responsible for falling to his or her lowly state. Later proponents merged with the socialist school.

The Socialist School

The socialist school of criminology, based on the ideas of Marx and Engels, began about 1850 and emphasized economic determinism. Marx himself had little to say about crime and criminals. His ideas about the origin and maintenance of social inequality were "applied" to the study of crime by others. The resulting theory of crime causation was so simplistic that it can hardly be called Marxist.

Marx's basic idea was that inequality and poverty result from private ownership of the means of production, a system which exploits the working classes. To the criminologists, this came to mean that inequality and poverty cause people to turn to crime. Although the mechanisms by which poverty might "work" to produce crime were not spelled out, the research studies done by even the early members of this school were scientific. They started by hypothesizing that crime rates are affected by economic conditions such as fluctuations in the business

³Alfred Lindesmith and Yale Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42:653-71, 1937; Yale Levin and Alfred Lindesmith, "English Ecology and Criminology of the Past Century," *Journal of Criminal Law and Criminology*, 27:801-16, 1937.

⁴Henry Mayhew, *London Labour and the London Poor: Cyclopaedia of the Conditions and Earnings of Those That Will Not Work* (London: Charles Griffin, 1861), 1:6.

cycle, and then tested the hypothesis with statistical data in a manner which enabled others to repeat the work and test the conclusions.⁵

The earlier studies used statistical methods, measures of crime, and measures of economic conditions that are quite naive by present-day standards. Nevertheless, many empirical studies—most of them done by non-Marxists—show that variations in crime rates are associated with variations in economic conditions. Modern Marxian criminologists are more theoretical than empirical. They tend to reject the idea that criminology can or should be scientific. They explore our consciousness, examine how we understand the world, seek a critical understanding of official reality, and question the state and its legal system. The emphasis is thus on the sociology of criminal law, rather than on the sociology of lawbreaking or of reactions to it.

Typological Schools

Three schools of criminology which have been called "typological" or "biotypological" have developed. They are similar in their general logic and methodology; all are based on a postulate that criminals differ from noncriminals in certain traits of personality, which promote unusual tendencies to commit crimes in situations in which others do not commit crimes. The three typological schools differ from each other as to the specific traits which differentiate criminals from noncriminals.

The Lombrosians Lombroso was the leader of a school which came to be called the "Italian school," or the "positive school." The first statement of his theory was in a pamphlet published in 1876; it grew to a three-volume book in subsequent editions.⁶ In its earlier and more clear-cut form this theory consisted of the following propositions: (1) Criminals are, by birth, a distinct type. (2) This type can be recognized by stigmata or anomalies, such as asymmetrical cranium, long lower jaw, flattened nose, scanty beard, and low sensitivity to pain.⁷ The criminal type is clearly represented in a person with more than five such stigmata, incompletely represented by three to five, and not necessarily indicated by less than three. (3) These physical anomalies do not in themselves cause crime; rather they identify the personality which is predisposed to criminal behavior, and this personality is either a reversion to the savage type—an atavism—or else a product of degeneration. (4) Because of their personal natures, such persons cannot refrain from crime unless the circumstances of life are unusually favorable. (5) Some of

⁵For a report on some of the early studies using a Marxist approach (Friedrich Engels, 1892; Filippo Turatio, 1883; Bruno Battaglia, 1886; Joseph Van Kan, 1903; Willem Bonger, 1905), see Stephen Schafer, *Introduction to Criminology* (Reston, Va.: Reston Publishing Company, 1976), pp. 75-78.

⁶Cesare Lombroso, *L'uomo delinquente* (Torino, Italy: Bocca, 1896-97). See also Marvin E. Wolfgang, "Pioneers in Criminology: Cesare Lombroso (1835-1909)," *Journal of Criminal Law, Criminology, and Police Science*, 52:361-391, 1961.

⁷The belief that criminals have unique physical characteristics appeared long before Lombroso. See C. Bernaldo de Quiros, *Modern Theories of Criminality*, trans. Alfonso de Salvio (Boston: Little, Brown, 1911), pp. 4-5.

Lombroso's followers concluded that the several classes of criminals, such as thieves, murderers, and sex offenders, are differentiated from each other by physical stigmata.

The Lombrosian school was at first directed against the classical school. It provoked considerable controversy by asserting, like the cartographic and socialist schools before it, that engaging in criminal conduct is determined by conditions beyond the control of the actor and is not therefore to be understood as an exercise in free will. Later it was directed against Tarde's attempt to reconcile moral responsibility with determinism and against his theory of imitation.⁸ The controversy then focussed on the question of biological versus social determinism. As a result of these controversies, Lombroso gradually modified his conclusions, especially as to the "born criminal," and reduced the proportion of criminals who were "born criminals" from approximately 100 percent to about 40 percent. Garofalo, Ferri, and other followers of Lombroso made other modifications, so that the school lost its clear-cut characteristics.

The conception that criminals constitute a distinct physical type was disproved to the satisfaction of most scholars when Goring, an English physician, made a comparison of several thousand criminals and several thousand noncriminals and found no significant difference between them.⁹ Lombroso and his followers had never made a careful comparison of criminals and noncriminals and had little knowledge of the "savage" whom the criminals were supposed to resemble. The morphological emphasis has continued in modified form in South America. It was in vogue in the United States until about 1915, and it continues, currently, in attempts to locate the cause of some criminality in chromosomal imbalances.¹⁰

The Intelligence Testers When the Lombrosian school fell into disrepute, its logic and methodology were retained, but "feble-mindedness" was substituted for physical type as the characteristic which differentiated criminals from noncriminals. This school was represented most clearly by Goddard's theory that "feble-mindedness," inherited as a Mendelian unit, causes crime for the reason that the mentally retarded person is unable to appreciate the consequences of his or her behavior or appreciate the meaning of law.¹¹ Goddard's tests showed that almost all criminals were "feble-minded," and he asserted, also, that almost all "feble-minded" persons were criminals. As intelligence tests became standardized and were applied to a larger number of criminal and noncriminal persons, the importance attributed to mental retardation in the causation of crime decreased greatly, and this school of thought dissolved.

⁸Gabriel Tarde, *Penal Philosophy* trans. Rapelje Howell and Edward Lindsey (Boston: Little, Brown, 1912). This book was first published in 1890.

⁹Charles Goring, *The English Convict* (London: His Majesty's Stationery Office, 1913).

¹⁰M. F. Ashley Montagu, "Chromosomes and Crime," *Psychology Today*, 2:42-49, October, 1968; and Donald J. West, ed., *Criminological Implications of Chromosome Abnormalities* (Cambridge: Institute of Criminology, 1969).

¹¹H. H. Goddard, *Feeble-mindedness* (New York: Macmillan, 1914).

The Psychiatric School The psychiatric school is a continuation of the Lombrosian school without the latter's emphasis on morphological traits. In the earlier years it emphasized, as did Lombroso, psychoses, epilepsy, and "moral insanity," but it has attributed increasing importance to emotional disturbances and other minor psychopathies as the school of intelligence testers fell into disrepute. Also, in the later history of this school, it has held that these emotional disturbances are acquired in social interaction rather than by biological inheritance. Many variations are found within this school, but the major influence has been the Freudian theory, especially in its earlier form, which placed great emphasis on frustration and "the unconscious." The central thesis is that a certain organization of the personality, developed entirely apart from criminal culture, will result in criminal behavior regardless of social situations. For example, Aichhorn claimed that a delinquent personality is formed in the first few years of a child's life. If a boy is not socialized in a manner such that he learns to control his instincts for pleasure, he will come into conflict with society. His ego will be faulty because he was unable to adjust to the problem of leaving the pleasures of childhood for the reality of adult life.¹² The most extreme writers hold that all or almost all criminals develop by processes similar to this; the less extreme writers attempt to isolate a smaller fraction of the criminals for explanation in this manner. The notion that criminals must as a matter of policy be "treated" rather than punished is part of this school of thought.

The Sociological and Social Psychological School

Of all the schools of criminology, this one is the most varied and diverse. Analysis of crime in a sociological manner actually began with the cartographic and socialist schools. Also, many nineteenth-century European scholars belonging to neither of these schools interpreted crime as a function of social environment. Among these were Von Liszt (Germany), Prins (Belgium), Van Hamel (Holland), and Fointsky (Russia). Tarde, a French social psychologist and a contemporary of Lombroso, refuted the prevailing biological notions and developed a theory emphasizing the importance of "imitation" in crime causation. His basic notion was that one behaves according to the customs of his society; if a man steals or murders, he is merely imitating someone else.

The greatest development of the sociological school has taken place in the United States. Late in the nineteenth century, criminology was accepted as a field of study by the growing university departments of sociology, and in the United States since that time systematic studies of crime and criminals have been made primarily by sociologists. A survey made in 1901 indicated that criminology and penology were among the first courses offered under the general title "sociology"

¹²August Aichhorn, *Wayward Youth* (New York: Viking Press, 1936). See the more general discussion in David Feldman, "Psychoanalysis and Crime," chap. in Bernard Rosenberg, Israel Gerver, and F. William Howton, eds., *Mass Society in Crisis* (New York: Macmillan, 1964), pp. 50-58.

in United States colleges and universities,¹³ and the *American Journal of Sociology* included articles and book reviews on criminology when it was first published in 1895. However, American sociologists, like most European scholars, were deeply impressed by many of the Lombrosian arguments,¹⁴ and it was not until about 1915, after the publication of Goring's work, that a strong environmentalist position was cultivated. It was probably this trend which prompted a sociologist to write in 1914:

The longer the study of crime has continued in this country, the greater has grown the number of causes of crime which may be described as social. This is the aspect in the development of American criminology which has given to that study in this country the title of "The American School."¹⁵

The central thesis of the sociological school is that criminal behavior results from the same processes as other social behavior. Analyses of these processes as they pertain to criminality have taken two principal forms. First, sociologists have attempted to relate variations in crime rates to variations in social organization, including the variations in larger institutional systems. The following are some of the social conditions which have been discussed in relation to variations in the crime rates of societies and subsocieties: the processes of mobility, culture conflict, normative conflict, competition, and stratification; political, religious, and economic ideologies; population density and composition; and the distribution of wealth, income, and employment. This kind of analysis fell into disfavor in the years between about 1940 and 1955, principally because criminologists have become extremely cautious about basing generalizations on the available crime statistics. Because variations in crime rates may represent mere differences in statistical procedures, rather than real variations in the frequency of crime, sociological analysis of the variations is extremely hazardous. Sociologists are now concentrating much time and attention on the processes by which various agencies manufacture sets of crime and delinquency statistics. Nevertheless, the trend in criminology since about 1955 has been toward analysis of the relationships between aspects of the social structure and variations in crime rates, especially variations by social class.

Second, sociologists have attempted to identify the processes by which persons become criminals. These analyses are related to general theories of social learning and have utilized such concepts as imitation, attitude-value, compensation, frustration-aggression, differential association, and reinforcement. The principal

¹³Frank L. Tolman, "The Study of Sociology in Institutions of Learning in the United States," *American Journal of Sociology* 7:797-838, 1902; 8:85-121, 1902; 8:251-72, 1902; 8:531-58, 1903.

¹⁴See, for example, Carroll D. Wright, *Outline of Practical Sociology* (New York: Longmans Green, 1899); Maurice F. Parmelee, *The Principles of Anthropology and Sociology in Their Relations to Criminal Procedure* (New York: Macmillan, 1908); Phillip Parsons, *Responsibility for Crime* (New York: Columbia University Press, 1909).

¹⁵John L. Gillin, "Social Factors Affecting the Volume of Crime," in *Physical Basis of Crime: A Symposium* (Easton, Pa.: American Academy of Medicine, 1914), pp. 53-67.

orientation at present is generally taken from the social psychological theories of John Dewey, George Mead, Charles Cooley, and W. I. Thomas, and the development of criminal behavior is considered as involving the same learning processes as does the development of the behavior of a banker, teacher, or student. The content of learning, not the process itself, is considered the significant element which determines whether one becomes a criminal or a noncriminal.

EPIDEMIOLOGY AND INDIVIDUAL CONDUCT

The basic controversy in criminology in the United States at present is that between the psychiatric school and the sociological school. Members of the sociological school recognize that psychogenic traits must be taken into account in the explanation of criminal behavior, and members of the psychiatric school have recognized the importance of social and cultural conditions. But there is disagreement over the extent to which "personality" and "culture" should be emphasized in criminological theories, largely because there is no consensus as to the specific manner in which personality and culture interact to produce specific forms of noncriminal behavior.

Some writers in both schools have made classifications of criminals, with the conception that one class is due to personality and another to culture.¹⁶ It is sometimes said that sociologists study crime rates while psychiatrists study individual conduct, and that the two kinds of resulting theory need not be consistent. These practices seem to form a basis for merging the psychiatric and sociological approaches to an explanation of criminal behavior, but they really just avoid the difficult problem of determining the relationship between culture and personality. The problem of how, or whether, basic personality traits and culture combine remains a point of controversy.

Perhaps a new school of criminology will soon develop. Ideally, the theory forming the basis of this school will have three distinct but consistent aspects. First, there will be a statement that explains the statistical distribution of criminal behavior in time and space (epidemiology), from which predictive statements about unknown statistical distributions can be derived. Second, there will be a statement that identifies the process or processes by which persons come to exhibit criminal behavior, from which can be derived predictive statements about the behavior of individuals. Third, there will be demonstration of how both lawmaking and reactions to lawbreaking can be made consistent with the explanations of crime rates and criminality.

Concentration on only one segment of this theoretical problem is sometimes necessary, but it is erroneous and inefficient to ignore the other segments or to

¹⁶A. R. Lindesmith and H. W. Dunham, "Some Principles of Criminal Typology," *Social Forces*, 19:307-14, 1941; Guy Houchon, "Contribution à la Methode Differentielle en Criminologie," *Revue Internationale de Criminologie et de Police Technique*, 18:19-32, 1964; and Richard O. Nahrendorf, "Typologies of Crime and Delinquency: Classification or Methodology?" *Sociologia Internationalis*, 5:15-33, 1967.

turn them over to another academic discipline. This means that as time goes on, the psychiatric school, which now concentrates on individual criminality, will attempt to explain crime rates with a consistent set of theory, that those sociologists who concentrate only on explaining the distribution of crime will develop a consistent set of theory to explain individual criminal conduct, and that the resulting merger of psychiatric and sociological theory will be utilized by lawyers and others who write new criminal codes and devise procedures for their administration. Modern behavioral psychology, which is neither sociological nor psychiatric nor punitive in orientation, probably will be at the base of this "new" criminology.¹⁷

THE MULTIPLE-FACTOR APPROACH

In contrast with the preceding schools of criminology, which are oriented to integrated theory, many scholars have insisted that crime is a product of a large number and great variety of factors, and that these factors cannot now, and perhaps cannot ever, be integrated theoretically. That is, they insist that no scientific theory of criminal behavior is possible. The multiple-factor approach, which is not a theory, is used primarily in discussions of individual cases of crime, but one form of this approach is also used in analyses of variations in crime rates.

Persons who study individual cases by means of this approach are convinced that one crime is caused by one combination of circumstances or "factors," while another crime is caused by another combination of circumstances or factors. This eclecticism is often considered more rigorously empirical than explanations stated in terms of an integrated theory. William Healy's emphasis upon multiple causation in the cases of individual delinquents, at a time when many persons were seeking arguments for discounting the biological and physical explanations of crime, played an important role in the rise of this assumption.¹⁸ Healy was determined that no theoretical orientation or preconception would influence his findings and that he would simply observe any "causal factor" present. The inevitable consequence of such crass empiricism was the discovery, in a now-famous study, of no less than 170 distinct conditions, every one of which was considered as conducive to delinquency.¹⁹ The following is an example of multiple-factor thinking about individual cases:

Elaborate investigations of delinquents give us conclusive evidence that there is no single predisposing factor leading inevitably to delinquent behavior. On the other hand, the delinquent child is generally a child handicapped not by one or two, but usually by seven or eight counts. We are safe in concluding that almost any child can overcome one or two handicaps, such as the death of one parent or poverty and poor health. However, if the child

¹⁷See Harvey Wheeler, ed., *Beyond the Punitive Society: Operant Conditioning—Social and Political Aspects* (San Francisco, W. H. Freeman, 1973).

¹⁸William Healy, *The Individual Delinquent* (Boston: Little, Brown, 1915).

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

has a drunken unemployed father and an immoral mother, is mentally deficient, is taken out of school at an early age and put to work in a factory, and lives in a crowded home in a bad neighborhood, nearly every factor in his environment may seem to militate against him.²⁰

Although this statement seems to be based on an assumption that each factor is of equal importance, adherents of the multiple-factor notion ordinarily argue that either the presence of one or two "important" factors or seven or eight "minor" factors will cause delinquency.

When variations in crime rates are the object of consideration, conditions found to be statistically associated with high crime rates are taken as the units of study. Thus, in the United States, males have a higher crime rate than females, blacks than whites, young adults than middle-aged, and city residents than rural residents. The advocates of the multiple-factor approach to the study of crime rates make little or no attempt to discover processes common to males, blacks, young adults, and city residents. However, they do not impute causal power to the factors either; this is in contrast to the persons who use the multiple-factor approach in studying individual cases. Ogburn used this procedure in one of the early comparisons of crime rates of American cities.²¹ Reckless pioneered its use, under the name "actuarial approach," in the study of differential reactions to the lawbreaking of various categories of citizens, its most common usage at present:

The actuarial approach assumes that individuals have a greater or lesser liability to be caught and reported as violators [of the criminal law] by virtue of the position they occupy in society as determined by their age, sex, race, nativity, occupational level, and type of residence. The behavior which is studied is only that which is reported in contrast to that which is not recorded. The liability is strictly that of becoming the sort of violator who is reported.²²

Some adherents of multiple-factor "theory" take pride in their eclectic position, pointing to the narrow, particularistic explanations of other schools and to their own broadmindedness in including all types of factors.²³ Others agree on the desirability of a generalized and integrated theory and on the possibility of developing such a theory in the long run, but they point to the breakdown of all such explanations and insist that the most economical procedure for the present generation is to accumulate factual knowledge rather than add to the futile attempts at new generalizations. Often the contribution of multiple-factor studies to criminal-law administration, rather than to the development of a body of scientific principles, is emphasized.

²⁰Mabel A. Elliott and Francis E. Merrill, *Social Disorganization* (New York: Harper, 1941), p. 111.

²¹William F. Ogburn, "Factors in the Variation of Crimes Among Cities," *Journal of the American Statistical Association*, 30: 12-34, 1935.

²²Walter C. Reckless, *The Etiology of Delinquent and Criminal Behavior* (New York: Social Science Research Council, 1943), p. 74.

²³See Sheldon Glueck, "Theory and Fact in Criminology," *British Journal of Delinquency*, 7: 92-109, 1956.

Albert Cohen has made one of the best critiques of the multiple-factor approach in criminology, and some of the comments above are from his work.²⁴ There are three major points in the critique, which is directed at the approach as it is used in the study of individual cases. He points out, first, that there has been a confusion of explanations by means of a *single factor* and explanation by a *single theory* or system of theory applicable to all cases. A single theory does not explain crime in terms of a single factor, and it is often concerned with a number of variables. A *variable* is a characteristic or aspect—such as velocity or income—with respect to which something may vary. We make statements of fact in terms of the *values* of these variables, for example, "The crime rate is high among persons with incomes of less than \$3000 per year." The pertinent variable here is income, and its value is \$3000. But neither a statement of one fact ("single factor") nor a series of such statements ("multiple factors") about crime is a theoretical explanation of crime. A theoretical explanation, a *single theory*, organizes and relates the variables. It is an abstract statement of how the known variations in the values of one variable are related to known variations in the values of other variables. A test of the theory is how well it accounts for all of the variations in the values of the variables.

Cohen's second point is that factors are not only confused with causes, but each factor also is assumed to contain *within itself* a capacity to produce crime, a fixed amount of crime-producing power. Thus, one factor is not always considered powerful enough to produce crime in individual cases—several factors must conspire to do so. As Cyril Burt said, "It takes many coats of pitch to paint a thing thoroughly black." Sometimes the basis for imputing causal power to a factor in an individual case is statistical association between high crime rates and that factor. Thus, if a study of various areas of a city has revealed that high crime rates and "poor housing" are usually found together, an investigator studying a juvenile delinquent who lives in a poor house may assign causal power to the condition of the house. Or if the delinquency rate among "only children" is high, causal power may be assigned to the fact that a particular child is an only child. Statisticians have pointed out that this practice is fallacious, and it is not an intrinsic part of the "actuarial approach."²⁵ Another consideration is that sometimes the basis for imputing causal power to a factor cannot be determined at all, for it is based upon rather subjective, intuitive judgments of the investigators. Furthermore, each factor is assumed to be independent of all other factors and to operate independently of the actor's definition of the situation. However, the factor "only child," for example, obviously has no intrinsic qualities which produce delinquency or nondelinquency; instead, the *meaning* of being an only child varies with

²⁴Albert K. Cohen, "Juvenile Delinquency and the Social Structure" (Ph.D. dissertation, Harvard University, 1951), pp. 5-13. See also his *Delinquent Boys: The Culture of the Gang* (Glencoe, Ill.: Free Press, 1955).

²⁵William S. Robinson, "Ecological Correlations and the Behavior of Individuals," *American Sociological Review*, 15:351-57, 1950; Leo A. Goodman, "Some Alternatives to Ecological Correlation," *American Journal of Sociology*, 64:610-25, 1959.

differences in local customs, national and ethnic mores, and various other social conditions.

Third, Cohen points out, the "evil-causes-evil fallacy" usually characterizes multiple-factor studies, although it is neither a necessary part of the approach nor peculiar to it. This fallacy is that "evil" results (crime) must have "evil" precedents (broken home, psychopathic personality, and so on). Thus, when we "explain" crime or almost any other social problem, we tend merely to catalog a series of sordid and ugly circumstances which any decent citizen would deplore, and attribute causal power to those circumstances. In criminology, this fallacious procedure might stem from a desire to eradicate crime without changing other existing conditions which we cherish and esteem; that is, criminologists tend to identify with the existing social order and seek causes of crime in factors which might be eliminated without changing social conditions that they hold dear, or that may be safely deplored without hurting anyone's feelings.

METHODS OF STUDYING CRIME

Explanations of crime have been derived from two general types of methodology. The first is the commonsense approach by which people become acquainted with a community, a business, politics, or any social issue. This methodology is used by the historian and by all social scientists. It consists of collecting and arranging data that are believed to be significant. It is not the methodology of science outlined in textbooks on logic. It is impressionistic and deals with general tendencies rather than with specific interpretations. Consequently, the person using it is able to take into account a great variety of conditions which could not be considered if the methodology were more precise. One of the most important of these omissions in contemporary criminology is concern for the immense amount of white-collar fraud. These crimes seem to have permeated modern life and to have social effects which are far more serious than the effects of "street crime." However, these impressions cannot be documented statistically or by any precise methodology.

The second general methodology is systematic study of persons who are arrested or convicted of crimes or of the statistics of such arrests and convictions. This methodology is more precise and "scientific" than the first; it deals with specific variables and, usually, specific types of criminal behavior.²⁶ The more popular techniques or "methods" included within the scope of this methodology are discussed below. In later chapters, many examples of research studies utilizing the various methods will be given.

Statistics of Crimes

One common criminological method is the determination of the correlation between arrests or convictions and certain specific physical or social variables.

²⁶See Guy Houchon, "Modèles de Recherche et Equipment en Criminologie," *Annales de la Faculté de Droit de Liège*, 1965, pp. 241-304.

Bonger used this method and presented a mass of materials purporting to show a close correlation between crime rates and economic conditions.²⁷ Others have used the same method in an effort to determine the statistical significance of seasons, of unemployment, of congestion of population. Thus, the correlations may be between crime rates and certain conditions over a period of time, or they may be between crime rates and certain conditions in space. One of the difficulties of this method has been the lack of reliable crime statistics, and lack of concern for the processes by which statistics are produced. Another difficulty is that, at most, it merely identifies general relationships. It may determine, for instance, that more crimes are committed against the person in hot weather than in cold weather, but it does not tell whether this is due to the direct effect of temperature upon temper, or to a greater frequency of contacts between people in hot weather than in cold weather, or to a greater frequency of intoxication in hot weather, or to some other variable. Consequently this method is of value in collecting data but does not necessarily lead to theoretical statements about the data.

Statistics of Traits and Conditions of Criminals

A second statistical method is comparison of the frequency with which one or more traits or conditions appears among criminals with the frequency with which it occurs among noncriminals. Thus, personality tests have been used to determine the relative frequency of emotional disturbances among criminals and noncriminals. Also, enumerations have been made of the criminals who come from homes broken by death, divorce, and desertion of one or both parents in comparison with the number of law-abiding persons who come from such homes. Similarly, race, sex, age, nativity, alcoholism of self or of parents, education, and other conditions are studied. In the course of such studies many traits and conditions are compared, but in general each one is abstracted from the others. Often, as indicated above, each trait showing a relatively high incidence among criminals is considered one of many "factors" in crime. No pretense is made of studying any criminal as a unit, and no effort is made to determine the conditions producing the criminality of particular persons by this method.

Valuable information, preliminary to the formulation of a theory, may be secured in this way. The ideal study of this kind would reveal that certain traits or conditions were present among all criminals, or all criminals of a certain type, and that these traits or conditions were absent among all noncriminals. But there are several difficulties and inadequacies in this method:

1. There is practically no information accessible in regard to criminals, as such. The only information generally available concerns prisoners. Prisoners are a selected group of criminals, and an enumeration of their traits or conditions would, presumably, yield results different from an enumeration of the same traits

²⁷W. A. Bonger, *Criminality and Economic Conditions* (Boston: Little, Brown, 1916).

or conditions of all criminals. This is a difficulty that confronts any method of studying criminals, but it is more distinctly a limitation of this method than of some of the others because this method depends on mass information. Apparently, the best that can be done at present is to recognize the apparent biases in the statistics and to try to make allowances for them, or to attempt to secure other statistics regarding criminals not adequately represented in prisons.

2. The data regarding arrestees and prisoners are doubtful in many respects. Such evident conditions as race, sex, and age can be determined with a fair degree of accuracy, but it is impossible to secure other data, such as income, home conditions, or employment history, without intensive investigations in the communities in which the prisoners lived prior to arrest. Beyond these rather formal items, reliable information can be secured only with great difficulty. Even when prisoners are cooperative, unreliability enters because of errors of memory, perception, and interpretation.

3. When this method is used, it is necessary to make comparisons with the general population and also with specialized occupational, racial, sex, age, and other groups from which criminals come. It is often necessary to assume, therefore, that the sample of the general population does not include persons who have violated the criminal law without detection or apprehension. This assumption is unwarranted. Standards for the entire population and especially for particular groups are lacking. It has been customary for those who use this method to enumerate their cases and then, without knowing how prevalent the same traits are in the general population, assert that the enumerated traits are important "causes of" or "factors in" crime. For instance, it is frequently reported that a specified part of the criminal population is found, on examination, to be psychopathic, and that this trait is therefore extremely important in the causation of crime. But no one knows how large a percentage of the general population would also be found, by the same standards, to be psychopathic. It was once frequently asserted that "feeble-mindedness" was much more common among criminals than among noncriminals, but the general administration of army tests during World War I revealed that the proportion of the population estimated to be "feeble-minded" had been far too small.

4. No matter how many traits or conditions are enumerated, this method cannot by itself provide a framework for understanding the mechanisms by which crime and criminality are produced. We may find, for instance, that the male is ten times as criminalistic, judged by commitments to prison, as the female. But males are also ten times as likely to be killed by lightning. Is this a sex difference, or a result of differences in occupations, or the general mode of life, or something else? If we find that there is a close correlation between the criminality of juveniles and the alcoholism of their parents, we want to know whether the child is delinquent because the parent spends money for alcohol that ought to be used to obtain necessities for the child, or because the discipline of the home is irregular or brutal, or because the child becomes emotionally disturbed, or because

alcoholism of parents creates a condition whereby the child comes into contact with an excess of delinquent behavior patterns. As a leading social psychologist stated more than fifty years ago, "Taken in themselves, statistics are nothing more than symptoms of unknown causal processes."²⁸

5. Sometimes the traits and conditions which are compared are so loosely defined that their frequency distribution in the two populations can only be asserted, not demonstrated. The incidence of "constitutional inferiority," "bad home environment," and "psychological tensions," for example, cannot be determined with accuracy simply because the concepts are so vague that investigators cannot agree on their presence or absence in individual cases.

6. The statistical enumeration of an excess of certain traits and conditions among delinquents or criminals gives no clues as to why some offenders who do not possess the traits or conditions are criminals, or why some persons who do possess them are not delinquents or criminals. Thus, for example, a good statistical study will tell us how much more frequently delinquency occurs in children from homes broken by divorce, desertion, or death than in children from homes not so broken. But we need to know more than that—why some persons from intact homes are nevertheless delinquent, and why some children from broken homes do not become delinquent.²⁹ Ideally, we should have information that will enable us to state that persons with such-and-such attitudes or who live under such-and-such social conditions will all become delinquent. Perhaps it will never be possible to construct precise rules of this kind, but it is certain that the statistics of traits of criminals will not be sufficient in themselves.³⁰ The differential association theory presented in Chapter 4 is an attempt to organize, integrate, and give meaning to statistical information about crimes and criminals, among other things.

Individual Case Study

In the individual case-study method, the criminal, rather than the trait or condition, is regarded as the unit. The traits and conditions of one criminal are all studied together. It is not necessary to abstain from statistics in this method, and it differs from the method just described largely in that the individual, rather than any abstracted trait or condition, is the unit of study. The same traits may be studied by each method. If the importance of the home environment to crime is determined by a comparison of the grades or indices of the homes of delinquents and of nondelinquents, it is not the individual case method. If the importance of the home environment is determined by a consideration of the home in relation to the rest of the life situation of a criminal, it is the individual case method. The differences in the methods are further emphasized by recalling that the purpose of

²⁸W. I. Thomas, *The Unadjusted Girl* (Boston: Little, Brown, 1923), p. 244.

²⁹See the discussion in Chapter 10.

³⁰See Marvin E. Wolfgang and Harvey A. Smith, "Mathematical Models in Criminology," *International Social Science Journal*, 18:200-233, 1966.

the comparison of the home indices of criminals and noncriminals is to determine the relative frequency of home conditions of specified kinds among the two groups. The purpose of the individual case study is to determine how and why certain types of homes produce delinquency—how they produce delinquency, rather than how frequently delinquency is found in them.

The study of individual cases can be made on a multiple-factor level, or it can be used to discover meaningful hypotheses to be tested by other methods or by analyses of other cases. The first use of the method, the enumeration of multiple factors, has already been discussed. The assertion that a certain combination of factors caused the delinquency in an individual case often rests on an implicit, "hidden" theory which the person making the study has in mind. It is important, in scientific work, that these implicit theories be made explicit. In his pioneer study of delinquents, Healy listed factors located by means of reviewing the child's family and developmental histories, by examining the child's environment (including home and neighborhood), by taking physical and psychological measurements, and by making medical and psychiatric examinations.³¹ The list of specific items under these heads covers nine pages in his book. But Healy emphasized the importance of studying psychological factors such as mental dissatisfaction, irritative mental reactions to environmental conditions, obsessional imagery, adolescent mental instabilities and impulses, emotional disturbances, worries and repressions, antisocial grudges, mental peculiarities or aberrations, and mental defects.³² This would indicate that the causal factors considered as significant to the delinquency of each case actually were those which supported a hidden psychiatric hypothesis about delinquency. In later books, Healy explicitly stated this hypothesis and reported on specific efforts to test it by the method of examining the traits of delinquents and nondelinquents.³³ An alternative interpretation is that the earlier case studies were conducted on an exploratory basis, and that the psychiatric theory was suggested by them. While this hypothesis is doubtful in this particular instance, exploratory examination of case histories, including life histories and autobiographies of criminals and delinquents, can provide significant hypotheses about the etiology of criminal behavior.

The individual case-study method is subject to two general criticisms: (1) Explanations of the specific delinquencies are too much subject to the individual whim or prejudice of the investigator. Consequently, there is danger of making much of conditions which are really insignificant and neglecting conditions that are very significant. This means that the investigator sees in the materials of an

³¹Healy, *The Individual Delinquent*, pp. 53-63.

³²*Ibid.*, pp. 28, 32.

³³William Healy and Augusta F. Bronner, *New Light on Delinquency and Its Treatment* (New Haven: Yale University Press, 1936).

individual case those things which fit into his or her own preexisting scheme for explaining delinquency, even if that scheme is not stated. The check on this explanation is the judgment of other investigators who examine the same case and carefully state their hypotheses. (2) Most of the persons making case studies are employed by agencies dealing with delinquents, and their studies must result in advice regarding procedure. Consequently, there is a probability that the studies will be directly oriented toward temporary modification of delinquency rather than toward understanding delinquency. The items which can be readily modified may be selected as causes, or considerations of practicability in dealing with the offender may determine both the kind of statistics produced and the explanation which is given. There is a tendency to be concerned with any physical or other defect that may need to be corrected, even if it is not considered relevant to the individual's criminality.

Limited Case Study

In an attempt to explain drug addiction, Lindesmith used a method aimed at the production of generalizations rather than a multiple-factor "theory." This system also has been used in a study of embezzlers.³⁴ The method involves case studies, directed by explicit hypotheses, of rigorously defined categories of behavior. The procedure has essentially the following seven steps: (1) A rough definition of the behavior to be explained is formulated. (2) A hypothetical explanation of the behavior is formulated. (3) One case is studied in the light of the hypothesis with the object of determining whether the hypothesis fits the facts in that case. (4) If the hypothesis does not fit the facts, either the hypothesis is reformulated or the behavior to be explained is redefined so that the case is excluded. This definition must be more precise than the first one, and it may not be formulated *solely* to exclude a negative case. The negative case is viewed as a sign that something is wrong with the hypothesis, and redefinition takes place so that the cases of behavior being explained will be homogeneous. (5) Practical certainty may be attained after a small number of cases has been examined in this way, but the location by the investigator, or anyone else, of a negative case disproves the explanation and requires a reformulation. (6) This procedure of examining cases, redefining the behavior, and reformulating the hypothesis is continued until a universal relationship is established, each negative case calling for a redefinition or a reformulation. The negative case—that is, the one which does not fit the hypothesis—is the important point in the procedure, for it calls for redefinition or reformulation. (7) For purposes of proof, cases outside the area circumscribed by the definition are examined to make certain that the final hypothesis does not

³⁴Alfred R. Lindesmith, *Opiate Addiction* (Bloomington, Ind.: Principia Press, 1947), and *Addiction and Opiates* (Chicago: Aldine, 1968); Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* (Glencoe, Ill.: Free Press, 1953). See also Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963).

apply to them. This step is in keeping with the observation that scientific generalizations consist of descriptions of conditions which are always present when the phenomenon being explained is present but which are never present when the phenomenon is absent.

This method is not statistical in the ordinary sense, nor is it the case-study method in the ordinary sense. It combines the individual case-study method and the method of statistical examination of traits of criminals, for it examines individual cases of criminality in the light of a hypothesis and then, for purposes of proof, attempts to determine whether or not that hypothesis also pertains to cases of noncriminality. At the same time, however, it differs from either of these methods: it does not attempt to secure a general picture of the person, but only such facts as bear upon the hypothesis, and it attempts to go beyond statistical tendencies to a theoretical explanation. The method has been criticized on the ground that it merely produces precise definitions of various types of behavior, rather than explanations of that behavior.³⁵

Study of the Criminal "In the Open"

Another method of studying crime is by association with criminals "in the open." Those who have had intimate contacts with criminals know that criminals are not "natural" in police stations, courts, and prisons, and that they must be studied in their everyday life outside of institutions if they are to be understood. By this is meant that the investigator must associate with them as one of them, seeing their lives and conditions as the criminals themselves see them. In this way, observations can be made on attitudes, traits, and processes which can hardly be made in any other way. Also, observations are of unapprehended criminals, not the criminals selected by the process of arrest and imprisonment.

An excellent study of persons receiving stolen goods was recently made by this method.³⁶ Unlike its author, however, few individuals have the ability to secure the trust of criminals. After all, criminals have little to gain and much to lose by allowing observers to hang around with them. Further, one observer cannot build upon the work of another to a very great extent, for precise, controlled techniques of observation can scarcely be employed. Moreover, it cannot be assumed that criminals know much about crime and criminal behavior, even if they volunteer information regarding the processes by which they became criminals. Nevertheless, study of criminals in natural settings can generate useful and fruitful hypotheses, especially if the study is guided by the principles of the limited case method.³⁷

³⁵Ralph H. Turner, "The Quest for Universals in Sociological Research," *American Sociological Review*, 18: 604-11, 1953.

³⁶Carl B. Klockars, *The Professional Fence* (New York: Free Press, 1974).

³⁷Cf. Ned Polsky, *Hustlers, Beats, and Others* (Chicago: Aldine, 1967).

Experimental Method

It is possible to test hypotheses regarding causes of delinquency or crime by changing the behavior of groups or individuals, under controlled conditions. This is somewhat like the experimental method of the physical and biological sciences, although the control is much less complete in social situations. In criminology, experiments in social reform attempt to change the crime rate by altering the conditions believed to create and maintain it, or to change the behavior of individual criminals by changing them or the conditions in which they live. If, for example, it is believed that certain aspects of social structure produce high crime rates, then it is likely to be predicted that if those structural conditions are changed experimentally, the crime rate will go down. The Chicago Area Projects were undertaken primarily to test the hypothesis that community disorganization causes high crime rates, and the Mobilization for Youth Project in New York was an experiment designed to test whether increasing the economic opportunities available to young people would result in less delinquency.³⁸ Similarly, hypotheses regarding the processes by which persons become criminals can be tested by trying to change criminals by methods based on the hypotheses. The Cambridge-Somerville Youth Study was an experiment of this kind,³⁹ as are most attempts to change criminals by clinical methods.

However, the results of such experiments must be interpreted with extreme caution. Evidence that a crime rate goes down or that a person's behavior changes in the expected direction when a program of change based on a theory is instituted cannot by itself be taken as evidence that the theory correctly describes the social conditions which made the crime rate high or the process by which the behavior was originally acquired. The change might have been produced by things rather extraneous to the program of change, or the program might have been based on several theories, rather than on a single theory. The careful observation and elimination of such extraneous elements is the essence of a *controlled* experiment.

CONCLUSION

All the methods which have been described have a proper place in the attempt to understand crime and criminal behavior. Much futile argument has been devoted to controversies between methods and especially to the controversy between the statistical and the nonstatistical methods. The value of any method is determined by its relation to the problem which is stated, and the statement of a problem is justified by the position of that problem in the total body of knowledge. At a particular stage in the development of knowledge some problems are more important than others, and consequently some methods are more useful than others.

³⁸See the discussion in Chapter 16.

³⁹See the discussion in Chapter 26.

The "exploratory method" is needed continuously. This is a congeries of methods, including statistical descriptions and comparisons in the form of averages, percentages, and correlations; field observations; and armchair speculations. This exploratory method is justified in new areas of study because it may pave the way for later definitive studies based on general theory. Both in the total field of criminology and in smaller areas within this field, the exploratory method is the only method available for developing hypotheses and theories. Several generalizations have been made by different schools of thought regarding crime and criminal behavior as a whole. None of these generalizations is completely satisfactory, and revision of them calls for new hypotheses to be tested. Similarly, if a particular area of criminal behavior, such as kleptomania or automobile theft, is selected for study, the researcher must become acquainted with the available statistical data and use other exploratory methods before he or she is prepared to formulate definite hypotheses regarding it.

The principal argument presented in this chapter is that the multiple-factor approach, defined as mere enumeration of a series of conditions related in some manner or other to criminal behavior, is not adequate. The pride which some criminologists take in this multiple-factor approach is entirely misplaced. This "theory" should be recognized as an admission of defeat, for it means that criminological studies must always be exploratory. The criminologist can carry conclusions beyond multiple factors and reduce the series of factors to simplicity by the method of logical abstraction.

For purposes of understanding crime and criminal behavior, definitive generalizations are needed regarding crime rates and criminal behavior generally, with specifications of the general theory applied to particular criminal behaviors. The relation between the general theory and the particular crimes and criminal behaviors is analogous to the relation between a germ theory of disease and the particular germs which cause particular diseases.

Work along both of these lines is desirable. Continued efforts should be made to state valid generalizations regarding criminal behavior as a whole, and continued efforts should be made to explain particular criminal behaviors. Research work of the former type should guide the efforts of those who are attempting to explain particular criminal behaviors, and conclusions from the studies of particular areas of criminal behaviors should lead to revisions of the generalizations regarding criminal behavior as a whole. Just as the germ theory of disease does not explain all diseases, so it is possible that no one theory of criminal behavior will explain all criminal behavior. In that case, it will be desirable to define the areas to which any theory applies, so that the several theories are coordinate and, when taken together, explain all criminal behavior.⁴⁰

⁴⁰Cf. Marshall B. Clinard and Andrew L. Wade, "Toward the Delineation of Vandalism as a Sub-Type in Juvenile Delinquency," *Journal of Criminal Law, Criminology, and Police Science*, 48:493-99, 1958; Don C. Gibbons and Donald L. Garrity, "Some Suggestions for the Development of Etiological and Treatment Theory in

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4

A Sociological Theory of Criminal Behavior

The preceding discussion has suggested that a scientific explanation consists of a description of the conditions which are always present when a phenomenon occurs and which are never present when the phenomenon does not occur. Although a multitude of conditions may be associated in greater or lesser degree with the phenomenon in question, this information is relatively useless for understanding or for control if the data are left as a hodgepodge of unorganized factors. Scientists strive to organize their knowledge in interrelated general propositions, to which no exceptions can be found.

THE PROBLEM FOR CRIMINOLOGICAL THEORY

If criminology is to be scientific, the heterogeneous collection of multiple factors known to be associated with crime and criminality must be organized and integrated by means of explanatory theory which has the same characteristics as the scientific theory in other fields of study. That is, the conditions which are said to cause crime should be present when crime is present, and they should be absent when crime is absent. Such a theory or body of theory would stimulate, simplify, and give direction to criminological research, and it would provide a framework for understanding the significance of much of the knowledge acquired about crime and criminality in the past. Furthermore, it would be useful in minimizing crime rates, provided it could be "applied" in much the same way that the engineer "applies" the scientific theories of the physicist.

There are two complementary procedures which may be used to put order into criminological knowledge. The first is logical abstraction. Blacks, males, urban-dwellers, and young adults all have comparatively high crime rates. What do they have in common that results in these high crime rates? Research studies have shown that criminal behavior is associated, in greater or lesser degree, with such social and personal pathologies as poverty, bad housing, slum-residence, lack of

recreational facilities, inadequate and demoralized families, mental retardation, emotional instability, and other traits and conditions. What do these conditions have in common which apparently produces excessive criminality? Research studies have also demonstrated that many persons with those pathological traits and conditions do not commit crimes and that persons in the upper socioeconomic class frequently violate the law, although they are not in poverty, do not lack recreational facilities, and are not mentally retarded or emotionally unstable. Obviously, it is not the conditions or traits themselves which cause crime, for the conditions are sometimes present when criminality does not occur, and they also are sometimes absent when criminality does occur. A generalization about crime and criminal behavior can be reached by logically abstracting the conditions and processes which are common to the rich and the poor, the males and the females, the blacks and the whites, the urban- and the rural-dwellers, the young adults and the old adults, and the emotionally stable and the emotionally unstable who commit crimes.

In developing such generalizations, criminal behavior must be precisely defined and carefully distinguished from noncriminal behavior. Criminal behavior is human behavior, and has much in common with noncriminal behavior. An explanation of criminal behavior should be consistent with a general theory of other human behavior, but the conditions and processes said to produce crime and criminality should be specific. Many things which are necessary for behavior are not important to criminality. Respiration, for instance, is necessary for any behavior, but the respiratory process cannot be used in an explanation of criminal behavior, for it does not differentiate criminal behavior from noncriminal behavior.

The second procedure for putting order into criminological knowledge is differentiation of levels of analysis. The explanation or generalization must be limited, largely in terms of chronology, and in this way held at a particular level. For example, when Renaissance physicists stated the law of falling bodies, they were not concerned with the reasons why a body began to fall except as this might affect the initial momentum. Galileo did not study the "traits" of falling objects themselves, as Aristotle might have done. Instead, he noted the relationship of the body to its environment while it was falling freely or rolling down an inclined plane, and it made no difference to his generalization whether a body began to fall because it was dropped from the hand of an experimenter or because it rolled off the ledge of a bridge due to vibration caused by a passing vehicle. Also, a round object would roll off the bridge more readily than a square object, but this fact was not significant for the law of falling bodies. Such facts were considered as existing on a different level of explanation and were irrelevant to the problem of explaining the behavior of falling bodies.

Much of the confusion regarding crime and criminal behavior stems from a failure to define and hold constant the level at which they are explained. By analogy, many criminologists and others concerned with understanding and

defining crime would attribute some degree of causal power to the "roundness" of the object in the above illustration. However, consideration of time sequences among the conditions associated with crime and criminality may lead to simplicity of statement. In the heterogeneous collection of factors associated with crime and criminal behavior, one factor often occurs prior to another (in much the way that "roundness" occurs prior to "vibration," and "vibration" occurs prior to "rolling off a bridge"), but a theoretical statement can be made without referring to those early factors. By holding the analysis at one level, the early factors are combined with or differentiated from later factors or conditions, thus reducing the number of variables which must be considered in a theory.

A motion picture made several years ago showed two boys engaged in a minor theft; they ran when they were discovered; one boy had longer legs, escaped, and became a priest; the other had shorter legs, was caught, committed to a reformatory, and became a gangster. In this comparison, the boy who became a criminal was differentiated from the one who did not become a criminal by the length of his legs. But "length of legs" need not be considered in a criminological theory because it is obvious that this condition does not determine criminality and has no necessary relation to criminality. In the illustration, the differential in the length of the boys' legs apparently was significant to subsequent criminality or noncriminality only to the degree that it determined the subsequent experiences and associations of the two boys. It is in these experiences and associations, then, that the mechanisms and processes which are important to criminality or noncriminality are to be found.

TWO TYPES OF EXPLANATIONS OF CRIMINAL BEHAVIOR

Scientific explanations of criminal behavior may be stated either in terms of the processes which are operating at the moment of the occurrence of crime or in terms of the processes operating in the earlier history of the criminal. In the first case, the explanation may be called "mechanistic," "situational," or "dynamic"; in the second, "historical" or "developmental." Both types of explanation are desirable. The mechanistic type of explanation has been favored by physical and biological scientists, and it probably could be the more efficient type of explanation of criminal behavior. As Gibbons said:

In many cases, criminality may be a response to nothing more temporal than the provocations and attractions bound up in the immediate circumstances. It may be that, in some kinds of lawbreaking, understanding of the behavior may require detailed attention to the concatenation of events immediately preceding it. Little or nothing may be added to this understanding from a close scrutiny of the early development of the person.¹

However, criminological explanations of the mechanistic type have thus far been notably unsuccessful, perhaps largely because they have been formulated in

¹Don C. Gibbons, "Observations on the Study of Crime Causation," *American Journal of Sociology*, 77:262-78, 1971.

connection with an attempt to isolate personal and social pathologies among criminals. Work from this point of view has, at least, resulted in the conclusion that the immediate determinants of criminal behavior lie in the person-situation complex.

The objective situation is important to criminality largely to the extent that it provides an opportunity for a criminal act. A thief may steal from a fruit stand when the owner is not in sight but refrain when the owner is in sight; a bank burglar may attack a bank which is poorly protected but refrain from attacking a well-protected bank. A corporation which manufactures automobiles seldom violates the pure food and drug laws, but a meat-packing corporation might violate these laws with great frequency. But in another sense, a psychological or sociological sense, the situation is not exclusive of the person, for the situation which is important is the situation as defined by the person who is involved. That is, some persons define a situation in which a fruit-stand owner is out of sight as a "crime-committing" situation, while others do not so define it. Furthermore, the events in the person-situation complex at the time a crime occurs cannot be separated from the prior life experiences of the criminal. This means that the situation is defined by the person in terms of the inclinations and abilities which he or she has acquired. For example, while a person could define a situation in such a manner that criminal behavior would be the inevitable result, past experiences would, for the most part, determine the way in which he or she defined the situation. An explanation of criminal behavior made in terms of these past experiences is a historical or developmental explanation.

The following paragraphs state such a developmental theory of criminal behavior on the assumption that a criminal act occurs when a situation appropriate for it, as defined by the person, is present. The theory should be regarded as tentative, and it should be tested by the factual information presented in the later chapters and by all other factual information and theories which are applicable.

DEVELOPMENTAL EXPLANATION OF CRIMINAL BEHAVIOR

The following statements refer to the process by which a particular person comes to engage in criminal behavior:

1. *Criminal behavior is learned.* Negatively, this means that criminal behavior is not inherited, as such; also, the person who is not already trained in crime does not invent criminal behavior, just as a person does not make mechanical inventions unless he has had training in mechanics.
2. *Criminal behavior is learned in interaction with other persons in a process of communication.* This communication is verbal in many respects but includes also "the communication of gestures."
3. *The principal part of the learning of criminal behavior occurs within intimate personal groups.* Negatively, this means that the impersonal agencies of

communication, such as movies and newspapers, play a relatively unimportant part in the genesis of criminal behavior.

4. *When criminal behavior is learned, the learning includes (a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; (b) the specific direction of motives, drives, rationalizations, and attitudes.*

5. *The specific direction of motives and drives is learned from definitions of the legal codes as favorable or unfavorable.* In some societies an individual is surrounded by persons who invariably define the legal codes as rules to be observed, while in others he is surrounded by persons whose definitions are favorable to the violation of the legal codes. In our American society these definitions are almost always mixed, with the consequence that we have culture conflict in relation to the legal codes.

6. *A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.* This is the principle of differential association. It refers to both criminal and anticriminal associations and has to do with counteracting forces. When persons become criminal, they do so because of contacts with criminal patterns and also because of isolation from anticriminal patterns. Any person inevitably assimilates the surrounding culture unless other patterns are in conflict; a southerner does not pronounce *r* because other southerners do not pronounce *r*. Negatively, this proposition of differential association means that associations which are neutral so far as crime is concerned have little or no effect on the genesis of criminal behavior. Much of the experience of a person is neutral in this sense, for instance, learning to brush one's teeth. This behavior has no negative or positive effect on criminal behavior except as it may be related to associations which are concerned with the legal codes. This neutral behavior is important especially as an occupier of the time of a child so that he or she is not in contact with criminal behavior during the time the child is so engaged in the neutral behavior.

7. *Differential associations may vary in frequency, duration, priority, and intensity.* This means that associations with criminal behavior and also associations with anticriminal behavior vary in those respects. Frequency and duration as modalities of associations are obvious and need no explanation. Priority is assumed to be important in the sense that lawful behavior developed in early childhood may persist throughout life, and also that delinquent behavior developed in early childhood may persist throughout life. This tendency, however, has not been adequately demonstrated, and priority seems to be important principally through its selective influence. Intensity is not precisely defined, but it has to do with such things as the prestige of the source of a criminal or anticriminal pattern and with emotional reactions related to the associations. In a precise description of the criminal behavior of a person, these modalities would be rated in quantitative form and a mathematical ratio would be reached. A formula

in this sense has not been developed, and the development of such a formula would be extremely difficult.

8. *The process of learning criminal behavior by association with criminal and anticriminal patterns involves all of the mechanisms that are involved in any other learning.* Negatively, this means that the learning of criminal behavior is not restricted to the process of imitation. A person who is seduced, for instance, learns criminal behavior by association, but this process would not ordinarily be described as imitation.

9. *While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values.* Thieves generally steal in order to secure money, but likewise honest laborers work in order to secure money. The attempts by many scholars to explain criminal behavior by general drives and values, such as the happiness principle, striving for social status, the money motive, or frustration, have been, and must continue to be, futile, since they explain lawful behavior as completely as they explain criminal behavior. They are similar to respiration, which is necessary for any behavior, but which does not differentiate criminal from noncriminal behavior.

It is not necessary, at this level of explanation, to explain why persons have the associations they have; this certainly involves a complex of many things. In an area where the delinquency rate is high, a boy who is sociable, gregarious, active, and athletic is very likely to come in contact with the other boys in the neighborhood, learn delinquent behavior patterns from them, and become a criminal; in the same neighborhood the psychopathic boy who is isolated, introverted, and inert may remain at home, not become acquainted with the other boys in the neighborhood, and not become delinquent. In another situation, the sociable, athletic, aggressive boy may become a member of a scout troop and not become involved in delinquent behavior. The person's associations are determined in a general context of social organization. A child is ordinarily reared in a family; the place of residence of the family is determined largely by family income; and the delinquency rate is in many respects related to the rental value of the houses. Many other aspects of social organization affect the associations of a person.

The preceding explanation of criminal behavior purports to explain the criminal and noncriminal behavior of individual persons. As indicated earlier, it is possible to state sociological theories of criminal behavior which explain the criminality of a community, nation, or other group. The problem, when thus stated, is to account for variations in crime rates, which involves a comparison of the crime rates of various groups or the crime rates of a particular group at different times. The explanation of a crime rate must be consistent with the explanation of the criminal behavior of the person, since the crime rate is a summary statement of the number of persons in the group who commit crimes and the frequency with which they commit crimes. One of the best explanations

of crime rates from this point of view is that a high crime rate is due to social disorganization. The term *social disorganization* is not entirely satisfactory, and it seems preferable to substitute for it the term *differential social organization*. The postulate on which this theory is based, regardless of the name, is that crime is rooted in the social organization and is an expression of that social organization. A group may be organized for criminal behavior or organized against criminal behavior. Most communities are organized for both criminal and anticriminal behavior, and, in that sense the crime rate is an expression of the differential group organization. Differential group organization as an explanation of variations in crime rates is consistent with the differential association theory of the processes by which persons become criminals.

DIFFERENTIAL ASSOCIATION AND INDIVIDUAL CRIMINALITY

Professor Sutherland introduced the theory of differential association in the 1939 edition of *Criminology*. He modified the theory in the 1947 edition, but this version was not changed in subsequent editions. Neither has it been changed in the current edition. The theory is still being tested, analyzed, criticized, and extended. It would be inappropriate to modify the statement in such a way that the research work of a number of persons would be undermined. Accordingly we shall merely elaborate on the basic statement by describing some of the principal interpretive errors apparently made by readers and some of the principal criticisms advanced by criminologists and others.²

Some Literary Errors

The basic statement of the theory of differential association is not clear. In two pages, nine propositions are presented, with little elaboration, purporting to explain both the epidemiology of crime and delinquency and the presence of criminality or delinquency in individual cases. It therefore is not surprising that Sutherland's words do not always convey the meaning he seemed to intend. Most significantly, as we shall see later, the statement gives the impression that there is little concern for explaining variations in crime and delinquency rates. This is a serious error in communication. In reference to the delinquent and criminal behavior of individuals, however, the difficulty in communication seems to arise as much from failure to study the words presented as from the words themselves. Five principal errors, and a number of minor ones, have arisen because readers do not always understand what Sutherland seemed to be trying to say.

First, it is common to believe, or perhaps to assume momentarily, if only for purposes of research and discussion, that the theory is concerned only with contacts or associations with criminal and delinquent behavior patterns. Vold, for

²The remainder of this chapter is a modification of Donald R. Cressey, "Epidemiology and Individual Conduct: A Case from Criminology," *Pacific Sociological Review*, 3:47-58, 1960. Students interested in documentation of the points made here should refer to this article, which is reprinted in Donald R. Cressey and David A. Ward, eds., *Crime, Delinquency, and Social Process* (New York: Harper and Row, 1969), pp. 557-77.

example, says, "One of the persistent problems that always has bedeviled the theory of differential association is the obvious fact that not everyone in contact with criminality adopts or follows the criminal pattern."³ At first glance, at least, such statements seem to overlook or ignore the words "differential" and "excess" in the theory, which states that a person becomes delinquent because of an *excess* of definitions favorable to violation of law over definitions unfavorable to violation of law. "This is the principle of differential association. It refers to both criminal and anticriminal associations and has to do with counteracting forces." DeFleur and Quinney rearranged and analyzed the nine assertions of the differential association theory in the logical language of set theory.⁴ This work both discovered and demonstrated that "the principle" or "the theory" is in all nine assertions, not in the sixth assertion (about the excess of definitions) alone. But it also showed clearly that the sixth assertion does not say that persons become criminals because of associations with criminal behavior patterns; it says that they become criminals because of exposure to an *overabundance* of such associations, in comparison with associations with anticriminal behavior patterns. After restating the theory of differential association in the language of set theory, DeFleur and Quinney translated their finished product back into English as follows:

Overt criminal behavior has as its necessary and sufficient conditions a set of criminal motivations, attitudes, and techniques, the learning of which takes place when there is exposure to criminal norms in excess of exposure to corresponding anticriminal norms during symbolic interaction in primary groups.⁵

Clearly, then, it is erroneous to state or imply that the theory is invalid because a category of persons—such as police officers, prison workers, or criminologists—have had extensive association with criminal behavior patterns but yet are not criminals.

Second, it is commonly believed that the theory says persons become criminals because of an excess of associations with criminals. Because of the manner in which the theory is stated, and because of the popularity of the "bad companions" theory of criminality in our society, this error is easy to make. The theory of differential association is concerned with ratios of associations with *patterns of behavior*, no matter what the character of the person presenting them. Phrases such as "definitions of legal codes as favorable or unfavorable," "definitions favorable to violation of law over definitions unfavorable to violation of law," and "association with criminal and anticriminal patterns" are used throughout the formal statement. Thus, if a mother teaches her son that "Honesty is the best policy," but also teaches him, perhaps inadvertently, that "It is all right to steal a

³George B. Vold, *Theoretical Criminology* (New York: Oxford University Press, 1958), p. 194.

⁴Melvin L. DeFleur and Richard Quinney, "A Reformulation of Sutherland's Differential Association Theory and a Strategy for Empirical Verification," *Journal of Research in Crime and Delinquency*, 3:1-22, 1966.

⁵*Ibid.*, p. 7.

loaf of bread when you are starving," she is presenting him with an anticriminal behavior pattern and a criminal behavior pattern, even if she herself is honest, noncriminal, and even anticriminal. One can learn criminal behavior patterns from persons who are not criminals, and one can learn anticriminal behavior patterns from hoods, professional crooks, habitual offenders, and gangsters.

Third, in periods of time ranging from five to twelve years after the first publication of the above statement (1947), at least five authors have erroneously believed that the theory consists of the version published in 1939.⁶ This error is not important to the substance of the current statement of the theory, but discussing it does tell something about the nature of the theory. The 1939 statement was qualified so that it pertained only to "systematic" criminal behavior rather than to the more general category "criminal behavior."⁷ The word "systematic" was then deleted, and Sutherland explained that it was his belief that all but "the very trivial criminal acts" were "systematic," but he deleted the word because some research workers were unable to identify "systematic criminals," and other workers considered only an insignificant proportion of prisoners to be "systematic criminals."⁸ The theory now refers to all criminal behavior. Limitation to "systematic" criminality was made for what seemed to be practical rather than logical reasons, and it was abandoned when it did not seem to have practical utility.

Fourth, it is commonplace to say that the theory is defective because it does not explain why persons have the associations they have, or identify the *sources* of definitions favorable or unfavorable to delinquency and crime.⁹ Although such expressions are valuable statements of what is needed in criminological research, they are erroneous when applied to differential association. Determining why persons have the associations they have is a highly relevant research problem, and we shall later see that when the differential association theory is viewed as a principle that attempts to account for variations in crime rates it does deal in a

⁶Robert G. Caldwell, *Criminology* (New York: Ronald Press, 1956), pp. 182-84; Ruth S. Cavan, *Criminology*, 2d ed. (New York: Crowell, 1955), p. 701; Mabel A. Elliott, *Crime in Modern Society* (New York: Harper and Bros., 1952), p. 274; Richard R. Korn and Lloyd W. McCorkle, *Criminology and Penology* (New York: Holt, 1959), pp. 297-98; Vold, *Theoretical Criminology*, pp. 197-98.

⁷See Edwin H. Sutherland, *Principles of Criminology*, 3d ed. (Philadelphia: Lippincott, 1939), pp. 5-9. This statement proposed generally that systematic criminality is learned in a process of differential association but then went on to use "consistency" as one of the modes of affecting the impact of the various patterns presented in the process of association. Thus, "consistency" of the behavior patterns presented was used as a general explanation of criminality, but "consistency" also was used to describe the process by which differential association takes place. Like the word "systematic," "consistency" was deleted from the next version of the theory.

⁸Edwin H. Sutherland, "Development of the Theory," in *Edwin H. Sutherland on Analyzing Crime*, ed. Karl Schuessler (Chicago: University of Chicago Press, 1973), p. 21.

⁹Gwynn Nettler, *Explaining Crime* (New York: McGraw-Hill, 1974), p. 199; and Gene Grabner, "The Limits of Three Perspectives on Crime: 'Value-Free Science,' 'Objective Law,' and 'State Morality,'" *Issues in Criminology*, 8:35-48, 1973.

general way with differential opportunities for association with an excess of criminal behavior patterns. Nevertheless, the fact that the "individual conduct" part of the theory does not pretend to account for a person's associations or for the origins of definitions favorable to crime cannot be considered a defect in it.

Fifth, other authors have erroneously taken "theory" to be synonymous with "bias" or "prejudice," and have condemned the statement on this ground. For example, in connection with criticizing Sutherland for deleting "systematic" from the earlier version of his theory, Caldwell wrote that at the time the revision was made "we had not acquired enough additional facts to enable [Sutherland] to explain all criminal behavior."¹⁰ This statement does not clearly recognize that facts themselves do not explain anything, and that theory tries to account for the relationships between known facts, among other things. Confusion about the role of theory also is apparent in Clinard's statement that the theory is "arbitrary," Glueck's statement that "social processes are dogmatically shaped to fit into the prejudices of the preexisting theory of 'differential association,'" and Jeffery's statement that "the theory does not differentiate between criminal and noncriminal behavior, since both types of behavior can be learned."¹¹

Additional errors stemming from the form of the formal statement, from lack of careful reading of the statement, or from assumptions necessary to conducting research, have been made, but not with the frequency of the five listed above. Among these less frequently made errors are (1) confusion of the concept "definition of the situation" with the word "situation"; (2) confusion of the notion that persons associate with criminal and anticriminal behavior patterns with the notion that it is *groups* that associate on a differential basis; (3) belief that the theory is concerned principally with learning the *techniques* for committing crimes; (4) belief that the theory refers to learning of behavior patterns that are neither criminal nor anticriminal in nature, (5) belief that "differential association," when used in reference to professional thieves, means maintaining "a certain necessary aloofness from ordinary people";¹² (6) failure to recognize that the shorthand phrase "differential association" is equivalent to "differential association with criminal and anticriminal behavior patterns," with the consequent assumption that the theory attempts to explain all behavior, not just criminal behavior; and (7) belief that the theory is concerned only with a raw ratio of associations between the two kinds of behavior patterns and does not

¹⁰Caldwell, *Criminology*, p. 182.

¹¹Marshall B. Clinard, *Sociology of Deviant Behavior* (New York: Rinehart, 1957), p. 204; Sheldon Glueck, "Theory and Fact in Criminology," *British Journal of Delinquency*, 7:92-109, 1956; Clarence Ray Jeffery, "An Integrated Theory of Crime and Criminal Behavior," *Journal of Criminal Law, Criminology, and Police Science*, 49:533-52, 1959.

¹²Walter C. Reckless, *The Crime Problem*, 2d ed. (New York: Appleton-Century-Crofts, 1955), p. 169. This kind of error may stem from Sutherland himself, for in his work on the professional thief he used the term "differential association" to characterize the members of the behavior system, rather than to describe the process presented in the first statement of his theory, two years later. See Edwin H. Sutherland, *The Professional Thief* (Chicago: University of Chicago Press, 1937), pp. 206-7.

contain the statement, explicitly made, that "differential association may vary in frequency, duration, priority, and intensity."¹³

Some Popular Criticisms

Identification of some of the defects that various critics have found in the theory also should make the theory clearer. Five principal types of criticism have been advanced in the literature. It would be incorrect to assume that a criticism advanced by many readers is more valid or important than one advanced by a single reader, but commenting on every criticism would take us too far afield. We can only mention, without elaboration, some of the criticisms advanced by only one or two authors.

It has been stated or implied that the theory of differential association (1) is defective because it omits consideration of free will, (2) is based on a psychology assuming rational deliberation, (3) ignores the role of the victim, (4) does not explain the origin of crime, (5) does not define terms such as "systematic" and "excess," (6) does not take "biological factors" into account, (7) is of little or no value to "practical men," (8) is not comprehensive enough because it is not interdisciplinary, (9) is not allied closely enough with more general sociological theory and research, (10) is too comprehensive because it applies to noncriminals, (11) assumes that all persons have equal access to criminal and anticriminal behavior patterns, and (12) assumes that some behavior patterns are objectively "criminal." Some of these comments represent pairs of opposites, one criticism contradicting another, and others seem to be based on one or more of the errors described above. Still others are closely allied with the five principal types of criticism, and we shall return to them.

One popular form of criticism of differential association is not, strictly speaking, criticism at all. A number of scholars have speculated that some kinds of criminal behavior are exceptions to the theory. Thus, it has been said that the theory does not apply to rural offenders, to landlords who violate rent control regulations, to criminal violators of financial trust, to "naïve check forgers," to white-collar criminals, to certain delinquents,¹⁴ to perpetrators of "individual" and "personal" crimes, to irrational and impulsive criminals, to "adventitious"

¹³If these "modalities," as Sutherland called them, are ignored, then the theory would equate the impact of a behavior pattern presented once in a television drama with the impact of a pattern presented numerous times to a child who deeply loved and respected the donor. It does not so equate the patterns. See Eric Linden and James C. Hackler, "Affective Ties and Delinquency," *Pacific Sociological Review*, 16:27-46, 1973.

¹⁴Marshall B. Clinard, "The Process of Urbanization and Criminal Behavior," *American Journal of Sociology*, 48:202-13, 1942; idem, "Rural Criminal Offenders," *American Journal of Sociology*, 50:38-45, 1944; idem, "Criminological Theories of Violations of Wartime Regulations," *American Sociological Review*, 11:258-70, 1946; Donald R. Cressey, "Application and Verification of the Differential Association Theory," *Journal of Criminal Law, Criminology, and Police Science*, 43:43-52, 1952; Edwin M. Lemert, "Isolation and Closure Theory of Naïve Check Forgery," *Journal of Criminal Law, Criminology, and Police Science*, 44:293-307, 1953; Daniel Glaser, "Criminality Theories and Behavioral Images," *American Journal of Sociology*, 61:441, 1956; and Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969), pp. 14-15, 229-30.

and/or "accidental" criminals, to "occasional," "incidental," and "situational" offenders, to murderers, nonprofessional shoplifters and noncareer type of criminals, to persons who commit crimes of passion and to persons whose crimes were perpetrated under emotional stress.¹⁵ It is important to note that only the first six comments—those referring to rural offenders, landlords, trust violators, check forgers, some white-collar criminals, and some delinquents—are based on research. At least two authors have simply stated that the theory is subject to criticism because there are exceptions to it; the kind of behavior thought to be exceptional is not specified.¹⁶ Quinney has argued, more generally, that behavior patterns are not objectively criminal so that any attempt to explain any criminal behavior is necessarily fallacious on its face; nevertheless, he has devised a strategy for refining the differential association theory so it can be put to test.¹⁷

The fact that most of the comments are not based on research means that the criticisms are actually proposals for research. Should a person conduct research on a particular type of offender and find that the theory does not hold, then a revision of the theory is called for, provided the research actually tested the theory, or part of it. As indicated, this procedure has been used in six instances, and these instances need to be given careful attention. Hirschi, for example, has concluded on the basis of empirical research that *absence* of control, not the presence of behavior patterns favorable to delinquency, is what increases the likelihood that delinquent acts will be committed.¹⁸ But in most cases, there is no evidence that the kind of behavior said to be exceptional is exceptional. For example, we do not know that "accidental" or "incidental" or "occasional" criminals have not gone through the process specified in the theory. Perhaps it is sometimes assumed that some types of criminal behavior are "obviously exceptional." However, one theoretical analysis indicated that a type of behavior that appears to be obviously exceptional—"compulsive criminality"—is not necessarily exceptional at all.¹⁹

A second principal kind of criticism attacks the theory because it does not adequately take into account the "personality traits," "personality factors," or "psychological variables" in criminal behavior. This is real criticism, for it suggests that the statement neglects an important determinant of criminality. Occasion-

¹⁵See Nettler, *Explaining Crime*, p. 197; and Steven Giannell, "Criminosynthesis," *International Journal of Social Psychiatry*, 16:83-95, 1970.

¹⁶Harry Elmer Barnes and Negley K. Teeters, *New Horizons in Criminology*, 3d ed. (Englewood Cliffs, N. J.: Prentice-Hall, 1959), p. 159; Donald R. Taft, *Criminology* (New York: Macmillan, 1956), p. 340.

¹⁷Richard Quinney, *Criminology: An Analysis and Critique of Crime in America* (Boston: Little, Brown, 1975), pp. 96-99, 100-111.

¹⁸Hirschi, *Causes of Delinquency*, p. 229. See also Gary F. Jensen, "Parents, Peers, and Delinquent Action: A Test of the Differential Association Perspective," *American Journal of Sociology*, 78:562-75, 1972; John R. Hepburn, "Testing Alternative Models of Delinquency Causation," *Journal of Criminal Law and Criminology*, 67:450-60, 1977; and Joseph H. Rankin, "Investigating the Interrelations Among Social Control Variables and Conformity," *Journal of Criminal Law and Criminology*, 67:470-80, 1977.

¹⁹Donald R. Cressey, "The Differential Association Theory and Compulsive Crimes," *Journal of Criminal Law, Criminology, and Police Science*, 45:49-64, 1954.

ally, the criticism is linked with the apparent assumption that some kinds of criminality are "obviously" exceptional. However, at least a dozen authors have proposed that the statement is defective because it omits or overlooks the general role of personality traits in determining criminality.

In an early period Sutherland stated that his theory probably would have to be revised to take account of personality traits.²⁰ Later he pointed out what he believed to be the fundamental weakness in his critics' argument: *Personality traits* and *personality* are words that merely specify a condition, like mental retardation, without showing the relationship between that condition and criminality. He posed three questions for advocates of personality traits as supplements to differential association: (1) What are the personality traits that should be regarded as significant? (2) Are there personal traits to be used as supplements to differential association, which are not already included in the concept of differential association? (3) Can differential association, which is essentially a *process* of learning, be combined with personal traits, which are essentially the *product* of learning?²¹

Sutherland did not attempt to answer these questions, but the context of his discussion indicates his belief that differential association does explain why some persons with a trait like "aggressiveness" commit crimes, while other persons possessing the same trait do not. It also reveals his conviction that terms like *personality traits*, *personality*, and *psychogenic trait components* are, when used with no further elaboration to explain why a person becomes a criminal, synonyms for *unknown conditions*.²²

Closely allied with the "personality trait" criticism is the assertion that the theory does not adequately take into account the "response" patterns, "acceptance" patterns, and "receptivity" patterns of various individuals. The essential notion here is that differential association emphasizes the social process of transmission but minimizes the individual process of reception. Stated in another way, the idea is that the theory deals only with external variables and does not take into account the meaning to the recipient of the various patterns of behavior presented in situations which are objectively quite similar but nevertheless variable, according to the recipient's perception of them. One variety of this type of criticism takes the form of asserting that criminals and noncriminals are sometimes reared in the "same environment"—criminal behavior patterns are presented to two persons, but only one of them becomes a criminal.

Sutherland was acutely aware of the social psychological problem posed by such concepts as "differential response patterns." Significantly, his proposed solution to

²⁰Sutherland, "Development of the Theory," pp. 25-27.

²¹Edwin H. Sutherland, *White Collar Crime* (New York: Dryden Press, 1949), p. 272. See also Harwin L. Voss, "Differential Association and Containment Theory—a Theoretical Convergence," *Social Forces*, 47:381-91, 1969.

²²See the discussion in Chapter 7.

the problem was his statement of the theory of differential association.²³ One of the principal objectives of the theory is to account for differences in individual responses to opportunities for crime and in individual responses to criminal behavior patterns presented. To illustrate, one person who walks by an unguarded and open cash register, or who is informed of the presence of such a condition in a nearby store, may perceive the situation as a "crime-committing" one, while another person in the identical circumstances may perceive the situation as one in which the owner should be warned against carelessness. The difference in these two perceptions, the theory holds, is due to differences in the prior associations with the two types of definition of situation, so that the alternatives in behavior are accounted for in terms of differential association. The differential in "response pattern," or the difference in "receptivity" to the criminal behavior pattern presented, then, is accounted for by differential association itself.²⁴ Cressey has argued that one of the greatest defects in the theory is its implication that receptivity to any behavior pattern presented is determined by the patterns presented earlier, that receptivity to those early presentations was determined by even earlier presentations, and so on back to birth.²⁵ But this is an assertion that the theory is difficult to test, not an assertion that it does not take into account the differential response patterns of individuals.

If receptivity is viewed in a different way, however, the critics appear to be on firm ground.²⁶ The theory does not identify what constitutes a definition favorable to or unfavorable to the violation of law. The same objective definition might be favorable or unfavorable, depending on the relationship between the donor and the recipient. Consequently, the theory indicates that differential associations may vary in "intensity," which is not precisely defined but "has to do with such things as the prestige of the source of a criminal or anticriminal pattern and with emotional reactions related to the associations." This statement tells us that some associations are to be given added *weight*, but it does not tell us how, or whether, early associations affect the *meaning* of later associations. If earlier associations determine whether a person will later identify specific behavior patterns as favorable or unfavorable to law violation, then these earlier associations determine the very meaning of the later ones, and do not merely give added weight to them. In other words, whether a person is prestigious or not prestigious to another may be determined by experiences that have nothing to do with criminality and anticriminality. Nevertheless, these experiences affect the meaning (whether favorable or unfavorable) of patterns later presented to the person

²³See Edwin H. Sutherland, "Susceptibility and Differential Association," in *Edwin H. Sutherland on Analyzing Crime*, ed. Schuessler, pp. 42-43. See also Solomon Kobrin, "The Conflict of Values in Delinquency Areas," *American Sociological Review*, 16:653-61, 1951.

²⁴Cf. Elihu Katz, Martin L. Levin, and Herbert Hamilton, "Traditions of Research on the Diffusion of Innovation," *American Sociological Review*, 28:237-52, 1963.

²⁵Cressey, "Application and Verification of the Differential Association Theory."

²⁶I am indebted to Albert K. Cohen for assistance with this paragraph and with other points.

and, thus, they affect receptivity to the behavior patterns.²⁷ For example, in one experiment a rich-looking person and a poor-looking person were employed as models. The models crossed a street against a traffic light, and the experimenters noted how many pedestrians followed them in their lawbreaking. More people imitated the rich-looking model, possibly because to many persons, observing another person crossing the street against the light is not objectively favorable or unfavorable. If a poor person does it, it might be a behavior pattern unfavorable to law violation, but if a rich person does it, the pattern might have a quite different meaning.²⁸

A fourth kind of criticism is more damaging than the first three, for it insists that the ratio of learned behavior patterns used to explain criminality cannot be determined with accuracy in specific cases. Short, for example, has pointed out the extreme difficulty of operationalizing terms such as "favorable to" and "unfavorable to"; nevertheless, he has devised various measures of differential association and has used the term in a series of significant studies.²⁹ Glaser has noted that the "phrase 'excess of definitions' itself lacks clear denotation in human experience." Glueck has asked, "Has anybody actually counted the number of definitions favorable to violation of law and definitions unfavorable to violation of law, and demonstrated that in the predelinquency experience of the vast majority of delinquents and criminals, the former exceeds the latter?" And Hirschi has concluded both that the theory is "virtually nonfalsifiable" and that predictions from it "tend to be trivial."³⁰ In a study of trust violators, Cressey found that embezzlers could not identify specific persons or agencies from whom they learned their behavior patterns favorable to trust violation. The general conclusion was, "It is doubtful that it can be shown empirically that the differential association theory applies or does not apply to crimes of financial trust violation or even to other kinds of criminal behavior."³¹ Similarly, Stanfield has noted the extreme difficulty of measuring the variation and content of "frequency, duration, priority, and intensity."³²

It should be noted that these damaging criticisms of the theory of differential association as a precise statement of the mechanism by which persons become

²⁷This actually is the important point Vold was making in the quotation cited at footnote 3, above. See also Don C. Gibbons, *Society, Crime, and Criminal Careers: An Introduction to Criminology* (Englewood Cliffs, N. J.: Prentice-Hall, 1968), pp 204-6.

²⁸M. M. Lefkowitz et al., "Status Factors in Pedestrian Violation of Traffic Signals," *Journal of Abnormal and Social Psychology*, 51:704-6, 1955.

²⁹James F. Short, Jr., "Differential Association and Delinquency," *Social Problems*, 4:233-39, 1957; and James F. Short, Jr. and Fred L. Strudbeck, *Group Process and Gang Delinquency* (Chicago: University of Chicago Press, 1965).

³⁰Glaser, "Criminality Theories and Behavioral Images"; Glueck, "Theory and Fact in Criminology," p. 96; and Hirschi, *Causes of Delinquency*, pp. 14-15.

³¹Cressey, "Application and Verification of the Differential Association Theory," p. 52.

³²Robert E. Stanfield, "The Interaction of Family Variables and Gang Variables in the Aetiology of Delinquency," *Social Problems*, 13:411-17, 1966.

criminals do not affect the value of the theory as a general principle which organizes and makes good sense of the data on crime rates. As we shall see below, a theory accounting for the distribution of crime, delinquency, or any other phenomenon can be valid even if a presumably coordinate theory specifying the process by which deviancy occurs in individual cases is *incorrect*, let alone untestable.

The fifth kind of criticism states in more general terms than the first four that the theory of differential association oversimplifies the process by which criminal behavior is learned. At the extreme are assertions that the theory is inadequate because it does not allow for a process in which criminality is said to be "chosen" by the individual actor. Some such assertions maintain that a social psychology and sociology of criminals and crime is impossible, and their authors ask for a return to something like the "free will" tenets of the classical school of criminology. Interestingly enough, such assertions have in recent years been announced by social psychologists and sociologists.³³ More realistic criticism ranges from simple assertions that the learning process is more complex than the theory states or implies, to the idea that the theory does not adequately take into account some specific type of learning process, such as differential identification or operant conditioning.

But it is one thing to criticize the theory for failure to specify the learning process accurately and another to specify which aspects of the learning process should be included and in what way.³⁴ Clinard, Glaser, and Matthews, among others, have introduced the process of identification.³⁵ Weinberg, Sykes and Matza, Cressey and Frazier, among others, have stressed other aspects of more general social psychological theory.³⁶ Adams has, on the basis of a laboratory

³³David Matza, *Becoming Deviant*, (Englewood Cliffs, N. J.: Prentice-Hall, 1969), p. 107; Steven Box, *Deviance, Reality, and Society* (London: Holt, Rinehart and Winston, 1971), p. 21; Ian Taylor, Paul Walton, and Jock Young, *The New Criminology: For a Social Theory of Deviance* (London: Routledge and Kegan Paul, 1973), p. 128.

³⁴Despite the fact that Sutherland described a learning process, it should be noted that he also said, "The process of learning criminal and anticriminal behavior patterns involves all the mechanisms that are involved in any other learning."

³⁵Clinard, "The Process of Urbanization and Criminal Behavior"; idem, "Rural Criminal Offenders"; idem, "Criminological Theories of Violations of Wartime Regulations"; Glaser, "Criminality Theories and Behavioral Images"; idem, "Differential Association and Criminological Prediction," *Social Problems*, 8:6-14, 1960; idem, "The Differential Association Theory of Crime," in *Human Behavior and Social Process*, ed. Arnold Rose (Boston: Houghton Mifflin, 1962), pp. 425-43; Victor Matthews, "Differential Identification: An Empirical Note," *Social Problems*, 15:376-83, 1968.

³⁶S. Kirson Weinberg, "Theories of Criminality and Problems of Prediction," *Journal of Criminal Law, Criminology, and Police Science*, 45:412-29, 1954; idem, "Personality and Method in the Differential Association Theory," *Journal of Research in Crime and Delinquency*, 3:165-72, 1966; Gresham Sykes and David Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review*, 22:664-70, 1957; Cressey, "Application and Verification of the Differential Association Theory"; idem, "The Differential Association Theory and Compulsive Crimes"; idem, "Social Psychological Foundations for Using Criminals in the Rehabilitation of Criminals," *Journal of Research in Crime and Delinquency*, 2:49-59, 1965;

experiment, noted the importance of such "nonsocial" variables as money, drugs, and sex in the reinforcement and maintenance of delinquent behavior.³⁷ Jensen consistently found that boys who associate with delinquents are more likely to be delinquent than boys who do not, but this occurs independently of the effect of these associations on their attitudes and beliefs.³⁸ Even these attempts are, like the differential association statement itself, more in the nature of general indications of the kind of framework or orientation one should use in formulating a theory of criminality than they are statements of theory. Burgess and Akers have given a most promising lead in this area by specifying that the conditions and mechanisms through which delinquent and criminal behavior are learned are those indicated in the theory of human learning variously referred to as reinforcement theory, operant behavior theory, and operant conditioning theory.³⁹

The theory of differential association does not concentrate exclusively on individual criminality. It is also concerned with making sense of the gross facts about delinquency and crime.⁴⁰ Examination of Sutherland's writings clearly indicates that when he formulated the theory he was greatly, if not primarily, concerned with organizing and integrating the factual information about crime rates. In his account of how the theory of differential association developed, he made the following three relevant points:

More significant for the development of the theory were certain questions which I raised in class discussions. One of these questions was, Negroes, young-adult males, and city dwellers all have relatively high crime rates: What do these three groups have in common that places them in this position? Another question was, even if feeble-minded persons have a high crime rate, why do they commit crimes? It is not feeble-mindedness as such, for some feeble-minded persons do not commit crimes. Later I raised another question which

idem, "The Language of Set Theory and Differential Association," *Journal of Research in Crime and Delinquency*, 3:22-26 1966; Charles E. Frazier, *Theoretical Approaches to Deviance* (Columbus, Ohio: Bobbs-Merrill, 1976), pp. 113-114.

³⁷Reed Adams, "The Adequacy of Differential Association Theory," *Journal of Research in Crime and Delinquency*, 11:1-8, 1974. See also Clarence Ray Jeffery, "Criminal Behavior and Learning Theory," *Journal of Criminal Law, Criminology, and Police Science*, 56:294-300, 1965.

³⁸Jensen, "Parents, Peers and Delinquent Action."

³⁹Robert L. Burgess and Ronald L. Akers, "A Differential Association-Reinforcement Theory of Criminal Behavior," *Social Problems*, 14:128-47, 1968. See also Ronald L. Akers, Robert L. Burgess, and Weldon T. Johnson, "Opiate Use, Addiction, and Relapse," *Social Problems*, 15:459-69, 1968.

⁴⁰One of Sutherland's own students, colleagues, and editors has said, "Much that travels under the name of sociology of deviant behavior or of social disorganization is psychology—some of it very good psychology, but psychology. For example, Sutherland's theory of differential associations, which is widely regarded as preeminently sociological, is not the less psychological because it makes much of the cultural milieu. It is psychological because it addresses itself to the question: How do people become the kind of individuals who commit criminal acts? A sociological question would be: What is it about the structure of social systems that determines the kinds of criminal acts that occur in these systems and the way in which such acts are distributed within these systems?" (Albert K. Cohen, "The Study of Social Disorganization and Deviant Behavior," chap. 21 in *Sociology Today*, ed. Robert K. Merton, Leonard Broom, and Leonard S. Cottrell, Jr. [New York: Basic Books, 1959], p. 462).

became even more important in my search for generalizations. Crime rates have a high correlation with poverty if considered by areas of a city but a low correlation if considered chronologically in relation to the business cycle; this obviously means that poverty as such is not an important cause of crime. How are the varying associations between crime and poverty explained?⁴¹

It was my conception that a general theory should take account of all the factual information regarding crime causation. It does this either by organizing the multiple factors in relation to each other or by abstracting them from certain common elements. It does not, or should not, neglect or eliminate any factors that are included in the multiple-factor theory.⁴²

The hypothesis of differential association seemed to me to be consistent with the principal gross findings in criminology. It explained why the Mollaccan children became progressively delinquent with length of residence in the deteriorated area of Los Angeles, why the city crime rate is higher than the rural crime rate, why males are more delinquent than females, why the crime rate remains consistently higher in deteriorated areas of cities, why the juvenile delinquency rate in a foreign nativity group is high while the group lives in a deteriorated area and drops when the group moves out of the area, why second-generation Italians do not have the high murder rate their fathers had, why Japanese children in a deteriorated area of Seattle had a low delinquency rate even though in poverty, why crimes do not increase greatly in a period of depression. All of the general statistical facts seem to fit this hypothesis.⁴³

The formal statement of the theory indicates, for example, that a high crime rate in urban areas can be considered the end product of criminalistic traditions in those areas. Similarly, the fact that the rate for all crimes is not higher in some urban areas than it is in some rural areas can be attributed to differences in conditions which affect the probabilities of exposure to criminal behavior patterns.⁴⁴ The important general point is that in a multigroup type of social organization, alternative and inconsistent standards of conduct are possessed by various groups, so that an individual who is a member of one group has a high probability of learning to use legal means for achieving success, or learning to deny the importance of success, while an individual in another group learns to accept the importance of success and to achieve it by illegal means. Stated in another way, there are alternative educational processes in operation, varying with groups, so that a person may be educated in either conventional or criminal means of achieving success. As indicated above, this situation may be called "differential social organization" or "differential group organization." "Differential group

⁴¹Sutherland, "Development of the Theory," p. 15.

⁴²Ibid., p. 18.

⁴³Ibid., pp. 19-20.

⁴⁴Cf. Henry D. McKay, "Differential Association and Crime Prevention: Problems of Utilization," *Social Problems*, 8:25-37, 1960.

organization" should explain the crime rate, while differential association should explain the criminal behavior of a person. The two explanations must be consistent with each other.

It should be noted that, in the three quotations above, Sutherland referred to the differential association statement as both a "theory" and a "hypothesis," and did not indicate any special concern for distinguishing between differential association as it applies to the epidemiology of crime and differential association as it applies to individual conduct. In order to avoid controversy about the essential characteristics of theories and hypotheses, it seems preferable to call differential association, as it is used in reference to crime rates, a principle. Many "theories" in sociology are in fact principles that order facts about rates—now called epidemiology—in some way. Durkheim, for example, invented what may be termed a "principle of group integration" to account for, organize logically, and integrate systematically the data on variations in suicide rates. He did not invent a theory of suicide, derive hypotheses from it, and then collect data to determine whether the hypotheses were correct or incorrect. He tried to make sense of known facts about rates, and the principle he suggested remains the most valuable idea available to understand the differences in the rates of suicide between Protestants and Jews, urban-dwellers and rural-dwellers, and so on.

The differential association statement, similarly, is a "principle of normative conflict" which proposes that high crime rates occur in societies and groups characterized by conditions that lead to the development of extensive criminalistic subcultures. The principle makes sense of variations in crime rates by observing that modern societies are organized for crime as well as against it, and then observing further that crime rates are unequally distributed because of differences in the degree to which various categories of persons participate in this normative conflict.⁴⁵ Sutherland invented the principle of normative conflict to account for the distribution of high and low crime rates; he then tried to specify the mechanism by which this principle works to produce individual cases of criminality. The mechanism proposed is differential association:

The second concept, differential association, is a statement of [normative] conflict from the point of view of the person who commits the crime. The two kinds of culture impinge on him or he has association with the two kinds of cultures and this is differential association.⁴⁶

THE VALUE OF DIFFERENTIAL ASSOCIATION

As an organizing principle, normative conflict makes understandable most of the variations in crime rates discovered by various researchers and observers, and it

⁴⁵See Raymond D. Gastil, "Homicide and a Regional Culture of Violence," *American Sociological Review*, 36:412-27, 1971.

⁴⁶Sutherland, "Development of the Theory," pp. 20-21.

also focuses attention on crucial research areas.⁴⁷ The principle of normative conflict does not make good sense out of all the statistical variations, but it seems to make better sense out of more of them than do any of the alternative theories.

On the other hand, it also seems safe to conclude that differential association is not a precise statement of the process by which one becomes a criminal. The idea that criminality is a consequence of an excess of intimate associations with criminal behavior patterns is valuable because, for example, it negates assertions that deviation from norms is simply a product of being emotionally insecure or living in a broken home, and then indicates in a general way why only some emotionally insecure persons and only some persons from broken homes commit crimes. Also, it directs attention to the idea that an efficient explanation of individual conduct is consistent with explanations of epidemiology. Yet the statement of the differential association process is not precise enough to stimulate rigorous empirical test, and it therefore has not been proved or disproved. This defect is shared with broader social psychological theory. Although critics agree, as we have indicated, that the differential association statement oversimplifies the process by which normative conflict "gets into" persons and produces criminality, an acceptable substitute that is consistent with the principle of normative conflict has not appeared.

It is important to observe, however, that the "individual conduct" part of the theoretical statement does order data on individual criminality in a general way and, consequently, might be considered a principle itself. Thus, "differential association" may be viewed as a restatement of the principle of normative conflict, so that this one principle is used to account for the distribution of criminal and noncriminal behavior in both the life of the individual *and* in the statistics on collectivities. In this case, both individual behavior data and epidemiological rate data may be employed as indices of the variables in the principle, thus providing two types of hypotheses for testing it.⁴⁸ Glaser has shown that differential association makes sense of both the predictive efficiency of some parole prediction items and the lack of predictive efficiency of other items.⁴⁹ In effect, he tested the principle by determining whether parole prediction procedures which could have proven it false actually failed to prove it false. First, he shows that a majority of the most accurate predictors in criminology prediction

⁴⁷Cf. Llewellyn Gross, "Theory Construction in Sociology: A Methodological Inquiry," chap. 17 in *Symposium on Sociological Theory*, ed. Llewellyn Gross (Evanston, Ill.: Row, Peterson, 1959), pp. 548-55. See also Donald R. Cressey, "The State of Criminal Statistics," *National Probation and Parole Association Journal*, 3:230-41, 1957; and DeFleur and Quinney, "Reformulation of Sutherland's Differential Association Theory."

⁴⁸I am indebted to Daniel Glaser for calling this point to my attention.

⁴⁹Glaser, "Differential Association and Criminological Prediction." See also idem, "A Reconsideration of Some Parole Prediction Factors," *American Sociological Review*, 19:335-41, 1954; and idem, "The Efficiency of Alternative Approaches to Parole Prediction," *American Sociological Review*, 20:283-87, June, 1955; and Daniel Glaser and Richard R. Hangren, "Predicting the Adjustment of Federal Probationers," *National Probation and Parole Association Journal*, 4:258-67, 1958; and David M. Downes, *The Delinquent Solution: A Study in Subcultural Theory* (London: Routledge and Kegan Paul, 1966), pp. 97-98.

research are deducible from differential association theory, while the least accurate predictors are not deducible at all. Second, he shows that this degree of accuracy does not characterize alternative theories. Finally, he notes that two successful predictors of parole violation—type of offense and noncriminal employment opportunities—are not necessarily deducible from the theory, and he suggests a modification that would take this fact into account.

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5

Crime, Delinquency, and Social Structure

In nonliterate and peasant societies the influences surrounding a person are relatively steady, uniform, and consistent. Until the early part of this century, China exemplified this situation perfectly except in a few coastal cities. Individuals were surrounded by all of their relatives, and this larger family determined each person's career and ambitions. The principal satisfactions were found in cooperation with that group, which was considered as extending beyond one's own life into the distant future. Within this group each person had almost perfect security, for the group cared for its members in case of sickness, accident, old age, insanity, or any other emergency. Such charity involved no stigma or disgrace. The large family, moreover, was supported by the surrounding community, which also was harmonious in its traditional culture.

Despite industrialization, contemporary China is experiencing a return to this form of organization. Local communities are in many respects self-supporting and self-contained societies. There is consistency in the behavior patterns presented to persons in the socialization process. Accordingly, there are few opportunities for individualism in behavior, and the behavior of individuals is almost predictable. Therefore, few crimes are committed.¹

Such group cohesion is illustrated by certain Labrador Indians, who have been characterized as follows:

They are primary in pattern since, through the intimate association of individuals forming them, the social fusion of kin results in producing a community whole within which there is a tendency toward harmony and the most thoroughgoing cooperation. Strife is scarcely present, violence strenuously avoided; competition even courteously disdained. These, they think, lead to ridicule. In their place are met subjection of self, generosity in respect to

¹See Harold E. Pepinsky, *Crime and Conflict: A Study of Law and Society* (New York: Academic Press, 1976).

property, service, and opinion, the qualities which we often speak of as being found in "good sports" and which seem to develop as social habits. And these are the qualities that to them represent honor and a welcome place in the thoughts of their associates.²

Similarly, the Zuni Indians of western New Mexico disapprove of conflict, controversy, and strife:

Among the Zuni a man is not supposed to stand up for his rights; he is looked down upon if he gets into any sort of conflict or achieves notoriety. The best that one Zuni may say of another is that he "is a nice polite man. No one ever hears anything from him. He never gets into trouble."³

DIFFERENTIAL SOCIAL ORGANIZATION

At present no such consistency and uniformity is evident in Western civilization, although certain isolated rural settlements approach it. In contemporary urban society, a child is confronted with various ways of behaving even within the home, for no parent can act consistently in modern life; parents themselves are the recipients of many alternative roles and behavior patterns.⁴ Similarly, groups outside the home have standards of conduct which often are extremely different from those within the home. A great deal of behavior is in the nature of role-playing; when roles are conflicting or ambiguous, the behavior is inconsistent. In a pioneering study, Sellin described the normative conflicts within contemporary communities thus:

Every person is identified with a number of social groups, each meeting some biologically conditioned or socially created need. Each of these groups is normative in the sense that within it there grow up norms of conduct applicable to situations created by that group's specific activities. As a member of a given group, a person is not only supposed to conform to the rules which it shares with other groups, but also to those which are peculiarly its own. A person who as a member of a family group—in turn the transmitting agency for the norms which governed the groups from which the parents come—possesses all its norms pertaining to conduct in routine life situations, may also as a member of a play group, a work group, a political group, a religious group, etc., acquire norms which regulate specialized life situations and which sustain, weaken, or even contradict the norms earlier incorporated in his personality. The more complex a culture becomes, the more likely it is that the number of normative groups which affect a person will be large, and the greater is the chance that the norms of these groups will fail to agree, no matter how much they may overlap as a result of common acceptance of certain norms. A conflict of norms is said to exist when more or less divergent rules of conduct govern the specific life situation in

²Frank G. Speck, "Ethical Attributes of Labrador Indians," *American Anthropologist*, 35:559-94, 1933.

³Robert Redfield, "Primitive Law," *University of Cincinnati Law Review*, 33:1-22, 1964. See also R. K. Denton, *The Semai: A Non-Violent People of Malaya* (New York: Holt, Rinehart and Winston, 1968); Michael Banton, "Authority in the Simpler Societies," *Police Journal*, 43:261-67, 1970; and B. K. Bantawa, "Juvenile Delinquency in Nepal," *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Materials*, No. 10, 1975, pp. 116-18.

⁴See Aubrey Wendling and Delbert S. Elliott, "Class and Race Differentials in Parental Aspirations and Expectations," *Pacific Sociological Review*, 11:123-33, 1968.

which a person may find himself. The conduct norm of one group of which he is a part may permit one response to this situation, the norm of another group may permit perhaps the very opposite response.⁵

This condition of normative conflict is ordinarily considered social "disorganization" or "unorganization" because the directives for conformity on the part of the person are not uniform and harmonious. In this condition, the society does not possess consensus with respect to societal goals or else does not possess consensus regarding means of achieving agreed-upon societal goals. Consequently, the individual is confronted with alternative goals or means, or exists under conditions in which the norms of many members of the society are unknown to other members.⁶ Each male is "transformed from being defined as his father's son into a citizen."⁷ Then he finds that behavior which is "right" or "correct" in one group is "wrong" or "improper" from the point of view of other groups in which he has membership; or, in the condition of *anomie*, he literally does not know how to behave, for he does not know what is expected of him.

The presence of this heterogeneous set of conflicting norms is considered social disorganization largely on the ground that an earlier form of social organization has disappeared or is disappearing. Actually, the social conditions in which the influences on the person are relatively inharmonious and inconsistent are themselves a kind of social organization. Such social organization is characteristic of all except the most isolated contemporary Western societies, although there are wide variations in the degree of heterogeneity and in the pervasiveness of the normative inconsistencies.⁸

So far as delinquency and crime are concerned, a heterogeneity of norms in a society means that both a delinquent or criminal subculture and an antidelinquent or anticriminal subculture have developed. The society has become organized in such a way that a premium has been placed both on refraining from crime and on perpetrating crime. A person may now be a member of a group organized against crime and at the same time be a member of a group organized for criminal behavior. The individual participates in delinquent subcultures as well as in nondelinquent and antidelinquent subcultures. Under such conditions of differential group organization, one would expect the crime rates to be relatively high, for there are "rules for crime" as well as "rules against crime." A sociological problem of first-rate importance is discovery of the conditions under which these rules for crime and rules for delinquency have developed. The task here is not to

⁵Thorsten Sellin, *Culture Conflict and Crime* (New York: Social Science Research Council, 1938), pp. 29-30. See also John Dewey, *Human Nature and Conduct* (New York: Henry Holt, 1930), p. 130.

⁶See Judith Blake and Kingsley Davis, "Norms, Values, and Sanctions," chap. 13 in *Handbook of Modern Sociology*, ed. Robert E. L. Faris (Chicago: Rand McNally, 1964) pp. 456-84.

⁷Daniel Lerner, "Comparative Analysis of Processes of Modernization," in *The Modern City in Africa*, ed. Horace Miner (New York: Praeger, 1967).

⁸C. W. Kieffer, "The Psychological Interdependence of Family, School, and Bureaucracy in Japan," *American Anthropologist*, 72:66-75, 1970.

identify the processes by which criminal behavior patterns are adopted by an individual or a group; it is to identify the processes which brought the behavior patterns into existence in the first place.

DEVELOPMENT OF NORMATIVE CONFLICT

One recent impetus to development of delinquent and criminal subcultures was the colonization of America, which threw the Old World out of economic balance. This was followed by the final breakup of the feudal system, in which the ownership of the land had been limited, and in which the fixed social classes had mutual duties to each other. Experimental science developed, resulting in the rise of modern technology. With the development of machinery, the production of wealth passed from the control of the consumer to the control of the capitalist; the laborers followed their work from the home to the factory; and thus the city developed around the factory and the marketplace. As world commerce began to develop, the traditional restrictions on economic activity were irksome, and rebellion against these restrictions resulted in a system of relatively free competition, with an accompanying individualistic ideology according to which social welfare is best attained if every person works only for his or her own selfish interests. Thus, the new system placed great emphasis upon individual enterprise, and it became shameful for an individual to withdraw from economic competition. Each person was expected to pursue private ends in the most efficient manner possible, and the expected result was increased economic wealth for all.

The democratic revolutions, with their accompanying ideologies of natural and inalienable rights, cannot be clearly separated from this economic revolution. Participants in the relatively new economic system resisted any measures which would inhibit free competition, and the slogan "the least government the best" was given homage. Each participant rebelled against restrictions on his or her own behavior and therefore attempted to keep government weak. However, as competition developed, it became apparent that competitive advantages could be secured through governmental manipulation. Individuals and industries secured tariffs, franchises, patents, and other special privileges. Both by emphasis on a "hands-off" policy and by emphasis on special privileges, government was made less effective as a controller of behavior.

The attitudes and ideology which developed with the industrial and democratic revolutions were opposed to the authoritarian principle in government and in other institutions. Economic and political individualism was useful at the time of revolt against the fixed statuses and restrictions of the feudal system and against the absolutism of the political system. But individualism is not a positive principle of social organization, and when the revolutions ended, the usefulness of the negative principle also ended. Since that time, the ideology of individualism has encouraged each citizen to disregard social welfare in the interest of selfish satisfactions.⁹ Under such conditions of normative conflict, the significance of

⁹See Kenneth L. Karst, "Individual, Community, and Law," in *Law and the American Future*, ed. Murray L. Schwartz (Englewood Cliffs, N. J.: Prentice-Hall, 1976), pp. 68-73.

laws becomes relative—some are obeyed and others are not, depending on whether one “believes in” them.¹⁰ Businessmen, like gangsters, believe that public welfare need not be considered, for it will be best realized if persons work for their own selfish interests.¹¹ The gangster is a man who acquires by individual merit and a gun that which is denied him by the complex orderings of a stratified society. As Veblen said:

The ideal pecuniary man is like the ideal delinquent in his unscrupulous conversion of goods and persons to his own ends, and in a callous disregard of the feelings and wishes of others and of the remoter effects of his actions, but he is unlike him in possessing a keener sense of status and in working more farsightedly to a remoter end.¹²

Similarly, with the industrial and democratic revolutions the ambition for luxurious standards of life became effective for all social classes, since the values which previously restricted these standards to the nobility had been altered. Emile Durkheim, the noted French sociologist, made the following observation about stable societies:

The economic ideal assigned each class of citizens is itself confined to certain limits, within which the desires have free range. But it is not infinite. This relative limitation and the moderation it involves make men contented with their lot while stimulating them moderately to improve it; and this average contentment causes the feeling of calm, active happiness, the pleasure in existing and living which characterizes health for societies as well as for individuals. Each person is then at least, generally speaking, in harmony with his condition, and desires only what he may legitimately hope for as the normal reward of his activity. Besides, this does not condemn man to a sort of immobility. He may seek to give beauty to his life; but his attempts in this direction may fail without causing him to despair.¹³

But rapid technological advancements and discovery of vast unexploited markets raised the level of aspirations by presenting what appeared to be unlimited possibilities for accumulation of wealth.¹⁴ After the disappearance of the nobility, businessmen constituted the elite, and wealth became respected above all other attainments; necessarily, poverty became a disgrace. Wealth was therefore identi-

¹⁰See Marshall B. Clinard, *The Black Market: A Study of White Collar Crime* (New York: Rinehart, 1952), pp. 331, 334.

¹¹See Edward A. Duddy, “The Moral Implications of Business as a Profession,” *Journal of Business*, 15:70–71, 1945; and Harry V. Ball and Lawrence M. Friedman, “The Use of Criminal Sanctions in the Enforcement of Economic Legislation,” *Stanford Law Review*, 17:197–223, 1965.

¹²Thorstein Veblen, *Theory of the Leisure Class* (New York: Macmillan, 1912), p. 237. See also David Matza and Gresham M. Sykes, “Juvenile Delinquency and Subterranean Values,” *American Sociological Review*, 26:712–19, 1961.

¹³Emile Durkheim, *Suicide: A Study in Sociology*, trans. John A. Spaulding and George Simpson (Glencoe, Ill.: Free Press, 1951), p. 250. This book was first published in Paris in 1897.

¹⁴For contemporary examples, see Irving L. Horowitz, *Three Worlds of Development: The Theory and Practice of International Stratification* (New York: Oxford University Press, 1966); S. Kirson Weinberg, “Urbanization and Male Delinquency in Ghana,” *Journal of Research in Crime and Delinquency*, 2:85–94, 1965; and Marshall B. Clinard and Daniel J. Abbott, *Crime in Developing Countries: A Comparative Perspective* (New York: Wiley, 1973).

fied with worth, and worth was made known to the public by conspicuous consumption. The desire for symbols of luxury, ease, and success, developed by competitive consumption and by competitive salesmanship, spread to all classes, and the simple life was no longer satisfying. Now, "it is everlastingly repeated that it is man's nature to be eternally dissatisfied, constantly to advance, without relief or rest, toward an indefinite goal. The longing for infinity is daily represented as a mark of moral distinction. . . . The doctrine of the most ruthless and swift progress has become an article of faith."¹⁵

Planned acquisition through hard work and careful saving became a virtue, and failure to acquire became evidence of poor character. The doctrine of equality meant that each man was to compete against all comers, even if his social and economic status put him at great disadvantage in doing so. As Durkheim said:

Overweening ambition always exceeds the results obtained, great as they may be, since there is no warning to pause here. Nothing gives satisfaction and all this agitation is uninterruptedly maintained without appeasement. Above all, since this race of an unattainable goal can give no other pleasure but that of the race itself, if it is one, once it is interrupted the participants are left empty-handed. At the same time the struggle grows more violent and painful, both from being less controlled and because competition is greater. All classes contend among themselves because no established classification any longer exists. Effort grows, just when it becomes less productive.¹⁶

In sum, this analysis maintains that in the attempt to locate and train the most talented persons to occupy technical roles, industrial societies maintain that goals of personal, material success are available to all, regardless of social origins. By maintaining that great economic rewards are available to all, and by maintaining that achievement of the rewards is a sign of moral worth,¹⁷ an optimum number of persons can be motivated to compete for the rewards. But the social structure of industrialized societies is not necessarily consistent with this set of values, this culture. The social structure is the patterned sets of relationships among people and, as Merton has pointed out, in industrial societies this structure effectively blocks access to success goals for some parts of the population.¹⁸

One result is invention of a set of values which makes it "all right," even if illegal, to achieve success by routes other than the standard ones provided in the social structure. A set of values of this kind is "deviant," or "delinquent," or "criminal," in the sense that it inspires persons to achieve success by means which are not sanctioned by the legal institutions of society. Normative conflict is present, and both individuals and groups now have the opportunity to learn

¹⁵Durkheim, *Suicide*, p. 257.

¹⁶*Ibid.*, p. 253.

¹⁷See Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons (London: Allen and Unwin, 1930).

¹⁸Robert K. Merton, *Social Theory and Social Structure*, rev. and enl. ed. (Glencoe, Ill.: Free Press, 1957), chaps. 4 and 5.

illegitimate as well as legitimate means for achieving personal success. In this kind of social arrangement, multiple moralities develop. The "rules of the game" embodied in criminal laws may be known to those who evade them, but the emotional supports which accompany conformity to these rules are offset by the stress on the success goal and by the "rules for violating rules" which develop in these circumstances. As Merton has said: "It is only when a system of cultural values extols, virtually above all else, certain *common* success-goals for the population at large while the social structure rigorously restricts or completely closes access to approved modes of reaching these goals *for a considerable part of the same population*, that deviant behavior ensues on a large scale."¹⁹

Cloward and Ohlin have summarized the general observations on the origins of delinquent and criminal subcultures and, thus, the observations on the origins of normative conflict, in the following terms:

Interaction among those sharing the same problem [discrepancies between aspiration and opportunity] may provide encouragement for the withdrawal of sentiments in support of the established system of norms. Once freed of allegiance to the existing set of rules, such persons may devise . . . delinquent means of achieving success. A collective delinquent solution to an adjustment problem is more likely to evolve by this process in a society in which the legitimacy of social rules can be questioned apart from their moral validity. . . . What seems expedient, rational, and efficient often becomes separable from what is traditional, sacred, and moral as a basis for the imputation of legitimacy. Under such conditions it is difficult for persons at different social positions to agree about the forms of conduct that are both expedient and morally right. Once this separation takes place, the supporting structure of the existing system of norms becomes highly vulnerable.²⁰

Many types of delinquent, criminal, and deviant subcultures exist in contemporary society, with the result that normative conflict is present on a large scale. Accordingly, no juvenile gang, neighborhood group, ethnic group, or social class needs to invent a criminal subculture in order to take on a high rate of criminality. Although new sets of values which make delinquency and criminality "all right" even if illegal are invented from time to time, most apparent inventions are merely variations on themes invented long ago. As Bordua has observed, "Each generation does not meet and solve anew the problems of class structure barriers to opportunity but begins with the solution of its forbears. This is why reform efforts can be so slow to succeed."²¹

¹⁹Ibid., p. 146. It should be noted that in this statement Professor Merton slips into a theory of deviant behavior, rather than limiting himself to a theory of the origin of deviant subcultures. Deviant behavior on a large scale can arise only *after* invention of deviant subcultures. This point will be discussed in Chapter 9.

²⁰Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity: A Theory of Delinquent Gangs* (Glencoe, Ill.: Free Press, 1960), pp. 108-9.

²¹David J. Bordua, "Delinquent Subcultures: Sociological Interpretations of Gang Delinquency," *Annals of the American Academy of Political and Social Science*, 338:119-36, 1961.

However, it appears that various types of delinquent subcultures have arisen, and thrive, at different locations in the social structure. The evidence is fragmentary, impressionistic, and uncoordinated, but it seems to indicate that some types of delinquent and criminal subcultures have arisen in large metropolitan centers and particularly in those areas of cities that are characterized by poverty, while other types have arisen in middle-class areas or, as indicated by values conducive to the commission of white-collar crimes, in upper-class areas.

Because the sets of delinquent and criminal values are located in different parts of the social structure, they are not equally available for adoption by all segments of the society. Working-class persons living in areas inhabited by certain racial and ethnic groups in large American cities have available for adoption a different kind of criminal subculture than do upper-class persons.²² High delinquency and crime rates of various kinds become, from this perspective, "location data" which direct the attention of researchers to the study of the origin and continuation of various kinds of delinquent and criminal subcultures in various parts of the society.

In one of the best studies using such location data as a stimulus to exploration of the origin of a type of delinquent subculture, Cohen examined "non-utilitarian" delinquency.²³ Statistical data indicated that a destructive kind of "hell-raising" vandalism was more prevalent among working-class boys than among middle-class boys. Traditionally, criminologists have assumed that such data indicate the existence of a delinquent subculture and, thus, a high incidence of normative conflict among working-class boys, and then they have gone on to try to explain how the delinquent subculture is taken over by individual boys. Cohen, on the other hand, followed the leads provided by Durkheim and Merton and asked why such a subculture is there to be taken over. The theory he developed in response to this question maintains that the nonutilitarian delinquent subculture has arisen in response to a conflict between the aspirations inspired by middle-class values and the ability and opportunity that working-class boys have for fulfilling these aspirations. Middle-class values have been incorporated into the law and into other general codes of legitimate and moral conduct, codes which prescribe proper conduct for everyone.

At the same time, however, society is organized in such a way that all working-class persons cannot achieve the goals implied in these values—goals such as personal "success" and achievement of the kind requiring rational, honest labor, careful long-range planning, and deferral of gratifications. For example, while all youths might be inspired with the notion that anyone who works honestly and soberly can graduate from college, and with the idea that it is advantageous to graduate from college, the fact is that some youths entering this competition will be defeated, for they are not adequately equipped for the competition. In response to this conflict between values and social structure, rules have been developed for

²²See Irving Spergel, *Racketville, Slumtown, Haulburg: An Exploratory Study of Delinquent Subcultures* (Chicago: University of Chicago Press, 1964).

²³Albert K. Cohen, *Delinquent Boys: The Culture of the Gang* (Glencoe, Ill.: Free Press, 1955), esp. pp. 121-37.

achieving personal success by turning the middle-class rules "upside down." Once this subculture had been invented, youths could achieve a symbol of status, for example, either by doing well in school or by vandalizing the school at night. Or, more generally, they could achieve a symbol of status either by getting a good education, working hard, and saving their money until they were able to join the country club, or by doing none of these things and, instead, ripping up the country club's golf greens late at night.

It should be noted that Cohen's theory does not attempt to account for the delinquency or nondelinquency of any particular juvenile. It is a theory that explains why certain values are more readily available for learning by some youths than by others. Since the rules for nonutilitarian delinquency are carried, by and large, by working-class persons, they are more readily available for learning by working-class persons than by middle-class persons. Further, since the rules for delinquency arise in connection with differences between culturally defined aspirations regarding success, on the one hand, and opportunities for achieving this success, on the other, they are more readily available for learning by boys than by girls.

Walter B. Miller's study of working-class delinquency showed more concern for diffusion of delinquency values within the working class than for the origin of these rules for delinquency among working-class people. Unlike Cohen, he has not developed a specific theory which attempts to account for the development of certain of the rules for delinquency. Instead, Miller develops the notion that working-class values include a delinquent subculture.²⁴ Accordingly, he finds the origin of the delinquent subculture in the values of the working class, but he does not report in detail on the structural conditions leading to the invention of these values. Essentially, Miller sees working-class values emerging from the shaking-down process of immigration, internal migration, and vertical mobility.²⁵ Normative conflict has developed on a class basis, and, accordingly, rules for delinquency are present for learning by lower-class boys.

For example, Miller observes an intense concern for "toughness" and "masculinity" in lower-class culture, a concern which is expressed in a set of rules demanding that boys "act tough" in certain circumstances. Since "acting tough" and "being tough" often are defined as delinquency by the agencies of law enforcement, the stress on toughness amounts to a delinquent subculture. Miller emphasizes the importance of the structure of the family relationships in the working class to development of this delinquent subculture in that class:

A significant proportion of lower-class males are reared in a predominantly female household and lack a consistently present male figure with whom to identify and from

²⁴Walter B. Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, 14:5-19, 1958.

²⁵See Bordua, "Delinquent Subcultures"; and Walter B. Miller, "Implications of Urban Lower Class Culture for Social Work," *Social Service Review*, 33:219-36, 1959.

whom to learn essential components of a "male" role. Since women serve as a primary object of identification during the pre-adolescent years, the almost obsessive lower-class concern with "masculinity" probably resembles a type of compulsive reaction-formation.²⁶

Miller's thesis has been reduced by Cloward and Ohlin to three main propositions: (1) The lower class is characterized by distinctive values. (2) These values vary markedly from the middle-class values which undergird the legal code. (3) The result is that conformity with certain lower-class values may automatically result in violation of the law.²⁷ As Miller says, "Engaging in certain cultural practices which comprise essential elements of the total life pattern of lower-class culture automatically violates certain legal norms."²⁸ This observation is consistent with one made earlier by two astute observers of American social life:

Activities [such as] gregarious theft and gang warfare by the boys and gregarious sex by the girls appear to be channels for the playful, sociable and conformist impulses of the lower-class youth. If, in many urban areas, we find a lower-class boy or girl who is not delinquent in this sense, we can be fairly sure that he or she is either headed up the class ladder or is psychologically deviant or both, being unwilling or unable to join in the group activities sanctioned by peers.²⁹

Cloward and Ohlin have attempted to account for the invention of delinquent subcultures in terms which closely resemble those used by Cohen. Their concern, like that of Miller, is more for the question of why delinquent subcultures persist and diffuse once they are invented, than for the question of how they get invented in the first place. Nevertheless, they follow the writings of Durkheim and Merton to the conclusion that at least three different types of delinquent subcultures have been invented as a response to a clash between values which promote unlimited economic aspirations and a social structure which restricts accomplishment of the aspirations. They then go on to observe that among some segments of the population even the possibilities of legitimately achieving *limited* success goals are also restricted, and they find three delinquent subcultures being invented in these areas of poor opportunity.

Two of these subcultures provide illegal avenues to success goals; these are the "criminal subculture," which contains rules for the pursuit of material gain by means such as theft, extortion, and fraud, and the "conflict subculture," which contains rules for the achievement of status through manipulation of force or the threat of force. The other subculture, the "retreatist subculture," contains rules favoring the consumption of drugs. The basic notion here is that the subcultures are invented when aspirations are frustrated and when the frustration is diagnosed

²⁶Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," p. 9.

²⁷Cloward and Ohlin, *Delinquency and Opportunity*, p. 65.

²⁸W. C. Kvaraceus and W. B. Miller, *Delinquent Behavior: Culture and the Individual* (Washington: National Education Association, 1959), pp. 68-69.

²⁹Reuel Denney and David Riesman, "Leisure in Urbanized America," in *Reader in Urban Sociology*, ed. Paul K. Hatt (Glencoe, Ill.: Free Press, 1951), p. 471. See also David M. Downes, *The Delinquent Solution: A Study in Subcultural Theory* (London: Routledge and Kegan Paul, 1966).

as due to the conditions of the social order rather than to personal attributes of the interacting but frustrated population.³⁰

If, once invented, a delinquent subculture is to persist, there must be devices for passing the norms, values, and rules for delinquency on to newcomers, whether these newcomers are children of the participants or immigrants from another area where the subculture does not exist. For example, the "criminal subculture" described by Cloward and Ohlin is rather stable, and one source of this stability is the network of bonds that exists between age levels.³¹ Children are linked with adolescent delinquents and share their normative conflict; adolescent delinquents, in turn, are linked with young adult offenders, who, in turn, are linked with adult criminals.³² The delinquent subculture is carried by a broad, age-linked population. On the other hand, the "conflict subculture" is less stable, probably because devices for socializing newcomers into it have not developed to the same degree. While any newcomer must learn the values of the conflict subculture, the subculture is carried by adolescents, not by children and adults. Accordingly, those persons who have been socialized do not move onward through a set of age-graded patterns; they tend to be guided by other values when they reach young adulthood, rather than moving on to an "adult" form of violence. The population carrying the values of the conflict subculture is small and diffuse.

Discovery of the processes leading to the invention of delinquent and criminal subcultures whose existence establishes normative conflict in a society does not explain either the behavior of individual delinquents and criminals or the distribution of crime and delinquency rates. Even in societies disproportionately stressing success goals to the degree that delinquent subcultures are invented, most persons do not use illegitimate means for achieving the approved ends. Rather, in a multigroup type of social organization, conflicting standards of conduct are possessed by various groups. Normative conflict is not distributed evenly throughout the society. An individual who is a member of one group will use one means for achieving the success goal, while an individual having membership in another group will use another means.

McKay has pointed out that alternative educational processes are in operation

³⁰Cloward and Ohlin, *Delinquency and Opportunity*, pp. 111-24. See also Wendling and Elliott, "Class and Race Differentials"; and Wan Sang Han, "Discrepancy in Socioeconomic Level of Aspiration and Perception of Illegitimate Expediency," *American Journal of Sociology*, 74:240-47, 1968.

³¹Cloward and Ohlin do not make a careful distinction between gang activities and the delinquent subcultures on which gang activities are based, with the result that it is difficult to determine when they are concerned with the invention of a delinquent subculture and when they are concerned with the distribution of the values of this subculture to individuals. See the discussion of gangs in Chapter 9. For an excellent study of the way the behavioral rules making up a deviant subculture get invented, see John K. Irwin, "Surfers: A Study of the Growth of a Deviant Subculture" (Master's thesis, Department of Sociology, University of California, Berkeley, 1965); and idem, "Deviant Behavior as a Subcultural Phenomenon," in *The Sociology of Subcultures*, ed. David O. Arnold (Berkeley: Glendessary Press, 1970), pp. 109-11.

³²See Gerald Robin, "Gang Member Delinquency," *Journal of Criminal Law, Criminology, and Police Science*, 55:59-65, 1964.

and that a child may be educated in either "conventional" or criminal means of achieving success.³³ Cloward has shown that even unsanctioned means of attaining success are not available to everyone; some persons may be "double failures," in the sense that neither legitimate nor illegitimate means for achieving success are available to them:

Note, for example, variations in the degree to which members of various classes are fully exposed to and thus acquire the values, education, and skills which facilitate upward mobility. It should not be startling, therefore, to find similar variations in the availability of illegitimate means.³⁴

MOBILITY

The industrial and democratic revolutions were accompanied by increased mobility as well as by a conflict between increased aspirations and conditions of the social structure. The new condition of mobility was compatible with the individualistic ideology, and it was at the same time incompatible with political absolutism. In the first place, the large family and the homogeneous neighborhood, which had been the principal agencies of social control, disintegrated, primarily as a result of mobility. They were replaced by the small family, consisting of parents and children, detached from other relatives, and by a neighborhood in which the *mores* were not homogeneous. Many family functions were transferred to other social institutions, resulting in a weak family unit in which the members had relatively few activities or interests in common. Similarly, the neighborhood ceased to function as an effective socializing agency in which the pressures for conformity were intimate, personal, and consistent.

Second, with increased mobility the problem of control was greatly intensified, for the boundaries of frequent and effective interaction were extended from the local community to nations and then to most of the earth in the form of commerce, travel, newspapers, and other means of communication. When interaction was confined to the local community, spontaneous and sentimental influences controlled behavior, for the effect of the behavior of a person was immediately apparent to self and to others. When interaction extended beyond the area of intimate association, the effects of the behavior were not immediately discernible either to the members of any local community or to the participants in the broader area of interaction.

Because of increased mobility, a condition of anonymity was created, and the agencies by which control had been secured in almost all earlier societies were

³³Henry D. McKay, "The Neighborhood and Child Conduct," *Annals of the American Academy of Political and Social Science*, 261:32-42, 1949. See also South Side Community Committee, *Bright Shadows in Bronzewood* (Chicago: South Side Community Committee, 1949), pp. 26-28.

³⁴Richard A. Cloward, "Illegitimate Means, Anomie, and Deviant Behavior," *American Sociological Review*, 24:164-76, 1959. See also Albert K. Cohen and James F. Short, Jr., "Research in Delinquent Subcultures," *Journal of Social Issues*, 14:20-37, 1958.

greatly weakened.³⁵ It is probable that the family and neighborhood would have been relatively impotent to control their members in activities with outsiders, even if they had been retained in their original strength, for these agencies cannot be effective in the control of behavior occurring far away from their location. A certain national loyalty, somewhat comparable to the loyalties in the earlier primary groups, flourished in connection with the doctrine of the divinity of royalty. But apparently the common people did not take this doctrine as seriously as did royalty, and when the belief in the doctrine disintegrated, no effective substitute was found.

We may conclude that mobility of persons and of commodities widens the area within which control becomes necessary and at the same time weakens the local agencies of control in the communities into which the migrants move. On the one hand, "over-attention to movement and under-attention to settlement are the villains that destroy local defensible community space."³⁶ On the other hand, "people who occupy a marginal status are continually confronted with the necessity of forming moral judgments. Situations that would be routine for other people call for choice."³⁷ However, this conclusion is not based on sufficient evidence to justify a definitive statement regarding the significance of mobility to criminality. It is possible that rapid changes in technology may create a situation in which the criminal laws, written for social conditions as they existed before the technological changes, must almost necessarily be violated if the new technologies are to be retained.³⁸ However, certain students of law have insisted that the prevalence of crime is due to the fact that the law has been extended much more rapidly than the general *mores*, and that when the law is not thus supported by general *mores* it is relatively unimportant and is violated frequently. In either case, the most relevant variable is the normative conflict which has arisen to provide alternative patterns of conduct, some of which are clearly violations of the criminal law.³⁹ The author of *Future Shock* has put the matter this way:

In each year since 1948 one out of five Americans changed his address, picking up his children, some household effects, and starting life anew at a fresh place. Even the greatest migrations of history, the Mongol hordes, the westward movement of Europeans in the nineteenth century, seem puny by comparison. . . . Any relocation, of necessity destroys a complex web-work of old relationships and establishes a set of new ones. It is this

³⁵See Joel Samaha, *Law and Order in Historical Perspective: The Case of Elizabethan Essex* (New York: Academic Press, 1974); and Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon, 1975).

³⁶H. L. Niebert, "Crime Prevention by Urban Design," *Transaction: Social Science and Modern Society*, 12:41-47, 1974.

³⁷Tomatsu Shibutani, *Society and Personality* (Englewood Cliffs, N. J.: Prentice-Hall, 1961), p. 578.

³⁸W. F. Ogburn, *Social Change*, 2d ed. (New York: Viking Press, 1952), pt. 4.

³⁹See Weinberg, "Urbanization and Male Delinquency in Ghana"; and Denis Szabo, "Societe de masse et inadaptations psycho-culturelles," *Revue Francaise de Sociologie*, 6:472-86, 1965.

disruption that, especially if repeated more than once, breeds the "loss of commitment" that many writers have noted among the highly mobiles.⁴⁰

A few studies of the relationship between horizontal mobility and the crime rate have been made, most of them in the 1930s, but they have been directed toward analysis of the direct effects of mobility in a contemporary situation. They fail to measure the full significance of mobility, for the effects of this process on criminality are principally indirect and are diffused over a period of time and over a wide area.⁴¹ A few data are presented, however, as illustrations of the first efforts to study this process. McKenzie found a correlation of 0.39 between juvenile delinquency and mobility by wards in Columbus, and Sullenger found a correlation of 0.34 in a similar study in Omaha.⁴² Carpenter concluded that a criminal group studied in Buffalo was much more migratory than a control group in the same city.⁴³ A more recent study, of a sample of 787 Dutch children, showed that children who had never moved had the lowest delinquency rates, that those who had moved 1-3 times had intermediate rates, and that children who had moved four or more times had the highest delinquency rates.⁴⁴ A national survey of the United States has shown that blacks, who have higher crime rates than whites, also move more often than whites, though their mobility is more local.⁴⁵ Reiss showed that 39 percent of a group of delinquent probationers in Chicago had resided at their present address for less than three years, and the Gluecks found that 33.6 percent of their delinquents, as compared with only 14.8 percent of the nondelinquents, were at their present address for less than one year.⁴⁶

These statistics give some understanding of the reason why the word *traveler* in medieval England was used in popular discourse to designate the thief. Such statistics, however, are entirely inadequate as demonstrations of the significance of horizontal mobility, for the important point is that mobility has affected all persons in modern society and not merely those who are nonresidents at the time of a crime:

Urbanization and industrialization have affected the development of community relationships by increasing the rate of family mobility. Mobility has eroded the sense of

⁴⁰Alvin Toffler, *Future Shock* (New York: Bantam Books, 1970), pp. 78-79.

⁴¹O. Kinberg, "On So-Called Vagrancy," *Journal of Criminal Law and Criminology*, 24:552-583, 1933; and Clinard and Abbot, *Crime in Developing Countries*, pp. 108-127.

⁴²R. D. McKenzie, "The Neighborhood," *American Journal of Sociology*, 28:166, 1921; T. E. Sullenger, *Social Determinants in Juvenile Delinquency* (New York: John Wiley, 1936), p. 179. See also Sullenger, "The Social Significance of Mobility: An Omaha Study," *American Journal of Sociology*, 55:559-564, 1950.

⁴³Niles Carpenter and William M. Haenszel, "Migratoriness and Criminality in Buffalo," *Social Forces*, 9:254-55, 1930.

⁴⁴W. Buikhuisen and H. Timmerman, "Verhuizing en Criminaliteit" [Moving and Crime], *Nederlands Tijdschrift voor Criminologie*, 12:34-39, 1970.

⁴⁵Ronald J. McAllister, Edward J. Kaiser, and Edgar W. Butler, "Residential Mobility of Blacks and Whites: A National Longitudinal Survey," *American Journal of Sociology*, 77:445-56, 1971.

⁴⁶Albert J. Reiss, Jr., "The Accuracy, Efficiency, and Validity of a Prediction Instrument," *American Journal of Sociology*, 56:552-61, 1951. Sheldon and Eleanor T. Glueck, *Unraveling Juvenile Delinquency* (New York: Commonwealth Fund, 1950), p. 80.

community, diminishing opportunity for the development of role relationships based on roots in a neighborhood. It is important to have a variety of role contacts, particularly across age groups; yet increasingly in urban areas adults interact with friends who are scattered throughout the metropolitan area and not with individuals who live in the same building or block. There is a reduction of long-term interest in youth on the part of conforming adults outside the family. Young people are mobile, meeting friends away from home and away from the neighborhood where informal social controls are more likely to be exercised. Once a certain proportion of the population has developed this postindustrial pattern, one can no longer speak of it as a community.⁴⁷

CULTURE CONFLICT

Like "social disorganization," the concept of *culture conflict* has been used to refer to social conditions characterized by a lack of consistency in the influences which direct the individual. The concept has not been clearly formulated, however, for it sometimes is used as a synonym for normative conflict and sometimes is restricted to only the normative conflict arising from migration of conduct norms from one area to another.⁴⁸ As we have seen, normative conflict can develop *within* a culture, without the introduction of norms from other cultural areas. It also can arise when the norms of one cultural area come into conflict with those of another. Most of the American research on the relationships between culture conflict and crime has been concerned with normative conflict arising in the latter process, the interpenetration of cultural codes. This emphasis no doubt reflects an interest in America's "immigrant problem."⁴⁹

Conflicts between the norms of behavior in divergent cultural codes may arise in at least three ways. First, the codes may clash on the border of contiguous culture areas. Speck observed, for example, that:

Where the bands popularly known as the Montagnais have come more and more into contact with Whites, their reputation has fallen lower among the traders who have known them through commercial relationships within that period. The accusation is made that they have become less honest in connection with their debts, less trustworthy with property, less truthful, and more inclined to alcoholism and sexual freedom as contacts with the frontier towns have become easier for them.⁵⁰

With increased mobility and the development of communication processes, the border between such divergent cultures has become extremely broad, for knowledge concerning divergent conduct norms no longer arises solely out of direct personal contacts. The old social relations and standards of behavior which had been adequate for control while Palestine was relatively isolated from the rest

⁴⁷Paul C. Friday and Jerald Hage, "Youth Crime in Postindustrial Societies: An Integrated Perspective," *Criminology*, 14:347-68, 1976. See also H. MacCoby, "The Differential Political Activity of Participants in a Voluntary Association," *American Sociological Review*, 23:524-32, 1958.

⁴⁸See Donald R. Cressey, "Culture Conflict, Differential Association, and Normative Conflict," chap. 4 in *Crime and Culture: Essays in Honor of Thorsten Sellin*, ed. Marvin E. Wolfgang (New York: Wiley, 1968), pp. 43-54.

⁴⁹See Chapter 7.

⁵⁰Speck, "Ethical Attributes of Labrador Indians," p. 561.

of the world have proved inadequate in more recent years, when the cultures of other groups have been introduced into Israel through impersonal means. Remarkable changes in criminality have occurred.⁵¹ Similar effects have also been observed in South Africa:

An important factor in producing criminal behavior is culture conflict. This discontinuity is seen in the movement of hundreds of thousands of Bantus from the "Veld," the native reserves, and even other parts of Africa to the cities where a new set of physical and personal associations surrounds the individual. There is a breakdown in primary controls that follows detribalization with the introduction of cash economy, accelerated mobility, personal anonymity, and new leisure time pursuits. . . . One aspect of nonconforming behavior has been gang life among the [African] juvenile offenders.⁵²

Second, in colonization the laws and norms of one cultural group may be extended to cover the territory of another, with the result that traditional ways of behaving suddenly become illegal. For example, when Soviet law was extended to Siberian tribes, women who obeyed the Soviet law and laid aside their veils were killed by their relatives for violating the norms of the tribes. Wearing a veil was illegal from the point of view of Soviet law, and not wearing a veil was illegal from the point of view of tribal law. Similarly, before French law was introduced in Algeria, the killing of an adulterous woman was the right and duty of the woman's father or brother; but under the French law such killing became a crime punishable by death.

Third, when participants in one culture migrate to another culture, they may take with them ways of behaving which clash with the norms of the receiving culture. This process is the reverse of the one just discussed, and it occurs when the migrant group is politically weaker than the group whose territory is invaded. If the Algerians in the above illustration had moved to France, they would have introduced divergent norms in that nation.

After a period of dominance by English customs and laws, many conflicting norms were introduced in the United States by this process. Generally, the immigrant population, having reached maturity in the Old World environment, remains relatively isolated and has a relatively low crime rate when the immigrants settle in America, but some studies show that the sons of immigrants have a much higher crime rate than their parents or the native-born of native parentage, apparently because the second generation, like the Siberian women, finds it difficult to identify the proper ways of behaving.

TENDENCIES TOWARD INTEGRATION

During the last century, especially, the individualistic system in business and politics has been modified in its material aspects. Free competition was ruining

⁵¹See Shlomo Shoham, "Culture Conflict as a Frame of Reference for Research in Criminology and Social Deviation," chap. 5 in *Crime and Culture*, ed. Wolfgang, pp. 55-82.

⁵²R. Williamson, "Crime in South Africa: Some Aspects of Causes and Treatment," *Journal of Criminal Law, Criminology, and Police Science*, 48:185-92, 1957. See also Clinard and Abbott, *Crime in Developing Countries*.

individuals, and they abandoned it in favor of collective activities. Huge multinational corporations, huge banks, chain stores, chain theaters, chain newspapers, and broadcasting networks developed. Trade associations, labor unions, chambers of commerce, and many other associations also were formed. To an increasing extent, the behavior and opportunities of individuals are determined and defined by these collectivities and associations.⁵³ The ideology of individualism still remains in a world of corporate activity. This may be seen in the frequency with which the directors and officers of corporations are traitors to their stockholders, in the competition between associations for financial advantages, and in many other ways. But the general development has been from feudalism and absolutism to individualism, and from individualism to private collectivism.

In the United States, the national wealth has been increasingly controlled by fewer and fewer corporations, primarily because the corporations gaining government privileges have been able to use them to gain still more privileges. Favorable legislation has been piled on favorable legislation, monopolies have monopolized monopolies, and merged corporations have merged with merged corporations until government and big business have become at the highest levels one enterprise rather than two.⁵⁴ As the late Senator Philip Hart of Michigan put it, "When a corporation wants to discuss something with its political representative, you can be sure it will be heard. When a company operates in thirty states, it will be heard by thirty times as many representatives."⁵⁵ One result of such legislative listening has been a fusion of corporation and government or, perhaps more accurately, transformation of the nation into a huge corporation with its own board of directors at the top.

There seems to be no real inclination to unscramble corporate mergers and thus to abandon the system of private collectivism in favor of a return to the competitive system of earlier generations. It is just possible, on the contrary, that individualism and normative conflict will diminish as more and more people, especially poor ones, are given full membership in the socialistic system which the corporate complex demanded and created. Such integration is, after all, what is implied by the term "welfare state."

Four tendencies toward social integration, aside from the corporate activities described above, seem to have appeared in the modern world. First, a wider uniformity of behavior and a greater degree of identification of self with others are secured by newspapers, radio, theaters, television, and public education. This interest, however, tends to be restricted in scope or is concerned with ephemeral incidents. Its importance may be indicated in relation to bribery of athletes. In

⁵³See Manfred Rehbinder, "Status, Contract, and the Welfare State," *Stanford Law Review*, 23:941-55, 1971; and Robert Childres and Stephen J. Spitz, "Status in the Law of Contract," *New York University Law Review*, 47:1-31, 1972.

⁵⁴See Donald R. Cressey, "Restraint of Trade, Recidivism, and Delinquent Neighborhoods," in *Delinquency, Crime and Society*, ed. James F. Short, Jr. (Chicago: University of Chicago Press, 1976), pp. 209-38.

⁵⁵Quoted by Milton Viorst, "Gentlemen Prefer Monopoly: The Impotence of Antitrust Law," *Harper's Magazine*, 245:32-38, November, 1972.

1919, when a notorious gambler and gangster bribed some of the baseball players in the world series to throw the game, a tremendous pressure for punishment of the players and the briber was exerted. Bribery of a member of the president's cabinet provoked less popular antagonism than the bribery of these baseball players. An almost identical reaction to bribery of college basketball players occurred thirty years later. The players were dismissed, and in some states laws were enacted which made the penalty for giving bribes in athletic contests more severe than the penalty for robbery with a gun. On this point, the public, or that part of it which counted in athletics, presented a united front. It is possible that baseball or some other sport could become the nucleus around which public morality may be unified, as has been claimed of cricket in England; but in general the public interests, like the communication media which largely create them, are fluctuating, unstable, and concerned with unimportant things.

A second tendency toward uniformity of thought and attitudes was seen in the artificial efforts to develop nationalism in Europe, as in the Nazi regime in Germany, Fascism in Italy, Sovietism in Russia, and dictatorships in other countries. These movements, like the New Deal in the United States and more recent manifestations of a "welfare state" both in the United States and abroad, were gropings toward social organization to replace the individualism which had broken down or was breaking down economically, legally, and politically.

Third, the rise of suburban living in the United States, a leveling-off of the birth rate, and the near-elimination of immigration should permit the development of a cultural homogeneity that has not been possible since the early nineteenth century. The passing of the population-expansion phase of our history, together with industrial decentralization, may lead to a cessation of city growth, may permit the development of neighborhoods and residential suburbs of a primary-group type, and may reduce the speculative aspect of economic life.

A fourth tendency toward homogeneity may be found in the development of scientific activities and intellectual honesty. The proportion of scientific people in modern society is not large, but the results of science have permeated all society to a greater or lesser extent. The attitude of scientific inquiry is an important variable to be considered in analysis of changes in some of the old institutions. A characteristic of the changes in social organization described earlier was their incompatibility with intellectual honesty.⁵⁶

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⁵⁶Noam Chomsky, "The Responsibility of Intellectuals," *The New York Review of Books*, February 23, 1967; and Kai T. Erikson, "Sociology: That Awkward Age," *Social Problems* 19:431-36, 1972.

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