CRIMINAL LAW AND JUSTICE SYSTEM

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Preface

The criminal law and justice system form the cornerstone of societal order and governance, encompassing a complex network of statutes, procedures, and institutions designed to maintain public safety and uphold individual rights. At its core, criminal law delineates prohibited behaviours and prescribes penalties for those found guilty of transgressing these legal boundaries. This body of law operates on the principle of culpability, wherein individuals are held accountable for their actions if they knowingly or intentionally commit acts deemed unlawful. This principle is complemented by the presumption of innocence, which safeguards defendants' rights until proven guilty beyond a reasonable doubt.

Law enforcement agencies serve as the frontline in the justice system, tasked with investigating alleged crimes, gathering evidence, and apprehending suspects. Once apprehended, suspects are subjected to a judicial process that includes prosecution and defense representation. Prosecutors, representing the state, present evidence and arguments aimed at securing a conviction, while defense attorneys advocate on behalf of the accused, ensuring their rights are protected and mounting a robust defense strategy.

The trial process is a pivotal stage in the criminal justice system, where the prosecution and defense present their cases before a judge and, in many cases, a jury of peers. This phase is governed by procedural rules designed to ensure fairness and transparency, including the right to a speedy trial, legal representation, and the opportunity to confront witnesses. Following the presentation of evidence and arguments, the trier of fact deliberates to determine guilt or innocence.

Upon conviction, sentencing is imposed, with the aim of achieving various objectives such as deterrence, rehabilitation, and retribution. Sentencing may

involve fines, probation, incarceration, or, in jurisdictions that permit it, capital punishment. Additionally, the justice system oversees the administration of corrections and rehabilitation programmes aimed at managing offenders, addressing underlying issues, and facilitating their successful reintegration into society.

Throughout its various stages and components, the criminal law and justice system strive to balance competing interests, including the need for public safety, individual rights, and societal well-being. It is a dynamic and evolving framework that continually adapts to changes in societal norms, legal precedents, and advances in technology and forensic science. Ultimately, the effectiveness and legitimacy of the criminal justice system hinge on its ability to administer justice impartially, uphold the rule of law, and foster public trust and confidence in its operations.

"In 'Criminal Law and the Justice System,' readers delve into the intricate workings of legal principles and societal mechanisms aimed at upholding order and fairness in society's response to crime."

–Author

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Components of Criminal Law

Under United States law, an element of a crime (or element of an offense) is one of a set of facts that must all be proven to convict a defendant of a crime. Before a court finds a defendant guilty of a criminal offense, the prosecution must present evidence that, even when opposed by any evidence the defense may choose to present, is credible and sufficient to prove beyond a reasonable doubt that the defendant committed each element of the particular crime charged. The component parts that make up any particular crime vary depending on the crime.

The basic components of an offense are listed below; generally, each element of an offense falls into one or another of these categories. At common law, conduct could not be considered criminal unless a defendant possessed some level of intention — either purpose, knowledge, or recklessness — with regard to both the nature of his alleged conduct and the existence of the factual circumstances under which the law considered that conduct criminal. However, for some legislatively enacted crimes, the most notable example being statutory rape, a defendant need not have had any degree of belief or willful disregard as to the existence of certain factual circumstances (such as the age of the accuser) that rendered his conduct criminal; such crimes are known as strict liability offenses.

CRIMINAL LAW POLICY SECTION PROGRAMME LOGIC

A logic model is a systematic and visual way to illustrate the relationship between the planned activities of a programme, in this case criminal law policy services and their expected results. In other words, a logic model is a depiction

of how a programme or service is intended to work and what it is trying to achieve. A basic logic model has the following key elements:

Activities: The processes, tools, events and actions that are part of the implementation of the services. The activities should lead to the intended results.

Outputs: The direct product of the identified activities.

Outcomes: The impacts of the services. These are results/changes/benefits/consequences. They are usually presented in stages, as change is incremental over time: immediate outcomes should support and lead to the intermediate outcomes, and intermediate outcomes to long-term ones.

This section provides a logic model for CLPS, including a visual diagram and text descriptions of the key elements. The descriptions in this section represent the theory behind the Section. As such, they provide an account of expected results of the Section's activities. The evaluation findings in Section 4 explore whether CLPS activities are being implemented as planned and whether expected outcomes are, in fact, being achieved.

ACTIVITIES

The Section's numerous activities that can be grouped into three main categories:

- Legal policy development and analysis;
- Legal advice and assistance; and
- Engagement and collaboration with provinces and territories, criminal justice stakeholders and international partners.

LEGAL POLICY DEVELOPMENT AND ANALYSIS

Part of the Section's core mandate involves supporting the Minister of Justice in the development of criminal law and criminal justice policy. This includes providing criminal law and policy advice to the Minister and to other government departments as well as to advance Canadian priorities and interests internationally. The outputs of this policy work vary widely and include legal opinions, reports, legislation and international agreements and conventions. A lot of CLPS' work during the evaluation period led to the development and enactment of new criminal laws. The sub-sections that follow describe CLPS' involvement at each stage of the policy development process.

Step 1: Planning the Legislative Programme

Twice each year, the Department of Justice is asked to submit a list of the legislation that the Minister plans to propose to Cabinet for introduction. CLPS provides input into this process by submitting proposals for the government's legislative programme in the area of criminal law and procedure. As part of this function, CLPS responds to policy direction from the government and monitors the legal policy environment in the areas of criminal law and procedure to determine emerging issues, such as gaps in the criminal law framework and issues with implementing recent law reforms. Research, case law and

consultations with stakeholders (*e.g.*, Canadian Bar Association) help inform emerging issues. As emerging issues and government priorities are identified, CLPS develops policy options for addressing them. The Minister's chosen policy option forms the basis of the legislative proposal.

Step 2: Policy Development

Generally speaking, after a proposed bill is included in the government's legislative programme, CLPS counsel draft a Memorandum to Cabinet (MC) along with accompanying briefing material seeking policy approval and authority to draft the bill. The Memorandum to Cabinet includes an annex of drafting instructions which provides the framework for drafting the bill. As part of the development of the MC, the Section consults with affected departments and with legal advisers within specialized areas of the Department of Justice (*e.g.*, Human Rights Law Section (HRLS) and the Constitutional, Administrative and International Law Section (CAILS)) who advise on the Charter and other constitutional implications of the policy proposal. Once it is approved by the Minister, CLPS follows the progress of the MC through approval by the appropriate Cabinet policy committee to ratification by the full Cabinet. It is usually at this stage that drafting can begin. Pre-drafting may start earlier, as long as Cabinet approval is given.

Step 3: Bill Drafting

CLPS operationalizes the drafting instructions in the MC approved by Cabinet by working with the drafters (from the Legislative Services Branch) to develop the bill. The details of the drafting instructions are often fleshed out by CLPS counsel orally at meetings with a team of two drafters, one of whom is responsible for the English version while the other is responsible for the French. This co-drafting process ensures two original and authentic versions of the bill that reflect both the civil and common law systems, as well as both official languages. CLPS also drafts briefing and speaking notes, and attends the Government House Leader Review to respond to questions.

Step 4: Parliamentary Process

As the bill is being drafted, CLPS prepares the necessary briefing materials that will be required for the Parliamentary process. These materials include: briefing books for use by the Minister or Parliamentary Secretary; clause-by-clause binders for use by all Members of the Parliamentary committees studying the bill; draft statements for the Minister, Parliamentary Secretary and government Members during debate at the various stages of the parliamentary process; and a succinct background paper that describes the bill. CLPS also works closely with the Department's Communications Branch to prepare public communications materials such as: highlight sheets, backgrounders, Minister's Press Conference remarks, material for Parliamentarians and media briefings, press releases, and any other communication materials deemed necessary for a particular bill.

CLPS supports the progress and passage of criminal law reform bills throughout the Parliamentary Process. Bills proceed through three readings in each of the House of Commons and Senate and are studied by committees in each House. CLPS counsel can be asked to support the Minister in the government lobby during each of the readings and at the Report Stage (when the bill, as passed by the committee, is considered by the House). CLPS counsel also appear as witnesses on technical matters at committee or accompany the Minister during Bill Committee Study. Part of CLPS' role in supporting the Minister throughout the Parliamentary process also includes providing technical briefings to Opposition Critics upon request by the Minister's Office.

Step 5: Post Enactment

The final Parliamentary stage in the enactment of a bill by Parliament is Royal Assent. If the bill comes into force upon proclamation on a date or dates after the bill receives Royal Assent, CLPS prepares the supporting documentation to obtain the Order in Council fixing the date(s) for coming into force.

Depending on the nature of the bill, CLPS may provide post-enactment support, for example, by engaging in outreach, training and educational activities that support the bill's implementation. The Section also monitors criminal law reforms by obtaining feedback on implementation issues from provinces and territories and criminal justice stakeholders including other departments and agencies, such as the Royal Canadian Mounted Police and the Public Prosecution Service of Canada, and non-governmental organizations such as the Canadian Bar Association and the Canadian Association of Chiefs of Police. When legislation for which CLPS is responsible undergoes a parliamentary review process, the Section prepares materials and provides other necessary support, such as counsel serving as witnesses when appropriate. Additionally, CLPS provides litigation support when bills concerning a criminal law matter are contested. CLPS' participation in strategy sessions helps ensure that the litigators have the information necessary to understand the objectives of the legislation being challenged.

PRIVATE MEMBERS' BUSINESS

CLPS also provides support to the Minister in relation to all Private Members' business related to criminal law, including motions, parliamentary questions, and bills. CLPS advises the government on Private Members' bills on criminal law matters (through Memoranda to Cabinet) and drafts speeches, briefing materials and amendments as necessary for initiatives the government supports. CLPS also works with legislative drafters to develop government motions to amend these bills where necessary.

Similar legislative support and public and media relations materials (except clause-by-clause books) required for government bills are generally required for Private Members' bills.

LEGAL POLICY DEVELOPMENT IN OTHER DEPARTMENTS

In addition to legal policy development and analysis concerning the Department of Justice's own criminal law and criminal justice policy initiatives, the Section provides legal policy advice to other federal departments/agencies on their own proposed legislation, policies, programmes, guidelines or other initiatives either during the development of the policy stage or during the drafting of legislation. The Section will often comment on proposed ideas or options or will be asked to add criminal law aspects to non-criminal policy proposals.

LEGAL POLICY DEVELOPMENT IN OTHER DEPARTMENTS

CLPS provides legal policy advice on the development of international instruments on criminal law and procedure. It does so by attending international meetings (*e.g.*, United Nations, Organisation for Economic Co-operation and Development, Commonwealth, Council of Europe, G8, G-20) to share the Canadian perspective and by providing legal policy advice to Canadian negotiators. In some fora, such as the United Nations Commission on Crime Prevention and Criminal Justice, it is CLPS that leads the Canadian delegation in defending Canada's interests and positions when negotiating international instruments related to crime prevention and terrorism. In addition, CLPS is involved in reporting on Canada's implementation of international instruments and is involved in evaluating other countries' implementation of international legal instruments or international standards in intergovernmental review bodies (*e.g.*, in relation to the United Nations Convention against Corruption, the Inter-American Convention against Corruption, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Financial Action Task Force Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation).

CLPS can also be involved in bilateral meetings and negotiations. For example, the Section provides legal and policy advice in support of the negotiation of cross-border law enforcement initiatives, including the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America.

LEGAL ADVICE AND ASSISTANCE

As subject matter experts in the area of criminal law, CLPS provides legal advice to the Minister of Justice, to the Departmental Legal Services Units (DLSUs) and, on behalf of the Minister, to other federal departments. In the context of the former, CLPS, as the lead on the development of criminal law policy, will often provide a mix of legal and policy advice to the Minister of Justice. A typical briefing note, for example, may report to the Minister a factual situation that has occurred or is ongoing, how the existing law is being or may be applied, and then offer options or make policy recommendations as to law amendments or other legal or non-legal options for addressing them.

As with advice to the Minister of Justice, all other advice may contain legal matters or policy matters, and can contain both. A common scenario involves the use of criminal law powers and offences in support of the non-criminal policy proposals of other departments. In this scenario, the policy elements include advice on whether the client's policy objective is an appropriate use of the criminal law, and if so, an assessment of the probable effectiveness of various offences and sentencing options. The legal issues include matters such as advice on how existing criminal law elements of the scheme have been applied and the actual formulation or amendment of offences.

Legal advice is typically sought by counsel in DLSUs who have attempted to find solutions before contacting CLPS and it typically flows from the Section to the DLSU counsel and through them to the client. The nature of the advice sought varies considerably but commonly involves such issues as enforcement powers (*e.g.*, search and seizure); questions about criminal procedure; sentencing-related questions; as well as advice in relation to such things as the creation of offences in regulatory statutes and advice on the interpretation of laws and the legal considerations for operational issues, such as the use of investigative techniques.

For litigation matters, when the federal government intervenes in a case involving the interpretation/application of the criminal law, including Charter challenges on a criminal law matter, the Section provides litigation support (along with the Public Law Sector) to ensure that the litigators have the information necessary to address the Charter challenge. CLPS counsel often provide support to provincial counsel arguing criminal law issues even where the Government of Canada does not intervene, as well as to federal Crown prosecutors and litigators where the Government of Canada is carrying the case. CLPS also assists other countries in criminal law and procedure matters by giving technical assistance to support their law reform efforts and is occasionally involved in assisting the Government respond to complaints raised with United Nations bodies.

ENGAGEMENT AND COLLABORATION WITH PROVINCES AND TERRITORIES AND CRIMINAL JUSTICE STAKEHOLDERS

CLPS engages with the provinces and territories and with numerous stakeholder groups to identify emerging issues, discuss options for addressing them, and monitor reforms by obtaining feedback on implementation issues. This process includes consultations with federal, provincial and territorial officials on criminal law issues, which occur primarily through the Coordinating Committee of Senior Officials (Criminal Justice) and its working groups, as well as through interdepartmental working groups within the federal government.

The Section consults with other departments and agencies, such as the Royal Canadian Mounted Police, Public Safety Canada, the Public Prosecution Service of Canada, Canada Border Services Agency, the Canadian Security Intelligence Service, and the Department of Foreign Affairs, Trade and Development

(DFATD). In addition, as appropriate to the particular issue, CLPS consults with other relevant criminal justice stakeholders, such as the Canadian Bar Association, Barreau du Québec, the Canadian Criminal Justice Association, and the Canadian Association of Chiefs of Police.

At the international level, CLPS is involved in a number of bilateral activities with other countries (*e.g.*, Canada-US Cross-Border Crime Forum, the Canada-India Joint Working Group on Counter-Terrorism) on issues of criminal law policy including national security and anti-terrorism law. CLPS also participates in a number of intergovernmental bodies and expert working groups, including the G8 Roma-Lyon Crime and Terrorism Group, the United Nations Commission on Crime Prevention and Criminal Justice, the Commonwealth and various specialized committees of the Organization of the American States.

INTERMEDIATE OUTCOMES

GOVERNMENT DECISION MAKING IS INFORMED BY LEGAL AND POLICY ADVICE

Through its activities, CLPS is able to provide information upon which the government can base policy decisions. For example, the Section undertakes analyses regarding the potential impacts of legislative, policy or other initiatives. CLPS wants to ensure that the government is aware of the legal effects of any proposed changes and of the potential impacts that new laws or policies will have on the criminal justice system and key stakeholder groups. By offering well-analyzed policy alternatives, CLPS enables the government to make well-informed decisions based on the best available evidence. Although CLPS provides legal policy advice and support, it does not control whether its recommendations are accepted; the government makes the final decisions on the policy direction.

CONTRIBUTION TO THE DOMESTIC AND INTERNATIONAL CRIMINAL LAW FRAMEWORK

CLPS contributes to the domestic criminal law framework through the development of criminal law policy. As mentioned previously, it is responsible for the preparation of Memoranda to Cabinet concerning criminal law policy issues, amendments to the *Criminal Code*, and in some other areas where the criminal law is seen as the primary or core element of an initiative. The Section also contributes to legislative and other initiatives where the criminal law does not form the primary or core element of the initiative.

CLPS counsel often carry domestic policy files that involve discussions and cooperation with their international counterparts. This can be explained by the significant increase of transnational crime (*e.g.*, drug trafficking, money laundering, cyber-crime, corruption, terrorism) due to globalization and technological advances. To ensure the effectiveness of Canada's criminal justice system, CLPS must develop coordinated responses with its international

counterparts. For this purpose, CLPS engages in a wide-range of ongoing intergovernmental committees and working groups that deal with various criminal justice matters. The Section also provides legal policy expertise to DFATD during the negotiations of international criminal law instruments, which is used to ensure that these instruments reflect Canadian interests and approaches. In some instances (*e.g.*, United Nations Commission on Crime Prevention and Criminal Justice), it is CLPS, on behalf of DFATD, that directly negotiates international criminal law instruments.

MENTAL STATE (MENS REA)

Mens rea refers to the crime's mental elements of the defendant's intent. This is a necessary element—that is, the criminal act must be voluntary or purposeful. *Mens rea* is the mental intention (mental fault), or the defendant's state of mind at the time of the offense, sometimes called the *guilty mind*. It stems from the ancient maxim of obscure origin, "actus reus non facit reum nisi mens sit reas" that is translated as "the act is not guilty unless the mind is guilty." For example, the *mens rea* of aggravated battery is the intention to do serious bodily harm. *Mens rea* is almost always a necessary component in order to prove that a criminal act has been committed.

Mens rea varies depending on the offense. For murder, the mental element requires the defendant acted with "malice aforethought". Others may require proof the act was committed with such mental elements such as "knowingly" or "willfulness" or "recklessness". Arson requires an intent to commit a forbidden act, while others such as murder require an intent to produce a forbidden result. Motive, the reason the act was committed, is not the same as *mens rea* and the law is not concerned with motive. Although most legal systems recognize the importance of the guilty mind, or *mens rea*, exactly what is meant by this concept varies. The American Law Institute's Model Penal Code has reduced the mental states to four. In general, guilt can be attributed to an individual who acts "purposely," "knowingly," "recklessly," or "negligently." Together or in combination, these four attributes seem basically effective in dealing with most of the common *mens rea* issues.

CONDUCT (ACTUS REUS)

All crimes require *actus reus*. That is, a criminal act or an unlawful omission of an act, must have occurred. A person cannot be punished for thinking criminal thoughts. This element is based on the problem of standards of proof. How can another person's thoughts be determined and how can criminal thoughts be differentiated from idle thoughts? Further, the law's purview is not to punish criminal ideas but to punish those who act upon those ideas voluntarily.

Unlike thoughts, words can be considered acts in criminal law. For example, threats, perjury, conspiracy, and solicitation are offenses in which words can constitute the element of *actus reus*. The omission of an act can also constitute the basis for criminal liability.

CONCURRENCE

In general, *mens rea* and *actus reus* must occur at the same time—that is, the criminal intent must precede or coexist with the criminal act, or in some way activate the act. The necessary *mens rea* may not continually be present until the forbidden act is committed, as long as it activated the conduct that produced the criminal act. However, for criminal liability to occur, there must be either overt and voluntary action or a failure to act when physically able as required by statute or law.

CAUSATION

Many crimes include an element that actual harm must occur—in other words, causation must be proved. For example, homicide requires a killing, aggravated battery requires serious bodily injury and without those respective outcomes, those respective crimes would not be committed. A causal relationship between conduct and result is demonstrated if the act would not have happened without direct participation of the offender.

Causation is complex to prove. The act may be a "necessary but not sufficient" cause of the criminal harm. Intervening events may have occurred in between the act and the result. Therefore, the cause of the act and the forbidden result must be "proximate", or near in time.

INDIAN CRIMINAL LAW

Indian criminal law is the law relating to criminal conduct in India.

HISTORY

Indian Criminal Laws are divided into three major acts *i.e.*, Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872. Besides these major acts, special Criminal Laws are also passed by Indian Parliament *i.e.*, NDPS, Prevention of Corruption Act, Food Adulteration Act, Dowry Prevention Act, the Defence of India Act, *etc.* thousands of minor laws are made in India.

Indian Penal Code formulated by the British during the British Raj in 1860, forms the backbone of criminal law in India. Jury trials were abolished by the government in 1960 on the grounds they would be susceptible to media and public influence. This decision was based on an 8-1 acquittal of Kawas Nanavati in *K. M. Nanavati vs. State of Maharashtra*, which was overturned by higher courts.

Indian Penal Code(IPC) was passed under the chairmanship of Lord Macaulay and was enforced in 1862, Lord Macaulay issued clarification for the people of India for implementation of this Code, because people were of the view that rule of Capital Punishment will be misused against them. Further more people were against foreign rule on Indian people.

PROFILE OF THE CRIMINAL LAW POLICY SECTION

Not unlike other policy functions, CLPS operates in a dynamic, complex, fast-paced policy environment that is significantly influenced by events, shifting priorities and changing landscapes. The Section consults and interacts with a wide range of policy stakeholders, each with their own unique needs and interests. There is significant variation in the nature of these relationships, their depth, duration and the type of engagement (*e.g.*, partnerships, consultations, networking/information sharing). Part of CLPS' role is to help build consensus among stakeholders and achieve a balanced policy approach that takes these different perspectives into consideration. The policy work of CLPS benefits from the contributions and the support of a wide variety of actors and functions within the Department including, but not limited to, the Research and Statistics Division, Communications Branch, Public Law Sector (*e.g.*, Human Rights Law Section which advises CLPS on the Canadian Charter of Rights and Freedoms (the "Charter") risks associated with policy proposals), Cabinet and Legislative Affairs and Legislative Services Branch (which provides drafting services).

Other federal departments and agencies, provinces and territories and non-government organizations also provide input into policy development through the consultation process. The variety of products and services that the Section delivers to its diverse client and stakeholder base. Lines with two arrowheads denote a reciprocal (partner) relationship between CLPS and the other party. The figure also summarizes the varied nature of the work undertaken by CLPS on behalf of its clients and stakeholders.

STRUCTURE

The Criminal Law Policy Section is part of the Policy Sector, which manages the Department of Justice's overall policy agenda. The Section consists of nine teams which deal with different criminal law subject area specialties. While the team structure described below accounts for much of the Section's policy work, it should be noted that some is carried out independent of this structure. Additionally, the Section works on cross-cutting issues that involve multiple teams. For example, CLPS provides extensive legal and policy advice on international cooperation and cross border law enforcement initiatives, including extradition, mutual legal assistance, law enforcement information sharing, integrated cross border policing and cooperative policing and plays a lead role in the development of international instruments and protocols to govern cross border policing initiatives.

SENTENCING REFORM

CLPS monitors the policy environment with respect to sentencing, including sentencing patterns and case law on sentencing. The Section provides legislative and policy options to the Minister of Justice. In addition, other federal

departments solicit its advice on the penalty provisions in proposed federal legislation. Issues covered under this theme include penalties (maximum and minimum), conditional sentences, alternative measures, restorative justice, and the dangerous offender regime in the *Criminal Code*.

CABINET AND LEGISLATIVE AGENDA

The Cabinet and Legislative Agenda group oversees CLPS' support to the Minister of Justice throughout the Cabinet and Parliamentary processes (*e.g.*, in the preparation of Cabinet submissions, briefing material, speeches) and monitors the progress of legislation.

CRIMINAL PROCEDURE

Criminal procedure concerns the rules that govern criminal proceedings from the time of arrest through to sentencing and appeals. CLPS policy work in this area includes ensuring that procedures address emerging issues such as new technologies (*e.g.*, electronic disclosure, telewarrants), social and procedural changes that affect the criminal justice process (*e.g.*, the growth of mega-trials, the increase of self-represented accused) and case law developments (*e.g.*, court decisions affecting legislative provisions). This policy work also ensures that the criminal justice system functions effectively, efficiently and fairly.

SOCIAL AND MORAL ISSUES

This subject area focuses on the provision of legal policy advice on social and moral issues in the criminal law context, such as federal legislative or policy responses to sexual morality issues (*e.g.*, prostitution, pornography, obscenity), medical legal issues (*e.g.*, abortion, assisted suicide, euthanasia), protection of vulnerable groups (*e.g.*, violence against women and children including sexual violence, human trafficking), and other legal issues with social and moral implications (*e.g.*, gambling, hate crime, mental disorder, impaired driving).

EXTERNAL RELATIONS

Recognizing that increasingly criminal activity crosses national boundaries, CLPS focuses its response on transnational and international crime by participating in international fora, such as the United Nations Commission on Crime Prevention and Criminal Justice, the G8 Roma/Lyon Group on transnational organized crime and terrorism, and the Canada-U.S., Cross Border Crime Forum. It brings Canadian experience, approaches and interests to the development of international instruments. In addition, protecting Canadian economic and national security interests can involve stabilizing countries that are experiencing serious domestic crime problems. Consequently, CLPS provides technical support and policy-related advice to assist these countries. The Section also provides advice and technical support to countries with effective justice systems that are interested in learning from the Canadian experience.

HIGH-TECH AND INVESTIGATIVE POWERS

As part of its work in the area of high-tech crime, CLPS considers whether the statutory framework for law enforcement investigatory powers is sufficient to support the type of techniques required to keep pace with modern technology and its use in criminal activity.

ORGANIZED CRIME

Several *Criminal Code* provisions address organized crime and police investigative powers that federal or provincial law enforcement agencies use to enforce federal statutes. CLPS monitors the Canadian legal framework and provides advice concerning these statutory provisions and their operation. It participates in international fora that address organized crime and assists in the development and implementation of related international instruments.

SECURITY, TERRORISM AND GOVERNANCE

CLPS provides legal and policy advice on domestic legislation and policy related to security, terrorism and governance (anti-corruption). In particular, CLPS serves as the policy lead within the Department on related legislation, such as the *Anti-terrorism Act*, *Security of Information Act*, *Crimes against Humanity and War Crimes Act*, *Corruption of Foreign Public Officials Act*, and relevant provisions of the *Criminal Code* and the *Canada Evidence Act*. The Section participates in the negotiation of international instruments, implements international conventions into Canadian law, participates in international peer-review bodies and provides technical assistance to other countries undertaking domestic implementation. The Section also has the lead role in supporting the Minister of Justice with regard to the Cross-Cultural Roundtable on Security.

The organizational structure of the Section, which is headed by a Director General/Senior General Counsel (DG/SGC). The DG/SGC Office provides executive support to the Director General, while Operations is responsible for corporate planning and reporting, budgeting, staffing, and contracting processes. The Director General is supported by several General Counsel and Team Leaders, each of whom leads one of the nine teams who deliver criminal law policy services. The Sentencing, Cabinet and Legislative Agenda, External Relations and Security, Terrorism and Governance teams are each managed by a General Counsel (LC-02). The Criminal Procedure, Social and Moral Issues, Policy Centre for Victim Issues, High-Tech and Investigative Powers and Organized Crime teams are each led by a Senior Counsel (LP-03) who reports to one of the four General Counsel.

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Regulations Concerning Criminal Offenses and Judicial Procedures

Criminal law and criminal procedure constitute fundamental pillars of the legal system, encompassing a multifaceted framework of regulations and processes designed to address unlawful conduct and ensure fair treatment within the justice system. Criminal law delineates prohibited behaviours and stipulates penalties for individuals found guilty of violating these legal boundaries. It operates on the principle of culpability, holding individuals accountable for their actions if they knowingly or intentionally engage in unlawful acts. This body of law is complemented by criminal procedure, which governs the mechanisms by which suspected offenders are investigated, prosecuted, and adjudicated. Criminal procedure encompasses a series of rules and safeguards aimed at protecting the rights of individuals involved in the criminal justice system, including the presumption of innocence, the right to legal representation, and due process protections. Together, criminal law and criminal procedure form the framework through which society responds to crime, balancing the imperatives of public safety, individual rights, and procedural fairness. They provide the foundation for law enforcement agencies, prosecutors, defense attorneys, judges, and correctional institutions to fulfill their respective roles in administering justice and maintaining societal order. As such, a comprehensive understanding of criminal law and criminal procedure is essential for navigating the complexities of the legal system and safeguarding the principles of justice and equity.

Clara and Linda go on a shopping spree. Linda insists that they browse an expensive department store. Moments after they enter the lingerie department,

Linda surreptitiously places a bra in her purse. Clara watches, horrified, but does not say anything, even though a security guard is standing nearby. This example illustrates two issues of criminal law: (1) Which crime did Linda commit when she shoplifted the bra? (2) Did Clara commit a crime when she failed to alert the security guard to Linda's shoplifting?

SOURCES OF LAW

Law comes from three places, which are referred to as the sources of law.

CONSTITUTIONAL LAW

The first source of law is constitutional law. Two constitutions are applicable in every state: the federal or US Constitution, which is in force throughout the United States of America, and the state's constitution. The US Constitution created our legal system. States' constitutions typically focus on issues of local concern.

The purpose of federal and state constitutions is to *regulate government action*. Private individuals are protected by the Constitution, but they do not have to follow it themselves.

EXAMPLE OF GOVERNMENT AND PRIVATE ACTION

Cora stands on a public sidewalk and criticizes President Obama's health-care plan. Although other individuals may be annoyed by Cora's words, the government *cannot* arrest or criminally prosecute Cora for her speech because the First Amendment of the US Constitution guarantees each individual the right to speak freely. On the other hand, if Cora walks into a Macy's department store and criticizes the owner of Macy's, Macy's could eject Cora immediately. Macy's and its personnel are *private*, not government, and they *do not* have to abide by the Constitution.

EXCEPTIONS TO THE CONSTITUTION

The federal and state constitutions are both written with words that can be subject to more than one interpretation. Thus there are many *exceptions* to any constitution's protections. For safety and security reasons, we see more exceptions to constitutional protections in *public schools* and *prisons*. For example, public schools and prisons can mandate a certain style of dress for the purpose of ensuring safety. Technically, forcing an individual to dress a specific way could violate the right to self-expression, which the First Amendment guarantees. However, if wearing a uniform can lower gang-related conflicts in school and prevent prisoners from successfully escaping, the government can constitutionally suppress free speech in these locations.

SUPERIORITY OF THE CONSTITUTION

Of the three sources of law, constitutional law is considered the *highest* and should not be supplanted by either of the other two sources of law. Pursuant to

principles of federal supremacy, the *federal* or US Constitution is the most preeminent source of law, and state constitutions cannot supersede it. Federal constitutional protections and federal supremacy.

STATUTORY LAW

The second source of law is statutory law. While the Constitution applies to government action, statutes apply to and regulate *individual* or *private* action. A statute is a written (and published) law that can be enacted in one of two ways. Most statutes are written and voted into law by the *legislative* branch of government. This is simply a group of individuals elected for this purpose. The US legislative branch is called Congress, and Congress votes federal statutes into law. Every state has a legislative branch as well, called a state legislature, and a state legislature votes state statutes into law. Often, states codify their *criminal* statutes into a penal code. State citizens can also vote state statutes into law. Although a state legislature adopts *most* state statutes, citizens voting on a ballot can enact some very important statutes. For example, a majority of California's citizens voted to enact California's medicinal marijuana law.

STATUTORY LAW'S INFERIORITY

Statutory law is inferior to constitutional law, which means that a statute cannot conflict with or attempt to supersede constitutional rights. If a conflict exists between constitutional and statutory law, the courts must resolve the conflict. Courts can invalidate unconstitutional statutes pursuant to their power of judicial review, which is discussed in an upcoming section.

ADMINISTRATIVE LAWS AND ORDINANCES

Other written and published laws that apply to individuals are administrative laws and ordinances. Administrative laws and ordinances should not supersede or conflict with statutory law. Administrative laws are enacted by administrative agencies, which are governmental agencies designed to regulate in specific areas. Administrative agencies can be federal or state and contain not only a legislative branch but also an executive (enforcement) branch and judicial (court) branch. The Food and Drug Administration (FDA) is an example of a federal administrative agency. The FDA regulates any food products or drugs produced and marketed in the United States. Ordinances are similar to statutes, except that *cities* and *counties* vote them into law, rather than a state's legislature or a state's citizens. Ordinances usually relate to health, safety, or welfare, and violations of them are typically classified as infractions or misdemeanors, rather than felonies. A written law prohibiting jaywalking within a city's or county's limits is an example of an ordinance.

MODEL PENAL CODE

State criminal laws differ significantly, so in the early 1960s a group of legal scholars, lawyers, and judges who were members of the American Law Institute

drafted a set of suggested criminal statutes called the Model Penal Code. The intent of the Model Penal Code was to provide a standardized set of criminal statutes that all states could adopt, thus simplifying the diversity effect of the United States' legal system. While the Model Penal Code has not been universally adopted, a majority of the states have incorporated portions of it into their penal codes, and the Model Penal Code survives as a guideline and focal point for discussion when state legislatures modify their criminal statutes.

CASE LAW

The third source of law is case law. When judges rule on the facts of a particular case, they create case law. *Federal* case law comes from federal courts, and *state* case law comes from state courts. Case law has its origins in English common law.

ENGLISH COMMON LAW

In Old England, before the settlement of the United States, case law was the most prevalent source of law. This was in contrast to countries that followed the Roman Law system, which primarily relied on written codes of conduct enacted by legislature. Case law in England was mired in tradition and local customs. Societal principles of law and equity were the guidelines when courts issued their rulings. In an effort to be consistent, English judges made it a policy to follow previous judicial decisions, thereby creating a uniform system of laws throughout the country for the first time.

The English system of jurisprudence made its way to the United States with the original colonists. Initially, the thirteen colonies unanimously adopted common law as the law of the land. All crimes were common-law crimes, and cases determined criminal elements, defenses, and punishment schemes. Gradually, after the Revolutionary War, hostility towards England and modern reform led to the erosion of common-law crimes and a movement towards codification. States began replacing common-law crimes with statutes enacted by state legislatures.

Oxford professor Sir William Blackstone's *Commentaries on the Law of England,* which interpreted and summarized English common law, became an essential reference as the nation began the process of converting common-law principles into written statutes, ordinances, and penal codes.

LIMITATIONS ON COMMON-LAW CRIMES

In modern society, in many states and the federal government, *United States v. Hudson & Goodwin*, 11 U.S., 32 (1812), accessed September 24, 2010. judges *cannot* create crimes. This violates notions of fairness. Making up a new crime and punishing the defendant for it does not provide consistency or predictability to our legal system. It also violates the principle of legality, a core concept of American criminal justice embodied in this phrase: "Nullum crimen sine lege, nulla poena sine crimen".

In states that do not allow common-law crimes, statutes must define criminal conduct. If no statute exists to criminalize the defendant's behaviour, the defendant *cannot be criminally prosecuted*, even if the behaviour is abhorrent. As the Model Penal Code states, "[n]o conduct constitutes an offense unless it is a crime or violation under this Code or another statute of this State".

The common law still plays an important role in criminal lawmaking, even though most crimes are now embodied in statutes. Classification of crimes as felonies and misdemeanors is a reflection of English common law. Legislatures often create statutes out of former common-law crimes. Judges look to the common law when defining statutory terms, establishing criminal procedure, and creating defenses to crimes. The United States is considered a common-law country. Every state except Louisiana, which is based on the French Civil Code, adopts the common law as the law of the state *except* where a statute provides otherwise.

THE CRIMINAL AND CRIMINOLOGY IN COURT PROCEDURES

Criminals are human beings much like the rest of us. They move about from place to place: they play and work more or less; they laugh, and mourn and are otherwise moved emotionally as we are; they form personal attachments to persons, things, and places as we do; just as we are, so are they eager for the approval of those with whom they associate, and are cast down when they fail to secure it.

They are ambitious "for a place in the sun": the "sun" being the circle of those who are, in general, seeking the same type of satisfactions that they desire for themselves. They think, learn, and forget as we do; and finally in respect to their physical make-up they resemble our neighbours in our city block. Moreover in all these respects they differ among themselves much as the members of our club differ among themselves.

These are observations such as a casual observer might make. And for these reasons it is impossible to bring forward any one person (or even a half dozen) and to introduce him as a criminal with any reasonable expectation that after seeing him and talking with him the observer would next day recognize another criminal if he should chance to meet him and talk with him. The recognition of the criminal character is not so simple as that.

We quote below, nevertheless, abstracts from several case histories that afford glimpses into a few of the personal characteristics of as many boys and youths who became criminals.

The last two in this short list are what may be described as "professional" criminals -at any rate towards the end of their recorded careers: "professional" in much the same sense that one of us is "professional." After a long period of preparation they were living exclusively upon what they could gain as a result of their training.

A

An Italian boy who immigrated at 9 years of age. When we saw him at 15 he was decidedly bright mentally but poorly educated, having gone very irregularly to school. He had been several times in the juvenile court and once to the Parental School. A few years later he was a member of a gang notorious for their robberies and which, according to the Chicago Crime Commission "commanded some political influence and was said to resort to intimidations to prevent their conviction on various charges for which they had been indicted." After having served a term at the reformatory, he is reported at 24 years to have killed a man in a street hold-up.

B

A sad, repressed boy, very small for his age, who had a weak, untruthful mother and sickly father. The boy became very dissatisfied with school yet, on account of poor physical condition, he was not permitted to work. The judge's orders for him to live with relatives in the country, following our advice, were never carried out. He was truant, drifted into bad companionship and much delinquency until finally with companions he killed the cashier of a bank they were attempting to rob. He is serving a long term in a reformatory.

C

A defiant, stubborn boy, suffering for long from a mental conflict concerning his parentage. Although bright and showing no evidence whatever of mental abnormality, he developed a distinct anti-social attitude, shown even towards benefactors. He became a chronic run-away, going off alone. Penniless and hungry, he crept into a shanty with the purpose of robbery and assaulted the old man occupant so that he died. This boy needed understanding treatment which he never received. He was sent to an industrial school.

D

A boy with a nice, open face, who demonstrated good loyalties to the father who looked after him; the mother, an immoral woman, having deserted. At one time he was allowed to live with her. Bad companionship was a big factor in his downfall; except for a short time in a correctional school, he was never removed from his thoroughly bad environment. He, too, was implicated in killing a bank official while a member of a gang of "auto bandits." His sentence was 15 years in the penitentiary.

E

American born of Italian parents, we saw three times when he was between the ages of 12 and 16. From the first he was in poor physical condition, with very large tonsils and adenoids, poor colour, choreic jerkings, and valvular heart lesions. At 14 after having been nine months at the Parental School, he was only four feet, six inches, and was fifty pounds under the average for boys of his age. We found him normal mentally and of striking personality characteristics.

He was a leader, never coming to report to his probation officer without bringing a crowd of boys. We observed him to be forceful, bad-tempered, and reckless. His home was just moderately good, his mother being a grim-visaged, illiterate woman whose treatment of her boy's delinquencies was excessive scolding. In general the family attitude was, "Let him alone; he's sick."

F

F's delinquencies were serious from the beginning. With his crowd there was very repeated petty thieving, burglary, truancy, and staying out late at night. It was clear that he needed physical up-building and firm disciplinary control over a very long period. After these three court appearances he was tried with a well-to-do farmer uncle, who could not manage him. He was sent twice for short periods to the John Worthy School and on numerous occasions was held in the Detention Home. Each time he was allowed to return home.

We find that he has had an exceedingly long court and police record for burglary, robbery, assault, and assisting in an attempt to murder. He has served two terms in the House of Correction, has been in the army and deserted, is a gambler, and has twice had gonorrhea. His people tolerate him when he is at home and regard him as a burden with which they have to put up.

G

The story of G. covers ten years from the time he was 13 years old. He was short, of sturdy build, healthy. Mentally he was of average general ability; one of his teachers said that he was an unusually bright boy, "but with a mind full of badness." His delinquent tendencies, beginning at 7 years, comprised stealing from home, school, and employers, sometimes with companions, but not always with the same crowd. At home he showed signs of irritation and nervousness in certain "spunky spells" and in biting his finger nails. The family circumstances were good, but his father was a peculiarly "hard" man "who never could be told anything." His mother was religious, affectionate, anxious to be helpful to the boy.

Even so young this boy showed marked reticence, his lips firmly set, though his chin appeared decidedly weak. One of his remarks to us was that he hadn't stolen nearly so often as he had been tempted. He was frank with nobody, apparently not even with himself; he lied excessively to officials of the juvenile court and to others. He showed a rather defiant attitude, but sometimes tears were in his eyes and he very evidently was suffering from some inner stress. We came to feel strongly that the dominant feature of his case was inner conflict and obstinate repression. Later he grew more and more indifferent and more anti-social.

His record has been a long career of frequent thieving, fraudulent misrepresentation, forging, robbery, cashing of stolen money orders, *etc.* Earlier he was befriended by many, including the judge, and jobs with good firms were found for him, but in every case he proved dishonest. Of recent years he has not

worked, living by dishonest methods. He was tried on probation to several officers. He was sent to St. Charles twice and he was returned on other occasions when he ran away. He was twice sent to the John Worthy School. He was committed to the state reformatory as a young adult and finally to the penitentiary. He is well known to detective agencies because of the type of delinquency in which he mainly engages.

No one can decide for one's self why these boys became criminals without having made a very close analysis of their life histories from their very early childhood. And this analysis should take account of everything in their homes, schools, churches, playgrounds, work, and associates that might possibly have affected them for good or for ill. Moreover such an analysis should stress, very heavily, the boys' personal characteristics: their whole physical and mental makeup. It will be observed that Drs. Healy and Bronner in the above abstracts have mentioned various personal characteristics and numerous features of the boys' home, school, and neighbourhood life. These they have pointed out because in the particular instances they are regarded as important from the viewpoint of one who is trying to understand the youths' behaviour and to reach a decision as to what should be done about it.

We could describe numerous cases of adults who, in a state of unmistakable mental disease have committed atrocious crimes — or what would be crimes in the proper sense if committed by a normal person. They attract a great deal of attention and are a shock to the community. But as a matter of fact such cases are relatively few and offenses of this nature are generally perpetrated by an individual alone — not in cooperation with others.

It is an important point that the criminal who is engaged in "big business" like any other person who is working on a large scale, is in cooperation with others. The cooperation may or may not be the outcome of a formal organization created for the purpose of committing depredations. Sooner or later the criminal becomes a part of a cooperating and mutually protecting group. Nowhere is this better illustrated than in two of Clifford R. Shaw's books in which certain law breakers have told their own stories, at length.

The *Natural History of a Delinquent Career* is a narrative account of the life of one who, for the purpose of the narrative, is called Sidney Blotzman. He was considerably above the normal level of intelligence. For this reason and because of his other personal characteristics he was undoubtedly capable of becoming more than an average figure in normal, honest human relations. But when he was still only in his sixteenth year of age he was a notorious criminal beginning a twenty-year sentence in a state penal institution.

PREVENTION IS BETTER THAN CURE

The best cure for diseases is their prevention. This applies equally to those of the biological organism and to those of social behaviour. It is self-evident

that the only road to prevention lies through an understanding of causes and through their control. The research student, therefore, who is motivated by no other than a desire to satisfy his scientific curiosity respecting phenomena needs no defense in addition to this — assuming that he not only gains an understanding but passes it on to others who may find something otherwise useful in it.

Some of the results of efforts at research into the causes of criminal behaviour have been set out in this book. The attainment of completion in this direction is a never-ending process, but enough has been accomplished and confirmed to afford a fairly adequate notion of the points at which preventive measures need to be applied.

THE HOME

The conclusions of research students support the common-sense view that in the nature of the home and the neighbourhood are at once the primary roots of criminal careers and the first defenses against their development. This holds alike in those states in which the family is the social unit both in theory and in practice and in those in which the state itself is regarded as the theoretical parent. The mere fiat that a state is *in loco parentis* does not make it the parent and moreover no state has yet tried the experiment of putting itself into the place of the parent excepting in isolated cases as when a guardian is legally appointed or when the court assumes responsibility for a juvenile delinquent or dependant.

In every case the criminal man or woman was a child before he was recognized as a criminal, and it was the home in the persons of father and mother, and perhaps others, that made the first contacts with him. So one must look first to the home as an agent for preventing the development of criminals. And many a finger will point out at once that to leave it so is quite too simple; that the home itself is a victim of the times and of circumstances; that the boy's or girl's going wrong is "the fault of society." Of course it is a plain fact that the atmosphere of the times does invade every form of institution. The home, along with the church and the school, is its victims or beneficiaries as the case may be. In the present instance the times unquestionably make it difficult for the majority of homes in this country to perform their normal function. We are prepared to believe that in many instances they have made it impossible. But on the other hand it is equally true that in every social stratum are examples of homes in which there is successful resistance to deteriorating influence from without. It requires self-denial, ingenuity, wisdom, skill, and determination on the part of parents and other members of a family to accomplish this result, but it justifies emphasis upon the point that the home is the first bulwark against the development of criminal careers, and that to strengthen it should be the first object of our preventive efforts. If we could have the responsibility of parents for the character of their children emphasized by every overt and implicit means, and if we could stress that responsibility as systematically and uninterruptedly as we do the fact

that every man, parent or not, should be economically self-sufficient, the probability is that we would accomplish more than we have been doing towards preventing the development of undesirables. The great road towards this end — omitting description of hills and bridges, *etc.* — is of the same nature as the way towards the professional attitude of the physician, the banker, or what not.

The doctrine that "society is responsible" and that therefore our preventive work must begin with cleaning the streets, providing insurance against unemployment and other misfortunes, teaching professions and trades from engineering to hair dressing, *etc.* — all at public expense — is mischievous to the extent that the populace takes it seriously. For what is the praise or blame of the state or community at large is too far removed from the rank and file to arouse great care on the part of most of us. To be most effective the first responsibility and the agent first responsible must be as near as hands and feet.

But there is no denying the fact that "the times are hard" upon the home. They are running true to form in this respect, for the times always have been so — no doubt less so on the whole a generation or more ago. "Less so" because there were "chores" or definitely marked responsibilities for every member of the household; the home was more nearly an economic unit than it is today, and outside distractions were less near at hand.

It should be our first object to strengthen the home. It is easy enough to make the categorical statement and no one will be found in a civilized state to deny it. There are two possible attacks upon this first object: upon the parents directly, and secondly upon the children. The direct attack aims to elevate the quality of those who at a given time are homemakers.

Whatever machinery there may be — like that for adult education, for example — that is designed for making life thrilling above the vegetative level may be interpreted as a direct support of parents; as in some measure a bulwark against such unfortunate drifting as too often leads to disorganization and irresponsible conduct. For in so far as such movements make the sojourn at home interesting and profitable on a high plane, they tend to cement the family and thereby to create the soil and atmosphere that are conducive to the silent and unobtrusive processes of wholesome development of the younger members of the circle. The Parent-Teacher's Association and many others are in this category of aids directly aimed at those who are immediately responsible for the moral and physical health and well-being of the children of our day. Preventive work as it affects children directly begins, of course, as early as the earliest childhood. Just as soon as parents begin to train their children in habits of constructive cooperative work, and to develop in them a sense of responsibility towards others they are beginning to fortify their own homes and those that shall succeed them. They are doing likewise when they surround their children with a healthy religious life at home and tie them up with an outside institution like the church that specializes in the inculcation of ideals of personal sacrifice and of bearing one another's burdens. For childhood is the great season of

insensible growth of those attitudes that make or break the future home and the future state. Any neglect by parents of their responsibilities in this direction is quickly reflected in the children — not that the young recognize what is going on before they have attained maturity, if even then. We are considering here one of the many intangibles that go together towards the building of character for good or ill.

THE SCHOOLS

But in addition to whatever aids are created for direct assistance to the parents themselves are others of much greater magnitude that are brought to bear immediately upon the children of the present age. And here one thinks, in the first place, of the schools. These, for our purposes as criminologists, we prefer to consider as aids to the home, though their promoters perhaps have rarely thought of them in any other sense than as contributors to the young directly. They are the second line of preventives of the development of criminals. It is no longer assumed, as Horace Mann did when he was broadcasting propaganda for the establishment of a public school system in Massachusetts, that to open a school is to close a jail. But at the same time it is not denied that schools may contribute to the prevention of criminal careers. To some degree — though perhaps it is small — this may be accomplished by way of precept and example, for the school has an advantage in that it lays hold of boys and girls when they are at an impressionable age. There can be no doubt that many children of normal abilities are unadjusted in school, as many adults are in their occupations. The result is irritation, grouchiness, and ill-behaviour that mark a period of "predelinquency." Parents, teachers, neighbours, and policemen become acquainted with boys and girls of this sort who are often only the victims of a lack of a vivid and creative imagination in the personnel of the institution with which they are in contact.

Such a creative imagination was supplied many years ago, for example, by Mr. William F. Bogan, then Principal of Lane Technical High School in Chicago, and now General Superintendent of Schools in that City. We quote here, from private correspondence, a hitherto unpublished statement with reference to an educational experiment for which he was responsible:

About twenty years ago Chicago discovered that in its public school system were hundreds of large over-age boys who were retarded in their grades and unhappy in their associations with the brighter, younger, and smaller children in the schools. In the belief that special treatment might aid these boys to find themselves, a prevocational department was organized in connection with the Lane Technical High School. The chief requirements for admission were: excess weight, excess height, and excess age for the grade. It is not much of an exaggeration to say that the most important instruments for testing eligibility were the weighing scales and the yard stick. No boy was admitted who could not show a clear record of at least one year behind the grade. The curriculum that was offered the boys emphasized handwork and drawing and minimized

book work. The results were what any intelligent person might have prophesied: the boys developed independence, skill of hand, and a liking for simple academic work that seemed to have a goal. These boys who at first were nick-named 'prevokes' for short, then 'provokes' because of their irritating ways, soon developed qualities of leadership which won the respect of the high school boys. In shop and drawing classes they mingled with high school boys and could not be distinguished from them. They soon developed an *esprit de corps* which made them very proud of their school and their department. This pride in the school became the basis of a group morale that has been noted by nearly every visitor. Plainly these large boys during their association with brighter and smaller boys and girls in the elementary schools had suffered from soul hunger and hand hunger. The prevocational school satisfied this peculiar type of hunger.

The same spirit of loyalty and love for the school combined with a remarkable discipline and courtesy was observed in the Thomas A. Edison School for truant boys in Cleveland. Several other cities have schools of similar type that are also remarkable, so remarkable that they are becoming laboratory schools for the education of educators. Particularly notable are the schools in New York of similar type organized many years ago and fostered by Miss Olive Jones.

It is thus by attending to the problems of adjustments, by removing unnecessarily irksome strains incident to adjustment, and by building up stable human organisms that we may expect to diminish the liability to criminal behaviour in the future. The school may contribute towards this end.

The most discussed school system in the United States — the Gary (Indiana) system — should have more than a passing mention in this connection. It is located in a highly industrialized district where the weight of the times is heaviest upon the home, and where, as in urban conditions almost universally, it is well-nigh impossible for parents to supply constructive occupations for their children out of school. It is a fundamental principle of this system that *all day* children should be busy, under suitable conditions, at work, study, and play. To this end the school is the coördinating agent of all the facilities of the community. Its comprehensive all-the-time programme is for all the grades from the kindergarten through the high school. In the ordinary situation, the streets and alleys have approximately twice as much time for educating the children in the wrong way as the schools have for educating in the right direction. Under the Gary system, the street and alley time is appropriated to the school.

But a few generations ago it was the narrow circle of the home aided by the small shop and the farm that educated and trained the child and were mainly responsible for the character of both the immature and the mature. But now the small shop and the farm are beyond the horizon of the great body of children. With them have gone the opportunity to bring the child face to face with concrete situations in which his own responsibility looms before him in signs whose meaning is unmistakable. Where there are no vegetable and flower gardens the effect of neglecting to pull weeds is not apparent. There is nothing superior to

the hundred-and-one chores of the farm and shop to bring quickly to the senses of the boy and girl the effect of doing them or of neglecting them. Dr. G. Stanley Hall has enumerated approximately sixty industries that three score years ago were practiced in a small New England township and that were accessible to every adolescent farmer lad in the township, and many of which were to be found on a small scale upon every farm within its boundaries. How can an urban community compete with a situation like that when it undertakes to find a vital, character-building occupation for every youth in school and in his leisure hours? Contrast with this the work of a "hand" in a modern shoe factory who all day does but one of the eighty-odd processes that are involved in the transition from raw hide to a finished pair of shoes! Here, in times past, were aids of the first order to sensible parents. It is just this defect of our times that the Gary Schools try to overcome by coördinating all the agencies of the community.

Today, each of a considerable variety of schools is called upon to supply the lack of what support parents of an earlier generation had abundantly from other sources. With this change in the times has come the necessity for connecting the child with the type of school in which his nature can find the best conditions for its development. And when he is done with school, he has but a part picture of the life in which he is a unit.

Every form of agency for the social welfare, including the organized charities and protective associations, settlements, and the like may be regarded as aids to the home in its struggle against waywardness and criminality. In fact, it is the expressed policy of the best of these institutions to cooperate with parents first and last to the end that they may be enabled themselves to perform their natural functions in relation to the rearing of their children.

THE JUVENILE COURT

One such institution is the Juvenile Court. It hears complaints against children of Juvenile Court age — that is, those who are under sixteen to twenty-one years, for the age differs among the states. Moreover the same court takes cognizance of children who are merely dependent but not delinquent, becomes their guardian if need be, and undertakes responsibility for finding a suitable home for them or for providing them with healthful surroundings by whatever means may be available. It is not a criminal court and the juvenile delinquents who are brought before it are not regarded as criminals though the complaints against them of misconduct may be thoroughly well grounded in fact. The distinction between a *juvenile delinquent* and a *criminal* is artificial in a host of instances if not in all, but it is a salutary one nevertheless in view of the pliability of the youth and his immaturity. The conventional rules of court procedure, the rules of evidence and all are taboo in the Juvenile Court. The youth at the bar needs no defense; he cannot incriminate himself. And there is no prosecution in the ordinary sense. There are no heroics about the procedure; no splitting of hairs, no building up and tearing down of testimony for and against. While in

the conventional criminal court a defendant's past is immaterial to the issue at hand and may be excluded by the court in arriving at a judgment, it is otherwise in the Juvenile Court. Here the judge seeks all the facts that bear not upon the commission of a misdeed itself, but upon the youth himself -his school, community, and home life; his parents, brothers and sisters, and playmates; his abilities and disabilities both of body and mind. And when the court has acquired a picture of the entire situation, it wants to know first what the parents can do about the case and whether it is probable that, with such and such assistance, they will be able to do something constructive for the child. The question is not whether he is guilty but whether — forgetting all of that — something can be done to set him upon the high road, and to prevent him from becoming a confirmed criminal. To this end he is placed upon probation to his parents or, if they are unfit, to others. This is *juvenile* probation in contrast to *adult* probation that has been discussed in an earlier chapter.

Thus the spirit of the Juvenile Court is parental. It steps in when the natural parent has failed or is in danger of failing. It does so on the hypothesis that the child is, or may be, an asset to the state. The court is not a namby-pamby recent upshot from "uplifters"; it is the outgrowth of an ancient Anglo-Saxon concept that the King is the "guardian of his subjects."

We have already alluded to the fact that the Juvenile Court in its capacity as protector of its wards places them upon probation to their parents or to others; if need be it undertakes responsibility for finding them foster homes, *etc.*; and that it aims to become acquainted with the child's abilities and disabilities.

SCHOOL AND COMMUNITY CLINICS

Most of the troublesome cases that come before the Juvenile Court were truants and behaviour problems before they landed in the court. The implication is obvious. As a result school clinics and community clinics have attained wide vogue in recent years in an effort to stem the tide. The Illinois Institute for Juvenile Research is an illustration of an organization that is promoting state-wide service of this character.

The problems are expected, on one hand at least, to be wrought out by all the agencies we have mentioned plus corresponding developments in industrial and commercial establishments where large numbers of men and women are employed. It is wholesome — the attention that is being given to improving the conditions of labour, to relieving it of its tedium; to creating a favourable attitude towards one's occupation — as by instituting profit-sharing, for example; to selecting the job for the man — as Superintendent Bogan selected a particular type of school programme for a group of recalcitrant pupils. The mental hygienist in school and industry is carrying an important load in these relations. Night schools, lecture courses, reading clubs; religious affiliation and activity; wholesome voluntary organizations of every sort may be preventives in the best sense. They exercise the intangible but real forces in our daily lives. It is a

hopeless task to prove by graphs and statistics that they are actually preventives, but we are all the time demonstrating our belief in the proposition by our contributions organizations of the sort while we over and over again repeat, "They develop manhood"; and however we describe the meaning of that phrase we are going to make it clear that it implies something opposite to developing ne'er-do-wells and criminals. But all these movements together are regarded by at least one group of students — the eugenists — as inevitably unavailing against the great swell of oncoming criminals. For as they see it, criminality is in the blood and it will out unless the biological stream is cut. Hence sterilization.

STERILIZATON AS A MEANS OF PREVENTION

The object of the "Sterilization of the Unfit" is to stop the source of supply; to guarantee that "unfit" persons shall not be born. It is a "eugenic" measure. And the "unfit" in the language of the eugenist are the feeble-minded, the imbeciles, certain classes of the mentally diseased, the epileptics, and "degenerates" chiefly. Those who urge that the great majority if not all of the criminal population are recruited from the groups of the "unfit" are quite logical in holding that by eliminating the unfit, criminals will be wiped out of existence because no such individuals will come into being. But if we are approximately correct in an earlier chapter, a large proportion of the criminals in our generation do not belong in any of the categories of the mentally or of the physically unfit, nor in all of them together. For example, the proportion of feeble-minded in the criminal population is not much in excess of that in the population at large. Consequently the choking out of the groups in question would affect but a minimal proportion of criminals. Moreover, the laws of inheritance of such complicated characteristics as feeble-mindedness, mental disease, epilepsy, *etc.*, are so imperfectly known, as we have pointed out in an earlier chapter, that we could not possibly be assured that every offspring of persons so afflicted — if they were permitted to have offspring — would be tainted similarly. We could not, therefore, be justified in enforcing sterilization upon all such folk on the theory that by completely eliminating the possibility of their reproducing we should as thoroughly deprive the next generation of the burden of crime that it would otherwise bear.

Furthermore, there is no formula available by which we can determine in advance which epileptic will produce none but epileptics and which one will produce some epileptics and some normal descendants. The literature on heredity supports these propositions. And in addition, as we have pointed out hitherto, it is a respectable hypothesis that germ plasm may be so affected by environmental factors in the present generation as to modify the quality of the next. Once more, the sterilization of all criminals and of all defective individuals of whatever sort cannot blot out the social menace that such persons carry with them. For it leaves them and their undesirable behaviour with us, free to spread abroad their social and pathological contamination.

For all these reasons, it is premature to look to compulsory sterilization of the classes we have referred to as a panacea for crime. And by the same token it

is impossible for us to expect the certainty of even partial relief from sterilization with the consent of those who are to undergo the operation. Nevertheless, twenty-three states of the American Union have created sterilization laws in one form or another. Indiana led the way in 1907 with a compulsory statute under which one hundred and twenty operations were performed before the law was declared unconstitutional in 1921. In that year the Supreme Court of the State held in *Williams v. Smith* that the law was unconstitutional in that it denied the appellee due process of law:

Giving the inmate no opportunity to cross-examine the experts who decided upon the operation, to controvert their opinion, or to establish that he was not within the class designated in the statute. And wholly aside from the proposition of cruel and unusual punishment and infliction of pains and penalties by the legislative body through an administrative board, it is very plain that this act is in violation of the Fourteenth Amendment of the federal Constitution in that it denies appellee due process.

Whether legislation of this character can ever be effective in relation to the elimination or diminution of crime is a question of selection of cases and that in turn is a problem for those biologists whose specialty is in the field of heredity. We have already suggested that at present the problems are far from being solved.

COÖRDINATION OF EFFORT

The home, we believe, is primary and central in all efforts at preventing the development of criminals. This thought must be kept emphatically before home makers. Any other course is destructive of morale and, in the long run, of morals. Every agency for education and for public welfare in any respect is to be considered as a supporter of the home and it must be a cooperator with it.

But the cooperating agencies must be coordinated. They must work together according to a plan. The scope of activity on the part of each will need to be extended now and restricted at another time. The direction and control that are implied in coordinated work demand supervision and administration. This demand cannot be met by the heads of families.

The plan as adopted coordinates (1) the Health Department, including the division of health education in the schools, the Berkeley Health Center and the city health department; (2) the Berkeley Welfare Society, including work for home relief, and the Emergency Home; (3) the Bureau for Research and Guidance in the Public Schools, which undertakes surveys of progress and failure, educational and vocational guidance, school attendance, exclusion from school, and promotion of community organizations and clubs; (4) the Police Department, which is occupied not merely with arresting suspects and others but with investigating all manner of complaints, supervising public places and delinquents and potential delinquents, and promotes the development of organizations that are designed for elevating the morale of the community.

The best illustration of a state-wide organization of effort for the prevention of the development of criminals is furnished in the state of Illinois where the

office of State Criminologist has become the coordinating center for both public and voluntary agencies that bear upon the general problem. According to Gallagher nine cities in the United States had created crime prevention bureaus or were described as about to do so. Generally speaking, their programmes were very much restricted, and for the most part they are centralized in the police department. In Berkeley, centralization is in a Coordinating Council, and in the state of Illinois preventive functions are coordinated in the office of the State Criminologist.

INSTITUTIONS OF INTERNATIONAL CRIMINAL LAW

Today, the most important institution is the International Criminal Court (ICC), as well as several ad hoc tribunals:

- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda

Apart from these institutions, some "hybrid" courts and tribunals exist—judicial bodies with both international and national judges:

- Special Court for Sierra Leone, (investigating the crimes committed the Sierra Leone Civil War)
- Extraordinary Chambers in the Courts of Cambodia, (investigating the crimes of the Red Khmer era)
- Special Tribunal for Lebanon, (investigating the assassination of Rafik Hariri)
- Special Panels of the Dili District Court
- War Crimes Chamber of the Court of Bosnia and Herzegovina
- The War Crimes Court at Kosovo (in development)

INTERNATIONAL CRIMINAL COURT

The International Criminal Court (French: *Cour Pénale Internationale*; commonly referred to as the ICC or ICCt) is a permanent tribunal to prosecute individuals forgenocide, crimes against humanity, war crimes, and the crime of aggression (although it cannot currently exercise jurisdiction over the crime of aggression).

The court's creation perhaps constitutes the most significant reform of international law since 1945. It gives authority to the two bodies of international law that deal with treatment of individuals: human rights and humanitarian law.

It came into being on July 1, 2002—the date its founding treaty, the Rome Statute of the International Criminal Court, entered into force—and it can only prosecute crimes committed on or after that date. The court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere.

As of May 2015, 123 states are parties to the Statute of the Court, including all the countries of South America, nearly all of Europe, most of Oceania and roughly half of Africa. A further 31 countries have signed but not ratified the

Rome Statute. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty until they declare they do not intend to become a party to the treaty. Three signatory states—Israel, Sudan and the United States—have informed the UN Secretary General that they no longer intend to become states parties and, as such, have no legal obligations arising from their former representatives' signature of the Statute. 41 United Nations member states have neither signed nor acceded to the Rome Statute; some of them, including China and India, are critical of the Court. Ukraine, a non-ratifying signatory, has accepted the Court's jurisdiction for a period starting in 2013.

The court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the court by the United Nations Security Council. It is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states. To date, the Court: Has opened investigations into nine situations: the Democratic Republic of the Congo; Uganda; Central African Republic I and II; Darfur, Sudan; Kenya; Libya; Côte d'Ivoire; and Mali. The Office of the Prosecutor requested the authorization to open an investigation in the Georgia situation. Additionally, the Office of the Prosecutor is conducting preliminary examinations in seven matters in Afghanistan, Colombia, Guinea, Iraq, Nigeria, Palestine and Ukraine.

It publicly indicted 39 people. The ICC has issued arrest warrants for 31 individuals and summonses to eight others. Eight persons are in detention. Proceedings against 25 are ongoing: nine are at large as fugitives, four are under arrest but not in the Court's custody, four are in the pre-trial phase, and eight are at trial. Proceedings against 12 have been completed: two have been convicted, one has been acquitted, four have had the charges against them dismissed, two have had the charges against them withdrawn, one has had his case declared inadmissible, and three have died before trial.

As of March 2011, three trials against four people are underway: two trials regarding the situation in the Democratic Republic of the Congo and one trial regarding the Central African Republic. Another two people have been committed to a fourth trial in the situation of Darfur, Sudan. One confirmation of charges hearing (against one person in the situation of the DR Congo) is to start in July 2011 while two new cases (against a total of six persons in the situation of Kenya) will begin with the suspects' first appearances in April 2011.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The International Criminal Tribunal for Rwanda (ICTR), or the Tribunal pénal international pour le Rwanda (TPIR), is an international court established in November 1994 by the United Nations Security Council in Resolution 955 in order to judge people responsible for the Rwandan Genocide and other serious

violations of the international law in Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. In 1995 it became located in Arusha, Tanzania, under Resolution 977. (From 2006, Arusha also became the location of the African Court on Human and Peoples' Rights). In 1998 the operation of the Tribunal was expanded in Resolution 1165. Through several resolutions, the Security Council called on the Tribunal to complete its investigations by end of 2004, complete all trial activities by end of 2008, and complete all work in 2012.

The tribunal has jurisdiction over genocide, crimes against humanity and war crimes, which are defined as violations of Common Article Three and Additional Protocol II of the Geneva Conventions (dealing with war crimes committed during internal conflicts).

So far, the Tribunal has finished 50 trials and convicted 29 accused persons. Another 11 trials are in progress. 14 individuals are awaiting trial in detention; but the prosecutor intends to transfer 5 to national jurisdiction for trial. 13 others are still at large, some suspected to be dead. The first trial, of Jean-Paul Akayesu, began in 1997. Jean Kambanda, interim Prime Minister, pleaded guilty. According to the ICTR's Completion Strategy, in accordance with Security Council Resolution 1503, all first-instance cases were to have completed trial by the end of 2008 (this date was later extended to the end of 2009).

On July 1, 2012, an International Residual Mechanism for Criminal Tribunals will begin functioning with respect to the work begun by the ICTR. The ICTR has been called upon by the United Nations Security Council to finish its work by December 31, 2014, and to prepare its closure and transition of cases to the Mechanism.

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, more commonly referred to as the International Criminal Tribunal for the former Yugoslavia or ICTY, is a body of the United Nations established to prosecute serious crimes committed during the wars in the former Yugoslavia, and to try their perpetrators. The tribunal is an ad hoc court which is located in The Hague, the Netherlands.

The Court was established by Resolution 827 of the United Nations Security Council, which was passed on 25 May 1993. It has jurisdiction over four clusters of crime committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crime against humanity. The maximum sentence it can impose is life imprisonment. Various countries have signed agreements with the UN to carry out custodial sentences. The last indictment was issued 15 March 2004. The Tribunal aims to complete all trials by mid-2011 and all appeals by 2013, with the exception of Radovan Karad•iæ whose trial is expected to end in 2012

and the appeal to be heard by February 2014. Goran Had•iæ has been charged, however is still at large and thus do not fall within the court's completion strategy.

On 1 July 2013, an International Residual Mechanism for Criminal Tribunals will begin functioning with respect to the work begun by the ICTY. The ICTY has been called upon by the United Nations Security Council to finish its work by 31 December 2014 and to prepare its closure and transition of cases to the Mechanism.

THE PURPOSES OF PUNISHMENT

Deterrence prevents future crime by frightening the *defendant* or the *public*. The two types of deterrence are specific and general deterrence. Specific deterrence applies to an *individual defendant*. When the government punishes an individual defendant, he or she is theoretically less likely to commit another crime because of fear of another similar or worse punishment. General deterrence applies to the *public* at large.

When the public learns of an individual defendant's punishment, the public is theoretically less likely to commit a crime because of fear of the punishment the defendant experienced.

When the public learns, for example, that an individual defendant was severely punished by a sentence of life in prison or the death penalty, this knowledge can inspire a deep fear of criminal prosecution.

INCAPACITATION

Incapacitation prevents future crime by removing the defendant from society. Examples of incapacitation are incarceration, house arrest, or execution pursuant to the death penalty.

REHABILITATION

Rehabilitation prevents future crime by altering a defendant's behaviour. Examples of rehabilitation include educational and vocational programmes, treatment center placement, and counseling. The court can combine rehabilitation with incarceration or with probation or parole. In some states, for example, nonviolent drug offenders must participate in rehabilitation in combination with probation.

RETRIBUTION

Retribution prevents future crime by removing the desire for *personal* avengement (in the form of assault, battery, and criminal homicide, for example) against the defendant.

When victims or society discover that the defendant has been adequately punished for a crime, they achieve a certain satisfaction that our criminal procedure is working effectively, which enhances faith in law enforcement and our government.

RESTITUTION

Restitution prevents future crime by punishing the defendant *financially*. Restitution is when the court orders the criminal defendant to pay the victim for any harm and resembles a civil litigation damages award. Restitution can be for physical injuries, loss of property or money, and rarely, emotional distress. It can also be a *fine* that covers some of the costs of the criminal prosecution and punishment.

3

Juvenile Delinquency and Courts

Juvenile delinquency, also known as "juvenile offending", is participation in illegal behaviour by minors (juveniles, *i.e.,* individuals younger than the statutory age of majority).

Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers, and courts. A juvenile delinquent in the United States is a person who is typically below 18 (17 in New York, North Carolina, New Hampshire, and Texas) years of age and commits an act that otherwise would have been charged as a crime if they were an adult. Depending on the type and severity of the offence committed, it is possible for people under 18 to be charged and treated as adults.

In recent years a higher proportion of youth have experienced arrests by their early 20s than in the past, although some scholars have concluded this may reflect more aggressive criminal justice and zero-tolerance policies rather than changes in youth behaviour. Juvenile crimes can range from status offenses (such as underage smoking), to property crimes and violent crimes. Youth violence rates in the United States have dropped to approximately 12% of peak rates in 1993 according to official US government statistics, suggesting that most juvenile offending is non-violent.

However, juvenile offending can be considered to be normative adolescent behaviour. This is because most teens tend to offend by committing non-violent crimes, only once or a few times, and only during adolescence. Repeated and/or violent offending is likely to lead to later and more violent offenses. When this happens, the offender often displayed antisocial behaviour even before reaching adolescence.

SOCIALIST LAW JURISDICTIONS

A Public Procurator is an office used in Socialist judicial systems which, in some ways, corresponds to that of a public prosecutor in other legal systems, but with more far-reaching responsibilities, such as handling investigations otherwise performed by branches of the police. Conversely, the policing systems in socialist countries, such as the Militsiya of the Soviet Union, were not aimed at fulfilling the same roles as police forces in Democratic countries.

PEOPLE'S REPUBLIC OF CHINA

A Public Procurator is a position in the People's Republic of China, analogous to both detective and public prosecutor. Legally, they are bound by Public Procurators' Law of the People's Republic of China.

According to Article 6, the functions and duties of public procurators are as follows:

1. Supervise the enforcement of laws according to law.
2. Public prosecution on behalf of the State.
3. Investigate criminal cases directly accepted by the People's Procuratorates as provided by law.
4. Other functions and duties as provided by law.

VIETNAM

The Supreme People's Procuracy is the highest office of public procurators in Vietnam.

INSTITUTIONAL INDEPENDENCE

In many countries, the prosecutor's administration is directly subordinate to the executive branch (*e.g.*, the US Attorney General is a member of the President's cabinet). In some other countries, such as Italy or Brazil, the prosecutors are *judicial civil servants* and so their hierarchy is installed with the same *(or nearly the same)* liberties and independence warranties which the judges traditionally enjoy.

In other countries, a form of private prosecution is available, meaning persons or private entities can directly petition the courts to hold trial against someone they feel is guilty of a crime, should the prosecutor refuse to indict.

PRIVATE PROSECUTION

In the early history of England, victims of a crime and their family had the right to hire a private attorney to prosecute criminal charges against the person alleged to have injured the victim. In the 18th century, prosecution of almost all criminal offences in England was private, usually by the victim. In Colonial America, because of Dutch (and possibly French) practice and the expansion of the office of attorney general, public officials came to dominate the prosecution of crimes. However, privately funded prosecutors constituted a significant

element of the state criminal justice system throughout the nineteenth century. The use of a private prosecutor was incorporated into the common law of Virginia, but is no longer permitted there. Private prosecutors were also used in North Carolina as late as 1975. Private prosecution has been used in Nigeria, but the practice is being phased out.

Bruce L. Benson's *To Serve and Protect* lauds the role of private prosecutors, often employed by prosecution associations, in serving the needs of crime victims in England. Radical libertarian theory holds that public prosecutors should not exist, but that crimes should instead be treated as civil torts. Murray Rothbard writes, "In a libertarian world, there would be no crimes against an ill-defined 'society,' and therefore no such person as a 'district attorney' who decides on a charge and then presses those charges against an alleged criminal."

RISK FACTORS

The two largest predictors of juvenile delinquency are:

- Parenting style, with the two styles most likely to predict delinquency being
- "permissive" parenting, characterized by a lack of consequence-based discipline and encompassing two subtypes known as
- "neglectful" parenting, characterized by a lack of monitoring and thus of knowledge of the child's activities, and
- "indulgent" parenting, characterized by affirmative enablement of misbehaviors
- "authoritarian" parenting, characterized by harsh discipline and refusal to justify discipline on any basis other than "because I said so";
- peer group association, particularly with antisocial peer groups, as is more likely when adolescents are left unsupervised.

Other factors that may lead a teenager into juvenile delinquency include poor or low socioeconomic status, poor school readiness/performance and/or failure, peer rejection, or attention deficit hyperactivity disorder (ADHD). There may also be biological factors, such as high levels of serotonin, giving them a difficult temper and poor self-regulation, and a lower resting heart rate, which may lead to fearlessness. Delinquent activity, particularly the involvement in youth gangs, may also be caused by a desire for protection against violence or financial hardship, as the offenders view delinquent activity as a means of surrounding themselves with resources to protect against these threats. Most of these influences tend to be caused by a mix of both genetic and environmental factors.

Individual Risk Factors

Individual psychological or behavioural risk factors that may make offending more likely include low intelligence, impulsiveness or the inability to delay gratification, aggression, lack of empathy, and restlessness. Other risk factors that may be evident during childhood and adolescence include, aggressive or

troublesome behaviour, language delays or impairments, lack of emotional control (learning to control one's anger), and cruelty to animals. Children with low intelligence are more likely to do badly in school. This may increase the chances of offending because low educational attainment, a low attachment to school, and low educational aspirations are all risk factors for offending in themselves. Children who perform poorly at school are also more likely to be truant, and the status offence of truancy is linked to further offending. Impulsiveness is seen by some as the key aspect of a child's personality that predicts offending. However, it is not clear whether these aspects of personality are a result of "deficits in the executive functions of the brain" or a result of parental influences or other social factors. In any event, studies of adolescent development show that teenagers are more prone to risk-taking, which may explain the high disproportionate rate of offending among adolescents.

Family Environment and Peer Influence

Family factors that may have an influence on offending include: the level of parental supervision, the way parents discipline a child, particularly harsh punishment, parental conflict or separation, criminal parents or siblings, parental abuse or neglect, and the quality of the parent-child relationship. Children who develop behavioural problems early in life are at greater risk for continual life long antisocial behaviour, criminal activity and violence. Some have suggested that having a lifelong partner leads to less offending.

Juvenile Delinquency, which basically is the rebellious or unlawful activities by kids in their teens or pre-teens, is caused by four main risk factors namely; personality, background, state of mind and drugs. These factors may lead to the child having low IQ and may increase the rate of illiteracy. Children brought up by lone parents are more likely to start offending than those who live with two natural parents. It is also more likely that children of single parents may live in poverty, which is strongly associated with juvenile delinquency. However once the attachment a child feels towards their parent (s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent.

If a child has low parental supervision they are much more likely to offend. Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. A lack of supervision is also connected to poor relationships between children and parents. Children who are often in conflict with their parents may be less willing to discuss their activities with them.

Adolescents with criminal siblings are only more likely to be influenced by their siblings, and also become delinquen; if the sibling is older, of the same

sex/gender, and warm. Cases where a younger criminal sibling influences an older one are rare. An aggressive, non-loving/warm sibling is less likely to influence a younger sibling in the direction of delinquency, if anything, the more strained the relationship between the siblings, the less they will want to be like, and/or influence each other.

Peer rejection in childhood is also a large predictor of juvenile delinquency. Although children are rejected by peers for many reasons, it is often the case that they are rejected due to violent or aggressive behaviour. This rejections affects the child's ability to be socialized properly, which can reduce their aggressive tendencies, and often leads them to gravitate towards anti-social peer groups. This association often leads to the promotion of violent, aggressive and deviant behaviour. "The impact of deviant peer group influences on the crystallization of an antisocial developmental trajectory has been solidly documented." Aggressive adolescents who have been rejected by peers are also more likely to have a "hostile attribution bias", which leads people to interpret the actions of others (whether they be hostile or not) as purposefully hostile and aggressive towards them. This often leads to an impulsive and aggressive reaction. Hostile attribution bias however, can appear at any age during development and often lasts throughout a persons life. Children resulting from unintended pregnancies are more likely to exhibit delinquent behaviour. They also have lower mother-child relationship quality.

APPLICABLE CRIME THEORIES

There are a multitude of different theories on the causes of crime; most, if not all, of are applicable to the causes of juvenile delinquency.

Rational Choice

Classical criminology stresses that causes of crime lie within the individual offender, rather than in their external environment. For classicists, offenders are motivated by rational self-interest, and the importance of free will and personal responsibility is emphasized. Rational choice theory is the clearest example of this idea. Delinquency is one of the major factors motivated by rational choice.

Social Disorganization

Current positivist approaches generally focus on the culture. A type of criminological theory attributing variation in crime and delinquency over time and among territories to the absence or breakdown of communal institutions *(e.g.,* family, school, church and social groups.) and communal relationships that traditionally encouraged cooperative relationships among people.

Strain

Strain theory is associated mainly with the work of Robert Merton. He felt that there are institutionalized paths to success in society. Strain theory holds that crime is caused by the difficulty those in poverty have in achieving socially

valued goals by legitimate means. As those with, for instance, poor educational attainment have difficulty achieving wealth and status by securing well paid employment, they are more likely to use criminal means to obtain these goals.

Merton's suggests five adaptations to this dilemma:

- *Innovation:* Individuals who accept socially approved goals, but not necessarily the socially approved means.
- *Retreatism*: Those who reject socially approved goals and the means for acquiring them.
- *Ritualism:* Those who buy into a system of socially approved means, but lose sight of the goals. Merton believed that drug users are in this category.
- *Conformity*: Those who conform to the system's means and goals.
- *Rebellion*: People who negate socially approved goals and means by creating a new system of acceptable goals and means.

A difficulty with strain theory is that it does not explore why children of low-income families would have poor educational attainment in the first place. More importantly is the fact that much youth crime does not have an economic motivation.

Strain theory fails to explain violent crime, the type of youth crime that causes most anxiety to the public.

Differential Association

The theory of Differential association also deals with young people in a group context, and looks at how peer pressure and the existence of gangs could lead them into crime. It suggests young people are motivated to commit crimes by delinquent peers, and learn criminal skills from them. The diminished influence of peers after men marry has also been cited as a factor in desisting from offending.

There is strong evidence that young people with criminal friends are more likely to commit crimes themselves. However it may be the case that offenders prefer to associate with one another, rather than delinquent peers causing someone to start offending. Furthermore there is the question of how the delinquent peer group became delinquent initially.

Labeling

Labeling theory is a concept within Criminology that aims to explain deviant behaviour from the social context rather than looking at the individual themselves. It is part of Interactionism criminology that states that once young people have been labeled as criminal they are more likely to offend. The idea is that once labelled as deviant a young person may accept that role, and be more likely to associate with others who have been similarly labelled. Labelling theorists say that male children from poor families are more likely to be labelled deviant, and that this may partially explain why there are more working class young male offenders.

Social Control

Social control theory proposes that exploiting the process of socialization and social learning builds self-control and can reduce the inclination to indulge in behaviour recognized as antisocial. The four types of control can help prevent juvenile delinquency are:

Direct by which punishment is threatened or applied for wrongful behaviour, and compliance is rewarded by parents, family, and authority figures. Internal: by which a youth refrains from delinquency through the conscience or superego. Indirect: by identification with those who influence behaviour, say because his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships. Control through needs satisfaction, *i.e.,* if all an individual's needs are met, there is no point in criminal activity.

JUVENILE COURT

A juvenile court (or young offender's court) is a tribunal having special authority to pass judgements for crimes that are committed by children or adolescents who have not attained the age of majority. In most modern legal systems, children and teens who commit a crime are treated differently from legal adults that have committed the same offense.

Industrialized countries differ in whether juveniles should be tried as adults for serious crimes or considered separately. Since the 1970s, minors have been tried increasingly as adults in response to "increases in violent juvenile crime." Young offenders may still not be prosecuted as adults. Serious offenses, such as murder or rape, can be prosecuted through adult court in England. However, as of 2007, no United States data reported any exact numbers of juvenile offenders prosecuted as adults. In contrast, countries such as Australia and Japan are in the early stages of developing and implementing youth-focused justice initiatives as a deferment from adult court.

Globally, the United Nations' has encouraged nations to reform their systems to fit with a model in which "entire society [must] ensure the harmonious development of adolescence" despite the delinquent behaviour that may be causing issues.

The hope was to create a more "child-friendly justice". Despite all the changes made by the United Nations, the rules in practice are less clear cut. Changes in a broad context cause issues of implementation locally, and international crimes committed by youth are causing additional questions regarding the benefit of separate proceedings for juveniles.

Issues of juvenile justice have become increasingly global in several cultural contexts. As globalization has occurred in recent centuries, issues of justice, and more specifically protecting the rights of children as it relates to juvenile courts, have been called to question. Global policies regarding this issue have become more widely accepted, and a general culture of treatment of children offenders has adapted to this trend.

TYPES

Juvenile delinquency, or offending, can be separated into three categories:

- Delinquency, crimes committed by minors, which are dealt with by the juvenile courts and justice system;
- Criminal behaviour, crimes dealt with by the criminal justice system;
- Status offenses, offenses that are only classified as such because one is a minor, such as truancy, also dealt with by the juvenile courts.

According to the developmental research of Moffitt (2006), there are two different types of offenders that emerge in adolescence. One is the repeat offender, referred to as the life-course-persistent offender, who begins offending or showing antisocial/aggressive behaviour in adolescence (or even in childhood) and continues into adulthood; and the age specific offender, referred to as the adolescence-limited offender, for whom juvenile offending or delinquency begins and ends during their period of adolescence. Because most teenagers tend to show some form of antisocial or delinquent behaviour during adolescence, it is important to account for these behaviours in childhood in order to determine whether they will be life-course-persistent offenders or adolescence-limited offenders. Although adolescence-limited offenders tend to drop all criminal activity once they enter adulthood and show less pathology than life-course-persistent offenders, they still show more mental health, substance abuse, and financial problems, both in adolescence and adulthood, than those who were never delinquent.

Gender Roles and Differences by Sex

Juvenile delinquency occurrences by males are largely disproportionate to the rate of occurrences by females. This great gap between the crimes reinforce the connotations of traditional masculinity to be the center of violence, aggression, and competition. This is largely based on the notion that as males, it is their duty to take what they feel they deserve through these means to define themselves and play the role of provider and independent figure. These societal conditions are infringed by male peers, asserting the notion that the Panoptic that Jeremy Bentham described as an ideal self-regulation prison both literally and figuratively mimics the actions of male delinquents.

However, these delinquencies are not as prevalent in females in that they are expected to be more docile individuals and rely solely more on dependent characters, alleviating them from the need of committing delinquencies. Because aggression is not a desired characteristic, it has caused more commotion when females perform crimes that are often attributed to males. The acts of delinquency begin with the juvenile's expectations of their perceived roles through the direction of adults of both genders. Sandra Lee Bartky expresses these claims thoroughly in her work *Foucault, Femininity, and the Modernization of Patriarchal Power* by examining close observation of diction, action, and decorum. Boys learn to take as much space as possible when sitting, dress appropriately to stand out, and speak more demanding to assert his position and

gain respect from fellow male peers. This expectation of leadership rarely enforced through peers largely dictates that delinquencies arise when male feel that they cannot assert or claim such respect through legal and practical means, thus enforcing violence is merely extenuating a desired trait to gain such position. Thus, delinquent behaviour is expressed as an outlet especially to those of lower socioeconomic backgrounds that cannot gain precedence through conventional means.

Women face many obstacles living in today's society and some of these problems are even more difficult when young adolescent girls are faced with them. Physical and sexual abuse, neglect, and exploitation are often found in the backgrounds of female juvenile offenders. Yet, very few resources are available to girls who are faced with these problems. This is why females have higher rates of committing status offences such as truancy, breaking curfew, running away. Female offenders are more likely to commit status offences than violent; and female offenders are less likely than male offenders to be arrested and formally charged for most offences. However, if the female ends up actually being charged, she is more likely than a male offender to be sentenced to secure confinement. Research has always primarily focused on the delinquent male population. Which is why it is extremely important research is being conducted in regards to female development, the nature of female risk and protective factors, and the effectiveness of intervention and prevention programmes. Research also indicates an offender's outcome depends heavily upon, attitudes and experiences of professionals who work with girls. Among the research that does exist, it is noted that many individuals who work in the juvenile justice system maintain that girls are more difficult to work with than boys. With that said, it is extremely important that those working in these facilities are gender-specifically trained.

Gender role for females is to become more unnoticeable, a follower that does not need to stand out. Because of their condition to be more docile and dependent, the instinctive need to gain precedence is not as highly valued. Even respect comes in the form of different terms, as it is through how appropriately she conducts herself that seems innocent. This is also influenced by fellow peers such as mothers and other female figures apart from the authoritative male figure. In this instance, there is no need to urge to commit delinquency as the female is expected to rely on the male for his expected role as provider. It is through the act of needing to become dependent that enforces the feminine characteristics to seem as an alternative to delinquency. In fact, it has been largely stated that while masculinity induces such violent behaviour, femininity is seen as the antithesis to delinquency. Furthermore, it is assumed that because femininity and masculinity are portrayed to be opposites, they contain a bipolarity in society that forms an explanation to the staggering disproportionate ratio between convicted delinquents. A sociological study conducted and recorded in the article Gender Role Expectations of Juveniles, both a masculine and feminine test was created to be answered by kindergartners until high school,

indicating what role expectations were among the sexes. The answers were predominantly that males were to provide through aggressive terms, while females should be the more docile, bolstering the bipolarity assumption. This is because gender-role socialization produces an absolutist stance towards rules and a receptiveness towards generalized moral standards among girls while boys tend to develop a more individualistic and relativistic view of rules. The bipolarity assumption suggests that masculinity and femininity are opposites, and the assumption of unidimensionality implies that gender differences form a single scale.

Interestingly, the impact of feminism has because the formation of a new trend as female delinquency has gone up. Because women are now able to take more the individualistic social stance and become the means of their own provisions, the lack of providing those means has caused a gender convergence of crime. Recent data and observations from the article indicate that gender role change necessarily means females' changing their gender role identification to become more like males', that is, towards masculine identification. Thus, crime now committed by females resemble masculine behaviour. This illustrates an alarming trend in which females decide to adopt traditional masculine practices to instigate the need to commit delinquent acts. This results in more violent behaviour among females, juveniles and adult women alike, however, the feminist critique indicates that this is primarily women adopting to masculine methods in order to achieve equal respects, thus adopting such practice is not an indication of equality but as a means of resort still relegated under patriarchal constructs.

However, the indication of gender convergence is still seen permeating between the psychological and social causes of the delinquent behaviours among females. These findings even went to cases between androgynous individuals as they were perceived in test findings to become more inclined to delinquent behaviours than females counterparts, mimicking levels with of males. However, this also comes into how the androgynous individual expresses its sexual identity regardless of physiology. Sex differences in crime is prevalent in these terms because of studies indicating that differentiation acknowledgments between the sexes from the traditional masculine and feminine characters to the more androgynous ones also play an important psychological component. This important factor was done through a series of testing, indicating that differentiation is key to the convergence theory of crime that has bolstered the rise in female crime rates. Differentiation, in this case, showed that delinquency caused by androgynous individuals were self-reported and acknowledged more than the traditional counterparts. Furthermore, females who considered themselves undifferentiated were more likely to become aggressors, but the reverse is true for undifferentiated males. This result from testing indicated that undifferentiated males inclined to more law-abiding practices, indicating that traditional masculine behaviour supports high self-esteem for undifferentiated males. Because this contrasts to the data for undifferentiated females, this

indicates that low self- esteem is primarily prevalent in females. These qualities, however, are suggestive themes that point towards attitudes towards the police. Data confirms that sex differences in crime relate to attitudes of legal authority as well as developmental stages with parents, prompting the undifferentiated behaviour that associates with a risk of promoting delinquent behaviour. The studies of gender behaviour that makes juveniles amendable at their early developmental stage is a thorough analysis of why juveniles create delinquent behaviour. Through feminist analysis, it is important that juvenile behaviour be studied through the critique of the traditional masculine and feminine constructs to see how these attitudes shape the nature of the crimes committed between both sexes. From the gender roles expectations to convergence theory and differentiation, these psychological factors shape the risk of delinquency that juveniles may intend to act upon. More importantly, these suggestive studies are still being researched to promote safer behaviour for juveniles.

Racial Differences

There is also a significant skew in the racial statistics for juvenile offenders. When considering these statistics, which state that Black and Latino and White teens are more likely to commit juvenile offenses. It is important to keep the following in mind: poverty, or low socio-economic status are large predictors of low parental monitoring, harsh parenting, and association with deviant peer groups, all of which are in turn associated with juvenile offending. The majority of adolescents who live in poverty are racial minorities. Also, minorities who offend, even as adolescents, are more likely to be arrested and punished more harshly by the law if caught. Particularly concerning a non-violent crime and when compared to white adolescents. While poor minorities are more likely to commit violent crimes, one third of affluent teens report committing violent crimes.

Ethnic minority status has been included as a risk factor of psychosocial maladaptation in several studies *(e.g.*, Gutman et al. 2003; Sameroff et al. 1993; Dallaire et al. 2008), and represents a relative social disadvantage placed on these individuals. Though the relation between delinquency and race is complex and may be explained by other contextual risk variables, the total arrest rate for black juveniles aged 10–17 is more than twice that as of white juveniles. This does not seem to be the case for the minority group of East Asian background.

According to the OJJDP Statistical Briefing Online Book, in each racial group, the juvenile arrest rate for all offenses combined generally increased from the early 1980s through the mid-1990s and then declined in recent years. Between 1980 and 2012, the total juvenile arrest rate decreased 59% for Asians, 55% for American Indians, 44% for whites, and 21% for black juveniles. In 2012, there were 3,362 arrests of white juveniles for every 100,000 white persons ages 10–17 in the population. In comparison, the Asian juvenile rate was about one-third (30%) the white rate, the American Indian rate was about 10% below the white rate and the black rate was more than double the white rate. The

overall arrest rate for black juveniles peaked in 1995. For the other three racial groups, the arrest rates peaked in 1996. Between their peak years and 2011, the juvenile arrest rates declined for each racial group: the decline was 45% for black juveniles, 68% for Asians, 61% for American Indians, and 50% for whites.

JUVENILE DELINQUENCY IN THE UNITED STATES

This page is primarily concerned with juvenile delinquency in the United States.. For information on juvenile delinquency in general, see juvenile delinquency. In addition, although the term juvenile delinquency often refers to juvenile as both the victims and the aggressors, this page only refers to juveniles as the actual delinquents. The information and statistics for juveniles as victims rather than offenders is much different. For information about juveniles as the victims of violent attacks, see trafficking of children, child abuse, child sexual abuse, or prostitution of children.

INTRODUCTION TO JUVENILE DELINQUENCY

Juvenile Delinquency refers to criminal acts committed by children or teenagers, specifically anyone below the age of eighteen. Common sentiment on this issue is that the crimes they commit hurt society and hurt the children themselves. Much research and debate revolves around the problem of juvenile delinquency in the US. The research is mainly focused on the causes of juvenile delinquency and which strategies have successfully diminished crime rates among the youth population. Though the causes are debated and controversial as well, much of the debate revolves around the punishment and rehabilitation of juveniles in a youth detention center or elsewhere.

THE RISE OF JUVENILE DELINQUENCY IN THE 1950S

Ever since the evolution of radios and television gave us the ability to project music, sports, news, etcetera, the world has been able to tune in to what is happening halfway across the world from their location. The 1950s boomed with increases in income, scientific and medical increases, entertainment, and a tremendous media increase starting with the portable radio. After World War II, couples who had put off having children either before or during the war finally had the chance to start a family and live normal lives. Hence, the baby boom initiated the start of a very busy decade. After the first portable radio came out, media rapidly increased. People could advertise themselves to people all around the country and even to people driving in their cars. This media evolution gave birth to a whole new way of living for the generations to come and for the first time ever there was a generation gap. Media was reaching everyone and molding people's lives like never before. Anyone could access comical, frightening, romantic, or sarcastic information, movies, music and so on with the click of a button. A rise in juvenile delinquency was one of the main

causes of the baby boom and media increase. Teenagers could access more information at their age than any other generation. As a result, teenagers witnessed crime, murder, stealing, cheating, lying, and so on to be "cool" like how they saw in the media. This led to a high rise in juvenile delinquency because more children and teens were implanted with the thought that carrying out bad actions was okay. Lead has also been linked to juvenile delinquency, it was added to gasoline from the 1920s through 1979, however it was not widely understood to be neurologically harmful in minute amounts until the 1950s.

CAUSES

There are many factors that cause juvenile delinquency. Children whose parents have been incarcerated are far more likely to show delinquent behaviour than their peers. Sometimes children want to test their parents' limits, or society's limits.

Some people believe that imposing strict laws such as curfews will cause a drop in juvenile delinquency rates, but sometimes imposing strict rules merely give the children more of an incentive to break them. However, sometimes juvenile crimes do in fact occur due to the exact opposite reason, that is, a lack of rules and supervision. One example of this is that children many times commit crimes after school and while their parents are at work or preoccupied. Statistics that are mentioned below explain the peak hours of juvenile crime rates and conceptualize this very cause. Additionally, mental illness and substance abuse are large contributing factors. 15-20% of juveniles convicted of crimes have serious mental illnesses, and the percentages increase to 30-90% of convicted juveniles when the scope of mental illnesses considered widens. Also, many people believe that a child's environment and family are greatly related to their juvenile delinquency record. For example, the dynamics of a family can affect a child's well being and delinquency rate.

Crime rates vary due to the living situations of children; examples of this could be a child whose parents are together, divorced, or a child with only one parent, particularly a teen mom. This is largely because living arrangements are directly related to increases and decreases of poverty levels. Poverty level is another factor that is related to the chances a child has of becoming a juvenile delinquent.

Statistics on living arrangements, poverty level and other influential factors can be found in a later section. Others believe that the environment and external factors are not at play when it comes to crime; they suggest that criminals are faced with rational choice decisions in which they chose to follow the irrational path. Finally, another cause could be the relationships a child develops in school or outside of school. A positive or negative friendship can have a great influence on the chances of children becoming delinquents. Peer pressure is also at play. Relationships and friendships can lead to gangs, which are major contributors of violent crimes among teens. These are just some of the causes of juvenile delinquency.

MENTAL/CONDUCT DISORDERS

Juvenile delinquents are often diagnosed with different disorders. Around six to sixteen percent of male teens and two to nine percent of female teens have a conduct disorder. These can vary from oppositional-defiant disorder, which is not necessarily aggressive, to antisocial personality disorder, often diagnosed among psychopaths. A conduct disorder can develop during childhood and then manifest itself during adolescence.

Juvenile delinquents who have recurring encounters with the criminal justice system, or in other words those who are life-course-persistent offenders, are sometimes diagnosed with conduct disorders because they show a continuous disregard for their own and others safety and/or property. Once the juvenile continues to exhibit the same behavioural patterns and turns eighteen he is then at risk of being diagnosed with antisocial personality disorder and much more prone to become a serious criminal offender. One of the main components used in diagnosing an adult with antisocial personality disorder consists of presenting documented history of conduct disorder before the age of 15. These two personality disorders are analogous in their erratic and aggressive behaviour. This is why habitual juvenile offenders diagnosed with conduct disorder are likely to exhibit signs of antisocial personality disorder early in life and then as they mature.

Some times these juveniles reach maturation and they develop into career criminals, or life-course-persistent offenders. “Career criminals begin committing antisocial behaviour before entering grade school and are versatile in that they engage in an array of destructive behaviours, offend at exceedingly high rates, and are less likely to quit committing crime as they age.”

Quantitative research was completed on 9,945 juvenile male offenders between the ages of 10 and 18 in the 1970s. The longitudinal birth cohort was used to examine a trend among a small percentage of career criminals who accounted for the largest percentage of crime activity. The trend exhibited a new phenomenon among habitual offenders. The phenomenon indicated that only 6% of the youth qualified under their definition of a habitual offender (known today as life-course persistent offenders, or career criminals) and yet were responsible for 52% of the delinquency within the entire study. The same 6% of chronic offenders accounted for 71% of the murders and 69% of the aggravated assaults.

This phenomenon was later researched among an adult population in 1977 and resulted in similar findings. S. A. Mednick did a birth cohort of 30,000 males and found that 1% of the males were responsible for more than half of the criminal activity. The habitual crime behaviour found among juveniles is similar to that of adults. As stated before most life-course persistent offenders begin exhibiting antisocial, violent, and/or delinquent behaviour, prior to adolescence. Therefore, while there is a high rate of juvenile delinquency, it is the small percentage of life-course persistent, career criminals that are responsible for most of the violent crimes.

PREVENTION

Because the development of delinquency in youth is influenced by numerous factors, prevention efforts need to be comprehensive in scope. Prevention services may include activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering. Increasing availability and use of family planning services, including education and contraceptives helps to reduce unintended pregnancy and unwanted births, which are risk factors for delinquency.

Education is the great equalizer, opening doors to lift themselves out of poverty. Education also promotes economic growth, national productivity and innovation, and values of democracy and social cohesion. Prevention through education aides the young people to interact more effectively in social contexts, therefore diminishing need for delinquency. It has been noted that often interventions may leave at-risk children worse off then if there had never been an intervention. This is due primarily to the fact that placing large groups of at risk children together only propagates delinquent or violent behaviour. "Bad" teens get together to talk about the "bad" things they've done, and it is received by their peers in a positive reinforcing light, promoting the behaviour among them. A well-known intervention treatment that has not increased the prevention of juvenile delinquency is the Scared Straight Treatment.

"The harmful effects of Scared Straight and boot-camp programmes may be attributable to juvenile offenders' vicarious exposure to criminal role models, to the increased resentment engendered in them by confrontational interactions, or both" This suggests that exposure to criminals could create a sense of idealization and defeat the entire purpose of scared straight treatment.

Also, this treatment doesn't acknowledge the psychological troubles that the teenager may be experiencing. As mentioned before, peer groups, particularly an association with antisocial peer groups, is one of the biggest predictors of delinquency, and of life-course-persistent delinquency. The most efficient interventions are those that not only separate at-risk teens from anti-social peers, and place them instead with pro-social ones, but also simultaneously improve their home environment by training parents with appropriate parenting styles, parenting style being the other large predictor of juvenile delinquency.

CRITIQUE OF RISK FACTOR RESEARCH

Two UK academics, Stephen Case and Kevin Haines, among others, criticized risk factor research in their academic papers and a comprehensive polemic text, *Understanding Youth Offending: Risk Factor Research, Policy and Practice*.

The robustness and validity of much risk factor research is criticized for:

- Determinism, *e.g.,* characterising young people as passive victims of risk experiences with no ability to construct, negotiate or resist risk;
- Imputation, *e.g.,* assuming that risk factors and definitions of offending are homogenous across countries and cultures, assuming that statistical

correlations between risk factors and offending actually represent causal relationships, assuming that risk factors apply to individuals on the basis of aggregated data.

- Reductionism, *e.g.,* over-simplfying complex experiences and circumstances by converting them to simple quantities, relying on a psychosocial focus while neglecting potential socio-structural and political influences.

CIVIL LAW JURISDICTIONS

Prosecutors are typically civil servants who possess a university degree in law, and additional training in the administration of justice. In some countries, such as France and Italy, they belong to the same *corps* of civil servants as the judges.

BELGIUM

In Belgium, the Senior Crown prosecutor, or *Procureur du Roi/Procureur des Konings* (or *Procureur Général/Procureur-Generaal* in appellate courts and in the Supreme Court), is supported by crown prosecutors (*substituts/substituten*). He opens preliminary investigations and can hold a suspect in custody for 24 hours. When necessary, a Crown prosecutor will request an examining judge (*juge d'instruction/onderzoeksrechter*) be appointed to lead a judicial inquest. With a judge investigating, Crown prosecutors do not conduct the interrogatories, but simply lays out the scope of the crimes which the judge and law enforcement forces investigate (*la saisine*). Like defense counsel, Crown prosecutors can request or suggest further investigation be carried out. The Crown prosecutor is in charge of policy decisions and may prioritize cases and procedures as need be. During a criminal trial, prosecutors must introduce and explain the case to the trier, *i.e.*, judges or jury. They generally suggest a reasonable sentence which the court is not obligated to follow; the court may decide on a tougher or softer sentence. Crown prosecutors also have a number of administrative duties. They may advise the court during civil actions. Under Belgian law, judges and prosecutors are judicial officers with equal rank and pay. The Minister of Justice can order but not forbid a criminal investigation (*droit d'injonction positive/ positief injunctierecht*).

BRAZIL

In Brazil, the public prosecutors form a body of autonomous civil servants - the Ministério Público (literally *Public Ministry*) - working both at the federal and state level. The procuradores da República - federal prosecutors - are divided in three ranks, according to the jurisdiction of the courts before which they officiate, thus the "procuradores da República" (federal prosecutors) officiate before single judges and lower courts, "procuradores regionais da República" (prosecutors who officiate before federal appellate courts), and "subprocuradores gerais da República" (prosecutors who officiate before the superior federal courts). The Procurador Geral da República heads the federal body, and tries

cases before the Supremo Tribunal Federal (STF), Brazil's highest court, in charge of judicial review and the judgment of criminal offenses perpetrated by federal legislators, members of the cabinet, and the President of Brazil. At the state level, the career is usually divided in "promotores de Justiça" (state prosecutors), which officiate before the lower courts, and "procuradores de Justiça" (prosecutors officiating before the states' court of appeals). There are also military prosecutors whose career, although linked to the federal prosecutors, is divided in a manner similar to state prosecutors.

In Brazil the prosecutors' main job is to promote justice, as such they have the duty of not only trying criminal cases, but, if during the trial, they become convinced of a defendant's innocence, requesting the judge to acquit him. The prosecutor's office has always the last word on whether criminal offenses will or will not be charged, with the exception of those rare cases in which Brazilian law allows for private prosecution. In such cases, the prosecutor will officiate as *custos legis*, being responsible to ensure that justice is indeed carried out. Although empowered by law to do so, prosecutors conduct criminal investigations only in major cases, usually involving police or public officials' wrongdoings. Also, they are in charge of external control over police activity (art. 129, VII, of Brazilian Federal Constituition) and requesting diligences and the initiation of a police investigation (art. 129, VIII, of Brazilian Federal Constitution). The power of individual prosecutors to hold criminal investigations is still controversial and, although massively supported by judges, prosecutors and the general population, it is being contested before the Supremo Tribunal Federal.

According to Law 12.830/2013, the "delegado de polícia" (police officer chief), as the police authority, is responsible for conducting the criminal investigation in Brazil by means of a police investigation, named "inquérito policial", or other procedure provided by law that has the purpose of ascertaining the circumstances, materiality and authorship of criminal offenses. Similar provision is also found in art. 4º of the Brazilian Code of Criminal Procedure and in art. 144, §4º, of the Brazilian Federal Constitution.

Beside their criminal duties, Brazilian prosecutors are among those authorized by the Brazilian constitution to bring action against private individuals, commercial enterprises, and the federal, state and municipal governments, in the defense of minorities, the environment, consumers, and the civil society in general.

FRANCE

In France, the Office of the Prosecutor includes a Chief Prosecutor, or *Procureur de la République* (or *procureur général* in an appellate court or in the Supreme Court) assisted by deputy prosecutors (*avocats généraux*) and assistant prosecutors (*substituts*). The Chief Prosecutor generally initiates preliminary investigations and, if necessary, asks an examining judge, or *juge d'instruction*, be assigned to lead a formal judicial investigation. When an

investigation is led by a judge, the prosecutor plays a supervisory role, defining the scope of the crimes being examined by the judge and law enforcement forces. Like defense counsel, the chief prosecutor may petition or motion for further investigation. During criminal proceedings, prosecutors are responsible for presenting the case at trial to either the bench or the jury. Prosecutors generally suggest advisory sentencing guidelines, but the sentence remains at the court's discretion to decide, to increase or reduce as it sees fit. In addition, prosecutors have several administrative duties.

Prosecutors are considered magistrates under French law, as in most civil law countries. While the defense and the plaintiff are both represented by common lawyers, who sit (on chairs) on the courtroom floor, the prosecutor sits on a platform as the judge does, although he doesn't participate in deliberation. Judges and prosecutors are trained at the same school, and regard one other as colleagues.

GERMANY

In Germany, the *Staatsanwalt* (literally 'state attorney') is a life-tenured public official in the senior judicial service belonging to the same corps as judges. The Staatsanwalt heads pre-trial criminal investigations, decides whether to press a charge or drop it, and represents the government in criminal courts. He not only has the "professional responsibility" not to withhold exculpatory information, but is also required by law to actively determine such circumstances and to make them available to the defendant or his/her defense attorney. If he is not convinced of the defendant's guilt, the state attorney is required to plead against or in favour of the defendant according to the prosecutor's own assessment (RiStBV, No. 138/139). Prosecution is compulsory if the prosecutor has sufficient evidence to convict.

ITALY

In Italy, a Prosecutor's Office is composed of a Chief Prosecutor (*procuratore capo*) assisted by deputy prosecutors (*procuratori aggiunti*) and assistant prosecutors (*sostituti procuratori*). Prosecutors in Italy are judicial officers just like judges and are ceremonially referred to as *Pubblico Ministero/Public Ministry' (or P.M.)*

Italian Prosecutors officiate as *custos legis*, being responsible to ensure that justice is indeed carried out. They are obligated under the Constitution to initiate preliminary investigations once they are informed or take personal notice of a criminal act, the so-called *notitia criminis*, or receive a bill of complaint. They can make direct investigations or conduct them through orders and directives given to (judicial) police detectives *(which anyway have the chance to make their own parallel investigations in coordination with the Prosecutor)*: if enough evidence has been gathered in order to proceed, the prosecution is compulsory and it must move from preliminary investigations to initiate trial proceedings. At trial, the prosecuting attorney has to handle the prosecution but is prohibited

from withholding exculpatory evidence, for they have to promote justice, which means that they have the duty of not only trying criminal cases, but, to request the judge to acquit him if, during the trial, they become convinced of a defendant's innocence, or agree that there is no evidence, beyond any reasonable doubt, of his guiltiness.

In appellate courts, the Office of the Prosecutor is called *Procura Generale* and the Chief Prosecutor *Procuratore Generale* (PG). The *Procuratore Generale presso la Corte di Cassazione* is the Chief General Prosecutor before the Corte di Cassazione, the Supreme Court of Italy.

Prosecutors are allowed during their career to act in the other's stead, but a recent ruling by the Italian Constitutional Court stated that prosecutors, who wish to become judges, must relocate to another region and are prohibited to sit or hear trials that they themselves initiated.

JAPAN

In Japan, public prosecutors *kensatsu-kan* (iß–) are professional officials who have considerable powers of investigation, prosecution, superintendence of criminal execution and so on. Prosecutors can direct police for investigation purposes, and sometimes investigate directly. Only prosecutors can prosecute criminals in principle, and prosecutors can decide whether to prosecute or not. High-ranking officials of the Ministry of Justice are largely prosecutors.

POLAND

The highest ranking prosecutor office of the Prokuratura in Poland is the Prokurator Generalny (General Prosecutor) - chief of the Prokuratura Generalna (General Prosecutor Office). The GP has 5 deputies. Structure of Public Prosecutor in Poland is 4-level: General Prosecutor Office —> Appellation Prosecutor Offices (11) —> District Prosecutor Offices (46) —> Regional Prosecutor Offices (326).

SOUTH KOREA

Prosecutors are the public officials who are members of the ministry of Justice.

Prosecutors can conduct crime investigations directly or indirectly. They are responsible for the entire process of investigations and court prosecutions. Since Korean modern law was designed after continental system, the role of Korean prosecutors is similar or identical to that of European equivalents in commanding investigations, determining indictable cases and prosecuting process. Korean prosecutors take pride in successful prosecutions of former presidents(1995) and sons of the incumbent presidents(1997 and 2002). Besides, they have made important contributions to convicting many corrupt high-ranking officials and business leaders. A prosecutor, in Korea, has the power to prohibit a defendant or an accused individual from departing the Republic of Korea via an International Hold.

SWEDEN

In Sweden, public prosecutors are lawyers who work out of the Swedish Office of Public Prosecutions (*Åklagarmyndigheten*) and direct police investigations of serious crimes. For all criminal cases, public prosecutors decide arrests and charges on behalf of the public and are the only public officers who can make such decisions. Plaintiffs also have the option of hiring their own special prosecutor (*enskilt åtal*). The exception is cases concerning crimes against the freedom of the press for which the Attorney General acts as the prosecuting attorney. In court, the prosecutor is not necessarily in an adversarial relationship to the defendant, but is under an obligation to investigate and present information which may incriminate or exhonerate the defendant. The prosecutor is not a judicial officer, nor do they participate in the private deliberations of the court.

Public prosecutors are the only public officers who can decide to appeal cases to appellate courts (*hovrätter*). Otherwise, appeals are initiated by defense counsel, the plaintiff, their representatives, and other parties to the case (*målsäganden*). When a case has been decided by an appellate court, the right to appeal to the Supreme Court passes from the case's prosecutor to the Director of Public Prosecutions (*Riksåklagaren*).

4

The Criminal Procedure Code: Criminal Courts

Criminal law occupies a pre-dominant place among the agencies of social control and is regarded as a formidable weapon that the society has forged to protect itself against anti-social behaviour. The laws of criminal procedure are meant to be complementary to criminal law. It is intended to provide a mechanism for the enforcement of criminal law. The Code of Criminal Procedure of 1989 was repealed by the Code of 1973 to consolidate and amend the laws related to Criminal Procedures. It is an Act to strengthen and change the law relating to the procedure to be followed in apprehending criminals, investigating criminal cases and their trial before the Criminal Courts. This article talks about The Criminal Procedure Code: Criminal Courts and essential information related to the same.

VARIOUS CLASSES OF CRIMINAL COURTS IN INDIA

Besides the Courts that are mentioned below, the Courts may also be constituted under any other law. The Supreme Court is vested with the appellate jurisdiction regarding criminal matters from a High Court in some instances as well.

The following are the other major criminal courts in India.

1. The High Courts
2. The Courts of Session
3. The Judicial Magistrates of the First Class, and, in any metropolitan area; the Metropolitan Magistrates.

4. The Judicial Magistrates of the Second Class
5. The Executive Magistrates.

The Supreme Court of India

The highest form of a judicial forum and final court of appeal is the Supreme Court of India as stated under the Constitution of India. The Supreme Court of India is entrusted with the power of the judicial review. This Court is formed by the Chief Justice of India and a panel of 30 other judges who hold extensive capabilities in the form of original appellate and advisory jurisdictions. As the Supreme Court is the final court of appeal in the nation, it chooses to take up appeals primarily against the verdicts issued by the High Courts of various states. It safeguards the primary fundamental rights of the citizens and settles disputes between the governments of multiple countries. The laws declared by the Supreme Court binds the courts all around the country including the Union and State Governments. The President of India has to enforce the decrees of the Supreme Court as per the law.

The High Courts

The judicial system of India is formed by the 24 High Courts placed at the country's state and union territory level along with the Supreme Court of India at the national level. Every High Court has the jurisdiction over a state, a union territory or over a group of states and union territories.

The High Courts of India are considered the principal civil courts of the original jurisdiction in every state and union territory. A High Court exercises its original civil and criminal jurisdiction when the subordinate courts do not authorisation by law to try such cases. These courts may also have approval in first authority in some issues as explicitly designated in the federal or state's laws.

Courts of Judicial Magistrate of First Class

The second lowest level of the structure that forms the Criminal Couts in India. As stated in the Criminal Procedure Code of 1973, a State Government may establish a Court of Judicial Magistrate of the First Class with the consultation of the High Court of the respective state. The Judicial Magistrate is generally controlled by the Sessions Judge with the Chief Judicial Magistrate as a subordinate as stated in Section 15 of the Code. A Judicial Magistrate of First Class has the power to pass a sentence of imprisonment for a term that does not exceed three years, or of a fine that does not exceed Ten Thousand Rupees or of both.

Courts of Judicial Magistrate of Second Class

The lowest in the hierarchy that forms the Criminal Court structure in India is the Courts of the Judicial Magistrate of Second Class. As stated in Section 11 of the Criminal Procedure Code of 1973, a State Government may establish a

Court of Judicial Magistrate of the First Class with the consultation of the High Court of the respective state. A Judicial Magistrate of First Class has the power to pass a sentence of imprisonment for a term that does not exceed more than one year, or of a fine that does not exceed Five Thousand Rupees or of both.

The Executive Magistrates

The Executive Magistrate is an officer of the law who is vested with specific powers and duties as stated under the Criminal Procedure Code and the Indian Penal Code. These officers do not hold power to accuse nor pass any verdict of sorts. An individual arrested on the orders of a court outside its local jurisdiction would be produced before the Executive Magistrate who may also set a bail amount for the arrested individual to avoid the custody of the Police depending on the warrant. This officer may also pass orders restraining individuals from entering a specific area and authorised to use force against people. A District comprises of the following Judicial Magistrates.

1. The Chief Judicial Magistrate
2. The Additional Chief Judicial Magistrates
3. The Sub-Divisional Judicial Magistrates
4. The Judicial Magistrates First Class

POWER OF THE COURTS

The powers of the Courts have been stated in Chapter III of the Criminal Procedure Code. One of these powers is to try offences. Offences are categorised into two majorly.

1. Those offences that may be tried under the Indian Penal Code.
2. Those offences under any other law.

According to Section 26 of the Criminal Procedure Code, any offence under the Indian Penal Code of 1860 may be tried by the High Court or the Court of Session or by any other Court. Such a crime is shown in the First Schedule to be triable. On the other hand, any offence under any other law shall be tried by the Court mentioned in that law. If it has not been mentioned, it may be tried by the High Court or any other Court by which such an offence is shown in the First Schedule to be triable.

POWER OF THE COURT TO PASS SENTENCES

Sentences which the High Courts and Session Judges of India may Pass

According to Section 28, a High Court in India may pass any sentence authorised by law. A Sessions Judge or an Additional Sessions Judge may pass any punishment permitted by the law, but any sentence of death given by any such judge shall be subject to confirmation by the High Court of India.

An Assistant Sessions Judge may choose to pass any sentence as authorised by the law except a sentence of death or one regarding imprisonment for life or of imprisonment for a term that exceeds ten years.

Therefore, Section 26 of the Criminal Procedure Code enumerates the types of Courts in India in which various offences can be tried and then under Section 28, it spells out the limits of the sentences which such Courts are authorised to pass.

Sentences of the Magistrates

Section 29 of the Criminal Procedure Code lays down the quantum of punishment which different categories of Magistrates are empowered to impose. The powers of the individual classes of the Magistrates to pass sentence are as follows.

1. The Court of the Chief Judicial Magistrate may pass any sentence as authorised by the law except that of a sentence of death or imprisonment for life or imprisonment for a term exceeding more than seven years.
2. The Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding more than three years or of a fine not exceeding more than Five Thousand Rupees or of both.
3. The Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of penalty not exceeding One Thousand Rupees or of both.
4. The Chief Metropolitan Magistrate shall have all the powers of the Court of a Chief Judicial Magistrate and that of the Metropolitan Magistrate and the powers of the Court of the Magistrate of the First Class.

Sentence Imprisonment in Default of Penalty

When a fine is imposed on an accused, and it has not been paid, the law provides that the accused can be imprisoned for a term in addition to substantive imprisonment awarded to him, if any. Section 30 of the Criminal Procedure Code defines the limits of the Magistrate's powers to award imprisonment in concern to the default of payment of the penalty.

It states that the Court of a Magistrate may impose such a term of imprisonment in default of payment of a penalty as is authorised by the law provided that the term is as follows.

1. The term is not more than the powers of the Magistrate under Section 29.
2. The term where the imprisonment has been awarded as a part of the substantive sentence. This term should not exceed 1/4th of the time in prison which the Magistrate is competent to inflict as a punishment for the offence than as imprisonment in concern to the default of payment of the fine.

Conviction of Several Offences at One Trial

Section 31 of the Criminal Procedure Court relates to the quantum of punishment which the Court is authorised to impose where the accused is convicted of two or more crimes at one hearing.

CIVIL AND CRIMINAL PROCEDURE

Something should be said, in brief, about variations in procedure between the two systems. Here, the word "civil" is used in contrast to criminal. There is no trial or jury in civil cases, as may often be the case in the United States, though not in England. The entire process is different. The presence of a jury in the United States forces an acceleration of the entire process because of the difficulty and expense of getting the jury assembled and empanelled.

Once that is the case, the court proceeds immediately with the trial in an attempt to conclude as quickly as possible. In Civil law jurisdictions, civil cases go much more slowly. There is a brief preliminary stage when pleadings are submitted to a hearing judge. Next follows an evidence-taking, where the hearing judge takes notes and prepares a written record. That is later submitted to the deciding judge who receives briefs from the counsel and listens to arguments. All of this takes the form of a series of meetings as each issue is brought to the attention of the hearing judge. There is little surprise as each lawyer is notified of each issue as it comes up, and, without a jury, there is no cross-examination. Generally, questions are passed to the judge who may conduct the investigation. There are fewer of the rules of evidence familiar to American lawyers (such as the exclusionary rule whereby illegally gathered information is excluded from trial), though a number of rules are employed, such as excluding biased persons from testifying, as well as taking what is called a "decisory oath" in some countries.

There is in many countries a "loser pays" rule, referring mostly to legal fees, though the amounts are usually limited by a court schedule. Contingent fees are usually considered illegal (France) or unethical (Germany) but are found in Japan, Indonesia, and Thailand. Many foreign legal authorities are appalled by its prevalence in the United States, feeling that a lawyer should not be personally given a stake in the outcome of a case. Although substantive criminal law is similar in both systems, civil law jurisdictions, in line with the revolutionary principle of limiting the power of judges, reject the American practice, which gives the judge power to award penal and general damages in criminal cases, not to speak of the contempt power (which is very rare), instead insisting the judge be limited to what is provided for in legislation.

The contrast is often drawn (or overdrawn) between what is called the "accusatory" model in the United States and the "inquisitorial" model in civil law countries. Historically, the accusatory procedure is felt to have been a development from that of private vengeance in which the interested parties would be the main participants. Instead of settling their dispute by direct conflict or feud, a legal procedure would involve a neutral third party who would seek to secure a settlement. In such a triadic situation, as noted at the outset, the object was to secure an outcome that would settle the matter by leaving each party feeling justice had been done. In earlier times, when trial was by battle, ordeal, or other ways, although seeming to be a throwback to a time of "barbarous" cruelty, these methods, apart from their presumed psychological

effects (the guilty party feeling he would be caught and so offering confession at once), had the virtue that they brought the conflict to an end, and prevented further acts of vengeance that would disturb the peace of the community.

With the accusatory practice, presumably conflict would also be terminated but might go on if each party felt justice had not been done. The inquisitorial model introduced the state as an active participant in the trial. Now the judge, who is after all a representative of government, is in a coalition with the prosecution against the third party, the defendant. Although this biases the process, in practice, the introduction of the jury, the fact that proceedings are oral, as well as limitations on the power of the judge all combine to make the system fair, though excesses did and continue to exist.

The criminal trial is in three parts: the investigative phase, with the public prosecutor assuming an active role; the examining phase, presided over by a judge who assumes an active role in examining the evidence; and preparing a record and the trial. Judges may, if warranted, end the proceedings if they feel the evidence is not conclusive, or they may decide the case should go to trial. The accused is entitled to legal representation as well as the right to inspect the material the judge has collected.

He can be questioned, but not sworn, and he or she may refuse to answer. Unlike the American system in which a defendant, if sworn, may then be cross-examined, no comparable procedure exists, though a refusal to answer by the accused may be taken into account by the jury. British judges assume a more active role in the trial process than is the case in the United States.

However, this is not "inquisitorial" in a narrow sense but rather a reflection of the fact that in the English procedure the judge determines the relevancy of evidence, rather than the strict exclusionary and other rules emphasized in American courts. To do their jobs, English judges are much more willing to question witnesses or even raise issues. Until the 1980s, plea bargaining was considered to be undesirable practice, only possible in America. But judicial scholars increasingly asked how could civil law jurisdictions possibly handle all the criminal cases they had to decide without some form of plea bargaining? After a spirited debate and careful research, it was finally concluded that plea bargaining, though not exactly like that used in America, was in fact being used in European countries. In the case of Germany, Hermann reports that some kind of plea bargaining takes place in from 20 to 30 per cent of all cases. While far from the American percentage of 90 per cent, that is still considerable, particularly since it is accompanied by other forms of sentence reduction and mitigation of offenses.

It is widely employed in complex cases, such as white-collar crimes, tax evasion, and drug offenses, which present nearly impossible evidentiary problems, as well as less serious crimes, which are settled with a fine. It is rare in cases involving violent crimes, however. Bargaining occurs at all stages of a criminal proceeding, often with the active participation of the judge, who may even take the initiative. A settlement may take the form of the accused agreeing

to pay a sum of money to a charitable organization. Other alternatives include penal orders that are similar to nolo contendere pleas in which the accused agrees to a fine-usually for minor misdemeanor cases, such as traffic cases. Pleas also occur if the accused makes a confession. Normally, a confession does not lead to avoidance of a trial, as is the case in America. Instead, it usually leads to a reduction in the sentence. Other countries are also beginning to allow plea bargaining as many had been doing, but are now doing more openly.

The most striking example is that of Italy, which even uses the term patteggiamento, the Italian word for bargain. However, there is no reduction of the charge, as in the American system, but there is a maximum reduction of one-third of the normal sentence, which may not exceed two years, which has the effect of limiting the practice to cases with shorter normal sentences. In Italy, as is the case in other civil law countries, the trial decision is made by a panel of judges, a practice which, however costly, is defended as superior to the American practice, which places what is felt to be excessive power in the hands of a single judge.

WILL COMMON LAW AND CIVIL LAW SYSTEMS PERSIST

Although we have focused on differences between the two systems, and the differences are indeed substantial, there is considerable movement towards the convergence of common and Civil law systems. The attempts to severely limit the power of judges have, over the years, been recognized as excessive and more a holdover from fears of arbitrary and class-based favouritism of judges. From the refusal to place limits on the power of legislatures, Civil law countries have developed constitutional limitations, even in the form of courts, though often hidden under other names.

Historically, Civil law countries divided the field between private and public law, with most of the concern historically being with civil law (law of persons, marriage, contracts, torts, *etc.*). Public law was felt to be the concern of legislatures or the sovereign. However, the coming of the modern state has led to an enormous growth of administrative law, along with appropriate court systems, leading to situations not much different in essence from those found in developed common law countries.

Civil codes have receded in significance as state legislatures and parliaments enact more farreaching laws never contemplated in earlier times, particularly those associated with large-scale industry, the welfare role of governments, complex bodies of labour law, and especially with the emergence of the government as an economic participant in national affairs. Perhaps of greatest significance is the emergence of new international entities, especially the European Community, before which national codes have been slowly giving way. Of course, that tendency may be reversed, but it seems strongly in process. On the other hand, common law countries have recognized the advantages of classic civil law procedures, such as the importance of certainty in legal decision

making, though such certainty is sought not through a code but by a succession of cases. The power of judges to make decisions has been the object of attempts by the U. S. Congress to place caps on awards for injury, as well as the attempt of persons to bypass courts and seek justice through changes in legislation, as in cases of pollution, abortion, and other public issues.

Is one system better than the other? The question is unanswerable in that form. Even though civil law authorities continue to be suspicious of lawyers, they discover they must have them and grant them powers they would prefer not to. That is, of course, a well-known problem in the United States as well. Each system must be understood in the context of the culture and social structure of the country that employs it. Ultimately, any question of superiority must be answered in terms of how well the system serves the legal needs of the country. Most countries, in fact, employ a mix of systems in which one finds bits and pieces of both common law and civil law systems.

PUBLIC DEFENDER

But much more serious is the following situation: one who is poor and without friends who will put their means at his disposal is in a sorry state in the criminal court compared with the more opulent. He cannot arrange for bail. He must wait behind the bars while his better-provisioned pals enjoy practically the freedom of the city. He cannot retain a "smart" lawyer who knows all the ins and outs of the laws and procedure and who can plausibly delay a case to the very last and appeal it to the last court. If he is represented by a lawyer at all it is probably by a hanger-on about the court who is waiting for just such a moment as this when the court will appoint one, at the expense of the state, to represent the prisoner at the bar. In the circumstances he is likely to receive but scant attention. At any rate it is likely to seem so to him — especially if the issue is unfavourable to himself. And that seeming so is a very important matter. It naturally embitters him to be hustled through to a conclusion that he doesn't like when he knows that his neighbour, on account of his opulence, when he was a prisoner at the bar was able to hold the state off for months. And of course there is no denying (in the absence of very extensive investigation) that on the whole those who have been represented by appointed counsel have received justice at the hands of the court, whereas the others have received less than justice. But that is from *our* point of view. And we are now interested in the effect that the court has upon the men and women who come into contact with it as prisoners undergoing trial. Does it tend to develop attitudes that are socially favourable or unfavourable?

It was in an attempt to equalize the opportunities of the richer and the poorer in the courts, and consequently to minimize the at least *seeming* occasion for defendants' resentment against the courts and the laws that, in many jurisdictions, the office of Public Defender has been inaugurated. This office is a recognition of the fact that adequate defense is just as proper an obligation of the state as prosecution. It is the function of the Public Defender to offer his services to an

indigent defendant immediately upon his apprehension and to stay with him throughout subsequent proceedings precisely as if he were a privately retained attorney.

An objection has occasionally been made that by the Defender system the state will be only blocking its own efforts at conviction. Such a blocking however, is no more a reality than we find in the ordinary situation in which the defendant is represented by private counsel. For such counsel is a member of the court and a representative, therefore, of the state opposing another representative of the same state: the Public Prosecutor. Moreover, the Prosecutor himself — assuming his high-mindedness — is working both for the defense and for the prosecution to the extent that he is eagerly allowing the accused every advantage that properly belongs to him at the same time that he is making use of such evidence as is appropriate in an effort to convict him. Thus the Public Defender may be described as a *complement* to the Prosecutor.

There is no indication that the Public Defender is an institution that railroads the guilty towards freedom and so does its bit to create an attitude of nonchalance towards the law and the courts among offenders and their friends. There is no indication, however, in data of this sort that impecunious innocent defendant's find in the Defender an agent who looks after their interests as zealously as privately employed attorneys are supposed to do. We have already suggested that the favourable effect of court procedure upon those who come into touch with it as defendants depends in a measure upon their finding concrete evidence that they are not deprived of thoroughgoing attention by reason of their being poor and inconspicuous.

Unfortunately there has been to date no thoroughgoing investigation of the operation of the office of Public Defender. This officer could be just another Prosecuting Attorney, seeking for acquittals whether or no as the Prosecutor is alleged to seek convictions by all means — for political reasons. The figures quoted above do not show that this has gone on in Los Angeles at any rate. But only a comprehensive investigation will answer the question. And only such an investigation will show to what extent if at all the Defender and the Prosecutor connive together for lower pleas in an effort to hurry cases to a conclusion.

BAIL AND DETENTION

Procedure in relation to bail bonds is another matrix that undoubtedly helps to mold the criminal attitudes of many unfortunates who come into conflict with the law. Has the accused means at his disposal, either his own or from his friends (a few hundred dollars, usually, in felony cases in Chicago), wherewith to pay the fee of a professional "bond-fixer" or Guarantor's Association? If so it is not required (excepting in certain restricted cases) that he be lodged in a place of detention, such as a jail, to await the day of his trial. He may roam about his customary haunts at will while his less opulent colleague in crime languishes behind the bars. Perhaps 50 per cent, in our large metropolitan areas,

for one reason and another, are not admitted to bail. And among those who are admitted are the notorious "bail jumpers" whose bailers are not even called upon for forfeiture. All of this creates, in the criminal population and in its borderland, a picture that does not inspire a feeling for the majesty of the law. On the contrary it helps only to create a barrier against the development of a wholesome morale in the state.

COURT PROCEDURES: CIVIL AND CRIMINAL

Fundamentally we are interested in the detection and punishment of the guilty because of the added protection we believe is thus assured to the public. If detection and punishment can be brought to pass with deadly certainty we shall sooner or later find an attitude developed in the people that, expressed in words, would say: "You can't make crime pay." Though this is control upon a low plane, it is control nevertheless that is much worth seeking.

Procedure in criminal cases, too, is capable of playing a large role in the development of attitudes that shall be favourable or unfavourable, as the case may be, to the protection of the community against repeated crimes by those who are today passing through the mill, and against a sullen, stubborn grouch on the part of those who are being charged and tried for crimes and misdemeanors. Any penal treatment whatever has a good effect upon a culprit in proportion to his feeling that it is just. And the court can do something towards promoting this feeling — or towards blocking it. This observation directs us at once to the Municipal Court (the Police Court in smaller cities). It is the "people's court." It is the only institution of its sort with which the great mass of arrested folk have anything to do. Consequently if they do not get an impression here that the courts are fair and honest — that they hold the scales even — they are likely not to get it elsewhere.

We have already alluded to the fact that the court, by abuse of the power to suspend sentences, may contribute to the development of unfavourable attitudes towards the courts, the laws, and procedure generally. The judge who is elected, and for a short term of, say, two years, is under strong pressure to curry favour for the purpose of building his political fences — and that almost from the day of his election. It is difficult for a relatively weak man to withstand the opportunity, and even a stronger man may seize it and use it without at any time laying himself open to the charge of malfeasance in office. But in using the opportunity he cannot fail to give to the observing the impression that, while he has one eye upon the public service he has another upon his reelection. These difficulties, we believe, are overcome in a jurisdiction in which judges are appointed for life as in Massachusetts. There is then no temptation to cut a corner to win a few votes, and on the whole, therefore, the judge's contribution towards a wholesome public attitude towards the law and the courts is likely to be greater than in other jurisdictions in which the short elective term prevails.

But neither can the appointive life term solve every problem completely. If a man of small caliber is appointed — and one who is lazy withal — he may be found very small indeed: a mere technician — strictly honest but of such circumscribed vision that he can see only the forms of the law. If one's future is assured it is easy to lie down upon one's oars. Perhaps, as an antidote to this possibility, a long term (not a life) appointment or election is preferable. In such a circumstance one cannot divorce one's self completely from the changing world; as a matter of sheer self-protection one must keep in contact with the daily life of the people but one may do so without feeling pressed, as a matter of practical politics, to be daily alert for votes.

Moreover, the long term or appointment for life will prove to be a step in the direction of uniformity in court practice because it will tend to reduce variations due to differences in the personal equation of judges who rapidly succeed one another.

There are many circumstances that bring inequalities to pass in the administration of justice. In any system they are bound to occur due to the personal equation of officers, if to no other cause. But when these inequalities are of a striking character and when they are brought to pass by removable causes, they are a root of destructive attitudes.

If the procedure of the court in a given case has been such that the culprit goes away with the feeling that he has been unjustly dealt with and that he has not been heard as completely as others have been, it is unfortunate to say the least. If thousands go away from the courts carrying such a feeling with them the unfortunate aspect of the situation assumes an importance that is out of proportion to their numbers.

Interpreters

In the first place the matter of court interpreters (it may seem a trivial matter at first glance) may be of first rate importance. Indeed, it is certainly so in a jurisdiction that is crowded with foreign-language-speaking people. A non-English-speaking accused person before an English-speaking judge who understands no language but his own is in an impossible situation without an interpreter. And he may be in little better state if his interpreter is able to report to the court only in such terms as "He means that, *etc.*" If the accused is to go away feeling that he has had a real hearing and not a sham one the interpreter must be able to do his work with complete and unquestionable accuracy. Moreover, it is unfortunate that the accused who is just able to stagger along at making his common wants known in English is ordinarily assumed to be able to understand sufficiently and to be understood in the course of proceedings in court. But this is too much to assume. It is impossible to count cases in this and similar relations, but there can be no doubt that hundreds or thousands of convicted persons pass through the congested courts every month and leave the place.

CLASSIFICATION OF CRIMES

More important and substantive is the classification of crimes according to the severity of punishment. This is called grading. Crimes are generally graded into four categories: Felonies, misdemeanors, felony-misdemeanors, and infractions. Often the criminal intent element affects a crime's grading. Malum in se crimes, murder, for example, are evil in their nature and are generally graded higher than malum prohibitum crimes, which are regulatory, like a failure to pay income taxes.

FELONIES

Felonies are the *most serious* crimes. They are either supported by a heinous intent, like the intent to kill, or accompanied by an extremely serious result, such as loss of life, grievous injury, or destruction of property. Felonies are serious, so they are graded the highest, and all sentencing options are available. Depending on the jurisdiction and the crime, the sentence could be execution, prison time, a fine, or alternative sentencing such as probation, rehabilitation, and home confinement. Potential consequences of a felony conviction also include the inability to vote, own a weapon, or even participate in certain careers.

MISDEMEANORS

Misdemeanors are *less serious* than felonies, either because the intent requirement is of a lower level or because the result is less extreme. Misdemeanors are usually punishable by jail time of one year or less per misdemeanor, a fine, or alternative sentencing like probation, rehabilitation, or community service. Note that incarceration for a misdemeanor is in jail rather than prison. The difference between jail and prison is that cities and counties operate jails, and the state or federal government operates prisons, depending on the crime. The restrictive nature of the confinement also differs between jail and prison. Jails are for defendants who have committed less serious offenses, so they are generally less restrictive than prisons.

FELONY-MISDEMEANORS

Felony-misdemeanors are crimes that the government can prosecute and punish as *either* a felony or a misdemeanor, depending on the particular circumstances accompanying the offense. The discretion whether to prosecute the crime as a felony or misdemeanor usually belongs to the *judge*, but in some instances the *prosecutor* can make the decision.

INFRACTIONS

Infractions, which can also be called violations, are the least serious crimes and include minor offenses such as jaywalking and motor vehicle offenses that result in a simple traffic ticket. Infractions are generally punishable by a fine or alternative sentencing such as traffic school.

CRIMINAL PROCEDURE IN JAPAN

The nation's criminal justice officials follow specified legal procedures in dealing with offenders. Once a suspect is arrested by national or prefectural police, the case is turned over to attorneys in the Supreme Public Prosecutors Office, who are the government's sole agents in prosecuting lawbreakers. Under the Ministry of Justice's administration, these officials work under Supreme Court rules and are career civil servants who can be removed from office only for incompetence or impropriety. Prosecutors presented the government's case before judges in the Supreme Court and the four types of lower courts: high courts, district courts, summary courts, and family courts. Penal and probation officials administer programmes for convicted offenders under the direction of public prosecutors. After identifying a suspect, police have the authority to exercise some discretion in determining the next step. If, in cases pertaining to theft, the amount is small or already returned, the offense petty, the victim unwilling to press charges, the act accidental, or the likelihood of a repetition not great, the police can either drop the case or turn it over to a prosecutor. Reflecting the belief that appropriate remedies are sometimes best found outside the formal criminal justice mechanisms, in 1990 over 70 percent of criminal cases were not sent to the prosecutor.

JUVENILES

Police also exercise wide discretion in matters concerning juveniles. Police are instructed by law to identify and counsel minors who appear likely to commit crimes, and they can refer juvenile offenders and non-offenders alike to child guidance centers to be treated on an outpatient basis. Police can also assign juveniles or those considered to be harming the welfare of juveniles to special family courts. These courts were established in 1949 in the belief that the adjustment of a family's situation is sometimes required to protect children and prevent juvenile delinquency. Family courts are run in closed sessions, try juvenile offenders under special laws, and operate extensive probationary guidance programmes. The cases of young people between the ages of fourteen and twenty can, at the judgment of police, be sent to the public prosecutor for possible trial as adults before a judge under the general criminal law.

CITIZENS

Arrest

Police have to secure warrants to search for or seize evidence. A warrant is also necessary for an arrest, although if the crime is very serious or if the perpetrator is likely to flee, it can be obtained immediately after arrest. Within forty-eight hours after placing a suspect under detention, the police have to present their case before a prosecutor, who is then required to apprise the accused of the charges and of the right to counsel. Within another twenty-four hours, the prosecutor has to go before a judge and present a case to obtain a detention

order. Suspects can be held for ten days (extensions are granted in almost all cases when requested), pending an investigation and a decision whether or not to prosecute. In the 1980s, some suspects were reported to have been mistreated during this detention to exact a confession. These detentions often occur at cells within police stations, called daiyo kangoku.

Prosecution

Prosecution can be denied on the grounds of insufficient evidence or on the prosecutor's judgment. Under Article 248 of the Code of Criminal Procedure, after weighing the offender's age, character, and environment, the circumstances and gravity of the crime, and the accused's rehabilitative potential, public action does not have to be instituted, but can be denied or suspended and ultimately dropped after a probationary period. Because the investigation and disposition of a case can occur behind closed doors and the identity of an accused person who is not prosecuted is rarely made public, an offender can successfully reenter society and be rehabilitated under probationary status without the stigma of a criminal conviction.

Inquest of Prosecution

Institutional safeguards check the prosecutors' discretionary powers not to prosecute. Lay committees are established in conjunction with branch courts to hold inquests on a prosecutor's decisions. These committees meet four times yearly and can order that a case be reinvestigated and prosecuted. Victims or interested parties can also appeal a decision not to prosecute.

Trial

Most offenses are tried first in district courts before one or three judges, depending on the severity of the case. Defendants are protected from self-incrimination, forced confession, and unrestricted admission of hearsay evidence. In addition, defendants have the right to counsel, public trial, and cross-examination. Trial by jury was authorized by the 1923 Jury Law but was suspended in 1943. A new lay judge law was enacted in 2004 and came into effect in May 2009, but it only applies to certain serious crimes.

The judge conducts the trial and is authorized to question witnesses, independently call for evidence, decide guilt, and pass sentence. The judge can also suspend any sentence or place a convicted party on probation. Should a judgment of not guilty be rendered, the accused is entitled to compensation by the state based on the number of days spent in detention. Criminal cases from summary courts, family courts, and district courts can be appealed to the high courts by both the prosecution and the defense. Criminal appeal to the Supreme Court is limited to constitutional questions and a conflict of precedent between the Supreme Court and high courts.

The criminal code sets minimum and maximum sentences for offenses to allow for the varying circumstances of each crime and criminal. Penalties range

from fines and short-term incarceration to compulsory labour and the death penalty. Heavier penalties are meted out to repeat offenders. Capital punishment consists of death by hanging and is usually imposed for multiple homicides. After a sentence is finalized, the only recourse for a convict to gain an acquittal is through a retrial. A retrial can be granted if the convicted person or their legal representative show reasonable doubt about the finalized verdict, such as clear evidence that past testimony or expert opinions in the trial were false.

Trial by Lay Judge

The first trial by citizen judge, "saiban-in", began August 3, 2009 under a new law passed in 2004. Six citizens became lay judges and joined three professional judges to determine the verdict and sentence the defendant. Japan belongs to an inquisitory system of criminal process. Therefore, a judge oversees the proceedings and also determines the guilt and the sentence of the accused. The citizen lay judges as well as professional judges are allowed to put forth questions to defendants, witnesses and victims during the trial. The new system aims to invite participation of the wider community and also provide a speedier, more democratic justice system, according to Eisuke Sato, the justice minister. The first trial by lay judge lasted four days, while some comparable criminal cases may last years under the old system. The historic trial of 72-year-old Katsuyoshi Fujii who stabbed his 66-year-old neighbour to death had substantial media attention. The selected lay judges must be voters, at least 20 years old, and possess a secondary level education. Professional lawyers and politicians may not serve as lay judges in the new system. At least one judge must concur with the majority vote from the lay judges in regards to a guilty verdict, however a majority not guilty verdict by the lay judges will stand. During the inaugural case, the citizens relied on the professional judges to help ascertain a sentence for the verdict decided upon, but felt confident in their interpretation of the trial arguments presented by prosecution and defence.

CONVICTION RATE

One of the main features of the Japanese criminal justice system well known in the rest of the world is its extremely high conviction rate, which exceeds 99%. Some in the common law countries argue that this is to do with elimination of the jury system in 1943, however, trials by jury were rarely held as the accused had to give up the right to appeal. Lobbying by human rights groups and the Japan Federation of Bar Associations resulted in the passing of a judicial reform bill in May, 2004, which introduced a lay-judge system in 2009, which is often confused with jury system in common law countries.

J. Mark Ramseyer of Harvard Law School and Eric B. Rasmusen of Indiana University examine if the accusation is in fact warranted. In their paper ("Why Is the Japanese Conviction Rate So High?") they examined two possibilities. One is that judges who come under the control of central bureaucracy are pressured to pass a guilty verdict, ensuring high conviction. Another possibility

is that, given that the non-jury system under inquisition system has predictable ruling on guilt, Japan's understaffed prosecutors working on low budgets only bring the most obviously guilty defendants to trial, and do not file indictments in cases in which they are not certain they can win.

All Japanese court rulings are accessible in digital format; the two academics examined every case after World War II in which the court found the defendant not guilty. The result is mixed. Simple statistical analysis shows that the judge's later career tends to be negatively affected by a non-guilty verdict. However, by examining the individual cases, the two academics found that all of those cases which negatively affected judges' careers had political implications (such as labour law or electoral law) and that the facts of the case (*i.e.*, the defendants committing the accused deed) itself were never in dispute. However, judges delivered 'not guilty' verdicts on technicalities such as statutes of limitation or constitutional arguments, which were subsequently reversed in a higher court. In cases in which the judge delivered a 'not guilty' verdict because they ruled that there was insufficient evidence to ascertain that the defendants did the accused deed, the judge suffered no negative consequence. For this reason, the paper argued that Japanese judges are politically conservative in legal interpretation but are not biased in matter of fact.

In the matter relating to Japanese prosecutors being extremely cautious, the paper found ample evidence for it. In Japan, 99.7% of all the cases brought to court resulted in conviction, while in the U.S., the figure is 88%. According to a cited research, in the U.S., the accused contest guilt in 22% of federal cases and 11% of state cases, while in Japan, the ratio is modestly less. The paper attributes this difference to greater predictability of the outcome in Japanese cases. This is due to two reasons.

One is that it is the judge rather than the jury who determines the verdict. As judges "have seen it all before" and the lawyers on both sides "have seen them seeing it", as they can read the judge's previous ruling (which includes written reasoning for the previous verdict), the way that the judge thinks and argues is very predictable.

Secondly, Japanese trials before the institution of the current lay judge system, were discontinuous. The defense and the prosecutor would first gather in front of the judges and present the issue. Then, the court would enter recess and both sides would go back to prepare their case. As they reconvened on different dates, they would then present each case which the judges examined, the court would be put in recess again and each side would go back to gather further evidence. Some complex trials took years or even a decade to conclude which is impossible under jury system. During the questioning of evidence, judges were explicit about their opinions by the way they questioned the evidence, which gave greater predictability about the final verdict.

For this reason, the prosecutor is far more likely to bring in the case where conviction is assured and the accused is far more likely to settle. Moreover, the paper found that Japanese prosecutors have a far more pressing need to be

selective. In the U.S., the federal government employs 27,985 lawyers and the states employ another 38,242 (of which 24,700 are state prosecutors). In Japan, with about a third of U.S. population, the entire government employs a mere 2,000. Despite Japan having a low crime rate, such numbers create a significant case overload for prosecutors. In the U.S., there are 480 arrests (96 serious cases) per year per state prosecutor. (The actual figure is lower as some are prosecuted in federal court). In Japan, the figure is 700 per year per prosecutor. In the U.S., a rough estimate is that 42% of arrests in felony cases result in prosecution - while in Japan, the figure is only 17.5%.

In murder, U.S., police arrested 19,000 people for 26,000 murders, in which 75% were prosecuted and courts convicted 12,000 people. In Japan, 1,800 people were arrested for 1,300 murders, but prosecutors tried only 43%. Had the allegation that Japanese prosecutors use weak evidence mostly based on (forced) confessions to achieve convictions been true, the larger proportion of arrests would have resulted in prosecutions and eventual conviction. But the opposite is true. In fact, the data indicates that Japanese prosecutors bring charges only when the evidence is overwhelming and likelihood of conviction is near absolute, which gives a greater incentive for the accused to confess and aim for a lighter sentence, which, in turn, results in a high rate for confession.

The Japanese criminal justice system, despite retaining the death penalty, is relatively lenient in sentencing by the standard of the United States. Outside capital cases, many of those sentenced to life sentences are paroled within 15 years. Those convicted of less heinous murder and manslaughter are likely to serve less than 10 years.

Those convicted of rape will often serve less than two to five years. It is even possible for someone convicted of murder to serve a suspended sentence if the defense successfully argues for mitigating circumstances. Moreover, in Japanese criminal proceedings the conviction and sentencing phase are separate. In the Japanese criminal justice system, these are distinct phases, echoing that of common law jurisdictions where sentencing is usually remitted to a later hearing after a finding of guilt. The court proceedings first determine guilt, then a second proceeding takes place to determine the sentence. Prosecutors and defense teams argue each phase. Defense lawyers, given the predictability of the outcome in term of guilt once the charge is brought, together with leniency of punishment (except in death penalty cases), often advise the accused to confess their guilt in trial. Remorse is seen as a mitigating factor which tends to bring reduced sentences.

CONFESSION IN JAPANESE CRIMINAL INVESTIGATION

Many Western human rights organizations alleged that the high conviction rate is due to rampant use of conviction solely based on confession. Confessions are often obtained after long periods of questioning by police as those arrested may be held for up to 23 days. This can, at times, take weeks during which time the suspect is in detention and can be prevented from contacting a lawyer or

family. Article 38 of Japan's Constitution categorically requires that "no person shall be convicted or punished in cases where the only proof against suspect is his/her own confession," In practice, this constitutional requirement take a form of safeguard known as "revelation of secret" (Himitsu no Bakuro, lit "outing of secret"). Because suspects are put through continuous interrogation which could last up to 23 days as well as isolation from the outside world, including access to lawyers, both the Japanese judiciary and the public are well aware that confession of guilt can easily be forced. Consequently, the court (and the public) take the view that mere confession of guilt alone is never any sufficient ground for conviction.

Instead, for confession to be a valid evidence for conviction, the Japanese court requires confession to include revelation of verifiable factual matter which only the perpetrator of the crime could have known such as the location of an undiscovered body or the time and place the murder weapon was purchased, a fact about the crime scene, *etc.* Furthermore, to safeguard against the possibility that the interrogator implanting such knowledge into confession, the prosecutor must prove that such revelation of secret was unknown to the police until the point of confession. For example, in the Sachiura murder case which happened in 1948, the conviction was initially secured by the confession of the location of the body which was yet to be discovered. However, it later transpired that the police likely knew the location of the body and this created a possibility that the confession of the location of the body could be forged and implanted by the investigating police, resulting in the higher court declaring the confession unsafe and reversing the verdict. While it is impossible for an innocent suspect to reveal relevant information about a crime even under severe torture, a guilty suspect is likely to crack under prolonged interrogation in isolation and make a damning confession. Activists claim that the Japanese justice system (and Japanese public to some extent) consider that prolonged interrogation of suspect in isolation without access to lawyers is justified to solve the criminal cases without risking the miscarriage of justice.

In addition, the requirement that the revelation of relevant information by the accused was unknown to the police and that the prosecutor examines the police investigation before the case is brought to the court, is seen as an extra layer of safeguard for the validity of confession as evidence.

However, most miscarriage of justice cases in Japan are, indeed, the results of conviction solely based on the confession of the accused. In these case, (1) the record of sequence and timing of the police discoveries of evidence and the timing of confession is unclear (or even faked by the police) (2) the contents of the revelation of secret has only weak relevance to the crime itself or that (3) the revelation of secret to be actually vague enough that it is apply only loosely to the elements of crime (Prosecutor's fallacy). Serious miscariage of justice cases in Japan involve police deliberately faking the police evidence (and insufficient supervision by the prosecutor to spot such rogue behaviour) such as where the police already knew (or suspected) the location of the body or the

murder weapon but they fake the police record to make it appear that it is the suspect who revealed the location. During the 1970s, a series of reversals of death penalty cases brought attention to the fact that some accused, after intensive interrogation signed as-yet unwritten confessions, which were later filled in by investigating police officers. Moreover, in some cases, the police falsified the record so that it appear that the accused confessed to the location where the body was buried, yet the truth was that the police had written in the location in the confession after the body was discovered by other means. These coerced confessions, together with other circumstantial evidence, often convinced judges to (falsely) convict.

Currently the Japanese Federation of Bar Associations is calling for the entire interrogation phase to be recorded to prevent similar incidents occurring. The International Bar Association, which encompasses the Japanese Federation of Bar Associations, cited problems in its "Interrogation of Criminal Suspects in Japan". Japan's current Minister of Justice, Hideo Hiraoka, has also supported videotaping interrogations. Police and prosecutors have traditionally been opposed to videotaping interrogations, stating that it would undermine their ability to get confessions. The current office of prosecutors has, however, reversed their previous opposition to this proposal. Proponents argue that without the credibility of confessions supported by electronic recordings, the lay judges may refuse to convict in a case when other offered evidence is weak. It is also argued that recording of interrogation may allow lowering standard in the "revelation of secret" that confession must contain the element of crime which police and prosecutor did not know. Once the recording is introduced, it would become impossible for the police to forge confession. Then, it may become possible to bring conviction based on confession of elements of crime which only perpetrator "and" police knew.

In October 2007, the BBC published a feature giving examples and an overview of "'Forced confessions' in Japan". The case was called "Shibushi Case". In addition, Hiroshi Yanagihara, who was convicted in November 2002 for attempted rape and rape due to forced confession and the identification by the victim despite an alibi based on the phone record, was cleared in October 2007 when the true culprit was arrested for an unrelated crime. The two cases damage the credibility of Japanese Police.

To Japanese citizens and police, however, the arrest itself already creates the presumption of guilt which needs only to be verified via a confession. The interrogation reports prepared by police and prosecutors and submitted to the trial courts often constitute the central evidence considered when weighing the guilt or innocence of the suspect.

BIAS IN THE COURT

On November 14, 1978, a Texas jury found Thomas Barefoot guilty of the murder of Bell County police officer Carl Levin. Based on the gravity of the crime and the testimony of two psychiatrists who claimed that Barefoot would

pose a continued menace to society, that same jury recommended the death penalty. Barefoot appealed. The psychiatrists, he argued, had no grounds on which to predict his future dangerousness. The case made it all the way to the Supreme Court, which rejected his claim, affirming the merit of the mental health experts and denying a stay of execution. On October 30, 1984, Barefoot was put to death by lethal injection.

That same year, another man, Leroy Hendricks, was convicted in Kansas for his own crimes—child molestation, in this case. He went on to serve nearly 10 years of his five- to 20-year sentence and was almost a free man when the state government stepped in and—again on the basis of a mental health expert's opinion—moved to contain him under its Sexually Violent Predator Act, a law passed only two years earlier that allowed the state to indefinitely confine sexual predators it considered too dangerous to release, placing them instead into mental hospitals after they'd served their sentences. It was enacted after the rape and murder of a young college student at the hands of a convicted rapist out after his release. Hendricks, in fact, would be the Act's first case.

"It's brought to the forefront things that are no surprise to many forensic psychologists and psychiatrists, which is that we're human beings, and human beings have biases."

Forensic psychologists and psychiatrists are frequent elements in criminal proceedings, and their opinions clearly carry weight. But these experts are often recruited by a particular side—defence or prosecution—and paid for their time and expertise. So here's the too-little-asked question: Are forensic mental health experts influenced by the team or individual that picks them?

That's the question asked by a team of researchers out of the University of Virginia and Sam Houston State University in Texas. And according to their new study out in the journal *Psychological Science*, not only is the answer a clear yes, but it may be that most evaluators don't even realize when their work is compromised.

"Sometimes the public or attorneys talk about hired guns, but nobody thinks *they're* the hired gun, right?" says lead author Daniel Murrie, who is also the director of the University of Virginia's Institute of Law, Psychiatry, and Public Policy. "But what this research seems to suggest is that many clinicians are vulnerable to some degree after all."

The work that led up to this conclusion kicked off a few years ago, when notices from Murrie's institute started popping up in the inboxes of forensic psychologists and psychiatrists around the country. They were invited, the letters read, to participate in free training on a couple of popular risk assessment tools—the Psychopathy Checklist-Revised, or PCL-R, and the Static-99—for a few continuing education credits if they would come back in a few weeks' time to score case files for an out-of-state "justice system" for $100 per file.

Granted, it wasn't standard as consultation gigs go, but it wasn't unheard of either. One hundred and eighteen Ph.D.s, Psy.D.s, and M.D.s signed on, streaming in from 15 states. Three weeks later, all but 10 returned to meet with

the attorney, who explained that a large-scale legal case was underway and that they would be scoring a group of sex offenders being considered for long-term civil commitment. Armed with case files and the evaluation forms they studied earlier, each scored three to four individuals before heading home.

Only four of the 108 participants guessed the truth: The entire affair was a lie. Everyone there *actually* scored the same three main files—real cases from the past, stripped of identifying information. (Some also scored a final case very low in psychopathy, just to see if there was a possible floor effect. There was, to an extent.) The office space was a borrowed university satellite building. The $400 came from a National Science Foundation grant. And as for the attorney? The retired lawyer-turned-professor was the key to the whole thing—to half of the participants, he claimed to be with the prosecution; to the other half, he was the defence; and to both, he gave 15 minutes' worth of team-tailored pep talk, and disappeared. As manipulations go, it wasn't very strong. But it was enough.

On all three main cases, average prosecution scores on the PCL-R were about three points higher than the defence. The Static-99 varied similarly but to a lesser extent. That in itself is odd; normal error wouldn't stack the deck in just one direction. But then, to put the effect into perspective, the researchers compared all the possible combinations of a defence expert versus prosecution—akin to the typical expert-versus-expert courtroom scenario. In any given pairing, they found, the prosecution scored more than six points higher than the defence nearly a full third of the time.

Statistically speaking, says Marcus Boccaccini, a psychologist at Sam Houston State University and study co-author, a six-point gap with the state higher than defence should happen in fewer than three percent of the pairings with normal variation. "Not 29 percent. But it *is* 29 percent, and it's happening in *that* direction." A similar pattern emerged in the Static-99, albeit to a lesser extent, with state experts varying more than two standard errors higher than defence in 18 to 20 percent of the cases. And for neither instrument did the differences correlate with the experts' experience, specialty, and attitude towards sex offenders—only the team they played for.

The thing to keep in mind is that these measures are two of the most common and thoroughly researched risk assessment tools in psychology today. And they're common because they're considered so objective. In research settings, two experts scoring the same person for psychopathy on the PCL-R will produce scores within two points of each other 92 percent of the time. "This is a watershed piece of research," says Joel Dvoskin, a longtime forensic psychologist in Arizona. "It's brought to the forefront things that are no surprise to many forensic psychologists and psychiatrists, which is that we're human beings, and human beings have biases."

Indeed, many have long assumed that bias in mental health testimony existed, particularly since the rest of forensic science, like fingerprint analysis, DNA, and eyewitness testimony, has come under fire for subjectivity in recent years.

But without numbers and proof, it remained an open question easy to dismiss. "We have an uncanny ability to say it's a problem, but it's not a problem for *me*," says Randy Otto, a forensic psychologist at the University of South Florida. "And they truly believe that the opinions they form are unaffected by how they've been retained and who's retaining them."

In fact, after the study was complete, Murrie and Boccaccini sent the scores to the participants so that each could see how they compared—yet still the blinders stayed. "And in fact," says Murrie, "if you asked them, 'Who do you think is most vulnerable to allegiance bias?,' you would see the answers were typically opposite of them. People who worked in the public sector all thought that the people who would be vulnerable to allegiance would be private practitioners." The older experts blamed the younger, and newcomers blamed the experienced. "Basically everybody thought it was somebody who was unlike them."

It's unknown how this adversarial allegiance impacts real life. The standard danger zone in a PCL-R rating is 30 or higher, so six points matter—but no mental health evaluation exists in a courtroom vacuum, confounding cause and effect. Some research has suggested that a defendant labeled as psychopathic is seen as more deserving of harsh punishment. Certainly, such score discrepancies *do* exist in real life: Earlier work by Murrie and Boccaccini has documented lopsided results in actual court proceedings in Texas, and other work by them suggests that jurors in sexual predator cases doubt the testimony of defence experts over the state's.

Future research can try to tease out such effects, as well as ways to counteract them and force experts to recognize their own shortcomings. "Whether it's choosing the right test or looking to see if evaluators trained a certain way are less prone to this than others—we need to start thinking about moving in that direction," says Boccaccini. "We now see the problem, well, let's work to minimize it. We can do that. We're people who study humans and human decision-making. We should rise to the challenge."

For Murrie and Boccaccini, that may be easier said than done. "We're pretty sure they'll never believe us again," Boccaccini says. "Even if we try to do a follow-up study where there's no deception, nobody's going to believe it."

EXPERT WITNESS

An expert witness, in England, Wales and the United States, is a person whose opinion by virtue of education, training, certification, skills or experience, is accepted by the judge as an expert. The judge may consider the witness's specialized (scientific, technical or other) opinion about evidence or about facts before the court within the expert's area of expertise, referred to as an "expert opinion". Expert witnesses may also deliver "expert evidence" within the area of their expertise. Their testimony may be rebutted by testimony from other experts or by other evidence or facts.

In Scots Law, *Davie v Magistrates of Edinburgh* (1953) provides authority that where a witness has particular knowledge or skills in an area being examined by the court, and has been called to court in order to elaborate on that area for the benefit of the court, that witness may give evidence of his/her opinion on that area.

ROLE OF EXPERT WITNESSES

Typically, experts are relied on for opinions on severity of injury, degree of sanity, cause of failure in a machine or other device, loss of earnings and associated benefits, care costs, and the like. In an intellectual property case an expert may be shown two music scores, book texts, or circuit boards and asked to ascertain their degree of similarity. In the majority of cases, the expert's personal relation to the defendant is considered and irrelevant.

The tribunal itself, or the judge, can in some systems call upon experts to technically evaluate a certain fact or action, in order to provide the court with a complete knowledge on the fact/action it is judging. The expertise has the legal value of an acquisition of data. The results of these experts are then compared to those by the experts of the parties.

The expert has a great responsibility, and especially in penal trials, and perjury by an expert is a severely punished crime in most countries. The use of expert witnesses is sometimes criticized in the United States because in civil trials, they are often used by both sides to advocate differing positions, and it is left up to a jury to decide which expert witness to believe. Although experts are legally prohibited from expressing their opinion of submitted evidence until after they are hired, sometimes a party can surmise beforehand, because of reputation or prior cases, that the testimony will be favourable regardless of any basis in the submitted data; such experts are commonly disparaged as "hired guns."

Duties of Experts

In England and Wales, under the Civil Procedure Rules 1998 (CPR), an expert witness is required to be independent and address his or her expert report to the court. A witness may be jointly instructed by both sides if the parties agree to this, especially in cases where the liability is relatively small.

Under the CPR, expert witnesses may be instructed to produce a joint statement detailing points of agreement and disagreement to assist the court or tribunal. The meeting is held quite independently of instructing lawyers, and often assists in resolution of a case, especially if the experts review and modify their opinions. When this happens, substantial trial costs can be saved when the parties to a dispute agree to a settlement. In most systems, the trial (or the procedure) can be suspended in order to allow the experts to study the case and produce their results. More frequently, meetings of experts occur before trial. Experts charge a professional fee which is paid by the party commissioning the report (both parties for joint instructions) although the report is addressed to the court. The fee must not be contingent on the outcome of the case. Expert

witnesses may be subpoenaed (issued with a witness summons), although this is normally a formality to avoid court date clashes. In the United States, under the Federal Rule of Evidence 702 (FRE), an expert witness must be qualified on the topic of testimony. In determining the qualifications of the expert, the FRE requires the expert have had specialized education, training, or practical experience in the subject matter relating to the case. The expert's testimony must be based on facts in evidence, and should offer opinion about the causation or correlation to the evidence in drawing a conclusion.

Experts in the U.S., typically are paid on an hourly basis for their services in investigating the facts, preparing a report, and if necessary, testifying during pre-trial discovery, or at trial. Hourly fees range from approximately $200 to $750 or more per hour, varying primarily by the expert's field of expertise, and the individual expert's qualifications and reputation. In several fields, such as handwriting analysis, where the expert compares signatures to determine the likelihood of a forgery, and medical case reviews by a physician or nurse, in which the expert goes over hospital and medical records to assess the possibility of malpractice, experts often initially charge a flat fixed fee for their initial report. As with the hourly fees discussed previously, the amount of that flat fee varies considerably based on the reviewing expert's field, experience and reputation. The expert's professional fee, plus his or her related expenses, is generally paid by the party retaining the expert. In some circumstance the party who prevails in the litigation may be entitled to recover the amounts paid to its expert from the losing party. In high stakes cases multiple experts, in multiple topics, are often retained by each party. Although it is still relatively rare, the court itself may also retain its own independent expert. In all cases, fees paid to an expert may not be contingent on the outcome of the case.

HISTORY

The earliest known use of an expert witness in English law came in 1782, when a court that was hearing litigation relating to the silting-up of Wells harbour in Norfolk accepted evidence from a leading civil engineer, John Smeaton. This decision by the court to accept Smeaton's evidence is widely cited as the root of modern rules on expert evidence. However, it was still such an unusual feature in court that in 1957 in the Old Bailey, Lord Justice Patrick Devlin could describe the case of suspected serial killer Dr John Bodkin Adams thus: "It is a most curious situation, perhaps unique in these courts, that the act of murder has to be proved by expert evidence."

On the other hand, expert evidence is often the most important component of many civil and criminal cases today. Fingerprint examination, blood analysis and DNA fingerprinting are common kinds of expert evidence heard in serious criminal cases. In civil cases, the work of accident analysis, forensic engineers, and forensic accountants is usually important, the latter to assess damages and costs in long and complex cases. Intellectual property and medical negligence cases are typical examples.

Electronic evidence has also entered the courtroom as critical forensic evidence. Audio and video evidence must be authenticated by both parties in any litigation by a forensic expert who is also an expert witness who assists the court in understanding details about that electronic evidence. Voice-mail recordings and closed-circuit television systems produce electronic evidence often used in litigation, more so today than in the past. Video recordings of bank robberies and audio recordings of life threats are presented in court rooms by electronic expert witnesses.

NON-TESTIFYING EXPERTS

In the U.S., a party may hire experts to help them evaluate a given case. For example, a car maker may hire an experienced mechanic to decide if its cars were built to specification. This kind of expert opinion will be protected from discovery by the opposing party. In other words, if the expert finds evidence against their client, the opposite party will not automatically gain access to it. This privilege is similar to the work-product doctrine (not to be confused with attorney–client privilege).

The non-testifying expert can be present at the trial or hearing to aid the attorney in asking questions of other expert witnesses. Unlike a testifying expert, a non-testifying expert can be easily withdrawn from a case. It is also possible to change a non-testifying expert to a testifying expert before the expert disclosure date.

TESTIFYING EXPERTS

If the witness needs to testify in court, the privilege is no longer protected. The expert witness's identity and nearly all documents used to prepare the testimony will become discoverable. Usually an experienced lawyer will advise the expert not to take notes on documents because all of the notes will be available to the other party.

An expert testifying in a United States federal court must satisfy the requirements of Fed. R. Evid. 702. Generally, under Rule 702, an expert is a person with "scientific, technical, or other specialized knowledge" who can "assist the trier of fact," which is typically a jury. A witness who is being offered as an expert must first establish his or her competency in the relevant field through an examination of his or her credentials. The opposing attorney is permitted to conduct a voir dire of the witness in order to challenge that witness' qualifications.

If qualified by the court, then the expert may testify "in the form of an opinion or otherwise" so long as:

- The testimony is based upon sufficient facts or data,
- The testimony is the product of reliable principles and methods, and
- The witness has applied the principles and methods reliably to the facts of the case."

Although experts can testify in any case in which their expertise is relevant, criminal cases are more likely to use forensic scientists or forensic psychologists, whereas civil cases, such as personal injury, may use forensic engineers, forensic

accountants, employment consultants or care experts. Senior physicians – UK, Ireland, and Commonwealth consultants, U.S., attending physicians – are frequently used in both the civil and criminal courts. The Federal Court of Australia has issued guidelines for experts appearing in Australian courts. This covers the format of the expert's written testimony as well as their behaviour in court. Similar procedures apply in non-court forums, such as the Australian Human Rights and Equal Opportunity Commission.

TYPES OF EXPERT WITNESS

Educating Witness

The educating witness teaches the fact-finder (jury or, in a bench trial, judge) about the underlying scientific theory and instrument implementing theory. This witness is an expert witness, called to elicit opinions that a theory is valid and the instruments involved are reliable. The witness must be qualified as an expert witness, which may require academic qualifications or specific training.

Reporting Witness

Called after teaching witness leaves stand. Usually the laboratory technician who personally conducted the test. Witness will describe both the test and the results. When describing test, will venture opinions that proper test procedures were used and that equipment was in good working order.

SCIENTIFIC EVIDENCE

In law, scientific evidence is evidence derived from scientific knowledge or techniques. Most forensic evidence, including genetic evidence, is scientific evidence.

Frye Test

The *Frye* test, coming from the case *Frye v. United States* (1923), said that admissible scientific evidence must be a result of a theory that had "general acceptance" in the scientific community. This test results in uniform decisions regarding admissibility. In particular, the judges in *Frye* ruled that:

Just when a scientific principle or discovery crosses the line between experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs. This test has been criticized as misunderstanding the scientific process and being based on the assumption that a jury is unable to evaluate scientific testimony. The goals of the test were to avoid evidence from overly questionable or controversial scientific theories to be used; it was used to exclude lie-detector results employed by the defence in the original case.

Daubert Test

The Daubert test arose out of the United States Supreme Court case Daubert v. Merrell Dow Pharmaceuticals, 509 U.S., 579 (1993). It requires four things to be shown:

- That the theory is testable (has it been tested?)
- That the theory has been peer reviewed, (Peer reviewing usually reduces the chances of error in the theory)
- The reliability and error rate (100% reliability and zero error are not required, but the rates should be considered by the trial judge)
- The extent of general acceptance by the scientific community.

POWER OF DNA

As law enforcement agencies the world over have been amassing huge collections of fingerprints since the closing days of the nineteenth century, so too have they recently begun to collect, organize, analyze, and store collections of DNA samples for forensic purposes.

This trend, as was the case with fingerprints, has been hailed as a godsend for crime fighting, but also decried as an evil at the same time. However, as with fingerprints, it looks like DNA testing and associated databases are here to stay. Accordingly, the current proliferation of DNA databases and their likely further expansion raise three significant policy issues and attendant questions. First, how do we utilize this new technology, while protecting against misuse and abuse? The question is really much more complex than this, and it certainly covers a multitude of sub-issues. At the essential core of this issue is the same question which appears in virtually every facet of our daily lives today. Science and technology are progressing at exponential rates, while the ordinary citizen struggles to keep up; so, what happens when technology, and the manifold advances it spawns, transcends society's ability to regulate such technology? Further, in the absence of a serious and well-informed debate about the advisability and demonstrative value of putting into practice whatever advances new technologies may provide, will particular interest groups exert unchallenged influence, if not complete hegemony in a particular area, and successfully lobby for very large expenditures of public financing?

In order to address the first issue properly, the investigation of a second issue requires careful and immediate attention. Although technology makes certain advances possible, are these advances truly necessary? Moreover, will they produce the alleged benefits and if so, at what cost? This chapter will not attempt to solve this dilemma in a macro context. Rather, our interest centers on the forensic application of DNA technology, and in particular, the construction of scientific databases that contain such information. In the past few years, supporters of DNA testing for forensic applications have made remarkable claims about the potential of DNA testing as a crime fighting tool and have touted DNA as the next great breakthrough since fingerprints. It should be noted at the

outset that we have no quarrel with DNA testing per se. The scientific community has conclusively demonstrated the reliability and validity of DNA testing and that the "matching" of an evidence sample with that taken from a suspect for purposes of exclusion versus inclusion can be highly successful. Further, although at one time there was considerable debate about the admissibility of DNA evidence, the point is now moot.

However, our inquiry is guided by a healthy skepticism about the widespread collection of DNA samples and their subsequent storage in databases as a crime control measure.

Regarding the potential of such programmes as a law enforcement tool, Ronald S. Neubauer, the president of the International Association of Chiefs of Police offered the following comments:

We think it's one of the most important developments in forensic science in law enforcement.... And in the 21st century, we not only see DNA being a tool to solve crimes, but as a way to insure that innocent people are not being convicted of crimes they did not commit.

It is precisely this type of unsupported assertion, if not blatant exaggeration, concerning the crime fighting value of DNA, together with the manifold costs of DNA testing and database construction, that frame the scope of our analysis. To put it more simply, will DNA databases provide law enforcement and the subsequent criminal prosecutions with measurable and significant effects on crime? Further, can these effects, once demonstrated and replicated on a wide-scale basis, be produced in a cost-effective manner? Assuming that DNA databases are indeed valuable in the fight against crime, and can be administered in a cost-effective fashion, a final remaining issue arises concerning appropriate regulations surrounding DNA database construction, maintenance, and access. As will be shown below, since there are various schemes concerning who should be required by statute to contribute DNA samples, this question indeed poses significant legal and ethical issues which must not be ignored or dismissed amidst the fervor surrounding the alleged benefits of DNA testing.

This chapter provides a brief introduction to DNA testing and its increasing application in criminal jurisprudence. In it we devote special attention to federal initiatives that seek to expand the use of DNA (and DNA databases) owing to its reputed evidentiary value. We will give an analysis of the efficacy of DNA testing and associated databases, from both a "pure" effectiveness basis (*i.e.*, DNA's impact on crime) and a "cost" effectiveness standpoint (*i.e.*, the crime level effect per unit cost of DNA testing and storage). It will review predictions of what the future may hold for DNA and related databases, and the normative policy concerns regarding current use and likely future expansion. Here our goal is to provide informative commentary on the fundamental question of concern: are we better off living in a world where our most basic and singularly unique characteristics are on file, serving as a constant shadow over our daily lives? Here we provides a discussion of how DNA databases are being designed, and a survey of the existing law in the United States as to their present structure.

THE EMERGENCE OF DNA TYPING

Iscovery of DNA

The DNA story begins with two gentlemen named Watson and Crick who came upon a remarkable discovery in 1953. They unraveled the mystery of DNA for the first time, obtaining a Nobel Prize for their efforts. Like many scientific discoveries, it would take years to realize the full magnitude and potential of this pioneering work. It was not until the early 1980s that Dr. Alec Jeffreys at the University of Leicester in England pioneered the use of DNA in the law enforcement arena. The Federal Bureau of Investigation (FBI) quickly followed suit in 1988.

DNA is the chemical deoxyribonucleic acid, which carries the genetic code of each human's body—the genetic blueprint we inherit from our parents. DNA, while not actually a part of saliva, urine, perspiration, or tears, is found in one place, and only one place—the nucleus of cells. Because these cells are found in all bodily fluids, tissue, and hair, DNA is an omnipresent residue that trails us wherever we go. These physical properties of DNA have made it an important tool in fighting crime. Presently, there are three principal methods by which DNA testing is usually accomplished: (1) Restriction Fragment Length Polymorphism (RFLP); (2) Polymerase Chain Reaction (PCR); and (3) Short Tandem Repeats (STRs). Depending upon the quantity and quality (*i.e.*, molecular weight and possible degradation) of the forensic sample available, the time frame available for testing, and other factors, one or more of these methods will generally produce valid results for making a "match" between an evidence sample and a suspect sample for purposes of excluding or failing to exclude the suspect as the perpetrator.

EFFECTIVENESS OF DNA

In theory, a DNA database consists of DNA samples obtained from two sources: crime scene evidence and individual "donors."The term "donors" is used simply for utility here, and who is included in the donor group varies substantially from jurisdiction to jurisdiction.

It should be noted here that other sources of DNA might provide samples for these databases, such as unidentified human remains or the DNA of relatives of missing persons. However, these records typically constitute only a small part of the average DNA database, and consequently, will be disregarded for the purposes of this chapter.

Once a DNA sample intended for storage in a DNA database is obtained, it is sent to a DNA laboratory for processing. Once it has been analyzed, the results are stored in a central database. After this process is completed, the results of every DNA specimen in that database can be compared with every other sample in the database, and these samples can also be checked against new samples taken from people, crime scenes, or otherwise obtained elsewhere.

The ultimate value of a crime-fighting measure depends, not upon theory, or exaggerated speculations, or even anecdotal accounts, but rather on the real-world effectiveness of the technique. Thus, collection and study of empirical data is crucial to evaluating the advantages and disadvantages of such methods. The remainder of this section will first analyze the effectiveness of DNA databases from a crime-level or "pure effectiveness" standard and then consider the additional factor of cost to determine the ultimate value of DNA databases.

Effectiveness

Clearly, because the DNA databases are relative newcomers to the fight against crime, they have yet to make a significant impact on crime rates. This should not, however, be viewed as a failure, at least at this early juncture in their history. Due to the very nature of a database, its utility theoretically increases proportionally as the amount of data contained in it expands. Therein lies the problem: DNA analysis is still quite time consuming, and this has led to a massive backlog of unanalyzed samples in our nation's crime laboratories. This backup may contain as many as 450,000 samples waiting to be analyzed. Crime labs across the country are continuing to expand and upgrade their existing technology, and the technology itself is rapidly progressing.

Despite the backlogs, anecdotal evidence has already demonstrated that DNA databases can have remarkable effectiveness in solving crimes.

Law Enforcement

There are two basic applications for DNA in law enforcement, and these two widely divergent applications must be differentiated so that the proper focus of our inquiry will be clear. First, there is DNA testing concerning known suspects and evidence samples. Here, the DNA extracted from bodily fluids or tissue found at a crime scene (*e.g.*, blood or semen), or a victim's DNA extracted from residue left on an offender (*e.g.*, the victim's blood) are compared to determine if there is a match. It would seem that in the absence of other explanatory information, a DNA match or non-match would be dispositive of the suspect's involvement in or his/her innocence of the crime. We wholeheartedly and unequivocally endorse this particular use of DNA testing with known offenders, and further, encourage its use as broadly as possible. The only meaningful caveats we would offer involve proper training for crime-scene technicians and laboratory personnel as well as sound certification policies and well-conceived oversight and monitoring processes for both evidence collection and subsequent DNA testing.

However, a second (and highly touted) use of DNA concerns the construction of massive DNA databases to facilitate what we shall refer to as the "DNA mining process." As noted above, the logic behind DNA databases appears convincing, and concomitantly, such databases are touted as major crime fighting tools. It would seem to make sense that all that society needs do to fight crime effectively is: (1) capture the DNA from known offenders (the exact selection

of offenders remains open to debate); (2) store the DNA in a database; and (3) compare the offender bank DNA with that taken from crime scenes. The promised results of course will be the identification and subsequent arrest of a suspect and his or her successful prosecution owing to the DNA match, a result which would not have been possible but for the DNA database. However, when one examines the nature and distribution of crime, the presumed usefulness of DNA databases as a crime control measure may not only be far from obvious or certain, but may turn out to be grossly exaggerated. We thus turn to a consideration of crime events and their susceptibility to DNA applications in law enforcement.

We come then to the issue of Effectiveness Test. In particular, the crime scene response would have to include forensic technicians and crime scene technicians (or "criminalists," as they are often called) who would scour the crime scene looking for trace evidence like blood, other bodily fluids, tissue, hair, *etc.*, which carries the DNA of the perpetrator. Thus, the success of the DNA mining expedition for crime-fighting depends on three fundamental prerequisites: First, the criminal has to leave evidence behind at the crime scene, or on the person or clothing of the victim, that contains the criminal's DNA. Second, a trained technician must search the crime scene for this evidence. Third, the DNA-bearing evidence has to be, in fact, found, collected, and be of sufficient quantity and quality to permit DNA testing.

Let us be realistic here about the likelihood of these three prerequisites actually taking place, rather than permit ourselves to be swept up in the euphoria exemplified by the proponents of DNA mining. What do the groups of serious offenses classified by FBI as Index offenses tell us? The answer is straightforward—that DNA databases will not be greatly successful in increasing the extent to which police solve the vast majority of Index crimes. There are two principal and inescapable reasons for this conclusion. First, law enforcement already does a more than creditable job (*i.e.*, greater than 50% clearance) of solving three out of the four violent Index crimes (66.1% of murders; 50.8% of rapes; and 58.5% of aggravated assaults). Second, as we have shown, the vast majority of Index crimes are property offenses, and this offense type does not carry a high potential for beneficial DNA testing, owing to the fact that the usual property offense crime scene is not likely to have the perpetrator's DNA, and even if it does, such evidence will hardly be looked for, let alone collected and tested for comparison to the databases.

An alternative perspective on the availability of DNA-bearing evidence and its collection potential, however, has been advanced elsewhere. Weedn and Hicks have noted that "at most crime scenes, there are many kinds of biological evidence: not only blood and hair but also botanical, zoological, and other types of substances." The authors advance their argument by citing data collected in one study revealing that blood evidence was found in 60% of murders and in a similar percentage of assaults and batteries, while hair was found at the scene of 10% of robberies and 6% of residential burglaries. It is obvious, of course,

that the authors' use of the word "most" above is sheer hyperbole. There is no conceivable way that DNA-related evidence found at the scene of only 10% of robberies and 6% of burglaries can be considered to qualify as "most" crimes. In fact, the data would suggest the alternative—that DNA-bearing evidence is available at only a small number of crime scenes. It is likely, of course, that the authors are really arguing that DNA related material is theoretically available at some crime scenes and could be and should be collected more often than is presently done, thereby aiding the investigation. Thus, they note that: saliva, skin cells, bone, teeth, tissue, urine, feces, and a host of other biological specimens, all of which may be found at crime scenes are also sources of DNA. Saliva may be found in chewing gum and on cigarette butts, envelopes, and possibly drinking cups. Fingernail scrapings from an assault victim or a broken fingernail left at the scene by the perpetrator may also be useful DNA evidentiary specimens. Even hatbands and other articles of clothing may yield DNA.

We readily accept the notion that there may be biological specimens left at some crime scenes that could quite readily yield DNA for testing. But, we repeat our admonition outlined above: while there may be such evidence available at crime scenes, it is highly unlikely that police departments have sufficient resources to look for such evidence across the wealth of crimes with which they must concern themselves. Weedn and Hicks are well aware of this as they state "little of this evidence is recovered from crime scenes, less is submitted to crime labs, and still less is analyzed." The reasons are obvious. It is often difficult enough to convince the police to dust for fingerprints at a residential burglary because the police know that their search will likely be futile. Imagine, therefore, trying to convince police to search the crime scene (usually outside) of a robbery for such evidence as the perpetrator's hair, tissue, or other biological residue. Or imagine further, a crowded parking lot outside a bar or night club that was the scene of an assault. Here, the police would be expected to hunt for a broken fingernail or the victim would have to turn over his or her clothing so that a search for trace evidence could be conducted. Thus, it is unrealistic to argue that DNA is readily available at crime scenes if only the police would look for it. Assuming that the legitimate law enforcement reluctance to treat every crime scene, regardless of how serious, as if it were a homicide or a rape could be overcome, where will the resources come from to look for the biological evidence, collect it, test it, and store it in a DNA database? It must be recognized that the front end of the process, the crime scene, is highly labour intensive, and it is doubtful that local law enforcement has such resources available. Weedn and Hicks have specifically noted that the scarce resources available to law enforcement which must be distributed across a range of pressing needs is a significant limitation to DNA as a crime-fighting tool. Moreover, not only is the process highly labour intensive, that labour tends to be highly trained, and therefore, more expensive. Further, even if such resources could be made available somehow, the question arises as to whether this is a wise expenditure of public resources. It should be stressed that we do not wish to suggest

abandoning current forensic evidence collection practices, but only that there are significant and numerous obstacles to realizing substantial crime-reduction results from this process.

Prosecution

The other stage of the criminal justice system for which DNA mining (and the DNA databases) could be most beneficial concerns the prosecution of criminal defendants. Just because DNA mining might not dramatically increase the rate at which crimes are solved by the police, there are still advantages to the prosecutorial use of DNA results. DNA could produce the following benefits: (1) convictions could be more likely; (2) convictions without undue plea-bargaining could occur more often; (3) some, if not many, defendants may even plead guilty in the face of such strong forensic evidence; (4) some defendants who might not otherwise be brought to trial could be convicted; and (5) some suspects would be exonerated before trial, thus sparing the necessity of a trial—both the expense as well as unnecessary discomfort and embarrassment for the wrongfully accused. Naturally, this list is not meant to be exhaustive, but merely suggestive of DNA's potential in court. It would seem, therefore, that DNA use by prosecutors would be universally high as it would be difficult to assemble reasons to the contrary.

These results are highly pertinent to the question of DNA effectiveness, as even those prosecution offices that use DNA evidence extensively do not use such evidence beyond the two most serious crime types. One can only wonder why this is the result. Is it because such evidence is not collected or tested and, therefore, is not available? Or, could it be that the crime types in question do not require DNA evidence to make a case sound enough to go to trial?

CONCLUSION

At the outset, this chapter raised one simple question: are we better off living in a world where our most basic and singularly unique characteristics are on file, serving as a constant shadow over our daily lives? The question suggests a brooding omnipresence of big government that makes us uncomfortable. Yet, if DNA databases could be proven to be of unparalleled value in fighting crime, then the answer might be yes, other concerns notwithstanding. In this vein, we have no quarrel whatsoever with the earliest and most basic of DNA applications in the criminal law: known suspect testing and post-conviction relief. We agree that there is unparalleled value to the use of DNA testing to match a particular suspect's DNA with that extracted from trace evidence left behind at a crime scene. Similarly, can there be a more justice-oriented application for DNA than to use its exculpatory capabilities to exonerate persons who were wrongfully accused and convicted? Moreover, aside from the obvious moral issues, a wrongful conviction serves no purpose, and consequently is of no value in our criminal justice system. Each of these DNA applications should be used as extensively as possible, not only as effective crime control measures, but more

importantly, as definitive tests of whether an accused, or even a previously convicted person, is actually innocent. Beyond these two applications of DNA testing per se, however, our inquiry concerning the spreading craze over DNA databases as a crime control measure does not offer similar support. In fact, the analysis reported here of the best available government crime data raises serious concerns that DNA databases are proliferating and becoming ever more inclusive, and the costs associated with collecting, testing, and storing the information are rising into the hundreds of millions of dollars. These developments are occurring all across the country despite the absence of convincing evidence that the DNA mining process will strike gold as proponents have claimed.

We have demonstrated that DNA databases will not be greatly successful in increasing the extent to which police solve the vast majority of crimes. This was shown to be the case because the vast majority of Index crimes are property offenses, and this type of offense does not carry a high potential for beneficial DNA testing because the usual property offense crime scene is not likely to contain the perpetrators' DNA, and even if it does, such evidence will seldom be looked for, let alone collected and tested for comparison with the DNA databases. Again, we argued that the millions of less serious Non-Index crime scenes hardly ever contain DNA-related evidence. We further argued that even if such crime scenes did contain DNA evidence, local law enforcement hardly has the necessary resources to treat these offenses as though they deserved the intensive crime scene effort that is usually reserved for serious violent crimes against the person. In this regard, we noted that it is often difficult enough to convince the police to dust for fingerprints at a residential burglary, because the police know that their search will likely be futile. Imagine, therefore, trying to convince police to search the crime scene (usually outside) of a robbery for such evidence as the perpetrator's hair, tissue, or other residual evidence.

We also considered the value of DNA database evidence to the prosecutorial function. We found that DNA evidence is not used by a majority of prosecutors' offices across the country. We did find that "big city" prosecutors relied heavily on DNA evidence both at trial and during plea negotiations. However, this extensive use pattern in the most populous areas must be discounted by the fact that these offices handle only about one-third of the serious crime in the United States. That is, the vast majority of crime, about 64%, occurs in smaller jurisdictions, which are served by prosecutor units that do not rely heavily on DNA evidence, either at trial or during plea negotiations, regardless of the severity of the crime being prosecuted. We found that prosecutorial use of DNA is clearly a big city or large county phenomenon, but the majority of crime is committed and prosecuted elsewhere, thus diminishing the value of DNA as a crime control measure at the macro level. Further, we also found that even among the big city prosecutors, DNA evidence use was restricted to mostly homicides, rapes, and other very serious offenses.

We also considered the cost-effectiveness of DNA databases. Here the results were quite convincing. At present, the DNA extraction process is a highly

expensive and time-consuming process when considered in the aggregate. The costs associated with increased testing, especially the increased testing necessitated by the more "inclusive" DNA database proposals are astronomical when compared to the expected crime level benefits associated with the databases. Clearly, a legitimate question remains: Are DNA databases and their direct and more indirect or diffuse costs the most effective way to spend scarce criminal justice resources? At this point, the answer must be no.

Last, we considered various future scenarios and proposals for various DNA database configurations. These proposals include very specific eligibility criteria, like persons convicted of sex offenses or violent crimes, but they also include more expansive criteria like persons arrested, the general public, or even newborns. The essential point is clear. The only reason to bear the manifold costs associated with DNA databases is if, and only if, it can be shown that a particular database configuration will be demonstratively successful in solving crimes or easing prosecutions which would not be possible otherwise. Thus, what good are the more expansive (and expensive) database definitions like, "all persons arrested for anything?" Our response is: "Not very good." The only databases that appear worthy of serious consideration are those which focus on specific categories of criminals, like violent offenders and sexual predators. It remains open to debate whether such databases should contain just convicted persons or arrested persons as well. However, the restriction to particular offense types appears to be highly justified on the basis of the demonstrative yield owing to crime scene issues and the well recognized recidivism potential of violent offenders and sexual predators. We should all look with great skepticism at proposals for more inclusive eligibility. Further, we should demand that the proponents of wider inclusion prove scientifically and unequivocally the crime level value of the more inclusive databases.

Statements like this not only strain credibility, but give us all reason to pause and wonder whether public officials have succumbed to a fatal case of DNA fever.

There are ever present dangers that the public will be swept up in the same euphoria over Meanwhile, the implications for privacy and other personal liberty issues, plus the huge potential for abuse, should encourage us to keep looking over Big Brother's shoulder even as he watches us. We cannot stress enough the civil liberty issues, and perhaps, other constitutional concerns, subsumed within the DNA database craze.

HIERARCHY OF CRIMINAL COURTS AND THEIR JURISDICTION

Administration of justice is the most important function of the State. For this purpose our Constitution has set up a hierarchy of courts. The Supreme Court of India is the highest court and is a body constituted by the Constitution itself. The High Courts of respective states are also provided by the Constitution. The other criminal courts there power and functions are provided by the Cr. P. C.

SUPREME COURT OF INDIA

The Supreme Court is the apex Court of India. It is established by Part V, Chapter IV of the Constitution. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India.

The Supreme Court of India comprises the Chief Justice and 30 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist.

Provisions exist for the appointment of a Judge of a High Court as an Adhoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court. The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and dispose of all such cases itself. Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies:

a. That the case involves a 7 substantial question of law of general importance, and
b. That, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

In criminal cases, an appeal lies to the Supreme Court if the High Court:

a. Has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or
b. Has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or
c. Certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.

HIGH COURT

The High Court stands at the head of a State's judicial administration. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint. The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of India and the Governor of the State. The procedure for appointing Judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be eligible for appointment as a Judge one must be a citizen of India and have held a judicial office in India for ten years or must have practised as an Advocate of a High Court or two or more such Courts in succession for a similar period.

Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose. This power may also be exercised by any High Court exercising jurisdiction in relation to territories within which the cause of action, wholly or in part, arises for exercise of such power, notwithstanding that the seat of such Government or authority or residence of such person is not within those territories. Each High Court has powers of superintendence over all Courts within its jurisdiction. It can call for returns from such Courts, make general rules and prescribe forms to regulate their practice and proceedings and determine the manner and form in which book entries and accounts shall be kept.

CONSTITUTION OF CRIMINAL COURTS AND THEIR TERRITORIAL JURISDICTION

The criminal courts are constituted according to the Criminal Procedure Code (Cr.P.C) 1973.

Section 6 of the Cr.P.C. provides that Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:

i. Courts of Session;
ii. Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
iii. Judicial Magistrates of the second class; and
iv. Executive Magistrates

The Sessions Judge: Section 9 of the CrPc talks about the establishment of the Sessions Court. The State Government establishes the Sessions Court which has to be presided by a Judge appointed by the High Court. The High Court appoints Additional as well as Assistant Sessions Judges. The Court of Sessions ordinarily sits at such place or places as ordered by the High Court.

But in any particular case, if the Court of Session is of the opinion that it will have to cater to the convenience of the parties and witnesses, it shall preside its sittings at any other place, after the consent of the prosecution and the accused. According to section 10 of the CrPC, the assistant sessions judges are answerable to the sessions judge.

The Additional/Assistant Sessions Judge: These are appointed by the High Court of a particular state. They are responsible for cases relating to murders, theft, dacoity, pick-pocketing and other such cases in case of absence of the Sessions Judge.

The Judicial Magistrate: In every district, which is not a metropolitan area, there shall be as many as Judicial Magistrates of first class and of second class. The presiding officers shall be appointed by the High Courts. Every Judicial Magistrate shall be subordinate to the Sessions Judge.

Chief Judicial Magistrate: Except for the Metropolitan area, the Judicial Magistrate of the first class shall be appointed as the Chief Judicial Magistrate. Only the Judicial Magistrate of First Class may be designated as Additional Chief Judicial Magistrate.

Metropolitan Magistrate: They are established in Metropolitan areas. The High Courts have the power to appoint the presiding officers. The Metropolitan Magistrate shall be appointed as the Chief Metropolitan Magistrate. The Metropolitan Magistrate shall work under the instructions of the Sessions Judge.

Executive Magistrate: According to section 20 in every district and in every metropolitan area, an Executive Magistrate shall be appointed by the State Government and one of them becomes District Magistrate.

POWER OF COURTS TO TRY OFFENCES

Chapter III of Cr.P.C. deals with powers of Courts. One of such power is to try offences. Offences are divided into two categories:

i. Those under IPC; and
ii. Those under any other law.

According to section 26 any offence under IPC 1860 may be tried by the HC or the Court of Session or any other Court by which such offence is shown in the first schedule to be triable, whereas any offence under any other law shall be tried by the Court mentioned in that law and if not mentioned, it may be tried

by the HC or any other Court by which such offence is shown in the First Schedule to be triable. This section is a general section and is subject to the other provisions of the Code.

POWER OF THE COURT TO PASS SENTENCES

Sentences which may be passed by the courts have been mentioned under section 28 and 29 of criminal procedure code.

1. Sentences which High Courts and Sessions Judges may pass:
2. According to section 28, A High Court may pass any sentence authorised by law. A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court. An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years. Thus, section 26 enumerates the types of Courts in which different offences can be tried and then under section 28, it spells out the limits of sentences which such Courts are authorised to pass.
3. Sentences which Magistrates may pass:
4. Section 29 lays down the quantum of sentence which different categories of Magistrates are empowered to impose. The powers of individual categories of Magistrates to pass the sentence are as under:
   - The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.
   - The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.
   - The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.
   - The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.
5. Sentence of imprisonment in default of fine:
6. When a fine is imposed on an accused and it is not paid, the law provides that he can be imprisoned for a term in addition to a substantive imprisonment awarded to him, if any. Section 30 defines the limits of Magistrate's powers to award imprisonment in default of payment of fine.
7. It provides that the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law: Provided that the term:

a. Is not in excess of the powers of the Magistrate under section 29;
b. Shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one- fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Sentences in cases of conviction of several offences at one trial:

Section 31 relates to the quantum of punishment which the Court is authorised to impose where the accused is convicted of two or more offences at one trial.

0. When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.
1. In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that-
   a. In no case shall such person be sentenced to imprisonment for longer period than fourteen years;
   b. The aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.
2. For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

COMMON LAW JURISDICTIONS

Prosecutors are typically lawyers who possess a law degree, and are recognized as legal professionals by the court in which they intend to represent society (that is, they have been admitted to the bar).

They usually only become involved in a criminal case once a suspect has been identified and charges need to be filed. They are typically employed by an office of the government, with safeguards in place to ensure such an office can successfully pursue the prosecution of government officials. Often, multiple offices exist in a single country, especially in those countries with federal governments where sovereignty has been bifurcated or devolved in some way.

Since prosecutors are backed by the power of the state, they are usually subject to special professional responsibility rules in addition to those binding all lawyers. For example, in the United States, Rule 3.8 of the ABA Model

Rules of Professional Conduct requires prosecutors to "make timely disclosure to the defense of all evidence or information that tends to negate the guilt of the accused or mitigates the offense." Not all U.S., states adopt the model rules; however, U.S., Supreme Court cases and other appellate cases have ruled that such disclosure is required. Typical sources of ethical requirements imposed on prosecutors come from appellate court opinions, state or federal court rules, and state or federal statutes (codified laws).

DIRECTORS OF PUBLIC PROSECUTIONS

In Australia, Canada, England and Wales, Hong Kong, Northern Ireland, Republic of Ireland, Trinidad & Tobago, Kenya, and South Africa, the head of the prosecuting authority is typically known as the Director of Public Prosecutions, and is appointed, not elected. A DPP may be subject to varying degrees of control by the Attorney General, usually by a formal written directive which must be published.

In Australia, the Offices of the Director of Public Prosecutions institute prosecutions for indictable offences on behalf of the Crown. At least in the case of very serious matters, the DPP will be asked by the police, during the course of the investigation, to advise them on sufficiency of evidence, and may well be asked, if he or she thinks it proper, to prepare an application to the relevant court for search, listening device or telecommunications interception warrants.

More recent constitutions, such as South Africa's, tend to guarantee the independence and impartiality of the DPP.

CANADA

In Canada, public prosecutors in most provinces are called Crown Attorney or Crown Counsel. They are generally appointed by the provincial Attorney-General.

SCOTLAND

Though Scots law is a mixed system, its civil law jurisdiction indicates its civil law heritage. Here, all prosecutions are carried out by Procurators Fiscal and Advocates Depute on behalf of the Lord Advocate, and, in theory, they can direct investigations by the police. In very serious cases, a Procurator Fiscal, Advocate Depute or even the Lord Advocate, may take charge of a police investigation. It is at the discretion of the Procurator Fiscal, Advocate Depute, or Lord Advocate to take a prosecution to court, and to decide on whether or not to prosecute it under solemn procedure or summary procedure. Other remedies are open to a prosecutor in Scotland, including fiscal fines and non-court based interventions, such as rehabilitation and social work. All prosecutions are handled within the Crown Office and Procurator Fiscal Service. Procurators fiscal will usually refer cases involving minors to Children's Hearings, which are not courts of law, but a panel of lay members empowered to act in the interests of the child.

UNITED STATES

In the United States, the director of a prosecution office may be known by any of several names depending on the jurisdiction, most commonly District Attorney.

The prosecution is the legal party responsible for presenting the case against an individual or a corporation suspected of breaking the law, initiating and directing further criminal investigations, guiding and recommending the sentencing of offenders, and are the only attorneys allowed to participate in grand jury proceedings.

The titles of prosecutors in state courts vary from state to state and level of government (*i.e.*, city, county and state) and include the terms District Attorney (in New York, California, Texas, Pennsylvania, Delaware, Massachusetts, North Carolina, Georgia, Nevada, Wisconsin, Oregon, and Oklahoma), City Attorney, Commonwealth's Attorney (in Kentucky and Virginia), County Attorney (in Arizona), County Prosecutor (in New Jersey, Ohio and Indiana), District Attorney General (in Tennessee), Prosecuting Attorney (in Hawaii, Idaho, Michigan, Washington counties, and West Virginia, and in Missouri except cities that have "City Attorney" prosecutors), State's Attorney (in Connecticut, Florida, Illinois, Maryland, and Vermont), State Prosecutor, Attorney General (in Delaware and Rhode Island), and Solicitor (South Carolina). Prosecutors are most often chosen through local elections, and typically hire other attorneys as deputies or assistants to conduct most of the actual work of the office. United States Attorneys, appointed by the President and confirmed by the Senate, represent the federal government in federal court, in both civil and criminal cases. Private attorneys general can bring criminal cases on behalf of private parties in some states.

Prosecutors are required by state and federal laws to follow certain rules, such as they must be elected by the people of that county, and must disclose material evidence to the defense due to the 1963 Supreme Court ruling of *Brady v. Maryland* and other cases and statutes. Failure to follow these rules may result in prosecutorial misconduct findings, although a 2013 investigation found that actual discipline for prosecutorial misconduct was lacking.

Prosecutors are also tasked with seeking justice in their prosecutions. Prosecutors in some jurisdictions have the discretion to not pursue criminal charges, even when there is probable cause, if the Prosecutor determines that there is no reasonable likelihood of conviction. Additionally, Prosecutors often have the discretion to dismiss charges after an indictment, but before trial, through the use of voluntary dismissal or nolle prosequi. In a famous case outlining the duties of a prosecutor, the U.S., Supreme Court stated, "…therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done… He may prosecute with earnestness and vigour – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper

methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S., 78 (1935). In Kentucky, Massachusetts, Pennsylvania, and Virginia, criminal prosecutions are brought in the name of the Commonwealth. In California, Colorado, Illinois, Michigan, and New York, criminal prosecutions are brought in the name of the People. In the remaining states, criminal prosecutions are brought in the name of the State.

5

The Response of Women within the Criminal Justice System

The reporting and subsequent investigation and prosecution of rape and sexual assault are the focus of much of the available research literature on the subject, particularly in Britain. As already indicated, the establishment of specialist police units in Scotland to deal with sexual assault dates back to the mid 1980s, and followed highly publicised research which critiqued existing police practice.

The trend towards specialism in this area continued throughout the 1990s, and is now standard across the Scottish police forces. Although the model varies slightly from one force area to another, key components include dedicated interview suites, specialist officers, and a 'victim-centred' approach. In some areas there is also a dedicated forensic suite.

Practitioners acknowledge that there have been significant improvements in the police response to rape and sexual assault complainers over the last 20 years (Christianson and Greenan, 2001), and this is supported by research. A study of 23 women in Sussex who had reported to the police between 1991 and 1993 found that 57% of them felt mostly positive about the response of police officers, while 43% were mostly negative about the response of police officers (Temkin, 1997). None of the women, including those who felt negative about the service overall, felt that they were disbelieved, or that the police were 'heavy-handed ' in their approach.

In addition, the majority of the women (19 out of 23) valued the manner and attitude of the police officers who dealt with them. For the women who were 'mostly negative' about their experience with the police, poor follow up,

difficulty accessing information, disbelieving attitudes and insensitive handling were the main features of their complaints about the service. Temkin concludes that "the believing, sympathetic, non-judgmental attitude of the police, the unpressured pace and supportive manner in which their statements were taken, the access which they had to police officers and to information thereafter and the help and backing they received...during the course of the investigation and afterwards" were the main reasons for women feeling positive about the experience of reporting (Temkin, 2001: 524). Follow-up, she maintains, continues to be a problem, particularly in the area of information on the progress of the case.

These findings are similar to those from a survey of 48 women who reported to police in New Zealand between 1990 and 1994, in which 40% of the women expressed some degree of satisfaction with the police response, and 38% were dissatisfied (Jordan, 2001). The author acknowledges some of the difficulties inherent in measuring 'satisfaction' with a process which by its nature is bound to be distressing. She notes: "Because rape is such an intense and sensitive area, when the police act with professional caring and demonstrate their respect for the victim, this is noticeable and greatly appreciated. When such qualities are lacking, however, their absence is also very noticeable." (Jordan, 2001: 696).

She goes on to explore the balance to be struck between the need (of women) for the process to be manageable, and the need (of police officers) to focus on the end result of that process: "...at the very time that a raped woman is seeking to be believed and validated, the police will be intent on obtaining proof and verification that she is telling the truth. Her need for validation may clash with the police search for verification, and the techniques used by the police in their quest for evidence may threaten and undermine her sense of confidence and safety in them. While she struggles to regain a sense of autonomy following the rape, the police feel they as professionals must retain control of the proceedings." (Jordan, 2001: 701).

Jordan asserts that the achievement of a sense of control over the proceedings need not be achieved by one party at the expense of the other. Citing Temkin, she notes the value women place on belief, respect for the complainer, and a non-judgmental approach by the police (Jordan, 2001).

Recorded crime statistics for Scotland show a steady increase in the reporting of rape (Scottish Executive, 2003). This picture is similar in England and Wales and across Europe (Regan and Kelly, 2003). However, in none of these jurisdictions has the increase in reported rapes been matched by an increase in prosecutions or convictions. In fact, the conviction rate for rape has fallen during the period in which the reporting levels have risen.

In an attempt to identify some of the reasons for this, the Home Office requested a joint inspection by HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate into the investigation and prosecution of rape cases. Their report was published in April 2002. The terms of reference were:

"...to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal.". The review covered all offences of rape against women, men and children. In relation to the investigation stage, the key findings echo some of the research findings already discussed, included the need for consistent training of police officers and forensic examiners, and improvements in the physical environments in which interviews and examinations take place. In addition, the review identifies partnership working with other agencies (*e.g.*, through dedicated sexual assault referral centres) as key to improving the response to victims. Improved and standardised recording systems, and a review of timescales needed for submission of files to the Crown Prosecution Service are identified as the main administrative improvements required.

Although the report does not consider the role of forensic examiners in detail, it does note the limitations on choice posed by the lack of female forensic examiners, and the implications of forensic examiners learning 'on the job' rather than through accredited training programmes. The report considers that quality of forensic evidence is crucial to effective prosecution of rape and sexual assault, increasing the likelihood that prosecution will happen, and that a conviction will result (HMCPSI/HMIC, 2002). In addition, it is suggested, any measures which reduce the trauma of the investigative process for individual women are to be welcomed, improving not only the likelihood of achieving a conviction, but also the woman's recovery rate following a sexual assault. This view is supported elsewhere in the literature.

In a study commissioned by Rape Crisis Network Europe (RCNE), Kelly and Regan reviewed recent literature on the conduct and outcomes of forensic examinations. They identify some of the key elements of good practice in relation to forensic examinations, emphasising "the rights and dignity of the victim". These include "speedy response; avoiding the triage system in hospital A&E departments; a private dedicated space; a well equipped examination room; trained and skilled practitioners; female examiners; a streamlined victim-centred information gathering process; time to move at the speed the victim/survivor is comfortable with; protocols and evidence kits which are applied flexibly, according to the facts of the case; space to discuss the process, debrief and undertake crisis intervention, and provision of, or links to, medical follow up and advocacy/support services."

These conditions, they argue, are crucial, both to the quality of the evidence gathered, and to the comfort and health of the complainers (Kelly and Regan, 2003: 12). In their subsequent review of five different approaches to forensic examination, they note that the use of trained doctors is one of the more common models. They identify a number of difficulties inherent in this approach, including problems with recruiting women doctors, the need for participating doctors to take on a generic forensic role, thus perhaps limiting their knowledge about sexual assault, and problems with limited availability of doctors at certain times. They also suggest that there may be limited co-ordination and integration across

the services, and an absence of advocacy and support. Some of these issues are addressed by the use of forensic nurses, who have a more extensive role in providing healthcare advice, advocacy and support to complainers, in addition to evidence gathering and providing forensic reports for the courts. This model is widely used in North America and has several advantages, including a higher degree of specialism, cost effectiveness, and a more holistic approach to health intervention following sexual assault.

A holistic approach is also found in the provision of Sexual Assault Centres, which in Canada are designed to "attend to the medical, emotional, social and medico-legal needs of clients in a prompt, professional, and compassionate manner and to provide leadership in the prevention of sexual assault". These are usually hospital based, often attached to accident and emergency facilities, with a dedicated examination room and possibly interviewing facilities. There are several examples of similar centres in England, including The Haven, a referral centre based in a sexual health setting which provides forensic examination and sexual health follow up in southeast London (Kerr et al, 2003), and the St Mary's Centre in Manchester, which was the first such centre in England. As yet, there are no such facilities in Scotland, although discussions are ongoing in Glasgow about how such a service might be developed (Dutton and Cavanagh, 2003).

Kelly and Regan conclude by identifying the key components required in order to begin developing minimum standards:

- "Privacy through the development of dedicated rooms, or a centre;
- Philosophical principles underpinning practice that emphasises respect, dignity, rights and choice;
- Enhancing forensic practice through capacity building-both the number of trained examiners (often through involving nurses) and their skills base;
- Access to female examiners;
- Ensuring that even if people have to wait for a medical practitioner, that a staff member is available to greet them, take them to the more private rooms, and explain their rights and what may happen next;
- Linking provision of immediate medical care, forensic examinations, crisis and short term counselling, follow up medical care and advocacy;
- Combining service provision with training, awareness raising and system advocacy;
- Leadership within the service, and some form of community accountability;
- Ensuring access is as wide as possible, and that outreach efforts are targeted at under-served populations."

Finally, they note the emerging debate about how far forensic evidence actually influences the outcome of sexual assault trials, citing Canadian research which demonstrates that only documented injury appears to have a predictive influence on convictions. Given the trauma for women undergoing forensic examination, further research would seem to be indicated in this area.

In another report for Rape Crisis Network Europe, Regan and Kelly address the issue of attrition in reported rape cases, raising serious concerns about the extent to which convictions for rape have fallen across Europe, as shown in their pan-European study. They maintain that this downward trend in conviction rates is contrary to what might be expected, given the role of the women's movement in raising awareness and challenging rape stereotypes, the development of rape crisis lines and other women's counselling projects, the development of training and practice guidelines, increased media awareness and legal reforms. However, they argue that it is symptomatic of a situation in which rape has received little attention compared with domestic violence and trafficking. The study indicates that countries with adversarial legal systems have the highest attrition rate-England and Wales, Scotland and Ireland all have conviction rates below 10%. At 6%, the conviction rate for rape in Scotland is second only to that in Ireland.

The Justice ministries for the countries involved in the study offered a range of technical and procedural 'barriers to successful prosecution', including limited or absent evidence, under-reporting or delayed reporting, lack of support services, delays in court proceedings and 'limited incentives for prosecutors'. The authors contend that, despite a wide range of legal and procedural reforms which have been enacted across Europe since 1980, there is still an absence of good practice in enabling rape complainers to give their best evidence or in supporting and protecting "their dignity and integrity" during the trial process. Overall, they argue, rape is very much 'a forgotten issue' on political and social policy agendas, attracting neither the debate nor the resources which have gone into highlighting domestic violence as a social policy priority. They make a number of recommendations for change, including the suggestion that research should be undertaken to explore the points of attrition in rape cases and identify possible reasons for the increase in attrition.

A small scale pilot study which addresses these issues has already been undertaken in Scotland. The study retrospectively tracked the progress of 191 complaints involving sexual offences through the criminal justice system, by examining crime reports, interviewing police officers, examining fiscal files and interviewing precognition officers and procurators fiscal. Two police forces were involved, one urban and one rural, and seven fiscal offices. Of a total of 47 cases which began as complaints of rape, 17 did not progress beyond the police, a further 15 did not progress beyond the fiscal, and of the 15 which went to court, eight resulted in a conviction (Jamieson, 2001).

Although this seems an improvement on the 22% conviction rate reported in an earlier study, Jamieson notes that more than half of the cases which proceeded to court involved child complainers. A further breakdown of the figures shows that of the nine cases involving child complainers, five resulted in a conviction, compared with only two out of the 14 cases involving an adult complainer. Although Jamieson comments on the range of reasons given in police crime reports for not proceeding, including withdrawal of the complaint, false allegation, and

no known suspect, she does not identify any one area of police procedure as particularly problematic. In relation to cases marked 'no proceedings' by the procurator fiscal, she suggests that the basis for deciding there is 'insufficient evidence' might bear further exploration. Acknowledging that the fiscals interviewed all maintained that decisions should be made on the basis of sufficiency of evidence, and not on the credibility of the complainer, she nonetheless notes: "In the case files we examined, we formed the impression that judgements about credibility were most often recorded in cases in which there is equivocation about the sufficiency of the evidence." (Jamieson, 2001: 80).

The HMCPSI/HMIC report also notes concern about the role of the complainer's credibility in cases where there is limited evidence, and in particular "...found that the prosecutor's approach too often tended to be one of only considering any weaknesses, rather than also playing a more proactive role in seeking more information and trying to build or develop the case." (HMCPSI/HMIC, 2002: 9). Amongst a raft of measures outlined in the subsequent Action Plan it is noted that revised guidance on rape has already been made available to prosecutors, and that a revised training package for sexual offences will be commissioned. In addition, it is noted that the CPS agrees with the recommendation that rape cases should be handled by specialist prosecutors, and that consideration is already being given to how to implement this.

There have been some significant changes in the legislative response to rape and sexual assault over the past three years in Scotland. A recent Lord Advocate's reference on the definition of rape clarifies Scots law and makes it clear that rape is based on an absence of consent, and does not require the use or threat of force. The introduction of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 prohibits the accused in sexual offence trials from conducting his own defence, and tightens the restrictions regarding use of sexual history/character evidence. The Solicitor General has recently announced a review of the prosecution of rape and sexual offences in Scotland. All of these initiatives might be expected to improve the treatment of rape complainers and hopefully the attrition rate. Regan and Kelly (2003) recommend that governments evaluate recent and new legal and procedural reforms. A precedent has been set in Scotland with the evaluation of the Protection from Abuse (Scotland) Act 2001, and it would seem that this exercise would bear repeating in relation to the recent sexual offences legislation.

A search of the literature produced little from Canada on rape or sexual assault. As noted earlier in this report, Canada has no specific offence of rape, having made the shift to a broader 'sexual assault' spectrum of offences in the early 1980s. In a recent overview of the Canadian experience, Hague et al note that this creates some difficulty in trying to compare reporting and prosecution of rape in Canada with experiences in the UK, as the figures available from Justice Canada provide the totals for all sexual assaults, across all three of the levels of sexual assault defined in law, and with no distinction made between offences against children and offences against adults.

The legislative reform in Canada also included the removal of the requirement for corroborative evidence in sexual assault cases. In practice, however, it would seem that prosecutors are still reluctant to proceed with cases which do not have some form of corroboration. Hague et al note with some surprise a decline in reported sexual assaults over the five years before their report, and with some disappointment the absence of the kind of detailed data that is available on 'family violence' from Statistics Canada. It would seem that in Canada, as in Europe, rape and sexual assault are 'forgotten issues', despite the best efforts of women's advocacy services.

LAWS AND OTHER POLICIES AFFECTING WOMEN

Numerous laws exist to protect women's rights, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (Widow Burning) Prevention Act, and the Dowry Prohibition Act. However, the Government often was unable to enforce these laws, especially in rural areas in which traditions were deeply rooted. According to press reports, the rate of acquittal in dowry death cases was high, and because of court backlogs it took 6 to 7 years on average to rule on such cases.

Prostitution was common, with an estimated 2.3 million prostitutes in the country, some 575,000 of whom were children. Many indigenous tribal women were forced into sexual exploitation. In recent years, prostitutes began to demand legal rights, licenses, and re-employment training, especially in Mumbai, New Delhi, and Calcutta. In January the Government signed the South Asian Association for Regional Cooperation (SAARC) Convention on Prevention and Combating Trafficking in Women and Children for Prostitution.

The country is a significant source, transit point, and destination for many thousands of trafficked women. In 1999 according to NCRB statistics, there were 8,858 cases of sexual harassment. Sexual harassment of women in the workplace became a subject of NHRC consideration during the year.

The NHRC instituted a committee to investigate harassment of women in the legal profession and asked universities to establish complaint committees immediately. The commission suggested the creation of a telephone hot line for complaints, initially starting in New Delhi, and gave advice to the media on reporting incidents of harassment against women.

The National Commission for Women conducted 18 meetings with 568 representatives of public sector units, including public and private banks, educational institutions, corporations, universities, and hotels, to examine further issues of compliance to address harassment against women. The law prohibits discrimination in the workplace, but enforcement was inadequate. In both rural and urban areas, women were paid less than men for doing the same job. Women experienced economic discrimination in access to employment and credit, which acted as an impediment to women owning a business. The promotion of women to managerial positions within businesses often was slower than that of males.

State governments supported micro credit programmes for women that began to have an impact in many rural districts. The Government continued to review legislation on marriage; it passed the Indian Divorce (Amendment) Act during 2001; the act widely had been criticized as biased against women. The Act placed limitations on interfaith marriages and specified penalties, such as 10 years' imprisonment, for clergymen who contravened its provisions. Under the Act, no marriage in which one party is a non-Christian may be celebrated in a church.

Under many tribal land systems, notably in Bihar, tribal women do not have the right to own land. Other laws relating to the ownership of assets and land accorded women little control over land use, retention, or sale.

However, several exceptions existed, such as in Ladakh and Meghalaya, where women had several husbands and controlled the family inheritance. The traditional preference for male children continued. Although the law prohibits the use of amniocentesis and sonogram tests for sex determination, the Government did not enforce the law. The tests were misused widely for sex determination, and termination of a disproportionate number of pregnancies with female fetuses occurred.

In the 12 years since the State of Maharashtra passed a law banning the use of such tests for sex determination, the state government filed charges against only one doctor, who was acquitted. Human rights groups estimated that at least 10,000 cases of female infanticide occurred yearly, primarily in poor rural areas. Parts of Tamil Nadu (Dharmapuri, Salem, and Madurai districts) still had high rates of female infanticide. In addition, parents often gave priority in health care and nutrition to male infants. Women's rights groups pointed out that the burden of providing girls with an adequate dowry was one factor that made daughters less desirable.

WOMEN IN INDIA: HOW FREE? HOW EQUAL

India ranks 115 in the Human Development Index of 2001. The country has made considerable progress since independence; economic reform and liberalization measures over the 1990s have led to strong economic growth, increased exports and reduced inflation.

Overall life expectancy is 62.9 years, and projections for 2000-2005 suggest that life expectancy of males and females will be 63.6 years and 64.9 years respectively (United Nations Population Division, 2000). According to the 2001 Census, overall literacy has increased to 65.38 per cent.

MEAN FOR THE COUNTRY'S WOMEN

A report commissioned by the United Nations Resident Co-ordinator in India titled 'Women in India: How Free? How Equal?' raises several disturbing issues concerning the current status of women in India. Data from the Census of India 2001 and the Human Development Report 2001 also corroborate some of the study's observations.

These include:

- Although the absolute number of females has grown 21.79 per cent in the last decade, the malefemale ratio is still lower than it was 100 years ago. In societies where men and women are treated equally, women tend to outlive and outnumber men. Typically, one would expect to find 103-105 women for every 100 men. The 2001 Census reveals an adverse ratio of 93 women for every 100 men. With the exception of Kerala, every state has fewer women than men. India, in the words of Amartya Sen, has to account for some 25 million 'missing women'.
- The Indian girl child is disadvantaged right from birth. The sex ratio for girl children between the age of 0 and 6 years is 927, strengthening the fear that some girl children are never born or have no opportunity to survive.
- Only 54 per cent of women are literate as compared to 76 per cent of men.
- More than 36 per cent of the population lives below the poverty line. Many of them are women.
- There are far fewer women in the paid workforce than there are men.
- In some states such as West Bengal, Orissa, Bihar, Assam and Arunachal Pradesh, between 63 and 85 per cent of married women suffer from anaemia.
- The average Indian woman bears her first child before she is 22 years and has little control over her own fertility and reproductive health.
- In 1998 – 1999, only 48 per cent of married women in the reproductive age group used any form of contraception. This figure is much lower (30%) in poorer states like Uttar Pradesh and Bihar.
- For many women, abortion is the only method of contraception available.
- More than 570 women die per 100,000 births, 70 per cent due to totally avoidable reasons.
- Women are under-represented in governance and decision-making positions.
- Most women do not have any autonomy in decision making in their personal lives.
- In Madhya Pradesh and Rajasthan, less than 50 per cent of women have access to money in the household.
- Women face violence inside and outside their family, as well as at the workplace.

The impact of drug use on women, both directly and indirectly, needs to be understood within the context of these realities.

CONSTITUTIONAL RIGHTS FOR WOMEN IN INDIA

The Constitution of India guarantees equality of sexes and in fact grants special favours to women. These can be found in three articles of the Constitution. Article 14 says that the government shall not deny to any person equality before

law or the equal protection of the laws. Article 15 declares that government shall not discriminate against any citizen on the ground of sex. Article 15 (3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Moreover, the government can pass special laws in favour of women. Article 16 guarantees that no citizen shall be discriminated against in matters of public employment on the grounds of sex. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. The Constitution imposes a fundamental duty on every citizen through Articles 15 (A) (e) to renounce the practices derogatory to the dignity of women.

All these are fundamental rights. Therefore, a woman can go to the court if one is subjected to any discrimination. When we talk about constitutional rights of women in India, we mainly pertain to those areas where discrimination is done against women and special laws formulated to fight those bigotries. The most important issues stand as those pertaining to marriage, children, abortion, crimes against women, and inheritance.

Before modern Hindu laws were passed, child marriages were the norms, inter-caste marriages were banned, the girl became a part of the husband's family, and polygamy was common. In the 19th century, the British rulers passed several laws to protect customs and traditions while abolishing detestable practices like Sati.

Some such revolutionary laws were Hindu Widows Remarriage Act 1865 and the Brahmo Samaj Marriage Act 1872, the forerunner of the present Special Marriage Act. In the beginning, the Act sets four essential conditions for a valid Hindu marriage.

They are:

- Monogamy
- Sound mind
- Marriageable age
- The parties should not be too closely related.

Polygamy was permitted among Hindus before the Act was passed in 1955. However, after the act was passed, any man marrying again while his wife is living will be punished with fine and imprisonment up to seven years. Formerly, child marriages were common. The Child Marriage Act of 1929 was not very effective as such marriages were continued to be performed. Now, however, the bridegroom must be 21 years old and the bride 18 years. However, there is a separate Muslim Code of Conduct, which allows polygamy of up to four wives as per Islamic laws. A marriage may be invalid without the boy or the girl realizing it at the time of the wedding. A civil marriage would be void if four essential conditions are not complied with.

These conditions are listed in the Special Marriage Act as enumerated below:

- If it is bigamy
- If either party was suffering from mental disorder
- If the boy has not completed 21 years and the girl 18 years

- The boy and the girl are too closely related, or in legal language, are "within degrees of prohibited relationship" unless custom governing at least one party permits the marriage between them. Prohibited relationships are listed in he Special Marriage Act.
- A fifth reason for invalidating a marriage is impotence of either party.

There are some grounds available to the wife only, both in Hindu and civil marriages. One such ground available exclusively to the wife is her husband's commission of rape, sodomy or bestiality. Under the Hindu Adoptions and Maintenance Act 1956, a Hindu wife is entitled to be maintained by her husband.

Section 125 of the Criminal Procedure Code also deals with maintenance of wife and children. If there is a decree of maintenance against the husband and the couple have been living apart for over one year, it would be a ground for the wife to seek dissolution of marriage. Here again the Muslim Personal Law has a different set of conditions for the annulment of an Islamic marriage.

The Dowry Prohibition Act of 1961 says that any person who gives, takes, or abets the giving or taking of dowry shall be punished with imprisonment, which may extend to six months or with fine up to Rs. 5,000 or with both. Dowry that started off as a practice to give away presents to the departing daughter, usually some resources to begin her new married life, slowly assumed extraordinary proportions and turned into a social evil. Brides were expected to bring the "gifts" regardless of their personal willingness. The bride's family could no longer have an individual say; lists were prepared and sent to the girl's house before the final agreement between the two families. The condition being that the boy would marry the girl only if the demands were met. Such a custom is being practiced not only in India but also in other countries like Bangladesh and Nepal. The reason behind this custom is the poor economical condition of the people along with a lack of education; unawareness of legal rights among women and a general bias against the women.

Crimes like rape, kidnapping, eve teasing and indecent exposure can be grouped as crimes against women. Rape is the worst crime against women after murder and the maximum punishment under the Indian Penal Code (IPC) is life imprisonment. An abortion or miscarriage due to natural causes is not an offence. Therefore, the law does not deal with it. However, violent and forceful abortion is a crime. Sections 312 and 316 of the Indian Penal Code deal with abortion as crime. Section 313 deals with abortion without the consent of the woman. The punishment could even be life imprisonment. The Hindu Succession Act gives male and female heirs almost equal right to inheritance. Section 14 says that any property possessed by a female Hindu shall be held by her as full owner and not as a limited owner.

UNDERSTANDING DEVIANCE AND CONTROL

Deviance is nonconformity to social norms or expectations. For many people, the word 'deviance' is used only in relation to moral, religious, or political norms. The 'deviant' is seen as someone whose behaviour departs from normal

moral standards or who deviates from a political or religious orthodoxy. The sociological concept of deviance, however, takes a broader point of view and recognizes that there can be deviation from social norms of all kinds.

Along with sexual deviants, political deviants, and religious deviants must be counted those whose behaviour runs counter to legal or customary norms more generally—criminals, the mentally ill, alcoholics, and many others.

What makes these people deviant is the fact that their behaviour seems to run counter to the norms of a social group. It is this that the homosexual, the prostitute, the child molester, the schizophrenic, the suicide, the radical, the heretic, the Ecstasy user, and the burglar all have in common.

All of them seem to engage in behaviour that is not seen as normal in their society. No form of behaviour is deviant in and of itself. To judge behaviour as deviant is to judge it from the standpoint of the norms of a particular social group.

The defining statement for the sociological study of deviance is Becker's justly famous claim that:

- Social groups create deviance by making the rules whose infraction constitutes deviance, and by applying these rules to particular people and labelling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label.

Even where there is a consensus over standards of behaviour within a society, these standards may change over time. What was formerly considered as normal, conformist behaviour may come to be seen as deviant. High levels of consensus are uncommon, and it is more typical for there to be rival definitions of normality and deviance within a society. In these circumstances, conformity to the expectations of one group may mean deviating from the expectations of another. Revolutionary terrorists, for example, may be regarded as deviants from the standpoint of established social groups, but they are seen very differently by members of their own political movement.

In all these contested situations, it is the views of the powerful that prevail, as they have the ability to make their views count. This insight is particularly associated with a so-called labelling theory of deviance that is closely linked to symbolic interactionism. This point of view, it is the fact of being labelled as a deviant by the members of a powerful or dominant social group that makes an action deviant. This is why ethnic minorities are in many societies treated as deviant groups if they are seen as violating the normal customs and practices of the majority ethnic group.

Similarly, those women who depart from what is seen as normal female behaviour by, say, entering what are regarded as male occupations, might be regarded as deviant by many men and by some other women. Whether the behaviour of a person is deviant depends upon whose values are taken as being

the basis for determining what is to count as normal or conformist behaviour. In this part as suggested, look at a number of forms of deviance. As suggested, look at the formation of deviant identities through interaction between deviants and the agents of social control. As suggested, show that what is deviant in one context may be conformist in another, and that the critical element is the social reaction that labels behaviour one way or another. Having discussed some of the features that are common to all forms of deviance, drug use and abuse, and sexual difference.

BIOLOGY AND DEVIANCE

In the past, but also in some more recent discussions, the social dimension of deviance has often been ignored. Deviant behaviour has been seen in purely individual terms and as something to be explained by biology. From this point of view, all 'normal' individuals conform to social expectations, and so those who differ must have something wrong with them.

A deviant body is seen as explaining a deviant mind and deviant behaviour. Such a claim ignores the fact that no behaviour—except, perhaps, purely automatic reflexes such as blinking in bright sunlight—can be seen independently of the meanings that it carries and the social contexts in which it occurs.

EVOLUTION, RACE, AND DEVIANCE

For many writers on difference and deviance in the nineteenth century, and still for some today, biology provides the key to explaining human behaviour. Nineteenth century evolutionary theory led to the widespread acceptance of the idea that there was a 'great chain of being', an evolutionary hierarchy of species that connected humans to apes and to the lower animals.

The supposed racial divisions of the human species were all accorded their place in this evolutionary hierarchy. It was widely believed that individuals 'recapitulate' the evolution of their species in their own biological development. They go through various animal-like stages in their foetal development and during their later development outside the womb.

Particular races, it was held, had developed only to the particular level that was allowed by their biology: the white races had developed the furthest, while the black races showed an inferior development. White children, for example, were seen as having reached the same stage of evolution as black adults, who had not developed beyond these more 'childlike' characteristics and forms of behaviour. These assumptions underpinned contemporary views of deviance. The nineteenth-century English doctor John Down, for example, classified various forms of mental disability in terms of the 'lower' races to which their characteristics corresponded.

He argued that some 'idiots' were of the 'Ethiopian' variety, some of the 'Malay' or 'American' type, and others of the 'Mongolian' type. His special study of the genetics of the latter group meant that those with Down's syndrome

were, for many years, known as 'Mongols'—a derogatory label that continued to be very widely used until the 1970s. Each society tends to see its own members as being the highest, most-evolved exemplar of the human species. The Japanese, for example, saw themselves as being at the pinnacle of evolution and civilization, and their term for Down's syndrome was 'Englishism'.

The most notorious of these evolutionary approaches to deviant behaviour was the theory of crime set out by Cesare Lombroso, who held that many criminals had been born with 'atavistic' features. Criminals had definite biological failings that prevented them from developing to a fully human level. They showed, perhaps, certain apelike characteristics, or sometimes merely 'savage' features that gave them the distinct anatomical characteristics from which they could easily be identified: large jaws, long arms, thick skulls, and so on.

These atavistic features, Lombroso argued, also led them to prefer forms of behaviour that are normal among apes and savages, but are criminal in human societies. These criminal tendencies were apparent, Lombroso claimed, in their other 'degenerate' personal characteristics: the criminal, he believed, is idle, has a love of tattooing, and engages in orgies. Lombroso claimed that about 40 per cent of all criminals were 'born criminals' of this kind.

They were driven into criminality by their biology. Other law-breakers were simply occasional, circumstantial offenders and did not have the 'atavistic' characteristics of the born criminal. The excesses of Lombroso's theory and the racial assumptions that underpinned it have long been discarded. However, many people still see criminality as resulting from innate characteristics.

Violence and aggression, for example, are often seen not only as specifically male characteristics, but in their extreme forms as being due to genetic peculiarities. It has been proposed, for example, that many violent criminals have an extra Y chromosome in their cells. Some have suggested that rape can be explained as a consequence of normal, genetically determined male behaviour. In the 1990s, the success of the Human Genome Project led to many strong claims about the genetic basis of crime.

The idea of the born criminal was supported in a report that 'Pimping and petty theft appear to be genetically conditioned but a person's genes have little influence on their propensity for committing crimes of violence'. Violence was reported to be due to a 'mild brain dysfunction in early life', and it was claimed that improved standards of health care for pregnant women could reduce violent crime by over 20 per cent. The link between biology and social behaviour is not this straightforward. While there may, indeed, be a biological basis to violent behaviour—and the matter is still hotly debated—the ways in which this is expressed and the consequences that flow from it depend upon the meanings that are attached to it and the particular social situations in which it occurs. The behaviour of a soldier in time of war involves violence that is channelled into disciplined action against a national enemy. This violence is condoned and encouraged, and it may even be rewarded as heroism or bravery.

The behaviour of someone at a football match who attacks a member of the opposing team's supporters involves far less violence, but it is likely to be condemned and denounced as hooliganism that must be stamped out. No biological explanation of violence can explain why one act is that of a hero and the other is that of a villain. Of course, this is not to make the absurd claim that it is only the social reaction that differs between the two cases. The point is that, while some people may have a disposition towards violent behaviour, a biological explanation can, at best, explain the disposition.

It cannot explain when and how that disposition is expressed in social action, or is inhibited from expression. Nor can it explain the reactions of others to violence. An explanation of deviance must refer to the processes of socialization through which people learn to give meaning to their behaviour and to the processes of discipline and regulation through which some people come to be identified as deviants and to be processed in particular ways by a system of social control.

SOCIAL REACTION AND DEVIANCE

There are three levels of explanation in the study of deviant behaviour. A first level of explanation is concerned with the existence of the many different forms of human behaviour that occur in any society. Biology may contribute towards an explanation of this diversity, but it can never provide the whole explanation. It is always necessary to take account of processes of socialization.

A second level of explanation is concerned with the variation in norms between social groups, as manifested particularly in cultural and subcultural differences. Socialization takes place within particular social groups, and it is the norms of these groups that provide the standards for the identification of particular kinds of behaviour as deviant.

The third, and final, level of explanation is concerned with the ways in which particular individuals are identified as deviants by others and so come to develop a deviant identity. This is a matter of social reaction and control. In the rest of this part as suggested, outline some of the general processes that are involved in deviance and control and the processes that are common to a range of deviant and conformist identities.

You may like to read this through fairly quickly, not worrying about all the details, and then go on to the discussion of specific forms of deviance in the following parts. When you have read one or two of these parts, return to this general discussion of deviance and control and try to work through its details.

PRIMARY AND SECONDARY DEVIATION

Two key concepts in the study of deviance are primary deviation and secondary deviation, which were first systematized by Lemert. Primary deviation is the object of the first two levels of explanation that we identified higher than. It is behaviour that runs counter to the normative expectations of a group, and is recognized as deviant behaviour by its members, but which is 'normalized' by

them. That is to say, it is tolerated or indulged as an allowable or permissible departure from what is normally expected. It is ignored or treated in a low-key way that defines it as an exceptional, atypical, or insignificant aberration on the part of an otherwise normal person. The normalization of the deviant behaviour defines it as something that is marginal to the identity of the deviator.

Many justifications for the normalization of deviant behaviour are employed: A man is seen as aggressive because he is 'under stress' at work, a woman behaves oddly because it is 'that time of the month', a child is being naughty because he or she is 'overtired', an elderly woman steals from a supermarket because she is 'confused', a middleaged man exposes himself in public because he has a 'blackout' and 'did not know what came over him', and so on. What Lemert calls secondary deviation, or deviance proper, is the object of our third level of explanation.

It arises when the perceived deviation is no longer normalized and is, instead, stigmatized or punished in some way. The social reaction and its consequences become central elements in the deviator's day-to-day experiences and it shapes future actions. When public opinion, lawenforcement agencies or administrative controls exercised by the welfare and other official agencies react in an overt and punitive way, their reaction labels the person as a deviant of some kind. This labelling stigmatizes the behaviour and the person, who must now try to cope with the consequences of the stigma. Stigmatization may involve the rejection, degradation, exclusion, incarceration, or coercion of the deviant, who becomes the object of treatment, punishment, or conversion. Those who are stigmatized find that their lives and identities come to be organized around their deviance.

They may even come to see themselves as a deviant—as a 'thief ', as 'mentally ill', and so on—taking on many of the stigmatizing attributes of the popular and official images. Even if the deviator rejects this identity, the fact that he or she is identified in this way by others becomes an important factor in determining future behaviour.

The development of secondary deviation may, initially, involve an acceptance of the negative, stigmatizing stereotypes that others hold of the deviant. Deviants may often, however, be able to construct a more positive image of their deviance and build an identity around a rejection of the stigma.

They accept the label, but, instead of merely reflecting back the public stereotype, they construct an alternative view that reflects their own experiences and those of people like them. They construct accounts—narratives—of their coming to be the kind of people that they are, and these narratives become central features of the construction and reconstruction of their identity. In much the same way that the Black Power movement constructed more positive images of black identity, so such movements as Gay Pride have led to the construction of positive images of homosexuality. Not all deviance results from the conversion of primary deviation into secondary deviation through an external social reaction. Deviators may, for example, escape the attention of those who would label

them, remaining 'secret deviants'. Such people may, nevertheless, move into secondary deviation precisely because of their attempts to keep their deviant behaviour secret. By anticipating the reactions of others, they begin to act towards themselves in terms of the stigmatized deviant identity, even if they do not embrace this identity themselves. The man who engages in homosexual acts in private, for example, may become drawn into association with other gay people because the risks of his inadvertent exposure as gay in other social situations are too great. There is also the possibility of false accusation. Someone who has not violated expectations may, nevertheless, be labelled as a deviant and processed accordingly.

Such people will experience many of the same consequences as those who have been correctly labelled. Although they may feel a sense of injustice about their wrongful accusation, they may, as a result of their experience of stigmatization, come to act in ways that are quite indistinguishable from other deviants. Such highly publicized cases of wrongful imprisonment for terrorist bombings as those of the Birmingham Six and the Guildford Four highlight the more general situation of false accusation that is apparent in, for example, the child who is wrongly punished by a teacher for cheating or the political dissidents in the Soviet Union who were officially designated as mentally ill.

Primary deviation that is not normalized does not always result in secondary deviation or commitment to a deviant identity. Many people drift in and out of deviant behaviour without being committed to it at all. Because they are not committed to their deviant acts—they do not see them as a fundamental expression of their identity—they are able to abandon them whenever they choose, or when the circumstances are not right.

Conversely, of course, they may feel able—though not required—to deviate whenever the opportunity and the inclination are present. Drift, then, is an important aspect of the structuring of deviant behaviour. Matza suggests, for example, that juvenile delinquency rarely becomes a matter of secondary deviation, precisely because juveniles drift back and forth between deviant and conformist behaviour without ever becoming committed to delinquency as a way of life.

Many of those who become involved in crime do not embrace a deviant identity—they do not see themselves as criminals, burglars, or housebreakers. Rather, they see their involvement in criminal activities as an aspect of the larger social situation in which they find themselves. They may, for example, be long-term unemployed, in serious financial hardship, and faced with the opportunity of illegal gain.

Such people drift into crime for situational reasons, and become secondary deviants only if they are unable to drift out again. Certain opportunities may be denied to them, while other courses of action become easier. They become secondary deviants if the whole structure of interests within which they act—the advantages and disadvantages, rewards and punishments—tend to force them into continued deviance. Those who have been imprisoned for theft or

burglary, for example, may experience restricted employment and promotion opportunities in the outside world that make it difficult for them to abandon their criminal life and to enter or re-enter conventional occupations.

Where people do take on a deviant identity, however, their behaviour will be shaped by commitment as well as constraint. Those who have become committed to a deviant identity will be committed to a whole range of behaviours that are associated with that identity. These ways of behaving will seem more 'natural' to them than any others, and they will identify with the behaviours as much as with the label itself.

Commitment and constraint generally operate together: a firmly committed deviant is more likely to face disadvantaged opportunities, and a tightly constrained deviant is more likely to feel a sense of difference from others. If their circumstances change, and these constraints alter, they may find it possible to drift out of crime once more.

DEVIANT ROLES AND CAREERS

Where deviance has become a central feature of a person's identity and way of life, it can take the form of role deviance. In this situation, a person's activities become organized into a distinct and recognizable social role to which particular normative expectations are attached. The deviant is expected to act in deviant ways: conformity to these particular role expectations confirms the person's deviant identity! Until recently, male homosexuals, for example, were widely expected to exhibit their deviance by behaving in 'effeminate' ways, and one who conformed to these expectations had adopted the public, stereotyped homosexual role.

Deviant roles, like conformist roles, often have a career structure. This is particularly likely where the role is defined within a group of deviants, rather than by public stereotypes alone. Where the deviant role involves a particular sequence of events and experiences that are common for all its occupants, role deviance becomes what has been called career deviance. This may be highly formalized, paralleling the kinds of career structures that are found in conventional occupations. Full-time thieves, for example, may be members of teams who make their living from their deviance and that have their own internal structures of leadership, reward, and 'promotion'. When organized as career deviance, the deviant role is likely also to involve what Goffman has called a moral career. This term describes the internal or personal aspects of a career, the specific sequence of learning experiences and changes in conceptions of self and identity that occur as people follow their deviant career. It is a process through which people come to terms with their stigma and their commitment to a deviant identity. With each phase of the public career associated with the role, its occupants must reconsider their past in an attempt to make sense of their new experiences.

They single out and elaborate, with the benefit of hindsight, those experiences that they believe can account for and legitimate their present situation. This is a

continuous process in which their personal biography—their life story—is constantly constructed and reconstructed in the light of their changing circumstances.

DEVIANT GROUPS AND COMMUNITIES

Career deviants are especially likely to become involved with groups that support and sustain their identities and that help them to come to terms with the constrained opportunities that they face. Gangs and cliques are formed, clubs and pubs are colonized as meeting places, and organizations and agencies are set up to promote shared interests or political goals. With advances in technology, new forms of support and communication become possible.

The spread of the telephone allowed people to maintain distant communication far more effectively than was possible through writing letters, and computer technology now allows global communication through the Internet and e-mail. Those who are involved in two or more of these groups will tie them into larger social networks that bond the groups into cohesive and solidaristic communities with a shared sense of identity. Criminal gangs, for example, may be involved in localized networks of recruitment and mutual support, to which individual criminals and juvenile gangs may also be attached.

These networks form those subcultures of crime that comprise an underworld. The subcultures are means through which skills and techniques can be learned and in which criminals can obtain a degree of acceptance and recognition that is denied to them by conventional groups. Goffman has argued that the groups of 'sympathetic others' that form the supportive subcultures of deviance comprise two distinct types of people: the own and the wise. The own are those who share the deviant identity.

They have a common understanding of stigmatization from their personal experiences, and they may be able to help in acquiring the tricks of the trade that allow a deviant to operate more effectively, as well as by providing emotional support and company in which a deviant can feel at home. The own help people to organize a life around their deviance and to cope with many of the disadvantages that they experience.

The wise, on the other hand, are 'normals' who have a particular reason for being in the know about the secret life of the deviants and for being sympathetic towards it. They are accepted by the deviants and are allowed a kind of associate membership in their activities. They are those for whom the deviants do not feel the need to put on a show of normality or deviance disavowal: they can safely engage in back-region activities with them. The wise can include family members and friends, employees, and even some control agents who have day-to-day contact with them.

The own and the wise together form a network of contacts and connections that support deviants in the construction of their narratives of identity. Some of the wise may actively support deviants in sustaining their deviance, though there are limits to the willingness of people to become too closely involved in

activities where the stigma of deviance is likely to 'rub off ' on to them. Active support, then, is most likely to come from the own, and this is particularly true where there is a need for representatives to speak or act for their interests and concerns in public.

Such representatives may sometimes become very active and make a living—and a new identity—out of their role as spokespersons for particular deviant groups. They make a 'profession' of their deviance in quite a novel way, perhaps appearing in the press and on radio and television whenever issues of concern are discussed. There are, of course, limits to this. Only certain forms of deviance are allowed to have the legitimacy of their stigmatization debated in public.

Gays and the mentally ill, for example, have active and important organizations that can lobby for their interests, while thieves and burglars do not. Pressure groups on behalf of those involved in serious crime are, for the most part, limited to campaigns for prison reform and are led by the wise and by reformed offenders.

The general account of deviance and control that we have presented must be treated with caution, as all of its elements will not apply equally to every case of deviance and stigmatized identity. It is a general framework that provides the concepts that can sensitize researchers to the specific issues that occur in particular cases. As suggested, illustrate this by considering a number of forms of criminal behaviour.

DRUGS AND DRUG ABUSE

The use of drugs is now one of the most widely discussed forms of deviance. In its most general meaning, a drug is any chemical that can have an effect on the human body and, perhaps, a physical effect on the mind. Some drugs occur quite naturally in many widely used drinks and foods. Caffeine, for example, is found in both coffee and tea, alcohol is the basis of beer, wine, and spirits, and vitamins are found in fresh fruit and vegetables.

Many drugs are used as medicines, usually under the control of doctors. Morphine, penicillin, and steroids, for example, are used very widely and under a variety of commercial trade names in hospitals, clinics, and surgeries. Many other medical drugs are freely available for purchase without prescription: aspirin, codeine, ibuprofen, and numerous other analgesic drugs can be bought in any highstreet pharmacy and in many supermarkets.

This broad, dictionary definition of 'drugs', however, is not what newspaper columnists, politicians, and social commentators mean when they use the word. These people generally use the word in a much narrower sense to refer to the non-medical use of drugs. This is the deliberate use of chemical substances to achieve particular physiological changes, simply for the pleasure or the other non-medical effects that they produce.

It is in this sense, for example, that many parents and teachers rail against the use of drugs by children and young people. The nonmedical use of drugs in the twentieth century has, indeed, been largely an activity of the young. Drug

use, then, is seen as a deviant activity, as non-medical drug abuse. It becomes, therefore, a matter for social control. For this reason, the non-medical use or possession of many drugs has been made illegal.

There is a great deal of ambiguity over how widely this meaning of the word 'drug' is to be taken, and whether all non-medical drug use is to be regarded as a deviant activity. Many freely available products have the same characteristics as illicit drugs. Tobacco, for example, can be freely bought in shops and it is a major source of tax revenue for the government. At the same time, however, it contains nicotine, an addictive stimulant to the nervous system that is a major health hazard both to those who smoke and to those around them.

Similarly, alcoholic drinks, which can have serious physiological and psychological effects if taken in large quantities, are an accepted and even encouraged part of a normal social life for most people. Like tobacco, alcohol is available in shops and supermarkets, it is a multi-million pound industry, in which many people find legitimate employment, and—unlike cigarettes—it can be advertised freely on television.

Some chemicals with domestic or industrial uses, but which can also be used to produce 'high' feelings, can be purchased quite legitimately and with even fewer restrictions. Recent research has suggested that chocolate may operate in the same way as heroin, nicotine, and cannabis, by its effect on the limbic system in the brain. Eating chocolate can produce a 'rush' or high feeling because it affects the brain in the same way as the active ingredient in cannabis. Glues and solvents, which are used as stimulants and hallucinogenics by many young people, can be purchased in hardware and do-it-yourself shops.

The use of heroin, cocaine, or Ecstasy, on the other hand, is widely disapproved of and their use is surrounded by numerous legal restrictions over their acquisition and sale. Many such drugs are the objects of advertising campaigns that are aimed at discouraging their use by encouraging people to 'say no' if offered them. They can usually be obtained only from illegal sources. Medical trials have been set up in Britain, however, to investigate the part that might be played by cannabis, on prescription, in the treatment of multiple sclerosis and as a pain-killer. Morphine has long been available in pharmacies in Codeine and similar analgesic tablets, and both cocaine and morphine could be bought over the counter in British high streets until 1916. In 2002 it was announced that heroin would be made available to addicts on prescription. The different social reaction to alcohol, chocolate, glue, and heroin cannot be explained simply in terms of the medical dangers involved in using any specific stimulant. If the potential danger was the principal determinant of the social reaction, alcohol and tobacco would have been criminalized many years ago.

LEARNING DRUG USE

The idea of addiction to drugs is central to discussions of their non-medical uses. Addiction is seen as occurring where people have become physiologically dependent on the use of a particular drug and suffer serious and persistent

withdrawal symptoms when its use is stopped. However, dependence is as much a psychological as a physiological fact and, as such, it is shaped by social factors.

People must learn how to use particular drugs, and they become committed to their use only through complex social processes from which physiological dependence cannot be isolated. 'Addiction' is a medically constructed label and a social role that combines elements of the sick role and, in some cases, the criminal role. Drugs do, of course, have specific physiological effects: alcohol and barbiturates depress mental activity, cocaine and caffeine stimulate it, and LSD distorts experiences and perception.

Their full effects, however, depend upon the social context in which they are used. Individuals who use drugs learn from one another not only the techniques that are necessary for their use, but also how to shape and to experience the kinds of effects that they produce.

The nonmedical use of drugs, then, is a deviant activity that, like all forms of deviance, is surrounded by normative frameworks that structure the lives of users and lead them to experience particular deviant careers and associated moral careers. 'Drug addiction' is a deviant identity that reflects a specific deviant career.

Becoming a Cannabis User

In an influential study of deviant activity, Becker documented the career stages that are involved in becoming a marijuana user. He showed that people drift into cannabis use for a variety of reasons. Once they begin its use, however, they will—if they persist—follow a particular sequence of stages. Becker called these stages the 'beginner', the 'occasional user', and the 'regular user'.

As users follow this career sequence, cannabis-smoking becomes an ever more important part of their identity. Becker shows, however, that cannabis use rarely involves full-blown secondary deviation, despite the fact that its use is illegal. Cannabis use is a low-visibility activity that rarely comes to the attention of those who might publicly stigmatize users, and so these users are less likely to progress to secondary deviation. Becker's research was undertaken in the early 1950s, and public attitudes have altered somewhat since then.

There was an increase in cannabis use in both the United States and in Britain during the 1960s. It has, since then, become accepted or tolerated in many situations. In California in 1996, for example, legal restrictions were relaxed in order to allow for its medical use in the treatment of certain cancer patients. Indeed, it has been suggested that cannabis use has become normalized for many people. Research shows that about a quarter of 16–24 year olds in Britain in 2000 had tried cannabis during the previous year.

Most of these users regard their use in the same way that most adults regard alcohol and tobacco use. In 2004, legislation came into effect in Britain that partly decriminalizes the possession of cannabis by altering its classification to that of a 'Class C' drug. This meant that possession of cannabis will no longer result in automatic prosecution but could be dealt with through an official

warning. It was anticipated that the police would, in most situations, pay little attention to those who merely possess cannabis for their own use. When Becker undertook his research, cannabis use was both illegal and surrounded by social meanings that associated it with irresponsibility, immorality, and addiction. Becker showed that, while the drug is not physically addictive, its image and its illegality led to specific patterns in its use. Unlike cigarettes, cannabis cannot be bought at the local newsagent or the supermarket—though it can be obtained in this way in the Netherlands.

Most people, therefore, had neither the opportunity nor the inclination to smoke it. Those who were most likely to begin to use the drug, Becker argued, were those who were involved in social groups where there was already a degree of cannabis use. It was here that there were likely to be opportunities for new users. Becker saw the typical locales for exploratory drug use as organized around values and activities that oppose or run counter to the mainstream values of the larger society.

When he undertook his research, these had their focus in social groups around jazz and popular music, students, and 'bohemians'. These groups tended to have a more critical and oppositional stance towards conventional social standards. Participants were likely to see many other people using the drug, and their own first use was likely to become a real possibility if an opportunity presented itself. Today, when marijuana use has become more generalized among young people, exposure to its use in peer groups is likely to be the initial introduction for many young people.

Someone enters the beginner stage in the use of cannabis when he or she is offered the opportunity to smoke it in a social situation where others are smoking, where there is a degree of social pressure to conform to group norms, and where the group itself provides a relatively safe and secluded locale away from the immediate possibility of public censure. Becker shows that people who move from the stage of the beginner to that of the occasional user must learn a number of skills and abilities associated with the use of the drug.

Someone willing to use the drug may know that it causes a 'high' feeling, but they are unlikely to know exactly how to produce this. The principal skill that must be learned, then, is the actual technique for smoking cannabis. This is different from that used in tobacco smoking.

Only if the smoke is inhaled in the correct way, with an appropriate amount of air, can cannabis have any significant effect on a person's body and mind. Group membership is essential for the easy learning of this skill, as the new user is surrounded by those who can demonstrate it in their own smoking.

Those who fail to learn the proper technique will never experience the physical effects of cannabis and so are unlikely to persist in using the drug. A user must also acquire the ability to perceive the effects of the drug and, therefore, must learn what it is to be high or stoned. This is not as strange as it may seem.

Users may have experiences that they fail to recognize as effects of the drug, but that others recognize as central features of their high state. Through

interaction with others, new users begin to learn what signs and symptoms to look out for and what, therefore, can be taken as indicating that they have successfully learned the smoking technique.

Last, but not least, they must learn to enjoy the effects of cannabis. They must learn to treat dizziness, tingling, and distortions of time and space as pleasurable experiences, rather than as unpleasant and undesirable disturbances to their normal physical and mental state. Only those who successfully acquire these skills and abilities—the smoking technique, the ability to perceive the effects, and enjoyment of the effects—will persist as cannabis users.

As occasional users, cannabis smokers acquire further justifications and rationalizations for its use, and these reinforce their continued use of the drug. The subculture of the group provides ready-made answers to many of the conventional objections to cannabis use that may be raised in their minds. Users may claim, for example, that cannabis is less dangerous than the alcohol that is tolerated and encouraged by conventional opinion.

They are also likely to hold that cannabis smokers are in complete control of when and where they choose to use the drug; that the drug is not in control of them.

The regular user of cannabis can neutralize any conventional or official labels that may be applied to them by non-users. People who lack the support of other users are less likely to become regular users if they accept the stereotype of addiction or the idea that they are likely to escalate towards the use of hard drugs.

If ideas of addiction, escalation, and mental weakness cannot be neutralized, smokers may revert to occasional use, rather than becoming committed, regular users.

To protect themselves from stigmatization, regular users try to learn how to control the effects of the drug, inhibiting its effects at will, so that they are able to pass as normal in front of non-users or the police.

They must, nevertheless, run certain risks of detection, as regular use requires access to illegal dealers whose criminal activities may bring the user to the attention of the police. In order to minimize their chances of discovery as users, they are likely to spend more and more of their time in the company of their own, the other regular users who can provide a supportive and relatively safe environment in which to smoke.

PATTERNS OF DRUG USE

People learn how to use drugs in particular social contexts. Becker's work explored cannabis use in the specific context of post-war America, though his conclusions have a much wider application. In this part as suggested, look at the changing context of drug use in Britain. We look first at an account of deviant drug use in the 1970s, and then we turn to the contemporary, normalized use of drugs by young people.

Deviant Drug use

Although it was developed in the 1950s, Becker's argument retains much of its relevance for contemporary patterns of cannabis use, and it has much to say about the use of other drugs. This was first confirmed in a study undertaken by Jock Young in London. Young's primary concern, however, is the origins of the negative social reaction to cannabis use. Why is it, he asks, that there is no similar social reaction to the use of tobacco? He holds that the reason is to be found not in the drug, but in the motivation that people are seen as having for using it.

Drugs that are seen as being used to aid productivity are likely to be tolerated, while those that have a purely hedonistic purpose are seen as 'drug abuse'. European and North American societies tolerate or even encourage the drinking of coffee and tea, and the smoking of tobacco when working under pressure or as a 'release' from the pressure of a heavy work schedule. The worker 'earns' the right to 'relax with a smoke and a drink' after work, and people may be allowed to smoke at work if it 'helps them to concentrate'.

Alcohol is widely used, and it is tolerated as a way in which people may, periodically, ease the transition from work to leisure. It is culturally normalized. It is only when alcohol is used to excess and interferes with normal, everyday activities that its use is defined as deviant. No such tolerance is allowed for the user of cannabis, which is not seen as linked in any way to work productivity.

Young also points out that there can be cultural variations in response to the same drug. Andean peasants use cocaine as an aid to work, and it is a normalized feature of their society. In Britain and the United States, however, cocaine is regarded very differently. Young has shown that these variations in response to drugs can be explained in terms of the relationship between a dominant set of social values and a secondary subterranean set of values.

The dominant values of contemporary societies stress work and everyday routines, but they coexist with other values that stress the need for excitement, leisure, and pleasure.

These hedonistic, or pleasure-oriented, values are subterranean because they concern experiences that can be pursued only when the demands of employment and family life have been met.

It is through their work—paid employment and unpaid work in the household—that people acquire the 'right' to freely enjoy their leisure activities and to pursue the subterranean values.

Young sees this as involving a socialized conflict between the desire for pleasure and the repression of this desire as people engage in their everyday activities.

Through their socialization, he argues, adults acquire a feeling of guilt about any expression of these hedonistic values that has not been earned through hard work. Subterranean values can be exercised only with restraint and only so long as they do not undermine the normal everyday realities of work and family life. The drugs that have come to be seen as problematic in contemporary

societies are those that are used to induce an escape from everyday realities into an alternative world where hedonistic values alone prevail. They are seen to be associated with subcultures that disdain the work ethic and enjoy pleasures that have not been earned through work: 'It is drug use of this kind that is most actively repressed by the forces of social order. For it is not drugtaking *per se* but the culture of drugtakers which is reacted against: not the notion of changing consciousness but the type of consciousness that is socially generated'.

In contemporary societies, Young argues, this kind of drug use is to be found in the inner-city subcultures and many youth subcultures. Young found an overwhelming emphasis on drug use in the 'Bohemian youth culture' of the hippies of the 1960s. The use of mind-altering drugs was raised to a paramount position as one of the fundamental organizing principles for the identities of its members.

This subculture—primarily a subculture of middle-class, student youth—was organized around spontaneity and expressivity and a rejection of work. It was in hippie culture that the main structural supports for cannabis use were found, and in the late 1960s Young documented its increasing emphasis also on the strong hallucinogenic drug LSD.

What he called the delinquent youth culture, on the other hand, was more characteristic of some working-class areas. Young saw this as generating an ambivalent attitude towards drug use. While the delinquent subculture was organized around its strong emphasis on subterranean values, drug use was merely tolerated or allowed—it was not required.

Normalized Drug use

Young's work was undertaken in a period of full employment and relative affluence. The period since he wrote has seen the emergence of mass unemployment and economic insecurity, exacerbated by a global recession. Despite some improvement, employment remains insecure or uncertain for many young people. Illegal drug use today is not so much focused on hippie youth who reject the work ethic.

It is now more strongly emphasized by the inner-city unemployed who have little experience of or prospect for secure and regular paid employment. Some glimpses of this were apparent in Young's references to the subculture of inner-city black Americans, as it had developed from the 1920s. He saw this as strongly supportive of cannabis use and as a principal source of heroin use. Their poverty and inferior status forced them into a rejection of conventional values and an embrace of subterranean values.

Indeed, this was one of the principal contexts of drug use studied by Becker. This group has recently been identified as the core of a so-called underclass. In the 1970s, 'conformist youth culture' could still be seen as fully embracing conventional culture and its conditional commitment to hedonistic values. Its members were committed to work and to family, and their leisuretime activities posed no challenge to the dominance of the conventional values.

Young saw this culture as having little significance for deviant drug-taking, holding that conformist youth simply made illicit use of alcohol for the same purposes as their parents. It is clear today, however, that cannabis use has become common within this culture since the 1980s and that there was a growth in the use of Ecstasy in the 1990s. Declining employment opportunities in a period of recession broke the link between conventional work values and hedonistic values for many young people. Where there was little or no employment, the question of 'earning' pleasure simply did not arise.

As a result, drug use has increased among all parts of youth. Almost half of 16 year olds in Manchester in 1992 were reported to have used an illegal drug, generally cannabis, and just under three-quarters had been in situations where drugs were available and on offer.

In a national survey of 15–16 year olds in 1996, 42 per cent had used an illegal drug. The British Crime Survey for 2000 found that a quarter of those aged 16–19 and over a quarter of those aged 20–24 had used cannabis during the previous twelve months.

A survey in 2004 of 16–24 year olds found that 39 per cent reported that they had used illegal drugs. Cannabis was the most commonly used drug, with 30 per cent of the young adults having used it. Use of Ecstasy, cocaine, or amphetamines was much lower, at about 4–7 per cent of 16–24 year olds. Heroin use, however, has been increasing in Britain, and the average age at which heroin users had first begun to experiment with the drug is 15.

Three-quarters of the young people in inner-city areas are reported to have tried crack cocaine. Class and gender show little association with drug availability and take-up, but ethnicity does. Black youths are rather more likely to come into contact with drugs than are white youths, as suggested in an earlier study by Pryce and Asians are far less likely to do so: only 32 per cent of young Asians in Manchester in 1992 reported having been offered drugs.

The ease of access to drugs such as cannabis—44 per cent of boys and 38 per cent of girls in 1996 had used it—shows that Becker's view of the importance of subcultures to occasional users must now be qualified. Changes in the urban and class conditions that sustained 'delinquent' subcultures in the past, combined with a more commercialized structure of illegal drug-trading, have resulted in a wider availability of drugs.

Drug use is now an integral, normalized part of a generalized youth culture, and not of specific class-based or deviant subcultures. Even the police are tolerant towards its use and generally caution those cannabis users who come their way. Along with music, clothes, magazines, and a love of fast cars, drugs and alcohol are a part of the everyday, pleasure-seeking experience of virtually all young people.

The counter-cultural Bohemian and hippie orientations that Young identified in the 1960s are no longer an important part of this youth subculture, which is now a consumerist and leisure-oriented subculture organized around the pursuit of pleasure that is disconnected from the requirement to 'earn' it through

productive work. Despite its high profile in the news media, Ecstasy is far less widely used than cannabis. In a national survey in 1996, 9 per cent of boys and 7 per cent of girls reported having taken Ecstasy. Amphetamines, LSD and solvents are all more widely used than Ecstasy: 20 per cent of boys and 21 per cent of girls had used solvents. Ecstasy, amphetamines, and LSD were all associated with regular involvement in dance clubs and raves, but in these venues, cannabis remains the most widely used illegal drug. Indeed, alcohol—consumed under age—was even more widespread: 94 per cent of 15–16 year olds in a national survey reported that they had consumed alcohol, generally on a regular basis.

Over one-third were tobacco smokers, the rate of use and the rate of growth in use being higher among girls than among boys. These findings support the claim that there is now a 'poly-drug' culture in which users are not confined to the use of any one drug.

Cannabis remains the drug of preference, but it is taken alongside other drugs. Not all drugs used by young people are normalized features of the conformist youth culture.

Heroin use, for example, is found among less than 2 per cent of young people, and these generally have little involvement in consumerism and conventional family life. Indeed, 'conformist' drug users tend to regard heroin as a drug that would undermine their lifestyle.

It is something to be avoided in favour of the more 'pleasure-oriented' drugs. Auld show that there is a characteristic episodic user of heroin: neither the occasional nor the regular user, but someone who has periods of sustained heroin use, followed by periods 'coming off'. Retreatism and withdrawal from what is perceived as a hostile world are principal motives for those who have experienced a lifetime of emotional and physical abuse in broken families and poor districts.

Such users find it difficult to band together for mutual support in the deprived city areas where the homeless congregate, and their lifestyle forces them into close association with a vast criminal underworld of dealers and organized crime. In these circumstances, heroin users are very likely to make the transition from primary to secondary deviation. In the inner-city areas, the growth of an informal economy has been associated with the expansion of an extensive fringe of irregular activities—street-level thieving, dealing and exchange of stolen and illicit goods of all kinds.

The unemployed residents of these areas seek to make more than the bare public assistance level of income through involvement in these activities. Cannabis has, since the 1960s, become more closely tied to professional drug-dealing and, along with hard drugs such as heroin and cocaine, is traded on the streets. It has been estimated that, by 1997, the number of drug deals in London alone had reached an annual total of 30 million, with a total value of £600 million.

Only around one in 4,000 street deals results in an arrest. Through their involvement in this irregular economy, the unemployed can easily become

involved in drug dealing, and the opportunities for use are great. Small-scale users and others become drawn into large networks of organized drug crime. There is a hierarchical division of labour in the supply of drugs, and the largest rewards tend to go to those who are furthest removed from street-level dealing.

PROFESSIONAL AND CAREER CRIME

Theft—stealing property belonging to another person—is one of the few forms of crime to have a highly organized character and to offer the chance of a career or profession to those engaged in it. Theft includes burglary, robbery, forgery, confidence tricks, pickpocketing, and numerous other fraudulent activities. Not all of these are organized as career crime, of course, and not all of those who drift into theft even make the transition from primary deviation to secondary deviation. School children who steal from shops, for example, rarely continue into a career of thieving.

Nevertheless, theft is, indeed, one of the most organized forms of crime. Career crime is nothing new. Mary McIntosh traces it back to the actions of pirates, bandits, brigands, and moral outlaws who often combined criminal with political aims. If the Robin Hood image of the rural outlaw is a rather idealized fiction, it nevertheless grasps an important element in pre-modern theft. With the growth of towns in the early modern period, opportunities for street and house crime became much greater, and there was a growth in the amount of what McIntosh calls craft crime.

This is the small-scale, skilled theft engaged in by pickpockets, cutpurses, and confidence tricksters. These forms of career crime proliferated through the eighteenth and nineteenth centuries and remain an important part of everyday crime. McIntosh traces the origins of what she calls project crime to a later period. This is large-scale robbery and fraud, and became fully established only in the early years of the twentieth century. It has become the predominant form of theft only since the 1950s.

CRIME AND THE UNDERWORLD

Where rural bandits and outlaws were enmeshed in the surrounding social life of the rural communities from which they were drawn, urban craft crime tended to be based in a distinct criminal underworld. The growth of such criminal areas was first reported in the sixteenth century, but it was in the eighteenth and nineteenth centuries that they achieved their fullest development. The criminal underworld of a city such as London comprised various ‘rookeries’ that formed the dwelling places and meeting places of craft criminals of all kinds. Segregated from the rest of society, the underworlds provided for the security, safety, shared interests, and concerns of the craft thieves. The underworlds were rooted in the surrounding slum districts of the poor working class. Poverty, unemployment, overcrowding in poor physical conditions, and a lack of leisure opportunities other than the pub, were the conditions under which many people drifted into crime and some became confirmed in a criminal career.

An urban underworld formed an occupational community with a subculture that established norms of criminal behaviour, a slang and argot, and an esprit de corps that sustained the shared identity of the thieves. Central to the underworld code was the injunction not to 'squeal', 'squawk', 'grass', or inform on others. Association with other thieves, and a lack of association with the targets of their theft, inhibited any concern for the feelings of the victims of crime. It also meant that thieves could learn from other thieves the techniques and skills that would help them in their own crimes.

In addition, their leisuretime associates formed a pool of partners in crime. They were able to find markets for their stolen goods, and they could attain a degree of protection and insulation from detection and law enforcement. Underworld life, however, has been fundamentally altered by the urban redevelopment of the inner-city areas and the dispersal of population to the suburbs. One of the principal roots of the London underworld had been in the Spitalfields and Cable Street districts of the East End, where there has been much redevelopment.

While certain central pubs and clubs remain important venues for career criminals, much activity is now more dispersed through the city, and the underworld forms an extended social network rather than being confined to a particular physical locale. Even in the 1960s, however, a tradition of craft crime still survived in Spitalfields, and the surrounding district had high levels of crime: there were especially high levels of burglary, violence against the person, gambling, and prostitution. Much crime, however, was 'petty, unsophisticated, unorganized and largely unprofitable—if often squalid and brutal'.

A subculture of crime continues to sustain career crime, which has, however, changed its character. Alongside older forms of craft crime, project crime has become more significant, and this has also helped to transform the structure of the underworld. Where craft theft involved the stealing of small amounts of money from large numbers of people, project crime involves a much smaller number of large thefts. Growing affluence and, in particular, the increasing scale of business activity have meant that the potential targets of theft have become much bigger.

As a result, criminals have had to organize themselves more effectively and on a larger scale if they are to be successful against these targets. Improved safes, alarm systems, and security vans can be handled only by organized teams of specialists: safe-breakers, drivers, gunmen, and so on. Such crimes, organized as one-off projects, require advanced planning and a much higher level of cooperation than is typical for craft crime. Teams for particular projects are recruited through the cliques and connections that comprise the underworld, and these may sometimes be organized on a semi-permanent basis.

The criminal underworld that existed in the East End of London from the Second World War until the 1960s, for example, contained numerous competing gangs that were held together largely by the violent hegemony of the Kray twins and their associates. The east London gangs engaged in violent feuds

with their counterparts from the south London underworld, and the leading members of the East End and south London gangs occasionally met on the neutral ground of the West End.

It is through the subculture of crime that people can be socialized into criminal identities, whether as a craft thief or a project thief. The professional thief, like the professional doctor, lawyer, or bricklayer, must develop many technical abilities and skills. He must know how to plan and execute crimes, how to dispose of stolen goods, how to 'fix' the police and the courts, and so on. These skills must be acquired through long education and training, and it is through his involvement in the underworld that the thief can acquire them most effectively. Based on his detailed study of a professional thief, Sutherland has shown how the person who successfully learns and applies these techniques earns high status within the underworld.

The beginning thief, if successful, is gradually admitted into closer and closer contact with other thieves. It is they who can offer him 'better' work and from whom he can learn more advanced skills. Once successful, the thief dresses and behaves in distinct ways and proudly adopts the label 'thief ' in order to distinguish himself from a mere 'amateur', small-time criminal.

As well as gaining respect within the underworld, he may also gain a degree of recognition and respect from police, lawyers, and newspaper crime writers. These people are aware of his activities and have often accommodated themselves to professional crime: apart from the corruption that sometimes occurs, there may also be shared interests in not reacting immediately and punitively towards all crime.

BURGLARY AS A WAY OF LIFE

One of the few contemporary investigations of career theft in Britain is an investigation of domestic burglaries. Burglary is illegal entry into a building with the intent to steal. Domestic burglary was, for a long time, subject to the death penalty, and from 1861 to 1968 it carried a maximum sentence of life imprisonment.

Following the Theft Act of 1968, the maximum penalty has been fourteen years' imprisonment. In practice, only just under a half of convicted burglars have been given custodial sentences. Recognizing the problems involved in assessing rates of crime, Maguire and Bennett concluded that about 60 per cent of all burglaries were committed by a relatively small number of persistent, career criminals. The remaining 40 per cent were committed by juveniles who had drifted into delinquency and would, for the most part, drift out of it again. Maguire and Bennett interviewed a number of persistent burglars, most of whom were committed to their criminal careers. They had, typically, carried out between 100 and 500 break-ins during their careers. They combined this with involvement in car theft, burglary from commercial premises, and cheque forgery.

They were mainly young, single, and with no dependants. The men described themselves as 'thieves', or simply as 'villains', and they described their crimes

as 'work' from which they could earn a living and from which they would eventually retire. Maguire and Bennett are, however, more critical of this self-image than Sutherland had been. In particular, they highlight a number of ways in which the thieves sought to neutralize the moral implications of their actions through self-serving rationalizations.

Thieves claimed, for example, that any distress suffered by the victims was no concern of theirs. They were simply doing a job, carrying on their trade, and this distress was an unavoidable consequence of their routine, professional activities. This claim was further bolstered by the claim that, in any case, they stole only from the well-to-do, who could easily afford it and who were well insured. In fact, many of their victims were relatively poor council house residents who could ill afford to be burgled.

Similarly, the thieves sought to boost their own status by disparaging the amateurism of the majority of 'losers', 'wankers', 'idiots', and 'cowboys' who carried out unsuccessful thefts. However, Maguire and Bennett argue, it is more accurate to see the persistent career thieves as divided into low-level, middle-level, and high-level categories on the basis of the scale of their crimes. Thieves move up and down this hierarchy a great deal over the course of their careers. High-level burglaries are undertaken by thieves who are members of small networks of committed criminals who keep themselves separate from other, small-time criminals. Sometimes they work alone, and sometimes in pairs, but always they keep their principal criminal contacts within their network. Middle-level burglaries are carried out by those who are involved in larger and less exclusive networks of thieves with varying abilities and degrees of commitment. There is less consistent adherence to the code of mutual support, and less effective contacts with receivers of stolen goods and with other specialist criminals.

Finally, low-level burglaries are undertaken by individual thieves with only loose connections to one another and who are indiscriminate in both their criminal connections and their choice of crimes. It is at the lower level that people first enter burglary, as the loose social networks are closely embedded in the surrounding structure of the local community. In most cases, this is a process of drift by some of those who have previously been involved in juvenile delinquencies.

When describing their careers, however, the thieves minimized the element of drift and presented a self-image of themselves as people who had chosen to enter careers of crime. Those who drift into lower-level burglary and become at all successful may graduate, in due course, to middle-level or high-level burglary through the contacts and connections that they make. Those in the networks carrying out the high-level burglaries were, in a sense, at the pinnacle of the career hierarchy, though Maguire and Bennett show that they are unlikely to be at all involved in large-scale project crimes undertaken by the London gangs.

Their activities are confined to housebreaking, shop-breaking, car theft, shoplifting, and cheque forgery. They have little or no involvement in such specialist crimes as hijacking lorries, bank raids, or embezzlement. Very few

burglars—even those at the high level—make a major financial success of their chosen careers, and most spent at least one period in prison. Imprisonment is not, however, a purely negative experience, as it gives the burglar an opportunity to 'widen his circle of criminal acquaintances, learn new techniques and be encouraged to try his hand at more lucrative offences'.

Nevertheless, few burglars continued with burglary beyond their thirties or forties. Most drifted into what they hoped would be safer forms of work. Entry into legal employment is difficult for someone with a criminal record, and few make the transition successfully. Walsh has shown that some burglars are able to combine career crime with a continuing involvement in legitimate employment—typically short-term jobs in the building and construction industry or in other casual work such as catering and cleaning.

It seems likely that some who retire from burglary may be able to continue or to re-enter such casual and temporary work. Career crime has probably never been a completely self-contained, full-time activity. Even in the heyday of the Victorian underworld of the East End, criminal activities were combined with casual labour and street trading, one type of work supplementing the earnings from the other.

Hobbs has shown how the East End has long been organized around an entrepreneurial culture of wheeling and dealing, trading and fixing, that makes no sharp distinction between legal and illegal activities. Theft may, indeed, be career crime, a way of life, but it does not take up all of a thief 's time and cannot usually provide him with a regular or substantial income. Those involved in thieving, then, must combine it with other ways of gaining an income. Casual labour is combined with their own thieving and the performance of the occasional criminal task for other, more successful thieves.

Those who are themselves more successful may be involved as much in trading and dealing as in thieving, and their entrepreneurial activities are likely to range from the legitimate, through various 'shady' deals, to the criminal. The fulltime criminal is not a full-time thief, even if he stresses this aspect of his life in constructing his own identity. Much thieving is undertaken by those who are in lowpaid or semi-legitimate work or who are unemployed. There is considerable evidence that the growth of the drugs market in the 1980s has sharpened a distinction between the full-time criminal and the mass of ordinary thieves.

The establishment of a large and extensive market in drugs has connected together the criminal networks of London, Manchester, Birmingham, Glasgow, and other large cities. This has allowed a greater degree of organization to be achieved in the project crimes that sustain drug trafficking. Those who are involved in this organized crime, however, have highly specialized skills—for example, in relation to VAT fraud—and are very different from those who steal hi-fis and videos from domestic premises.

The significance of the drug market for ordinary thieves is that it offers possibilities for casual and occasional trading in small quantities of drugs that supplement their more established sources of income.

GENDER, ETHNICITY, CLASS, AND CRIME

The public perception of crime concentrates on robbery, burglary, theft, mugging, rape, and other crimes of theft and violence. The popular view sees this crime as male, working-class activity. Professional crime is seen as the work of certain adult males and as expressing conventional notions of masculinity. This point of view does get some support from the criminal statistics, which seem to show the very small number of women who are convicted of criminal offences; 5.9 per cent of all men in 2000 were found guilty or were cautioned for a notifiable offence, compared with 1.2 per cent of women.

It also appears that the kinds of crimes committed by women are less 'serious' than those committed by men. All parts of Britain show that women have very little involvement as offenders in domestic or commercial theft, vehicle theft, or street violence, though they are often, of course, involved in these as victims. They are, however, more heavily involved in shoplifting than are men, prostitution is an almost exclusively female crime, and only women can be convicted of infanticide. There is some evidence, however, that the number and types of crime committed by women may have altered since the 1960s. In a similar way to the crimes of women, many middleclass crimes are not generally regarded as 'real' crimes. While there is a great public fear of street violence and domestic burglary, there is relatively little concern about fraudulent business practices, violations of safety legislation, or tax evasion.

While such offences, arguably, have much greater impact on people's lives than does the relatively small risk of theft or violence, they are either invisible to public opinion or are not seen as proper 'crimes'. In this part as suggested, assess the adequacy of these views of crime, exploring aspects of the crimes of women, ethnic minorities, and the affluent.

DISTRIBUTION BY GENDER, ETHNICITY, AND CLASS

The kinds of crimes that are committed by women, like those committed by men, reflect the gender-defined social roles that are available to them. Both men and women are involved in shoplifting, for example, but women are more likely to steal clothes, food, or low-value items. Men are more likely to steal books, electrical goods, or high-value items.

This reflects the conventional domestic expectations that tie women to shopping for basic household goods in supermarkets, while men are able to shop for luxuries and extras. Put simply, both men and women tend to steal the same kinds of items that they buy. Similarly, men are heavily involved in vehicle crimes, including car theft, while women are heavily involved in prostitution. This involvement in prostitution can be seen as an extension of a normal feminine role that allows implicit or explicit bargaining over sex.

This connection between crime and conventional genderroles is particularly clear in the patterns of involvement that women have in offences related to children. Those who are most responsible for childcare are, other things being equal, more likely to be involved in cruelty to children, abandoning children,

kidnapping, procuring illegal abortions, and social-security frauds. Theft by women generally involves theft from an employer by those involved in domestic work or shop work. Even when involved in large-scale theft, women are likely to be acting in association with male family members and to be involved as receivers of stolen goods rather than as thieves. There are, of course, problems in estimating the actual number of offences from the official statistics but the overall pattern is clear. Because women are less likely to be arrested and convicted for certain offences—something that we look at below—the difference between male and female involvement in crime is exaggerated by the official figures. The differing patterns of offence do, however, exist. Only in the case of sexual offences is the pattern for male and female involvement more equal, the apparent predominance of women resulting from the fact that their sexual behaviour is more likely to be treated in ways that result in conviction. The sexual double standard means that the authorities normalize much male sexual delinquency, but express moral outrage at female sexual delinquency.

As Smart argues:

- None of these types of offences requires particularly 'masculine' attributes. Strength and force are unnecessary and there is only a low level of skill or expertise required. The women involved have not required training in violence, weapons or tools, or in specialised tasks like safe breaking. On the contrary the skills required can be learnt in everyday experience, and socialization into a delinquent subculture or a sophisticated criminal organisation is entirely unnecessary.

There is growing evidence that members of ethnic minorities in Britain have become more heavily involved with the legal system since the 1960s. They are now especially likely to appear as offenders and, more particularly, as victims of crime and as police suspects.

Housebreakings and other household offences show little variation among the various ethnic groups, about one-third of all households being victims of such crime. African Caribbeans, however, are almost twice as likely as whites to be the victims of personal attacks. This is, in part, a consequence of the fact that African Caribbeans live, disproportionately, in inner-city areas where such crimes are particularly likely to take place.

However, their experiences also have a racially motivated character. The growing victimization of black and Asian people reflects a real growth in racial violence and racist attacks by members of the white population. While criminal acts carried out during the urban riots of the 1980s often had a racial aspect to them, blacks and Asians are far more likely to be the targets of racial crimes than they are to commit them. There has, nevertheless, been a growing involvement of young African Caribbeans in many kinds of street crime. The police hold to a widely shared prejudice that African Caribbeans, in particular, are heavily involved in crime and that special efforts need to be taken to control them. Many studies have shown the racism inherent in police actions that stop black people in the street and subject them to closer scrutiny than other members of the population.

African Caribbeans are more likely than whites, and members of other ethnic minorities, to be approached by the police on suspicion, to be prosecuted, and to be sentenced. This is reflected in a growing hostility of ethnic minorities towards the police, who are often seen as racists rather than as neutral defenders of law and order. Offences carried out by men from the middle classes are generally described as white-collar crime. This term originally referred to crimes and civil-law infractions committed by those in non-manual employment as part of their work.

It is now used a little more broadly to refer to three categories of offence:

1. *Occupational crimes of the affluent:* Offences committed by the relatively affluent and prosperous in the course of their legitimate business or profession. Examples are theft from an employer, financial frauds, and insider dealing in investment companies.
2. *Organizational crimes:* Offences committed by organizations and businesses themselves—that is, by employees acting in their official capacities on behalf of the organization. Examples are non-payment or under-payment of VAT or Corporation Tax, and infringements of health and safety legislation leading to accidents or pollution.
3. Any other crimes committed by the relatively affluent that tend to be treated differently from those of the less affluent. An example is tax evasion, which is treated differently from social-security fraud.

The concept of white-collar crime, then, is far from clear-cut. It does, however, help to highlight the class basis of much crime. The number of people involved in whitecollar crimes is barely apparent from the official statistics, as many go unrecorded. Its status as hidden crime, however, is paradoxical in view of its financial significance.

It was estimated that the total cost of reported fraud alone in 1985 was £2,113 million, twice the amount accounted for by reported theft, burglary, and robbery. Official estimates suggest that the actual cost of all fraud in Britain in 2003 was £13,800 million. The relatively low representation of women in recorded crime is the main reason why female criminality has been so little researched. Lombroso and Ferrero set out a deterministic theory, based on the claimed peculiarities of female biology, which still has some influence in the late 1990s.

They held that women were less highly evolved than men and so were relatively ‘primitive’ in character. They were less involved in crime, however, because their biology predisposed them to a passive and more conservative way of life. They were, however, weak willed, and Lombroso and Ferrero saw the involvement of many women in crime as resulting from their having been led on by others.

The female drift into crime was a consequence of their weak and fickle character. The extreme position set out by Lombroso and Ferrero has long been abandoned, but many criminologists do still resort to biological assumptions when trying to explain female criminality. Pollak, for example, held that women are naturally manipulative and deceitful, instigating crimes that men undertake. What such theories fail to consider is that, if women do indeed have lower rates

of criminality, this may more usefully and accurately be explained in terms of the cultural influences that shape sex–gender roles and the differing opportunities available to men and to women. Like the crimes of women, the crimes of the affluent have been little researched.

Early discussions of white-collar crime were intended as criticisms of the orthodox assumption that criminality was caused by poverty or deprivation. Those who carried out thefts as part of a successful business career, Sutherland argued, could not be seen as acting out of economic necessity. Sutherland's own account stressed that white-collar crime was learned behaviour and that, in this respect, it was no different from other forms of criminality.

All crime, he held, resulted from the effects of 'differential association' on learning: those who interact more frequently with others whose attitudes are favourable to criminal actions are themselves more likely to engage in criminal acts. This implies that patterns of conformity among the affluent and the deprived, among men and among women, are to be understood in the context of their wider role commitments and the interactions in which they are involved with their role partners. Those who are predisposed to see criminal actions as appropriate will, if the structure of opportunities allows it, drift into crime. There is no need to assume that women are fundamentally different from men, or that the working classes are fundamentally different from the middle classes.

WOMEN AND CRIME

It appears, then, that women, like men, drift into criminal actions whenever the structure of opportunities is such that it seems a reasonable response to their situation. The particular situations in which they find themselves are determined by the ways in which sex–gender identities are institutionalized in their society, and so their patterns of criminality are gendered.

Cultural stereotypes about men and women, as suggested, show, are also a major influence on the nature of the social reaction to female criminality. The absence of strong punitive responses to most forms of female crime means that the progression from primary to secondary deviation is less likely to occur. Women may drift into crime, but they only rarely pursue criminal careers.

A form of female crime that seems to be the principal exception to this rule is prostitution. In law, a prostitute is someone who sells sex, and this is almost invariably seen as a female offence. Men involved in prostitution, other than as clients, tend to be seen as engaged in acts of 'indecency' rather than of 'soliciting' for prostitution. Under British law, a woman who has been arrested and convicted for soliciting is officially termed a 'common prostitute' and is liable to re-arrest simply for loitering in a public place. As most prostitution is arranged in public, on the streets, it is difficult for women so labelled to avoid the occasional spell in custody.

They may also find it difficult to live a normal life off the streets:

- It is virtually impossible for them to live with a man or even another woman as it is immediately assumed that such people are living off

immoral earnings, thereby making themselves vulnerable to a criminal charge. Also, the legal definition of a brothel, as a dwelling containing two or more prostitutes, has made it difficult for two women to live together even where only one is a prostitute.

In 2006 the government in Britain announced its intention to change the law to allow up to three prostitutes to work together without their place of work being defined as a brothel. The reaction of the police is critical in determining whether a woman who breaks the law is defined as a criminal. Police work is structured around the cop culture, a culture that strongly emphasizes masculinity and that underpins the harassment and abuse of female police officers and the derogation of many female offenders.

Prostitutes, for example, are seen as flouting the domesticity of the conventional female role and have been subject to harassment and entrapment. Nevertheless, prostitutes are often able to establish a mutual accommodation with the police, an arrangement in which each can get on with their job with the minimum of interference from the other. When there is pressure on the police to take action, however, such arrangements break down. In these circumstances, prostitutes are highly vulnerable and can be quite susceptible to police persuasion and suggestion. On the other hand, women who conform to conventional role expectations are seen as in need of protection, and cautioning is more widely used for female offenders than it is for males. There is some evidence that this differential treatment of male and female offenders also occurs in the courts.

Sexist assumptions in court practices have led some to suggest that women experience greater leniency than men. Others, however, have suggested that greater harshness is more likely. Heidensohn correctly points out that this may simply reflect the well-known lack of consistency in sentencing, though she reports evidence that supports the view that women are treated more harshly.

Indeed, Edwards has suggested that women are subjected to much closer scrutiny in courts precisely because the female offender is seen as unusual or unnatural. Women are on trial not only for their offence but for their deviation from conventional femininity. Their punishment or treatment is intended to ensure that they adjust themselves back to what is seen as a natural feminine role. Very few convicted women are given custodial sentences.

Men are two or three times more likely to be imprisoned for an offence than are women, and their sentences tend to be longer. The women who are imprisoned are mainly those who have been convicted of such things as theft, fraud, forgery, or violence. Prisons do make some attempt to recognize that women's domestic commitments are different from those of men, and a number of mother-and-baby units have been set up. Some well-publicized cases have been reported, however, of pregnant prison inmates who have been forced to give birth while manacled to a prison officer. Studies of female prisons in the United States have shown how these prisons are important sources of emotional and practical support for their inmates, often involving the establishment of lesbian family relationships. This appears to be less marked in Britain.

CRIMES OF THE AFFLUENT

The crimes of the affluent, the prosperous, and the powerful can be explained in terms of the same motives as any other criminal act. They differ from 'ordinary' theft and burglary only in terms of their social organization and the social reaction to them. The character and motivation of those involved are no more, and no less, pathological than those of any others who drift into crime. White-collar crimes, however, are much less likely to result in full-time criminal careers.

The nature of the social reaction makes the development into secondary deviation much less likely. Much corporate and occupational crime takes place in the financial services industry, where changing patterns of regulation have created greater opportunities for illicit activities. The British financial system was, for much of the nineteenth and twentieth centuries, regulated in a highly informal way. Recruitment to banks, insurance companies, and other financial enterprises took place through an old-boy network centred on the public schools and the Oxford and Cambridge colleges.

The Stock Exchange, as the central institution in the financial system, was at the heart of this system of informal regulation. The system rested on trust and loyalty: those who had been to school together and shared a similar social background felt that they could trust one another in their business dealings. The motto of the Stock Exchange was 'My word is my bond', and many deals were sealed on the shake of hands rather than with a written contract. During the 1970s the government introduced a number of changes to this system of regulation in response to the growing internationalization of the money markets.

This culminated in the so-called Big Bang of October 1986, when the Stock Exchange was finally opened up to foreign competition. New codes of practice were introduced to reflect the more diverse social backgrounds of those involved in the buying and selling of currency, shares, and commodities. The old system of trust could no longer be relied on, and more formal mechanisms were required. The Bank of England was given greater powers of control and supervision, and in 1997 the Labour government created a new Securities and Investment Board to regulate the whole system.

The offences with which the new system of regulation has had to deal are those that have been made possible by the changing structure of the financial system. The investment management firm of Barlow Clowes, for example, set up new offshore investment funds to provide high returns to its wealthy clients who wanted to minimize their tax bills. The head of the company was found to have financed an extravagant lifestyle at the expense of the investors in the funds.

The growth of domestic takeover business made possible massive fraud by some directors and managers associated with Guinness and its financial advisers in 1986. These directors and managers manipulated share dealings to keep up the price of Guinness shares on the stock market and to help its takeover of another company. Their actions were the subject of an official enquiry and, later, a criminal trial that resulted in some of them being imprisoned. Much white-collar crime is low in visibility.

It tends to occur in the context of normal business routines, and it is less likely to be noticed, even by its victims. Fiddling business expenses, for example, is almost undetectable, and many employers treat it as a source of tax-free perks for their employees. Large-scale fraud, when discovered, is more likely to result in an official reaction, though it will often be hushed up if it might suggest a failure of supervision or control by senior managers. Crimes of the affluent are far more likely to be regulated by specialized enforcement agencies than by the police, and this has important consequences for the nature of the social reaction.

These agencies—the Health and Safety Executive, the Factory Inspectorate, the Inland Revenue, and so on—generally have a remit to maintain and promote high standards of business and trading, and the enforcement of the criminal law is only one part of this remit. Their officials, therefore, develop 'compliance strategies' that stress persuasion and administrative sanctions aimed at crime prevention, rather than the detection and punishment of offences. The level of prosecutions is, therefore, very low. Few cases go to court, and very few result in imprisonment. In these ways, the transition to secondary deviation is avoided.

FEMALE OFFENDERS IN THE COURTS

Since women make up a minority of those charged with criminal activity, they also represent a relatively small proportion of those dealt with by the courts. In 2003/04, 15% of the cases completed in adult criminal courts involved female defendants. As well, women who do appear in court are somewhat less likely than their male counterparts to be found guilty.

In 2003/04, just over half (51%) of the cases against women resulted in a conviction, compared with a figure of 59% for men. In addition, because women generally commit less serious crimes than men, they are more likely than their male counterparts to be sentenced to probation. In 2003/04, 40% of women convicted of an offence were given probation as their most serious sentence, compared with 29% of men found guilty. In contrast, women were less likely than their male counterparts to be sentenced to prison: 26% versus 38%.

Women who are sent to jail typically receive shorter sentences than their male counterparts. In 2003, for example, the mean term for women sent to prison was 63 days, nearly half the figure for men whose mean prison term was 120 days.

The fact that women receive shorter sentences than men is consistent across all offences, with the exception of attempted murder, criminal harassment, and drug trafficking.

INDIAN CULTURE RESTRICTS WOMEN'S ACCESS TO WORK

India is a multifaceted society where no generalization could apply to all of the nation's various regional, religious, social, and economic groups.

Nevertheless, certain broad circumstances in which Indian women live affect the ways they participate in the economy. Indian society is extremely hierarchical with virtually everyone ranked relative to others according to their caste (or caste-like group), class, wealth, and power. This ranking even exists in areas where it is not openly acknowledged, such as certain business settings.

Though specific customs vary from region to region within the country, there are different standards of behaviour for men and women that carry over into the work environment. Women are expected to be chaste and especially modest in all actions, which may constrain their ability to perform in the workplace on an equal basis with men.

Another related aspect of life in India is purdah—literally, the veiling and seclusion of women. Fewer women, especially younger women, observe purdah today, but those who still do face constraints beyond those already placed on them by other hierarchical practices.

These cultural rules place some Indian women, particularly those of lower caste, in a paradoxical situation: when a family suffers economically, people often think that a woman should go out and work, yet at the same time the woman's participation in employment outside the home is viewed as "slightly inappropriate, subtly wrong, and definitely dangerous to their chastity and womanly virtue".

When a family recovers from an economic crisis or attempts to improve its status, women may be kept at home as a demonstration of the family's morality and as a symbol of its financial security. As in many other countries, working women of all segments of Indian society face various forms of discrimination including sexual harassment.

Even professional women find discrimination to be prevalent: two-thirds of the women in one study felt that they had to work harder to receive the same benefits as comparably employed men. It is notable that most of the women in this study who did not perceive discrimination worked in fields (*e.g.*, gynecology) where few, if any, men competed against them.

MUCH OF WOMEN'S ECONOMIC ACTIVITY

Although most women in India work and contribute to the economy in one form or another, much of their work is not documented or accounted for in official statistics. Women plow fields and harvest crops while working on farms; women weave and make handicrafts while working in household industries; women sell food and gather wood while working in the informal sector. Additionally, women are traditionally responsible for the daily household chores (*e.g.*, cooking, fetching water, and looking after children).

Although the cultural restrictions women face are changing, women are still not as free as men to participate in the formal economy. In the past, cultural restrictions were the primary impediments to female employment; now, however, the shortage of jobs throughout the country contributes to low female employment as well.

The 1991 Indian census divides workers into two categories: "main" and "marginal" workers. Main workers include people who worked for 6 months or more during the year, while marginal workers include those who worked for a shorter period. Detailed data on marginal workers have not been tabulated from the 1991 census, but many of these workers are agricultural labourers. Unpaid farm and family enterprise workers are supposed to be included in either the main worker or marginal worker category, as appropriate (Registrar General and Census Commissioner. Women account for a small proportion of the formal Indian labour force, even though the number of female main workers has grown faster in recent years than that of their male counterparts. The 1991 census shows that the number of male main workers increased 23 percent since the 1981 census while the number of female main workers increased 40 percent. However, women still accounted for only 23 percent (64.3 million) of the total.

The reported labour force participation of women is very low. Fewer than one-quarter (22 percent) of women of all ages were engaged in work either as a main or a marginal worker in 1991, compared with just over half of men. Rural women were more likely than urban women to be counted in the census as working, 27 percent versus 9 percent, respectively.

INFORMAL SECTOR IMPORTANT SOURCE OF WORK FOR WOMEN

Since Indian culture hinders women's access to jobs in stores, factories, and the public sector, the informal sector is particularly important for women. More women may be involved in undocumented or "disguised" wage work than in the formal labour force. There are estimates that over 90 percent of working women are involved in the informal sector and not included in official statistics (The World Bank, 1991).

The informal sector includes jobs such as domestic servant, small trader, artisan, or field labourer on a family farm. Most of these jobs are unskilled and low paying and do not provide benefits to the worker. Although such jobs are supposed to be recorded in the census, undercounting is likely because the boundaries between these activities and other forms of household work done by women are often clouded. Thus, the actual labour force participation rate for women is likely to be higher than that which can be calculated from available data.

WOMEN'S UNEMPLOYMENT RATES SIMILAR TO MEN'S

Unemployment is difficult to estimate in India and most unemployment statistics are likely to underestimate the true level of unemployment, particularly for women. This is due, in part, to the fact that many potential workers do not bother looking for work because they feel jobs are too scarce. Such people are rarely included in unemployment statistics. Also, there is not a strong motivation to register at employment offices because of the perceived minimal benefits of doing so. Different sources provide disparate pictures of the nature of

unemployment in the country. According to employment-office statistics for 1996, there were 37.4 million unemployed people, of whom 22 percent were female (International Labour Office (ILO), 1997).

The most useful unemployment data, however, come from the Indian National Sample Survey Organization that conducts periodic surveys to estimate employment and unemployment rates. The most recent available survey (1990-91) showed that female unemployment rates were virtually the same as male rates; just over 2 percent for each gender in rural areas, and just over 5 percent in urban areas.

Data show substantial drops in unemployment rates since 1977-78, particularly for women. At that time, the female unemployment rate was 4.1 percent in rural areas and 10.9 percent in urban areas, while the male rates were 3.6 percent and 7.1 percent, respectively (National Sample Survey Organization (NSSO), 1994). The above trend in unemployment rates does mask other less-positive developments, however. Although female unemployment rates were falling, there was not a corresponding increase in employment rates. For example, in 1977-78, 23.2 percent of all rural females were employed, but by 1990-91, the share of rural females employed remained essentially unchanged. For males, on the other hand, drops in their unemployment rate translated almost directly into comparable increases in their employment rate (NSSO, 1994).

FEMALE WORKERS RELATIVELY YOUNG

Female workers tend to be younger than males. According to the 1991 census, the average age of all female workers was 33.6 compared with the male average of 36.5. Among the youngest workers (ages 5 to 14), girls worked at nearly the same rate as boys — about 5 percent of children worked as main or marginal workers.

As age increases, the ratio of female to male workers decreases. In the 25 to 29 age group, there were only 406 female workers for every 1,000 male workers, and for the age group 50 to 59, the ratio declined further to 340. Little has changed since 1981, though the number and the proportion of children under the age of 15 who were working has declined.

VAST MAJORITY OF INDIANS WORK IN AGRICULTURE

Most female and male main workers are employed in agriculture. Agricultural employment is divided into three categories in the census: cultivators, agricultural labourers, and other agricultural work. Cultivators usually have some right to the land — they or their family own the land or lease it from the government, an institution, or another individual. In addition, cultivators may supervise or direct others.

In contrast, agricultural labourers work on another person's land for monetary wages or in-kind compensation. These workers have no right to the land on which they work. More than half (55 percent) of female agricultural workers are considered labourers, compared with just one-third of male agricultural workers.

This suggests that most female workers are employed in lower-skilled, lower-paid positions, and are not the supervisors or owners of capital. Most female cultivators are members of a family that owns the land, rather than being the owners themselves.

The share of total female agricultural workers who were cultivators increased slightly between 1981 and 1991, from 41 to 43 percent. The only other sector of the economy that employs more than 5 percent of working women is the service sector. This sector, which includes occupations such as social work, government, teaching, religious activities, and entertainment, accounts for about 8 percent of all female main worker labour. Household and non-household industries each employ about 4 percent of female main workers.

WOMEN FACE WAGE DISCRIMINATION

Throughout the economy, women tend to hold lower-level positions than men even when they have sufficient skills to perform higher level jobs. Researchers have estimated that female agricultural labourers were usually paid 40 to 60 percent of the male wage.

Even when women occupy similar positions and have similar educational levels, they earn just 80 percent of what men do, though this is better than in most developing countries. The public sector hires a greater share of women than does the private sector, but wages in the public sector are less egalitarian despite laws requiring equal pay for equal work.

TECHNOLOGY DOES NOT ALWAYS IMPROVE WOMEN'S EMPLOYMENT

There is evidence that suggests that technological progress sometimes has a negative impact on women's employment opportunities. When a new technology is introduced to automate specific manual labour, women may lose their jobs because they are often responsible for the manual duties. For instance, one village irrigated its fields through a bucket system in which women were very active.

When the village replaced the manual irrigation system with a tube well irrigation system, women lost their jobs. Many other examples exist where manual tasks such as wheat grinding and weeding are replaced by wheat grinding machines, herbicides, and other modern technologies.

These examples are not meant to suggest that women would be better off with the menial jobs; rather, they illustrate how women have been pushed out of traditional occupations. Women may not benefit from jobs created by the introduction of new technology.

New jobs (*e.g.*, wheat grinding machine operator) usually go to men, and it is even rarer for women to be employed in the factories producing such equipment.

Recent National Sample Survey data exemplify this trend. Since the 1970s, total female self-employment and regular employment have been decreasing as

a proportion of total employment in rural areas, while casual labour has been increasing (NSSO, 1994). Other data reinforce the conclusion that employment options for female agricultural workers have declined, and that many women seek casual work in other sectors characterized by low wages and low productivity.

FEMALE EMPLOYMENT DOES NOT INSURE ECONOMIC INDEPENDENCE

Even if a woman is employed, she may not have control over the money she earns, though this money often plays an important role in the maintenance of the household. In Indian culture, as in many other countries, women are expected to devote virtually all of their time, energy, and earnings to their family. Men, on the other hand, are expected to spend time and at least some of their earnings on activities outside the household. Research has shown that women contribute a higher share of their earnings to the family and are less likely to spend it on themselves.

Research has suggested that as the share of the family income contributed by a woman increases, so does the likelihood that she will manage this income (The World Bank, 1991). However, the extent to which women retain control over their own income varies from household to household and region to region. One study found that fewer than half of women gave their earnings to their husbands. The study also showed, however, that many women still sought their husbands' permission when they wanted to purchase something for themselves.

In northern India, where more stringent cultural restrictions are in place, it is likely that few women control family finances.

RELATIONSHIP BETWEEN WOMEN'S EDUCATION

The level of education is low in India; in 1991, only 39 percent of women and 64 percent of men were literate. The majority of those who are literate have only a primary education or less (RGCC, 1993). For men, as the level of education rises, the share that are main workers generally increases. Just over one-third of literate men who have no formal education work as main workers, while three-quarters of those with post-high school educations are similarly employed.

The effect of education on the employment status of women is not so straightforward. Higher levels of education for women do not directly translate into higher proportions of main workers. For example, 18 percent of illiterate women are employed as main workers, while just 11 percent of those with high school educations are employed as such. Not until women achieve a post-high school level of education are there dramatic improvements in their employment status—about half of all women who receive a post-secondary non-college diploma are employed as main workers. These women likely have received training for specific jobs. Surprisingly, women with university degrees do not have relatively high employment rates; only 28 percent of these women are employed as main workers.

The confounding of the usual relationship between education and employment may be related to the likelihood that poorer and lower educated families require female members to work.

Often, girls and young women work instead of receiving an education. Well-off and better-educated families may send their daughters to school, but are able to afford to follow the cultural practice of keeping women at home after schooling is complete. Not until women receive specialized post-secondary education do they see significant improvements in their employment rates.

WORK EXPERIENCES

Employment rates for women vary substantially across India's diverse states and territories. States with proportionately larger rural populations typically have higher employment rates because most people throughout India are engaged in agriculture.

For instance, the territory of Dadra and Nagar Haveli, a small area in western India, had the highest female employment rate (49 percent) in the country according to the 1991 census. In this area, 90 percent of all female employment was in agriculture. Delhi, on the other hand, with an urban population of nearly 90 percent, had a female employment rate of just 7.4 percent.

Exceptions to the relationship between proportionately large rural populations and above-average female employment exist. Regions in northern India have lower employment rates than southern regions. Though the share of the population involved in agriculture in these states was near the national average, the female employment rate was very low—10.8 percent in Haryana and just 4.4 percent in Punjab. According to survey data, rural female unemployment is also very low in these areas—1.4 percent in Punjab and virtually nil in Haryana. Around half of all rural women in these areas are engaged in domestic duties compared to the national average of 37.8 percent (NSSO, 1994). Identifying the exact reasons for the disparity between the northern and southern regions is difficult.

The northern states, particularly Punjab, are agriculturally fertile and the population is comparatively well off. Thus, it is not as important for the women of families in these regions to work. More importantly, however, cultural practices vary from region to region. Though it is a broad generalization, northern India tends to be more patriarchal and feudal than southern India. Women in northern India have more restrictions placed on their behaviour, thereby restricting their access to work. Southern India tends to be more egalitarian, women have relatively more freedom, and women have a more prominent presence in society.

EVIL OF DIVORCE

While we talk about marriage and its significance in the life, its important that we also discuss the intricacies of the separation as it's a right provided to all men and women on different grounds to separate if the marriage is not

considered happy. Though it is still looked upon as a social evil, the law permits a couple to seperat ways on mutual grounds. Also Indian women have their own rights to file for a divorce if not treated well.

Even though we observe that women are ill treated in our country in rural as well as urban areas of India; a very small percentage of women who initiate for separation. But more and more social activists and social agencies are creating awareness about the laws and rights available to women as well as men. While this is one side of the tale, there are also cases where the law is twisted and turned and misused by both men and women. However, we must discuss the otherside of the heavenly knot.

CRIMINAL LAW AND JUSTICE SYSTEM

Criminal law encompasses the body of laws that define offenses against the public and establish penalties for individuals convicted of those offenses. The justice system, in turn, is responsible for enforcing these laws and administering justice through a series of procedures and institutions. In most modern legal systems, criminal law operates on the principle of culpability, where individuals are held accountable for their actions if they knowingly or intentionally commit a prohibited act. This principle is often accompanied by the presumption of innocence, wherein defendants are considered innocent until proven guilty beyond a reasonable doubt. The justice system comprises various components, including law enforcement agencies, prosecutors, defense attorneys, judges, and correctional institutions. These components work together to ensure that individuals accused of crimes are afforded due process rights, including the right to a fair trial, legal representation, and protection against self-incrimination. Sentencing in the criminal justice system aims to achieve various objectives, including deterrence, rehabilitation, incapacitation, and retribution. Punishments can range from fines and probation to imprisonment and, in some jurisdictions, capital punishment. The criminal law and justice system play a critical role in maintaining public order, protecting individual rights, and deterring criminal behavior within society. "In 'Criminal Law and the Justice System,' readers delve into the intricate workings of legal principles and societal mechanisms aimed at upholding order and fairness in society's response to crime."

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