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THE SOCIAL CONTROL OF CRIME

Maurice Cusson
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THE SOCIAL CONTROL OF CRIME

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RESUME FRANÇAIS

La thèse défendue dans cet ouvrage est que le contrôle social est l'une des raisons majeures pour lesquelles les êtres humains respectent la loi. En effet, ces derniers ne semblent pas avoir d'inhibitions innées qui les empêcheraient de passer à l'acte. Les gens ne se soumettent pas automatiquement aux lois, comme en témoigne le simple fait de l'existence de la criminalité. On peut défendre que le contrôle social supplée à ce manque d'inhibition. Dans ce travail, le terme contrôle social sert à désigner l'ensemble des moyens spécifiquement utilisés par les hommes pour empêcher ou limiter le crime. Il se fait sentir quand un individu rencontre, au moment de violer une loi, une résistance d'origine sociale qui l'empêche d'agir ou, du moins, le fait hésiter. Le contrôle social repose, en dernière analyse, moins sur l'influence du groupe sur ses membres que sur une structuration des relations interpersonnelles telle que la conformité y devient profitable ou valorisante pour ceux qui y participent.

L'ouvrage est organisé autour d'une distinction entre quatre types de contrôle social: 1) le traitement, 2) la morale, 3) la dissuasion, 4) la justice.

1) Le traitement est une forme de contrôle social qui a eu, pendant le dernier demi-siècle, la faveur des spécialistes des sciences humaines et celle de larges secteurs de l'opinion. L'utilisation de mesures thérapeutiques pour réhabiliter, rééduquer, resocialiser - peu importe le terme - les délinquants, repose sur l'hypothèse que le crime

est le symptôme d'un problème psychologique. Il s'agit donc de diagnostiquer le trouble qui est à l'origine de la conduite délinquante puis de le traiter. Le but poursuivi est de restaurer l'équilibre psychologique du délinquant et de répondre de façon individualisée à ses besoins. Le patient est réhabilité quand le thérapeute a réussi à changer les aspects de sa personnalité qui le poussaient au crime.

2) La morale. On a longtemps cru - et la croyance est encore vivace chez bien des gens - que le crime est tenu en échec par de solides convictions morales. Les notions de bien et de mal, épaulées par les pressions exercées par tous ceux qui désapprouvent le crime, forment l'essentiel de ce qu'on peut appeler le contrôle moral de la délinquance. Celui-ci repose sur l'hypothèse que la réprobation du crime exercera une influence sur la conduite des gens. En effet, l'individu qui s'est laissé convaincre que le crime est un acte indigne, acquiert, par le fait même, une motivation pour résister aux tentations.

Le contrôle moral table sur le besoin qu'ont les êtres humains de se respecter. Il mise aussi sur leur désir d'être bien vus des gens dont l'opinion leur importe: ceux qu'ils estiment et ceux auxquels ils sont attachés. Ainsi, la personne sur qui s'exerce l'action de la morale évite le crime parce qu'elle est convaincue que, si elle cédait à la tentation, elle se déshonorerait à ses yeux et aux yeux d'autrui.

3) La dissuasion. Le mode de contrôle social le plus visible et le mieux connu est fondé sur la force. On vise à soumettre les citoyens aux lois en leur inspirant une "crainte salutaire" ou en les rendant incapables de commettre des crimes. Par la menace et par l'application effective du châtement, on met les citoyens devant un choix: se soumettre ou encourir une peine. La neutralisation est une mesure complémentaire à l'intimidation: principalement par l'incarcération, le délinquant est mis dans l'impossibilité physique de commettre de nouveaux crimes. La caractéristique de la force est qu'elle n'exige pas, pour être efficace, le consentement de celui sur qui elle s'exerce.

4) La justice est une notion diffuse à laquelle on fait constamment référence mais qui a été peu étudiée, sauf par les philosophes. La justice instaure au sein du corps social, un mode d'attribution des biens et des chartes qui, par divers arbitrages, tient compte des droits de chacun. Les prohibitions du vol et de l'agression peuvent satisfaire aux exigences de justice de l'individu parce qu'il est dans son intérêt de vivre dans une société où chacun respecte la personne et les biens d'autrui. Il jouit ainsi de la plus grande liberté compatible avec celle d'autrui, étant protégé contre les atteintes à ses droits tout en respectant réciproquement ceux d'autrui.

Les principes de justice favorisent l'éclosion de solutions de rechange au crime qui, pour l'essentiel, prennent la forme de relations fondées sur la réciprocité. Ces relations se maintiennent grâce à des mécanismes autorégulateurs par lesquels chaque citoyen est conduit à faire respecter les règles qu'il respecte lui-même. Le crime est alors tenu en échec parce qu'il met en cause l'intérêt à long terme de son auteur et parce qu'il justifie les victimes dans des réactions comme la réclamation, la rupture ou la vengeance qui tendent à rétablir l'équilibre, c'est-à-dire une équitable répartition des biens et des charges.

INTRODUCTION

INTRODUCTION

Temptation

We tend to forget that crime can be an easy road to the satisfaction of one's interests. There are numerous reasons for stealing. Why not round off the month with some lucrative swindling? Why not just take what you cannot afford? Why not try to become rich with other people's money? Yet compared with the number of people short of money, there are very few thieves. And there are also many reasons for using violence. It would be very convenient to do away with this rival who is getting in your way, this boss who is always on your back, this colleague who never misses an opportunity to malign you, this neighbour who goes out of his way to make your life impossible. And how sweet it would be to take revenge on the person who humiliated you in public! Yet here again, when you think of all the conflicts and hatreds that abound, there are comparatively few murderers.

And the sensations that juvenile offences such as theft, vandalism and aggression offer adolescents should not be underestimated. We must face the fact that it can be fun to steal an automobile or sneak into a house to take all sorts of valuable or useful things.

Crime can be made to serve very diverse interests - cupidity, jealousy, anger, resentment, lust, ambition... Seen in this way, crime is simply a means of satisfying a compelling desire, of resolving a problem, or achieving one's ends. It is an expedient that can serve a person's short term goals. If such is the case, there is reason to maintain that the penchant for crime is part of the human condition.

The attraction of crime is not surprising considering the insatiable human appetite. There seems to be no limit to man's desires. His needs seem to increase at a faster rate than his means to satisfy them. If legitimate means fail, why not resort to illicit ones?

Resistance to temptation

If the reasons for acting out are so numerous and powerful, crime should be an everyday occurrence. But is it? During the years 1976-1977-1978, the rate of burglary per 100,000 inhabitants was 1,400 in the United States and 1,200 in Canada. The number of robberies per 100,000 inhabitants was about 190 in the United States and 85 in Canada. During the same period, the rates for deaths by homicide were 9.3 in the United States, 2.6 in Canada, and 1.0 in France.⁽¹⁾ Three comments can be made about these figures: 1) There are too many crimes. 2) Crime is rare. 3) There are considerable variations in the volume of crime.

1/ If we judge these figures in terms of our own attachment to life and the inviolability of our homes, there are far too many burglaries, armed robberies and homicides.

2/ Our indignation over these acts must not allow us to forget that, in spite of everything, crime is a rare event in the life of most citizens. The fact that it is usually calculated on the basis of the number of crimes per 100,000 inhabitants should be sufficient to show how exceptional it is. In France today, there is twenty times the risk of being killed in an automobile accident than being the victim of a homicide. In Canada, fewer than nine inhabitants out of 10,000 are the victims of robbery. The fact is that people obey the law much more often than they violate it. In the case of serious crimes, this fact is obvious. There would be infinitely more crime if people gave in to all the temptations that came their way.

3/ Crime varies enormously in time and space. Americans today murder their fellow man nine times more often than the French. Unless the French are infinitely cleverer at hiding their corpses than the Americans, it is evident that the temptation to kill is resisted more effectively in France than in the United States. And it seems that in contemporary France it is resisted better than it was in the XIXth century; homicides were two and a half times more numerous then than they are today (Chesnais, 1981, pp. 71-76).

(1) See: Waller (1981, p. 80) and Chesnais (1981, p. 41).

In some cases crime can be relatively rare. In this case, the question comes to mind: How can the law check drives as strong as the lure for gain or the sexual drive? We have reason to be surprised that there are so many crimes, but we have as much reason to be surprised that there are so few. If crime deserves an explanation, so does respect for the law. The question, then, is: "Why do men obey the law?" More precisely, "Why do human beings sacrifice their desires to conform to the rules?"

One possible explanation for this resistance to temptation is that the human being has innate inhibitions that prevent him from killing or stealing. But this seems unlikely. One has only to watch any young child with his peers. He takes their toys and, if a quarrel breaks out, he hits out with all his might. Only the fact that he is weak, awkward and has no weapons prevents him from inflicting serious injuries. Nor is the adult exempt from criminal tendencies. In times of war, the honest citizen dons the uniform and, if the occasion arises, indulges in pillaging, raping and murdering. His ardour does not seem to be at all dampened by any innate control.

And what about the considerable variations in the volume of crime? Would innate inhibitions be unequally distributed according to the era, the people, the size of cities?

If crime is a problem in human societies, it is because man does not automatically submit to the laws - no more than he gives in to temptation every time. Since Malinowski, we have ceased to believe that men spontaneously obey laws or customs. "Is it not contrary to human nature to accept any constraint as a matter of course, and does man, whether civilized or savage, ever carry out unpleasant, burdensome, cruel regulations and taboos without being compelled to? And compelled by some force or motive which he cannot resist?" (Malinowski, 1926, p. 10).

Contrary to what Rousseau thought, man is not naturally good, which does not mean that he is naturally bad. It means that he can be tempted by theft or violence and that nature has not endowed him with an instinct that will stand in the way of temptation. Every human being is a potential offender.

Social control

What takes the place of this lack of inhibition? Many sociologists think the answer is social control. A person's criminal impulses are held in check by what Durkheim called 'social constraint' and what sociologists today call 'social control'. This is understood to be all the means by which the members of a society impose the conformity necessary to life in common.⁽¹⁾ This definition is a little too broad for our purposes here, however. If we agree to restrict ourselves to the criminal phenomenon, a more suitable definition would be this: By social control, we refer to all the means specifically used to prevent or limit crime.

Social control is felt when, at the moment of violating a law, a person meets social resistance that prevents him from acting out or at least makes him hesitate.

Since Durkheim, sociologists have often tended to think that social control boils down to the hold society has over its members. This idea, in my opinion, has the disadvantage of placing the individual and society in opposition too categorically. I would prefer to go along with Crozier's conception, which underlines the fact that men impose conformity on themselves. In this hypothesis, the social control should be found first within the individual and then in the interaction between the members of a particular group. Submission to the laws would be explained by the motivation that individuals develop during their relationships with one another. In the final analysis, social control depends, not on the influence of the group on its members, but on a structuring of interpersonal relationships where conformity becomes a social value or a matter of self-interest.

(1) By social control, Crozier (1980) refers to 'all the means by which a society, a social group, or rather the men who compose them as a structured collective group, succeed in imposing on themselves a minimum of conformity and compatibility in their conduct.' (p. 41).

Types of social control

One of the most serious obstacles to the systematic study of social control is the difficulty of putting some order into its diverse manifestations. No typology to date goes beyond descriptive or administrative categories - prison, police, courts, probation; formal control, informal control, etc. If we want to go beyond the accumulation of odd facts, it is essential to reduce the infinite complexity of the concrete manifestations of the phenomenon to a few basic categories. It is for this reason that I constructed a theoretical typology of social control made up of four types, each having its own logic: 1/ treatment, 2/ morality, 3/ deterrence and 4/ justice.

1/ Treatment is a form of social control that, during the last half-century, has had the support of specialists in the social sciences as well as large sections of the population. The use of therapeutic measures to rehabilitate, reform or reeducate delinquents is based on the hypothesis that crime is the symptom of a psychological problem. It is a question of diagnosing the cause of the delinquent conduct and then treating it. The object is to restore the psychological equilibrium of the delinquent and to answer his individual needs. The patient is rehabilitated when the therapist has succeeded in changing those aspects of his personality that drove him to crime.

2/ Morality. For a long time it was believed - and many people still believe - that crime is held in check by firm moral convictions. The idea of good and bad, supported by the pressure exercised by all who disapprove of crime, forms the basis of what may be called the moral control of delinquency. It rests on the hypothesis that condemnation of crime will exercise an influence on people's behaviour. The very fact that a person is convinced that crime is bad and shameful gives him the motivation to resist temptation.

Moral control counts on the human need for self-respect. It also relies on people's desire to be approved of by those they admire and like. Thus the person influenced by morality avoids crime because he is convinced that should he give in to temptation he would disgrace himself, both in his own eyes and in the eyes of others.

3/ Deterrence. The most visible and best-known type of social control is based on force. The object is to make the citizens obey the laws by inspiring a 'healthy fear' in them or making them incapable of committing crimes. By means of threats and the effective application of punishment, the citizen is given a choice: obey or pay the penalty. A supplementary measure to intimidation is incapacitation: by incarcerating the delinquent, he is rendered physically incapable of committing new crimes. An important characteristic of this form of social control is that, to be effective, it does not require the consent of the person on whom it is exercised.

4/ Justice is a diffuse concept that is constantly referred to but studied very little, except by philosophers. Justice institutes a method of allocating goods and obligations in society that conciliates everyone's rights and interests. The prohibition of theft and aggression is able to satisfy the individual's demands of justice because it is in his interest to live in a society where everyone respects the person and property of others. He thus enjoys the greatest amount of liberty compatible with that of others, being protected against any invasion of his rights while respecting those of his fellows.

The principles of justice favour the emergence of alternatives to crime that essentially take the form of exchange. These relationships are maintained through self-regulating mechanisms whereby each citizen sees that the rules he himself obeys are obeyed by others. Crime is therefore held in check because it jeopardizes the interests of its author over the long term and because it justifies the reaction of victims in lodging a complaint, severing relations or taking vengeance, which tend to reestablish the equilibrium, that is, an equitable distribution of goods and obligations.

The results of social control

In this book, I systematically examine these four types of social control and, above all, their impact on delinquency and crime.

To the layman, it would seem that social control - at least certain of its manifestations - fulfils its function and contributes, if not to the elimination, at least to a reduction of the number of crimes. But this opinion is

contested by a great many specialists. Positivist criminologists have constantly questioned the idea that social control, with the exception of therapeutic measures, can have a real influence on criminality. In their view, the biological, psychological or sociological facts associated with crime are the essential problems. This led these criminologists to propound theories in which social control as a pertinent variable was simply ignored. It was considered so unimportant that in a good many criminological treatises it was not even mentioned save for a remark, in passing, that crime has always existed even though it has always been cruelly punished.

During the 60's, criminologists showed a renewed interest in social control. But it was to assert that it contributed to the making of criminals, producing the exact opposite of what might have been expected. This idea, surprising at first, is not really new. The development of the prison system coincides with the popularization of the saying: 'Prison is a crime school'. Victor Hugo illustrates this thesis in "Les Misérables". Jean Valjean steals a loaf of bread to keep his family from starving. Arrested and convicted, he spends part of his life in penal servitude. The terrible life he leads, the injustice and ostracism that follows make him into a hardened criminal. Ever since the publication of the book, the idea has never been totally forgotten. For today's interactionist sociologists, social reaction against crime is a labelling operation whereby persons who are unlucky enough to be caught are branded as criminals. They are thus given a negative self-concept. The marked criminal, unable to find a place again in society, and forced to lead the life of a pariah, is obliged to engage in criminal activity from which there is no escape.

However, recently this analysis was contested vigorously by a growing group of sociologists and new economists who, on the bases of their research, dared to reaffirm that deterrent measures or other forms of social control contribute to the reduction of crime.

The idea that some form of social control can produce results is, a priori, quite tenable. If we agree that men are tempted by crime and have no

natural internal control that prevents them from succumbing, it follows logically that they would spend their time robbing and killing one another. But this is not the case. Could this fact not be explained by social control? Although obviously it has never succeeded in eliminating crime completely, this does not exclude the possibility that it has a relative effect. It would be surprising if all the measures men have resorted to to fight crime have been totally ineffective. It presupposes a very pessimistic view of man's capacity to solve his problems.

The approach taken here follows logically from this line of reasoning. It consists in analyzing as systematically as possible the effectiveness of the measures of social control used today in western societies. In this way, we will try to explain the relative rarity of crime due to various means of social control as well as the relative frequency of crime (there are sectors where there is more crime than elsewhere) due to insufficient, clumsy or inadequate social control.

The recidivism of offenders who, in the past, had been subjected to a number of control measures poses a particular problem. Why, in spite of all attempts to make them change their ways, do some men start all over again? This fact has often been used as proof that social control is doomed to failure. Perhaps this is true but it remains to be proven. Several chapters of this work are devoted to this problem.

A definition of crime

In this book, criminal behaviour will be the sole criterion for the evaluation of the various measures examined. To use the jargon of the profession, it will be the dependent variable. The terms offence, delinquency, crime, will be used to designate offences punishable under the penal code and causing obvious harm to others.

This definition is limited to crimes against the person and against property. The offences concerned are theft (burglary, automobile theft, theft

with violence, fraud), vandalism, aggression, assault and battery, rape, kidnapping and homicide.

Knowledge and action

The subject of this book is not often dealt with theoretically. Almost always it is treated as a practical problem clamouring for concrete and immediate solutions. Criminologists have been only too willing to respond to this demand and needed no urging to give advice left and right. I am afraid they may have been too quick. The present ideas on the social control of crime are based more on ideological bias than on fact. Also, the solutions so far advocated by criminologists are no better or worse than those advanced by non-specialists.

I have made an effort here to resist the temptation to propose solutions. I wanted to stick solely to theories and facts. I vowed to treat this concrete and hotly debated subject theoretically and coolly. My objective is to construct a model that can help us to understand the phenomenon and one that is not in contradiction with the known facts. To do this, I undertook to filter the ideas on crime control through the known facts, retaining only those that survived the test.

The man of action will find no concrete solutions in this book, and certainly not the solution. But I hope, when he has finished reading it, he will have a more exact and coherent picture of the phenomenon as well as some information. Not on what he should do, but on what others have done and what results they have had. Perhaps this will give him a more precise idea about the possible consequences of the action he takes.

PART I

AUTOPSY OF A FAILURE

CHAPTER I

THE ZERO EFFECT

In the twentieth century, the medical model was relied upon to fulfill the ancient hope of a crimeless society. Instead of punishing the criminal, he must be treated. The medical model became the rule and gave a new legitimacy to the criminal justice system. A profusion of institutions began to appear, their aim rehabilitation: juvenile courts, probation, parole, indeterminate sentences, treatment within the community, residential centres. Projects for changing the prisons into treatment centres were carried out, and under the impetus of this vast movement, the penal system changed, first and foremost in its rhetoric, but also in its functioning.

However, from the beginning, the project of substituting treatment for punishment showed disturbing weaknesses. First, implementation was a problem: the most appealing programmes on paper broke down one after the other when they were tried. In the United States, for example, the historian Rothman (1980) reports that probation, parole and juvenile courts had no sooner been instituted than they were diverted from the ideal assigned them and became bureaucratic, superficial and arbitrary. As soon as they came into contact with reality, the fine new ideas came to nought. Next there were difficulties concerning the results. As soon as researchers undertook to evaluate the level of recidivism of the clients of therapeutic programmes, they discovered to their dismay that either the rates of failure were very high or the new measures seemed to have made no impact (Healy and Bronner, 1926; Glueck S. and E., 1934; Power and Withmer, 1951).

For many years, these facts were ignored. No one wanted to question the principles in the light of the practices they gave rise to or the results they produced. There was always hope. But ten years ago, attitudes changed considerably. Today most researchers believe that, at the present state of knowledge, there is no effective treatment of delinquency.

This conclusion could have serious consequences. It could mean that the method of social control of crime that most social science specialists

counted on did not come up to their expectations. But is it true that we have no success in treating delinquents? If so, what are the causes of this failure? The first five chapters of this work will be devoted to these questions.

The treatment of offenders; basic propositions

First of all, it is important to recall the principles and major theoretical orientations of the partisans of rehabilitation. At the risk of being schematic, it might be said that over and above the divergencies of schools, they were in agreement on five basic points.

1) The concept of individualization is at the very core of the therapeutic doctrine. Crime is the expression of its author's personality. One must therefore treat the individual, not the act, and adapt the treatment to the personal characteristics of the delinquent rather than suit the punishment to the crime (Chazal, 1953, p. 60). Also, before treatment, it is essential to take the personality of the client into consideration. To do this, a psychological and social investigation is advocated, as well as the constitution of a dossier on the offender's personality, diagnosis and classification. In this way one can choose the therapeutic measure best suited to the needs of the client.

2) The object of the treatment is to transform the offender's personality. If it is true that the cause of the crime is within the criminal, it is he who must be treated. An effort is made, therefore, to correct what motivates him to enter into conflict with the law, and to make him into a normal citizen and reintegrate him in society. The end in view is both moral and therapeutic, with particular emphasis on one or the other depending on the period. Fifty years ago we talked of reforming delinquents, of making useful and honest citizens of them. More recently, the intention is to have them find their psychological balance and help them become aware of their problems. Beyond these nuances, it is agreed that the treatment is a success when the delinquent is at one with himself and with society (Chazal, 1978, p. 129).

3) To fulfil his mission, the therapist should have discretionary power. True individualization is impossible if the clinician does not have room to manoeuvre. He should be free to choose the most appropriate measure and to intervene when his clinical insight tells him to. He should be able to prolong the treatment for as long as is deemed necessary. Therapists must therefore be exempt from the yoke of the laws that prescribe penalties in the abstract and that prevent them from acting freely. This is why indeterminate sentences are favoured; the prisoner must not be liberated until he has been transformed.

4) Rehabilitation makes it possible to achieve a reconciliation between the interests of the offender and those of society. What traditionally seemed incompatible, no longer is. Thanks to treatment two birds are killed with one stone. The client is helped and society protected at one and the same time. Considering this, there is no contradiction in advocating measures that combine assistance and restraint, understanding and supervision. This syncretism is both the cause and effect of the optimism that reigns among promoters of the therapeutic ideal. They are convinced that their solution, being in the best interest of all, has all the advantages and no disadvantages.

5) Therapeutic doctrines in criminology have a final characteristic - empiricism. It can be defined here as the idea that the accumulation of observations and experience acquired in direct contact with the delinquents will suffice to discover first the causes of the problem, then the solutions. This empiricism is not without a certain theoretical weakness. It is fair to say that the partisans of rehabilitation have never agreed on a given theory;⁽¹⁾ on the other hand, they were in agreement on a method - the study of individual cases, perceived as the best means of acquiring knowledge. Convinced that the facts speak for themselves, most of them think that scientific knowledge will come from an accumulation of observations.

(1) Their theoretical positions can be separated into three categories. First, pure empiricism: all theoretical proposals are rejected in favour of action. Second, 'multifactorialism': delinquency is thought to be caused by a great many factors of a biological, psychological, sociological and cultural nature; this eclectic approach, however, does not lead to a real theory conceived as a coherent group of general propositions. Third, there are people who adhere to a specific theoretical position, but never succeed in agreeing on a given theory. What we have here is a competition of models inspired by psychology, psychiatry, social service and sociology.

With regard to intervention, we find another manifestation of empiricism. To begin with, there is no series of specific therapeutic measures whose value would be tested, as is the case in medicine. The empiricists believe the difficulty can be overcome by counting on the clinical relationship and diagnosis. First they defend the premise that the clinical relationship that develops between the practitioner and his client is a treatment in itself. Next they state that the diagnosis will disclose solutions along the way that were not known previously. In other words, they think that the treatment will flow automatically from the case history. This is what made a probation officer remark that once the diagnosis is made, most of the work is done (Rothman, 1980, p. 67).

This outline of the philosophy behind the therapeutic approach to delinquents, although brief, should be sufficient to bring us to the heart of the matter: What were the results of the treatments inspired by these principles?

Results of evaluative research

The decisive test to find out whether or not a method of treatment has an impact on the rehabilitation of delinquents consists in comparing the rate of recidivism of the subjects treated with the rate of those who were not. During the past thirty years, several hundred evaluative studies of this type were carried out. What do they tell us? The answer is most disappointing: Whatever the nature of the therapy used, whether individual or group therapy, whether inspired by Freud, Rogers, or Glaser, whether transactional or any other type; whether intensive or not, the result will be no different. The level of recidivism we can expect, taking the initial characteristics of the subjects into account, will remain practically unchanged. It is what might be called 'zero effect'; the introduction of therapeutic measures in the criminal justice system has no effect on recidivism.

This finding is based on a considerable body of evaluative research. On going through these works, the overall conclusion one draws is always discouraging: nowhere have the authors succeeded in demonstrating that recourse to any treatment whatsoever makes penal intervention more effective (Bailey,

1966, Hood and Sparks, 1970, Lipton et al., 1975, Greenberg, 1977, Wright and Dixon, 1977, Sechrest et al., 1979).

In the United States, this finding, often referred to by the expression 'nothing works', is the object of a vast consensus among researchers, particularly since the publication in 1974 of a shattering article by R. Martinson, who summarizes the conclusion of a thorough analysis of 231 evaluative studies as follows: "Save for a few isolated exceptions, efforts to rehabilitate the delinquents who have been studied to date have had no appreciable effect on recidivism" (Martinson, 1974, p. 25). The work of Martinson and his collaborators made an even greater impact inasmuch as, already several years ago, researchers were having serious doubts about the effectiveness of treatment. Today only a small minority of researchers, such as Palmer (1975), express reservations about the 'nothing works' idea.⁽¹⁾

It seems, then, that rehabilitation measures so far have not had any significant influence on recidivism. As this has been demonstrated many times before, we shall simply explain the scope and limitations of this proposition.

Recidivism in the strict sense

The term 'zero effect' refers essentially to recidivism in its strict sense, that is, to criminal activity that follows penal intervention, and not to other variables such as the conduct of the subjects during treatment, their psychological development, their social adjustment, etc. It is quite possible that certain treatments contribute to the psychological development of delinquents. During research on a Quebec institution for young delinquents, Boscoville, a good deal of progress in many psychological areas was observed among

(1) Palmer (1975) reproached Martinson for having underestimated the positive or partially positive results of the works reported in his article. He pointed out that certain categories of delinquents seem to succeed a little better than others after certain treatments (I shall come back to this point). However, a committee of the National Academy of Science devoted itself to an analysis of the problem to conclude that Martinson and his collaborators were correct and that Palmer had committed the error of accepting without reservation research that claimed, without true justification, to have found positive results (Sechrest et al., 1979).

the residents during treatment: a lessening of social maladjustment, of autism, of alienation and of psychosis and an improvement in social maturity, self-esteem, etc. This progress was significantly greater among a group of boys who had undergone all the treatment than among those who had left the centre prematurely. Even though the latter had also progressed, they had done so much less rapidly (Bossé and LeBlanc, 1980C, pp. 60-61). However, it was discovered, with some surprise, that the psychological variables were totally independent of recidivism. The boys who show the best results on the psychological tests recidivate no more nor less than the others, and the boys who progress the most during their stay in the institution recidivate no more nor less than those who make no progress (Bossé and LeBlanc, 1980A, p. 150 and 186; Bossé and LeBlanc 1980B, p. 15). The psychological gains would be interesting for an analysis of the control of delinquency if they were associated with recidivism; but as they seem to be independent, there is little use in studying them - at least in this context. Thus when we say that the treatment is ineffective, this applies only to recidivism; it is quite possible that in other respects it has a beneficial effect on the psychological stability of the delinquents.

Many offenders do not recidivate

By 'zero effect', we obviously do not mean that all delinquents who are subjected to a penal measure recidivate. The level of recidivism varies a great deal according to the group examined, but it is never 100%. In the most representative samples of all the delinquents who enter a given system, we generally find a majority of subjects who sooner or later become rehabilitated. Two examples: In a sample of 2543 minors within the French justice system, 58% had become rehabilitated 15 years after the intervention (Breuvart et al., 1974, p. 20). In a sample of 1015 inmates of American federal prisons, Glaser (1964, p. 20) reported a 65% rate of success (no recidivism after four years). By zero effect, we mean that the introduction of whatever therapeutic measure it may be during a penal intervention does not change the percentage of recidivism that would normally be expected, taking into account the initial characteristics of the subjects, such as the number of previous infractions, age, and the precocity of their delinquency, etc.

There are isolated positive results

The proposition does not mean that all research without exception comes to the conclusion that the measure studied is ineffective. We find a minority of works that show there are significant differences between one measure and another. However, in most of the cases, these works have methodological weaknesses that make their conclusions suspect. The main ones are the following: the experimental groups are not really comparable to the control groups, important variables are not kept constant, the criteria for measuring the recidivism are not valid. Besides this, it is impossible to find a general trend in these studies: in one place we come to a positive result with method X but everywhere else the same method proves ineffective. Or again, we find an 'effective' method during a first experiment, but when we replicate the experiment again later, we no longer obtain the same results. This impossibility to reproduce the same effect during subsequent experiments introduces serious doubts concerning the value of the method used.

It has never been proven that we cannot treat delinquents

Although we conclude that the efforts made to date have failed, we must not conclude that it has been proven that we cannot treat offenders. All that we can confirm is that, in the present state of our knowledge, it has been impossible to prove that one measure was more effective than another for reducing the recidivism of comparable subjects. As Wilson (1980, p. 7) points out, we have not proven that 'nothing works' but no one has succeeded in proving that 'something works'. It is quite possible that we will discover an effective measure in the future; it is even possible that one such method exists already but that researchers have not had the occasion to evaluate it.

Interventions proposed

What type of interventions are concerned in the evaluative studies that conclude in failure? This is a delicate question that needs to be carefully examined.

A first answer, negative, must be that these studies do not concern the penal experience, but treatments that are superimposed on it. By penal experience I mean all that a delinquent undergoes when he enters the system: arrest, interrogation, preventive detention, trial, social investigation, prison (which is in itself a composite experience), parole, etc. Evaluative studies deal with isolated measures, group therapy, for example, not with all that a group of offenders experiences. As the penal experience is a constant among the subjects of an evaluation, it is impossible to assess its specific impact. To do so, one would have to compare offenders who had gone through the penal experience with a comparable group who had not, and this has never been done. We have every reason to believe, therefore, that this experience can have a marked positive or negative influence. It is more lasting, more intense and more brutal than almost any of the particular measures that were evaluated. As Baril (1977) observes, it is a grave error to attribute "a neutral value to all the events that precede the execution of the sentence or the programme of reeducation. It is as though this were a blank period in the life of the child, as though arrest, investigation by the police, preventive detention, appearance before the court, clinical evaluations, placement preceding the decision, the break with family ties, the numerous new people encountered, would have no influence, good or bad" (p. 16).

We often speak of the ineffectiveness of rehabilitation programmes without defining precisely what these programmes are. Since the idea of 'rehabilitation' and the related ideas of reeducation, reform and treatment have very diverse meanings,⁽¹⁾ we do not always know exactly what measures are said to be ineffective. To overcome this lack of precision, some authors found

(1) The terms 'rehabilitation' and so on convey five ideas: 1) transformation of the personality of the delinquent, 2) non-recidivism, 3) concern for the good and the interests of the delinquent, 4) pardon, 5) non-punitive measures. Some of these ideas concern the objectives, others the means - but never one specific method, which is essential in an evaluative study. The problem does not arise when we examine research that evaluates a specific measure, a variety of group therapy, for example. It arises when we wish to put forward a general proposition that would take into account all or most evaluative studies.

no better way than to define rehabilitation by what it is not. Gibbs (1975) defines it as "the alteration of an offender's behavior by non-punitive means, so that he or she will no longer violate the laws" (p. 72)(1). In a definition of this kind, the means is not specified other than to point out that it is non-punitive. From this point of view, to rehabilitate is to reduce recidivism by no matter what means as long as it is not a punishment. Under these conditions, we are faced with an assortment of disparate measures, none of which, we are told, produce results. Lipton, Martinson and Wilks (1975) have examined the effectiveness of the following methods: 1) Education and vocational training, 2) individual counseling, 3) group counseling, 4) milieu therapy, 5) medical treatment, 6) duration of sentences, 7) probation, 8) parole, 9) intensive supervision. All that can be concluded from such reviews is that the disparate experiments attempted to date have not proven very effective. But this is not very precise.

It is possible to be more specific. In effect, the large majority of treatments evaluated involve some form of psychotherapy in its broadest sense. The essential element of psychotherapy is the relationship that develops between a therapist and his patient, or between the members of a therapy group. Most of the attempts made to rehabilitate offenders consisted in the introduction of psychotherapy or the intensification of the psychotherapeutic relationship that was felt to exist already. This includes all forms of individual psychotherapy (psychoanalysis, reality therapy, client centered therapy, etc.), and group psychotherapy. Added to this are the experiments during which the intensity of the relationship in probation and parole has been substantially increased with a view to making them into therapeutic measures.

Besides these various types of psychotherapy that have been the subject of a considerable number of evaluations, other 'treatments' have been much

(1) Sechrest et al., 1979, propose a definition along similar lines: "Rehabilitation is the result of any planned intervention that reduced an offender's further criminal activity, whether that reduction is mediated by personality, behavior, abilities, attitudes, values, or other factors. The effects of maturation and the effects associated with "fear" or "intimidation" are excluded, the result of the latter having traditionally been labeled as specific deterrence."

less systematically evaluated. Among others, these measures include academic and professional training, aesthetic surgery and castration. These measures are little known, marginal, and the rare evaluations that have been made have not been conclusive.

It is therefore possible to say that the evaluative studies are essentially concerned with psychotherapy, understood as intervention based on the relationship and seeking to change an aspect of the personality of the offender.

An additional point must be made. All these psychotherapies are carried out within the framework of penal intervention that is a punitive measure, and often the treatment itself is obligatory. Therefore even if, in itself, the treatment entails no sanction, it is necessarily a punishment, understood here as the disagreeable consequence of a crime, inflicted on a delinquent by a recognized authority. According to this definition, any treatment given within the penal system is, in addition, a punishment. Hence what was evaluated were psychotherapies combined with punitive measures.

The zero effect: the basic proposition

It is now possible to state the proposition called the zero effect. When whatever form of psychotherapy is practiced within the framework of a penal measure, it does not significantly lower the level of recidivism that could have been expected had the subjects not been treated. This formulation is not very different from the more precise proposition that Martinson (1976) put forward on the subject: "The addition of isolated "treatment" elements to a system (probation, imprisonment, parole) in which a given flow of offenders has generated a gross rate of recidivism has very little effect (and in most cases, no effect) in making this rate of recidivism better or worse" (Martinson, 1976, p. 190).

The differential effect of treatments

Are psychotherapies universally ineffective or would they not be effective with only certain categories of delinquents? A certain number of

authors think treatments have differential effects: when certain ones are applied to certain offenders, they reduce the recidivism, and when they are applied to others they do not; they may even increase it.

The "Community Treatment Project" of California, a famous experiment with differential treatment of juvenile delinquents within the community, furnishes several indications that this is so. This research merits close examination, all the more so since it gave rise to some fruitful debate. Young delinquents from 13 to 19 years of age considered eligible for treatment were distributed at random either in a 'control' group - they were then placed in institution (the measure that was provided for this type of delinquent in any case) - or in an experimental group. In the latter case, they were classified according to their level of interpersonal maturity, and underwent intensive treatment adapted to their psychological characteristics, while remaining within the community. At first, the researchers who evaluated this project spoke of success; after this treatment, the subjects of the experimental group were reincarcerated less often than those of the control group. However, a close analysis of the figures published in the research reports showed that the agents of the 'Community Treatment Project' were much less ready to recommend the cancelling of their clients' parole than the agents employed by the correctional services of California who were in charge of the subjects in the control group (Lerman, 1975, p. 65). The measure of success obtained, therefore, depended in good part on the conduct of the agents and not only on that of the delinquents. This is what made Lerman ironically remark that the project succeeded in changing the behaviour of the agents, but not that of the clients. In fact, when Lerman (1975, p. 63) compared the delinquent acts committed by the subjects of the two groups, he found no significant difference: each committed as many crimes against the person and against property as the other.

In a new development, Palmer (1975 and 1978), one of the principal researchers of the 'Community Treatment Project', shows that certain categories of clients succeed better in the experimental group than in the control group. He divided the delinquents into two categories. The first group called "conflicted", was made up of boys who had an internal conflict and a relatively high level of interpersonal maturity. In the second group, called "power oriented", were boys who tended to establish relationships with others based on

manipulation and power. The conflicted subjects recidivated less often after community treatment than after a stay in institution. On the other hand, the power oriented subjects had higher rates of recidivism after community treatment than after placement in an institution (Palmer, 1978, p. 44). As Wilson (1980, p. 8), pointed out, it seems there are receptive subjects who commit fewer offences after treatment, but if there is no difference in the total figure, it means that there are non-receptive subjects who commit more than the control group after having been treated.

Similar indications had already been found during an evaluation of individual psychotherapy by Adams (1962). Clinicians were asked to classify the inmates according to whether or not they were amenable to the treatment. The receptive subjects, it seems, were intelligent, anxious, able to express themselves, aware of having a problem; they had 'insight', were willing to change and accept the treatment. After the experiment, it was discovered that these amenable inmates treated had a rate of failure (measured by a return to prison or institution) significantly lower than amenable subjects who were not treated. But, among the non-amenable subjects, the rate of failure was higher for those who were treated. It seems, in this case, that the psychotherapy had aided the amenable clients but negatively affected those who were not.

In the face of these facts, authors such as Glaser (1974), Palmer (1975) and Wilson (1980) advanced the hypothesis that a certain category of offenders profit from psychotherapy. Their characteristics are the following.

- 1 - They have a relatively high level of interpersonal maturity; they take others into account, communicate easily and have inner values. In addition, they show concern about their delinquency, which very likely gives them a feeling of guilt.
- 2 - They have a real desire to change and improve themselves, and because of this, they are willing to collaborate with the treatment.
- 3 - They are relatively uncommitted to delinquency. More precisely, they have never been strongly reinforced by their illegal activities and their legitimate

activities have not been too negative (Glaser, 1974, p. 147). They seem to waver between an honest and a criminal lifestyle. Where a diagnosis is concerned, this indecision shows there is a 'medium risk' of recidivism: the probability of their being arrested again is neither very strong nor very slight.

This said, it is obvious that therapeutic treatment will have no miraculous effect. Even with this category of subjects, it seems to evoke only a minor improvement where recidivism is concerned. On the other hand, delinquents amenable to treatment probably represent only a minority (difficult to number) of a total population of offenders. We can therefore not expect that the use of psychotherapy on a group of prisoners or probationers can improve the situation substantially, especially since there is a risk, as Wilson (1980, p. 8) points out, that this measure may result in certain non-amenable subjects committing more crimes because of the treatment.

We can conclude, then, that the 'zero effect' hypothesis is not invalidated by the real possibility that the treatments produce differential effects. The treatment does not change the overall level of recidivism. It is possible, however, that this lack of results obscures three different developments: 1 - Certain receptive offenders commit a few less crimes because of the treatment. 2 - Non-receptive offenders commit more because of the treatment. 3 - The others are not affected either positively or negatively by the treatment and recidivate - or do not recidivate - for reasons that have nothing to do with the psychotherapy. The sum of these effects, positive, negative and nil would produce the zero effect that was in question.

CHAPTER II

SIGNIFICANT FACTORS IN RECIDIVISM

Why the zero effect? How is it that, in spite of the laudable efforts of thousands of persons, the results of therapeutic projects do not measure up to expectations?

The first answer that comes to mind is that the treatments used were not potent enough to counteract the factors that drive certain person to recidivate. In other words, it is possible that the determinants of recidivism exert much more influence on the offender than all the psychotherapy used to date.

In a previous book, (Cusson, 1981) I dealt at length with the question: Why do adolescents commit offences? I answered by showing that crime is an activity more gratifying and more profitable than is usually believed, and that, within the range of means available to certain youngsters, an offense is the most accessible solution to amuse themselves, to have money and prestige or defend themselves against aggression. Clearly the reasons that impel a youngster to engage in crime are not going to disappear automatically following penal intervention. Recidivism exists for the same reasons that crime exists. However, there are a number of subtle differences. The factors inducing the initial delinquency and those behind recidivism are not entirely the same. To explain recidivism, one must ask the question: Why, after having undergone a penal measure, do certain offenders revert to crime? This presumes an explanation of how it is that certain individuals do not succeed in giving up an activity that has caused them a great many difficulties.

A study of the research on recidivism leads to the conclusion that there are four main reasons for it.

- habit
- immaturity
- handicaps
- difficulties connected with the post-penal situation

The habit of crime

Previous crimes - It has been shown, research after research, that the greater the number of offenses committed by an offender, the more he will tend to recidivate. No matter how one measures the previous criminality - by the number of arrests, the number of convictions, the number of stays in prison and even by the number of hidden crimes - it is always associated with the subsequent recidivism (Glueck and Glueck, 1930; Glaser, 1964, p. 50; Home Office, 1964; Breuvar et al., 1974, p. 184; Waller, 1974, p. 174; West and Farrington, 1977, p. 143).

To cite an example, in Glaser's sample (1964, p. 50), the rate of recidivism of prisoners who had had no previous convictions was 25% whereas, among those who had had 4 or more, it was 46%. Some would have thought that the recidivism ought to be connected, not with the previous offense per se, but with the fact that the increased number of penal interventions had had a labeling effect on those who had experienced them, forcing them back into crime. This argument cannot be upheld, however, for West and Farrington (1977, p. 143) showed that there is also a close relationship between the self-reported delinquency and recidivism.⁽¹⁾ Also there is a strong correlation between the hidden delinquency of a group of school children at a given moment and their hidden delinquency two years later (Biron and Cusson, 1979, p. 118). It is evident that past delinquent activity makes it possible to predict future delinquency.

Precocity - Another very well-known fact is the precocity-recidivism relationship. The younger an offender is when he is arrested for the first time, the more he will tend to recidivate. For example, a man who comes out of the penitentiary at the age of 25, and who had started his criminal career at the age of 12, will have a much greater chance of recidivating than another man

(1) More precisely, they showed that 60% of the boys convicted by the juvenile courts and the adult courts admitted having committed a large number of offences, whereas only 31% of the boys who had never been convicted by the juvenile courts (and who therefore had never recidivated as adults) had a high percentage of self-reported delinquency.

who is released at the same age, but had been arrested for the first time only at the age of 20. "Recidivism is more probable when the criminal career began early in life" (Wilkins, 1964, p. 56). Glaser's figures (1964, p. 38) illustrate this tendency. Prisoners who were 14 years old or less at the time of their first arrests had a 49% rate of recidivism; this fell to 27% if the first arrest took place between 21 and 23 years of age and dropped to 11% if they were first arrested after the age of 34.

The taste for crime - What is the significance of this relationship between frequent and precocious criminal activity, on the one hand, and recidivism on the other? The man who has started his delinquency at a very early age and who has committed a large number of offences, has acquired criminal habits over the years. Crime, for him, has become second nature and even a deeply rooted need. Aggression, and above all theft, have become intrinsically gratifying and exercise a real attraction for him. What Genet (1949, p. 12) calls 'their taste of crime' leaves such men powerless to resist temptation, despite the fear of being punished anew. Only with great difficulty can they forego the satisfactions provided by their offenses.

The person who has engaged in intense activity around the age of 12 or 13 has learned to get what he wants - wealth, success, pleasure - by violating the law. The many satisfactions that he derives from crime reinforce it, and make it difficult to uproot. These criminals are addicted to crime in the same way that alcoholics are to drink. And when they are forced to stop, they feel deprived. They have the impression that they are living at a snail's pace. Crime is the only activity that gives them the feeling of living intensely, sometimes of just living (Willwerth, 1974, p. 45; Aurousseau and Laborde, 1976, p. 34).

During a stay in prison, as we will see further on, most inmates seriously consider abandoning this risky career. But those who have acquired this compelling need find it difficult to resist the many temptations that present themselves once they are at liberty. The hold-up man examines a bank as though it were a treasure house. Spontaneously, almost without thinking, he examines its weak points, assesses the difficulties of a robbery and dreams

of the possible loot (Reynolds, 1953, p. 221). The pickpocket is solicited by former accomplices to commit an easy crime with no risk. It seems absurd for him to refuse.

'I made my first touch, after my return, on Broadway. One day I met the Kid there, looking for a dollar as hard as a financier. He asked me if I was not about ready to begin again, and pointed out a swell Moll, big, breezy and blonde, coming down the street, with a large wallet sticking out of her pocket. It seemed easy, with no come-back in sight, and I agreed to stall for the Kid.
(Hapgood, 1903, p. 210)

Crime is all the more attractive because it can provide a way of life that the criminal cannot afford otherwise. "It's a much simpler and easier life. I was raised up in it, grew up in it and lived all my adult life in it." (King and Chambliss, 1972, p. 157). Freedom, money easily got and spent, leisure time; the criminal lifestyle is not without charm and, in comparison, the routine life of Mr. Man on the Street seems dull and drab. Recidivism is explained not only by the inability to adjust to a normal life but also by the powerful attraction of the lifestyle for those who have known it only too well. The risk of succumbing is never ruled out.

"One thing I have found; there is no difference between a criminal and an alcoholic or a narcotics user in this respect. The danger of returning to the old life always is there. I know sometimes I get depressed and feelin' real bad and I don't understand why I'm going straight, I can't see any sense to it whatsoever. I made good money, I lived good, and I survived the penitentiary. That was part of my crime. So I don't know what I'm doing on this side of the fence."
(King and Chambliss, 1972, p. 143)

On the other hand, offenders who have committed one or two crimes later in life, and have had the terrifying experience of prison, have infinitely less chance of recidivating. For them, crime is not a habit, long reinforced and answering a need. They have not experienced the criminal way of life and it holds no fascination for them. The crimes they have committed - generally murder, fraud or misappropriation of funds - in a moment of despair have left disagreeable memories. They have no desire to repeat them. They will not give in to temptation simply because the temptation will not exist.

Immaturity

"I do not know any hoodlums who are not children"
(Genet, 1949, p. 132)

"Some men acquire wisdom at twenty-one, some not till they are thirty-five, and some never. Wisdom came to me when I was thirty-five."
(Hapgood, 1903, p. 209)

According to widespread belief, the younger a delinquent is the better his chances of readjustment. This is certainly not true of adults. From the age of 20 on, the older a delinquent is, the less he tends to lapse into crime. For example, in a sample of American prisoners, those who left the prison at 18 had a recidivism rate of 51% whereas those who left at 35 recidivated at a rate of only 30% (Glaser, 1964, p. 36). Petersilia et al. (1978, p. 49) showed that in a group of adult criminals the self-reported crime diminished substantially with age, even among those who remained active in crime. The average monthly number of offences was 3.28 during the 'young adult' period and dropped to .64 during the adult period.

This had been known for a long time. Quételet had observed that the penchant for crime develops on a parallel with physical vitality and emotional intensity, reaching its height at 25 years of age then gradually diminishing. He explained this reduction by the fact that intellectual and moral maturity comes belatedly to check criminal tendencies, which will lessen even more with the decline of physical vitality and emotional intensity.

This commonsense explanation is convincing. For the average criminal, success depends on such simple factors as the agility to jump over a fence, speed at running and brute force. These abilities reach their peak around the age of twenty and are on the decline from 30 on. For the offender, as for the athlete, the age of retirement comes early. No one has studied the phenomenon more thoroughly than Sheldon and Eleanor Glueck. Following up samples of delinquents over a long period, they noted a substantial reduction of criminality between the ages of 25 and 30. They explained this evolution in terms of maturation. The offenders who turn from crime between 25 and 35 have belatedly acquired the maturity they lacked until that time. They therefore become capable

of self-control and foresight, denial of immediate satisfaction, regard for the opinion of others and realization of the disadvantages that crime entails. In other words, they lose this form of infantilism - the improvidence, impulsiveness and irresponsibility - that characterizes delinquents (Glueck and Glueck, 1974, pp. 170-171).

The handicaps

Habitual criminals, and particularly those who continue their illegal activities after the age of 35, are, for the most part, men who are seriously handicapped. Because of this, they have neither the psychic energy required to surmount the very real difficulties of resuming a normal life, nor the personal resources necessary for a lasting adjustment. They have handicaps in three areas: family, work and personality.

The family. Prolonged recidivism is generally characteristic of offenders who had particularly bad family backgrounds. They were deprived of the presence of their father, the latter having been absent for long stretches at a time; one of their parents, or both, were alcoholics; their home was broken up by the desertion of the father or mother, by divorce or separation; the father, and even sometimes the mother, had a history of crime (Breuvart et al., 1974, p. 99). Under such conditions, it is not surprising that, from the age of 14, they often left home (Glueck and Glueck, 1943, p. 127).

Where school and work are concerned, those men are outstanding for their poor attendance at school (truancy, dropping out, etc.), their professional instability, unemployment and poor work habits (Glueck and Glueck, 1943, p. 127; Breuvart et al., 1974, p. 104 to 109).

The picture is particularly black with respect to the personal characteristics of these multiple recidivists - alcoholism, low I.Q., mental illness, nervous ailment, epilepsy (Glueck and Glueck, 1943, p. 127; Breuvart et al., 1974, p. 114).

Thus the men who become indefinitely involved in crime are very ill-equipped for life in society. They come from disorganized families that have

left them a legacy of an extremely poor upbringing and probably some hereditary defects. They have neither the preparation nor the competence necessary to succeed on the labour market. Often they have less than normal intelligence and a precarious psychological stability. As Glueck (1974, p. 150) remarked, such men do not have the psychic resources that would permit them, even belatedly, to acquire the maturity necessary to go straight. Their handicaps keep them in an infantile state of psychological evolution.

Parker (1963), in the person of 'Charlie', aptly described this perpetual offender - actually more maladjusted than offender. Charlie is a habitual petty criminal, an alcoholic, who has spent a good part of his life in prison and who is generally out for only several days or weeks, just enough time to be arrested again for a minor theft. However, one day a number of people decide to help him, and thanks to their concerted efforts, and particularly to the patience of those who gave him lodging, he managed to stay out of prison for one year. The life he leads during this year shows clearly how difficult it is for a handicapped offender to lead a normal life.

During this period, Charlie changes jobs eleven times. He is unable to adjust to even the simplest job; he is too slow, he argues with the foreman, he falls ill or he leaves of his own accord. He is offered a course in shoemaking during which time he would be paid. He accepts with enthusiasm: this is the chance he had been hoping for all his life. But after a week he leaves without notice because the pay was not good enough. Charlie is just as much a misfit in the homes where he stays. He demands a great deal of attention, refuses to cooperate, commits petty theft, criticizes, gets drunk and argues. For a time he takes refuge with his sister, but very soon has to leave; he would stay in bed all day; he would demand that his meals be brought to him in bed; at night he would go out, coming back late at night, drunk, noisy and aggressive (Parker, 1963, pp. 65-86).

The handicapped criminal is a pariah because he is incapable of living and working with people. He confines himself to a life of crime because he is unable to do better. He returns constantly to prison, not because he takes pleasure in committing crimes, but because he is unfitted to live on his own. Prison, for him, is more of a refuge than a punishment.

The post-penal experience

One can hypothesize that the problems ex-convicts confront when they return to society will affect their recidivism. So it would be useful to have a look at the situation facing offenders after their stay in prison and to estimate the impact that these events have on their decision to either obey the law or return to their criminal activities.

Work

Ex-prisoners who quickly find a job after leaving prison and those who succeed on the labour market recidivate much less than those who remain unemployed or fail at their job (Glaser, 1964, p. 359; Glueck and Glueck, 1974, p. 174). It is evident that crime is abandoned when there is satisfactory employment.

Moreover, it is a fact that ex-prisoners, at least during the first year after their release from prison, are poorly paid and must resign themselves to accepting difficult and disheartening work. Under these conditions, those who say they are satisfied with their work are rare indeed (Glaser, 1964, p. 334; Irwin, 1970, p. 134; Waller, 1974, pp. 98-99). The problem for ex-prisoners is generally not in finding a job but finding one that is the least unsatisfactory.

Also, they must want to work. There are many offenders who have an aversion to work. They will therefore look for a job merely to satisfy the requirements of parole and, if they are hired, they leave or force their boss to dismiss them. Then there are the others, the ones who really want to work. The difficulties they encounter must not be underestimated.

As Glaser (1964, p. 361) and Irwin (1970, p. 134) point out, the main obstacle to hiring an ex-prisoner is not so much his criminal record as his lack of professional training and work experience. The majority have left school prematurely, have never learned a trade, have known long periods of inactivity and have constantly changed jobs. With such a history, if they are

truthful, their job application won't make a very good impression. Employers will not be attracted by these poorly qualified candidates who present them with an interminable list of jobs interspersed with periods of unemployment.

Prisoners who have had the opportunity of working or learning a trade in prison are not much better off. Prison is not a good school as far as preparation for the labour market is concerned; its techniques and equipment are old-fashioned, and the pace of work and productivity are below normal.

What might be called the professional incompetence of criminals is not the only problem. To this is added the attitude of the population toward ex-prisoners and the measures taken to block their access to the labour market. Obviously employers do not look very favorably on a candidate who admits to a criminal past. Schwartz and Skolnick (1962) demonstrated this through a well-known experiment. They sent a job application to 100 hotel-keepers; all contained an identical 'curriculum vitae' except on one point: some mentioned that the candidate had been convicted for assault and battery. In this case, only 4% of the answers received were positive. The other applications that did not mention any judicial history of convictions received 36% of the positive answers. In the Netherlands, Buikhuisen and Dijksterhuis (1971) did a similar experiment. The result: the applications that made reference to a conviction for theft received 32% of the positive responses; those that did not, 52%. Similar attitudes concerning ex-convicts appeared in an American survey: 74% of the respondents said they would hesitate to hire an ex-offender for a responsible position (Dale, 1976, p. 324).

Other factors accentuate the difficulties ex-prisoners have in finding a job, especially a good job. Numerous laws and regulations, as well as the policies of government agencies and large companies, simply forbid the hiring of persons who have been convicted for a crime. Thus most civil service posts in the government are closed to ex-prisoners. The same is true for numerous professions regulated by laws; in many American states one must have good moral standards or have a clean record to become a lawyer, doctor, nurse, accountant, electrician, and even an embalmer, plumber, barman or barber (Dale, 1976, p. 329). If we add the restrictive policies of many corporations, particularly

in the field of insurance, finance and real estate (Irwin, 1970, p. 125), we must admit that the range of possibilities of employment for ex-prisoners is remarkably limited.

Ex-prisoners who are looking for work often hesitate between admitting their past and hiding it. In the first case, they risk an immediate refusal; in the second, they live in constant fear of being found out and dismissed. It seems that employers quite frequently know about their employee's criminal record (44% of the ex-prisoners studied by Glaser (1964, p. 353) had informed their employer); however an employer rarely decides to dismiss the person when he learns the facts. For example, Glaser (1964, p. 354) reports that only 4% of the cases of loss of employment were due to the discovery of a criminal record. West and Farrington (1977, p. 66) also found that it is exceptional for anyone to lose his job because of a past criminal conviction.

Family life

An ex-prisoner is more likely to recidivate if, after his release from prison:

- 1) He does not spend his first night of freedom at home or with his family (Waller, 1974, p. 164).
- 2) He does not get along with the persons with whom he is living and in particular with his wife (Glaser, 1964, pp. 381-382; Glueck and Glueck, 1974, p. 122).
- 3) He does not go to see his children (Waller, 1974, p. 164).
- 4) He has no friends that he sees regularly, in the event that he is a bachelor (Waller, 1974, p. 164).

This means that an ex-prisoner will succeed in turning from crime if he can establish a satisfactory relationship with a woman, if he establishes a home and if he lives in harmony with his intimates.

The family can help an ex-prisoner when he is released, first by greatly easing the shock of his return to a normal life, and then by helping

him to subsist by giving him food and shelter. In this way the family can help the ex-prisoner to keep his head above water during the first days and weeks of his freedom.

A decisive factor in the rehabilitation of offenders is the simple fact of establishing a stable and satisfying relationship with a person of the opposite sex. Why? It is reasonable to suppose that his wife or girl-friend would try to convince her partner of the dangers of a criminal career and would be all the more convincing since she herself has much to lose if she allows her man to follow a path that, sooner or later, will lead him back to prison. It is also probable that this could be a case of effect as well as cause. For if an offender succeeds in remaining on good terms with a companion, it is very likely that he has acquired the maturity and foresight necessary, first to preserve this relationship and, next, to extricate himself from the impasse of crime.

Seeing friends again

Ex-prisoners who more than once meet with friends they knew in prison recidivate three times more often than those who never see them again (Glaser, 1964, p. 391). In a group of juvenile delinquents who had spent time in a Quebec institution, 80% of the boys who, after their release, made new delinquent friends recidivated against 57% recidivism among those who made no new friends and 23% who made new friends who were not delinquents. An ex-prisoner will be much more likely to recidivate if he maintains an association with the world of crime.¹

Most delinquents are aware of the fact that it would be difficult not to act out if they continued to frequent questionable hang-outs (Waller, 1974, p. 110). However, loneliness often makes them, almost in spite of themselves, associate with those who are sometimes the only persons with whom they feel at ease.

(1) See also Waller (1974, p. 163).

"As I sauntered along the Bowery that night the desire to talk to an old pal was strong. But where was I to find a friend? Only in places where thieves hung out. 'Well,' I said to myself, 'there is no harm in talking to my old pals. I will tell them there is nothing in the graft, and that I have squared it.' I dropped into a music hall, a resort for pickpockets, kept by an old gun, and there I met Teddy, whom I had not seen for years."
(Hapgood, 1903, p. 203)

Where interpersonal relationships are concerned, the ex-prisoner who, like everyone else, needs friendship, affection and consideration, has an alternative: either he will associate with his former accomplices and prison mates or with honest people, preferably his family, his wife and his children, if he has any. The choice he makes will have a decisive influence on his commitment to crime.

Conclusion

"It has taken me all my life so far, 38 years of it, for me to reach my present state of mind. In that time I have acquired some habits. It took me a lifetime to form these habits and I believe it would take more than another lifetime to break myself of these same habits even if I wanted to. My philosophy of life is such that very few people ever get, and it is so deeply ingrained and burned into me that I don't believe I could ever change my beliefs. The things I have had done to me by others and the things I have done to them can never be forgotten or forgiven either by me or others. I can't forget and I won't forgive. I couldn't if I wanted to. The law is in the same fix."
(Gaddis and Long, 1970, p. 251)

An analysis of the factors influencing recidivism gives us a good reason for the failure of efforts to rehabilitate criminals. It is because we come up against powerful compulsions and because the means used are unable to meet the enormity of the task.

Let us consider the case of a criminal who is subject to a good many of the factors that drive him to recidivate: he is 20 years old; he has been found guilty of 10 crimes; he has committed his first offence at the age of 12;

he has never known his father; he has no professional training; he is an alcoholic; upon his release he is unable to find a job and has no family to take him in.

If we undertake to rehabilitate this man, the psychotherapy, to be effective, would have to offset the influence of the following factors:

1 - Criminal habits ingrained over his 8 years of delinquent activity and that give him a powerful motive to continue.

2 - An immaturity that perhaps will be outgrown in five or ten years but that, in the meantime, makes him incapable of looking to the future.

3 - Insurmountable difficulties in finding work because of his lack of training and experience.

4 - The loneliness that, because he has no family, drives him to seek out criminal peers.

Now think of a criminal whose likelihood of recidivating is at the other extreme. (Treatment is often given indiscriminately to very good risks as well as very poor ones.) Imagine an accountant of 40 years of age with no criminal record, who has no particular handicap and who, in a fit of jealousy, killed his wife. This man has no criminal habit and no desire to commit a further crime. His chances of finding a job are excellent. In this case too, the psychotherapy will have no effect on the recidivism, not because he will commit another crime, but because it is extremely improbable that he will do so.



CHAPTER III

THE OBJECTIVES OF TREATMENT

It is not enough to explain this failure of therapies by pointing to the variable associated with recidivism. Since there are a good number of offenders who are only moderately involved in crime, it would have been reasonable to expect that one or another of the psychotherapies tried to date should produce a minimum of significant changes. It seems that this is not the case. We must therefore look at the nature of the treatment concerned. Is it not possible that in the theory or practice of rehabilitation projects, there might be something that condemns them to failure?

The objectives of the treatment

I shall start by focussing on the grounds for the therapeutic action - its objectives and the reasons given for its justification.

Works on clinical criminology are verbose when they describe cases, but are laconic when it comes to defining the objectives of rehabilitation projects. Nonetheless, it is possible to give some details of the ends in view when psychotherapy is undertaken with offenders.

Therapeutic treatment is directed at the personality of the offender and not his crime. It is meant to deal with what he is, not what he has done. Often the objective is to restructure his whole personality. Doctor Menninger, one of the leaders in this field, speaks in these terms of the result he is seeking:

"The prisoner, like the doctor's other patients, should emerge from his treatment experience a different person, differently equipped, differently functioning, and headed in a different direction from when he began the treatment."
(Menninger, 1966, pp. 257-258)

According to this model, crime is caused by psychological malfunctioning and by attacking this cause, it will be made to disappear.

The clinician tries to answer the individual needs of the offender and help him to resolve his problems. The offender is seen as a man who has unsatisfied needs and who suffers from a problem he is incapable of resolving by himself. His crime is an indication of this problem as well as an expression of this need to be helped.

In short, the treatment has two objectives, to change the offender's psychological functioning and to help him resolve his problem.

The call of the sick and the call of the delinquent

This is referred to as the medical model. The analogy is obvious: like the sick, the criminal is suffering and, like the doctor, the psychotherapist undertakes to cure him. Let us take the comparison further. What is the goal of medicine and what is its profound significance? Canguilhem, in a philosophical study on medicine, answers that the medical clinic seeks an objective that is a question of values. He shows that there is no scientific criterion that would enable us to distinguish the normal from the pathological. The clinic is a "technique for the restoration of normality whose aim, namely the subjective satisfaction that a norm is established, is beyond the competence of scientific knowledge" (Canguilhem, 1966, p. 153). But if the goal of medicine does not stem from science, where does it come from? From the call of the sick. Medicine "is an activity that has its roots in the spontaneous effort of the living to dominate the environment and organize it according to the values of the living (...). It is first, then, because men feel ill that there is medicine" (idem, p. 156).

If the goal of medicine cannot be founded on science, this is even more true of the clinical treatment of offenders; it can only be normative. This being the case, are we justified in saying about the treatment of offenders what we say about medicine, namely, that it is a response to the call of the offender and has its roots in the latter's efforts to resolve his problems? Does one suffer from crime in the same way one suffers from an illness? And because of this suffering, does the criminal want to change?

It is far from evident that the answers to these question can be positive. There are a good number of men for whom crime and delinquency is an advantageous and agreeable activity. They derive substantial material and psychological benefits from it and, because of this, do not see why they should abandon it. From their point of view, crime is a satisfying answer to their needs, a valid solution to their problems. It has nothing to do with sickness. Crime is not experienced as suffering; on the contrary, it brings pleasure, profit and freedom. Sickness is life slowed down; crime, for certain criminals, is life at its highest level of intensity - a moment when they feel powerful and free. These are realities that clinicians do not willingly acknowledge. And when they meet a criminal who admits them, they go so far as to deny the evidence.

"For me there was never any escape from group therapy, since I was always quite candid in admitting that I was a thief because I enjoyed the stimulation of crime and because I had a marked aversion to the 40-hour week. This didn't go over at all well in a system geared to the premise that a thief is never a thief through preference, but through the workings of a warped id. Nature's abhorrence of a vacuum, I tell you, is as nothing compared to the psychologist's loathing of a simple and direct explanation."
(MacIsaac, 1968, p. 69)

"Because he believed that really, in his heart, the criminal wanted to go straight, and was too stupid or too proud to admit it. And if it wasn't either of those, then he was a poor blind soul who couldn't help himself. In my case they were wrong. They were fundamentally wrong. And that's why they all, every one of them, failed. Not one of them has ever even begun."
(Parker and Allerton, 1962, p. 142)

These men refuse to drop their criminal activities and reject the way of life proposed to them in exchange. An insignificant job poorly paid? Get up every morning to go to work? Security? Marriage? They want none of it!
(Parker and Allerton, 1962, pp. 134 and 141).

In cases of this sort the therapy never really gets off the ground. Even more so since often the client feels no guilt. In a rather pessimistic vein, De Greeff (1942) noted that although criminals often regret having done

something "foolish" for which they must pay with their freedom, they never, or very rarely, go so far as to regret having caused irreparable harm - in the case of murder - to their fellow man. Most of the time, writes the criminologist Louvain, they do not have "enough moral sense to want to change, to want to improve themselves, to wish they had never been criminals" (p. 293). And if a clinician explains to the criminal that he is not really responsible for the crime he committed, he will only remove his guilt even further and weaken the little motivation to change that might have existed.

It is always possible to answer that the therapist has an expertise that enables him to know better than the person involved what is in his best interest. He therefore feels he is entitled to act "for the good" of the client.

This position is debatable.

"To know what is good for anyone better than he does himself, only God can do. Even the father of a family, at the head of his tiny kingdom, although he is supposed to know what is good for each of his sons and guide them individually by making them work toward that goal, does so with many blunders, mistakes and often unfortunate results."
(De Jouvenel, 1955, p. 147)

These words carry even more weight when one thinks of the ignorance that exists concerning the offenders. When we realize how difficult it is to understand a criminal, especially to understand someone who refuses to speak out (and they often have reason to clam up), when we realize that the best experts only rarely agree on the diagnosis, we cannot see how we can claim to impose on the offender, in spite of his objections, our own conception of what should be in his best interest.

It would be another error to think that criminals never want to change. There comes a time when the majority of them ardently wish to change. But they want to change when crime is no longer successful, when they have learned to their cost that the only sure way of avoiding imprisonment is to stop stealing. As long as crime pays, they want no help and have nothing in common with the

sick person who consults his doctor. But when the time comes when they have had enough, it is not longer necessary to work on motivation. It is already there. The ex-prisoner who wants to change must be given concrete help; and this help would be most welcome right after his release from prison. The ex-prisoner at that point does not need to gain 'insight'; he needs to find a suitable job, a place to live and a little money. During this period of transition between a past dominated by crime and a still uncertain future, these men are often helpless and discouraged. If they get enough encouragement and friendship to acquire sufficient confidence, they can make a new life.

A double misunderstanding

Since the offender often refuses to change, the clinician does not always receive a mandate from his client. However, there is always one from society, and it is quite clear: make the offenses stop, at least during the period of his treatment, and keep his behaviour under control. After all, the probation and parole officers, the psychologists and criminologists who work in the prisons receive their salaries only because they are believed capable, in one way or another, of checking the anti-social activities of those in their charge. They are always reminded repeatedly by service directors, judges, police, journalists and politicians that "society wants to be protected".

However, this social mandate is unwillingly accepted and sometimes repudiated by clinicians. During her studies on the criminological clinic, Anne-Marie Favard (1981) found that clinicians do not easily accept their mandate. They feel they are viewed as a 'cop'. This is understandable. The therapeutic movement is based on a distinct and deliberate option in favour of the offender. What is wanted above all is to help, to humanize the fate of prisoners, to mitigate the consequences of the punishment. This decision has led clinicians to be very indulgent concerning the offenses committed by those they wish to help. During a study that consisted in measuring the attitudes toward the offenses of youths from different segments of the population, Mallewska, Peyre and Bonerandi showed that of all the groups studied, the educators in reform schools were the least severe in judging the offenses; they are even more indulgent than the young delinquents themselves. It is not the act that is important to these educators, but the person and the cause. One of

them said: "I judge the gravity by the harm done to the minor rather than the harm to society" (p. 172). When the offense is minimized to this degree, we understand why, measured in terms of recidivism, the rehabilitation projects are failures. Those who work in this field do not think delinquency is a real problem; they therefore cannot seriously think that conformist behavior is an objective worth pursuing. It is not surprising that clinicians have never tried very hard to look for methods that would have reduced recidivism effectively. This does not interest them very much.

There is a vast misunderstanding here. Society entrusts therapists with the mission of participating in the fight against crime; the latter act as though they could answer this expectation, but what interests them, in fact, is to contribute to the betterment of persons whom they regard as victims of society.

Actually the misunderstanding is twofold, first between the clinicians and the offenders they want to help and who do not want help, and next between society that wants crime controlled and those who are not interested in this aim.

The clinician is caught between a delinquent who often refuses to cooperate and an inevitably repressive social demand that his professional ideology tells him to ignore. It is impossible, therefore, to get a clear idea of his objectives. Should he help? Understand? Change the personality? Prevent recidivism? It would be impossible for him to choose between these different and perhaps incompatible goals.

This ambivalence explains a large part of the ineffectiveness of the therapeutic project. There is no clear desire to get results, at least not in terms of recidivism. The policy followed is ill-founded. It has meaning only if, consciously or not, the client asks for help. However, the latter frequently makes it clear that he does not want to change or be helped.

CHAPTER IV

THE TREATMENT-CONTROL DILEMMA

At the level of means, two ideas constantly recur in the clinical literature: A) exercising an influence through the relationship; B) avoiding punishment.

The clinical relationship. The very basis of therapy is the 'relationship', considered the best, if not the only, method of rehabilitating offenders. To describe it, the same terms constantly recur: dialogue, friendship, understanding, empathy, sympathy, confidence. According to Chazal (1978), the educators "take helpful measures by first creating a true emotional relationship between themselves and the minors assigned to their care" (pp. 128-129). In one of his books, Menninger (1966) devotes a chapter to treatment under the meaningful title "Love against hate". He explains the credo very well: love is the key to all therapeutic programmes (p. 260). Recently a French rehabilitation specialist, in speaking of delinquents, wrote: "to understand and love others one day, they have an urgent need to be understood and loved" (Tomkiewick, 1980, p. 4). These ideas are largely accepted by the practitioners of this intervention. In correctional institutions for minors in the United States, the majority of the staff believes that close relationships with the youth are "of great or absolute top importance" (Vinter et al., 1976, p. 135). In France, Favard (1981), on completion of his research on clinical intervention, concluded that the practitioners of rehabilitation value the relationship to such a point that it becomes an end in itself.⁽¹⁾

The rejection of punishment. The horror of punishment is another distinctive characteristic of the therapeutic ideology. Menninger (1966) violently denounces it in the very title of his book, "The Crime of Punishment". To treat the criminal and not punish him is a precept that, even today, is presented as evidence. Man commits crimes because he is miserable and punishment

(1) Anne-Marie Favard also noted that, in spite of the importance accorded the relationship, it has never been defined operationally, and none of its technical and practical methods are ever specified.

can only reinforce him in his revolt. "It is not by adding further frustrations that one will cure a youngster whose asocial state is the result of psychological suffering and frustrations" (Tomkiewick, 1980, p. 4). It obviously follows from this that no form of treatment should include punishment.

The shift to repression

To love, not punish, are very fine ideas. But what happens in practice? The strange thing is that no lasting programme for the treatment of delinquents actually applies this theory. One starts with an ideal resolutely hostile to any repressive measure and within a short time there is an apparently inevitable resurgence of punitive measures. The practice never corresponds to the theory. How is this possible? In the following, I shall try to trace the steps of this shift.

1 - The ineffective relationship. It all starts with a fact that is apparently ignored by a good many partisans of the treatment: the relationship itself is not a very effective means of behaviour modification. It has never been proved that the simple fact of establishing a positive relationship with a delinquent leads to a change of conduct. In fact, there are indications that a good relation with offenders has no impact on behavior. During a study in two Quebec institutions for juvenile delinquents, I found little correlation between the quality of the relationships between the educators and the youth and the behaviour - especially the aggressive behavior - of the latter during their stay at the institution (Cusson, 1974A, p. 91). In the matter of parole, Waller (1974, p. 134) made the same observation: a good relationship during the first months of the parole did not seem to have any effect on the probability of ex-prisoners recidivating. An offender may have an excellent relationship (and this often happens) with a clinician and still continue to behave the way he likes. It is not enough to establish a relationship of confidence with a delinquent to truly influence him. Redl and Wineman (1951, vol. I) saw this clearly:

"An educator may be loved by a child, may even be the object of a crush, may be extremely popular with the children, but may still have not the slighted "influence" over them."
(Redl and Wineman, 1951, p. 22)

Hence the chief method of the therapeutic undertaking, the one advocated by some to the exclusion of any other, does not significantly influence the conduct of those taken in charge.⁽¹⁾ What happens then?

2 - Misbehaviour. Sooner or later, the clinician realizes that, in spite of the confidence, the understanding and empathy, his clients continue to misbehave. Neither the thefts nor violence stop. He sadly admits to himself that his policy of the outstretched hand prevents neither the duplicity, the lying, the manipulation, the impertinence nor the refusal to cooperate. When he directs group therapies the situation is often intolerable; the groups are out of control, the participants take advantage in order to complain or to brag cynically about the most revolting crimes (Carr, 1975, p. 186).

In the "Community Treatment Project" the list of reasons most frequently cited for placing a ward in detention gives us a good idea of the problems that confront one during the treatment of a group of juvenile delinquents (Lerman, 1975, pp. 36-37). (The figure indicates the number of times a detention measure had been taken).

Auto theft:	26
Burglary:	11
Fighting	4
Uncooperative attitude toward the programme:	18
Absence from the group sessions:	9
Misbehaviour at school:	24
Truancy:	17
Trouble in home or foster home:	15
Running away:	12
Curfew violation:	10
Drinking:	8

Thus during the treatment, whether in institution or in the community, the delinquency, the maladjustment and the refusal to cooperate are manifested frequently. Why? Perhaps because the clients have little motivation to change. Perhaps because, like all adolescents, delinquents like to amuse themselves at the expense of persons in authority. One thing is certain: the clinical relationship is not the solution.

3 - Resignation. A good many practitioners are discouraged by their failure. This may explain the frequency of resigned attitudes among probation officers, educators, and prison psychologists; they become uncommitted and give way to passivity and routine. When a case poses no problem, they ignore it and when it becomes obvious that they must intervene, they do the minimum. The clinician becomes a bureaucrat for whom a good client is one who is seen as little as possible.

"Then I went over and reported to the parole office. It's just routine. You go up there and they tell you the rules. If you need any advice come down and see us; they don't wanta be bothered with you, you're here and the quicker they get rid of you the quicker they can sit down and read their newspapers and talk about politics."
(Martin, 1952, p. 168)⁽¹⁾

Gone is the sacred fire, gone is the desire to rehabilitate, gone is the involvement and hope. The relationship with the client ends in trivialities, and because of that is much less frustrating.

"To be fair, I must say the probation officer who had most to do with me when I was under him on licence after my Corrective Training made no great effort to reform me. From the start he accepted me for what I was: I suppose he thought he could make more profitable use of his good advice on others. It was mostly a case when he saw me of: 'Hello, how are you, where are you living, are you still working? Yes, well, you're O.K.'" Even when it was obvious I wasn't working, he didn't much want to know. Yet there were times when I went to see him and we had long talks and arguments about politics, books, the world situation, things like that. But never about my after-care."
(Parker and Allerton, 1962, pp. 132-133)

Others take refuge in evaluations and diagnoses. Most of the time is spent in studying the personality of the clients without really being concerned about the practical implications this might have. This tendency to overevaluate is particularly frequent among psychologists. They do interminable anamneses, make multiple tests and write out long reports that are characterized

(1) See also: King and Chambliss, 1972, p. 121.

by their uselessness. Favard (1981, pp. 5-6) pointed out that the diagnoses are not connected with either the factual data concerning the subject (social investigation - behaviour) or the treatment. The diagnosis floats in the void without any connection with either the nature of the problem or with the solution to it.

4 - Refusal to remain helpless. But not everyone easily agrees to a lack of commitment in his field, especially if this involves daily contact with the delinquent. There comes a time when a person feels the need to do something about the accumulation of disorderly conduct that threatens the very survival of the rehabilitation programme in which he is working. A programme for the treatment of delinquents simply cannot be carried on without at least a minimum of coercion. The projects which persist in not punishing survive with great difficulty for a year or sometimes two, but must finally be dropped. The reasons for this failure are simple.

Assured of impunity, the delinquents becomes uncontrollable. If the programme is of a residential nature, there is chaos inside, and outside, there is constant looting of the homes in the neighbourhood. If it is a community programme, the clients simply continue to violate the law. This draws protests from all sides, the victims, the neighbours, the police, judges, and journalists. The institution becomes so discredited that the sponsors take fright; funding is stopped. Or again, the judges and their collaborators decide to no longer place a child in this infamous place.

Many practitioners foresee this and decide to act before it is too late. But what shall they do? What is to be done when kind words are obviously ineffective? How does one force the compliance of recalcitrants?

The law of the survival of punishment

One day, the clinical staff finds the answer. To stop the disorderly conduct, the last resort is punishment. This, Warren and her collaborators of CTP discovered.

"Temporary detention is one method of control which has been effective with many wards. More importantly, it is the only method of control which has proven effective with some wards. This treatment technique is vital to Community programs and the further restriction or elimination of its use may jeopardize the success and survival of these programs."
(in Lerman, 1975, p. 43)

This explains why, although the treatments have always been put forward as alternatives to punishment, the latter has never disappeared from the treatment programmes themselves. What we have here is actually a law, which I call the survival of punishment. It can be formulated in the following terms:

Every lasting programme for the treatment of delinquents includes unmentioned punitive elements that no one can eradicate.

Several years ago, I participated in a survey of residential centres that house young delinquents and children in need of care. (Batshaw, 1975). Intrigued from the beginning by the fact that, in spite of the denials, punishment seemed to be a current practice, I asked the director of all the establishments I visited some questions about the system of sanctions. A typical conversation went something like this:

- Do you ever punish a child in your establishment?
- No sir! It is against our principles!
- But what do you do if a resident hits an educator?
- In that case, it is automatic: 48 hours in isolation. (Isolation in a residential centre is equivalent to solitary confinement in prison). But it is not a punishment; it is a consequence of the act.
- And if he runs away?
- Our rules also make provision for a consequence of isolation...

I was never able to find one residential centre where there was no punishment. The commonest punishments were (and still are): loss of the right to move about freely on the campus, loss of the pocket money provided daily, loss of permission to go out, loss of the right to telephone, isolation in a locked room or in a specially converted cell, extension of the stay in the institution, transfer to a security detention centre.

In the United States, in a representative sample of correctional institutions for minors, the most frequent punishments mentioned were: taking away points, separation from others, keeping youths longer, transfer. (Vinter et al., 1976, p. 115).

The "Community Treatment Project", considered by the experts to be a very good programme of treatment within the community, set out to demonstrate that it is possible to treat delinquents while keeping them in their natural surroundings. However, it was shown that the agents of the C.T.P. were resorting to temporary detention as a control measure and on a very large scale. Lerman (1975), after a thorough analysis of the project, calculated that in 1968, 89% of the youngsters participating in the programme had been placed in temporary detention at least once (p. 36). Over a period of 16 months, every client of the C.T.P. had spent an average of 56 days in detention (p. 40). Lerman took a malicious pleasure in calculating the relationship between the time the youngsters spent in detention and the time they were actually receiving treatment (individual therapy, group therapy, family treatment, etc.). He arrived at the following: during a 16 months period, the clients were treated for a total average of 5.7 days whereas they had spent, still on the average, 56 days in detention. In a sense, they were thus punished almost ten times more than they were treated!

Punishments exist in probation and parole as well, one of which is of major importance - suspension, which generally means the delinquent goes to prison or an institution. After an observation of probation officers, Emerson (1969, p. 221) states that the threat of incarceration is the main source of pressure in probation. When the agent learns or suspects that one of his clients is behaving badly, he threatens to suspend his liberation, adding that he is giving him one 'last chance'; then, if the behaviour is repeated too often, he has to carry out his threat.

Similar incidents can be observed in most of the clinical treatments of offenders. Even the diagnosis can be used in a punitive way. Psychologists and psychiatrists will sometimes react to the refusal of a stubborn patient to cooperate by making a diagnosis that will lead to a more severe sentence; it

is enough for them to write "potentially dangerous", "psychopathic", "delinquent character structure" etc. Prisoners know that the therapist have real power, especially when the judges or commissions that have the final say are overburdened and tend to blindly follow the recommendations submitted to them by the experts. They know, too, that they had better not talk too much. 61% of the young residents in American correctional institutions agree with the remark: "If you tell too much about yourself to staff here, the information will probably be used against you". 32% of the youngsters housed in group homes are also of this opinion (Vinter et al., 1976, p. 118).

In sum, the process that leads to this omnipresence of punishments is the following. In a group of delinquents submitted to treatment, various forms of deviance inevitably occur: theft and assault as well as disobedience, brawls, escapes and riots. The staff can hardly tolerate these goings on; they make life impossible and draw criticism from the outside. Inevitably, the reaction is recourse to force. But how does one avoid escalation when one is caught up in the system? Threats are not enough? Carry them out. The loss of privileges does not daunt the recalcitrants? Isolate them in a cell, but don't call that punishment.⁽¹⁾ For to admit that punishment is used would be tantamount to admitting that therapeutic treatment is not basically different from traditional repressive methods. The treatments were developed as a reaction against these methods and have always been presented as alternatives that are more humane and more effective. To admit that one has recourse to the good old strong-arm method would be to admit failure.

(1) It seems that the only known way to avoid this escalation of repressive measures is the combined use of selection and expulsion. By selection, at entry to the programme, only those likely to cooperate are accepted. By expulsion, those who stop showing good intentions during the treatment are expelled. This weeding out makes it possible to keep the 'good' and eliminate the 'hardened' cases.

The treatment - control dilemma

Thus we see how the clinicians resign themselves to a strong-arm therapy that is far from their ideal. From this moment, they begin to play a game that is neither too clear nor too honest; it cannot be because it is based on the negation of an important aspect of the reality, namely the inevitable conflict between the delinquent and society. It was thought possible, through psychotherapy, to be able to protect society without coming into conflict with the delinquent. But from the moment antisocial activity is profitable for its author, there seems to be no way of stopping him without putting a price on it in the form of punishment. And from the moment experts have the job of protecting society, there seems to be no way of avoiding recourse to repressive measures. But rather than having the courage to acknowledge this inevitable conflict, therapists claim to be on the side of the delinquent without being against society, and on the side of society without being against the delinquent. This false situation inevitably has led to a 'therapeutic-repressive' relationship, a regular fool's game where the practitioner claims to act for the good of the delinquent, but, as he is aware that the citizens demand protection, he is necessarily led to impose restraints which he hides behind pseudo-scientific jargon. The prisoner, however, is not fooled; even if the clinician speaks to him of understanding and assistance, he knows very well that he is subject to coercion: the person in front of him, making a show of benevolence, is quite capable of making a report that will prolong his incarceration. One of the only choices he has is to make believe that he is full of good intentions and on the road to rehabilitation. Thus the therapeutic-repressive relationship quickly degenerates into a case of reciprocal manipulation, the therapist leading the other to believe he is there to help him whereas he has a clear mission of control, and the delinquent claiming to be engaged in a process of rehabilitation whereas his only interest is to escape the coercive power that is being exerted over him.



CHAPTER V

JUSTICE AND REHABILITATION

The idea of justice and the legitimacy of therapeutic action

The rehabilitation of criminals is an ideal inspired by charity, not by justice. In addition, its partisans, citing individualization, explicitly rejected principles of justice, such as equality and proportionality. But this rejection of the ideal of justice left a void. It left the clinicians without the means to define the limits of their interventions. The borderline between what is legitimate and what is not has never been drawn. What is more, the actual justification of the treatment has never been clearly established. This leaves a whole series of questions unanswered.

Do we have the right to treat delinquents? Unlike the patient of a doctor, the criminal does not come of his own accord to the therapist's door to ask for help. Most of the time, we make him offers that he cannot refuse: either you participate in community treatment or go to prison; you will attend group therapy sessions if you want to be released soon. The question of whether we have the right to treat delinquents arises because it is more or less obligatory. Since any obligatory measure involves a loss of liberty, as such, it should be considered a punishment. In this case, why should the rules of justice aimed at limiting excesses in the application of punishment not be applied to treatments that are not entirely voluntary? If it is pertinent to speak of the right to punish, it is also pertinent to speak of the right to treat.

Should freedom of conscience be respected? Psychotherapy focuses on the personality of the delinquent, including his convictions and even his way of thinking. Does this not constitute a threat to his freedom of conscience and opinion? As Léauté (1972, p. 759) points out, in our country, we recognize the "right of every citizen, a right opposable to the State, to choose his own criteria of Good and Bad, on condition that by his conduct he does not violate the laws of this same State".

Nothing is a greater threat to liberty than trying to change people's conscience against their will. At the time of the Inquisition, this was the justification for the most atrocious tortures. Without going to that extreme, we are using practices today that delinquents may well find unjust. A resident in an institution is sometimes punished because he has refused to confide in his educator and, as we have seen, detention for refusal to collaborate was commonly practiced in California. Have we the right to punish people because they refuse to talk about their problems?

Is it just to impose punishment out of proportion to the offence? In keeping with the sense of justice of most citizens, the penal codes are based on the idea that punishment must be in proportion to the crime. The suffering inflicted on an offender must not be greater than that for which he is responsible. Therapeutic ideologies reject this rule: one does not punish a crime, one adapts some form of treatment to the person's individual needs; from this point of view, proportionality is not pertinent. The result: A delinquent could be incarcerated for sassing a teacher (Lerman, 1975, p. 82). The juvenile courts, which are largely based on the philosophy of rehabilitation, follow this ideology fairly closely. There is very little relationship here between the gravity of the infractions and the severity of the sentences. Very often children who commit "offenses" as minor as truancy or running away from home are placed for two years in the most prison-like institutions, whereas adolescents found guilty of a good many automobile thefts and burglaries are placed on probation or simply given a warning.

The rejection of proportionality has led to the system of indeterminate sentences. Provision is made for the guilty person to remain in prison until such time as he is rehabilitated or for a period of from one to twenty years, for example. Experts decide the date of release.

This practice is all the more dangerous in that it is based on an illusion, namely, that it is possible to know the exact moment the delinquent is rehabilitated. In the present state of our knowledge, however, this is totally impossible. The situation here is in no way similar to what occurs in medicine. Generally, the doctor knows when a patient is cured or when he can allow the

patient to convalesce at home without any risk. In the case of delinquents, we have no reliable way of knowing when he is "cured". This ignorance was acknowledged in 1833 by Beaumont and Tocqueville. Their analysis is still valid today. "How can figures show the purity of soul, the delicacy of feeling and the innocence of intentions?" (p. 149). It is all the more difficult because, on the one hand, it is in the prisoner's interest to make believe he is rehabilitated and, on the other, the person who evaluates him tends to be credulous. In effect, the criminal wants his freedom and is therefore interested in showing "profound remorse for his crime and a strong desire to return to the path of virtue. Even if these sentiments are not sincere, he expresses them nonetheless. On the other hand, the well-meaning man who has devoted his whole life to the pursuit of an honourable mission is himself influenced by a passion that can cause mistakes. Since he ardently desires the reform of criminals, he easily believes in it" (Beaumont and Tocqueville, 1833, p. 149).

It is just to treat two men differently who have committed exactly the same crime? Equality is a basic requirement of justice; men who are similar according to a pertinent criterion should be treated in the same way. Most people would find it just that two men who had committed the same crime should receive equal punishment. Here again, in the name of individualization, this idea was rejected - with contestable results, to say the least. On this point, Wilson (1975) put forward an example that speaks for itself.

"If rehabilitation is the goal, and persons differ in their capacity to be rehabilitated, then two persons who have committed precisely the same crime under precisely the same circumstances might receive very different sentences, thereby violating the offenders' and our sense of justice. The indeterminate sentence, widely used in many states, is expressive of the rehabilitation ideal: A convict will be released from an institution, not at the end of a fixed period, but when someone (a parole board, a sentencing board) decides he is 'ready' to be released. Rigorously applied on the basis of existing evidence about what factors are associated with recidivism, this theory would mean that if two persons together rob a liquor store, the one who is a young black male from a broken family, with little education and a record of drug abuse, will be kept in prison indefinitely, while an older white male from an intact family, with a high

school diploma and no drug experience, will be released almost immediately. Not only the young black male, but most fair-minded observers, would regard that outcome as profoundly unjust." (p. 171)

Are arbitrary decisions acceptable? According to another principle of justice, decisions that affect a person's well-being should not be made arbitrarily but according to rules clearly stated in advance. In this way, men are subject to the laws and not to the discretionary power of others and the decisions have the advantage of being foreseeable and impartial. This principle is obviously not recognized in the therapeutic philosophy. It claims to intervene, not according to the rule, but to 'clinical sense'. It refuses to be limited by any rule. The clients, then, are at the mercy of the goodwill of the therapist. The ex-prisoner never knows when or why it is decided to suspend his parole, and the resident of an institution never knows when or why he will be released.

The requirements of justice and the effectiveness of treatments

These questions naturally pose problems of morality and justice. But they might also have a detrimental effect on the results of psychotherapy. Offenders can easily question the legitimacy of the treatments they are made to undergo, especially their coercive nature. They can point an accusing finger at the disproportion between the crime and the punishment. They compare their punishment with that of friends who had done the same thing and they protest against the arbitrary nature of certain decisions. What cooperation can one expect from a client who has such good reason to challenge the rules of a game which, in order to be played, requires his participation? It is true that, whatever the rules were, a good many delinquents would say they were victims of injustice. But are we not taking the risk, by so much ambiguity, of accentuating this feeling they have of being unjustly treated?

Such a situation can easily throw the therapist off balance. How can he be insensitive to the protests of those in his charge? After all, he too has a sense of justice. He, too, questions the legitimacy of his action. Harassed by his clients, he will begin to doubt his right to treat them; he

will be bothered by the disproportionate nature of certain measures; he will not know what to say if reminded that two identical crimes were followed by totally different measures; he will be at a loss if charged with being arbitrary. As a result, he will become indecisive, hesitant and inconsistent in his work. Held back by his guilty conscience, he will not dare to fully carry out the logic of the treatment model. Especially if he is working with groups, he will have to take these claims into account and to compromise with his ideals.

Conclusion: The zero effect

In the preceding pages, we have amassed a wealth of reasons why psychotherapy has never produced results that are really any different from traditional repressive measures. These reasons can be summarized as follows.

Psychotherapists assume that the offender wants to change. However, this is not always the case. There are a good many prisoners who remain attached to a way of life that, whatever we may say, has advantages as well as drawbacks. And in the event that the offender has decided to opt for a new life, it will not be easy to eliminate the criminogenic factors that drive him to recidivate: deeply ingrained deviant habits, immaturity, lack of foresight and perseverance, poor work habits, and finally the numerous difficulties the ex-prisoner encounters on his release from prison.

The human being - and not only the offender - is not a piece of clay that can be molded as one pleases. He stubbornly resists changes forced upon him 'for his own good'. And the relationship with someone who does not want to be helped quickly degenerates. As Wilson remarked, this failure is no surprise. To believe that it could be otherwise is to be ignorant of human nature.

"It requires not merely optimistic but heroic assumptions about the nature of man to lead one to suppose that a person, finally sentenced after (in most cases) many brushes with the law, and having devoted a good part of his youth and young adulthood to misbehaviour of every sort, should, by either the solemnity of prison or the skillfulness of a counselor, come to see the error of his ways and to experience a transformation of his character. Today we smile in

amusement at the naiveté of those early prison reformers who imagined that religious instruction while in solitary confinement would lead to moral regeneration. How they would now smile at us, at our presumption that conversations with a psychiatrist or a return to the community could achieve the same end. We have learned how difficult it is by governmental means to improve the educational attainments of children or to restore stability and affection to the family, and in these cases we are often working with willing subjects in moments of admitted need. Criminal rehabilitation requires producing equivalent changes in unwilling subjects under conditions of duress or indifference. (Wilson, 1975, p. 170)

This failure can also be explained by the enormous gap between theory and practice. "When one looks at actual programs - at what had actually been tried - it turns out that much of what is called rehabilitation cannot reasonably be expected to effect real changes in behavior over time" (Sechrest *et al.*, 1979, p. 35). The most cursory examination of treatment as it exists makes one highly skeptical of its capacity to change anything at all in the subjects treated. We almost inevitably find a wide gap between what Ellenberger (1976, p. 1821) calls projected processes and real processes.

This situation is not new. Rothman (1980) has shown that the entire history of the therapeutic undertaking in the United States is marked by this incapacity to translate principles into facts. From the start, the probation and parole services were functioning in a way that had nothing to do with the logic that served to justify them. Almost everywhere, ill-prepared and overburdened officers wrote superficial reports that were followed by arbitrary and unpredictable decisions. What is called supervision was reduced to a few brief and episodic contacts during which some stereotyped questions were asked that served as an introduction to lectures on the virtue of honesty and punctuality (Rothman, 1980, pp. 91-92).

If it was impossible to put the theories into practice, it is not only because of a lack of means or of competent therapists, it is basically because the principles that the latter had the task of putting into effect are not valid.

They are not valid because they rely on a measure, the clinical relationship, that does not evoke a true motivation to change and that, because of

this, simply does not succeed in changing the behaviour. Without real influence, the clinicians have to fall back on control and punishment. And so the projected programme progressively changes into a repressive system, strangely similar to that it set out to supplant.

The therapeutic model has never been fully implemented because it ignores some essential components of the problem. Because of this, it causes a serious malaise in the very persons whose task it is to implement it. Torn between the interest of society and that of their clients, they are tempted either to repress or withdraw. Treatment personnel are fed on theories, noble certainly, but theories that clash with their common sense and ignore their sense of justice.

But is there truly a theory to apply? The empiricism that characterizes the philosophy of rehabilitation reduces it to an empty shell. Nothing is specified, neither the causes of delinquency, which are said to be multiple and complex, the priorities nor concrete solutions. All that is asked of the clinicians is to gather all the facts concerning the case and to individualize accordingly. But which facts are important and which are not? How does one know what is worth keeping and what can be ignored and what interpretation to give the facts observed? The answers are not available. The practitioner is left either to fall back on his clinical sense or accumulate disparate information with the hope that the facts will speak for themselves.

This empiricism leaves the clinician without an organizing principle, without orientation, without any criterion by which to make a decision and without a method of procedure. Under these conditions, how can he do a good job when its very meaning escapes him!

Still today, expressions such as diagnosis and differential treatment cannot hide the ignorance in which we find ourselves. As soon as we try to take stock of the useful knowledge at our disposal, we find that there is very little we know that can be regarded as effective guides to intervention (Tremblay, 1981, p. 17). Our ignorance is very often ignored: we do not have any solution but we refuse to admit it.

We understand, then, why disoriented practitioners are forced to insidiously lapse into a crypto-punitive practice, the therapeutic-repressive relationship. This, like the heads of Hydra in the legend, keeps reappearing in spite of efforts to make it disappear because, without it, treatment programmes could not survive. But then, therapeutic intervention is not really different from traditional penal interventions. Only the labels have changed. The zero effect should not be surprising: similar measures produce similar results.

PART II

MORALITY

CHAPTER VI

DO DELINQUENTS HAVE THEIR OWN MORAL PRINCIPLES?

Since we obviously have not yet found an effective method of rehabilitation, we must now look for other solutions. But this time, rather than looking at the most recent forms of social control, we shall inquire into the method that is probably the oldest of all - morality. Why speak of morality here? Because it tries to persuade us that it is wrong to steal and to attack our fellow man. We must not forget that in people's eyes these are not only infractions against the law; they are also seen as manifestations of evil. For most of our fellow citizens, crime is just as much, if not more, a question of morality as of law.

To limit the criminal activities of their members, societies are not content to make theft and aggression just illegal, they also have made them immoral, defining them as evil. We may assume, moreover, that it was primarily because these acts were considered immoral that their criminal character was recognized by the law, the codes simply confirming people's judgment.

In order to examine morality, we must study informal social control, the influence people have on one another to create conformity - the pressure of parents, friends, peers and neighbours.

From a moralistic morality to an immoral morality

Our ideas about morals have undergone a distinct change over the past two centuries. According to the classic conception, morality is a set of rules of conduct considered absolutely valid and based on the idea of good and bad. In this perspective, the moral rules have an essential role to play in the preservation of solidarity, confidence and justice among human beings. By definition, then, morality is good and it is universal. It is necessarily in conflict with crime, for crime is an immoral act that is made possible only because of the weakening of its author's system of values.

This classic view of morality was at one stage seriously questioned by relativist philosophies. According to these, what is good in one group can be bad in another, with no possibility of finding a universal criterion by which to judge. Sociologists and anthropologists had an important role to play in bringing about an essentially relativist conception of morality. Here, for example, is how Lévy-Bruhl (1900) defines it: "We call 'morality' the sum of conceptions, judgments, feelings and usages relating to the respective laws and responsibilities between men, recognized and generally respected at a given period and in a given civilization" (p. 101).

This transformation was then followed by a broadening of the concept of morality. It no longer referred to only the rules concerning good and bad, but to all types of rules. Thus Piaget (1932), the Swiss psychologist, begins his "The Moral Judgment of the Child" with the statement: "All morality consists in a set of rules and the essence of all morality is to be sought in the respect the individual acquires for these rules" (p. 1). On the basis of this, he believes that children's attitude toward the rules of a game of marbles is a moral fact. Similarly, in both anthropology and sociology we see a more and more widespread tendency to equate morality with the customs and usage peculiar to a group.

Once morality was made relative and emptied of its substance, it was natural for the term to be replaced - notably in sociology - by the more neutral expressions 'norms' and 'culture'. At the same time, the moral fact itself faded as a chosen field of study. Among the exceptions is the research on the moral values of adolescents headed by Denis Szabo during the 60's (Szabo, Gagné and Parizeau, 1972).

This development paved the way for what might be called a theory of immoral morality. Whereas in the traditional conception it was inconceivable that morality could lead to crime, it becomes quite possible as soon as we speak of norms and culture. If morality is not universal in meaning, it may be supposed that moralities diverge to the point of being contradictory, with the result that one group could advocate what would be a crime in the eyes of the members of another group.

Concerning the relationship between morality and delinquency, we have two opposing hypotheses. According to the first, based on the classical philosophy, morality can but prevent crime. Therefore moral values must be instilled in people. According to the second, which is derived directly from modern cultural relativism, morality, or more precisely, the norms of conduct of a group, can prescribe acts that we call crimes. The offender would then be simply someone who is conforming to the norms of his sub-culture - norms that deny the immoral nature of infractions defined as such by a contested authority.

The opposition between the two hypotheses must not be minimized. They are opposed on a number of stands concerning man, society and crime. In the view of traditional morality, man is fallible; in sub-culture analysis, he is conceived as a being who conforms completely to the norms of the group to which he belongs. For the former, within all societies and even among mankind, there is a set of values shared by all; for the latter, norms of conduct are relative and divergent. The former view crime as a sin, the latter believe it is obedience to a sub-cultural norm. One believes the origin of the problem is to be found in the weakness of moral convictions, the other in the content of the norms of certain groups.

Conflict of cultures

We will now examine some theories concerning the conflict of cultures. This is actually only one of the denominations given a theoretical corpus that goes back to Gabriel Tarde (1890) and the laws of imitation. Also used are the terms differential association (Sutherland, 1969), cultural transmission (Shaw and McKay, 1942) and sub-culture (Cloward and Ohlin, 1960; Wolfgang and Ferracuti, 1967). The basic idea is that certain groups transmit norms of conduct to their members that are in conflict with the law, and by so doing, push them into crime. The theory can be broken down as follows:

- 1 - Within a State there are groups (sub-cultures) that have norms in opposition to the rules of conduct sanctioned by the Penal Code of that State. What is permitted in the former is prohibited in the latter. What is more, some acts that are obligatory in a given group are forbidden by law.

2 - People have a remarkable ability to submit to the rules of the group to which they belong.

3 - In a situation of culture conflict, respect for the norms of one's group is an infringement of a rule promulgated by the State. Mere obedience to the norms of the sub-culture leads ipso facto to the violation of the law.

4 - Sometimes the conflict may also be internalized. This is true of 'cultural hybrids' that have incorporated two sets of contradictory norms (Sellin, 1938, pp. 67 & 69). They are therefore disoriented and skeptical, a state favourable to delinquency.

5 - The more well-integrated a person is in a sub-cultural group, the more he will respect its norms and, because of this, the more he will tend to commit infractions.

6 - From the strict point of view of culture conflict, true deviance does not exist any more than infringement of the law. There is only conformity to divergent norms and different points of view concerning the same acts.

Now we will compare the theories with the facts. In the discussion that follows, I shall try to answer three questions.

Is there any conflict between the norms the citizens obey and the stipulations of the criminal code or is there a consensus?

Do delinquents approve or disapprove of the acts forbidden by law?

Do delinquent groups have a criminogenic influence on their members? If so, how?

Conflict or consensus?

In every major society there are norms that contradict one another and, more specifically, are in conflict with the prescriptions of the penal

code. This, then, is the point of departure necessary for sub-cultural theories of delinquency. Sellin shows that, within a nation, there can be divergent norms concerning the same act; what is considered acceptable in one segment of the population is disapproved of in another. As Sellin explains, sometimes those in authority in a given society introduce provisions in the law that are against the moral convictions of certain groups. From this point of view, as Boyer (1966) ironically points out, crime can be defined as an "act considered prejudicial to society by a group of men who have the power to enforce their opinions by law." (p. 9). Sellin (1960) gives several examples of this type of conflict: the prohibition, in the United States, of the purchase, sale and possession of liquor, whereas a good many Americans were not at all against the consumption of alcohol (p. 882); the ban on betting, also in the United States (p. 886); the conviction among certain minorities that honour must be defended by violence and adultery punished by death - convictions that are obviously not shared by the legislators (pp. 828-829); the acceptance of stolen goods in certain poor families (p. 830).

The preceding analysis seems all the more irrefutable in that it is in complete accord with modern ideas. For anyone who has ever been at all exposed to the world view conveyed by the social sciences, it is self-evident that every group has its own norms of conduct, that there is no consensus on moral values; that there is no guarantee that the law and morality will coincide in every respect. For such a person, it would never occur to them to doubt anything so obvious.

But are these facts really pertinent to the study of crime and delinquency? It is clear, for example, that the conflict of norms concerning alcoholic beverages or betting cannot help very much to account for most offenses. There is a distinction to be made here between three things: first the conflicts of norms that have nothing to do with crime, secondly those that have a marginal influence and thirdly those that have a direct influence on the phenomenon. Let us look at this in more detail.

1 - There is no question that in contemporary societies the moral standards are many, divergent and contradictory. Politics, ideologies, work, the family, sex, religion and education are all battle fields where opposing

conceptions of good and bad confront one another. However, most of these conflicts have no direct pertinence - or very little - for the study of crime and delinquency: a person can be of the right or left, believe in God or be an agnostic, approve or disapprove of sexual freedom without disagreeing with the laws forbidding theft and violence. These conflicts of norms are not pertinent because generally they do not constitute a conflict between the law and morality. In western democracies, the laws do not prohibit leftist ideas, lack of religious belief or most sexual relations outside of marriage.

2 - There are conflicts, however, between the norms of certain groups and specific provisions of the law - conscientious objection, drugs, gaming and betting, for example. It is to such activities that the theory of culture conflict really applies. However, most of these acts are victimless crimes and therefore crimes we decided to exclude from our field of study.

3 - There remains a third type of culture conflict that, if it existed, would be pertinent to delinquency as it is understood here: opposition between the laws and moral convictions of certain groups concerning acts that cause obvious harm to others. But then the question arises: how extensive are normative disagreements among the population on the question of theft and violence?

The research on public attitudes to crime provides some answers to this question. The results obtained by Newman (1976) are particularly convincing. During a vast crosscultural study, the following question was asked of a sample drawn from six countries: "Do you think robbery should be prohibited by law?" In India, 97% of the answers were positive, in Indonesia 99%, in Iran 98%, Sardinia 100%, the United States 100%, and Yugoslavia 98% (Newman, 1976, p. 116).

Clearly robbery is universally condemned. But this crime is a serious one. What do people think of acts that, although they cause obvious harm to others, are not as serious? Recently Tittle (1980) did a survey among a sample population in three American states (New Jersey, Oregon and Iowa) in order to study the impact of sanctions on deviance. He asked the respondents to give their opinion about various deviant acts. 97% of the persons questioned considered assault morally unacceptable, 95% theft of \$50.00 and 90% theft of

\$5.00 (Tittle, 1980, p. 48). To the question "Should these acts always be prohibited by law?", the percentage of positive answers was 94% for assault, 96% for theft of \$50.00 and 94% for theft of \$5.00 (pp. 58-59). Thus even in the case of offenses of medium or little gravity, an enormous majority of people are convinced they are reprehensible acts. These facts are all the more significant in that all the studies on the perception of crime show that there is a high level of agreement from one social class to another and one age group to another on the criminal nature and gravity of acts such as theft and assault (Newman, 1976, pp. 41-51; Tittle, 1980, pp. 48-50).

The obvious conclusion is that it is difficult to find traces of culture conflict among the general population where theft and assault are concerned. The immense majority of people acknowledge the validity of the legal prohibition of such acts and condemn them. If there is any culture conflict, it is confined to such limited minorities that it is impossible to detect them in samples of the general population.

The normative attitudes of delinquents

What immediately comes to mind apropos these minorities are criminal groups. It is very likely that the members of such groups set a value on theft and assault but, being so few in number, it is impossible to come across them during public opinion polls. Nevertheless it is possible to find research that would enable us to discover what distinguishes the normative attitudes of delinquents from those of non-delinquents.

It is not easy, when speaking about the normative characteristics of delinquents, to avoid the tautology: Delinquents have no moral convictions. The proof? Their conduct is indisputably immoral. If delinquent activity is the only thing that can be put forward to show that delinquents have no moral conscience, we have a proposition that merely says: criminals commit crimes, an irrefutable but meaningless proposition.

We must therefore find a measurement of conscience that is independent of behaviour. Recently, different teams studying self-reported delinquency were able to assess a group of respondent's moral conscience by measuring the disapproval of various crimes. It is naturally only a limited aspect of the

phenomenon, but it at least avoids tautology. The person who strongly disapproves of theft, for example, shows a moral reactions to this act. Is this attitude in accordance with his conduct? We can answer by measuring the correlation between this variable and the self-reported delinquency.

In 1974, a representative sample of adolescents from the island of Montreal, aged 12 to 16, were asked this question:

"To what extent do you agree or disagree with adolescents of your age who take something of considerable value (fifty dollars or more) that does not belong to them?"

Five answers were proposed:

Totally agree

Agree

Undecided

Do not agree

Totally disagree

Similar questions were asked in order to measure the adolescents' evaluations of other offenses - shoplifting, vandalism, etc. The answers were added together to make what we called an index of adherence to norms: the more an adolescent disapproves of theft and other infractions, the stronger his adherence to the norms. When this variable was compared with the number of crimes the respondents admitted to, it was found that the delinquency varied conversely with adhesion to the norms. (Biron, 1977; Caplan, 1978; Biron and Cusson, 1979). The more an adolescent disapproves of the delinquency of others, the more he himself will tend to obey the law. Of all the variables measured during this research, adherence to the norms was by far the one most strongly correlated with delinquency. The moral convictions of adolescents, then, are not ideas dissociated from reality; on the contrary, they govern action.

Similar results were found by other researchers. Hindelang (1970 and 1974), during two separate research operations, reported a significant association between the fact of committing a crime and the degree of approval-disapproval of this act. Delinquents disapprove less of the acts they commit than non-delinquents do.

In Florida, Chiricos and his collaborators (1977) found that there was a very strong negative correlation between the affirmative answers to the question "Is it always wrong to steal?" and the number of such delinquent acts admitted. In England, Belson (1975) had given 3,113 London boys a list of different types of thefts and asked them to say whether they considered them "very bad", "quite bad", "not so bad" and "quite all right". Here again the results showed conclusively that the more a boy condemns theft in its various forms, the less he will indulge in stealing.

The convergence is remarkable. We can therefore confirm the fact that the adolescent who allows himself to break the law does not have very strong moral convictions or else has ones that lead him to approve of theft and violence.

It is possible to believe, however, that the causality works two ways. The correlations reported are strong enough to have us believe that there is a reciprocal effect of the adherence to the norm on delinquency and the latter on the adherence to the norm. The adolescent who does not condemn theft will be led to steal and inversely, the one who steals will justify himself and develop a tolerant attitude to this type of behaviour. This is Tittle's argument (1980, pp.67-69); he points out that the fact of committing a crime with impunity leads us to think that it is not as bad as we believed. Acting out seems to play a role in weakening moral convictions. Furthermore, Tittle gives indications that moral convictions inhibit the tendency toward delinquency. He discovered that of all the variables measured during the research, moral commitment came out as the variable most closely associated with the respondents' estimation of the probability of future deviance (Tittle, 1980, p. 188).

The moral ambivalence of delinquents

The results just presented could lead to the conclusion that delinquents have their own system of values. This is what the culturalists naturally think. According to them, in sub-cultures, it is not enough to tolerate what the majority calls crime, it is made obligatory. Thus Cloward and Ohlin (1960, p. 13), as well as Wolfgang and Ferracuti (1967, p. 160), state that in sub-cultures, crime can be demanded and a person who refuses risks being expelled from the group.

To agree that there are great differences between delinquents and non-delinquents at the normative level is one thing, but to conclude from this that delinquents have a morality opposite to that of the majority is another. To jump to this conclusion one would also have to show that delinquents place a value on acts that other disapprove of. There is empirical data that will help us to decide if this conclusion is warranted or not.

Matza (1964, p. 49) gives 100 young delinquents in institution illustrations of various crimes: fighting with weapons, auto theft, vandalism, armed robbery, etc. He then asks what they would think of a boy who did any of these things. He discovers that only 2% of the respondents expressed approval of the acts illustrated. 40% expressed indifference, 30% slight disapproval and 28% indignation. The more serious the offense, the greater the number of boys who showed indignation. The striking fact was the tiny proportion of delinquents who approved of the acts.⁽¹⁾

Information gathered in Montreal by the Research Group on Juvenile Maladjustment will enable us to get an even more precise idea of the situation. Among the available data, there were two series of pertinent variables: 1) the self-reported delinquency of school children in Montreal, 2) the extent to which these school children approved or disapproved of these very offenses. Thanks to the collaboration of Louise Biron, it was possible to find out whether or not the adolescents studied approved of the crimes they themselves had committed. We arrive at the following results.

(1) In 1974, Hindelang (p. 377) questioned Matza's analysis. He, too, had studied delinquents in institution, asking them if they approved or not of various crimes. 20% approved of fighting while armed, 20% auto theft, 18% petty theft and 15% vandalism. The proportion of respondents who approve of delinquency is actually much higher in Hindelang's sample than in that of Matza; the fact remains, nevertheless, that only a minority reacted with approval. I tend to think that these differences are due to the procedures used. There is a more negative reaction to an act whose brutality is brought out in a picture than in a mere written description of the act.

Reactions to theft of adolescents who had committed such thefts

To what extent do you agree or disagree with adolescents of your age who:

...take something in a store without paying for it?

Totally disagree	Disagree	Undecided	Agree	Totally agree	Total
13.5%	28.6%	37.9%	12.1%	7.9%	749

...take something of value (\$50.00 or more) that does not belong to them?

Totally disagree	Disagree	Undecided	Agree	Totally agree	Total
16.0%	13.6%	43.2%	6.2%	21.0%	81

These figures⁽¹⁾ show first that these delinquents (in the sense that they have committed the act they are asked to judge) tend to be concentrated

- (1) In the case of adolescents who had never committed these crimes, the answers were as follows: "Taking something from a store without paying for it"

Totally disagree	Disagree	Undecided	Agree	Totally agree	Total
48.6%	30.2%	16.7%	2.2%	2.3%	2317
"Taking something of value"					
56.0%	26.1%	14.5%	1.7%	1.7%	2987

What distinguishes the non-delinquents is that they highly disapprove of these acts.

in the 'undecided' category and quite a number manifest some disapproval of acts they have committed. On the other hand, if we add together the categories 'agree' and 'totally agree' for each offense we get 20% and 27% of respondents who express some approval. These figures, which follow the same trend as those of Matza and Hindelang, entitle us to think that only a minority of thieves approve of theft.

The delinquents' attitude toward their crimes seems to be one of indifference or, to be more precise, ambivalence - vacillation between disapproval, neutrality and approval. Thus as far as looking for a crime ethic is concerned, we find nothing but a good deal of indecision. There is no proof as yet that there is an anti-social ethic that would make theft praiseworthy. There is every indication that crime is not a matter of principle for its authors. We seldom find thieves who sing the praises of theft or violent criminals who extol violence.⁽¹⁾ If theft and aggression were set up as universal values - that is, considered valid for everyone in all circumstances - logically speaking, it would be legitimate to steal from anyone, no matter who. However, as it happens, most thieves think it indecent to steal from friends or relatives. Let us go further. If theft were a universal value it could operate in reverse; it is alright to steal from others, ergo it is alright to steal from me. This is obviously not the way thieves think. Like all of us, they are extremely put out when they are robbed.

Sykes and Matza (1961) were correct in advancing the idea that delinquents are not fundamentally opposed to the dominant conceptions of good and bad. They are content to neutralize them by making a series of excuses, citing extenuating circumstances, or justifications. They are not obeying moral imperatives that tell them to steal, they are taking the license to do so.

The influence of delinquents

If we agree that delinquents do not have their own system of norms and values, then we must reject the culturalists' proposal that sub-cultures

(1) It happens, nonetheless, that in front of his peers, a delinquent will make a show of skill, cunning, power or courage by violating the law, but it is these qualities that are valued, not the crime itself.

transmit criminal norms to their members. Does this mean that delinquents have no criminogenic influence on their friends? No. An impressive series of facts show conclusively that associating with persons given to crime can lead someone to violate the law. These facts are the following.

1 - Crime tends to be concentrated in certain urban areas and to remain at a high level over the years. This observation was made in Chicago by Shaw and McKay (1942) and since then, has been made in other places by a great many researchers. This leads us to suppose that in areas where there is a high rate of crime, delinquent solutions are transmitted from one individual to another and from one age group to another.

2 - Most of the time adolescents commit their crimes with one or several accomplices. It is estimated that 80% of adolescents arrested for theft had at least one friend as an accomplice (Shaw and McKay, 1942; Fréchette and LeBlanc, 1978, p. 134).

3 - Persons who associate with delinquents tend to commit crimes themselves. In 1950, the Gluecks found that 98% of the persistent delinquents in their sample had delinquent friends. Like theirs, every research ends up with strong positive correlations between delinquency and delinquents friends (Short, 1957; Reiss and Rhodes, 1964; Hirschi, 1969, p. 99; West and Farrington, 1973, p. 49; Belson, 1975, pp. 236-237; LeBlanc and Biron, 1980, p. 83).

4 - The tendency to admit that one would commit various crimes if the temptation were strong enough varies directly with a person's association with delinquents (Tittle, 1980, p. 188).

It must be acknowledged, then, that delinquents exercise some form of criminogenic influence. But how do we account for this if, as we have just seen, we must reject the hypothesis that sub-cultures transmit norms to their members that make crime a praiseworthy act?

There is another possibility which I explained in my book "Why Delinquency?". In short, it is that delinquents, rather than transmitting norms, offer their peers solutions and criminal opportunities. Delinquents, by their

example, their urging and their help, make acting out easy for their friends. They show them the most effective way to carry out a delinquent act and eventually teach them the techniques and know-how needed to accomplish complex crime. The presence of delinquent peers helps to modify the consequences of the crime and to make it both more agreeable and effective. With accomplices, there is a greater probability that the theft will yield more money, more pleasure, and greater protection against censure.

The influence of delinquents, then, is based on efficiency, not values. There is a real difference. The one is a solution, the other a norm. The "solution" achieves a goal and is judged by its results not by its moral values. The norm prescribes the conduct or forbids it because it is deemed good or bad. Delinquents influence their friends by offering them solutions, not norms; expedients, not ideals. The distinction enables us to understand how it is that, although strictly speaking there is no criminal sub-culture in the sense of a milieu where crime is raised to the status of a moral value, delinquents, nonetheless, have a real influence on their friends.

When all is said and done, sub-culture theories are based on an unjustified confusion of delinquent groups with minorities that create or defend new values. Moscovici (1976) recently made a very useful distinction between a nomie minority and an anomie minority. The nomie minority (also called active minority by Moscovici) is a group of people who have their own norms and take a consistent position in opposition to the dominant values (p. 87). The members of an active minority campaign to have their point of view accepted because they believe in it (p. 56). They do not merely contest the authority of the majority, they suggest alternative solutions (p. 261). They challenge the dominant norms and values because they adhere to other norms and put a value on other things. They break with the majority because they feel they have the support of another group. The Soviet dissidents, Soljenitsyn in the lead, are a typical example of an active minority. There are many other examples: minority political parties, civil rights movements and those for the defence of ethnic minorities, movements for the liberation of women, ecologists, etc.

By anomie minority we mean a group of deviant individuals who have no normative system to suggest to replace the norms they do not obey. It is best

defined by their transgression and by the lack of a real value system (Moscovici, 1976, p. 87). Such deviants stand out from the majority, not because of different values, but the inability to conform. From the facts just presented, it is clear that delinquent groups are essentially anomic minorities.(1)

We can conclude with two statements. First, people agree in their disapproval of theft and violence, which means that there is such a thing as a consensus on these matters. It would seem, then, that the ability of the theory of culture conflict to account for these crimes has been much exaggerated. Secondly, if it is true that delinquents have normative attitudes different from those of non-delinquents, it cannot be claimed that they have a system of values of their own. What distinguishes them from law abiding citizens is their ambivalence and absence of moral conviction.

We can therefore seriously doubt the existence of norms that drive a person to crime. But all the evidence leads us to believe that there are rules of conduct that inhibit acting out.

(1) A similar distinction was also made by Merton (1971, pp. 829-831) between 'non-conforming behaviour' and 'aberrant behaviour'. For Merton, the non-conformist questions the legitimacy of the norms and wants them replaced by others. He generally acts in a disinterested manner and is inspired by values he considers superior to those he challenges. On the other hand, the aberrant person does not question the norms he violates, most often through self-interest. Such a person acts secretly and, when arrested, excuses himself by citing extenuating circumstances and not by legitimizing his deviance.



CHAPTER VII

THE MORAL CONTROL OF CRIME

It is doubtful that social control theorists would disagree with the preceding argument. After all, it is mainly for similar reasons that they rejected sub-cultural theories and turned to a model which presents crime and delinquency as the result of the breakdown of social control.

The theories of social control

Social control theories can be summed up in five propositions.

1 / Every individual has criminal propensities simply because man is a creature of desires for whom crime can be a useful expedient, an easy means of resolving a great many problems and satisfying various needs.

2 / To keep these disruptive drives in check, societies impose rules on their members and exercise pressure on them to see that they are obeyed.

3 / It is this pressure that is called social control. It means all the resources by which the members of a society impose conformity on one another.

4 / The more the individual is integrated in his group, the stronger the social control.

5 / When the conditions for the exercise of social control are lacking - especially integration in the group - people's anti-social drives are given free rein and they drift into crime or delinquency.

In a brilliant book, "Cause of Delinquency (1969)", Hirschi presented an original formulation of this theory, accompanied by empiric verification. The focal point of his theory is the 'bond' concept, a term that covers all that ties the individual to society. According to Hirschi, adolescents commit

delinquent acts because their ties to society are weakened or broken, making the regulatory action of the social group inoperative. This bond between the individual and society is made up of four elements:

1 - Attachment to others that makes the adolescent conform to the expectation of others because he is sensitive to their opinion.

2 - Commitment to conventional behavior. People invest time and energy in an activity and refrain from deviance because of the risk of losing their investment.

3 - Involvement. When somebody is too busy with a conventional undertaking, he will not have time or energy left for delinquency.

4 - Belief. Some people have strong beliefs in the moral validity of social rules; others have not. "The less a person believes he should obey the rules, the more likely he is to violate them" (Hirschi, 1969, p. 26).

It was Hirschi who drew the attention of contemporary sociologists to the explanatory power of the social control theory. However, his model does not give a complete answer as to how the bond between the individual and society can lead to respect for the law. There is no reason to think that integration in society can automatically lead to conformity. This bond must still be used to transmit certain values or give direction to the individual's conduct.

With a closer look at Durkheim's books, Hirschi could have presented a more complete picture. Durkheim clearly explained that having ties with social groups is not enough to induce law abiding conduct; the representatives of the society must also show their adherence to the values they consider essential.

Both theories, Hirschi's and Durkheim's must be taken into consideration when it comes to developing an adequate theory of social control. The French sociologist left us a number of concepts that will enable us to explain the findings of contemporary research. Two ideas seem to be particularly crucial in the present context: integration in the group and denunciation.

Integration in the group

According to Durkheim, to behave morally is simply to behave in the common interest. We can understand, then, the importance of integration in the group. Submission to the rules would not make sense if one did not feel part of some community. "For man to be a moral being, he must care about something other than himself, he must be and feel part of a society, no matter how small" (Durkheim, 1923, p. 66).

Integration in the group can be defined as a person's inclusion in a social unit and being a true part of it. Two elements that constitute the integration are a person's relations with the other members of the group and his participation in its common activities.

Today's adolescent, on whom recent research results are soon to be reported, spends most of his time at home or at school. Both of these institutions have an essential role to play in the socialization of these future adults. It is important, therefore, to examine the integration of young people in their families and in school.

If it is true that integration in the group is a factor that makes society's regulatory influence on a person possible and that, in the case of adolescents, the relationship with the parents is an important element of this integration, it is logical to assume that the attachment to parents varies inversely with the delinquency. This is actually the case. The fact is so well known that it is becoming almost axiomatic. Young delinquents do not get along with their parents. This fact has often been reported by researchers who were studying the characteristics of adolescents arrested by the police. They differ from non-delinquents in that they are unfeeling or hostile toward their parents. And the feeling is reciprocated: the parents are often cold, hard and full of hatred vis-à-vis their children (Glueck and Glueck, 1950, p. 125; Andry, 1960, pp. 117-119; McCord and McCord, 1959, pp. 90-99; West and Farrington, 1973). Similar observations have been made among school children whose delinquency is measured by questionnaire; negative correlations are constantly

found between the self-reported delinquency and the various measures of parent/child relationships (Nye, 1958, p. 72; Hirschi, 1969, pp. 91-93; Biron, 1974, p. 113; Caplan, 1978, pp. 122-129; LeBlanc and Biron, 1980, p. 83).

The same reasoning can be applied to the school milieu. If commitment to school is an element of integration, which is a condition of social control, we may suppose that the delinquency will vary in inverse ratio to the degree of integration at school.⁽¹⁾ This is actually the case. Failure, falling behind and dropping out of school are closely associated with delinquency (Hirschi, 1969, p. 116; Villars, 1972, pp. 133-134; Laberge-Altmejd, 1976). Furthermore, young delinquents tend to have few academic aspirations and devote relatively little time to their school work.

These facts lead one to conclude that the more integrated an adolescent is within his family and in school, the less he will be delinquent. More generally, crime varies in inverse proportion to people's integration in social groups.

Denunciation

In all likelihood, submission to the law follows from integration because the latter makes communication possible between the individual and the group. If so, integration is necessary, but not enough. In order for the influence of society to be effective, the individual must know exactly what is expected of him. How? According to Durkheim, the answer is denunciation, in other words - disapproval.

It was in considering the role of punishment in moral education that Durkheim underscored the importance of denunciation. He had serious reservations about the intimidating effect of punishment. He did not agree that punishment can have an effect by associating fear with the idea of wrongdoing.

(1) The facts concerning the school situation of young delinquents can also be interpreted in terms of opportunities, as I have done in "Why Delinquency?". This would mean that the maladjustment in school has a twofold relationship with delinquency. First, it leads to a narrowing down of opportunities, and second, it places the adolescent on the fringe of society, thus excluding him from the sphere of influence of society.

When we educate through fear, we merely intimidate without inculcating any moral conviction, without inducing any real inclination for good. In this case, the motivation for moral conduct is very weak, as shown by the criminal who learns to overcome his fear. Just as the sailor takes the risk of drowning, "punishment is the professional risk of the offender career" (Durkheim, 1923, p. 136).

The exact function of punishment, according to Durkheim, is to counteract the corrosive action of the infraction, to reaffirm the authority of a norm that has just been violated and to show there is still adherence to the values challenged by the infringement. If this reaction were not forthcoming, if the offence were ignored, this show of tolerance would risk being interpreted as a sign that the rule is no longer in force. It is in this sense that the punishment is a denunciation, that is, essentially the reprimanding of an offense in order to keep alive the moral conviction of the members of a group.

Durkheim's analysis enables us to understand the nature of moral influence. It is based, not on fear, but on a process of persuasion. Where morality is concerned, the aim is to convince others of the good or bad nature of an act. Influence is exercised on behaviour through the idea of good and bad. Denunciation, like all moral evaluation, is a message and can have an impact only if it 'gets through'. Moral influence differs from force in that persuasion and consent are its essential prerequisites. Men submit to moral judgments because they believe them to be valid.

Thus, if we are to go by Durkheim, it is through disapproval that the expectations of the group are expressed. This could mean that denunciation is necessary to the social control of delinquency. An hypothesis that stems directly from Durkheim's analyses can be put forward. Delinquency will be less frequent where it is energetically denounced. Where theft and aggression are condemned, the prohibitions maintain all their vigour and consequently reinforce people's respect for the law.

Findings concerning parental disapproval

Initially, it is the parents who can censure an act. If disapproval has a role in keeping delinquency in check, we should be able to discover signs

of this in the way parents react to the misbehavior of their children. Research on the disciplinary methods used give us our first clues. In "Unraveling Juvenile Delinquency" (1950) Sheldon and Eleanor Glueck studied parents' discipline in the case of 500 persistent juvenile delinquents compared with a group of 500 non-delinquents. The disciplinary methods used by the father and mother were classified according to four categories: 1) firm but kindly discipline, 2) over-strict discipline (the parents are hard and inspire fear), 3) lax discipline (indifference, negligence and laissez-faire), 4) erratic discipline (alternating and inconsistent measures, sometimes lax, sometimes too strict). They discovered that 91% of the mothers of the delinquents were either lax or erratic; among the mothers of the non-delinquents, the equivalent was 33% (Glueck, S. and E., 1950, p. 131).⁽¹⁾ Thus the authority exercised by the mothers of delinquents is marked by negligence, permissiveness and inconsistency. Contrary to what is often thought, the young delinquent does not suffer from an excess of authority but from a laissez-faire attitude.

Findings of the same order have been made time and time again by different researchers. In France, Villars (1972) found that 72% of the parents in his sample of young delinquents had an educative approach marked by a lack of authority, weakness and impotency, a do-nothing attitude (p. 306). On the other hand, he found that only 7% of these parents had used extremely severe methods.

Thus most of the young delinquents had not too severe, but weak or indifferent parents, letting their children do what they wanted.

These observations are pertinent to our subject, namely, disapproval. How will such parents react to the escapades of their children? Certainly not by severely reprimanding them. Too weak, too little concerned, they will let them pass, will tolerate them, will do nothing. They will not be able or willing to point out to their children that the act in question is unacceptable.

(1) 68% of the fathers of the delinquents acted in a lenient or erratic fashion against 36% of those of the non-delinquents.

The lack of supervision of the parents of delinquents is well-known to criminologists and ties in with the above findings. Once more, the Gluecks have contributed some useful information on the subject. They showed, in 1950, that there was a difference in supervision between the delinquents and non-delinquents. More recently, Hanna Malewska and Vincent Peyre (1973), during a comparative study on French and Polish samples, came up with a similar observation: "The parents of delinquents, and especially 'serious delinquents', are not very attentive and do not control the activities of their children properly, nor do they know much about their social life outside the home" (p. 89). "The parents of non-delinquents play a more active role in the life of their children and intervene when necessary" (p. 91).

Supervision, or more precisely knowledge of the child's activities, was measured by questionnaire and put in correlation with the self-reported delinquency. In the Montreal study already described, the two questions bearing on this subject were "Do your parents know where you are when you are away from home?" and "Do your parents know who you are with when you are away from home?". The answers to these two questions vary inversely with the amount of self-reported delinquency, which means that a child tends to commit few crimes when his parents keep informed of his comings and goings (Biron, 1974; Caplan, 1978; Biron and Cusson, 1979). In the United States, Hirschi (1969) and in England, West and Farrington (1973) had already made similar observations.

Most of the delinquents had lived with adults who paid little attention to what was happening to their child. Left to themselves, and taking advantage of this lack of supervision, they could devote a large part of their leisure time to escapades, including thefts and other misdemeanors, without their parents knowing anything about them. Speaking of his mother, stupified to learn that her son had been convicted of several crimes, a California criminal wrote in his autobiography: "I knew she hadn't had any idea about the things I'd done. In fact, she really didn't even know who I was" (Carr, 1975, p. 24).

Criminal tendencies blossom in a climate where there is a laissez-faire attitude and a lack of supervision. The chances are that, during his youth, the future criminal had had the opposite of a punitive upbringing.

The anticipated reaction of parents

Chirico et al (1977) asked Florida students how their parents would react if they discovered that they had committed an offense.

The answers went from approval to disapproval. The more the students expected disapproval from their parents, the less frequently they committed crimes. Here we have a direct effect of disapproval on delinquency. The anticipation of parental disapproval has an inhibiting effect on acting out.

A similar phenomenon was observed in Montreal. The question used here to measure the anticipated reactions of the parents was: "If you took something from a store without paying and your parents found out about it, what would they do?" 82% of the respondents who said their parents 'would do nothing' had a higher frequency of delinquency than the average. The others who expected some form of censure or punishment had a much lower frequency of delinquency (Biron and Cusson, 1979, p. 49).

Informal sanctions

If it is true that within the family circle censure can help check delinquency, it is quite possible the same would be true in other spheres of social life. Tittle's (1980) data bears this out. In order to isolate the influence of sanctions as strictly as possible, Tittle did not use self-reported delinquency as a dependent variable. Instead, he used his respondents' estimation of the probability that they would commit such and such a crime should there be a strong desire to do so.⁽¹⁾

(1) A measurement of this kind has two advantages. First, it bears on the future; it makes it possible to ascertain the causal precedence: it avoids the difficulty that arises from the fact that the previous crimes may change the perception of the sanctions. Second, it supposes that the respondent has a real desire to commit the crime in question. Thus the difficulty is overcome concerning individuals (very rich people, for example) who would abstain from acting out, not for fear of society's reaction, but simply because they have no desire to do so.

Tittle then placed this variable in relation to an impressive series of independent variables that not only concerned informal sanctions but also various factors generally associated with delinquency. He found initially that moral commitment (the fact of saying a crime is bad) and differential association are the variables most strongly associated with the probability of future delinquency (p. 188). This observation is not new, but what is new is the researcher's further discovery that the fear of informal sanctions comes a close second and has an influence on future delinquency almost as great as moral attitude and associating with delinquents. The element of the social reaction that contributed most to inhibiting future crimes was the fear of the loss of interpersonal respect (p. 197).

A series of similar variables that had a bearing either on the reaction of peers and acquaintances or that of the community were also strongly associated with future delinquency.

It is clear from Tittle's analyses that a person will refrain from an act, first if he fears a loss of the respect he enjoys in his milieu, secondly, if his circle disapproves of acts such as theft and violence, and thirdly, if there is any danger that his peers will know about the offense.

Furthermore, Tittle (p. 197) demonstrates that the fear of informal sanctions has much more influence on people than the fear of formal sanctions (certainty of arrest, severity of the prison sentence, etc.). The sanctions that come from family, friends and acquaintances are much more effective in checking crime than those brandished by the State. Tittle (1980, p. 241) concludes from all this that social control, as a general process, is essentially based on informal sanctions.

Tolerance

The work done by Erickson and Gibbs (1979) on tolerance toward crime follows the same direction. Their point of departure was the hypothesis,

surprising at first, that the rate of deviant acts in a community increases directly with the community tolerance of that act.(1)

To test their hypothesis, Erickson and Gibbs asked samples of residents from four communities to say to what degree they disapprove of a certain number of crimes likely to be committed by adolescents. Based on the material obtained in this way, they created a first measure of intolerance called 'intensity of collective negative evaluation'. At the same time, they had the respondents choose the type of punishment they would recommend for the different types of crimes committed by adolescents. From these recommendations, they created a second measure entitled 'severity of the collective evaluative reaction'. This done, they compared these measures of intolerance with measures of self-reported delinquency and official delinquency. This operation yielded three major findings:

1 - The frequency of a given form of deviance within a community varies directly with the degree of tolerance of the people of this community for this act. The more such a crime is disapproved of in a community, the less frequent it will be and, above all, the less one will find youngsters in this community who will admit having committed this type of act even once.

2 - The more severe the members of a community are with regard to a particular crime, the less frequent this crime will be in that community.

3 - When different communities are compared, we find that the rates of youngsters who acknowledge having committed at least one crime varies inversely with the degree of severity characteristic of that community.

(1) In its more commonly used sense, tolerance means an attitude that consists in respecting the freedom of others and allowing them attitudes different from those one adopts for oneself. In the present context, the word is used in the more precise sense of tolerating crime, that is, not reacting negatively to theft and violence. From this point of view, censure and intolerance are the same. It seems legitimate to suppose, then, that the intolerance of a particular social milieu will result in a reduction of criminal activity in this milieu.

The intensity, and especially the severity, of the evaluative reaction in a community with regard to various offenses, has the effect of significantly controlling them and particularly the percentage of youngsters there who commit at least one crime.(1)

Thus the intolerance of a community concerning a given deviant act inhibits its members from the tendency to commit such an act. In an intolerant milieu, a person hesitates to violate the law because he does not want his peers and his friends to think ill of him. This interpretation is supported by a fact reported by Chiricos (1977) and his team: the more adolescents expect the disapproval of their friends if they commit a crime, the more they obey the law. In the same way that the intolerance of a community keeps its members straight, the intolerance of a group of friends makes a person avoid what the group condemns.

This gives us an additional explanation of the fact that adolescents who have delinquent friends tend to violate the law themselves. By force of circumstance, delinquents are very tolerant of the infractions of their peers. Hence the person who associates with such individuals will be free from disapproval. This inevitable moral indifference will have a corrosive effect on the convictions of those exposed to it.

The dynamics of moral control

Denunciation and integration in the group emerge from our analysis as two essential components of social control: denunciation expresses the moral convictions of the members of the group and integration makes the individual

(1) The negative correlations between intolerance and delinquency are stronger when the latter is measured by the number of youngsters who commit crimes than by the average number of crimes. This may mean that numerous adolescents commit no crimes because of the climate of disapproval that reigns in their community. On the other hand, those who are insensitive to community censure commit a great many crimes. The quantity of these offences strongly influences the averages and modifies the intolerance/delinquency correlation.

receptive to the message. To ensure respect for the rules, it is necessary for people to be integrated in normative groups, that is, in communities made up of people who react negatively to an offense.

Integration in the group enables one to count on the inter-dependency that binds the members of the group - the need for acceptance, help, approval, esteem. As such, it motivates the individual to take cognizance of the moral expectations of others.

However, integration is a matter of degree. The more integrated a person is in his group, the more he has to lose if his peers learn that he has committed a serious offence. He risks losing the consideration he enjoyed, and at worst, he risks being expelled and losing all the advantages he gained from his participation in the life of the group. This is why Homans (1950, p. 287) stated that the higher the status of a member of a group, the more he will be motivated to respect its norms - he has too much to lose by violating them. The greater the risk of losing friendship, prestige and success because of a single infraction, the stricter the conformity.⁽¹⁾ This is why adolescents who are unhappy at home and in school often take to crime; they do not have much to lose by not conforming to the expectations of people with whom they have ceased to have a satisfying relationship.

But there is a paradox to be solved here. We obey the law in order to preserve our social status. However, if we should happen to give in to temptation and it becomes known, our status will be affected, with the result that the next time our resistance to temptation will not be strong - we will have less to lose. Are we not in danger, then, of becoming involved in a vicious circle of crime followed by degradation that will lower our status and therefore any reason to obey the law?

(1) This is what authors such as Toby (1957) and Hirschi (1969) mean by what they call the "stake in conformity".

CHAPTER VIII

STIGMA AND MORALITY



Weak moral control can lead to delinquency and that, in turn, may be the first step in the process of becoming a hardened criminal.

Tolerance and its causes

As we have seen, delinquents have had an upbringing marked by indulgence, laissez-faire and indifference. They have grown up in a climate of excessive freedom that has not been conducive to moral restraint. Only occasionally were they confronted by person resolute in upholding the integrity of a norm. What causes this moral void? Some familiarity with the family history of young delinquents is enough to reveal situations that, by all evidence, give rise to or promote tolerance. Some of these are:

1 - Educative indifference of the parents. The father and mother are not interested in the education of their child. They are content to satisfy his physical needs but do not bother to teach him moral values. This indifference can be extended to everything that concerns the child. Some parents, in fact, have absolutely no interest in their child. They organize their life as though they had no children - leaving their child alone in the house when they go on vacation, for example. They have abdicated their role as parent and educator.

2 - Lack of moral standards. The parents have no firmly rooted moral convictions. They are little concerned with questions of good and bad and, consequently, they have no moral reaction to their child's behaviour.

3 - Disorganization of the family. The parents, stricken by alcoholism, extreme poverty or dissention, are incapable of coping with the difficulties of everyday life. Overwhelmed, they leave the child to himself, completely neglecting his upbringing. In extreme cases, the disorganization is such that the family no longer exists. The child is shunted from home to home, from one institution to another, tossed about like a ping-pong ball.

4 - The weakness of the parents. The parents are afraid to confront the child. They want to avoid tears and protestations at any cost. This attitude is frequently found in the mother who has to bring up her child without the help of her husband, the latter being physically or psychologically absent. We see it as well in grandparents who have been given the care of the child and who no longer have the energy to impose even a modicum of discipline.

5 - Overprotection. Some parents do not want to frustrate the child or displease him. Afraid of traumatizing him, they give in to all his whims. Sometimes the permissiveness is practiced as a matter of principle. These parents are convinced that it is wrong to reprimand or punish a child. They believe that one must never intimidate a child, for fear of inhibiting his spontaneity.

6 - The difficult child. There are some children who, very early on, defend their drives most vigorously and who provoke a crisis each time they are asked to give up what they want. In time, the parents stop disciplining the child. The tolerance in this case is due to the parents giving into the child's demands. Yochelson and Samenow (1976) state that this is the case for most of the criminals they have studied. Debuyst (1960) has found the same thing among young adult criminals who were spoiled children.

The consequences of tolerance

Whatever the cause, excessive tolerance on the part of parents leaves its mark on the child. Having rarely been confronted with truly sanctioned prohibitions, they had never learned to defer the satisfaction of their desires, to accept frustrations or submit to values of any kind. The child who has lived in an atmosphere of moral indifference has never acquired a feeling of obligation. He is unable to bow to discipline. Having never learned to control his desires, he has become their slave.

Sooner or later, however, discipline will be necessary - perhaps due to changes in the family but more likely at school, where the teachers will not take kindly to a disorderly and rebellious child, and finally in the neighbourhood, where people will react with increasing hostility to escapades that, with

age, will become more and more intolerable. To check his bad behaviour, they will resort to the traditional moral pressure: exhortations, censure, punishments. Unfortunately, it is too late. For all intents and purposes, the child has become incapable of conforming to the expectations of his associates. Reprimands, long overdue, no longer lead to any improvement. They merely harm the child. He feels trapped; censured from every side, he is powerless to adopt a line of conduct that would enable him to change.

The young Henri described by Debuyst and Joos (1971, p. 136ff) is an example of this process. Henri has been stealing for several years, he shies away from all discipline and never resists a temptation. He was raised by his grandparents under rather unusual conditions. "The grandmother had no idea of organization. There was never any set mealtime and the food consisted of pastries, waffles, pancakes, chocolates and various other kinds of sweets. The child used to take whatever he wanted, obeyed or disobeyed; he was a completely spoiled child" (pp. 136-137). "From his earliest years, Henri was undisciplined, totally incapable of resisting his slightest whim, incapable of checking an impulse or adapting himself to the most minor project for the future. Thus he grew up without having had to adjust to anything requiring persistence and without having had to finish an undertaking" (p. 137). However, his father re-married and brought Henry home again. His second wife wanted to instill good habits in the child, make him go to school and eat at regular hours. Henri refused to submit to these restrictions. He had become incapable of accepting the requirements of a normal life, incapable of any effort, incapable of giving up any passing fancy. Confronted by these parental demands, he had "a defence reaction akin to panic" (p. 161). His second mother would not give in and things became worse and worse, with Henri running away, lying and committing petty theft. Gradually he took refuge in the only activity that offered him satisfaction - theft. All his pleasure and creativity was concentrated in delinquency.

Like Henri, most of the thieves that occupy our prisons had been children and adolescents who did not have the strength to submit to any form of discipline, incapable of living up to the expectations of others. They come to accept both their misbehaviour and its condemnation as inevitable. This most

probably is the source of the "chronic despair" and the "illusion of irreversible degeneration" that Mailloux (1971, p. 202) detected in the juvenile delinquents at Boscoville.

The alternative

The inability to satisfy adult requirements is not always so obvious. There is a choice here: either stop behaving badly in order to be reconciled with the family or continue and arrive at a major confrontation.

Debuyst and Joos (1971) have described the alternative confronting numbers of young thieves in these terms: 1 / Keep on stealing and enjoy the fun and money, knowing very well that this will lead to a conflict with their family; for if they keep on stealing, inevitably they will have to sever their ties with their parents. 2 / Abandon theft to safeguard their relationship with others. This is the path of reconciliation, but there is a price: they must give up the pleasure of stealing.

Escalation

Whether the adolescent chooses a delinquent way of life or slips into it because he cannot help it, the consequences will be the same: more and more difficulties will arise. He will not succeed in school and will incur the anger of his teachers. In the neighbourhood, he practices theft, vandalism and assault and is looked upon as a bum. His parents cannot bury their heads in the sand indefinitely, for teachers, neighbours and the police will soon let them know that something is definitely wrong. How will they react to their child's escapades? Some parents remain indifferent and deaf to the complaints. Others defend their child and make excuses for him, while others try to take the child in hand. If the situation has greatly deteriorated, however, measures to put the child back on the right road will have no effect. They might even cause a rupture in a relationship already threatened by the indifference of the parents⁽¹⁾.

(1) The idea that delinquency is caused by a lack of affection is debatable. Lemay (1973) and Mucchielli (1974) point out that rarely, during their

Stigma

There comes a time during this escalation when the delinquent discovers that everyone is in league against him: his victims, his teachers, his neighbours, the police and sometimes his parents. All want to reform him by means of the usual moral sanctions - censure and reprimands. But a paradox occurs here. Beyond a certain point, when they become too frequent or too virulent, the moral sanctions take on a new aspect and tend to produce the opposite of the effect desired. The reprimands degenerate into insults and a show of hostility. For moral reactions often occur in two stages. First, pressure is brought to bear to persuade the delinquent to change his behaviour; but when this fails, he is considered beyond rehabilitation and rejected.⁽¹⁾

These two different types of reaction recently came to light during a study on the reactions of the offender's immediate circle to a criminal conviction. This is how certain parents came to reject their respective sons.

"I still took an interest in him (after his third criminal case...) because I believed he could be rehabilitated. I therefore helped him when he was in prison and up to the time he was released. Since (the new crime) I no longer go to see my son at the prison visiting room... I let him know that he had better not put a foot in my apartment. I refuse to go to see him". Just as eloquent is the disillusioned statement of the father of a young man charged with first degree murder: "At the age of 16, we had placed him as a baker's assistant... at first the trade seemed to please him, then he began to be discouraged as he had to get up early. Toward the end of June 1963, he succeeded in getting himself hired as a milk controller by the Department of Agriculture. He was dismissed following a theft... He decided to join the army... He

(1) (continued) childhood do delinquents seriously lack affection. If, during adolescence, the parent/child relationship has deteriorated, it is likely caused by the initial indifference of the parents and then by the belligerence provoked by their attempts finally to take the child in hand. It seems to me that the bad relations are more an effect of delinquency than its cause.

(1) I have dealt with this idea at greater length in an article (see: Cusson, 1974B).

quickly made the grade of sergeant. He must have done something because he was demoted. His contract was cancelled in 1968. On leaving the regiment, he returned home where he stayed for several months. During this time, he was a great source of worry. He stole my wife's car and a large sum of money, which he squandered at the races and with women. When he had no more money, he came home. Because of his behaviour toward us we asked him to live his own life." (Di Marino, 1979, p. 208)

When there is no longer any hope of improvement and the offender shows an apparently congenital moral turpitude, we stigmatize him and put him out of harm's way.

The stigma has two elements: labelling and exclusion.

Labelling consist in describing someone in derogatory terms. It conveys the message: Take care! This person is dishonest and dangerous, hold on to your purse, do not trust him, do not let him in your home, do not hire him. The terms 'incorrigible', 'beyond reform', 'depraved', are characteristic epithets of labelling.

Exclusion consists in ejecting the guilty person from the groups to which he belonged and severing all relationship with him. He is banished, ostracized and given a wide berth. Placed outside the pale of society, made a pariah, he is the target of general hostility.

Stigmatization is a measure of social control that is both incapacitating and intimidating. It makes the incapacitation of offenders possible because, as soon as they have been given the stigma, they will be watched with suspicion and excluded everywhere, denying them a great number of criminal opportunities (legitimate ones as well). The fear of stigma can also have a deterrent effect: a person will abstain from acting out in order to avoid the distrust and hostility of his milieu.

The amplification of delinquency

In Montreal, we asked high school students: "Do your parents ever punish you... by slapping or hitting you? ... by isolating you from the rest of

the family? ... by not letting you do things you want to do? ... and so forth". Two types of punishments, much more than the others, were in positive correlation with self-reported delinquency. They were 1) "scolding and remonstrating all the time" and 2) "insulting you" (Biron and Cusson, 1979, pp. 46 and 55). It would seem that these purely verbal punishments, nonetheless degrading and humiliating, if too frequent, have an amplifying effect on delinquency.

In France, the Vaucresson researchers found a close relationship between reputation during childhood and reform. Fifteen years after a conviction, a very large number of the subjects who had had a bad reputation during their childhood and adolescence were not rehabilitated (Breuvart et al., 1974, p. 143).

It is very probable that these youngsters had a bad reputation because, from very early on, they behaved badly, just as it is very likely that the Montreal school children were frequently censured and insulted because their parents were exasperated by their conduct. This said, it is logical to think that the association works both ways: the constant rebukes, the insults and the bad reputation amplify the tendency to behave badly.

This occurs first of all because the accumulation of reprimands contributes to the erosion of moral awareness. Durkheim saw this:

"In fact, all punishment, once applied, loses some of its effect. What gives it its authority, what makes it feared, is not so much the pain it causes as the moral shame implied by the censure it conveys. The sense of moral propriety that protects us against misdemeanors is not strong. It only acts on those subjects in whom it has lost none of its original purity. It has often been said that a first offence always leads to others. This is because one is less susceptible to this shame a second time. Punishment, then, has the very serious disadvantage of crushing one of the principal sources of morality, thus reducing its effectiveness in the future." (Durkheim, 1923, p. 166).

This undermining effect of sanctions on morality will become more marked, since over time the rebukes insidiously change into stigmatizing measures, destroying its victim's sense of honour. Having lost his sense of dignity, he has lost the essential motivation to behave morally.

Condemnation of an act, especially if it is frequent, inevitably attacks its author. In spite of all the distinctions made in pedagogical treatises, how can one condemn an act without condemning its author? How is the person involved to differentiate? It is difficult to prevent a child who is censured too often from concluding that he himself is the object of reproach as well as his acts.

A negative identity

It is probably because of the detrimental effect on self-image that the stigma has an amplifying affect. Numerous studies have taught us that delinquents have a tendency to depreciate themselves. According to Mailloux (1971), the delinquent considers himself a black sheep whose "inclination toward evil is due to his incurably perverse nature" (p. 193).

"Aware of his numerous misdemeanors, he sees himself as the very embodiment of evil - as criminal by nature. The illusion, fostered by all those who were predicting that he would one day turn out to be the black sheep leads him to consider his bad behaviour innate and in no way capable of reform."

(Mailloux, 1971, p. 147)

This does not necessarily mean that delinquents are dissatisfied with themselves; some of them try to be satisfied with themselves as criminals. They come to value what they do. One can find good reason to be proud of a daring activity that many lack the courage to undertake. "I accomplish what all of you dream of doing," said a young criminal to Michel Lemay (1973, p. 510). Speaking of the sensation of "malicious triumph" he had when carrying out his exploits, Chessman (1954, p. 78) said of himself: "He never succeeded in being good, in becoming an honourable member of society, but at least, he no longer went unnoticed".

Jean Genet (1949), too, tried to be accepted as a thief: "I felt the need to become what I was accused of being. I saw myself as the coward, the traitor, the thief, the homo that they saw in me" (p. 186). "I need only to take pride in my career as a thief and to be happy with it" (p. 259). But it is not easy to withstand degradation and the contempt of everyone. "Denying the virtues of your world, criminals desperately agree to organize a forbidden world" (p. 10). "And I was stupified to realize I was garbage. I was contemptible" (p. 186).

One cannot put a stigma on crime without marking the criminal, and the latter, once branded, is in danger of settling down to a life of crime. This is the major disadvantage of morality as a measure of social control. It has an adverse effect, difficult to avoid. While it prevents a good number of citizens from committing crimes, it drives a few to pursue criminal careers.

CHAPTER IX

THE MORAL PHENOMENON

Recapitulation

The salient points of the analysis made in the last three chapters can be summed up as follows:

1 / The more a person disapproves of theft and violence, the less he will commit these acts.

This proposition refers to the facts concerning the moral ambivalence of delinquents and the tendency of non-delinquents to disapprove, en masse, of crimes such as theft. An element of moral conscience - the tendency to disapprove of a crime - helps to check the commission of this act.

2 / The more integrated a person is in groups where theft and violence are disapproved of, the less he will have a tendency to commit these acts.

This proposition comes from two findings. First, adolescents who are well integrated at home and in school commit fewer crimes than those who are not. Second, when they expect the disapproval of their parents and their peers, adolescents tend to avoid reprehensible conduct. Integration favours the influence of members of the group on the individual and gives him reason to respect their judgment, in particular the fear of being discredited and rejected.

3 / The more an adolescent expects to be reprimanded by his parents if he commits a crime, the more he will tend to obey the law.

4 / The more an adolescent expects to be censured by his peers if he commits a crime, the more he will tend to obey the law.

5 / The more people are afraid of losing the respect they enjoy in their milieu because of a crime, the less they will contemplate committing a crime, even though they would like to.

6 / The more severely the members of a community disapprove of a given crime, the fewer the number of persons in this community who will commit that crime.

The general theme of these last four propositions is that the evaluation of others influences our conduct. Censure, whether it comes from our parents, our peers or the community to which we belong, persuades us to repress acts that are disapproved of. The censure, which defines an act in pejorative terms, has an inhibiting effect. By all indications, crime is rare where it is censured and flourishes where it is regarded with tolerance.

7 / In time, the reprimands can become stigmatizing and amplify the delinquency.

It is difficult to censure the crime without affecting the delinquent's self-image. There is a risk, therefore, of becoming involved in an escalation during which the moral reactions will have a labelling effect. The marked delinquent will no longer have much to lose in terms of self-esteem and reputation; because of this, he will not have much incentive to obey the law.

The realm of morality

All these statements concern the negative judgments either dictated by our own conscience or expressed by others. Since these evaluations are nothing but the idea we have of evil, we can conclude that the mere idea of evil - our own and that of our peers - helps in the fight against crime.

This is the very heart of the moral phenomenon, conceived as behaviour which is influenced by the idea of good and bad.

But what do we know about this morality that acts to curb our criminal impulses?

Strategies and norms

Moral conduct can be distinguished from what might be called strategic conduct, that is, action taken as a means to an end. There is a classic contrast here: on the one hand, interest, utility, pleasure, efficacy, and on the other, the norm, good, duty, obligation, ideals. In today's social sciences, we find the equivalent in the difference between the 'homo oeconomicus', a person who tends to maximize his well-being and comes to a decision after calculating his costs and benefits, and the 'homo sociologicus', who, as Boudon (1979, p. 237) points out, can decide to do, not what he would prefer, but what custom and his values dictate.⁽¹⁾

We have often made the mistake of wanting to reduce human conduct to its strategic dimension. This was the case of the hedonist philosophers who, refusing to distinguish between the good and the useful, tried show that duty is in the best interest of people. In so doing, they were not able to account for altruistic behaviour.

We have also wanted to reduce human action to its normative dimension. As we found, this was the mistake of the sub-cultural theories which led to the absurd belief that deviance is merely conformity to conflictual norms. This would mean that man is a totally disinterested being with no other motivation than to submit to the will of his group.

We are forced, then, to recognize the duality of human action; it is both normative and strategic. Man is as much a rule-following animal as goal-pursuing animal (Hayek, 1973). Divided between the good and the useful, the human being is sometimes guided by duty, sometimes by interest, although he often succeeds in reconciling the two.

Crime falls precisely within this dialectic between the pursuit of an objective and submission to the rule. For the actor as a strategic being, it

(1) There are sociologists who take into account the strategic aspect of behaviour, Homans, for example, and economists who take into account its normative aspect, Hayek, for example.

seems a way of attaining his ends or solving a problem, for the actor as a moral being, it seems an act that sacrifices a value. According to this analysis, acting out will depend on the simultaneous play of three factors: 1) the strength of the motivation to achieve the desired goal, 2) whether or not there are legitimate ways of achieving this goal and 3) the power of the moral inhibition.

Constraint and cooperation

A second distinction enables us to have a better grasp of the meaning of morality. The moral facts concerned so far relate to what Piaget (1932) called the morality of constraint as opposed to the morality of cooperation. For Piaget, morality boils down to either the respect children have for adults, which explains the child's feeling of obligation and awareness of duty, or to the feeling of sympathy the child has for his peers, which explains cooperation (p. 275). We are confronted here by two moralities.

"The morality of constraint is the morality of pure duty and heteronomy: the child accepts a certain number of orders from the adult that he must obey no matter what the circumstances. Good is what conforms to these orders, bad is what does not. Intention plays little role in this concept and the responsibility is purely objective. But in opposition to this morality, there gradually develops a morality of cooperation, whose principle is solidarity and which places the accent on autonomy of conscience, intention, and consequently, subjective responsibility."

(Piaget, 1932, p. 268)

It is clear that the moral aspects that have been connected with delinquency so far refer to the unilateral respect that Piaget described as a combination, sui generis, of love and fear (p. 281). Morality, as it is presented in our analyses, falls within a relationship of dependency and submission, not a relationship of cooperation and reciprocity. Hence the adolescents we studied obey the law because they yield to adults or give in to the pressure of their group.

In this work, the term 'morality' is used in the sense of a morality of constraint. This certainly does not mean to say that reciprocal and contractual relationships should be ignored. On the contrary, they seem to me to be of the utmost importance. A section of this book, "Justice", is entirely devoted to them.

Internalization

Internalization of the rule is a characteristic trait of morality. It is understood to mean a stable tendency to act in conformity with a norm regardless of the advantages or disadvantages that might ensue.

There are situations in which it would be easy and profitable to steal with total impunity. Let us suppose that, on a deserted road, a person finds a pocketbook filled with money and containing the owner's identification. The gain is obvious, the risk nil. More than one person, however, will return the pocketbook to its owner. Conduct of this kind cannot be explained by the expectation of gain since the person deprives himself of the chance to profit despite the certainty of escaping punishment. We must agree, then, that there is behaviour as well as inhibitions that persist independently of what the behaviourists call external reinforcements (Aronfreed, 1968, p. 34). It is possible to believe, therefore, that they obey forces within the individual.

An indication of this process is reported in chapter VI. The tendency to disapprove of various offenses is associated with a low level of delinquent activity. This means that adherence to the norm, measurable by the evaluative reaction, determines behaviour. We can speak here of internalization: mental attitudes that exercise an influence on the inhibition of certain acts. It is only common sense to recognize that the human mind has a function - conscience - that enables it to distinguish between good and bad and to behave accordingly.

The internalization of moral rules can also be inferred from the fact that an offense is often followed, first by guilt feelings, then by attempts to make amends. A little introspection is enough to have us admit the existence of repentance and remorse, those disagreeable feelings that are a mixture of

anxiety, regret, shame and a desire to atone and be forgiven. These feelings are very often accompanied by a whole series of acts intended to show others that one recognizes the legitimacy of the rule one has just violated and that one intends to adhere to the value challenged by the infraction. These are what Goffman (1971) called reparative activities, which can be defined as measures taken by an offender to show his immediate circle that in spite of his offense, he is committed to the norm he has just violated.

The principal reparative activities are justifications and excuses. By justification, the offender tries to show that, despite appearances, he did not really commit the infraction. He can profess innocence, for example, saying that he did not mean to do it, that he had had to defend himself, that he had not anticipated the consequences of the act, that he was drunk, that he had no criminal intent, and so on. By excuses, the offender shows that, if it is true that he wanted to commit an offence, he now disowns the person he was, deplores his action, repents, and asks that he be allowed to be what he now knows he should have been. Among these excuses, we find expressions of regret, of repentance and embarrassment, self-criticism and promises to improve.

In addition to the justifications and excuses, there are actual moves to make restitution, to reimburse the victim, to compensate - all acts to make up for the harm caused by the infraction.

In the same way that the censure of others is a way of reaffirming their faith in the rule that has been violated, the act to compensate on the part of the guilty person is a way of professing his faith in the rule he has wrongly broken. It enables him to demonstrate to everyone, including himself, that his conduct was not an expression of his true nature and that he still has a moral conscience.

Moral motivation

If we agree that moral conduct leads to the denial of interest in favour of a value, we come up against a problem the utilitarians have been unable

to solve: What do we gain by sacrificing our own interests? It seems that morality is based on two different types of motivation: dread of the taboo and a sense of honour.

People with strong moral inhibitions react to armed robbery, rape and murder with horror. They evidence the same feelings of disgust and holy terror that were characteristic of taboo conduct in archaic societies. It is probable that morality owes some of its effectiveness to the taboo attached to certain acts. The English psychologist Trasler (1979, p. 317) has observed that internal controls work in such a way that the idea of violating the rule does not even occur to people. The offense has become literally unthinkable, the violation does not even enter the mind. Who, for instance, thinks of committing a hold-up when passing a bank? Who could consider raping a woman he is courting without success? Moral inhibitions also prompt people to avoid situations where they would be tempted to commit a culpable act. Some quick-tempered men, for instance, carefully avoid offending people and resist the urge to reply to an offensive remark. In this way, they never get into situations where they would have to resort to blows.

The fact that the keynote of this morality is the taboo shows the archaic nature of this mechanism of social control. It is a system of prohibitions that are imposed in the absolute and not based on reason. This type of control is introduced very early in the life of a child and, most likely, in the history of mankind. At least this is what Piaget thought; according to him, in the morality of constraint, the rule "is considered sacred and produces in the child's mind feelings similar to those that characterize the obligatory conformity in primitive societies" (1932, p. 292). In this case, it is not surprising that the moral rule is seen as immutable by those who have interiorized it. For them it has been established once and for all and there is no question of contesting or changing it (p. 277).⁽¹⁾

(1) It would be wrong to conclude that because these moral rules are archaic and unreasoned they are of no use. On the contrary, it is quite probable that such rules have an essential role to play in the survival of individuals and groups. Hayek (1979, pp. 157-160) points out that traditional rules were maintained because they favoured the perpetuation and expansion of the societies that had adopted them. A rule can be useful without the person who obeys it being aware of its utility.

A sense of honour can be considered another source of moral motivation. We behave according to the rule because we want to retain our own self-respect and the respect of others. In other words, people sacrifice their interests over the short term in order to acquire a good reputation and achieve self-esteem.

The advantages of having a good reputation are obvious: few human enterprises can be accomplished without the support of others and it would not be forthcoming if we did not inspire confidence. It is by behaving with moral integrity that we become known as an honourable person, thus establishing a position of trust among our peers.

We also behave well for our own continued self-respect. A man has a need for self-acceptance and gets a certain satisfaction from knowing or believing he is good, virtuous and honest. Self-love is a powerful motivating force. Thus for, man self-love depends in large part on his remaining true to his own values. Maria Ossowska (1970, p. 54) defines dignity (or in other words, sense of honour) as "an attribute of those who know how to defend the values they recognize, whose sense of self-worth is associated with the defense of these values and who expect to be respected for it by others".

For a moral person, any infraction is a threat to his self-esteem. Anyone who believes that theft is wrong cannot steal without undermining the good opinion he has of himself. If someone else steals, he does not deserve my respect; if I steal, I do not deserve my own respect. People are ready to sacrifice their immediate interests to have the satisfaction of proving to themselves that they are upright individuals. It is in this way that they build and protect the image they have of themselves and which they need for their self-acceptance. It is for this reason that those who do not succeed in living according to their principles have great difficulty in accepting themselves, and at worst, must relinquish their self-esteem.

It is hard to see how a sense of honour can exercise a true influence other than in groups where a hierarchy has been developed based on moral standing, that is, in milieux where the degree of esteem one enjoys depends on one's

conformity to the moral rules. In such groups, infringements affect the moral standing of their author. Here, the disapproval acts as a signal warning the offender that he is taking the risk of lowering his public image.

It may be concluded, therefore, that a sense of honour can prompt people to obey the law. In this respect, the moral control of crime consists in persuading the citizens that crime is a degrading act and anyone who commits an offense dishonours himself. This in itself is a specific reason to resist temptation. As Ossowska (1970, p. 134) points out, to define crime as a dishonourable act is a way of limiting it by appealing to men's sense of honour.

Sometimes this appeal is not made or is not heard. This is the case for most criminals. In their eyes, crime is not an infamous act, but simply one solution among others. But they risk paying a high price for taking the criminal way out, for they must lose their dignity and their reputation. The profits of crime are not without cost in terms of morality. It is one of the reasons - perhaps the most important of all - why, in spite of the opportunities available, most people avoid this path and, if they do follow it, quickly turn back.

CHAPTER X

THE MORAL FUNCTION OF THE CRIMINAL JUSTICE SYSTEM

So far our analysis of morality has been confined to the sphere of interpersonal relations. We will now consider whether or not the criminal justice system has a role in the fostering and preservation of moral institutions. Durkheim was convinced that the function of penal law is essentially a moral one. In his opinion, social reaction serves to restore the collective conscience disturbed by a crime. This means that punishment is not so much aimed at the offender as at honest citizens who would become uncertain about the rules if crime went unpunished.

The essential functions of the punishment, then, would be to make clear that the rule is still in force and thus preserve the moral convictions of the group. The criminal sanction serves first and foremost to "keep the social cohesion intact by preserving all the vitality of the collective conscience. Denied categorically, the latter would necessarily lose its energy if an emotional reaction on the part of the community did not compensate this loss, and the result would be a breaking down of social solidarity" (Durkheim, 1893, p. 76). The punishment therefore expresses the unanimous aversion that crime continues to inspire and, in so doing, preserves the society's consensus. In this perspective, the criminal trial is a ceremony in which representatives of the community express their indignation regarding the crime and the punishment, a tangible manifestation of society's continued disapproval of the act committed.⁽¹⁾

This view has not been discarded. In 1976, the Law Reform Commission of Canada proposed that the defence of social values become the main goal of the criminal law. It states:

(1) In England, the idea had been vigorously defended by Stephen (1863, p. 99):

"Some men probably abstain from murder because they fear that if they committed murder they would be hung. Hundreds of thousands abstain from it because they regard it with horror. One great reason why they regard it with horror is that murderers are hung with the hearty approbation of all reasonable men."

"The trial is not just directed at the offender in the dock nor even at potential offenders outside. On the contrary, it is a public demonstration to denounce the crime and re-affirm the values it infringed" (p. 23).

Similarly, Alain Peyrefitte attributes to punishment the role of restoring the social bond broken by the crime by exorcizing the fantasies of evil that enter the citizens' minds each time the law is violated.

"Through punishment, society reestablishes the confidence of the citizens and eliminates the disturbing doubt that the crime has elicited. The line between good and bad, between just and unjust has been drawn once again. Crime cannot be truly conquered for it constantly recurs. But it can be exorcized.

(Peyrefitte, 1981, p. 234)

He notes that the rule exists only by virtue of the punishment. "The sanction makes the obligation" (p. 332). Since society cannot exist without the set of rules that constitute it, punishment is bound up with the very survival of society. "The law punishes to remain the law. It punishes to survive. It punishes to keep the right to establish rules, to limit and protect freedom. It punishes to define what is licit and what is not" (p. 296).

A doubtful direct effect

The idea is appealing, but from the scientific point of view, it has the disadvantage of being practically incapable of verification. It is very difficult to find facts that can confirm or invalidate it. However, there is room for doubt. Is it likely that the punishment of criminals can have much direct influence on the moral convictions of the public?

As we have seen, it is a fact that morality effectively keeps people from committing crimes and that the fear of being censured by one's parents or fellow citizens contributes substantially to the social control of crime. But a man is sensitive to the disapproval of those close to him because he is anxious to keep their good opinion of him or because he values the respect of persons he esteems and loves. But do judges have such moral authority that the

mere fact of knowing that they punish thieves will convince us of the evil nature of theft? Is it not over optimistic to hope that magistrates can have such an influence over the nation's ideas of good and bad?

Theft and violence arouse our indignation because our moral education has taught us to react in this way, because we are influenced by the convictions of our peers and because we sympathize with the victims. Is it likely that it is also because we know that thieves and murderers go to prison? My reaction would be to agree with Andenaes (1974, pp. 122-124) and Walker (1980, p. 33) who believe that the direct influence of the criminal justice system on the moral attitudes of the public is minimal, especially over the short term.

Impunity weakens morality and justice

Even though the penal sanction has no direct influence on morality, or very little, it would seem that it can have an indirect and long term effect by limiting the number of crimes that go unpunished.

An anecdote told by Andenaes (1974, pp. 18-19) will help to explain how this process works. In Norway, an impressive series of thefts were occurring in an arsenal. Then one day, two boys, caught in the act of stealing, killed the guard. This obliged the police to take action and they succeeded in arresting a number of the thieves. A large quantity of stolen goods was recovered: several trucks were filled with arms, ammunition, radio equipment, uniforms, etc., following the raid. The boys who were caught, explaining why they had been stealing the goods, said that it was easy to steal from the arsenal and that many of their friends has done so with success. These examples prompted them to try their chances and, since they were always successful, they told other friends who also undertook to do what they were doing.

Any crime that goes unpunished encourages other to try their luck. One is tempted when one sees a good many people committing crimes openly and with impunity. This contagion of the "bad example" is a two-fold process: a weakening of moral conviction and a feeling of injustice.

The weakening of moral convictions. Without the support of others, it is difficult to preserve strong moral inhibitions. The latter must be backed up by the behaviour of others and their reactions of approval and disapproval. In a social vacuum, moral principles are in danger of weakening. Only saints, and there are few, stay on the right path despite being surrounded by unscrupulous men. That is why the sight of infractions committed openly and with impunity can weaken the moral fibre of ordinary mortals. If everyone steals, why not me? Guilt, which is often the shame of not being as upright as others, has no meaning if others are behaving badly. There is no reputation to maintain in a society of dishonest people; there is even a risk of being ridiculed for one's scruples.

The feeling of injustice. The sight of crimes going unpunished gives honest men the impression that they are fools. They agree to respect the rights of their fellow man while others are taking the liberty of doing the opposite. Not to be left out, they may therefore be tempted to imitate them and take advantage of the benefits of the criminal solution. In other words, crimes that go unpunished, especially if they are frequent, make respect for the law less and less rational, less and less profitable. As in a game, it no longer makes sense to play by the rules if the opponents are cheating.

The example of crime undermines morality and rational motives for obeying the law. Therefore the criminal sanction, which, by its deterrent effect,⁽¹⁾ not its moral influence, has the following results. It reduces the number of crimes by intimidating actual and potential delinquents and, in so doing, limits the numbers of examples that could have a deleterious effect on people's morality and sense of justice. It forces undeterred criminals to act furtively and thus reduces the visibility of these examples. It penalizes the offenders who are caught, making their examples less tempting and reassures the honest citizen that he loses nothing by obeying the law.

It is probably through deterrence that the criminal justice system influences morality and justice. As Andenaes points out, if the laws and their

(1) The deterrent effect of punishment will be discussed further on.

enforcement in themselves have no direct moral influence, they nevertheless help preserve peoples' moral convictions by intimidating those who have none.

It is quite possible that, beyond a certain volume of unpunished crimes, the moral and rational reasons for obeying the law can fade away. The criminal justice system, then, can help preserve morality and justice by limiting and neutralizing the corrosive influence of examples of successful crimes.

The criminal justice system and morality support one another

There is a further relationship between morality and the criminal justice system. Morality amplifies the intimidating effect of the penal system and the latter, in turn, enables moral disapproval to be exercised.

During a survey for the British government a few years ago, young people from 15 to 21 years of age were asked what importance they attached to the different possible consequences of an arrest. The following table shows the results obtained:

The importance attached to various consequences of a possible arrest: percentage of respondents who put one of the consequences mentioned first.

- What my family would think:	49%
- The chances of losing my job:	22%
- The publicity or shame of having to go to court:	12%
- The punishment I might get:	10%
- What my girlfriend would think:	6%

(Willocock and Stokes (1953) in Zimring and Hawkins, 1973, p. 192)

These figures show that the most frightening consequences of a hypothetical arrest concern the family, the job, the social milieu. These boys are afraid, first of all, of being discredited in the eyes of their parents. They are concerned about their reputation. They fear they would lose their job. These are what they fear the most, not the formal punishment they might undergo.

Penal measures are intimidating in the first place because they unleash a whole series of additional sanctions: disgrace, shame, dismissal, rejection. Before we fear our fate in court, we fear the reaction of our parents, our peers and our employers. (But it is necessary that our associates would have the same reaction, which is the case for most citizens, but not so for the habitual criminal living with his own kind.) Informal sanctions, which are often of a moral nature, give considerable weight to the criminal justice system, increasing its deterrent effect tenfold.

Furthermore, penal intervention often makes the exercise of social disapproval possible. The arrest and conviction of the criminal make the exposed crime a public matter that can trigger the disapproval of the guilty person's immediate circle. In a large city, offenders could easily escape the censure of their milieu if the action of the police and judiciary did not give some notoriety to their crimes (Andenaes, 1974, p. 50).

If there were no criminal justice system, it would be much easier, in modern societies, to escape moral sanctions, and if there were no informal sanctions - particularly of a moral nature - the criminal justice system would lose much of its deterrent power.

PART III

DETERRENCE

CHAPTER XI

DETERRENCE AND GENERAL PREVENTION

As we have just seen, the criminal justice system could very well have an indirect influence on society's moral climate if it had a deterrent effect. But has such a condition been met? There are some who strongly doubt it. The idea that punishments can have an intimidating effect has been discredited for a long time. But it is still very much alive in the minds of ordinary mortals. Most judges and lawyers firmly believe in it and it is the keystone of penal systems, past and present. It therefore merits close examination, particularly since the ineffectiveness of deterrence has never been proven.

The doctrine of deterrence.

The theory of deterrence can be summarized as follows:

1 - Threats. In order to control crime, the State publishes a collection of threats, the penal code. The warning is clear: if you attack a person or another person's property, we will deprive you of your freedom, take your money and even take your life. The essential idea is that the criminal law, as a method of social control, does not rely on moral persuasion or an appeal to reason, but on force, that is, on violence and the threat of violence.

2 - Execution. For these threats to be credible, they are carried out. That is why people who violate the law are chastised. As the Norwegian, Andenaes (1974, p. 131), points out, the law would be nothing but a scrap of paper if offenders were not punished. The police, the courts and correctional systems do their utmost to see that the citizens cannot violate the law with impunity. In this way, they show that the State does not make empty threats.

3 - The alternative. The citizens, then, have a choice: obey the law or pay the consequences. As Hart (1968, p. 23) explains, this gives people a kind of freedom. Rather than preventing crime by continual surveillance or

propaganda, unwanted conduct is made punishable. "In totalitarian régimes, there is more prevention than punishment. The people are trained, watched, supervised, educated, cared for and corrected. The most elementary rights are suspended in the name of prevention. In democratic countries, the idea of repression is inherent in the respect for human rights: it comes only after the infraction or crime, and at the end of a carefully organized adversarial procedure. Repression is to prevention what a posteriori financial control is to a priori financial control." (Peyrefitte, 1981, p. 293).

4 - The balance of profit and loss. Hypothetically, punishments will have a deterrent effect only if they counterbalance the profits people count on obtaining through crime. The citizen decides to commit or not commit a crime depending on whether the gains he hopes to acquire are greater or less than the punishment he will undergo.

5 - The certainty and severity. From the point of view of deterrence, the essential components of the punishment are its certainty and severity. The certainty of punishment is the probability that a crime will actually be punished. The severity of the punishment is the amount of suffering inflicted.

6 - The basic hypotheses. Two predictions logically follow from the doctrine of deterrence: First, the number of crimes committed varies inversely with the certainty of the punishment. Second, the member of crimes committed varies inversely with the severity of the punishment.

Definitions

Although seemingly simple, the theory of deterrence calls for relatively complex procedures. Also, before undertaking an examination of the facts, some distinctions must be made.

Deterrence has an effect when a citizen is prevented from committing a crime because of the fear of punishment. In other words, it is the intimidating effect of the punishment.

There are two different forms of deterrence.

General deterrence is the intimidating effect of the threat of penal sanction. The citizens are intimidated by the example of the punishment imposed on others. General deterrence works when the citizens, or more precisely potential offenders, avoid acting out because they take the threats set down in the law seriously.

Specific deterrence (also called 'special' or 'individual deterrence') is when a person already punished refrains from committing further crimes because of the punishment he has been subjected to. It has an effect on offenders who have undergone punishment, not on the citizens as a whole or on potential offenders. It deters recidivism.

Certain authors, such as Zimring and Hawkins (1973), believe there is a marked difference between general and specific deterrence. Others stress the similarities. For Walker (1980, p. 68), the difference lies in the fact that general deterrence calls on the imagination, whereas specific deterrence calls upon memory.

General deterrence should not be confused with general prevention. The latter is the power of the law and its enforcement to prevent the citizens from committing crimes. Here, the focus of attention is on the total number of crimes that are prevented by the laws and the criminal justice system. Since we cannot exclude the possibility that the control system can use mechanisms other than fear, we cannot put general prevention in the same category as general deterrence. The effect of general prevention can be estimated by the relationship between legislative and repressive activity on the one hand, and the general level of crime on the other. Although this effect may be due primarily to general deterrence, there are various other processes at work as well, such as the moral or expressive influence of the law, incapacitation and specific deterrence. General prevention, then, can be considered the result of additional influences exercised by the law and its enforcement.

Deterrence and morality

Among American authors such as Tittle and Chiricos, the term deterrence is often used to cover all forms of sanctions, whether formal or informal. But most informal sanctions do not rely on deterrence in the strict sense of inspiring fear, but on taking others' opinions into account. One must not confuse deterrence and morality.

Moral sanctions are effective only because we care about the esteem of others, whereas deterrent penal measures are effective due to the fear of the State's forcible interference in our lives. To refrain from stealing because we do not want to be disgraced in the eyes of those we care about is not at all the same as not doing so to avoid prison.

The intimidating effect of punishment can be considered of a strategic nature, not a moral one. The person who obeys the law for fear of punishment does so because of self-interest, not duty; he wants to avoid punishment, not keep his reputation or his self-image. By the threat of punishment, an attempt is made to make people change their strategies, to warn them that it is in their best interest to find legitimate ways of solving their problems. On the other hand, by moral pressure, an effort is made to convince people that certain acts are reprehensible.

Deterrence is based on coercion; to use it, all that is needed is power. The moral sanction depends on persuasion; to be effective, it takes for granted that the person to whom it is addressed is sensitive to the opinion of others.

Interiorization of the rule, an essential ingredient of moral conduct, does not exist in the type of behaviour that is influenced by deterrence. In the one case, we often behave well even when there is no threat of sanctions, in the other, we only behave according to the rules if we think that punishment will be enforced.

Certainty of punishment and crime

The objective certainty of punishment is the risk or probability of being punished for a given crime. It has been measured by researchers from three angles: 1/ the number of arrests compared with the number of known crimes, 2/ the number of convictions compared with the number of known crimes, and 3/ the number of prison sentences compared with the number of known crimes.

In the last ten or fifteen years, sociologists and economists, using more and more precise methods, have done a great deal of research on the certainty of punishment. They show that there is a significant inverse relationship between the certainty of punishment and the rate of crime. The greater the probability of arrest, conviction or imprisonment, the lower the crime rate (Gibb, 1968; Tittle, 1969; Logan, 1972; Ehrlich, 1973; Tittle and Rowe, 1974; Wolpin, 1978). Studies in which a significant relationship was not found between the rate of crime and the probability of arrest and imprisonment are rare (the research of Greenberg et al., 1979, is one exception). The work of Wolpin (1978) merits particular attention. On completion of a study on the evolution of the rate of crime in England from 1894 to 1967, Wolpin reports a constant reduction in the rate of cases cleared and the rate of imprisonments and as constant a rise in the rate of crime (p. 827). On the other hand, contrary to widespread opinion, crimes against the person were also found to be sensitive to variations in the certainty of punishment. One author, Ehrlich (1979, p. 50), even goes so far as to say that crimes against the person are no less affected by punishment than crimes against property. The consistency of the results are striking: using different methods and all sorts of different data, including victimization surveys (Goldberg, 1977 cited by Ehrlich, 1979; Smith and Warren, 1978), the authors all made the same observation: the rate of crime is negatively associated with the certainty of punishment. Thus one cannot object to this fact by arguing that the statistics are unreliable. It would be unlikely that in a large number of different jurisdictions the statistics would be biased in the same way, thus giving the same results.

However, a number of researchers, among them Blumstein et al. (1978, p. 25 ff) and Pontel (1978), noted that the increase in crime could have been

caused by congestion within the control system. We cannot exclude the possibility, then, that there is an inverse causal relationship between the rate of crime and the certitude of punishment, the volume of crime having an influence on the degree of the certainty of punishment. This seems to apply to the risk of being found guilty and sent to prison. This simultaneous relationship would be because judges and prosecuting attorneys are often overburdened in jurisdictions with a very high rate of crime, and would therefore be tempted to prosecute an accused less often and less vigorously than in jurisdictions where there are fewer cases to plead. The result is that more cases are dismissed, there are more acquittals, and therefore a reduced certainty of punishment caused by the volume of crime. A similar argument can be advanced concerning the risk of imprisonment. In high-crime jurisdictions, the courts will more easily agree to plea bargain, resulting in a reduction of the charge or the sentence. Thus there will be fewer prison sentences and a lessening of the certainty of punishment, once more due to the volume of crime.⁽¹⁾

Although a situation of this kind can apply to the risk of conviction and imprisonment, probably it does not apply to the risk of arrest. In modern societies, the police spend little of their time fighting crime and arresting criminals; most of it is devoted to other things: highway traffic, surveillance of public places, intervention in family disputes and conflicts between neighbours, assistance to accident victims and people who take ill on the street, answering emergency calls, etc. Rarely is a police corps overburdened by the volume of crime. In addition, the risks of arrest, in all likelihood, are much more influenced by other factors than the level of police resources, in particular, by the collaboration of witnesses and victims and by the administrative policies within the police services.

(1) This analysis was contested by Ehrlich (1979, pp. 52-53) who points out, first that the congestion of the courts cannot affect grave and unusual crimes, concerning which there seems to be an effect of the certainty of punishment. Next he points out that econometric procedures were used to control the influence of this phenomenon and that, in spite of everything, the association certainty/crime is maintained. All these considerations do not invalidate the deterrence hypothesis, but call for prudence: the correlation between the certainty of conviction or imprisonment and the volume of crime cannot be used as definitive proof of the deterrent effect.

Thus, if there are possible reservations about the deterrent effect of the risk of conviction and imprisonment, there is little doubt when it comes to the risk of arrest. It can be said, then, with some assurance, that the certainty of arrest helps to reduce crime. Incidentally, there are a great number of additional indications that point to the same conclusion.

The importance of the certainty of punishment is vividly demonstrated when, for one reason or another, the police forces are not on duty. In 1919, a police strike in Liverpool was followed by violence and looting. The most famous case was one that took place in Denmark when, in 1944, the German forces of occupation arrested all the police in the country; immediately, the rate of crime rose, particularly armed robbery, which in Copenhagen jumped from 10 to 100 cases per month (Andenaes, 1974, pp. 50-51). When the Montreal police went on strike in October, 1969, crimes against property in the business sector were four times more numerous than usual. "On the other hand, the number diminished in certain sectors where the people had increased the surveillance of their stores and houses" (Fattah, 1976, p. 74).

All measures that increase the risk of arrest reduce criminal activity. That is why there are fewer burglaries in homes where the windows are closed, not because it is impossible to enter, but because breaking a window or smashing a lock would make a noise, making the operation more risky. Burglar alarms are effective only because they heighten the risk of arrest. The same is true of the surveillance of buildings, the metros and other public places (Clarke, 1980). Possibly the reason why there is more crime in cities than in villages, is largely because the anonymity of large cities reduces the risk of arrest.

In short, we can conclude that the certainty of arrest is effective in prevention: the more probable it is, the fewer the crimes committed.

Crime and the severity of punishment

When we speak of the severity of punishment, a distinction must be made between the legal severity, the maximum punishment stipulated by the code, for example, and the real severity, the punishment actually inflicted by the courts, that can be measured by the average length of time spent in prison for a given type of crime. It is the real severity that concerns us here.

Most of the research on the real severity of punishment has dealt with the effect of the duration of imprisonment on the rate of crime. On the whole, there is no significant association between the rate of crime and the time spent in prison (Blumstein et al., 1978, p. 37). Many authors, Ehrlich (1973) among them, find such an association, but their studies are strongly disputed. There is one exception, however, homicide. Most researchers find a significant negative correlation between the rates of homicide and the duration of imprisonment for this crime (Nagin, 1978, p. 111). Gibbs, in 1968, was the first to report this negative correlation, although not a strong one, between the rates of homicide and the number of months their authors spent behind bars.

The absence of a consistent relationship between the severity of punishment and crime should not lead to any hasty conclusions. It must be pointed out that the measurement of the severity most frequently used - the duration of imprisonment - is rather crude, takes only one element of the phenomenon into account and ignores its subjective aspect. Tittle (1980, p. 197) has presented some data that suggest that what really counts is not the actual duration of the punishment but the extent to which it affects the person. On the other hand, it is quite possible that there is a threshold beyond which the punishment begins to have an effect (Tittle, 1980, p. 9). Unfortunately, the research on the relationship between the actual severity of the punishment and crime has been unable to determine this threshold. We do not know, therefore, whether or not the duration of imprisonment has any effect on the volume of crime in a community.

Conclusion: the difficulties of interpretation

The hypothesis of the deterrent effect of the certainty of punishment stands the test of reality better than that concerning its severity. It has been shown that the greater the probability of arrest, the greater the reduction in crime. On the other hand, we do not know whether or not the duration of the prison sentence has any influence on the rate of crime. This would make us tend to think that Beccaria was right when he wrote:

"The certainty of punishment, even if mild, will always make more of an impression than the fear of a terrible punishment

if that fear is mixed with a hope of impunity: the slightest suffering frightens people if it is inevitable, whereas hope, that heavenly gift that we all have, sweeps aside the prospect of the direct punishment, especially if it is reinforced by examples of impunity granted by a weak or greedy judge."

(Beccaria, 1764, p. 46)

However, we must not judge too quickly. The interpretation of the facts reported above is not self-evident. Most of the specialists explain them in terms of general deterrence: a strong possibility of being arrested intimidates potential delinquents and prevents them from acting out. However, at least three other mechanisms besides general intimidation could contribute to achieving the result observed.

1 - Special deterrence: Since there is a high risk of being arrested, there will be a large number of offenders apprehended and this could have a specific and not a general deterrent effect that would lead to a reduction in crime just the same.

2 - A moral effect: It is possible, as Durkheim (1893) thought, that the criminal sanction would have the effect, not of intimidating, but of reinforcing moral inhibitions against crime. Numerous arrests could show the public, graphically and repeatedly, the importance society attaches to the norms, thus reinforcing the moral convictions of the citizens.

3 - Incapacitation: In a jurisdiction where the probability of arrest and imprisonment is high, career criminals will most likely spend more time behind bars than in a jurisdiction where the certainty is low. An accumulation of prison terms, during which very active criminals are immobilized, could also have an impact on the total volume of crime.

Thus all that we can conclude in this chapter is that the certainty of arrest reduces the incidence of crime. It is impossible to go further and say by what process - deterrence or some other - we arrive at this result. Perhaps a study of specific deterrence would enable us to go further.

CHAPTER XII

THE CASE OF SPECIFIC DETERRENCE

A disputed theory

For the most part, authors who accept the theory of general deterrence are highly skeptical about specific deterrence. They believe that, even if the threat of punishment has an intimidating effect on the citizens as a whole, the punishment itself has no such effect on the offender who is punished (Tittle and Logan, 1973; Gibbs, 1975, p. 185; Vanden Haag, 1975, p. 135; Nagin, 1978, p. 95). We must admit that there is good reason for this.

First, recidivism. It is difficult to believe in special deterrence when we know that 35%, 40%, 50% and sometimes even a higher percentage of ex-prisoners recidivate. Moreover a number of offenders relinquish their criminal behaviour for reasons that have nothing to do with punishment.

Secondly, the more an offender has been punished in the past, the greater the probability that he will recidivate.

If we were to take this fact literally, we would be tempted to conclude that punishment, far from intimidating criminals, drives them more deeply than ever into crime. Indeed, this is exactly what many believe.

The choice of punishment, selection and recidivism

The more severely and frequently criminals are punished, the more they recidivate. There is no disputing this. But the conclusion that punishment does not have the desired effect is questionable. A very different interpretation is quite possible: the more a man is punished, the stronger his propensity for crime from the beginning: the recidivism that results would not be due to the punishment, then, but to the characteristics of the person.

Evaluations of penal measures often run into a basic methodological problem: the groups of offenders whose recidivism they want to compare are not

really comparable, because judges do not hand down sentences haphazardly, but try to suit the punishment to the characteristics of the offender. The "good risks", those who are not very likely to recidivate, are over-represented among those who are fined, for example, and under-represented among those who are sent to prison. How, then, can the effectiveness of these two punishments be compared? Wilkins (1969) put the problem in these terms:

"Obviously, the outcome of any process or treatment is determined in part by the nature of the "input" material. The different outcomes of treatment can be explained by the difference in the classes of offenders selected by the decision of the courts" (p. 85).

The phenomenon is well known, but it is more important than is usually thought.

When we compare the results of probation with those of juvenile institutions, we always get the same result: probation is followed by a lower rate of recidivism than the correctional school. In France, for example, 27% of youths on probation were considered a failure against 38% in juvenile institutions (Breuvart et al., 1974, p. 172). This does not mean that probation is a more effective measure, because those who are placed in correctional schools are worse risks. Breuvart et al. (1974, p. 174) were able to show that the adolescents placed in correctional schools came from broken families and had alcoholic or criminal parents much more often than their peers placed on probation. Moreover, a greater proportion of them were unemployed, were behind in school, were mentally deficient and unstable at work.

These results are not surprising knowing the way in which judges make their decision. Those they think will not be too great a threat to society are placed on probation, while those they believe will commit new crimes are placed in correctional schools.

A similar phenomenon occurs when we compare probation and "admonishment". The latter is a suitable warning that the judge gives a young delinquent. In France, the failure rate of the youth who were admonished was 18% 15 years later against 27% of the subjects on probation. It is obviously impossible to believe that admonition - a mere warning - is a more effective measure

than probation. The fact is that the subjects whom the judges see fit to admonish are actually 'better risks'. For example, there are three times fewer unemployed and mentally deficient cases among those who received a warning than among those placed on probation. Another distinguishing feature of this group was a stable family background, normal schooling and non-criminal parents.

A number of researchers have tried to overcome the problem of selection by keeping the characteristics associated with recidivism constant. The method most frequently used is to create homogeneous groups in terms of the probability of recidivism and to compare the actual level of recidivism of the subjects after different treatments had been applied.⁽¹⁾ If the different measures show different results within a homogeneous group, it is to be supposed that they are due to the treatment and not to the initial characteristics of the delinquents.

Despite these efforts, the effect of selection cannot really be eliminated. The judge's decision incorporates a prediction of the risks, which is partly based on information accessible to the researcher and partly on facts to which the judge alone has access and which can have predictive value.⁽²⁾ Judges quite possibly take this second category of facts into account when pronouncing sentence. Thus we have two series of predictions that do not completely overlap. The researcher, using his tables, creates homogeneous groups

(1) Here are the results obtained by Mannheim and Wilkins (1955) during their evaluation of 'Borstal' type homes, both open and closed.

	<u>success %</u> <u>open borstal</u>	<u>success %</u> <u>closed borstal</u>
Good risk group	78	67
Medium risk group	61	57
Bad risk group	38	38

(2) During recent studies, it was found that the fact of having a "rebellious character" (Breuvart *et al.*, 1974) and being "daring" (West and Farrington, 1973) are associated with recidivism. These characteristics can be perceived by the judge when confronting a youngster and he may take them into account in choosing a measure.

and makes his prediction. Similarly, the judge who chooses the measures actually selects the best and worst cases and his choices cut across the researcher's groups. Even if the judge's prediction is not as accurate as that of the researcher, as many studies show, it is better than leaving the decision to chance so that the groups of subjects who are imposed different penal measures are not completely identical.⁽¹⁾ Once again, the effect of selection has come into play and therefore we cannot attribute the differences in recidivism to the different effect of the measures with any certainty.

We can conclude that the act of selection has decisive importance concerning the results of penal measures. This can be formulated in terms of a general proposition.

The more coercive the measure applied to an offender (prison rather than probation; probation rather than a warning, etc.), the more he will tend to recidivate because those who are subjected to the most coercive measures have, from the start, a stronger probability of recidivism than the others.

Recidivism and the frequency of punishment

The second observation that can disprove the theory of specific deterrence is that the more frequently a man has been punished, the more likely he is to recidivate. The conclusion drawn from this is that punishments are not only ineffective, they have an amplifying effect on crime. Here again the question is to know the true cause. Is recidivism increased by the number of punishments or, and this is very different, does it come from the fact that the persons frequently punished have a greater tendency than others to commit crimes? In other words, does the relationship between the frequency of punishment and recidivism give us information about the punishments or about the offenders? To uphold the idea that the connection between the number of punishments and recidivism is due to the amplifying effect of punishments, it must be agreed, from the start, that the punishment is imposed on persons having an

(1) If, for example, one of the homogeneous groups created by the researcher is made up of 100 medium risk subjects and the judge has placed 40 in an institution and 60 on probation, we cannot legitimately suppose that the distribution made by the judge is a chance distribution.

equal penchant for crime and that the system works at random since the offender who is punished ten times is no more delinquent than the one punished only once. In this case, and in this case only, the theory can be defended. If among a certain number of similar individuals, there are some who had the misfortune to be punished more often than the others and who subsequently recidivated more, one is justified in attributing this to the punishment.

But this presupposition is obviously false. The penal system does not punish haphazardly. It has been shown that the adolescents who had been judged and convicted had higher self-reported delinquency than the adolescents who had not been arrested. On the other hand, the recidivism is associated with the frequency of the previous self-reported delinquency and not only with the number of convictions. It may be said, then, that the delinquency measured independently of penal intervention is associated with recidivism later on.

Thus justice systems differentiate those who are deeply involved in crime and those who are less so. The more a person commits crimes, the greater his chance of being punished. The number of previous convictions must be interpreted as an indicator of criminal tendency.

The process just analyzed can be separated into three phases:

1 - There are individuals who commit more crimes than others because, for many reasons, they have criminal tendencies that are stronger than the others.

2 - These individuals, because of this fact, are punished more often than others.

3 - They recidivate more frequently because they have more marked criminal tendencies.

Conclusion

In conclusion, the following two propositions can be considered to be in conformity with the facts:

1 - The more coercive the measure applied to an offender, the more he will tend to recidivate because, from the beginning, he is more committed to crime than another offender.

2 - The more frequently an offender has been punished in the past, the more he will tend to recidivate because, from the beginning, he is more committed to crime than another offender.

Under these conditions, no one can legitimately claim to refute the theory of special deterrence by relying on the fact that people severely and frequently punished recidivate more than others. This obviously does not mean to say that special deterrence does play a role, but simply to conclude that there is no proof that it does not. It is an open question.

CHAPTER XIII

NEW FINDINGS ON SPECIFIC DETERRENCE

The studies surveyed in the preceding chapter cannot give an answer to the question of specific deterrence. However works have only recently come along that put a new light on specific deterrence, using a methodology that gives us the hope of overcoming the problem of the selection effect.

The degree of constraint

1 - A new measure of recidivism

In most research, recidivism is measured simply by the percentage of subjects who commit at least one crime, who are sent back to prison or who violate the conditions of their parole during the course of a given test period. A subject has only to commit one offense to be put in the same category as those who have committed two, five or ten, and is therefore classified as a recidivist. This all or nothing measure is rather crude. It goes hand in hand with the conception of rehabilitation as a complete abandoning of all criminal activity. But how can anyone believe that an individual who has been deeply involved in crime for a long time, who lives in a milieu where illegal conduct is a way of life and who has very few legitimate opportunities open to him, totally abandon all criminal activities? It is quite possible, on the other hand, that after a penal measure, he will improve, that is, he will commit fewer crimes.

On the basis of these arguments, a small number of researchers (Empey and Lubeck, 1971; Empey and Erickson, 1972 and Murray and Cox, 1979) were prompted to develop a new measure of recidivism, a comparison between the number of crimes committed before the intervention and the number of crimes committed after. This method of calculation has the advantage of detecting changes that would have been imperceptible using the usual criterion of recidivism. For example, Murray and Cox, (1979, pp. 38-39) found that a group of chronic delinquents had an average of 6.3 arrests during the year preceding

their placement in institution, whereas during the year following their stay in the institution the average had fallen to 2.9. In the same group, however, the rate of recidivism measured according to the usual criteria was 82.3%, which could easily lead to the conclusion that placement in institution is a total failure; in reality, there was a definite improvement in terms of the number of crimes committed and this would have gone unperceived if mere recidivism had been the criterion.

Studies that use before and after measures tell us that delinquent behaviour diminishes considerably after a stay in an institution, in a residential programme or after strict surveillance. The number of crimes committed after is much lower than the number committed before. This applies to traditional institutions, to group homes and to non-residential programmes that have intensive supervision (Empey and Lubeck, 1971, pp. 259-260; Empey and Erickson, 1972, pp. 209-211; Bossé and LeBlanc, 1980 A, p. 82). This finding is rather surprising in view of the constant condemnation of institutions that has been going on for almost twenty years and all the ideologies advocating liberalization or even the elimination of programmes for taking delinquents in charge.

The best before/after study is that of Murray and Cox (1979). They developed an index called the "suppression effect" that enabled them to estimate the difference between the number of arrests before the intervention and the number of arrests after.⁽¹⁾ Thanks to this index, they compared the impact of different measures applied to chronic delinquents in Chicago. They obtained the following results: (Murray and Cox, 1979, p. 153)

	Suppression effect
Probation	-.036
At-home first placement	-.355
Residential first placement	-.453
Institutionalization	-.556

(1) The suppression effect is defined as:

$$\frac{(\text{Postintervention rate}) - (\text{Preintervention rate})}{\text{Preintervention rate}}$$

(Murray and Cox, 1979, p. 4)

After probation, the subjects commit about the same number of crimes as before - the suppression effect is close to zero. At the other extreme, the number is greatly reduced after a stay in institution. The suppression effect is moderate after at-home first placement and a little stronger after a residential first placement, but not as great, however, as after institutionalization. A surprising trend becomes evident from these figures: the more restrictive the measures, the more the delinquency decreases in comparison with its previous level. A mild measure such as probation has no suppressive effect, removing the delinquent from his milieu is already more effective, while maximum effectiveness is achieved when he is placed in a traditional institution.

Murray and Cox did a whole series of verifications to reassure themselves that their results were not affected by either a regression or a maturing process. They were able to show that the substantial reduction that took place after the stay in institution was not due either to the tendency of adolescents to cease their delinquency as they get older or to regression toward the mean. Furthermore, they eliminated the possibility that the decrease was caused by the boys becoming more skillful at escaping arrest following the penal intervention. This position is supported by the findings of Petersilia et al. (1978, pp. 36-37), who report that among habitual criminals, the probability of arrest (the relationship between the number of crimes reported by the delinquents themselves and the number of arrests) increases substantially with age. When they were young adults, they had a .06 probability of arrest; as adults, the probability rose to .20. For some reason, recidivists have less and less chance of escaping detection as time goes by.

The results cannot be explained by the effect of selection. First because the subjects were compared among themselves and next because in Chicago, as elsewhere, judges and their collaborators tend to send the 'poor risks' to an institution and reserve probation and less constraining measures for good risks. Under these conditions, it might be expected that institutional placements would have poorer results than the other measures. However, the opposite is true. The institutions, and to a lesser degree the group homes, show more improvement than the other measures despite the fact that they receive the subjects most deeply involved in crime.

Murray and Cox's results are more or less the same as those already obtained by Empey and Lubeck (1971), who found that the stay in institution as well as placement in a well-staffed group home produced a reduction of 70% of the delinquency compared with the previous level. On the other hand, Empey and Erickson (1972) had different results. They found the three measures, probation, intensive group therapy and placement in institution produced more or less equivalent reductions in delinquency.

2 - Deinstitutionalization in Massachusetts. A quite different type of research gives us a fact that has a bearing on the question of special deterrence.

The deinstitutionalization movement in Massachusetts is well known. In 1971, Jerome Miller, in charge of services for juvenile delinquents, decided to close all the state institutions for young delinquents, which for years had been criticized for their repressive methods and prison-like characteristics. The entire network of services for young delinquents changed. Whereas in 1968, before the change, on a typical day there would be 833 youngsters in institution and 1610 on parole status, in 1974 there were 132 in secure care, 399 in group care, 171 in foster care, 723 in non-residential care (organized recreational programmes, school activities, preparation for the labour market, etc.), and 941 on traditional parole (Coates, Miller and Ohlin, 1978, p. 30). In one sense, the operation was a success. The new system was functioning and the quality of life in the group homes was an improvement over that in the traditional institutions: the youngsters were more satisfied, the system was less punitive, less authoritarian, and there were fewer delinquent sub-cultures. However, - a fact seldom mentioned - the success was much less evident where recidivism was concerned. In 1968, before the reform, under a system dominated by the traditional institutions, the rate of recidivism was 66% and in 1974, under the new regime, it had risen to 74%, a rise of 8% significant to .001 (Coates, Miller and Ohlin, 1978, p. 150 to 152).⁽¹⁾ Here we have a massive

(1) These figures are all the more reliable in that they are not affected by selection. Since the entire network was changed, it was impossible for judges to place the more difficult cases elsewhere.

movement liberalizing a whole network of measures for juvenile delinquents, and what do we find? A slight increase in recidivism. We must therefore seriously consider the hypothesis that liberalization favours a rise in recidivism.

3 - Interpretation. The results just presented are too new and too few to justify a strong stand. Nonetheless, they permit consideration, as a hypothesis, that the more constraining a measure is, the more it will reduce the delinquency in comparison with its previous level.

But first how do we define the degree of constraint? The research done by Murray and Cox suggests that the institution reduces recidivism more than the group home, the latter more than community treatment and this last more than probation. To this we might add that there is some indication that in probation or parole, the strictest practitioners have better results than those who are more tolerant. This was observed in the research on the "Special intensive parole unit". The officers who decided that ex-prisoners who did not respect the conditions of their parole would be incarcerated had lower rates of recidivism than their colleagues. Martinson (1974, p. 46), who reports this finding, attributes it to deterrence, an interpretation that seems plausible considering the above.⁽¹⁾

The measures just mentioned - institution, group home, community treatment and probation - can be placed on a continuum of constraint whose constitutive elements would be:

a) The amount of supervision: the institution keeps its inmates under its guards 24 hours a day, the group home during a period that can be approximately estimated to be from 10 to 16 hours a day⁽²⁾ and probation during about 45 minutes a month.⁽³⁾

(1) This interpretation is all the more likely since it is often admitted by the delinquents themselves. 33% of the ex-prisoners on parole in Waller's sample (1974, p. 124) thought that parole had a deterrent influence of them.

(2) This estimate is based on the fact that the subjects in group homes generally go to school or to work during the day.

(3) According to the estimate presented by Silberman (1978, p. 335).

b) The strictness of the controls and, correlatively, the amount of liberty taken away from the subjects: in institution, the rules are strict and omnipresent, the surveillance constant and the sanctions severe; at the other extreme, the rules of probation affect only a few areas, the surveillance is episodic at best and easy to elude, and sanctions are rare.

The influence of the degree of constraint on recidivism can be explained in terms of intimidation and stopping the acting-out.

Intimidation. There seems to be a threshold beyond which a sentence becomes intimidating. For the chronic delinquents studied by Murray and Cox, this threshold is beyond probation (the title of their book, incidentally). For these multirecidivists, the arrest, the trial, the probation no longer had any deterrent effect. To check their delinquent activities, more draconian measures were needed. This situation is in keeping with an observation made in England by West and Farrington (1973, p. 15). Noting the reactions of delinquents after an appearance before the juvenile court, these authors report that for many of the boys "any decision other than a custodial sentence was often regarded as being let off". The delinquent recidivist who is placed on probation considers himself lucky. He is ready to pay for the benefits of his crimes by the slight inconvenience of having to suffer the lectures of his agent once a month.

It is very probable that the "penal threshold" varies with the individual and, above all, with past experience. The first arrest is a shock but the tenth becomes a minor incident. It seems there is a necessary minimum of punishments but, contrary to what Beccaria thought, it does not vary according to the crimes, but according to the individual.

Stopping the acting out. Psycho-educators in Quebec who have been working at the rehabilitation of delinquents for more than twenty years know from experience that the first thing to do on taking charge of a delinquent is to "stop the acting out". By a minutely detailed organization of the adolescent's daily life, and by constant supervision, the latter is prevented from stealing or attacking anyone. Psycho-educators are of the opinion that if this condition is not met from the start, rehabilitation is impossible.

The value of this policy can be verified in reverse. All that is needed is to remove all controls in an establishment that houses true delinquents. I was in a position to observe in several Quebec centres what happens when this is done. The delinquency continues with the same virulence as it did in the street. The strong constantly rob, exploit and brutalize the weak, and at night go out to loot the neighbouring houses. One only has to go back to Aichhorn, 1935 and Redl and Wineman, 1964, to get an idea of the intensity of the antisocial activity generated by a lifting of controls, and it is enough to read the descriptions of Polsky (1962) and Bartollas et al. (1976) to know that the absence of constraint creates a jungle dominated by the more aggressive inmates.

Penal measures with a strong degree of constraint, then, reduce recidivism, not only because they intimidate, but because they make the crimes simply stop for the duration of the intervention. Unable to steal or attack anyone, the delinquent is obliged to look for other things to pass the time and to satisfy his wants. He will then have a chance to find alternatives to delinquency; sports, a hobby, reading and work will fill this void to advantage. Moreover, it is not unlikely that, having learned to satisfy his needs other than by breaking the law during this period of restraint, he will simply continue to do the same once he is back on the street.

The duration of sentences

It seems, then, that the degree of constraint of a penal measure effects a reduction in delinquent activity. This could be considered a fact that militates in favour of the severity of punishment. However, in most people's minds, the severity is measured by the duration of the incarceration. What do we know about the effect of the duration of punishment on recidivism?

To date, researchers have been unable to find any relationship between the duration of punishment and recidivism. Hood and Sparks (1970, pp. 189-190) have gone through several studies and conclude that punishments of more than a year give no better results than punishments of one year and that prison terms of three or four months produce results no different from those lasting one or

two years. Similarly, little difference was found between the rate of recidivism among offenders sentenced to less than four years and the recidivism of those who had spent seven or eight years in prison. More recently, authors using highly sophisticated methods, such as Waller (1974, p. 191) and Murray and Cox (1979, p. 128), were still unable to find any relationship between the duration of sentences and subsequent recidivism, including that measured by the delinquency before and after.

However, it might be supposed that selection masks any possible deterrent effect. It might happen that offenders who receive the longest sentences have a stronger tendency to recidivate than those who receive short ones, but since they may be more intimidated, they may recidivate a little less, with the result that, in the end, there is no difference between the groups. Countering this supposition, there are at least two studies in which the effect of selection could not possibly play a part for obvious reasons. They are reported by Fattah (1976):

"According to a decision rendered by the Supreme Court of the United States in the Gideon case, the State of Florida was obliged to free 1,252 prisoners well before the expiration of their normal prison term. The prisoners concerned were indigents who had come up for judgment for serious crimes without the benefit of a lawyer's assistance.

"The Florida Department of Corrections proceeded with a study of 110 of those who had benefited from this premature liberation and 110 prisoners liberated at the expiration of their sentence; the two groups were carefully paired off in terms of their criminal pasts and other important factors. None of them were under the surveillance of a parole officer. Twenty-eight months after their liberation, 13.6% of the Gideon group of prisoners had resumed their criminal activity, whereas the percentage among those who had served their entire sentence was 25.4%."
(Fattah, 1976, p. 105)

Fattah does not say how long the sentences of the two groups were, but he does show that the delinquents liberated prematurely recidivated less than the others.

The second study reported by Fattah concerns a general reduction in the duration of sentences:

"In 1958, the State of Washington decided to reduce the average length of detention in the State prison. In three years, it went from 30 to about 20 months, and this ruling has remained in force since 1961.

"The rate of recidivism has not varied very much in Washington since 1961. After two or three years on parole the rates of failure still vary slightly from year to year."

(Fattah, 1976, p. 105)

Thus the works that use recidivism as a criterion agree with those that use the crime rate as the criterion: no association is found between the duration of sentences and delinquency. However, none of these studies permit a definitive conclusion. Moreover, the methodology used is rarely totally adequate. Almost always, relatively long sentences were compared, the shortest being three months. It is very possible that the duration has an effect within short sentences. It is quite likely, for example, that sentences of one month are more effective than those of one week. It is also possible that among recidivists, the incarceration will only have an effect after a certain length of time. But after how long a stay in prison does it start to have an effect? We do not know.

Various indications lead to the suspicion that the absence of any relationship between the duration of sentences and recidivism is caused by differences in sensitivity to punishment and in getting used to prison. We will see further on that some prisoners suffer enormously from a stay in prison whereas others adjust well. It seems that in the long run, some prisoners become accustomed to prison life. These factors could very well be much more important than the duration of the sentences.

If long prison sentences are no more effective than short ones, how is it that judges so often pronounce long sentences? Quite possibly a good many have the illusion that there is some therapeutic benefit. Judges who think in terms of rehabilitation will naturally imagine it takes a great deal of time to treat a criminal. Besides this, there are considerations that having nothing to do with recidivism: retribution, which prompts judges to pronounce long

sentences for murder, for instance, independently of the effectiveness such a measure might have, and incapacitation, to prevent certain dangerous criminals from committing new crimes on a long term basis.

The first penal interventions

In the field of special deterrence, research on the certainty of punishment, so important in the sector of general prevention, is at a complete standstill. Nonetheless, like a detective who, at the beginning of an investigation, has to follow up the few clues he is able to find, we have a small number of indications that can put us on the track of a hypothesis. These data initially concern the effect of the arrest on first offenders and next its impact on recidivists.

1 - First offenders. In cohort studies, about half the delinquents are arrested only once. After that they never again come to the attention of the police. In Philadelphia, 46% of the delinquents of the cohort studied by Wolfgang and his collaborators (1972, p. 66) were first offenders. In the four groups analyzed by the team of Anne-Marie Favard (1980, p. 16), 54% were first offenders.

It seems, then, that there are a good number of individuals, who commit crimes, are arrested and then disappear from the system, most likely because they have stopped committing crimes serious enough to call for an arrest. Even when we concede that some of these first offenders would have eventually outgrown crime, it is also probable that an appreciable number felt the effect of special deterrence. In any case, this is what we can conclude based on the following four observations.

a) In his study on shoplifting, Cameron (1964, pp. 151-167) shows that those who are amateurs at this type of theft are terrified when they are arrested. For them, it is a traumatic moment. They feel they are living a nightmare. According to this author, there is very little recidivism among these individuals.

b) Debuyst and Joos (1971, p. 199) describe the reaction of a boy who had been arrested for having committed several thefts in these terms:

"The intervention of the police came as a great shock. It was at this moment that he realized that his social future was in jeopardy and that he suddenly became aware of the gravity of the act. In effect, he shows considerable interest in his social 'image' and wants a chance to attain a 'respectable' social status. He fears the handicap of the conviction."

c) Most of the boys who had been arrested by the police after a theft stated the arrest had caused them to commit fewer thefts⁽¹⁾ (Belson, 1975, p. 141).

d) Glaser (1978, p. 117) asked students who in the past had practiced shoplifting: Why did you stop stealing in stores? 45% of the respondents answered that they became afraid of being arrested; a third of them realized that they were doing something morally wrong and a quarter because they had been arrested.

2 - The recidivists. What was the reaction to the first arrest of those who would later become multirecidivists? It is possible to give an approximate answer by examining what researchers call the 'velocity' of the criminal career. The term refers to the time between an offender's successive arrests, or more precisely, between the time an offender who is arrested can commit a new crime and the next arrest. This makes it possible to answer the question: How much time does an offender who has been arrested and then liberated take before committing a new crime that leads to a new arrest? In the cohort studied by Wolfgang et al. (1972, p. 169), the periods between the first eight arrests are established as follows:⁽²⁾

(1) Belson at the same time provides information that is not at all in line with the theory of stigmatization: only 8 boys out of 1,425 (0.56%) answered that the arrest drove them to commit more thefts than before.

(2) Murray and Cox (1979, p. 53) found exactly the same trends in their sample.

Between the 1st and 2nd arrest, there is a lapse of 16.96 months

"	"	2nd	"	3rd	"	"	"	"	8.79	"
"	"	3rd	"	4th	"	"	"	"	6.47	"
"	"	4th	"	5th	"	"	"	"	6.51	"
"	"	5th	"	6th	"	"	"	"	6.28	"
"	"	6th	"	7th	"	"	"	"	5.95	"
"	"	7th	"	8th	"	"	"	"	5.93	"

It seems that the first arrest slows down the delinquent behavior substantially; after the second, the slowing down is less marked and, after that, the delinquent activity is stabilized to a rhythm that leads to an arrest every five or six months. These figures lend themselves to an interpretation based on deterrence. After the first arrest, the delinquent realizes that the threat of punishment is credible. He therefore stops or considerably slows down his delinquent activity for a time. Then the bad memory of the arrest is forgotten and he starts again, is arrested once more, which once more prompts him to commit fewer crimes, but not for as long as the first time. After the third or fourth arrest, the threat of punishment has lost its credibility; the delinquent is no longer intimidated when the police apprehend him and at the first opportunity he commits new crimes at a 'normal' rate that lead to an arrest every five or six months. He will not really slow down until the day the arrest will end with placement in an institution (Murray and Cox, 1979, pp. 56-57).

These data give us reason to think that, even among recidivists, the first arrest has a deterrent effect.

Conclusion: warning signals and the criminal threshold

Research on special deterrence is lacking. Most of the works reported here are recent and have not been confirmed in subsequent studies. We are in the realm of hypotheses and a great deal more research will have to be done before we can assert anything at all with a sufficient degree of certainty. Keeping in mind these reservations, here are some hypotheses that can be inferred from the few things we know.

It has not yet been proven that the duration of punishment has an influence on the rates of recidivism; in other words, we have not succeeded in showing that there is a relationship between the length of sentences and recidivism.

The degree of constraint that a penal measure entails has an effect in reducing the delinquency of the subjects punished. The more constraining a measure is, the more the level of delinquency will decrease in comparison with its level before the intervention.

After the first penal intervention (which is generally merely an arrest), about 50% of delinquents abandon their criminal activities.

The first two arrests help to slow down the delinquent activity of recidivists, but subsequent arrests no longer effect a reduction.

These last three propositions warrant further study. Furthermore, two concepts should be considered.

Warning signals. From the point of view of the deterrence theory, penal intervention not only has value as a sanction, it also has value as a warning. It gives the offender (and possibly those of his friends who might be tempted to imitate him) information about the punishments in store for him. It is why a mere arrest that in itself carries few punitive elements has a moderating effect. The same could be said, in all likelihood, about the trial that ends with a warning, or a suspended sentence: it announces the imminence of punishment. Even probation can be considered a warning: a constant reminder of the incarceration that can be imposed the next time.

These warning signals are numerous in the juvenile justice system, where often a great number of offences are committed before the judge becomes resigned to the need for placement. They are less numerous for adults and do not exist at all where really serious crimes are concerned.

For the offender who is the least bit rational (and it seems that this is the case for the large majority), these warnings have a considerable advantage. The offender can see the trouble ahead. He can 'test' the system a few times and get an idea of the threshold beyond which the risks become too great. He can then stop or slow down before it is too late. It is also necessary that the warning be credible and that the system be relatively predictable. If one judge decides on placement in an institution after ten robberies and another does so after the third, the guilty person could be in for some unpleasant surprises.

It is very probable that information on the application of punishment is circulated among offenders. If this is the case, they should know the meaning of the messages conveyed to them and the number of chances they can take before the situation becomes risky. It might be supposed, then, that the deterrent effect of a system will be all the greater if it conveys clear messages and does not wait until the warnings lose their credibility before imposing a sanction. There would be less recidivism, for example, in jurisdictions where punishment was automatically administered after the third offence than in those where action is taken only after the fifth.

The penal threshold idea completes that of warning signals. The latter, to maintain their credibility, should be backed by an actual sanction. The works of Murray and Cox lead us to believe that there is a penal threshold that can be defined as the point of departure from which a penal measure has sufficient constraints to become a deterrent, that is, capable of making the offender reduce the number of his offenses. Sensitivity to punishment being variable, the penal threshold will vary according to the individual. For some, arrest is merely a warning, for others it will be experienced as a punishment. Furthermore, some individuals will be deterred by placement in a group home, others by incarceration, and it is also possible that some will remain insensitive even to imprisonment. It seems that the effectiveness of deterrence depends on two conditions: it must be probable and it must be sufficient, that is to say, it has to reach the penal threshold. On the basis of this, we can formulate the following hypothetical proposition.

The greater the certainty of punishment with a minimum of constraint, the less people commit crimes.(1)

(1) To test this hypothesis, one would have to first measure people's estimation of the risk of undergoing various punishments, then the degree of discomfort each of these punishments would cause them and finally, note their estimation of the risk of the punishment which, in each one's view, would involve a minimal degree of discomfort.

CHAPTER XIV

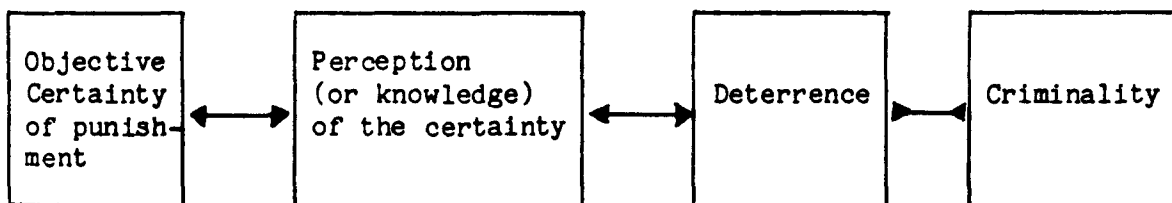
HOW DETERRENCE WORKS

The theory of deterrence at an impasse

After some rapid progress, the theory of deterrence has reached an impasse and is now at a standstill, mainly because it cannot offer a satisfactory explanation for the inverse relationship between the certainty of punishment and the rates of crime.

The interpretations that are dominant today among specialists exclude the hypothesis of specific deterrence. For the reasons put forward in chapter 12, the idea that punishments could have an influence on offenders actually punished was rejected. The tentative explanation was put in terms of general deterrence: the criminality diminishes because the general public is aware of the threat of punishment. But how do we account for the fact that variations in the degree of certainty of punishment affect the population? Naturally, by the knowledge the citizens would have about these fluctuations. Thus we introduce an intermediary variable between the objective certainty of punishment and people's criminal activity.

To cite Gibbs (1975, p. 15), the chain reaction could be described thus: (the symbol \longleftrightarrow indicates a direct relationship and the symbol $\blacktriangleright\blacktriangleleft$ a reverse relationship)



An increase in the objective certainty of punishment can affect the level of crime only if potential criminals know about it. Also, their information should be very precise. If, for instance, there is less breaking and

entering in an area where the certainty of punishment is 10%, let us say, than in one where it is 5%, it shows a remarkably precise knowledge on the part of potential offenders. But who are they? The widespread opinion of specialists is that general deterrence is aimed at the general public. However, we know that the average citizen is hardly informed at all on matters concerning the application of punishment. How, then, would people know that in such and such a city the certainty of punishment is 10% and elsewhere it is 5%? This unlikelihood has prompted one author, Fattah, (1976, pp. 82-83) to express serious reservations about the theory of deterrence.

Actually, when the problem is put in these terms, we have either to agree that it is insoluble or reject the hypothesis of deterrence. However, a third avenue is possible. But first we would have to find adequate answers to three questions:

What population is the target of deterrence?

What are the mechanisms concerned: specific deterrence or general deterrence?

How does the perception of punishment affect deterrence?

For whom is deterrence intended?

To understand the mechanism of deterrence, it is necessary to know the category of people who are susceptible to intimidation.

For purposes of analysis, there are three categories of citizens among the general population who can be differentiated by their attitudes to punishment.⁽¹⁾

The first category comprises the large majority of citizens who, except for a few peccadillos, do not commit any crimes for reasons that have little to do with punishment. Their motives can be of three kinds. First, they

(1) Distinctions of this kind were made by Ferri (1905), by Zimring and Hawkins (1973), Andenaes (1974) and Wilson (1975).

do not have the need or the desire to commit crimes: they do not want to kill, rape or burglarize. Secondly, if the temptation to do so should arise, their moral convictions or the fear of disapproval will stop them. Thirdly, they feel it is better over the long term to avoid violence and theft because they want to preserve the reciprocal relationships they have with their fellow citizens.

The second category is made up of a small minority of people who to some degree cannot be intimidated because they are not in their right mind or because they have a pronounced taste for crime and are unable to satisfy their needs other than by illegitimate means.

In the third category are the potential offenders, occasional criminals and even habitual criminals capable of weighing the odds. This group comes somewhere between the 'honest people' and criminals totally lacking in self-control. Here we find the individuals who commit crimes from time to time or who would commit them if the circumstances seemed favourable. We could also include professional criminals who are constantly on the lookout for a "good haul" but who will not act out unless they consider they have a good chance of success. Apropos this category of people, the saying "Opportunity makes the thief" is very apt.

Obviously, it is only this third category that can be deterred by the threat of punishment. In Tittle's sample (1980, pp. 262-268), the knowledge about the certainty of arrest has a deterrent effect that is much greater on persons who had already committed at least one crime in the past than on those who had never violated the law. This means that those who have one or several offenses to their name are more susceptible to the threat of punishment than 'honest citizens'. By all evidence, the law has a specific influence. It only influences individuals who are criminally motivated and whose moral inhibitions are weak, characteristics that can be deduced by the fact that they have already acted out.(1)

(1) This reasoning probably does not apply to crimes such as infractions of the highway code and tax evasion. Where these are concerned, it can be assumed that most citizens have few moral inhibitions.

Among the entire population, what percentage of people have criminal tendencies insufficiently counteracted by non-legal controls and, because of this, are susceptible to intimidation? It is very difficult to get an idea of the number of such persons, but several indications can be useful. Let us say, as a working hypothesis, that the people who commit at least one crime are likely to belong to this category and let us see what percentage of the population this represents. In Philadelphia, a city known to have a high rate crime, Wolfgang, Figlio and Sellin (1972, p. 54) report that 35% of the 9,945 boys of their cohort had had contact with the police. On the other hand, in France, in the Bayonne region, Favard (1980), who did an analysis of four cohorts, states that the percentage of boys who had at least one contact with the law is 6% for the cohort of 1940, 7% for that of 1945, 5% for that of 1950 and 7% for that of 1955. These figures show that the penal system is a method of special social control that is aimed at a rather limited target population that is always a minority of the general population. It follows that, to be effective, the objective properties of punishment, such as certainty, should be known, not by all the citizens, but by the minority who are truly tempted by crime and whose moral inhibitions are not strong enough to deter them. It is this particular group that should be studied concerning the influence of punishment.

Peer-oriented Deterrence

How does deterrence work? The hypothesis that seems to me the most likely is that two processes are involved: special deterrence and peer-oriented deterrence.

It is not necessary to dwell on special deterrence. It is enough to remember that, in all likelihood, arrest and punishment with a minimum of constraint have a deterrent effect on offenders who have been punished. This should have some impact on the volume of crime, considering that a minority of people are responsible for a good proportion of the crimes committed in a given region.

Peer-oriented deterrence can be defined as the intimidating influence exercised on a limited number of actual or potential offenders by the example of the punishment inflicted on one of their peers.

When a boy's friend is caught stealing, he will tend to say that this example prompted him to commit fewer crimes than he did previously (Belson, 1975, p. 141). This is a good example of what is understood by peer-oriented deterrence.

It is a well known fact that offenders look for the company of other offenders and that they influence one another. It is also very likely that potential criminals gravitate to the same circles and are exposed to the same types of influence. The chances are that the example of punishment especially affects this fraction of the population - people who contemplate crime and are in contact with one another. Peer-oriented deterrence is made possible by the spreading of information about punishment in the underworld among persons who, for obvious reasons, are interested in the fluctuations in the application of punishment.

The hypothesis of peer-oriented deterrence is in accordance with the observations of experimental psychology on modeling, that is, the learning process through the observation and imitation of the conduct of persons who are presented as models. Experiments reported by Bandura (1973, p. 68), demonstrate that behaviour can be transmitted simply by example. The modeling acts on the observer in three different ways, first by having him acquire new forms of conduct, secondly by reinforcing or weakening the inhibitions that govern his actions and, thirdly, by facilitating the behaviour already learned.

It has been shown in experiments that observing another person being punished for an aggressive act substantially reduces the tendency among the observers to imitate this aggressive behaviour (Bandura, 1973, p. 79).

As Newman (1978, p. 231) pointed out, there is an analogy between modeling and general deterrence. I would add that the analogy is even more evident in the case of peer-oriented deterrence.

Suppose for a moment that, in city X, the police substantially increase their rate of arrests for breaking and entering and that, at the same time, the judges decide to "no longer give a chance" to those who practice

this type of theft. What will happen? The fact will quickly be known to burglars in the area. For each time one of them is put in prison, his friends, accomplices and acquaintances will hear about it and tell their friends and acquaintances. This means that those directly concerned by the crackdown - actual and potential burglars - will know that punishment has become more certain than before, whereas the majority of citizens will remain completely ignorant of this turn of events. In view of this new development, a certain number of burglars will decide to stop, others will act only if the risks are not too high - they will therefore commit fewer burglaries - while others may turn to less risky forms of theft. The result is a significant reduction in the rate of burglaries.

According to the hypothesis of peer-oriented deterrence, every arrest has an intimidating effect, first on those immediately concerned, and next, by word of mouth, on an ever widening circle of persons interested in this information. If the arrests are sufficiently numerous, there will be a great many circles informed and soon the whole target population, actual and potential offenders, will be alerted.

Estimation of the risks

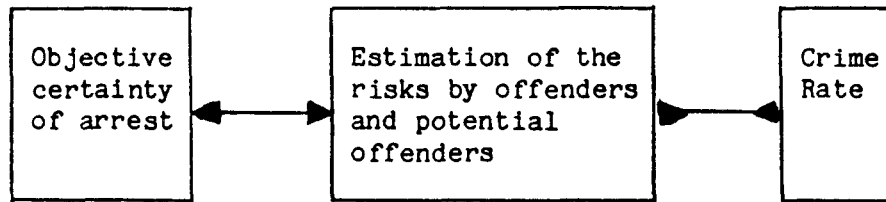
If certainty has an effect on crime, it is because in one way or another it affects the perception that potential criminals have of punishment. If they were not aware of the variations in certainty, it is hard to see how it could have an effect, or at least a deterrent one. Hence the necessary intermediary between the objective certainty of arrest and criminal behaviour is how potential offenders perceive it.

There are many studies on the criminal's perception of the risks, or as Coslin (1976) put it more precisely, the estimation of the risks of arrest. The latter can be measured by a question such as: "Suppose you take an automobile that doesn't belong to you, what are your chances of being arrested and taken to the police station?" In Montreal, where we have asked such questions, we obtained a slight negative correlation between the estimation of the risk and the self-reported delinquency (Biron and Cusson, 1979, p. 76).

This finding only confirms what we already knew. Claster, in 1967, Jensen in 1969, and Waldo and Chiricos in 1972, had already made similar observations. In England, Belson (1975, pp. 140-141) had found that boys who think they will never be caught by the police or anyone else commit more thefts and for a longer time than the others. In a French study, Coslin (1976) adds an interesting detail. He shows that the delinquents' estimations of the risks are higher than those of the non-delinquents (p. 148), but that the acceptance of the risk of being caught by the police is similar among both delinquents and non-delinquents (p. 152).⁽¹⁾

The interpretation given these facts by Claster and Coslin is that delinquents are more optimistic than non-delinquents concerning the chances of escaping arrest. They think they are invulnerable. We shall see a little further on that this interpretation is open to question, but what must be pointed out now is that these comparisons between delinquents and non-delinquents tell us very little about the process of deterrence and in particular, about the relationship between the objective certainty of punishment and criminal activity. It is impossible to rely on this fact to conclude that punishment has a deterrent effect. When the probability of arrest increases, fewer crimes are committed; this does not logically lead to the conclusion that the criminals' estimations of the risk are lower than those of non-criminals.⁽²⁾ It must be pointed out that the estimations of the risks made by persons who are not at all tempted by crime (probably the majority of citizens) is not pertinent here. Whether or not they think the risks are high changes nothing, for in any case, they will not commit a crime. It is the offenders and potential offenders who must be considered in order to see if their estimations of the risks are affected by the objective certainty of punishment and to verify whether or not this variable influences the rates of crime. This can be shown in the form of a graph:

-
- (1) Coslin measured the estimation of the risks by a question such as: When a person steals in a department store, in your opinion, is the risk of being caught low, medium or very high? He measured the acceptance of the risk by asking: What risk would you take of being caught?
- (2) Palmer (1977) suggests the following example. If the salaries of television repairmen rise, a larger number of people will engage in this trade. This does not mean that the people who become T.V. repairmen are more numerous than others in thinking that the salaries in this field will be raised.



This graph illustrates two hypotheses:

The greater the objective certainty of arrest, the higher the estimation of the risks on the part of offenders and potential offenders.

The higher the estimation of the risks by actual and potential offenders, the lower the rate of criminality.

The realism of delinquents

There is no research, to my knowledge, that would make it possible to test the validity of these two propositions. Nonetheless, certain indications gleaned here and there give us reason to think they are very probably sound.

In order for a relationship to exist between the objective certainty and how the offenders estimate it, they must be aware of the fluctuations liable to occur concerning the risks of arrest. We can assume that they are. At any rate, they have a remarkable awareness of the severity of punishments. In California, researchers compared the knowledge that prisoners had of the punishment provided in the code for different crimes with that of the general public to discover that the inmates had a much more precise knowledge of the sanctions than the ordinary citizen (Zimring and Hawkins, 1973, p. 145).

There has been no research focussed directly on knowledge of the actual risk of arrest, but studies dealing with the estimation of the risks permit us to conclude that offenders have a more correct perception than that of non-offenders. We have only to consider the actual risk of punishment. This can be done by first using victimization surveys. These provide an estimate of the percentage of crimes actually reported to the police. Glaser (1978, p.

85), on comparing the results of victimization surveys with the police statistics, came up with the following findings. 50% of the crimes included in the index of the "Uniform Crime Report" are reported to the police. Since only 20% of the crimes are cleared, the actual rate of crimes solved is about 10%. In other words, one crime in ten runs the risk of being followed by an arrest. This net rate of solution naturally varies according to the type of crime. For burglary, it is 7%, robbery 12%, auto theft 15%, rape 24% and homicide 80% (Glaser, 1978, p. 87).

But the picture is incomplete if we do not take the risks of imprisonment or institutionalization into account. In the case of adolescents, the only estimate that I know of is that done by Murray and Cox (1979, p. 142) in Chicago, where the probability that an arrest will lead to placement in an institution is 0.6%. With these figures in mind, it is easier to understand the delinquents who have an 'optimistic' estimation of the risk of being caught. They clearly do not underestimate the risk, in fact, their estimation is very realistic; much more so than that of non-delinquents, who considerably overestimate the probabilities of being caught.⁽¹⁾

Juvenile delinquents, then, seem to have an accurate perception of the reality. One might even be tempted to believe that for each offense, taken one by one, their conduct is rational, considering the risks they run: the chances are in their favour. If, for example, the objective risk of arrest for a burglary is 20%, let us say, and if in case of arrest, according to the estimate of Murray and Cox (1979), there is one chance in 150 of being placed in institution, the risk of being given a severe sentence is one in 750 (0.13%).

Among adults, the risks of incarceration are definitely higher and even tend to increase with age. At least this is what Petersilia *et al.* (1978, pp. 37-39) found in their sample of habitual criminals. When they were young adults, the probability of their being arrested for a self-reported crime was 6%. On the other hand, the proportion of arrests that ended in incarceration

(1) In a sample of Montreal schoolchildren, 45% of the respondents believe that they have a 50% chance of being arrested (Biron and Cusson, 1979, p. 142).

was 50%. Their actual risk of incarceration for a given crime was therefore 3%. On reaching adulthood, the risk increases, the probability of arrest being 20% and that of incarceration 71%. Thus the chances of an adult habitual criminal being imprisoned for one crime is 14%.

The cumulative risks

Glaser (1978, p. 86) pointed out that the probability of success of a criminal who commits a single crime is very different from that of the one who commits a great many, for the simple reason that the probabilities vary systematically with the number of crimes. If there is a 95% chance of success with one crime, there is a 90% chance for two, 77% for five, 60% for 10 and 7% for 50 crimes. The same situation can be described inversely. Let us suppose that the risk of incarceration for a recidivist delinquent is 3% for a single crime. In this case, if that person commits two crimes, the risk he runs of going to prison increase to 6%, to 14% if he commits five, to 45% if he commits twenty and to 60% if he commits thirty. An individual, then, has an excellent chance of escaping prison if he is content to commit one crime, but his chances rapidly diminish as his crimes multiply.

Thus when we speak of the estimation of the risks among recidivists, the important question is not only their estimation of the risk of being arrested if they commit one crime, but to know their estimation of the risks of being imprisoned if they follow a criminal career. In this regard, the question should be: If you continue to steal regularly, do you think you risk going to prison? If so, after what period of time?

The estimation of the cumulative risk of incarceration is presumably affected by the number of the offender's past punishments. This could be evaluated by noting the number and duration of previous incarcerations. The person who commits a good many crimes with impunity will discover that the danger of being arrested is not as great as he had thought. Logically, each undiscovered crime increases the offender's conviction that he can get away with his criminal activities. Inversely, an arrest forces him to raise his estimation of

the risks. This was the finding of Chiricos et al. (1977, p. 196): the estimation of the certainty of punishment is higher among youngsters who have been arrested than among those who have not. Furthermore, peer-oriented deterrence could very well play a role here. A person who associates with criminals who have often been incarcerated will tend to think that the cumulative risks of incarceration are high.

If it is true that the estimation of the cumulative risk of incarceration is affected by previous penal experiences, there is every reason to believe that young delinquents will be more optimistic in their estimation of the cumulative risks of incarceration (or institutionalization) than adult criminals. First of all, the objective risks of incarceration are lower among adolescents than among adults and secondly, the criminal records of adolescents are much shorter.

This examination of the risks involved in committing an isolated crime and those that threaten the continual commission of crimes, shows that crime can be considered a rational act over the short term, but ceases to be over the long term. The chronic criminal will almost inevitably be punished. He is like a man who has a habit of playing Russian roulette: if he plays too often, soon or later he will get a bullet in the head. From the moment a recidivist is arrested he becomes a police target and as long as he continues to be criminally active, he will be periodically arrested.

Are offenders aware of this fact? There are some, certainly, who know it and who say frankly: "The law of averages is against you - I don't care how good you are, you'll end up in jail at some time" (Letkemann, 1973, p. 37; see also: Reynolds, 1963, p. 270 and Irwin, 1970, p. 156). On the other hand, I tend to believe that most young recidivists are unaware of the fact and cherish the illusion that it is possible to baffle the police indefinitely.

Hypothesis

Based on these considerations, it is now possible to formulate a hypothesis that would account for the relationship between the certainty of punishment and criminality.

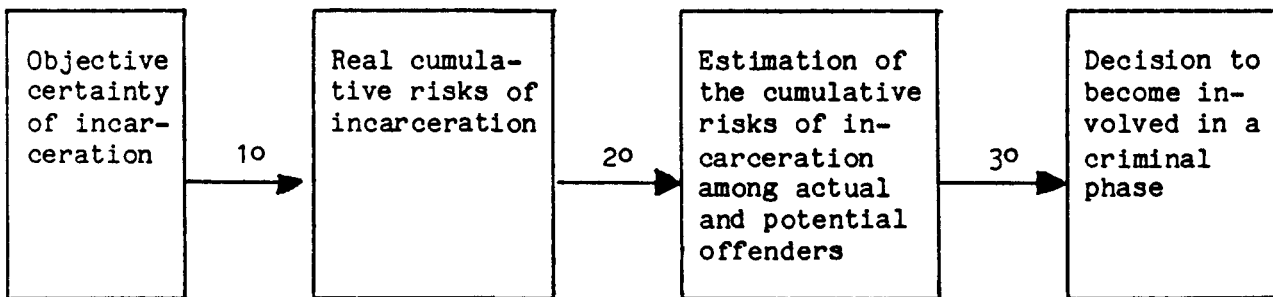
Variations in the degree of certainty of punishment affect criminal activity by the following sequential process.

First, variations in the actual rate of incarceration alter the real cumulative risks of incarceration.

Secondly, offenders are aware of the variations in the cumulative rates of incarceration, first on the basis of their personal experience (criminal record) and next on the basis of their observation of friends (peer-oriented deterrence).

Thirdly, variations in the estimations of the cumulative certainty of incarceration lead actual and potential offenders to change their decisions as to whether to undertake, continue or abandon a criminal phase.

This hypothetical process could be illustrated thus:



PART IV

RECIDIVISTS IN SPITE OF EVERYTHING

CHAPTER XV

THE LABELING THEORY

Criminologists have always been obsessed with the problem of repeated recidivism. Why, in spite of the numerous punishments they receive time and again do certain men persist in committing additional crimes that will only be punished anew? To account for the functioning of these individuals apparently impervious to intimidation, many ideas have been advanced: there is the born criminal, the psychopath, the sociopath and those who wish for punishment. The latest of these, and doubtless the most popular, is the theory of labeling.

The labeling theory

This is a theoretical corpus developed by interactionist sociologists mainly interested in four things.

1 - The nature of the deviance. This was considered simply the result of a process of labeling. A deviant is one who is defined as such by his milieu.

2 - The process by which acts and persons become labelled. The rules are created under the pressure of 'moral entrepreneurs' (Becker, 1963) which give rise to the creation of new forms of deviance. These rules are then applied selectively to certain persons who thus becomes deviants.

3 - The nature of the social reaction. The stigmatizing nature of certain social reactions was stressed. Mead (1918) argued that the object of the criminal trial is to draw a line between those persons who are considered members of society in due form and those who should be excluded. Thus the conviction emerged as a form of banishment defining the guilty party as hostile to the community. More generally, the labeling school contends that an essential characteristic of the social reaction is the stigma.

4 - The effect of the social reaction. This reaction amplifies the deviance of those who were subjected to it.

The first three aspects of the theory, having no direct implications regarding the problem of recidivism, will not be discussed here, only the fourth.

According to the labeling school, the main reason for recidivism should not be sought in the offender but in society's reaction. A person becomes a criminal because he has received the label of criminal. The process by which society in a way creates inveterate criminals can be separated into five stages.

1 - First of all, a person becomes involved in 'primary deviance' - a few infranctions for fun, as an adventure or under pressure of friends.

2 - Society reacts by labelling him. It defines the act as "bad" and, what is more, defines its author in pejorative terms; he himself is considered "bad" (Tannenbaum, 1938, p. 17).

3 - The label has several consequences that will make his return to legitimate conduct doubtful. He interiorizes the judgment of others and comes to see himself as others see him. He is isolated and therefore obliged to seek refuge among other deviants like him. This causes a segregation that creates an even greater distance between the deviant and the social environment (Robert, 1966, p. 187). And because of his bad reputation and isolation, legitimate opportunities are closed to him.

4 - These difficulties force him to continue his deviant activity, not for the reasons that he had initially, but because he has to adapt to the situation that was made for him. This is what Lemert (1951) called secondary deviance, which occurs when the deviant behaviour becomes a means of defence against the consequences of the social reaction.

5 - This 'secondary deviance' will accentuate the labelling reaction of the milieu, and results in a vicious circle. This, produces what Wilkins (1965) called the "amplification of deviance" and what Grygier (1965) defined as "social progression".

The impact of the first penal intervention on recidivism

According to Tannenbaum (1938) and Lemert (1951) labeling is the result of a long process of successive interactions between deviant acts and social reactions that escalate to a degree that ends in confirmed secondary deviance. As Gassin (1979) explains, "deviance is a term continually defined and redefined by the dynamic process of social interaction" (p. 26). According to a second interpretation, the process is divided into marked phases. Becker (1963, p. 31) believes that the crucial step in labeling is having been arrested and publicly labeled as deviant. In the same vein, Peyre (1979, p. 54) thinks that the first exposure to the justice system can have lasting effects. "Something in the nature of an initiation takes place and it is from then on that the scales can be tipped" (p. 54).

To what point can the first contact with the penal system - the arrest, but above all the first conviction - drive someone to recidivate?

One of the few studies on this point is that of Farrington.⁽¹⁾ During a longitudinal study, the self-reported delinquency of boys was measured at the ages of 14, 18 and 21. Between 14 and 18, a certain number of boys had been convicted of an offense. In order to find out if this conviction had had any influence on the subsequent reported delinquency of the boys who had been convicted, the researchers carried out a matching operation. The 53 boys found guilty were matched with 53 others who had never been convicted but who, at the age of 14, had the same amount of self-reported delinquency. The result was that the boys who had been convicted had a score of reported delinquency at 18 years significantly higher than that of the group that had never had a conviction. But there is always the suspicion that the boys who had been convicted were 'worse risks'. They actually had more traits associated with delinquency. To overcome this difficulty, the researchers then matched boys who were similar, not only as to their delinquency, but also in terms of the principal factors associated with recidivism. The result was similar to that obtained during the first comparison: the subjects convicted by the court subsequently had

(1) See: Farrington (1977), West and Farrington (1977) and Farrington, Osborn and West (1978).

a higher rate of self-reported delinquency than that of their peers. Finally, Farrington, Osborn and West (1978) did a comparison between young people who had been convicted between the ages of 18 and 21 and those who had not. Here again, those who had had to appear before a judge had subsequently increased their delinquency, which was not the case for the others. Furthermore, an analysis of the self-reported delinquency at 18 and at 21 of boys who had been convicted before the age of 14 established the fact that with time, the delinquency tends to diminish, whether or not the subjects had had a new conviction later on. It would seem, then, that with the years, the effect of deviance amplification gradually disappears.⁽¹⁾

In spite of all these methodological refinements, the research just described presents no conclusive results. The pairing procedure, as precise as it is, cannot overcome the problem of selection that was dealt with in chapter 12. It is always possible that the police, the judges and other agents of the system made their decisions based on factors that were not taken into account during the pairing process, with the result that it was not the effect of labelling that was measured, but the effect of selection. On the other hand, another interpretation of these results is possible. Only a very small minority of the boys convicted had been put in an institution the others had been either released, fined or placed on probation. It is quite possible that these not very intimidating measures had the effect of making the delinquents aware that there was no great risk in continuing to disobey the law. The increase in delinquency observed, then, could be due, not to stigma, but to the deterrent effect of the punishment wearing off. These boys are not severely punished even if convicted, and so they realize that they are not risking much by violating the law.

An interpretation of Farrington's results concerning labeling should be taken with all the more reservation since there was no trace of the labeling process when youngsters who had been found guilty by the judge were asked how

(1) In 1970, Gold used a method of pairing similar to that reported above, but with fewer subjects. He obtained results that were along the same lines: The delinquents arrested by the police had subsequently committed more crimes than the adolescents who had never had any contact with the police.

they felt when they were convicted. Of 53 boys interviewed by Farrington's team, 30 claimed the experience had no effect on them, 16 said that their first conviction had a restraining effect, 3 did not admit to having been convicted and there remained only four mentioned an effect compatible with further offenses (Farrington, 1977, p. 122). These findings coincide with those of Snyder (1971) who had questioned 43 youngsters placed on probation a short time before. Their dominant feeling during the hearing was fear, and what 37 of the 43 boys remembered most was the relief of having been put on probation rather than in an institution.

The effect of the conviction on the offender's circle

In the labeling theory, the immediate circle is often considered the intervening variable between the formal conviction and secondary deviance. Those close to the offender react to the label handed down by the court and adopt a whole series of attitudes toward the guilty person: rejection, distrust, pejorative names, etc. But is this what really happens?

Foster, Dinitz and Reckless (1972) questioned 115 boys several days after they had had to appear before the juvenile court. According to these boys, their contact with the penal system had very little influence on the people they associated with. Not one boy could see a change in attitude among his friends. 73% thought the incident had no effect on the attitude of their parents. For the great majority, they were convinced that the experience would be no problem at school. On the other hand, 40% of these boys thought that the event could have a negative influence on possible employers. To judge by the answers of these subjects concerning the members of their family, it seems that the parents already had a certain attitude toward their sons and the conviction did not change it very much. The parents appear either to think their child is a good boy who had momentarily got into trouble or they see him as a troublemaker, and in this case, the arrest and conviction does not come as a surprise.

Recently, Di Marino (1979) did an interesting study on the reaction to a conviction of the offender's immediate circle. He studied 200 criminal case files judged by a Court in Southern France and found 68 that contained pertinent information.

The major finding of this analysis is that those close to the offender have positive reactions toward him much more often than negative ones. This is contrary to the expectations of the labeling theory. However, there is a danger that the selection Di Marino was obliged to make among the files may have introduced a bias, for he had to eliminate 132 files out of the 200 because they did not contain pertinent data. It is very possible, then, that this absence of information could actually be due to a negative attitude on the part of the offender's immediate circle.

Whatever the case, the nature of these positive reactions to the offender is revealing. Those close to him at first show surprise at the crime: "that isn't like him", We are "stunned" and "overwhelmed" (Di Marino, pp. 209-210). And they draw a very flattering picture of the guilty person:

"He's neither 'a criminal' nor 'violent', nor a 'bad' person, nor 'a drinker', nor a 'gambler'" (p. 217). "He is attributed all sorts of qualities: he is 'straight', 'honest', 'stable', 'likeable', 'affectionate', 'quiet', 'upright', 'generous', 'serious', 'obliging', 'open', 'dynamic', 'thoughtful', etc... In all, the offender is presented as a 'a nice lad', 'has a clean slate', 'a good sort'" (pp. 217-218).

Why, then, has he committed a crime? The people around him answer either by making him out to be innocent, by justifying or excusing him. They refuse to believe he could do such a thing: "I am convinced that he had nothing to do with all this" (p. 216). They justify the act by saying: "He must have been threatened by the victim" (p. 215). The excuses given are generally the influence of bad companions and bad friends. "My son is incapable of committing such a crime on his own" (p. 212).

In the end, they do not abandon the offender; on the contrary, they run to his aid. Of 25 court hearings sampled by Di Marino, the accused was accompanied either by friends or members of his family in 58% of the cases (pp. 219-220). And they go to see him in prison.

"This willingness to support the offender during his ordeal is also evident in the considerable number of permits delivered to the members of his immediate circle and the long waiting lines to be seen at the doors of the prison on visiting days."

(Di Marino, 1979, p. 220)

But even though less frequent, there are negative reactions on the part of his circle. The offender is described in turn as:

a "young braggart", "a fighter", "a louse", "immoral", "a villain", "a bad boy", "a bad lot", "a bad character", or "has only one idea in his head, to binge" in night clubs. Sometimes these pejorative judgments are accompanied by a pessimistic, even hopeless prediction as to the future of the delinquent; there are witnesses who do not hesitate to declare that the accused "is incorrigible" or "is not good enough to live among honest people."

(Di Marino, 1979, pp. 205-206)

The labeling theory would lead us to believe that the conviction causes the members of the offender's circle to stigmatize him, but the facts reported here are the direct opposite of this supposition: more often than not, they praise him and fly to his aid.

The facts are so far removed from the theory that Di Marino concludes that when the crime becomes known, there is a rush to proclaim the guilty person innocent, "sometimes so vigourously that the deviant himself is led to believe he has nothing or very little to reproach himself with. He is given a clear conscience and thus prevented from being aware of the gravity of the act committed" (p. 231).

Di Marino's analysis can be compared with that done in chapters 7 and 8. We showed there that the delinquents had lived in a moral climate of indifference to wrongdoing, or even approval. This last observation, then, goes contrary to a central proposition of the labeling theory, namely, that the social reaction has the effect of increasing recidivism. In reality, the absence of any social reaction favours the proliferation of crime.

But the term social reaction is obviously not sufficiently precise. A distinction must be made between denunciation and labeling. Denunciation clearly contributes to the control of crime. With regard to labeling, things are not so clear. It is extreme denunciation. The offender is called incorrigible and is rejected; this affects his sense of morality and incentive to obey the law. There is reason to believe, therefore, that labeling, contributes to the amplification of deviance.

However, it is always difficult to distinguish between cause and effect. The stigma is very often the consequence of frequent or serious offenses. It is also the cause of the subsequent recidivism? Possibly, but it cannot be proved conclusively. According to the available data, there is a possibility that the recidivism that follows the stigma is due to the fact that, from the start, the individuals thus sanctioned had more criminal tendencies than the others.

The secondary effects of the social reaction

It is reasonable to suppose that long stays in prison or repeated exposure to various punishments will eventually mark a man. Whatever the effect of punishment on recidivism, it is quite possible that it will have a secondary effect on the delinquent. The existence of such effects was probably one of the factors that substantiated the theory of the amplification deviance. There are three secondary effects of repeated and long-lasting punishment: demoralization, difficulties in social readjustment and insensitivity.

Demoralization is a possible consequence of long periods of incarceration which seem to pare away the sense of morality the offender might have had and make him see himself as an inveterate criminal. This, at least, is what several autobiographies lead us to believe.

"I learned new tricks in the Tombs; and more than that, I began definitely to look upon myself as a criminal."
(Hapgood, 1903, p. 43)

With time, the prisoner loses all hope of changing (Shaw, 1930, p. 160). He feels he will never again be able to become rehabilitated however hard he tries (Hapgood, 1903, p. 253). Finally he loses all sense of dignity and comes to despise himself.

"The horrors of that House of corruption cannot be described. I can only say that when there, I lost all respect for myself, felt degenerated and inhuman."
(Shaw, 1930, p. 154)

This influence can be caused by the living conditions in prison, but the main corrupting influence comes from the other inmates who, by their words and actions, daily testify to the collapse of moral principles.

We can conclude, therefore, that a prolonged prison experience can destroy the requisites for a moral life: convictions, pride, a positive self-image. After a long stay in prison, the prisoner will have lost whatever moral convictions he had when he entered (assuming that he had some at the time). He will look upon himself as a criminal; he will cease to react to theft and violence with indignation; he will not be ashamed of committing such acts. Morally speaking, he will have nothing to lose by engaging in crime.

Penal intervention can only accentuate the difficulties of reinsertion in social life. How does a person find a satisfactory job when he comes out of prison? How does he make friends?

Another result of repeated punishment is insensitivity. By the force of circumstances, the recidivist has been subjected to sanctions of all sorts intended to reform or intimidate him. To resist all these pressures, he has to develop a defence. He has learned to remain indifferent, impervious to reproach and punishment. He hides all feelings of weakness behind a face without expression, behind a mask of impassivity (Schouten et al., 1976, p. 58).

"I was forced to admire their courage in the face of adversity. I liked their ability to suffer in silence and disdain, without giving in. Neither beatings nor cruelty could affect their contempt. They immolated themselves on the

altar of Virility that they finally symbolized, deaf and dumb to all that was not their obsession, impervious to all influence - incorrigible - according to the jargon of the Brothers."

(Del Castillo, 1965, p. 194)

This air of obstinacy, this haughty and closed attitude, hides feelings of guilt or fear that could make them vulnerable to the reprimands and punishments. To better withstand the social reaction, the offender dehumanizes himself, to use the expression of Mailloux (1971, p. 190); they immunize themselves against all human feeling: fear, shame, remorse.

Demoralization, difficulty in social readjustment and insensitivity are the secondary consequences of prolonged exposure to measures intended to correct or intimidate the chronic delinquent. They will probably make his rehabilitation doubtful, but to conclude from this that the social reaction causes recidivism, is going a step too far. We have here two opposite effects: on the one hand, the social reaction causes demoralization, insensitivity and difficulties in social readaptation, and, on the other, it deters. Do these two effects nullify one another or is one stronger than the other? We do not know exactly, but I tend believe that, for the largest number, the moderating effect of punishment is much stronger than its amplifying effect, whereas for a minority of offenders, the opposite is true.

The logic of labeling

The labeling theory is quite often presented by its adherents as a general theory of recidivism. This being as, it is legitimate to confront their principal arguments with the facts known in connection with recidivism.

The labeling school's main thesis concerning recidivism is that social reaction intensifies crime and delinquency. Starting from there, three propositions follow logically.

- 1 - The more frequent and intense the social reaction, the more it will increase recidivism.

- 2 - Labelling entraps its subject in a deviant role from which he can never escape.
- 3 - When society does not react to crime and delinquency, it disappears of itself.

The first hypothesis makes two assumptions: 1 - the frequency of punishment provokes an increase in recidivism. 2 - The severity of the punishment amplifies the recidivism. The impact of the severity and frequency of punishment on recidivism was developed fully in chapters 12 and 13, so it would be useless to go into the matter again here. However, certain points should briefly be called to mind. It is true that the more frequent and severe the punishments are, the more recidivism is probable, but we have seen that essentially this relationship can be attributed to selection. The result is that individuals frequently and severely punished recidivate more because, from the beginning, their criminal propensities are stronger. On the other hand, the indications reported in chapter 13 give us reason to believe that the more constraining a measure is, the more it reduces recidivism. Hence the facts do not support the hypothesis that severe and frequent punishments have an amplifying effect. On the contrary, certain facts make the reverse hypothesis plausible, that of the specific deterrent effect of punishment.

Labeling gives a person a deviant identity and in so doing, condemns that person to a role he will find difficult, if not impossible, to escape. This second hypothesis follows logically from the idea of secondary deviance. Since arrest and criminal conviction are forms of labeling, it may be supposed that, as soon as an offender is arrested or convicted, he will be destined to recidivate. Actually, this is not the case. In cohort studies, about half of the delinquents have only one contact with the penal system. Thus in half of the cases, labeling did not have the anticipated effect; the offender did not become involved in secondary deviance.

Knutsson (1977) noted that if it is true that the conviction commits the offender irrevocably to a criminal role, the number of offenders would increase regularly with age. Each new conviction would be tantamount to recruiting one more person into the army of crime, and as the offender cannot change

his role, the proportion of criminals would become greater and greater as they advanced in age. However, we know that this is not the case. Crime is at its peak toward the end of adolescence and then there is a gradual drop. The theory of labeling does not explain this fact.

A hypothesis more in line with the known facts, can be put forward. People often commit crimes without considering themselves criminals or delinquents. They steal but do not look upon themselves as thieves. They use the classic excuses - minimizing the crime, blaming the victim, claiming that everybody does the same - to maintain an ambiguous situation that affords them a clear conscience while they continue to violate the law. The social reaction, and particularly a conviction, confronts them with an alternative without compromise: either they stop committing crimes or continue, but they have to come to terms with the fact that they are offenders. Forced to make a clear decision, some will decide to stop violating the law, others will opt for crime. It is possible, therefore, that the latter will switch to more serious offenses because it has been their conscious decision.

According to the third hypothesis that stems from the labelling theory, when society does not react to crime, it resorbs by itself. In other words, the offender will spontaneously stop committing crimes if he is left alone. Interactionist have attached great importance to this idea and deduced from it the doctrine of non-intervention, which stipulates that juvenile delinquents must be left alone whenever possible (Lemert, 1967 and Schur, 1973).

If this hypothesis is valid, offenders who had experienced no intervention would normally stop violating the law, whereas those who were the object of social reaction would continue. At least three observations reported in this book are in direct opposition to this supposition.

First, the more the members of a community disapprove of a delinquent act (in other words, react), the fewer the individuals in this community who commit this offense (cf. chapter 7).

Second, many offenders stop committing crimes following a penal sanction (cf. chapter 13).

Third, it seem that recidivists often slow down after their first arrest (cf. chapter 13).

If the non-intervention hypothesis is put in terms of deterrence, it would mean that impunity favours a resorption of the crime and that, the less certain punishment is, the more the criminality will diminish. This hypothesis presupposes that crime and delinquency offers no gratification or benefit to its authors and, because of this, can only disappear with time unless it is articially maintained and reinforced by repression. Obviously, this is not so. Crime can give its authors many reasons to continue: it is a means of getting money, of affording pleasure, of obtaining power and prestige. Behaviour of this kind needs no outside support to persist. If it is true that crime can be gratifying, then when there is no reaction to the violations of a child or adolescent, they are in serious danger of learning to satisfy their desires through unlawful means; they will get into the habit of stealing and using violence and even become involved in a criminal career, all the more difficult to stop because they will have acquired the need for crime previously discussed.(1)

Conclusion

If a scientific theory should be judged by its ability to account for the facts, the theory of labelling must be judged severely. Its basic proposals are so far from the known facts that if one were to take the exact opposite view, one would have a more accurate idea of the reality. Instead of saying that the social reaction increases delinquency, it would be more correct to say that it reduces it. If there is such a thing as the amplification of deviance, the phenomenon is so rare that there is practically no trace of it. On the

(1) However, there is no question here of a policy of maximum intervention. Other factors must be taken into account. Penal action is never faultless. It comprises an inevitable element of coercion and even brutality. And its therapeutic value is more than doubtful. Penal measures exert pressure by means of fear and have worrisome secondary effects: demoralization, difficulty is social readjustment, hardening. The moderation of punishment that Beccaria spoke about is topical today.

other hand, a great many observations lead to the conclusion that social reaction can have either a moral or deterrent influence. These regulative effects greatly outweigh any possible amplifying influence.

This does not mean to say that there are no stigmatizing social reactions. On the contrary, it often happens that people react to a crime by branding the offender, excluding and ostracizing him. But these reactions are generally the consequences, and not the causes, of recidivism: it occurs when the offender has shown that he is more interested in profiting from crime than in the opinion of his intimates. Finally, even though stigmatizing, the reaction can have a moderating effect because it is intimidating.

There is tendency, in fact, to underestimate the effectiveness of labelling as a deterrent. There is no doubt that it exists, as Brillon (1980, pp. 128-132) has shown in his analysis of the defamatory punishments and ostracism in traditional African societies. Distrust, ridicule and exclusion are used to check the anti-social activities of the villagers. And these measures deter a good many deviants.

"He had to face shame, censure, derision and jibes. The offender, seeing that he had to be forgiven and forgotten, consequently had to adopt exemplary behaviour which, alone, in the long run, would bring about his total reintegration in society. The pressure of the group on the individual was all the greater in that it came from his own family as well, whose reputation and honour had been sullied by the anti-social behaviour. It all worked toward the elimination of recidivism."

(Brillon, 1980, p. 131)

CHAPTER XVI

THE PRISON EXPERIENCE

The labeling theory, then, is unable to give us the key to understanding recidivism. The problem has to be put in a different way. One solution would be to put it in terms of deterrence. This would lead us to focus our enquiry on the reactions of chronic offenders to punishment and the strategies they turn to in order to counteract its intimidating effect. Do these men succeed in accustoming themselves to punishment? Are they afraid? If not, why? If they are, how do they fight their fear?

First, we must examine the subjective aspect of deterrence: how do offenders go through the experience of being punished? The answers lie in what the principals concerned have to say.

The Pains of imprisonment

Sooner or later, the habitual criminal gets a taste of prison. In order to get an idea of how deterrence works, one must first see how disagreeable life in prison is. I shall begin by examining what Sykes (1958) called the pains of imprisonment.

The difficulties of a stay in prison or institution stem first from the confinement itself, then from the internal regime that is established in the prison milieu and, finally, the necessity of living with other criminals.⁽¹⁾

(1) In this chapter, I make no distinction between the institutions for juvenile delinquents and prisons. The expression "prison experience" refers to the two types of establishments. The reasons for this are first, that the problem of the chronic delinquent exists among minors as well as adults. Second, it is true that, in general, the institutions for juvenile delinquents have a much more humane system than the prisons, but there are a great many exceptions. There are institutions that, for all practical purposes, are prisons, and there are minimum security prisons that greatly resemble the institutions for minors. Third, prisons and institutions for juvenile delinquents both belong to the same institutional category. In

Confinement obviously means the deprivation of liberty, the freedom to go where you want, to enjoy the pleasures you're accustomed to, to do what you want when you feel like it. Confinement also means being unable to have the pleasure of sexual relations, unless homosexual ones. In prison and in institution, some of the simplest pleasures are inaccessible. "People don't know what it's like inside. We others, we dream of strolling on the street like everybody else" (Laflamme-Cusson and Baril, 1975, vol. II, p. 195).

To be confined is also to be cut off from people you like, from family like, from parties, from Saturday night dances. This deprivation is most keenly felt during holidays.

"You have to have experienced Christmas in prison, to know how sad it can be. Sure, there was a little celebration and, at midnight, the fellows all shook hands. It was "Merry Christmas" and good wishes and laughter. But some of us didn't laugh. Anyway, I didn't want to see anybody. I wanted to go alone somewhere and cry. You know as well as I do that it's natural not to be happy under these conditions. During the Holidays, some prisoners take it very hard. After all, there are fathers of families who think of their wives and children... I swear it's not a pretty sight. Some who are in cells fly off the handle; others cut their wrists; others break everything in their cells. These are terrible sights, hard to bear, believe me."
(Jodoin, 1976, p. 100)

No matter what programme of activity is offered the prisoners, they are bored in the prison milieu. Inevitably the routine is extremely monotonous. "Here you take your shower at 4.30. It's always the same. At home, if you feel like taking a bath... you do... you don't wait for bath time. If it only changed sometimes! Always the same hours, the same faces, the same walls" (Laflamme-Cusson and Baril, 1975, vol. II, p. 120). Novelty, the unexpected, a happening - all are eliminated by the very nature of institutional life. In

(1) (continued) the terminology of Goffman (1961), they are total institutions. The institutions for minors have many characteristics in common with the prisons: confinement, regimentation, subjection, boredom, fear of fellow prisoners, etc.

institutions for juvenile delinquents in the United States, 77% of the residents agree that "Most of the time, it is boring here" (Vinter et al., 1976, p. 181). The boredom is accentuated by the waiting: you wait for your trial, the end of your sentence, a visit from your parents. You kill time as best you can: talking, playing, dreaming, drowsing, counting the hours and the days, fighting, stealing, annoying the guards, preparing an escape, organizing a revolt. There's not doubt about it, barring the exception, the time spent in institution or in prison is useless - time lost.

As Goffman (1961) showed, totalitarianism is the natural path for a bureaucratic organization that has to take charge of a group of people confined in the same space 24 hours a day. The system has enormous power, particularly since it is not counterbalanced by any organized counter-power. Totalitarian power in the prison milieu is inevitable, for the inmates have no desire either to stay or collaborate, and the majority among them have learned to resolve their problems by theft and violence. This coercive régime engenders another form of deprivation - subjection, the almost total suppression of initiative. Everything is decided for the inmates: when to get up, then to eat, what to eat, what to do during the day, etc.

Victimization. "The worst thing about prison", said a prisoner to Sykes (1958, p. 77), "is that you have to live with other prisoners". The brutal fact is: when thieves and violent criminals are put together, they continue to rob and attack one another. The prisoners admit this openly.

"Som people kill themselves in prison. I've lost a number of friends that way. Other people kill each other in prison. It's a brutal place; not so much because of the guards but because of the convicts themselves. Prisons become storage vaults for the unfeeling and fascist-minded animals of our world. Prisons concentrate these people into small, close areas. They distill the worst from society by their function and augment it."
(Mac Isaac, 1968, p. 56)

In the institutions for juvenile delinquents, there is violence as well, but not to the point of murder.

"The Centre I was in - Savigny -, it was considered very good compared with others! But it's still prison... Because after a while, you really get into the groups and there, you've got to play the bigshot with the guys. You only get respect they using your fists; its prison alright. With the educators, its the same: you have to be a tough guy to count. As soon as you are a tough guy, the educators say: "Him, he's a somebody. He's O.K."... Because you hit out, because you get respect. You have to play the prison game with the guys who are there...
(Aurousseau and Laborde, 1976, p. 23)

In a sample of American institutions, 48% of the residents has fought with another youngster during the preceding month and that 28% of them had committed a theft in the institution during the same period (Vinter et al., 1976). The fact is that there is a constant risk of being attacked and robbed in these institutions.

It is not unusual for veritable systems of exploitation based on physical violence to develop in prisons and institutions. Bartollas et al. (1976) devoted a book to the analysis of victimization that was installed permanently in an institution for juvenile delinquents in the United States. As soon as a new boy arrived, he was put under ruthless pressure. During meals, the best food was taken from him. He was obliged to give away all his cigarettes. They took away the candy he bought at the canteen. The victim was quickly obliged to choose between defending himself with his fists or letting himself be systematically deprived. Bartollas and his collaborators estimated that at least 90% of all the residents of this institution were either exploiters or exploited. The boys incapable of defending themselves became the victims of homosexual rape. They became scapegoats. Living in constant terror, humiliated, traumatized, some went so far as to try to commit suicide.

In most prisons, the inmates fear for their lives - and with reason.

"Rarely a week goes by that an inmate is not stabbed. A knife in the back, a razor blade in the guts, a guy is disfigured, another loses an eye..."
(Jodoin, 1976, p. 76)

The much talked about "prisoners' code" that would supposedly foster solidarity among the prisoners offers little protection against the exploitation and brutality. The only rule that really counts is the one against informing and that is only obeyed for fear of reprisals. For the rest, it is the law of the strong.

"There's no such thing as honor among thieves. When you're a thief you're a wolf. If the wolf that's running alongside of you falls down and you're hungry, you're gonna eat him up".

(Martin, 1952, p. 152)

As pointed out by Bartollas et al. (1976, p. 271), there is much less justice and humanity in the relationships between prisoners than in the worst sectors of the criminal justice system.

One of the reasons for the omnipresence of controls, of the surveillance and regimentation in carceral establishments is simply to protect the inmates from other inmates.

Subjective deterrence

Torn from his milieu, deprived of his freedom, bored to death, a prey to the exploitation and violence of his fellows, the prisoner lives through an experience that can be nothing but disagreeable. Is it an experience that will deter him? Does he think that the fear of prison will motivate him to avoid crime? Glaser (1964, p. 481) has asked 248 prisoners who were on the point of being liberated, what aspects of prison experience helped the most if they wished to go straight. The answer given most often (between 54% and 31% of the respondents depending on the prisons they came from) was deterrence and more precisely, the thought of being incarcerated again. In Canada, Waller (1974, p. 120) asked a similar question of men who had been out of the penitentiary for a month. 32% of the respondents acknowledged that the fear of going back to the penitentiary would prevent them from committing new crimes. These figures are particularly significant when we consider that people do not easily admit being dominated by fear and that it is not in the interest of criminals to give people arguments in favour of deterrence.

Thus a substantial minority of prisoners acknowledge that prison does exercise a deterrent influence.

Accomodation

It is not unreasonable to suppose that ex-prisoners who recidivate do so because they are less sensitive to punishment than the others. For these men, life in prison would impose minor difficulties, but not enough to intimidate them. This supposition is valid only if it can be shown that for some, imprisonment is a much less disagreeable experience than for others; and to go one step further, for some, prison has no intimidating value.

Life is full of surprises; in spite of all the disagreeable aspects of prisons of institutions, there are men who are comfortable there and even want to return. Some adolescents, after having stayed in a French institution say they "miss the Centre". One of them found "he was well off there". These adolescents particularly appreciated the fact that they felt "protected" and "accepted" in the institution (Selosse et al., 1972, p. 307). Similar findings were made among men who were leaving prisons and penitentiaries. About 15% of the ex-prisoners in Waller's sample (1974, p. 77) acknowledged that from time to time they felt better in prison than when they were at liberty.⁽¹⁾ 60% of the adult criminals questioned by Petersilia et al. (1978, p. 46) said they had no difficulty in adapting to prison during their adulthood (against 47% during their juvenile period and 40% during their "young adulthood").

This may come as a surprise. One ex-prisoner from California explains why it is possible to prefer prison to freedom.

"Sure I miss the place. I had a lot of good friends there. I actually hated to leave. I knew that I wouldn't see most of these guys again. And I had a lot of good things going there. I had my house fixed up. I had my job, I was getting used to the food, was going to school. And I had some goofy friends, we used to do a lot of wild things together. Except for broads, I didn't mind the joint at all."
(Irwin, 1970, p. 134)

(1) To be more exact, 17% of the subjects on parole and 13% of those who had not obtained parole made the same admission.

It sometimes happens that adolescents, sick of life on the street, ask to be taken back to the institution where they had been and who return with evident pleasure.

"But after a while, I found myself getting tired of the school thing, getting tired of the Harlem thing. Dad found out what I was doing and said; "The boy ain't no good; he ain't never been no good, and he ain't never gonna be no good." He told me not to come back in the house, so I thought, Fuck it, I don't want to come back in the hour no more anyway.

I was only about fifteen, and I couldn't get a job. I couldn't do anything. I didn't like the idea of not being able to get a place and having to stay out on the street. So I just got fed up one day and went back to Warwick. I went down to the Youth House where the bus used to pick up all the boys going to Warwick every Friday. I just told the bus driver and the other cat that was on the bus that my name was Claude Brown, that I had stayed down from Warwick, and that they were looking for me. They said, "Hop on". So I just hopped on and went up to Warwick. When I got to Warwick, everybody was glad to see me. It was like coming home, a great reunion. I had only been home for about four months, and most of the cats I'd left at Warwick were still there, so there was a place for me."
(Brown, 1965, p. 146)

The fact that the State pays all the expenses in another facet of prison life. The prisoners are lodged, clothed and fed. Undoubtedly, most of the time they are badly housed, badly dressed and badly nourished. But it is better than nothing. Besides, the person who has a horror of making decisions will appreciate the fact that every day, a considerable number of civil servants are paid to decide for him. He can therefore enjoy the luxury of total irresponsibility; everything is looked after by the system.

And the man who has a horror of work will have a taste of being idle. For in spite of the impression given by the words "forced labour", prisoners rarely have to work very hard. Although the work is often obligatory, the effort and productivity rarely are. In a competitive world, obsessed with efficiency, the carceral institutions offer a refuge to people who detest working under pressure.

If life can be bearable in the prison milieu, it becomes almost agreeable in some institutions for juvenile delinquents where the educators have succeeded in creating a climate that compares advantageously with that found in private boarding schools for college students. Small groups (between 8 and 20) residents have their own quarters and live a relatively relaxed life there under the benevolent guidance of several educators. The latter are often fairly numerous, competent, and devoted to keeping violence and exploitation under control. They also succeed in breaking through the barrier of distrust that, at the beginning, separates them from the delinquents and they establish open and amical relationships with their charges. In Quebec, where we have carried out systematic studies on the quality of life in several institutions for young delinquents, we have found that the relationships between the residents and the educators as well as those that develop between the youngsters are remarkably positive (Cusson, 1974-A, Cusson and LeBlanc, 1980).

In these establishments, there is still boredom, but it is kept at a tolerable level thanks to the organization of many cultural and sports activities: baseball, football, swimming, hockey, handball, badminton, gymnastics, billiards, bowling, theatre, pottery, photography, films, etc.

The art of living in prison

It is also possible to lead a not too disagreeable life, at least in some correctional establishment, but, it is necessary to know how to adjust. In this respect, individuals vary considerably. Some will succeed in adjusting to the worst penitentiary, others will be miserable in the best institution. To make life bearable in the most unbearable prison, several conditions have to be met: the physical strength and courage to keep thieves and aggressors in check and the experience and knowledge of prison life necessary to avoid making blunders and to obtain the most interesting jobs. The person who has these assets can succeed in adjusting to life in prison. The three most frequent types of adaptation are 'hibernation', settling in and continued crime in prison.

Hibernation is a method of adaptation frequently adopted by professional criminals. It is one of them, incidentally, who used this term. "You just - like a bear hibernatin' as far as I'm concerned - you try to make your

mind a blank and settle down; you have so much time to do and that's all" (King and Chambliss, 1972, p. 109). These prisoners are "doing time". They watch television, daydream, drowse, sleep, take drugs or tranquillizers when they can get them. They avoid "trouble" and annoyances: they never speak to the guards, keep a respectful distance away from violent inmates and hotheads, have a few firm friends and a job that is not too exhausting. Thus they serve their sentence in a state of numbness to wake up only on the day of their release.

Settling in is a method of adaptation that is frequent among prisoners who have started life in institution when very young and who seem to be resigned to staying there forever. They arrange it so that they can get all the satisfactions possible in institutional life (Goffman, 1961, p. 107). Their objective is to live comfortably in this world with which they are familiar. They make their life in the prison milieu (Irwin, 1970, p. 68). More than anyone, they have developed the art of living in prison; they make a place for themselves, manoeuvre to be in the best cell block and have the best work load (in the kitchen, the secretariat, library, etc.), and associate with the big-shots of the place.

Prison crime consists in pursuing criminal activities inside the prison walls.

"Once I learned how to get by, the Youth House became one of the nicest places I had ever been. I really liked it there. I became a member of the Council on my floor. Toto was a member too, and we both were getting by real good. The people in the Youth House trusted the Council members more than they did the rest of the boys. So Toto and I could steal a lot of things and nobody would even think we did it. Sometimes when we took something and thought somebody might find out, we would bully some punky guy and make him say that he did it. And if things really got bad, like everybody on the floor losing play privileges for a while, we would take whatever we stole and put it in somebody else's room. Then when the searching started, either me or Toto would find it, and the person whose room we found it in would get in trouble. As time went on, the floor supervisor started getting wise to us, but this didn't mean that we had to stop. We just had to find a new way to do what we wanted to do, and we always found one. I was getting by real good, and I didn't care if I never left the Youth House."
(Brown, 1965, pp. 60-61)

There are some men who are so lacking in friends, family and resources, and are so miserable that prison seem to them preferable to freedom. It is a refuge that lets them escape a life that is too grim.

"When I go to jail now, Sonny, I live, man. I'm right at home. That's the good part about it. If you look at it, Sonny, a cat like me is just cut out to be in jail. It could never hurt me, 'cause I never had what the good folks call a home and all that kind of shit to begin with. So when I went to Warwick, I made my own home. It was all right. Shit, I learned how to live. Now when I go back to the joint, anywhere I go, I know some people. If I go to any of the jails in New York, or if I go to a slam in Jersey, even, I still run into a lot of cats I know. It's almost like a family." I said, "Yeah, Reno, it's good that a cat can be so happy in jail. I guess all it takes to be happy in anything is knowin' how to walk with your lot, whatever it is, in life."
(Brown, 1965, p. 412)

There are children who are maltreated, abandoned or rejected by their parents. There are some people who cannot get three meals a day. There are men who, outside of person, are absolutely alone, without family, without friends. There are human beings crushed by the struggle to live.

JEAN: "Yes but then Jeff, he is a typical case of suicidal hold-up. He really wanted to go back to the slammer. Everybody knew it except the totally blind who believe in bad luck. But for me, for you, for everyone, ... we know very well that Jeff WANTED to go back to jail; if not, he would never have planned such a suicidal venture. He's not the only one. There are many like him; because in jail, they don't have to face what they have to face outside. Prison is another kind of confrontation... much less hard, in a way."

PIERROT: "Those are guys who are used to prison; it's guys like Jeff who are in prison since they're about 13..."

JEAN: 12. I knew Jeff at the Centre de Bure-sur-Yvette; he was 12 and from the age of 12 to 25 he has lived in prison almost all the time.

"LARSENE: Well, when they're outside, it's unbearable. They are totally at a loss. Besides, do you remember? Once Jeff said to me: "Outside, I'm bored to death."" (Aurousseau and Laborde, 1976, p. 49)⁽¹⁾

Conclusion: Difference in sensitivity to punishment

"One prison sentence is the same as another, and all prisons are the same; no matter whether you are beaten regularly or simply slammed into a cell and forgotten. Because prison is a compound of immobility, feelings, and people. (...) Regardless of conditions, prison is bad or incredibly bad according to the individual's capacity to suffer from it." (Mac Isaac, 1968, p. 56)

Even though everyone suffers during a stay in a prison institution, their suffering will vary a great deal depending on the individual, on their ability to adapt and their capacity to cope elsewhere. For a small minority of men, life is not as hard inside as it is outside. They naturally suffer from the subjection, the boredom and the brutality that characterizes the prison world but they do not feel so alone and bewildered as they do in a society where they see only indifference and inhumanity. For others, a greater number, the sentence is like a bad time they must get through somehow, bearable if they know how to get by. For third group, probably the majority of people who are sent to prison, it will be an intolerable and terrifying experience.

These individual variations perhaps give us one key to habitual crime. People who adapt fairly well to prison life and who feel no worse in prison than they do elsewhere no longer have much to lose by committing new crimes. Zimring and Hawkins (1973, p. 28) believe that the effect of punishment varies according to what people have to lose if they are punished. Two hypotheses come to mind: The more an inmate adapts to prison life, the greater the risk of recidivism. The more an offender prefers freedom to prison life, the less he will tend to recidivate. Keeping in mind that there are a few men for whom the prospect of returning to prison is only a minor inconvenience, multiple recidivism loses some of its enigmatic character.

(1) A similar case was reported by Petersilia *et al.* (1978, p. 55). The respondent said: "I wasn't equipped to handle the outside world (...) I was anxious to get back with my own kind. I deliberately got myself busted when things got too bad."

CHAPTER XVII

DECISIONS AND DETERRENCE

Crime as a project

Except for rare cases of totally impulsive acts, crime is preceded by a certain amount of deliberation, sometimes very brief, other times lasting several days. Some murders have been premeditated for months. Crime, then, is normally the result of a decision. Moreover, in the case of criminals studied by Yochelson and Samenow (1976, p. 411) the fear of punishment often intervenes during the decision-making process.

The process can be described as follows. An offender conceives the project for a crime. Immediately the question of the risks comes to mind. Sometimes he decides that the risks are too great and drops the idea, other times he overcomes his fear and goes ahead.

Beating a retreat

A criminal project is often abandoned because it is too dangerous. According to Yochelson and Samenow (1976, p. 411) criminals plan a considerable number of crimes but carry out only a minority, the others being considered unrealistic and, above all, too risky.

The crime contemplated by the offender is often dropped after some calculation. He considers the pros and cons, the gains expected, the probability of arrest, the punishment to which he is exposed, and then gives up the idea. Other times, he becomes paralyzed with fear and is unable to act. This is the case for criminals who have served long terms in prison and who are terrified at the idea of having to go back. They prepare an attack but, when it comes time to act, they are scared stiff and beat a retreat. This is what one inmate had to say about San Quentin.

"A guy loses his soul in one of these places. When it really comes down to doing something he hasn't got it anymore.

Oh yeah, he can plan some heavy scores, but when it comes to executing them, he freezes. I remember two guys I knew inside before - dudes I thought were pretty heavy - they contacted me to pull this caper. They had this thing all set up and they wanted me to get a car and go with them. Well, we were going to take the place on Monday morning and Sunday night I grabbed a car and changed plates. The next morning we came wheeling up to the place and everything looked cool to me, but one of them said, "Man, there is something wrong. I don't know what it is, but somethin's wrong." So I said: "All right, man, if you wanna wait, I won't say anything." Ya know, a guy's risking his neck so I don't wanna push him into it. So, here we go again, next week, same story, I get the car, we come wheeling up to the place, this time, this guy sees somebody heading for the door. I say, "It's all right, man, I'll take care of that dude." So I get out, they finally follow. Then this guy sees somebody coming down the street and now he really panics and gets back into the car. Man, I had to back away then and we drove off. I told these two motherfuckers not to come around me anymore. I finally figured out what was wrong with them. They had lost their nut sacks, their balls. Oh, they can still talk some heavy scores, but can't put them together anymore. That's what the joint does to a guy." (Irwin, 1970, p. 186)

Acting out

Other times, in spite of the fear, criminals do act. Supported by their accomplices, they take their courage in both hands, and acting on the heat of the moment, they force themselves to overcome their panic.

"I saw no one inside and so I stepped into a small alcove around the door to see if I would have enough privacy from the sidewalk, and when I did I was suddenly struck numb, as if I had just fallen into a river of ice! Overcome with a feeling of such stark horror, I had to shake my head violently. I almost ran back to the car.

Sliding behind the wheel, I said in a voice filled with emotion, "It's all off Ralph. We've getting out of here."

"Are you crazy? Why would you wanna do that for?"

"Because I've got this weird feeling that something very, very bad is going to happen to me if I go through with the play. I've had these feelings before and I know."

"I told you you're acting crazy! We've here and we're set and you know we need the dough. If we don't hit that joint now, we won't get another chance for two weeks!"

"We can cruise around until we find another score."

"No! This is a gold mine and we're never going to find a better spot. Maybe you're just chicken."

I squeezed the steering wheel and rested my head on it as crazy thoughts rushed through my mind and after a minute I raised my head and said, "Okay, I'm going to do it, but don't you ever call me chicken again." I took off my glove and rubbed my holy medallion in the hope that the eerie feeling would fade. It did not. I then started the car and leaving the motor running we both got out and crossed the street."

(Caron, 1978, p. 45)

A taste for risk

Cowardly and villainous crimes, such as several hoodlums attacking a defenceless old man, would lead us to believe that criminals are lacking in courage. The fact remains that these men take considerable risks. The unforeseeable reactions of the victims and the always possible intervention of the police make theft and aggression highly dangerous. To commit these acts on a regular basis, a person must have courage. This trait is seen very early on among juvenile delinquents. They distinguish themselves from their comrades by their daring and spirit of adventure (West and Farrington, 1973). It would seem that delinquents have a liking for risk. This trait probably comes from a need for action, for stimulation and stress and leads them to look for intense sensations. Crime sometimes attracts them, not in spite of the risk, but because of it. They seek out dangerous activities and get carried away by the danger. Not that they want to be punished, but they like taking the risk of being caught.

Fighting fear

Fear can drive the criminal to take measures to reduce the objective risks of punishment.

First he may only act if the danger is not too great. Beyond a certain degree of risk, he will reject the venture. This threshold of danger will vary with the individual.⁽¹⁾ Some accept only the risk of minor punishments, confining their activities to crimes such as burglary. Others are prepared to run the risk of years in prison by going so far as to stage a holdup. The probability of arrest must also be taken into consideration. The criminal will therefore be more or less selective in the choice of his victims. Very likely, the degree of risk taken will vary directly with the gain anticipated. A person will be ready to risk a great deal for a haul of ten thousand dollars, but not a few hundred.

It is quite likely that the struggle against fear begins with the choice of a crime where the degree of risk is acceptable. In all probability a person's criminal activities will vary according to his willingness to take risks.

The recidivist determined to escape the consequences of his crimes will carefully prepare his ventures; he will take various precautions to lessen the probability of arrest. To do this, he will gather all the information that will allow him to act quickly at the right moment and in the right place (Where is the money? What is the layout of the place? When do the police patrol the area? What is the best escape route? etc.). He will get the necessary equipment (arms, automobile, tools, masks, disguises). All these measures make the execution of the crime more certain, more rapid, more efficient and minimize the risks.

Weakness

But if the habitual criminal pushes the logic of rational action to its limit in order to avoid punishment, he will discover that the only reliable solution is not in choosing safe targets or in carefully preparing his ventures; it will be in ceasing to steal or attack people. But he will find it difficult to do so.

(1) And probably with certain periods: when the delinquent has just got out of prison, he is probably less ready to take the risk.

One reason for this is that the recidivist has very few legitimate opportunities. He does not have the schooling, professional skill or personal and social resources to succeed in anything other than theft.

The second reason is related to the delays in punishment. Punishment, as applied in the criminal justice system, is fundamentally different from conditioning. It is uncertain and occurs only after long delays - weeks, months, sometimes years. Deterrence is not conditioning. It is effective only because most people have the ability to act in terms of the future, because they are able to see the eventual consequences of their actions and take them into consideration. Chronic offenders, however, are obviously unable to think in terms of the future. The prospect of immediate gain takes precedent over that of the possible future sanction (Zimring and Hawkins, 1973, pp. 98-99). For the present-oriented offender, the fear of punishment is not enough to counteract the tendency to yield to temptation. He will regret it later if he is punished, but this will not stop him from doing the same thing the next time.

The art of escaping punishment, then, does not only depend on the intelligence necessary to prepare crimes astutely. It depends much more on foresight, the ability to take into account the threat of punishment as well as opportunities that will make alternatives to crime and delinquency accessible.

The filtering effect of the penal threat

In every prison in the world, the poor and unqualified are greatly over-represented. Because of this, it was concluded that punishment was discriminatory. This conclusion is not the only possible one. Most people avoid contact with the penal system simply by not committing crimes that entail a real risk of punishment. But there is a minority of people who, through lack of foresight, and through the inability to do better, cannot adapt their behavior to the penal threat. They are therefore punished again and again. Thus it is not enough to say that the penal system arbitrarily selects a certain category of persons; it would be more correct to say that those who end up in prison have selected themselves. This is what Andenaes (1977, pp. 9-10) called the filtering effect of the criminal law.

This author had observed that, in Norway, where drunkenness is systematically and severely punished, the persons convicted for this offense have many traits in common with the habitual clientele of the prisons, and in particular, over-representation of people of the lower classes. According to him, this is due to strict enforcement of the law.

"In a system of criminal law that is operated with a reasonable degree of efficiency - and I mean a system where the risk of being discovered and the severity of the sanctions ensure a rational reason for checking violations of the law - the large majority will keep on the good side of the law. This applies particularly to those who are well adjusted and are capable. The person who has been socially successful and who is well adjusted has a great deal to lose if he is ever convicted. He also has the advantage of being able to conduct himself so that he does not enter into conflict with the law. And, as a general rule, he is capable of acting rationally over the long term. Those who are not motivated by the threat of the law are those who are less well adjusted."

(Andenaes, 1977, p. 9)

In other words, citizens capable of taking cognizance of the fact that punishment is actually applied avoid committing crimes. A small number of persons remain who cannot adjust to this situation and who end up in prison. The composition of the prison population, then, is determined by the differential effectiveness of the threat of punishment.

This self-selection of offenders is also very evident in the juvenile justice system. Considering that it takes dozens and dozens of arrests before a judge decides on institutionalization, we are led to conclude that adolescents who have a minimum of foresight and self-control have the time to take the measures necessary to keep them from returning to an institution - stop stealing and attacking people. And those who remain after the filtering - those who fill our institutions - are too handicapped to escape punishment. The arrest could very well prompt them to stop their delinquent activities for a time. But its influence will not be sufficient to have them stop completely.

CHAPTER XVIII

RETIRING FROM CRIME

Good resolutions

During the sixties, the inmates in American prisons questioned by Glaser's team believed that approximately 50% of their fellow inmates want to go straight but that only half of this 50% would be capable of sticking to their resolutions (Glaser, 1964, pp. 478-479). Irwin (1970), who interviewed prisoners on the point of being paroled, also stated that offenders often have the intention of changing: "Most of them expressed the belief that making it is up to the individual, and now that they had decided to try to make it their chances were very good. Most who come back, they believed, don't want to make it" (p. 112). A further indication: in the case of the adult criminals interviewed by Petersilia et al. (1978, p. 53), at the moment they were released from juvenile institutions, 36% counted on stopping their anti-social activities and finding a job, whereas the percentage rose to 52% at the time of their release from prison.

The degree of determination in each case is highly variable. In certain cases, the prisoner has the intention of stopping his criminal activities but his resolution does not stand the test of his new-found freedom for very long.

"My mother and father came to get me on the day of my release; they took me to their new lodgings on Henri Julien St. My brothers, sisters and cousins were waiting for me and everyone was glad to see me. A bit like the story of the prodigal son. I was happy too. I began a normal life again and promised myself I would never go back to my crazy behaviour of the past. But it seems I needed it. For, after a time, I began to hang around the nightclubs, those in the lower part of the city where I could meet the guys I had known in prison. And, at the same time, I found that things were going badly: I had no money and wanted to have everything... I had to find a way of getting money fast..." (Jodoin, 1976, p. 111)

On the other hand, some firmly intend to stop completely or more precisely never to go back to prison. The offender realizes that he has become incapable of "doing time"; prison life has become intolerable.

"I left Dannemora asylum for the criminal insane on a cold winter morning. I had my tickets for New York, but not a cent of money. Relatives or friends are supposed to provide that. I was happy, however, and I made a resolution, which this time I shall keep, never to go to stir or the pipe house again. I knew very well that I could never repeat such an experience without actually going mad - or dying. (...) I looked at the gloomy building and said to myself: 'I have left Hell, and I'll shovel coal before I go back.'" (Hapgood, 1903, p. 332)

It seems that ex-prisoners who have truly resolved to obey the law recidivate less than the others. Waller (1974, p. 149) recently found that Canadian prisoners who asked for parole had a 30% rate of recidivism compared with a 50% rate for those who did not apply for it. How is it that the mere act of asking for parole leads to such marked differences? Probably because it shows a firm resolve to abandon crime. This interpretation is based on the fact that before leaving the penitentiary, the attitude of the prisoners who ask for parole differs from that of their fellow inmates. They are optimistic about their chances of never having to go back to prison, they see no reason why they should commit new crimes and, after their release, they quickly find a job (Waller, 1974, p. 184). On the contrary, the prisoners who prefer not to ask for parole seem to be little interested in leading a normal life. In all probability, they prefer not to be under the surveillance of an officer because, in the event that they were caught in a new crime during the parole period, they would have to serve the full term of the previous sentence.

Thus it would seem that the stronger the resolution of an ex-prisoner to obey the law, the less he will tend to recidivate.

The gamble is no longer fun

What motivates a recidivist to change his ways? First of all, there is the fact that with age, the exhilaration of criminal life palls. Just as

the adolescent loses interest in his childhood games, the adult criminal finds his forbidden ventures less and less exciting. He does only by necessity what he used to do for pleasure. "I don't want to be a criminal all my life! I'm bored to death with that trip." (Aurousseau and Laborde, 1976). They can no longer stand a hectic and disorderly life. It is not amusing anymore, merely exhausting.(1)

Succeeding in something else

Frequently, however, even the most sincere resolutions are not kept. For it is not enough to lose interest in crime to become rehabilitated, there must be an alternative solution.

Those who become interested in a trade, in something that can fill the void left by crime, will come through fairly well. Ex-prisoners who become writers are a good example.

"It's this that got me out of myself and what attracted me and saw me through. I found a kind of passion for literary creation. I believe it is essential for a boy, even if he has been in the clink, to find something that he cares about almost more than anything else. When that happens, 90% of the work is done..."
(Mazerol, 1977, p. 252)

It is interesting to note here the important role of fellow prisoners in the acquisition of new interests. This is how Ron Le Flore, who was to become a professional baseball player of high calibre, came to owe his success in part to a fellow inmate.

"Karalla told me he thought I had the professional baseball potential. I knew I was a good athlete, but I had never thought about baseball as anything more than a way to impress administration and pass the time.

Karalla kept working with me. He hit me grounders and fly balls and taught me how to slide. He clocked me on the

(1) "I'm just tired."
(Allen, 1977, p. 223)

football field: 9.6 seconds for one hundred yards where the grass was six inches high and the ground wasn't level. He kept telling me I had the ability to play professional baseball. The more he talked about it, the more I thought about it. I began believing that maybe I could play professional ball when I got out of prison, so I began watching games on TV, trying to learn as much as possible. In August 1971 I wrote to the Detroit Tigers, to General Manager Jim Campbell, requesting a tryout after I was released. The Tigers sent me a form letter in September, stating that all their players were scouted and they weren't interested."
(Le Flore and Hawkins, p. 81)

The price of crime

But by far the most important factor in making the chronic criminal decide to change his ways is realization that the price to pay for crime has become exorbitant.

It is not unusual for an habitual criminal to discover that, at 35, he has already spent a total of 10 or 15 years behind bars. He realizes sadly, then, that the best years of his life have been wasted killing time in damp cells in the company of scoundrels. And he knows he has paid a high price for the good moments crime had afforded him.

In other cases, the criminal does not wait to make this painful reckoning of his own situation. He thinks of the example of a friend who has been sentenced to ten years; he listens to the advice of men who speak from experience.

"I met one old guy, Rabbit Spencer, who had been in and out of the institution for twenty-five years. He had been using drugs that long, too. For some reason he seemed to pay close attention to me. Whenever he saw me doing something wrong, like "skating" into another cell block, he would call me aside and say, "Look, man, you shouldn't be doing that."

"It don't make sense for you to ruin your life when you've got a chance to make something of yourself," he told me. "I've been in and out of this place, and they way you're going, you're going to be doing the same thing. I've been through it, man, and there ain't no glory here. You've got too much going for you to spend the rest of your life in

institutions. You're the best athlete I've ever seen come through here - you're stronger, you're faster, and from what I've seen your thinking is a little better, too."

"Don't blow it, man. It's much easier to blow an opportunity than it is to get one."

I guess he caught me at the right time, when I already had intentions to trying to change myself for the better. A lot of guys tried to offer me advice, and I listened to them - but I wouldn't hear them. It was different with Rabbit Spencer because I knew he had done all the things I was thinking about doing. It was easier to pay attention to him because he knew what he was talking about. He probably wanted to better himself, too, but it was too late.

I lay in my cell at night after the lights were out, thinking about the things he said and wondering, Was he right? Rabbit Spencer had a lot of influence on me and on my decision to change my life.
(Le Flore and Hawkins, ¹⁹⁷⁸ pp. 85-86)

This realization becomes truly meaningful when the offender also becomes convinced that no one can win against the system; in the long run one is always the loser. The criminal has the feeling that he is hitting his head against a stone wall (Haggood, 1903, p. 343). His numerous incarcerations helping, he realizes that it will be impossible to escape punishment if he continues to engage in crime.

"I'm not changing because I now feel that they are right and I was wrong. I have never felt that I was wrong. I will always feel that they were wrong. But now I'm tired of losing. I've been losing a long time. You can't beat them, so I'm going to get trying to win their way."
(Irwin, 1970, p. 156)

When someone has already been convicted for relatively serious crimes and he continues to commit them, he quickly finds that everyone is after him, his victims, honest folk and the enormous control system, and that they will continue to seek him out the minute he comes out of hiding.

"You might fool them for a time - I did - but inevitably you have to lose. Just as I have lost, and I flatter myself that I operated with more intelligence than the usual criminal."
(Reynolds, 1963, p. 270)

If he is the least bit introspective, the persistent criminal realizes that he carries within himself the seeds of his own destruction. His cult of danger, his short-sightedness, his associates, his abuses will put him behind bars as surely as if he were deliberately seeking punishment.

"The 'criminal mentality' (what I prefer to call the 'philosophy of crime') is born to lose. The criminal acts out his role the way he's been taught it, taking a series of huge risks with very little reward, until he gets caught. His confusion in the face of bourgeois values is shown by the fact that, while he often can't stand work even if he can find it, he squanders his hardearned money so fast and so senselessly that he has to go to work again and pull another job. As a consumer - and he consumes with a vengeance - he is flashy, over-conspicuous and demonstrative, behavior which leads to arrest in poor black neighborhoods. As a thief, however, he is thoroughly secretive, isolated and paranoid."

(Carr, 1975, p. 199)

The aging criminal can easily become a derelict. It is not always easy to enjoy the fruits of theft when the police have their eye on you; it takes energy, courage and some know-how. There are long periods when nothing interesting presents itself. The irregular income, the need not to trust anyone, the fear and the abuse of alcohol and drugs in the end take their toll on even the hardest of men. They therefore slip into this "series of pathetic actions" described by Genet (1949, p. 117). They sink more and more into petty theft. They are in danger of becoming a derelict, living only for alcohol and drugs (Hapgood, 1903, p. 196).

Guy, during his days as a daring and carefree burglar, was always dressed with flashy elegance. When Genet met him years later, he was living a miserable life as a petty thief, his pride gone.

"No longer in Montmartre or the Champs-Élysées, I met Guy one day in Saint-Ouen. He was dirty, in rags and covered with filth. And in a group of buyers poorer and dirtier than the stall-keepers. He was trying to sell a pair of sheets, no doubt stolen from some hotel room (...) He looked sad. Java was with me. We recognized one another immediately. I said:

- Is that you, Guy?

I don't know what he read in my face, his own became terrible.

- I'm o.k. Go away.

- Listen...

The sheets were draped over his arms in the way mannequins show goods in shop windows. Bending his head a little to the side as if to emphasize his words, he said:

- Forget me.

- But...

- Forget me, mate.

Shame and humiliation must have prevented him from saying anything more. Java and I went on our way."

(Genet, 1949, pp. 259-260)

Examples like these can be enough to persuade a criminal to retire before it is too late.

Often the criminal lives the life of a fugitive - hunted, because after each crime, even if successful, there is always the fear of being arrested. Did someone recognize me? Did I leave any traces? Will my accomplice inform on me? Hunted because a known criminal is watched, interrogated, and harrassed by the police who will accuse him one day of a crime that he did or did not commit. The criminal is at everyone's mercy, the police, informers, his accomplices, his so-called friends and any citizen who may have recognized him.

"JEAN: Anyway, I have no illusions. You will always be hunted down. If it's not in bars, it's everywhere else...

LARSENE: People track you down...

JIM: People track you down and when the cops arrive, people rush to come and give them a hand and the cops go by what these people say, before even trying to find out..."

(Aurousseau and Laborde, 1976, p. 122)

Professional criminals know that in order to escape the police it is best to constantly change residences and even cities. If they operate too long in the same place, they will soon be caught (King and Chambliss, 1972, p. 22). If they are being sought, it is better to form no habits, never to go back twice to the same restaurant, the same bar or the same moviehouse (Reynold, 1963, p. 216). As the first careless movement can cost them years of freedom, they are constantly on the lookout. They are alarmed by the least suspicious sign and give a start every time someone knocks at the door. They constantly have the impression they are being followed or watched.

Habitual criminals are paranoiacs and have good reason to be; the world is full of people who hate them and would like to see them in prison.

This perpetual insecurity and constant being on the alert eventually becomes intolerable. The criminal is nervous, uneasy, cannot sleep, and sometimes even develops ulcers. At this point, he will think seriously of abandoning the criminal life, simply to find peace and tranquillity.

Recidivists often die a violent death. Some are shot by the police, others are stabbed by their fellow inmates, others are murdered because their accomplices suspect them of being informers, many die of an overdose of heroin, while others commit suicide. These dreadful examples can also stop the criminal from continuing this dangerous career.

There were others too. Reggie Harding, who attended Eastern High School in Detroit and later played for the Detroit Pistons in the National Basketball Association, was in Jackson for a while. Occasionally we played basketball together. Just before he was released he told me the Baltimore Bullets were giving him a chance to get back into pro basketball.

"You gonna go straight?" I asked him.

He glared at me as if I had no business asking him a question like that. "Whattaya mean, am I gonna go straight?" he sneered.

Soon after his release, we learned that he was taking drugs again. Not long after. I heard that he had been killed. That made me think."

(Le Flore and Hawkins,¹⁹⁷⁸ p. 86)

Haunted by the prospect of prison and losing their nerve, the criminal decides not to violate the law any longer, not because he has any regrets, but because he no longer has the courage to expose himself to new dangers.

"I'm no less a thief than the day I went to prison. Let's say I don't have the nerve I once had. I still have a great desire to be a millionaire but not the nerve to take the chance. (...)

You must know that you can't continue... if you continue to live your life the way you lived it before, then you stand a chance of going back to prison. If you want to stay out of prison you've got to find some other way to live your life. (...)

Fear makes us honest. Fear has made me an honest man. Fear and inopportunity have made me an honest man."

(Irwin, 1970, p. 176)

The maturing process is not the only factor than can explain why the age of retirement is so early in the world of crime. Another variable, perhaps more important, also plays a role. It is a kind of deferred deterrence. The aging criminal fears losing his nerve. This slowly but surely wears down his criminal intent. Without the prospect of punishment, the retirement age for crime would very probably increase substantially. This is precisely the case in organized crime. We find 'mafiosi' who at the age of 50 and 60 continue to practice their trade. Why? Most likely because these men almost always escape punishment.

CHAPTER XIX

SOCIAL CONTROL AND PREDICTION

Nowadays, the best way to predict recidivism is by means of prediction tables. But these are purely empirical. By putting together elements of the analysis conducted so far, it should be possible to construct a theory for the prediction of recidivism. This theory will rest on the postulate that crime is the result of a decision.

Postulate

To accept such a theory, we must first consider it plausible that people in general and offenders in particular 1) are aware of the consequences of their acts; 2) want to maximize their well-being; 3) are capable of choosing from available alternatives and 4) have a minimum of rationality. A brief explanation of these four points is in order.

1 - Criminal behaviour, like all human activity, is largely determined by its probable consequences. "All potential offenders - even the perpetrators of "crimes of passion" - on the whole respond to costs and gains, prices and rewards in much the same way, although not necessarily to the same extent, as do individuals who pursue legitimate or socially approved activities" (Ehrlich, 1979, p. 27)

2 - Offenders try to adopt strategies that will enable them to get the most satisfaction. Crime can be seen as a way of enabling its author to acquire the greatest personal welfare, considering his situation and his capabilities.

3 - The offender, like everyone else, is not entirely a prisoner of either his milieu or his compulsions. He has a more or less wide margin of maneuverability depending on his opportunities. He does not have the choice of an unlimited quantity of possible solutions, but may often have two or even more. Thus to a certain point, he can fashion his own destiny.

4 - Criminal behaviour has a minimum of rationality. The person who contemplates committing a crime uses the information he has to weigh the pros and cons. However, his decisions are not totally rational, for he does not take into account all the information that would be hypothetically useful. It is enough for him, during his deliberations, to have a few options from which to choose.

In this chapter the focus will be mostly - but not exclusively - on recidivists. Hence the question: Do they conform to the model of rational action just described? It is only logical that habitual criminals, like all of us, are aware of the consequences of their acts and want to further their self-interest. However, their legitimate opportunities are very limited. Besides this, they are shortsighted and incapable of persevering very long at any project. This combination of lack of foresight and limited opportunities makes the chronic offender a 'hot-head' who frequently gets himself into situations that land him in trouble.

The single crime and the criminal phase

Before going any further, a distinction must be made between two types of criminal decisions, that of committing a single crime and that of a criminal phase. In the first case, the decision is circumstantial. It consists in reacting to a given opportunity. An adolescent finds, for instance, that it would be easy to enter a house to burgle it and decides to do so. A criminal phase is entirely different. The term applies mainly to recidivists. They periodically ask themselves: Shall I continue in crime? Shall I go on leading the same kind of life?

But why do we speak of 'phases' and not criminal careers, as is customary? Because crime is rarely an activity practiced consistently over twenty, thirty or forty years, as is the case for careers in the current sense of the term. Glaser (1964, p. 466) was the first to discover that 90% of criminals who go to prison are not entrenched in crime indefinitely. They alternate between the use of criminal and non-criminal means to attain their ends. They zig-zag between crime and non-crime, engaging in crime for a time, abandoning

it and then returning to it. This is based on some well established facts. Almost all the offenders in Glaser's study had had honest jobs during more or less long periods. On their release from prison, most of the ex-prisoners tried to avoid any criminal activity for a time. In addition, it frequently happens that a person goes through a criminal phase that lasts up to the moment of his arrest, but once released from prison, he goes straight.

These observations show that crime is not a stable solution. The expression 'criminal career' does not square with the facts. That is why it is preferable to speak of criminal phases, periods of several months or years during which a person is heavily engaged in crime.

If we agree that the offender considers his costs and benefits and that he is able choose the best solution to his problems, an analysis of the advantages and disadvantages of crime is essential for any attempt at prediction. But this is not enough, for crime can be considered an alternative solution to legitimate activity. It is also necessary, then, to consider the advantages and disadvantages of alternatives to crime.

The advantages of crime

If crime is a means to an end, we may suppose that the first consideration of someone who is contemplating a crime is the benefit he is likely to obtain. Among the professional criminals studied by Letkemann (1973, p. 151), the estimated size of the loot usually takes precedence over the estimated risk. Another indication comes from an experiment by Carroll (1978). He gave four groups - including offenders and non-offenders - 72 hypothetical situations of theft in which four components are varied: 1) the loot (the subject was told he could get \$100., \$1,000. or \$10,000.); 2) the severity of the punishment (probation, 6 months in prison or 2 years in prison); 3) the probability of success (0.1, 0.3 or 0.8); 4) the probability of arrest (0.05, 0.15 or 0.4). By means of this procedure, Carroll discovered that the amount of money anticipated by the theft contributed most to the decision. Next in decreasing order came the severity of the punishment, the probability of success

and the probability of being arrested. The size of the loot had considerable weight in the decision - in fact, twice as much influence as the severity of the punishment.(1)

The advantages of crime are not confined to the monetary gain. The psychological and social advantages must also be taken into consideration, especially among adolescents.

Among the non-monetary gains, the most important are probably action, power and aggression.(2)

The preceding remarks mainly concern the decision to commit one particular crime. To complete the analysis, we must examine the motives of the offender who decides whether or not to engage in a criminal phase. Besides the benefits anticipated from a given crime, there are two other contributing factors.

1 - The taste for crime. Is crime an intrinsically gratifying activity for a given individual? Indications of this could be the number of previous crimes; the early onset of delinquency; the pleasure, material gain and other gratifications the subject obtained from his previous crimes.

(1) Among the other results obtained by Carroll worthy of mention are:

- 1- The severity of the punishment is three times more important than the probability of arrest.
- 2- The probabilities of success or failure are clearly less important than the amount of gain and the severity of the punishment.
- 3- Most individuals take only one aspect of the problem into account, this varying from one subject to another. 50% concentrate on the money to the exclusion of the other factors, 24% essentially consider the severity of the punishment, 17.7% the probability of success and 7.6% the probability of being caught.
- 4- Little difference was found between the delinquents and non-delinquents concerning the factors contributing to the decision. In both groups, the decision-making process seems basically the same.

(2) See "Why Delinquency?".

2 - The lifestyle. Persistent theft affords a way of life that includes adventure, that is, an exciting, dangerous life; leisure time, freedom from the schedule and discipline of steady work; associating with criminals and deviants; regular consumption of alcohol and drugs; living it up, with expensive leisure-time activities, spending sprees, associating with prostitutes, living a night life, etc. A lifestyle of this kind would give every reason to predict the decision to engage in or continue a criminal phase.

The cost of crime

The costs of crime can be separated into four categories: 1) intrinsic costs, 2) moral and social costs, 3) penal costs and 4) costs connected with a criminal lifestyle.

1 - The intrinsic costs of crime are the difficulties involved in the preparation and execution of the crime. They might include 1) the time required to plan the project, get the necessary information, recruit accomplices and carry it out; 2) the money necessary to buy arms and equipment; 3) the disagreeable contingencies that can occur during the execution of the act (fear, the reaction of the victims, etc.).

An important point must be made here. Almost all the intrinsic costs of the crimes concerned in this book - petty theft, breaking and entering, mugging and holdup - are minimal. Most of the time, offenders give their expeditions little preparation. They have no investments to make, or very few, as far as equipment goes. Petty larceny can be committed with bare hands; for breaking and entering, a few inexpensive tools are sufficient; only a hold-up requires a certain investment for the gun. Finally, the crime itself takes very little time, generally several minutes. Crime, then, can be a very profitable activity; very few intrinsic costs and immediate benefits. Hence it is easy to understand why crime is a tempting activity and why societies have to sanction it. They do so by introducing extraneous costs to an activity that, in itself, has very few.

2 - By "moral and social costs" we mean all the problems that relate to the informal control of crime. They can be classified according to three

types: first, the feelings of guilt and the disapproval likely to come from parents, friends, associates, colleagues, employers, neighbours, etc.; second, the amount of respect and esteem a person risks losing if his crime becomes known; third, the exclusion and rejection that may be triggered by knowledge of the crime: divorce, loss of friends, loss of employment, jobs becoming inaccessible, etc.

3 - The penal costs are the difficulties, losses and suffering that stem from the enforcement of the law: the arrest and interrogation; the shame and financial costs attendant to the trial; the fine, the incarceration, etc.

This element of the problem was analyzed at length. It is enough to recall that concerning the estimation of the risks, the most important variable seems to be the estimation of the probability of imprisonment.⁽¹⁾ Concerning severity, the penal threshold must be taken into account⁽²⁾ (the point at which the intervention is sufficiently constraining to cause the offender to reduce his criminal activity) and the differences in sensitivity to the punishment of incarceration.⁽³⁾

4 - The costs of a criminal lifestyle. The criminal style of life has advantages, but it also has grave disadvantages, principally because the habitual criminal lives in a hostile environment. These costs are primarily insecurity (the constant fear of arrest, of being killed), secondly, the life of a pariah (distrust and hostility on the part of the citizens, police harassment), and thirdly, the possibility of becoming a derelict.

The relative costs

Toby (1957) observed that the middle class adolescent who does well in school, who has a promising career ahead of him and who enjoys an excellent

(1) See Chapter 14.

(2) See Chapter 13.

(3) See Chapter 16.

reputation has everything to lose if a stupid venture lands him behind bars. His "stake in conformity" is high. This is not at all the case for the heroin addict without work and without family. Thus the idea that the costs of crime are relative should be taken into account. It refers to the advantages a person has at a given moment and risks losing in the event of a criminal conviction.

Determining the relative cost of crime can be done by taking stock of all the advantages at risk that a person enjoys, that is, what could be denied him following the commission of a crime (a job, the prospect of a career, family life, esteem and reputation, etc.).

In 1950, Homans pointed out that the effectiveness of social control depends on the sum of deprivations a person risks by violating a norm. The one who strays from his usual level of conformity runs the risk of triggering not one, but a whole series of adverse reactions.

Costs and benefits of alternative legitimate activities

Crime can be considered a means of attaining an end that could be obtained by legitimate means. If that is the case, it is necessary to analyze the benefits and costs of legitimate activities that can be considered alternative solutions to crime.

The benefits of a legitimate activity could include a steady income, the satisfaction of work, the esteem of honest men and security.

Among the costs of the same activity are the long hours, the monotony and boredom of the work, the need to get up early in the morning, to endure the discipline of working, the authority of the boss and the company of colleagues with whom there is no common interest.

Legitimate opportunities (schooling, professional training, experience, intellectual resources, relationships...) should also be considered. It is these opportunities that in major part will determine the level of satisfaction

that a person can expect in activities other than crime. More precisely, it is legitimate opportunities that will make access to a remunerative and satisfying job possible.

It is enough, therefore, to consider the legitimate opportunities open to most chronic offenders to realize that they have little chance of obtaining a well-paid and interesting job because of their lack of competence, their inexperience and their judicial backgrounds. Because of this, the non-criminal option is rarely attractive: a miserable salary, hard working conditions, and unstimulating routine work. Moreover, if crime brings them sufficient gratification, some will be prepared to accept the risk of prison. It is the price they are willing to pay to lead the kind of life they like (King and Chambliss, 1972, p. X). Some are even prepared to pay dearly for the benefits of crime.

"Prison's an occupational risk, that's all - and one I'm quite prepared to take. I'll willingly gamble away a third of my life in prison, so long as I can live the way I want for the other two-thirds. After all, it's my life, and that's how I feel about it. The alternative - the prospect of vegetating the rest of my life away in a steady job, catching the 8.13 to work in the morning, and the 5.50 back again at night, all for ten or fifteen quid a week - now that really does terrify me, far more than the thought of a few years in the nick."

(Parker and Allerton, 1962, p. 88)

However, many recidivists do not resign themselves so easily to the prospect of prison and so decide to look for work and change their way of life. But failure is frequent. The multi-recidivist engages in a life he knows little about, for which he is ill-prepared and that is more demanding than the one he had known before. "Becoming a square-john is a lot harder than becoming a thief." (King and Chambliss, 1972, p. 161). Finding that he can get only minor jobs, difficult and poorly paid, he rejects this solution and falls back on what seems to him the easiest one - crime. "I could have found a menial job, but I didn't want to work that hard. I don't know why I started again, it just seemed like the easiest thing to do." (Petersilia et al., 1978, p. 55).

In certain cases, the reason for the failure to reintegrate in society is obvious. Alone, without a job, without a cent, the criminal who wanted to

change is forced to take up his former way of life in order to subsist; he will even act out on purpose in order to be arrested and thus return to the prison in which he had sworn never to step foot again. In other cases, the ex-prisoner must be content with a miserable job - dishwasher, janitor, night watchman - and live alone in a seedy hotel, living the life of a derelict. There are some, too, who get a good job but are incapable of taking any interest in it. Their new life has no meaning for them (Irwin, 1970, p. 132; Manocchio and Dunn, 1970, pp. 253-262). These various types of failure could lead to new recidivism. To get away from the daily routine, to escape boredom, they begin a new criminal phase.

Hypothesis

All these observations can be summed up in the form of a hypothesis. Faced with the decision whether to become involved in crime, to continue or give it up, a person will choose the option that, considering his opportunities, will provide the most benefits at the least cost. Thus he will decide to engage in crime when the advantages, less the costs, are greater than the advantages, less the costs, of a legitimate alternative.

However, this formulation would be incomplete without considering the level of criminal activity of an offender at a given moment.⁽¹⁾ In this case, a more accurate hypothesis would be the following. Criminal activity will tend to be at a level which, for its author, and considering his opportunities, has the most advantages at the least cost. According to such an hypothesis, for each individual, at a given moment, there would be an optimal combination of criminal and non-criminal activities. This combination would vary with the circumstances, and would explain the shifting back and forth between crime and legitimate activities; the benefits of the one will seem to be greater at a given moment, whereas at some other time, the other will seem to offer greater benefits.

(1) We have seen in chapter 13 that recidivism should not be analyzed in terms of all or nothing; the frequency of the delinquency at a given moment should be compared with its previous frequency.

Resolutions

In the above model, the balancing of benefits and costs leads to the act only if the actor so decides. I therefore tend to believe that these decisions are not completely dependent on the estimation of the profits and losses. If that is the case, prediction should take into account the subject's state of mind. We would have to know how determined he is to continue or abandon criminal solutions.

The attitude of recidivists toward their criminal involvement can be separated into four categories.

1 - The resolution to continue in crime. More than one criminal has stated that he opted consciously and voluntarily for crime.⁽¹⁾ In prison, they dream of the day when they will resume their anti-social activities and as soon as they get out they start again.

2 - Fatalism. This attitude is frequently found among habitual petty criminals. They passively yield to a fate that is only vaguely accepted. Driven by a need for money or solicited by friends, they slip into crime almost without thinking. To use Matza's expression (1964), they drift into delinquency. "Charlie" is an example of this resignation to his fate.

"As Carter got to know him better, he found Charlie had what seemed to be a complete lack of concern for himself. It was not a philosophic acceptance of fate, but a kind of feeling that he deserved what he got and there was nothing to be done about it. You did wrong, you went to prison, you came out, you did wrong, and you went back to prison. House-breaking, larceny, petty thieving - these were things you did without much effort or thought, when you were short of a bit of money. You were never any good at it, and you always got caught. If you were lucky you got off with a short sentence; if you weren't you got a long one."
(Parker, 1963, p. 49)

(1) For example: Parker and Allerton (1962), Karpis and Trent (1971), Mesrine (1977).

3 - The half-hearted 'good' resolution. This is frequent among prisoners who are on the point of being released. They promise themselves never to be arrested again. They keep to their resolve for several months but fall back into their old habits when they are in difficulty or when the temptation becomes too strong.

4 - The firm determination to stop. The irrevocable decision is made to avoid anything that might send them back to prison again.

The proposition that follows will, with reason, be considered obvious. Nonetheless it should be written down in so many words, for it is part of a group of important truths that criminologists have almost totally forgotten. I therefore suggest the following hypothesis. Fatalism and the resolution to continue in crime make it possible to predict a relatively high volume of criminal activity, whereas the firm resolution to stop makes it possible to predict a substantial reduction of this type of behaviour.

PART V

JUSTICE

CHAPTER XX

THE PROBLEM OF JUSTICE

To attribute respect for the law to the fear of others' opinion or fear of punishment would be to give only a partial picture of the reality. The reasons for avoiding crime mentioned so far are all negative - moral inhibition, shame, fear. The limitations of this view were pointed out by Piaget (1932), when he criticized Durkheim on the question of the morality of the child. The Swiss psychologist disagreed with the French sociologist's having reduced morality to only one of its forms, and its most primitive one at that, what Piaget called the morality of constraint: the duty that is imposed on the child unilaterally by the adult. But with age, another morality appears, the morality of cooperation, whose underlying principle is mutual respect and which emerges from reciprocal relationships between children. In this morality, the rule is neither imposed from above nor immutable, but is the result of negotiations between cooperating partners who succeed in agreeing on a convention.

Essentially Piaget was right. Social conformity alone cannot account for people's respect for the rules and a complementary explanation must be found in the cooperation between autonomous and equal individuals.

If we refuse to reduce man to the status of a dependent being, we must ask: Why, in the beginning, were theft and violence prohibited? If morality and laws exist, it is because there were and still are people whose principles are based on something other than authority. Blind obedience can account for part of the respect for law, but for society as a whole, it becomes a limited explanation. It says nothing of the motivation that is the source of morality and criminal law. People who obey the law, and demand that the State sanction it, do so for a reason that, in the final analysis, is due neither to moral conformism nor fear. Then what? Why are so many people convinced that crime should be held in check?

The answer must be sought in the content of the laws themselves. We must consider the meaning of the laws prohibiting theft and violence in order to discover what we might call the original motivation for obeying the law.

People think that theft and aggression should be prohibited for three reasons: 1 - Because these acts threaten the common good; 2 - Because they make human beings suffer; 3 - Because they are a source of injustice.

The common good

One might think that men condemn crime out of concern for the common good, because they think these acts threaten the social order, undermine confidence and endanger social solidarity. A society could not function whose members were constantly victims of criminal aggression. Social life needs cooperation and predictable behaviour from others. Society could not exist if our relationships with everyone were marked by fear, distrust and hostility, or if we had to ward off attacks from all sides.

Many citizens vaguely sense this. They feel that the proliferation of crime can undermine the social fabric. They know that their most vital interests would be endangered in the anarchistic climate that would result. Everyone who benefits, even a little, from social order has reason, then, to oppose crime. However, there is every reason to be skeptical of the idea that most citizens are ready to make sacrifices for the common good. We know that people, save for exceptional periods, and then only a minority, do not spend much time working toward it. Disinterested servants of the common good are not exactly plentiful. Can the desire to preserve the social order account for the emergence of social control? I doubt it.

Sympathy

It can be alleged that people keep from killing or robbing their fellow men, and condemn those who do so, because they have sympathy for people's suffering. This explanation cannot be disputed when it is a question of family and friends. However, is the explanation valid in the case of the masses of unknown persons we rub shoulders with every day, in the street, in public places and at work? Possibly. Man is a social animal immediately sensitive to others, even to a person he meets for the first time. What Garofalo (1890, p. 20) called his feelings of pity and humanity will cause him to inhibit acts that would make his fellow man suffer.

However, sympathy has its limits. Over and above the circle of people we associate with regularly, it is but a fragile barrier against the force of our desires. Can we truly believe that it will make us resist the temptation to kill those we hate or take the property of those who mean nothing to us? It is rather doubtful. Particularly in the case of thefts such as burglary or shoplifting where the thief does not even come in contact with his victim. Sympathy cannot be the exclusive basis for obeying the law in modern anonymous societies, for we are surrounded by a great number of strangers to whom we are totally indifferent.

Justice

The common good and sympathy help us to understand the origin of the prohibition of theft and aggression but leaves much to be explained. This is especially true in our mass societies. They have too many members for us to rely on identification with the group or with others to ensure submission to the laws. There remains justice: people condemn crime because it is an unjust act for the victim and, over the long term, not very rational for its author.

The question of justice arises within a group every time we want to acknowledge, exchange or distribute rights and obligations, benefits and costs, rewards and punishments, advantages and disadvantages. The principles of justice stem from the search for the most adequate method for the distribution of goods and obligations. As such, crime creates justice problems: theft is an unfair transfer of goods and aggression causes injury. Men will therefore feel the need to find principles of justice that can resolve these problems. They will have to do so by taking three essential factors into account: the individual, autonomy and indifference.

The individual. In human societies the individual is not perfectly integrated; and in contemporary societies, there is no real consensus. Societies are made up of separate individuals, each convinced of his own value, each ready to more or less relentlessly defend his particular interests and maximize his advantages. These people will refuse to sacrifice their own interests for the common good or cede to the 'greater interest' of the community.

Autonomy. Individuals have a certain margin of manoeuvre. They are not pre-programmed or totally conditioned. Having freedom of action, each individual is to some extent unpredictable; furthermore, he can use his freedom to attack and rob his fellow citizens if he so desires.

Indifference. Modern societies have too many members for everyone to personally know everyone else. The citizens live side by side with people to whom they are totally indifferent.

The problem is that when autonomous individuals, defending their particular interests and having little sympathy for one another, meet each other, they have no reason, save for the superior strength of the other, to refrain from attacking or robbing him.

This situation is avoided by solutions whereby the essential interests of each are protected. The principles of justice do this by making it possible to determine the sharing of goods and responsibilities in a group between several persons (Villey, 1979, p. 101). Each one is given his due. Justice is founded on a coherent set of general rules that apply to everyone in exactly the same way. Hence universality is an essential characteristic of justice; as the definition of Perelman (1972, p. 55) indicates: Justice "consists in observing a rule stipulating the obligation to treat all beings in a given category in a certain way". Thus conceived, the function of justice is to prevent conflicts by making a general principle prevail.

CHAPTER XXI

JUSTICE AND THE OFFENDER

Crime, then, is not only a matter of law or morality, it is also a question of justice. Obviously, a person who steals or attacks someone commits an injustice. Even the offender is aware of this. In that case, he must come to terms with the problem of justice.

Justification of the crime

To be convinced that the offender is not indifferent to the idea of justice, it is enough to listen to him talking about his offenses: he constantly tries to show that his acts, although illegal in the strict sense of the law, are either excusable or based on principles of justice. As philosophers of law would say, he shifts the argument from positive law, where his justifications are unfounded, to natural law where he thinks he can more easily justify his action.

The list of justifications alleged by offenders is very long.⁽¹⁾ Those based on concepts of justice fall into five categories:

- 1 - Vengeance
- 2 - Retribution
- 3 - Just desserts
- 4 - Denial of harm
- 5 - Annulment of the social contract

- 1 - Vengeance

Basing themselves on the rule of justice that stipulates "evil for evil", criminals claim that their crimes are but reactions to some harm or

(1) De Greeff often spoke of these justifications. Many authors have also referred to them, in particular, Redl and Wineman (1951), Sykes and Matza (1957), Matza (1964), Mailloux (1971) and Mucchielli (1974).

other that they have sustained. This reason is often given by the authors of blood crimes. "The murderer takes justice into his own hands, considering himself the victim before being the avenger" (Hesnard, 1963, p. 203). Many crimes of passion are justified in the eyes of their authors by vengeance (De Greeff, 1942). Maltreated adolescents who set fire to the homes of parents or employers often consider themselves not guilty on the grounds of evil for evil (Henry and Laurent, 1974, p. 60).

2 - Retribution

"At first Robert tried to justify his thefts. The thief who is just beginning always wants to punish a bastard by robbing him. - These people are vicious, he says."
(Genet, 1949, pp. 149-150).

Sometimes the criminal assumes the role, not of avenger, but of judge and executioner. Without having been attacked himself, he justifies his act by saying that his victim deserved what he got. The underlying principle is: "Wrong must be punished". Thus in stealing from a store, the thief will say the owner is dishonest, he deserved to be robbed (Sykes and Matza, 1957). "To rob the State or a business is not stealing, or is stealing from thieves, so it is alright." (Mucchielli, 1974, p. 86). In the same way, drunks who are robbed are 'punished' for their intemperance and homosexuals or prostitutes for their depravity.

The argument of deserved punishment can even be alleged when the victim, even though he has done nothing bad, behaves in a careless or naive way. In a bar, a person who shows a huge wad of bills 'deserves' to be robbed because of his lack of prudence. And the owner of a house who forgets to lock his doors and windows 'deserves' to be burglerized.

The rationalizations made in terms of vengeance or retribution are based on a prior deprecation of the victim. "The attitude of dispensing justice is maintained only by this constant denigration of the victim, who is replaced by a myth that resembles its subject less and less." (De Greeff, 1950, p. 288). For example, before murdering on intimate, the latter is reduced to a caricature that will then be easy to eliminate.

3 - Just desserts

If the victim, because of his stupidity or his dishonesty deserves to be robbed, the offender, because of his courage and skill deserves his spoils. This justification is based on the precept: "To each according to his deeds", and is sometimes used by professional criminals. They think their illegal activity can be classified as work. One even stated that it is a difficult profession; each job has to be carefully prepared, you have to bear the tension without flinching, risk your freedom, take steps to sell your goods at a good price, etc. All this led him to believe that he was making his living by the sweat of his brow (Parker and Allerton, 1962, pp. 88-89).

4 - Denial of harm

This widespread rationalization consists in saying that no serious harm is done to the victim and that consequently no real crime has been committed. Petty thieves constantly resort to disclaiming any harm in order to exonerate themselves. The Vaucresson researchers calculated that of 456 juvenile delinquents studied, there were 254 who tended to minimize their crime (C.F.R.E.S., Vaucresson, 1963, p. 122). It is easy to convince ourselves that we have done nothing seriously wrong. The automobile thief will say that he only borrowed a car that the owner will find sooner or later (Sykes and Matza, 1957). The burglar will remark that the owners are insured and will make a profit by padding their claim. The professional thief will say that he robs people or businesses that are so rich that it makes no difference to them (King and Chambliss, 1972; Martin, 1952).

Sellin (1960) tells us that in Detroit during the depression, many immigrant families from Central Europe used to heat themselves with coal that the children stole from the railway yards. These people, including the parish priest, denied that this was stealing: "the railroad... it's so huge" (p. 884). Sellin interprets this attitude in terms of culture conflict: the community had norms that conflicted with those promulgated in the State laws and would therefore approve of what was forbidden by the State. It would seem to me more appropriate, however, to analyze this attitude in terms of justice. These

people were not contesting the social norms that prohibit stealing. Instead, they had put the problem in terms of the harm caused, telling themselves (without being altogether wrong) that they were not causing the railway company much serious harm.

5 - Annulment of the social contract

"Be shocked, hypocrites! Everyone steals. It goes from everyday petty theft - a bit of loot here and there - to organized and official breach of trust. In other words, from the labourer to the big shot."
(Spaggiari, 1978, p. 16)

Thieves take pleasure in saying that the world is full of thieves. To hear them talk, except for a few naive souls, men are dishonest. "According to them, the police are gangsters in uniform, all lawyers are villains, all judges profiteers and all educators hypocrites." (Mailloux, 1971, p. 197). They maintain that there are more rogues, cheats and criminals among "good folks" than in all the prisons of the world (Hapgood, 1903, p. 195 and King and Chambliss, 1972, p. 132).

If this is true, it is logical to conclude that the social contract is void. If only a minority of naive persons respect the rights of others, the individual who has had the misfortune to be labelled a criminal would be poorly advised to copy them. In a world of criminals, to be the only one to observe the law would be both stupid and dangerous.

* * * * *

It is significant that outlaws show the need to justify themselves and do so by resorting to the principles of justice. They do not disclaim justice, they use it to their own advantage.

The rule of justice, according to Piaget (1932, p. 158), is a law that introduces balance in social relations. It inspires both the victim and the offender, the former to claim reparation, the latter to justify himself. Both speak the same language even if they don't agree with one another. Justice is

an everpresent aspiration of man. Besides the law and morality, there are principles of reciprocity and equality that furnish keys to understanding people's attitudes toward crime.

Victim of injustice?

How are we to interpret the offender's attitude toward justice? A large part must naturally be attributed to rationalization. They justify behaviour that they clearly or vaguely know to be unjust. This being so, the justifications are more the consequences than the causes of the criminal activity. But there is something more, because what seem like poor excuses - for who takes the point of view of the victim into account? - are often presented without the slightest trace of irony or bad faith. This leads to the belief that over and above easy justifications, recidivists are particularly sensitive to injustice. This was the thinking of De Greeff, who felt that these men's violent need for justice is part of a deep-rooted attitude that he called the feeling of being a victim of injustice. "All these people explain their life and attitudes by the injustices and misfortunes they have suffered, how their deep sense of justice has always prevented them from submitting to unfair treatment." (De Greeff, 1950, p. 280).

This feeling of injustice forces criminals to ferociously defend themselves against any frustration they consider unwarranted. Refusing to doubt themselves or to consider the other person's point of view, they are convinced they are either on the side of the just or the side of the victim, never the side of the offender. In their vindictiveness, they seem to be incapable of evolving toward a more rational form of attitude toward justice. The refusal to come to terms with the injustice of the world gives the criminal an overall justification for his criminal activity, analagous to the annulment of the social contract: if there is no justice, why be just? What is more, if no one has ever been just toward me, why should I be just toward them? Arrogating to himself the right to take revenge for all the wrongs he has been made to suffer, he immediately justifies all his crimes, past and future.

Recent research has confirmed De Greeff's analyses. It shows that adolescents who acknowledge having committed numerous crimes tend to say that

their parents are unfair and make unjust rules (Nye, 1958; Caplan, 1978). At school, juvenile delinquents have the impression they are treated more severely than the rest of the class, and so have suffered an injustice (Malewska and Peyre, 1973, p. 121). In clinical research, Yochelson and Samenow (1976) pointed out the tendency of habitual criminals to portray themselves as the perpetual victims of others' injustice.

Are criminals just?

Habitual criminals believe themselves to be targets for the injustice of a hostile world while refusing to admit their own injustices. It is clear, at least to their victims, that these men do not behave justly. But leaving this particular point aside, is it possible to assess their general conduct in terms of justice? In other words, to what degree do they have what the ancients called the virtue of justice, the willingness to grant each person his due? To answer this question, there is no use pointing to the crimes they commit, for this would result in a tautology; we must see if they behave with justice in other areas of their lives.

In a person's transactions with others, justice means giving the equivalent of what one gets. Criminals are not exactly gifted in this respect. They are hardly aware of the need for reciprocity in their dealings with others. Yochelson and Samenow (1976, p. 304) even believe that the criminal has no idea what reciprocity means. According to them, this lack is first apparent in his family where, as a child, he demands that all his wants be satisfied without giving anything in return.

It is in their relations with their wives or mistresses that the offender's tendency to give less than they get is most flagrant. These men frequently live off their women, who pay for the food and shelter and, alone, have to assume responsibility for the children. When the woman hasn't the means to keep them, they will sometimes drive her to prostitution. It is not by chance that a good number of criminals, besides theft, practice procuring. A criminal's mate, more often than not, is badly exploited and will sometimes benefit from his next term in prison to free herself of her chains (See Manocchio and Dunn, 1970; Willwerth, 1974, p. 64; Carr, 1975; Jodoin, 1976).

The recidivist does not give his family the equivalent of what he gets because of a greed that drives him to always demand more. This trait was detected by Mucchielli (1974), who speaks of the extreme and demanding ego of the "true delinquent". It is obvious in the way he spends his money. West and Farrington (1977, p. 62) observed that delinquents differ from non-delinquents in that they spend more than they get, have no savings and are crippled with debts. Moved by a strong desire to enjoy life, the common criminal finds himself without resources, first when it comes to paying his debts and then, more generally, to establishing a fair balance in his exchanges with his associates.

According to philosophers, the just man is primarily concerned with "not having more than his share nor less than his share" (Villey, 1978, p. 64). The lifestyle the criminal adopts makes him eternally in debt to those with whom he deals. In this sense, he does not have the virtue of justice.

Justice and the presentism of offenders

The reasons for obeying the law that stem from the ideal of justice always presuppose a gamble on the future. Thus men respect their commitments, pay their debts, return good for good, do not enrich themselves to the detriment of others because in the end, it is worthwhile keeping the good will of those around them. From this point of view, man submits to the laws because the short term reasons for appropriation and boundless license have been substituted for the long term rationale of justice. Most persistent offenders simply do not have the foresight necessary to act in terms of future objectives. They have what I've called 'presentism' (Cusson, 1983). By this term, I mean the absence of perseverance in the pursuit of long term projects. Most criminals cannot stick to anything; obsessed with the present moment, they fail to organize their activities in a realistic way for the future. Because of this handicap, they will make enemies by violating the rule of reciprocity. They will tend, then, to sacrifice the future advantages of remaining on good term with their fellow citizens for immediate satisfaction.

Incapable of acting according to the rule of justice, chronic offenders nonetheless show a need for justice, particularly to be treated fairly.

Caught between their desire for justice and their own injustices, they adopt a view of society that will allow them to justify their own injustices while defending themselves against those they are made to suffer. They deny that people are just while demanding justice for themselves. And they will rationalize the injustices they are guilty of while pointing up those of which they are the victim.

CHAPTER XXII

UNIVERSALITY OF THE PROHIBITION OF THEFT AND MURDER

If the criminal is willing to defend his case in terms of justice, there is no reason why we should not do so as well. The relationship between crime and justice could therefore be put in the following terms. The prohibition of acts such as robbery and murder does not stem only from an arbitrary social or legislative decision, it also exists because it is a just solution to the problem of defending vital individual interests. In other words, the meaning of the laws should be looked for in the requirements of personal justice.

But before going into the subject, we need to know how general the problem is. If we were to study one particular law, passed at a given moment, in a given country, we would try to find the meaning of the law in the social and political context in which it originated. However, violations of the criminal code that cause obvious harm to others are prohibited on an extremely broad scale. It would therefore be logical to undertake the analysis at a level of generality corresponding to that of the prohibition concerned. The approach, then, would be to identify the societies where theft and violence are officially prohibited, then find the meaning of these regulations based on the pertinent characteristics that are common to these societies.

Cultural relativism and its implications

People tend to believe that theft and violence everywhere have always been considered crimes. However, this runs counter to a principle widely accepted in the social sciences - cultural relativism. If we go into the logical consequences of this principle, there can be no truly universal law.

By "cultural relativism", we mean a doctrine that defends two complementary positions. First, all the elements of culture, including morality and the law, depend on the society in which they are found. Second, each society develops its own system of values and its particular ideas of good and bad. This means that the norms and laws tend to differ from one group to another.

This doctrine has implications whose ramifications should not be underestimated.

The first implication is that every norm, whether moral or legal, is a matter of convention, that is, based on arbitrary decisions made by the members of a given community. It is what Strauss (1953, p. 11) calls "conventionalism". The laws are made only by agreement between members of a society, who, at a given moment, are willing to obey such or such a rule. These agreements can serve to avoid conflicts, but they are not based on either truth or justice.

The second implication is that if the norms are essentially relative to the group that adopts them, they have no universal value. Diverse ideas of good and bad are valid because they are subjective. There is no common criterion by which to assess them and decide in favour of one or the other. A moral system is valid only because it corresponds with the preferences of the members of a particular group. Two groups can stand up for moral principles that are totally contradictory and it would be impossible to say if one is right and the other wrong.

If we follow the relativist doctrine to its logical conclusion, it leads to some troubling implications. It is possible to agree in theory that universal moral principles do not exist and that it is impossible to make a valid distinction between good and bad. But it is not so easy to accept some of the consequences. It would mean that murder, torture, slavery, cannibalism or clitoral circumcision can only be judged relatively. We could simply say that these are practices of people whose morality differs from ours. And, as all morals have equal merit, we would have to agree that these customs that seem repugnant to us are no better or worse than any others. It would also be impossible to judge objectively whether a group of young people who carry out a dangerous rescue operation in the mountains are behaving better than a gang of hoodlums who practice group rape. Thus we can conclude with Strauss (1953, p. 18), Kluckhohn (1955, p. 663) and Ginsberg (1956, p. 30): cultural relativism culminates in moral nihilism.

Applied to politics, relativism brings us to a similar impasse. If it is impossible to agree on valid criteria of good and bad, just and unjust,

on what solid basis can we criticize the actions of our governments? How are we to distinguish between good and bad systems? What is to be said of nazism, stalinism, death camps, the Gulag archipeligo, genocide and all the atrocities committed in the name of the majority? That we are shocked? But, according to relativist logic, tyrants and tyrannical majorities will have an easy justification. By what principle are you judging us? You have your values, we have ours; one set is as good as the other! Thus, as Ginsberg (1959, p. 30) points out, relativism supplies ammunition to the violent and undermines the position of defenders of justice and liberty.

Cultural relativism is not only impractical, it also denies a very important moral fact, namely, that evil and injustice are sometimes evident to all minds. Disinterested persons from very diverse milieus and societies can agree on the injustice of certain acts. We can therefore conclude that total cultural relativism is untenable, first because it leads to the support of any atrocity whatsoever, and secondly because it does not correspond to the facts.

The diversity of moral values

There is one element of truth in relativism, however, and that is the diversity of moral rules. Ever since the days of major exploration, travellers, and later on anthropologists, constantly talked of the strange customs of foreign peoples. Historians, too, have shown that laws and customs vary almost ad infinitum. An example will suffice to indicate the scope of the possible variations.

"According to Thonissen, of the ten crimes under Hebrew law punished by stoning (namely, idolatry, inciting to idolatry, dedication to Moloch, magic, calling upon spirits, disobedience to parents, violating the sabbath, blasphemy, the rape of another's betrothed, the loose behaviour of a young girl evidenced by the absence of signs of virginity at the time of her marriage), nine have ceased to be crimes even in our European societies, and the tenth, the rape of another's fiancée, has remained a crime, but in an entirely different sense; for it is the violence done to a woman as such that is punished today and not the outrage to the person whose fiancée was raped.

(Tarde, 1886, p. 27)

Thus laws and norms change. The problem is to know what interpretation to give this diversity. Must we conclude that the rules become valid only through the subjectivity of those who adopt them? This is certainly not evident. To accept this conclusion, norms would have to be shown to vary arbitrarily. This would be very difficult to demonstrate. Historical and ethnographic monographs are full of observations that lead us to believe on the contrary, that moral and juridic rules are often valid answers to the problems of a given society at a given moment in its history. For example, the principle of respect for human life seems to be universally accepted, and yet the Eskimos consider it acceptable to kill newborn babies and old people. This is due to their particular circumstances. When the parents of a newborn baby foresee that they will be unable to feed it, they kill it, usually by leaving it to die of the cold. When the elderly become weak and unable to follow the group in its movements from place to place, they are killed, and often themselves ask for death at the hands of a family member. Hoebel (1954, pp. 69-77), who reports these brutal customs, explains them by the conditions of life in the North. Life is extremely precarious, mere survival often depends on this measure. It is impossible when conditions become particularly difficult to care for the non-productive members of the group.

A rule can be just because it equitably resolves a particular problem in a given situation. The norms and laws can vary, not only because they are exacted arbitrarily, but also because they are adapted to the circumstances and milieu in which they emerge. It could well be that universal principles inspired laws that differ because they answer particular needs.

From the indisputable fact that moral and legal rules vary it does not necessarily follow that they all vary. It is possible to find, among the abundance of divergent morals, a few universal rules. After all, anthropologists all agree that incest is universally prohibited (the definition of incest varying, however, from one culture to another). Is it the only universal prohibition? This leads us to the central question of whether or not the crimes that concern us here - theft and aggression - are the object of universal prohibition. Almost a century ago, Gabriel Tarde had answered by stating: "Certain specific acts have always been considered criminal, especially killing and

stealing a member of one's own social group" (p. 29). This was in 1886. Since then, anthropologists have acquired a great deal of knowledge that was unknown at that time. Does this additional information make it necessary for us to revise Tarde's answer?

Murder

According to Linton (1952, pp. 657-660), physical violence, especially the fact of maiming others without valid justification, is universally condemned. However, there are many societies in which physical violence is tolerated when it is practiced in certain sports or when it is in response to an insult. Furthermore, it is difficult to determine at what level of gravity violence is condemned. In the case of children particularly, many minor forms of physical violence are tolerated: jostling, fist-fighting and scuffling. It is difficult, therefore, to claim that violence is universally prohibited.

We are on firmer ground when we refer to an extreme form of violence - murder. The few modern anthropologists who have studied the question agree in saying that the act of voluntarily killing a member of one's group is prohibited in all known societies (Linton, 1952, p. 657; Hoebel, 1954, p. 286 and Kluckhohn, 1955, p. 672). Murder has always been forbidden everywhere, and is subject to physical, moral and religious sanctions. However, the definitions of murder vary, or to put it differently, the justifications for the act of killing are not the same from one society to another. The principal exceptions are: 1 - to kill in legitimate defence; 2 - capital punishment; 3 - suicide; 4 - euthanasia; 5 - infanticide; 6 - vengeance; 7 - duelling.

Theft

Theft poses more complex problems because, in order to define it, one must first agree on a definition of property, which is not easy.

The idea of property refers to a system of rights, obligations and privileges that govern the relationships of individuals in terms of material

goods. For our purposes, the following definition will suffice.⁽¹⁾ Property refers to the rights and privileges relating to the use of material objects. Among these, the first is the owner's privilege to use his possessions as he sees fit, including giving or selling them and, secondly, excluding their use by others. This means that the owner is protected against the encroachment of other persons who would like to take or use his possessions. The right of ownership, then, refers to a prohibition for everyone save the owner.⁽²⁾

Property exists in all known human societies (Hallowell, 1943, p. 132; Murdock, 1945, p. 124; Linton, 1952, p. 655; Hoebel, 1954, pp. 286-287). It seems that almost everywhere, the yield of the hunt and the crops, the harvest, as well as clothes, tools and utensils are protected by recognized property rights, either of the individual or the smallest family unit (Linton, 1952, p. 655). On the other hand, property rights on land are often collective and when they are individual, they are limited (Hoebel, 1954, p. 287; Gluckman, 1965, p. 41).

However, although theft is forbidden everywhere, the particular form of the prohibition varies a good deal. It will depend naturally on the goods that are protected by the rights of ownership. It will also depend on the rules that permit certain forms of appropriation. The most widespread exceptions are theft for survival, looting in time of war, theft against strangers and appropriation within the family group (Gluckman, 1965, p. 43 and Ossowska, 1970, pp. 132-133).

(1) Anthropologists have suggested various definitions of property, each more complicated than the other. The reader interested in the subject could consult the following authors: Hallowell (1943, pp. 120-121), Malinowski (1947, p. 123), Hoebel (1954, p. 58) and Gluckman (1965, p. 36).

(2) The rights of ownership are generally not absolute; a proprietor can rarely do everything he wants with his possessions. When he uses them, he must take the rights of others into account, he must honour his commitments, he must often share or lend, he must obey the various laws that enjoin him to act in one way or another with his possession (Linton, 1952, p. 656 and Gluckman, 1965, pp. 49-50).

In some societies, the norms relating to theft are intended to protect the members of the group and not strangers. According to Brillon (1980), this is the case in most traditional African societies. "It was much more serious to steal from the members of one's clan or village than from those who were more distantly related. As for stealing from other tribes, it was not wrong in itself, but gave rise to reprisals" (p. 105). This attitude also obtains with regard to murder: the killing of a stranger is more easily tolerated than that of a relative. It is this that made Linton (1952, pp. 649-650) say that the ethical systems function in terms of the in-group.

Conclusion

Tarde was right; murder and theft committed against members of one's own group are universally seen as crimes. Nonetheless, there are marked variations from one society to another in the justifications that make these acts tolerable.

To agree that there are a few universally forbidden acts should obviously not make us ignore all the acts that are forbidden in a given era or place and that are tolerated and even approved of at other times and in other places. On the one hand, there are universal crimes such as murder, and on the other, acts judged differently according to the era and the region, such as homosexuality, the possession of drugs, religious crimes and political crimes. As Newman (1976, p. 15) remarked, one of the errors of the relativists was to ignore this distinction and to act as though all crimes belonged to the second category.

CHAPTER XXIII

RECIPROCITY AND THEFT

How do we account for the universality of the prohibition of murder and theft? It seems to me that all human societies have been confronted with the same problem of protecting persons and goods from aggression and appropriation. We can imagine that very soon a solution was found in a given group, and spread from there to all societies. It is also possible that there was a convergent evolution; the same solution emerged independently in several cultures. Whatever its origin, the very universality of this solution gives us reason to think that it is necessary to the survival of human societies which, without it, would have collapsed under the pressure of internal fighting. What is more, the fact that all societies, without exception, condemn theft and murder leads to the belief that it is the least unsatisfactory solution.

What is the logic behind these prohibitions?

Briefly, my theory is that every human group has a whole series of related problems to confront: the allocation of goods and obligations among the members of the group, the safety of the people and prevention of internal conflicts. Among the elements of culture contributing to the solution of these problems everywhere is a coherent nucleus of principles of justice, the most important being reciprocity and liberty. These principles bring solutions to these problems that ensure the survival of the group without at the same time sacrificing individual interests. And precisely because they are not sacrificed, individuals have good reason to defend these principles. Thus a self-regulating mechanism is introduced into the system that allows it to operate with a minimum of outside intervention.

To understand the logic of this self-regulating system, the two principles, reciprocity and liberty, warrant some explanation.

Reciprocity

Theft and aggression can be analyzed as interactions of two persons where one of the partners - the victim - is injured by the other - the offender.

But unlike the victim of an accident or illness, the victim of a crime does not suffer merely an injury, but an unjust injury. Why? Because the harm is done deliberately without any intention of compensating the victim.

Crimes are one-sided interactions; the thief gains, the victim gets nothing in return; the attacker makes the victim suffer but with no thought of making amends. This shocks the victims, not only because the crimes are contrary to morality or the law, but also because they are in flagrant violation of the norm of reciprocity. The crime is the negation of a principle of commutative justice that is expressed in many well-known maxims: Do unto others as you would have them do unto you. A contact should not benefit one at the expense of the other. Do not do unto others what you would not have them do to you.

The rule of reciprocity substitutes exchange for the pure appropriation of others' goods and requires that reparation be made when harm is done to others

It is exchange that best exemplifies reciprocity. One follows the rule of reciprocity when one gives the equivalent of what one gets. More precisely, during an exchange, something must be given in return for the thing received, and the value of what is given must be equivalent to that initially received.

Exchanges governed by the rule of reciprocity are so universal and so important that many sociologists have considered it the very basis of social life. Since Mauss (1925) showed that the cycle to give - receive - return constituted a strong bond in the social life of ancient societies, complete sociologies have been centred on the idea of exchange (Homans, 1961; Blau, 1964).

The rational basis of respect for the property of others

Exchange - giving the equivalent of what one has received - is the very antithesis of theft, where there is recourse to force or subterfuge to obtain what one wants without offering anything in return. But why is exchange

universally preferred to theft? In the short run, it is much more advantageous to simply take the property of others. It affords a clear profit; something is acquired without having to pay for it. Over the long term, on the other hand, it may very well be otherwise. If we succeed in showing that exchange in the long run is a more profitable transaction than pure appropriation, we will have shown, at the same time, that there is a rational basis for obeying the law, quite apart from the fear of punishment or some moral conviction.

Even though an exchange does not afford as substantial a gain as theft, it is nonetheless profitable, because what one receives is subjectively worth more than what one gives. This is the basic motivation for the exchange, the selfish grounds for reciprocity. But it is obviously not the slight profit that makes the exchange more advantageous than theft. It is over the long term that the superiority of the former becomes apparent.

Exchange greatly contributes to cementing social bonds and promoting friendships between men. This is a constant theme of the anthropologists and sociologists who have studied it (Mauss, 1925; Lévi-Strauss, 1947; Homans, 1961). It forestalls aggression. In fact, every exchange includes an implicit pact of mutual non-aggression. In order to be able to give, receive and return, one must first cease hostilities. Afterwards, if the affair is concluded to everyone's satisfaction, there will be no reason for aggression. On the contrary, each of the parties will want to enter into new transactions; there will be every indication that the non-aggression pact will be prolonged indefinitely. The connections made in this way will have the important advantage of contributing to the general security - a security all the greater in that each person is surrounded by a greater number of satisfied partners.

From the moment there is mutual trust and exchanges continue profitably, friendship becomes possible. This was clearly shown by Homans (1974, p. 59); a specific transaction that ends to the satisfaction of all will foster the development of friendly relations that will go beyond the utilitarian considerations that prompted the initial relationship.

Quite obviously, theft starts a process that is the exact opposite, giving rise to hostility, distrust and fear. Over the long term, then, the

superiority of exchange over simply appropriating other people's property becomes clearly evident. The first fosters the development of alliances, friendship and security, the second leads to rupture, aggression and insecurity. Respecting the rule of reciprocity, moderately profitable for the moment, becomes a perfectly rational solution in the long run. Men abstain from stealing because, among other reasons, they have substituted the long term rationality of exchange for the short term one of appropriation. Respect for the law, then, is motivated by an enlightened egoism. It is in the interest of the partners in an exchange to be concerned about each other's interests lest a profitable relationship come to an end.

The prohibition of theft, in the last analysis, is only the negative version of the rule of reciprocity that prescribes giving value for value. On the one hand, theft is prevented, on the other, an alternative - exchange - is offered. It becomes possible to acquire the property of others by offering an acceptable return. Malinowski (1934, p. XXVIII) made a very strong point of this positive element of obeying the law. We avoid stealing not only for fear of punishment, but also because we want to take advantage, first of the services obtained through exchange, and secondly of the friendship and confidence that results.

Self-regulation

Here the term 'self-regulation' means the mechanisms of social control that are inherent in the relationships between individuals. It is a process by which a certain type of conduct occurs and another is held in check without any intervention other than that of the actors engaged in the relationship. In the case of reciprocal relationships, self-regulation is achieved through a series of spontaneous reactions on the part of one partner that prompts the other to respect the equivalence of the goods or services exchanged and in this way checks any attempt to take advantage of the other. Thus, all exploitive behaviour is prevented - fraud, dishonesty, or appropriation, in other words, anything that resembles theft.

Reciprocal self-regulation is based on the willingness of the dissatisfied partner to stand up for what he considers his rights. Any violation of

the rule of reciprocity - theft being only the most blatant - triggers a reaction by the injured person that will try to restore the equilibrium that has just been upset. This form of self-regulation is also contingent on the dependency that has developed between the partners during successive exchanges. Malinowski (1926, p. 20) saw this. In an exchange relationship, the partners depend on one another, which makes it imperative that the one pay for what he has received from the other. Each partner, then, has a weapon to see that his rights are respected - reciprocity, or more precisely, the desire of his opposite to maintain a profitable relationship.

Thus the rule of reciprocity dictates that every person who feels he has been wronged should react in defence of his interests. At the same time, it makes the presumed exploiter aware of these reactions. If both parties want the relationship to continue in the future, neither of them will want the partner to get the impression that he has been cheated. It is therefore in the interest of each to consider the interests of the other. By a process of mutual adjustment, each partner will be led, first to give sufficient and secondly, to demand a reasonable return. In the case of any inequality, anything resembling exploitation, the victim will lodge a complaint in order to reestablish the balance. If the potential exploiter really needs the other and if he wants to plan for the future, he will give in to pressure. In this way, a balance is achieved, where one partner, to persuade the other, will allow himself be persuaded.

Reciprocal adjustment occurs not only within the framework of exchanges, it can also be observed when the victim of an injury demands reparation. In the case of petty theft, for example, the victim is often satisfied with getting back the stolen merchandise. When the boy next door breaks a window, the owner will often simply ask the parents to pay for the damage.

The victim's claim is normally intended to reestablish the situation prior to the infraction through restitution of the stolen property, compensation or damages for the injury suffered. The victim feels his claim is legitimate, based on the principle of justice that an injury must be compensated (Eckhoff, 1974, p. 141). This obligation to restore the equilibrium by making compensation for an injury, comes directly from the idea of reciprocity.

The logic of reciprocity can bring an offender to admit that he is in the wrong and should make reparation. For example, he might realize that what he has just done to someone, he would not like done to him, and this will motivate him to satisfy the claims of the victim. More often, the fear of exposure will make him come to terms. If, on the other hand, the offender refuses to make amends, the victim will then be tempted to take vengeance or use an indirect form of vengeance - lodge a complaint with the police.

The reparations not only give satisfaction to the victim, they also dispose of the illegitimate benefit obtained by the offender. In doing so, the reparations, or more precisely the claims of the victims, help to control thefts by making them less profitable.

A rupture occurs when a reciprocal adjustment cannot be achieved. One partner withdraws from the transaction and often systematically avoids the other partner with whom he could not come to an agreement. Thus people who refuse to bow to the norm of reciprocity are simply, but effectively, sanctioned by being excluded from future exchanges. And the person who makes a habit of exploiting, cheating or refusing to make up for the harm he causes will be shunned.

There can be more than a mere rupture. When injury has been caused deliberately and without any intention of making amends, the victim could go so far as to take vengeance. This vindictive reaction is not very different from the 'frustration-aggression' reaction. The victim of a crime wants to pay back injury for injury. He feels justified to do so by the principle of justice that, following the logic of reciprocity, stipulates: "hurt can be repaid by hurt" (Eckhoff, 1974, p. 30).

Vengeance, then, has a double basis: the aggressive impulse that triggers it and the principle of reciprocity that justifies it. It is therefore possible to understand the diverse manifestations of retaliation. When carried away by aggression, the vengeance will often be out of proportion to the injury; stirred by anger, the victim, taking justice into his own hands, can go so far as to destroy the offender. But when governed by the principle of reciprocity, the response will tend to be more in proportion and the retaliation will then be the equivalent of the aggression - an eye for an eye, a tooth for a tooth.

Vengeance is so widespread that it can be considered a normal reaction. Psychologists have found that children find vengeance perfectly justified. Studying the development of a child's idea of justice, Piaget (1932) found that, with age, there is "a stronger and stronger tendency to consider it legitimate to return blow for blow" (p. 241). "If someone claims the right to punch me, then he gives me the same right" (p. 258). More recently, Bull (1969) ascertained much the same thing in a sample of 360 children and adolescents: at 17, 63% of the subjects had a set attitude of negative reciprocity consisting in returning injury for injury (p. 44).

Conclusion

Social behaviour obeys the logic of reciprocity which introduces mechanisms that regulate the exchanges so that the benefits tend to be fairly balanced. Reciprocity develops a strong motivation in people to obey the laws that prohibit theft and aggression. There are four underlying principles here.

1 - There should be value for value. This is the rule of exchange. It offers a rational alternative to theft. It prompts men to obey the law because while ensuring a benefit and at the same time fostering a friendly and secure relationship between the partners, it constitutes a more advantageous solution over the long term than simple appropriation.

2 - There should be proportionate give and take. By a process of reciprocal adjustment, the partners in an exchange can come to an understanding

as to the value of the benefits to be given and received. The fear of being excluded from any future exchanges is sufficient, most of the time, to convince anyone who would like to take unfair advantage of the situation to keep his demands within reasonable limits. Thus actions that could be seen as theft are held in check.

3 - A wrong must be righted. This is the rule of reparation that authorizes the victim to demand some form of compensation. Indirectly this rule prompts men to obey the law for fear that their crimes may be rendered useless by the obligation to make amends.

4 - Evil can be repaid by evil. This is the rule of vengeance. It justifies the victim of a crime returning blow for blow. The effect of retaliation is to prompt men to obey the law for fear of vindication by the victim.

More than anyone, Malinowski understood that social control depends primarily on a complex network of overlapping mutual relationships. He explained that people fulfill their obligations because they are involved in a series of relationships with one another that form a chain of reciprocal services, that is, services for which each must be remunerated at a given moment (Malinowski, 1926, p. 26). As these chains are linked one to the other, a series of mutual relationships is formed that creates a web in the group which, directly or indirectly, binds the individual to a considerable number of persons. The closer the reciprocal relationships, the greater the group's hold over the individual. It can be advanced therefore, that crime will vary in inverse proportion to the number of mutual relationships developed within a group.

CHAPTER XXIV

LIBERTY AND COERCION

Crime is not only a negation of the principle of reciprocity, it can also be a threat to liberty. A hold-up is a patent case of crime that is an attack on liberty. Rape, too, is obviously a denial of liberty. Theft and aggression can also be considered encroachments upon the liberty of a person in the sense that, by such acts, the offender forces his victim to suffer an injury, prevent or make more difficult the realization of his aims. As for homicide, it is the ultimate deprivation of liberty - the freedom to live!

Liberty

This word can be used legitimately in a number of sense. It is frequently defined in terms of freedom of choice - the ability to choose on one's own between several options. But here we will be talking about liberty in relation to others. In this case, liberty is negatively defined as the absence of arbitrary coercion. The person who is not subjected to the coercive power of another, who is not obliged to do what someone else decides or is prevented from doing what he wants, is free. From a positive point of view, liberty would therefore be the possibility of pursuing one's own ends rather than serving those of others (Hayek, 1960, pp. 20-21).

Baechler (1976) defines coercion as "the imposition of another's will without that will being legitimized by compliance" (p. 13). Coercion, then, consists in forcing someone to act against his will. He is obliged to serve another person's ends by the use or threat of violence. Coercion consists in forcing a person to choose between submitting or suffering serious injury.

But others do not limit liberty only by coercion in the strict sense. They can do it by wounding a person, killing him, by taking away the means to achieve his aims or terrorizing him. Liberty can therefore be described as immunity against any action of others that stops one from fully using the means and information he has to achieve his ends.

The sphere of liberty

But the definition of liberty as protection against any intervention by others that threatens to stop one from attaining one's goals is impractical. From the moment we live in society, it is inevitable that we all encroach on one another and hence negatively affect the realization of our aims.

"Man's whole life in every social context - and he has never lived in a non-social context - is spent in constant contact with his fellow man, and there is not one of his actions or even his words that cannot do harm, and there is not one of his actions or words that are entirely without consequences for someone else. Indeed, it is impossible to live without continually affecting others, sometimes to serve or better them, sometimes to harm or hold them back."
(De Jouvenel, 1955, p. 329)

Liberty conceived as the suppression of all acts that can harm others is unattainable. However, a more useful definition is possible. It consists in defining a domain for each person within which he will be protected against the encroachments of his fellow citizens and the public authorities. Hayek explained this better than anyone else. In every human society there are rules of conduct that give specific meaning to the general prohibition against harming others. These rules apply to areas of an individual's life - his person, his property, his actions - in which others are not authorized to interfere, save with his consent. In this way, a limited number of acts that affect others are prohibited. The function of these rules is to protect individual interests that are considered legitimate in a given society and to indicate what each person can count on. Thus each one has a sphere of liberty where he can do as he likes with the guarantee that his fellow citizens are forbidden to intervene (Hayek, 1973, pp. 128-131).

In concrete terms, the area protected can include 1) the integrity of his person, 2) the inviolability of his home, 3) the possibility of coming and going as he wishes and 4) his property.

The importance given property is not to be underestimated. The distinction between mine and yours constitutes an indispensable step in the definition of the sphere of liberty. It is impossible to realize most of our

projects - or even to survive - if we are not assured of the control of goods such as tools, clothing, food, etc. The rules that protect these goods relieve the individual of the need to be constantly on the alert to defend them by physical force (Hallowell, 1943, p. 138). In this respect, they contribute significantly to man's liberty.

The meaning and function of the rules prohibiting violence and theft emerge very clearly: they serve to protect each person's sphere of liberty by preventing the most obvious encroachments. They can be conceived as ramparts erected to keep men from constantly clashing with one another. They prevent many conflicts without unduly restricting people's margin of manoeuvre. This solution makes it possible to reconcile individual liberty and the absence of conflict (Hayek, 1973, p. 129). When each individual is assured of an area that is inviolable, he no longer has to be on guard every minute against the threatening moves of others. This security obviously fosters confidence and paves the way for exchange and cooperation.

Thus the rules that guarantee a protected area for everyone, far from being an obstacle to freedom, make it possible. "Basically, justice has but one goal: to ensure liberty by setting limits" (Peyrefitte, 1981, p. XIV). What freedom would we have if all our fellow citizens had license to attack us, coerce us and rob us? Absolute freedom, the power to do as we like in our relationships with others, kills liberty. As long as freedom stays within the law, which limits everyone's power to act as they please, we can be assured of the inviolability of our person and our property.

Pursuing one's best interest

The last of the great contractualist philosophers, Rawls (1971) speculated about the principles of justice that free and rational persons concerned with their own interests would accept in an initial position of equality to define the fundamental terms of their association.⁽¹⁾ More modestly, I would

(1) The contractualist philosophers deserve great credit for having pointed out the rationality of the laws for the individual. It is therefore tempting to base their thinking on the social contract hypothesis. However,

ask if rational men have any interest in accepting rules that forbid everyone, themselves included, to commit theft or aggression. To answer this question, it suffices for the moment to imagine a society in which these prohibitions were removed - a situation conveniently called the state of nature. Starting from there, we will try to balance the advantages and disadvantages for a given individual in this situation where aggression and appropriation have ceased to be considered crimes.

On the one hand, there are all the benefits obtained by this individual by means of acts that we call crimes, but are not considered crimes in the state of nature. This includes the value of the goods acquired at the expense of others and the pleasure experienced while carrying out these acts. Also to be added are the advantages gained by beating up, injuring or killing all those who can do him harm - competitors, enemies, anyone who stands in his way. Over and above these is what he can gain by subjugating others by force.

On the other hand, there is: 1 - The damages sustained each time he has been the victim of a theft or attack: his goods stolen or destroyed, his injuries, his premature death, etc. 2 - The cost of private protection against theft and attack, the price of arms, locks, fences, the time and energy devoted to guarding his property, defending his person, surveilling everyone, training

(1) continued.

this would confuse the problem as much as clarify it, for three reasons. 1) The social contract is clearly a myth. As Villay (1979, p. 92) and Peyrefitte (1981, p. 295) point out, there has never been free consent between citizens. 2) This fiction gives the impression that the laws are the result of a conscious project, whereas everything leads to the belief that those in question here had developed in the form of customs which had the underlying function of regulating human interaction. 3) It leads us to view society as a hierarchic organization built in all its aspects by the individuals who had conceived the project (Hayek, 1973, pp. 12 and 38). This point of view makes us forget that society is also made up of a fabric of reciprocal relationships.

in the use of arms, etc.⁽¹⁾ 3 - The indirect costs stemming from a situation where theft and violence are common practice: limited freedom of movement, difficulty in amassing goods, the uncertainty of long term projects, fear, tension, etc.

I am not suggesting that men consciously based their decision to make laws prohibiting theft and violence on the advantages and disadvantages involved, but simply to show that the individual may have an interest in supporting this solution. With the law, the citizen gets a 'fair deal'. His margin of manoeuvre is limited, but this loss is largely compensated by the security that he is ensured.

Defending one's liberty

The prohibitions that protect the inviolable area reserved for everyone answer obvious individual needs. This leads us to think that the reasons for their emergence and maintenance should be sought in the interaction between individuals and not in dictates from the authorities. The self-regulating mechanisms that explain how these prohibitions can appear and remain are not well known. However, I would like to make a few speculations about the matter.

It might be thought that the prohibition of acts that cause damage is based first of all on everyone's desire to defend his interests. Every time another person encroaches on my territory, each time someone threatens my person or my property, it triggers a reaction that can be pretty fierce when the interest concerned is vital. Thus the habit of respecting each person's area of freedom would be motivated first by the fear of counter-attacks and secondly by the fear that the other person might pay me back by encroaching on my domain just as I encroached on his. The habit of respecting the person and property of another could then be institutionalized, first in moral rules and then in the law. In a milieu where one avoids interfering in another person's area of

(1) As Tullock (1971, p. 211) points out, private protection against theft would, in all probability, not be very effective. It would require an enormous amount of time and energy, perhaps for nothing, for there would always be the risk of being confronted by a more powerful aggressor.

freedom, it is relatively easy to give up the licence to attack and rob others. One agrees not to resort to violence because one is protected against the violence of others. The solution that emerges from this process is inspired by justice; the general rules suppressing acts prejudicial to freedom are universally applied to everyone. Thus equality is ensured: each individual has the same obligation to respect the person and property of others; each has the same protection from attacks against his own person and property.

Conclusion

It seems possible to conclude that it is an error to think that all laws are commands, coming from a higher authority. It is true of certain laws, but not those regarding theft and violence. These stem from human interaction and guarantee people an area of freedom in which they can pursue their objectives by whatever methods they choose. In this respect, the law is necessary to liberty.

The general prohibition of killing, stealing and attacking is an acceptable solution for rational individuals wanting to further their interest. It is of benefit to the individual and at the same time compatible with the interests of others.

This being the case, we can understand the universality of the prohibition of murder and theft. It helps to make human societies viable by reducing conflicts and fostering confidence. More than that, it does so without sacrificing the individual to the common good. In this way, the conflict between individual interests and those of society, without being totally eliminated, is largely attenuated.

CHAPTER XXV

JUSTICE, MORALITY AND POWER

Justice without power is impotent; Power without justice is tyranny. Justice without power is inconsistent, because there are always the wicked; power without justice is denounced. Justice and power, then, must be joined; and to do this, what is just must be strong, or what is strong must be just.

Pascal (p. 153)

The essential point of this book is that men resist the temptation of crime for three main reasons: morality, which makes them believe that theft and violence are wrong; deterrence, which is fear of the law, and justice, which gives everyone reason to obey the rules based on their own best interests.

These three elements of social control, morality, deterrence and justice, support one another in working toward the same goal. If one fails, it is replaced by the second, which in turn is taken over by the third. It can be perceived as a system whose stability is ensured by the action of three mutually supportive mechanisms.

Justice, the underlying principle

The legitimacy of the norms pertaining to theft and violence are not a matter of morality or law. Morality is based on custom and law on the power that enacts it. We know there are aberrant customs and inequitable laws, and that is what makes justice necessary. It alone can be the basis of law and give it meaning. A solution can be called just if it resolves a conflict by a rule of general application that recognizes the interests of some without unduly infringing on those of others. Justice means achieving the best possible balance in human interrelationships and giving the individual a freedom compatible with that of his fellow man. The prohibition of theft and violence is an essential element of the solution designed to attain these two ends. It

fosters social amity and freedom at the cost of a reasonable limitation of each individual's margin of manoeuvre. In the final analysis, the moral and legal regulations concerning appropriation and aggression are legitimate because they are just. If they were based only on custom or on a whim of the legislator, they would sooner or later lose their credibility. That they do not is because it is hard to imagine other solutions that would be more just or, to be more realistic, less unjust.

It is precisely because these rules are considered just that moral or penal sanctions are often unnecessary. People respect them, not for fear of external sanctions, but because they can conform to them without endangering their essential interests. It is not so much punishment that makes us respect the property of others but the fact of being in a network of mutual relationships where the attribution and exchange of goods is carried out equitably. It is not so much fear that makes us respect the property of others; it is because most of the people around us do so.

Justice makes the moral and legal rules viable by offering solutions other than crime and fostering self-regulation processes based on the legitimate interests of the parties concerned. Each partner sees that the rule he himself respects is respected by the other, with the result that any deviation triggers counter-reactions that tend to restore the balance. That is why the moral authorities or the police do not always take action to see that the norms are respected; they remain in reserve, intervening only when self-regulation fails.

Sanctions bolster justice

It now remains to be shown that justice - in this case, relationships based on reciprocal respect for the rights of others - could not survive if it were not supported by moral and penal sanctions.

Although it is true that conforming to the rules of justice is to the advantage of the majority, there is a much more profitable solution - taking

advantage of others who adhere to the norm without doing so oneself. The advantage is obvious: one is protected against any encroachment while taking liberties with other's rights. In this way, a person gives himself a decided superiority over his fellow citizens. The best solution, then, is to ignore the laws that everyone else obeys - a very tempting one, and it would be naive to think that some people would not yield to the temptation.

To rely exclusively on everyone's good will, then, would be impractical. Hobbes (1651) clearly saw the uncertain nature of reciprocal relations based only on the given word. "For he that performeth first, has no assurance the other will perform after" (p. 196).

Besides this problem, there is a still greater one. Most people live side by side without even knowing one another. It may be in my interest to respect the rights of those with whom I have reciprocal relations, but I would have no reason to behave in the same way with perfect strangers; and the latter, having no commitment as far as I am concerned, would have no reason to spare me.(1)

This is why the social order cannot be founded on personal interest alone. Ever since Hobbes, contractualist philosophers have pondered over the question and have found much the same answer: "there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant" (Hobbes, 1651, p. 205). When the state fulfills this function, it does not invent new rules, it simply gives the partners additional reason to respect the rules on which they have agreed.

A system of sanction is therefore necessary, not so much to force us to obey the law, but to eliminate any suspicion that others will not do their part. In this way, we can have confidence; knowing that our fellow citizens will respect our rights because they cannot disregard them with impunity, we

(1) See De Jouvenel (1955, p. 306).

know we will not be the only ones to play by the rules. The sanctions that serve to establish a climate of confidence and trust between people can be seen here as opening the way to cooperative exchange.⁽¹⁾

Sanctions are a necessary, but secondary, reason for obeying the law. Necessary because, without it, confidence could never be established; secondary because from the very first, it is in the interest of all to live in a society where the rights of each individual are mutually respected.

Most of the contractualists, agreeing with Hobbes on this point, thought that this power to oblige people to keep their word was coercive and a manifestation of state control. It seems to me that they underestimated the influence of morality. What stops us from abusing the confidence of someone who is treating us fairly? Fear of the police? Rarely. It is more likely the shame of being looked upon as a liar and a cheat by of our associates. The reliability of commitments is largely due to informal social control. We are just because justice is held up as a virtue. And when we speak of virtue, we are in the realm of morality.

The final resort

Whatever the psychological and sociological causes of crime, it is mockery to say that impunity assured the criminal is not an incentive to crime.

(Baechler, 1978, p. 125)

Even though morality plays a dominant role in creating a climate favourable to justice, coercion should not be disregarded, however. A last line of defence against injustice is still necessary. This role falls to the penal system.

We showed in chapter 10 that the law, through its intimidating function, serves to preserve morality. Penal measures exercise a deterrent effect

(1) Also see Rawls (1971, p. 240) and Boudon (1977, pp. 21 and 162).

that limits the number of crimes, and in so doing, prevents the example of too many unpunished crimes undermining the moral convictions of the citizens. In other words, enforcement of the law protects morality by lessening and offsetting the pernicious influence of seeing crimes go unpunished. Thus if morality supports justice, coercion upholds morality.

A more direct function of coercion is that of protecting the citizens against aggression. The minute people agree not to use violence, they become vulnerable and will be overcome by the first aggressor who comes along. The community, then, must defend its members who are defenceless precisely because they obey the law. "If the individual had to abandon all or part of his own power to retaliate without the guarantee that the community would make up for it by thwarting a possible aggressor, he would put himself in a position of inferiority without any compensation" (Baechler, 1978, p. 195). The day the State ceases to defend its citizens, they will take up arms, simply to survive. There would then be no question of morality or justice, only the law of the jungle.

In a reasonably policed society, penal sanctions have only a limited role to play because justice, strengthened by moral control, furnishes the essential motivation to obey the law. Deterrence is mainly addressed to the marginal elements of society, to those who have nothing much to lose by violating the rules of the social game. But this marginal function of the penal system is nonetheless indispensable, first because it preserves morality and, secondly, because it insures the citizens against having to resort to violence to defend themselves. It is impossible to see how we could do without a minimum of violence to forestall persons who cannot be influenced either by principles of justice or morality. Coercion is the last resort. It is the only method that, by definition, does not require the consent of the person on whom it is exercised to be effective.

* * * * *

An improbable image of the criminal

The aim of the theoretical model presented here was to present facts about the influence of social control on crime. Very briefly, this model is based on four main propositions.

- 1 - Psychotherapy does not appreciably reduce the level of recidivism that could have been expected if the subjects had not been treated.
- 2 - Moral sanctions have the effect of reducing delinquency and crime.
- 3 - Penal measures, and most particularly the certainty of punishment, have a deterrent affect on actual and potential offenders which causes them to reduce their criminal activity.
- 4 - It is in the best interest of individuals to live in a society where everyone respects the person, property and liberty of others since he is then protected in return against the violation of his own rights. In this way, each can enjoy greater freedom, more security and the advantages that stem from cooperation. It is a situation that fosters self-regulating mechanisms which have a decisive influence on respect for the law.

If we accept these four propositions, we have come a long way from the determinist conception of crime. Still today, many criminologists remain obsessed with the question: What aberrations drive the criminal to commit his crimes? As soon as the problem is put in these terms, one is forced to look for what distinguishes the criminal from the normal man. And he will find differences: the offender will be pictured as a being who has his own morality and his own psychology. And, little by little, a curious image of the criminal as both angel and devil is created. He is seen as an angel when we think that he will mend his ways with a few kind words and a little love. He becomes a devil when he is painted as a psychopath, cruel, cold, totally impervious to reason, morality and even coercion.

It is in reaction against this improbable image that I have written this book. I simply wanted to shift attention from the criminal to the human being. The first step is to take account of the ordinary citizen (who very

often is a potential offender) and not just the criminal, then to consider the criminal as a man first, and not as a monstrosity. Once this change of perspective has been made, the offender appears in a new light. Neither angel nor devil, he becomes, more prosaically, a man who allows himself to be tempted by an activity that brings him immediate benefits at a minimum intrinsic cost. Most of the crimes referred to here can be carried out in several minutes and require little investment, while the instant benefits are very real. It is not surprising, then, that there are some who give in to temptation; crime can be a quick solution to many problems.

The need for social control is therefore easily understood. Its role is to introduce external costs to an activity that has few intrinsic ones. Moral control consists in making crime an evil act, reprehensible, shameful. Penal control consists in brandishing the threat of punishment. But in certain milieus, moral sanctions are used sporadically and without conviction, and most of the time the probability of being punished for an isolated crime is slight. Under these conditions, we must admit that crime can be a rational activity over the short term. This is particularly true for adolescents, who generally have an excellent chance of getting away with their delinquent acts. But the cumulative risks of punishment make crime costly in the long run. There comes a time in the life of a recidivist when punishments become more and more frequent and there are various types of additional costs: disapproval, stigma, prison, insecurity. The joint effect of these sanctions forces the offender to become aware that, over a long period, crime brings more disadvantages than advantages. This is very likely the reason why even inveterate criminals retire, for the most part, between the ages of 25 and 35. Besides the maturing process, another takes place that I call deferred deterrence - the belated intimidating effect of punishment.

Therefore criminals are not madmen but individuals who make choices depending on the means available and the profits anticipated. If we accept this, we are led to conclude that, for better or for worse, the criminal is just like us. Like most of us, he resists any change imposed on him. And like most of us, he is sensitive to disapproval and knows fear. When his acts become more costly than he had thought, like anyone else, he goes in search of new solutions. The criminal is decidedly like other men - more adaptable than changeable.



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