

Project Report

THE POLITICAL ECONOMY OF CRIME: AN ANNOTATED BIBLIOGRAPHY

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## ACQUISITIONS

During the last decade, as the United States slipped into an ever-worsening political and economic crisis, "law and order" became a prime concern for many voters, and an easy issue for politicians to exploit in seeking office. Most recent public discussion has obscured the truth about "the crime problem" and its causes. Many basic issues have been left undiscussed, and basic questions unanswered.

How much crime is there? What is crime's real cost? How do certain harms become heavily prosecuted crimes, while other harms remain legal, or the laws against them go unenforced? How and why does the amount of crime and deviance--and society's response to it--change? Is crime the result of an individual's weakness, or is it built into our social system? Can more reforms--better deterrence or better rehabilitation--cut crime, or is it necessary to radically change our society to do that? If so, what types of change are needed?

This annotated bibliography is an attempt to present and analyze some of the literature now available which poses these questions.

### I. How Much Crime is There?

The first thing to note is that not all harms--either to individuals or to institutions--are "criminal." A crime is an act which is defined and prohibited by law, and for the commission of which the government may impose a penal sanction: death, prison, exile, or stigmatizing financial penalties.

The most commonly used indicator of crime in the United States is the F.B.I. crime index, a national tabulation of the number of murders, robberies,

forcible rapes, aggravated assaults, auto thefts, grand larcenies, and burglaries. All types of crimes on this index have been rising since World War II.

The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Avon, 1968, pp. 89-96. Referred to hereafter in this bibliography as President's Commission, 1968.

-cites the amount of Index crime in the United States in the mid-1960's, and the risk that an average American runs of becoming a victim of such crimes.

However, official statistics are not necessarily reliable:

Albert J. Reiss, Jr., "Assessing the Current Crime Wave," pp. 23-40, in Barbara McLennan, ed., Crime in Urban Society, Dunellen, 1970.

-Notes difficulties in indexing crime. States that the President's Commission understates the real risk of victimization because it neglects the heavy underreporting of crime (fewer than half of violent crimes and one-third of felonies against property are reported to the police), and because it averages crime incidence over the whole population, rather than over the subpopulation which is at risk for a given crime (i.e., auto owners/auto thefts).

Edwin H. Sutherland and Donald R. Cressey, Principles of Criminology, 8th edition, Lippincott, 1970, pp. 25-38. Referred to hereafter in this bibliography as Sutherland, 1970.

-Critique of the validity of crime statistics.

President's Commission, pp. 96-122.

-Cites surveys of random population samples to show that much crime is unreported; shows that some of the rise in official crime rates is due to a reduction in this underreporting as police improve record-keeping systems, people come to demand more protection from police against behavior previously seen as "normal," and as the spread of property insurance increases people's incentives to report lost or damaged property. Concludes that, nevertheless, the "real" crime rate is up, because of urbanization,

the high proportion of traditionally-crime-prone youth in the population, and increased opportunities for property crime in an affluent society. (Reiss also noted similar problems in determining the "real" crime rate.)

Daniel Bell, "The Myth of Crime Waves," in The End of Ideology, Free Press, 1959, pp. 137-158.

-Says that the present U.S. concern over increasing crime is exaggerated because of unreliable crime reporting by the newspapers and the F.B.I.; describes massive lawlessness in 19th century American cities, and blames increased concern over crime on its tendency to spill into middle-class residential and business districts, out of the slums.

Apparently, the F.B.I. crime statistics are a poor indication of the amount of crime in this country. They concentrate on only a few crimes-- primarily those committed by the poor. There is so much unreported crime and so much confusion (or deliberate manipulation of crime statistics) in police reporting that statistical models based on these figures are highly suspect.

Several writers present evidence that crime is not a deviant activity; rather, almost everyone has--at some time--committed a serious crime.

The President's Commission, pp. 147-148.

-Cites a study showing that 91% of American adults have at some time committed a serious crime.

Sutherland (1970), pp. 38-46.

-Another survey showing that, by their own report, most Americans break the law, and that crime is under-reported. Gives data on the pervasiveness of crime by corporations and their employees.

If nothing else, these studies show that crime statistics alone explain why public fear of crime and government law enforcement budgets have risen greatly in the last twenty years.

Additional readings on the amount of crime, and the validity of crime statistics:

Albert Biderman and Albert V. Reiss, Jr., "On Exploring the Dark Figure of Crime," Annals, November 1967, pp. 1-15.

W. G. Skogan, "Validity of Official Crime Statistics," Social Science Quarterly, June 1974, pp. 25-38.

## II. How Much Does Crime Cost?

At first, the answer might seem simple and straightforward.

President's Commission, 1968, pp. 123-130.

Sutherland, 1970, pp. 21-22.

-Both calculate the cost of private and government crime as the sum of the value of property and revenue lost in theft, fraud, and other property crime, the total cost of the criminal justice system (police, courts, and corrections), and the cost of private security systems, the earnings lost and medical care costs of the victims of violent crime, and the income to criminals who provide illicit goods and services.

This approach is unsatisfactory, but it provides the raw data needed for a sounder analysis of crime's cost.

The "cost" of crime depends upon the definition of "cost" used, and this depends upon the economic model used.

Begin by analyzing the "costs" of crime in terms of the loss to aggregate Gross National Product it causes at any given time. This would be the result of the destruction of potentially-productive human and nonhuman assets by criminals, victims, and law enforcement agencies, and of the use of goods, services, and labor in the production or control of "bads"--goods and income transfers undesired by society, as expressed by their legal prohibition. The GNP and human welfare lost would be compared to the potential

size and distribution of GNP if society were at an optimum. This social optimum would be defined as the use of society's resources in the most productive, efficient way possible given prevailing technology and institutions, subject to some pre-existing equitable distribution of wealth and income.

Although Sutherland and the President's Commission on Law Enforcement never spell out the theory justifying their notion of "cost" of crime, the definition given here seems to fit their analyses.

Alas, this definition of "cost" instantly runs into a thicket of difficulties. Some of these would be familiar to anyone who has become skeptical about neoclassical welfare economics. Any theoretical construct which includes an aggregate social welfare function is likely to be misleading, because it is not possible to add up the "welfare" of individual members of society to get a composite social welfare function. This is because there exist social classes with conflicting interests and with unequal political and economic power. What is good for General Motors' stockholders and executives may very well NOT be good for the rest of us. This immediately throws out the presumptions that laws express the values and needs of society as a whole--what is needed is a critical examination of the interests served and harmed by different types of laws. Possibly, for most people in society, a given crime may produce a "good" rather than a "bad".

Other problems arise because the model takes the status quo as granted, and a marginally reformed version of it as an ideal. The distribution of power and income, the process of legislation and enforcement, and the class-determined nature of prevailing ideology, values, and application of technology would not be seriously questioned. This would allow the orthodox

social scientists to avoid thinking about major social changes (hence, basic changes in law, crime, and the costs of crime) that could increase the well-being of large numbers of Americans. The model deals with the problem of equity by posing some "ideal" distribution as given. If the "ideal" is the present American income distribution, severe inequality and inequity tarnish the model at its birth. And if some more egalitarian ideal is posed by the orthodox economists, they never explain how society could realistically go toward this "better" income distribution without challenging capitalism itself.

There is a second way to discuss the "cost" of crime without challenging orthodox economics. It involves counting as costs the amount which people, individually or collectively, would willingly pay to avoid or spread the risks of victimization. Also, unlike the first model, this one would center on summing the value of illegal harms done to individuals and to corporations or government, rather than assessing crime's impact upon aggregate GNP.

A third set of questions probes the conditions which sustain modern capitalism. Do different types of illegal activity maintain or erode the capitalist mode of production: its ideology, structure of incentives, methods of socializing the labor force?

The analysis of different types of crime shows that the cost of crime varies according to which conceptions of cost are used. Consider first the cost of victimless crimes. The President's Commission estimated the cost of gambling to be \$7 billion, as of 1967. It is far from clear how this figure was derived, unless it is assumed that income going to producers of an illegal service is automatically a social loss. But capitalist economic

theory assumes that buyers and producers voluntarily enter the market, make transactions, and can thus both end up better off than they were before trade. And ordinarily, the consumer's preferences are taken as a given, under the doctrine of "consumer sovereignty." So, why--within capitalism--is it logical to assume that the consumer's use of discretionary income in gambling is a less valid use of his/her money than going to a movie or carnival? (After all, any form of recreation could be harmful to the consumer if taken to excess.)

It seems that under the idiot's calculus of GNP, which equally weights \$100 million for producing a bomber and \$100 million for producing low-income housing, the final value of gambling produced is a gain, not a loss. The gambling industry, especially the numbers racket, would generate greater income inequality, funneling revenue from many poor people into the hands of a few big winners and the house operators, but this is hardly different from the effects of many business operations under capitalism. No assets are destroyed by the "criminals," and risks are voluntarily assumed.

Apparently, the social loss caused by gambling is the use of scarce, potentially productive law enforcement resources in the suppression of this activity. Also, large income and excise taxes from legalized, regulated gambling are foregone when the industry is underground. Major nonquantifiable costs arise because of the corruption and invasion of civil liberties which enforcement of the law entails. The justifications for police activity are weak: gambling is "immoral"--but only in the eyes of a few, minority Christian sects--and organized crime can get revenues as readily from

other businesses as from gambling. Indeed, "organized crime" is a cartel-like system designed to supply the public with illegal goods. Remove the illegality, and the gangster becomes a respectable crook, the same as any other capitalist shark.

The only remaining question related to gambling is an open one. Given the logic of capitalism, is it reasonable to legalize gambling? But in a well-ordered socialist society, what would be the solution? Gambling does employ people and resources that might be better used for more vital tasks, such as rebuilding cities or expanding parks. But it shares this characteristic with many other harmless forms of recreation. Indeed, it may be that gambling has attained its present popularity because people seek thrills and instant money as a way to escape their present insecurity. As this motive disappeared under socialism, even gambling might wither away. Until then, gambling would seem to be fit for socialization, not police repression.

Another consensual crime is the sale and use of illicit drugs, which the President's Commission estimated the cost at \$350 million in 1967. Here, the "costs" are, to some extent, real. Many illicit drugs are harmful and are likely to reduce the user's productivity. But the same argument holds against alcohol, tobacco, numerous legal mood-altering drugs grossly overprescribed by physicians, and drugs inadequately tested for side effects by the FDA. These "costs" include the price of medical treatment needed by drug users as a result of their drug use (less the cost of the medical care they would require without drug use). Also, since illness or drug habituation often lowers the user's productivity and/or income, the cost would include the discounted present value of future wages that the user would be likely to earn due to his/her drug use.

In terms of this harm, no logical line can be drawn for banning use of one set of harmful drugs and encouraging the use of a different set of harmful drugs. The annual costs in medical care and lost wages of alcohol and tobacco use alone are likely to dwarf the amount of revenue to illegal drug pushers. In any case, the use of social resources to control the use of harmful drugs would be justified, up to the point where a dollar extra of control prevents an extra dollar of harm.

This does not necessarily create an efficiency argument for criminal law control of damaging drugs. It might instead require a "better" FDA, voluntary medical treatment of drug victims, higher drug excise taxes, controls over doctors' medical practices, and limits to drug advertising or promotion. Indeed, criminal law prohibition of harmful drugs is likely to raise the social cost of drugs. Scarce tax dollars used in this fashion produce a stream of ex-offenders who have their expected incomes cut because of an arrest record, and who have--if imprisoned--probably learned the tricks of the trade in other types of crime. Illegal drugs are often adulterated, and the more dangerous therefore. A drug user who contacts a pusher for one illegal drug--possibly harmless--can be turned on to the pusher's more dangerous wares. And, prohibition drives up drug prices, notably those of heroin and cocaine. The cost often drives an addict to theft, robbery, or prostitution in order to raise the price of a "fix." Furthermore, the flow of large sums of money from ghetto youth to drug importers worsens income inequality and provides ample grease for government corruption. The upshot is that much anti-drug law enforcement is pure waste, and raises the social costs of drug abuse far above what they might be

if the U.S. imitated Britain's legal-heroin policy. The arguments concerning the wastefulness of legal prohibition of harmful drugs under capitalism apply a fortiori to the irrationality of prohibiting a harmless--a nearly-harmless--drug such as marijuana.

Some fairly high level of social cost due to drug use appears inevitable, at least within capitalism. The drug, alcohol, and tobacco industries are powerful, and they have profitably capitalized on peoples' discontent by saying, "swallow this or smoke that and feel better fast." Chemicals can channel discontent away from the powerful, cooling it out by a quick fix; hardly any "junkies" or "heads" are revolutionaries. The problems that sociologists cite as "causes" of drug abuse--unemployment, boring school or work, family disorganization, and the like--seem unlikely to lessen greatly without major social change.

Given the economic wastefulness of present methods of drug-control and the integral part which drugs play in America, it remains to be seen why certain drugs are legal and others, perhaps less harmful, are absolutely illegal. The reason probably, is that certain drugs came to be identified by government and the "public" with unpopular, seemingly dangerous minorities. This seems to be the case with hallucinogens, heroin, cocaine, and marijuana. In any case, policymakers have recently come to see the harmlessness--from their viewpoint--of much drug use, and the high cost of prohibition as a policy of control. Thus, decriminalized grass and methadone are signs of what may be in store.

The example of China shows that the level of drug use varies with social conditions. There, the British heavily pushed opium in the nineteenth

century as a means of increasing their economic power. Addiction was widespread under the late Empire and the Nationalists, and has greatly decreased since the Liberation in 1949. It would be worth close study to find why this happened. Have people turned away from opium because revolutionary enthusiasm has replaced mental alienation? Or, is it heavy penalties and a tightly-integrated society which keeps the desire for drugs in check?

Prostitution is another complex crime. Is its social cost the \$225 million which the President's Commission believes went to prostitutes and pimps? These transactions have the deceptive appearance of a victimless, free-market deal between two consenting partners. But the prostitute seems to be more the victim than the criminal, despite prevailing law enforcement practice. Prostitution in the West bloomed when the male-defined sexual double standard was strongest, as in the Victorian era. A permanent problem facing women is poverty joblessness; female unemployment rates are well above male rates, in boom and slump, while wages are less than 60 per cent of male wages for similar work. Women may decide to sell sex in order to survive, or to escape poverty. In short, the prevalence of prostitution is a reliable indicator of the economic and cultural subordination of women to men.

For a capitalist society, the lost labor and talent of whores is not really a "cost;" these women are otherwise likely to be jobless, or under-employed. And under these conditions, the use of police and court time to process whores is pure waste, a hypocritical bow to Christian morality which degrades the prostitutes without ever attacking the roots of the problem. In recent Socialist countries dedicated to women's liberation, a different

approach has proven possible. As women in China move toward economic and sexual equality with men, the real base of prostitution withers; in a free, nonsexist society, who would willingly sell their own body? The government there retrained prostitutes from the old regime and used police power to stop those who profited from the women's work.

Loan-sharking in 1967 cost \$350 million according to the President's Crime Commission. The harm is easy enough to see--exploitive loan repayments, enforced by threat of physical violence. This revenue is a social loss--but usury is a necessary crime in capitalist society. Ordinary credit institutions force high-risk borrowers either to pay premium interest rates or to do without credit. It would seem that the poor person, the small businessman, and the gangster are the likeliest markets for loan sharks--and these are always with us. The difference in behavior of a loan shark and a respectable banker or personal-loan company owner is a matter of degree, not of kind.

Tax fraud was estimated by the President's Crime Commission to have cost \$120 million in lost revenues in 1967. An additional, though uncounted, cost is the value of human and non-human resources devoted to evading tax laws, and the cost of enforcement to the government. The real social cost of this crime is ambiguous. There is little reason why resources given to a capitalist government will raise GNP, equalize income, or increase efficiency to a greater degree than would occur if these resources are used privately by a (presumably, often wealthy) tax cheater. A different equity problem does arise, in that governments are determined to get their money, and what one person doesn't pay, another must. Given the nonprogressive real

incidence of local, state, and federal taxes, and given the smaller scope for tax cheating available to a poor wage-earner, tax fraud probably does increase income inequality. But tax fraud is the illegal extension of tax loopholes; these, called "investment incentives," are virtually sacrosanct politically--and cost the government billions of dollars annually in lost revenue. There is a very costly, legal, crime-like activity.

Theft and fraud present a tangled, \$4 billion problem of cost analysis. They are transfer payments and so do not directly enter aggregate GNP. And, there is no reason to assume that a thief--especially, a professional thief--or the receiver of stolen goods will use the goods less efficiently than the victim. But the revenue from activities is a social cost which justifies public and private attempts at their suppression. Theft and fraud weaken the ruling principle of income distribution, "to each according to the factors of production (labor, land, or capital) that he or she owns." These crimes are an attack upon private property, albeit a predatory and unpolitical attack. It is no accident that the development of modern theft law began in 15th century England, when capitalist relations of production were displacing feudalism. Additional costs accrue because potential victims are willing to pay to cut or spread property losses. Hence the validity of counting a large share of private security alarms and employment, as well as the difference between the value of premiums paid into theft insurance companies and the value of claims paid as costs of theft and fraud.

Furthermore (although this may not enter official cost calculus), theft and fraud probably increase the inequality of income and wealth. Ripping

off a large corporation or a government seems a victimless act to a thief, but governments can raise tax rates and oligopolies can raise their prices enough to cover their losses and then some. The actual incidence of the federal individual income tax is roughly proportional; that of most state and local taxes (i.e., property and sales taxes) is highly regressive. Higher corporate prices to cover theft losses would, like higher taxes, also probably be regressive. The rich consume a far lower proportion of their income than the poor, so even an x per cent price hike for all commodities and services would harm the poor relatively more than the rich. To the extent that luxury good prices are less inflated by theft and fraud than ordinary goods, this same argument holds a fortiori. Theft from a large corporation or government would only rarely depress stock or bond prices and returns (hence capitalist wealth and income) enough to compensate for this effect. Another very common class of theft is when the poor steal from each other. Here again, income flows into the hands of the most predatory and the most cunning, away from others who deserve the income and property no less. One type of theft by an individual or nonpolitical criminal group which might have an equalizing income effect is Robin Hood theft, when the poor steal from a rich individual--who cannot alone pass his losses onto anyone except an insurance company.

The foregoing analysis has assumed that a thief or swindler, acting alone or in a group, is acting from solely mercenary motives. Such non-political theft is the rule. But where the rich, the government, or corporations are ripped-off for political reasons, the impact is potentially very different. The rebel-thieves may increase equality by redistributing

their gains among the poor, or by using the gains to finance a leftist movement. When such actions occur in an organized way by many people, their actions cease to be theft and become acts of expropriation, or revolutionary war.

In the narrow sense of F.B.I. index property crimes, embezzlement, fraud, and the like, ordinary theft is built into the lines of capitalism--even as it gnaws gently at prevailing property relations. In a society which teaches its children individualism and materialism, at an early age, how could things be otherwise--especially, when economic insecurity and inequality are the daily experience of millions?

Furthermore, the legal line between illegal, wrongful taking of another's income and legal, exploitive taking of another's income, is arbitrary. False advertisers and product adulterers are economic cousins of con-men and pickpockets. Monopolists, who maximize their profits by jacking up prices and cutting production below what it would be in a competitive market, are not so different from extortionists. Such near-theft, if illegal, is lightly punished, if at all, as white-collar crime. Theft-like activity is a normal business practice here.

Several crimes are similar in that they involve the destruction or injury of people and property. Arson, vandalism, and the like cost the value of public or private guard-time spent dealing with these crimes, plus the value of the property destroyed. Murder costs the present value of the deceased's expected future income until the usual time of natural death, plus the cost of pre-death medical care, plus some value for family grief. Assault costs society the value of the victim's medical care, plus the present

value of the income lost due to injuries, plus some value for pain. This analysis could, if used in cost-benefit analysis, produce unethical results. For example, say, Nelson Rockefeller's life is valued at 1000 times that of a factory worker, because that is the difference between their incomes. In practice, this appears to be the usual calculus, but fixing a person's expected earnings at expected per capita GNP would lead to more egalitarian resource allocation in controlling violent crime.

For these crimes, as with theft, the real social costs are understated. Smog, unsafe cars, industrial accidents, poor medical care, and malnutrition prematurely kill thousands and maim millions. Policymakers knowingly allocated resources so as to allow these preventable conditions to prevail, when they should have known how bloody the results might be. Their profit-oriented cost-benefit analysis grinds out high "acceptable" levels of harms which are akin in result but not in law to manslaughter and aggravated assault. As China and Cuba show, such harms can be greatly alleviated--even by an underdeveloped country--once the country regulates its economy to meet human needs, not to maximize profits.

The implications of the analysis of the cost of crime is that a high level of crime and crime-like harms is built into the structure of our advanced capitalist society. Only after major social change can we hit the real roots of these crimes. Until then, heavy police expenditures on "victim" crimes will be a normal, necessary response to the high and rising social costs of crime.

There are several essays on the cost of crime which raise important theoretical issues.

Robert Hann, "Crime and the Cost of Crime: An Economic Approach," in the Journal of Research on Crime and Delinquency, January 1972, pp. 12-30.

-This essay describes the theoretical basis of cost-benefit analysis. Social welfare should be maximized within the constraints given by scarce resources and prevailing institutions. "Crime" is seen as any activity which imposes uncompensated costs on the victim; the goal is to reduce crime to the level at which the value of resources used to prevent the last extra crime equal the social cost (or value) of that last extra crime. The goal is to allocate resources as might be done by a perfectly competitive capitalist market. Under these conditions, it is rational to accept some crime, and to limit the methods used in the suppression of crime. Hann also criticizes the estimates of the cost of crime which add up such things as the market value of goods stolen and the income to criminals from tax evasion, since it is unclear as to the extent to which these diversions of resources reflect a real economic loss. And, he discusses some technical problems in doing cost-benefit analysis of criminal justice systems.

Simon Rottenberg, "The Social Cost of Crime and Crime Prevention," in Barbara McLennan, ed., Crime in Urban Society, Dunlennan, 1970.

-Analyzes the cost of different types of crime; criticizes the bookkeeping method of finding crime's cost; uses methods similar to Hann's in analyzing how society should allocate law enforcement resources. The desired goal is to achieve the optimal level of crime at minimum cost. Rottenberg, like Hann, holds that there is a social cost to police brutality, invasion of privacy, and false convictions. These practices destroy a person's security, a "good" in itself, and, by violating due process, confuses the innocent with the guilty. The allocation of punishment to the innocent distorts the incentives society offers to obey the law, so the expected crime rates would rise, all other things being equal.

J. P. Martin and J. Bradley, "Design of a Study of the Cost of Crime," in the British Journal of Criminology, Volume 4, No. 6, October 1964, pp. 591-603.

-Discusses the problems in figuring the cost of crime--which they define as the sum of public law enforcement, justice, and correctional bodies, the cost of security spending by potential victims, and the losses to crime by victims. They decide, in studying public anti-crime costs, to cover the expenses of the nontraffic crimes usually dealt with by police, rather than including the crimes usually seen by administrative agencies.

Economic questions still arise. Which costs of law enforcement bodies may be imputed to crime, and which to other functions? How and why do law enforcement spending patterns change? What are the costs and benefits of public policy changes? What are crime losses to the victim--insurance premiums, costs of self-protective measures, costs of lost earnings and property? How much of business security force costs is due to the risk of crime?

Additional readings on the cost of crime:

Martin Katzman, "The Economics of Defense Against Crime in the Streets," Land Economics, Volume 44, November 1968, pp. 431-440.

-An unexciting discussion of the major economic trade-offs facing criminal justice policymakers.

J. P. Martin, "The Cost of Crime: Some Research Problems," in International Review of Criminal Policy, 1965, No. 23.

E. J. Mishan, "A Note on the Cost of Tariffs, Monopolies, and Thefts," Western Economic Journal, Vol. 7, No. 3, September 1969, pp. 230-233.

-Argues that the cost of theft includes the harms of undesired risk and negative externalities.

Gordon Tullock, "The Welfare Costs of Tariffs, Monopolies, and Thefts," in the Western Economic Journal, Vol. 5, No. 3, June 1967, pp. 224-232.

### III. Orthodox Criminology

Several nonradical criminological traditions exist, each with their own ideology and nostrums for the crime problem. The most common of these among academic criminologists is the liberal, positivist tradition.

Sutherland, 1970, is a classic in the field. Sutherland is the Paul Samuelson of criminology. He surveys the entire field--the causes of crime, how different types of criminals operate, and how the criminal justice system works. The authors accept the law's definition of what crime is and discuss ways of reducing crime by making existing institutions more liberal, humane, and efficient. With their reform attitudes go a belief that the "crime problem" is complex and irretractable. So, they are skeptical and reserved about the benefits to be gained from law, court, and prison reform, or from major social change.

Stuart Hills, Crime, Power, and Morality: The Criminal-Law Process in the United States, Chandler, 1971.

-A left-liberal analysis of the American criminal justice system, based on the belief that the legal system is unfair to the unorganized and the powerless, so these people should unite to check the power of the powerful, within the pluralist American system. Part One, pp. 1-64, supports the theory that the justice apparatus worsens crime by stigmatizing offenders and confirming their identity as "criminals." It also criticizes legislation of morality and class bias in police work and the courts.

The conditions under which deterrence can work--rapid justice, punishments fitting the crime, use of rational calculation by criminals, and a moral consensus in society--are absent. Part Two criticizes drug control and calls for less legal control--possibly decriminalization--of marijuana.

Part Three, pp. 102-144, discussed the crimes, power, and methods of the Cosa Nostra, with attention to the role that government corruption plays in allowing organized crime to continue.

Part Four, on white collar crime, describes how businessmen break the law, finds that the costs of this type of crime are far higher than the costs of street crime, and calls for more severe punishment.

The book is factual and written in good, muckraking fashion.

Norval Morris and Gordon Hawkins, The Honest Politician's Guide to Crime Control, University of Chicago, 1969.

-This book calls for major reforms of the criminal justice system, without an analysis of the social roots of these "irrationalities," or explaining the forces that could lead to the adoption of these reforms. These include the end of laws against victimless crimes and vice, abolishing juvenile "crimes" which are not crimes when committed by an adult, and putting an end to capital punishment. Also, they favor gun registration, professionalizing the police, greater use of locks and alarms, putting all released convicts under parole supervision, ending the money bail system, moving toward community-oriented offender treatment, treating convicted offenders and establishing psychiatric jails similar to Patuxnet and Vacaville, for the rejects from ordinary prisons. These proposals are a hodge-podge, designed to rationalize the criminal justice system and have it concentrate more effectively on the most dangerous types of ordinary crime. Some represent an end to certain injustices of the legal process; others, especially the suggested prison reforms, would worsen the position of prisoners vis a vis the state.

Ian Taylor, Paul Walton, and Jock Young, The New Criminology: For a Social Theory of Deviance, Routledge and Kegan Paul, 1974.

-A critique of orthodox criminological theory, based on the internal limits to the logic of each system of criminological thought and the problems raised and solved in each system. Covers the classical criminologists, the positivists (both biological theorists and Durkheimians), the social interaction theories (a la Sutherland), the Marxists, and the new conflict theorists.

Elliot Currie, Review of Taylor, Walton, Young in Crime and Social Justice, No. 2, Fall/Winter 1974.

-A critique of The New Criminology; praises its discussion of criminological theory, but criticizes its failure to study the social origins and consequences of the theories, and the academic style in which the book is written.

Liberal criminology, as presented here, tends to accept the power relationships which underlie the State's power to define, prosecute, and punish those harms which it calls "crime." It offers either cosmetic reforms, or heroic calls for sweeping new Marshall Plans for the criminal justice system, without analyzing the social focus which made the system what it is now, and the methods which would be needed to overcome the irrationalities of the criminal justice system. Conservative criminology is more unabashedly in favor of the status quo; it emphasizes crime control and respect for constituted authority at the expense of the concern which liberals claim to have for the rights and rehabilitation of the offender.

Edward C. Banfield, The Unheavenly City Revisited, Little, Brown, 1974, chapters 8-11.

-Banfield assumes that an individual's crime-proneness is determined by his/her taste for risk, willingness to inflict injury, willingness to obey conventional morality, and time-horizon. The urban lower class (and also, youth) which orients its goals and life-style around the present, is seen as the main source of street crime. So, the crime rate is, to a large degree, a demographic "given," shaped by a city's age/racial/class composition. Riots, likewise, are due to the concentration of lower-class youth in cities, the breakdown of the institutions which used to regulate the lower class (i.e., the political machines), the legitimation of rioting by the black movement, and the lack of certain, severe deterrence by police and courts. As remedies, Banfield recommends more certain and severe legal penalties for criminals, the hardening of crime targets by locks, lighting, alarms, etc., preventive detention for criminals, and curbstone justice.

Banfield's analysis obscures the real origins of the "lower class." He defines class by a person's morality and time-orientation, without realizing that these differences do not fall from the sky--they come from a person's and a group's daily experience, shaped by economic status and activity.

Banfield believes that "the lower class is with us forever," but fails to see that other "lower" classes--the Irish and the Italians--could rise out of poverty because of their race and their arrival in the city at a time when unskilled labor was in demand. His remedies for the lower-class problem are at best, Band-Aids; cutting the school-leaving age and establishing a negative income tax. Or, they are unattainable--as with his call for a fall in unemployment to three per cent. Or, they are discriminating: letting business cut its minimum wages to low-productivity workers, or encouraging the "incompetent poor" to use birth control and day care. All these would be designed to encourage people to work regularly, and to reduce the ability of the "lower class" to socialize children in the same culture.

Additional readings in nonradical criminology.

American Friends Service Committee, Struggle for Justice, 1971.

Herbert A. Bloch and Gilbert Geis, Man, Crime, and Society, Random House, 2nd edition, 1970.

William J. Chambliss and Robert B. Seidman, Law, Order, and Power, Addison-Wesley, 1971.

Nicholas N. Kittrie, The Right to Be Different, 1971.

-Description and criticism of the juvenile justice system and legal controls on psychopaths, addicts and alcoholics.

Richard Quinney, "Is Criminal Behavior Deviant Behavior?" in British Journal of Criminology, Vol. 5, No. 2, April 1965, pp. 132-142.

-Theory, not statistics.

Richard Quinney, The Social Reality of Crime, Little, Brown and Company, 1970.

Gresham M. Sykes, "The Future of Criminology," American Behavioral Scientist, 15 (February 1972), pp. 409-419.

Austin Turk, Criminality and Legal Order, Rand McNally, 1969.

Austin Turk, "Conflict and Criminality," American Sociological Review, June 1966, pp. 338-352.

George B. Vold, Theoretical Criminology, Oxford, 1958.

#### Critiques of Liberal Criminology

Lewis Coser, "Unanticipated Conservative Consequences of Liberal Thinking," Social Problems 16 (Winter 1969), pp. 263-272.

Don C. Gibbons, "Observations on the Study of Crime Causation," American Journal of Sociology (September 1971), pp. 262-278.

Alexander Liazos, "The Poverty of the Sociology of Deviance: Nuts, Sluts, and Preverts," Social Problems 20 (Summer 1972), pp. 103-120.

Gresham M. Sykes, "The Rise of Critical Criminology," Journal of Criminal Law and Criminology 65 (June 1974), pp. 206-213.

#### IV. Deterrence Theory

In recent years, a new band of social scientists has ventured into the field of criminology--the orthodox economists.

Their view of crime is shaped by their model of human nature and of society. They see society as an aggregate of individuals and competitive firms, each of which seeks to maximize utility or profits, within the constraints set by their own resources and by their market-derived income. They assume that individuals will choose rationally whether to engage in legitimate or illegitimate activity, depending on the relative costs and benefits of these choices. Further, they believe that the interests and welfare of individuals in society are basically harmonious and nonconflicting so that they can be summed to derive a set of choices which can maximize the welfare of society as a whole. Also, they take the existing structure of opportunities, distribution of wealth, power, and income and modes of

socialization as given, so that society's main way of making an individual less likely to choose crime is to alter the certainty and severity of punishment.

Gordon Tullock, The Logic of the Law, Basic Books, 1967.  
Hereafter referred to as Tullock, 1967.

-Chapters 1 and 2 set forth the normative and psychological assumptions from which an orthodox economist would analyze the law: the quest for Pareto's optimality; the assumption that since no individual can get special legal privileges he/she should oppose the grant of such privileges to others; homo-economicus, and risk aversion.

In the rest of the book Tullock uses utilitarian economics to analyze traffic laws and the tax code. In discussing criminal law, he shows the low risk of felons landing in jail and describes how the courts process offenders. He advocates reforms such as paying people who are detained for trial, having police pay those they search rather than obtaining a search warrant, pay for court witnesses and greater emphasis by courts on fact-finding and less on points of law. He argues that severe penalties are not necessary to deter violent crime.

Based on such assumptions, there have been many theoretical statements about how deterrence would work. The classical statement of deterrence theory is:

Gary Becker, "Crime and Punishment: An Economic Approach," in The Journal of Political Economy, Vol. 26, No. 2, March-April 1968, pp. 169-217.

-He says that people become criminals if the utility they expect to gain from breaking the law is greater than the utility they could gain using their labor and resources in legitimate activities. The expected gain to the criminal could be cut by raising the certainty and severity of punishment. There are limits to the degree to which punishments could be increased, as the cost of law enforcement and the cost of the punishment (to society and to the

offender) rises--the goal is to minimize the cost to society of crime and law enforcement together. Fines are to be preferred as methods of punishment; they are transfer payments, so their social cost is zero. In antitrust cases, large fines, not jail or company dissolution, should be used. The cost of a prison sentence to an offender rises with his income due to increasing lost earnings, while the marginal cost of a fine is comparatively less. The opposite situation holds for the poor. So, the wealthy tend to commit crimes punishable by prison and the poor tend to commit crimes punishable by jail. In a market society it is not unfair to jail those who can't pay fines; an optimal sentence would cost them no more income than a fine. A criminal justice system should consider acts which cause uncompensated harms to others as crimes and then seek to minimize the social losses. These theses are supported by the orthodox, mathematical techniques of welfare analysis and cost-benefit analysis.

John Harris, "On the Economics of Law and Order," Journal of Political Economy, Vol. 78, No. 1, January/February 1970.

-Harris' essay extends Becker's theoretical analysis and shows that different political values and priorities, when cranked into a mathematical, economic model of crime deterrence, produce different "optimal" results. He says that raising the odds of punishing the guilty also raises the costs of the justice system to the innocent and that excessively heavy punishments may create popular disaffection and increase serious crime. Thus, if mugging and murder both carry a death penalty, why not always kill the victim to silence him/her? Probably, a change in the certainty of punishment affects crime rates more than a change in the severity of punishment. In any case, if the costs of an unjust "justice" are considered, "optimal" crime levels are higher than if these costs are ignored. He concludes "optimality levels of the (criminal justice) policy variables depend on how various losses are perceived. It is clear that these losses will be perceived differently by

different social and socioeconomic groups within any society. The political process will determine how the interests of various groups will be reconciled or which groups will be able to impose their will on the rest of society. Unfortunately the economic approach is powerless to shed light on the resolution of group conflict. This is succinct statement of the limits to the value of neoclassical economic optimality and cost-benefit analysis in the real world.

Robert Hann, "Crime and the Cost of Crime: An Economic Approach," Journal of Research on Crime and Delinquency, Vol. 9, No. 1, January 1972, pp. 12-30.

-The early part of the article explains the theory of neoclassical welfare economics, clearly and in detail.

George J. Stegler, "The Optimum Enforcement of Laws," Journal of Political Economy, Vol. 78, No. 3, May-June 1970.

-A person chooses to enter crime if this promises greater earnings than legal activity, (discounted for the risk of punishment) if he/she expects to maximize his/her income in this way. The more profitable a crime, the more severe penalties should be, in order to reduce the marginal returns to crime. The marginal benefits of crime spending should equal these benefits for other public spending. There are limits to "optimal" law enforcement. Budgets are limited so full enforcement is impossible. Excessive penalties reduce the law's value as a marginal deterrent to more serious crimes. Reducing safeguards against punishing the innocent harms deterrence, costs resources, and reduces people's confidence in the criminal justice system. The present structure of penalties for economic regulation offenses is nonoptimal; agencies should change present practice by pursuing the most serious crimes and setting penalties to reduce the social costs of both the offense and enforcement.

Lester Therrow, "Equity Versus Efficiency in Law Enforcement," Public Policy, Vol. 18, Summer 1970, pp. 451-462.

-There is a conflict between equity (equalizing everyone's odds of being a crime victim) and efficiency (minimizing the total incidence of crime within the given budget of a law enforcement agency). Efficiency favors preventing the most-readily deterrable crimes unless society decides that certain other crimes are more serious. Compensating property crime victims is more efficient than asking police to make everybody equally safe from crime, but everybody should be equally well protected against personal attack. Society needs to decide whether to emphasize equity for the criminal or deterrence; on this question and others, cost-benefit analysis forces the equity and value judgments out in the open.

David L. Sjoquist, "Property Crime and Economic Behavior: Some Empirical Results," American Economic Review, Vol. 63, No. 3, June 1973, pp. 439-446.

-A mathematical replay of Becker's analysis, using 1960 F.B.I. data to show that burglary, grand larceny, and robbery in cities between 25,000 and 200,000 in population are less prevalent where prison sentences are longer or where the certainty of arrest is greater. A one per cent rise in arrest rates is more effective in deterring crime than a one per cent rise in sentence severity.

Johannes Andenaes, Punishment and Deterrence, Univeristy of Michigan, 1974.

-A book of repetitive essays which uses historical anecdotes to support the use of criminal penalties for their deterrent effect on the population as a whole (as opposed to deterring a criminal--once caught--from repeating the crime).

Isaac Ehrlich, "Participating in Illegitimate Activities: An Economic Analysis," in Gary S. Becker, ed., Essays on the Economics of Crime and Punishment, Columbia University Press, 1974, pp. 68-133.

-Another mathematical, neoclassical deterrence model, studying F.B.I. index data on street crime. Some new elements in the model are: that post-prison recidivism often makes sense since the individual's "productivity" in crime has been

raised by lessons in crime while in jail and his/her productivity in legal work is down due to the atrophy of old skills and the stigma of a prison record. Risk avoiders are more deterred by increases in punishment certainty (and unemployment seems to have an ambiguous effect on their tendency to commit crimes), while risk preferrers are more deterred by more severe penalties. Those who are risk-neutral are equally affected by these changes. The market, rational-criminal model explains property crimes--but the violent criminal also responds to changes in penalties, wages or employment. Property crime rates increase with income inequality; crime rates in general rise as the nonwhite proportion of the population rises. The effects of unemployment and age distribution of the population on crime are inconclusive. Law enforcement productivity--the probability of the arrest and conviction of criminals--falls with lower spending, rising population size and density. 1965 law enforcement spending was suboptimal; a 1 per cent increase in direct law enforcement would cut crime 1.4 per cent, all other things being equal. However, the decision to raise police spending (rather than other anticrime spending, such as welfare) depends on police effectiveness and the relative effectiveness of other crime-fighting methods.

Franklin Zimring and Gordon Hawkins, "Deterrence and Marginal Groups," in Journal of Research on Crime and Delinquency, Vol. 5, No. 2, July 1968, pp. 100-124.

-There is a distinct subpopulation of offenders and another group of people who are, at any given time, on the verge of crime. Deterrence should be aimed at these people, since the general population is well-socialized enough to obey laws against major violence and property crimes. Arrest and prison records do "choose" a representative sample of offenders. This "sociological" critique of the "economic" model of deterrence fails, for there is evidence (cited earlier) that most people have seriously broken the law, and that the justice system does "select" the least powerful or least competent of offenders.

## V. Deterrence: Empirical Studies

Based on the economic model of crime, there have been numerous statistical attempts to prove or disprove deterrence theory.

William C. Bailey, J. David Martin, and Louis N. Gray, "Crime and Deterrence: A Correlation Analysis," in Journal of Research on Crime and Delinquency, Vol. 11, No. 2, July 1974, pp. 124-143.

-The authors begin by summarizing the previous literature studying the effects on crime rates of varying the severity of punishment (the average length of sentence) and its certainty (the number of prison admissions compared to the number of index crimes known to police). They criticize the literature showing that the death penalty didn't deter murder more than life imprisonment because it failed to control the speed with which the punishment was imposed. A study by Gibbs in 1968 found that there was a negative correlation between the homicide rate and increased severity and certainty of punishment across the 50 states, with certainty the more potent deterrent. (His 1969 restudy showed that, in fact, severity of punishment was a more effective deterrent to murder.) Tittle, in 1969, found the negative correlation between certainty of punishment and index crime rates between 1959 and 1960 to vary between -.08 for auto theft and -.46 for assault ( $P < .01$ ). Except for homicide, the certainty of punishment was a more decisive deterrent than the average length of sentences served by prisoners released in 1960. Ehrlich, in 1972, also found deterrence theory to hold. But in 1970, Chiricos and Waldo tested the theory for index crimes over three time periods and got inconsistent results. As the authors of this article say, "It is of interest to note the dissimilarity of . . . findings on the question of deterrence. These differences provide a particular mystery considering the similarity of the researchers' operationalizations of their punishment and rate variables, and the time periods examined." Undaunted by numerous statistical problems, the authors do their own deterrence study and uphold the theory, with certainty of imprisonment being most important.

Louis N. Gray and J. David Martin, "Punishment and Deterrence: Another Analysis of Gibbs' Data," in Social Science Quarterly, September 1969, Vol. 50, No. 2, pp. 389-395.

-They cite Gibbs' 1968 study finding that the linear combination of certainty and severity of punishment explained 22 per cent of the homicide rate. Gibbs' however, was wrong about the greater impact of certainty of punishment; severity may be equally important. In any case, they use a log model to explain 35-40 per cent of the variations in the homicide rate. Halving either the certainty or severity of punishment would double the murder rate.

Llad Phillips, "Crime Control: The Case for Deterrence," in Simon Rottenberg, ed., The Economics of Crime and Punishment, American Enterprise Institute for Policy Research, 1973, pp. 65-84.

-Phillips studied the deterrent effect of law enforcement on gun assaults. The offense rate is determined by the conviction rate, the severity of punishment, and other "causal factors." The conviction rate is determined by the law enforcement spending and the offense rate. He uses economic models to show that, other things being equal, raising law enforcement spending does, by raising the conviction rate, cut gun assaults. But if the "causal factors" worsen, police spending, conviction rates, and gun assaults may all rise together. Using mathematical models, he found that the gun murder rate rose in the 1960's but the felony gun murder rate didn't-- so most of the increase was due to firearm assaults by the families or acquaintances of the victims. Half of this increase in murder was due to an increasing rate of use of guns in assaults and half due to a rise in that rate of assaults. The odds that an assailant will not use a gun rise with the increasing certainty and severity of punishment for criminal homicide at a decreasing rate as certainty and severity rise. Deterrence is more important than the density of guns in the population in influencing the gun murder rate.

On page 104, there are brief comments on the piece. Gregory Krohin finds that the data are

biased. Half of all aggravated assaults go unreported, many of these are intra-family crimes, and gun use is less likely in family or unreported assaults than it would be in felony assaults. And, the conviction rate is determined, not by law enforcement spending but by legal procedures. A high conviction rate raises the chance of convicting the innocent. Such problems would seem to undermine the data and the conclusions. Jack Gibbs notes that there is difficulty in trying to statistically control causes of crime without identifying what these are.

Charles R. Tittle, "Punishment and the Deterrence of Deviance," in Rottenberg, op. cit., pp. 85-102.

-The failure of the death penalty to deter murder argues against its use in modern society but not against deterrence as a whole. It is true that ex-convicts have a high recidivism rate (35 per cent), hence prison doesn't always deter those who have been there. Punishment may well deter the population as a whole. He cites lab experiments which uphold the value of sanctions in obtaining conformity. Also, more certain penalties for parking violators at a Midwestern university and the 1967 British crackdown on drunk drivers produced the desired fall in offense rates, due to the increased certainty of punishment. (Severe but unlikely punishments appear to have little effect on deviance.) Sanctions deter but are less crucial if the rule itself has widespread moral support. Sanction effectiveness depends on how people perceive the punishments and perceptions which may be at variance with reality. He sums up the research conducted so far as not definitive. The only safe conclusion is that sanctions probably have some deterrent capability under some circumstances.

Tittle then calls for more research. The areas of ignorance he lists are a telling commentary on the present state of deterrence theory: which type of norms provoke obedience? What does the deviant gain from his/her actions? Do sanctions deter reasoned behavior more effectively than impulsive behavior? Which age/sex/race/class groups are deterred? How much deviance is caused by sanctions themselves? What causes conformity?

Gordon Waldo and Theodore Chiricos, "Perceived Penal Sanction and Self-Reported Criminality: A Neglected Approach to Deterrence Research," in Social Problems, Spring 1972, Vol. 19, No. 4, pp. 522-540.

-For the offenses of petty theft and marijuana use, they tested deterrence theory by measuring self-reported crime and the perception of the likelihood and severity of punishment among college students in Florida. There was no relationship between perceived severity of penalties and the incidence of self-reported crime, but the greater a person's belief in the certainty of his/her own arrest and punishment, the less likely he/she would violate either of these two laws. The deterrence effect was stronger for marijuana use than for theft, indicating that a norm with strong community moral support relies less on deterrence for its support than does a rule not seen as preventing a moral wrong.

It seems clear that deterrence theory and its empirical proofs are still on shaky ground. The statistics used concentrate on crimes committed by the poor--the F.B.I. index--although the deterrent effect of jail for white collar criminals would be an interesting thing to test. Also, the statistics themselves, as cited earlier, are of doubtful reliability.

Compounding the problem is the common use of the "severity of punishment" measure as the average length of sentences served for a given crime by prisoners released in year X compared to the crime rates in years X-1, X, and X+1. How can it be logically assumed that there is any significant connection between the sentences meted out years before X to the crimes committed in X? It would seem more logical to compare the crime rate in X to the average length of sentences given in X or X-1 for the given crime. The article by Chiricos and Waldo on perceived penal sanctions is valuable; it shows how people connect the legal penalties and their own decision to commit crime.

There are deeper problems with deterrence theory. It assumes that criminals respond to rewards and penalties and seek to optimize their welfare in either legal or illegal work. For economic crime, the vast bulk of all crime, this is probably a valid assumption. And even for many crimes against the person, the criminal can be said to act as if he/she were a rational welfare-maximizer. But most deterrence theorists do not ask why the returns to legal work are so low for so many people so that crime seems to be the best alternative. They can thus avoid critical analysis of malfunctioning labor markets, inequality, unemployment, poverty, and racism. Instead, they direct their attention to the policy variable which is controllable without disturbing the status quo--altering the certainty and severity of punishments. In the end, research may well show that some form of deterrence theory holds. Then, at what cost do we prevent crime? If raising penalties deters some crime, and higher penalties for the most serious crimes are needed to maintain marginal deterrence of the worst felonies, they why not bring back torture or public executions? If raising the certainty of conviction deters crime, at what cost do we do this? A policeman on every corner? The abrogation of the procedural safeguards which officially exist to protect the defendant? Which crimes does society wish to deter? Deterrence theory, in short, appears to be a law-and-order, class-biased, and unproven theory. This does not mean the application of the deterrence principle is never valid--what is needed are social values and institutions which will provide justice as well as "order."

Additional readings on deterrence theory.

Robert G. Caldwell, "The Deterrent Influence of Corporal Punishment on Prisoners Who Have Been Whipped," American Sociological Review, April 1944, pp. 171-177.

Theodore Chiricos and Gordon Waldo, "Punishment and Crime: An Examination of Some Empirical Evidence," Social Problems, Vol. 18, No. 2, Fall 1970.

William Chambliss, "The Deterrent Effect of Punishment," Crime and Delinquency, Vol. 12, No. 1, January 1966.

William Chambliss, "Types of Deviance and the Effectiveness of Legal Sanctions," Wisconsin Law Review, Summer 1967.

Jack Gibbs, "Crime, Punishment, Deterrence," Social Science Quarterly, March-June 1968.

Larry Gould and Zim Namenwirth, "Contrary Objectives: Crime Control and Rehabilitation of Criminals," in Jack Douglas, ed., Crime and Justice in American Society, Bobbs-Merrill, 1971.

Gordon Hawkins, "Punishment and Deterrence: The Educative, Moralizing, and Habitative Effects," Wisconsin Law Review, Vol. 1969, No. 2.

Gary F. Jensen, "Crime Doesn't Pay: Correlates of a Shared Misunderstanding," in Social Problems, Fall 1969.

Charles Logan, "General Deterrent Effects of Imprisonment," Social Forces, Vol. 51, September 1972, pp. 64-73.

Herbert Packer, The Limits of the Criminal Sanction, Stanford University Press, 1968.

Charles Tittle, "Crime Rates and Legal Sanctions," Social Problems, Vol. 16, No. 4, Spring 1969.

Gordon Tullock, "Does Punishment Deter Crime?" in The Public Interest, Summer 1974.

A hard-line, self-contradictory polemic for deterrence theory.

Gordon Tullock, "An Economic Approach to Crime," in Social Science Quarterly, Vol. 50, No. 1, June 1969, pp. 59-71.

Llad Phillips and Harold Votey, Jr., "An Economic Analysis of the Deterrent Effect of Law Enforcement on Criminal Activity," in the Journal of Criminal Law, Criminology, and Police Science, Vol. 63, No. 3, September 1972.

Llad Phillips, "The Control of Criminal Activity: An Economic Analysis," in Daniel Glaser, ed., Handbook of Criminology, Rand McNally, 1974.

Richard G. Salem and William J. Bowers, "Severity of Formal Sanctions as a Repressive Response to Deviant Behavior," in Law and Society Review, Vol. 7, February 1972, pp. 427-441.

Leonard Savitz, "A Study in Capital Punishment," in Journal of Criminal Law, Criminology, and Police Science, November-December 1958.

Karl Schuessler, "The Deterrent Influence of the Death Penalty," Annals of the American Academy of Political and Social Science, November 1952.

Bernard A. Thorsell and Lloyd W. Klemke, "The Labeling Process: Reinforcement and Deterrent?" Law and Society Review, Vol. 7 February 1972, pp. 393-403.

Michael R. Geerken and Walter R. Gove, "Deterrence: Some Theoretical Considerations," Law and Society Review, Spring 1975, pp. 497-514.

Jack P. Gibbs, Crime, Punishment, and Deterrence, Elsevier, 1975.

#### Deterrence: Case Studies

Donald T. Campbell and H. Lawrence Ross, "The Connecticut Crackdown on Speeding," Law and Society Review, Vol. 3, 1968, pp. 33-53 and 55-76.

H. Lawrence Ross, Donald T. Campbell, and Gene V. Glass, "Determining the Social Effects of a Legal Reform: The British Breathalyzer Crackdown of 1967," American Behavioral Scientist, March-April 1970.

Barry Schwartz, "The Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape," Journal of Criminal Law, Criminology, and Police Science, December 1968, pp. 509-515.

Patrick Tornudd, "The Preventive Effect of Fines for Drunkenness," Scandinavian Studies in Criminology, Vol. 2, 1961, pp. 109-124.

## VI. The Social Origins of Crime

There is another way of understanding society which does ask these questions about the social context of crime and punishment--Marxian social science. The Marxist method of analysis is explained in several essays in:

Richard C. Edwards, Michael Reich, and Thomas E. Wesskopf, The Capitalist System, 1972, Prentice-Hall. Hereafter referred to as Edwards, et. al., 1972.

Editors' introduction, "The Study of Historical Change: The Emergence of Capitalism," in Edwards, et. al. (1972), pp. 50-52.

Karl Marx, "A Contribution to the Critique of Political Economy," in Edwards, et. al. (1972), pp. 52-53.

Paul Baran and Eric Hobsbaum's, "The Method of Historical Materialism."

-These essays describe how Marxists begin the analysis of society and of social change--by examining the historical development of the forces and relations of production within society. This provides a way to understand economic, cultural, and intellectual change, grounding social science in reality rather than in myth. These essays show that the method, dialectical materialism, is not technical or economic determinism.

Using Marxist tools, the authors of The Capitalist System explain what the institutions are which define a capitalist system.

Editor's introduction, "The Capitalist Mode of Production," in Edwards, et. al. (1972), pp. 88-92.

-Explains the function of the system-defining institutions of capitalism: the free market, in which labor-power is bought and sold as a commodity, private property, a largely market-determined distribution of income, hierarchical control of the work process, profit-maximization, and utility-and-income-maximizing economic man.

These books discuss the Marxist theory of class, alienation, and revolution.

Robert Freedman, Marxist Social Thought, 1968.

Istvan Meszaros, Marx's Theory of Alienation, 1970.

Charles Anderson, The Political Economy of Social Class, Prentice-Hall, 1974.

-A Marxist empirical and historical analysis of the U.S. class structure, the state, and recent social movements.

#### VI: A. Class and Inequality in America

The existence of a stable class system in America shapes the opportunities and desires of all of us, and to understand class is essential in order to understand crime.

Richard Parker, The Myth of the Middle Class, Liveright, 1972, pp. 92-166, and 210-216.

-The earlier section includes chapters describing the economic circumstances of the poor, the rich, the lower-middle (or working) class, and the upper-middle class. These show that the distribution of wealth, income, and consumption is highly unequal and that by present-day standards, one-third of the nation is still poor. The tables at the end of the book show that inequality has been roughly stable since the turn of the century, and that social mobility is less potent as a force against stratification than the apologists would have us believe. The conclusions here hold a fortiori since the beginning of the general economic crisis in 1973.

G. William Domhoff, Who Rules America? Prentice-Hall, 1967.

-Documents the existence of a stable, cohesive, nationwide upper class which itself leads or directly finances those who lead major corporations, the Federal executive branch, the foundations, the major universities, and the two major political parties.

Edward C. Banfield, The Unheavenly City Revisited, 1974, Chapter 3, pp. 52-76.

-Holds that social class is determined, not by wealth, income, or a group's economic role and group consciousness, but by the ability of individuals in a group to plan for the future. Hence, the lower class is present-oriented while the middle and upper classes are future-oriented. Most ordinary crime is due to the acts of the "present-oriented" lower class.

Banfield is one of the most articulate conservative social scientists today. His class theory hews to myopic tradition of bourgeois social sciences failing to seek or find the social structures which enhance or discourage present-orientation, and failing to prove his assumption that the class structure of cities is changing toward middle-class and upper-middle class.

Gabriel Kolko, Wealth and Power in America, Praeger, 1967.

-Argues that extreme wealth and poverty, concentrated corporate power, and income inequality are rooted deeply in our economic order. Uses theory, history, and statistics.

For the skeptical, further numerical evidence exists of the inequity and durability of the American class system.

Ferdinand Lundberg, "The Concentration of Wealth and Power in America," in Edwards, et. al. (1972), pp. 169-174.

-Statistics showing that the concentration of wealth (stocks, land, bonds, liquid assets, and states) is extreme and has remained stable in this century. The richest 1 per cent of the population held 31.6 per cent of the wealth in 1922, 20.8 per cent in 1949, and 26.0 per cent by 1956.

Frans Ackerman, Howard Burnbaum, James Wetzler, and Andrew Zimbalist, in Edwards, et. al., (1972), pp. 207-218.

-Statistics: the federal income tax has little equalizing effect on income distribution which

has itself remained relatively stable since World War Two; poverty is still widespread; property-owners receive far higher incomes than wage-earners as a group; racism and sexism sharply cut income for blacks and women, and education fails to provide social mobility.

Still more statistics on income and wealth are available, in

Maurice Zeitlin, ed., American Society, Inc., Markham Publishing Company, 1970.

Robert Lampan, "The Share of Top Wealth-Holders in National Wealth, 1922-1956."

-Statistics in personal (not corporate) wealth; the percentage of wealth held by the richest 1 per cent of individuals fell between 1929 and 1953--but half of this decline disappears if family wealth-holding is considered. The concentration of stocks and bonds rose between 1922 and 1953.

Selma F. Goldsmith, "Changes in the Size Distribution of Income," pp. 116-132.

-The share of personal income going to the wealthiest 5 per cent of Americans fell between 1929 and 1955, during the Depression and in World War Two. However, she notes that the statistics overstate the decline: inflation has had a different impact on the rich and the poor, and unreported, untaxed upper-class income (as from oil depletion and capital gains) is unreported. If national income accounts rather than personal income figures are used, the "equalization" between 1929 and 1955 almost disappears.

Victor Perlo, "A Review of 'Shares of Upper-Income Groups in Income and Savings,'" pp. 134-140.

-Provides a similar critique of Kuznet's famous study on the 1950's and concludes that virtually no equalization has occurred since 1929.

Edward C. Budd, "Inequality in Income and Taxes."

-Income inequality stable since 1944; taxes not only fail to redistribute income, but fall most heavily on the poor.

Thomas E. Weisskopf, "Capitalism and Inequality," in Edwards, et. al., 1972, pp. 125-133.

- Explains why wealth and income inequality is inherent in the capitalist mode of production and how inequality is transmitted from generation to generation.

The other side of the coin of wealth is poverty, which these readings show to be pervasive and galling.

Sherman Barr, "Budgeting and the Poor: A View From the Bottom," in Robert Perrucci and Marc Pelisuc, eds., The Triple Revolution: Social Problems in Depth, Little, Brown and Co., 1958, pp. 530-549.

- Describes how the poor try to survive on a welfare budget and their relationships to the welfare agencies which control them.

Charles Lebeaux, "Life on ADC: Budgets of Despair," in Perrucci and Pilisuc, 1969.

- Describes impact of welfare cutbacks on the poor--a theme that, with the economic squeeze on government, is thoroughly contemporary.

Richard C. Edwards, "Who Fares Well in the Welfare State," in Edwards, et. al., 1972, pp. 244-251.

- Finds the welfare system of the late 1960's inadequate; it failed to redistribute income, allowed the welfare recipient to fall even further behind the average wage earner's position, and supported capitalism by economically punishing those who did not work, and by depoliticizing them.

#### VI: B. Crime and Poverty

A commonplace among criminologists is that crime is highest among the poor. It isn't quite so simple as that--the white-collar criminals among the wealthy are rarely caught and prosecuted, and self-reported crime, as reported to surveys, is almost universal. However, these readings point to a higher rate of ordinary street crime among the poor than the rich.

Belton M. Fleisher, "The Effects of Unemployment on Juvenile Delinquency," in Journal of Political Economy, Vol. 62, No. 65, December 1963, pp. 543-555.

-Fleisher compares the crime rates of youth under 25 to their unemployment rates. He finds that over 80 per cent of arrests of those under 25 are for property crime and that youth account for the majority of property crime. (Whether this is because they commit most such crime or because they are less competent, and get caught, is unclear.) The youth crime rate peaks at 16 years of age at the same time as the peak youth unemployment rate. In general, as unemployment rises so does delinquency--and for those under 17, delinquency rates also rise in wartime as family supervision weakens. If unemployment doubles, delinquency rises 25 per cent. Thus, a full-employment policy would generate significant social savings in lower crime costs as well as higher GNP. Unemployment alone does not explain delinquency; more research on its psychological causes is needed.

Belton M. Fleisher, "The Effect of Income on Delinquency," in the American Economic Review, Vol. 56, No. 1, March 1966, pp. 118-137.

-Studying the correlation between juvenile delinquency rates and unemployment, income, and family disorganization, Fleisher concluded that, other things being equal, a 10 per cent rise in income in high-delinquency areas would cause a 20 per cent drop in the rate of youth crimes against property and the person, especially if the added income took the form of higher male job income rather than transfer payments. Lower unemployment would have a less dramatic effect on delinquency since some of the bad economic effects of unemployment are offset by unemployment insurance. However, a full-employment policy, by raising income, would cut delinquency--high unemployment explains 15 per cent of the increase in youth crime from 1952 to 1960.

Belton Fleisher, The Economics of Delinquency, Quadrangle Books, 1966.

-Sets out in detail, the assumptions, mathematical models, and numerical results of his studies of income and delinquency. The conclusions of his American Economic Review article and the book are the same.

Robert Evans, Jr., "The Labor Market and Parole Success," Journal of Human Resources, Vol. 3, No. 2, Spring 1968, pp. 201-212.

-Released felons have low education, low-status, low-skill, low-wage pre-prison jobs, and little work experience. A study of paroled Massachusetts felons shows that slightly over half failed to successfully complete parole. The main difference between those who failed and those who succeeded was not attitude change or pre-prison work records or educational levels. Rather, the parole successes had done better than the failures in the labor market, earning higher wages, holding more skilled jobs, and suffering less unemployment. Evans therefore recommends improving employees' work skills and education while they are in prison or under close state supervision. Given the record of prison industries, the underfunding of work-release programs, and the prospect for a long period of mass unemployment, especially for blue-collar workers, these recommendations appear to be Band-Aids on a cancer.

Robert Evans, "The Released Offender in a Changing Labor Market," Industrial Relations: A Journal of Economy and Society, Vol. 5, No. 3, May 1966, pp. 118-124.

-The employment prospects of ex-offenders are worsening over time; their educational level is rising more slowly than that of the general population and they are concentrated in low-skill jobs, a shrinking sector of the labor force. (Hence, parolee unemployment rates for men aged 14 to 24 were similar to those for all youth in 1950 and more than double the "normal" rate in 1962.) Evans recommends that the ex-offender "like the ugly duckling, needs to be made over by prison rehabilitation"--a most dubious prospect under present conditions.

Daniel Glaser and Kent Rice, "Crime, Age, and Employment," in American Sociological Review, Vol. 24, No. 5, October 1959, pp. 679-686.

-Using more primitive methods and less reliable statistics than Fleisher, Glaser and Rice contend that rising unemployment is correlated with rising adult property crime rate and falling juvenile delinquency rates--due to the same supervision provided by the unemployed father. For adults over 35, property crime arrest rates fall as unemployment rises which Glaser and Rice attribute to a spurious statistical result of the positive correlation among youth.

Steven Box and Julienne Ford, "The Facts Don't Fit: On the Relationship Between Social Class and Criminal Behavior," Sociology Review, Vol. 19, No. 1, New Series--February 1971, pp. 31-52.

-The orthodox assumption that crime rates are higher among the poor than in the upper classes is unwarranted. Using juvenile delinquency data, Box and Ford argue that a higher proportion of "ordinary," lower-class crime gets reported than does upper-class crime and that police seek offenders in lower-class areas. Hence the higher lower-class rates may be a statistical artifact--to some degree.

They cite many contradictory surveys among youth of self-reported crime and find that there is no strong evidence that the lower class does or does not have a crime rate well above the upper-class rate. Their contention that this disproves labeling theory is dubious and requires a leap of faith to accept.

W. R. Brythaway and D. R. May, "On Filtering the 'Facts' of Social Class and Criminal Behavior: A Rejoinder to Box and Ford," The Sociological Review, Vol. 19, No. 4, New Series, 1971, pp. 585-707.

-A turgid, unsuccessful rebuttal to Box and Ford.

Sutherland (1970), pp. 218-224.

-Crime by working class people is overrepresented in the criminal justice system. Pp. 225-227--statistics on the relationship between crime and depressions.

Kenneth Polk, Dean Frease, F. Lynn Richmond, "Social Class and Delinquency," Criminology, Vol. 12, No. 1, May 1974, pp. 84-96.

-Claims that low high school grade point averages are a better prediction of delinquency than the parents' low class position (as a blue-collar worker). This survey doesn't reveal that the blue-collar/white-collar distinction is of little value in measuring class differences and that academic achievement is crucially influenced by the parents' class.

These readings indicate that ordinary street crime is most common among the poor and the unemployed. This suggests several reasons why street crime has risen in the U.S. postwar period, the statistical illusion and changing age distribution of the population aside.

(1) "Poverty" is the product of inequality, a hardy weed which has held its own since World War II. If 1972 standards of living were used, the same proportion of the population was deprived as in 1947. It is plausible that the poor person would make the same cost-benefit choice, weighing his/her utility from illegal and legal activity, now as in 1947.

(2) The urbanization of the poor--a result of agricultural mechanization and the growth of jobs in the cities--and the rise of the Black movement have meant that many angry, poor youth are concentrated in ghettos where a street-crime prone subculture can easily arise.

(3) The paraded affluence of the upper classes and inflation arouse expectations which the poor can hardly meet legally. Also, the long boom, the city, and "easy" urban transportation provide the opportunities for property crime, the needed anonymity, and the chance to easily travel away from the ghetto to the scene of a crime.

(4) The American economy since 1958 has experienced full employment, under 4 per cent unemployed, only in the Vietnam War. Since 1958, youth unemployment has remained chronically high; it has risen greatly during the recent crisis. Also, due to inflation, taxes, and slow economic growth, a worker's average weekly real spendable pay--after 25 decades of almost uninterrupted growth--stagnated in 1965, and fell slowly until 1970. Real wages rose once again in 1971 and 1972 but the economic crisis has driven real wages down close to 1965 levels. The likelihood of a slow recovery with continued severe inflation and unemployment does not promise a rapid improvement in this situation. In short, Belton Fleisher's criteria for cutting delinquency rates are not being fulfilled. It is probably no accident that official crime rates rose at an accelerated rate between 1965 and 1970 and again after 1973.

(5) The U.S. is moving toward a dual economy in which many female, poor, or unskilled or Third World workers will be unemployed or left in a low-wage industry. Such industries, usually in competitive markets, can hardly (even in prosperity) grow as rapidly as oligopolies. Low rates of investment and low "productivity" mean permanent low wages for many workers.

Poverty and poverty-induced crime, then, is a collective problem, not the result of individual failures.

Additional readings on crime and class:

David Bogen, "Juvenile Delinquency and Economic Trends," American Sociological Review, April 1944, pp. 178-184.

T. G. Chiricos, "Inequality in the Imposition of the Criminal Label," Social Problems, Spring 1972, pp. 553-572.

Michael Fooner, "Economic Factors in Crime and Delinquency," New York Law Journal, March 1969.

Edward Green, "Race, Social Status, and Criminal Arrest," American Sociological Review, June 1970, pp. 476-490.

J. Harry, "Social Class and Delinquency," Sociological Quarterly, Spring 1974, pp. 294-301.

Lynn McDonald, Social Class and Delinquency, Faber and Faber, 1969.

Llad Phillips, "Crime, Youth, and the Labor Market," in the Journal of Political Economy, Vol. 80, May 1972, pp. 491-504.

Harwin Voss, "Socio-economic Status and Reported Delinquent Behavior," Social Problems, 1966, pp. 314-324.

Eugene P. Wenninger and John P. Clark, "Socio-Economic Class and the Correlation with Illegitimate Juvenile Behavior," Journal of Research on Crime and Delinquency, 1964, pp. 1-32.

#### VI: C. The Role of Government

The prevailing liberal view is that governments are--at least potentially--neutral bodies within which different interest groups contend for desired policies. Marxists view government as a body whose basic function is to stabilize capitalist relations of production. Laws and government programs may do so by force, by concessions designed to cool-out opposition, by public investment and demand management designed to foster economic stability and capital accumulation, and by the production of bourgeois ideology--as is done in school. These readings expand upon these theses:

Alan Wolfe, "Political Repression and the Liberal Democratic State," in Richard Quinney, ed., Criminal Justice in America: A Critical Understanding, Little, Brown, and Company, 1974, pp. 50-61.

-A solid historical, theoretical treatment of legal repression in capitalist democracies. He sees legal repression of dissent as integral to maintaining capitalist power but the forms of repression change over time. Thus, 19th century employers relied upon private police and thugs to break strikes and drive radicals out of town; with the growth of government in this century, government has taken over most of this function. Repression tends to strike radical movements which have a mass more severely than the more extreme, sectarian organizations. The use of repression is not entirely safe for government; it sometimes loses its legitimacy in this way.

Kenneth Cloke, "The Economic Basis of Law and the State," in Robert Lefcourt, ed., Law Against the People, Random House, 1971, pp. 65-80. (Referred to hereafter as Lefcourt, 1971.)

-A murky but passable Marxist historical analysis of the role of law in the United States.

Paul Sweezy, "The Primary Function of the Capitalist State," in Edwards, et. al., (1972), pp. 133-135.

-Explains the Marxist theory that the primary role of the government is to protect private property.

Richard Edwards, Arthur MacEwan, et. al.; "Ruling Class Power and the State," in Edwards, et. al., (1972), pp. 135-141.

-The government's role is to keep the ruling class (see Domhoff, above) in power by stabilizing the economy, making concessions to the discontented poor (as during the New Deal), repression, and socializing business' costs of production (as by controlling pollution and by financing education of the labor force). This orientation of the state and the ruling class itself is not a conspiracy: the class rules using ideology, maintenance of its social cohesion, and log-rolling between different camps within the ruling class.

James O'Connor, "The Expanding Role of the State," in Edwards, et. al., (1972), pp. 192-201.

-Explains why the role of government and law in society has been rising since the transition from competitive to monopolistic

capitalism in the latter part of the last century, due to the inability of the private economy to stabilize itself, carry out necessary but unprofitable investment (as in providing education and health care for the maintenance of a productive labor force), or to expand markets and access to overseas resources without government protection. Includes statistics on the rising role of government within the economy.

VI: D. The Normality of White-Collar Crime

This understanding of the role of government begins to explain why certain acts are "crimes" and others are not, even if both acts cause harm to an innocent person, by intent or by negligence. The property crimes of the poor or working person: larceny, bad checks, burglary, robbery, and auto theft, violate property rights and may involve violence. (Of course, an ordinary crime against a middle-class person is more likely to get serious police attention than a similar crime against a poor or nonwhite person.) Meanwhile, a large-scale fraud, price-fixing, and tax evasion cost more than ordinary crimes, but such crimes are rarely prosecuted when found. The perpetrators are less likely to go to jail if convicted than would be an ordinary mugger. These crimes are committed on a large scale by the respected and powerful and most judges are reluctant to send one of their own to jail. Of course, "legal" harms such as producing unsafe goods, failure to protect workers against industrial accidents, bait-and-switch advertising, repressing unions, and so forth are normal practices of the profit-maximizing firm and will not be seriously impeded by the law.

There is ample documentation for the foregoing arguments about white-collar crime.

Richard C. Edwards, "The Logic of Capitalist Expansion," in Edwards, et. al., pp. 98-106.

- Explains how the normal operation of capitalism drives businesses and capitalists to maximize profits and to continuously seek expanding markets. (Under these conditions, is it any surprise that many businessmen would decide to break some regulating law when they feel hard-pressed?)

Edwin M. Schur, "A Society of Friends," in Charles E. Reasons, ed., The Criminologist: Crime and the Criminal, Goodyear Publishing Company, 1974, pp. 239-245 (referred to hereafter as Reasons, 1974).

- A general essay on the causes of white-collar crime which argues that American crime is caused by U.S. society's dynamism, complexity, materialism, individualism, and impersonality. Social action is needed to reduce fraud; laws can deter misbehavior.

Gilbert Geis, "Deterring Corporate Crime," in Reasons, (1974), pp. 246-259.

- Society doesn't usually judge white-collar criminals harshly. This is because they inflict their damage slowly, in small amounts at a time, and because those who run the criminal justice system are in the same social class. The remedies are to change public psychology and to increase penalties for crimes committed by businessmen.

Edwin H. Sutherland, White Collar Crime, Dryden, 1961.

- This book is the classic study of crimes committed by businessmen and corporations. Sutherland finds widespread, repeated violations of civil and penal law by the U.S.'s 70 largest corporations since 1900. He discusses the cost, history, and ways of committing restraint of trade, monopolization, rebates, patent and copyright fraud, dishonest advertising and financial manipulation, violations of wartime economic controls, and other crimes. White collar crime breeds within

the business elite; people who enter this sub-culture learn to go along to get along and to compete by any means necessary. Such crime is well-organized and virtually unopposed by the government. Officials' ties to the business class include a common culture, possible blood ties or friendships, and either past employment or the hope of future employment in a major corporation. Also, business can block or aid government programs and fund or starve political office-seekers.

This book is well-documented although there is confusion over the technical notion of "white collar crime." Sutherland includes as crimes those civil law violations which are enforceable by a criminal fine or prison if the corporation or businessman refuses to obey a court order or pay a civil fine. Despite this difficulty the book makes its point--that crime is built into the uppermost levels of American society. There are good, economically-informed statements in the book on the economic and social implications of the shift from competitive to monopoly capitalism.

Gilbert Geis, ed., White Collar Criminal, Atherton Press, 1968. Referred to hereafter as Geis, 1968.

-A collection of essays on the definition, extent, results, methods, and sanctions applied to white collar crime.

Marshall B. Clinard, "Criminological Theories of Violations of Wartime Regulations," in Geis (1968), pp. 71-87.

-Describes the violations and enforcement of the World War II price controls; argues that the different subcultures of law-abiding and law-breaking businessmen do not explain why they do or do not break the law--although their personal histories may.

Robert E. Lane, "Why Businessmen Violate the Law," in Geis (1968), pp. 88-102.

-Finds that white collar crime is most prevalent in declining industries, and when regulatory laws are ambiguous, ill-publicized, or not supported by the businessmen.

Gilbert Geis, "The Heavy Electrical Equipment Antitrust Case of 1961," in Geis (1968), pp. 103-118.

- Summarizes the story of the electrical price-fixing conspiracy and its prosecution in 1961; supports the view that businessmen break the law after they learn to do so in a subculture favorable to such lawbreaking.

Raymond C. Baumhart, "How Ethical Are Businessmen?" in Geis (1968), pp. 119-135.

- A survey of businessmen's ethics which finds that shady practices and conflicts over ethics are common.

Alan Dershowitz, "Increasing Community Control Over Corporate Crime: A Problem in the Law of Sanctions," in Geis, 1968, pp. 136-154.

- Examines present sanctions for crimes by business and finds the laws and their administration inadequate. Recommends more severe penalties.

Richard Quinney, "Occupational Structure and Criminal Behavior: Prescription Violations by Retail Pharmacists," in Geis, (1968), pp. 210-218.

- Pharmacists have two roles: as businessmen and as professional people. A survey shows that those who identify themselves primarily as businessmen are more likely than "professionals" to violate the law.

Kenneth Reichstein, "Ambulance Chasing: A Case Study of Deviation and Control Within the Legal Profession," in Geis (1968).

- Analyzes the origins and social role of ambulance chasing; as a result of social and economic stratification within the legal profession, and as a service to a particular client market.

Geis (1968) also contains some essays on the modus operandi of business fraud.

David Caplovitz, "The Merchant and the Low-Income Consumer," pp. 237-244.

- There is a dual market in consumer goods, one for the well-off and another, exploitive one for the poor.

President's Commission on Consumer Interests, "Home Maintenance and Repair," pp. 245-254, and "Automobiles."

George Feifer, "Russia Shoots Its Business Crooks," Geis (1968), pp. 320-326.

-Studies the implementation of the 1961 death penalty decrees for economic crime.

Marshall B. Clinard, "The Black Market," in Marshall Clinard and Richard Quinney, Criminal Behavior Systems: A Typology, Holt, Rinehart, and Winston, 1967, pp. 151-163.

-Describes the pervasiveness, "normality," and operations of the World War II black markets. Criticizes differential association explanations of white-collar crime for ignoring the impact of the criminal's personality, of the economic pressures he/she faces, and of government enforcement.

"White collar" crime was not always so genteel and nonviolent. A chapter from Marx's Capital, in Edwards, et. al., 1972, pp. 61-66, describes how the English capitalist class accumulated their wealth: forcible enclosure, slavery, colonialism, piracy, and child labor.

Additional readings on white-collar crime:

Marshall B. Clinard, The Black Market: A Study of White Collar Crime, Holt, Rinehart and Winston, 1952.

H. E. Pepinsky, "From White Collar Crime to Exploitation," Journal of Criminal Law, Criminology, and Police Science, June 1974, pp. 225-233.

David Sanford, ed., Hot War on the Consumer, 1969.

Gordon B. Spivack, "Antitrust Enforcement in the U.S.--A Primer," Connecticut Bar Journal, 37 (September) 1963.

Warren G. Magnuson and Jean Carper, The Dark Side of the Marketplace, Prentice-Hall, 1968.

Crime and similar, though legal harms, are built into capitalism and grow in tandem with it. A businessman or a corporation must keep corporate profits rising or risk being bested in the drive for new markets and lower

costs. The law allows wide latitude for profit-maximization and the social mores tolerate it--and both wink at shady or illegal acts designed to do this. Likewise, an individual is trained from birth to be greedy, acquisitive, and individualistic, the better to be able to consume and to respond appropriately to monetary incentives for alienated labor. If an individual's socially-oriented wants outrun the income he/she can command because of his/her ownership of land, capital, or labor-power--then that person may well commit economic crime.

VI: E. Hard Time Ahead--The Economic Crisis

There will be another underlying crisis which is almost certain to propel crime rates upward--the world economic crisis.

The recession which began in 1973 is no ordinary postwar recession with a one-year dip in U.S. living standards followed by the ascent of the economy to a new high. Inflation and unemployment have worsened steadily over the last decade because the economic structures upon which America's long 1945-1969 growth have crumbled. In short, these are the problems:

(1) The U.S. economy has, for the last 100 years, become increasingly controlled by large firms--trusts, monopolies, oligopolies, multinational corporations. Such firms can ride roughshod over the old "free" market, giving them higher profits while worsening inflation and economic stagnation.

(2) The U.S. defeat in Indochina and the rise of OPEC are the most dramatic, visible recent signs that U.S. military and economic power is declining. More and more nations choose to develop economically by themselves or with Communist aid, spurning the profit-seeking advances of the U.S.

government and of the large U.S. corporations. So, our access to profitable and ready markets, cheap labor, and cheap resources dwindles.

(3) Our economic power vis a vis Europe and Japan has declined since 1960 as their industries became more efficient and internationally competitive than ours. Hence the dollar devaluations and the turmoil on the international monetary market.

(4) The use of the military budget as a pump-priming device for 30 years has built inflation into the economy while failing as an efficient device for generating jobs.

(5) The orthodox Keynesian policies of higher Federal spending and easy money in recessions, and lower spending and tight money in inflationary booms are bankrupt. The political pressures to raise government spending are irresistible, ruling out budget cuts as a serious alternative. Tight money and high interest rates would stop inflation if given long enough to work and pursued severely enough. But the costs would be unacceptable--double-digit unemployment and a real risk of a financial panic. We all thought that panics were nightmares from the bad old days, and that an 1893, 1907, or 1933 would never recur. However, the absence of a depression after World War II allowed and encouraged the pyramiding of government, business, and personal debt. Debt inflation helped the economy and prices to rise. But the absence of a panic to wash out bad debts and investments has meant that the debt and credit structure has grown unsound. After 1966, the go-go years' hangover began to set in. The government tried to stabilize or cut the money supply to stop inflation in 1966, 1970, and 1973-74--and every time, the cash-weak debt pyramid came ever closer to crumbling.

All of these unfavorable conditions have limited America's room to maneuver its way out of the present economic crisis. As a result, the recession which began in 1973 was extraordinarily severe and the return of prosperity and "full" (or 5 per cent jobless) employment is far in the future. Many who lose their job in this slump will never work again; millions more are being impoverished.

Here are several readings which provide a Marxist overview of the origins, scope, and possible effects of the economic crisis.

Douglas F. Dowd, "Accumulation and Crisis in U.S. Capitalism," Socialist Revolution, Vol. 5, No. 2, Issue 24, pp. 7-44.

-Overview of U.S. economic history since the 1920's, which describes the crisis of the 1970's as the result of contradictions within the structures which sustained the postwar boom.

Analyzes the political repercussions of the state-directed capitalism which he deems likely to emerge as the attempted solution to the crisis.

"The Economic Crisis," Monthly Review, Vol. 26, No. 10, March 1975, pp. 1-8; continued in the April 1975 issue, pp. 1-13.

-An analysis based on the theory that monopoly capitalism has built-in tendencies to stagnation, as occurred in 1907-1915 and 1929-1941; reaches conclusions similar to Dowd's on the likelihood of increased Government direction of the economy.

(For a fuller explanation of the Monthly Review stagnation theory, see Paul Baran and Paul Sweezy, Monopoly Capital, Monthly Review Press, 1966. Chapter 7, "The Absorption of Surplus: Militarism and Imperialism," pp. 178-217, and chapter 9, "Monopoly Capitalism and Race Relations," pp. 249-280, are good short Marxist analyses of these problems.)

James Crotly and Raford Boddy, "Who Will Plan the Planned Economy?" in David Mermelstein, ed., The Economic Crisis Reader, Vintage Books, 1975, pp. 80-91. (Hereafter referred to as Mermelstein, 1975!)

-An analysis of the events since 1965 which led up to the current economic crisis; describes the limitations of capitalist economic planning.

Arthur MacEwan, "Changes in World Capitalism and the Current Crisis of the U.S. Economy," in Mermelstein, 1975, pp. 71-80.

-Describes the world trade and financial order that the U.S. built after World War II, and how U.S. economic hegemony over the "Free World" disappeared.

David M. Gordon, "Capital vs. Labor: The Current Crisis in the Sphere of Production," in Mermelstein, 1975, pp. 392-406.

-Emphasizes the role of the conflict of the division of income between labor and capital in the current crisis; uses this framework to discuss the erosion of profits from the mid-sixties through 1970, the use of controls in 1971, and the government's current strategy in fighting the recession.

Monopoly is not just an abstract problem for liberal crusaders; its presence in our economy worsens both inflation and unemployment.

Richard C. Edwards, "The Impact of Industrial Concentration on the Economic Crisis," in Mermelstein, 1975, pp. 213-223.

-Describes how monopolized industries contribute to inflation and unemployment; criticizes anti-trust policy as a realistic or effective solution to the problem; shows that fiscal and monetary deflation are less and less effective as monopoly power in the economy increases.

Richard C. Barnett and Ronald Muller, "The Negative Effects of Multinational Corporations," in Mermelstein, 1975, pp. 152-162.

-Multinational firms' foreign investment has exported jobs and income from American workers at an accelerating rate since the mid-1960's.

"Keynesian Chickens Come Home to Roost," in Monthly Review, April 1974, pp. 1-11.

-One strategy by which the government averted depression after World War II was deficit spending and credit expansion, another was encouraging the expansion of corporate debt. Now, the inflation generated by these cures can't sustain prosperity. Documented by statistics on the growth of debt, and its economic efforts.

Business Week, "The Debt Economy," in Mermelstein, 1975, pp. 175-189.

-Explains the economic difficulties facing banks and corporations as the result of overextended debt. A solid analysis by one of the most influential organs of the U.S. business press.

"Banks: Skating on Thin Ice," Monthly Review, February 1975, pp. 1-21.

-Marxist analysis of the causes and possible consequences of the low liquidity of the U.S. banking system.

#### VI: F. The Dual Economy

For the poor, the slow recovery will be the more traumatic because the U.S. has developed a dual labor market. One labor market is for skilled or professional workers; it offers relatively good wages and steady jobs. It consists of numerous government administration, education, and private manufacturing jobs. The secondary labor market includes low-skill, low-wage jobs: unskilled and semiskilled blue-collar unions with weak or nonexistent unions, service workers (janitors, waiters, nurses' aides, and the like) and many low-level white-collar workers.

Here are readings about the development of a "dual economy" in the United States.

Barry Bluestone, "Economic Crisis and the Law of Uneven Development," Politics and Society, Vol. 3, No. 1, Fall 1972, pp. 65-82.

-Documents the growth of a "dual economy" in the U.S. since World War II, with a growing gap in wages and investment between the monopolistic and the peripheral sector. Federal defense spending and income tax loopholes worsen this uneven development. Government transfer payments have, at best, held income unequally stable since World War II; then rising size has been canceled out by the strong tendency toward a more unequal income distribution.

James O'Connor, "The Economic Structure of American Capitalism," in David Mermelstein, ed., Economics: Mainstream Readings and Radical Critiques, 2nd edition, Random House, 1973, pp. 63-66.

-Discusses the rise of a dual private economy and the expanding economic functions of government.

O'Connor's The Fiscal Crisis of the State (1973) examines these issues in depth. There is a good summary of the book by David Gold in David Mermelstein's The Economic Crisis Reader, 1975, pp. 123-131.

These readings show how the normal operations of a capitalist economy produce inequality, leaving the poor in ghettos with little hope of leaving. The class bias of government and legal business behavior that resembles white-collar crime create the conditions in which street crime flourishes.

Here follow some statistical readings on monopoly power in the U.S.-- the driving power in the dual economy.

Gardiner Means, "Business Concentration in the American Economy," in Edwards, et. al., (1972), pp. 146-156.

-History and statistics of the rise of monopoly power in U.S. business: control over assets by the largest corporation, manufacturer's mergers, and the high concentration of profits.

M. A. Adelman, "The Two Faces of Economic Concentration," in David Mermelstein, ed., Economics: Mainstream Readings and Radical Critiques, 2nd Edition, Random House, 1973, pp. 67-71.

-Concentration ratios, per se, tell little about the economic and non-economic performance and impact of an industry.

Paul Baran and Paul Sweezy, "The Behavior of the Large Corporation," in Edwards, et. al., 1972, pp. 162-168.

-Despite the much-heralded "separation of ownership and control," corporations still seek to maximize profits--rather than "satisficing"--seeking growth and "reasonable" profits.

Victor Perlo "Ownership and Control of Corporations: The Fusion of Financial and Individual Capital," in Maurice Zeitlin, ed., American Society, Inc., Markham Publishing Company, 1970, pp. 265-282.

-Banks have a strategic position in modern corporations--as stockholders, members of boards of directors, and in their role as financiers of merger. Bankers, stockholders, and managers have the same interest--to maximize profit.

A double squeeze is in operation. Declining or stagnant world demand limits growth of private sector jobs of all types; many of the postwar growth industries have played themselves out. Governments, especially state and local, face mounting debt, popular resistance to regressive tax structures, and upper-class resistance to tax reform. The upshot is a fiscal crisis and, at best, no growth in government jobs in the foreseeable future. Hence, growth in the primary labor market will be markedly slower than in the recent past. The heaviest impact of this will fall on those trained since 1960 in ever-growing numbers for what was assumed to be an ever-rising number of jobs--jobs that are now unlikely to materialize.

This will come as a rude jolt after years of a "revolution of rising expectations." Some of the "surplus" primary market workers will be driven

by need into economic crime; many more--including youth who see that there is no place for them in society--may turn to drugs or "expressive" crime--vandalism, sabotage, and mayhem.

For those now caught in the secondary labor market, the prospects are even worse. Few of these workers have the "protection" afforded by a good union, a skill, or a degree. They work in jobs for which there is a marked labor surplus and are the most defenseless targets of layoffs and government program cutbacks. The competitive or declining industries which employ them bear the brunt of the economic crisis and no foreseeable prosperity is likely to lift them into economic security.

Monthly Review underscores the seriousness of mass unemployment in "Capitalism and Unemployment," in the June, 1975 issue, pp. 1-14. The article shows that government statistics hide the real extent of unemployment. If the economy were to create jobs for those now jobless and for the expected growth of the labor force over the next decade, the economy would have to grow far more rapidly than in the prosperous 1945-1969 period merely to keep unemployment rates at their postwar average. Under these conditions, it seems plain that the rate of "ordinary" crime will keep on rising. Economic crime, of course, rises and falls with unemployment; it may be that crimes of violence could also rise with people's increasing frustration and despair over hard times--a despair they take out upon their neighbors. Is it any accident that the violent crime rate reached a peak in 1933 not surpassed until the early sixties? (President's Commission, 1968, p. 102).

Business crime, too, should increase as firms compete for a stable or shrinking market and face great uncertainty in sales and profits. The corrupt deals which attended the 1973-1974 oil shortages provide a taste of things to come.

There are two lines of attack that the government might make upon a slump-induced crime wave. One would be to design a policy that could end the economic crisis. This seems to be an empty hope; these readings on government economic policy show why.

Raford Boddy, and James Crotty, "Class Conflict, Keynesian Policies, and the Business Cycle," in Monthly Review, Vol. 26, No. 5, October 1974, pp. 1-17.

-Statistical analysis of U.S. business cycles from 1945 through 1972, showing that businesses face a profit squeeze in the latter part of an economic expansion. Recessions, while temporarily lowering profits, restore the long-run conditions for profitable capitalist growth by reducing pressures for wage increases (due to high recession unemployment). Argues that government "stabilization" policy is in tune with business' need for an occasional slump, producing what is--in part--a political business cycle.

Stephen W. Welch, "Zapping Labor: A Radical Perspective on Wage-Price Controls," in Mermelstein, 1975, pp. 384-391.

-Explains the origins of the 1971-1974 wage/price controls, and why, after the August 15 freeze, business supported controls and labor opposed them.

William K. Tabb, "Capitalist State Planning is Not Socialism," in Mermelstein, 1975, pp. 406-412.

-A government-directed economy in the interests of capital should not be confused with socialism; a closer likeness is the economic policies of right-wing dictatorships.

## VII. The Evolution of the Capitalist Criminal Justice System

It seems likely, instead, that government will fall back upon a different alternative--to change the criminal justice system to cope with increasing crime. Depending on the strength of the left in this country, the degree of racial division, and other conditions, federal, state, and local authorities could continue their present conservative path. This means eroding suspects' and defendants' rights, increasing police numbers, pay, and powers, and more generally, urging the police to "get their man"--no matter what the cost. Or, there might be a "liberal" solution to the problem: more professionalism and higher pay for police and other criminal justice personnel; a crackdown on felonies and the decriminalization of drugs, gambling, and sexual nonconformity. Neither change in the criminal justice system should be a surprise although the conservative solution seems likelier at this time. The criminal justice system has always evolved over time, changing to meet the needs of the changing society within which it operates.

### VII: A. The Evolution of Law

These readings show that the most basic features of the justice system have changed. Law itself has not always existed.

Stanley Diamond, "The Rule of Law Versus the Order of Custom," in Richard Quinney, ed., Criminal Justice in America: A Critical Understanding. Little, Brown, and Company, 1974--referred to hereafter as Quinney, 1974.

-Analysis of the rise of law, concentrating on the early West African states, which argues that law

arises as custom and pre-state local communities break down. Early laws were designed to protect the rising state, not to institutionalize local custom.

Mark Kennedy, "Beyond Incrimination," in *Reasons*, 1974, pp. 106-135.

- "Crime" and "punishment" are culturally and historically specific types of norm violation and reprisal. These concepts arose with the breakup of the feudal system of blood feuds and collective responsibility for crime and with the rise of unified national states. These new states defined new types of crime to deal with the emerging market and private property relationships. A "crime" is a violation of a state-imposed law for which a penal sanction may be imposed. Revolutions change the nature of "crime."

This essay's most valuable material is the history of law under feudalism and in the early capitalist period. Kennedy's theory equating "crime" and "punishment" is provocative but needs more historical backing than it gets.

After capitalism arose, law continued to change.

William E. Nelson, "Emerging Notions of Modern Law in the Revolutionary Era: An Historical Perspective," in *Quinney*, 1974, pp. 100-126.

- History of the change in crime, criminal law, and procedure in Middlesex, Massachusetts before and after the American Revolution. Before 1760, most prosecutions were for immorality--fornication, Sabbath-breaking, and the like. The defendants came from all social classes. After 1790, morals prosecutions dwindled, while prosecutions for attacks on property--theft--soared. Now, most defendants were the urban poor.

Before 1760, people trusted the juries and the precedent-bound judiciary as sufficient to keep law from being oppressive. After 1760, as the Government--rather than the offended person--began prosecuting crime, it came to be seen to a greater degree as an antagonist to the individual. Hence the post-1780's restrictions on arrest warrants, judicial interrogation, and the assignment of counsel in capital cases.

This is good legal history and it would go well with economic history of this period. Was the shift toward property crime and prosecution of lower-class defendants after 1790 the result of the birth of an urban proletariat in eastern Massachusetts? Who favored the creation of legal safeguards for the accused and had the power to put them through?

#### VII: B. The Creation of the Police

As crime and class conflict increased in the 19th century it became necessary for governments in the industrial countries to create bodies of professional law-enforcers--the police.

Allan Silver, "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riots," in Quinney, 1974, pp. 152-169.

-Describes the rise of the first modern police force in London in 1829, replacing posses of the wealthy (and the military) as enforcers of order. Both the upper class and the poor understood the social meaning of the British riots between 1790 and 1850--a "tradition of riot" lacking in the United States.

Evelyn L. Parks, "From Constabulary Society to Police Society: Implications for Social Control," in Reasons, 1974, pp. 271-289.

-Describes the transition of law enforcement in America from a force of constables which help private citizens prosecute crime to a professional force which seeks to prevent crime and maintain order. The police have been the shock troops of efforts to impose a uniform moral order, variously armed with laws prohibiting liquor or drugs, and a vast array of misdemeanor laws which are useful in controlling the poor.

The best part of this essay is on the rise of the professional police in America in the mid-19th century.

### VII: C. The Creation of Prisons

Punishment, too, has changed.

David Rothman, "The Invention of the Penitentiary," in Quinney, 1974, pp. 299-322.

-Describes the development of the penitentiary system in the U.S. after 1820. Both the Auburn and Pennsylvania plan prison tried to isolate the inmates from corrupting influences and to reform them through hard, regular, disciplined work. These systems were the result of the failure of jails after 1790--and descriptions of this failure are sound similar to present criticisms of U.S. prisons.

Martin B. Miller, "Rediscovering the 19th Century Prison," in Issues in Criminology, Vol. 9, No. 1, Spring 1974, pp. 91-114.

-A history of the American prison system from the 1700's through the Progressive Era. Analyzes prison reforms as methods of maintaining administrative control over prisoners.

### VIII. Problems of Criminal Justice

The criminal justice system as it operates in America today is shot through with class bias and injustice.

Robert Lefcourt, "Law Against the People," in Quinney, 1974, pp. 253-263.

-An overview of the class biases of the criminal justice system, written with a surprisingly small amount of rhetoric.

### VIII: A. The Police

The police are on the front lines of the war against crime. These readings describe how they really operate.

Jerome Skolnick, Justice Without Trial: Law Enforcement in A Democratic Society, John Wiley and Sons, 1966.

-An account of how police work in "Westville," based on Skolnick's observations of police in the field and in the stationhouse. He examined the police subculture, police discretion in arrest, enforcement of prostitution and narcotics laws, and police tactics to raise the crime clearance rate. Skolnick found numerous illegal and unconstitutional practices, and finds them to be normal and necessary to police work as it is now defined.

William Vega, "The Liberal Policeman: A Contradiction in Terms?" in Issues in Criminology, Vol. 4, No. 1, Fall 1968.

-The police role changes liberals into conservatives. Liberal police must assert authority, enforce unenforceable laws, conflict with court rulings in their daily work, and deal with the authoritarian police subculture. More education and professionalism won't liberalize the police; the subject of professional courses are heavily oriented toward crime control and order.

Philip G. Zimbardo, "Coercion and Compliance: The Psychology of Police Confessions," in Perrucci and Pilisuc, 1968, pp. 550-570.

-A case history of a false confession extracted by a U.S. police force, using physical and/or mental pressure; also cites the coercive but nonviolent interrogation techniques seen as constitutional by a police interrogation manual. Argues that false confessions are common but unnecessary to the detection of crime.

Gary T. Marx, "Civil Disorder and the Agents of Social Control," in Reasons, 1974, pp. 290-321.

-History of police role in U.S. race riots from 1919 to the late 1960's. Finds that, from 1919 to 1943, police often joined in riots against blacks or passively watched the white mobs. In the 1960's, police did move against the rioters--who were now black. Describes the police tactics in the 1960's riots which worsened the violence and disorder. Holds that, in general, the controllers' behavior has improved over time.

The history of how police have dealt with riots in the U.S. is worthwhile, but the conclusions of the ongoing and possible solutions to this problem should be taken with several grains of salt.

Paul Chevigny, "Police Power," in Quinney, 1974, pp. 200-213.

-Case studies from the New York police showing that any person who is a deviant or outcast or who defies the police may expect abuse, arrest, or trumped-up charges. Police perjury is rife, tacitly tolerated by police leaders and politicians, who need a "plausibly deniable" way to get the dirty work of law enforcement done.

Jeff Gerth, "The Americanization of 1984," in Quinney, 1974, pp. 213-228.

-Muckraking about the Federal criminal justice machinery from 1966 through 1972. Argues that the drives against drugs and organized crime in this period were pretexts to get repressive laws that could be used against street criminals and political dissenters. Contains dirt on the wide dissemination of arrest records, intrusive surveillance and dossier-making, and repressive aid programs to local police; severely critical of LEAA.

#### VIII: B. Prosecution

The police enforce class law in a class society and the accused can't expect relief at the hands of the prosecution.

William J. Chambliss and Robert B. Seidman, "Prosecution: Law, Order, and Power," in Quinney, 1974, pp. 235-253.

-Plea-bargaining, under which over 90 per cent of felons are convicted without jury trial, is unjust; the guilty plea can cover up police and prosecutor misconduct. Lawyers--public defenders or private courthouse "regulars"--become the prosecutor's collaborators. Prosecutors use multiple, heavy charges and pre-trial detention to get a guilty plea; their harshest actions are against street crime, not white collar crime.

VIII: C. Defense Attorneys

Nor are defense attorneys reliable allies for the defendant.

Abraham S. Blumberg, "Covert Contingencies in the Right to Assistance of Counsel," in Perrucci and Pilisuc, 1968, pp. 530-549.

- Describes commonplace abuses of defendants by defense lawyers--plea collusion with the prosecutor and the judge to maintain assembly-line justice, and manipulating court procedures to get the maximum fee for the minimum work.

One reason is that lawyers are usually from the middle and upper classes and so do not readily identify with their lower class clients. Another problem is the system of legal education.

David N. Rockwell, "Education of the Capitalist Lawyer: The Law School," in Lefcourt, 1971, pp. 90-104.

- Describes how the course content, methods of teaching, class background of law students, and rewards for "establishment" law channel law students, especially in elite schools, away from social activism.

Robert Lefcourt, "Lawyers for the Poor Can't Win," in Lefcourt, 1971, pp. 123-139.

- Court-appointed lawyers can't do effective work because of their ties to the prosecution, the inadequacy of their pay and resources to the tasks demanded of them, political pressures to avoid class action suits and unpopular cases, and legal ethics which limit the allowable vigor of an attorney's defense.

VIII: D. The Courts

Nor are the courts free of bias. Political show trials and the bail system, indeed, indicate otherwise.

David Sternberg, "The New Radical-Criminal Trials: A Step Toward a Class-In-Itself for the American Proletariat?" in Quinney, 1974, pp. 274-294.

-Describes in detail how radical defendants, lawyers, and spectators disrupted the 1969-1972 "conspiracy" trials and why they did so. Also, outlines the legal system's countermoves against the disruptions.

The historical material is interesting, showing how the justice system operates under stress. But Sternberg's conclusions are off base. He expected that working-class people in large numbers would start attending trials of members of their own class; that plea-copping would disappear as defendants became aware of public support, and that the defendant's power position would improve vis a vis the criminal justice system.

But none of this has happened, with good reason. Sternberg believed that many working-class people identified with and learned to imitate the behavior of radicals in the conspiracy trials. But most working-class defendants probably either knew nothing of those trials or considered them too bizarre to imitate. Furthermore, defendants are not a class; even if most are poor, most have not begun acting together politically against racial, sexual, and class oppression.

Sutherland, 1970, pp. 228-234.

-Describes how corruption, bribes, perjury, and political influence on courts are a normal part of the workings of the criminal justice system.

William M. Landes, "An Economic Analysis of the Courts," in Gary S. Becker, ed., Essays in the Economics of Crime and Punishment, Columbia University Press, 1974, pp. 135-163.

-An econometric analysis of the U.S. court system. He assumes that the prosecutor seeks to maximize convictions weighted by sentences while the defendant seeks to maximize his utility. Both face a budget constraint. A pretrial settlement is likely if a trial would prove costly to the prosecutor, or would result in a small sentence, or if the defendant is risk-averse. A defendant would spend more on his defense if he is wealthy or expects a severe sentence on conviction. Charging a fee for going to trial would cut trial demand and court backlogs as would long court delays. (Presumably, the fee is over and above present court costs for both sides.) Defendants

out on bail are likelier than incarcerated defendants to go to trial. With the size of bail and disposition of the case controlled, defendants who did not make bail were likelier than the released to be convicted. Federal courts (and possibly county courts) with high average sentences, had a relatively great demand for trials.

All of these conclusions are plausible enough--almost obvious. It does show that--even as studied by an orthodox economist--America's criminal justice system doesn't operate according to principles from civics books.

On pages 135 through 163 of the same book, Landes wrote another essay, "The Bail System: An Economic Approach."

-A neoclassical economic analysis of the bail system. It seeks to balance the value of pretrial freedom to the defendant and the lower jail costs of government against the costs of releasing the defendant: the costs of crimes the defendant might commit while free, and the costs of extra arrests and trials. If the present system continues, in which the defendant pays bail, it is optimal to do as done now and jail those with prior arrests or facing serious charges. A better system would be to compensate defendants whom the court decided not to release.

Those acquitted would be paid; those convicted would receive credit for time served. This change would end bail discrimination against the poor and give the government incentives to improve its jails and cut court delays.

Landes' suggested reform is very much in the tradition of rational, orthodox economics. He makes sense within the present system but it costs money in a time of fiscal crisis and lacks the organized political support of any group or class. Put it in a class with massive antitrust action or deregulating railroads.

VIII: E. Prisons and Parole

It is in the prison system that government power is manifest in its most naked, brutal form. Reforms come and go, but prisons stay the same.

Daniel Glaser, The Effectiveness of a Prison and Parole System, Bobbs Merrill, 1964.

-Chapter 2, pp. 13-35, shows that only one-third of ex-convicts return to prison within two to five years after release. (This range of years reflected different followup periods for different groups of convicts.)

Chapter 7, pp. 149-171, justifies a hierarchy of rewards and punishments inside the prison as a rehabilitative device. Chapter 9, pp. 172-191, describes the goals and methods of prison discipline. Chapters 11 and 12 discuss the rehabilitative value and problems of prison school and industry programs. Chapter 14, pp. 311-361, describes the economic status of ex-prisoners: low income and high unemployment.

This book is a sanitized discussion of how prisons work. Glaser argues that, with some changes in programs and with greater resources, the prisons can rehabilitate offenders, taking the criminal law, the economic system, and the class structure as given.

Others doubt this possibility and shed more light (if fewer statistics) upon life behind prison walls.

Sidney Zirin, "The Case of Marvin," in Crime and Delinquency, Vol. 20, No. 3, July 1974, pp. 297-301.

-A satire of the use of six new, rehabilitative methods, from corporal punishment to the token economy, on a delinquent boy in a state school. The boy never commits a crime again--but he does become a mental basket case.

Erik Olin Wright, The Politics of Punishment: A Critical Analysis of Prisons in America, Harper and Row, 1973.

-Chapter 1, pp. 3-19, holds that almost all crime is economic crime--a self-interested, rational response to economic difficulty by members of any class. Chapter 2, pp. 22-44, describes the class and race backgrounds of prisoners, shows statistically that most black male youth have a brush with jail, and that high punishments channel criminals into lower-risk law violations.

Chapters 4 through 6, pp. 57-151, describes San Quentin, as seen by Wright, an ex-chaplain. He discusses the prison officials' attitudes toward prison and prisoners, how the discipline hearings worked, and how they dealt with prison radicals. He then discusses the prison from the prisoners' viewpoint, centering around racism--as an unofficial means of maintaining prisoner order and disunity. Chapter 7 criticizes the liberal theory and practice of prison rehabilitation as teaching conformity and breaking the prisoner's will.

Chapters 8 through 11 are a series of graphic exposes of violence and racism at Soledad Prison in California.

Chapter 13, pp. 262-280, by James E. Smith, describes the possibilities and the very real limits of legislative prison reform.

Chapter 14, pp. 281-312, describes the impact and limitations of recent court decisions expanding the rights of prisoners.

David P. Stang, "Problems of the Corrections System," in Reasons, 1974, pp. 366-387.

-Graphic description of the problems of the prisons: undereducated custodial staff, rape, torture, and racism. Recommends court decisions favoring prisoners' rights, community-based corrections, pretrial diversion of offenders from the criminal justice system, and better inside-jail programs.

Vernon Fox, "Prisons: Reform or Rebellion?" in Reasons, 1974, pp. 388-403.

-Gives details about recent prison riots at Soledad, San Quentin, and Attica and calls for prison reform.

John Pallas and Bob Barber, "From Riot to Revolution," in Quinney, 1974, pp. 341-356.

-Describes the changing nature of prison rebellions since World War II: the spontaneous, white-led riots of the early 1950's over living conditions, separatist Black Muslim organizing in the late fifties and early sixties, and the post-1967 political rebellions. Argues (without evidence) that prisoners, "the wretched of the earth," can be a vanguard of the coming revolutionary movement.

This essay is good in uncovering some of the hidden history of prison revolts, but the conclusions smack of late Sixties rhetoric.

After legal punishment, whether by fine or by prison, there is the continuing burden of the stigma of a legal record. But this burden, too, is distributed unequally by class.

Richard Schwartz and Jerome Skolnick, "Two Studies of Legal Stigma," in Howard S. Becker, ed., The Other Side: Perspectives on Deviance, Free Press, 1964, pp. 103-117.

-The first study involved sending a job application for an unskilled job by an unskilled, 32 year old male high school graduate who had been arrested for assault. One hundred employers, none of whom knew the application was bogus, received the folder-- 25 each seeing a conviction record, 25 an acquittal, 25 an acquittal with a reference by a judge, and 25 a folder with no arrest record. Nine employers expressed interest in the "man" without the arrest, 6 in the "man" acquitted with a reference, 3 in the acquitted man, and one in the convict. For the offender, the authors conclude, the deterrent effect of arrest and punishment may be offset by crime-inducing unemployment. Those caught in the justice system suffer a permanent loss of status.

The story for white-collar civil offenders is very different. A Connecticut insurance company's records revealed 69 doctors sued in 64 malpractice suits in the 15 years after World War II. Fifty-eight were questioned and 52 suffered no damage to their careers after trial, 5 specialists gained, and 1 suffered, due to a post-trial neurosis. There were

no loss of hospital privileges, and no sanctions by the state licensing board. The doctors benefited from their scarcity and their defense by their colleagues; the authors speculate that prosecution of simple assault by a doctor would usually be quashed, in short, social class matters.

Additional readings on the criminal justice system:

Abraham Blumberg, "The Practice of Law as a Confidence Game: Organized Cooption of a Profession," Law and Society Review, June 1967, pp. 15-39.

Jerome Carlin and Jan Howard, "Legal Representation and Class Justice," UCLA Law Review, January 1965.

William J. Chambliss, "Vice, Corruption, Bureaucracy, and Power," Wisconsin Law Review, 4 (1971), pp. 1150-1173.

Paul Chevigny, Police Power, Vintage Books, 1968.

Donald J. Newman, "Pleading Guilty for Consideration," Journal of Criminal Law, Criminology, and Police Science, 1956, pp. 780-782.

Albert J. Reiss, Jr., The Police and the Public, Yale University Press, 1971.

David Seidman, "Normal Crimes" (on public defenders), Social Problems, 12 (Winter) 1965, pp. 255-276.

James Q. Wilson, Varieties of Police Behavior, Harvard University Press, 1968.

#### IX. Marxist Criminology

The class-ridden nature of the criminal justice system and the roots of the economic crisis within our most basic institutions suggest that something is rotten in our society which makes crime and injustice normal. Recently, Marxists have entered criminology to apply the insights provided by that method into the "crime problem." Thus far, these efforts are still at an early stage; a common Marxist paradigm is still far off.

David M. Gordon, "Capitalism, Class, and Crime in America," in *Reasons*, 1974, pp. 66-88.

-Gordon, an economist, notes that crime is everywhere in America and that the criminal justice system is biased due to class bias in the laws it enforces. He disagrees with conservative and liberal-rehabilitationist criminologists, agreeing with the orthodox economists that people ordinarily decide rationally to commit crimes.

He sums up the Marxist viewpoints on historical materialism, class, and the state and finds conditions which make lawbreaking rational. These include inequality, economic insecurity, competition for scarce jobs, income, or markets, and the continued presence of outdated laws on the books. The bulk of crime can be understood by this model: ghetto crime, organized crime, and white-collar crime. There is one criminal justice system for the poor and another for the rich; the state thus usually fails to prosecute the white-collar crimes of the rich. The justice system and crime itself change over time. Major reductions in crime are unlikely in a reformed capitalism; its criminogenic features--inequality, competition, and economic insecurity--are basic to its survival. The justice system blames the individual for social problems and shunts the poor and the black into the secondary labor market. Under socialism, the criminal could be treated as a member of a family who had broken trust rather than a social enemy.

This essay is well-reasoned and well-argued.

Ian Taylor, Paul Walton, and Jock Young, *The New Criminology: For a Social Theory of Deviance*, Routledge and Kegan Paul, 1974.

-The final chapter of the book calls for the development of a social theory of deviance. Such a theory would explain why society generates different types of deviance at different times and controls them in different ways.

Elliott Currie, "Review of Taylor, Walton, and Young's New Criminology," in Crime and Social Justice, No. 2, Fall-Winter 1974, pp. 109-113.

-Criticizes Taylor, Walton, and Young for separating the social causes of deviance from its biological and psychological causes--without explaining why certain roles come to be seen as normal. Also, Currie says that the book blurs the distinction between deviance which does or does not advance revolutionary social change; under socialism, there would still be "crime," but "crimes" would no longer be defined by a capitalist ruling class.

Richard Quinney, "A Critical Theory of Criminal Law," in Quinney, 1974, pp. 1-26.

Richard Quinney, "Crime Control in Capitalist Society," in Reasons, 1974, pp. 136-143.

-Marxist critiques of orthodox criminology and the law. His argument, in a nutshell, is that law and the state are created and maintained by the ruling class to sustain its own power. Law is the basis for the violent repression of the powerless. "Rates of crime indicate the extent to which the ruling class must coerce the popular, and its ability to rule."

These essays are limited in value. Quinney indulges in the fetishism of illegality, confusing individual crime or deviance with collective, political, revolutionary activity. He oversimplifies the role of the state, ignoring such functions as the socialization of the costs of private production, investment in the production of the labor force, and macro-economic stabilization. Further, his thesis that capital's power depends solely or mainly upon force is wrong; any organizers who based a strategy on such a belief would fail utterly in the America of 1975. Education, workplace discipline, patriarchally-defined sex roles, the mass media, racism, and religion all play their part in teaching people to accept the status quo--even if they would really benefit from socialism. Whoever fails to deal with these issues would end up as a self-isolated sect.

Paul Hirst, "Marx and Engels on Law, Crime, and Morality," in Economy and Society, Vol. 1, No. 1, February 1972, pp. 28-56.

-In pages 28 through 39, Hirst argues that deviance is not an object of study for Marxism; the class struggle is. Marx's thought evolved in three periods: The Kantian (pre-1843), Feuerbachian (1843-1844; concerned with "alienation"), and historical materialist (1845-1883, concerned with class struggle).

This first part of the essay is weak. On Marxist theories of deviance and crime, the issue is not, did Marx say anything about this in Verse 32, Chapter 57 of the Good Book? Rather, it is to transcend the limitations of orthodox social science and use the powerful methods of historical materialism and political economy to understand the "laws of motion" of deviance.

The second part of the essay is far better. Hirst sums up what Marx and Engels wrote about crime. Marx criticized the lumpenproletariat--the thieves, pimps, bums, and professional criminals, because of their reactionary role in workers' movements as a strategic, not a moral, judgment. Poverty drives workers to occasional crime, but even when this crime--sabotage, terrorism, banditry, and riots--are aimed at capital, crime is an ineffective, pre-political challenge to capitalist power. To matter, spontaneous resistance must be organized and political. The state will try to brand revolutionaries as criminals, but the left must avoid the fetishism of "legality" and "illegality" and decide its tactics according to what would best build the struggle for socialism.

The concept of "lumpenproletariat" raises issues that need further study. What does the concept mean in modern America? If people not regularly connected to the productive process as capitalists, officials, professionals, or workers are lumpenproletarian, where do the long-term unemployed fit--as (ex) workers or as lumpenproletarian? Is there much movement from the working class into and out of the lumpen stratum? Is the lumpen stratum liable to grow during the economic crisis? If so, are its politics now likely to be as Marx described them in 1848?

Hirst next discusses the role of crime in the social relations of production. Property is not theft; the concept of "theft" arose only with capitalist private property. Capitalists and police carry out and enforce exploitation but their roles are necessary under capitalism. Thieves steal from everybody and are parasitic. The mob's production of illegal commodities is economically marginal and does not enjoy state protection as legal capitalists do.

Hirst's analysis of "theft" is sound but his analysis of the mob is far less valid. Recent revelations--including Watergate and the CIA-Mafia plot to kill Castro--should make plain the extent of organized crime-induced corruption, and its collusion with the government.

Furthermore, illegal commodities can stabilize the social system, from capital's viewpoint. Heroin cools-out and immobilizes ghetto youth who might otherwise riot; loan-sharks are bankers without the velvet gloves; thugs and scabs are good for breaking strikes. Organized criminals are undercover capitalists, but capitalists just the same.

Steven Spitzer, "Toward a Marxian Theory of Deviance and Control," unpublished paper, University of Pennsylvania.

-Begins by discussing the limits of different schools of criminology: conservative, labeling, conflict, and economic determinists, as well as criticizing Quinney and the Schwendingers.

He then moves on toward a thought-provoking, unsightful analysis of the political economy of deviance under capitalism. Different types of deviance processing--from ostracism to asylums to prison--may be applied to groups which pose a problem for the system--criminals, homosexuals, the ill, the retarded, the jobless, the old, the addicts. Problem populations, most notably a reserve army of surplus labor, arise because of conflicts inherent in capitalism's normal operations. The size of and threat posed by different deviant populations influence what type of processing "they will receive;" as the threat increases, so does the formal role of the state. The stronger the informal controls imposed by society, the less the need for government intervention.

But the surplus population grows with capitalism; the young, the old, the black and the unskilled are pushed out of the labor force. The "market"-- or the boss--no longer disciplines them, so the government's role must increase with time. Spitzer sees his theory (presented only in the barest form here) as a beginning. A theory of deviance should ask how the form and content of deviance and control change over time, under capitalism and under different modes of production, by analysing the contradictions within these different societies.

Several scholars have produced analyses of the future prospects for crime in America.

Stanley Aronowitz, "Law, the Breakdown of Order, and Revolution," in Quinney, 1974, pp. 394-414.

-Aronowitz argues that the family, the church, the unions, the employers, and the schools--the traditional, non-legal institutions which trained and disciplined the labor force--can no longer work well in this capacity because of the evolution of the capitalist system. So, law and government repression will be increasingly relied upon by the powerful to "keep the lid on." He sees the U.S. as headed toward state-directed capitalism and argues that liberal reformism, the united front strategy of the 1930's, and a bureaucratic left cannot cope with the threat.

Aronowitz' ideas are plausible but the style of the essay is lushly Hegelian. He seems overoptimistic in interpreting the decay of the old institutions as signifying political decision by millions of people to stop cooperating with capitalism and to rebel.

R. Kelly Hancock and Don C. Gibbons, "Some Criminological Theory and Forecasts for a Society that is Coming Apart," Portland State University, 1974.

-After an analysis of conservative, liberal, and radical criminological theory, Hancock and Gibbons predict that crime is likely to continue rising. They believe that economic instability, falling living standards, and mass, long-term unemployment will cause major increases in ordinary street crime.

Deterrence and rehabilitation programs, if well-designed, may have some good effect--but will be unable to greatly reduce crime. This crime is unlikely to be political or revolutionary. But they also expect organized protest and violence to spread as dissatisfaction increases.

This analysis makes sense, even though, contrary to their arguments, prison radicalism is not central to the development of the left. Also, it seems more likely that a long economic crisis will be accompanied by continued slow social decay rather than a cataclysmic upheaval--the left is still many years away from making a successful revolution.

Additional readings in Marxist criminology.

David M. Gordon, "Class and the Economics of Crime," in Review of Radical Political Economics, Summer 1971, pp. 51-75.

Richard Quinney, Critique of Legal Order, 1974.

Richard Quinney, "Crime Control in Capitalist Society," in Issues in Criminology, Spring 1973.

Herman and Julia Schwendinger, "Defenders of Order or Guardians of Human Rights?" Issues in Criminology, 5 (Summer, 1970), pp. 123-157.

#### X. Crime and Socialism: A. Theory

The Marxist critique of capitalism as a criminogenic society implies that socialism would alleviate many of our crime problems. Theoretically, as workers and other now-oppressed people take democratic control over the state and the economy, exploitation and abuse of power by business and the state would wither. Economic crime would decline with the elimination of poverty, reduction of inequality, and establishment of a planned economy. Violent street crime would decline as people unlearn the competitive, self-seeking, aggressive habits of capitalist life, and as the building of new community ties provides greater emotional support and control of deviants. As people perceive increased power

over their own lives, they would decreasingly resort to drugs, vandalism, and mayhem to blot out or strike back at "reality." With the end of male supremacy, rape and prostitution would decline.

Supporters of China, Cuba, the USSR, and other socialist countries claim that socialism as it exists there has licked the crime problem. Do the theories and the claims fit reality?

A way to begin understanding crime under socialism is to read the theory of the socialist state, as developed by Marx, Engels, Lenin, Stalin, and Mao. Revolutions change the social definition of what is legal and illegal. Old crimes disappear; new crimes are created, along with a new legal/justice system. Theory can, to some degree, explain, predict, and justify the changes that occur.

Marx' and Engels' theory lay the basis for the theory of the socialist state.

Karl Marx and Friedrich Engels, Communist Manifesto, in Selected Works (1 vol.), International Publishers, 1968.

-The working class would need to unite as a class, forcibly overthrow the bourgeoisie and seize state power. Workers would use "despotic inroads on the right of property and the conditions of bourgeois production" to achieve ownership of the means of production by the state, the workers organized as the ruling class. Then, the socialist state would try to increase the forces of production as rapidly as possible.

Marx, The Civil War in France (with Engles' 1891 introduction) in Selected Works, 1968.

-Sums up their lessons from the rise and fall of the 1871 Paris Commune. Each ward in Paris elected a Commune member by universal suffrage. Most officials were working-class, and all were subject to recall. The Commune was both a legislative and an executive/Administrative body. All city officials worked for workers' wages. The police and the standing army were abolished, replaced by a National Guard including all who could bear arms. All judges were elected. The Commune governed publicly, separated Church and State,

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remitted house rents, and planned for worker operation of factories closed by capitalists.

The workers of Paris showed that, to hold power, they needed to smash the old repressive organs of the state, and to guard themselves against their own officials. In Engels' words, "The state is nothing but a machine for the oppression of one class by another . . . and at best an evil inherited by the proletariat after its victorious struggle for class supremacy, whose worst sides the victorious proletariat, just like the Commune, cannot avoid having to lop off at once as much as possible until such time as a new generation reared under new, free social conditions is able to throw the entire lumber of the state on the scrap heap."

Marx' and Engels' analysis of the Commune showed how the state and the law would play a new role after revolution. The government was radically democratized, and repression was carried out by the armed populace, not separate bodies of armed men. Bureaucratic rule and capitalist exploitation became illegal; the Commune began attacking property rights and setting up a worker-controlled economy. Law served the majority, not the minority.

Marx claimed that under the Commune, even without police, crime almost disappeared from Paris. He implied that high crime was a feature of capitalism, and would decline rapidly after the revolution. Low crime, with the expropriation of the capitalists and suppression of their resistance, would mean that the state, as an organ of repression, could wither away under socialism.

Marx, Critique of the Gotha Program, in Selected Works, 1968.

-Although the state as repressive authority would disappear, Marx here implies that a public authority would be needed long after the revolution, to guide the economy toward communism. One reason would be to allocate wages and consumption. Deductions from the total social product would be made before each worker was paid--for replacement and expansion of the means of production, insurance against accidents and natural disasters, administrative costs, support for those unable to work, and the costs of collective goods such as schools and health care. Also, since workers would still carry capitalistic habits with them into the new

society, their pay would be proportional to their productivity--not strictly equal or based on need alone.

Plainly, to do this planning, distribution, and control, social authority would still be needed--even though it would from the beginning be exercised collectively by the majority of the population. Later, with the development of productive forces, the transcendence of the division of labor, the all-round development of individuals, and the transformation of labor from "a means of life into life's prime want," it would be possible to go to "from each according to his ability, to each according to his needs." Social accounting and control could then become less rigorous.

Presumably, sanctions against those attacking, abusing, or misappropriating collective property would be needed. With the suppression of the capitalists, the problem would shift from controlling theft and sabotage by a class to controlling property and "white-collar" crime by rare individuals.

This essay by Marx is one of his most influential theoretical works, and the one which most clearly explains his ideas on how socialism would develop. It is a criticism of an 1976 German Socialist Party platform.

F. Engels, The Origin of the Family, Private Property, and the State  
(introduction by Eleanor Leacock), International Publishers, 1968.

-A book which includes empirical research into how the family, private property, and the state arose with the breakup of early tribal society. This research is dated to some degree, being heavily based on pre-1880 work. But much remains useful. Engel's accompanying theoretical analysis of the role of the family and the state in class society sheds light on much which orthodox social science obscures.

Engels associated the rise of the state with the rise of the division of labor, the antithesis between town and country, the use of coercive force to control a territorially-based citizenry, private property, exploitation, and the rise of the male-dominated monogamous family as the economic unit of society.

Presumably, all these would need to disappear before the state does--and so the withering away of the state under socialism would be a long process.

V. I. Lenin, State and Revolution, in Selected Works (1 vol.), International Publishers, 1971.

-Lenin was the first socialist leader to apply Marx' and Engels' theories in a revolution. State and Revolution sums up his experiences from the Russian revolutions of 1905 and February, 1917. He said that the proletariat needs to organize itself into a state, directly backed by the armed people, to carry out centralized repression of bourgeois resistance and to organize all working and exploited people (including peasants, small businessmen, and semi-proletarians) for the new social system. This proletarian dictatorship would be needed for the entire period of transition to socialism, and would be democratic for the exploited and dictatorial for the exploiters. Since the majority of the people would begin to carry out state functions themselves, the proletarian state would wither away from its inception. Lenin, like Marx, approved of the democratic mechanisms set up by the Paris Commune.

Lenin, like Marx, was optimistic that crime would wither away as socialism developed. As people are freed of exploitation and grow up in an environment where attempts to subvert socialism for personal gain become difficult to carry out (due to the spreading of state functions across the population), people will learn as a matter of habit to obey basic social rules. Individual crimes might occur, but these would be put down at once by the people themselves. And Lenin was more explicit than Marx in saying that a vital role of the state would be to plan the economy.

V. I. Lenin, The Immediate Tasks of the Soviet Government, Selected Works, 1971.

-This essay, written in early 1918, places greater emphasis on the need for state power than does State and Revolution--as might be expected in a period of economic collapse, civil war, and foreign invasion. Repression of the overthrown exploiters would be necessary, since they don't lose all their wealth, management skills, education, and connection with other bourgeoisies at the stroke of an expropriation order. Also, dictatorship is needed to control the crime, profiteering, and outrages that accompany civil war, as well as to enforce labor discipline. This dictatorship is enforced by the poor and the workers, who are drawn into state and administration by the Bolsheviks.

V. I. Lenin, The Proletarian Revolution and the Renegade Kautsky, Peking edition, n.d.

-A sharp polemic against social democratic critics of the Bolsheviks. Lenin calls for the masses backing the new socialist government to ruthlessly repress capitalist and criminal resistance, acting on their revolutionary conscience rather than a detailed code of laws and due process. Existence of dictatorship for the minority and democracy for the majority implies that there is a dual system of justice

Stalin, "The Right Deviation in the CPSU (B)," Collected Works, Moscow, 1955, Vol. 12, pp. 37-41.

Stalin, "Political Report of the Central Committee to the 16th Congress of the CPSU (B)," Collected Works, Moscow, 1955, Vol. 12, pp. 380-31.

-These 1929 and 1930 articles hold that the precondition for the withering away of the state is the maximum intensification of its coercive power. Stalin arrived at these conclusions during the beginnings of forced industrialization and collectivization in the USSR.

Stalin, "On the Draft Constitution of the USSR," p. 698, in Problems of Leninism, Foreign Languages Publishing House, Moscow, 1954.

-Discusses the 1936 Soviet constitution, hailing the "transformation of the dictatorship into a more flexible, and consequently more powerful, system of guidance of society by the state." This poses the socialist state as a power above and opposed to society, and turns the theory of Marx and Lenin on its head.

Stalin, Report to the 18th Congress of the CPSU (B) on the Work of the Central Committee, pp. 791-797, in Problems of Leninism, 1954.

-Denounces calls for the withering away of the state as "twaddle"; despite the elimination of class conflict in the USSR, it would be necessary to strengthen the military, penal, and intelligence organs of the Soviet state in order to protect socialist property from thieves and to defend the country from spies, saboteurs, and invaders sent in by the encircling capitalist powers. Needless to say, this article, written during the great 1936-1939 purges, contradicts Marx' and Lenin's ideas, that the population as a whole should be armed and organized to wield state power.

Stalin's theories are a far cry from those of Marx or Lenin. They are a cover for his bureaucratic counterrevolution in the USSR; Stalin's union of theory and practice was the GULAG Archipelago.

Mao Tse-Tung, "On the People's Democratic Dictatorship," in Selected Readings from the Works of Mao Tse-Tung, Foreign Languages Press, Peking, 1971.

-Explains the operations of the People's Republic as it was in 1949. Landlords, monopoly capitalists, and Chinese Nationalists leaders would lose their civil rights. These reactionaries would be given land and work in order to remold them into new people through labor. Those unwilling to work would be compelled to. The existence of imperialism, and domestic reactionary classes requires the strengthening of the police, army, and courts--for use against reactionaries and those who break the law. Of Mao's works on the state, this was the most "Stalinist," with its emphasis on strengthening the special state apparatus rather than on mobilizing the people.

Mao Tse-Tung, "On the Ten Great Relationships" (1956) in Stuart Schram, ed., Chairman Mao Talks to the People: Talks and Letters, 1956-1971. Pantheon Books, New York, 1974, pp. 61-83.

-Discusses the major contradictions and priorities in Chinese socialist politics and economics. Upheld the need to execute counter-revolutionaries "for whom the masses had great hatred, and whose blood debt was heavy." There were still some counter-revolutionaries in 1956, but most were turned over to agricultural cooperatives for work--there should be fewer arrests and executions, even though the death penalty is still needed. Mao said that people should help those who made mistakes and wished to correct them, rather than excluding such people from the revolution.

Mao Tse-Tung, "On the Correct Handling of Contradictions Among the People," in Selected Readings, 1971.

-Mao's theory of the state, as expressed in 1957, parallels Lenin's rather than Stalin's. The dictatorship was to suppress reactionary classes, those who resist socialism, and major criminals, as well as to defend China from foreign attack. These problems would be dealt with by coercion--but that was not how to handle ideological problems (i.e., persistence of religion) among the people: workers, peasants, the urban petty bourgeoisie, and the national bourgeoisie who accept socialism. For these people, the vast majority, persuasion, discussion, and education should be used. The suppression of counter-revolutionaries should be reviewed; if errors are found, exoneration should be publicized as widely as the original wrong decision. There were public disturbances in 1956 in China, due to bureaucracy in the leadership and insufficient popular education. When disturbances occur, their leaders should not be summarily fired or expelled from the Party, unless they are active counter-revolutionaries or lawbreakers. Mao said, "In a large country like ours,

there is nothing to get alarmed about if small numbers of people create disturbances; on the contrary, such disturbances will help us get rid of bureaucracy."

Mao Tse-Tung, "Talks at the Chengtu Conference" (1958), in Schram, pp. 96-103.

-Criticizes dogmatism; warns people to learn from Chinese experience and not to blindly follow the USSR.

Mao Tse-Tung, "On Democratic Centralism" (1962), in Schram, pp. 158-187.

-The Party should be democratic, and not fear criticism from the masses. Class struggle continues under socialism. Security organs should use professional work and popular/ Party involvement to fight counter-revolutionaries. Ninety-five percent of the people support socialism; landlords and bourgeois reactionaries must be compelled to reform. "If we arrest people and execute people at the drop of a hat, the end result would be that everybody would fear for themselves and nobody would dare to speak."

This essay criticizes methods such as those used in the USSR in the 1930's; it elaborates Mao's earlier "On the Correct Handling of Contradictions." These essays, with their mass-oriented, anti-bureaucratic flavor, pre-saged Mao's support of the Cultural Revolution after 1966.

Paul M. Sweezy and Charles M. Bettelheim, On the Transition to Socialism, Monthly Review Press, 1971.

-Excellent Marxist theoretical discussion of the difficulties faced by Russia, China, and other socialist countries after their revolutions. Indicates that a development plan such as China's (which emphasizes equality; nonmaterial or collective consumption incentives to labor; fighting male supremacy by political education and collectivizing labor traditionally performed in the home) is likelier than Soviet-type development to achieve the transition to communism. Given the Marxist critique of capitalism cited earlier in this bibliography, a Chinese plan seems likelier than the Soviet to reduce ordinary crime. The authors also contrast Soviet bureaucracy and popular apathy with the Chinese active politicization of the population, and mass involvement in State administration. This could mean that China's justice system is less bureaucratic than the Soviet's.

Erik Olin Wright, The Politics of Punishment: A Critical Analysis of Prisons in America, Harper and Row, 1973, final chapter.

-Concludes that there is no inherent reason why socialist prisons would be spared the present problems of U.S. jails.

X.: B. Law and Justice in the Socialist Countries

The experience of the criminal justice systems in Russia, China, and other countries reflects the issues raised by the theory of the socialist state.

These issues affect each system and its development:

--A centralized, bureaucratic, professionalized system versus one which is decentralized and integrated into the community.

--A government which has stabilized its power enough to develop an orderly legal system, with some due process for defendants, no crime without a law, no punishment without legal conviction, and relatively mild penalties, versus a system which is an organ of terror and civil war, and uses "West-of-the-Pecos" law.

--A government which allows or encourages dissent, versus a Stalinist regime which sees such dissent as treason.

--A wide or narrow definition of who is (or what acts are) counter-revolutionary crimes by "enemies" are usually sanctioned much more severely than crimes by the "people." This is related to the degree to which the regime tries to rehabilitate criminals, or instead prefers to liquidate them.

--The extent of the use of compulsory work as a way to reform criminals (a theoretical outgrowth of Marx' view that work was the central characteristic of the species, and the main way in which people transform themselves and their environment).

## 1) Soviet Justice

Roy A. Medvedev, Let History Judge: The Origins and Consequences of Stalinism, Vintage Books, 1973.

-An exhaustive history and analysis of the Stalin period in the USSR by a dissident Soviet Marxist-Leninist. Covers the abuses of the Stalinist police, camps, and purges in harrowing detail. Argues that the abuses of Stalin were not the inevitable outgrowth of socialism or Leninism.

Alexander Solzhenitsyn, One Day in the Life of Ivan Denisovich.

-Published in the USSR in the early 1960's; since banned. Describes a day of a prisoner in a Stalinist labor camp.

Solzhenitsyn, Gulag Archipalego, 2 volumes.

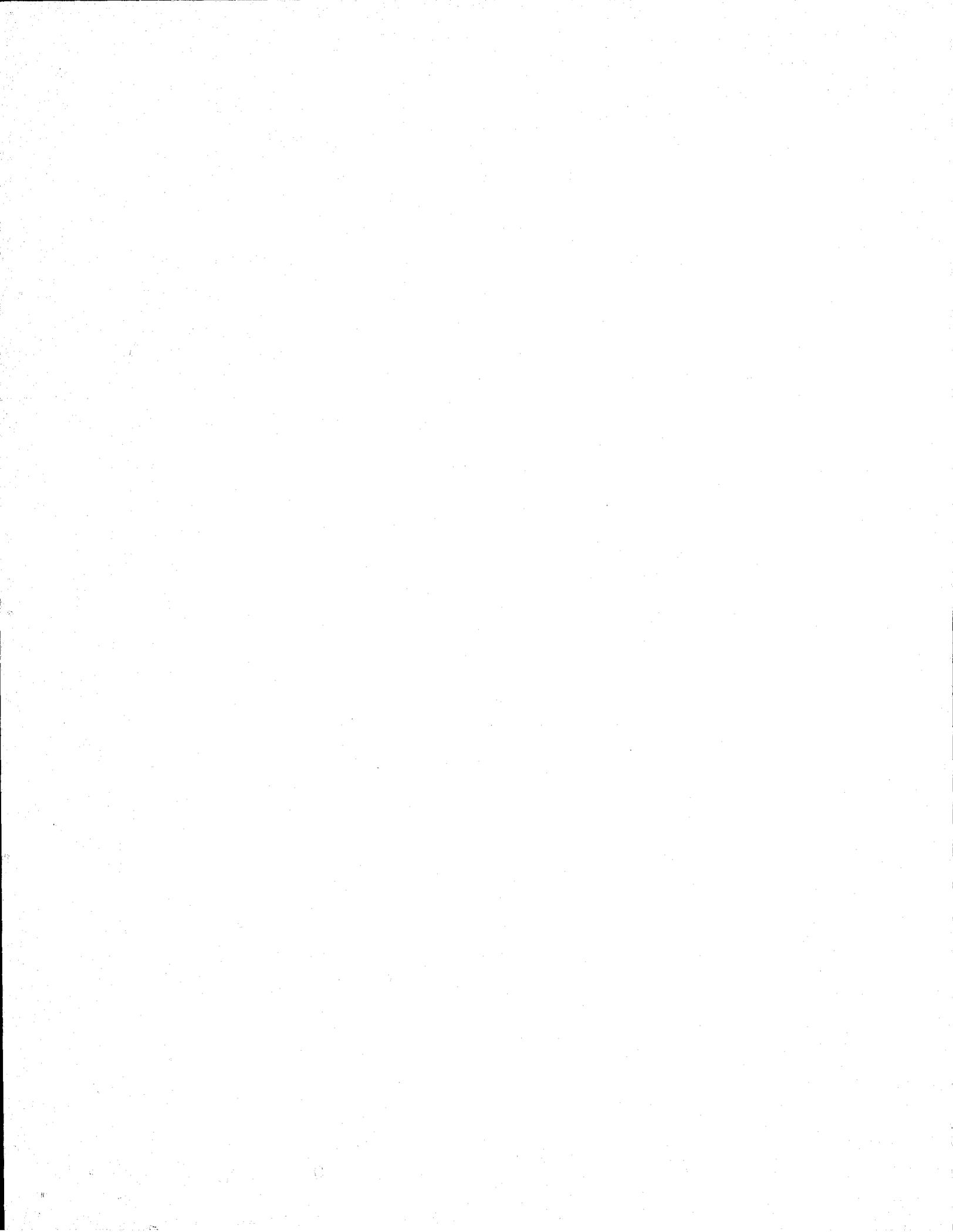
-Describes the Stalinist police and camp system in detail; traces their origin to Lenin in the Civil War. Captivating writing on a gruesome subject. Other sources confirm the bulk of Solzhenitsyn's charges, although he blends pages of rightist polemics into his muckraking.

Donald D. Barry, William E. Butler, George Ginsburg, Contemporary Soviet Law: Essays in Honor of John N. Hazard, Martinus Nijhoff, 1974.

-Including these articles, which are generally fair and well-documented.

Harold J. Berman, "The Educational Role of Soviet Criminal Law and Civil Procedure," pp. 1-16.

-Soviet laws and institutions exist in part to educate people, leading them toward becoming a new Soviet citizen. In addition to determining a defendant's guilt or innocence, courts may issue orders for alleviation of conditions exposed at the trial which led to the crime or civil suit. Social organizations can join in the trial on either side of the case; trials may be held and decisions published at the residence or work place of the accused. Civil suits, 80 percent of the court caseload, are treated as signs of deeper social disorder. Berman finds this broader-spectrum Soviet trial more similar to Western juvenile justice systems (which supposedly consider all factors affecting the child) than to adult courts, which stick to finding for or against the defendant. Trials, especially in political cases, are a ritual of society's rejection and degradation of the accused.



**CONTINUED**

**1 OF 2**

Peter H. Tuviler, "Criminal Law and Social Control," pp. 17-54.

-History and analysis of the Soviet justice system, from Stalin onward. Stalin used severe laws to combat ordinary as well as political crime, but his emphasis on crimes against the state and socialist property left the rest of society open to disorder and delinquency.

After Stalin, there were amnesties of prisoners and reduction of criminal penalties. The legal code was reformed after 1958. It placed the burden of proof on the prosecution, barred legal punishment except on judicial conviction for a crime named in the criminal code, and threw out the Stalinist theory that confession was proof of guilt. Juveniles have broader due-process rights than adults. Judges have wide leeway in setting penalties according to the individual case.

Some of these gains were reversed after 1961. Between 1961 and 1970, there were vague "antiparasite" laws which could be used to send non-conformists and non-workers to exile and compulsory work with little due process. In 1970, these laws became better, to a degree--there is a legal requirement to work, which is less vague than preceding law. Lay courts for petty offenses were introduced into work places. Prisons became tougher, and the death penalty was extended after 1961. In 1966, there was a campaign against court leniency and street crime, and conviction rates doubled.

Alcoholism and juvenile delinquency rose rapidly in the USSR in the 1960's despite the crackdown. There has been recent Soviet criticism of harsher penalties, and experiments with work-release programs.

F. J. M. Feldbrugge, "Law and Political Dissent in the Soviet Union," pp. 55-68.

-The media and printing/duplicating apparatus are in the hands of the state. Laws restricting freedom of speech and association are broad and vague, and can be used against almost any strong criticism of the Soviet system. Jail, the asylum, or firing from the job await convicted dissidents, but the Soviets are unlikely to revert to Stalinist terror against dissent.

Zigurda L. Zile, "Soviet Struggle for Environmental Quality," pp. 124-157.

-Using Soviet sources, finds ecological disruption widespread and environmental laws weak or unforced. Growth has planning priority over conservation.

A. K. R. Kiralfy, "Soviet Labor Law Reform Since the Death of Stalin," pp. 158-174.

-Describes harsh Stalinist labor codes, which gave severe penalties for worker lateness, absenteeism, or job-changing without management consent. Now, labor discipline is less harsh; economic incentives are displacing compulsion. Wage differentials are less than in the West. Law and a state-dominated grievance structure (which workers are using increasingly) set wages, hours, and working conditions.

The labor code as described sounds similar to a good U.S. trade-union contract with a large company.

Ivo Lapenna, Soviet Penal Policy, Dufour, 1968.

-A history from 1917 to 1968 of the theory and history of Soviet criminal justice; fairly objective. Compares Soviet state reality and Soviet Marxist theory of the state to Marx; describes the egalitarian but ad hoc courts of the Civil War period, and the origins of the secret police. Finds that the present criminal code is milder than the preceding 1924 code, especially as it was used under Stalin. Mobilization of the people against crime works sometimes, but is limited by apathy; Lapenna believes that recent experience with lay courts and police have failed. He believes that crime rates have risen since the late 1950's, given the non-publication of statistics and the crackdowns of the 1960's.

Soviet criminology has revived in the 1960's after a 40-year hiatus. Lapenna sees it as an ad hoc listing of social conditions (low education, superstition, drunkenness, broken families, imperialist propoganda, etc.) without probing to the root causes of rising Soviet crime. To do so, criminology would either have to reject Marxist theories of the causes of crime, increasing its study of offender biology and personality--or it would have to apply Marxist criticism to Soviet reality and call it state capitalism. Neither is allowed.

Harold J. Berman, Soviet Criminal Law and Procedure: The RSFSR Codes, Harvard University Press, 1972.

-This book contains a 100-page commentary on Soviet criminal law and court procedure; it is fair and well-documented. The rest of the book contains the laws and procedures as amended through 1972.

The 1920's laws had much milder penalties for ordinary crime than for political crime. "Hooliganism," disorderly conduct and mayhem, was and remains the most frequently-prosecuted crime.

The 1923 Code of Criminal Procedure was similar to Continental European law; the differences allowed speedier, more secret action against political opposition, easier prosecutions and convictions of defendants, and less formal court proceedings. Between 1922 and 1956, extrajudicial secret police trials were allowed. A 1934 anti-terrorist law provided for a maximum 10-day investigation, giving the defendant the indictment 24 hours before trial, no defendant or counsel participation in the trial, no appeal or petitions for mercy, and immediate execution. These gruesome procedures disappeared with Stalin's death. Procedure after the late 1950's allows defendants to be held incommunicado (up to nine months in certain cases)--but the code specifies a long list of defendant's rights. Berman believed that the present criminal procedure code deals practically with all issues, as well as could be done in a society where crime is rampant, there are very strong pressures against leniency with criminals, and where the level of professional legal competence is very low. However, there is widespread violation of these procedures in political trials.

## 2) Chinese Justice

Jerome Alan Cohen, The Criminal Process in the People's Republic of China, Harvard University Press, 1968.

-This book begins with a commentary on Chinese law and procedures; what follows is 600 pages of laws and case studies from China, using Chinese communist, refugee, and Western sources. The chapters cover the law, neighborhood organizations, the police, reform through labor, criminal conduct, pretrial and trial proceedings, sentencing, appeal, judicial error, and prisons.

Chinese law--whether traditional, Nationalist, or Communist--has been repressive, with few protections for individual rights. At present, much Chinese law is vague or unpublished.

Chinese law, like Soviet law, developed in phases. Between 1949 and 1953, the Nationalist legal apparatus was broken, and there was widespread terror against criminals and counterrevolutionaries. Police powers were broad. Cohen claims that Mao said 800,000 persons were executed by 1954.

Between 1953 and 1957, Chinese law resembled that in the USSR immediately before or soon after Stalin's death. Public trials came into wider use. After 1957, the Chinese rejected Soviet legal models as "Western." The rights of defendants were circumscribed, as were releases on "technical" grounds. Extrajudicial punishments increased.

As of 1963, there were strong links between the police, the prosecutor/investigator, and the courts. Local Party control over the judicial process is explicit and praised. Penalties that can be imposed without court trial include compulsory consciousness-raising in the neighborhood or work place, small fines or jail sentences, and up to three years of compulsory work. Criminal court penalties include compulsory work, prison, or the death penalty--which can be suspended. The more severe administrative penalties fall on unregenerate landlords, rich peasants, counterrevolutionaries, those who refuse to work or resist agricultural communes, recidivist petty criminals, and violent criminals. Minor penalties are handed out locally; severer penalties by higher levels of government.

Police have wide powers of arrest; visits to a prisoner can be denied while the case is under investigation. Standard U.S. police interrogation techniques are used, with rare use of physical force to obtain confession. Any evidence is admissible in the trial (as is usual in European non-adversary trial procedure). Reliability of confessions must be shown by independent evidence. Appeals of trial verdicts are free and informal, but little used. The state can drop unjustified cases in process; it pays and publicly exonerates those wrongly convicted. The prison regime rewards with earlier parole repentance, reliable work and informing on and inducing other prisoners to reform. Ex-cons face disabilities in China, as in the US.

Cohen finds the Chinese justice system to be close-knit and police-oriented, but operating on regular rules. Law is affected by the defendant's class. Judges have little legal training--but corruption and law enforcement extortion have almost disappeared. Chinese law uses less criminal punishment and more persuasion and social pressure than modern Soviet law--but gives criminal defendants fewer rights than the Soviet system.

Far East Reporter, June 1976, P. O. Box 1536, New York, NY 10017.

George Crockett, "Criminal Justice in China," pp. 3-17.

-A favorable account of China's justice system by a US local court judge. Serious criminals and counterrevolutionaries faced proceedings like those described by Cohen above; virtually all disputes, however, are handled informally, by conciliation involving people in the disputants' neighborhood or work place. The conciliators discuss the issues with all concerned, assess blame, and try to show guilty parties the error of their ways. More serious crimes are dealt with by a three-person court, including two lay judges. Court decisions are tentative, and must be upheld by local Party organs. Criminals are required to do physical work according to their ability, to transform themselves through labor. Jails and prisons are few; crime has fallen greatly since 1949. Crockett claims that the theoretical reasons why crime would be less under socialism do hold in China.

Maud Russell, "The People's Courts," pp. 18-39.

-Case studies of four 1959 trials--corruption, negligent homicide, and two divorces.

Allyn and Adele Rickett, Prisoners of Liberation, Anchor Press, 1973.

-A sympathetic account by two Americans of their imprisonment in China as US spies for four years in the early 1950's. They describe and put into context the prison regime and thought reform (a process that seems similar to Synanon). Thought reform is an extension of the criticism-self criticism process that is usual in Chinese life. Prisoners are organized into small consciousness-raising groups, with the leader reporting to prison authorities. (Their account indicates a generally-successful uprooting of traditional inmate culture.) The goal of the small groups--to get the prisoners to admit their errors and turn toward building the new China.

U.S./China Peoples' Friendship Association, Opium and China: New China Kicked the Habit, 1975 pamphlet.

- A sympathetic account of the history of China's drug problem, and how China allegedly mobilized its people and reeducated addicts after liberation to end drug addiction there.

Franz Schurmann, Ideology and Organization in Communist China, University of California Press, 1968, 2nd ed.

- A detailed, objective study of the structure, development, and ideology of China's government, economy, and Communist Party until 1968.

Jerome Cohen, ed., Contemporary Chinese Law: Research Problems and Perspectives. Harvard University Press, 1970.

- Includes these articles:

David Finkelstein, "The Language of Communist China's Criminal Law," pp. 188-209.

- Ambiguities in Chinese law come from the Chinese language itself; he offers many examples. He favors creation of a professional lawyer class and a standard legal language in China as a solution.

Marinus J. Meyer, "Problems of Translating the Marriage Law," pp. 210-229.

- The 1950 Chinese marriage law centers on a requirement to register marriages with the state. This is to resist the arranged-marriage tradition. The requirement lacks a sanction; it is for public education.

Stanley Lubman, "Methodological Problems in Studying Chinese Communist Civil Law," pp. 230-260.

- Chinese civil law changes frequently with changing government policy. There is a conflict between bureaucratic rule and "mass line" popular mobilization.

Richard M. Pfeffer, "Crime and Punishment: China and the United States," pp. 261-281.

- The actual operations of the US and Chinese justice systems are more similar than would appear to be the case if one compares their rules and institutions.

In the US as in China, the Crime Control Model of justice dominates over the Due Process Model. In the US, as in China, police and lower courts are concerned with factual defendant guilt, not legal process rules; guilty pleas are common and trials relatively few; police and judges have wide discretion to treat offenders differently because of their social background. Here, too, a "coercive environment" keeps many suspects from exercising their full rights.

Harold J. Berman, "Soviet Perspectives on Chinese Law," pp. 313-33 off.

-Compares Chinese and Soviet law; finds Soviet law to be more "Western," professional, stable, and due-process oriented. Differences are rooted in differing national traditions. The USSR, which until 1957 praised China for using Soviet-Type law, now accuses China of violating socialist legality with non-Soviet law.

### 3) Cuban Justice

Martin Loney, "Social Control in Cuba," in Ian and Laurie Taylor, eds., The Politics of Deviance, 1973, pp. 42-60.

-Relates the evolution of the socialist Cuban legal system to changes in economic policy and the power of Party Stalinists. Describes mass participation in lawmaking and implementation; discusses Cuba's treatment of dissent and nonconforming lifestyles.

Robert Cantor, "New Laws for a New Society," in Crime and Social Justice, No. 2, Fall-Winter 1974, pp. 12-23.

-A highly favorable description of Cuba's courts, lawyers, and criminal justice policy.

It seems that the U.S. could benefit from certain features of the justice systems of existing socialist countries, especially China's: the mobilization of people at the grass-roots level to control crime and resolve disputes, the demystification of law, and a potentially more humane and effective prison system. But plainly, we must develop a new, just legal system from U.S. tradition there is a great deal for a socialist US to avoid if possible. The wide use of the death penalty and limitations on civil liberty and due process in a non-civil-war

period are the most striking negative features of the existing socialist systems; their resemblance or exaggeration of the worst in our justice system is disheartening.

X.: C. Criminology in the Socialist Countries

Soviet Criminology

Walter D. Connor, Deviance in Soviet Society: Crime, Delinquency, and Alcoholism, Columbia University Press, 1972.

-A well-documented study of crime and criminology in the USSR.

According to Connor, Soviet crime rose in the Civil War, fell in the 1920's (except for juvenile delinquency), and rose again until the mid-1930's. Criminological study continued until the late 1920's, with the advent of Stalinism. Juvenile delinquency is still a significant problem in the USSR, but it is not seen as so serious a problem there, as in the West. The age/offenses/education/social background of Soviet and Western delinquents are similar. Delinquency is primarily blamed on family conditions; there are some personality studies on the special characteristics of adolescence. Generally, treatment of deviants is similar to that in other societies; there may be middle-class bias in their justice system.

Alcoholism is high and rising, with large social costs. Deviance is seen as a capitalist survival, with cultural lag due to the family, religion, and (in an important insight) the socialization of young Russian men to be tough, hard-drinking "he-men." Soviet criminologists and liquor controllers do not cite poor housing, low wages, shortages, and drab working-class life in the USSR as causes of deviance, they avoid criticizing the social order. (He confirms Lapenna's observations on the ideological limits of Soviet criminology.)

X.: D. Additional Readings

The following is a list of other scholarly articles and English-language original sources on law, justice, and criminology in socialist countries. The

works were drawn from these indexes, for the 1963/66-76 period.

- Social Sciences and Humanities Index/Social Science Index
- Index to Legal Periodicals
- Public Affairs Information Service (1970 to date)
- Articles Related to Law Index.

This list is reasonably complete. Needless to say, sources should be used with care; they range from official Soviet publications to a State Department publication (Problems of Communism) to objective scholarship--with everything in between.

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