



Crime, Criminal Justice, and Criminology in Post-Soviet Ukraine

Todd S. Foglesong and Peter H. Solomon, Jr.

Issues in 
International Crime

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FOREWORD

As the world shrinks with the ever-increasing speed of communications, the United States faces new challenges resulting from the growing transnational character of crime. Criminal justice officials and policymakers now have to deal with offenses and offenders whose origins and connections lie outside this country. Criminal organizations are becoming increasingly sophisticated and international in the scope of their activities. Foreign policy professionals now have to grapple with issues once considered purely local, such as crime and police reform.

Yet as the challenges multiply, the supply of information has not kept pace. Academics and policymakers alike lament the dearth of information on transnational crime.

To bridge the gap between research, policy, and practice, the National Institute of Justice (NIJ) sponsors the “Issues in International Crime” monograph series, which presents the results of research in this emerging field. The research published in this series is coordinated through NIJ’s International Center, whose mission is to stimulate and facilitate research on international crime and justice issues and to disseminate the results of that research to policymakers at all levels.

Primarily analytical rather than empirical in nature, the series serves as a vehicle for communicating information on international crime to a target audience that includes policymakers inside and outside the criminal justice system who are attempting to prepare informed policies on complex transnational crime issues, academics who can synthesize the information and teach others about these issues, and criminal justice practitioners.

This inaugural monograph, a “white paper” on crime and justice issues in Ukraine following the collapse of the Soviet Union in 1991, is a product of the U.S.-Ukraine Research Partnership that has been conducted by the NIJ International Center since 1998. This partnership reflects the high level of importance that the United States attaches to its rule-of-law and transnational crime initiatives in Ukraine.

Subsequent monographs in this series will deal with the Russian organized crime threat, police reform abroad, and the impact of corruption on U.S. aid to Eastern Europe and the former Soviet Union.

PREFACE

This study analyzes crime, criminal justice, and criminology in post-Soviet Ukraine. Its purpose is to introduce U.S. criminologists, criminal justice researchers, and other observers to the state of crime and justice in Ukraine. The work will also help scholars understand the character of Ukrainian criminology and assist researchers from both countries in identifying possible projects and potential partners for collaborative inquiries.

Chapter 1 is an interpretive analysis of recent Ukrainian political history. It describes the emergence of independent Ukraine and its regional differences, written and working Constitution, central political institutions, and current socioeconomic predicament. Chapter 2 examines patterns of crime and criminality in Ukraine since 1972. It scrutinizes data on ordinary, economic, business, and organized crime, and it explores the reasons behind their growth and transformation in the past 25 years. Chapter 3 analyzes the past and present system of criminal justice in Ukraine. It focuses on problems in policing, prosecution, and criminal procedure, and offers an assessment of the regime's response to crime. Chapter 4 outlines the main institutions and topics of criminological research in Ukraine today.

The authors relied upon not only published Russian and Ukrainian literature but also unpublished materials, including statistical reports and government studies, as well as interviews with many scholars, judges, legal officials, procurators, and police officers. Foglesong and Solomon benefited from research assistance and advice from many scholars and legal officials in Ukraine, including Iu.M. Groshevoi, A.G. Kulik, A.A. Svetlov, A.P. Zakaliuk, and V.S. Zelenetskii. The authors are also pleased to acknowledge the contributions of Paul D'Anieri and Rosemary Gartner. In addition, Jim Finckenauer, Gary Chick, Jolene Herson, and Mark Eckert helped greatly with the publication of this study.

CONTENTS

Foreword.....	iii
Preface	v
Chapter 1: Independent Ukraine: An Overview	1
Geopolitical Significance	3
Internal Divisions	3
The Ambiguous and Ambivalent Emergence of Independence	5
Ukraine's Constitution.....	6
Ukraine's Weak State and the Problem of Economic Reform.....	7
The Outlook: After the Presidential Elections	11
Chapter 2: Crime and Criminality in Post-Soviet Ukraine	15
Patterns of Criminality and Ordinary Crime	18
Explaining Patterns of Criminality	26
Business Crime and Crime in the Economy	30
Organized Crime and Corruption	33
Conclusions	43
Chapter 3: Criminal Justice in Post-Soviet Ukraine	55
The Soviet Legacy	58
Post-Soviet Criminal Justice	66
Fighting Crime in Ukraine: Assessing the Regime's Response	72
The Future of Criminal Justice Reforms	83
Chapter 4: Soviet and Post-Soviet Criminology in Ukraine	101

CHAPTER *1*

Independent Ukraine: An Overview



GEOPOLITICAL SIGNIFICANCE

Ukraine is one of the linchpins of stability in East-Central Europe. Comparable to France in both area and population, Ukraine is, after Russia, the largest and most prominent of the successor states of the Union of Soviet Socialist Republics (U.S.S.R.). Ukraine's geopolitical significance stems not only from its size but also from its location and economic potential. Ukraine connects Western and Eastern Europe. It is, as political geographers say, a critical borderland. Surrounded by Russia in the East, Belarus in the North, the Black Sea in the South, and Poland, Slovakia, Hungary, Moldova, and Romania in the West, Ukraine is central to European regional security. Ukraine's continued independence will make it impossible for Russia to extend its influence west. As Zbigniew Brzezinski maintains, "It cannot be stressed strongly enough that without Ukraine, Russia ceases to be an empire, but with Ukraine suborned and then subordinated, Russia automatically becomes an empire."¹

With NATO expanding its borders eastward to Ukraine's western edge, the country's role in maintaining regional stability has only increased. If a newly expanded NATO does not want to find itself facing a resurgent Russia, Ukraine will have to remain independent and resist the stationing of Russia's troops on its soil. Ukraine clearly has the political desire to remain independent of Russia, but it is not clear that Ukraine has the economic wherewithal and internal stability to back up its political goals. Its turbulent history, the legacy of Soviet rule, the immaturity of its democracy, and the chaos of its economy call into question Ukraine's coherence as an independent state. Moreover, if Ukraine continues to provide a hospitable environment for organized crime, it will provide a constant source of problems for NATO and European Union (EU) countries, as problems with the drug trade and trafficking in women already demonstrate. These factors help explain the immense attention the country has received in U.S. foreign policy in recent years (in 1998, Ukraine was the third-largest recipient of U.S. foreign aid, behind only Israel and Egypt).²

INTERNAL DIVISIONS

Ukraine's history has been defined by its own internal divisions between east and west. Most of eastern Ukraine has been under Russian control since the 17th century, and the Russian state today traces its roots to medieval Kiev (which it emphatically calls *Kievan Rus*). The western quarter of the country (including areas traditionally known as Galicia), with between one-fifth and one-sixth of the total population, was not linked to Russia or the Soviet Union until 1939. These areas were part of the Austro-Hungarian Empire until 1920, when a large portion of this territory was

incorporated into interwar Poland; it did not become part of the U.S.S.R. until the Molotov-Ribbentrop Pact ceded this part of Poland to the U.S.S.R.

This divisive and well-remembered history is largely responsible for two complicated political problems today. First, Ukrainian society is divided into two parts with largely different histories, different experiences with democracy and the free market, and different attitudes toward those institutions. The population in the western part tends to identify with the models being provided by its neighbors to the west—the former Hapsburg territories of Poland, Slovakia, and Hungary. In eastern Ukraine, ties with Russia are much stronger, and there is greater identification with and affinity for traditionally Russian political culture and institutions.

Second, Ukraine has a very complex relationship with Russia, with its citizens' attitudes toward Russia tending to follow Ukraine's regional divisions. For Ukrainian nationalists, Russia is the historical enemy of the Ukrainian people, having subjugated Ukraine in the 17th and 18th centuries and then causing the deaths of millions of Ukrainians during the Great Famine of 1932 and 1933. Other Ukrainians identify closely with Russia because of their shared history, language, and culture and a high rate of intermarriage between ethnic Ukrainians and ethnic Russians, who make up 22 percent of the population of Ukraine. Although 73 percent of Ukrainian residents identified themselves as "Ukrainian" in the 1989 Soviet census, only a minority (approximately 40 percent) of Ukrainian citizens speak Ukrainian as their primary language, and a large number of ethnic Ukrainians define themselves as having mixed Russian-Ukrainian ethnicity when given that choice on surveys.³ For these ecumenically minded Ukrainians, Russia and Ukraine have indissoluble links: The two countries sprang from the same source—medieval Kiev—and have shared similar and tragic fates.

Moments of political unity in Ukraine have been rare. Ukraine's declaration of independence, for example, was widely supported across the political spectrum, and in the December 1991 referendum on independence, more than 90 percent of citizens voted for independence, including a majority in every region of Ukraine, even those traditionally linked to Russia. Since that time, however, the society and government have been divided about how to proceed on virtually all significant issues, including relations with Russia. Many of those who supported independence were dismayed to see the government rupturing longstanding ties with Russia. After several years of acrimonious relations, a tentative compromise was reached, in which Ukraine upholds economic ties with Russia but does not participate in Russian-led regional groupings such as the Commonwealth of Independent States (CIS) Customs Union.

On the central question of domestic economic reform, however, there is no consensus, little middle ground, and virtually no prospect for a harmonious political resolution.

THE AMBIGUOUS AND AMBIVALENT EMERGENCE OF INDEPENDENCE

Like other Soviet successor states, Ukraine first acquired economic autonomy as a result of the political decentralizations of the Mikhail Gorbachev era. Gorbachev had hoped to improve the country's economic performance by increasing the authority and accountability of the constituent republics and by taking decisions out of the hands of the middle-level bureaucrats who depended on the stagnation of Leonid Brezhnev's system for their survival. The first and last President of the U.S.S.R. was willing to concede daily control of both political and economic affairs as long as the republics would pursue centrally set, Union-wide goals. Greater autonomy, of course, appealed to both Ukrainian nationalists and the reigning political elite in Kyiv. Politicians gained notoriety and power without much added accountability, and nationalists acquired the semblance of statehood. When the opportunity for a nonbinding and painless proclamation of sovereignty presented itself in July 1990, Ukraine took it. Well before the collapse of the Soviet Union, therefore, Ukraine enjoyed most of the prerogatives of an independent state without losing its membership in or access to the resources of a reorganized U.S.S.R.⁴

Genuine independence was achieved suddenly, in the wake of the August 1991 putsch. In fact, the Ukrainian state was created almost spontaneously, in a rush of pronouncements in the late summer and fall of 1991.⁵ An amalgam of nationalists and an opportunistic political elite hammered out a pact of mutual convenience that led to Ukraine's secession from the U.S.S.R. Put simply, the nationalists made a deal with political and economic officials (the nomenklatura) in Kyiv. The nationalists promised not to try removing the government from power in its drive for independence if the government in Kyiv would break with the Soviet Union. This was considered positive by both sides: The nomenklatura obtained its primary goal, retaining power, and the nationalists achieved their ultimate goal, an independent Ukraine. Finally, in December 1991, in a Belorussian forest outside Minsk, President Leonid Kravchuk signed an agreement terminating Ukraine's participation in the Soviet Union.

The fact that independence was brought about neither by revolution nor by the overthrow of the ruling elite has had lasting consequences for politics and policies in Ukraine. By agreeing to let the Communist-era government retain power under a new label, the opposition made future political and economic change extremely difficult. Very few, if any, government officials had an interest in the rapid changes that

political and economic reformers sought and that the country objectively needed. Also, the expectations among nationalist reformers that the old guard would gradually be swept from power were naive. Since 1991, the nomenklatura has managed quite easily to preserve real power and control over property by means of a simple strategy—by “recruiting to its ranks the most conformist leaders of the former counter-elite and by a timely change in its slogans for the sake of a new ‘legitimacy.’”⁶ In addition, the Communist Party of Ukraine, to which many elite figures still belong, has been at least as rigid and conservative as Russia’s (observers had speculated that the Ukrainian communists endorsed independence so Gorbachev would not force upon them reformist economic policies). The deal brokered by nationalists in 1991 left in power officials vitally interested in the preservation of the previous political and economic system. A powerful and entrenched opposition to change was thus built into the Ukrainian political transition.

UKRAINE’S CONSTITUTION

It was not until 1996, and the settlement of a protracted political crisis, that Ukraine adopted a new Constitution.⁷ However, the constant battles over authority between the President, Prime Minister, and Parliament (the Verkhovna Rada) that preceded the adoption of the Constitution have not abated. In fact, the new Constitution has merely reinforced and institutionalized conflict at the apex of political power. Ostensibly a French semipresidentialist system, in which the Prime Minister and President share executive authority, the Ukrainian Constitution operates in practice like a fitful authoritarian regime. The President has very broad powers, including control over the Government.⁸ The Prime Minister is not selected from the party leaders in the Rada but, rather, is an outside official confirmed by the Rada upon nomination by the President. And because the legislature has little say in the formation of the Government, its acquiescence or cooperation in the development of policies is not easily obtained. Add to this too many fractious and underdeveloped political parties, and you get peculiar constitutional architecture that aggravates the disputes inherent in ideological, regional, and cultural differences in Ukraine.⁹ The fact that there is no democratic way of resolving these disputes (both the President and the Rada are elected directly by the population) tends to escalate political confrontations in Ukraine.

There have been two post-Soviet Parliaments in Ukraine, both dominated by socialists and neither capable of forming coalitions. This fragmentation of the legislative assembly is as much the consequence of ideological differences as it is of the inchoate party system.¹⁰ For a variety of historical, political, and institutional reasons, organized political parties have played only a minor role in postindependence Ukrainian

politics, although that role seems to be increasing under the new electoral law. The 1994 Rada was elected in 450 single-member districts, according to a majoritarian electoral rule. The result was a large number of independents in the Rada. For the 1998 elections, the electoral law was changed to a mixed plurality/proportional representation system, in which 225 members were elected in single-member districts, and 225 were elected on the basis of party lists. The new law was intended to strengthen parties and add coherence to the Rada, but no party in the Rada commands a majority or is able consistently to put forward a program that can win the support, or compel the acquiescence, of the President.

Like its Soviet predecessor, Ukraine remains a unitary state under the 1996 Constitution (article 132). There are three tiers of government: national, regional, and local (which includes cities, city and rural districts, and villages and rural settlements). Regional (oblast) and local (raion) governments are subordinated to higher level governments in virtually every respect (article 118). The intergovernmental structure remains, formally, a strict hierarchy. The unitary state is also reflected in the budget structure of Ukraine, which mirrors the governmental structure. The budgets of lower level governments are essentially “nested” within the budgets of their corresponding higher level governments. At the same time, those departments of regional and local governments that still double as components of central ministries (also known as dual subordination) normally receive a large part of their budgets (especially the salary component) directly from the ministry. This pattern applied, for example, to regional police departments, which remained part of the national Ministry of Internal Affairs. Overall, intergovernmental fiscal relations in post-Soviet Ukraine are marked by a high degree of revenue dependency and are reminiscent of centralized fiscal management under the Soviet system.

UKRAINE’S WEAK STATE AND THE PROBLEM OF ECONOMIC REFORM

Although a 1990 Deutsche Bank report judged Ukraine the most promising post-Soviet economy, Ukraine has been a financial disaster since 1991. The first 3 years of independence were accompanied by hyperinflation, and between 1991 and 1998, Ukraine’s real gross domestic product (GDP) declined by 63 percent (compared with slightly more than 40 percent in Russia). Among the postsocialist countries, only Albania and Turkmenistan have suffered more severe downturns. Virtually no sector or industry has escaped a deep and broad depression. Although many aspects of macroeconomic stabilization were achieved after 1994, including the introduction of a new currency (the Hryvnia) in 1996, the prospects for recovery soon were bleak.

Most economic indicators and international authorities paint a dire picture for Ukraine. In 1996, the World Bank categorized Ukraine as among the group 4, or slow reform, countries. In 1997, the World Economic Forum ranked Ukraine as the 52d of 53 countries in overall competitiveness in its *Global Competitiveness Report*. And in 1998, the Heritage Foundation-Wall Street Journal *Index of Economic Freedom* ranked Ukraine as the 125th of 156 countries, labeling Ukraine as among the “mostly unfree” economies of the world. Industrial investment (both domestically and from abroad) remains low, despite lower inflation and a more stable currency. Since 1995, Ukraine has become dependent on massive infusions of capital from multilateral lending institutions, particularly the International Monetary Fund (IMF), to prop up its economy.

For the average Ukrainian, the consequences of the economic collapse have been devastating, even if difficult to quantify. Hyperinflation ruined the savings of the most defenseless sectors of the population, especially pensioners and the unemployed. Official unemployment rates are still approximately 3 percent, although this is not an accurate measure. Many workers have been placed on administrative leave, or are officially listed as employed but paid as part-time workers or not at all. In March 1993, inspections of 6,900 enterprises conducted by the State Center of Employment revealed that nearly 572,000 of the 3.9 million workers, or 14.6 percent, were on long-term leave. In certain regions of Ukraine and branches of industry at that time, more than 44 percent of workers were compelled to take leave, which resulted in levels of hidden unemployment reaching 58 percent. Recent estimates place the number of hidden unemployed at close to 3.5 million. Many of these workers have turned to “shadow activities” for their sustenance. Registered unemployment grew from 162,000 in January 1996 to 351,100 in January 1997, before reaching 1,052,000 by July 1998. The International Labour Organization (ILO), however, estimated actual unemployment levels at closer to 9.8 percent, or three times the official rate. The situation is so dire that many Ukrainians go to Russia as guest workers. As in the cases of other countries undergoing such profound socioeconomic collapses, these conditions are criminogenic, a topic explored in detail in chapter 2.

Despite the extreme centralization of executive authority in Ukraine, and the constitutional right to rule by decree, the President has not been effective at governing or reforming the economy. Leonid Kuchma, the former Prime Minister and current President, has been much more reform minded than his predecessor Leonid Kravchuk and both Parliaments, but he has not taken many necessary steps for economic recovery and has been unable to implement his programs or laws. The most striking policy failures have been in the areas of large-scale privatization (especially in the

agricultural sector), corporate restructuring, enterprise governance, and creation of an investor-friendly business climate. Part of this policy failure stems from the state's own internal political divisions and the difficulty of simultaneously undergoing a fundamental political and economic transition. But much of the incapacity of government is the result of the state's internal institutional weaknesses and illegitimacy. The government simply has difficulty commanding the loyalty of its subjects. It cannot predictably or reliably perform the most basic function of government: collecting taxes. It also has trouble obtaining the obedience of its own civil servants, as the discussion of corruption in chapters 2 and 3 will show. In this sense, Ukraine is a quintessential case of what political scientists call a "weak state."¹¹

Advisers from the IMF and World Bank have strongly emphasized the need for improvement in tax collection, and draconian measures have been attempted. In the summer of 1998, for example, former Prime Minister Valery Pustovoitenko summoned several hundred prominent businessmen to a resort outside Kyiv, ostensibly for economic consultations. He then held the businessmen hostage in the Maryinskyi palace, releasing them only after they paid their taxes. While these tactics sent a message about the state's need for revenue, the government has not made significant improvements in tax collection. This chronic revenue crisis in Ukraine has had deleterious consequences for law and order and the reform of the criminal justice system, which is discussed in chapter 3. It has also thwarted economic reform.

The sources of economic decay and decline lie in three areas. First, although Ukraine is rich in natural resources, most of these were depleted during the Soviet period. Extraction costs in many cases exceed the prospective sales prices. Second, the Soviet Union left Ukraine with an economic base that was not viable in market terms. In particular, eastern Ukraine has enormous mining and metallurgy concerns that can neither be made profitable nor shut down without making redundant a substantial percentage of the workforce. No realistic transition strategy has been developed to phase out these industries. Third, Ukraine is highly dependent on Russia for its energy and has suffered a huge decline in terms of trade in the shift to world market prices: Ukraine's energy import costs have increased far more than the prices of its industrial and agricultural exports. Ukrainians with connections to Russian exporters have taken advantage of the price differentials and their administrative authority to reap huge illegal profits from this import business.

Together with these systemic problems, the weakness of the Ukrainian state has facilitated the expansion of a shadow, or unofficial, economy. The shadow economy was estimated at 60 percent of total real gross domestic product (GDP) in 1996.¹² Its growth has been swift. As early as 1992, a survey of 223 private firms found that

54 percent of their aggregate profit was derived from shadow activities. In 1994, a poll of 200 companies operating with foreign capital revealed that 55 percent of their business was involved with the shadow economy. By 1997, approximately 40 percent of all currency was circulating outside the official banking system.¹³ A significant proportion of the labor force is, therefore, at least partially, if not wholly, employed in shadow activities. In a strict sense, all of this activity is illegal, and some, as discussed in chapter 2, is closely linked to the criminal world.

The shadow economy, it should be emphasized, is at least partly attributable to excessive state regulation, which businesses have a hard time distinguishing from racketeering. The byzantine tax system, onerous business registration requirements, and complex (and often contradictory) regulatory rules under which all legitimate economic interests must operate place in the hands of underpaid and overworked administrators innumerable opportunities for using public office for private gain. More than 1,000 types of commercial activity are subject to licensing. Twenty-five separate state agencies have the right to audit businesses, and the average number of such annual checks has risen from 34 to 296. Ukrainian enterprises spend the equivalent of an estimated 3 percent of GDP on regulatory compliance each year. All of these rules and regulations have the effect of providing an army of state inspectors the power to shut down any enterprise in the country, unless a bribe is paid. To some extent, the state itself has forced firms into the shadows by making legitimate and profitable business nearly impossible.

Many of the Government's seemingly irrational economic policies also provide incentives and opportunities for crime and corruption. For example, the combination of hyperinflation and massive subsidized state loans enabled those with access to state loans to borrow money from the Government, convert the money to U.S. dollars, and then, after watching the currency lose much of its value, convert only a portion of the dollars back into local currency to pay off the loan, pocketing the remainder. Similarly, the lack of privatization of enterprises gives state managers the ability to sell their assets at grossly undervalued prices in return for a cash side-payment, often deposited in a foreign bank account. Barter trade, prompted by currency instability, made such transactions easier to hide by making prices difficult to monitor. Thus, former Prime Minister Pavlo Lazarenko (currently in a Federal prison facing criminal charges in both the United States and Switzerland) was reportedly able to make a fortune when he was able to use his control of state petroleum firms to buy gas at the subsidized rate, sell it at world market prices, and deposit the profits in Swiss banks.¹⁴

THE OUTLOOK: AFTER THE PRESIDENTIAL ELECTIONS

In most modern democracies, the completion of a presidential election usually signals the termination of open political conflict. Political foes return to their customary seats to conduct politics as usual. This does not occur in Ukraine. Far from settling and restructuring relations between government and opposition, the reelection of President Kuchma in October 1999 unleashed a new round of very public and intensely partisan political battles. In 2000, the President and the Rada were involved in what appeared to be irreconcilable institutional conflict.

Two months after his election victory, Kuchma proposed a referendum on constitutional changes to extend the power of the president of Ukraine. He claimed that the current Constitution gives insufficient power to the President and thereby stymies policy initiatives, especially economic reform. Over the objection of the Council of Europe, which was alarmed by the authoritarian implications of a further extension of presidential prerogative, Kuchma endeavored to put to the people six propositions:

- Should the President be allowed to dissolve the Rada if the present referendum shows that the public lacks confidence in the current legislature?
- Should constitutional changes be made by referendum?
- Should the President have the right to dismiss the Rada if, within 1 month, it is unable to form a permanent parliamentary majority, or approve the state budget within 3 months from the moment it is submitted by the Cabinet of Ministers?
- Should the immunity of Rada deputies be withdrawn?
- Should the number of deputies be decreased from 450 to 300?
- Should the Rada be a bicameral legislature instead of a unicameral body?

Ukraine's Constitutional Court disallowed the first two questions, but on April 16, 2000, nearly four-fifths of the population voted overwhelmingly in favor of the four remaining propositions.¹⁵

Despite the mandate given to Kuchma by the plebiscite, the referendum has not solved this latest constitutional crisis. Kuchma lacks the support of the two-thirds of the deputies in the Rada required to introduce changes to the Constitution. And

although the Constitutional Court has reminded the Rada that the results of the referendum are obligatory, the legislature remains defiant. It is not clear how Ukraine will extract itself from this impasse. The worst, but by no means least unlikely, scenario is that the President will dissolve the Rada and declare the Constitution changed by decree. The best, or at least most peaceful, scenario is that, through the politics of compromise and clientelism, Kuchma can engineer more modest legislative and constitutional changes.

Whatever form the resolution of the crisis takes, state policy on corruption and organized crime is unlikely to change dramatically. The intrigue of stripping deputies of their parliamentary immunity will likely engulf, and possibly disfigure, any new policy or legislation directed toward the fight against corruption and organized crime. Neither current nor future deputies are likely to expose themselves and their constituencies to the scrutiny of the law enforcement agencies, which support the President in this showdown. In short, the current political environment is not conducive to bold new anticrime measures. Even if the current President had a coherent reformist policy agenda, little of it could be achieved in this highly confrontational political environment. International organizations and foreign assistance projects must take this into consideration as they endeavor to lobby for changes in Ukrainian law enforcement practices.

Notes

1. Brzezinski, Zbigniew, "The Premature Partnership," *Foreign Affairs* 73 (2) (March–April 1994): 80.
2. Wolczuk, Kataryna, "The Politics of Constitution Making in Ukraine," in *Contemporary Ukraine: Dynamics of Post-Soviet Transformation*, ed. Taras Kuzio, Armonk, NY: M.E. Sharpe, 1998: 118–38.
3. For a lengthy discussion of these regional and ethnic divisions, see Wilson, Andrew, *Ukrainian Nationalism in the 1990s: A Minority Faith*, Cambridge: Cambridge University Press, 1997.
4. For a more detailed account of these developments, see Garnett, Sherman, *Keystone in the Arch*, Washington, DC: Carnegie Endowment for International Peace, 1997.
5. According to Alexander Motyl, "[V]irtually no one in or out of the government was prepared for independence or its aftermath." Motyl, Alexander, *Dilemmas of Independence: Ukraine After Totalitarianism*, New York: Council on Foreign Relations Press, 1993: 50, 75.

6. Polokhalo, Volodymyr, "The Neo-Totalitarian Transformations of Post-Communist Power in Ukraine," *Politychna Dumka/Political Thought*, no. 3 (1994): 133–4.
7. For an account of the constitutional impasse in 1995, see Wolczuk, Kataryna, "The Politics of Constitution Making in Ukraine" (see note 2).
8. The President thus effectively appoints the Prime Minister, who, in turn, directs the Cabinet of Ministers (article 106). The President also has the authority to appoint certain individual ministers. He has veto power over legislation, although there is provision for a parliamentary override. He can still overturn acts taken by the Cabinet of Ministers, but it is not clear that he can revoke the actions taken by individual ministries unless they violate the Constitution. The President also appoints the heads of local state administrations upon the recommendation of the Cabinet of Ministers.
9. For an analysis of the problems of semipresidentialism in Ukraine, see Wilson, Andrew, "Ukraine," in *Postcommunist Presidents*, ed. Ray Taras, Cambridge: Cambridge University Press, 1997: 67–105. For a description of similar constitutional confrontations in Russia, see Huskey, Eugene, *Presidential Power in Russia*, Armonk, NY: M.E. Sharpe, 1999.
10. According to Alexander Motyl, "The absence of an institutionalized party system means that . . . effective parliamentary rule is virtually impossible." Motyl, Alexander, *Dilemmas of Independence* (see note 5): 50.
11. For an indepth study of state weakness in Ukraine, see D'Anieri, Paul, Robert Kravchuk, and Taras Kuzio, *Politics and Society in Ukraine*, Boulder, CO: Westview Press, 1999: 90–140.
12. See Razumkov, et al., "Report of the Ukrainian Center for Economic and Political Studies: The Shadow Economy and Organized Crime in Ukraine" in *Zerkalo nedeli* Kyiv, February 10, 1996: 16, as translated from the Russian in FBIS–SOV–96–094–S.
13. Paskhaver, Alexander, "Ukraine's Shadow Economy During the Period of Transition," *The Ukrainian Economic Monitor* 3 (6) (13) (June 1996): 6–11.
14. In 1998, Pavlo Lazarenko fled Ukraine to the United States before he could be charged with criminal corruption. However, when Switzerland charged him with money laundering in 1999, he was arrested in the United States pending an extradition hearing. In May 2000, the U.S. Government also indicted Lazarenko on charges of money laundering, for which he is to face trial in

2001. In the fall of 2000, Lazarenko pleaded guilty to the Swiss charges and agreed to return some \$6 million to the government of Ukraine. The request for extradition to Switzerland was dropped.

15. See, for example, the coverage of the referendum results in the electronic RFE/RL Newline, 4 (77), part 2 (April 18, 2000).

CHAPTER 2

Crime and Criminality
in Post-Soviet Ukraine



Between 1989 and 1999, Ukraine, like other former Soviet republics, experienced a dramatic (approximately 2.5-fold) surge in its overall rate of recorded crime.¹ This increase should come as no surprise, for during this time the collapse of an entire economic system, enfeeblement of the state and its capacity to enforce its laws, and radical changes in social structure occurred.

Two stories define the organization of this chapter. The first concerns crime as a whole, especially ordinary crime, such as property crime, and crimes of violence. This is where the major surge in activity (and in police registration of activity) occurred. As discussed later, the really dramatic change occurred not in crimes of violence but, rather, in simple theft. On one hand, the rise in theft almost certainly reflects the changes in social structure, whether reflected in class differences, social disorganization, or social strain. On the other hand, the Soviet rates of property crime were so low compared with those in Western European countries that one might qualify the story as normalization.

The other big story was the criminalization of the economy; that is, development of economic activities of organized crime (such as trade in narcotics) and the symbiotic relationship between the criminal world and much of private business. These businesses have come to rely upon criminal organizations for protection and also face strong incentives to evade government taxation. Then there is the involvement of government officials as participants more than as combatants of these activities, and the spread of what is seen as corruption. There is, to be sure, some overlap between the worlds of ordinary and business-related crime, especially if one defines organized criminal groups loosely. But, for purposes of analysis, the distinction remains useful.

In examining these stories, we will pay close attention to what is distinctive about the Ukrainian situation, in both reality and perception. The leading local commentators on crime in Ukraine emphasize that, notwithstanding the growth of crime, Ukraine continues to have a much lower rate of recorded crime than the Russian Federation, still 40 percent less in 1995.² Comparisons with other post-Soviet republics suggest that it is Russia that is the outlier; but explaining this dramatic difference contributes to better understanding Ukrainian realities.³ Beyond reality there is the matter of perception. In the writings of both criminologists and other commentators in Ukraine, one encounters a strain of pessimism that may or may not be warranted. This pessimism takes the form of assertions that Ukrainian officials are more corrupt than their Russian counterparts, or that the dark figure of crime (the crimes unknown to or unrecorded by the police) is larger in Ukraine.⁴ Ultimately, these perceptions may matter more than the reality behind them.

Finally, in analyzing crime trends in Ukraine, this chapter relies on official data on crimes registered by the police. This is the main indicator of criminality used by Ukrainian criminologists and law enforcement officials alike. However, it is not the same as crimes reported to the police, much less the amount of crime actually committed. As chapter 3 explains, in the late Soviet period the police in Ukraine failed to register roughly one-third of the crimes reported to them, and this share increased during the post-Soviet period. Although many complaints to the police did not withstand scrutiny, police were also known to refuse to register “criminal manifestations” for other reasons, such as the unlikelihood of solving the case. Understanding the meaning of criminal statistics in any country during any epoch requires coming to terms with the incentives that shape the recording practices of the police, and this is especially so in late Soviet and post-Soviet Ukraine. In short, analysts and casual observers alike must treat Ukrainian statistics with caution. One must be especially careful not to make large inferences from relatively small changes in the dynamics of crime. This chapter, however, focuses mainly on large-scale or macrolevel changes in crimes registered by the police, changes that reflect underlying realities, notwithstanding variations in citizen reporting and police registration of crimes. We will indicate and discuss the situations in which these practices seem to shape or distort the data in major ways (for example, in statistics on organized crime).

PATTERNS OF CRIMINALITY AND ORDINARY CRIME

Although the great surge in crimes committed and registered in Ukraine occurred from 1989 to 1995, there had been a pattern of gradual increase from the mid-1960s. The trend accelerated in the years from 1978 to 1983, then briefly stabilized in the mid-1980s and even declined in 1987 and 1988 as a result of Mikhail Gorbachev’s antialcohol campaign. Overall, between 1972 and 1989, rates of recorded crime more than doubled. Explaining this change requires a knowledge of history. In part, the increase reflected the growing urbanization of Ukraine (and the U.S.S.R.)—the percentage of citizens living in urban areas in the U.S.S.R. grew from 56 percent in 1970 to 66 percent in 1989—but even more it resulted from the declining influence of factors that had kept crime rates artificially low in previous decades.

At least four factors combined from the 1930s through the first half of the 1960s to keep crime rates in the U.S.S.R. and Ukraine low, despite remarkably high rates of urbanization. One factor involved shifts in the scope of the criminal law, especially periodic exercises in decriminalization. Thus, in the mid-1920s, public drunkenness and petty theft were shifted to administrative jurisdiction. Decriminalization came in enforcement practice as well as in law; in the wake of Joseph Stalin’s harsh decrees

on theft in 1947, police for the most part stopped prosecuting juvenile offenders for thefts.⁵

A second factor involved demographic changes, as collectivization and World War II artificially reduced the number of young men (the main crime-committing group) in the population. This factor had a major impact in the 1950s. When a new generation of youth began to influence crime rates in the early 1960s, some of the responsibility for addressing this issue was shifted to juvenile affairs commissions and the offenses were effectively decriminalized.⁶

A third factor influencing crime rates was the change in property relations and in patterns of production that occurred in the early 1930s. The decline in private property and the amount and attractiveness of consumer goods led to a corresponding decline in theft of private property. Although employee theft of state property became an epidemic, it was treated as an administrative offense until 1940 and, once criminalized, was often ignored.⁷ Police methods of recording crimes became a fourth factor. For much of Soviet history, police were evaluated on the basis of rates of solving crimes (*raskryvaemost*), which encouraged them not to register crime reports, especially thefts, where there were no obvious suspects. At times, police were known to keep a separate parallel record of “criminal manifestations,” which were not entered in official statistics.⁸

The period from 1965 to 1988 witnessed a change in the conditions that had suppressed crime rates. First, after decades of disturbance some demographic normality was achieved. Second, no further significant decriminalization occurred; in fact, a series of police campaigns encouraged the qualification of more petty offenses as criminal. Third, and most important, the Soviet economy finally began producing a significant amount of goods worth stealing. As the Brezhnev government adopted a policy of increasing production of various consumer durables, a parallel or shadow economy (sometimes called the second economy) emerged to facilitate production and distribution of consumer goods. The shadow economy was itself a criminogenic phenomenon involving illegal production and trade, bribery of officials, misappropriation of supplies, and the use of private protection services. This economy also affected ordinary crime, providing more opportunities for property crime and involving a large part of the population in law-avoidance activities that eroded its already low respect for law.⁹ As exhibit 2.1 shows, these factors contributed to a fairly steady increase in the total number of registered crimes in Ukraine during this period.

EXHIBIT 2.1.

Criminality in Soviet Ukraine, 1972–88

Year	Registered Crimes	% Growth Since 1972	% Growth From Preceding Year	Crime Coefficient (per 100,000)
1972	135,646	–	–	283
1973	128,430	-3.4	-3.4	266
1974	144,325	6.4	12.5	297
1975	145,117	7.0	0.6	297
1976	148,514	9.5	2.3	303
1977	141,604	4.4	-4.6	287
1978	155,088	14.3	9.5	313
1979	178,019	31.2	14.8	358
1980	196,902	45.2	10.6	395
1981	209,135	54.2	6.2	417
1982	212,990	57.0	1.8	425
1983	236,580	74.4	11.1	469
1984	229,712	69.4	-2.9	453
1985	249,553	84.0	8.6	491
1986	248,663	83.3	-0.4	488
1987	237,821	75.5	-4.4	464
1988	242,974	79.1	2.2	473

SOURCE: *Prestupnost v Ukraine*, no. 2 (1994): 136–137.

In 1989, the number of registered crimes in Ukraine rose by 32.7 percent over the previous year, from 242,974 to 322,340, which requires special explanation. In 1989, the U.S.S.R. Ministry of Internal Affairs called for a change in police registration practices, instructing police agencies to include all reported crimes (and promising to disregard the resultant low rates of detection). The purpose of this artificially generated crime wave became obvious when police officials publicized the data, hoping to generate a panic: The inflated numbers were used to attract more resources for the police.¹⁰

Although the change in police reporting explains a portion of the 1989 crime wave, there is reason to believe that there was an actual increase as well. That year represented the beginning of the end of the Soviet economy, the year when suppressed inflation led to a shortage of goods in the main economy, as the bulk of goods were produced in and distributed through the shadow economy. The real prices necessary to acquire scarce goods in the second economy became excessively high, especially when members of the public resorted to hoarding. It is reasonable, then, to suppose

that the sudden new impoverishment of part of the public in 1989 led to a real surge in property crimes such as theft. Also, as exhibit 2.2 shows, in Ukraine between 1990 and 1995, the amount of recorded crime increased at an annual average rate of 12 percent, reaching its peak of 641,860 in 1995.

Each of the next 3 years registered a decrease in the order of 3 to 4 percent per annum. The most likely explanation for this decrease is the changes in police practice involving more qualification of less serious incidents as administrative, rather than criminal, offenses (a quiet decriminalization) and an increasing tendency not to record incidents with no suspects, owing to a concern about solution rates).¹¹ According to Genady Udovenko, a former presidential candidate and the current Chairman of the Human Rights Committee of the Ukrainian legislature, the decline in reported crime for 1997 was “artificial.”¹²

Property crime

The surge in recorded crime between 1989 and 1993 reflected a major change in the structure of crime. The number of property crimes, such as theft, robbery, swindling, and extortion, and economic crimes, such as bribery, counterfeiting, and trading in narcotics, grew much faster than crimes of violence, especially murder, serious assault, and hooliganism. The result was that the percentage of crimes against property rose from a one-third to a two-thirds share of all crime, while the percentage of

EXHIBIT 2.2.			
Criminality in Soviet and Post-Soviet Ukraine, 1988–98			
Year	Registered Crimes	% Growth From Preceding Year	Crime Coefficient (per 100,000)
1988	242,974	2.2	473
1989	322,340	32.7	623
1990	369,809	14.7	713
1991	405,516	9.7	780
1992	480,478	18.5	922
1993	539,299	12.2	1,032
1994	571,891	6.0	1,096
1995	641,860	12.2	1,241
1996	617,262	-4.0	1,208
1997	589,208	-4.8	1,164
1998	575,982	-2.3	1,137

SOURCES: *Prestupnost v Ukraine*, no. 2 (1994): 136–137; and “Osnovnye tendentsii prestupnosti i sudimosti v Ukraine v 1994–1998 gg.” (unpublished 1999).

violent crimes fell from two-thirds to one-third.¹³ Although a preponderance of crimes with “mercenary motives” is normal in times of economic decline, the shift in Ukraine and other post-Soviet states came quickly.

As exhibit 2.3 shows, by 1993, theft of private property had risen more than 13-fold from its 1972 level of 14,798 to 194,002; this figure reached 208,544 in 1995 before leveling out in 1998 at 184,760. At the same time, incidents of theft of state and collective property rose 9.4-fold, from 12,235 in 1972 to 115,987 in 1993, its peak before declining to 84,320 in 1998 (reflecting in part the progress of privatization). In addition, there is reason to suppose that the dark figure for these offenses was especially high: Police were at all times reluctant to record thefts that had no chance of solution, and the public, losing faith in law enforcement’s capacity and willingness to investigate thefts, reported these occurrences with decreasing frequency.¹⁴

Apartments and warehouses represented the most common locations for stealing, with thieves favoring jewelry, antiques, imported electronic goods, and hard currency. At the same time, the 1990s saw a revival of thefts of chickens and raids on vegetable gardens, acts reminiscent of the famine of 1947. Approximately half the thefts were committed by groups of offenders, often professional but not usually high-level units of organized crime. (The variety of organized groups will be

EXHIBIT 2.3.

Theft of Private and State Property, 1972, 1980, and 1990–98

Year	Private Property Theft (Number/ % of All Registered Crimes)	State and Collective Property Theft (Number/% of All Registered Crimes)	Total Registered Crimes
1972	14,798 / 10.9	12,235 / 9.0	135,646
1980	32,863 / 16.7	24,462 / 12.4	196,907
1990	129,900 / 35.1	49,429 / 13.4	369,809
1991	154,781 / 38.2	64,281 / 15.9	405,516
1992	179,889 / 37.4	99,559 / 20.7	480,478
1993	194,002 / 36.0	115,987 / 21.5	539,299
1994	197,715 / 34.6	113,993 / 19.9	571,891
1995	208,544 / 32.5	129,698 / 20.2	641,860
1996	198,447 / 32.1	114,689 / 18.6	617,262
1997	177,500 / 30.1	94,966 / 16.1	589,208
1998	184,760 / 32.1	84,320 / 14.6	575,982

SOURCES: *Prestupnost v Ukraine*, no. 2 (1994): 148–159; and “Osnovnye tendentsii prestupnosti i sudimosti v Ukraine v 1994–1998 gg.” (unpublished 1999).

discussed later in greater detail.) Not surprisingly, juveniles bore responsibility for more than 33 percent of thefts, and women committed 13 percent. More than 40 percent of apprehended thieves had criminal records, mostly for previous thefts.¹⁵

A considerable proportion of thefts was committed by single, unemployed persons in their twenties, often without fixed addresses. In Russia such “floaters” were well represented among thieves and constituted one reason for the overuse of pretrial detention and consequent prison overcrowding. Additional research could determine whether Ukraine faced a similar problem.

Despite the large amount of theft in Ukraine, there have been almost no studies about this type of crime.¹⁶ Such studies would be helpful in learning about the roots of theft: for example, what portion reflected poverty or social strain, and what portion represented the work of professional criminals taking advantage of an underpoliced and undercontrolled environment.

Violent crime

Crimes of violence also experienced a surge from 1988 to 1995, though at a lesser rate than property crimes. As exhibit 2.4 shows, incidents of intentional assault rose from 4,241 in 1988 (versus 2,218 in 1972) to 8,800 in 1995. Incidents of robbery grew from 1,694 in 1988 (versus 834 in 1972) to 4,998 in 1994. Also, incidents of intentional murder rose from 2,016 in 1988 (versus 1,577 in 1972) to 4,896 in 1996. In contrast, incidents of rape (including attempted) reached a high point in 1989 at 2,736 (versus 1,564 in 1972), then declined to 1,334 in 1998. As a result, the percentage of rape convicts among the population of labor colonies declined from 9.8 percent in 1991 to 3.4 percent in 1998.¹⁷

What accounts for the marked growth in recorded violent crime for this period? Although criminologists in Ukraine emphasize the novel aspects of the rise in murders, such as the presence of contract murders (210 in 1995) and the rise in the use of guns (from 15 to 16 percent of murders in the 1980s to 20 percent in 1993, with handguns replacing hunting weapons), the bulk of murders and the largest share of the increased number of murders remained impulse murders, committed among family, neighbors, and friends while under the influence of alcohol. In 1995, 62.2 percent of murders involved offender intoxication (virtually the same as in the 1960s); only 21 percent of victims were unknown to their assailant.¹⁸ One may conclude, therefore, that the rise in murders (and also assaults) during the past decade reflected the stresses of unemployment and impoverishment and the accompanying increase in alcohol consumption far more than the growth of organized crime.

EXHIBIT 2.4.

Crimes of Violence, 1972 and 1988–98

Year	Intentional Assault* (Number/% of All Registered Crimes)	Robbery (Number/% of All Registered Crimes)	Intentional Murder (Number/% of All Registered Crimes)	Rape (Number/ % of All Registered Crimes)
1972	2,218 / 1.6	834 / 0.6	1,577 / 1.2	1,564 / 1.2
1988	4,241 / 1.8	1,694 / 0.7	2,016 / 0.8	2,301 / 1.0
1989	5,939 / 1.8	2,547 / 0.8	2,589 / 0.8	2,736 / 0.9
1990	6,673 / 1.8	2,959 / 0.8	2,823 / 0.8	2,661 / 0.7
1991	6,850 / 1.7	2,833 / 0.7	2,902 / 0.7	2,351 / 0.6
1992	8,117 / 1.7	3,692 / 0.8	3,679 / 0.8	2,369 / 0.5
1993	8,174 / 1.5	4,712 / 0.9	4,008 / 0.7	2,078 / 0.4
1994	8,772 / 1.5	4,998 / 0.9	4,571 / 0.8	2,061 / 0.4
1995	8,800 / 1.4	4,740 / 0.7	4,783 / 0.8	1,947 / 0.3
1996	8,429 / 1.4	4,933 / 0.8	4,896 / 0.8	1,752 / 0.3
1997	7,602 / 1.3	4,873 / 0.8	4,529 / 0.8	1,510 / 0.3
1998	6,943 / 1.2	4,897 / 0.9	4,563 / 0.8	1,334 / 0.2

SOURCES: *Prestupnost v Ukraine*, no. 2 (1994): 148–159; and “Osnovnye tendentsii prestupnosti i sudimosti v Ukraine v 1994–1998 gg.” (unpublished 1999).

* Intentional assault (article 101 of the Criminal Code) involves inflicting grave bodily injury that is threatening to the life of the victim. Incidences of lesser forms of assault, including battery (article 102) and battery committed in a state of severe emotional distress (article 103) made up another 3 percent of all registered crimes in 1972; these, too, declined in the period under examination, to 1.5 percent in 1993 and 1.2 percent in 1998.

The sharp decline in reported rapes during the 1990s deserves further exploration. To be sure, the inevitable reluctance of victims to make reports to the police ensures a high level of latency, and it was possible that, in the 1990s, the inexperienced and underequipped persons who filled the ranks of ordinary police officers had little sympathy with or respect for the claims of female victims. However, it is doubtful that changes in either police conduct or public attitudes toward the police could explain the drop in recorded rapes in 1998 to less than the 1972 level. In Russia there was also a decline in rape data between 1990 and 1998, but it was not as dramatic. Unfortunately, the criminological characteristics of reported rapes yield few clues. In 1995, 66 percent of attempted rapes in Ukraine were committed by persons 21 years of age and younger, approximately nearly 66 percent of offenders and 40 percent of the victims were intoxicated, and many of the incidents resulted from misunderstandings.¹⁹ More sophisticated and focused research is needed on both the character and the processing of violent crimes against women.

Specific offender groups: Women, juveniles, recidivists, and migrants

The period from 1989 to 1999 also witnessed changes in the relative contribution to crime of four special groups of offenders. First, the share of reported crimes in Ukraine committed by women grew noticeably in the 1990s, rising from 13.6 percent in 1993 to 17.5 percent in 1996 (compared with 14.9 percent in Russia in 1995). However, in 1972, women represented 20.7 percent of offenders in Ukraine. To some extent, the share of crime committed by women is correlated with economic factors. For example, by 1980, the proportion of all crime committed by women had declined again to 15 percent; in 1985 and 1986 (years characterized by marked shortages in consumer goods), it rose sharply, to 22 and 26 percent, respectively, and it again rose in the mid-1990s (years characterized by hyperinflation). In the 1990s, women were involved mainly in crimes such as theft and cheating customers and suppliers, but, during the past 5 years, women were increasingly implicated in narcotics-related offenses and violent crimes, usually associated with alcohol use.²⁰

Second, the number of juveniles involved in criminal activity, as well as the number of young persons, ages 18 to 24, grew during the years 1979 to 1993 (the coefficients for juveniles more than doubled, and for young persons grew by 88.2 percent), while the coefficient for persons 25 years or older increased by 50 percent. Starting in 1993, however, the share of juveniles and young persons involved in criminal activity began to drop and that of older offenders began to rise, perhaps reflecting demographic factors. Although juveniles ages 14 to 17 represented 13 percent of identified offenders in Ukraine in 1993, that share had dropped to 8.6 percent by 1998. In Russia, the share of juvenile offenders also declined, falling from 17 percent in 1991 to 12 percent in 1995.

Like juvenile delinquents everywhere, Ukrainian youth committed mainly thefts (from apartments or of automobiles), operated in groups (gangs), and were motivated more by a desire to achieve prestige among their peers than by mercenary considerations.²¹ What may have distinguished young offenders in Ukraine, and the former Soviet Union generally, from their counterparts in the West was the likelihood that they would mature into adult offenders. This was because the proliferation of criminal groups, including those that were professional and organized, ensured opportunities for criminal careers, as organized crime actively recruits young criminals.²² At the same time, the predominant moral code among young persons in the former Soviet Union emphasizes the pursuit of economic gain at any cost, and the heroes of youth are, if not organized crime members, at least the “new

Ukrainians” or “new Russians”—most of whom are assumed to have made their fortunes through illicit means. It would be useful to determine whether an unusually large share of Ukrainian young offenders become adult criminals, possibly through a cohort study.

Third, the recidivism rate of persons accused by the police (almost all of whom would be convicted) in Ukraine between 1990 and 1993 averaged 18 percent, approximately 3 to 4 percent below that recorded in Russia; this rate, however, fell during the mid-1990s to approximately 15 percent.²³ Women and civil servants convicted of job-related crimes committed new offenses much less frequently, while persons convicted of theft, swindling, and trade crimes reoffended more often than the gross averages. As of 1993, 30 percent of repeat offenders committed a new crime within 3 years of release from confinement; 66 percent committed one within 5 years. Every seventh recidivist had been convicted of three or more offenses, and the bulk of these persons had been designated by the court as especially dangerous recidivists. Receiving this designation for either convictions of two very dangerous crimes or two moderately serious crimes and one minor one (all according to a complicated formula) meant a loss of eligibility for early release and confinement in a “special regime” labor colony.²⁴

Fourth, another criminogenic group within the population of all post-Soviet countries is migrants. In Russia, the country with the largest migrant population, newcomers accounted for 8 percent of recorded crime in 1995; data for the city of Moscow place the amount of migrant crime at 33 percent. Although Ukraine does not receive as many migrants as Russia, it remains a recipient, with some of its southeastern regions receiving large numbers of newcomers. According to official data, in addition to legal refugees and resettlers, Ukraine in the 1990s received some 50,000 illegal migrants.²⁵ Research concerning the role of migrants in either criminal activity in general or in specific areas of crime, such as the shadow economy or illegal trade of narcotics or women, could produce valuable insights.²⁶

EXPLAINING PATTERNS OF CRIMINALITY

In using available data, this overview analysis of ordinary crime in Ukraine has highlighted observable patterns and changes. It is also possible to consider theoretical perspectives that offer explanations at a higher level of analysis.

One of the oldest and most commonsense perspectives was offered a century ago by Willem Bongers, who sought to demonstrate a correlation between poverty and criminal activity. Parts of the Ukrainian population are so poor that stealing is the only way

to survive. Ironically, the original Soviet leaders, after coming to power, were ready to treat the commission of crimes out of need (*iz-za nuzhdy*) as a mitigating factor. Sympathy for the downtrodden has long since left the criminal codes of the former Soviet republics, but it may still be reflected in the practice of law enforcement.²⁷

Most present-day Ukrainian crime can be seen as a reaction to social strain. In his justly famous study of anomie, Robert K. Merton presented crime as a positive (innovative) response to increases in strain caused by the combination of relative deprivation, the permeation of society by a single set of values (materialism), and the uneven distribution of legitimate means of achieving them. Hence, strain causes anomie, which creates the need for a response. The alternatives to crime—namely immigration, resignation (such as alcoholism), or rebellion—Merton saw as having worse consequences for the society involved.²⁸

The late Soviet and post-Soviet experience, exemplified by Ukraine, included a remarkable combination of the circumstances that produce social strain. A sudden social differentiation emerged, in which a large part of the population became impoverished and earned a small fraction of the income earned by the wealthy. The society became enamored of the values of material accumulation, and very few (at least in public view) had access to legal ways of obtaining wealth.²⁹

In the U.S.S.R. there were also structured inequalities, although nowhere near as large or visible as those that emerged after its collapse. Both social strain and its potential effects were muted by three important factors: The presence of a welfare state (until the 1980s, at least the poorer parts of the population were protected by a safety net); opportunity for social mobility (the possibility to achieve success legally through obtaining higher education and resulting job tracks); and social control (the presence not only of police but also of strong families and community institutions supporting a system of morality that was generally accepted).³⁰ Since 1989, the welfare state all but vanished in Ukraine (as well as Russia); the easy paths to social mobility disappeared (only business pursuits seemed promising); and both policing and the system of “Communist morality” lost their effectiveness. Materialism supplanted any ideals or sense of what was right supplied by Communist morality.

Advancing beyond the “strain” theory in an attempt to fathom the criminogenic state of contemporary Ukraine, Elliott Currie has proposed an amalgam called a “market society,” which is likely to generate high levels of violent crime.³¹ A market society is one in which the principles of the market are not confined only to some parts of the economy and are not “appropriately buffered and restrained by other social institutions and norms,” but instead “come to suffuse the whole social fabric,

and to undercut and overwhelm other principles that have historically sustained individuals, families, and communities.” According to Currie, a market society contains at least seven criminogenic mechanisms: “the progressive destruction of livelihood; the growth of extremes of economic inequality and material deprivation; the withdrawal of public services and supports . . .; the erosion of informal and communal networks of . . . support . . .; the spread of a materialistic, neglectful, and ‘hard’ culture; the unregulated marketing of the technology of violence; and . . . the weakening of social and political alternatives.”

Currie’s larger point is that the United States is the empirical referent for the construct of a Darwinian society, and that Western advisers and East European officials alike have erred in trying to bring precisely this kind of capitalism to the post-Communist world. Perhaps they had no choice, at least in countries of the former Soviet Union, where the welfare state had already decayed and productive forces were too weak to support revival, despite a flow of illegal financial gains from Russia and Ukraine in the 1990s that suggests otherwise. Avoidable or not, citizens of Ukraine and Russia were forced to “sink or swim” in a society that was arguably more Darwinian in nature than the United States, and this kind of society is bound to generate much crime, both property and violent.

It may well be that post-Soviet countries have market societies and unregulated, oligopolistic forms of a market economy precisely because of the privatization of state resources, described by Steven Solnick as “stealing the state,” which brought wealth to many former officials, criminal allies, and friends who remained in government.³² The high rates of ordinary crime, including theft and murder, may be seen as a consequence of the creation of states dominated by the interests of a new class of entrepreneurs and predators, whose pursuit of profit entails another world of criminal activity—that of business and elite crime.

Ukrainian crime in comparative context

Understanding crime in Ukraine in a broader theoretical perspective is important to the development of a vibrant and autonomous criminology in that country (discussed in detail in chapter 4). But it is also important to place Ukrainian crime in an appropriate comparative context, and comparisons with Russia prove particularly insightful.

Although the increase in criminal activity in late- and post-Soviet Ukraine was dramatic, the levels of recorded crime in Ukraine do not come close to those in the Russian Federation. In 1993, for example, while Ukraine recorded 1,032 crimes per

100,000 population (the crime coefficient), the Russian Federation recorded 1,890. The difference between the two countries was even greater for the population age 14 and older: 1,287 versus 2,344.³³ In addition, crime in Ukraine appears to be less violent and lethal than in Russia. Although Ukraine's coefficient of murder (reports of actual and attempted murders per 100,000 population) reached 9, the same level recorded by the United States in 1994, it lagged well behind Russia at 22.³⁴ These data reflect longstanding differences between the two republics: In 1972, Ukraine's crime coefficient was 283; in 1971, Russia's was 536. With republics such as Moldavia and Belorussia at each period having figures similar to Ukraine's, Russia was the anomaly.³⁵

But why? Why is there less recorded crime in Ukraine than in Russia? This is an intriguing research question for at least three reasons. First, both populations have similar age structures. In 1987, the last year for which comparable data exist, the share of the population in the most criminogenic age cohort (15 to 19) in both countries was 22 to 23 percent. Second, the economic consequences of transition are generally viewed to have been more severe in Ukraine than in Russia. Between 1991 and 1998, real GDP in Ukraine declined by a cumulative 63 percent compared with slightly more than 40 percent in Russia. Third, police practices in Russia and Ukraine—including the rules and habits for recording crime as well as their systems for administering criminal justice (discussed in chapter 3)—remain remarkably similar today. In summation, the most convenient criminological explanations (demography, economics, law enforcement) do not help in understanding the large and longstanding differences in the levels of recorded crime in Russia and Ukraine.

Another possible explanation of the disparate crime levels would be differences in levels of urbanization. The western regions of Ukraine (Zakarpatiia, Ivano-Frankivsk, Volynskaia, and Vinitaskaia) are primarily rural and have always had the lowest coefficients of recorded crime (two-thirds lower than the coefficients recorded in the industrial east and lower than any rural region in Russia). Much higher levels of crime were found in the city of Kyiv, the Kharkiv region, and the Crimea (thought to have the worst crime problem in 1999); and the highest coefficients of crime were found in the eastern industrial regions of Dnipropetrovsk, Donetsk, and Lugansk. However, these crime coefficients in 1993 reached only 60 percent of the levels recorded in the industrial regions of Russia, such as Sverdlovsk and Perm in the Urals.³⁶ Although levels of urbanization explain differences in crime between regions of Ukraine, they do *not* explain the systematic differences in levels of recorded crime between Ukraine and Russia. According to the 1989 census, Ukraine was no less urban than the Russian Federation (it was actually slightly more urbanized, with 67 percent of its population living in cities as opposed to 66 percent in Russia).

Moreover, the Ukrainian industrial regions Dnipropetrovsk and Donetsk had higher levels of urbanization (83 percent and 90 percent, respectively) than did the Russian regions of Sverdlovsk and Perm (77 percent and 87 percent). Nor did the age structure of the population explain the difference. In 1987, the share of the population between the ages of 15 and 29 (the most prone to crime) was 22.98 percent in Russia and 22.11 percent in Ukraine, with generally similar gender ratios.³⁷

The Russian Federation also had two criminogenic features largely lacking in Ukraine. The first was a substantial frontier area, most notably the Russian Far East, which had by far the highest crime rates in the entire former Soviet Union (FSU). The second was the huge number of transients not necessarily included in the population data. Even decades ago, a portion of crimes committed in the Russian Soviet Federated Socialist Republic (RSFSR) were the work of persons from other parts of the U.S.S.R. After the breakup, Russia received millions of refugees, resettlers, and “visitors” from various parts of the FSU as well as from other countries. Many criminals apprehended for Russian crimes fell into these categories.³⁸

Further research is required to know whether this is an adequate explanation of the crime gap between Ukraine and Russia. Indeed, there is much room for more comparative research on crime rates in the former Soviet Union. Studies of border regions in Ukraine and Russia (such as Donetsk and Rostov, or Belgorod and Kharkiv), or even Ukraine and Poland, would be particularly good devices for elucidating regional variations and their causes. Such focused research, in which the variations in law enforcement regimes—factors that typically haunt comparative criminology—are minimal, could help solve the puzzle in crime rate differentials.³⁹

BUSINESS CRIME AND CRIME IN THE ECONOMY

When the U.S.S.R. collapsed in December 1991, the state-administered economies of its republics, including Ukraine, were already in the process of disintegration. Each successor state displayed its own particular blend of asset takeover by private entities and depression of the state sector economic activity by shadow economy competitors. Even before Ukraine became independent, criminals had a major effect on the economy; after the collapse, connections among new entrepreneurs (many of them former officials), corrupt government officials, and criminals began to flourish.⁴⁰

To understand organized crime and corruption in post-Soviet Ukraine, it is necessary to understand the shadow economy. This section begins with a history of the shadow economy and privatization during the late Soviet years and in post-Soviet

Ukraine, and then moves to an analysis of organized crime and patterns of corruption in independent Ukraine.

The long shadow of economic crime

Even in the Stalin period, the rigid formalities of Soviet economic planning were matched by informal reliance of managers on their personal connections, supply agents to gather inputs, and the extralegal manufacture of and trade in spare parts. To move further, and trade or sell additional supplementary production outside of the plan to other firms, was a natural concomitant. After Stalin's death, as the economic effects of World War II receded, there developed in the U.S.S.R. a demand for consumer goods that was not met by the state sector. By the 1960s, a parallel market began to emerge. The supply of goods for this market came from a variety of sources, but at its core lay illegal production undertaken mainly by the managers of state enterprises. This activity involved a series of criminal offenses, starting with the misappropriation of state assets (supplies and production process) and extending to payment of bribes to superior officials and control agencies and, eventually, protection money to criminal elements who demanded a piece of the action. During the Brezhnev years (1964–82), the shadow economy (known also as the second or parallel economy) grew to the point where it represented, by conservative estimate, 15 percent of the country's GDP.⁴¹

The economic restructuring during the Gorbachev period led quickly to both an expansion of the shadow economy and criminalization of the economy in general. The first law on cooperatives permitting private, or cooperative, businesses (February 1987) made possible the legalization of previously illegal businesses. At the same time, the laws allowed a variety of officials the discretion to vet and destroy the new firms, providing an ideal opportunity for bribes. Quickly, local government officials recognized that they could force owners of successful businesses to make them coowners. Simultaneously, in 1987, managers of large enterprises gained unprecedented authority to control the production and distribution processes, especially the prices charged. When the second law of cooperatives (May 1988) allowed managers of large state-owned enterprises to create spinoff firms, they responded by privatizing the best of their firms' assets and selling production at inflated prices. Naturally, these managers needed capital to purchase parts of their firms, and the most available partners were persons who had amassed fortunes in the second economy. This included criminals who, from 1986 to 1988, had taken advantage of the restriction on state production of alcoholic beverages to develop a staggeringly profitable underground business.⁴²

By 1989, it had become so profitable to sell goods in the shadow economy that managers of many more firms diverted production, and the shelves of state-owned stores stood bare. As the leaders of the U.S.S.R. lost control of the levers of the economy, they produced more legislation that enabled officials to acquire state assets in *legal* ways. One of the most important was the 1990 Law on Small Enterprises, which created an easy method for the purchase of the most valuable parts of state firms at low prices, and facilitated what Western observers called spontaneous privatization. That process was further aided by legal entities known as *kontserny*, which allowed the acquisition and quasi-privatization of even whole ministries.⁴³

Also in 1990 and 1991, opportunities for a variety of criminal activities expanded, including using primary businesses to sell illegal goods (such as arms and narcotics), and preying on the successes of others (extortion and protection rackets). The growth of private and quasi-private business—legal, illegal, or in between—also engendered the development of financial institutions, some closely tied to capital with criminal origins. This political economy gave rise to the now familiar partnerships involving entrepreneurs (including some industrial officials and the “Young Turks” of the Komsomol, or League of Young Communists), criminal organizations (in part staffed by former security police officials), and officials who remained in government. It is these triads, referred to by Louise Shelley as the “criminal-political nexus,” that most Ukrainians and Russians understand as the “Mafia.”⁴⁴

Both the shadow economy and the business-crime connection have continued and expanded in the post-Soviet space.⁴⁵ Although Russia has encouraged further privatization of state assets (including less profitable ones), Ukraine has moved more slowly, promoting mainly the privatization of small and local business. At the same time, many of the goods purchased by the public are imported, and the trading organizations have strong criminal connections, especially along the borders. Also, while Russia has engaged in a significant amount of legal and judicial reform, Ukraine has done little. However, the relative inactivity of the Ukrainian state may mean little: so far, the Russian effort has had little impact on organized crime or corruption.

By all accounts, the shadow economies of most post-Soviet countries expanded after independence; in the case of Ukraine, it grew to 48 percent of GDP according to one 1994 estimate.⁴⁶ One reason is the attempt by the new government to extract taxes from private firms. In Ukraine, as in Russia, the various levels of government produced a tax burden for business that was confiscatory and, when combined with obligatory payments for protection (*krysha*, or a roof), inconsistent with the survival of firms, let alone profit. As a result, most firms in Ukraine keep part of their business outside their official books, including payments to employees (working on the

side) and income. Further complicating attempts to sort out taxes is the large role of barter, even within the state sector, which makes it difficult to determine incomes and profits.⁴⁷ The reality is that the shadow economy and the official economy are intertwined: the same firms operate in both legitimate and illegitimate worlds. The shadow economy is, in short, “an organically connected structural part of the legal economy.”⁴⁸ President Kuchma reportedly put it more bluntly, claiming that “literally all spheres [of the economy] are criminalized and shadowized.”⁴⁹

The growth of the shadow economy in Ukraine is a symptom of the government’s loss of the capacity both to regulate the economy and to raise taxes, and it demonstrates a systemic weakness of the Ukrainian state to perform its basic functions. This vacuum of power and authority, in turn, creates opportunities for criminal groups with various degrees of organization, and encourages government officials to place private interests ahead of serving the public interest. This symbiosis of corruption and organized crime is described in the following section, and it is as difficult for scholars to disentangle and analyze as it is for the state to disrupt.

ORGANIZED CRIME AND CORRUPTION

Any discussion of organized crime in post-Soviet states must start with terminology, for neither “Mafia” nor “organized crime” is used consistently.⁵⁰ The word “Mafia” is confusing because popularly it refers to the entire web of persons who profit from the new economic order—entrepreneurs, corrupt officials, and criminals (acting individually or in concert)—while professionals usually reserve the term for organized groups with the highest degree of internal structure and discipline, something akin to that found in the Sicilian Mafia. Moreover, the term “organized crime” has multiple meanings. Although some criminologists in the FSU reserve this term for groups of criminals that resemble Western Mafia organizations, both police ministries and other criminologists prefer a broad rendering of the term, to include any and all groups that commit crimes together.⁵¹ Just as Stalin saw danger in any gathering of three or even two persons to plan a crime, so latter-day authorities find it convenient to treat all criminal groups as “organized.”

What exactly is organized crime?

This indiscriminate treatment of all groups as organized causes confusion about the scope and meaning of organized crime. For example, according to police data, there has been virtually uncontrolled growth in the amount of organized crime in the former Soviet Union. As exhibit 2.5 shows, in Ukraine in 1991, the police recorded 260 organized criminal groups (*organizovannykh prestupnykh gruppировok*). By

EXHIBIT 2.5.

Organized Crime Groups and Offenses, Ukraine and Russia, 1991–99

Year	Ukraine Number of Groups/ Number of Offenses	Russia Number of Groups/ Number of Offenses
1991	260 / 2,549	952 / 5,119
1995	831 / 4,500	14,050 / 23,820
1996	951 / 6,410	12,684 / 26,432
1997	1,081 / N/A	12,500 / 28,497
1998	1,157 / 9,000	N/A / 27,097
1999*	857 / 6,500	N/A / 24,000

* Denotes first 9 months only.

SOURCES: Glushkov, unpublished report; Volodymyr Stashis, presentation at NIJ-sponsored conference, November 20, 1999, Kyiv, Ukraine; V.V. Luneev, *Prestupnost XX veka*, 303–304; “Legislation and the Law: Impact on OC in Russia, 1997–1998,” *Organized Crime Watch*, May–June, 1999; *Organizovannaia prestupnost*, no. 4. Moscow, 1998, 258.

1998, Ukraine reportedly had 1,157 such groups, which were responsible for more than 9,000 crimes.⁵² In Russia in 1991, there were 952 organized criminal groups, but by 1997 there were more than 12,500 such groups, which were responsible for some 25,000 crimes.⁵³

These data lead to a number of troubling inferences. For example, it would appear that organized crime in Ukraine is much more dangerous than in Russia, for its groups are either larger or more organized. Although Russia has nearly 10 times the number of groups as Ukraine, far fewer offenses per group are committed there. While Russian organized crime groups commit 2 to 3 offenses each, Ukrainian organized crime groups are responsible for between 7 and 10 offenses each. The data also appear to suggest that the “cancer” of organized crime has metastasized much faster in Russia than in Ukraine. In 9 years, the number of groups in Russia grew by 1,000 percent; in Ukraine, the rate of growth was half that. However, to make any inferences based on these official data is exceedingly risky. The numbers recorded here are the product of an amalgam of police reporting and investigation statistics wholly unrelated to proper criminological or legal categories. With the number of groups, for example, comes the concept of exposure (*vyiavlenie*), which denotes that the police suspect the groups to have been responsible for the crimes reported. The number of “offenses,” too, comes from police investigations, not prosecution charges or court convictions.⁵⁴ They are, as one Western criminologist would warn, “the product, not of a neutral fact-finding process, but of a record-keeping process which is geared first and foremost to organizational (primarily police) aims and needs.”⁵⁵

The police data on organized crime are not without merit, however. A closer look at the numbers and, in particular, at the kinds of offenses committed by groups suggests that most groups involved consist of small gangs of extortionists, thieves, swindlers, or narcotics traders—that is, anything but serious criminal cartels with international or interregional ties.⁵⁶ In Ukraine, for example, simple theft (*kradizhka*) made up nearly 50 percent of the offenses committed by organized groups.⁵⁷ In Russia, according to Viktor Luneev, approximately 40 percent of the offenses committed by organized groups consisted of theft (*krazha*), and fully 80 percent consisted of what most criminologists would label ordinary criminal conduct.⁵⁸ Examined from this perspective, the data suggest that there may be a fairly short continuum between ordinary and organized crime in Ukraine.

One leading Ukrainian criminologist supports this indiscriminate approach to analyzing organized crime precisely because the smaller and less sophisticated groups commit a large portion of the crimes that can be uncovered. He finds wisdom in the observation of a popular Soviet (now Russian) chronicler of organized crime, Stanislav Govorukhin, that “one should not exaggerate the degree of order and organization in the criminal world, since we have no order anywhere.”⁵⁹

Although there is a large kernel of truth in this claim, this rough approach to criminological classification has at least three shortcomings. First, it inhibits the development of policy-specific knowledge. It is difficult to discern from the aggregate data which groups commit which offenses and, thus, it is not clear how best to direct the attention of law enforcement agencies. Second, the blanket approach to organized crime groups impedes an understanding of the continuum between ordinary and organized crime. Observers need to know much more about the relationships between the groups, especially whether smaller gangs are employed or periodically surrendered to the police by larger, better organized groups. Finally, the indiscriminate treatment of all groups as organized crime obscures one of the most important and yet poorly understood aspects of organized crime: the structure of relations within groups. There are likely important differences in the nature and evolution of authority and hierarchy both within and among groups. More discriminating analyses and supplier categories are needed to understand this variation.⁶⁰

There are two options for better organizing available information about Ukrainian organized crime, each represented by two different approaches to classification in post-Soviet criminology. One method is to classify groups by the nature of offenses they commit; the other is to sort groups by the nature of their organization. In both Ukraine and Russia, the latter approach is dominant and clearly favored by a younger generation of criminologists.⁶¹ Contemporary criminology in Ukraine and

Russia makes organization the *sine qua non* of organized crime. Most scholars in Ukraine and Russia distinguish three levels of organized criminal groups. First, a base level, comprising the majority of gangs of extortionists, thieves, swindlers, and narcotics traders, shows the rudimentary and episodic nature of organization involved, and is akin to that found in gangs, which are typically called groups (gruppировки). Second, the middle level involves relatively large formations with connections to authorities at the regional level. This level is often called a criminal organization (prestupnaia organizatsiia). Third, the high level has influence extending to multiple regions of the country, often with international ties and possessing means to launder money. This latter type is most often called a network or association (soobshchestvo).⁶²

Distinguishing these groups is helpful. We can see, for example, that few criminal groups are in the high-level category. A recent study of Russian organized crime concluded that there were only 350 authentic organized criminal groups in the Western understanding of the term and, of these, between 12 and 20 might be classified as major cartels.⁶³ This may be true for Ukraine as well. According to official data from the Ministry of Internal Affairs about groups exposed in 1997, only 3 percent had international ties, 6 percent had interregional ties within the FSU, and 20 percent had interregional ties within Ukraine.⁶⁴

However, the state of publicly available information about and analysis of the various kinds of criminal groups in Ukraine remains weak. In particular, serious study of the activities pursued by these various groups is sorely needed.⁶⁵ A good deal could be learned about the nature and activities of base- and even middle-level groups from studying groups that have been exposed and prosecuted. The higher level groups involved in international trade likely require some kind of ethnographic study, however dangerous. Particularly useful would be studies that focus not on particular crimes (for example, the number of persons apprehended and charged), but on business activities of organized criminal groups in particular sectors. Thus, one could imagine special studies of the role of organized crime in Ukraine in organized prostitution; the narcotics trade; the theft and sale of automobiles (luxury cars stolen in Europe and sold in the former Soviet Union) and weapons; the acquisition and trade of antiques, jewelry, and rare books; and banks and credit. Another area for investigation is the system of “roofs” and the division of labor in protection (extortion and rackets) between private security firms and public bodies, including various police forces.⁶⁶ Finally, there is a deficit of research into regional differences in the incidence of organized crime and of the relations between region-specific groups.

This sector-specific mapping of organized crime or functionalist approach to criminological analysis requires more empirical information than we now possess. For many of these topics, bits of relevant data can be reported, but, as a rule, this information raises more questions than it answers. Here we present material on activities in Ukraine that are typical of organized crime anywhere (prostitution, narcotics) and especially activities characteristic of the FSU (extortion, financial sector activities). This will begin to create a profile of organized crime in Ukraine and will represent a first step toward understanding whether, and how, organized crime in Ukraine is unique.

Due to the desperate state of the economy in the 1990s, Ukraine (and to a lesser extent Russia) became a center of pornography and prostitution for international consumption. According to an official report written in 1999, more than 400,000 Ukrainian women under the age of 30 had left the country, most to work in this field. According to the Ukrainian consulate in Greece, 3,000 Ukrainians work as prostitutes in Athens and Thessaloniki alone, and 6,000 more do the same in Turkey. A Dutch researcher has reported that approximately 8,000 Ukrainian women work as prostitutes in the Netherlands. It is unclear how many of these women came to this work knowingly and voluntarily; better educated than prostitutes from other countries, many of those from Ukraine and Russia were initially promised clerical or hotel positions. Typically, women who thought they were traveling voluntarily were later forced into prostitution when their benefactors took away their passports and confined them. In this way, Ukrainian women have joined those from other poor countries as victims of the multibillion-dollar business of trafficking.⁶⁷

Another growth industry for Ukrainian organized crime is the trade and sale of narcotics. The growth in the amount of narcotics-related crime known to the police has been remarkable: From 1988 to 1998, the number of violations rose more than 16-fold, reaching 39,800 offenses or nearly 7 percent of all recorded crimes. These data do not include approximately 26,000 rural residents who were fined for the administrative infraction of illegally planting poppies.⁶⁸ Not only does Ukraine constitute a link in the transportation of drugs from Asia to Europe, but local demand for drugs is rapidly growing. According to sociologists at the Ministry of Internal Affairs University in Kharkiv who surveyed a sample of young people in that city in 1995 and again in 1997, there was a substantial increase in the number of respondents who had used narcotics at least once (from 22 percent to 34.6 percent). The researchers uncovered an emerging subculture of narcotics use among Ukrainian youth, one that included women as well as men.⁶⁹

In addition to playing a primary role in illegal business activities, organized criminal groups in Ukraine were involved, through private security and financial institutions,

in the activities of a broad range of businesses. As a rule, most protection arrangements do not come to the attention of the police but, in the mid- and late 1990s, approximately 3,000 cases were registered each year. Of these, fully one-seventh were determined to be the work of organized criminal groups. According to an official report, the protection rackets were especially prominent in the industrial cities of eastern Ukraine, as well as in the Crimea and Lviv. In addition to extracting the usual tribute in exchange for protection from other predatory groups, organized criminal groups extracted further impositions at the sales level. Fully in control of the private and, to a large extent, state trade networks, criminal groups imposed a tax built into the price of goods ranging from 20 percent to 30 percent of the final price. In other words, criminal groups in Ukraine imposed their own value-added tax in addition to whatever the state could extract.⁷⁰

Another major area of group criminal activity in Ukraine in the 1990s was in the financial-credit system. It is important to stress that as in other post-Soviet countries, the financial-banking sector in Ukraine was underregulated and open to all kinds of abuses. A wide variety of offenses were becoming commonplace, ranging from counterfeiting of money, bills of sale, bank guarantees, and other documents to bribes to obtain credit, to helping clients avoid taxes and hide income, to fictitious operations and various forms of state money swindles. Sometimes, criminals paid to obtain confidential financial information that they could then use for extortion. Financial swindles, banking crimes, and counterfeiting all increased substantially in the late 1990s, as did money laundering. Some of these offenses were committed with the use of electronic banking and communications systems, but this mechanism for fraud awaits study.⁷¹

Finally, terrorist activity, though a distinct phenomenon that included political acts of violence unrelated to organized crime, also involved organized crime. A major study of terrorism in Ukraine concluded that organized crime groups were responsible for most explosions of buildings. In 1995 and 1996, there were 560 such incidents, in which 90 people died. A small part of the destruction was political, caused by Kurdish groups.⁷²

Corruption: Its character and causes

An element closely related to the shadow economy and a potent factor in organized crime was the corruption of state officials, who served as key players in these larger enterprises. Labeling particular actions and persons corrupt includes the danger of imposing norms and values not shared by most of those involved.⁷³ Ukraine was never governed by the legal rationality associated with Weberian bureaucracy, and

much of what outsiders call corruption reflected traditional exchange relationships. At the same time, though, post-Soviet Ukraine has seen both an increase and a systematization of the pursuit of private gain among public officials that has major costs for ordinary citizens. Although corruption is criminogenic in the sense that it embodies violations of criminal law, enforcement of that law can have only limited impact on the nature and scope of corrupt activity; all too often, attacks on corruption turn out to be political instruments used by one faction against another.⁷⁴

Daniel Kaufmann and Paul Siegelbaum see corruption as “the abuse of official power for private gain,” and see this definition as embracing both the misappropriation of state wealth and the extraction of rents from private entities. The rents may take the form of bribes or favors of any kind, and the action performed in exchange may be not only legal but also required as fulfillment of an official duty.⁷⁵

The practice of corruption by government officials in Ukraine reflects more than the opportunities provided by privatization and the collapse of Government and Communist Party supervision. It also reflects the traditional patterns of exchange relations that predominated under the czars and continued in Soviet times, as well as the florescence of clientelism that accompanied the growth of the shadow economy beginning in the 1960s. In the 1920s, Soviet authorities launched a major campaign against bribetaking by officials, but they eventually lost that battle. The Soviet system became increasingly feudal, in both the relationships among political bosses at different levels of the hierarchy and the relationship between the public and anyone who had authority or access to goods. Petty corruption, in the form of extra payments for scarce goods or favors, was ubiquitous, as was the habit of paying tribute to persons who could possibly help or harm an individual.⁷⁶ The growth of the shadow economy made these phenomena all the more systematic and gave higher placed officials, even members of the Politburo and Government, opportunities to take advantage of their networks.

Starting in the late 1980s, the collapse of state authority and the privatization of state assets produced both a further expansion of corrupt activity by Government officials and changes in its forms. It became easier for officials to misappropriate Government assets, for example, and new criminal opportunities appeared in the realm of financial transactions. On a larger plane, officials in late Soviet and post-Soviet Ukrainian Government—largely the same persons throughout—gained more opportunities for personal enrichment and faced fewer constraints in acting on them. Opportunities came not only through the privatization process but also through an increase in bureaucratic discretion accompanied by the disappearance of any and all forms of accountability. As before, most legislation consisted of “frame laws,” which

failed to supply the details needed for application and left crucial specifications to bureaucratic regulations. At the same time, the quick issuance of a stream of new Presidential edicts, Government resolutions, and laws, and their implementing regulations assured both legal ambiguity and a new scope for bureaucratic discretion.⁷⁷

As they gained more power, public officials in Ukraine became less accountable. The Soviet system depended on multiple channels of monitoring bureaucratic behavior, especially supervision by party officials and financial agencies. In Ukraine, both of these lines of accountability broke down and were not replaced by any real system of legislative supervision. Vertical superiors in the government, including staff of the Cabinet of Ministers, might hold lower officials accountable, but typically the former were drawn into the same networks of clientelism as their subordinates.

Finally, whatever past inhibitions had been created by ethical or moral considerations largely disappeared in the immediate post-Soviet years, as public officials faced a sharp gap between the capacity to meet their needs and the income they obtained legally; they also shared a strong sense that everyone, including their bosses, used public office for private gain. In fact, not only officials but also politicians, such as deputies to the Supreme Rada and lower legislatures, were also reputed to take part in this process.⁷⁸

In short, both private payment of officials to perform their duties and the favoring of persons who were part of the same network constituted the “rules of the game” in most post-Soviet countries, including Ukraine. As some perspicacious analysts of the Soviet order had predicted (Barrington Moore and Kenneth Jowitt), traditional forms of social relations came back with a vengeance.⁷⁹ To say that corruption became normal, however, is not to denigrate its costs. Corruption does matter, and it has a wide variety of potentially deleterious effects. Corruption diverts resources from the achievement of public goals, weakens the positive effects of market mechanisms, increases social inequality, discredits law as an instrument of public regulation, strengthens the hold of oligarchic cliques in government, weakens faith in public authority, increases alienation and social tension, and erodes political stability.⁸⁰ Not all of these were present in Ukraine during the 1990s, but all had the potential to be.

The prosecution of Government officials for corruption-related offenses, such as bribery, usually reflects not only the extent of the phenomenon but also patterns of policing and politics. Proving bribery is notoriously difficult, and in the U.S.S.R. most instances registered with the police did not lead to prosecutions. Also, for any official of importance, screening by party authorities assured that only those out of favor with their superiors would face court.⁸¹ All the same, bribery convictions

increased in the post-Stalin period from 1,800 in 1957 to 3,000 in 1970 to 6,000 in 1980.⁸² Since 1986, however, the conviction rates have dropped precipitously: In Russia, from 3,454 (1986) to 2,008 (1987) to 812 (1988) to 441 (1989); and in Ukraine, from 1,895 (1986) to 1,473 (1987) to 1,100 (1988) to 1,049 (1989). From 1990 to 1998, the incidents of alleged bribery recorded by the police in both countries rose 2.5 times to 5,807 in Russia and 2,449 in Ukraine. In Russia, the rate of conviction stayed low (in 1997, 1,381 out of 5,624 registered offenses); in Ukraine, however, successful prosecutions were far more common, with convictions in 1,641 of 2,449 registered offenses in 1998.⁸³ This may have reflected a tendency in Ukraine to prosecute mainly low-level officials, a tendency easily observed in the enforcement of the Ukraine's 1995 Law on the Struggle Against Corruption (henceforth, corruption law).

Beyond attempts to expose bribetaking and misappropriation of funds, a classic way to reduce corruption is to introduce regulations on conflict of interest and disclosure of income. The government of Ukraine succeeded not only in drafting a law introducing such rules but also in getting it approved. (In Russia, a comparable law has been repeatedly blocked, most recently by the President.) The 1995 corruption law established administrative, not criminal, responsibility; however, violations of the new rules and regulations could lead to heavy fines and loss of employment. Interestingly, the new rules applied not only to civil servants but also to members of parliaments and councils. However, members of the Rada and the regional legislatures had immunity from criminal prosecution. As might be anticipated, prosecutions for violations of the corruption law were directed mainly at lower level officials (categories 5 to 7) and deputies in rural and village councils. In 1997 and 1998, nearly 100 top-level officials and approximately 235 policemen were convicted of offenses such as failing to declare income, doing business related to one's position, and receiving material benefits or other advantages in connection with their work performance, including access to goods or services at a discount—actions similar to bribetaking. Those convicted received fines but rarely were fired.⁸⁴ Chapter 3 discusses how police and Procuracy officials implemented the corruption law.

Both the rates of criminal convictions and the passage and enforcement of the corruption law suggest that political forces in Ukraine found it advantageous to pursue corruption, at least at lower societal levels. Moreover, in 1997 and 1998, the Government sponsored an anticorruption campaign known as Clean Hands, established a coordinating committee on corruption, and developed a planning document known as the Conception on the Fight Against Corruption for 1998–2005.⁸⁵ Various surveys, including a World Bank study of small business, suggest that Ukraine has an especially high degree of corruption; a locally generated report estimates that 40

percent of enterprises and 90 percent of commercial structures have corrupt relationships and that 60 percent of the income of government officials comes from bribes.⁸⁶

Is Ukraine's situation actually worse than Russia's? There is really no way to know. A national poll conducted in late 1998 in the Russian Federation found that only 36 percent of adults had never given a bribe to an official and that 27 percent did so regularly; 36 percent had done so more than once, and 5 percent had done so only once.⁸⁷ A recent survey of public attitudes toward corruption revealed that the populations of Hungary and Russia did not perceive it to be a major problem, but those in Bulgaria and Poland did. These public feelings "seem unrelated to the 'unknown' level of real corrupt practices."⁸⁸ Despite the difficulties in this kind of research, it is worth discovering whether the levels of perceived and reported corruption in Ukraine are in any way correlated.

The corruption-organized crime connection in context

Whereas in an earlier era there was a tendency to treat corruption as a consequence of moral degradation, the current explanation views corruption in terms of economics and market disequilibrium. Corruption is seen as a rational response to distorted markets and the structure of incentives. Especially in underdeveloped economies, corruption is a form of protectionism, either as a response to or a cause of market uncompetitiveness.⁸⁹ As this discussion has shown, however, it is not useful to reduce corruption and organized crime to mere economic epiphenomena. The links between corruption and organized crime and the evolution of new state and social structures are too deep to be ignored.

To make sense of the flourishing of corruption, the shadow economy, and organized crime in post-Communist countries, sociologists from the East and West have turned to theories of social networks and clientelism.⁹⁰ Endre Sik and Barry Wellman argue on the basis of Hungarian experience that the use of personal connections, or network capital, was more prevalent under Communism in Eastern Europe than in the capitalist West and became even more widespread in post-Communist conditions. Their nuanced and well-illustrated analysis treats these patterns of conduct not as a form of deviance but as normal and understandable consequences of particular social conditions. In a study of crime in the Czech Republic, John Hagan and Detelina Radoeva explicitly connect crime and corruption with extreme differentiation in the possession of and opportunities to use social capital. They found that high levels of trust often lead to corruption and corporate crime, while low levels of trust disconnect others from society and lead to street crime. Finally, Andras Sajo has produced a most penetrating and pessimistic analysis that treats individual acts of corruption in

post-Communist countries as part of a powerful and real form of social organization, or clientelism. To Sajo, the conduct of public officials and businessmen is not a product of any moral deficit but, rather, a consequence of a structure of opportunity, in which there is no viable alternative to clientelist relations. In fact, Sajo warns us that no confrontation with corruption, including conflict-of-interest rules, can have any teeth and serve more than a public relations function, as long as clientelist dependencies predominate, private property is not well demarcated and protected, and there are no guaranteed salaries to safeguard personal autonomy.

CONCLUSIONS

After reviewing the dramatic changes that occurred in the quantity and quality of crime in Ukraine during the past 12 years, we reach mixed conclusions. On the one hand, the growth of ordinary crime (violent and especially property) represents both a natural catching up with countries of the West (although Ukraine still has a long way to go) and a normal response to social disorganization, increased social differentiation, and social strain. If anything, crime rates should have risen even more than official statistics indicate, and it may well be that the dark figure (latent crime) is unusually high, as some Ukrainian criminologists believe. On the other hand, the criminalization of the economy through the expansion of the shadow economy, the role of organized crime, and the corruption of state officials represents a more serious condition for the future of the Ukrainian economy and politics. Although the high rates of ordinary crime might well level off and even decrease, should Ukraine develop a prosperous economy and effective government, the domination of the economy by the political-criminal nexus may be more difficult to reverse. Some observers see this as part of a transition, but others correctly view the business-crime problem as endemic to post-Communism, just as corruption was to late Communism. There may be entry points in what seems to be a vicious circle. One is to study and find ways of developing accountability among government officials and separating them from the criminal world. (This would require positive as well as negative incentives and, therefore, cost money.) Another, more controversial, approach is to encourage criminal elements to launder money by investing in legitimate business, but only in the context of an effective regulatory framework. In fact, it is hard to imagine the development of a prosperous economy in Ukraine without major reinvestment in the country of profits that have been removed from the country. (It would be useful to have studies of capital flows and identification of any returning capital, however small.) Serious, long-term investment in Ukraine will not take place until a system of true private property is developed, with appropriate legal protections, but thus far the elites benefit more from ownership ambiguity.

In short, any serious attempts to remedy either of the two crime problems identified depend upon larger changes in the economy, polity, and society. And serious study of crime in Ukraine must relate it to the larger context in all its complexity.

Notes

1. Kulik, A.G., and B.I. Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody," *Prestupnost v Ukraine (Biulleten zakonodavstva i iuridichnoi praktiki Ukraini)*, no. 2 (1994): 5–37; "Prilozhenie," *Prestupnost v Ukraine*, no. 2 (1994): 134–186; and "Osnovnye tendentsii prestupnosti i sudimosti v Ukraine v 1994–1998 gg.," with attached tables, unpublished 1999. Unless otherwise indicated, all references to statistical data on crime in Ukraine are drawn from these data.
2. See, for example, Kulik and Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody," 7–8 (see note 1).
3. *Prestupnost i pravonarusheniia, 1991–1995: Statisticheskii sbornik*, Moscow: MVD, Mlu, Mezhsudarstvennyi statisticheskii komitet SNG, 1996: 12–13, 21.
4. Shelley, Louise I., "Organized Crime and Corruption in Ukraine: Impediments to the Development of a Free Market Economy," *Demokratizatsiya* 6 (4) (Fall 1998): 649, citing a 1997 study of the Ukrainian National Integrity Survey; Kulik and Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody," 7 (see note 1); Zelinskii, A.F., *Kriminologiya: kurs lektsii*, Kharkov: Prapor, 1996: 29, 35.
5. For details, see Solomon, Peter H., Jr., "Criminalization and Decriminalization in Soviet Criminal Policy, 1917–1941," *Law and Society Review* 16 (1) (1981): 9–44; and Solomon, Peter H., Jr., *Soviet Criminal Justice Under Stalin*, Cambridge: Cambridge University Press, 1996: chapter 12.
6. Solomon, Peter H., Jr., *Soviet Criminologists and Criminal Policy: Specialists in Policy-Making*, New York: Columbia University Press, 1978: chapter 5.
7. From August 1940 until the 1950s, conviction for the crime "petty theft from an enterprise" brought mandatory imprisonment of 1 year. Not wanting to lose productive workers who pilfered, factory managers often issued warnings or reprimands rather than reporting offenders to the police. Solomon, *Soviet Criminal Justice*, 327–30 (see note 5).
8. Solomon, *Soviet Criminal Justice*, 327–30, 435–6 (see note 5).

9. On the involvement of the public in the shadow economy, see Simis, Konstantin. *U.S.S.R.: The Corrupt Society*, New York: Simon and Schuster, 1982; and Shtromas, Alexander, *Political Change and Social Development: The Case of the Soviet Union*, Frankfurt: Peter Lang Publishing, 1980: 67–81.
10. Solomon, Peter H., Jr., “Reforming Criminal Law Under Gorbachev: Crime, Punishment, and the Rights of the Accused,” in *Toward the “Rule of Law” in Russia? Political and Legal Reform in the Transition Period*, ed. Donald Barry, Armonk, NY: M.E. Sharpe, 1992: esp. 246–50.
11. According to a well-informed analyst, apart from 1997, there were no drops in the level of signals about crimes provided by the Ukrainian public and there were signs of increasing use of administrative offenses. See “Osnovnye tendentsii,” 2 (see note 1). In Russia, an analogous leveling and drop in recorded offenses took place a few years earlier and was produced mainly, according to V.V. Luneev (a top criminologist), by police omitting to record hard cases. Luneev, V.V., “Kontrol nad prestupnostiu: nadezhny li pokazateli?” *Gosudarstvo i pravo*, no. 7 (1995): 89–96.
12. Udovenko, Genady, interview in *Golos Ukrainy*, September 7, 1999, 2.
13. Kulik and Bobyr, “Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody,” 13 (see note 1).
14. On public attitudes toward the police in Ukraine, see Kulik, A.G., “Otnoshenie naseleniia k militsii,” *Prestupnost v Ukraine*, no. 2 (1994): 65–79.
15. Zelinskii, *Kriminologiya*, 170–81 (see note 4); Kulik and Bobyr, “Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody,” 13–16 (see note 1).
16. A recent bibliography of publications by Ukrainian criminologists lists no published studies of theft and only two dissertations: one on “the prevention by police of theft of private property on railroads” and the other on “the prevention of open theft and robberies of state property.” It is unclear whether either includes a major empirical component. “Bibliografiia rabot ukrainskikh kriminologov, opublikovannykh v 1992–1998 gg.,” unpublished, 1999.
17. “Otchet po rezultatam issledovaniia po teme ‘retsivnaia’ prestupnost v sovremennykh usloviakh i meropriiatiia ee preduprezhdeniia,” unpublished, 1999: 12.
18. Zelinskii, *Kriminologiya*, 212–18 (see note 4); Mikhailov, A.E., *Nekorystnaia nasilstvennaia prestupnost i ee preduprezhdenie*, Kyiv: 1997: 12–24.

19. Dolgova, A.I., ed., *Prestupnost, statistika, zakon*, Moscow: Itrinologicheskaiia assotsiatsiia 1997: 215; *Sostoianie prestupnosti v Rossii za ianvar-dekabr 1998 goda*. Moscow: MVD, 1999; Zelinskii, *Kriminologiia*, 218–21 (see note 4).
20. Kulik and Bobyr, “Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody,” 22–24 (see note 1).
21. Zelinskii, *Kriminologiia*, 244–57 (see note 4).
22. “Sostoianie borby s organizovannoi prestupnostiu v Ukraine” (informatsionnaia spravka), unpublished, 1999: 8.
23. The term “rate of recidivism” refers to the share of persons who have committed crimes while also having previous convictions of any criminal offense remaining on their records. (The Soviet republics’ criminal codes provided for the expiry of a conviction record after an established time period without a new offense.) For details on the calculation of recidivism, see Zelinskii, *Kriminologiia*, 234–6 (see note 4).
24. *Ibid.*, 231–43; “Otchet po rezultatam issledovaniia po teme ‘retsidivnaia prestupnost . . .’” Note that the term “especially dangerous recidivist” was similar to the “three strikes and you’re out” laws in the United States. A relatively trivial offense could and did lead to serious consequences for offenders that bore no reasonable connection either to their rehabilitation or just punishment.
25. Dolgova, A.I., *Kriminologiia: Uchebnik dlia iuridicheskikh vuzov*, Moscow: InfraM-Norma, 1997: 708–725; “Primernaia tematika sovместnykh ukrainsko-amerikanskikh kriminologicheskikh issledovaniia (predlozheniia nauchno-issledovatel'skogo insitututa Nacionalnoi akademii vnutrennykh del Ukrainy),” unpublished, 1999: 7.
26. See, for example, Stoecker, Sally, “The Rise in Human Trafficking and Role of Organized Crime,” unpublished paper, Transnational Crime and Corruption Center, American University.
27. Bonger, Willem, *Criminality and Economic Conditions*, Boston: Little, Brown & Co., 1916; Solomon, Soviet Criminal Justice under Stalin: 33–4 (see note 5).
28. Merton, Robert K., “Social Structure and Anomie,” (1938) in Robert K. Merton, *Social Theory and Social Structure*, Revised and Enlarged Edition, New York: Free Press, 1957: 131–60. See Savelsverg, Joachim J., “Crime, Inequality, and Justice in Eastern Europe: Anomie, Domination, and Revolutionary Change,” *Crime and Inequality*, ed. John Hagan and Ruth Petersen, Stanford: Stanford University Press, 1995: 206–24.

29. For data on social stratification, see D'Anieri, Paul, Robert Kravchuk, and Taras Kuzio, *Politics and Society in Ukraine*, Boulder, CO: Westview Press, 1999: 166–205.
30. The classic research on the importance of the spectrum of social control for comparative crime rates is Adler, Freda, *Nations Not Obsessed With Crime*, Littleton, CO: Fred B. Rothman & Co., 1983. The Russian criminologist Viktor Luneev cites Adler with approval and argues that it was the effective web of social control for much of the Soviet period that kept crime rates in the U.S.S.R. low. Luneev, V.V., “Prestupnost v Rossii pri perekhode ot sotsializma k kapitalizmu,” *Godusdarstvo i Pravo*, no. 5 (1998): 45–58.
31. Currie, Elliott, “Market, Crime and Community: Toward a Mid-Range Theory of Post-Industrial Violence,” in *The Crime Conundrum: Essays on Criminal Justice*, ed. Lawrence M. Friedman and George Fisher, Boulder, Colorado: Westview Press 1997: 17–44; quoted text at 24–5.
32. Solnick, Steven, *Stealing the State: Control and Collapse in Soviet Institutions*, Cambridge, MA: Harvard University Press, 1998.
33. *Prestupnost i pravonarusheniia*, 1991–1995, 20, 21 (see note 3).
34. Kudriavtsev, V.N., and A.V. Naumov, eds., *Nasilstvennaia prestupnost*, Moscow: Spark, 1997: 19 (in chapter by V.V. Luneev). Interestingly, six other Soviet successor states had murder rates higher than Ukraine; for example, Kazakhstan at 15, Latvia at 16, and Estonia at 24.
35. Dolgova, A.I., ed., *Kriminologiya: Uchebnyk dlia iuridicheskikh vuzov*, Moscow: InfraM-Norma, 1997, 147; “Prilozhenie,” (to Kulik and Bobyr), 136 (see note 1).
36. *Ibid.*, 184–5; *Prestupnost i pravonarusheniia*, 1991–1995, 19–20 (see note 3).
37. “The 1989 Census: A Preliminary Report,” *Current Digest of the Soviet Press*, 42 (17) (1989), 17–23; Ryan, Michael (compiler), *Contemporary Soviet Society: A Statistical Handbook*, London: Edward Elgar, 1990: 94–6.
38. Dolgova, A.I., ed., *Kriminologiya*, 712–713; 764–769 (see note 25).
39. For a brief discussion of methodological obstacles in comparative criminology, see Van Dijk, Jan, and Kristiina Kangaspunta, “Piecing Together the Cross-National Crime Puzzle,” *National Institute of Justice Journal* (January 2000): 35–41. More generally see Nelken, David, “Whom Can You Trust? The Future of Comparative Criminology,” in *The Futures of Criminology*, ed. David Nelken, London: Sage Publications, 1994: 220–43.

40. S.S. Boskholov, a Russian scholar and member of the Duma, refers to the link between entrepreneurs, corrupt officials, and criminals as an “iron triangle.” See his unpublished report on “problems in the fight against corruption in Russia” presented to the Central and East European Law Initiative of the American Bar Association, April 22, 1999.
41. On the shadow or “second” economy in the Brezhnev period, see Grossman, Gregory: “The Second Economy in the U.S.S.R.,” *Problems of Communism* 26 (5) (1977), 25–40; on the criminogenic connections, see Anderson, Annelise, “The Red Mafia: A Legacy of Communism,” in *Economic Transition in Eastern Europe and Russia: Realities of Reform*, ed. Edward P. Lazear, Stanford: Stanford University Press, 1995: 340–66. The estimate of the size of the shadow economy is Grossman’s.
42. For an overview of this story, see Sergeyev, Victor M., “New Social Phenomena and Crime in Post-Communist Russia,” *Russian Politics and Law* 36 (5) (September–October 1998): 3–8. See also Jones, Anthony, and William Moskoff, *Ko-ops: The Rebirth of Entrepreneurship in the Soviet Union*, Bloomington: Indiana University Press, 1991.
43. On the legal framework of managerial privatization, see Johnson, Simon, and Heidi Kroll, “Managerial Strategies for Spontaneous Privatization,” *Soviet Economy* 7 (4) (1991): 281–316.
44. The term “criminal-political nexus” first appeared in Shelley, Louise I., “The Political-Criminal Nexus: Russian-Ukrainian Case Studies,” unpublished (1998).
45. See, inter alia, Glinkina, Svetlana, “The Shadow Economy in Contemporary Russia,” *Russian Politics and Law* 34 (2) (March–April, 1996): 46–70; and Esipov, V.M., *Tenevaia ekonomika: Uchebnoe posobie*, Moscow: Moskovskii Institut MVD Rossii, 1997.
46. A World Bank estimate reported in “Sostoianie borby s organizovannoi prestupnostiu,” 19 (see note 22). Other estimates include: 33 percent for the whole FSU in 1994 (by Daniel Kaufmann and Paul Siegelbaum) and 55 percent (Louise Shelley) for Ukraine in 1997. Kaufmann, Daniel, and Paul Siegelbaum, “Privatization and Corruption in Transition Economics,” *Journal of International Affairs* 30 (2) (Winter 1997): 420; Shelley, “Organized Crime and Corruption,” 656 (see note 4). Note that as of 1989, before the collapse of the Soviet economic system, estimates of the size of the shadow economy fell in the 17 to 25 percent range. Holmes, Leslie, *The End of Communist Power: Anti-Corruption Campaigns and Legitimation Crisis*, Oxford: Oxford University Press: 149–50.

47. On tax-collection problems in Russia, see Morozov, Alexander, "Tax Administration in Russia," *East European Constitutional Review* 5 (2–3) (1996): 39–47; and a unique anthropological study, Zschoch, Barbara, "Tax Fraud in Yaroslavl Small Enterprises: Techniques, Causes, Cures," unpublished paper 1997. On tax issues in Ukraine, see Kravchuk, Robert, "Ukraine's Soviet Inheritance: A Weak State," in *State and Institution Building in Ukraine*, ed. Taras Kuzio, Robert Kravchuk, and Paul D'Anieri, New York: St. Martin's Press, 2000.
48. Ordinary citizens have their feet in both realms, too. An estimated 80 percent of Ukrainians received income from the second economy that they do not report. *Tenevaia ekonomika: Opyt kriminologicheskogo issledovaniia*, Lugansk: LIVD MVD Ukrainy, 1997: 38; "Problemy sozdaniia gosudarstva i zashchity prav cheloveka v Ukraine," *Materialy II regionalnoi nauchnoi konferentsii* (February 1996), unpublished (Lviv, 1996), 4.
49. See the report of his remarks at the December 14, 1999, meeting of the Coordinating Committee for Fighting Corruption and Organized Crime, in Omel'chenko, G., and A. Ermak, "Pravitelstvennye garantii—kak zerkalo ukrainskoi korruptsii," *Golos Ukrainy*, January 20, 2000, 3–5.
50. For helpful discussions of the difficulty of defining organized crime in western literature, see Hobbs, Dick, "Criminal Collaboration," in *The Oxford Handbook of Criminology*, 2d ed., ed. M. Maguire, R. Morgan, and R. Reiner, Oxford: Oxford University Press, 1997: 801–40; and Jacobs James and Christopher Panarella, "Organized Crime," in *The Handbook of Crime and Punishment*, M. Tonry, ed., Oxford: Oxford University Press, 1998: 159–77.
51. Thus, although the Moscow criminologist Azalia Dolgova prefers a narrow, Western-style definition of "organized crime," her Ukrainian counterpart Zelinskii prefers a broad one. See Zelinskii, *Kriminologiiia*, 197–201 (see note 4).
52. Public remarks of Volodymr Stashis, the President of the Ukrainian Academy of Legal Sciences and Director of the Kharkiv Center for the Study of Organized Crime, at an NIJ-sponsored conference on criminology in Kyiv, November 20, 1999. See also Glushkov, unpublished report, 1999.
53. "Dannye o proiavleniakh organizovannoi prestupnosti v 1993–1997 v Rossii," *Organizovannaia prestupnost*, no. 4 (1998): 258–61.

54. Luneev reports that in 1996, the Russian MVD decided no longer to record organized crime on the basis of police data, and now relies only on prosecution statistics. Luneev, V.V., *Prestupnost XX veka: mirovoi kriminologicheskii analiz*, Moscow: Norma, 1997: 303.
55. See Maguire, Mike, "Crime Statistics, Patterns, and Trends," in Maguire et al., eds., *The Oxford Handbook of Criminology*, 144 (see note 50).
56. Note that a recent study of Russian organized crime concluded that of more than 5,000 criminal groups identified at that time, only 350 would meet the usual Western understanding of organized crime, and between 12 and 20 deserved classification as "major cartels." Luneev, V.V., "Organizovannaia prestupnost v Rossii: osoznanie, istoki, tendentsii," *Gosudarstvo i pravo*, no.4 (1996): 96–109.
57. See *Zlochinnost v Ukraini*, Kyiv: State Committee on Statistics, 1999: 48. We discuss this in greater detail in chapter 3.
58. Luneev, *Prestupnost XX veka*, 304 (see note 54). A. I. Alekseev, another Russian criminologist, reports that whereas 22 percent of all crime was committed *in* groups, only 2 percent was committed *by* organized criminal groups. See Alekseev, A.I., *Kriminologiia: kurs lektsii*, Moscow: Kriminologicheskaiia assosiat-siia, 1999: 195.
59. Quoted in Zelinskii, *Kriminologiia*, 201 (see note 4).
60. Such leading scholars as Luneev and Galeotti claim that the groups themselves are "amorphous" and "loose networks," with "no rigid chain of command." Luneev, V.V., *Prestupnost XX veka*, 287 (see note 54); Galeotti, Marc, "The Mafia and the New Russia," *Australian Journal of Politics and History* 44 (3) (1998): 415–16, and Galeotti, Marc, "Inside the Russian Mafia" *Jane's Intelligence Review* 12 (3) (March 2000) (available by subscription at jir.janes.com). For an insightful discussion of the various forms of organization, see Williams, Philip, "Introduction," in *Russian Organized Crime: The New Threat?* ed. Philip Williams, London: Frank Cass, 1997: 12–14.
61. For example, the offense-based taxonomy of crime preferred by Karpets, the aged dean of Soviet criminology, is criticized by Luneev, a younger scholar, as "casuistic." *Prestupnost XX veka*, 285 (see note 54).
62. For examples, see Alekseev, 195–206 (see note 58); Zelinskii, 200–8 (see note 4); and A. Dolgova, ed. *Kriminologiia*, 595–609 (see note 25).

63. See Galeotti, “The Mafia and the New Russia”; and “Inside the Russian Mafia” (see note 60). On April 13, 2000, on Russian television, the Russian Prosecutor General’s office reported that there were only 500 real organized groups, with 4,000 active members. See also Luneev, V.V., “Organizovannaia prestupnost v Rossii” (see note 56).
64. Glushkov, unpublished report, 1999. Comparable data for Russia suggest a slightly higher degree of intergroup contact and cooperation. According to Luneev, “Organizovannaia prestupnost v Rossii” (see note 56), in 1995, 4.4 percent of Russian crime groups had international ties, and 13 percent had interregional connections with other groups in the former Soviet Union.
65. The collaborative U.S.-Ukrainian research groups supported by the International Center of the National Institute of Justice are organized along functional or crime-specific lines. For example, most groups have focused their research on specific kinds of offenses, such as human trafficking, money laundering, and drug trafficking.
66. Volkov, Vadim, “Violent Entrepreneurship in Post-Communist Russia,” *Europe-Asia Studies* 51 (5) (July 1999): 741–54.
67. “Sostoianie borby s organizovanoi prestupnostiu v Ukraine” 25–26 (see note 22); Shelley, Louise I., “Human Trafficking: Defining the Problem,” *Organized Crime Watch—Russia*, 1 (2) (February 1999): 1–2.
68. Kulik and Bobyr, “Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody,” *Prestupnost v Ukraine (Biulleten zakonodavstva i iuridichnoi praktiky Ukraini)*, no. 2 (1994): 5–37” 19 (see note 1); *International Narcotics Control Strategy Report, 1997: Ukraine*, Washington, DC: Bureau of International Narcotics and Law Enforcement Affairs, March 1998.
69. “Molodezh i narkotiki: nauchnyi otchet po itogam sotsiologicheskogo issledovaniia,” unpublished report, Kharkov: MVD Universitet vnutrennykh del, kafedra sotsiologii, 1997. For analogous data and analysis of adolescents and narcotics in the Russian Federation, see Popov, V.A., and O.Iu. Kondrateva, “Narkotizatsiia v Rossii—shag do nationalnoi katastrofy,” *Sotstiologicheskie issledovaniia*, no. 8 (1998): 65–8.
70. “Sostoianie borby s organizovanoi prestupnostiu v Ukraine” 12–13, 16–17 (see note 22).
71. *Ibid.*, 17–24 (see note 22).

72. Antilenko, V.F., *Sovremennyi terrorism: sostoianie i vozmozhnosti ego uprezhdeniia (kriminologicheskoe issledovanie)*, Kyiv, 1998: 156, 145.
73. For wise observations along these lines, see Beare, Margaret, "Corruption and Organized Crime: Lessons from History," *Crime, Law and Social Change*, 28 (2) (1997): 155–72. See as well the trenchant remarks of Andras Sajo "that corruption in Eastern Europe is, in part, a function of Western perceptions." Sajo, Andras, "Corruption, Clientelism and the Future of the Constitutional State in Eastern Europe," *East European Constitutional Review* 7 (2) (Spring 1998): 37–46.
74. For example, the Russian observer Boskholov cautions against careless campaigns against corruption for precisely these reasons. See Boskholov, "Problemy ugolovnoi politiki v sfere borby s korrupstii," in *Informatsionnyi biulleten*, no. 5, published by the Irkutsk Center for the Study of Organized Crime, May 1995.
75. Kaufmann and Siegelbaum, "Privatization and Corruption," 422 (see note 46).
76. For vivid examples, see Simis, *U.S.S.R.: The Corrupt Society* (see note 9).
77. On frame laws and bureaucratic discretion, see Sergeyevev, "New Social Phenomena and Crime in Post-Communist Russia," 9–19 (see note 42).
78. See Boiko, A.M., "O nekotorykh faktakh kotorye determiniruiut korrupstiiu," *Doklad dlia konferentsii "Kontseptsiiia formirovaniia zakonodatelstva Ukrainy*," unpublished (October 1997).
79. Moore, Barrington, Jr., *Terror and Progress—U.S.S.R.: Some Sources of Change and Stability in the Soviet Dictatorship*, New York: Harvard University Press, 1954; Jowitt, Kenneth, "Soviet Neotraditionalism: The Political Corruption of a Leninist Regime," *Soviet Studies*, 35 (3) (1983): 275–97.
80. For a comprehensive analysis of the negative consequences of corruption (and of some of its latent positive functions), see the Satarov report: *Fond informatika dlia demokratii, "Korrupstiiia v Rossii*," published in *Rossiiskaia gazeta*, 19 February 1998, 3–16; partially reprinted in *Chistye ruki* 2 (1999), 5–13; and translated as "Russia: Corruption Seen as a Socioeconomic Problem," *FBI-SOV-98-072*, available on the Internet to subscribers to wnc.fedworld.gov.
81. On party screening of misdeeds by important officials, see Solomon, Peter H., Jr., "Soviet Politicians and Criminal Prosecutions: The Logic of Party Intervention," in *Cracks in the Monolith: Party Power in the Brezhnev Era*, ed. James Millar, Armonk, N.Y.: M.E. Sharpe, 1992: 3–32.

82. Table in *Chistye ruki #2* (1999): 10 (see note 80).
83. The Russian data comes from Luneev, V.V., "Sniskhoditelnost vlastei k korrupsioneram dovedena do absurda," *Chistye ruki #2* (1999), 26–33, especially at 31; and the Ukrainian data from Kulik and Bobyr, "Obshchaia tendentsiia," (see note 1), and "Osnovnye tendentsii prestupnosti v Ukraine v 1972– 1993 gg. i prognoz na blizhaishie gody," with attached tables, unpublished 1999. (see note 1).
84. Informants have told us that the police and Procuracy in Ukraine competed in the generation of cases under the law on corruption, and produced many weak ones that had to be stopped by judges. *Zakon Ukrainy ot 5 oktiabria 1995, "O borbe s korrupsiiei;"* Luneev, "Sniskhoditelnost vlastei k korrupsioneram dovedena do absurda," (see note 83); "Borba s korrupsiiei v Ukraine (informatсионnyi material)," unpublished (1999).
85. "O sostoianii ispolnenii tsentralnymi i mestnymi organami ispolnitelnoi vlasti aktov zakonodatelstva o gosudarstvennoi sluzhbe i borbe s korrupsiiei," *Postanovlenie Kabineta Ministrov Ukrainy ot 3 avgusta 1998, No.1220.*"
86. Shelley, Louise I., "Organized Crime and Corruption in Ukraine" (see note 4); "Sostoianie borby s organizovannoi prestupnostiu v ukraine," 25 (see note 22).
87. Rudnev, Valerii, "Budushchee bez korrupsii," *Chistye ruki*, no.1 (1999), 1–2.
88. Sajo, Andras, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe," 42 (see note 73).
89. For a review of the literature and examples of such explanatory strategies, see Rose-Ackerman, Susan, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge: Cambridge University Press, 1999; Sachs, Jeffrey, and Katerina Pistor, *The Rule of Law in Russia*, Boulder, CO: Westview Press, 1997.
90. Sik, Endre, and Barry Wellman, "Network Capital in Capitalist, Communist, and Postcommunist Countries," in *Networks in the Global Village: Life in Contemporary Communities*, ed. Barry Wellman, Boulder, CO: Westview Press, 1999: 229–53; John Hagan and Detelina Radoeva, "Crime and Capitalization in the Czech Republic," in Friedman and Fisher, *The Crime Conundrum*, 75–92 (see note 31); Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe" (see note 73).

CHAPTER 3

Criminal Justice in Post-Soviet Ukraine



The system of criminal justice in Ukraine today is, as it has been for nearly 10 years, on the verge of reform. New draft codes of criminal law and procedure, as well as draft laws on court organization, the status of judges, the Procuracy, and organized crime, have circulated in academic and law enforcement institutions, traversed in and out of the Ukrainian legislature, briefly appeared in public for commentary, and then made their way back to the floor of the Rada for debate and further readings. Although there was little chance that any of this fundamental legislation would be adopted until after the Presidential elections of 1999, there is a strong possibility now that some of this legislation will be adopted in the first years of the new millennium.

Ukraine today faces considerable pressure to modernize and humanize legislation governing the administration of criminal justice. The adoption of a new Constitution in 1996, ratification of several international covenants and obligations, and Ukraine's desire to remain in good standing with the Council of Europe and eventually join the European Union all increase the likelihood of major movement on these legislative issues.¹ This political timeframe presents criminologists and legal scholars both in Ukraine and abroad with a small window of opportunity. Applied research completed before the adoption of this critical legislation may yet influence the reform process. Although those outside the country should not be naive or overly optimistic about the prospects for shaping the future of Ukrainian criminal justice, they should also not be unduly pessimistic. The imprimatur of science, international expertise, and serious scholarship behind any legislative recommendation in Ukraine's polarized parliament would smooth its journey. Perhaps just as importantly, it would strengthen the position of criminologists and legal scholars in the development of public policy.²

To identify appropriate topics and methods of investigation, however, we must take note of the Soviet legacy in Ukrainian criminal justice. Few fundamental changes in criminal law and practice have occurred in the 9 years since Ukraine became independent of the U.S.S.R. In understanding the current state of Ukrainian criminal justice, researchers today must appreciate the recent Soviet past. This chapter begins, then, by examining the Soviet legacy of criminal justice. It then addresses changes in institutions and the administration of justice since 1992. Finally, it assesses the performance of the state in fighting crime (ordinary, economic, and organized) and corruption in the post-Soviet period.

THE SOVIET LEGACY

The legal system in Ukraine under Soviet rule and the character of the justice administered by its institutions and officials differed little from that in Soviet Russia. Ukraine's codes of criminal law and procedure were modeled closely after Russia's, and its principal legal institutions were deeply sovietized. Ukraine's system of criminal justice was what one might call neoinquisitorial, in which the preliminary investigation, not the trial, was the decisive stage of proceedings, and the development of the case during this stage was monopolized by a supposedly impartial and objective investigator (*sledovatel*). Unlike the investigator in most Continental systems, however, the investigator in Ukraine was neither a judicial officer nor a neutral figure. Adversarial elements, such as open and oral review of the evidence and the participation of both prosecution and defense counsel at trial, were circumscribed. The dossier developed by the investigator served as a script for the trial judge, directing his or her attention, shaping the scope of inquiry, and, in most cases, determining the trial's outcome. The judge's main task was to verify the evidentiary findings and evaluations made by the pretrial investigator and then assign punishment.³

Institutions

The central position in this neoinquisitorial system of criminal justice was occupied by the Procuracy, an institution of enormous power and prestige. Originally created by Peter the Great as the "eye of the Czar," the Russian Procuracy until 1864 had responsibility for monitoring affairs of state, in particular ensuring compliance with the edicts of the autocrat. The Judicial Reform of 1864 transformed the Czarist Procuracy into a prosecutorial agency, but Lenin in 1922 decided to restore the Soviet Procuracy to its role as supervisor of legality in public life, including responding to the complaints of citizens about illegal actions of government officials. Throughout its history (until 1991), the Soviet Procuracy performed both supervisory and prosecutorial functions, in varying balances. During the late 1920s and 1930s, the Procuracy was mobilized by the party leadership to help implement its transformational policies, including industrialization and collectivization, as well as to prosecute, sometimes extrajudicially, those branded as "enemies of the people."⁴ Despite this involvement in the application of terror, the Procuracy evolved into the main mechanism of centralization and the restoration of legal order, however draconian, in the late Stalin period. Subsequent Soviet leaders expanded the role of the Procuracy in public affairs, partly to counter the secret police in succession struggles, but also to develop "socialist legality."

Shoring up public confidence in the state and ensuring greater predictability in economic relations were important regime goals, and the Procuracy played a critical role in their achievement. The Procuracy quickly became the most prestigious legal institution with the best cadres and greatest resources. Its stature and centralization—unlike most public officials, procurators were not also subordinate to local governments—made the Procuracy, both in the eyes of the public and in reality, the one agency in the U.S.S.R. capable of combating corruption in the localities and providing a modicum of hierarchy in the application of laws. In the Gorbachev period, the Procuracy experienced further growth in both personnel and political significance. During the so-called war of laws, as republics and regions demanded more autonomy or in some cases sovereignty, the Procuracy served as the last bastion of Soviet legality.

The political prominence of the Procuracy stemmed in large part from its responsibility for the “general supervision” (*obshchii nadzor*) of legality in public life. It performed the role of an aggressive and omniscient ombudsman, protecting the interests of the commonweal, intervening in civil suits, and, most important, reviewing citizens’ complaints against the state. But the Procuracy was not supposed to wait for signals of wrongdoing; its task was to preempt illegality—to prevent not only crimes but also social injustice, pollution, malfeasance in state enterprises, and misadministration of the state. For this purpose, it conducted periodic “checkups” (*proverki*) that were, in effect, raids on public agencies and social organizations. With the power to subpoena information and documents, the Procuracy could refer its findings to courts for the application of fines or initiation of criminal proceedings, or recommend to the Government changes in laws and administrative practices. In sum, the Procuracy was a metagovernmental institution with unique and unwieldy powers—not a separate branch of government, as some have suggested.⁵

In matters of criminal justice, the Procuracy was similarly all-competent and all-powerful. Its power stemmed from its unusual dual role in administering justice: procurators acted as both prosecutors and referees of the legality of proceedings at all stages. Even the procurator who prosecuted a case in court, and not merely his superiors, could issue a protest of the trial court’s ruling or verdict, which higher courts were obliged to review. In addition, the procurator who eventually presented in court the state’s case against the accused was usually responsible for ensuring objectivity in the dossier and development of the case during the pretrial investigation. This comingling of functions naturally jeopardized the procurator’s impartiality. The fact that the Procuracy also answered to the state for the success of the fight against crime, however measured, made its dual role especially problematic. The Procuracy had an institutional conflict of interest, and its allegiance to legality was divided.

In the 1980s, a minority of vocal and respected legal scholars asserted that the Procuracy represented a threat to the rule of law and independence of the judiciary. The Procuracy's domination of the pretrial stage, right to protest court decisions, ability to trigger multiple stages of appellate review, and general lack of what political scientists now call "horizontal accountability" was perceived as an excessive check on the judiciary's power and autonomy and as inconsistent with the rule of law. This opinion generated momentum for the first wave of judicial reform in post-Soviet Ukraine, discussed later in this chapter. However, the greatest threat to legality and rule of law presented by the Procuracy came during the pretrial stage. The Procuracy alone sanctioned almost every arrest and all searches, seizures, and wiretappings without having to justify or give reasons for its decisions to any institution or person. Moreover, appeals of such decisions were not adjudicated by courts; rather, they were handled administratively by higher level procurators. Perhaps the most worrisome aspect of the Procuracy's monopoly of proceedings at the pretrial stage was the potential for biased and unvigilant supervision of its own investigators. Because of the pressure to clear crimes and charge likely offenders, there were strong incentives to overlook mistakes, infractions, and bias in the work of investigators.

By the 1970s, the vast majority of criminal investigations were conducted by investigators working within the police departments, but this did not eliminate bias or improve the quality of investigations.⁶ Though institutionally subordinate to the republican Ministries of Internal Affairs (MVD), the police were also part of local government and held accountable by it. Although, as a rule, MVD investigators possessed a higher legal education, they were police department employees and vitally concerned with police goals, such as solving crimes. Instead of providing a fresh assessment and thorough screening of the detectives' work, police investigators often did little more than give legal form to the detectives' hunches and reports.⁷ Consequently, the quality of police investigations fell markedly in the last decade of Soviet power. Many of the more talented and experienced investigators left MVD, especially as the socialist economic system began to collapse and the opportunities for profitable employment in the private sector grew. In 1991, independent Ukraine inherited a young, undereducated, and relatively inexperienced corps of criminal investigators.

Courts in Soviet Ukraine were weak and dependent bodies that lacked public respect, and the career of judge had low status and few rewards. One of the reasons for this was the limited jurisdiction of the courts. Courts did not deal with constitutional matters; their main mandate was the enforcement of criminal law and the resolution of civil disputes relating to divorce and alimony, housing, inheritance, and labor issues. The judiciary's role in reviewing the legality of the actions by

government officials was exceedingly small (for example, one could not contest a traffic ticket in court until the 1970s) and, as explained above, closely circumscribed in the crucial pretrial phase. Further, the courts played only a minor role in the resolution of commercial disputes, as conflicts between state-owned firms were handled by special tribunals of the state *arbitrazh*, which was not a part of the court system. However, judges could not perform even these modest functions free of constraints, as they faced pressures to avoid acquittals and to sentence according to existing policies. Records were kept of judges' performance, according to such criteria as stability of sentences (i.e., the percentage of verdicts that withstood appeal), and these records influenced the course of a judge's career. Judges whose decisions were reversed too often faced disciplinary proceedings and, on occasion, recall.⁸

A second factor influencing respect for the courts was that, rather than being independent, judges in the U.S.S.R. were exposed to multiple lines of dependency—one horizontal and two vertical. In their localities, judges depended upon local political officials, including party bosses, for the provision of personal benefits (such as apartments and vacations) and extrabudgetary support of the courts (maintaining and repairing court buildings, provision of cars). In addition, local party leaders also had a voice in judges' continuation in office, including a say in their periodic renomination for election (for 5 years) and the right to initiate a recall. Most judges felt sufficiently obliged to their local patrons to cooperate with their needs, whether responding to the occasional case intervention or maintaining appropriate records. Still, in the last decades of Soviet power, judges felt even greater dependency upon their two vertical masters: the Ministry of Justice and the higher courts. The Ministry of Justice and its regional departments administered the courts by controlling their budgets, distributing bonuses, handling complaints, monitoring delays, and writing the performance evaluations on which judges' career advancements depended. The higher courts supervised lower court performance by holding training courses, convening conferences on judicial practice, conducting disciplinary proceedings, and using their considerable appellate power.

Another sign (and cause) of the low status of the courts and judges was financial. Although the Soviet government was famous for its capacity to target resources to its priority concerns, the administration of justice was not one of them. Typically, the buildings occupied by courts throughout the Soviet period were among the most modest and worst maintained public buildings and a matter of constant complaint. Moreover, judges' salaries and budgets for court staff and expenditures were barely adequate, causing judges to rely upon the generosity of local officials and, occasionally, corruption. Another sign of judges' low status was the meager provision of benefits, which in the Soviet system mattered greatly. A large number of judges in the

1970s and 1980s lacked their own apartments and many, like their colleagues in MVD, left state service for private practice in the last years of Soviet power.

Judges in the late Soviet period also had a weak sense of professional identity. Judges received little, if any, special training; familiarity with the courts came mainly from earlier experience working as court secretaries. Opportunities for midcareer training (special courses) existed but were mostly episodic and superficial. Also, judges had none of the institutions to support interactions among them and make them into a community. There were no judges' associations, no special literature for judges, and no research institutes devoted to court problems and the administration of justice. Judges in many regions had opportunities to gather in the capital city for conferences, but these were typically organized by party bodies or justice officials to make judges aware of the current priorities in the struggle against crime, which was viewed by many Government officials as the courts' primary responsibility.

Criminal procedure

Soviet criminal procedure developed at least three rules that tipped the scales of justice in favor of the prosecution. First, defense counsel played a negligible role in the pretrial investigation, unless the accused was a juvenile or mentally ill. Advocates, as defense attorneys were called, had no access to the dossier being developed until the conclusion of the investigation and no right to conduct parallel inquiries, and, until 1990, had only delayed access to the accused. Second, when the incriminating evidence was insufficient to convict, prosecutors were given a second (or third) chance by virtue of the uniquely Soviet institution of "supplementary investigation." At either a pretrial hearing or trial, if the court could not fill in the gaps of the investigation, prosecutors could request that the judge return the case for further investigation—without jeopardizing future judicial proceedings. Third, the prosecution enjoyed a privileged position in appellate proceedings. Although both parties had an automatic right to an appeal in cassation (which was ostensibly limited to reviewing questions of fact), only the procurator had the right to be present (presence of accused and defense counsel was at the discretion of the judge) and he was entitled to give conclusions and be heard first. If no appropriate relief was obtained, a procurator could then launch a protest in supervision and deliver it to as many as three different levels of appellate tribunals, all of which were empowered to change rulings, vacate judgments, adjust sentences, or order new trials for a number of reasons (including the need to apply a stiffer punishment).⁹ Trials in the district (raion) people's courts (the lowest level of court) were often perfunctory but not necessarily brief. The judge and two lay assessors (who were elected from and by the population at large and adjudicated questions of fact and law with the judge) had to conduct an exhaustive inquiry,

verifying the truthfulness and objectivity of all information compiled by the pretrial investigator. Incomplete, unobjective, or inexhaustive investigations of the record by the judge could lead to a reversal; at the trial stage, there was no doctrine of harmless error. The confession of the accused played an important role, and the trial typically began with an inquest into the accused's character, background, and, especially, level of remorse. Although a confession by itself could not support a conviction, it was central to the judge's main task: assigning punishment. Except for the interrogation of the defendant, trials were routine, formulaic, and sometimes redundant.

Performance

How did the system operate in practice? What was criminal justice like in Soviet Ukraine? Perhaps the most striking feature of criminal justice in Ukraine was the paucity of acquittals. Throughout the 1980s, fewer than one-half of 1 percent of criminal defendants were acquitted. In fact, an accused person was more likely to be judged unfit to stand trial than to receive a judgment of acquittal. The rate of acquittal, however, was not a good measure of Ukrainian justice, for not all accused were convicted. Courts had at least two reliable mechanisms for dispensing with badly investigated cases or unwarranted prosecutions: One was to return the case to the police or Procuracy for supplementary investigation, where it might conveniently disappear; the other was to dismiss charges and terminate criminal proceedings. In the early 1980s, supplementary investigations constituted approximately 3 to 4 percent of all dispositions; this figure rose to nearly 9 percent at the end of the decade. The rate of terminations was more stable, ranging from 4 to 6 percent of all dispositions.¹⁰ Even with the negligible number of acquittals, therefore, the outright conviction rate was only 85 percent. Thus, although Ukrainian criminal justice was rife with accusatorial bias, the system did not always flout basic rules of law and procedure.

The two worst aspects of criminal justice in Ukraine were an overreliance on detention as a measure of restraint and ensuring the appearance of the accused at trial, and the excessive use of imprisonment. At least 35 percent of all persons accused, and virtually all persons charged with offenses likely to be penalized with custodial sanctions, spent many months, and sometimes years, in jail awaiting trial.¹¹ There was no provision for bail, and alternative measures of restraint were available principally for those charged with truly trivial offenses. Also, prison was the main form of punishment in Ukraine, perhaps because of the economy's insatiable demand for cheap labor.¹² In some years, 60 percent of those convicted by courts were given custodial sentences. By the 1980s the rate of imprisonment was down to 40 percent, and, as exhibit 3.1 shows, at the end of the decade it stood at 34 percent. This figure was misleading, however, for it encompassed a wide variety of nonviolent

EXHIBIT 3.1.

Sentencing in Ukrainian Courts, 1990–91

Year	Number Convicted	Number/ % Imprisoned	Number/ % Given Corrective Labor	Number/ % Chemo	Number/ % Conditional Conviction	Number/ % Other Noncustodial
1990	104,199	35,947 / 34.5	22,890 / 22.0	8,613 / 8.3	6,096 / 5.9	30,653 / 29.4
1991	108,553	35,055 / 32.3	24,128 / 22.2	9,283 / 8.6	7,208 / 6.6	32,879 / 30.3

SOURCE: *Prestupnost v Ukraine*, no. 2 (1994): 141.

NOTES: “Corrective labor,” the main noncustodial form of punishment, meant that the court obliged the convict to remain at his or her place of employment and deducted 20 to 25 percent of his salary into the state treasury. “Chemo” (khimiya) was the vernacular term for “conditional convictions with compulsory labor assignment”; it referred to the toxic conditions in which prisoners were made to work. “Conditional conviction” was a probationary sentence, which could be transformed into real imprisonment if the convict violated the conditions of his probation. Other noncustodial punishments included fines, social supervision, and, for juveniles, “suspended sentences” (*otsrochka ispolneniia prigovora*), which differed little from conditional conviction.

crimes as well as several offenses that in other countries might be classified as misdemeanors. Prison not only was a virtual certainty for those guilty of violent crimes but also routinely was used for those who committed ordinary property offenses, especially attempts on socialist property.

Was Ukrainian criminal justice effective in fighting crime? On paper it was spectacularly successful. Levels of cleared or solved (*raskrytye*) crimes were fantastically high. In most years, the clearance rate hovered above 90 percent; for certain offenses, it was closer to 100 percent. Such stellar performance, however, had much less to do with the mythic “advantages” in the prosecution of neoinquisitorial procedure than with the vices of the police accounting system. Until 1988 the police could “solve” crimes without sending cases or criminals to court. Between 1970 and 1980, the Ministry of Internal Affairs considered a crime “solved” from the moment a decision was made to open (*vozbudit’*) a criminal investigation. Between 1980 and 1988, a crime was deemed solved once charges were formally presented to the accused. In both systems, however, the police were not required to obtain a conviction in order to be favorably evaluated. Not surprisingly, many “solved” crimes never made it to court. Soviet criminal procedure aided and abetted these practices, affording both police and Procuracy many reasons not to pursue a criminal case to its logical conclusion. For example, criminal proceedings could be terminated for a host of “nonrehabilitative reasons” (e.g., if there had been a “change of circumstances” and the crime had ceased to be “socially dangerous”), or the accused could

be diverted from formal prosecution by having their cases sent to “comrades courts” or by being placed under a variety of forms of social supervision.¹³

In 1988, however, the U.S.S.R. Procuracy and MVD jointly decreed that henceforth a crime would be considered solved only when a procurator had signed a conclusion to indict (*obvinitelnoe zakliuchenie*)—meaning that the case now had to be sent to court for trial. These rule changes limited prosecutorial discretion and discouraged diversion, but they also encouraged the police to engage in activities designed to protect their performance ratings—principally, concealing reports of crimes.¹⁴ Because of this and the emergence of high amounts of unrecorded or “latent” crime, the performance numbers remained respectable and the police still appeared vigilant. As exhibit 3.2 shows, police opened investigations in approximately 75 percent of registered crimes, identified suspects in every second case, and, with the assistance of the Procuracy, secured convictions of more than 90 percent of those charged.

Unfortunately for the Ukrainian police, the rule changes coincided with political reforms that brought about heightened public scrutiny of police conduct. Revelations of fraud in recording crime showed that police claims were much inflated and that the system’s performance was not exemplary. Using the same data, scholars and journalists with a critical eye could show that fewer than one-third of registered crimes (104,119 of 369,809) ended in convictions. Not just criminologists, but also the public at large now knew that there were considerable problems in the fight against crime. Dissatisfaction with the state’s record in ensuring public safety spawned pressures for fundamental changes in policing and prosecution as well as the reform of criminal law and procedure.

EXHIBIT 3.2.				
Police Performance, 1990				
Number of Crimes Registered	Number/% of Investigations Opened	Number/% of Suspects “Identified”	Number/% of Suspects Charged	Of Suspects “Identified,” Number/% Convicted
369,809	271,346 / 73.4	186,683 / 50.5	114,674 / 61.4	104,119 / 90.8

SOURCE: *Prestupnost v Ukraine*, no. 2 (1994): 135–40.

POST-SOVIET CRIMINAL JUSTICE

The desire to improve the fight against crime in Ukraine developed in parallel with discussions about the rule of law and a growing interest in the establishment of a rule-of-law state, or *Rechtsstaat*.¹⁵ But this movement and efforts to liberalize criminal justice in Ukraine have not been very strong; certainly they have been much weaker than in Russia. This weakness comes not from a shortage of reformist and liberal-minded legal scholars in Ukraine but, rather, from the policy priorities of a new state gripped by a surge in levels of recorded crime and a catastrophic collapse of the economy. Put simply, politicians' interest in legal reform and individual liberties in the post-Soviet period has taken a back seat to matters of statehood, especially the relationship to Russia of independent Ukraine. For the state, the key issues have been sovereignty and survival, not modernization and liberalization of the legal system. This political calculus has stalled the reform of criminal justice in any direction.

Judicial reform

In the first years of independence, Ukraine moved quickly to introduce judicial reforms. In April 1992, a Conception of Judicial Reform was endorsed by the Rada and, by the end of 1993, a packet of laws was adopted that substantially improved the status of judges in Ukraine and reduced external influence on their work. Instead of being elected by the public at large for 5-year terms, district court judges were now elected, upon the recommendation of the chairman of a regional court, for 10-year terms by the regional legislative assembly.¹⁶ Judges also acquired some capacity for self-government through new corporate associations (councils of judges) and judicial qualification commissions (consisting of judges and lawyers nominated by politicians) that vetted candidates for judicial posts, controlled disciplinary proceedings, and convened congresses for the discussion of reform issues. Judges' salaries were increased, and judges received new benefits and privileges, including, most importantly, the right to adequate housing within 6 months of appointment.¹⁷

Unfortunately, these innovations did little to address the two main sources of judicial dependence—the Ministry of Justice and higher courts—and were much more modest than those called for by judges and many legal scholars. Most judges, for example, wished to remove the responsibility for judicial administration and court financing from the Ministry of Justice and create in its place an entirely autonomous judicial department, subordinate only to the Supreme Court and Council of Judges.¹⁸ But the Ministry of Justice was reluctant to give up this important lever of influence on judges, and the deputies in the Parliament, excited about democratic rule and representative government, were unwilling to cede political

power to the judiciary. The forces against radical reform were simply too powerful. Furthermore, there were substantial problems in the realization of even these modest improvements in judicial status and independence. Despite the new legislation, judges had difficulty obtaining appropriate housing, continued to work in dilapidated buildings, and were frequently exposed to outside pressures (often from deputies).¹⁹ Not surprisingly, the number of vacancies and rate of turnover in the judiciary remained high, which only served to worsen the performance of courts about which politicians were so agitated.

In February 1994, the President ordered work on a new Conception of Judicial Reform, but by the time one had been drafted, the window of political and economic opportunity for radical changes had closed.²⁰ Parliamentary elections in March 1994, followed by Presidential elections in October, and fighting over the division of powers in the drafting of a new Constitution created a political crisis that put judicial reform off the active agenda.²¹ So contentious were the politics of Ukrainian constitutionalism that a collapse of the Republic was only narrowly avoided.²²

The adoption of a new Constitution in 1996 reopened the door to radical legal and judicial reform, for it enshrined a wide array of important civil liberties and proclaimed new court structures and procedures that required profound changes to the organization of the judiciary and criminal procedure. For example, the Constitution proclaims rights against double jeopardy (article 61) and searches and seizures not sanctioned by courts (articles 29 to 31), and it contains provisions for jury trials, new forms of appellate review, and the abolition of the Procuracy's power of general supervision. However, none of these rights and changes are realizable without new enabling legislation, and the transitional provisions in the concluding chapter of the Constitution, section 15, postpones the introduction of many of these changes until 2001, or until such time as the Rada introduces such legislation. Because of the protracted socioeconomic crisis and the priorities of political figures at the national level, the state has not had the means with which to deliver on these promises. The only major institutional innovation in the area of judicial reform has been the introduction of a Constitutional Court, which has been besieged by questions concerning the proper configuration of state power, not the niceties of criminal law and procedure.²³ Two other dramatic new institutions—the introduction of habeas-like hearings for those in pretrial detention²⁴ and the possibility of bail²⁵—have been grafted onto the neoinquisitorial structure, but neither has had great consequences for the courts or the administration of justice.

As of the new millennium, judicial reform in Ukraine has thoroughly bogged down. There is neither a political engine nor public constituency for reform. Both the

Supreme Court and the Ministry of Justice, the two institutions most directly interested in and affected by judicial reform, lack the right of legislative initiative and are themselves stalemated over reform issues. The two Rada committees concerned with judicial and justice reform—the Committee on Legal Reform and the Committee on Legislative Facilitation of the Operation of Law Enforcement Agencies and the Fight Against Organized Crime and Corruption—are divided on the major questions of the day and are rumored to be patronized by the Supreme Court and Ministry of Justice, respectively. The most important piece of reform legislation, the Draft Law on Court Organization (*Sudoustroistvo*), on which the vast majority of changes to criminal procedure depend, has stalled. The key sticking points include the proper configuration of projected juries (whether they will be mixed or classical and how many votes should be required for conviction and acquittal);²⁶ the nature of new appellate courts; the relationships of local courts to existing administrative units; and the place and role of specialized tribunals, such as motions, administrative law, commercial, and military courts.²⁷ Although a conciliatory commission was to smooth over the differences between the two remaining drafts (originally, five were submitted), the deputies could not come to agreement and the bill was not put to the floor for consideration.²⁸ As of early fall 2000, the Rada still had not sorted out the differences between the drafts and adopted a law on court organization.

In the meantime, the judiciary has endured a protracted crisis in funding and a backlash against its enhanced status and newly won insulation from outside interference. In 1998, courts received only 49.6 percent of the amount of funding deemed essential to basic operations. In February, a Deputy Minister of Justice claimed that there had been a 20-percent increase in the amount budgeted for the courts in 1999, so almost 70 percent of the level requested by the judiciary as essential will be delivered this year.²⁹ A recent report, however, claims that at midyear courts have received only one-third of their appropriations.³⁰ Lower level judges report that their courts receive assistance and short-term subsidies from local governments—which tends to jeopardize their independence in a variety of cases—but these sums are usually modest and will likely stop as a source of future sustenance.³¹ Having lost its patience with the Council of Ministers, the Supreme Court has now requested that the Constitutional Court rule on the constitutionality of the Government's failure to fund the courts properly.³²

The backlash against courts comes chiefly from the executive. In 1998, for example, the Council of Ministers proposed amendments to the Law on the Status of Judges that would have eliminated many of the privileges and benefits of judges.³³ Also in January 1998, the President established a Higher Council of Justice made up of 19 individuals, including leading politicians, legal officials (of which only 2 are judges),

and scholars, that aggressively vets first-time candidates for judicial posts and reviews disciplinary conduct materials.³⁴ Councils of this kind in other countries, such as France, Italy, and Canada, are dominated by judges.³⁵ The President also has arrogated to himself the right to appoint a chairman of district courts; although the Constitution is ambiguous on this point, the most responsible reading gives this power to the judges of the court in question.³⁶ Finally, the President has displayed open contempt for the Supreme Court's autonomy. In February 1999, for example, President Kuchma complained to a journalist about the Supreme Court's supervision of judicial practice on matters relating to the Law on Foreign Investment. Specifically, he charged that the Supreme Court wrongfully endorsed lower court practice, which upheld the rights of foreign investors after the law was annulled. Kuchma suggested that people hurt by such decisions should demonstrate in front of the Supreme Court.³⁷ Under these circumstances, it is not surprising that responsible parliamentarians claim that "the judiciary today is completely subordinated to the executive."³⁸

The police

The police (also called the MVD) have been beset by similar problems stemming from the weakness of the state and the chronic crisis in funding government operations. The MVD, according to its present Minister, Iu. F. Kravchenko, is financed at only 30 percent of its basic needs.³⁹ Although some of the shortfall is made up by local government subventions, the inability of the state to properly fund and maintain the police has led to an exodus (both involuntary and coerced) of capable cadres, a reduction in the ability to train reliable police officers and criminal investigators, and a sense of betrayal that adversely affects the loyalty of the police. This combination of factors has spawned considerable corruption in the ranks. Most corruption (both fact and fiction) is the usual, insignificant kind, such as the indiscretions among the employees of the State Automobile Inspectorate (GAI). However, the scale of these and other forms of professional degeneration is nevertheless worrisome. For example, internal investigations uncovered 108 acts of corruption in 1997, and, in the first quarter of 1999, 50 police officers were fined for misdemeanor corruption. From 1997 through 1999, respectively, 525, 325, and 533 individuals faced criminal prosecution for various kinds of malfeasance.⁴⁰ Even if the direct consequences for the fight against crimes of police misconduct are not great, the impact on the public perception of police integrity and efficacy is considerable and helps contribute to the scale of unreported crime.

A different form of police corruption may have more serious long-term consequences. In some cases, officers and even entire police units have either betrayed law enforcement or been captured by criminal groups, a development dubbed

“merging” (srashchivanie) in both Ukraine and Russia. Although no reliable data exist on this kind of corruption, it is clear that police, on occasion, perform services for wealthier, better supplied criminal groups and businesses by looking the other way, providing tips, selling information, or, less commonly, performing criminal acts. It is also not uncommon for police to compete with criminal groups in the supply of protection services. Some of this activity is centralized, aggressively marketed, and organized institutionally within the MVD as extradepartmental security (Vnevedomstvennaia okhrana). However, some of the protection services provided by police are unofficial and disloyal. The best-known examples of this entrepreneurial policing include guaranteeing businesses safety from gangs, criminal groups, or fire, health, and tax inspectors.⁴¹ In return for these services, police officers receive free meals and hospitality from local restaurants or scarce goods and services from stores. This activity is difficult to distinguish from racketeering. At the very least, it blurs the distinction between cops and robbers. Nevertheless, some officers defend these practices as either no different from the free doughnuts enjoyed on occasion by U.S. police officers, or as an officer’s anthropology (the kind of good detective work that gets cops closer to the ultimate objects of their investigations). Whatever the merits of such claims and denials, the state’s lack of supervision of this conduct is cause for concern.

Partly in response to these developments, the MVD has set up a new Division for Public Relations. So far, this division has conducted or sponsored victimization surveys and used other research instruments to better understand public perceptions of and interactions with the police. Some of the research and findings are fairly primitive and used for crude purposes. For example, the minister recently reported with a sense of accomplishment that 34 percent of respondents in a survey claimed to trust the police, while 33 percent did not.⁴² Other projects conducted under the auspices of the new public relations division are more promising. The MVD, for example, has helped fund experiments with municipal police departments, which will not only deliver better information on public attitudes but also develop more reliable information about the extent of unreported crime.⁴³ These and other investigations can rely on the considerable research potential and capacity of the institutes, laboratories, and universities subordinated to the MVD (which is discussed in chapter 4) to bring about a better understanding of police problems and their potential remedies.⁴⁴

The Procuracy

The U.S.S.R.’s collapse has been both a boon and bane for the Ukrainian Procuracy. The Procuracy has experienced huge growth, especially in its central administrative apparatus, which lacked independent managerial capacity when it was subordinate to the U.S.S.R. By 1997, the number of central staff was three times that in 1986.

The magnitude of this growth is now criticized as excessive, and a reduction in personnel and administrative units has been engineered by Potebenko, the current Procurator General.⁴⁵ However, this recent downsizing should not be seen as a sign of reducing the Procuracy's functions. On the contrary, the scope of general supervision of legality, which the Procuracy advertises as its greatest virtue, has grown markedly in recent years.⁴⁶ The protracted socioeconomic crisis, stealing of state assets, and general lawlessness in public relations have heightened the state's need for self-protection and increased the public's demand for quick and inexpensive legal aid. In this sense, the collapse has brought about added justification for the existence of this omnicompetent institution.

However, the pledge to create a rule-of-law state, the desire for greater integration with European government institutions, and, above all, the promised dilution of its functions in the new Constitution, all raise questions about the validity of the Procuracy's present status. According to the Constitution, not only are most of the Procuracy's current functions of supervising legality in the pretrial stage (searches and seizures, arrest warrants) to be transferred to the courts, but the rights and powers associated with general supervision are to be dissolved by 2001 (chapter 15, paragraph 13). As of this writing, a year remains before new legislation must be adopted on these questions, and there is already a vigorous debate on the Procuracy's future. The abolitionists are in the minority, although many of the arguments they advance are sound, including the claim that the Procuracy is not sufficiently independent of government to be able to properly supervise its officials.⁴⁷ Most of the pillars of the academic legal establishment echo the nostalgic and nationalist claims of Potebenko, who insists that Ukraine's unique identity and current predicament warrant the retention of the historical role of the Procuracy.⁴⁸ Nevertheless, there is considerable uncertainty over the future role and function of the Procuracy in Ukraine. Research on such topics as prosecutorial discretion and the effectiveness of pretrial supervision might influence the outcome of the debate.

The character of criminal justice

There have been only modest changes in the administration of justice in Ukraine since the U.S.S.R.'s collapse. Acquittals remain below 1 percent of all dispositions; in 1998, they were one-half of 1 percent.⁴⁹ There are, however, strong signs of more rigorous judicial scrutiny of evidence amassed by the prosecution—especially in the review of habeas-like petitions and in the rise in the number of cases terminated by courts. In 1997 and 1998, courts released from custody every third prisoner who contested the legality of his pretrial detention.⁵⁰ Between 1990 and 1998, terminations rose from 5 to 10.3 percent of all dispositions.⁵¹ Together with a steady rate of

returns for supplementary investigation (8 to 9 percent), these otherwise liberal court practices have aroused the enmity of the law enforcement community to which the judiciary once belonged. Courts today are accused of coddling criminal defendants and are routinely decried as too independent, arbitrary, or corrupt. Although such charges resonate with a population uncertain about public safety, they are for the most part without merit. Each year, courts take into custody more accused than they release, and most judges prefer to give the prosecution a second chance in tough cases rather than order an acquittal.

The greatest problem faced by courts in the administration of criminal law today is excessive caseload. Since 1990 the number of criminal defendants has increased by 230 percent, and the number of administrative (misdemeanor) hearings has risen in similar proportions. The growth in civil suits has been equally intense, from fewer than 300,000 in 1990 to nearly 800,000 in 1998.⁵² The expansion of the judicial corps, by contrast, has not been large; there was only a modest increase in the total number of judges between 1990 and 1998. These figures do not fully capture the strain on the judiciary, however, for judges now also play an active role in corporate self-governance in addition to administering an ever-expanding and often contradictory body of law. The principal means by which this growing burden has been relieved are: allowing defacto decriminalization (police and prosecution treating certain felonies as misdemeanors), allowing bench trials in civil suits if the parties consent to a single-judge hearing, and authorizing judges to try some criminal matters without lay assessors. More fundamental changes to criminal and civil procedures that might simplify and accelerate trials are currently under consideration.⁵³

FIGHTING CRIME IN UKRAINE: ASSESSING THE REGIME'S RESPONSE

Neither the President nor the public finds the performance of the state in combating crime satisfactory. More than two-thirds of citizens polled in 1994 rated police work "poor," and just more than half of police officers polled judged their own effectiveness as "low."⁵⁴ Even the Minister of Internal Affairs now claims he is "not satisfied" with police performance, lamenting that almost 30 percent of murders and robberies are not solved.⁵⁵ But public opinion polls, pre-electoral platitudes, and clearance rates are not sophisticated ways of assessing the system's performance in fighting crime. Clearance rates in particular are famously tricky instruments of measurement. In Ukraine, as in the United States and United Kingdom, this rate is calculated without respect to the number of persons ultimately convicted of crimes. It is also not based on the number of crimes *reported* to the police but, rather, on the number *registered* by them. Moreover, it subtracts from the total the number of crimes police

have to clear (the number of cases “suspended”) (priostanovleno) because a suspect could not be identified within 2 months.⁵⁶ For these and other reasons, clearance rates tell us little about the quality of police detective work and should be discounted in the attempt to assess police performance in Ukraine. Although steps are being taken to establish different measures of police effectiveness, at present there is no reasonable criterion by which to assess police performance.⁵⁷

Two other factors complicate assessments of the system’s response to crime: limited access to data and the unreliability of official statistics. Despite more openness in Ukraine’s crime reporting, there are still great problems in accessing crime information. In 1998 the State Committee on Statistics published only 100 copies of *Crime in Ukraine (Zlochinnost v Ukraine)*, the only authoritative source on rates of crime. Scholarly articles and books with complete sets of data are also rare. One issue of an irregular legal periodical accounts for the majority of citations and bulk of public knowledge about the recorded levels of crime and punishment in Ukraine.⁵⁸ Even researchers within MVD academies and institutes report facing major restrictions of access to the data they themselves manage.⁵⁹ Establishing a unified and publicly accessible crime database is a prerequisite to assessing the system’s performance; it would also constitute an important first step in the development of mature, empirical criminology in Ukraine.

There are also grave and legitimate concerns about the reliability of crime data generated by the MVD. Not a single police officer, judge, or Procuracy official interviewed for this study believes that the reported 2.2-percent decline in registered crime in 1998 reflects the truth. Almost all law enforcement officials know of tricks used to enhance performance ratings that distort the aggregate picture of crime, some of them quite alarming. For example, the head of a district police department outside Kharkiv reports that coroners in his district are paid to record mysterious cases of murder as instances of “the infliction of grave bodily harm” from which death unintentionally followed in order to relieve the police of pressure to clear these crimes.⁶⁰ These and other deceptions are not rare, and are presumably more common for less serious crimes. Each year, the Procuracy uncovers about 15,000 crimes “concealed” (skrytykh ot ucheta) by the police and opens criminal investigations into another 15,000 cases in which the police unjustifiably decided not to commence inquiries.⁶¹ Skepticism and cynicism about the veracity of police crime statistics is so common in Ukraine that many procurators advocate the transfer of control over data registry to civilian authorities.⁶²

The government itself has acknowledged a problem with crime data and recently endorsed a program to study seriously the causes of, and means of combating, the dark figure—latent crime (*latentnaia zlochinnost*). Funding for this program, unfortunately, has reportedly disappeared.⁶³ Nevertheless, initial studies have had some positive results; some scholars have even begun to create a conceptual apparatus for the study of latent crime. For example, Zelenetskii proposes to distinguish between artificial and natural latency—that is, treating deliberate police distortion and deception as latent crime and the public's underreporting of crime as organic.⁶⁴ Other scholars focus on the extent of this natural latency; typically they report large amounts of latent crime. One victimology survey in Kyiv conducted with international assistance found that only half of all crimes are reported to the police.⁶⁵ A senior sociologist at a police institute in Kharkiv, however, suggests that the rate of unreported to reported crime is 10 to 1; for certain kinds of crimes, he estimates the ratio is 30 to 1.⁶⁶ Sorting out the scale of this latent crime is clearly a prerequisite to any assessment and would provide a suitable topic for joint research.⁶⁷

Without advances on these three fronts, of course, any analysis of police performance must remain speculative. Accordingly, these observations are tentative and intended to raise questions for future research. Exhibit 3.3 presents data on levels of reported and registered crime as well as the further handling of such offenses by police from 1990 to 1998. What do these data tell us about the quality of policing?

EXHIBIT 3.3.
Crime and Punishment in Ukraine, 1990–98

Year	Number of Crimes Reported	Number/% of Crimes Registered	Number/% of Cases Opened	Number/% of Persons Identified	Number/% of Persons Charged	Number/% of Persons Convicted*
1990	557,905	369,809 / 66.2	271,346 / 73.3	186,683 / 68.7	114,674 / 61.4	104,199 / 28.2
1991	608,440	405,516 / 66.6	323,735 / 79.8	187,468 / 57.9	128,115 / 68.3	108,553 / 26.8
1992	1,004,626	480,478 / 47.8	N/A	207,326 / N/A	145,151 / 70.0	115,260 / 24.0
1993	1,092,330	539,299 / 49.4	524,063 / 97.1	242,363 / 46.2	187,855 / 77.5	152,878 / 28.3
1994	1,197,436	571,891 / 47.8	550,638 / 96.3	269,061 / 48.8	206,023 / 76.6	174,959 / 30.5
1995	1,307,924	641,860 / 49.1	586,077 / 91.3	340,421 / 58.1	281,643 / 82.7	212,915 / 33.2
1996	1,308,306	617,262 / 47.1	553,730 / 89.7	339,530 / 61.3	284,164 / 82.8	242,124 / 39.2
1997	1,246,650	589,208 / 47.2	523,447 / 88.8	337,908 / 64.5	284,264 / 84.1	237,790 / 40.3
1998	1,317,812	575,982 / 43.7	518,632 / 90.0	330,067 / 63.6	272,236 / 82.5	232,598 / 40.4

* Percentage of persons convicted is reported as a percentage of registered crimes.

First, there is still a considerable amount of selective registering of crime in Ukraine. The rise in levels of *reported* crime was not matched by a comparable rise in *registered* crime; that is, registered crime rose steadily and substantially, but at a rate lower than crimes reported to the police. As a result, while in 1990 two out of three reported crimes were registered, in 1998 police registered only two out of five reported crimes. Unless the public is reporting false or frivolous incidents at a growing rate (which is unlikely, given the low public confidence in the MVD), it would appear that the police are dismissing more allegations of criminal activity than in the past.⁶⁸ The police are not arbitrarily dismissing reports of crime; the decrease since 1993 in the percentage of registered crimes that led to a criminal investigation suggests that police are compelled to register such reports even when the prospects of their solution are not great. Nevertheless, more needs to be known about the disincentives to registering crimes and the rationale for not opening criminal investigations when the required elements of a crime are present.⁶⁹ What governs police investigators' decisions to confer on reported offenses the status of a registered crime? How many reported but unregistered crimes were serious offenses? Is this selective registration of crimes merely a de facto decriminalization or something more corrupt and worrisome?⁷⁰

Second, there has been a substantial increase in the percentage of persons charged (from 60 percent to 82 percent of persons identified). In other words, Ukrainian prosecutors are assigning criminal liability to more people than in the past. What factors determine whether suspects identified by the police as probable culprits are ultimately prosecuted by the Procuracy? Does the increase in the prosecution rate reflect the selective registration of crimes, a diminished capacity to divert accused individuals from trials, or better policing? What does it mean to police to have "identified" a likely suspect? Although "identified" (*vyiavleno*) is not a legal term, scholars claim it means that there are "sufficient grounds to presume" someone committed the crime in question. Is there a common law of "sufficient grounds" in police practice in Ukraine that, if codified, might improve their performance? At the very least, more formalized standards of policing would increase MVD accountability to the public.

Finally, the ratio of convictions to the number of registered crimes has increased noticeably from 1990 to 1998, from 28 to 40 percent. Yet the ratio of convictions to *reported* crimes has remained fairly stable, hovering around 18 percent. This suggests that there has been little improvement in the ability of police to catch criminals in the past decade. However, in light of the great increase in levels of crime, the growing complexity of offenses, and the underfunding of MVD, perhaps such steady rates mean the police are coping adequately with their tasks. Clearly, examining

these data in the aggregate generates only limited knowledge. We must approach these police processing data by categories of crime.

Economic crime

Ukraine has decriminalized some previously prohibited economic activities, but it has not gone as far as Russia. For example, speculation—the purchase and sale of scarce goods for the purpose of making a profit—remains a crime in Ukraine (article 154), as do illegal currency transactions. Moreover, since 1992, the Rada has adopted laws that introduced a multitude of new economic offenses such as bank fraud and tax evasion.⁷¹ Ukrainian society is deeply divided on the question of decriminalizing certain forms of economic activity, especially those affecting retail prices on consumer goods. On the one hand, many (perhaps most) Ukrainian citizens insist that the economic collapse and transition away from solely socialist forms of property relations have given rise to much nefarious economic conduct, a considerable portion of which causes harm to innocent or unwitting citizens. Others argue that the Ukrainian criminal code penalizes too many forms of ill-defined types of economic activity, giving the regime and its administrators too much discretionary control over citizens' daily lives. Although this debate is unlikely to be solved by better criminology and police performance assessments, it is instructive to analyze the available data on economic crime.

Since 1990, recorded economic crimes in Ukraine have doubled. Nevertheless, considerable portions of the sections of the Criminal Code pertaining to economic crimes remain dormant. According to a researcher in Kharkiv, between 1992 and 1996, charges were brought under only 33 percent of the economic offenses listed in the code, and only 50 percent of the criminal investigations initiated were sent to court.⁷² These and other data suggest that shortcomings in the fight against economic crime are attributable to excessively discretionary prosecutorial strategies. The high incidence of fines as penalties in particular suggests that the offenses chosen for prosecution were not serious. However, other research in Kharkiv indicates that police strategies were also part of the problem: Only minor offenses and offenders were targeted. The fact that more than 50 percent of individuals accused of economic crimes in Kharkiv were women suggests that discretionary policing also stifles the fight against major economic crime.⁷³ Sorting out the relative contributions of the police and the Procuracy to this shortcoming is a high priority. Are procurators ducking or diverting serious cases from prosecution, or are few serious criminals apprehended in the first place? Are the police preying only on petty offenders in the marketplace? What roles do corruption and performance evaluation play in policing strategies? To develop answers to these and other questions, researchers will need, among other things, more control over the recording of economic crime.⁷⁴

Corruption

The struggle against corruption in Ukraine has reached an impressive level. As exhibit 3.4 shows, more than 15,000 civil servants were convicted of a crime of office last year, or 5 percent of the total number of civil servants in Ukraine.⁷⁵ Equally impressive is the performance of the Procuracy in prosecuting official crimes. In 1998, procurators obtained convictions in 67 percent of bribery cases known to the police (1,641 of 2,449 persons charged with registered offenses were convicted).⁷⁶

This success rate may have less to do with the investigative and trial skills of procurators than with the 1995 Law on the Struggle Against Corruption (corruption law) discussed in chapter 2.⁷⁷ By establishing administrative penalties (fines and removal for office) for many offenses that are virtually indistinguishable from their counterparts in criminal law—for example, “receiving material benefits, services, privileges, and other benefits” in exchange for the performance of public services (article 1A, corruption law) closely resembles accepting bribes (article 168, Criminal Code)⁷⁸—this law effectively decriminalized many forms of corruption. Instead of drawing up criminal charges, the police, in consultation with the Procuracy, now can handle reports of corruption and malfeasance without getting bogged down in formal, costly, and lengthy pretrial investigations. Such added prosecutorial discretion could be expected to improve the quality of cases in which the Procuracy decides to introduce criminal charges.

Ideally, giving the police and the Procuracy new discretion in such matters should have worked also to diminish the pressures not to dismiss reports of crime and corruption (which, for obvious evidentiary reasons, are not easy to investigate or prosecute, and thus might jeopardize clearance rates). The available evidence suggests that neither the police nor the Procuracy is dismissing reports of such offenses. As exhibit 3.5 indicates, in few cases do procurators obtain permission to try officials

EXHIBIT 3.4.

Corruption in Ukraine, 1997: Convictions for Official Crimes

Year	Number of Convictions for “Official Crimes”	Abuse of Office (article 165)	Negligence (article 167)	Accepting Bribes (article 168)	Forgery (article 172)
1997	11,311	2,756	1,787	1,540	4,435
1998	15,127	3,861	2,253	1,641	6,524

SOURCE: Zakaliuk, *Bor'ba s korruptsii v Ukraine* (unpublished paper).

EXHIBIT 3.5.
Fighting Corruption in Ukraine: Misdemeanor Prosecutions, 1997–98

	1997 Total	1997 (Civil Servants)	1997 (Deputies)	1998 Total	1998 (Civil Servants)	1998 (Deputies)
Number of charges filed*	6,344	4,548	1,096	6,902	5,162	1,029
Number sent to trial	5,422	4,510	217	6,656	5,128	819
Number convicted	1,925	N/A	N/A	N/A	N/A	N/A
Number of requests for permission to proceed with charges	995		977	246		224
Permission given	188		183	48		48
Permission refused	378		374	31		30
Number not sent to trial (expiration of statute of limitations)	37	14	22	10	5	2

*Note that these are misdemeanor, or administrative, offenses pursuant to the “Law on the Struggle Against Corruption.”

SOURCES: Zakaliuk, *Bor’ba s korruptsii v Ukraine* (unpublished paper); *Visnik Verkhovnogo Sudu*, no. 1 (1998).

with immunity, and in less than half of all cases do they obtain convictions.⁷⁹ Although we do not know the total volume of potential offenses, these numbers suggest that the police and Procuracy are conducting the struggle against corruption with some integrity, or at least without excess regard for the prospect of success at trial.⁸⁰

What explains the low rate of success in prosecutions for misdemeanor corruption? A study conducted by the Supreme Court in May 1998 (that was not available for research) reportedly claims that in half of the cases analyzed by the Court, the accused was not, legally, a public official (*dolzhnostnoe litso*).⁸¹ In another set of cases of unknown size, courts discovered the elements of a crime and thus terminated misdemeanor proceedings so that criminal charges would be drawn up. Furthermore, judges at the Kyiv City Court claim that many cases are poorly prepared. They send one-third of their cases back for supplementary investigation, from which they rarely return. These judges maintain that detectives fail to diligently execute the orders of investigators. Because defense counsels are present in most corruption cases, many charges fail to stand up to evidentiary scrutiny at trial.⁸² Finally, corruption may be part of the answer. The fact that, according to one scholar, some judges assign penalties lower than the statutory minimum suggests that exchange relations play a role here too.

Two factors combine to diminish the effectiveness of the campaign against corruption, even in respect to those officials who are convicted. First, the sanctions stipulated in the law are far too mild: Financial penalties (between 25 and 50 monthly minimum wages, or approximately \$250 to \$500) for corruption are negligible, especially when weighed against the possible gains from such activity. Unfortunately, the prospect of change is not great. The Rada is unlikely to endorse upward revisions in the scale of penalties as long as its own members represent potential subjects of misdemeanor prosecutions.⁸³ Second, the political will for punishing corrupt officials is waning. Local authorities are not only reluctant to allow prosecutions (only rarely are officials stripped of their immunity) but they also intervene in the process of punishment. According to the Council of Ministers, every second convicted official is not dismissed from his or her position, despite the requirement of removal in the corruption law. The national Government also appears to have washed its hands of the corruption problem. In its most recent decree, the Council of Ministers decried the formal implementation of the 1995 law but took no new steps to reinvigorate the struggle.⁸⁴ In short, the problems in the struggle against felony and misdemeanor corruption are as much political as they are legal and organizational.⁸⁵

Organized crime

Ukraine moved quickly to develop an adequate machinery to combat what it saw as organized crime (see the discussion in chapter 2 for details). In July 1993, the Rada adopted the law, "On the Organizational-Legal Foundations of the Fight Against Organized Crime," which not only established an analytical bureau for the study of organized crime and created a new office within the Presidency for coordinating the struggle against it, but also introduced many new police powers.⁸⁶ Under the law, the new special Administrations for Fighting Organized Crime (UBOZ) within MVD and FSB (Federal Security Service, the successor to the KGB) were empowered to (1) subpoena information from banks and other commercial entities; (2) petition a court to suspend the licenses and close down operations of commercial entities suspected of criminal acts; (3) conduct wiretaps and searches and seizures, in some cases without a warrant from the Procuracy; and (4) pay people to infiltrate or establish commercial relations with suspected criminal organizations (articles 12 and 13). The same law also introduced the possibility of partial or complete immunity for especially cooperative participants (article 14, part 2). A few months later, in December 1993, the Rada adopted another helpful law, "On Ensuring the Safety of Participants in Criminal Proceedings," which created protections for witnesses and victims of crimes, including identity changes, work and residence relocations, and provisions for dependent security.⁸⁷ In spring 2000, enhanced versions of these

protections were incorporated into the Code of Criminal Procedure.⁸⁸ Together with laws that either introduced new crimes or raised penalties for offenses committed by criminal groups, such as extortion and racketeering, this legislation appeared to give the state formidable weapons in the fight against organized crime.⁸⁹

The data used by MVD in the fight against organized crime are impressive, giving credence to the apparently contradictory claims that organized crime is now a threat to national security and that it has been successfully resisted.⁹⁰ According to MVD statistics, in the past 3 years, 3,189 organized criminal groups responsible for almost 20,000 crimes have been exposed and destroyed (*vyavleno i unichtozheno*).⁹¹ A closer examination of the data, however, generates concern about the use of this indicator as a measure of success in the fight against organized crime. First, it is unclear what the terms “exposed” and “destroyed” and their figures mean. Because MVD does not report data on convictions for organized criminal groups, we have no idea how many of the destroyed groups end up in prison. Second, there appears to be little attrition in the war against organized crime. Each year, the same number of groups that is destroyed reappears in the statistical ledgers of identified groups. Are the ranks of organized criminal groups being constantly replenished by an endless supply of deviants?⁹² Third, the groups caught and destroyed are not credited with a large number of crimes. In fact, the average number of crimes allegedly committed by each organized group has declined, from 10 in 1991 to 7 in 1998 and 1999.⁹³ Although it is conceivable that this decrease is a consequence of earlier detection and interdiction by the police, it is more likely that this statistic represents the modest scale of criminal activity of the groups caught. Finally, data on the character of the crimes committed by organized groups confirm the finding presented in chapter 2, that only minor groups are actually caught and brought to court. Between 1990 and 1998, theft (*kradizhka*) accounted for between 35 and 50 percent of the offenses for which groups were charged. Although robbery, extortion, and murder are becoming part of the repertoire of groups caught, they remain a small percentage.

What accounts for the problems in fighting organized crime in Ukraine? Why are only minor groups being caught? There are at least five kinds of difficulties that merit attention. First, corruption and the complicity of government in organized crime are serious obstacles to its investigation and prosecution. According to a senior researcher in the President’s Coordinating Committee for the Fight Against Corruption and Organized Crime, corruption is “the main obstacle in overcoming organized crime in Ukraine.”⁹⁴ Many forms of corruption are in fact indistinguishable from organized crime. A significant percentage of those officials fined for misdemeanor corruption, for example, were charged with protecting or failing to stop unlawful activities of economic entities under their regulatory control.⁹⁵ This

political patronage may well protect offenders from the scrutiny of criminal investigators. It is not clear, however, that complicity and corruption in the ranks of MVD are part of the problem in tackling organized crime. According to senior officials in the Procurator General's office, only a small percentage (6.8 percent) of investigations conducted by the UBOZ are "terminated for nonrehabilitative reasons," which is a convenient way for police to get rid of unwanted cases.⁹⁶ However, in light of the frequent allegations of police corruption from the MVD itself, further research, including study of other potential indicators of police complicity such as latent crime, should be conducted on this question.⁹⁷

Second, there is a significant problem with resources in the fight against organized crime in Ukraine. Although its organized crime administration enjoys a separate budget line in MVD's annual appropriations, the funds are either inadequate or sequestered. Investigators report that there is not always enough money to pay for expert testimony and laboratory work, and they are sometimes faced with extortion. Experts may refuse to release their reports and conclusions until cash has been paid in advance. There are also many mundane problems associated with insufficient funding. Shortages of cars, surveillance and crime scene equipment, and other technology slow the work of investigators and hamper timely prosecutions. Finally, investigators carry heavy caseloads and receive little, if any, special training for their work.⁹⁸ Faced with the prospect of low clearance rates at the end of each accounting period, investigators give preference and greater attention to familiar cases that are easier to solve.⁹⁹

Third, there are problems in the organization, administration, and coordination of the struggle against organized crime. Principal responsibility for guiding the fight against organized crime rests with the ephemeral-sounding Coordinating Committee for the Fight Against Corruption and Organized Crime. Established in June 1993, the committee was, in 1997, to be transformed into the National Bureau of Investigation (NBR), the Ukrainian analogue of the FBI. A presidential edict creating the NBR was issued, and consent to the creation of such an institution was obtained from the Constitutional Court, but the Parliament failed to enact enabling legislation; the NBR therefore remains an entity on paper only. Little is known about the work and structure of the coordinating committee. According to its secretary, its primary focus is not economic crime but contract murders and the prevention of crimes against members of the mass media.¹⁰⁰ Although the coordinating committee has met 47 times since 1993, it addressed the question of witness protection for the first time in June 1999 and only recently finalized a unified system for reporting organized crimes.¹⁰¹ This information gives the impression that the state has only just begun setting up the administrative machinery for successfully fighting organized crime.

Fourth, there are many problems with interagency cooperation and rivalry, perhaps because there is no permanent institution for directing the fight against organized crime. The organized crime battlefield is therefore institutionally overcrowded, with the tax inspectorate, customs agency, central bank, security service, Procuracy, and police all competing for jurisdiction and the rewards of successful prosecutions. The competition between the Procuracy and police is especially problematic. In 1994, special investigatory units for organized crime were created within the departments of the Procuracy for overseeing legality in the fight against organized crime. Although this practice yielded positive results, according to a senior official from the Procuracy, these special units were dissolved in 1997, and operative control of organized crime investigations reverted to the organized crime unit within MVD, the UBOZ.¹⁰² Even the UBOZ, however, lack an investigatory monopoly; last year, approximately 40 percent of organized crimes were investigated by ordinary police.¹⁰³ To some extent, then, the recent appointment of the Procurator General as the new chairman of the coordinating committee may relieve some of these tensions and settle some of the jurisdictional jealousy, likely in favor of the Procuracy. But if past politics is a guide, administrative intrigue begins only after the appointment of a new boss.

Finally, much to the dismay of police, Procuracy, and judges, Ukraine still lacks a legal definition of organized crime. Nowhere in the Criminal Code is the term “organized crime” authoritatively defined.¹⁰⁴ Most legal scholars and legal officials lament this legal lacuna, but it is unclear how this void hampers the fight against organized crime. There is ample room for prosecutorial maneuvers in the provisions for complicity (*souchastie*) in article 19, including liability for being an accomplice (*souchastnik*), executor (*ispolnitel*), organizer (*organizator*), inciter (*podstrekatel*), and facilitator or accessory (*posobnik*). Many articles of the code prescribe enhancements for various forms of participation in proscribed conduct (not only, for example, for banditry, an obvious group crime, but also for murder, robbery, and so forth) as well as a slew of articles targeted at illegal conduct commonly associated with organized crime groups (such as article 155⁸, on Interfering With Legal Economic Activity). Furthermore, official commentaries on the code, which lack legal force but nevertheless give guidance to legal practitioners and are often consulted, help elucidate the meaning of organized crime.¹⁰⁵

The legal armory for combating organized crime in Ukraine is not much inferior to that in Russia. Although Russia moved earlier to equip itself, first by introducing amendments to the old Criminal Code in 1994, then by adopting a new Criminal Code in 1996, the Ukrainian Criminal Code is quite comparable to and, in respect to economic crimes, perhaps more encompassing than Russia’s. The only glaring inequality is the absence in the Ukrainian code of a special norm analogous to

article 210 of the Russian code, citing liability and penalties for creating a criminal organization.¹⁰⁶ But because Russia's fighting of criminal organizations is not substantially superior to that of Ukraine, it is hard to see how legal loopholes can help explain the limited success of law enforcement agencies.

Perhaps the major legal impediment to combating organized crime in Ukraine lies in the realm of procedural law. Although it has yet to be shown that cases against organized groups fail because of difficulties in gaining cooperation of codefendants, prosecutors in both Ukraine and Russia face a number of difficulties in attempting to free accomplices from criminal liability in exchange for their assistance. The criminal codes in both countries contain provisions for excusing criminals from liability in a variety of circumstances, such as a "change in the environment" and "due to the disappearance of dangerousness in the offender," but this discretion applies only if the offenses are not serious.¹⁰⁷ In addition, codes in both countries contain norms that allow cooperative codefendants to be rewarded for their testimony and assistance, but this form of sentencing agreement requires the consent or complicity of the judge. Especially because legal scholars in Ukraine complain that prosecutors are hamstrung by the law and legal traditions discourage creativity and flexibility in prosecutorial behavior, research on the contribution of criminal procedure to the paucity of successful cases is needed.

A final ostensibly legal obstacle to successfully combating organized groups may come from the working definition of organized crime, which appears to rely heavily on stability or durability (*ustoichivost*) as the defining attributes of an organized group. Almost all judges, investigators, and procurators interviewed for this study complained about the evidentiary difficulties of proving a group is stable. Here it appears that myths about the Mafia and the early development of a sophisticated and rather scholastic conceptual apparatus (fit only, perhaps, for the analysis of groups in Sicily) may be hampering the prosecution of organized crime.¹⁰⁸ Obviously, an authoritative definition of the term "organized crime" in the code would assist legal officials, but the dearth of prosecutions of major criminal groups cannot be attributed solely to legal lacunae. Concerted state action to harmonize officials' concepts of the laws and their meaning might be more effective in producing results than new legislation.

THE FUTURE OF CRIMINAL JUSTICE REFORMS

As this overview of criminal justice in post-Soviet Ukraine has shown, reforms have been modest, slow, and fitful. Periodic successes and advances, such as the incorporation of amendments into the existing code, may actually have slowed the reform process by diminishing the political urgency of adopting a new Criminal Code and

Code of Criminal Procedure. For example, the introduction of stiffer sanctions for certain politically sensitive offenses, such as economic crimes, from 1995 to 1997 fostered complacency in the movement to adopt new basic legislation. Nevertheless, a version of the draft Criminal Code passed first reading in the Rada in December 1998, and the code's general part (*obshchaia chast'*), which lays out basic rules and principles (e.g., on punishments and key concepts such as negligence and conspiracy) passed second reading in June 2000.¹⁰⁹ It is unlikely, however, that even this first part will easily gain final approval, for fundamental disagreements remain on key issues, as well as specific arguments on smaller issues that may escalate into factional or doctrinal disputes. A central sticking point will be the norms governing conspiracy and complicity (*souchastie*) (chapter 6, articles 25 to 30), which are central to the prosecution of organized crime. There is, for example, likely to be concern, if not alarm, over the open-ended description of the means by which a facilitator (*posobnik*) can be deemed to have assisted in the commission of a crime.¹¹⁰ In addition, there are what appear to be doctrinal disputes over the minimum number of persons required for a crime to be deemed committed by an organized group. For example, Oleg Litvak, the former Procurator General, insists it is nonsense for two people (which, he points out, are in fact a pair) to continue to be considered a group.¹¹¹ Another point of contention will be the introduction of criminal liability for organizations and juridical persons (*iuridicheskikh lits*), which may potentially harm economic interests.¹¹² Finally, there promises to be much debate on the special part (*osobnnaia chast'*) of the code, which defines and stipulates penalties for all offenses but has yet to be examined as a whole by Parliament. Reportedly, deputies and interested groups and agencies have submitted more than 1,200 proposals on this special part, with recommendations that include punishment scales, the delimitation of offenses, and the allocation of investigative jurisdiction.¹¹³

No less important to the reform of criminal justice and improved fight against crime in Ukraine is the elaboration of a new Code of Criminal Procedure. In July 1999, a working group under the auspices of the Council of Ministers and chaired by V.T. Maliarenko, the head of the Criminal Division of the Supreme Court of Ukraine, submitted a final draft of the code to the Government. Before sending it to the Rada for debate and first reading, however, the Council of Ministers reportedly distributed the draft to certain scholars and institutions for further commentary. Although such deliberative diligence is not unusual in Ukrainian legislative politics, it is odd in the case of this law, as the working group consisted of not only a broad array of leading specialists in criminal procedure but also officials from numerous interested government agencies. Whatever the reason for such caution in the development of this legislation, it is not likely that the draft Code of Criminal Procedure will receive a first reading in the Rada until winter 2001 at the earliest, after a law on court

organization has been adopted. Even then, a quick adoption of this law is not expected because there are so many controversial issues.

Apart from doctrinal differences on appellate procedures and the proper scope of review, there are likely to be long debates about summary criminal proceedings during both pretrial investigation and trial. Opposition to the abbreviation of criminal investigations and acceleration of trials is primarily well meaning; opponents view such proposed simplifications of criminal procedure as both dangerous incursions into the rights of suspects and the accused and as echoes from the Stalinist past. Without some form of plea bargaining or sentencing agreement, however, it is hard to imagine a radical improvement in the fight against organized (or even merely group) crime. Ukraine's system of criminal justice presently lacks the means by which to sufficiently encourage, and reward, the cooperation of codefendants.

Are there any lessons from the U.S. experience?

It is not clear whether there are any lessons to be learned from the U.S. experience with organized crime. As shown both here and in chapter 2, very little of what counts for organized crime in Ukraine resembles the activities of groups prosecuted in the United States, such as those in New York that have received detailed study.¹¹⁴ Much of the advice on money laundering, wiretapping, and other modern investigative and legislative tactics for countering crime given by U.S. experts to Ukrainian prosecutors and judges thus pertains to a small portion of the problem.¹¹⁵ Moreover, the United States has its own array of political and legal problems thwarting successful use of legislation, especially the Racketeer-Influenced and Corrupt Organization (RICO) statutes, targeted at organized crime.¹¹⁶ Perhaps it is these negative lessons that most need to be conveyed. Nevertheless, for those areas dealing with comparable criminological phenomena, there are three kinds of lessons.

The first lesson is broadly methodological and relates to the development of useful criminological knowledge. Researchers will not advance understanding of the sources or dynamics of organized crime in Ukraine or elsewhere by studying cases of the successful prosecution of organized criminal groups. Success in the formal prosecution of such groups in any country is the rare exception, not the rule. At the very most, then, by examining case files (the most common method employed by Ukrainian criminologists) researchers will learn only about the least organized groups, not the more resilient and important ones. The dataset for studies of organized crime must therefore be unconventional and selected not on the basis of legal categories but, rather, on sociological grounds. Especially if, as some scholars have suggested, organized crime and corruption are embryonic forms of social organization,

criminologists should select for closer study those sectors in public life from which such formations likely derive their organizational inspiration and imprint. This means detailed and quasi-anthropological studies of labor unions, farmers' markets, police stations, and jails. Studies of this kind may help us understand that which is unique about organized crime—namely, the organizational principles and practices that constitute these groups and enable them to survive.

The second lesson is legal. Ukraine will need more supple legal and procedural tools with which to prosecute and convict organized criminal groups. In the United States, conviction of organized criminals would not have been possible without plea bargaining. Most of the well-known crime figures and groups, such as the Gambino family, were initially charged with a multitude of offenses but convicted only of one or two counts.¹¹⁷ Because evidence for the state's claims was and always will be weak in such cases, law enforcement must be able to offer defendants incentives to cooperate.

The third lesson pertains to policy. Ukraine will need not only genuine political will to better fight organized and ordinary crime but also a variety of policy tools. In the United States, criminal law has not been the sole or even most effective tool in fighting organized crime. For example, most of the success in New York came from the application of legal devices found in administrative and civil law. Indeed, New York made its greatest inroads into organized criminal families and corporations by obtaining consent decrees and the right to monitor transactions within such entities. As James Jacobs argues, the State of New York liberated itself from organized crime by putting organized criminals out of business, not in jail.¹¹⁸ Of course, such a strategy requires strong regulatory capacity, something that Ukraine now lacks. However, there is a long tradition of state intervention in Ukraine's economy, from which some policy entrepreneurship and vision might be revitalized.

Notes

1. For a description of some of these obligations and the domestic pressure they give rise to, see Koshiw, Jaroslaw, "Ukraine About to be Shut out of Europe," *Kiev Post*, December 17, 1998, and the interview with Supreme Court judge T. Prisiazhniuk, in *Golos Ukrainy*, January 8, 1999.
2. The current President of Ukraine, Leonid Kuchma, recently issued a decree sponsoring the development of a Law on Criminological Expertise, which, if adopted, would require an assessment of the criminological consequences of any new legislation to be conducted prior to the consideration of new bills. For a description of this bill, and the problems of financing such an enterprise, see Zakaliuk, A.P., "O vvedenii v Ukraine kriminologicheskoi ekspertizy (Pro

zaprovadjennia v Ukraini kriminologichnoi ekspertizi)” *Pravo Ukrainy*, no. 7 (1999): 100–104.

3. For a more detailed description of Soviet criminal procedure, see Osakwe, Christopher, “Modern Soviet Criminal Procedure,” *Tulane Law Review* 57 (1985): 439–601; for a description of the character of justice administered in Soviet courts, see Solomon, Peter H., Jr., “The Case of the Vanishing Acquittal: Informal Norms and the Practice of Soviet Criminal Justice,” *Soviet Studies*, 39 (4) (October 1987): 531–55, and Foglesong, Todd S., “The Evolution of Criminal Justice and Development of Judicial Dependence in Late Soviet Russia,” in Solomon, Peter H., Jr. ed., *Reforming Justice in Russia*, Armonk, NY: M.E. Sharpe, 1997: 282–304.
4. For a detailed description of the role of the Procuracy in the terror, and analysis of the early system of justice in Soviet Russia, see Solomon, Peter H., Jr., *Soviet Criminal Justice Under Stalin*, Cambridge: Cambridge University Press 1996.
5. For a discussion of the Procuracy in the post-Stalinist period, see Huskey, Eugene, “The Administration of Justice: Courts, Procuracy, and Ministry of Justice,” in *Executive Power and the Soviet State*, ed. Eugene Huskey, Armonk, N.Y.: M.E. Sharpe, 1992: 221–48, and Smith, Gordon, “The Struggle over the Procuracy,” in *Reforming Justice in Russia*, ed. Peter H. Solomon, Jr., 438–73 (see note 3).
6. As early as the 1960s, the Procuracy ceded to the police the investigation of most ordinary crimes. The procuracy retained responsibility for investigating murder, corruption, and major economic offenses. The KGB had even more proscribed jurisdiction, investigating only crimes against the state such as treason, sedition, and terrorism.
7. Sociological research by legal scholars in the late Soviet period suggested that police investigators were the least qualified of all employed jurists. See, for example, Shelley, Louise I., *Policing Soviet Society: The Evolution of State Control*, London and New York: Routledge, 1996.
8. While judges everywhere dislike being overruled, the prospect of reversal had special consequences for judges in Soviet Ukraine. Their records on “stability of sentences” played a major role in their performance rating, potential bonuses, professional reputation, and future careers—including the likelihood of promotion and possibility of not being renewed after the current 5-year term expired. Viktor Shishkin, the former Procurator General, acknowledged this reality in a recent article, referring to the “organizational consequences” that were often

- drawn in respect to defiant or opinionated judges. See Shishkin, Viktor, "Problems and Prospective Solutions for Establishing a Judiciary in Ukraine," *Parker School Journal of East European Law* 3 (1) (1996): 31–40.
9. A more detailed description of these and other rules of criminal procedure in Ukraine can be found in Sergey Chapkey and Vladimir Tochilovsky, "Ukraine," *World Factbook of Criminal Justice Systems*, available at www.ojp.usdoj.gov/bjs/pub.
 10. Ninety-five percent of all rulings to terminate criminal proceedings concerned cases of private prosecution (insult; slander, and inflicting light bodily injury). For data on terminations, see "Prilozheniia," *Prestupnost v Ukraine*, no. 2 (1994).
 11. By law, pretrial detention was limited to 2 months. However, the Code of Criminal Procedure made ample provision for extensions, in the event of "difficult" investigations. It was not unusual for investigators to get extensions up to 6 months, and not very rare for pretrial incarceration in truly complicated cases to last 18 months.
 12. A powerful economic rationale undergirded penal policy in Soviet Ukraine: Both prisons and other forms of punishment played a significant role in Soviet economic development. See, for example, Swianiewicz, Stanislaw, *Forced Labor and Economic Development: An Enquiry into the Experience of Soviet Industrialization*, London: Oxford University Press, 1965.
 13. For a more detailed study of police and prosecutorial practices in the pretrial stage, see Foglesong, Todd S., "The Politics of Judicial Independence and the Administration of Criminal Justice in Soviet Russia, 1982–1992, unpublished doctoral dissertation, University of Toronto, Department of Political Science, 1995, chapter 3.
 14. For an inventory of these practices, see Zelenetskii, V.S., *Vozbuzhdenie ugolovnogo dela*, Kharkov, 1998: 6–23.
 15. See the discussion of the meaning of these terms in Berman, Harold, "The Rule of Law and the Law-Based State (*Rechtsstaat*)," *Harriman Institute Forum* 4–5 (1991).
 16. Judges elected for the first time were given probationary 5-year terms. For more on the 1992 Law on the Status of Judges, see Halustick, Lisa, "Judicial Reform in Ukraine: Legislative Efforts to Promote and Independent Judiciary," *Parker School Journal of East European Law* 1, (5–6) (1994): 663–86. In Russia, by contrast, the 1992 Law on the Status of Judges conferred life tenure upon judges.

For a more detailed account of the movement for judicial independence in Russia, see Solomon, Peter H., Jr., and Todd S. Foglesong, *Courts and Transition: The Challenge of Judicial Reform in Russia*, Boulder, Colorado: Westview Press, 2000, chapter 2.

17. For a recent Ukrainian account of these developments, see Bryntsev, V.D., *Sudebnaia Vlast (Pravosudie): Puti reformirovaniia v Ukraine*, Kharkov, 1998. For an account by a North American, see Ratushny, Kim, "Towards the Independence of Judges in Ukraine?" forthcoming in *Saskatchewan Law Review* 62:2.
18. See Bryntsev, V.D., *Sudebnaia vlast (Pravosudie)*: 33 (see note 17); Halustick, 676–7 (see note 16).
19. For accounts of these problems, see the *Daily Report: Ukraine*, published by FBIS, July 6, 1993, pp. 70–72; November 14, 1994, 49–50, and the Ukrainian Supreme Court's resolution no. 4, April 12, 1996, "On Applying Legislation That Ensures the Independence of Courts," in *Ukrainski Chasopis Prav Liudini* nos. 3–4, 1997: 157–64.
20. For an account of the origins of the Conception of Judicial Reform, see the interview with V. V. Onopenko, the former Minister of Justice, in *Khreshchatyk*, August 1, 1995, 3. A draft Conception was prepared in 1995 by Vasilii Onopenko, the Minister of Justice from 1993 to 1994, but never endorsed by Parliament. For a description of some of the ideas in the unrealized Conception, see Onopenko, V., "Sudebno-pravovaia reforma: tsel' i sredstva," *Golos Ukrainy*, October 27, 1998, 8.
21. Only at the end of 1999 was a draft of the new Conception of Judicial Reform completed. It has yet to be submitted to the legislature for review. See the interview with Boiko, the Chairman of the Supreme Court, in "Vtoroe obnovlenie tretei vlasti," *Golos Ukrainy*, December 7, 1999, p. 9–11.
22. For accounts of the politics of Ukrainian constitutionalism, see Wolczuk, Kataryna, "The Politics of Constitution Making in Ukraine," in *Contemporary Ukraine: Dynamics of Post-Soviet Transformation*, ed. Taras Kuzio, Armonk, NY: M.E. Sharpe, 1998: 118–38, and Wilson, Andrew, "Kuchma," in *Post-Communist Presidents*, ed. Ray Taras, Cambridge: Cambridge University Press, 1997.
23. For an outline of the Court's functions, and a review of the first two years of its decisions, see Futey, Bohdan, "Upholding the Rule of Law in Ukraine: The Judiciary in Transition," unpublished paper presented at the University of

Ottawa, October 2–3, 1998. See also the remarks of Anatolii Selivanov and Evgenii Marchuk, in “Tsel’ pravosudiia,” *Golos Ukrainy*, December 15, 1998, 10–11. It should be noted that the creation of the Court did not immediately resolve the question over the power to review the Constitutionality of laws and normative acts. Less than a month after the Constitutional Court first convened, the Supreme Court ruled that the courts of general jurisdiction could also apply the Constitution when subordinate legislation was found to be in contravention of its provisions. See the report by Sergei Demskii, “Primenenie Konstitutsii Ukrainy vo vremia provedeniia sudoproizvodstva,” *Golos Ukrainy*, November 6, 1996, 3.

24. In 1998, 877 of 2,648 (i.e., 33 percent) who contested their custody in these hearings were released from jail. Data furnished by the Ministry of Justice. For studies of earlier court practice, see Klochkov, V.G., *Sudebnyi kontrol za sobliudeniem zakonnosti i obosnovannosti primeneniia mery presecheniia—zakliuchenie pod strazhu*, Kyiv, 1998, and Korzh, V.P., *Uchastie prokurora v rassmotrenii materialov sudebnoi proverki o zakonnosti i obosnovannosti aresta (uchebno-metodicheskoe posobie)*, Kharkiv, 1997.
25. For an American account of bail reform in Ukraine, see Lehman, Christopher, “Legal Reform in Ukraine: Life in the Trenches,” *Demokratizatsiya* 7 (2) (Spring 1999): 228–40.
26. For a description of some of the options under consideration, see the interview with Vasiliu Maliarenko, the Head of the Criminal Division of the Supreme Court, “Sud prisiashnykh: novaia nadezhda ili problema?” *Golos Ukrainy*, January 20, 1999, 3.
27. For a detailed account of the development of this legislation, written by the Academy of Legal Science’s Institute for the Study of Crime in Kharkov, see Tsibileva, N.V., and M.V. Khotenets, “Problemy realizatsii konstitutsionnykh printsipov v postroenii sudebnoi sistemy Ukrainy,” unpublished report, 1999.
28. Interview with Oksana Vinogradova, Head of the Department of Judicial Reform, Ministry of Justice, April 19, 1999. See also Onopenko, Vasil, “Konstitutsiia Ukrainy i sudoproizvodstvo: raskhozhdeniia i paradoksy,” *Golos Ukrainy*, April 14, 1999, 6.
29. Interview with O. M. Paseniuk, the Deputy Minister of Justice, February 3, 1999. Paseniuk, a former judge, argues that it benefits the courts to have the Ministry of Justice in charge of finance, since the Ministry’s budget covers more

than just courts, and it can move moneys across categories, for example from the Notary or Bar, and possibly prisons (unless the Department of Corrections is established at the National level), to the judiciary.

30. Udovenko, Genadii, "Problemy reformirovaniia pravosudiiia v Ukraine," *Golos Ukrainy*, June 16, 1999, 4.
31. Pasiuk, the Deputy Minister of Justice, claimed that the Council of Ministers in 1996 (before the adoption of the Constitution) suggested that the courts be financed from local budgets. Judges at the Kyiv City Court acknowledged this, and referred to a CM Decree no. 1313, from 1997. They also reported a more recent contradictory ruling of the Council of Ministers which forbids local governments from such discretionary spending—that is, using money in ways "not already stipulated" (ne po naznacheniiu). Interviews, April 20, 1999.
32. See "Verkhovny sud v sude, konstitutsionnom," *Golos Ukrainy*, June 19, 1999, 3.
33. See "Sudiam, gosudarstvenuiu zashchitu," *Golos Ukrainy*, December 3, 1998, 2.
34. See the interviews with Valerii Evdokimov, the Chairman of the Higher Council of Justice, "Komu doveriat' sudeiskuiu mantiu," *Golos Ukrainy*, January 14, 1999, 3, and "Sudoustroistvo: poiski optimalnogo varianta," *Golos Ukrainy*, September 28, 1999, 5.
35. See Volcansek, Mary, and Jacqueline Lucienne Lafon, *Judicial Selection: The Cross Evolution of French and American Practices*, New York, Greenwood Press, 1998, and Friedland, Martin L., *A Place Apart: Judicial Independence in Canada*, Ottawa, Canadian Judicial Council, 1995.
36. Compare articles 106 and 128 of the Constitution of Ukraine.
37. See Zamanskii, Vladimir, "President Kuchma: 'Ia obrashchus' k narodu i skazhu: idite demonstratsiei k Verkhovnomu Sudu za zarplatami i pensiiami," *Kievskie vedomosti*, February 11, 1999, 12. More recently, Kuchma derided a decision of the Kyiv City Court that annulled the results of mayoral elections due to irregularities and violations of the election law. Kuchma claimed the court "trampled the will of thousands of Kyiv voters." *RFE-RL Newline* 3 (142) July 23, 1999.
38. Sirenko, "Bez parlamentskogo kontroliia, pravovoe gosudarstvo nevozmozhno," *Golos Ukrainy*, October 13, 1998, 3.
39. See the interview with Kravchenko, in FBIS, January 5, 1999. For example, almost 10 percent of the personnel in the Minsk District Department of Internal

Affairs is paid for by the Kyiv city, not national, government. Interview with Head of the Minsk District Division of Internal Affairs, Kyiv, April 17, 1999.

40. Most of the officials relieved of their duties come from the GAI and Prisons. See the interviews with V. Lytvynenko, Deputy Head of the Main Administration for Fighting Organized Crime and Corruption of the MVD, FBIS, November 7, 1998, and Minister Kravchenko, FBIS, October 20, 1998. According to Kravchenko, the MVD employs a total of 220,000 people. See “Zvit pered ukrainskim narodom pro operativno-sluzhbov diialnost organiv vnutrizhnikh sprav u 1998 rotsi,” *Imenem zakonu*, no.7 (1999), 7. The numbers for 1999 were reported by Anufriev, the Deputy Minister of the Interior, in “Chuzhie pogony,” *Golos Ukrainy*, July 14, 1999, 4.
41. Some of these problems are discussed in the interview with M. Korniyenko, a Deputy Minister of Internal Affairs, FBIS, December 3, 1998.
42. See the interview with Kravchenko, “Ministra nikogda ni zabirala militsiia,” *Golos Ukrainy*, July 11, 1998, 11. For a more sophisticated analyses of the results of such studies, see Kulik, A.G., “Otnoshenie naseleniia k militsii,” in *Prestupnost v Ukraine*, no. 2 (1994), 65–79, and Zelenetskii, *Vozbuzhdenie ugolovnogo dela*, 18–19 (see note 14).
43. See, for example, “Kriminogennaia situatsiia v g. Kharkove,” the results of a research project conducted jointly by the Kharkov City Government and University of Internal Affairs. More recently, senior researchers at the University of Internal Affairs in Kharkov launched a new project investigating the “effectiveness of police-public interactions” (Faktery effektivnosti vzaimovsiazii militsii s naseleniem), the results of which are due next year.
44. One internal administrative problem worth investigating concerns the relationships within police departments. Many observers claim there are strained relations between detectives (rozysk), on the one hand, and investigators on the other. Detectives are evaluated by the number of criminal cases opened (vozbuzhdennykh), and thus have little incentive to fulfill the orders (porucheniia) of investigators, who are evaluated on the basis of completed cases (okonchennykh). See the discussion of this problem in M. Potebenko, “Vremia trebuet ne slov, a deistvii,” *Golos Ukrainy*, August 21, 1998, 3.
45. See Vasilev, G., “Cherez pravoporiadok—k obshchemu poriadku,” *Golos Ukrainy*, September 17, 1998, 3.

46. For examples of the arguments in favor of general supervision, see Chernenko, N., "Prokuror dolzhen imet' pravo," *Golos Ukrainy*, May 26, 1999, p. 10, and Davydov, V., and N. Rudenko, "Prokuror na zashchite gosudarstva i grazhdani-na," *Golos Ukrainy*, October 13, 1998, 11.
47. Ironically, one of the most ardent advocates of limiting the jurisdiction of the Procuracy is Shishkin, a member of parliament who was Procurator General from 1991 to 1993.
48. For Potebenko's most recent arguments, see "Reformy i institut prokurorskogo nadzora," *Golos Ukrainy*, December 1, 1998, p. 10, and "Prokuratura na strazhe prav cheloveka," *Golos Ukrainy*, June 12, 1999, p. 8. For the views of the President of Ukraine's Academy of Legal Sciences, see Tatsii, V., "Chto goditsia dlia Londona, prezhdvremenno dlia Kieva," *Golos Ukrainy*, April 10, 1999, 3.
49. For a report on judicial practices in 1996 and 1997, see "Sudova statistika," in *Visnik Verkhovnogo Sudu*, no. 1 (1998).
50. Special Report prepared for this study by the Ministry of Justice. In Russia, by contrast, only one of every five of habeas petitions in the last two years was successful. Foglesong, Todd S., "Habeas Corpus or Who Has the Body? Judicial Review of Arrest and Detention In Russia," *Wisconsin International Law Journal* 14 (3) (Summer 1996): 541–578.
51. Statistical Survey prepared for this report by the Ministry of Justice.
52. See "Sudova statistika," in *Visnik Verkhovnogo Sudu*, no. 1 (1998): 43–45.
53. See Bryntsev, *Sudebnaia vlast (Pravosudie)* (see note #17).
54. Kulik, "Otnoshenie naseleniia k militsii," 66.
55. See Kravchenko's comments in FBIS, January 5, 1999. For recent published data on the effectiveness of the police, see "Zvit pered Ukrainskim narodom pro operativno-sluzhbovu diialnost; organiv vnutrishnikh sprav u 1998 rotsi," *Imenem Zakonu*, no. 7 (1999) .
56. See the MVD's *Instruktsiia pro edinii oblik zlochiviv* (Instructions on Uniform Registration of Crimes).
57. Some police officials are willing to countenance changes to the system. Kirichenko, the Deputy Minister of the Interior who supervises academic research institutes under the auspices of the MVD, says that establishing new

criteria for the evaluation of effective police work is a high priority and claims that a senior MVD official is preparing to write a dissertation on the topic.

58. *Prestupnost v Ukraine*, no. 2 (1994).
59. Ukrainian researchers are also hampered by the system of data collection and the use of indiscriminate reporting categories by the state. For example, in the best study of the prosecution of economic crime in Ukraine, authors report that 75 percent of all prosecutions in Kharkov were for articles 154 and 155 (speculation and a host of other forms of unlawful means of acquiring wealth. Because the data is not broken down by subsection of article 155, it is impossible to know how serious the offenses and prosecutions were in these cases, thus making an intelligent assessment of performance impossible.
60. Interviews. This same chief of police estimated the real murder rate as twice the reported level. Other policemen I interviewed told stories of bodies being moved across district boundaries for the same purpose.
61. See the discussion in Zelenetskii, *Vozbuzhdenie ugovnogo dela*, 6–14 (see note 14).
62. Interviews.
63. Interview with A.P. Zakaliuk, one of the drafters of the program of study.
64. See Zelenetskii, *Vozbuzhdenie ugovnogo dela*, 6–23 (see note 14).
65. See Kulik, A.G., “Mezhdunarodnyi opros zhertv prestuplenii v Kieve,” unpublished paper.
66. Interview with V. Sobolev, Head of the Department of Sociology at the University of Internal Affairs, Kharkov.
67. So far, Ukrainian researchers have only employed extensive and expensive methods to study this problem. Instead of using anthropological or ethno-methodological approaches to the study of latent crime, criminologists have relied solely on survey-based means of gauging the levels of unreported crime.
68. This conclusion contradicts the findings of A.M. Bandurka, a member of parliament and rector (president) of the University of Internal Affairs in Kharkov, who implies that the problem with concealing crimes diminished in 1994. See Bandurka, A.M., and A.F. Zelinskii, *Vandalizm* (Kharkiv, 1994): 4.

69. See the discussion in Zelenetskii, *Vozbuzhdenie ugolovnoho dela* (see note 14).
70. Kulik, A.G., and B.I. Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody," *Prestupnost v Ukraine (Biulleten zakonodavstva i iuridichnoi praktiki Ukraini)*, no. 2 (1994): 5–37; Kulik and Bobyr suggest police dismiss only reports of minor offenses.
71. These offenses include unlicensed or fictitious entrepreneurial activity, many forms of commercial and bank fraud (e.g., deceiving customers and suppliers), tax evasion, exposing commercial secrets, bootlegging, counterfeiting, services extortion, price collusion and fixing, false bankruptcies, and others.
72. Draft report by Kalman, A., "Problemy povysheniia effektivnosti pravopriemitelnoi praktiki borby s ekonomicheskoi prestupnostiu v Ukraine," Kharkiv, April 1999.
73. Kalman, O.G., I. O. Khristich, and Iu. G. Boiko, "Uzagalnennia praktiki borot'bi zi zlochinostiu u sferi ekonomichnoi diialnosti pravookhoronnikh ta pravozastosovchikh organiv kharkovskoi oblasti za 1992–1997 rr.," *Pitannia borot'bi zi zlichinnostiu* (Kharkov, 1998).
74. Ukrainian researchers are clearly hampered by the control over data collection and the use of indiscriminating categories by the state. For example, in the best study of the prosecution of economic crime, authors report that 75 percent of all prosecutions in Kharkov were for articles 154 and 155, speculation and a host of other offenses. Because the data is not broken down by subsection of article 155, it is impossible to know the gravity of the offenses and prosecutions.
75. According to Decree No. 1220 of the Council of Ministers from August 3, 1998, "On the status of implementing legislation on state service and the struggle against corruption by central and local agencies of executive power," 296,819 civil servants were employed in 1997.
76. For data on the number of registered crimes, see "Osnovnye tendentsii prestupnosti i sudimosti v Ukraine v 1994–1998 gg.," with attached tables, unpublished 1999.
77. *Vseukrainskie vedomosti*, November 14, 1995, p. 3.
78. The three main offenses for which civil servants or elected officials were charged in both 1997 and 1998 were: 1) "illegal receipt of material benefits, services, privileges, and other goods" in exchange for the fulfillment of state duties; 2) "engaging in entrepreneurial activity directly or via intermediaries or through

persons under one's regulatory authority;" and 3) violating rules on the declaration of income. Together, these three categories constituted nearly three-fourths of all forms of prosecuted misdemeanor corruption. An additional 693 individuals were fined for violating article 184 of the Code of Administrative Infractions (i.e., improper use of state property).

79. A recent report by the Secretary of the Coordinating Committee for the Fight Against Corruption and Organized Crime claims that two-thirds of all cases "collapse" in court. See "K sotrudnichestvy i vzaimodeistviu—odin KROK," *Golos Ukrainy*, June 26, 1999, 12.
80. For a recent study, see the "Survey of the Struggle of the Law Enforcement Agencies Against Corruption in the Ukraine," *Organized Crime Watch* 1 (6) (December 1999).
81. Decree no. 13 from May 25, 1998.
82. Interview with Kiev City Court judges.
83. See the interview with V. Lytvynenko, Deputy Head of the Main Administration of the Ministry of the Interior, FBIS, November 7, 1998.
84. See Decree No. 1220 of the Council of Ministers from August 3, 1998.
85. For the government's own assessment of the relative weights of these factors, see the program "On the Concept of Struggle Against Corruption for the Years 1998–2005," adopted by the President of Ukraine, April 24, 1998.
86. See "Ob organizatsiono-pravovykh osnovakh borby s organizovannoi prestupnostiu," in *Zakonodatelstvo Ukrainy o borbe s prestupnostiu*, Kharkiv, 1999, 204–230. Oddly, the law used the diminutive form of the word "group" (gruppировка, not gruppа).
87. See the Law "Ob obespechenie bezopasnosti lits, uchastvuiushchikh v ugolovnom sudoproizvodstve," published in *Zakonodatelstvo Ukrainy o bor'be s prestupnostiu*, 175–87.
88. For example, witnesses may now make identifications without suspects seeing them, and the state can conduct undercover operations against individuals who may present a threat to witnesses. See "Parlamentskaya khronika," *Golos Ukrainy*, October 23, 1999, p. 3, and "O vnesenii izmenenii v nekotorye zakonodatelnye akty Ukrainy," *Golos Ukrainy*, March 1, 2000, p. 3.

89. See especially articles 155³, 155⁵, 155⁶, 155⁷, and 155⁸ of the current Criminal Code.
90. For example, the chief of staff of the MVD (nachalnik glavnogo shtaba) presented a glitzy slide show on the successes in the fight against organized crime, replete with pie charts and sophisticated tables that I was later not allowed to examine more closely.
91. Glushkov, A.V., "Sostoianie borby s organizovannoi prestupnostiu," unpublished paper, 11. According to a Russian criminologist, in 1996 alone, more than 9,000 groups involving 60,000 persons were "stopped" (presechena). Alekseev, A.I., *Kriminologija: kurs lektsii*, Moscow: Kriminologicheskaiia assotsiatsiia, 1999: 199. The Procuracy's Research Institute on Problems of Improving Legality and Legal Order reported similar successes. See *Organizovannaia prestupnost—4*, Moscow, 1998: 258–9.
92. See *Zlochinnost v Ukraine*, 40–1.
93. See the discussion above, chapter 2, pp. 39–43.
94. See Glushkov, "Sostoianie borby s organizovannoi prestupnostiu v Ukraine," (informatsionnaia spravka), unpublished, 1999: 26.
95. See the interview with Aleksandr Voitsekhovskii, Secretary of the Coordinating Committee for the Fight Against Corruption and Organized Crime, "K sotrudnichestvu i vzaimodeistviu—odin 'KROK,'" *Golos Ukrainy*, June 26, 1999, 12.
96. Interview with V.V. Korol, head of the Department for Supervising Legality in Organs of Criminal Investigation, Detection, and Inquiry of the MVD, Office of Procurator General, April 22, 1999.
97. Research by Louise Shelley on corruption among incarcerated former police officers suggests an interesting method for studying law enforcement complicity. See, for example, Report on Research and Activities, Transnational Crime and Corruption Center, January 4, 1999, Attachment E.
98. Although central officials claim all investigators charged with solving organized or economic crimes receive special training, investigators in local police departments insist they received little instruction prior to accepting their new briefs. Interviews, Minsk District Department of Internal Affairs, Kyiv, and Kuriashy District Department of Internal Affairs, Kharkiv.

99. As O.R. Protsuk, a senior procurator in the Department for Supervising Legality in Organs of Criminal Investigation, Detection, and Inquiry of the MVD, put it, “When you work on a conveyor belt and the clock is ticking (kogda sroki podzhimaiut), you tackle cases that are easy to solve.” Interview, April 22, 1999.
100. See Voitsekhovskii, “K sotrudnichestvy i vzaimodeistviu—odin KROK,” *Golos Ukrainy*, June 26, 1999, 12.
101. Data from the Coordinating Committee and MVD do not always track. Compare, for example the information from the CC in Glushkov, “Sostoianie borby,” with the claims of V. Melnikov, Deputy Minister of the Interior, in FBIS, Nov 5, 1998.
102. Vasilev, G., “Cherez pravoporiadok—k obshchemu poriadku,” *Golos Ukrainy*, September 17, 1998, 3. According to other procurators, investigators in the UBOP do not receive special training, and differ little from rank-and-file police detectives.
103. Interviews with Korol, Protsuk, and A.V. Kovalenko, the head of the Department of International Cooperation of the Procuracy General.
104. See the interview with V. Lytvynenko, deputy head of the Main Administration of the Ministry of the Interior, FBIS, November 7, 1998.
105. See, for example, the *Ugolovnyi Kodeks Ukrainy: Kommentarii*, Kyiv, 1998, edited by S.S. Iatsenko, 647.
106. For a discussion of the problems with this norm in Russia, see Kupriianov, A., “Ispolzovanie sluzhebnoho polozheniia pri uchastii v prestupnom soobshchestve,” *Rossiiskaia iustitsiia*, no. 2 (2000): 43.
107. V.M. Groshevoi, the vice president of the Academy of Legal Sciences and the preeminent scholar of criminal procedure in Ukraine, voiced concerns about this issue in particular. Interview, February 1999.
108. See the discussion in Zelinskii, *Kriminologii: kurs lektsii*, Kharkov: Prapor, 1996: 198–208.
109. Personal communication with VI. Borisov, deputy director of the Kharkiv Center for the Study of Organized Crime, May 10, 2000.

110. The first part of the current text of paragraph 5, article 26, reads: “A facilitator is one who by his advice or instructions, or by making available the means or implements of a crime, or by removing obstacles to the commission of a crime, *or by other means* (ili inym obrazom) renders assistance to the commission of a crime by other participants . . .” (italics added).
111. Under the existing Criminal Code, a group is “two or more persons.” For Litvak’s views, see Litvak, Oleg, “Prava na oshchibku net: zametki po povodu odnovo iz proektov ugolovnogo kodeksa Ukrainy,” *Golos Ukrainy*, July 7, 1998, 7.
112. See, for example, the discussion in Smitienko, V., and G. Agafonov, “Otvettstvennost iuridicheskikh lits—nasushchnaia problema ugolovno-pravovogo regulirovaniia,” *Golos Ukrainy*, March 5, 1996, 9.
113. Phone interview with A.P. Zakaliuk, July 23, 1999.
114. See, for example, Jacobs, James, *Gotham Unbound: How New York City Was Liberated From the Grip of Organized Crime*, New York: New York University Press, 1999.
115. See, for example, the proceedings of a conference on prosecuting transnational crimes at Syracuse University in fall 1999, *Syracuse Journal of International Law and Commerce* 27 (1) (Winter 2000).
116. See, for example, the Department of Justice studies, “Prosecuting Criminal Enterprises: Federal Offenses and Offenders,” and “Local Prosecution of Organized Crime: The Use of State RICO Statutes,” www.ojp.usdoj.gov/bjs/abstract/lpoc.htm
117. See, for example, the account in Jacobs, *Gotham Unbound* (see note 114).
118. Ibid.

CHAPTER 4

Soviet and Post-Soviet Criminology in Ukraine



Criminology in post-Soviet Ukraine, like its counterpart in the Russian Federation, constituted an applied field of social research based mainly on legal categories and reflecting few, if any, developments in Western sociological theory since World War II. The field was also underfunded and lacked both a sufficient number of established senior scholars and an inflow of young talent. To understand why criminology in Ukraine was underdeveloped calls for examining the history of Soviet criminology in general as well as in the Republic of Ukraine. After a brief review of this history, the main institutions and research focuses of Ukrainian criminology today will be described.

In the first decade after the Russian Revolution, native criminology developed an impressive set of institutions and activities. Young legal and medical researchers succeeded in gaining sponsorship from governments ranging from the federal to the city level and establishing a major research institute in Moscow (the State Institute for the Study of Crime and the Criminal) and a series of research offices (*kabinety*) in a number of cities, including Odessa, and later Kyiv and Kharkiv. Although, like their European counterparts, Soviet scholars treated criminology as primarily a legal science; their research was interdisciplinary and included both sociological-statistical study of crime and biopsychological examinations of criminal offenders. But its disciplinary home in law did not save criminology from the destruction that befell all social research. In 1929, young Marxist scholars attacked the clinical side of Soviet criminology as neo-Lombrosian (after the Italian positivist criminologist Cesare Lombrosio, who studied the physical features of criminals, such as the size of their crania) and therefore anti-Marxist. Not long afterward even the purely sociological studies (e.g., of recidivism or alcoholism and crime) also stopped. Stalin and his fellow leaders found any empirical research (or reality testing) more threatening than useful, and all (largely embryonic) forms of social research died out in the 1930s.¹

The revival of empirical social research became a progressive cause after Stalin's death, and the first efforts at small-scale criminological studies were undertaken behind the closed doors of the Procuracy's new Institute for Police Science, founded in 1957. By 1963, the proponents of criminology succeeded in getting the profile of this institute broadened and its name changed to the All-Union Institute for the Study of the Causes and Elaboration of Measures of Preventing Crime. Obviously a mouthful in any language, the institute was known for decades (even when its formal name changed again to the Research Institute for the Strengthening of Legality, Law, and Order) as the Procuracy Institute.²

The revival of criminology was approved by party authorities on the grounds that empirical (or "concrete sociological") research would improve law enforcement and

reduce crime, thereby making a practical contribution. But the keepers of the ideology insisted that the reality testing not challenge party doctrine or dogma. Since 1930, crime was officially understood as a remnant of the bourgeois capitalist order, foreign to Soviet social structure, and on the decline. As late as 1960, no one could publish anything to the contrary. But it was difficult to develop any kind of criminology on this basis, and, during the 1960s and 1970s, criminologists struggled to expand their domain. In the early 1960s, A.B. Sakharov helped make the offender's personality a legitimate object of study, even though he understood personality as a social-psychological—and not biologically determined—structure. A few years later, I.S. Noi (of Saratov) pushed farther to get recognition of the role, however limited, of biological factors in crime causation, thereby facing head-on the original ideological objection to criminology. Finally, beginning in 1968, Vladimir Kudriavtsev developed a multifactorial vector-based theory of crime causation that integrated and gave place to a wide variety of primary and secondary factors. Kudriavtsev's original theory, developed with little knowledge of Western scholarship, was, in its integrative power, analogous to Sutherland's theory of differential association, but it represented macrotheory rather than theory of the middle range and did not generate researchable hypotheses.³

The unwillingness of the Soviet leadership to recognize, at least publicly, that crime was endemic to socialist as well as capitalist society had another unfortunate consequence, namely the keeping secret of all statistics on crime and on the processing of crime cases. At most, criminologists who gained access to official data were allowed to present analyses in percentage terms and, even then, many studies were placed under the restrictive category “for internal use only.”

Who were the new Soviet criminologists? They were mainly specialists in criminal law (and a few psychologists) who somehow managed to learn about techniques of statistical analysis and perhaps survey research. From the 1960s through the mid-1980s, there were no sociologists available to study crime or deviance, for all forms of social research had been stopped under Stalin, and practitioners of the newly revived sociology had great trouble gaining a foothold in universities; all sociology was taught as a subfield of philosophy, and few sociologists were produced until the late 1980s. From the mid-1960s, criminology became a compulsory subject in law faculties, and a professor at every institution training jurists had to teach it. Criminology research, however, was concentrated in two large research institutes in Moscow: the Procuracy Institute already mentioned (which, at its peak, had nearly 200 researchers, half doing criminological study) and, from the 1970s, the Research Institute of the Ministry of Internal Affairs. The latter quickly became the main center for studies of penal institutions, their inmates, and policing, while the former

concentrated on studying the causes and prevention of various kinds of crime. In the 1970s, criminologists succeeded in convincing many legal officials that criminal justice had to prevent crime as well as repress criminals and, for a while, criminal policy came to reflect this emphasis.⁴ At no time, however, was serious extended study of the behavior of police and legal officials attempted. Sociology of criminal law remained underdeveloped.

In the late 1970s, the study of victimology began to grow, but on the whole, the intellectual framework of Soviet criminology did not grow beyond its ruling paradigm. For one thing, criminological theory did not advance beyond the multifactorial theories of the 1970s, including the major Western developments from the 1950s to the present—stigma or interactionist theory; the advances in theories of strain and opportunity; the critical or neo-Marxist criminology developed especially in England; the Foucaultian, poststructuralist theory; or the application to criminology of risk theories. Post-Sutherland sociological theories of crime, including those set forth by Robert Merton, Richard Cloward and Lloyd Ohlin, and Theodore Becker and the interactionists, were analyzed for Soviet audiences in 1971 by A.M. Iakovlev, but the ideas were not absorbed into mainstream Soviet criminology, nor did they have an impact on research agendas.⁵ Few criminologists traveled abroad (even to conferences), and those who did understood the limitations under which they had to work.

When Ukraine became independent at the end of 1991, it inherited a modest study of criminology. There were no major criminological research centers (all were in Moscow), and what research existed was conducted mostly by faculty at the various police academies and legal training institutions. At the same time, the theoretical and methodological scope of criminology in Ukraine was limited. Studies of crime and its causes had a narrow, applied approach, and categories or concepts were largely legal rather than sociological in nature. Obviously, there was a shortage of senior scholars ready to step into the breach, and government underfunding of all science (due to the economic collapse) made careers in legal and social science unattractive to bright and ambitious young people.⁶

In this context, the institutional development of post-Soviet Ukrainian criminology is remarkable. As of 1999, there were at least three major centers of criminological research in Ukraine (one in Kyiv and two in Kharkiv), and research was being conducted in many other places as well. Police scholars took the lead, with a large number of criminologists employed at the National Academy of Internal Affairs (the former Police Higher School) in Kyiv and the University of Internal Affairs in Kharkiv, both of which are police training institutes. The National Academy of

Internal Affairs (NAIA) is home to two groups of criminologists: one working in the many laboratories of its research institute, and another in its department (*kafedra*) of criminology. Although the department of criminology is staffed by able teachers, few conduct applied research. The academy's leadership includes First Vice Chancellor V.I. Shakun, a prolific criminologist with several works on urbanization and crime, but whose research is not very empirical. The bulk of the academy's applied criminological research therefore takes place under the aegis of its research institute, a former branch of the All-Union Research Institute of the U.S.S.R. MVD.

The Government, often the MVD, commissions most of the criminological research at the NAIA Research Institute. This accounts for the highly specific and voluble character of the research topics. For example, in 1999 the Institute initiated major new criminological research projects on piracy and intellectual property, illegal migration, securities fraud, and the drug trade. The purpose of this research is often to produce draft legislation or recommendations for police operations. For example, A.N. Zhuzha (head of the department of criminology) and N.S. Khruppa, two experts on drug crimes, are responsible for formulating the National Antinarcotics Program for 2001 to 2005. Another group of scholars is charged with carrying out a project to produce recommendations on death penalty legislation. Despite this pressure to produce highly specific and immediately applicable criminological knowledge, much fundamental research is still conducted. For example, A.G. Kulik and V.I. Bobyr, two experts on crime statistics and patterns of criminality, have begun innovative studies of latent crime (including victimological surveys) as well as a study of the causes of "professional deformation" in the police force. Another scholar at the research institute, A.V. Glushkov, who also works for the Coordinating Committee on the Fight Against Corruption and Organized Crime, has developed sophisticated conceptual apparatuses for studying organized crime.⁷

In Kharkiv, the University of Internal Affairs is administered by A.M. Bandurka, a prominent deputy (member of Parliament), who is also vice president of the Ukrainian Association of Criminologists.⁸ The university is fairly young, having graduated only 5 classes of jurists (about 10,000 students), most of whom have joined the ranks of detectives and investigators in MVD. Already, however, the university has developed a laboratory of criminology research, which is well funded and well equipped for advanced applied research. The computer facilities in particular are impressive. The laboratory draws on faculty from many different departments of the university for its research and is committed to interdisciplinary approaches to the topics it studies. A.N. Yarmish, the first vice rector of the university, supervises all academic research, and Vladimir Sobolev, the chair of the department of social

psychology, one of only a handful of scholars in Ukraine with the degree of doctor of sociological sciences, plays a central role in most projects.

The laboratory in Kharkov currently has five main topics of research:

- Latent crime, studied primarily through surveys and a cooperative and experimental program with the city government to set up a municipal police force.⁹
- Corruption, racketeering, and extortion, which it hypothesizes as a continuum of criminality.
- The drug trade and narcotics use, especially among juveniles.¹⁰
- The systematization of crime data and police performance indicators.
- The subculture and behavior of organized criminal groups.

Only for this last topic do researchers propose to use the methods of ethnography and anthropology.¹¹ On the whole, the laboratory has expressed a preference for extensive and expensive research tools and methodologies, such as surveys.

Outside the world of the police stand three academies under whose auspices serious criminological research is conducted. The oldest, and now weakest, is the National Academy of Sciences of Ukraine (NAS), which is home to the Department for Problems of Strengthening Legality and Fighting Crime of the Institute of State and Law, which, until recently, was headed by the late A.A. Svetlov. In this department are one veteran criminologist (A.N. Kostenko, a doctor of legal sciences) and two junior criminologists. The principal research interests of these scholars are juvenile crime, criminal psychology, and crimes by officials (corruption). But since funding for basic research has diminished considerably in the past 5 years and the analytic disposition of these scholars is formal and legal, rather than empirical or sociological, few of their publications are rich in descriptions or data. Their preferred method is a legal case study—deducing the causes of the commission of a certain kind of crime by analyzing a batch of criminal cases that have passed through the courts.

The second academy of importance is the National Legal Academy (NLA). NLA, formerly the Kharkiv Institute of Law, is the premier center for teaching law to civilians in Ukraine. It employs Ukraine's most well-known legal scholars (including V.M. Groshevoi, the doyen of Ukrainian criminal procedure). V.Ia. Tatsii, the president (rector), plays a prominent role in Ukrainian legal politics and is often included *ex officio* in many governmental and quasi-governmental bodies (such as the Higher

Council of Judges). Because of NLA's focus on instruction, however, most of its faculty are better versed in theory and pedagogy than applied criminology or the administration of justice. Of course, there are exceptions, and many of the best researchers (such as V.I. Borisov, A.G. Kalman, and A.F. Zelenetskii) combine appointments at the NLA with slightly better paying work at a research institute of the Academy of Legal Sciences (ALS).

The President of Ukraine established ALS as a new academic research institution in 1994. It also is headed by V.Ia. Tatsii and is reportedly one of only four state-funded academies (the other three are the Academies of Agrarian, Medical, and Pedagogical Sciences). The academy's principal function is to coordinate the scientific research of Ukraine's best legal scholars and institutes. It has established two subsidiary bodies—the Kyiv Regional Center (which houses the Department of Legal Information and is the prospective site of an Internet studio project) and the Research Institute for the Study of Problems of Crime, located in Kharkiv. Created in 1995 and headed by V.I. Borisov, a professor from NLA who also works for the U.S.-funded Kharkiv Center for the Study of Organized Crime, this institute has a large staff (67 researchers) but limited funding. There are no computers or researchers with experience in statistical software programs or regression analyses in the Sector for the Study of Crime, headed by A.G. Kalman. Nevertheless, it has produced some valuable studies of corruption and economic crime, its major research focus since 1997.¹² The Sector for Judicial Reform, equally challenged by a paucity of resources, has also generated valuable reports and commentaries on draft legislation of court organization.

In addition to these institutions in Kyiv and Kharkiv, criminological research projects are under way in police academies at Donetsk, Dnipropetrovsk, Zaporozhe, Lugansk, Lviv, and Odessa and at law faculties of universities in Lviv, Odessa, and Kyiv.¹³ Most research at these regional institutions is local, although on occasion scholars are involved in national projects coordinated by the Academy of Legal Sciences Kyiv Regional Center. Finally, some criminologists have been seconded into research units within new Government structures. For example, V.M. Popovich, author of several works on the shadow economy and economic criminology, now works in a research institute within the State Tax Administration.¹⁴ In light of the proliferation of governmental agencies in Ukraine, it is likely that valuable research and researchers can be found outside academia and police institutes.

The impressive institutional frameworks for criminology developed in the past few years have not always brought new or vital content into research. Even the main research centers in Kyiv and Kharkiv are by and large starved for funds; many, if not most, of their researchers work part time, supporting themselves through teaching

and other jobs. At the same time, much of the research underway remains within the framework of Soviet criminology in terms of topics, theoretical underpinnings, and research methods. The main subject areas for research published between 1992 and 1998 included crime structure and dynamics, offender personality, victimology, crime causes and conditions (e.g., alcoholism, urbanization, migration), crime prevention (especially in police work), organized crime and corruption, economic crime, narcotics and crime, juvenile crime, and violent crime. In most of these subject areas, publications included three or four short articles and one or two dissertations; only seven research monographs and four textbooks were published. The research plans through 2000 include a few new topics, including studies of latent crime, the history of Ukrainian penal institutions, and computer crime, but the bulk of Ukrainian criminology promises to continue along tried and true paths.¹⁵

Criminology in Ukraine would benefit from an infusion of new ideas, theoretical approaches, research methods, and, above all, the development of middle-range theory and a working relationship between theory and research. One way to advance this agenda is to bring Ukrainian scholars, especially of the younger generation, to Western countries for prolonged periods of study, including research participation.¹⁶ Another way to help Ukrainian criminologists overcome the many decades of isolation from Western criminology is to organize joint Ukraine-U.S. research projects in Ukraine. Participants in such projects should recognize from the outset that these will be learning experiences for all, and partners from each side must stand ready both to teach and to receive new ideas.

Notes

1. On Soviet criminology in the 1920s and 1930s, see Solomon, Peter H., Jr., "Soviet Criminology: its Demise and Rebirth, 1928–1963," in *Crime, Criminology and Public Policy: Essays in Honour of Sir Leon Radzinowicz*, ed. Roger Hood, New York: Free Press, 1975, 571–593. On criminology in Soviet Ukraine in the 1920s, see Danshin, I.N., "Iz istorii kriminologicheskikh uchrezhdenii v Ukraininskoi SSR v 20–30-e gody," *Voprosy borby s prestupnostiu*, no. 32 (1980); Danshin, *Vvedenie v kriminologicheskuiu nauku*, Kharkov: Pravo, 1998: 56–67; and Ivanov, L.O. and L.V. Ilina, *Puti i sudby otechestvennoi kriminologii*, Moscow: Nauka, 1991: 146–154.
2. See Solomon, "Soviet Criminology," (see note 1); and Solomon, Peter H., Jr., *Soviet Criminologists and Criminal Policy: Specialists in Policy-Making*, New York: Columbia University Press, 1978, esp. chapter 4.

3. Sakharov, A.B., *O lichnosti prestupnika i prichinakh prestupnosti v SSSR*. Moscow: Gosiurizdat, 1961.; Krakhmalnikh, L.G. and I.S. Noi, "O profilaktike prestuplenii priskhopatov," *Sbornik nauchnykh rabot Saratovskogo otdeleniia NNOSMiK* vyp.3 (1961): 260–70; Noi, I.S., et al., "O rasshirenii nauchnoi osnovy izucheniia prestupnika," *Tezisy dokladov iz soobshchenii na mezhvuzovskoi konferentsii o teoreticheskim i metodologicheskim problemam pravovoi nauki* Kishinev: 1965; Kudriavtsev, V.N. *Prichinnaia sviaz v kriminologii*, Moscow: Iuridicheskaia literatura, 1968; and Dubinin, N.P., I.I. Karpets, and V.N. Kudriavtsev, *Genetika, podevedenie, otvetstvennost*, Moscow: Politizdat, 1982.
4. See Solomon, *Soviet Criminologists and Criminal Policy*, 136–44 (see note 2).
5. Iakovlev, A.M., *Prestupnost i sotsialnaia psikhologiya*, Moscow: 1971.
6. Danshin, *Vvedenie*, 73–76 (see note 2); Zelinskii, A.F. *Kriminologiya: kurs lektsii*, Kharkiv, 1996: 15–16.
7. Despite Glushkov's access to primary materials on organized crime groups, there is little ethnography in his analyses and published work.
8. A.M. Bandurka tends to publish highly publicistic works. See for example, *General Militsii sovetuet i preduprezhdaet*, Kharkov: 1998.
9. This project began in January 1997 and has yielded several publications already. A second survey took place in February 1999 and is to be followed by more detailed interviews with crime victims who did not report offenses to the police.
10. Work on this topic has already yielded a major report, *Narkotiki i molodezh*, written by I.P. Rushchenko.
11. Vladimir Sobolev reports that several of his students are experimenting with ethnomethodology as a means of studying social groups. One had successfully entered into a Roma community. For the study of subculture of organized criminal groups, Sobolev hopes to conduct intensive research inside prisons.
12. See, for example, the final reports published in volume 2 of its journal, *Pitannia borot'bi zi zlochinnistiu*, Kharkov: 1998.
13. "Ukrainskaia kriminologiya: tsentry, kadry, napravleniia issledovaniia, publikatsii, plany do 2000g." Unpublished report, 1999.
14. See, for example, Popovich, V.M., *Tin'ova ekonomika iak ekonomichnoi kriminologii*, Kyiv: 1998.

15. “Obzor sostoiianiia razrabotki kriminologicheskikh problem i podkhodov k izucheniiu i analizu prestunosti v nauchnoi literature i pravookhranitelnoi praktiki v 1992–1998 gg.” Unpublished report 1999; “Bibliografiia rabot ukrainskikh kriminologov, opublikovannykh v 1992–1998 gg.” Unpublished report 1999; “Ukrainskaia kriminologiia” (see note 13).
16. Professor Louise Shelley of American University has taken admirable initiative in bringing Ukrainian criminologists to Washington, D.C., for extended stays.

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