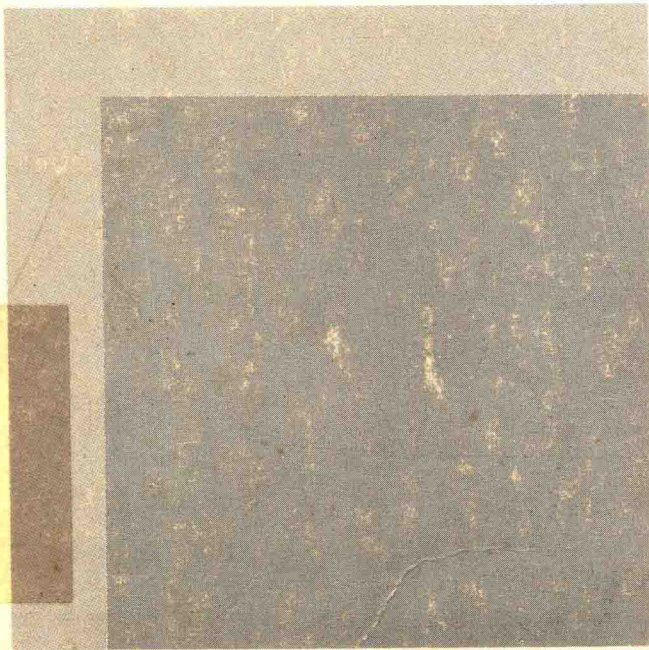


THE SOCIOLOGY OF PUNISHMENT AND CORRECTION

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The Sociology of Punishment and Correction

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The Sociology of Punishment and Correction

Foreword

The phenomenon of crime and the judicial machinery which results from it create many puzzling problems for the modern community, especially the issues of punishment and correction which demand data, analysis and understanding.

The variables involved in seeking to comprehend crime and to cope with the machinery for its control are so extensive and complex that they embrace every major field of man's knowledge, but especially the social sciences. A tremendous complexity results from the intricate nature of human personality as well as the interrelationships of such personalities in different cultural settings.

The best hope for improved understanding of crime and its control is by the application of the scientific method to the data of criminal behavior and to the theories and processes of law enforcement. Within the last two decades particularly, use of the scientific method has brought refined understandings from the or-

derly testing of hypotheses. Many of the most valuable contributions of recent years are included in this volume. Some of the earlier studies included here are significant as pioneering research as well as being informative in their own right.

This volume is adaptable for study in a number of ways as is more fully described in the Preface. A suggested method is to pursue the Preface and then the Introductions of the five Sections sequentially. This approach will provide a panoramic perspective and provide scope for more detailed perusal of individual chapters.

That the public be informed on matters of crime and punishment is crucial and exceeded only by the need for students to devote their careers to the behavioral sciences with specialization in criminology. The present volume will provide the student as well as the citizen with a variety of empirical and conceptual tools with which to attack the problems of punishment and correction.

Washington, D.C.
May, 1962.

Donald Clemmer, Director
Department of Corrections, D.C.

Acknowledgments

We wish to express our gratitude to the publishers and authors of the selections included in this volume for their kind permission to reprint material. The present state of knowledge in the field of the sociology of crime and of corrections is due in large part to the contributions which these scholars have made.

To Francine Spiegel, our secretary, we express our thanks for long hours at arduous tasks proficiently performed. We wish to acknowledge as well the valuable assistance of

Estelle Cohen, Annette and Benjamin Jacobson, Fay Savitz, and Lenora Wolfgang in helping to read and to correct proof.

Finally, we wish to express our gratitude to the department of Sociology and the Wharton School at the University of Pennsylvania for the intellectual climate that made it possible for us to experiment with course material and provided the encouragement and the stimulus that resulted in the development of this volume.

Preface

The purpose of *The Sociology of Punishment and Correction* is to provide the student of criminology ready access to some of the best and most important contemporary sociological literature in this field. We believe that this book, along with its companion volume, *The Sociology of Crime and Delinquency*, can be used as a supplement to a textbook or as a text itself in a single undergraduate course that covers both crime and correction. If there are two separate undergraduate courses, the two books can be used as texts or supplements in each respective course. In short, they have been designed to stand independently or to be used together as a single volume, either as a text or as a supplement. We have not subscribed to the idea that the undergraduate student in criminology is interested merely in being entertained. The selections include a considerable number of sophisticated empirical and theoretical studies. For this reason the book should be equally appropriate for use in advanced graduate courses in the field.

As editors we have tried to keep the contents (1) sociological, (2) contemporary in research, theory, and description, and (3) empirical wherever appropriate and possible. As sociologists we have not excluded legal, psychological, or penal administration materials because they have little to contribute towards understanding the problems of criminal law, prisons, or prevention. However, criminology courses in the United States traditionally are taught in departments of sociology, and the abundance of excellent sociological materials available reflects the primary orientation of American criminology. The inclusion of non-sociological as well as historical materials would have resulted in a collection of prohibitive length unless important sociological contributions were sacrificed.

Historical studies in law and penology form an important background for an understand-

ing and perspective of contemporary research and analysis, but again, these have been left out not because they lack importance, but because space is limited. Although we characterize the present group of selections as contemporary, the ideas contained in a given work are considered significant rather than the date it was written. If the discipline of criminology is an attempt to use the scientific approach, attitude, and methods of empirical research, a book of readings must do more than present a series of unsupported claims and counterclaims. Many of the selections therefore consist of empirical research findings, details of which are normally impossible to include in a textbook. We have included not only theoretical discussions but also some purely descriptive material. This has been necessary for two reasons: first, because in certain areas of the administration of justice, prisons, and prevention, few research studies exist; and second, because many of the areas of inquiry such as prison life and preventive work with gangs are so remote from the experiences of both students and teachers that the beginning of understanding and insight must come through accurate description.

Not all subjects or all good articles or books within the selected subject areas could be included in a book of this size. Although some excellent materials could not be included, we have not used mediocre selections simply because they were the best available. It should also be noted that some of the selections name specific prisons or cities where certain conditions existed at the time the article was written. The student should not assume that these conditions necessarily still exist.

American criminology tends to be unnecessarily provincial in ignoring some of the excellent writings in Europe and Asia. Although the orientation of such work frequently is legal or medical, some excellent research and theoretical discussions have appeared in recent years.

For a number of reasons, it has been impossible to include a large number of these contributions, but an examination of the table of contents will reveal several British scholars represented.

The brief section introductions are designed to tie the sections and the individual selections to one another. We do not feel that such introductory remarks should include critiques of the selections nor adhere to one particular orientation. The first section, titled "The Administration of Justice," contains selections dealing with social psychological and sociological aspects of the criminal courts, law enforcement, and the death penalty. The second section, "The Prison Community," is devoted entirely

to sociological analyses of the prison as a social system, a microcosm which has important implications for both criminal law theory and rehabilitative efforts. The next section, titled "Treatment," considers the areas of probation, parole, and especially institutional programs aimed at changing the law violator into an acceptable citizen. Because predictive devices have had more enthusiastic development in criminology than in any other area of the social sciences, especially in the last decade, such research activities are sufficiently important to merit a special section. The final section on "Prevention" contains descriptions of only a few of the rapidly proliferating group of techniques being used in this country.

March 1962

Norman Johnston
Leonard Savitz
Marvin E. Wolfgang

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SECTION



The Administration of Justice

Criminology is more than the study of one type of prohibited behavior called crime; it is also the study of the individual who engages in these illicit actions: the criminal. The criminal is not someone who is merely suspected, accused, or even tried for an offense; he must be guilty of the offense "beyond a reasonable shadow of doubt" and convicted in a court of law. It thus becomes imperative to examine the various procedural stages from arrest to sentencing through which the accused becomes the fit object of our concern, the criminal.

The police are the first to learn of the commission of the crime and remain the source of our best, if still imperfect, data on crime. The police have often been accused of being corrupt, inefficient, and brutal. Westley examines why a number of police use violence. He finds that it is illegally used to justify their occupational existence and to coerce respect from a disrespectful public. The American Civil Liberties Union attempted to determine the extent of illegal police detentions which they found to be considerably more extensive than is commonly believed.

After the crime becomes known to the police, the next stage consists of the detection and apprehension of the criminal via informers, fingerprints, modus operandi files, or by the use of such devices as the polygraph (lie detector). At the next procedural level is the appearance of the accused before the magistrate and the problem of bail. At some stage prior to his trial, the accused is usually granted the right to bail. The sole function of bail is to guarantee the appearance of the defendant at the time of his trial. In any case this is the theory; practice, it will be seen in Foote's article is quite divergent. As Newman indicates, when the District Attorney enters the case he has among his enormous legal powers, the discretion to make legally sanctioned "deals" with defendants in order to save time and money and to increase the certainty of conviction.

Judicial statistics show a decreasing use of jury trials, and the consequences of such a trend are not necessarily detrimental to the purposes of criminal justice. The verbatim excerpt from the Pennsylvania Joint Legislative Commission Report presents a frightening picture of the irrationality and incoherence of a number of jurors in a typical criminal case. One of the

most fascinating areas involved is touched upon by the Commission: the process of jury decision-making. How is it possible that twelve strangers will unanimously agree upon guilt or innocence in over 95 per cent of all cases despite conflicting evidence. The controversial University of Chicago studies, conducted by Strodtbeck and others, were largely curtailed because of the furor aroused by their "bugging" of jury rooms, despite the approval given the project by the District Attorney, defense counsel, and presiding judges. Their results indicate, not surprisingly perhaps, that their final verdict is a reflection not only of the formal evidence but also the social class and occupational positions of certain jurors.

Not all individuals who engage in criminal actions are considered by the law to be criminals. There are a variety of defenses which, if accepted, render the accused non-culpable under the law, such as being below the age of culpability, committing an act which is accidental and without criminal negligence, engaging in behavior under duress, or being adjudged insane. Unfortunately insanity is not coterminous with psychosis; the latter is a medical concept, while the former is a legal term. The two most famous precedent cases involving insanity rules are those of Daniel M'Naghten and Monte Durham. An aroused House of Lords put several questions concerning insanity to the Chief Justices of England after M'Naghten had been declared insane; the justices, in response set forth the Right-and-Wrong Test which since 1843 has remained the basic rule for England and almost all of the American states. The Durham Rule in 1955, now the law for federal jurisdictions, held that if the crime is the product of a mental disease, the individual is insane.

During the trial a wide range of conflicting evidence is often presented. Occasionally, expert witnesses are called to testify about such matters as ballistics, fingerprints, and insanity. Psycholinguistics has recently been accepted as an additional subject for expert testimony. Arens and Meadow document the first case which proved that the linguistic style of an accused person was incompatible with what the police and prosecution alleged to have been his verbatim confession.

Is Justice blind? Is it meted out without regard to race, social class, or income? Some evidence suggests that differential administration of justice operates even with the ultimate social sanction of death. Of capital offenders sentenced to death what are the common characteristics of those who are actually executed? One of the crucial variables, and it may well be the most important factor in determining whether an individual is convicted, is the nature and quality of his defense counsel. In Pennsylvania, Wolfgang, Kelly, and Nolde show that the client of a state-appointed attorney is statistically more likely to be executed than is the defendant who retains a private attorney. Green's is one of the few studies that find no judicial discrimination. It must be noted that, regarding the variable of race, he has produced results in keeping with Johnson's contention that if the race of the victim is not taken into account, Negroes and whites *appear* to receive equal justice.

The fundamental purpose of punishment is the protection of society. Ideally this involves deterring the criminal from recidivating as well as deter-

ring the potential criminal. Cesare Beccaria postulated in *An Essay of Crimes and Punishments* (1764) that celerity, certainty, and uniformity of punishment rather than severity best served the aims of justice. Most severe forms of punishment have virtually disappeared, but from time to time proposals are made to revive them. Does severity of punishment increase deterrence? Regarding deterrence and capital punishment, comparative statistics of bordering states, some with and others without the death penalty, reveal no significant differences in homicide rates. Sellin's conclusion on this point as originally presented before the British Royal Commission on Capital Punishment was that there is no evidence that capital punishment deters.

1. Violence and the Police

WILLIAM A. WESTLEY

BRUTALITY AND THE THIRD DEGREE HAVE BEEN identified with the municipal police of the United States since their inauguration in 1844. These aspects of police activity have been subject to exaggeration, repeated exposure and virulent criticism. Since they are a breach of the law by the law-enforcement agents, they constitute a serious social, but intriguing sociological, problem. Yet there is little information about or understanding of the process through which such activity arises or of the purposes which it serves.

This paper is concerned with the genesis and function of the illegal use of violence by the police and presents an explanation based on an interpretative understanding of the experience of the police as an occupational group.¹ It shows that (a) the police accept and morally justify their illegal use of violence; (b) such acceptance and justification arise through their occupational experience; and (c) its use is functionally related to the collective occupational, as well as to the legal, ends of the police.

The analysis which follows offers both an

► SOURCE: "Violence and the Police," *The American Journal of Sociology* (August, 1953), 49:34-41.

* The writer is indebted to Joseph D. Lohman for his assistance in making contact with the police and for many excellent suggestions as to research procedure and insights into the organization of the police.

This paper presents part of a larger study of the police by the writer. For the complete study see William A. Westley, "The Police: A Sociological Study of Law, Custom, and Morality" (unpublished Ph.D. dissertation, University of Chicago, Department of Sociology, 1951).

¹ Interpretative understanding is here used as defined by Max Weber (see *The Theory of Social and Economic Organization*, trans. Talcott Parsons [New York: Oxford University Press, 1947], pp. 88).

occupational perspective on the use of violence by the police and an explanation of policing as an occupation, from the perspective of the illegal use of violence. Thus the meaning of this use of violence is derived by relating it to the general behavior of policemen as policemen, and occupations in general are illuminated through the delineation of the manner in which a particular occupation handles one aspect of its work.

The technical demands of a man's work tend to specify the kinds of social relationships in which he will be involved and to select the groups with whom these relationships are to be maintained. The social definition of the occupation invests its members with a common prestige position. Thus, a man's occupation is a major determining factor of his conduct and social identity. This being so, it involves more than man's work, and one must go beyond the technical in the explanation of work behavior. One must discover the occupationally derived definitions of self and conduct which arise in the involvements of technical demands, social relationships between colleagues and with the public, status, and self-conception. To understand these definitions, one must track them back to the occupational problems in which they have their genesis.²

The policeman finds his most pressing problems in his relationships to the public. His is a service occupation but of an incongruous kind, since he must discipline those whom he serves. He is regarded as corrupt and inefficient by, and meets with hostility and criticism from, the public. He regards the

² The ideas are not original. I am indebted for many of them to Everett C. Hughes, although he is in no way responsible for their present formulation (see E. C. Hughes, "Work and the Self" in Rohrer and Sherif, *Social Psychology at the Crossroads* [New York: Harper & Bros., 1951]).

public as his enemy, feels his occupation to be in conflict with the community, and regards himself to be a pariah. The experience and the feeling give rise to a collective emphasis on secrecy, an attempt to coerce respect from the public, and a belief that almost any means are legitimate in completing an important arrest. These are for the policeman basic occupational values. They arise from his experience, take precedence over his legal responsibilities, are central to an understanding of his conduct, and form the occupational contexts within which violence gains its meaning. This then is the background for our analysis.³

The materials which follow are drawn from a case study of a municipal police department in an industrial city of approximately one hundred and fifty thousand inhabitants. This study included participation in all types of police activities, ranging from walking the beat and cruising with policemen in a squad car to the observation of raids, interrogations, and the police school. It included intensive interviews with over half the men in the department who were representative as to rank, time in service, race, religion, and specific type of police job.

DUTY AND VIOLENCE

In the United States the use of violence by the police is both an occupational prerogative and a necessity. Police powers include the use of violence, for to them, within civil society, has been delegated the monopoly of the legitimate means of violence possessed by the state. Police are obliged by their duties to use violence as the only measure adequate to control and apprehension in the presence of counter-violence.

Violence in the form of the club and the gun is for the police a means of persuasion. Violence from the criminal, the drunk, the quarreling family, and the rioter arises in the course of police duty. The fighting drunk who is damaging property or assailing his fellows and who looks upon the policeman as a malicious intruder justifies for the policeman his use of force in restoring order. The armed criminal who has demonstrated a casual regard for the lives of others and a general hatred of

the policeman forces the use of violence by the police in the pursuit of duty. Every policeman has some such experiences, and they proliferate in police lore. They constitute a common-sense and legal justification for the use of violence by the police and for training policemen in the skills of violence. Thus from experience in the pursuit of their legally prescribed duties, the police develop a justification for the use of violence. They come to see it as good, as useful, and as their own. Furthermore, although legally their use of violence is limited to the requirements of the arrest and the protection of themselves and the community, the contingencies of their occupation lead them to enlarge the area in which violence may be used. Two kinds of experience—that with respect to the conviction of the felon and that with respect to the control of sexual conduct—will illustrate how and why the illegal use of violence arises.

1. *The Conviction of the Felon.* The apprehension and conviction of the felon is, for the policeman, the essence of police work. It is the source of prestige both within and outside police circles, it has career implications, and it is a major source of justification for the existence of the police before a critical and often hostile public. Out of these conditions a legitimation for the illegal use of violence is wrought.

The career and prestige implication of the "good pinch"⁴ elevate it to a major end in the conduct of the policeman. It is an end which is justified both legally and through public opinion as one which should be of great concern to the police. Therefore it takes precedence over other duties and tends to justify strong means. Both trickery and violence are such means. The "third degree" has been criticized for many years, and extensive administrative controls have been devised in an effort to eliminate it. Police persistence in the face of that attitude suggests that the illegal use of violence is regarded as functional to their work. It also indicates a tendency to regard the third degree as a legitimate means for obtaining the conviction of the felon. However, to understand the strength of this legitimation, one must include other factors: the competition between patrolman and detectives and

³ The background material will be developed in subsequent papers which will analyze the occupational experience of the police and give a full description of police norms.

⁴ Policemen, in the case studied, use this term to mean an arrest which (a) is politically clear and (b) likely to bring them esteem. Generally it refers to felonies, but in the case of a "real" vice drive it may include the arrest and conviction of an important bookie.