Encyclopedia of Crime and Justice

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PSYCHOPATHY

Definition

A psychopath is a relatively asocial, emotionally insensitive person who feels a less-than-normal intensity of guilt and is unable to form normal affectionate relationships with other people. At times in Western society such people have been regarded as heroes, as during the Nazi regime; on the other hand, anthropological studies indicate that entire groups (for example, the Ik tribe of Uganda) may exhibit a psychopathic syndrome. In general, however, psychopaths in North America, Latin America, and Western Europe are studied in relation to criminal behavior.

Psychopaths are only a minority, perhaps 10 percent, of the criminal population (Smith), but they are the most dangerous segment of criminals and the most likely to repeat their crimes (Cleckley). Unlike professional criminals, they do not concentrate on a particular type of crime. In general, they are overrepresented in the ranks of the explosive, aggressive criminals who commit major crimes of violence (McCord). They are also likely to commit crimes based on fraud and manipulation, such as the running of confidence games (Cleckley).

Changes in labels. Psychopaths have been designated by many names. In 1800, they were regarded as suffering from *manie sans délire* ("mania without delirium"), and by 1872 they were considered "morally insane." The American Psychiatric Association in 1952 substituted the word *sociopath,* and in 1972 the World Health Organization added the term *antisocial personality.* But despite changes in terminology, social and medical scientists have described the same basic type of person and agreed that the psychopath differs from both psychotic and average populations. The term *psychopath* has prevailed in common usage since its inception in the late 1800s (Harrington).

Incidence. Because of controversy over labels, estimates of the incidence of psychopathy have varied widely. Some commentators have argued that it is a pervasive characteristic of modern capitalist and bureaucratic societies (Harrington). The most reliable studies indicate, however, that the incidence of psychopathy among incarcerated criminals ranges from 7 percent to 26 percent, averaging 10 percent of known criminals. Cross-cultural studies of noncriminal populations estimate that between 2 percent and 5 percent may legitimately be described as psychopaths. In most societies, male psychopaths outnumber female ones. More-precise measures of psychopathy await further cross-cultural studies utilizing similar standards of diagnosis (Smith).

Diagnosis

Physiological measures. Psychopaths exhibit a less fearful response to experimental punishments than do nonpsychopaths. They show signs of slower autonomic nervous system responses to punishment, and they differ significantly in pulse and heart rates. In general, research indicates that psychopaths are less fearful of punishment, are less anxious, respond more efficiently to stress, are less mature neurologically (that is, less able to learn from punishment), are more eager for excitement, and have a greater propensity for violence than nonpsychopaths (McCord).

Psychological measures. Clinical and social psychologists have distinguished between psychopaths and neurotic criminals, "normal" criminals, psychotics, and the average population on a variety of tests, including the Thematic Apperception Test, the Rorschach test, and the Minnesota Multiphasic Personality Inventory (Smith; Reid; Hare and Schalling). These tests have demonstrated certain unique traits of the psychopath: a relative lack of guilt, a low level of anxiety, and an insensitivity to the welfare of others. Intelligence scores, however, fall within the range of the general population. Psychological tests offer ways of adapting the sentencing and treatment of criminals to the unique requirements of psychopaths.

Psychiatric judgment. Psychiatrists who have worked extensively with psychopaths largely agree in judging them as asocial, loveless, and incapable of feeling guilt. Psychiatrists are particularly aware of the deceptive charm of psychopaths, of their tendency to mimic socially appropriate behavior, and of a possible decline in overt aggression by psychopaths after the age of thirty-five. The majority of psychiatrists do not believe that psychopaths can be cured by psychotherapy, although others maintain a contrary opinion.

Physical origins

Most researchers agree that a direct relationship exists between psychopathy and physiology; many of them assert, in addition, that social and physical factors interact to produce the disorder.

Physiological insensitivity. Evidence indicates that the psychopath is physiologically as well as emotionally insensitive, relatively incapable of learning from physical cues, and unresponsive to skin conductivity stimuli (Hare). On the basis of studies of twins, some researchers, such as Sarnoff Mednick, have suggested that a slow electrodermal recovery rate (a hereditary attribute indicative of resistance to pain) is characteristic of psychopaths (Glaser, p. 145). Other investigators contend that society encourages differential forms of physical insensitivity and that these arise as a result of formal or informal training (Hare and Schalling). After repeated trials at jumping, for example, experienced paratroopers exhibit less physical sensitivity to this inherently dangerous act. Similarly, psychopaths who have been brutalized in early childhood may well learn not to respond to the attitudes and actions of others. Thus, physiological insensitivity could be regarded as either a cause of psychopathy or a result of social training.

The genetic approach. Slow-wave electroencephalogram (EEG) activity and cortical underarousal seem to reflect both hereditary and psychological differences between psychopaths and other people. Evidence indicates that psychopathy bears a relation to a lowered state of cortical arousal and a chronic need for novelty and stimulation (Hare); persons with a slow rate of arousal tend not to inhibit delinquent or criminal urges even after having experienced punishment. Biological children of psychopathic parents exhibit a psychopathic syndrome more often than do offspring of nonpsychopathic parents, and hormonal excretions that relate to psychopathy may have a hereditary base as well (Reid). For these and other reasons, some researchers assume that certain genetic factors interact with the social environment to produce psychopathy (Mednick and Christiansen). Research indicates, however, that most people with a psychopathic inheritance do not become psychopaths when raised in average social environments, and that most people who exhibit physiological signs typical of this condition do not in fact become psychopaths. Thus, a clear-cut relationship between genetic factors and psychopathy cannot be assumed (Reid).

Neural dysfunction. Physiologists have produced a large and impressive body of evidence showing that psychopaths suffer from neural damage. A relatively high proportion of psychopaths have disorders in the hypothalamic area, which, among other functions, apparently controls inhibition. Such disorders could be traced to accidents, disease, genetic background, or even the impact of the environment. Certain types of head injury, even in the intrauterine stage, may correlate with adult psychopathic behavior (Reid).

More than others, psychopaths have suffered from brain injuries or diseases such as encephalitis or epilepsy. They also show more signs of tics, tremors, abnormal EEG patterns, and other symptoms of neural disorder. This high incidence of neurophysiological dysfunction may be caused by cortical immaturity, damage to the hypothalamus, or disorders in other areas of the limbic system. Each of these could, in turn, be traced to heredity, prenatal injuries, early diseases, accidents, or environmental influences. However caused, it appears that defects in the hypothalamic area may play a major role in psychopathy.

Social origins

Rejection and psychopathy. Virtually all psychopaths have been rejected by at least one parent in early childhood and consequently develop an attitude of mistrust, insensitivity, or hostility toward other hu-

man beings, although they may retain an ability to manipulate others for their own goals. Severely rejected children, particularly those burdened with a neural disorder, do not develop a conscience, trust in others, or a willingness to consider the interests of others.

Psychopaths have also frequently experienced early institutionalization and a high degree of parental neglect, desertion, criminality, alcoholism, and other forms of deviance. Some researchers have suggested that there is a reciprocal relationship between the child's characteristics and parental rejection (Hare). The child's asocial behavior, for example, might lead the parents to reject him, and their rejection, in turn, could lead to greater hostility and mistrust on his part. This interpretation, however, does not take into account certain traits of the parents, such as their high incidence of criminality and alcoholism (Robins). Finally, although virtually all psychopaths have been rejected, the obverse does not hold true: rejected children may become psychopaths but may also follow other paths in life (Robins).

A theory of psychopathy's origins which considers both neurological and sociological factors concludes that (1) rejection, in combination with damage to such areas of the brain as the hypothalamus, results in psychopathy; and that (2) rejection, in the absence of neural disorder, can result in psychopathy if other influences in the environment (such as a criminal role model, differential association with criminals, or complete neglect) help direct the person in a criminal direction.

The social structure and psychopathy. Evidence suggests that societies disrupted by major upheavals such as war, revolution, or rapid technological development may produce a higher-than-usual proportion of psychopaths. Some commentators argue that the very nature of American society rewards psychopathic behavior since psychopaths are better able to adapt to a competitive form of capitalism (Harrington; Smith).

Treatment efforts

Treatment of adult psychopaths. Adult psychopaths have generally resisted attempts to alter their behavior and have at times been described as incurable. Incarceration as such does not reduce the rate of recidivism. Individual or group therapy appears to have little effect on adult psychopaths, and the same is true of both positive- and aversive-conditioning experiments. The diversion of adult psychopaths from criminal justice institutions has had little positive effect as well. Milieu therapy—full-scale psychotherapeutic efforts in a residential setting—may reduce the recidivism rate, but it has been hampered by a lack of money and public support.

Child psychopaths. In view of the general failure of attempts to change adult psychopaths, clinicians and correctional officials have attempted various approaches with child psychopaths, that is, those under the age of fifteen. Incarceration has had little positive effect on recidivism rates of either delinquents in general or child psychopaths in particular. Programs aimed at increasing the self-awareness of delinquent psychopaths, such as psychotherapy, psychoanalysis, group therapy, and counseling, have not generally proved effective. The effects of behavior modification or drug therapy on child psychopaths remain questionable. "Community treatment"—diversion, deinstitutionalization, or similar attempts—may be helpful for ordinary juvenile delinquents but has yet to establish its impact on child psychopaths.

Milieu therapy for child psychopaths (removal from their homes, placement in a loving environment, and an extended program of individual and group therapy) seems an effective way of reducing the rate of serious crimes during the age period when violence is most common. A comparison of former inmates of two reform schools twenty-five years after their release has indicated that residence in Wiltwyck (a school that practices milieu therapy) significantly reduced the rate of felony convictions particularly during the age span of fifteen to nineteen years. During this peak period of violence the Lyman School, a typical American reform school, failed to change the rate of crime. After age twenty-five, however, the Lyman School had a lower recidivism rate. In both cases, the rate dropped for whites but remained relatively high for blacks and other minorities (McCord).

The psychopath and the law

In the United States, persistent controversy surrounds issues of the prediction of violent behavior, the nature of mental disorder, the definition of responsibility, and the entire philosophical notion of free will; psychopaths are generally held responsible for their actions and receive specific penalties sanctioned by the law. In contrast, lawmakers in most European countries consider the psychopath to be mentally deranged and, because of his "diminished responsibility," in need of treatment in a mental hospital or special sanatorium.

WILLIAM MCCORD

See also CRIME CAUSATION, *articles on* BIOLOGICAL THEORIES *and* PSYCHOLOGICAL THEORIES; EXCUSE: INSANITY; MENTAL HEALTH EXPERT, ROLE OF THE; MENTALLY DISORDERED OFFENDERS; PREDICTION OF CRIME AND RECIDIVISM; VIOLENCE.

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PUBLICATIONS IN CRIMINAL LAW

The complex issues of guilt, responsibility, and punishment encompassed in the criminal law have attracted the attention of generalists and specialists alike, resulting in a varied and rich body of literature. Most great thinkers and philosophers have dealt with questions of criminal law as well. This article, however, will focus on the development of the literature of criminal law as such.

Pioneering works on English law such as Henry de Bracton's thirteenth-century *De legibus et consuetudinibus Angliae* and Edmund Plowden's sixteenth-century *Commentaries* discussed the criminal law. Edward Coke's *Third Part of the Institutes of the Laws of England,* written in the seventeenth century and first published in 1797, was also a notable treatise. These classics bear little resemblance to modern scholarly works, but they blazed a trail for the scholars who followed. Although largely inaccessible to the contemporary reader, they established a conceptual foundation that still endures.

In addition to the work of these authors, summaries of criminal law cases can be found in the earliest case reporters and in the abridgments and digests typical of the early period of legal writing. Each early case reporter is known by the name of its compiler, and many contain much subjective interpretation. In the seventeenth century, pamphlets and tracts appeared that dealt with issues of criminal law. During that century a considerable corpus of works on the criminal law—many of them written from the perspective of reformers—came into being, and the legal treatise as it is known today began to take form. Indeed, one of the first works to be classified as a modern legal treatise, William Hawkins's *Treatise on the Pleas of the Crown* (published between 1716 and 1721), was devoted to criminal law. Hawkins's work borrowed heavily from earlier studies such as Coke's, but it differed conceptually in that it attempted to present the law on specific subjects. Hawkins's work ran through eight editions and was reprinted as late as the nineteenth century.

Within fifty years of Hawkins's work, Cesare Beccaria's *On Crimes and Punishments* appeared in English translation. This work was extraordinary because it approached the subject of crime from a perspective of prevention as well as of punishment. Beccaria inveighed against the death penalty and the use of torture—positions that were quite innovative in the mid-eighteenth century—and his work exemplifies the effect that continental thinkers exerted on the development of common-law concepts. *On Crimes and Punishments* had a worldwide influence, and its impact is still felt today. It represented a refinement of the treatise form, and graphically demonstrated the potential of theoretical speculation on the law. Modern readers still find it quite accessible and surprisingly topical.

Soon after the publication of Beccaria's work, William Blackstone's *Commentaries on the Laws of England* appeared. This four-volume set derived from a popular series of Oxford lectures and was designed to acquaint the educated layman with the principles of

common law. The *Commentaries* represent the first attempt to systematically describe the structure of the entire common law. Although Blackstone drew his organizational scheme from the seventeenth-century writer Matthew Hale and borrowed heavily from a number of earlier authorities, his work had an immediate and profound effect. His "scientific" approach to legal principles and his elegant prose elevated the study of the common law to the position of a respectable discipline. As strong as Blackstone's impact may have been in England, it was dwarfed by his influence in the United States, where the *Commentaries* went through dozens of editions. It was not uncommon for the single available lawbook in a frontier town to be an edition of Blackstone.

Blackstone devoted the fourth and final book of his *Commentaries* to the subject of criminal law. This general treatment of the state of the criminal law in the late eighteenth century common-law system has been criticized roundly because of its "derivative" nature (much was taken from Beccaria) and because Blackstone was to a great extent an apologist for the system he described. Jeremy Bentham's early writings found Blackstone agonizingly conservative. Still, the *Commentaries* did fault the existing system for its harsh punishments and called for a reduction in capital punishment. Book Four's impact on American thinking can hardly be denied. In perusing Blackstone's work, one is struck by the closeness of much of his thought to contemporary issues.

During the nineteenth century there was an explosive growth in the role and importance of the legal treatise, a monographic work that concentrates on one area of the law and attempts to link cases with an organizing narrative. These treatises varied widely in form and quality, but they represented a major trend in legal literature, and many of them treated criminal law. John Marvin's *Legal Bibliography* (1847), an annotated listing of American and British lawbooks, mentioned seventy-six separate English-language treatises on the criminal law in America. Although only two of these were wholly American (the others being American editions of British works), the number is still impressive. In attempting to provide a comprehensive guide to all the existing literature, Marvin used not only the general subject heading of criminal law, but also headings for such specific topics as forgery, imprisonment, indictment, punishment, state trials, libel, and treason. In addition, the bibliography cited a number of reports, statute compilations, and practice books on criminal law. Marvin was by no means comprehensive, and several subsequent works of the same type are much more complete. The *Bibliography of Early American Law* by Morris Cohen and Balfour Halevy, to be published by the late 1980s, will offer thorough coverage of this period with the most sophisticated indexing and will make all early literature accessible.

James Kent's four-volume *Commentaries on American Law,* published between 1826 and 1830, was called "the American Blackstone" and proved enormously influential. Although it never attained either the popularity or the influence of Blackstone's work, Kent's treatment of all aspects of American law, including criminal law, was important. His *Commentaries* went through numerous editions, the twelfth (1873) and fourteenth (1896) being especially important because they were edited by Oliver Wendell Holmes, Jr. By the late nineteenth century the practical importance of Kent's *Commentaries* had faded, but its contribution to the conceptualization of the criminal law continues.

Between the publication of Marvin's *Legal Bibliography* in 1847 and the end of the nineteenth century, a wide variety of treatises on the criminal law appeared. The treatise gained in popularity during this era, a reflection of the increasing complexity of the law and of the growing number of attorneys who needed information. Several of the treatises of this period, such as James Fitzjames Stephen's *History of the Criminal Law in England,* are still widely cited. Some American works date from the time of Marvin, including Francis Wharton's *Criminal Law.* Wharton is now in a fourteenth edition and is still being published and supplemented.

Typical of the kind of book found in Marvin was John Archbold's *Pleading, Evidence, and Practice in Criminal Cases.* Archbold's guide for the practitioner of criminal law, although much criticized by subsequent commentators, has survived a number of title alterations; the fortieth edition appeared in 1979. Other classics, such as Edward East's *Treatise of the Pleas of the Crown* and Joseph Chitty's *Practical Treatise on the Criminal Law,* date from this period as well.

The nineteenth century also witnessed the growth of the codification movement, which attempted to create unified and comprehensive legislation covering all aspects of law. The movement sought to make the law clearer and to limit the role of the courts in "making law." One obvious target for codification was the criminal law. A major "statutory" work resulting from this movement was Edward Livingston's penal code. An exponent of codification, Livingston produced a model set of criminal statutes designed for the state of Louisiana. His code was an attempt to create a systematic collection of laws on the subjects of criminal law, criminal procedure, and imprison-

ment. Livingston's *System of Penal Law* was first published in 1824 and appeared as part of a system of codes in 1833. His comprehensive and progressive system was acclaimed by world leaders and leading intellectuals, and is still considered to be a visionary work. Although the codes were not adopted by any American jurisdiction, they had enormous impact on subsequent law reform movements.

The influence of the legal treatise on American law declined in the twentieth century. The treatise continued to play an important role, but new forms of legal publication came to the forefront and supplanted it, the most important among them being the legal periodical. Although commercially published legal periodicals had appeared in the United States throughout the nineteenth century, their role had always been secondary. The twentieth century saw the advent of the law school review, produced and edited by law students. Although originally conceived of as a hybrid publication containing both legal articles and school news, the academic law review soon acquired a completely scholarly focus. It is not an overstatement to say that law reviews contain the most important legal scholarship being produced.

Each of the more than one hundred and seventy American law schools now has some form of journal, and many of the larger schools have several. These academic law reviews are distinguished not only by their numbers but by their influence; they are the cutting edge of American legal thought. Scholars and practitioners resort to the academic law review to publish the best of their research. In addition, with the available audience of lawyers continually expanding, bar association publications and commercially produced journals are growing in numbers and quality. However, the periodical's emergence as the dominant form of publication has meant a fragmentation of legal study into a multitude of topics. The modern scholar is much more likely to focus on one particular facet of a problem than to attempt the broad approach that was once common.

The periodical literature on criminal law is vast and rich. Law review articles can be located in such standard tools as the *Index to Legal Periodicals* and the *Current Law Index*, each of which contains numerous subject headings for individual criminal law topics. These two indexes, which purport to cover the same body of material, cover all academic law reviews and a number of interdisciplinary journals as well. Through them one can gain access to the manifold periodical literature of criminal law. An index devoted especially to criminal topics is *Criminal Justice Abstracts* (formerly *Crime and Delinquency Literature*).

Other journals are specifically devoted to criminal law. The *Author's Guide to Journals in Law, Criminal Justice and Criminology* (Mersky, Berring, and McCue) aids in locating these specialized journals. It lists all law reviews and related legal publications, with a special emphasis on criminal law periodicals. The subject index guides the user to journals specifically focused on criminal law issues. These journals, together with the indexes noted above, are the starting point for most research in criminal law.

Another notable form of publication that developed in the twentieth century is the "model code." The lineal descendant of the nineteenth-century codification movement, the model code effort was led by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, which have developed a number of uniform laws and model codes. The former are urged upon state legislatures for adoption; the latter are published to serve as models for legislative action. Of special interest is the Model Penal Code, a modern form of what Livingston tried to achieve in the early decades of the nineteenth century. The Code was developed during the 1950s and early 1960s to serve as an example of progressive criminal codification. The American Law Institute and the National Conference of Commissioners joined forces to produce the Code, which required the efforts of legal scholars and practitioners, as well as of experts drawn from such related fields as psychology and sociology. Although no jurisdiction has adopted the Model Penal Code, it has had an enormous impact on the legislation of various states and on court decisions. The Code has spawned its own literature of periodical articles and monographs.

With regard to statutes themselves, there has been an enormous change in the role of legislatures as makers of law. The traditional common-law view had envisaged a limited role for the legislative branch; well into the twentieth century, it was the courts that effected most of the innovative legal reforms. That situation has changed dramatically. Congress and the state legislatures now make law in abundance; no subject escapes their ken. Criminal law is thus in large part a matter of statute. With commercially produced annotated codes available for every state and at the federal level, it is possible to find all criminal statutes printed in their current form, with periodic supplementation by pocket part to keep them up-to-date. These annotated codes also contain excellent indexes to assist the user in locating specific statutory provisions. In addition, the annotations provide abstracts of each case that has interpreted the provision in question. The annotated code is frequently the place to

begin research. It is the statement of the law itself. A list of available annotated codes can be found in the *Uniform System of Citation.*

Another type of legal material that has grown in prominence during the twentieth century has been the documents issued by governmental organizations. At both the federal and state levels, a veritable avalanche of such materials is now published. Much of this material, particularly that emanating from the federal level, is relevant to criminal law research. The statistical compilations produced at the federal level, such as the Uniform Crime Reports of the Federal Bureau of Investigation, as well as reports on criminal matters under consideration by federal legislative committees, can prove a valuable source for the researcher. The government also publishes specialized reports, studies, and even bibliographies. Because academic law libraries can be designated as selective government depositories, most of them now contain working collections of these federal and state documents. The use of such documents can be difficult for the neophyte. One general guide is Joe Morehead's *Introduction to United States Public Documents,* but the best way to learn about the available indexes and abstracts is to consult a documents specialist.

Although the standard monograph has declined in importance as a force in legal research, important books of this kind are still being published. Many are practice-oriented, such as the works published by the continuing-education divisions of many state bar associations. Others are keyed to law school study, for example, the criminal law titles in the hornbook (a legal term for textbook) series produced by the West Publishing Company and the Foundation Press. The Nutshell Series, also published by West, offers a number of titles on criminal law in a less expensive paperbound format. Important monographs are published by university presses and trade houses as well. Such titles can most easily be found in the subject section of a law library's catalog under the appropriate headings. Since many libraries are now linked through computerized bibliographic systems, it is frequently possible, with the help of a reference librarian, to search other collections as well. In addition, such major law libraries as those of Columbia University, the University of California at Berkeley, and New York University have published their card catalogs in book form.

Another source of monographic titles is subject bibliographies on criminal law topics, which can be found by the catalog search methods noted above. A helpful guide that has collected such bibliographies, arranged by subject, is *Criminological Bibliographies,* compiled by Bruce Davis. The Association of American Law Schools also has prepared a set of subject bibliographies, *Law Books Recommended for Libraries,* to guide law schools in building up their collections. One issue in this series, "Criminal Law and Procedure," provides easy access to the most important titles in the field.

Loose-leaf services are the staple of most modern collections. These frequently updated sets allow the publisher to keep the reader apprised of the latest developments in a subject area. Most of the services report on the activities of administrative agencies, but several, such as the *Criminal Law Reporter* and *Search and Seizure Law Report,* concentrate on issues of criminal law. The loose-leaf service places emphasis on speed of publication and demonstrates the constantly changing nature of modern American law.

A valuable survey of modern sources on criminal law is William Goodman's article "Essential Research Tools for Criminal Defense Attorneys." Goodman describes the research tools that he uses in day-to-day practice. Although written from a regional perspective, the article provides an excellent overview of research tools in criminal law.

ROBERT C. BERRING, JR.

See also CRIMINAL LAW REFORM: HISTORICAL DEVELOPMENT IN THE UNITED STATES; PUBLICATIONS IN CRIMINOLOGY.

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PUBLICATIONS IN CRIMINOLOGY

There are many valuable sources of information relating to crime, justice, corrections, police, and closely allied subjects. Statistics, although not always reliable, are nonetheless abundant. Bibliographies, abstract services, aids in locating literature and data, and numerous journals are available.

Statistics. In the United States, statistics are published on crimes known to police, arrests, imprisonment, victimization, and related areas. Although there has been considerable debate over the accuracy of some of this information, no one disputes that data covering crime and corrections are published in detail unmatched in any other large industrialized nation of the world, possibly excepting Great Britain.

Probably the most important publication offering such information is the annual *Crime in the United States* (Uniform Crime Reports for the United States). Issued by the Federal Bureau of Investigation, its title is followed by the year for which crime is being reported, each volume appearing some eight or nine months after the end of that year.

The Uniform Crime Reports offer information on Part I and Part II crimes, the former used as a numerical index of fluctuation in crime rates. Part I offenses have become known as "index crimes," and are sometimes referred to (improperly) as "serious crimes," although many serious crimes are in Part II. This is because Part II crimes are not suitable for use as an index of criminality, and because reliable information about them deals largely with arrests, rather than with crimes known to the police. Crimes in Part I are murder, forcible rape, aggravated assault, robbery, burglary, larceny-theft, motor-vehicle theft, and arson; of these, arson was the last to be included. All other

acts resulting in arrests, except traffic offenses, are found in Part II.

Complementing the Uniform Crime Reports are criminal victimization studies, initiated in the United States in the mid-1960s by the President's Commission on Law Enforcement and Administration of Justice. Victimization studies are available in many publications, including the Justice Department's annual *Criminal Victimization in the United States.*

Information on the prison population in America, including federal and state prisons but excluding local jails and lockups, workhouses, and juvenile and military detention centers, may be found in *National Prisoner Statistics* and *Prisoners in State and Federal Institutions on December 31,* two publications of the United States Department of Justice. They provide figures on escapes, deaths in prison, releases during the previous twelve months, and new prison admissions for the same period, giving data on the convict population that are probably as exact as can be found in any country in the world.

Accurate statistics on jail inmates are more difficult to obtain. The large number of very small jails, and the transient nature of their population, make record-keeping difficult. The *Census of Jails,* which bases its figures on inmates remaining in custody at least forty-eight hours, is issued by the Justice Department's Bureau of Justice Statistics, earlier known as the National Criminal Justice Information and Statistics Service.

There is no complete and reliable data source for juvenile offenders that shows numbers of arrests, disposition, and the youth inmate population. Some age-specific data can be found in the Uniform Crime Reports, the *Census of Jails,* and other sources, such as the *Children in Custody* survey provided intermittently by the Bureau of Justice Statistics. The available material on military crime is also of a sketchy and incomplete nature. For information on police personnel, the Uniform Crime Reports should be consulted; for state police and state correctional data, *The Book of the States.*

By far the most comprehensive collection of data on crime and justice appears annually in the *Sourcebook of Criminal Justice Statistics,* a compendium compiled by the Criminal Justice Research Center of the State University of New York at Albany and published by the Bureau of Justice Statistics. The 1980 edition was the eighth and, as the preface states, is a "compilation of criminal justice and related statistics that are currently available from the publications of a variety of governmental and private agencies."

The *Sourcebook* is a large volume, consisting of over six hundred pages and containing hundreds of tables, figures, maps, and other material from various publications, together with an annotated list of sources and references. The data on known offenses lean heavily on the Justice Department's victimization studies and the Uniform Crime Reports, the latter also providing the major information on persons arrested. On judicial processing of defendants, the *Sourcebook* is stronger for federal than state cases, but the latter are also represented. This same section offers information on sentencing, jury trials, and numerous other aspects of crime and justice. The final part is a rich source of data on persons under correctional supervision: it summarizes important information from *National Prisoner Statistics* and elsewhere regarding people on state and federal probation or parole, admissions to drug abuse treatment programs, juvenile custodial facilities, inmates in local jails, prisoners under death sentence, and the like.

An excellent source for foreign criminal justice data is *Current National Statistical Compendiums.* This series, on microfiche, gives the type of information for most countries of the world that in the United States is provided by the *Statistical Abstract of the United States* (U.S. Bureau of the Census). In addition, Interpol has a biennial publication, *Statistiques criminelles internationales.* Other material is available from the United Nations, the Dominion Bureau of Statistics for Canada, the Home Office for Great Britain, and other official agencies.

Journals. Almost all general (nonspecialized) sociological and psychological journals, and many in political science, philosophy, and other fields of study, devote considerable space to crime. Articles in such journals may be located by using key words in retrieval services and by utilizing abstracts. The North Carolina Justice Institute has sponsored the *International Guide to Periodicals in Criminal Justice* (McDowell, Russell, and Hines). Separate sections list the journals by the abstracting and indexing services that cover them, by specific subject interests, and by country of origin. The *Criminal Justice Periodical Index* lists more than one hundred journals in the English language, with author and subject indexes. The National Institute of Law Enforcement and Criminal Justice has published annotated lists of journals (La Perla, Horton, and Kravitz; Klein, Horton, and Kravitz), and Roy Mersky, Robert Berring, and James McCue have compiled an author's guide to journals in criminal justice.

Among the most important English-language journals in criminology, police science, corrections, and related areas are *Australian and New Zealand Journal of Criminology, British Journal of Criminology, Canadian Journal of Criminology, Corrections Today, Crime and Delin-*

quency, Crime and Social Justice, Criminology, Federal Probation, International Criminal Police Review, International Journal for the Sociology of Law, International Journal of Offender Therapy and Comparative Criminology, International Review of Criminal Policy, Journal of Criminal Justice, Journal of Criminal Justice Ethics, Journal of Criminal Law and Criminology, Journal of Police Science and Administration, Journal of Research in Crime and Delinquency, Police Studies, and *Prison Journal.* A few of these journals have been discontinued, but most are currently issued on a regular basis, and important materials may be found in the bound volumes of all of them. In addition, numerous specialized journals are devoted to such topics as alcoholism, drug addiction, terrorism, victimology, forensic science, and the polygraph.

Abstract, index, and data retrieval services. Almost all abstract and retrieval services in the social sciences, and many in other fields, have information on scholarly, and sometimes popular, articles on crime. *Criminal Justice Periodical Index,* although it does not contain abstracts, presents information on authors and subjects of articles in an imposing list of journals. *Criminal Justice Abstracts* contains in each issue "in-depth abstracts of current literature, worldwide in scope, and a comprehensive review that synthesizes and summarizes the knowledge on or developments in a certain subject." *Criminology and Penology Abstracts* gives thorough coverage to journals in many languages and is probably the most complete abstract service in this field. A companion is *Police Science Abstracts.*

The Criminal Justice Archive and Information Network (CJAIN) of the Interuniversity Consortium for Political and Social Research, located at the University of Michigan in Ann Arbor, collects data in machine-readable form from private researchers and government agencies and makes available a catalog of holdings for those interested in quantitative research. The National Criminal Justice Reference Service (NCJRS) has a data base available through commercial on-line vending services.

There are many bibliographies on such specialized subjects as capital punishment, violence, women and the criminal justice system, and juvenile delinquency. The field of crime is too large to handle in a single bibliography, but the massive work of Marvin Wolfgang, Robert Figlio, and Terence Thornberry, *Criminology Index: Research and Theory in Criminology in the United States, 1945–1972,* is remarkably comprehensive. Other bibliographies worthy of special note include one compiled by Bruce Davis on criminological bibliographies, a bibliography of sources compiled by Emily Johnson and Marjorie Kravitz, and a list of books, documents, and journal articles, arranged by narrow subject areas, compiled by Leon Radzinowicz and Roger Hood.

A major source on the lives and works of authors of criminological classics is Hermann Mannheim's *Pioneers in Criminology.* A companion volume, *Pioneers in Policing,* edited by Philip Stead, should also be consulted. Eugene Doleschal has written a guide to the most frequently used statistical sources for crime, police, courts, and corrections.

Libraries. There are many excellent libraries devoted to criminal justice. Worthy of note are the collections in the libraries of the United States Department of Justice; the John Jay College of Criminal Justice, New York City; the National Council on Crime and Delinquency, Hackensack, New Jersey; and the Institute of Criminology at Cambridge University.

EDWARD SAGARIN

See also CRIME STATISTICS: REPORTING SYSTEMS AND METHODS; CRIMINOLOGY: RESEARCH METHODS; EDUCATIONAL PROGRAMS IN CRIMINAL JUSTICE; PUBLICATIONS IN CRIMINAL LAW; RESEARCH IN CRIMINAL JUSTICE.

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PUBLIC DEFENDER

See CAREERS IN CRIMINAL JUSTICE: LAW; *both articles under* COUNSEL; CRIMINAL JUSTICE SYSTEM: OVERVIEW.

PUBLICITY IN CRIMINAL CASES

Introduction

As the criminal trial has evolved in England and the United States, the role of the jury—and of the judge who is sitting without a jury—is to decide the question of guilt on the basis of evidence adduced in open court. The trier of fact is, of course, expected to be a person of experience in the world of affairs. But he is also expected to come to the trial without the kind of predisposition, or prejudgment, that makes it impossible to be "indifferent" on the question of guilt before taking the oath of service (*Irvin v. Dowd,* 366 U.S. 717, 722 (1961)). The Sixth Amendment to the United States Constitution, in its guarantee of a right to trial by an "impartial jury," makes this expectation a fundamental right of the accused.

The right to an impartial jury does not require a juror to be wholly ignorant of the case before the trial begins. Indeed, one of the original purposes of trying a criminal defendant before a jury of his fellow citizens was to enable them to bring their knowledge of the defendant and of the circumstances to bear on their deliberations. But with the increasing emphasis on the role of evidence presented at trial and with the development of many procedural safeguards for an accused at that trial, there has been a growing concern that the significance of the hearing will be undermined if the jury is influenced by what it has seen or heard outside the courtroom. The line between permissible knowledge or opinion and a disqualifying predisposition has always been agonizingly hard to draw.

The problem of external influences on the trier of fact antedates the rapid technological developments in communications in the twentieth century. As long ago as the trial of Aaron Burr, for example, the presiding judge, John Marshall, had to grapple with defense challenges to jurors on the basis that inflammatory news reports had led them to form disqualifying opinions about the case (*United States v. Burr,* 25 F. Cas. 49 (D. Va. 1807) (No. 14,692g)). But the parallel development of new, more pervasive methods of communication and of the safeguards afforded to a criminal defendant have intensified the problem. The danger is not only that an entire community will become so agitated about a case that a jury or judge cannot function impartially—as may have been true, for example, in the trial of Bruno Hauptmann for the kidnapping of Charles Lindbergh's child (*State v. Hauptmann,* 115 N.J.L. 412, 180 A. 809 (1935)). There is also a risk that evidence whose admission at trial

would be grounds for mistrial or reversal will come into the hands of one or more jurors and will influence their judgment. This evidence might include such matters as information about a defendant's prior criminal record, about plea negotiations, about a confession unlawfully obtained, or about evidence illegally seized.

One possible approach to this problem is to reduce the hazards of such prejudgment to a minimum by the threat and imposition of direct sanctions against those publishing any material that may cause prejudgment to occur. This has long been the course followed in England and, to varying degrees, in other countries of the British Commonwealth. Any publisher or broadcaster who makes statements about a pending case that go beyond the bare bones of arrest and indictment and that are not limited to a fair account of proceedings in open court may be held in criminal contempt (and fined, imprisoned, or both) if those statements are found to have a reasonable tendency to interfere with the fair administration of justice. Even reports of pretrial judicial hearings are, under certain circumstances, within the ban.

For a number of reasons, this approach has been widely regarded as unacceptable in the United States. First, at least in general outline, it seems inconsistent with the protections afforded the freedoms of speech and of the press by the First Amendment to the Constitution, protections that have been held to confine the states as well as the federal government. Second, such comprehensive restrictions on speech and publication, even if constitutionally permissible, would appear to threaten many of the benefits to be obtained from independent investigation by the news media and from continuing public scrutiny of the entire law enforcement process. Finally, the restrictions may rest on assumptions about the effects of publicity that do not command a consensus and that have not been, and perhaps cannot be, empirically verified.

Measuring potential prejudice

Whether and to what extent the trier of fact may be prejudiced by information, misinformation, or opinion communicated outside the courtroom may be considered in several dimensions. First, how often does a case arise in which there is sufficient publicity to create any sort of problem? Most criminal proceedings receive little or no publicity; of those that do, many are resolved without a trial; and of those that are tried, many are disposed of by a judge sitting without a jury. But undisputed as these facts may be, substantial difficulties remain. Widely publicized cases, although few in relative terms, loom large when their absolute number is considered, and these cases, being the most visible, tend to contribute disproportionately to perceptions of the quality of American criminal justice. Moreover, it is far from clear that publicity causes difficulty only when a case goes to trial before a jury: the extent of publicity may be a factor, for example, in leading a defendant to accept a negotiated plea, and while judges may be immune to the effects of certain specific disclosures, they are unlikely to be impervious to widespread community sentiment surrounding a celebrated case.

A second series of questions focuses on those instances in which significant publicity has occurred and in which there is, or may be, a trial by jury. How probable is it in such instances that the publicity will prevent the jury from acting impartially? In part, the answer turns on the standard of impartiality: the greater the requirement of a truly open mind, the less likely it is that the requirement will be met. But in substantial part, the answer also turns on information that may be empirically ascertainable. When a case receives a great deal of publicity, is it still possible to impanel a qualified jury that has not been exposed to that publicity? For those who have been exposed, what is the significance (1) of the passage of time between the period of exposure and the trial; (2) of an explanation by counsel and the court of the proper role of the juror; and (3) of the juror's assurance that he can fulfill that role despite his exposure and despite any impressions he may have formed? How effective are efforts to protect jurors from exposure by isolating them during the trial or by warning them not to read or listen to reports of the case before reaching a verdict? Although certain arguments about the benefits and dangers of publicity may be unaffected by the answers to these questions, the questions are surely worth consideration.

To some extent, anecdotal answers to these questions have been offered on the basis of personal observation and experience. Predictably, these answers do not always jibe. One lawyer will assert that in a number of widely publicized cases she has found it virtually impossible to impanel a jury truly devoid of disqualifying prejudice. Another lawyer insists that he has never participated in a case in which a fully qualified jury could not be selected, even when the level of publicity was high. Reported cases are cited in which elaborate efforts to obtain an impartial jury have failed, in which jurors have not told the truth about their opinions or exposure to prejudicial information, or in which they have disregarded instructions not to read or listen to news reports about the case. In rebuttal, in-

stances are recounted in which juries have acquitted defendants in the face of widespread publicity heavily favoring the prosecution. And the debate continues.

On a more systematic level, a number of investigators have attempted to explore these questions through the use of survey techniques or carefully controlled experiments, but even these efforts have failed to resolve the issues. One study of public reaction to several highly publicized cases in a particular area concluded that although "other factors [such as social background and attitudes toward crime] may be associated with a potential juror's propensity to prejudge, pretrial information is easily the most serious cause" (Costantini and King, p. 38). However, this study did not consider the extent to which that prejudgment may have been based on inadmissible evidence or the opinions of others, nor did it undertake to assess the effect on prejudgment of the process of juror education and deliberation that occurs at a criminal trial. Other studies, based on the behavior of mock juries exposed to varying amounts of potentially prejudicial publicity, have varied both in design and result. There is, however, some support for the proposition that juror attitudes are affected by publicity outside the courtroom but that the effects may be substantially reduced by careful voir dire—preliminary examination of prospective jurors. Reviewing these studies, one observer concluded that "experiments to date indicate that for the most part juries are able to put aside extraneous information and base their decisions on the evidence" (Simon, p. 528). But the underlying data are sparse and far from determinative.

Given this state of knowledge, individual views about the appropriate measures to take are bound to be affected by subjective assumptions about human behavior and by the relative importance one attaches to the values at stake. Constitutional requirements and restrictions furnish guidance, as do past experiences reflected in actual cases and the results of empirical studies. But none of those sources is likely to provide specific answers to the questions presented by the hardest cases. Indeed, for many people the answers may hinge on the social and political climate in which the questions arise.

The evolution of safeguards and remedies

A landmark in the consideration of the problem of publicity is *Marshall v. United States*, 360 U.S. 310 (1959). Prior to that decision, the question of whether publicity surrounding a case affected the fairness of a criminal trial had arisen on a number of occasions, as in *Reynolds v. United States*, 98 U.S. 145 (1878); *Mattox v. United States*, 146 U.S. 140 (1892); and the Lindbergh kidnapping case, which the Supreme Court refused to review. But in *Marshall*, the Court squarely held for the first time that a defendant was entitled to a new trial as a result of such publicity. In the course of the original trial, seven jurors had admitted seeing newspaper articles reporting the defendant's prior criminal record. Given the prejudicial character of the information, the Court decided that the juror's assurances of continued impartiality were not determinative.

The *Marshall* decision was followed by several notable instances in which the Court held that, in light of the publicity or other circumstances attending the proceedings, a criminal conviction violated the defendant's constitutional right to a fair trial. Thus, in *Irvin*, the Court ruled unanimously that a state criminal defendant was entitled to a new trial, citing such factors as the massive publicity and resulting sentiment in the community; specific pretrial disclosures of information and opinion by the police and prosecution; the large number of potential jurors who had to be excused because of prejudgments about the case; and the fact that of the twelve jurors and two alternates eventually seated, eight admitted to an opinion that the defendant was guilty.

Shortly after *Irvin*, in one of two decisions that may constitute a high-water mark of Supreme Court response to the problem, the Court reversed a state conviction in *Rideau v. Louisiana*, 373 U.S. 723 (1963). In that case, a televised interview in which the defendant admitted the crime to a local sheriff was broadcast several times and viewed by a substantial percentage of the community, including at least three members of the jury ultimately impaneled. The Supreme Court, in a 7–2 decision, held that under these circumstances the defendant's motion for transfer of the trial to a different venue should have been granted. In a departure from its detailed examination of the juror's responses to questions in *Irvin*, the Court stated that it did not hesitate to reach its result "without pausing to examine a particularized transcript of the voir dire [preliminary] examination of the members of the jury" (*Rideau*, 727).

Public concern with the problem of publicity in criminal cases was heightened and sharply focused by the assassination of President John F. Kennedy and the slaying of Lee Harvey Oswald in November 1963. Indeed, the investigative commission headed by Chief Justice Earl Warren saw these events as "a dramatic affirmation of the need for steps to bring about a proper balance between the right of the public to be kept informed and the right of the individual

to a fair and impartial trial" (President's Commission, p. 242). In the wake of this recommendation, several press and bar organizations established committees to study the issues and prepare a report.

All of these events may have contributed to both the result and the formulation of the Supreme Court's 8–1 decision requiring a new trial for Dr. Samuel Sheppard in *Sheppard v. Maxwell*, 384 U.S. 333 (1966). After holding that Sheppard, charged with his wife's murder, had been deprived of a fair trial by a combination of massive, pervasive, and prejudicial publicity and of many disruptive circumstances attending the trial itself, the Court laid out in some detail the courses of action it thought necessary for courts to take in such cases to "ensure that the balance is never weighed against the accused" (*Sheppard*, 362). These included—in addition to such remedial measures as continuance and change of venue—rules governing disclosures by attorneys, other participants, enforcement officers, and court employees. These rules would "protect [judicial] processes from outside interferences" by "prevent[ing] the prejudice at its inception" (*Sheppard*, 363).

The *Sheppard* case had been preceded by *Estes v. Texas*, 381 U.S. 532 (1965), a 5–4 decision holding that the televising of Estes's criminal trial over his objection violated his constitutional right to a fair trial; it was followed by several bar association reports, including one by an American Bar Association advisory committee that contained detailed recommendations building on the Court's suggestions in *Sheppard* itself. In the course of debate, many of these recommendations were challenged by representatives of the communications media, but the recommendations were approved by the American Bar Association House of Delegates in 1968 (American Bar Association, 1968).

These and related developments in the mid-1960s were succeeded by a period of reexamination in which many of the recommendations that had been made and actions that had been taken were subjected to scrutiny, criticism, qualification, and, in some instances, rejection. The Watergate scandal, in which the media played a very different role from that played in the trials of Irvin, Rideau, and Sheppard or in the events surrounding the assassination of President Kennedy, doubtless contributed to this reexamination. Adding to it was the different character of many of the most visible criminal trials of the late 1960s and early 1970s, which involved criminal proceedings against those who, in a variety of ways, were protesting against social conditions in the United States and government policies overseas. Finally, the reexamination was spurred on by the tendency of many trial judges throughout the country to impose restraints and take actions that went well beyond those contemplated by the Supreme Court in *Sheppard* or by the various studies that followed it.

During this period, the Supreme Court itself pulled back from the implications of some of its prior decisions and explored a number of related issues. Thus, in *Murphy v. Florida*, 421 U.S. 794 (1975), the Court explained that its *Marshall* decision established not a constitutional rule but only a rule for the administration of justice in the federal courts, and that the Constitution did not require a juror to be uninformed but only "indifferent" in the sense of being able to lay aside any preconceived notions. In *Chandler v. Florida*, 449 U.S. 560 (1981), the Court all but overruled *Estes*, holding that the broadcasting or photographing of a criminal trial did not necessarily violate the rights of a nonconsenting defendant.

Moreover, in an important line of decisions, the Court declared the virtually absolute right of the news media to report what occurs in open court or what is part of the public record, and established a strong presumption against the punishment of other reporting of information about criminal proceedings, even if the information is regarded by law as confidential (*Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979)). Indeed, several members of the Court indicated in *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976) that no matter how great the threat to the fairness of a trial, a judicial order to the press not to publish certain information—a prior restraint—might never be valid.

Finally, although the Supreme Court in *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979) declined to hold that the closure of a pretrial hearing with the defendant's consent violated either the First or the Sixth Amendment, it ruled one year later that only a proper finding of an overriding interest could warrant the closure of all or part of a criminal trial itself, in light of the newly declared First Amendment right of the press and public to attend such a proceeding (*Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)).

Also during this period, some state and lower federal courts expressed their concern over aspects of what has often been described as the "fair trial–free press" problem, especially the propriety of restrictions on disclosures by attorneys and others participating in the criminal process. Thus, several courts offered differing views on the proper interpretation or validity of such restrictions when incorporated in rules of conduct or specific orders (*Hirschkop v. Snead*, 594 F.2d 356 (4th Cir. 1979); *Chicago Council of Lawyers*