

THINKING SERIOUSLY ABOUT CRIME: Some models of Criminology

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Crime is a subject of perennial interest, and in recent years it has once again become a topic of major public debate. We are likely to encounter the ‘conversation about crime’ wherever we turn – in conversations at a bus stop, or in the pub, reading the *News of the World* or *The Guardian*, or listening to a phone-in on the radio. These conversations will not only reflect the concern with what is commonly perceived as the ever-rising rate of crime, our feelings about what this means, and what ought to be done about it. They will also draw on a range of implicit explanations as to what causes crime, and a range of implications as to how to deal with it, even though we are not aware that we are using criminological theories and explanations of crime at all.

But there are important differences between ‘popular theories’ of crime and criminology. In particular, the latter:

- Attempts to ground itself in an empirical knowledge of the patterns, incidences and variations in criminal behaviour, drawing on more systematic information;
- Attempts to build a theoretical position systematically, so that the different parts of the theory fit coherently, ironing out inconsistencies and contradictions of position;
- Attempts to be as comprehensive as it can – dealing with the different aspects and drawing these into a systematic account.

This does not mean that it is only criminologists who are capable of ‘*thinking seriously about crime*’. Popular or lay discussions of crime may be well-ordered and thoughtful, and most criminological theories are better at explaining some aspects, or types, of crime than others.

In more popular discussions, we can often identify the points where people switch theories in mid-argument. For example, they sometimes define vandalism as a ‘wilful act of damage’ (implying conscious intent), but go on in the next breath to *explain* vandalism as a product of the vandal’s poor home background (implying that the behaviour is determined). Another common ‘switch’ is between the explanation of crime and the policy conclusions that are drawn. For example, if it is true that vandalism is the product of poor family and home circumstances, then is it logical to propose that vandals should be harshly punished for acts which are determined by circumstances? If the principal cause of vandalism is ‘bad home conditions’, we should logically ‘treat’ the circumstances, not the individual vandal, if we want to get to the root of the problem.

Using criminological theories can be equally problematic. It is not uncommon for theories of crime to adopt different explanations for different types of crime and offender. Thus, white collar crime is theorised differently from working class petty property crime.

Indeed, the variability of what is defined as crime has led some criminologists to question the search for a single, all-embracing theory which will explain all criminal activity. What is considered to be crime differs between and within societies over time. For example, the sale of alcohol was a legitimate activity in the USA at the turn of the century, was effectively criminalised during the Prohibition period, and is once more legitimate. Throughout this period the activity remained the same, it was the legal status of the sale of alcohol that changed. It may well be that we should not require a single theory, no matter how systematic in form, to account for *all* the many different types of crime within a single explanatory framework. Indeed, criminological theories differ precisely as to whether or not they assume a *single* explanation of crime in general to be either conceivable or useful.

In this article I shall introduce and consider six of the major paradigms within criminological theory. I shall show how some theories explain particular types of crime more adequately than others – and need not necessarily be faulted on this ground alone. The proposition that, though crime-in-general is universal, the types and patterns of crime are specific to particular societies at particular times is central to some of the theories we review. The test of this *general* applicability may not be relevant for judging their value as it would for theories, for example, on a set of universal psychological or physiological features.

Each of the paradigms I shall consider has certain features or elements in common. For example, they all have a particular view of *human nature* or of *social order*, even though this may not be especially stated. In examining the six paradigms, then, I shall ask a number of questions about each one:

1. What is their view of *human nature* in general?
2. What picture do they present of the *social order* which crime challenges, abrogates, or deviates from?
3. Do they define crime as a *natural, social* or *legal* phenomenon?
4. What is the *extent* and *distribution* of crime – is it general and *normal* in all societies, or is crime a marginal and exceptional activity? Do all people commit crime, or are there particular groups or individuals who engage in criminal activity?
5. What are the principal *causes* of crime?
6. What *policy deductions* so they draw as to how crime should be dealt with?

I shall ask these six questions of each of the major paradigms:

- Classicism
- Positivism
- Conservatism
- Strain Theory
- New Deviancy Theory
- Marxism

which we examine in this article. The way in which each paradigm answers these questions will enable us to distinguish clearly between them.

It is important to remember that we are using these questions as a device for organising our thoughts about crime. By posing them as dichotomies (is the view of human nature a voluntaristic or deterministic one? Is the view of social order based on consensus or coercion?), we are deliberately applying the question to draw out and emphasise the differences between paradigms. Posing the question as dichotomies does not necessarily mean that each theory wholly answers the questions with one alternative or the other.

It is also worth noting that the six paradigms are not of the same kind. Conservatism, for example, has been generally ignored in academic criminology, being regarded largely as a pragmatic and unelaborated way of thinking. The paradigms also have different historical developments: Classicism dates back to the eighteenth century, while interest and work in New Deviancy Theory stems from the 1960s.

In this article, paradigms are presented in ideal-typical form. Just as I have emphasised differences between the paradigms, so I have minimised the variety of position *within* six theoretical models. Positivism, for example, contains many other strands besides that of 'individual positivism', on which this article focuses. Although the paradigms are presented sequentially, this does not imply that they have been developed in a series of discrete historical stages, from Classicism to Marxism. Nor does it suggest that they are developed in a unilinear fashion. They are *competing* paradigms, each with its own intellectual history and each flourishing, with powerful support and a substantial body of research work, at the present time.

The Dichotomies

A. Human Nature: voluntarism versus determinism

At the point of committing a crime, is the offender perceived as acting out of free-will (*voluntarism*) or is she/he seen as propelled by forces beyond her or his control (*determinism*)? This can be conceived of as a question of (a) whether the act was committed wilfully as part of a process of reasoning (i.e. was it a rational act, whether or not correct in its reasoning), or (b) whether it was non-rational, invoking determining factors outside rational control (such factors can be either genetically or environmentally determined).

B. Social Order: consensus or coercion

Theories of crime are the other side of the coin to theories of order. All criminological theory, at least implicitly, involve a theory of social order. Order in our society can be understood as based either on the *consent* of the vast majority (although a minority may be coerced by this consent), or largely by the *coercion* – subtle or blatant – of the majority by a powerful minority.

C. *Definition of Crime: legal versus social*

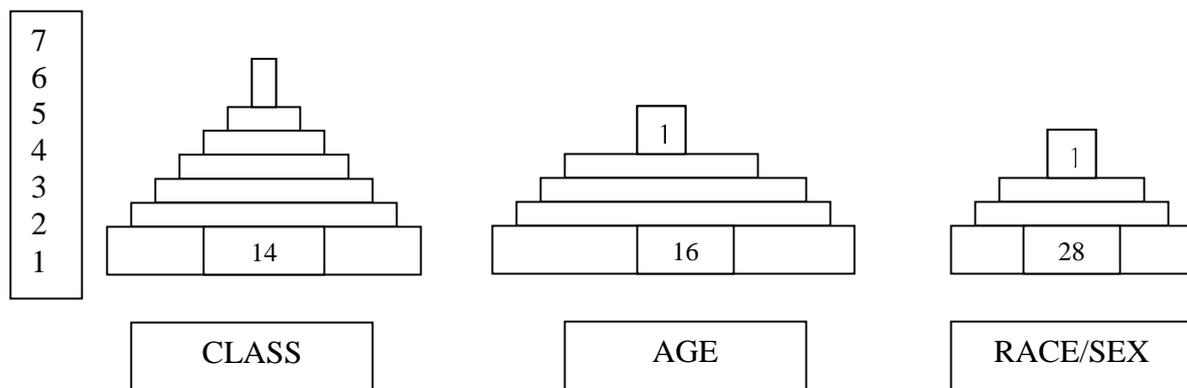
The definition of crime may be seen as obvious and taken-for-granted: it is behaviour or activities which break the *legal* code. Alternatively it may be argued that a more appropriate measure would be behaviour or activities that offend the *social* code of a particular community. The legal and social codes do not always coincide and can often conflict. One might argue that tax evasion is illegal only on paper; in reality it is a normal activity indulged in by a large part of the population. Similarly, vandalism may be seen as a crime simply by virtue of the fact of it being illegal, or else it may be seen as part and parcel of the spirited behaviour of young adolescent boys.

D. *The Extent and Distribution of Crime: limited versus extensive*

Is crime, as the official statistics suggest, a limited phenomenon committed by a small number of people, or are the statistics misleading in that law-breaking is an extensive phenomenon engaged in by a large proportion of the population? All criminological theories start from this key problem, although, as we shall see, they differ markedly in their use and interpretation of official crime statistics.

In Figure 1, I have constructed a series of Aztec pyramids on class, age, race and sex. As can be seen, the social characteristics which greatly increase the risk of incarceration are: to be lower working class rather than middle class, young rather than old, black rather than white, and male rather than female. Thus, to take an example, whereas on an average day in 1960 only one in 450 Americans were in prison, one is 26 black men aged between 25 and 34 were behind bars. Serious crime, according to the statistics, is a minority phenomenon within which certain social categories who are most marginal to society are vastly over represented. We have used American statistics here because comparable British figures on race are non-existent and, on class, extremely limited (although one British study, interestingly, indicates that the likelihood of a labourer going to prison in Britain is identical to that in the USA – see Banks, 1978).

Figure 1: Odds of going to prison by class, age, race, and sex



7	Professional		
6	Managerial		
5	Clerical	65+	
4	Craftsmen	45-64	White female
3	Operatives	35-44	Black female
2	Service workers	25-34	White male
1	Labourers	20-24	Black male

[Source: American data derived from Wright, 1973]

NOTE: A labourer is fourteen times more likely to go to prison than a professional; a 20-24 year old is sixteen times more likely than a 65 year old, and a black male is twenty-eight times more likely than a white female. The prisoner is thus seen to be on the fringe of the economy, unemployed, or a casual labourer, to have missed out on the educational system, to belong to a minority group.

E. *The Causes of Crime: individual versus society*

The causes of crime may either be located primarily within the individual, whether in his or her personality, biological make-up or powers of reasoning, or be seen as essentially the product of the wider society within which the individual exists. For example, rape might be viewed either as a product of a gross genetically-determined personality disorder, or as a mode of conduct which is a direct product of the sexist nature of a patriarchal society, and the way in which sexual encounters are usually understood and conducted by men.

F. *Policy Deductions: punishment versus treatment*

Such a series of propositions regarding the nature of the criminal, the way social order is to be maintained, the definition and extent of crime and its root causes has, of course, implications for public policy. If, for instance, we view crime as a voluntary act of the individual, we would tend towards a policy of *punishing* him or her, whereas, if she/he is seen as acting under the compulsion of individual or social forces, the *treatment* of the criminal might seem to be more appropriate.

The Six Paradigms

1. CLASSICISM

Classicist theories of crime and punishment developed out of the philosophy of the Enlightenment which swept through Europe in the second half of the eighteenth century. Within a hundred years most of the legal and penal systems of administration in Europe had been thoroughly remodelled in the light of classicist principles. Enlightenment thinkers were reacting strongly against the arbitrary systems of justice which prevailed

during the *ancien régime*, and the severe and ‘barbarous’ codes of punishment by which the law was upheld in the period of feudalism and the absolutist monarchies. The rise of Classicism is closely associated with the emergence of the free market and the beginnings of agrarian capitalism, and is best thought of as the philosophical outlook of the emerging bourgeoisie – the class that was rising to prominence in this new social order. The members of the new rising class not only sought to secure a privileged position for themselves in society, but aspired to re-fashion society itself along new lines. They demanded political rights hitherto denied them – they were political as well as legal reformers in England, at the forefront of the movement to extend the franchise to the new propertied classes. They also demanded a legal system that would defend their interests and protect their ‘rights and liberties’ against the arbitrary power hitherto wielded exclusively by the aristocratic landed classes and the Crown. In England, they were the principal inheritors of the English Revolution of 1644, which limited the prerogative of the monarchy and, even more, of the ‘Glorious Settlement’ of 1688 which settled the country under a constitutional monarchy and undermined the last vestiges of feudal power and authority.

The legal system they proposed had, at its centre, the concept of the ‘free’ and legal contract between free and equal individuals. ‘Contract’ for them was a practical necessity, for it was the relation which allowed men to hire the labour of others, to sell goods and acquire property, not according to rank and statute, but according only to the dictates of a free market. Modern civil law, which revolves around the concept of the contract, was first elaborated under these auspices. But ‘contract’ was also a grand conception of how society itself arose and how individuals were bound to one another within it, and therefore how their conduct ought to be regulated (i.e. the foundations of a new system of law).

Enlightenment philosophy centres on the ‘sovereign individual’ individuals were conceived as free and rational agents, capable of defining their own self-interests and of choosing rationally to temper their actions according to the dictates of reason, a faculty lodged in each individual. They therefore thought of society, not as something sovereign which pre-dated the individual, but as something which individuals had contracted to establish for their own individual and mutual benefit. They expressed their legal claims in terms of the ‘rights and liberties of the individual’ – and sought to limit the power and prerogative of the State (which, in previous times, had been powerfully identified with aristocracy and Crown) to the defence of the rights, liberties and property, as well as the safety and security, of the individual. The preoccupation with individual rights and duties, and with the limited conception of the State, together with the centrality of property and the market, make Enlightenment Classicism the source of many ideas and conceptions that were subsequently to be elaborated within liberal political theory and constitutional doctrine. Their influence has been carried into our own times within the ‘liberal tradition’. Individuals were therefore ‘free’ to act according to the dictates of Reason and self-interest, except insofar as their actions limited the freedom of other, equally free, citizens. They should be rewarded proportionately to their energy, skill and efforts – and, conversely, punished proportionately, according to the social harm which they inflicted on other individuals.

The rights, liberties and freedoms which had previously belonged to the very few by virtue of birth, rank and title, were now claimed by the rising class. But they laid claim to them, not in their own name, but as a 'universal' right. The American Declaration of Rights, a classic Enlightenment constitutional document, is entirely cast in this language of 'universal rights' – though there were many classes of persons (for example, the labouring poor and women) to whom, in fact, they did not conceive that they could apply. They were opposed to the arbitrary administration of justice in earlier times, which depended on the discretions and exceptions which 'great men' could make according to personal whim or inclination. They wanted, instead, a *universal* system of justice that could apply equally to all men. They wanted it to be a 'rational' system, derived not from the jumble of precedent and custom and tradition, but from clearly-defined rational first principles, and set out in a systematic form. Its operations should be certain and predictable, so that men could calculate the *benefits* and *costs* of wrong-doing as they did the profit and loss of a financial transaction. They wished to abolish the irrational discrepancy between petty crimes, punished by the terrible engines of capital statute and torture, and devised in their place a scale of punishment proportional to the severity of the crime. Just as men were governed by Reason, so too ought the systems of government, legislation and law by which their common conduct was governed. The application of Reason, calculation and predictability to matters of legislation and law made them the forerunners of modern systems of administration.

The most celebrated Classicist theorist is the eighteenth century Italian writer, Cesare Beccaria; his work was enormously influential on Enlightenment thinkers, including English legal reformers like John Howard, whose writings led to the construction of new penal regimes based on imprisonment, Romilly, who led the attack on the capital statutes, and the founder of Utilitarianism and leading figure among the 'philosophical radicals', Jeremy Bentham. The first chapter of Beccaria's classic work, 'An Essay on Crimes and Punishments', serves well to introduce us to Classicist principles in criminological theory:

“Laws are the conditions, under which men, naturally independent, united themselves in society. Weary of living in a continual state of war, and of enjoying a liberty which became of little value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security. The sum of all these portions of the liberty of each individual constituted the sovereignty of a nation; and was deposited in the hands of the sovereign, as the lawful administrator. But it was not sufficient only to establish this deposit; it was also necessary to defend it from the usurpation of each individual, who would always endeavour not only to take away from the mass his own portion, but to encroach on that of others. Some motives, therefore, that strike the senses, were necessary to prevent the despotism of each individual from plunging society into its former chaos. Such motives are the punishments established against the transgressors of the laws. I say, that motives of this kind are necessary; because experience shows that the multitude adopt no established principle of conduct; and because society is prevented from approaching to that dissolution (to which,

as well as all other parts of the physical and moral world, it naturally tends), only by motives that are the immediate objects of sense, and which, being continually presented to the mind, are sufficient to counter-balance the effect of the passions of the individual, which oppose the general good. Neither the power of eloquence nor the sublimest truths are sufficient to restrain, for any length of time, those passions which are excited by the lively impressions of present objects.” (Beccaria, 1801, pp.5-6)

This passage is based on several fundamental premises of the Classicist school: the ‘natural independence’ and sovereignty of the individual; the binding together in society under the ‘social contract’, which yielded power to the monarch or State only in return for the protection of rights and the security of person and property; the ‘associationist’ psychology of human motivations which underpinned their legal and social theories; the need for law to prevent the pursuit of naked self-interest from plunging society into a competitive struggle – a ‘war of all against all’, as the political philosopher Hobbes put it. Beccaria’s leading disciple in England was Bentham, who applied the rational calculus to his Utilitarian philosophy extensively to questions of law and punishment. Bentham sought to reform the archaic English system of justice according to rational principles, systematically applied. The legal code should be formalised, punishment made to bear directly on the individual, predictable and proportional to the offence. He reduced the complex issues concerning criminal motivation to the simple terms of his ‘pleasure/pain’ continuum. Punishment should be rational and impersonal. Bentham said of Beccaria that his was the ‘first of any account which is uniformly censorial’.

Classicist thinking has been immensely influential on legal and criminological reasoning over the past two centuries; many modern ideas about crime – for example, the centrality in English law of the concept of individual responsibility – can be traced to Classicist roots. It was rarely, however, anywhere put into practice in its pure form. Its implementation within the reform of both the criminal law and the administration of justice was more piecemeal and governed by pragmatic considerations than the pure Classicists would have wanted. Classicism was subsequently further modified by the introduction within its framework of some principles drawn from Positivism, the second major paradigm we shall examine. For example, a wider number of groups – children, the insane and feeble-minded – were recognised as being incapable of full rational responsibility for their actions, and the law was required to take some circumstantial factors and influences into account, modifying the pure Classicist doctrine of ‘free will’. The resulting amalgam of Classicism and Positivism – often labelled ‘neo-Classicism’ – has, however, constituted the dominant criminological paradigm in Anglo-Saxon legal thought and practice, and is the main source of the eclectic synthesis which, as Radzinowicz and others have observed, has dominated British and North American criminology ever since.

What is interesting about the Classicist paradigm is that it has the largest history of any contemporary criminological theory but still continues to be a major influence both on institutions of social control and in controversies in criminology. For example, a major debate within the last decade has been over the necessity of re-establishing Classicist

principles in terms of adult offenders (eg, N Morris, 1974; Fogel, 1975) and in the juvenile courts (eg, A Morris, 1978).

A. *Human Nature*

“Although free will may not exist perfectly, the criminal law is largely based upon its presumed vitality and forms the only foundation for penal sanctions.” (Fogel, 1975, p.183)

Within Classicism, human nature is conceived as rational, free and governed by self-interest. Human beings are considered ‘equal’ in that they are all endowed with free will and with the faculty of Reason. When cast in this universal framework, the theory disclaims distinctions of birth and aristocratic lineage, making its claims in the name of Universal Man. In terms of its origins, this fitted well with the rising ambitions and fortunes of the emergent bourgeoisie who most fiercely espoused its principles. In practice, significant sections of the population – women, the labouring poor, the insane (even, at times, the great majority) – have not been assumed to meet the criteria of the full citizenship accorded only to the fully rational individual. Such exceptions are justified on the grounds that they are either pre-rational (eg, children and juveniles) or *sub*-rational (the aged and infirm). The precise constituency of those excluded from the category of rational equals varies historically. The issue was and continues to be politically significant, since it related to the question of how far the reform of the franchise should go in extending full citizenship to the un-enfranchised.

There is a tension in the classicist conception of human nature between the rational self and the pursuit of self-interest. Using self-interest as a basic reference point in the analysis of human motivation gave the theory a firm, realistic – perhaps even materialistic – foundation: ‘society’ arose because the self-interest of individuals in the security of life and property over-rode the competitive drive to gain maximum advantage – there was no need to posit some wider ‘social’ instinct or ideal. But, in order that individuals, all seeking to realise their interests, did not bring society to ruin, self-interest had to be tempered by Reason, which was something more than mere ‘rational calculation’.. this tension was never adequately resolved. Nevertheless, writers like Bentham believed that the motivation to commit or not to commit a crime for personal advantage could be so weighted – provided punishment was sufficiently severe and certain – that ‘choosing to obey the law’ would come to be seen as the most rational of the available choices. Punishment – or, as he called it, the ‘science of pain’ – should be so severe that the ‘benefits of crime were far outweighed by its ‘costs’. Classicists are little concerned with the complexities of human motivation. They believed motivations could be calculated and influenced by external, objective arrangements.

B. *Social Order*

In the Classicist conception, social order is based on the Social Contract. In their view, society did not pre-date the individual. Instead, individuals rationally calculated that they could best secure their mutual advantage by ‘contracting together’ to establish a

sovereign state or power. In the face of the threat from external conquest, or the ‘war of all against all’, they were prepared to sign away some part of their sovereign liberties to ‘the Sovereign’, in return (the basis of *the contract*) for the protection of person and property against crime and usurpation. But they believed that this sovereign power, the State, should play a limited role – accorded only that power necessary to protect individuals’ rights and liberties. Coercion by the State should be limited to this minimum, based on a consensus between rational citizens. The exercise of power by the State is therefore justified only insofar as it satisfies the interests of its citizens by facilitating and maintaining justice, that is, by protecting the just rewards of labour and punishing justly those who offended against this order. In a modified form, this conception of a social order based on the Social Contract continues to be influential in contemporary thought and, together with the emphasis on the individual’s rights and civil liberties and the doctrine of the limited State (itself constrained by the ‘rule of law’) forms the cornerstones of modern legal and constitutional traditions within the Liberal perspective.

The Classicist conception of social order assumed, of course, the formal equality of status between all individuals who merited the honour of full citizenship. However, the emphasis on private property, on the just rewards for entrepreneurial skill and the ‘right’ to accumulate wealth, produced an actual social structure in which the basis of rights and benefits was very unequally distributed throughout society. This formal universalism underpinned the notion that ‘all men’ should be equal under the ‘rule of law’. Classicism, however, failed both in theory and practice to square the significant divergences between *formal* and *substantive* equality.

The rights which the law protected stemmed from and, ultimately, reverted to the individual citizens – the foundation stone of social order. Consent, once given, could also be withdrawn (though Classicists differ as to the conditions under which the overthrow of the sovereign or State is justified). In this sense, the bourgeois classes who subscribed to ‘social contract’ doctrine remained faithful to the Whig revolutionary tradition that had overthrown the absolute monarchy in the 1640s – though they were rapidly gaining ascendancy in the new social order which emerged in the wake of the Hanoverian Settlement.

C. *Definition of Crime*

Crime is defined as that which violates the Social Contract: in this definition, behaviour which is detrimental, not to the State as such, but to the personal safety and property of those individuals in society whose decision to ‘contract in’ founded the authority of the State. This, and not the question of whether such behaviour is widespread or ‘normal’, is the main criterion. Thus, for Social Contract theorists, tax evasion might be widespread and generally condoned as ‘normal’, but it would be necessary to legislate against it because it is anti-social and against social justice as they defined it. For them, ‘legal’ rather than ‘natural’ definitions are paramount in the definition of crime. They do not, therefore, subscribe to relativist conceptions of crime. They concentrate, not on circumstances and influences, but on the criminal *act* itself. If illegal, judged as the law

defines it in the light of the Social Contract, then the act should be punished proportionally – with unwavering certainty, severity and impartiality. Neither the arbitrary exercise of terror nor the discretionary application of justice – so much a feature of judicial administration under the *ancien régime*, or discretionary justice as practised in the modern courts – are acceptable to them.

The law, however, though certain and predictable, should not be involved in the control of any activities which do not harm others, do not contradict their self-interest or threaten the Social Contract. From this stems the long tradition in Anglo-Saxon law that, far from prescribing what the individual can and cannot do, it allows citizens to be free to do anything they like, provided only that it is not proscribed by law. Liberty was sovereign: subject only to the law's constraints. Thus the crimes which are 'without identifiable victims' (eg, prostitution, as it is viewed from their highly masculine-oriented world). Law and morality should be regarded as separate spheres: the one regulating public concerns, the sphere of the social contract; the other, the proper sphere of individual judgement and private reasoning. The civilised State is that which defines the minimal number of activities as crimes, and which permits moral diversity and individual variation – provided only that the Social Contract is protected.

D. The Extent and Distribution of Crime

Crime is the infringement of a *legal code*, not of a behavioural or social norm. the only acceptable method of ascertaining whether a particular act is, in fact, 'criminal' is *within* the legal process – that is, by 'due process of law'. 'Due process' was a founding conception of Classicism because it preserved the rights of an ascendant class against the arbitrary exercise of justice and coercion by the State. Provided 'due process' is observed, and the certainty of detection improved (Classicists strongly favour a regular and improved police), the criminal statistics can be taken as an accurate guide to the true extent of criminality in a society. As Paul Tappan forcefully puts it:

“The behavior prohibited has been considered significantly in derogation of group welfare by deliberative and representative assembly, formally constituted for the purpose of establishing such norms; nowhere else in the field of social control is there directed a comparable rational effort to elaborate standards conforming to the predominant needs, desires and interests of the community ...

Adjudicated offenders represent the closest possible approximation to those who have in fact violated the law, carefully selected by the sieving of the due process of the law; no other province of social control attempts to ascertain the breach of norms with such rigor and precision.” (Tappan, 1970, p.47)

This process of adjudication by due legal procedures represents the judgement by the court, not only as to whether in fact the act was committed by an individual, but – of crucial importance to Classicism – whether the individual intended to commit the act, whether the accused was in his or her right mind (*mens rea*) and could thus be held responsible for his or her actions as a rational individual.

E. *Causes of Crime*

In the Classicist paradigm, the whole conception of the ‘causes of crime’ relates to the question of rational motivation. Within the consensual majority, where Reason and self-interest are in a proper balance and the *costs* of crime clearly outweigh the *benefits*, no one should ideally be tempted to commit crime since, by definition, this would be an *irrational* calculation. But for the labouring poor of the nineteenth century, for example, many instances could be conceived where *benefits* were greater than *costs*, and crime was the result of a rational calculation – though harmful to the Social Contract. For this reason, punishment is at the centre of the Classicist conception of justice: through legislation and the reform of the penal regimes, punishment must be made so strict that the individual would be deterred from committing crime again.

To this rational calculus, significant exceptions are made, along the continuum of Reason. Rationality in its full sense – and hence full responsibility – could not be present where Reason is impaired (eg, insanity) or where no ‘intent’ can be shown (accident). Somewhat against the main thrust of this thinking, certain marginal exceptions through mitigating circumstances can also be allowed as marginal excused (eg, under duress or provocation). Even so, they are attributed to errors, or absence, of Reason, rather than to the positive force of circumstances. The source of criminality is thus located within the rational, ‘reasoning’ individual.

Nevertheless, unsatisfactory laws, or a legal system lacking clear principles, can create crimes which should never be labelled as such, and unjust laws or inequitable punishments can exacerbate the extent of crime. The systematisation and proportionality of law and punishment – the reforms which Classicists champion – are supported as much for these as for more strictly ‘humanitarian’ reasons.

F. *Policy Deductions*

Principles guiding the decision to imprison would be these:

- A. *Parsimony*: the least restrictive (punitive) sanction necessary to achieve defined social purposes should be imposed;
- B. *Dangerousness*: protection of future criminality should be rejected as a base for determining that the convicted criminal should be imprisoned;
- C. *Desert*: no sanction should be imposed greater than that which is ‘deserved’ by the last crime, or series of crimes, for which the offender is being sentenced (N Morris, 1974, p.xi).

“Here we will suggest that the law should deal only with a narrow aspect of the individual, that is, his criminal act or acts. We will urge that the law be applied uniformly to all offenders. We will spell out our principles of restraint, urging that criminal sanctions be imposed only when other remedies have proved inadequate.

The whole person is not the concern of the law. Whenever the law considers the whole person it is more likely that it considers factors irrelevant to the purpose of

delivering punishment. The other factors, by and large, have been and will certainly continue to be characteristics related to influence, power, wealth, and class. They will not be factors related to the needs or the treatment potentialities of the defendant. (American Friends Service Committee, 1971, pp.146-7)

The central focus of Classicist criminal policy is the criminal act itself. Criminals must 'choose' within the certain knowledge of detection – hence the requirement of a modernised and regular police force. Punishment must bear down directly on the responsibilities and calculations of the individual. Since the purpose of punishment is *not* to inflict arbitrary pain, or to make public retribution, but so to arrange things as to make obeying the law the most rational of choices, punishment must be made proportional to the actual social harm it causes, and limited to only that required to deter further criminal acts. Previous convictions of the actor are to be judged irrelevant to the particular act being judged by judicial process, since he or she must be punished only in relation to the specific action for which an accusation has been laid. The notion of using punishment to make a *general* example is anathema to classicism: the process must bear directly on the individual and the act. General deterrence puts the principle of social order (a subordinate or derived principle) *above* that of justice to the individual (the sovereign or founding principle). Classicism is, of course, concerned to preserve the Social Contract: but, it argued, the most effective way of doing this is through the resolute pursuit of individual justice. Within 'due process', there should be a strict defence of the individual's legal rights – Classicism strongly defends the 'presumption of innocence', for example. This concern for 'due judicial process' extends to the proportionate penalties in sentencing. Bentham hoped for a strict 'economy' of punishment – penalties and sentences strictly proportional to the offence. Thus modern neo-Classicists strongly favour a fixed 'tariff system' of sentencing, as against the more discretionary system which prevails in, for example, English and American courts at this moment.

“We submit that many distortions and corruptions of justice – such as the discriminatory use of penal sanctions and the use of the criminal justice system to promote conformity and control classes of person – depend upon the existence of wide margins of discretionary power in the hands of police, district attorneys, judges, correctional administrators, parole boards, and parole agents. Therefore, discretion is at the core of the problem.” (American Friends Service committee, 1971, p.124)

According to the principles of legal equality, crimes should be judged by a jury of one's peers – that is, by other rational and equal individuals. Judges should be guided by a clear and systematic legal code, and sentencing should be limited to applying a prior, agreed and fixed set of penalties – a tariff system – equally across the board allowing only minor adjustments and discretions for 'mitigating circumstances'. Thus:

“We propose to inform the convict at the outset of the penalties for his crime. We would replace the present law with a series of determinate sentences, keyed to the present felony classification system. For each felony class, a fixed sentence is proposed, with a narrow range in mitigation or aggravation allowed around that

definite figure to permit adjustments either for the facts of a particular case or for the seriousness of the offense as compared to others in the same class. In effect, then, a relatively small range of allowable prison terms would be associated with each offense. Whenever the court found imprisonment to be the appropriate disposition, it would select a fixed sentence from within that range and impose it. When a convicted person left the courtroom, he would know his actual sentence to be served less good time.” (Fogel, 1975, p.254)

Neither inappropriate leniency nor undue harshness are permissible in the Classicist economy of punishment. The first fails to achieve its effect; the latter introduces a personal and emotional element into a system which should be rational and impartial. Punishment should therefore be strictly applied, irrespective of the status or background of the accused, but also applied efficiently and effectively. Bentham, indeed, hoped to impose within the new penal regimes a very strict criterion of efficiency and cost-accounting: he was, for example, in favour of prisons which ‘paid’, but of regular public inspection as well. Punishment should be seen to be ‘just’ – but it should also be strict, regular and disciplined. Justice should be doled out without delay and to the maximum of offenders the police can apprehend. The law is an instrument, not only of control, but also of education. And ‘educating the public’ into the calculus of law-abidingness requires that irregularities, due to either lack of detection or evasion of penalties or irrational prison regimes, should be eliminated. Any deviation from strict disciplinary uniformity simply encourages crime, either through ineffective control or by propagating injustices which cause citizens to question the justice and impartiality of the Social Contract. In particular, modern Classicists have directed their wrath against the prison regime on two counts: that prison life does not embody principles of justice and/or that it attempts to treat the individual rather than to punish him. David Fogel notes this in two of the central parts in his demands for justice:

“The entire process of the criminal law must be played out in a milieu of justice. Justice-as-fairness represents the superordinate goal of all agencies of the criminal law.

When correction becomes mired in the dismal swamp of preaching, exhorting, and treating (‘resocialization’) it becomes dysfunctional as an agency of justice. Correctional agencies should engage prisoners as the law otherwise dictates – as responsible, volitional and aspiring human beings.” (Fogel, 1975, p.184)

Thus, N Morris notes sadly: “The prison should, were the world not full of paradox, be a very paradigm of the rule of law” (1974, p.21). Instead, due process ends at the point of imprisonment and the prison has become a lawless institution. The lawful educational role of the lawful prison is viewed by David Fogel as the central keynote of the neo-Classicist ‘justice model:

“The period of incarceration can be conceptualized as a time in which we try to reorient a prisoner to the lawful use of power. One of the more fruitful ways the prison can teach nonlaw-abiders to be law-abiding is to treat them in a lawful

manner. The entire effort of the prison should be seen as an influence attempt based upon operationalizing justice. This is called the 'justice model'.

It is a sad irony in our system of criminal justice that we insist on the full majesty of due process for the accused until he is sentenced to a prison, then justice is said to have been served. The entire case for a justice model rests upon the need to continue to engage the person in the quest for justice as he moves on the continuum from defendant-to-convict-to-free citizen." (Fogel, 1977, pp.126-7)

Nor is justice achieved in the modern prison by instituting seemingly progressive treatment or rehabilitation processes. For these involve a dishonesty which conceals disproportionate punishment:

"Thus the sleight of hand that transforms prisons into something else, such as 'civil institutions' for addicts and reformatories for juvenile delinquents, does not alter the coercive reality ...

We believe there is much to be gained from honesty in our semantics. By characterizing all penal coercion as punishment, we emphasize rather than dilute the critical necessity of limiting it as much as possible." (American Friends Service Committee, 1971, p.24)

Thus it is the twin obstacles of justice of arbitrary punishment or scientific treatment which Classicism opposes.

PROBLEMS OF CLASSICISM

The Classicist Contradiction

The principal contradiction at the heart of Classicism has already been indicated. It is, in essence, the contradiction between *formal* and *substantive* equality. Classicism assumes that all 'men' are free, rational and equal. An impartial and universal system of justice can operate 'rationally' in such circumstances, where none has priority of rank or status, and no prior handicaps or advantages. But the real world does not in any way resemble this ideal model. Indeed, it cannot by definition, since Classicism is rooted in a competitive model of man, where seeking advantage is precisely the most rational of motivations; and the principal purpose of the Social Contract is to defend the rights and liberties of 'men', above all, the liberty to employ the labour of others, to acquire property and accumulate wealth. These generate, as the necessary consequence of a competitive system, massively unequal distribution of advantages and disadvantages. But Classicism attempts to abstract from these real material conditions, and to posit a state of formal equality. It has therefore constantly to confront all the contradictions that flow from a legal philosophy based on *formal* equality which is required to operate 'justly' in conditions of *substantive* inequality. Many of the other problems in Classicism flow from this central contradiction.

The Necessity of Punishment

If men are free, sovereign and rational, and the contract just, we may ask why individuals persist in violating the law at all? Should not Reason regularly prevail? The fact that it does not, necessitating just and swift, but also extensive and severe, punishment, means that the motivations and incentives to commit crime are arising from some aspect of society not accounted for within the rationalist calculus. One source is that very structure of substantive inequalities which the paradigm finds so difficult to explain or take into account. Another may be that the Social Contract is, in reality, more 'just' for some than it is for others – the others being, perhaps, the majority of those lacking an advantageous position within the system. The premise that what is good and just for individuals corresponds to the 'collective good' is assumed, not demonstrated.

The Pyramid of Crime

If all individuals are equally endowed with Reason, why is the incidence of criminal irrationalities not random? Why do the statistics take the shape of that pyramid shown in Figure 1, with the poor regularly committing so much more crime than the rich? Perhaps, in the light of this, formal equality is a sham, imposing a form of legal fairness on a system which regularly generates substantive inequalities: a world where, as Anatole France cynically put it, the "*law in all its majesty forbids both rich and poor from sleeping under the bridge of the Seine*". Both may be equal 'in the sight of the law', but nowhere else.

2. POSITIVISM

"We speak two different languages. For us, the experimental (i.e. inductive) method is the key to all knowledge; to them everything derives from logical deductions and traditional opinion. For them, facts should give place to syllogisms; for us the fact governs and no reasoning can occur without starting with facts, for them science needs only paper, pen and ink and the rest comes from a brain stuffed with more or less abundant reading of books made with the same ingredients. For us science requires spending a long time in examining the facts one by one, evaluating them, reducing them to a common denominator, extracting the central idea from them. For them a syllogism or an anecdote suffices to demolish a myriad of facts fathered through years of observation and analysis; for us the reverse is true." (Ferri, 1901, p.244)

"Psychology is no longer a subsidiary of philosophy, it refers no longer on common sense reflections of life, or on armchair theorizing; by becoming experimental it has made the first faltering steps towards becoming scientific ... Admittedly these theories are much less powerful than those of physics, or astronomy, or chemistry, and they command less universal agreement; nevertheless they cannot be dismissed out of hand as useless and premature. Consider how quickly the older and more mature sciences outgrew their earlier theories, and how, almost unnoticed, they changed the face of the world. Psychology has set out on the same road, and sooner or later society will have to take heed of its views ...

Sooner or later society will have to replace its happy-go-lucky, unreasoning ways of dealing with offenders by rational, scientific methods, firmly founded on painstaking observation and empirically-based theory; three thousand years of failure to solve the problem of crime would suggest even to the most conservative that the old ways might not be the best!" (Eysenck, 1977, pp.212-213)

Emerging in the nineteenth century, Positivism attempted, under the influence of Darwinism, to carry through a radical change in the conception of man's place in nature. For just as Darwin's theories served to displace the human species out of the unique category of a divine creation into the wider evolutionary context of life on this planet, Positivism's task was to show that human behaviour was understandable by the same scientific laws that governed all living activity. This 'Positivist revolution' has seen a continuing struggle against 'metaphysical', 'pre-scientific' conceptions of human behaviour – in particular as represented by Classicism and its notions of human rationality, equality and free will.

Positivism's major attribute – from which its major characteristics may all be deduced – is in its insistence on the unity of the scientific method. That is, the premises and instruments which are so demonstrably successful in the study of the physical world and of animal biology are seen to be of equal validity and promise in the study of society and humans. Insisting on this premise, Positivists have proceeded to propound methods for the quantification of behaviour, to acclaim the objectivity of the scientific expert and to assert the determinate, law-governed nature of human action. In so doing, Positivist criminology creates almost a mirror image of Classicism: free-will disappears under determinacy, equality bows before natural differences and expert knowledge, and human laws that are created become scientific laws that are discovered.

There have been many varieties of Positivism both in criminology and in the social sciences in general. The particular version I wish to focus on in this section is by far the most prominent example, both in Positivist theory and in practice. This theory amidst that biological, physiological, psychological and social influences all contribute to the creation of the criminal but that it is in the *individual* that the fundamental predisposition to crime is situated. Furthermore, that the social order is consensual and that crime is a product of the under-socialisation of the individual into this consensus. This type of Positivism – what could be termed individual Positivism is the focus of this analysis. It owes its prominence not only to its theoretical dominance but, even more, because it is the paramount type of theory used by practitioners. I will refer to other varieties of Positivism at the end of this section.

A. *Human Nature*

"I think the major objection to the proposals I have outlined is that they smack of treating human beings as if they were nothing but biological organisms subject to strictly deterministic rules; this Pavlovian revolution, coming on top of the Copernican and Darwinian ones, is too much for the self-esteem of many people.

Undesirable the fact may be, but that is not sufficient reason for rejecting it as a fact, one would need better reasons to change one's scientific judgement. And where there is (1) a recognised social need, and (2) a recognised body of scientific knowledge which looks likely to be able to create a technology to cope with that need, it needs little in the way of precognitive ability to forecast that in due course society will use this knowledge and create this technology." (Eysenck, 1969, p.190)

All individual behaviour – however much this may violate human conceit – is a determined product of circumstances. Human beings have a basic animal nature which is more or less socialised into the values of society so that the line from the criminal to the law-abiding citizen is a continuum of degrees of socialisation. Therefore it is not a question of the 'criminal' and the 'normal' existing as separate categories of humanity, but rather one of everyone being a determined being, the major variable being the degree and efficacy of socialisation.

B. *Social Order*

Individual Positivists would hold that there is a consensus in society which corresponds to the needs of the system. That is, the values into which individuals are socialised are necessary to the orderly maintenance of the total society. Coercion should be limited to a minimum of cases where recalcitrant, 'under-socialised' individuals refuse to recognise their problems and are unwilling to be integrated into society.

To the Positivist, the Classicist contradiction between substantive and formal equality is a fiction based on the preposterous assumption of formal equality. People are substantially different – not in the sense of status – but in terms of their individual abilities and degree of socialisation. Here again, as with determinism, there is much resistance to scientific reality:

“This general attitude is often supported by reference to political notions. It is said that all men are born equal and it is deduced from this that indeed all men have the same innate ability, the same good or poor degree of personality, the same propensity to crime, and so on. This, of course, is a misinterpretation of the old saying. What it means is simply that all men are equal before the law ... it does not say anything whatsoever about their strength, their health, or other features in which they may differ from each other, and in which, as we know perfectly well, they do in fact differ. However, the fact that this is a misunderstanding has in no way lessened the impact of the saying on the great majority of people who are strongly convinced that any innate differences in ability or in propensity to crime would set some kind of limit to the working of modern democracy.” (Eysenck, 1977, p.75)

In reality, an individual's final place in the social order reflects more or less the compound of his or her personality and the social skills which have been inculcated into them.

C. *Definition of Crime*

A hallmark of such Positivism is the belief that there is a consensus of value in society that can be scientifically ascertained. Against this it can be judged whether an act is deviant or not. The word '*deviant*' is preferable to '*criminal*', as the latter merely refers to violations of legal codes which (a) may not reflect consensual values at all (eg, tax evasion as normal behaviour), (b) do not encompass all acts of deviance (eg, sexual promiscuity may be deviant but perfectly legal), or (c) are based on legal concepts which are unscientific, reflecting metaphysical concepts of free-will and intent (i.e. they are Classicist).

D. *The Extent and Distribution of Crime*

However much the Positivists would be sceptical of the crime statistics, in that they are a product of an unscientific conceptualisation collected in a process which is unsystematic and non-exhaustive, they would not doubt their basic pyramidal shape and the variations indicated between different groups of people. That is, that the incidence of crime is indeed greater among blacks than whites, young than old, male than female, and is inversely proportional to class and education. Thus, they would regard the official statistics as 'poor' data, yet data of relevance all the same. Whatever his or her scientific scruples, it is a rare Positivist who will not make direct use of the criminal statistics.

E. *Causes of Crime*

"Every crime is the result of individual, physical and social conditions." (Ferri, 1893, p.161)

Crime is a product of the under-socialisation of the individual. This can be a result of: (a) an innate genetic or physiological incapacity of the individual to be easily socialised; (b) a family background which was ineffective in the use of socialisation techniques in its child-rearing practices; (c) a social milieu which lacked coherent and consistent consensual values. Each of these levels – the physical, the family, and the social – will be seen to compound with each, to determine the socialisation of a specific individual. And it is noted that it is at the very bottom of the class structure, where the incidence of crime is greatest, that such 'defects' are most likely to occur, for it is there that the least capable individuals accumulate and pass on their inadequacies from generation to generation in a cycle of deprivation.

The causes of crime are thus rooted in defects in the past of the actor, in his or her determined antecedents. Crime itself is a reflection of these; as a product of under-socialisation it is an activity without meaning, a non-rational outburst of pre-social impulses.

None of this falls into the trap of suggesting that the *direction* or *shape* that crime takes is a biological pre-given. As Hans Eysenck astutely notes:

“criminality is a social concept, not a biological one. Indeed, what is criminal in one country may not be criminal in another; homosexuality is a crime in some American states but not in Germany. Similarly, what is a crime at one time may not be at another. It is a crime to kill people but only in peace time; during war it becomes a citizen’s duty to kill others ...

The very notion of criminality or crime would be meaningless without a context of learning or social experience and, quite generally, of human interaction. What the figures have demonstrated is that heredity is a very strong predisposing factor as far as committing crimes is concerned. But the actual way in which the crime is carried out, and whether or not the culprit is found and punished – these are obviously subject to the changing vicissitudes of everyday life. It would be meaningless to talk about the criminality or otherwise of a Robinson Crusoe, brought up and always confined by himself on a desert island. It is only in relation to society that the notion of criminality and of predisposition to crime has any meaning. While recognizing therefore, the tremendous power of heredity, we would by no means wish to suggest that environmental influences cannot also be very powerful and important indeed.” (Eysenck, 1977, pp.77, 79)

The criminal or deviant would be a rule-breaker in any culture – he would be a pacifist during wartime, an aggressor during peace. It is not necessary, therefore, for the Positivist to explain the content of the norms that are violated, merely the propensity of the individual to violate them.

F. *Policy Deductions*

“The classical school exhorts men to study justice; the positivist school exhorts justice to study men.” (Hamel, 1906, p.265)

“The criminal justice of the future, administered by judges who have sufficient knowledge, not of Roman or civil law, but of psychology, anthropology and psychiatry, will have for its sole task to determine if the defendant is the material author of the established crime; and instead of brilliant logomachies by the prosecution and the defence in an effort to trick one another, there will be a scientific discussion on the personal and social condition of the offender in order to classify him in one or another anthropological class to which one or another form of indeterminate segregation will apply.” (Ferri, 1901, p.229)

If the criminal is determined and not responsible for his or her actions, it makes no sense to punish crime. Instead, we must replace punishment with *treatment*. We must substitute for the jury system of law people a panel of experts who diagnose the condition of the *individual* and prescribe the appropriate treatment. The punitive response as advocated by Classicist and Conservative theorists, is not only inapplicable, it actually exacerbates the socialisation problems of the deviant.

Prognosis for the criminal is based not so much on what he or she did (the *act*), not on who he or she is (the *actor*), but on his or her background (the *antecedents*). The vandal

may cause £5 worth of damage or £50 worth, but to sentence him proportionately to the impact of the act (as the Classicists would) is meaningless. What is necessary is to see if the vandalism sprang from a deep-seated malaise of socialisation, or if it was the mere experimentation of a normal youth. And once diagnosis is made, the criminal must be treated for as long as is necessary. Sentences are therefore indeterminate, just as one's stay in hospital is indeterminate, and based on satisfactory treatment or 'cure' rather than on the fixed sentences of the Classicists. Rehabilitation rather than punishment must be our priority. But to achieve this, it will be necessary to discard outmoded prejudices and thinking. As Hans Eysenck stridently put it:

“Modern psychology holds out to society an altogether different approach to criminality, an approach geared only to practical ends, such as the elimination of antisocial conduct, and not cluttered with irrelevant, philosophical, retributory and ethico-religious beliefs ... We have now reached the point where we can hope to combat crime effectively; shall we have the courage and the wisdom to give up our ancient hates and fears, and grasp the opportunity?” (Eysenck, 1977, p.213)

PROBLEMS OF POSITIVISM

The Denial of Authenticity

By asserting that deviancy is a non-rational, determinate product of under-socialisation, the Positivists take all human volition and meaning away from activity. For example, they would argue that in advanced capitalist societies, as property ownership is the central cultural concern, then those who are under-socialised will be thieves. In Puritan New England, on the other hand, religious norms were paramount, and the under-socialised were adulterers and blasphemers. The danger here lies in stressing a consensual culture where all deviation is simply attributed to lack of socialisation. In reality the conflict over property in Western capitalism is not a function of lack of culture; it relates to the inequitable distribution of property in such societies. Sometimes such a conflict can be a result of a fully-formed oppositional culture (eg, revolutionary socialism) or by an alternative culture which despises property (eg, bohemian countercultures). More often, it will involve people accepting the dominant culture of success – yet, as they have limited opportunities to acquire property, taking up illegitimate means to achieve it (eg, as depicted in Strain Theory, see below) or accepting the prevalent culture of individualism and engaging in a no-holds-barred competition with their fellows ('the cult of the individual'). In all these instances deviance is *cultural*, whether it is a deviant culture set against the wider culture, or the dominant culture itself encouraging deviance. One might not like the particular cultural manifestation, but that is another thing; it is not sufficient to label it a product of under-socialisation. Thus human deviance may be the result of:

- *Alternative value systems* – contradictions in value, cynicism or hesitations about official values. Because Positivism ignores human choice and creativity it becomes myopic to the diverse ways in which human beings cope with a given environment and the different cultures which they create in response to it;

- *The normal criminal* – acceptance of the dominant culture of success may exacerbate feelings of frustration as regards one's lot in life, and acceptance of the cult of individualism may encourage aggressive competition. Both these may lead to crime – but not only in the lower reaches of society. For studies of unreported crime invariably indicate that crime is widespread throughout the social structure (see Pearce, 1976; Reiman, 1979). This suggests that it is not merely the under-socialised lower reaches of society which engender crime but also the 'socialised' top of the pyramid. This endemic deviance would point to the conclusion that the total society might be 'pathological' in Positivist terms. That, for example, there might be a close link between an acquisitive society and theft; between patriarchal sexist values and rape. It is 'normal' socialisation, then, that may lead to crime.

Both these instances suggest that the equation utilised by Positivism, namely that crime equals the consensual society defining the rules and the predisposed individual breaking them, is woefully inadequate.

Denial of the Classicist Contradiction

By putting such an emphasis on the predisposed individual as the source of crime, Positivism defused the problem of the Classicist contradiction. Thus it translates a major problem of capitalist order – how to cope with the conflict between the ideals of equal competition and the reality of unequal property distribution – into a function of the inequality of individuals. No matter whether one agrees with such competition or not, it is obvious that limitations in social mobility, access to educational opportunities, differentially distributed career prospects etc., constantly belie the reality of such a meritocratic competition. It is substantive differences in *social* opportunities, as well as in individual capacities, that structure the actual material possibilities constraining individuals in our society. The insistence on equality in Classicist thought is not a mere metaphysical mistake – rather it is an ideal which is constantly undermined by the reality of capitalist society.

Denial of Freedom

The stress on determination denies the alternative possibilities facing the majority of human beings at each juncture of their lives. For, although *total* determination is a human possibility, for example in the case of a heavily tranquillised prisoner in a high security prison, choices nearly always remain. Such an overstress on determinacy denies the role of consciousness in standing back and creating and assessing the means of interpreting and manoeuvring a particular set of material conditions. For example, even if it is absolutely correct that there is a high correlation between, eg, lower-working-class backgrounds and delinquency, this does not imply that the background *causes* delinquency. It merely implies that people in such an underprivileged determinant position in our type of society tend at a particular time to create a culture of delinquency as a means of attempting to cope with their predicament. Sometimes, in fact, these cultural responses to *given* conditions can rapidly change, witness the politicisation of prisoners at Attica, or the way in which particular individuals in their 'moral career' can

explore different cultural means of understanding their position. For example, note how individuals such as Malcolm X moved from being a thief to being a Black Muslim, to becoming a revolutionary seeking actively to understand and surmount his problems as a ghetto black.

To prove that there are correlations between certain determinant positions and certain types of crime (eg, company directors and corporate tax evasion) does not take meaning away from these activities, it merely provides us with the facts which we have to explain in terms of human choice and meaning.

This is not to deny that human beings confront material determinants which are experienced in the same way as the laws of the natural sciences.

Varieties of Positivism: A Critical Comment

At the close of this section there is an important comment to be made which applies throughout this article. As noted in the introduction, one of our tasks is to examine the inconsistencies of structure in a theory. Now, although the particular version of Positivism we have examined is often presented as an internally coherent structure, that is, in fact, debatable. For example, starting from the central premise of the unity of scientific method, it is frequently assumed that the other characteristics of the theory are logically deducible – for example, that human action is determined and that there is a consensus of value in society. Now it is difficult to imagine a Positivist criminology which does not assume human behaviour is determined – for it is not then predictably determined and scientific laws are inappropriate. But it is quite possible to imagine a Positivism which denies the consensual nature of social order. Indeed such positions exist, for example:

- *Radical Positivism* – where the total society is seen to be disintegrating and a multiplicity of emerging cultures are occurring to challenge the old order. In this instance some types of crime could be construed as a ‘healthy’ innovative adaptation to a pathological society (see Taylor, Walton and Young, 1973, pp.14-19).
- *A Pluralistic Positivism* – by a scientific survey of cultural norms, a Positivist may come to the conclusion that there empirically exists in society a variety of normative standards. Indeed some of these subcultures may seem to be supportive of criminal behaviour. That is, a type of *sociological* Positivism may emerge which argues that, in these cultures, it is the socialised, well-adjusted individual who is the criminal (eg, Miller, 1958).

It is important to note, then, that certain aspects of the above critique strike at the heart of Positivist theory, whereas others merely represent a critique of the specific variety presented here. Thus, to argue that Positivism denies the possibility of a plurality of value, applies only to the species of ‘individual Positivism’ presented above, whereas criticisms regarding the denial of human volition apply to the total spectrum of Positivist theories of human behaviour.

3. CONSERVATISM

A third approach that is often encountered in public discussion about crime is conservatism. In fact, conservatism as a body of opinion is less openly theoretical or systematic than our other ‘paradigms’. Conservatism is directed *against* liberalism and reformism, and its essentially pragmatic character is a consequence of protracted historical resistance to the reforming impulse. But the success of conservative arguments also depends on their ability to convey a *positive* sense of traditional, hierarchical forms of social organisation. In contrast to the ‘golden age’ of established values, proposals for reform appear ‘subversive’ in the conservative scenario, and the more radical the proposals are, the more dangerous and ‘anarchic’ they appear.

It should be said that conservatism (with a little ‘c’) is not co-terminus with Conservatism in its party-political sense. It is very likely (but not necessary) that Tory parties will offer variations on the basic conservative themes; but the latter might embrace other political views in specific circumstances, or form a part of ‘common sense’.

A. *Human Nature*

The image of human nature in conservative theory is *homo duplex*. In this it is similar to Classicism and Positivism. In all three theories, an instinctual nature is directly opposed to a social self, but in each theory the resolution of this tension has a different status. In Classicism, Reason is tempered by just punishment, while in Positivism the conflict is analysed deterministically, and treated in terms of ‘normal’ socialisation. Conservative thought is distinctive in that it involves a voluntaristic notion of human action such that the tension remains potentially unresolved: the ‘old Adam’ remains within most of us, poised to break through the veneer of civilisation. However, we are also endowed with free choice and powers of restraint, and the responsible, fully social person must continually mobilise these human capacities in order to control the lower urges. Sacrifice, discipline and the submission to authority become, in this context, the foundations of conservative philosophy.

B. *Social Order*

Conservative theory arose as a reaction against the ideas of the French Revolution. Thus it has always stressed the organic nature of society, defending the traditional order against the individualism and rationalism of the emerging bourgeoisie:

“From conservatism’s defence of social tradition sprang its emphasis on the values of community, kinship, hierarchy, authority and religion, and also its premonitions of social chaos surmounted by absolute power once individuals had become wrenched from the context of those values by the forces of liberalism and radicalism.” (Nisbet, 1970, p.11)

The evolution of human institutions goes beyond individual desires and Reason. Reason in itself, especially when harnessed to the egoism of individual desires, can lead directly to social disintegration. For social cohesion to be maintained, self-interest must be subordinated to the general good. However, unlike the liberal Classicist approach, conservatives do not see the general good as being a contractual agreement. Conceptions of the family and of marriage are indicative here, and they also serve to remind us that, in several respects, conservatism is of current as well as of historical interest. For the conservative, the unity of the family, its harmonious but patriarchal structure, is a long-term social and moral good, transcending the vicissitudes of particular circumstances. Given liberal and Classicist premises, the logic of marriage guidance counselling is that it enables the parties rationally to re-draw the terms of the marriage contract, thus re-establishing a relationship between formally equal individuals. In the conservative vision, self-sacrifice and order, embodied in the family, cannot be reduced to utilitarian calculations of individual pleasure and pain, effort and reward.

In Classicism, order is achieved through the pursuit of justice; in conservatism, the rational pursuit of fairness may be thought to be counter-productive. Order must take precedence over justice, for “order is indispensable to justice because justice can only be achieved by means of social and legal order” (Haag, 1975, p.35). Van den Haag continues: “objections to inequality of condition are objections as to the system of distributive justice, unless they are objections to God” (1975, p.46).

The author of *Punishing Criminals* – the most forthright presentation of a conservative criminology – notes how inequality is a key part of our system. If we wish to maintain the capitalist order then we must have inequality, since disproportionality of reward is the most effective method of maintaining capitalism, which is, in turn, held to be the most effective system of production available to humanity. Such an order is therefore ultimately in everyone’s interests, and the short-term or single-minded pursuit of individual justice must be seen as being either naïve or dangerous. Thus, Van den Haag’s clinical dissection of the Classicist contradiction:

“Since the law quite deliberately restricts the tempted, as well as the untempted, there is a kernel of truth in the belief, held by revolutionaries of various persuasions (most elaborately by Marxists) that the law is a device of the rich and powerful to keep the poor and powerless in check. The theatre of the law are meant to restrain those who would do what the law prohibits. Obviously, the poor and powerless are more tempted to take what is not theirs, or to rebel, than the powerful and wealthy, who need not take what they already have.

However, the discovery that the penal law restrains the poor and powerless more than the wealthy and powerful who are less pressed, or tempted, to do what it forbids is about as revealing as the disclosure that the Prohibition laws were meant to restrain drinkers more than the teetotallers who imposed them. Obviously, the law restrains some groups more than others and is violated by some groups more often than by others ... So because the temptation to break the laws is unequally distributed, because of different personalities and different living conditions, the laws – and the punishments for violating them – must weigh

or fall most heavily on some persons and groups. Those less favored by society are more tempted to violate laws and therefore suffer punishment for doing so more often.” (1975, pp.45-6)

Coercion is an inevitable part of the system, and its focus must of necessity be on those most tempted, namely the poor.

C. Definition of Crime

For the conservative it is those activities which threaten order that should be criminalised. In contrast to Classicism, this includes acts which offend morality as well as those which endanger person or property. For attacks on the tradition and the people’s respect for authority are a considerable threat to an orderly society. Hence the extraordinary focus of conservative ideologues on the threat of pornography. Thus Mary Whitehouse writes about BBC programmes: “there is a developing trend ... to undercut authority that is undermining the morals of the ... British people ... Sex and four-letter words are just the tip of the iceberg. It is the constant attack on morals and authority that concerns us”, and again: “Dirty books and sleazy films are as much a danger to Britain as enemy agents” (cited in Manson and Palmer, 1973, p.94)

D. Extent and Distribution of Crime

The following quotations, very different in style, capture the ‘associational’ quality of conservative diagnosis. They also indicate that the concern for moral degeneration frequently paraded in conservative thought, should not be thought as separate from the support of an economic order requiring considerable material deprivation.

“All these things are shaking our society to its very roots ... The old discipline of mass unemployment and grinding poverty has largely been eliminated. Family ties and family discipline are loosening. The influence of religion on social behaviour seems to be fading. The sense of personal obligation to society has been dimmed and dulled in a world that is changing so fast and in a society grown so complex that the individual feels helpless to influence his own destiny.” (Reginald Maudling, cited in Gamble, 1974, p.111)

“Through television we are encouraging on the consumption side, things which are entirely inconsistent with the disciplines necessary for our production side. Look at what TV advertising encourages: immediate gratification, do it now, buy it now, pay later, leisure time, hedonism.” (Anthony Downs, Consultant to Lyndon Johnson’s Riot Commission.

For the conservative, the causes of crime lie in the pursuit of individual gratification (usually incommensurate with effort), the undermining of traditional loyalties and the consequent unwillingness of the individual to accept discipline. The weakening of the social ties – itself encouraged by the liberal tradition of rational individualism, of which Classicist criminology is part – is exacerbated by the fact that both Classicist and

Positivist influences undermine the necessity for coercion in the preservation of order. Classicism presses for strict determination of punishment, emphasising legal rights and due process. Positivism insists on treating the offender rather than attempting to subdue the recalcitrant by means of 'short sharp shocks'.

E. *Policy Deductions*

The goal of conservative control policy is the maintenance of order. To achieve this aim coercion is a necessity. It is not a marginal or minimal phenomenon as in Positivist or Classicism, but rather a central part of social control which is undermined if any laxity in the exertion of authority occurs. Furthermore, it is due to the very nature of human beings that such coercion is necessary and always will be necessary. Crime will never be eliminated either by the propagation of Reason or the most insistent socialisation process. A more pragmatic approach is therefore desirable. For the conservative, justice may be important but it must always be subsumed under the need to maintain order. This is best encapsulated in the notion of a 'dual track' system of punishment. That is, an offender is first judged strictly on his or her offence – as in Classicist theory – but such a proportional punishment is then added to or subtracted from by a series of criteria whose concern is order; for example:

- *Ascriptive criteria:* Who is the offender? Is the person in a position of responsibility, whose defection and transgression threatens the fabric of authority – for example, a police officer or an NCO, as compared with someone in the ranks? If so, the punishment should be more severe.
- *Dangerousness:* Is the person a recidivist who is palpably of further danger to society, and should therefore be incarcerated longer than strict justice requires? Important in this formulation is the notion of incapacitation as an added confinement beyond that strictly determined by the requirements of just punishment.
- *Deterrence:* Does the offence or the type of offender represent a particular threat to society at the time of arrest? Is it necessary in passing sentence to hold in mind the function of punishment in deterring similar offenders? Would clemency better indicate, and support, the majesty of the State? Conservative answers to these questions require considerations other than those of equivalence between offence and penalty.

As a converse of such 'additions' to justice, charity may be invoked where the individual poses no threat to order and where the infringement is seen as only a temporary failing. Thus in the business of maintaining order, proportionate justice may be added to or subtracted from; preferably at the point of sentencing. The judge's discretionary role is central here. It is the judge who must weigh both the dangers to order and the efficacy of charity. If conservatism is most often seen as involving the principle of deterrence incommensurate with desert, we must take note of the other side of its coin, namely the principles of pardon and clemency.

If Classicism insists on focusing on the *act* of crime and Positivism on the biographical and determining *antecedents* of the criminal, conservatism would stress the *actor* him or herself. The person's relative position or reputation in the social order becomes of considerable importance. For here we are dealing with a school of thought which makes much of the symbolic and public nature of punishment. If Classicism upholds a system of deterrence restricted to inhibiting the individual's future transgressions, conservatism insists upon a *general deterrence* which would punish the one individual to deter all others and would punish the individual according to the social significance of the crime. The conservative preference for the simple, moral lesson, deriving from unchallengeable authority, is reflected in the residual (and obsessive) belief in the efficacy of physical punishment. Punishment should be expressed as publicly as possible, whether in the ceremonial of the courts (and its subsequent coverage in the mass media), or in the more direct ways in which, in the public view, the law is seen to be carried out. The limits of permissible behaviour are thus demonstrably drawn and the penalties for infractions are clearly spelt out.

If Classicism would punish the intransigent in the privacy of the prison where the offenders might rationally dwell upon the consequences of their crime, and if Positivism would treat the culprit in the hospital-like atmosphere of a therapeutic unit, conservatism would dispute that private and personal attention to criminals best serves the public order. The moral lesson of punishment for the individual must extend its salutary effects to the population as a whole, for it is here that the greatest social good can be achieved.

PROBLEMS OF CONSERVATISM

“It is this awareness of man's weakness and folly, not class interest or any doctrinaire conception of how the state should be organised, that leads the conservative to distrust sudden and drastic change, and all policies which depend upon it. He recognizes that, once the structure of society has been weakened beyond a certain point, there is no crime too horrifying for human beings, even highly cultivated and intelligent human beings, to commit. Indeed, it is the danger of the total breakdown of civilisation which induces him to tolerate inefficiencies, and even injustices, rather than put social stability at risk ...” (Lord Coleraine, in Buck, 1975, p.180)

For Classicism, equal competition between individuals rewarded and punished on a just basis is the mechanism which would bind each citizen to society. I pointed to the problems of Classicism which stem from the desire to maintain existing property relations at the same time as advocating a meritocratic race of rewards. The Classicist contradiction of insisting on formal equality while maintaining substantive inequalities gives rise to the problems of how justly to punish the unequal equally and why the poor are more evident in the criminal statistics than the rich. For conservatives, such a predicament is a product of the naïve rationalistic optimism of Classicism. Instead, they would insist on a 'realistic' pessimism. They would note that (even in a world based on the most rational and just system of rules) human nature being such, many would

inevitably cheat. Since people are *created* unequal, talk of equality merely incites envy and dispute. The conservative squarely accepts, and is bound to defend, the fact that the social order is not one of equality and justice. Two types of problem stem from this commitment.

First, the cause of crime, for conservatives, is the innate propensity of evil of the individual, combined with the weakening of social ties which allows such anti-social intransigence to break its bonds. There is thus little attempt to link the type of crime (eg, stealing or rape) to the nature of particular societies. Conservatism posits a root cause of deviancy, but it has no explanation of why individuals or groups concentrate on certain crimes rather than others.

Second, the pessimism of conservative theory assumes that, to maintain the present social order, coercion is inescapable: reason and justice will not bind society together. In response to this, it is legitimate to counterpose the possibility of a society in which the incidence of crime would be minimised by creating real substantive equalities based on agreed principles of justice. The Classicist contradiction, too, would appear to be resolved in the move from mere formal equality to equality both in form and substance.

D. STRAIN THEORY (SUBCULTURAL THEORY)

The three perspectives we have discussed have all focused on the individual. Although crime is seen as arising from some weakness in the binding between the individual and society, the impulse to criminal or deviant behaviour is located firmly in the individual. In Classicism, temptation to break, and infractions of, the law occur because the chains of reason which bind the individual to the social contract are insufficiently developed. Within Positivism, the socialisation of the individual is seen to be insufficient to constrain his or her natural impulses; whereas in conservative thought, tradition has been undermined and discipline relaxed to the extent that the individual feels little need to have self-sacrifice and limitations on his or her desires. In each theory crime or deviancy arises from the natural impulses of the individual as a result of a process of 'leakage' or weakness in the social order. Strain Theory breaks with such theories because it rejects the notion that crime arises from innate drives or instincts of the individual, and insists that the impulse to crime is normal and *socially* induced.

A. *Human Nature*

In rejecting the notion of an innate human nature, Strain Theory moves towards a position which emphasises the *social* nature of a person's individuality. Human nature is not a pre-social 'given', but is created by the particular society within which the individual lives. There is not, therefore, a tension within the individual between the 'natural' self and 'social' self – for the self is a product of social order.

It is not only in the focus on the total society rather than the individual which distinguishes Strain Theory from Classicism, Positivism and conservatism. In addition, while its main thrust remains determinist, it attempts to break out of the rigid either-or

dichotomies of determinism or free will which beset the previous theories. This it endeavours to do by picturing the human situation as that of rational problem-solving individuals placed in determined frameworks. In particular, the individual is seen to be inculcated with cultural goals and with a range of appropriate means and opportunities of achieving them. These determined 'givens' are the framework within which rational people make choices and decisions in order to attempt to solve the particular predicaments they face in their part of the social structure.

B. *Social Order*

Social order is maintained by the socialisation of people into a consensus of values which corresponds to the needs of the social system. Society is a functioning entity in which each part interrelates and supports the other. Such a *functionalist* notion of social order does not, however, preclude the examinations of its dysfunctions. As Robert Merton, the leading exponent of Strain Theory, explained:

“The study of social problems requires sociologists to attend to the dysfunctions of patterns of behavior, belief and organization rather than focusing primarily or exclusively on their functions. It thus curbs any inadvertent or deliberate tendency in functional sociology to reinstitute the philosophy that everything in society works for ‘harmony’ and the ‘good’.” (Merton, 1966, p.817)

It is at this juncture that Strain Theorists make their major innovation, for they note how, in order that social order may function, dysfunctional consequences are inevitable. Richard Cloward and Lloyd Ohlin graphically locate this process in their book, *Delinquency and Opportunity*:

“A crucial problem in the industrial world is to locate and train the most talented persons in every generation irrespective of the vicissitudes of birth, to occupy technical work roles. Whether he is born into wealth or poverty, each individual, depending upon his ability and diligence, must be encouraged to find his ‘natural level’ in the social order. This problem is one of tremendous proportions ...

... One of the ways in which the industrial society attempts to solve this problem is by defining success-goals as potentially accessible to all, regardless of race, creed or socio-economic position. Great social rewards, it is said, are not limited to any particular segment or segments of the population but are available to anyone, however lowly his origins ... The industrial society, in short, emphasizes *common* or universal success-goals as a way of ensuring its survival. If large masses of young people can be motivated to reach out for great social rewards, many of them will make the appropriate investment in learning and preparation, and a rough correlation between talent and ultimate position in the occupational hierarchy will presumably result.

One of the paradoxes of social life is that the processes by which society seeks to ensure order sometimes result in disorder. If a cultural emphasis on unlimited success-goals tends to solve some problems in the industrial society, it also creates new ones. A pervasive feeling of position discontent leads men to

compete for higher status and so contributes to the survival of the industrial order, but it also produces acute pressure for deviant behavior.” (Cloward and Ohlin, 1960, pp.81-2)

But the emphasis on the possibility of success constantly contradicts the actual opportunities facing people – particularly those lower in the class structure. Thus, Merton notes:

“In this same society that proclaims the right, and even the duty, of lofty aspirations for all, men do not have equal access to the opportunity structure. Social origins do variously facilitate or hamper access to the forms of success represented by wealth or recognition or substantial power. Confronted with contradiction in experience, appreciable numbers of people become estranged from a society that promises them, in principle, what they are denied in reality.” (Merton, 1964, p.214)

It is out of such an estrangement that crime and deviance are seen to arise.

C. Definition of Crime

It is at this point that we should note that Strain Theory does not limit itself to mere economic crime. It has been applied not only to thieving and robbery, but to vandalism, truancy, drug addiction, mental illness, suicide and homicide (Clinard, 1964). The major thrust of the argument is that the means by which an industrial society maintains itself creates the circumstances by which a wide range of disorder occurs. Thus it is in a plethora of indicators of dysfunction that Strain Theorists are interested. Indeed, as functionalists they note that some examples of crime may be directly functional to the social order, being the result of ‘normal’ behaviour rather than strain, and should not be considered as major indications of disequilibrium. Strain Theorists do not therefore limit themselves by using the official crime statistics, but rather see them along with other social indices as useful and usable.

D. Extent and Distribution of Crime

Despite reservations about the immediate use of official statistics or studies limited to interpreting these figures alone, Strain Theorists would accept the general pyramidal ‘shape’ of crime and disorder: namely that there is an inverse correlation between class position and crime. Indeed, the pyramid of crime is the basic empirical problematic of their theory. For it is at the bottom of society that the strain of blocked opportunities to shared cultural goals is greatest and where the highest amount of crime and deviancy should take place. The Classicist contradiction regarding the fact that not all rational citizens will equally embrace the Social Contract is not a problem for Strain Theorists, rather than the reverse: it is the basis of their explanation of disorder. Differences in wealth and property provide success goals and opportunities for their achievement to a much greater extent for the wealthy than for the poor. The Classicist principles of a free and equal race for rewards are seen as essential for an industrial society to function, but

the substantive inequalities of wealth give rise to frustration and deviance among the poor.

E. *Causes of Crime*

Deviance, then, is seen to be the result of a disjunction between the culturally induced aspirations of individuals and the structurally determined opportunities. The focus is not at all on the individual's antecedents, the *actor*, or the *act*, and it is a tension not within the individual, but between culture and structure. Such a tension is rooted in the total society, and in pointing to this Strain Theory recognises a fundamental irony in the social order:

“The irony of a virtue, ambition, promoting a vice, deviant behavior, contains an ellipsis. Ambition promotes deviation when it is institutionally frustrated. The latent feature of ambition that will yield a reversal and mock its virtue is the reality of class barriers and restrictions on social mobility. Such barriers and restrictions inhere in the very idea of ambition; by definition its only possible aim is to overcome them. Thus, ambition contains within itself the seed of institutional frustration.” (Matza, 1969, p.77)

Irony, as David Matza puts it, becomes a central tenet of such functionalist analysis.

But these dysfunctions are experienced not so much by isolated individuals as by whole groups of individuals in certain structural positions. It is here that Strain Theory introduces its concept of subculture. Thus, David Downes (1966), in his study of working-class delinquency in Stepney and Poplar, invokes the definition of culture formulated by C S Ford, namely ‘learned problem solutions’. That is, subcultural responses are jointly elaborated solutions to collectively experienced problems. Groups of people have both collective goals and legitimate means fixed for them by the determining agency of society. In their positions as housewives, or teenagers, or corporate executives, they evolve subcultures – specialised parts of the general culture suitable for their needs. Often these are deviant, but where there are significant discrepancies between aspiration and opportunity, deviant subcultures or *contracultures* occur. Deviant behaviour, then, is viewed as being a meaningful attempt to solve the problems faced by groups of individuals in particular structural positions – it is not a meaningful pathology. And here Strain Theory differs qualitatively from Classicism, Positivism and conservatism, for it *guarantees meaning to deviancy*.

F. *Policy Deductions*

The policy arising from Strain Theory is to attempt to alleviate the disjunction between aspiration and opportunities, institutional means and structural goals. In its most characteristic form, this involves piecemeal social engineering in order to provide opportunities to lessen the ‘strain’. Coercion should be at a minimum; what is necessary is to reform the structure of society so that a more egalitarian opportunity structure is engendered and the contradictions of Classicism are lessened *in fact*.

In terms of treatment of the individual, punishment is obviously irreconcilable with this approach. What is necessary on the immediate level is to teach the individual skills that will allow people most profitably to use their opportunities and demonstrate that many subcultural 'solutions' are of limited usefulness.

PROBLEMS WITH STRAIN THEORY

Problems of Middle-Class Crime

Strain theory accepts the pyramid of crime and sees the high incidence of lower-working-class crime as a product of the greater strain experienced by those at the lower end of the class structure. As with Positivism, surveys of unreported crime which show that crime is ubiquitous would seem to undermine the causal basis of Strain Theory. Against this it can be countered that what is vital for Strain Theory is merely a disjunction between aspirations and opportunities – people do not have to be *absolutely* deprived to suffer from feelings of frustration – they may be *relatively* deprived in terms of their aspirations and opportunities. Thus the income tax fiddler may be middle class and relatively well-off – yet his aspirations may still be considerably higher than his opportunities. All this may be true, but what remains to be explained is why the powerful who make laws find it necessary to break them.

Denial of Pluralism of Value

Without our denying the existence in Western capitalist countries of a consensual ideology which stresses the equal possibilities of all to succeed, it is a fault in Strain Theory that it sees such values as monolithic and unquestioned. This is not to suggest, for example, a working class consciousness which is clearly contrary to the status quo. It points to the widespread existence of contradictions in value, cynicism, fatalism, and disassociation from the major institutions – as well as outright rejection. Similarly, the attempt in Strain Theory to marry rational choice and determinacy fails because it allows human rationality only a foothold in the process. Rational problem-solving is seen to occur, first, in individuals attempting to link together the predetermined goals and opportunities that constrain them, and then, if this fails, in innovating means to achieve the same goals (eg, stealing to acquire consumer goods, etc.), and only then, if all else fails, in the innovation of new goals and means (eg, violent gangs, drug users with countercultural norms, etc.). The rational person is added onto the predetermined culture and structure – he or she is an added extra. Such a position considerably underestimates the rational undermining of accepted value and legitimate procedure which constantly occurs: negotiation of values, cross-cuts in means, reinterpretation of goals, cynical conformity, distancing of commitment, etc. In each case, human reason steps into the determining process – rebellion is rare, but so is the simple acceptance of the central values which the Strain Theorists describe. Normality and deviance are not separate watertight categories of behaviour, nor does normal behaviour automatically precede ventures into deviance. Rather, at times, they blend together, are mistaken for each other or are irrevocably inter-woven into the actual patterns of social behaviour.

The Limits of Reform

It is important to ask how far opportunities can be provided to lessen 'strain' without necessitating a change in the system. The reformist principles of Strain Theory would suggest that widespread adaptation is possible – yet the actual experience of projects such as Mobilization for Youth would suggest that severe economic and social limits to such adaptations occur. The short-term goals of adjusting the individual to existing opportunity suggests strong the adaptation of the individual to the status quo rather than an attempt at any fundamental changes.

Why is the system there in the first place

Strain Theory explains the Classicist contradiction as resulting from the necessity for a high level of inculcated aspirations in order for the social system to function. It is extremely doubtful if such a stratagem is an international ploy on the part of the ruling class or – even if it were – if it would be the most efficient method of solving the problems of the recruitment of appropriate personnel to specific tasks. A system of selective recruitment and cooling out would seem more adequate – and is probably more accurate empirically.

The Classicist contradiction between equality of opportunity and inequality of wealth is a means of legitimating the system. On a formal level it presents the notion of the open meritocratic society, while on a substantive level it preserves the existing class structure. This process of legitimation is, itself, a result of political pressure and conflict – the compromise of a half-finished struggle.

A satisfactory explanation of the structural roots of the contradiction and the nature of the 'strain' eludes these theorists. As Laurie Taylor nicely puts it:

“It is as though individuals in society are playing a gigantic fruit machine, but the machine is rigged and only some players are consistently rewarded. The deprived ones then either resort to using foreign coins or magnets to increase their chances of winning (innovation), or play on mindlessly (ritualism), give up the game (retreatism), or propose a new game altogether (rebellion). But in this analysis nobody appears to ask who put the machine there in the first place and who takes the profits. Criticism of the game is confined to changing the pay-out sequences so that the deprived can get a better deal (increasing educational opportunities, poverty programmes). What at first sight looks like a major critique of society ends up taking the existing society for granted. The necessity of standing outside the present structural/cultural configurations is not just the job of those categorized in the rebellion mode of adaptation – it is also the task of the sociologist.” (Taylor, 1971, p.148)

E. NEW DEVIANCY THEORY (LABELLINGTHEORY/SOCIAL CONSTRUCTIONISM)

This theoretical position emerged primarily in the 1960s and early 1970s, and has a close relationship with the libertarian currents widespread within Western capitalism in that

period. Its influence was, and still is, widespread. Outside criminology theoretical parallels occur, for example, within anti-psychiatry and radical feminism. New Deviancy theory was primarily a radical response to Positivist domination of criminology, and attempted to recover the 'meaning' in human behaviour denied, or reduced to biological and physiological imperatives, in Positivism.

A. *Human Nature*

The New Deviancy theorists' conception of human nature is one which emphasises free-will and creativity. People create meaning in the world, and they, in striving towards diverse numbers of cultural goals, impart a multitude of interpretations to the social and physical world around them. Human behaviour must be understood on the level of meaning imparted to it by the people involved. Reality is not 'given' or predetermined: it is socially constructed. Human rationality realises to the logic and norms of a particular culture; it is relative rather than absolute. Human nature is then constantly open and existentially boundless, and cannot be delimited in terms of a pre-given essence, for human beings make their own world and transform their own nature.

Like Strain Theory, New Deviancy theory attempts to marry voluntaristic and deterministic notions of human nature, but does so in almost a reverse fashion. In Strain Theory, human beings were seen to improvise rationally within their pre-given social framework. In New Deviancy theory, human beings are born free, but lose their voluntaristic capacity in the structures that society lays down in order to control their behaviour.

B. *Social Order*

The basic image that New Deviancy theory has of social order is that of a pluralism of values. Individuals live in an overlapping world of normative ghettos. In contrast to all previous theories, the notion of a consensus in society is challenged and replaced by the concept of a diversity of values. Consensus is a mystification, an illusion foisted on the public by the powerful. More precisely, it is an attempt by the powerful to foist their own particular value system on the diversity of groups within society. This is achieved, on the one hand, by their control over the major ideological apparatus within society (eg, the mass media, education) and, on the other, by their control and use of the repressive apparatus (eg, the police, courts). It is the particular nature of this illusion that New Deviancy theorists stress. They argue that the illusion is constructed first by securing general agreement that there is a consensus rather than a diversity of values within a particular social order, and second by insisting that this consensus – which is, in fact, the particular values of the powerful – is not a human, but a *natural* construct to which any well-socialised person would *naturally* adhere. Thus, what is in fact a human construct, a system of values created by a specific group of people, is presented as a 'thing', a reification having existence outside and above human creation. Such a position, as we have seen, is most characteristic of Positivism – the main ideological enemy of New

Deviancy theory – but both Classicism and conservatism embrace a similar notion of natural consensual values which all fully social individuals would share.

C. *Definition of Crime*

The most characteristic conception of the New Deviancy theorists is their notion of *labelling*. Society, they argue, does not consist of a monolithic consensus, but rather of a pluralistic array of values. For an action to be termed criminal or deviant demands not one, but two activities: a group or individual must act in a particular fashion, and, second, another group or individual with different values must label the initial activity as deviant. Human beings acting creatively in the world constantly generate their own system of values. Unfortunately, within the pluralistic order of society, certain groups – variously and vaguely termed ‘the powerful’, ‘the bureaucracy’, ‘the moral entrepreneur’ – with more power than others, *enforce* their values upon the less powerful, labelling those who infringe their rules and stereotypical tags. Thus, people who in fact are existentially free, and evolve different values or experiment with various forms of behaviour, are labelled by the authorities as *in essence* a ‘homosexual’, ‘a thief’, or ‘a psychopath’.

D. *Extent and Distribution of Crime*

At the same time as emphasising the diversity of behaviour, the New Deviancy theorists stress the ubiquity of deviance. It is not merely the poor who commit crime. Exposé of corporate activities and self-report studies of middle-class youth indicate the widespread nature of crime. But the theorists go further than this, for they stress not merely ubiquity and diversity but also, paradoxically, *similarity*. And it is through this observation that New Deviancy theory obtains its radical purchase on the world. That is, while it recognises that the norms of sexual intercourse vary from one social group to another, it notes how they all involve aggression and male domination. Similarly, while it is true that economic relations involve a great diversity, they also ubiquitously involve theft. All men are rapists, all people are thieves. Categories blend into one another: marriage and prostitution, rape and ‘normal’ sexual intercourse, corporate income tax fiddling and robbery, street violence and the violence of unguarded machinery in factories, the vandalism of the ‘redevelopment’ of the city and the vandalism of the kid in the telephone kiosk.

Whereas previous theories make clear lines between conformity and deviancy, these theorists suggest that not only is deviance relative to the values of the beholder, but that behind conformist appearances lies an underlife of deviance.

For conformity *involves* deviance, the everyday life of the deviant involves infraction, and, of particular importance, the sanctimonious conformity of the powerful involves the violation of the laws which they themselves create.

What, then, are the New Deviancy theorists to make of the pyramid of the official statistics? Simply, that it is a fabrication. It is a result of the prejudiced fashion in which

the police and the courts discriminate against lower-working-class deviance and ignore the crimes of the powerful. The Classicist contradiction between equality and property is a reality which is manifest not in the way in which the poor commit more crimes than the rich, but rather in the fact that the poor are more *vulnerable* to arrest and prosecution than the rich. The ubiquity of crime becomes a pyramid of official statistics because of the differential reaction of authority.

E. *Causes of Crime*

“In analysing cases of intended non-conformity, people usually ask about motivation: why does the person want to do the deviant thing he does? The question assumes that the basic difference between deviants and those who conform lies in the character of their motivations [...] Psychological theories find the cause of defiant motivations and acts in the individual’s early experiences ... sociological theories look for socially structures sources of ‘strain’ in the society, social positions which have conflicting demands placed upon them such that the individuals seek an illegitimate way of solving the problems their position presents them with. (Merton’s famous theory of anomie fits this category).

But the assumption on which these approaches are based may be entirely false. There is no reason to assume that only those who finally commit a deviant act actually have the impulse to do so. It is much more likely that most people experience deviant impulses frequently.” (Becker, 1963, p.26)

If crime and deviance are ubiquitous, it is not necessary to explain their origin. If previous theories have focused on the individual and structural antecedents of the criminal act (Positivist and Strain Theory respectively), on the act itself (Classicism) and on the actor (conservatism), New Deviancy theory focuses on *reaction*. It is the administration of crime, not its origins, which is the key to understanding the phenomena:

“The person described as deviant in society may be considered deviant in only one way, but the community reaction to him can be total. For example, a pregnant high-school senior may be quite capable of finishing her studies successfully before graduation, but the total response, stigma, and ridicule may lead her to leave; a homosexual may be as competent as the next person in the government bureaucracy and similar in every other way except for his sexual appetite; but may be treated as though he was *totally* different.” (Duster, 1970, p.90)

The labelling process has two consequences: ideological and coercive. Troy Duster brings this out in his study of heroin addicts at the California Rehabilitation Center. Certain deviant aspects of the addict may be regarded as ‘master statuses’ from which a knowledge of the total identity of the individual, overriding all other characteristics of the person, may be deduced. The process is often self-fulfilling for, once stigmatised, the heroin addict finds it very difficult to re-enter the ranks of normality. Further, Duster

notes how the addicts, in order to be released at an early date, must in the therapeutic group accept the moral characterisation imposed by their attendant psychiatrists. Moreover, the identity and kinship which they develop in the institution reinforces their notion of themselves as men set apart from the normal by virtue of their postulated personality weaknesses. In fact, Duster argues, there is negligible difference between addict and normal, apart from social inferiority, *until* the deviancy amplification process occurs:

“The point to be made is that the addict supplied a drug without stigmatisation would make the case that has been presented: that he cannot be identified among ‘normal’ men without a chemical test, and could therefore lead that kind of social life which would negate the charge of psychic weakness.” (Duster, 1970, p.247)

Duster, in common with other labelling theorists, implicitly holds a view of the world which suggests that there is a plurality of forms of behaviour in society and therefore definitions of deviancy. None of these deviant forms is, however, particularly extreme *until* social reaction occurs and spirals the deviant into a gross and unnecessary position. He would suggest that heroin addiction is initially a peripheral deviancy which, because of the blinkering effect of the notion of the ‘dope fiend’ as a ‘master status’, is reacted to in a totally miscued and unnecessary fashion. Thus, the very act of labelling, by materially limiting the future choices of the person and by being presented to the person as being the truth about his or her nature with all the force of authority, has a self-fulfilling effect. The old adages, ‘once a thief always a thief’, ‘once a junkie always a junkie’, *become* true not because, as earlier criminologists had maintained, this was the essence of the person involved, but because the power of labelling transformed and cajoled people into acting and believing *as if* they possessed no freedom in the world. This observation is a pointed criticism of Positivist notions of scientific laws that govern human behaviour. These ‘laws’, far from holding sway outside human control and purpose, are a *creation* of human interventions. If there is a correlation between broken homes and delinquency, it is not because the former *causes* the latter, but rather that delinquents from broken homes are differentially selected over their ‘normal’ compatriots to be arrested, prosecuted and to end up in the statistics. They are preferentially chosen because of the stereotype of them as typical ‘delinquents’. Thus they become like this stereotype through the process of labelling in both its coercive and ideological aspects. The criminal *career* is a function of social reaction rather than a result of a predisposed essence.

F. *Policy Deductions*

In Strain Theory we saw the irony of how the pursuit of *conformity* gives rise to deviance. Counterposed against this, in New Deviancy theory, is the irony of *social control* giving rise to gross deviance. For much social control is seen to be irrational and dysfunctional. The prisons do not work – they have a high recidivism rate. The stigmatisation of the delinquent leads, in a man-made progression, to the hardened criminal. Those in power are not only wrongly intolerant of diversity, their overreaction creates a more intransigent deviance which further threatens their image of the monolithic

consensual world and raises the level of coercive strategies necessary to maintain control. The key to controlling the 'crime problem', then, lies in the control of reaction against deviance, rather than in structural change.

For example, in 1967 in the United States, the President's Commission published *The Challenge of Crime in a Free Society*. Among other things, this report suggested that major causes of crime were poverty, slum conditions and blocked opportunities (that is, a Strain Theory approach). It was from the new deviancy perspective that Jack Douglas assembled a series of essays in a reader, *Crime and Justice in American Society*, which mounted a critique against this conventional wisdom:

"The authors of this book also share many ideas on how Americans must go about reconstructing the foundations of their laws and legal procedures in order to increase the safety of their person and their property while at the same time increasing the sense of social justice and the degree of social order. It is particularly noteworthy in this respect that none of the essays argues that we must have any kind of socio-economic reordering of our society to produce these results. Whereas the crime commission report continually insisted we must end slum living and every other form of social ill before we can solve our worst problems connected with crime and injustice, these essays have little to say about the social reorganization of priorities and resources. I suspect most of us are in favor of more equitable social policies in one form or another, yet it has been our implicit assumption that the critical, basic, problems with our laws and legal practices are causing our most severe problems of crime and injustice. The presidential commission's choice of placing the blame for these problems on social imbalances became a way of absolving legislators and legal authorities from responsibility for their own failures to create and administer practicable and just laws and legal procedures. We do not absolve them. We hold them to be most culpable, collectively and personally, for our most urgent problems of crime and injustice. They will continue to be so as long as they continue to administer and support the present system of unworkable and unjust laws and legal procedures. No amount of rhetoric, mystification, denial, or blame-gaming can change this fact." (Douglas, 1971, pp.xix-xx)

What is to be done, then, about crime? Each of the two parts of the control process – ideological and coercive – must be tackled. Ideologically it must be recognised that advanced industrial countries are diverse in value, and what is necessary is what Becker and Horowitz (1971) termed 'a culture of civility'. That is, tolerance must replace moral indignation, and an awareness of the open nature of human action replace essentialist stereotypes and reified notions of value. In terms of coercion, there must be a de-escalation of punishment, a realisation of the insignificant nature of most primary deviance (deviance before it is amplified – when it is termed *secondary* deviance) and a resistance to the creation of moral panics over deviancy. This policy of *radical non-intervention* (E Schur, 1973) involves the decriminalisation of many offences, particularly the so-called 'crimes without victims' (pornography, prostitution, gambling,

etc.) and severely lowers penalties on most others. And for the remaining serious offender:

“... it will probably be necessary to maintain a form of maximum isolation from the rest of society simply because the offender cannot be controlled by any other means. In such instances, Americans should investigate the possibilities of ‘banishment’ in which the recalcitrant offenders are allowed to run their own society, providing humane living conditions are maintained; banishment would absolve the rest of us from the guilt of dehumanizing our fellow human beings.” (Douglas, 1971, pp.42-3)

PROBLEMS WITH NEW DEVIANCY THEORY

Denial of Structural Causes

By granting human beings freedom in an absolute sense, without acknowledging any material constraints, human purpose is reduced to the level of whimsy. By propounding a conception of human nature as being free and spontaneous before the intervention of the State sullied it, these theorists threw all the weight of their criticism on bad administration. It was a romantic theory of the noble deviant, expressive and creative, who was bowed under the fetters of State control.

Thus, whereas Positivist theory, however distortedly, had emphasised the make-up of the individual and the structure of his or her social arrangements as generating deviancy (albeit ignoring the effects of social reaction), New Deviancy theory accomplished precisely the reverse position. It romantically suggested that nothing was wrong with the structure of society and the individual psyche outside the maladministration of the State and heavy-handed control agencies. In this manner, the conflict endemic in a class society was glossed over and the basic causes of crime ignored.

Inadequate explanation of social reaction

Paradoxically, for a theory which prides itself on introducing social reaction into the explanation of deviant behaviour, it is extremely limited in this respect. For the emphasis on maladministration rather than on structure ignores the structural causes of reaction. Hence, reaction is regarded as a simple irrationality in terms of administration, and politics is seen as showing up dysfunctions in the ruling class and clarifying mistakes in logic. Against this I would argue that the control system does involve a logic and that this logic relates to the total social order. Therefore the resistance of our rulers to the ‘rational’ logic of labelling theory is scarcely a mere whim of irrationality.

Problem of the Ubiquity of Crime

The stress on the ubiquity of crime and the denial of structural causes do not leave any possibility of explaining differences in human behaviour between subcultures, over time and between countries. For although it may be true that all people commit crime, it is palpably obvious that they do not commit the same kinds of crime or to the same extent. Even deviancy theorists who argue that middle-class and working-class juvenile delinquency is identical, as are the real crime rates of blacks and whites, and even men

and women, are stopped short when asked about old people compared with young people. Such a search for a democratic crime statistic may be a laudable pursuit of equality, but it is very bad criminology.

Furthermore, whereas the New Deviancy theorists have importantly stressed differential vulnerability of people to arrest, they are wrong to post this as an *alternative* to the differential propensity of people to commit crime. Surely, a study of differences in vulnerability *and* propensity would take us some way towards understanding the official statistics on crime?

Problem of Political Intervention

The strategy of non-intervention has serious flaws. As the most obvious level, the emphasis on maladministration rather than structure as the cause of problems in society blinds the theory to the root causes of the various crimes without victims. Because of this, there is little attempt to suggest structural *as well as* legislative solutions to the problems.

Even if we take the empirical incidents most tailor-made for New Deviancy theory, namely 'crimes without victims', problems arise. For if we examine a list of these crimes – prostitution, drug use, illegal gambling, pornography, abortion, homosexuality – the first thing to be noted is that it is a mixed bag. We are asked to agree in each case that there is no victim; we are asked to agree that it is irrational to intervene in so-called 'consensual crimes'. Why should we interfere, the New Deviancy theorists ask us, with free individuals doing their own thing? Our answer to them must be clear: because individuals are not free, because it is precisely the structural determinants, which the labelling theorists chose to ignore, which imprison and enmesh human action and rationality. Furthermore, the exercise of power is not an inherent evil, for it can be used to combat the repressive institutions that surround us. It is because social intervention can have a progressive as well as a deleterious consequence that we must discriminate between 'crimes without victims' and separate these categories which are presented to us. To present consensus between partners as an argument for the innocuousness of an activity is to ignore that contractual agreement in a capitalist society is very often not an agreement between equals but one between those of unequal power. Nor is such a 'free contract' beset by merely material constraints; the ideological domination of bourgeois ideas and categories scarcely makes for a *rational* contract between free individuals.

If we turn then to the structural causes of 'crimes without victims', we shall be more capable of distinguishing between them. To do this we must place activities in their social and historical context, and not generalise upon such an abstract and spurious basis as 'consensual activities'.

When we move beyond 'crimes without victims', the problems become even greater. For although we might argue that we should leave the juvenile vandal alone, should we absolve the income tax fiddler? And in discussing rape, we find a crucial contradiction in New Deviancy theory. Consistent with their general theory, New Deviancy theorists

would argue that rape is ubiquitous and scarcely demands a causal explanation outside its assumption as normal male behaviour, but would, at the same time, hesitate to warn about false labelling or suggest that recent fears about rape are merely a moral panic which grossly over-estimates the threat.

At base, the politics of non-intervention overlook the genuine fears that people have about crime. By underplaying the dangers of crime in the streets and suggesting that all would be solved merely by the State de-escalating its reaction to the criminal, it ignores the profound malaise and destructive anti-social behaviour which exists in our cities and which is generated by the type of society we live in.

6. MARXISM

The sixth theoretical perspective to be discussed is Marxism. Although Marxism has developed more sophisticated analyses of human nature and social order than the other traditions, its early contributions to the analysis of crime were limited. During the last decade, a Marxist criminology has emerged although the debates are at an early stage. In this development there has been a tendency both to reject some of the conceptual gains and to ignore the rational kernel and insights of non-Marxist traditions in criminology.

A. *Human Nature*

“Men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brain of the living.” (Marx, 1969, p.360)

For Marxists, the dichotomy between human beings being depicted as having free-will (eg, Classicism or conservatism), or as being determined (eg, Positivism) is false. Also they reject the notion of adding free-will at the end of a large series of determinants (eg, Strain Theory) or the depiction of determinacy as a monopoly of social reaction impacting on the pure spirit (eg, New Deviancy theory). Human beings are both the producers and the products of history; they create institutions and meaning within a particular historical period which is, in the last instance, determined by the mode of production of the time. Furthermore, there is no pre-social essence of humanity as is postulated in the majority of non-Marxist theories. The notion of an animal nature which will determine behaviour if ‘society’ does not intervene, or of an *a priori* human reason which exists outside of social context, is an absurdity. Rather, in their deviant behaviour and in their normal behaviour, in their reason or their unreason, in their individualism or in their collectivism, human beings are social beings. Thus:

“Man is a *zoon politikon* in the most literal sense; he is not only a social animal, but an animal that can be individualised only within society. Production by a solitary individual outside society ... is just as preposterous as the development of speech without individuals who live *together* and talk to one another.” (Marx, 1971, p.189)

Statements concerning the particular characteristics of social relationships, about for example the degree of individualism, rationality, freedom or determinacy, must be historically grounded. That is, they must be generalisations not about all humanity in the abstract, but about specific historical periods. It is important to specify, then, problems of freedom and determinacy within capitalism.

B. *Social Order*

In *Capital* (Vol.1), Marx characterises the transition from feudalism to early capitalism as the imposition of the discipline “necessary for the system of wage labour”:

“The advance of capitalist production develops a working class which by education, tradition and habit looks upon the requirements of that mode of production as self-evident natural laws. The organization of the capitalist process of production, once it is fully developed, breaks down all resistance. The constant generation of a relative surplus population keeps the law of the supply and demand of labour, and therefore wages, within narrow limits which correspond to capital’s valorization requirements. The silent compulsion of economic relations sets the seal on the domination of the capitalist over the worker.” (Marx, 1976, pp.899-900)

The coercion necessary at the genesis of capitalism becomes supplanted by the silent compulsion of the market. The worker is doubly free – free to sell his labour and ‘free’ of the ownership of the means of production. That is, compared with feudal relationships, he is free – but it is a voluntary compulsion because he is forced to sell his labour in the marketplace: he is free to be exploited. But not all the population are able to find employment; there is a ‘relative surplus population’ in capitalism which seem to maintain a market in labour – the ability of the employer to bid for labour among competing individuals selling their labour-power. Lastly, Marx notes how, through ‘education, tradition, habit’, people begin to accept this ‘double freedom’ as natural – as being an eternal part of human existence. The natural world of the voluntary compulsion of the market-place coupled with the daily discipline of the factory seal the fate of the worker. Marxism stresses the role of the work situation as the major focus of social control in capitalist society, while ‘direct extra-economic force is still used only in exceptional cases’.

It is important to stress the double nature of freedom under capitalism. Marxism does not suggest that freedom is an illusion, but rather that the nature of capitalist reality is both opaque and contradictory. Unlike the New deviancy theory, it does not view support for the existing system as a mystification but as arising out of the nature of capitalist reality itself. As Maurice Godelier puts it, in a capitalist society:

“It is not the subject who deceives himself, but *reality* which deceives him, and the appearances in which the structure of the capitalists’ production process

conceals itself are the starting-point for individuals' conceptions." (Godelier, 1972, p.337)

in his discussion of the labour process in *Capital*, Marx outlines two contrasting spheres. On the one hand, the world as it appears from the level of the process of circulation (the market exchange of commodities, i.e. labour and wages) with the process of production (i.e. the production of surplus value); on the level of the sphere of circulation of commodities the worker freely sells his labour, he obtains the market equivalent for it, he is an equal before the law, he is not cheated by the individual capitalist. On the other hand, if we leave 'the noisy sphere of human rights' and enter 'the hidden abode of production', we find a different story: coercion and necessity replace freedom, substantive inequality replaces formal equality, exploitation replaces equivalence. The market economy creates of necessity real freedom, rationality and individualism, at least in *certain sections* of the population. Thus the immediate world of appearances (freedom, equality, equivalence) inverts and obfuscates reality (servitude, inequality, exploitation), but it is not a mere illusion. Such a double, opaque and contradictory structure of reality is characteristic of capitalism and throws up theories which stress one-sidedly either free-will or determinism. There is the rational basis of conformity in our society (as one-sidedly depicted by Classicism) and there is the determinacy (as one-sidedly portrayed in Positivism).

The dull compulsion of economic need, as an indirect coercion, exists throughout the workforce. What of direct coercion and the 'exceptional circumstances' of its use? Here, as Dario Melossi puts it, the exceptions are in fact "the sphere of penal repression, that is, in the sphere of exceptions" (1976, p.32). for the coercion at the genesis of capitalism continues with its development:

"The way of the cross walked for some time by the proletariat punished for a social transition that they did not initiate or understand and which they opposed with all their force is, in a more developed moment, walked by the rebel, the criminal, by the ones Marx numbers amount the lumpen-proletariat." (Melossi, 1976, p.28)

Thus the data presented to the President's Commission indicate that the labourer is fourteen times more likely to go to prison than the professional, the person with less than four years' education is eighteen times more likely to enter prison than the postgraduate, and the black male is five times more likely to go to prison than the white. Unemployment in particular correlates and co-varies with imprisonment (Quinney, 1977, pp.131-40; Janovic, 1977).

The pattern is clear: the major focus of the prison (i.e. direct coercion) is the workless, the reserve army of labour and those marginal to the workforce. Indeed, in the United States, one in three blacks aged 20-29 is currently in penal custody or under penal supervision (Mauer and Huling, 1995).

The principles behind the control of the worker and the workless are the same. Whereas Classicism portrays the history of punishment as the tale of men of good-will advancing steadily on humanitarian grounds under the banner of reason, Marxism notes how Classicist ideals are historically situated. Central to this debate is the work of the Bolshevik legal theorist Eugene Pashukanis (1978), who pointed out that concomitant with the rise of commodity production (involving the notion of abstract labour, the free and equal worker, the proportional correspondence of labour reward, and of the concept of time as an abstract and general measure of values) arose precisely similar concepts of punishment. Namely, the notion of the abstract, voluntaristic, formally equal, legal actor who is punished proportionately to the cost of his crime by a fine or by the equivalent denial of his free time in prison. Thus the principles of reward which coax and give reason to the conformity of the worker in the factory are the same as the principles of punishment which are inflicted upon the recalcitrant. Just as the population must be convinced that utility to society is proportionately rewarded they must also be made aware that lack of utility is effectively curbed and stigmatised. The pyramid of success must have a shadow of failure.

An image used by the New Deviancy theorists was that of the iron fist and the velvet glove. Social control was at base naked coercion, a fist poised above the total population, but this was disguised and supplemented by a velvet glove of mystification. Material coercion and ideological delusion attempted to pacify the population, yet – and here was the irony of their critique – such a control mechanism was, in the last resort, dysfunctional. For labelling exacerbated rather than ameliorated deviancy.

How does Marxism differ from this? I have pointed to its insistence of pinpointing the nature of coercion and consensus in a particular historical period – in this case capitalism – and on detailing how coercive means are differentially applied to the working population (the worker or the workless). Coercion is not a blanket category, but is directly applied to the workless while manifesting itself as an indirect pressure on those in work ('the dull compulsion of economic need'). Consensus is not a system of mystified ideas by which the ruling class deludes the population, but arises out of the contradictory nature of reality itself. It is based on the *real* freedom and gains of capitalism that coexist and conceal coercion and exploitation; that is, the 'double freedom' of the worker under capitalism.

Marxists as well as New Deviancy theorists are fascinated by the role of the prison as an instrument of social control. What point, the New Deviancy theorists ask, is there in such a *dysfunctional* system? It represents for them the prime symbol of administrative irrationality. But Marxists, from the same empirical observation, come to exactly the opposite conclusion. They argue that the prison has two vital and efficient *functions* in capitalist society. The first is as a material deterrent, the second is as an ideological weapon. First, they point to the fact that although the focus of penal sanctions is on the workless, their real effort is on those in work. For the prisons do not control the future activities of their inmates; their presence controls the rest of the population. For the threat of being permanently excluded from reasonable work, of social stigmatisation and

of immiseration holds the respectable working class, the honest citizen, constantly in check.

Second, by portraying crime as a monopoly of the marginalised and the major problem of order in society, they deflect attention away from the crimes of the powerful and the exploitative nature of capitalism itself.

Marxist criminology does not only specify and differentiate the way in which coercive and consensual control impact on the working and workless population; it views the system as an integrated whole. Thus:

- The ‘reserve army of labour’, a relatively immiserated pool of people out of work, affects the market position of those in work by posing a constant potential competition for jobs;
- The social conditions of the reserve army, and the threat of those in work joining them, allow the imposition of a rigorous discipline in the workplace;
- Both workless and those in work are rewarded and punished in terms of the same principles of proportionality; there is a continuum of reward and punishment within society;
- The prison’s ‘failure’, in that it well-nigh irrevocably stigmatises the recalcitrant, serves as a first line of control – after work itself – for those in work;
- The State, in acting against the criminal, serves to legitimate itself as the protector of universal interests in society.

C. *Definition of Crime*

With the exception of the New Deviancy theory, all the theories discussed in this article assume that crime is any action which is severely against the interests of the majority of citizens. New Deviancy theory disagrees here: crime is that behaviour which violates the interests of the powerful. How does Marxism differ from this?

The basis for the political support of bourgeois society among the mass of the population is closely entwined with their fear of crime and disorder. Just as the ruling class takes working-class demands for justice and enmeshes them in the support of a class-ridden society, so too a real need for social order is similarly transmuted. The existence of a class society leads to desperation, demoralisation and a war of all against all. The working-class community suffers immensely from the criminals in its midst. Law gains its support not through a mere mystification of the working class, an ability to render people spellbound by its paraphernalia or pomp and authority. Legal institutions represent, it is true, the interest of the ruling class, but they are also much more than just this. As Herbert Marcuse put it:

“The state, being and remaining the state of the ruling class, sustains *universal* law and order and thereby guarantees at least a modicum of equality and security for the whole society. Only by virtue of these elements can the class state fulfil the function of ‘moderating’ and keeping within the bounds of ‘order’ the class

conflicts generated by the production relations. It is this 'mediation' which gives the state the appearance of a universal interest over and above the conflicting particular interests." (Marcuse, 1971, p.101)

the class society which creates social disorganisation also creates its partial palliative. Legal institutions also contain with them gains and concessions wrested from the bourgeoisie by the labour movement. Furthermore, they are a repository for the ideals of equality, justice and liberty which, however empty these remain as formal pronouncements outside the economic and political basis necessary to realise them, remain genuine ideals all the same. Conservative law-and-order campaigns therefore play on real needs for social order and embody genuine ideals, albeit in a distorted form. In this fashion, the criminal and the destructive elements of a class society are presented not as a *result* of present society, but as the *cause* of its lack of harmony. The ideological impact of such an inversion of the real world is considerable.

As with our discussion of the contradictory nature of the work process in capitalism, we see in law similar opaque and contradictory phenomena. Thus bourgeois law arises in order to safeguard, contract and protect property: that is, to maintain equality in the realm of exchange while perpetuating and allowing for increasing accumulation at the level of production. The law offering equality of judgement and protection to all involves a contrast between formal equality on one level, which obscures and perpetuates substantive inequality on the other. Thus, laws are passed which judge people as equal individuals, obscuring the fact that their inequitable class position makes them differentially vulnerable to commit crime in the first place. The formal equality of protection which laws give in the defence of the property of individuals, however, is simply the right of one class to perpetuate and extend its ownership of the means of production, thus rendering the working class both propertyless and unequal. Therefore, to judge people equally, is to act inequitably, to protect property equally is to extent inequality. Here again, bourgeois society creates crime which threatens the working class, and law maintains a degree of protection against the criminal. Also legal rights allow the individual to organise politically and they afford some protection against the intrusions of the ruling class and the State. Law not only legitimates ruling-class domination, it has a legitimate component to it, in terms of the protection of working-class interests. It is not, therefore, a mystification of the real interests of the powerful, as New Deviancy theorists would maintain.

D. The Extent and Distribution of Crime

In Marxist criminology, crime is seen to be endemic in the social order. The explanation of how the pyramid of crime emerges is, however, different from previous theories. In Strain Theory, the Classicist contradiction between property (substantive equality) and formal equality of opportunity is seen to be the root cause of crime. With this, Marxism would be in broad agreement. Contrary to this, New Deviancy theory stresses that the main contradiction is between the formal equality of ideal justice and the substantive inequality of justice in practice. With this, no Marxist would quarrel. It must be stressed, however, that the two positions are not alternatives. For the pyramid of crime is not

merely a figment of the differential reaction of the powerful. In a class society, despite the espousal of formal equalities of opportunity and of justice, substantive inequalities occur on *both* levels. As Jeffrey Reiman puts it:

“There is evidence suggesting that the particular pressures of poverty lead poor people to commit a higher proportion of the crimes that people fear (such as homicide, burglary, and assault) than their numbers in the population.

... if arrest records were brought in line with the real incidence of crime, it is likely that those who are well off would appear in the records far more than they do at present, even though the poor would still probably figure disproportionately in arrests for the crimes people fear. In addition to this, those who are well off commit acts that are not defined as crimes and yet that are as harmful or more so than the crimes people fear. Thus, if we had an accurate picture of who is really dangerous to society, there is reason to believe that those who are well off would receive still greater representation.” (Reiman, 1979, pp.7-8)

E. *Causes of Crime*

Contemporary capitalism makes a social contract based on effort and reward, the premise of citizenship being the provision of work and access to property and consumer goods. It is unable to employ the totality of the population: a proportion of individuals are marginalised. It is impossible to enmesh these people in the social control of the workplace and thus they are potentially a dangerous class. They have, unlike the stable workforce, little to lose from criminality. The judicial machinery must, therefore, be used to coerce them into subservience: it must fill the gap where work discipline is absent. The aetiology of crime and law-abiding behaviour has, therefore, the same root: the incorporation, or lack of it, of the population into the workforce. While this explains merely the propensity for crime among the workers, it does not root the actual motivation. Here again the motivation lies – as Strain Theory indicated – in the Classicist contradiction. The ever-present disparity between effort and reward, the emphasis on equal opportunities, yet the unequal reality of a class society, the stress on individual competition, yet the handicapped nature of the race – all militate to create a criminogenic milieu. Such contradictions are particularly hard on the marginalised groups who are denied full access to the consumer society. Thus, the very process which binds the worker to his bench turns the mind of the unemployed to forms of crime which have, in fact, a high rate of surveillance and apprehension.

Such a root cause of crime must be combined with an analysis of the effects of social reaction upon crime – as the New Deviancy theorists one-sidedly argue. In fact, Marx himself, in one of his rare discussions on crime, notes:

“There must be something rotten in the very core of a social system which increases its wealth without decreasing its misery, and increases in crimes even more rapidly than in numbers ... Violations of the law are generally the offspring of the economical agencies beyond the control of the legislator but, as the

working of the Juvenile Offenders' Act testifies, it depends to some degree on official society to stamp certain violations of its rules as crimes or as transgressions only. This difference of nomenclature, so far from being indifferent, decides on the fate of thousands of men, and the moral tone of society. Law itself may not only punish crime but improvise it ..." (Marx, 1859)

What of crimes of the powerful – how is it that those that make the rules are also persistent rule-breakers? The solution to this paradox is in the contradictory nature of law. Certain laws are passed by pressure of subordinate classes which act against the interests of the powerful (eg, anti-monopoly legislation, progressive income tax measures, factory safety legislation). The extension of real power is exhibited in the degree of their actual implementation: for, as Reiman has indicated, the pyramid of crime is in part the product of the differential immunity of the powerful to prosecution.

What of the element of volition or determinism in the criminal act? Engels is quite clear about the nature of crime *in extreme circumstances*. It evolves from the demoralisation and brutalisation of exploitation in which "the working-man becomes precisely as much a thing without volition as water ... at a certain point all freedom ceases" (1969, p.159).

How does this differ from a Positivist theory of crime, which would invoke invariable laws of human behaviour? In the sense that Engels specifies particular brutalising circumstances. However, Engels is not consistent in his writings on crime. For it also constituted the "earliest, crudest and least fruitful form of rebellion" (Engels, 1969, p.240). but even such an act of volition is soon enveloped in determinants:

"The workers soon realized that crime did not help matters. The criminal could protest against the existing order of society, only singly, as one individual; the whole might of society was brought to bear upon each criminal and crushed him with its immense superiority." (Engels, 1969, p.240)

A Marxist criminology also points to the existence of determinants which, as a product of human creation, are not natural laws, but at the same time come to dominate the lives of human beings. It is here that Positivism has its validity. It is at the desperate end of the social spectrum where the overwhelming milieu precipitates people into highly determined roles where the tyranny of the organism is best displayed, and where the Positivists, whether psychologists or biologists, come into their own. But this is a product of historical time and place – it is *not* a part of 'human nature' or 'man's essence' in the way that Positivism might have us believe.

Such a position is critical of the manner in which the New Deviancy theory rejected Positivism. That is, in suggesting that Positivism is wrong because it has an incorrect portrayal of human capacity – it denies human creativity – and that people who act in a determined fashion are acting like that because they are acting *as if* they were determined. It is wrong to confuse human potential with human reality or to regard the determination of human beings as a mistake in thought.

F. *Policy Deductions*

It may be true that there are correlations between broken homes and vandalism – the task must be to remove the conditions that give rise to such associations. It may be true – as Strain Theory argues – that the contradiction between the ideals of equality and the reality of restricted opportunities gives rise to delinquency. Yet this Classicist contradiction between formal equality and substantive inequalities stemming from property is not solved, as the Strain Theorists would have it, by merely opening up more opportunities. For the unequal distribution of property and power in capitalism will always result in the privileged reproducing inequalities of opportunity areas. For Marxists, the solution to the contradiction of Classicism is to abolish, that is to create a world where formal *and* substantive inequalities disappear.

PROBLEMS OF MARXIST CRIMINOLOGY

Problem of Specificity

The line of causality invoked by Marxists is: capitalism leads to crime, and creates a series of problems in terms of specific times, places and groups. To say, for instance, that crime is endemic among corporate elites does not explain which corporate executives commit criminal acts and under what specific economic circumstances.

In part, this problem relates to the over-concentration of Marxism on the total society rather than on the individual or group. Strain Theory, with its emphasis on subculture as a historical entity wherein a group of individuals faced a shared set of circumstances, and New Deviancy theory with its notion of ‘moral career’ – the biographical interaction of the individual with society – are more readily capable of dealing with the micro-level of analysis. In recent years, the concept of subculture has been recontextualised and integrated into Marxist analysis, particularly of youth cultures – and this is a fruitful line of development.

Problem of Functionalism

There is a tendency in much Marxist criminology to take up a position which could be called *left functionalist*. That is, phenomena are ‘explained’ by the role they are seen to play in maintaining capitalism. Dysfunctions, effects which create imbalances and disequilibria, are played down. We have noted in our discussion of Strain theory how Merton recommended the study of crime and social problems as a corrective to this tendency in bourgeois structural functionalism, but no such strictures have been applied to functionalist tendencies in Marxist criminology.

Problems of Dealing with Non-Economic Crimes

There is a tendency in Marxist criminology to assume an obvious economic motive for criminal activities. This is untrue, even in the case of a professional robber, and, of course it is inadequate in terms of rape or vandalism. What is needed here is a widening of theory and further specification and contextualisation as discussed earlier. In terms of rape, for example, one would look for a Marxist approach which was capable of analysing the notion of patriarchy and discussing the basis of gender differences and male

aggression. In terms of juvenile delinquency one would look for a way in which economic deprivation is manifested in delinquent subcultures which involve vandalism and acts of physical violence. Once again, it is to subculture theory that one turns to find concepts that mediate between the study of the total society and the actual activities of delinquent individuals.

Problems of Reform and Strategy

Marxist criminology would argue that real progress in the elimination of crime will occur only if fundamental changes are wrought in the ownership of the means of production. Revolution, not reform, is the major item on the agenda. With this in mind, it is necessary to argue for changes in criminal justice which would help to transform rather than merely shore up the system. Such a strategy is difficult, for there is no such thing as a demand which is without contradictions. For example, we have shown elsewhere (Greenwood and Young, 1975) how the right to abortion as a formal demand conceals the substantial inequalities which force some women to have abortions. Progressive abortion legislation involves gain on the level of women's rights, but is simultaneously a control measure on the part of population-controllers. Reforms, because they emerge from a class-divided society, will always display such a two-sided nature. The strategic problem is how to discriminate systematically between 'negative reforms', which on the whole serve to open up the system to fundamental change, and 'positive reforms', which merely give legitimacy to the system and increase its stasis (see Mathieson, 1974).

Problem of Crime Under Socialism

In classical Marxism, the excesses of deviance, and with them the need for law and the State, are seen to 'wither away'. A debate occurs within Marxist criminology as to whether such a position is utopian. Thus Paul Hirst writes:

"One cannot imagine ... the absence of the suppression of theft and murder, nor can one consider these controls as purely oppressive." (1975, p.240)

Such a debate has relevance to the whole problem of the causality of crime for, if it is true that all industrial societies will produce 'excessive' deviance, then part of the cause of crime is not only in capitalism but in the complex nature of industrial societies *per se*.

CONCLUSION

I have presented in this article six theories of crime and deviance, systematically comparing them on the central questions which any theory of order and of criminality must tackle. By examining the paradigms in this way, it is possible to differentiate clearly between them. But, as was suggested in the Introduction, one must be careful how we compare the different theoretical approaches. In particular, we should bear the following in mind.

- *Ideal-type Theories*

I have constructed 'ideal' theories which have, to an extent, a high degree of internal consistency; so the answer to each question should follow logically from the answer

to the others. In actual practice, however, one finds theorists who lack consistency and, of course, others whose writings are *in between* the theories so described.

Thus, in the early 1970s, many theorists, both in Britain and the United States, began to move away from New Deviancy theory towards Marxism. As a result, much of this transitional work shows characteristics of both traditions (eg, the essays in Taylor, Walton and Young, 1975). The purpose of placing theories into such ideal types is to create a usable vocabulary so that we can argue about crime in a serious and systematic fashion.

- *The Myth of Unilinear Development*

With the exception of conservatism – which strangely is rarely discussed in books on criminological theory – we have presented the theories in the order that is conventional in textbooks on criminology. That is, Classicism, Positivism, Strain Theory, New Deviancy theory and (perhaps) Marxism. This is not to make a common textbook mistake of believing that they developed in a series of discrete historical stages from Classicism to Marxism, each representing a step in the rational progress towards the solution of the crime problem.

- *There are many unilinear lines* – the one presented here is the one conventional in *sociological* textbooks on criminology. Different experts would have different unilinear lines and each unilinear line of development would be hotly disputed by experts from other disciplines; eg, a biologist interested in crime might see biological positivism as the function of a line of scientific achievement – scarcely a stage at the beginning of criminology. Thus, Hans Eysenck views himself as being at the end of a lengthy and distinguished lineage, but his line crosses the one presented above only at the point of Positivism.
- *Lack of dominance of any one theory* – rarely, if at all, does a theory dominate even select parts of the Academy, as the notion of unilinear development suggests. Rather, the situation is more that of competing paradigms. For instance, at the moment, academic criminology is presented with a wealth of eminently viable positions and excellent theoreticians in each of the theoretical traditions I have presented here. All these positions are flourishing and have powerful support and sound and substantial work as their basis. They can hardly be considered remnants of bygone theoretical ages! They all have long intellectual histories and social bases which belie the notion of the revolutionary development of theory in which earlier forms are dismissed and become defunct.
- *The myth of the new theory* – criminology, like the rest of the social sciences, suffers from much forgetfulness of its history, and fresh theories are rediscovered with a surprising naïveté (see Young, 1979). A major case in point is the so-called Positivist revolution at the beginning of the century, presented by leading exponents such as Enrico Ferri, as a Copernican

transformation of notions of human nature, social order and criminal policy. But, in fact, a flourishing Positivist school occurred in the middle of the nineteenth century (see Lindesmith and Levin, 1937; Pearson, 1975). Or, more recently, the distinguished American legal scholar, Isaac Balbus, in 1977 ‘discovered’ the commodity fetishist theory of law, only to admit ruefully at the end of this work that he had come across a more sophisticated version of this theory written in 1924 by Eugene Pashukanis!

Now the point of pouring scorn on the ‘new discoveries complex’ is not to say that nothing new ever happens in theory, or to detract from the work of the recent theorists. Theories, however recurrent, emerge in particular historical periods with special emphasis and advantages of their own. They play important roles in revitalising past discoveries, putting new stress on the interpretation of events and relating these to current happenings. What is annoying is the amnesia regarding the past and the perennial tendency to one-sided interpretations of social reality: voluntarism versus determinism; biological versus sociological reductionism, etc. The problem facing a theorist is to transcend such dichotomies, yet the tendency in terms of the fashionable theory of the moment is to swing backwards and forwards, to bob from one position to the other. Thus, in sociological circles in the late 1960s, Positivism became *démodé* and was replaced by a New Deviancy theory which, far from transcending the position put forward by its opponent, merely inverted every facet of Positivist theory, so that a mirror image resulted.

- *Theory and the Real World*

At the beginning of this article I stressed how academic theorisation about crime is not separate from law discussions by the public at large. It merely reproduces in a more systematic and consistent form the discussions occurring in pubs and at bus-stops. But there is another sense in which there is an intimate relationship between academic criminology and the real world. That is, these ideas very often have an only too real institutional basis. For instance, it may not have escaped the reader that the juvenile court is an arena where Positivist theories of crime are dominant and that the adult courts are the realm where Classicist principles often hold sway.

From the seating arrangement in magistrates’ courts, to the design and layout of prisons, fundamental ideas about the causation of crime and the nature of justice come into play.

I have indicated how the study of crime is not a marginal concern to the citizen, but plunges us immediately into fundamental questions of order and morality in society and to the examination of the very basis of the civilisation we live in.

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