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Boundary Changes in Criminal Justice Organizations

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From the Director

The celebration of the National Institute of Justice's 30th anniversary in the autumn of 1999 provided the Institute and the criminal justice community the perfect opportunity to reflect on three decades of criminal justice research accomplishments. A few months later, the dawn of the new millennium seemed the appropriate stage from which to look forward to what lies ahead for criminal justice in the United States.

As preparations were made to commemorate the Institute's anniversary, it became increasingly apparent to NIJ staff and the criminal justice research, policymaker, and practitioner communities that there needed to be one compilation comprising a comprehensive, scholarly examination and analysis of the current state of criminal justice in the United States. Consequently, NIJ conceived and launched a project to produce the four-volume *Criminal Justice 2000* series to examine how research has influenced current policy and practice and how future policies and practices can be built upon our current state of knowledge.

The themes developed for these volumes were purposefully broad in scope, to allow contributors the intellectual freedom to explore issues across criminal justice disciplines. In its competitive solicitation, NIJ asked the authors to explore and reflect on current and emerging trends in crime and criminal justice practice, based on scientific findings and analyses. An editorial board of eminent criminal justice researchers and practitioners then selected the proposals that displayed exceptional scholarly merit and contributed to the substantive themes of the volumes.

The result, the *Crime and Justice 2000* series, reflects the state of knowledge on a broad spectrum of crime and criminal justice issues. While the volumes do not comprehensively chronicle all topics vital to criminal justice in the United States at the year 2000, we hope the essays contained in these four volumes will stimulate thought and discussion among policymakers, practitioners, and scientists in the coming years and shape future research endeavors.

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A Century of Changing Boundaries

by Charles M. Friel

Imagine that we find ourselves in a dream. Slowly, as we gain our bearings, we realize that we are at a great assembly that has brought together two generations of justice reformers who have been separated by a century of time.

Leafing through the agenda, we find that our responsibility is to explain to our predecessors how the American system of justice has changed in the past hundred years. The challenge is to describe how the various boundaries that define the shape and texture of our laws, policies, jurisdictions, values, and aspirations have shifted across the century, sometimes for the good and, regrettably, sometimes for ill. Clearly, the changes to be addressed are staggering in both their diversity and complexity and demand a thoughtful understanding of who we are, from whence we came, and where we are in our own history.

We recognize our own generation. There are the leaders of the law enforcement community, members of the bench and the bar, academic social scientists, and law professors. We are victims' rights advocates, professionals from the treatment community, forensic scientists, and administrators of community corrections facilities, prisons, and jails. We recognize our colleagues from the legislature, journalists, policy analysts, representatives of the various justice professional organizations, interested citizens, and private-sector vendors, all offering a cornucopia of new products, programs, and proposals.

Not surprisingly, our generation is a mixture of men and women from all parts of the country, professionals from both the public and private sectors. Some are older, others younger. We are a sea of different faces, values, and hopes that represent the complex diversity of America at the

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beginning of the 21st century. We pride ourselves in being stewards of the administration of justice, professionals dedicated to improving the quality of justice in a society just stepping forth into a new millennium.

We have consensus on a number of fundamental principles. We agree that a balance must be maintained between individual rights and the security of the community. We know that if the ends of justice are to be achieved, the letter of the law must be tempered by the gentle hand of equity. We recognize, sometimes grudgingly, that law and policy must change from time to time if they are to remain congruent with the demands of a dynamically evolving society. We know that justice can be well served through the prudent embrace of new technologies, including everything from biometrics to robotics, from artificial intelligence to the brain chemistry of addiction.

Understandably, however, this consensus begins to evaporate as the justice debate moves from fundamental principles to particular applications. Agreeing that children should not be held to the same standard of accountability as adults, we are perplexed about where the boundary should be drawn. As neophytes in the information age, we wonder how to balance our need to know in order to protect the community with the risk of invading the citizen's privacy. We wrestle with whether the administration of justice should be primarily the domain of local and State government or whether the Federal Government should continue to take a greater policy and enforcement role. Beneath all these discussions on the particulars, however, is the daunting question of balance: How do we set the boundaries, how do we fit all the pieces together so that justice can be better served?

The Progressives

Lest we forget, we are not alone in this dream. Attending the assembly with us is the generation of justice reformers of a century ago. Men and women like us, stewards of a justice system at the dawn of a new century. Who were these predecessors in the pursuit of justice? Will we find kinship with them or will we find ourselves a century apart in beliefs and aspirations? Let us take a moment to meet some of them, since the century-long changes in justice, which we are about to reveal to them, were hammered into shape on the anvil of their ideas.

On their side of the podium are the police reformers, men like Major Richard Sylvester and Chief August Vollmer. Sylvester was the chief of police in Washington, D.C., and in 1901, he fortuitously became the president of the National Chiefs of Police Union, now the International Association of Chiefs of Police (Johnson 1988, 247–250). Through the turn of the 20th century, he

strenuously advocated the professionalism of law enforcement through creation of a civil service system, centralization of police administration, and the establishment of a national criminal identification system, an idea that subsequently became the Identification Division of the FBI (Monkkonen 1981).

Vollmer was the chief of police of Berkeley, California, and he sought the professionalism of police officers through university education (Dunham and Alpert 1989, 27; Vollmer 1936). He put theory to practice when he designed the first law enforcement degree program at San Jose State College and later became one of the founders of the School of Criminology at the University of California at Berkeley.

Vollmer's ideas were carried into a new generation by his protege O.W. Wilson, who sketched the blueprint of the professional model of policing in his classic text *Police Administration*, underscoring the benefits to be derived from scientific management and other innovations (Wilson 1962, 56–64).

The deplorable conditions of confinement in the 19th century nagged at the conscience of many reformers, among them Enoch C. Wines and Zebulon R. Brockway. Wines, who became the secretary of the New York Prison Association in 1862, would spend the rest of his life championing the cause of prison reform through centralized professional administration and the rehabilitation and education of prisoners. His innovative ideas were first set forth in a treatise entitled *The State of Prisons and of Child-Saving Institutions in the Civilized World* (1880). He was a principal in the organization of the National Prison Association, which he served as secretary until his death, and he represented the United States at the first International Penitentiary Congress in London. In recognition of his reform efforts, he was appointed by Congress to chair a permanent international commission on corrections (Clear and Cole 1990, 78–82).

Brockway offered a catalyst for prison reform in his paper *The Ideal of a True Prison System for a State*. His ideas became the building blocks for the *Declaration of Principles* issued by the National Prison Congress meeting in Cincinnati in 1870 (Goldfarb and Singer 1973, 40). From this congress evolved the American Correctional Association, which has been at the vanguard of correctional reform for more than a century. In 1912, Brockway capped his career

Our concept of childhood stands in stark contrast with that of a century ago. Rapid industrialization, coupled with unchecked urbanization and the struggle to survive in an age of low wages, put many a child and adolescent into the harsh reality of the factories, mines, and sweatshops.

with the publication of his autobiography, *Fifty Years of Prison Service*, which provides us a glimpse at a heroic struggle for the treatment of offenders.

Our concept of childhood stands in stark contrast with that of a century ago. Rapid industrialization, coupled with unchecked urbanization and the struggle to survive in an age of low wages, put many a child and adolescent into the harsh reality of the factories, mines, and sweatshops. By 1900, more than 1.7 million youngsters under the age of 16 were in the work force, more than the entire membership of the American Federation of Labor. The growing social conscience of the late 19th century, however, would seek to redefine this boundary between children and adults.

Reformers like Sophia Minton of the New York Committee on Children, Lucy Flowers of the Chicago Women's Association, Sara Cooper of the National Conference of Charities and Corrections, and their colleagues became known as the "child savers" in this reform movement (Salerno 1991, 37). They championed the cause of children and juveniles whom they saw falling into the chasms created by unchecked industrialization, urbanization, and the dislocating effects of immigration. By 1900, the work of the child-saver movement flowered into the establishment of more than 300 societies dedicated to the protection of children. A 20th-century legacy of their efforts was the concept of the reform school, ideally patterned on the model of the Christian home in a bucolic setting, anchored in the work ethic. Their efforts would also give birth to the idea of the juvenile code and the juvenile court, epitomized in 1899 with the enactment of the Illinois Juvenile Court Act (Illinois Statute 1899, sect. 131).

A 19th-century legacy of the abolitionist movement was the clarion call of reformers championing the rights of women. Some sense of the status of women during this era is portrayed in an 1856 report on the disposition of cases in the Boston courts. The author noted that while one man might end in prison for beating a truculent horse, another would likely receive just a \$3 fine and court costs for beating his wife—that is, if he did not maim or blind her (Fenner 1856, 253; Pleck 1987, 28–30).

By the end of the century, however, the public's attitude toward domestic violence began to change. As a result of the crusading work of the Grimké sisters (Angelina and Sarah), Elizabeth Cady Stanton, Susan B. Anthony, Lucy Stone, Charlotte Perkins Gilman, Carrie Chapman Catt, and other crusaders, the letter of the law began to recognize the seriousness of domestic violence as States began to criminalize wife beating (Fenner 1856, 243). Regrettably, it would be a strenuous century-long process before the letter of the law began to mature into the spirit of the law (Pleck 1979, 60).

Consistent with the zeitgeist of the era, politicians, educators, lawyers, journalists, and even artists began to join the ranks of the progressives late in the 19th century. At first their voices were lone cries in a wilderness of corporate greed and indifference to the plight of the common man. Undaunted, however, their crusade would lay the foundation for the social policy agenda of the next century. This progressive agenda has continually reinvented itself, beginning with Theodore Roosevelt's Square Deal, Woodrow Wilson's New Freedom, and Franklin D. Roosevelt's New Deal, then evolving into the Fair Deal, the New Frontiers, and the Great Society of Presidents Truman, Kennedy, and Johnson.

Indicative of the diversity of the reformers who sought to change the boundaries in this progressive era are Defense Attorney Clarence Darrow, Supreme Court Justice Louis Brandeis, Senator Robert La Follette, and Congressman George W. Norris. Even artists joined the fray. The so-called "ashcan" artists—among them Robert Henri, John Sloan, and George Luks—following the inspiration of their mentors William Hogarth and Francisco Goya, used their art to prick the conscience and unsettle the mind of an indifferent age.

Other progressives attacked the nonfeasance and corruption in urban government. Examples include Fremont Older and Rudolph Spreckels in San Francisco, Samuel M. Jones in Toledo, Tom L. Johnson in Cleveland, Joseph W. Folk in St. Louis, and Seth Low in New York (Berkin and Wood 1983, 320–323). Their example would lead to the widespread enthusiasm for municipal and State crime commissions that became the vogue in the 1920s and culminated with President Hoover's creation of the Wickersham Commission in 1929. Stalled for a time by the Great Depression and World War II, this trend in the use of commissions would reemerge in the form of President Johnson's Commission on Law Enforcement and Administration of Justice, the creation of the Law Enforcement Assistance Administration, and the justice policy debate of the past 30 years (Garraty 1966, 644–654; Walker 1980, 232–238; Feeley and Sarat 1980).

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The Changing Boundaries

This volume represents an attempt to address some of the agenda items of the assembly in our hypothetical dream. By no means are the ensuing chapters a definitive or exhaustive treatment of the subject. The subject areas selected represent mere examples, not a representative sample, of the myriad boundary changes that defined the character and nuance of our evolving system of justice of the past century.

In each chapter, the author or authors isolate an example of a boundary shift and describe its etiology, contemporary consequences, and possible futures. As appropriate, observations and conclusions are tied to the available literature, and specific issues that represent important concerns in need of future research are identified.

While the patient reader may find the subject of one boundary change more interesting than another, we hope that the real value of this work is in providing a better understanding of the dynamics of boundary changes themselves. If we are to know where we are in our own history and prepare for the future, then we need to understand how the amorphous commingling of the economic, political, social, and philosophical issues of our times will shape the boundary debates of the coming years.

The following boundary issues are addressed in this volume:

- The privatization and civilianization of policing.
- The boundary between Federal and local law enforcement.
- The changing interface between the courts and corrections.
- The blurring of the line between juvenile and adult justice.
- The changing response to domestic violence.
- The internationalization of criminal justice.
- Community justice: A new paradigm.

The privatization and civilianization of policing

One of the goals of 19th-century reformers was to rescue law enforcement from the corrupting control of urban political machines. They sought to accomplish this through a variety of initiatives, including the creation of a civil service system to combat patronage and the centralization of administration, with

lines of accountability and military-style discipline mirroring the corporate administrative structures that had proven successful in the private sector. They called for educating and training officers, using scientific techniques and emerging technologies more aggressively, and forming professional organizations for police executives so that the enforcement community could better share common concerns and address issues with a collective voice.

This movement was typified in the reformation of the New York Police Department under the leadership of Commissioner Theodore Roosevelt, who worked to extricate the department from the control of Tammany Hall (Axelrod, Phillips, and Kemper 1996, 234–235).

This professional model of policing would illuminate the efforts of law enforcement reformers through the first half of the 20th century, until its unintended weaknesses began to appear in the turbulent 1960s. With increasing frequency and escalating violence, the police found themselves confronting civilian demonstrators who challenged the status quo on issues ranging from civil rights and the plight of the inner-city poor to the war in Vietnam. One of the conclusions found in many of the post mortem reports resulting from these confrontations, such as the Kerner Commission report, was that in attempting to professionalize themselves, the police had not only extracted themselves from the urban machine, but, in the process, had also lost touch with the community (National Advisory Commission on Civil Disorders 1968, 157–160). These reports suggested that the police neither looked like the communities they served nor shared their values or concerns.

From this boundary eruption has arisen a call for the police to return to the community. Over the past few decades, a number of community initiatives have taken root, providing pathways for the police to return to the community and for the community to join in helping to secure the peace. Examples include more aggressive minority recruitment, neighborhood watch programs, cultural sensitivity training, and problem-oriented policing strategies with a shift of focus from responding to incidents to solving community problems. Much of this paradigm shift has been christened *community-oriented policing* and, according to Cordner (1999, 137–149), is characterized by:

- Decentralization: granting more authority and responsibility to line officers.
- Bureaucratic flattening: reducing the number of hierarchical layers of the organization to improve communications.
- Despecialization: reducing the number of specialized units to allow more direct service delivery.

- **Teaming:** improving efficiency and effectiveness by pooling officer skills and resources.
- **Civilianization:** replacing sworn personnel with civilians to make more effective use of personnel.

It is on this last dimension of community policing that Brian Forst has prepared the chapter entitled “The Privatization and Civilianization of Policing.” He traces the evolution of policing from the reform initiatives of the late 19th century through the professional era of the mid-20th century to the community policing vogue of the current era. In the context of this history, Forst clarifies the origins of the privatization and civilianization of policing, focusing on its assets and liabilities with respect to effectiveness, cost, equity, choice, and legitimacy. The chapter concludes with a view toward the future. What direction might privatization and civilianization take in the coming decade? What factors might mold the future of this trend, and how might this boundary change more effectively serve the public and restore the security of the community?

The boundary between Federal and local law enforcement

In the eyes of 19th-century progressives, the government not only practiced a hands-off philosophy relative to the abuses of the private sector, but also was malfasant in its apparent indifference to the plight of the common citizen. Urban political corruption, the working conditions in the mines and factories, the burden of perpetual debt laid on the shoulders of the farmer by the banks and railroads, the spiral of inflation and depression, and declining wages all led to a grassroots populist movement that demanded intervention by the Federal Government. For this generation, intrusion by government into the life of the citizen was seen as an appropriate and necessary step in the fulfillment of the American dream. This was true in almost all areas of life—from the conditions in the workplace to the rights of the laboring and debtor classes, education of the masses, pure food, health care, the environment, the care of children, and even the administration of criminal justice (Berkin and Wood 1983, 465–476).

Over the course of the 20th century, hands off began to turn into hands on as the Federal Government extended its involvement into the warp and woof of American life. This involvement was punctuated by political initiatives ranging from the Square Deal to the Great Society. In the field of criminal justice, it became manifest in 1968 with the passage of the Omnibus Crime Control and Safe Streets Act and the creation of the Law Enforcement Assistance Administration (President’s Commission on Law Enforcement and Administration

of Justice 1967). Beginning with this Act and the Federal funds that then flowed to State and local criminal justice agencies, the Federal Government would become a major player in local crime control and justice policy.

For the 19th-century reformer, this might seem to be the fulfillment of a long-awaited dream. For our generation, it is a source of contention. On top of the long litany of decisions by the Federal courts that have tempered almost every area of the justice system in the past 40 years, we now question whether there is too much Federal involvement. Some argue for more, while others demand less. Still others suggest that what is really needed is less direct involvement and more State-Federal partnerships.

Daniel C. Richman has tackled this issue in his chapter, "The Changing Boundaries Between Federal and Local Law Enforcement." It is his thesis that surveying the boundary between Federal and State law enforcement has become a complicated task, because the distinction does not lend itself to a categorical description. At certain junctures, the boundaries overlap; at others, the lines are blurred or shifting, advancing or retreating.

Richman argues that the appropriate and interesting question is not whether there is or ought to be a clear boundary between the two domains of enforcement, but what is the curious process by which the boundaries form? In the exposition of his thesis, he helps us to understand more clearly not only the tectonic shifts that have occurred along these boundaries but also where these lines might lie in the future.

The changing interface between the courts and corrections

A prison should be safe, clean, productive, and—most of all—hopeful. This maxim was the life's work of the progressives Wines and Brockway and their 20th-century proteges, correctional innovators like Sanford Bates and James V. Bennett.

Over the course of our history, the philosophical boundaries of correctional thinking have ebbed and flowed around various notions of what to do with the offender. At different times, these notions have emphasized penitence, reform, work, correction, and reintegration. It is curious how these ideas have been reflected in the very names that different generations have given to their places of detention: the penitentiary, the reformatory, the work camp, the correctional institution, and the halfway house.

The child savers of the 19th century carved a boundary that put adults on one side of the line and young people on the other, a penal code and its punishments on the former side, and the juvenile code and its sanctions on the other. As we begin our journey into the 21st century, however, the distinction is becoming muddled.

On briefing the progressives on the current state of corrections, could we say that our institutions are now safe, clean, productive, and hopeful? Might we say that we have achieved a century-long great step forward, or would we be compelled to admit that we have taken several steps forward and a few steps back? Would they be surprised to learn of the revolution in correctional case law of the past 30 years and the extent to which the Federal courts, vis-a-vis penologists, have defined the administration of corrections, from the rights of inmates to the conditions of confinement?

In the chapter on the governance of corrections, Christopher E. Smith lays before us the complex tapestry of court decisions that have redefined the boundaries of almost every aspect of correctional administration. As he speculates on the future, he concludes that the courts and corrections will continue to be inextricably bound together because of a boundary change that has created an avenue for both prisoners and prison employees to challenge in the Federal courts conditions of confinement.

The blurring of the line between juvenile and adult justice

A historical study of paintings of children and adolescents of different ages reveals a great deal about how different generations perceived their younger people. Not two centuries ago, it was common to depict young people as little adults dressed in adult clothing, striking adult poses, doing adult things. Such a view was also reflected in the treatment of young people before the law and in the workplace.

Contrast this image of the young with the mid-20th-century depictions by Norman Rockwell on the covers of the *Saturday Evening Post*. Here, children are clearly different than adolescents, and neither is depicted as a "little adult." Is this a matter of art imitating reality or vice versa?

Now recall how young people are depicted today in commercials, on billboards, and in the magazines, movies, and music targeted for the young. Are they once again depicted as little adults, striking adult poses, free to do adult things? Again, is art imitating reality or vice versa?

The child savers of the 19th century carved a boundary that put adults on one side of the line and young people on the other, a penal code and its punishments on the former side, and the juvenile code and its sanctions on the other. They began their new century attempting to draw a sharp distinction between the juvenile and the adult, with a hope that the twain would not be confused. As we begin our journey into the 21st century, however, the distinction is becoming muddled.

Child savers still abound, but now they are in the midst of a hard-edged reaction to juvenile violence. There is growing sentiment that if these not-so-young-looking young people commit violent acts, why should they not be treated as adults? Why not lower the boundary between juvenile status and adulthood? Why should juvenile records be sealed? Why are juvenile criminal records not kept in the same computerized repositories as those for adult offenders, readily available to the justice community?

This is no longer just a topic of conversation among concerned citizens and policymakers. The boundaries are already changing. The veil of privacy that has traditionally surrounded the juvenile court and its proceedings has been rent. Juvenile law and procedure have changed, and substantially so. In the chapter contributed by Jeffrey A. Butts and Ojmarrh Mitchell, a picture is painted of two systems of justice converging, one absorbing the other. They describe a boundary change that is resulting in an increasing number of juveniles being certified as adults, tried in adult courts, and sentenced as adults. They describe this historical swing in the pendulum of our view of young offenders and document the legislative and policy changes that are erasing the boundary between juvenile and adult justice. They conclude their discussion by suggesting several fundamental issues that should, in the coming years, circumscribe the policy debate on what to do with offending juveniles.

Immigration is not a new phenomenon in the American experience; in fact, it is the taproot of our history. In the half-century between the War of 1812 to the end of the Civil War, 6 million immigrants arrived to savor the melting pot of the American dream.

The changing response to domestic violence

The story of America is about the cry for recognition of basic rights and the freedom to give those rights expression. It began in 1776 over the rights of a people relative to their king and Parliament. For more than two centuries this struggle has continued as debtors have contended with creditors, laborers with

owners, States with the Federal Government, farmers with the railroads, the poor with the rich, and regional, religious, ethnic, and racial factions with one another. Progress has been agonizingly slow, not always forward, sometimes violent, and always frustrating.

Such has been the struggle for the rights of women. It has been a just demand to be able to stand equal before both the letter and the spirit of the law, to be treated equally in the workplace, in the corridors of government and academics, and in the streets of the marketplace.

How would we describe our progress on this front to the likes of the Grimké sisters, Lucy Stone, Elizabeth Cady Stanton, and the other progressives who championed the concerns of women? And, in particular, how would we describe our response to the pernicious problem of domestic violence?

Alissa Pollitz Worden suggests in her contribution to this volume that there has been a substantial shift in the boundaries that define the public's attitude toward domestic violence, the law, and its enforcement. As she indicates in her discussion of the history of this problem, we have made progress across several fronts, including reformation of the law, more appropriate policies and practices in local justice agencies, and the innovations encouraged by the Federal Government. She warns, however, that these advances should not lull us into complacency. The record of success is spotty and has been short lived in many places. Although some successes have been empirically documented, we know little about why well-intended programs fail. She leaves us with the intriguing thought that we may have more to learn from the study of the domestic violence initiatives that fail than from the study of those that succeed.

The internationalization of criminal justice

Would our audience be surprised at our growing concern over international crime and the fact that its tentacles have extended even to the local administration of justice? Probably not, since they shared similar concerns emanating from the complex problems associated with the wave of immigration at the turn of the 20th century.

Immigration is not a new phenomenon in the American experience; in fact, it is the taproot of our history. In the half-century between the War of 1812 to the end of the Civil War, 6 million immigrants arrived to savor the melting pot of the American dream. While the annual number of immigrants ebbed and flowed over the 19th century, it became a human tidal wave by 1900. In the 50 years following the Civil War, 25 million new immigrants arrived, reaching an all-time peak of 1.28 million in 1907 alone (Garraty 1966, 529–530).

Industry welcomed these immigrants as a source of cheap labor. By the turn of the century, more than half of the industrial labor force was foreign born. Organized labor, however, resented this influx of new workers because it depressed wages, and it became outraged when companies began to use foreigners as strikebreakers.

Although empathetic to the plight of the new immigrant, community-minded citizens, heads of charitable organizations, social workers, and even church leaders began to question whether their overcrowded cities could absorb any more of this huddled mass. As a result, these compassionate reformers began to call for a moratorium on immigration (Morison 1965, 479–483).

Our predecessors shared our belief in the importance of the “community” in securing domestic tranquility. They experienced firsthand the destabilizing effects of uncontrolled urbanization.

Festering slums, the rise in urban crime, the downward slide in wages, labor violence, the recessions of the 1890s, and the rawness of the friction created by differences in language, culture, and religion all contributed to the growth of a new “nativism” that saw the foreigner as a threat to domestic security. The Haymarket bombing and other acts of crime and violence were attributed to the socialism, alcoholism, criminality, anarchy, and communism brought to our shores by the immigrant. This nativism fostered the proliferation of antiforeign organizations and associated acts of violence against immigrants like the American Protective Association, whose hatemongering is akin to that of the racial and ethnic supremacist groups of our own day (Bailey 1975, 580–581).

By the turn of the century, the link was well established between crime at home and the political and social forces abroad that were driving immigration. This criminological paradigm is found between the lines of the crime surveys of the teens and twenties, culminating in 1931 in one volume issued by President Hoover’s Commission on Law Observance and Enforcement, entitled *The Report on Crime and the Foreign Born* (National Commission on Law Observance and Enforcement 1931).

No, these progressives of a century ago would not be surprised by the contemporary concern with international crime and how it is changing the boundaries of the criminal justice system of the 21st century.

This issue is addressed in the chapter contributed by Richard H. Ward; he brings into focus the confluence of a variety of criminal activities whose origins are foreign but whose consequences affect the domestic life of our communities. He

presents a sweeping picture of the challenge of international crime to the administration of justice at all levels of society. Cybercrime, narcoterrorism, sale of body parts, Internet-suborned crime, computer hacking, exploitation of women and children, transnational fraud, international money laundering, exploitation of immigrant labor, and growth in international criminal cartels are all presented as the sinews of the Gordian knot that the justice system must slice through in the decade to come.

Community justice: A new paradigm

The final briefing for our hypothetical audience of a century ago must include some explanation of the ever-increasing use of the adjective “community” in describing our evolving approach to the problems of crime and the administration of justice. Notable examples include community policing, community crime prevention, community defense, community courts, reintegrating the offender into the community, and strengthening community normative standards. These are but some examples of community-oriented initiatives addressed in the final chapter of this volume, contributed by David R. Karp and Todd R. Clear.

Our predecessors shared our belief in the importance of the “community” in securing domestic tranquility. They experienced firsthand the destabilizing effects of uncontrolled urbanization. On the eve of the Civil War, one in every four citizens lived in a city. By 1890, it was one in three, and by 1910, it was every other one (Garraty 1966, 531–537).

By our standards, the cities of the 1880s were unlivable. Urban populations were growing out of control. Sanitation, fire protection, transportation, public safety, public health, housing, and other city services we take for granted could hardly keep pace with the unchecked growth of the community. Urban government, frequently dominated by political machines with the primary purpose of perpetuating their own power, seemed indifferent toward (if not incapable of) addressing the pox of urbanization, while the State and Federal governments suffered from even greater indifference because they were twice removed from the problem. Even the law and the courts were publicly reprimanded for the failure to keep pace, as in Roscoe Pound’s (1906, 395) scathing address before the American Bar Association, *The Causes of Popular Dissatisfaction with the Administration of Justice*.

In many ways, the progressives saw good government as the key to achieving the “community” in their communities. The police had to be removed from the control of the urban bosses. The courts and the law had to be surgically reorgan-

ized and streamlined if they were to be congruent with the problems of an industrial age. Government needed to act aggressively to take children out of the factories, hazards out of the mines, and politicians' hands out of city coffers; to provide safe drinking water, reasonable working hours, clean streets, and uncontaminated food; and to implement a host of other reforms.

Much of the social legislation of the 20th century has been an outgrowth of the reaction to the squalid community conditions of the late 19th century. Progress has been slow. Some community problems have been better attended to than others. On the upside, our communities are probably better managed and more livable today than a century ago. The downside, however, has been growth in government bureaucracy, coupled with a tangle of laws, regulations, and red tape, which, although intended to restore the "community" instead has removed the government from the community.

The boundary changes idealized in Karp and Clear's chapter are in many ways similar to those demanded by the reformers of a century ago. They call for a system of law and agencies for its enforcement that seeks to improve the quality of community life by reducing the inequalities and indignities of social disorder, the agony of victimization, and the paralysis that emanates from the fear of crime. The authors present a blueprint for the community justice ideal as well as seven basic principles on which it should be founded, processes for its pursuit, and anticipation of the difficulties to be encountered if community justice is to be achieved.

A Final Thought

Our dream is concluded. We have attempted to explain to our predecessors the various boundary changes that have characterized the maturing of the justice system of the past century. What have we learned?

Hopefully, the reader will find the specific boundary changes discussed in this volume interesting and informative. The greater hope, however, is that describing these specific changes will provide a better understanding of the tectonics of how the boundaries of our laws, agencies, programs, and philosophies change over time in response to evolving social and economic conditions, as well as of the changing will of "we the people." We are, in the final analysis, best prepared for an uncertain future when we at least know where we are in our own history.

References

- Axelrod, A., C. Phillips, and K. Kemper. 1996. *Cops, crooks, and criminologists: An international biographical dictionary of law enforcement*. New York: Facts on File.
- Bailey, T.A. 1975. *The American pageant: A history of the republic*. Lexington, Massachusetts: D.C. Heath.
- Berkin, C., and L. Wood. 1983. *Land of promise: A history of the United States*. Glenview, Illinois: Scott, Foresman and Company.
- Clear, T.R., and G.F. Cole. 1990. *American corrections*. Pacific Grove, California: Brooks/Cole Publishing Company.
- Cordner, G.W. 1999. Elements of community policing. In *Policing perspectives: An anthology*, edited by L.K. Gains and G.W. Cordner. Los Angeles: Roxbury Publishing Company.
- Dunham, R.G., and G.P. Alpert. 1989. *Critical issues in policing: Contemporary issues*. Prospect Heights, Illinois: Waveland Press.
- Feeley, M.M., and A.D. Sarat. 1980. *The policy dilemma: Federal crime policy and the Law Enforcement Assistance Administration*. New York: Russell Sage Foundation.
- Fenner, B. 1856. *Raising the veil; Or, scenes in the courts*. Boston: J. French.
- Garraty, J.A. 1966. *The American nation: A history of the United States*. New York: Harper & Row.
- Goldfarb, R.L., and L.R. Singer. 1973. *After conviction*. New York: Simon & Schuster.
- Johnson, H.A. 1988. *History of criminal justice*. Cincinnati: Anderson Publishing Company.
- Monkkonen, E.H. 1981. *Police in urban America, 1860–1920*. New York: Cambridge University Press.
- Morison, S.E. 1965. *The Oxford history of the American people*. New York: Oxford University Press.
- National Advisory Commission on Civil Disorders. 1968. *Report of the National Advisory Commission on Civil Disorders*. Washington, D.C.: U.S. Government Printing Office.
- National Commission on Law Observance and Enforcement. 1931. *Report on crime and the foreign born*. No. 10. Washington, D.C.: U.S. Government Printing Office.
- Pleck, E. 1987. *Domestic tyranny: The making of social policy against family violence from colonial times to the present*. New York: Oxford University Press.

———. 1979. Wife beating in nineteenth-century America. *Victimology* 4:60–74.

Pound, R. 1906. The causes of popular dissatisfaction with the administration of justice. *American Bar Association Reports* 29:396–471.

President's Commission on Law Enforcement and Administration of Justice. 1967. *The challenge of crime in a free society*. Washington, D.C.: U.S. Government Printing Office.

Salerno, A. 1991. The child saver movement: Altruism or a conspiracy? *Juvenile and Family Court Journal* 42:37–49.

Vollmer, A. 1936. *The police and modern society*. Berkeley: University of California Press.

Walker, S. 1980. *Popular justice: A history of American criminal justice*. New York: Oxford University Press.

Wilson, O.W. 1962. Reorganization in Chicago. In *The police yearbook*. Washington, D.C.: International Association of Chiefs of Police.

The Privatization and Civilianization of Policing

by Brian Forst

This essay examines recent shifts toward privatization and civilianization in policing. It focuses on the nature and dimensions of the shifts, their precedents and causes, their advantages and dangers, and their effects on five critical dimensions of policing: effectiveness, cost, equity, choice, and legitimacy. These shifts, which have occurred over just 30 years or so, are contrasted with the centuries-long evolution of public policing and reliance on sworn officers to protect public safety that culminated in the 1960s.

Following a review of historical precedents that shaped the boundaries between public and private security resources and between sworn and civilian alternatives, the essay examines a variety of prospective policies and reforms in both the public and private domains aimed at minimizing the potentially harmful aspects of privatization and civilianization: improving private security service through licensing and bonding of agents and agencies; reducing problems associated with public monopolization of policing through improved accountability systems and accreditation; improving procedures for screening, training, and managing civilian specialists; making more effective use of civil remedies for harms in both the public and private sectors; and finding ways to clarify roles and improve coordination among the public, private, and civilian components of policing.

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The essay concludes with a look to the likely future of privatization and civilianization, including an identification of critical issues related to current trends and an examination of directions that appear most promising for improving service in both the public and private domains of policing.

Overview

Policing is widely regarded as an exclusively public-sector activity conducted by sworn officers, but a large and increasing share of the aggregate demand for public safety and security is being handled by the private sector and by civilians. As recently as 1965, there were more sworn police officers than private security personnel and vastly more sworn officers than civilians—the number of sworn officers surpassed the number of full-time civilians employed by law enforcement agencies by 8.3 to 1 (Shearing and Stenning 1981, 203; Cunningham and Taylor 1985, 112; U.S. Department of Justice [DOJ], Federal Bureau of Investigation [FBI] 1966). Within 30 years, the number of private security personnel soared to about triple the number of sworn officers, while the ratio of sworn officers to full-time civilians in law enforcement agencies had declined similarly by a factor of 3, to 2.6 to 1 (Mangan and Shanahan 1990; Reaves and Goldberg 1998).

A corresponding shift to privatization in nonpersonnel resources—including such target-hardening and detection devices as closed-circuit surveillance systems, sophisticated alarm systems, and so on—has been no less dramatic.¹ These substantial shifts have occurred rather suddenly by most historical standards. It had taken centuries for public policing to establish dominance over privately paid security agents, and less than three decades to reverse the trend.

This essay examines the dimensions of these shifts, their causes, and their effects on five critical dimensions of public safety: effectiveness, cost, equity, choice, and legitimacy. Recent trends toward privatization and civilianization are contrasted with the centuries-long movement toward reliance on sworn officers to protect public safety that culminated in the 1960s. The essay explores the implications of the privatization and civilianization trends in terms of the utilitarian dimensions of effectiveness and cost, and in terms of nonutilitarian considerations such as equity and legitimacy. A variety of prospective policies and reforms aimed at minimizing the potentially harmful aspects of privatization and civilianization are examined in both the public and private domains: improving private security service through licensing and bonding of agents and agencies; reducing problems associated with public monopolization of policing through improved accountability systems and accreditation; improving procedures for screening, training, and managing civilian specialists; making more effective use of civil remedies for harms in both the public and private sectors; and finding ways to clarify roles and improve coordination among the public, private, and civilian components of policing. The essay concludes with a look to the future of privatization and civilianization, including an identification of

critical issues related to current trends and an examination of directions that appear most promising for improving service in both the public and private domains of policing.

Definitions

We begin by defining what is generally meant by the terms central to the matters at hand: policing, public safety, private security, privatization, and civilianization.

Policing can entail a countless assortment of functions and services, ranging from conventional law enforcement responses in the form of criminal investigation and arrest to crime prevention activities and attempts to improve more general quality-of-life aspects of the community. Policing has been defined generally in terms of its domestic peacekeeping role. A core distinguishing characteristic has been identified by Egon Bittner (1980, 460): In the domestic domain, the police alone are given the authority to use nonnegotiable coercive force.² The term *police* typically refers to sworn officers working as members of the executive branch of government rather than to private security agents or agencies. *Public safety* encompasses more than just policing, including also fire protection, emergency vehicle service, and a variety of public health protection functions. *Private security* refers to a myriad of nongovernmentally provided services and products used to protect the lives and property of commercial and residential patrons against crime.

Privatization occurs typically on both the revenue-raising side and on the spending-and-production side, without any government involvement. However, it can exist on the production side alone, as frequently occurs when public funds are used to purchase the services of private agents. When it occurs on both sides, private citizens or institutions raise the funds for services that might otherwise be provided publicly and determine how they will be allocated. This includes a myriad of self-help approaches to protecting private property and personal safety, including the following:

- Hiring of security guards and private investigators.
- Installation of surveillance, lighting, and alarm systems.
- Use of citizen foot patrols and block watches as well as escort services for senior citizens and university women.
- Citizen-band radio automobile patrols and radio-alert networks for taxis, buses, and commercial vehicles.
- Carrying of concealed weapons by private citizens.

When privatization occurs on the production side alone, Federal, State, or local governments may contract with private sources for such specific services as:

- Court security.
- Prisoner custody.
- Computer and communications system maintenance.
- Training.
- Laboratory services.
- Radio dispatching.
- Video surveillance.
- Traffic and parking control (Elliott 1991, 62).³

Private security has been defined as “services other than public law enforcement and regulatory agencies that are engaged primarily in the prevention and investigation of crime, loss, or harm to specific individuals, organizations, or facilities” (Green 1981, 25). It typically includes the work of security guards, corporate security and loss prevention personnel, alarm and surveillance specialists, private investigators, armored vehicle personnel, manufacturers of security equipment, locksmiths, security consultants and engineers, and people involved in a variety of related roles from private forensic laboratory scientists to guard dog trainers and drug testing specialists (Cunningham, Strauchs, and Van Meter 1991, 2).

Civilianization refers to a law enforcement agency’s hiring of nonsworn personnel to replace or augment its corps of sworn officers, typically with the aims of reducing costs and improving service. Civilians are employed as communications specialists, criminalists (crime scene technicians, forensic laboratory scientists, etc.), computer specialists, lawyers, and a host of other support positions.

The number of persons employed in private security jobs began to surpass the number in sworn officer positions in the 1960s, and this numerical advantage continued to grow in the years that followed.

The Dimensions and Origins of Privatization and Civilianization

Trends in privatization and civilianization

The shifts toward privatization and civilianization that occurred toward the end of the 20th century have been both sudden and sharp, especially when viewed over the nearly 200 years since the creation of the first metropolitan police department in London. Exhibit 1 displays more precisely the dimensions of the shift, in terms of the ratios of sworn officers to civilians employed by law enforcement agencies and the ratios of private security industry personnel to sworn officers over the period 1965 to 1995 (Shearing and Stenning 1981, 203; Cunningham and Taylor 1985, 112).

Exhibit 1. Sworn officers, civilians, and security officers: 1965–95

	1965	1975	1985	1995
Sworn officers per civilian	8.3	5.0	3.9	2.6
Security officers per sworn officer	0.9	1.9	2.4	2.7

Sources: Cunningham, Strauchs, and Van Meter 1991, 3; U.S. Department of Justice, Bureau of Justice Statistics 1990, 1993, 1997.

Privatization

The number of persons employed in private security jobs began to surpass the number in sworn officer positions in the 1960s, and this numerical advantage continued to grow in the years that followed (Cunningham, Strauchs, and Van Meter 1991, 2). Mangan and Shanahan (1990) estimate about 2 million members of private security organizations in 1990; the Bureau of Justice Statistics estimates fewer than one-third as many police officers for the same year, some 600,000 (Maguire and Fianagan 1991). By the mid-1990s, Sears employed 6,000 security guards (Office of International Criminal Justice 1995), more than the Los Angeles Police Department had sworn officers.

Civilianization

While some tradition-bound police executives have been reluctant to transfer a variety of support functions to civilians,⁴ it has become increasingly clear that civilians tend to perform certain specialized roles more effectively than sworn

officers, who are selected and trained as generalists and then rotated from one assignment to the next accordingly. Sworn officers serve typically in patrol and traffic assignments and as investigators. Civilians serve in greatest numbers as telephone call-takers and dispatchers (Shernock 1988, 290).⁵ They serve also as crime scene and forensic lab technicians, information system and database specialists, lawyers, planning and research specialists, budgeting and finance specialists, administrators, and clerks, as well as in a host of other support capacities. In sheriff's departments, more than a third of all civilians serve in support of jail operations (Reaves and Smith 1995, ix). Civilians have been found to be a source of lower costs primarily through lower pay, reduced training requirements, and smaller overhead requirements (consisting mostly of reduced fringe benefits) (Schwartz et al. 1975, viii, 15-16).⁶ Estimates from New York City place the average cost of a civilian at one-third to one-half that of a sworn officer, even in jobs of approximately equal skill levels (Harring 1981, 27).

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Civilians have become employed to a greater extent, both absolutely and proportionately, in large metropolitan police departments than in smaller departments (Schwartz et al. 1975, vii).⁷ They tend to be used more widely in departments in the West than in the East (Reaves and Goldberg 1998, 4), and in greater proportions in municipal and county departments than in State police agencies (Reaves and Smith 1995, ix).

Costs

As the numbers of sworn officers, civilians, and private security personnel have varied, so have the respective costs associated with each category. Laband and Sophocleus (1992) estimate total private-sector spending on protection against crime at \$300 billion annually, about three times the amount spent on the entire public criminal justice system.

Historical landmarks, roots of recent trends

The history of policing reveals varied patterns of emphasis on solving crimes, preventing crimes, and providing other services. It is useful to consider these patterns with an eye toward the respective roles of the public and private sectors during various stages in the evolution of modern policing.

Early protection systems

Policing, like most other functions of modern government, was once exclusively in the domain of private enterprise. Posner (1981, 223–224) has noted that the policing of homicides in ancient Athens was primarily a family matter, with entry into the security market restricted; individuals without families were not well protected. Families continued to be the primary source of protection for centuries afterward. Prior to the Norman Conquest in 1066, villages protected themselves against criminals and nomads by organizing family men who raised a hue and cry when attacked. Captured offenders were typically subjected to tribunals that determined the applicable sanction: public humiliation, torture, banishment, or death.

The origins of a public policing function were established under the Norman aristocracy that evolved in England from the late 11th until the 13th centuries. This system operated under a pledge (or “frankpledge”) arrangement, led by a constable who delegated to “tythings” the primary responsibility for responding to crime, generally 10 families to a tything and 10 tythings to a constable. Within each English county (“shire”), the constables reported to a sheriff (“reeve”). The constables and sheriffs operated within a loose, quasi-governmental system that served the lords and independent peasant landowners in the area, supported by taxes collected by William the Conqueror and his successors.

The pledge system eventually was replaced by a “watch system” in English towns during the 13th century. Justice systems developed around a justice of the peace who supervised and adjudicated, a constable, his assistants, and night watchmen. The policing function was thus placed early on in the judicial branch of government.

Growth of cities and the need for urban protection

The Industrial Revolution attracted droves of people into factory towns and cities in the late 18th and early 19th centuries, overwhelming the watch system and Britain’s predominantly private, loosely organized “Associations for the Prosecution of Felons” (Elliott 1991). Sir Robert Peel, Secretary of the Home Office, served as chief architect of the design of a coherent and effective public response. Peel created the forerunner to the modern urban police department with the passage of the London Metropolitan Police Act of 1829. His design for the London Metropolitan Police Department (MPD) was modeled largely after the writings of Jeremy Bentham and others who argued for a force of peace officers to prevent crime. The officers later became known as “bobbies” in a tribute to Peel. Although corruption was not completely eliminated, the

MPD replaced a system of predominantly corrupt constables and their henchmen with carefully selected officers trained in restraint and outfitted in quasi-military navy blue uniforms, committed to serving the public 24 hours daily (Hart 1951; Radzinowicz 1948–68; Manning 1995, 379–380).

The British had thus created an innovative protective institution that pushed the boundary of policing squarely into the public domain. The source of the MPD's power was the English Constitution. Police behavior was determined explicitly by rules of law. Peel's creation of a professionalized policing operation served not only as an effective response to the extraordinary pressures of the Industrial Revolution and the severe problems associated with urban unrest, but also as a boost to the legitimacy of the public sector as the primary domain of protection against crime and disorder.

Policing in the United States

The United States took much longer to develop an effective public policing service. Crimes in colonial America had been handled differently depending on the setting. In the countryside, the top law enforcement officer was a fee-for-service sheriff, paid by the number and types of criminals caught, subpoenas served, and tax dollars collected. Towns also used a fee-for-service system to pay constables working for the court to serve subpoenas and make arrests. The constable in turn hired and delegated responsibilities to a team of night watchmen. Meanwhile, as the West expanded, cattle theft and other crimes were handled either by a quasi-public hired marshal or by private "vigilance committees," popularly known as "vigilantes."

Municipal policing in the United States in the 19th century

The need for a more public form of policing in the United States grew substantially in the 19th century as immigrants from Ireland, Germany, and Italy poured into the cities. The population of New York City jumped from 33,000 in 1790 to some 150,000 within just 40 years. Race riots ensued, with major upheavals in New York in 1834, Philadelphia in 1837, and St. Louis in 1850. The prevailing system of constables and night watchmen soon proved itself to be incapable of responding adequately to such large-scale urban crises. Militiamen were called on to contain many of these disturbances, with only limited success.

The influx of people brought more serious crime, more vice, and a host of related urban security problems, and the militia had not been created to deal with such matters. Cities in the United States responded in part by borrowing aspects of Peel's more effective policing model from across the Atlantic. The

Boston Police Department cobbled together a superficial imitation of the London MPD model in 1838, less than a decade after Peel's creation, and similar departments were set up in New York in 1844 and Philadelphia in 1854. These early urban police departments grew substantially during the 19th century. While the U.S. population more than doubled from the 1860s to the early 1900s, the population of police officers more than tripled, with the rate per 1,000 residents increasing from 1.3 officers per 1,000 in the mid-1860s to 2 officers per 1,000 by 1908 (Monkonn 1992, 554).

The primary similarities between the London MPD and its U.S. counterparts were in form, not substance. London's officers were civil servants created by the British Constitution, sworn to keeping peace by peaceful means. The U.S. Constitution, in contrast, makes no explicit mention of police. Police departments in the United States hired their officers locally through a system of ward bosses operating under mayoral patronage. Municipal police in the United States operated with considerably more informal discretion and less formal authority than Peel's officers. They were not given the training, effective supervision, or job security that were part and parcel of policing in London's MPD. They were typically dismissed when their ward chief or mayor failed to win reelection. Both systems were public and the officers uniformed, but the systems differed dramatically from one another in effectiveness and legitimacy.

Corruption, brutality, and incompetence

The U.S. system of municipal policing developed into a body of police with an inclination to patrol the election facilities to help secure the tenure of their patrons, more in some cities than others. The police also established reputations for being especially tough on immigrants and minorities. Before long, policing in most large cities became associated with corruption, brutality, and incompetence. Despite salaries about twice the level of the average factory worker in 1880, police routinely took payoffs from saloonkeepers, pimps, and gamblers in return for selective nonenforcement, and from peddlers and small business owners in exchange for protection. Free meals from restaurant owners became the norm in many areas. It soon became evident that navy blue uniforms alone did not stand for either integrity or effectiveness in policing.

These early police departments were nonetheless quite different from the constable and watch systems they replaced, and in some ways better suited to deal with problems inherent in urbanization. They were organized in hierarchies, with militaristic command and control systems, and with telegraph equipment linking precincts to central headquarters in the 1850s and call boxes on the streets by 1867. The police were moved from the judicial to the executive branch, with the courts

providing virtually no control over police operations. Constables became servers of court orders; sheriffs became jailkeepers. The fee-for-service approach of the prior system was replaced by a system of salaried employment, which offered new incentives for crime prevention and order maintenance absent under the earlier system.

The functions of policing in the United States expanded substantially during the latter half of the 19th century. The police became responsible for much more than making arrests: They took in the orphaned and homeless, shot stray dogs, enforced sanitation laws, and inspected boilers and fire escapes. In some cities they even took the annual census (Bayley 1983, 1125; Monkonen 1992, 554). New York City police officers cleaned up after horses in the streets. As the need for public welfare and public works grew, and prior to the creation of agencies designed to handle these needs, municipal police came by default to assume an incoherently broad variety of activities.

Despite this extraordinary expansion of responsibilities, some of the core functions typically associated with modern policing remained relegated to the private sector. Pinkertons, founded in 1850, became the primary protector of trains and their passengers; this agency also maintained the only national crime record system for the 75 years prior to the creation of the FBI's Uniform Crime Reports system.⁸ A host of other private property protection and investigative agencies emerged afterward, including Brink's in 1859, Wells Fargo, and Burns. When a criminal investigation was needed, the police department hired private detectives, as did private citizens and other institutions. Bounties remained the standard means of inducing the capture of wanted suspects.

The Reform Era (1890–1930)

By the end of the 19th century, the inadequacies of early municipal police departments had become a significant political issue. Confronting the problems of corruption and incompetence in urban police departments was a core element of the Progressive Movement by the 1890s. The Lexow Committee, established to investigate corruption scandals in the New York City Police Department in 1894, recommended major department reforms. Theodore Roosevelt was appointed president of the New York City Police Commission the following year, providing a platform from which he established a reputation as one who acted to clean up politics, largely by replacing a system in which police were handmaidens of corrupt ward bosses with a civil service employment system. He also acted to limit the role of police to that of crime control. The Progressives called for improved screening to make officers better qualified and formal training to make them more knowledgeable and competent. Roosevelt acted to impose those reforms during his 3 years as de facto New

York police commissioner.⁹ Substantive elements of Robert Peel's reform of public police were thus eventually adopted in the United States.

These reforms occurred neither overnight nor without frequent setbacks. The Boston Police Department became affiliated with the American Federation of Labor and struck in 1919, and rioting and looting followed. Governor Calvin Coolidge mobilized the state militia, fired the police, and then replaced them. The recommendations of the Lexow Committee for police reform were still echoed some 30 years later in recommendations by the Cleveland Crime Commission in 1922, the Missouri Crime Commission in 1926, and the Illinois Crime Commission and President Herbert Hoover's Wickersham Commission in 1929. Public police were still viewed with skepticism, and with good reason.

The "Professional" Era (1930–80)

Public policing became more professionalized under many of the reforms of the Progressive Era. Improved screening and training helped to ensure that those sworn to serve the public were fit for the task. Civil service protections helped to reduce temptations to control election outcomes and served to distance the police from political influences. Restricting the functions of public policing to issues directly related to crime control helped to provide municipal police departments with a sharper sense of focus on a primary mission.

Emphasis on effectiveness became one of the hallmarks of the Professional Era of policing.¹⁰ Police leaders began promoting departmental accomplishments through an expanding and influential network of newsprint and electronic media as they came to combine elements of scientific management with the systematic measurement of police effectiveness. This emphasis was not unique to policing, but the police were surely ahead of many other institutions, public and private, in embracing the measurement of performance as a hallmark of excellence and as evidence that police were professionals.

August Vollmer, J. Edgar Hoover, Orlando W. Wilson, William H. Parker, and other icons of professionalism transformed the public view of police and, perhaps more significantly, policing's view of itself, from one grounded in informal custom and ties to local institutions to one based on formal procedure grounded explicitly on utilitarian considerations of justice. To protect against corruption, these pioneers of professionalism sought to distance the police from the community.¹¹ As crime rates declined steadily from the inception of the Uniform Crime Reports in 1931 until the early 1960s, these champions of professionalism appeared to have found the magic bullet to crime control: a strong, effective, thoroughly professional system of public police.

The elevated status of the police contributed mightily to the dominance of public police over their private counterparts. "Police professionals" had created a climate in which policing became widely regarded as a legitimate State monopoly. According to one authority, by mid-century, "Policing was now simply assumed to be public. . . . Questions about private police and about the relationship between public and private policing simply did not arise" (Shearing 1992, 408).

Professionalism passes on

The Professional Era of policing, which had built its reputation on widely publicized victories over notorious gangsters, faced a more daunting test starting in the mid-1960s—a crime explosion coupled with severe urban unrest. By most accounts, "professionalism" failed that test. A major contributing factor to the eruption of crime was the emergence of baby boomers—children born after the return home of military personnel from World War II—into the peak offending ages of 15 to 24. For the decade starting in 1963, the homicide rate doubled and the robbery and burglary rates more than tripled, with large increases in virtually every other crime category. Meanwhile, riots broke out in New York in 1964, in the Watts area of Los Angeles the following year, in Newark and Detroit in 1967, and in Washington, D.C., in 1968 following the assassination of Martin Luther King, Jr.

These developments created demands on municipal police departments that were well beyond the limits of their capacities to respond effectively, especially in the inner cities, where the increases in crime tended to be extreme. Most crime rates remained at the elevated levels of 1970 throughout the 1970s and 1980s. Although homicide rates declined through most of the 1990s, they remained significantly higher than in virtually every other industrialized nation.

Urban riots continued episodically through the 1990s, fueled frequently by overly aggressive, insensitive, and brutal policing behaviors. Three conspicuous examples are the Metro-Dade, Florida, Police Department's killing of a black motorcyclist and subsequent coverup in 1979, the Philadelphia Police Department's bombing of the MOVE headquarters in 1985, and the Los Angeles Police Department's beating of Rodney King in 1991 (Skolnick and Fyfe 1993). Police brutality was, of course, not unique to the Professional Era of policing; it appears to have been more common in earlier times. But these more recent acts were met with a public reaction that had been unknown even as recently as the 1950s. It

The notion that police were the experts contributed to police arrogance, a sense that members of the community were inferior.

was becoming increasingly clear that a style of policing that had been popular especially among white middle-class Americans and among much of the police force was one that was capable of brutalizing large segments of the population. Even in the absence of brutality, professional policing was viewed by large segments of the minority community as aloof, often disrespectful, and apparently mean spirited.

Professionalism did not invent brutality, but the ironic distancing of *public* police from the community generated alienation and mutual disrespect. The notion that police were the experts contributed to police arrogance, a sense that members of the community were inferior. Effective use of technology and emphasis on efficiency need not interfere with a healthy relationship between the police and the public, but in many jurisdictions the leaders of the Professional Era managed to replace a reputation for friendly service with a cool, detached one and thus served to damage that relationship. Police in many jurisdictions further alienated the public by spending less and less time on the street.¹² There is nothing inherently wrong, and much right, about the idea of police working to achieve the status of “professional,” but the brand of professionalism preached by the most prominent spokesmen for the Professional movement and practiced by their minions clearly contradicted the most fundamental we-the-people aspects of democracy. The bubble had burst. The police had succeeded in restricting their mission to crime control, only to discover that their ability to control crime was severely limited and often hindered by the chasm of mistrust induced by “professionalism.”

Community policing

By the mid-1980s, although many citizens quietly responded to deficiencies in public policing through a variety of private means, it had become clear to some scholars and practitioners that a different approach to public policing was needed. The Professional model was revealed as ill suited for the areas where crime was most serious, and research was revealing that it was ill suited for other areas as well:

- In 1973, Police Foundation researchers reported finding that saturating areas in Kansas City with random patrol squad cars had no deterrent effect on the amount of crime in the area (Kelling et al. 1974).
- In 1982, researchers working in Flint, Michigan, reported finding that officers patrolling on foot had a much higher rate of nonconfrontational contact with citizens, and a much lower rate of confrontational contact, than motorized patrol officers; calls for service and crime in the foot patrols also declined (Trojanowicz et al. 1982).

- In 1985, Police Foundation researchers working with the Houston and Newark Police Departments reported finding that a variety of interventions that brought the police closer to the community—including miniprecincts, foot patrols, and door-to-door police outreach contacts—tended to reduce fear, increase satisfaction with police service, and increase the perceived quality of life (Pate et al. 1986).

The general idea for a new style of policing was to return to much of what was good about an earlier, more truly public style of policing. This meant getting closer to the community, not only to improve relations between the police and community—a worthy end in itself—but also to become more familiar with the problems that were unique to specific areas and develop contacts that would help the police, in *partnership* with the public, both to prevent and solve crimes.¹³

It meant also an expanded view of what public policing should be about: not just law enforcement, but crime prevention and fear reduction. A few police chiefs, including Lee Brown, chief of the Houston Police Department in the mid-1980s and then commissioner of the New York Police Department in the early 1990s, took it a step further: The police should aim for no less than working to improve the quality of life in the community, so that people can once again enjoy and feel safe in public parks and facilities, and walk down the street without being subjected to the signs of crime—graffiti, abandoned vehicles, and broken windows (Brown 1989; Wilson and Kelling 1982).

A host of other characteristics came to be associated with the public-spirited, bridge-building motif of community policing: more officer autonomy and less centralized organizational hierarchy; greater reliance on the informal exercise of discretion and less on formal rules and regulations; and a shift from a mode of random patrol and rapid response to calls for service from a central precinct station to one involving greater use of foot and bicycle patrols and miniprecincts. Above all, the community policing movement amounts to a return to fundamental democratic principles of governance: that the police *serve* the public, that they are *accountable* to the public, and that the public has a *voice* in determining how the police will serve them.

The community policing movement has been met with considerable resistance from some quarters, much of it based on legitimate concerns. First, the concept has a fad quality; it is easily trivialized. Many, perhaps most, police departments have embraced the form and rhetoric of community policing and largely ignored its substance. Second, although corruption has not yet revealed itself to be a problem unique to community policing, the risk that corruptible police who are closer to the public will succumb to corruption pressures, especially in cities with traditions of corruption, cannot be ignored. Third, high-crime areas

are often devoid of the social organization generally associated with definitions of “community.” Field experiments have revealed that poor inner-city areas tend not to show the gains found in other areas after community policing interventions are applied: improved satisfaction with police service, reduced fear of crime, and elevated perceptions of quality of life (Skogan 1990, 1666–167). Fourth, for all the rhetoric about the potential crime-reducing ability of strengthened police-public partnership, little evidence has come forth indicating a systematic effect of community policing interventions on crime rates. Declining crime rates in the 1990s have been attributed largely to other developments: a smaller proportion of the population in the crime-prone ages of 15 to 24, tougher sentencing policies, a maturing of drug markets, and record low rates of unemployment.

In short, community policing offers the potential to improve the delivery of service by the police and make it more authentically public. It does not promise that they will be able to prevent or respond effectively to every sort of future problem of crime and disorder. It does present opportunities to make policing more nearly consistent with fundamental principles of democracy: public service, accountability, and the citizenry’s voice in setting and changing policy. It is an approach to policing that can be effectively used by the police and by private security agents as well.

The resurgence of private protection

The Professional Era of policing is being superseded by community policing largely because it presented to the public the ill-conceived view that the police, not the public, are the primary line of defense against crime. This illusion has had regrettable consequences: Both the police and the public were all too willing to accept the idea that the public was primarily a pawn in the matter. The heroic images portrayed by the FBI’s “Gang Busters” and by “Dragnet’s” Sergeant Friday were elixirs for a public fearful of crime, a public eager to relieve itself of responsibility for maintaining order and enforcing informal rules of behavior through age-old forces for policing lapses in social conformity: consistent use of parental discipline, inducements toward mannerly behavior, use of shame, and so on.¹⁴

As the police have demonstrated that their powers in dealing with crime and threats of terrorism since the 1960s have been quite limited and as pressures to control public spending have increased, reliance on age-old informal inducements to conform to social norms has not reemerged in a systematic fashion. More tangible private-sector responses have materialized in their place. Private expenditures for security equipment, personnel, and services have soared—in office buildings, subways and other public transportation systems, shopping

centers and warehouses, universities and schools, hospitals, and large apartment complexes and condominiums. Passenger and baggage screening at airports are routinely handled today by private security firms under contract with the airlines, with local police called in only for emergencies (*Economist* 1997; Newman 1997; Stewart 1985). The proportion of homes with alarm systems increased from 1 percent in 1975 to 10 percent in 1985 (Gest 1995), with no signs that the trend has abated in the years since.

Privatization also has occurred in the areas of investigative services, perimeter safeguards, surveillance systems, risk management, and armed courier and armored car services (Becker 1995; *Economist* 1997). Private investigation alone now encompasses services that range from the investigation of disability claims and marital infidelity to the delivery of legal papers (“process serving”), to criminal investigations aimed at undermining the prosecutor’s evidence and solving sophisticated computer crimes.

Citizens and organizations, public and private, have come to recognize that their municipal police departments have limited capacities, and they have taken matters into their own hands. They have hired private agents for specific security services, and do other services themselves, as noted earlier.¹⁵ Laws permitting the carrying of concealed weapons by private citizens became increasingly popular in the 1990s, especially in the South. Clearly, the police no longer monopolize public safety. Indeed, even police departments now contract out many functions previously done internally.¹⁶

Some communities, aware of the inefficiencies in providing conventional police services, have bypassed their police departments altogether and contracted out portions of public protective services to private agencies. State and local government spending on private services mushroomed from \$27 billion in 1975 to some \$100 billion in 1987, with another \$197 billion of Federal expenditures for private security services in 1987 (Cunningham, Strauchs, and Van Meter 1991, 2). Los Angeles County awarded some 36 contracts for guard services in the early 1980s at an estimated 74 percent of the cost of the county policing alternative (Savas 1987, 183).¹⁷ Other municipalities have gone even further, experimenting with all-private police forces, and have found them to deliver services at lower costs and with no decline in quality of service.¹⁸

While most police departments have grown modestly since 1975, the private security industry has exploded. No single factor can be identified as the primary cause of the shifts to privatization and civilianization over the past 30 years, but a few factors stand out as leading candidates: the 1960s crime explosion that overwhelmed public resources, the growth of specialization throughout the economy, an increased ability of the middle class to turn to private

alternatives, and a decline in the popularity of public-sector solutions to domestic problems generally.

These developments have not been unique to the United States. A 1988 survey in the United Kingdom found 239 patrols operated by private firms on behalf of local authorities (*Police Review* 1989). Britain and Canada had twice as many private security agents as public police by 1990 (Fielding 1991; Toronto Police Department 1990). Similar trends have been reported in Australia, Switzerland, Bavaria, and elsewhere (Rau 1989; Elliott 1991).

Nor are private firms unique to policing. Private correctional institutions constituted only 19 percent of all juvenile correctional facilities in the United States in 1950; they grew to 41 percent of all such institutions by 1989 (see McDonald 1992, 378).¹⁹ During the same period, inmates held in private centers grew from zero to 7 percent of the total Federal prisoner population (Bronick 1989). Privatization has occurred as well in the delivery of ambulance service, fire protection, libraries, sewerage, trash collection, street maintenance, legal services for indigent defendants, and alternatives to adjudication, such as mediation and diversion programs. Lopez-de-Silanes, Shleifer, and Vishny (1995) have estimated from recent censuses of governments that the fraction of 12 such services contracted out by 3,043 U.S. counties increased from 24 to 34 percent from 1987 to 1992.

Did the arrogance associated with the Professional Era of policing—leading eventually to the promotion of a kinder and gentler style of policing—contribute as well to the growth of the private security industry? Perhaps, but the industry would certainly have grown anyway. There is no clear indication that the transition to community policing has slowed that growth appreciably; the rapid development of shopping malls in the 1980s and the hiring of security personnel that accompanied that development was not a direct product of police arrogance. Regardless of whether police arrogance played a major or minor role in stimulating the private security business, however, community policing's bridge-building motif is by all appearances more hospitable to private security than the ivory tower approach of Professionalism (Walsh and Donovan 1989).

Privatization of protective services is, in any case, not new. Protection from crime and disorder was once exclusively a private matter. The recent trend toward privatization follows centuries of what might be referred to as the "publicization" of police services.

The movement back to the privatization of policing is perhaps best explained by its parallel to a general decline in the willingness of voters to incur higher

taxes and support government expansion, and a specific decline in their willingness to see their tax dollars leave their communities. Such sentiments are not unique to conservative Americans. According to the mainstream management scholar Peter Drucker (1988, 26):

Government has become too big, too complex, too remote for each citizen actively to participate in it . . . we no longer believe, as did the “liberals” and “progressives” these past hundred years, that community tasks can—nay, should—be left to government.

Such sentiments have been voiced as well by Vice President Al Gore, who, in heading the National Performance Review, asks how Americans can be expected to trust and respect government when, on average, they believe it wastes 48 cents of every tax dollar it collects (Gore 1993, 1). Gore (1993, 1995) envisions a government that will come to rely increasingly on privatization, point-of-service vouchers, inter- and intra-agency competition, and the creation of performance-based organizations that can be managed like private corporations.²⁰

The civilianization of police departments

As police departments contracted out for private services largely in the interest of efficiency, they also moved to civilianize positions in the department that had been filled previously by sworn officers, for many of the same reasons. It had become clear that, despite widespread reservations about the suitability of civilians for work that had traditionally been done by sworn officers, civilians taking switchboard calls, dispatching patrol cars, and collecting evidence at crime scenes would free up officers for the critical work of policing the streets. Some traditionalists had resisted this movement in the 1960s and 1970s, despite the fact that most sworn officers viewed jobs in the back office as inferior, less than real policing. By the 1980s and 1990s, that resistance had largely evaporated, as civilians had proved themselves more than competent in the positions for which they were hired.²¹ The critical task of dispatching patrol units in response to calls for service, done almost exclusively by sworn officers in the 1960s, was done almost exclusively by civilians by 1990.

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History of public and private policing: Lessons learned

What significant patterns are revealed from this brief account of the history of public and private policing? One is that sweeping changes in policing trends have emerged typically as manifestations of broader societal movements. The Reform Era of policing grew out of the larger Reform Era that transformed the corrupt political machines of the 19th century into institutions that were held more widely accountable. Police “professionalism” reflected in part a desire of police to coattail onto technological advances that were transforming society at large. The community policing movement of the 1980s was largely an outgrowth of trends in consumerism, excellence in service delivery, and “empowerment” crusades of the times.

The shift back to privatization in policing also corresponds with a larger dissatisfaction with government services and rising taxes. Elsewhere in the criminal justice system, especially in the correctional area, privatization has taken shape, with much of the same controversy that has accompanied the privatization of policing services. Fire and ambulance services have been privatized in many communities, and people are turning increasingly to alternatives to public school systems—private schools, with and without public subsidy in the form of vouchers, and home schooling. At the Federal level, serious consideration is

being given to the privatization of the Social Security system (Dentzer 1996) as well as to genuine privatization of the mail delivery and air traffic control systems, public housing, and government printing operations (Hage, Cohen, and Black 1995).²²

Even in responding to serious crimes, public services have often faltered in the presence of overwhelming obstacles, leaving no choice but for citizens to fend for themselves.

The second major pattern is this: Significant reforms in the delivery of public policing services typically follow failure of the prevailing system to deal effectively with newly emerging threats. The creation of the London MPD and uniformed officers in major U.S. cities in the early and mid-19th century were responses to breakdowns in the constable and watch system following the Industrial Revolution’s flood of immigration to urban centers in search of jobs. The Reform Era of policing was largely a response to public disgust of rampant police corruption. Community

policing emerged as central elements of police professionalism revealed themselves to be not only ineffective but often counterproductive, stimulants of frustration and anger in minority communities. August Vollmer’s ([1936] 1971) and Orlando Wilson’s (1938) visions of professionalism in policing surely were not intended to promote arrogance, insensitivity, and brutality, yet professionalism

nonetheless became a cloak within which those evils came to masquerade. Proponents of subsequent policing movements would certainly do well to ensure that their good intentions are not similarly corrupted.

The third major pattern has to do with the resilience of private solutions to problems of crime and disorder. In the absence of a corps of sworn officers, or when the government fails to provide effective protection, private protective services tend to fill the void, for better or worse.²³ The central functions of policing—preserving domestic peace and order, preventing and responding to crimes—have always been conducted first, foremost, and predominantly by private means. Even during periods in which the number of sworn police officers exceeded the number of paid security personnel, the vast majority of activities and expenditures associated with crime have been private. Most crimes still are not reported to the police; in 1996, only 42.8 percent of violent crimes and 34.8 percent of personal thefts were reported to the police (Ringel 1997).

The exception is in the domain of very serious crimes. The highest concentrations of sworn police officers relative to private protective service personnel have tended to be in the activity of responding to homicides, robberies, and other serious felonies. The more commonplace demands for policing services have always relied more heavily on private solutions, as has the primary responsibility for preventing serious crimes. Even in responding to serious crimes, public services have often faltered in the presence of overwhelming obstacles, leaving no choice but for citizens to fend for themselves. A prominent example is the failure of the Los Angeles Police Department to deal effectively with the riots in Los Angeles following a Simi Valley jury's acquittal of police officers charged with beating Rodney King. The anarchic private responses that spring forth under such breakdowns are often sharply at odds with conventional notions of justice, reminiscent of the gun-slinging scenarios that characterized the fabled Wild West during the 19th century.

Assessing Public and Private Alternatives

We have witnessed the evolution of public policing to a position of dominance over private alternatives by the 1960s, and then a pendulum swing back toward privatization. Has the pendulum swung too far in the direction of privatization? What should be the basis for making such an assessment? By 1996, about \$4 were consumed in the private sector of the U.S. economy for every dollar consumed in the public sector;²⁴ meanwhile, roughly \$2 were spent for private security resources for every dollar spent on public policing. Do those numbers correspond to ones we might derive from a thoughtful prescriptive calculus?

Can we envision a more stable and coherent system, one that doesn't swing from one extreme to the other?

The developments described above evolved with varying degrees of deliberation as to the appropriate role of police and the degrees to which each aspect of policing should be provided publicly or privately. The absence of deliberation has had its consequences. The most serious problems in policing appear to occur when police departments operate in a reactive mode rather than one that anticipates and heads off significant problems before they overwhelm existing police capacities.

A more contemplative approach would begin by identifying each aspect of policing that might be delivered publicly or privately and asking how public and private approaches to the delivery of each aspect can be expected to affect each of the following:

- The overall quality and quantity of services delivered.
- The costs of delivery.
- The distribution of services to low-, medium-, and high-income citizens.
- The ability of citizens to choose among alternative service delivery strategies.
- Public perceptions about the extent to which the police are fulfilling their constitutional mandate.

Such a framework is considered in the following section.

A word of caution is needed against the temptation to ask about the overall relative superiority of privatization or civilianization to the alternatives. The varieties of private security forces and modes of civilianization are too vast—as are the varieties of public police agencies—to permit meaningful global generalizations about the relative effectiveness, costs, and overall superiority of the public or private sectors. The broad range of private security alternatives includes well-trained and well-paid agents, often current or former sworn officers who operate in coordination with municipal police departments; plant guards whose job is simply to call the police when they observe suspicious activity; and vigilante groups and ganglike organizations that often compete with local police for the control of neighborhoods.²⁵ Even the least formally organized persons operating in a private security capacity have the authority to arrest that is granted to ordinary citizens, although the laws governing that authority are murky.²⁶ Similarly, civilianization in a particular department may be warranted for certain positions but not others, depending on the needs of the department and community, the skills of the sworn officers, local labor market conditions, and other

factors. Meaningful comparisons require a parsing of the specific application in a particular setting, and in terms of particular goals.²⁷

Economic constructs

We can begin the process of coherent assessment by considering the implications of the shifts toward privatization and civilianization in light of basic frameworks for analyzing the alternatives. The utilitarian approach of neoclassical economics offers several constructs that can help provide bases for assessing public and private alternatives for the provision of goods and services: the distinction between public and private goods, the principal-agent model and the role of incentives for each category of personnel, the notion of economies of specialization, and the notion of externalities.

A public good (or service) is one for which the benefits are nonexcludable and indivisible; they accrue to society at large rather than to specific individuals who may wish to pay for the good.²⁸ To the extent that police deter crimes, all citizens will benefit. Other examples include the court and correctional systems, national defense, and freeway construction. The level and quality of such goods and services are determined through political processes. A private good is one for which the benefits accrue only to those who pay for the good. Examples include automobile ownership and the viewing of motion pictures. The level and quality of these goods and services are determined through the market economy.

Domestic security confers both private and public benefits on individuals. People who pay for private security do so in anticipation of benefits that justify the costs. Improved locks and alarm systems confer benefits directly on those who pay for them. The community as a whole, on the other hand, generally experiences benefits from having a safer environment to a degree that justifies the public expenditures for police departments. Police officers patrolling parks, streets, and other public places confer benefits on all who may wish to frequent those places.

Dependence on private funding for the policing of public places can, however, present a “free rider” problem: Policing such areas through reliance on private support will be underfunded to the extent that some individuals renege on their obligation and let others pay for the service. Private citizens can overcome free rider problems privately by setting up homeowner organizations or similar quasi-public institutions with voting and dues-paying arrangements to select and acquire specific levels and types of security resources. Thus the free rider problem does not require that the government must provide the public good, only that it or a quasi-public counterpart serve as collection agent for its provision.

Policing approximates a pure public good most nearly for extremely serious crimes. The highest concentrations of sworn police officers relative to private protective service personnel have tended to be associated with responses to homicides, robberies, and other serious felonies. More commonplace demands for protection against crime, and crime prevention in particular, have always tended to rely more heavily on private solutions.

The principal-agent model serves as another useful construct in weighing public and private alternatives as well as the question of civilianization (Stiglitz 1989; Grossman and Hart 1983; Ross 1973; Ritter and Taylor 1997). This model is used to examine alternative contractual arrangements and systems of accountability between an employer (principal) and worker (agent), with an eye toward arrangements that induce the worker to operate most effectively in the interests of the organization.

The partitioning of public and private policing services can also be understood in terms of economies of specialization, the concept that public and private security resources are best used respectively in various domains in accordance with the relative efficiency of each alternative. Crimes against business are typically investigated by private security personnel, rarely by sworn officers. Corporations generally have the resources and incentives to do so immediately and in a focused manner. The prospect of their waiting for officers from the local police department to deal effectively with serious episodes of computer crime, fraud, and industrial espionage is generally viewed as unacceptable. Trivial cases are more prone to be passed on to the police in many settings. Department stores have been found to exploit economies of specialization by skimming affluent shoplifting cases for civil recovery and shipping poorer shoplifters off to the criminal justice system (Davis, Lundman, and Martinez 1991, 406).

“Economies of specialization” does not imply that a particular job should be filled by the person who can do it best; rather it implies that for a given budget, the allocation of people to jobs should aim to produce the highest level of productivity. Thus, sworn officers should serve as patrol officers and detectives even if they are somewhat more effective serving as dispatchers than civilians, because the aggregate level of effectiveness is likely to be higher when the officer serves in the position for which it is more difficult to find a suitable civilian substitute. Times of shrinking police department budgets have been found to be ones in which economies of specialization have especially favored the civilianization of support positions (Crank 1989, 176).

Another construct from economics that can help to inform our assessment of change is that of externalities, the impact of one person’s or institution’s behavior

as a producer or consumer on the well-being of another, typically a neighbor or bystander. Externalities may be positive (known as “external economies”), as with general deterrent effects of police activities. Other positive externalities might be when a household without a firearm benefits from the deterrent effect of firearms in a sufficient number of other households in the area or when the owner of a car without a hidden radio-transmitter device used for retrieving stolen vehicles benefits from the deterrent effect of such devices in enough other cars (Ayres and Levitt 1998, 43–47).²⁹ Or externalities may be negative (“external diseconomies”), as when innocent people are injured in a police car chase, detained by a police search, annoyed by the intrusive behavior of a private detective, or disturbed by the accidental discharge of a neighbor’s weapon or the existence of a neighbor’s barking watchdog.³⁰ External diseconomies imposed by any particular protective arrangement may be at least partly offset by external economies.

Negative externalities are a market imperfection that governments are often called on to correct. Typical solutions include taxing those who impose costs on others, regulating the activities that cause external diseconomies, requiring those who impose them to compensate directly those who are adversely affected, and internalizing the diseconomies by inducing those who cause them to incur the costs directly.

Nonutilitarian aspects of privatization and civilianization

Shifts to privatization and civilianization can also be weighed in terms of inequitable allocations of essential public safety resources, the public’s perception of the legitimacy of police in a jurisdiction, effects on the police culture, and conflicts of interest associated with moonlighting police officers.

Private security systems and the poor

One of the ironies of private security is that it is least affordable by the very neighborhoods that tend to need it the most. Wealthy communities are generally willing *and* able to tax themselves more for public police and to purchase more private protection. It is no coincidence that wealthy communities tend to experience lower rates of burglary, larceny, and robbery despite a greater abundance of potential loot.

One important type of private security resource is the burglar alarm system common in both commercial and residential areas. The benefits of alarm systems are both direct and indirect, as are the costs. The direct benefit is reduced burglaries and other crimes that often accompany burglary, either through the deterrent value of discouraging burglaries or through the enhanced ability to catch crimes

in progress. Indirect benefits include peace of mind, avoidance of the need to remain on the premises to protect one's property, and any external benefits to neighbors associated with the perception that buildings in the area are protected.³¹ The direct costs consist of the initial outlays for installation and the utility charges for maintenance. Indirect costs include the costs of false alarms imposed on the police—a cost that is shared by citizens who do not have the systems³²—and a decline in the quality of life associated with signs that perpetually remind us of a need to protect ourselves, even when the dangers may be modest (see Hakim, Rengert, and Shachmurove 1996).³³ Some have argued that these security systems may be inferior to architectural designs and urban configurations that discourage crime without such costs (Brantingham and Brantingham 1990; Clarke 1992; Flusty 1994).

Residential surveys and ethnographic studies have demonstrated that private alarm systems can be an effective deterrent,³⁴ but what about a downside of their use beyond cost: their limited availability to the poor, who are typically at greatest risk of victimization and least able to afford such resources? Privatization has been less controversial in the area of prevention than in the control of crime, but as police have come to take on additional responsibility for prevention, it seems in order to consider what should be done in areas where private spending on alarm systems and other forms of crime detection and prevention has been limited by a dearth of resources. Hakim, Rengert, and Shachmurove (1996) have devised one creative solution: The costs of false alarms and problems associated with inaccessibility of the systems to the poor can be handled simultaneously by imposing a system of fines for repeat false alarms, in amounts no less than an approximation of the average cost of each such call,³⁵ using the resulting revenues to subsidize the installation of alarms and other prevention systems for the poor. An alternative solution would be for private security agents, rather than sworn police officers, to respond to all automatic alarm calls so that the consumers of those services bear the costs. The problem of inequitable distribution of home protection would be solved by providing such families with the means to pay for such resources, perhaps in the form of vouchers—much as food stamps are currently provided to help those families pay for basic subsistence goods. Such subsidies can simultaneously support the effectiveness, cost, equity, and choice goals.

One might be tempted to argue that opportunities to conserve scarce police resources through privatization are greatest in the domain of protecting commercial establishments. Businesses are, after all, better able to cover the costs of protection than are poor residents of a community. This argument, however, may apply more appropriately to wealthy than to poor neighborhoods. It overlooks the typical response of businesses everywhere to crime and its costs. It is well known that high crime rates in many neighborhoods have induced higher

prices, lower quality goods and services, and eventually, the emigration of commercial institutions out of those places (Wilson 1987). The allocation of sworn police officers to poor neighborhoods should not be restricted to public streets and residential areas. At current margins, the returns to public safety and public welfare may actually be higher for additional allocations of sworn officers to protect commercial establishments in poor neighborhoods than to other alternatives.

Legitimacy

If any single concern is paramount, it is that of *legitimacy*. The sworn oath of police to serve the public at large confers on them an intrinsic legitimacy.

Two elements of the police mandate give rise to this legitimacy. The first derives from the process by which officers are screened, trained, and then solemnly sworn to serve the public, warranted alone by the awesome authority to use deadly force.³⁶ The other, more significant, element derives from the fact that under the Constitution the police serve the state—the public at large, not specific individuals. A fundamental precept of this Adamsian government-of-laws-and-not-men notion is that it breeds impartiality.³⁷ Bayley and Shearing (1996, 596) have noted that the great significance of public police in democratic nations is that they are “accountable to every citizen through the mechanisms of representative government.”

Private security personnel do not have such a broad and profound mandate. They have, however, been dealt an *extrinsic* legitimacy from a clientele that has experienced specific limitations in the service of sworn police: resource constraints for the provision of basic services, inability to provide various specialized services and products, and unreliable or otherwise insufficient responsiveness to particular needs. Privatization serves largely to complement public policing in the delivery of specialized services, but it has come to serve as a substitute as well, filling voids in basic service left by police departments that have been swamped by overwhelming demands and a variety of other justifications for lapses in service delivery.

Ironically, the police have lost legitimacy the most in places where crime rates are highest and effective private alternatives are unaffordable—in the inner cities. Inner-city residents have experienced a multitude of lapses, originating in a lack of respect by the police and manifesting as the inconsistent application of force. Municipal police have acted too often far beyond the level

The police have lost legitimacy the most in places where crime rates are highest and effective private alternatives are unaffordable—in the inner cities.

appropriate to achieve compliance. At the other extreme, high crime rates and low rates of reporting crimes to the police in inner cities suggest that the police have more often been unresponsive when some show or threat of force was needed. The community policing movement is showing signs of restoring some of this lost legitimacy to urban police departments (Skogan 1990; Kelling and Coles 1996); community policing alone, however, may prove to be insufficient.

The weighing of equity and legitimacy against utilitarian aspects of privatization and civilianization is not a matter of either public or private decisionmaking alone. As a practical matter, the allocation of public and private security resources in any area, and the extent of civilianization in any department, is the result of a loose interplay of a complex mix of political and private decision processes. Expenditures on private security resources are largely the product of a combination of perceived inadequacies in public protection and the ability of people to purchase protective goods and services in the private sector. The combination of public and private resources in any neighborhood is determined by the level and mix of crime, the quality and quantity of public policing service, the availability of appealing private alternatives, and the wealth and political power of the people in the neighborhood. Private decisions tend to be based primarily on utilitarian considerations, and the political domain is typically left to handle matters of resource inequity and legitimacy.

Effects on police culture

One of the less obvious problems of privatization has to do with the negative effects it may have on public policing. While much of the impact of privatization on public policing is surely positive—including opportunities for information sharing, realization of economies of specialization, and the effects of healthy competition—other effects may hurt policing. Police morale is not boosted by the perception that the work of sworn officers is less valued by society than that of corporate security officials and private investigators, a perception corroborated by the six-figure salaries of some corporate security personnel. Losing capable sworn officers to private concerns is likely to harm both the morale and effectiveness of the remaining corps. Certain elements of the police culture are negative and deserve to be shaken up; nonetheless, some competitive effects of privatization may be unhealthy to the morale and effectiveness of public policing.

Moreover, much of police work is intangible and social, involving unpredictability and quaintness, requiring unique skills of persuasion and guile, depending on public trust, and relying on symbols to motivate behavior (Manning 1977). To the extent that privatization shifts emphasis from these values of loyalty and

craft to flawed measures of accountability may be to guarantee that the essential intangibles will be neglected, it may work to diminish the capacity of the police to control crime and contribute to the preservation of peace and order (Forst and Manning 1999).

The effects of civilianization on the police culture are also mixed. Civilians can contribute to overall effectiveness and thus elevate the status of police departments and serve to professionalize core policing functions by relieving sworn officers of distracting support activities. On the other hand, some sworn officers are bound to resent the placement of civilians in positions that are perceived to compromise sensitive information, interfere in sworn officers' exercise of discretion, and disrupt operations (Wilson 1968, 153; Guyot 1979, 253; Shernock 1988, 299; Crank 1989, 167).

Conflicts of interest

Many sworn police officers work part-time in security positions. Although many departments prohibit such arrangements,³⁸ some 150,000 police officers moonlight as private security agents (Reiss 1988).³⁹ These officers are better trained than most of the alternatively hired guards. But special problems do arise when the establishments where these officers work part-time are in the officer's full-time police jurisdiction: risk of corruption, questions of liability (especially coverage for injury and sick leave), conflict of interest and favoritism, problems of reduced effectiveness on official duty due to diminished capacity associated with private workloads, and questions about whether uniforms, publicly issued resources, and publicly financed training should be used for the benefit of private interests (Senna and Siegel 1993; Stewart 1985).

What distinguishes police from every other institution is that we give them the unique power to use coercive force in situations in which, according to Egon Bittner (1974, 30), "Something-ought-not-to-be-happening-about-which-something-ought-to-be-done-NOW!" (See Klockars 1985, 16). Moonlighting may compound the already fragile ability of police to use this power wisely by serving to deter sworn officers from curbing the excesses of private police. Those who lack resources to buy their own private police may lose all faith in sworn officers who cannot respond to the complaint, "You're the police. Why aren't you protecting me from this rent-a-cop?"⁴⁰

Measuring performance

What primary aspects of policing can be identified to permit a comprehensive assessment of the ability of public, private, and civilian alternatives to contribute to these key aspects of police performance: effectiveness, cost, equity,

legitimacy, and choice? Egon Bittner (1980) has identified three primary domains of policing: criminal law enforcement, regulatory control, and peacekeeping. The law enforcement domain includes both responses to calls for service and discretionary enforcement activities associated with the control of crimes of consent: prostitution, gambling, and drugs. It also includes undercover operations to avert violent street crimes and fencing of stolen property. The regulatory control aspect includes traffic management and the control of specific licensed activities, such as vendor licenses, permits to carry firearms, taxicab licenses, and hotel registration. The peacekeeping domain includes order maintenance activities, such as crowd control, complaints against disorderly neighbors, dealing with mentally ill and suicidal individuals, control of youthful disorders and gang activities, and coordination with public works agencies to repair street surfaces and faulty lighting and to remove abandoned vehicles. It also includes responding to emergencies and disasters. Few peacekeeping functions are in response to crimes, but most do involve an element of latent conflict and the prospect of a criminal offense, particularly in urban areas (Fyfe 1995; Wilson and Kelling 1982).

One can further distinguish between operational and support activities of police departments as aspects suitable for privatization and civilianization. The three domains identified by Bittner represent *operational activities*. Typical police department *support activities* include human resource management, call-taking and dispatch operations, vehicle maintenance, forensic evidence analysis, information systems management, research and strategic planning, and financial management.

Walsh and Donovan (1989, 191) offer yet another categorization of policing tasks that have been performed by a private security agency serving a Brooklyn highrise apartment complex:

- Law enforcement activities, mostly responding to calls involving complaints (43 percent of all tasks).
- Miscellaneous services to residents, such as assisting elderly persons with packages, providing escorts during evening hours, and giving street directions (20 percent).
- Crime prevention activities, such as checking parking garages, stairwells, and other public areas for suspicious persons, events, and vehicles (17 percent).
- Service for management (10 percent).
- Administrative duties (10 percent).

These activities are not typical of private security agencies. They resemble more closely the sort of activities that are commonly performed by community-oriented patrol officers in municipal police departments.

Exhibit 2 lists the primary services provided by police departments, grouped by major function: law enforcement, regulatory control, peacekeeping, community service, and support. The extent to which each of these is currently performed by unsworn agents varies from setting to setting. The extent to which each *should* be done by private or civilian alternatives can be assessed in terms of the extent to which each type of resource satisfies each criterion for assessing policing: effectiveness in protecting and serving the public, cost, equity, legitimacy, and choice.

Effectiveness and equity ought to be the most critical criteria for assessing performance for the activities for which the most is at stake, issues that present

Exhibit 2. Primary functions and services of policing

<p>1. Law enforcement</p> <p>Respond to telephone calls for service Respond to automatic burglar alarm calls Enforce vice laws Undercover enforcement Crimes of violence Fencing of stolen goods</p>	<p>3. Peacekeeping (continued)</p> <p>Prisoner escort Respond to emergency, disaster Coordination with public works Miscellaneous crime prevention activities Target hardening: surveillance systems, alarms</p>
<p>2. Regulatory control</p> <p>Traffic management Firearm permits Vendor, taxi licenses Hotel, restaurant control</p>	<p>4. Community service</p> <p>Give directions Miscellaneous bridge building, support activities</p>
<p>3. Peacekeeping</p> <p>Crowd control Noise complaints Manage special events Handle mentally ill, suicidal individuals Disorderly juveniles</p>	<p>5. Support</p> <p>Human resource management Call taking, dispatch Forensic evidence analysis Vehicle maintenance Information systems management Research, strategic planning Financial management</p>

immediate threats to life and limb. For such activities, carefully screened and well-trained individuals are essential, people who know what to do in a variety of routine yet serious situations and who can be trusted to exercise discretion wisely for situations that fall outside the routine. Sworn police officers are generally most appropriate for such circumstances, despite the higher costs that are typically incurred.

Regulatory functions would seem also to call primarily for sworn officers, largely on grounds of legitimacy. These functions are more susceptible to danger of corruption, and success in the careers of sworn officers is more critically tied to absence of wrongdoing than is the case with privately hired employees, who are generally more inclined to move from one job to another. Although corruption is certainly not unknown to sworn officers in many police departments, most citizens would probably prefer police officers over contract employees for regulating activities that affect public safety and order.

Enforcement of vice laws, similarly, is inherently and primarily a matter for the police, again primarily on grounds of legitimacy, since these are laws against acts that have no immediate victims of predation. Although trafficking in illegal goods and services often imposes substantial costs on the neighborhoods in which it occurs, the absence of a victim who might ordinarily purchase protection against a crime of violence or immediate property loss places the primary burden of enforcement of vice laws and investigation of vice crimes squarely on sworn police officers. The indirect costs imposed by vice crimes on affected neighborhoods are generally dealt with through private means.

On the other hand, target hardening (e.g., the installation and maintenance of locks and surveillance and alarm systems) and related crime prevention activities lend themselves more naturally to service from the private sector, principally in the interests of effectiveness, cost, and, in the case of security systems, choice. Responding to burglar alarms may also lend itself more to private means than under current practice. Private agents protect individuals and private property, while sworn officers police public places. Target hardening is already a predominantly private matter, and police departments are seeking and finding ways of reducing responses to false alarms.

Since 1960, police departments have also been moving generally in the direction of civilianizing many of the support functions listed in exhibit 2 to reduce costs and improve effectiveness. Steps in this direction include hiring less expensive personnel to handle call taking and dispatch and employing specialists to perform such activities as information systems management and administration of finance and accounting functions.

The very existence of questions about when private policing solutions may be superior to public solutions suggests that in such ambiguous circumstances, *both* solutions may be in order, with the respective roles to be worked out as unique local conditions dictate. Examples of ambiguous circumstances are enforcement of parking codes, animal control, security for special events, funeral escorts, prisoner escorts, public housing security, and small-town policing. The best mix of sworn, civilian, and private solutions in these domains is bound to vary from community to community, depending on existing police workloads, the quality of local government, extent of income inequality, and other factors.⁴¹

In any case, communities do not have to continue providing for their security needs as they have historically. By considering each aspect of those needs and asking how the various public and private alternatives satisfy each criterion—effectiveness, cost, equity, legitimacy, and choice—communities are likely to find ample opportunities to improve the delivery of those services.

Strengths and weaknesses of privatization

Specific advantages presented by the private security alternative to a force of public officers include the following, the first four of which are common to private-sector goods and services generally:

1. Public agencies are shielded from competitive inducements to maintain the levels of service quality and quantity that are demanded of a private agency under the credible threat of replacement if the buyer of the agency's services fails to receive desired levels of service.⁴²
2. Management can more easily dismiss individual personnel who fail to conform to agency standards (Klockars 1985, 42).⁴³
3. Governmental accounting procedures are biased against efficient resource allocation.⁴⁴
4. Private organizations have strong incentives to respond to specific and diverse user needs, suggestions, and complaints and can often do so more quickly, without the requirement for such communications to wend their way through cumbersome municipal bureaucracies.⁴⁵
5. Private security agencies tend to be more receptive to innovation and risk than municipal police departments (Sparrow, Moore, and Kennedy 1990, 202–208).

6. Private agents have the authority to stop and challenge any person, without probable cause, for trespassing in a designated private area,⁴⁶ and they can make arrests without having to give *Miranda* warning information to arrestees (Walsh and Donovan 1989, 195; Jacobs 1983, 1141).
7. Municipal police departments may be able to reduce patrols in areas covered privately, thus freeing up resources for other public needs (Jacobs 1983).
8. The delivery of many police services and specific police functions (such as vehicle towing and laboratory analysis of forensic evidence), like the production of services in other sectors, is subject to economies of scale—an approximate size that minimizes costs per unit of service delivered—that private organizations are more likely to achieve than public (Poole 1978, 28).⁴⁷

These advantages suggest that private security agents can serve to complement sworn police officers, filling gaps in public service. A central aspect of this concept is that the police are saddled with an open-ended and hence more daunting task than are security guards: protecting public places (Sherman 1995, 339). The private security industry may thus be able to serve citizens both by meeting specific private needs at the margins where public streets and private property converge and by providing a counterweight to public policing authorities, reducing monopoly powers and political influences that have been known to breed inefficiency and corruption.⁴⁸ Similarly, civilians can fill gaps in public service by enabling law enforcement agencies to more effectively realize gains from economies of specialization and in relieving sworn officers of mundane, time-consuming tasks.

Private security agents are not generally bound by the same set of constraints that are imposed on sworn police officers. They enjoy the powers to arrest, to search for and seize evidence, and to file criminal charges in court, but they are not held to due process requirements routinely followed by the police, such as those specified in *Mapp v. Ohio* (367 U.S. 643 [1961]). This latitude offers private agents a degree of immunity from the criminal or civil liability charges arising from false arrests that sworn officers must often face.⁴⁹ Unlike sworn officers, who are bound to file criminal charges when probable cause exists, private security personnel have discretion to prosecute offenders under either civil statute (advantageous to stores in cases involving affluent shoplifters) or criminal statute (generally used for poor offenders), thus raising questions about equal protection and due process (Davis, Lundman, and Martinez 1991).

Affluent voters have been willing to tax themselves for police services in their communities at prevailing margins and to augment those funds with private security expenditures targeted to specific needs. However, many have been less

than thrilled to see their tax dollars leave their immediate communities to go elsewhere within the jurisdiction. Obviously, a private citizen has substantially more control over funds spent on private protection services than over funds aimed at public police that must traverse convoluted governmental processes, and it should not be surprising that they would vote accordingly. Many suburbanites have little interest in helping the inner cities with financial support that they would prefer to see spent for suburban needs, public and private. Many of these people choose simply to stay away from dangerous neighborhoods downtown; they tend to prefer to restrict expenditures on police and private security resources to their own communities, even though the crime risks are typically much lower. As good jobs have left urban centers over the past 20 years, it has become all too easy for upper and middle-class voters to separate themselves from the problem of inner-city crime (Wilson 1987). Federal and State expenditures on policing can be more readily distributed to inner cities than local expenditures, but political pressures often intervene to thwart even those redistributions.

Thus one of the acute problems of privatization has been to allow areas most in need of protective services to go without them, which only adds to the vulnerability of the residents of those neighborhoods to crime and disorder. The Metropolitan Police Department of Washington, D.C., fell under extreme financial stress in the mid-1990s under Mayor Marion Barry; meanwhile, neighborhoods in many of the city's affluent Northwest area protected themselves privately with elaborate security systems and guards. At the same time, suburbs surrounding the city experienced low crime rates and well-financed police departments. Police departments operating within the metropolitan areas of New Orleans, Detroit, Richmond (Virginia), and other places with extremes of inner-city crime in the general vicinity of wealthy suburbs have come to experience similar disparities in protection.

Maldistribution of resources is by no means the only problem associated with the privatization of policing.

Another is that a private corporation and its employees can be difficult to supervise, especially when contracts are awarded to different companies periodically. This can become a noxious matter when private agents have access to sensitive information. Although public officials occasionally violate privacy, as

Bar bouncers and bodyguards are rarely known for their reputations as civil libertarians, and an expansion of these uncontrolled and often overly aggressive branches of the private security industry would not bode well for the goal of a more civil society.

The fundamental issue here is that of legitimacy. Police officers take an oath of office in which they swear to serve the public at large; they are neither narrowly nor tentatively employed.

in the 1996 case of White House personnel rifling through some 400 FBI security files of political opponents without legitimate justification (Gergen 1996), the potential for such violations could be greater when private agencies have access to such information. Government employees can be held to a higher standard. They are accountable not only to the highest level of political authority but also to the public, in ways that private individuals are not (*Washington Post* 1996).

Another potential problem with privatization derives from one of the most basic aspects of our criminal justice system: The adversarial system of legal procedure reduces the role of vengeance by interposing the state in the place of the victim as the offender's legal opponent. This is viewed by many as a fundamental weakness of our system of justice, one that depersonalizes the process and moves those most directly harmed by crime off into a role of prosecution resource, imposing an excessive burden of uncompensated crime and justice costs on the victims. The police have long been known to view our legal system with suspicion and hostility (Skolnick 1994, 181–197, 213–220),⁵⁰ and this feature of our system surely contributes to the breach between the police and legal cultures. Several scholars have noted that this cultural divergence lies beneath episodes of police brutality delivered as “curbside justice,” the act of using dirty means to achieve what some view as worthy ends (Klockars 1995, 330–340; Skolnick and Fyfe 1993, 106–112).

This has been a problem primarily with sworn police officers rather than private security agents, and the privatization of policing does not alter this basic Constitutional principle of our justice system. Yet, the extra-legal retributive behaviors that have become a too-familiar feature of our policing culture could conceivably become more widespread under further privatization. The police officer is insulated from the victim through several layers of mid- and upper level police management and a mayor's office; in a properly functioning department, abuses in the use of force may result in job loss and difficulty finding another job in policing. The security agent working directly for a client victim, on the other hand, may be more inclined to do the client's bidding for brutal tough justice, especially when his job security may be strengthened by the activity.⁵¹ Bar bouncers and bodyguards are rarely known for their reputations as civil libertarians, and an expansion of these uncontrolled and often overly aggressive branches of the private security industry would not bode well for the goal of a more civil society.

Perhaps the most difficult problem of private security personnel is that the potential for incompetence and misbehavior is enormous. The screening for many private hirings is often lax and the training nil. Poor screening has been known to result in the hiring of private security personnel with criminal records (Williams 1991, 475).⁵² Security guards may receive guns without having received adequate instruction on their usage.⁵³ They may receive uniforms and be assigned beats to patrol when they are unprepared for even routine situations.⁵⁴ Poorly managed agencies and unscrupulous operators have been known to go bankrupt or otherwise fail to honor contractual assurances that their services and products—alarm systems, locking devices, and so on—are up to par (Stewart 1985, 762). And guns purchased privately primarily for security purposes have been found more often to result in the death of a household member than that of an intruder.⁵⁵

The fundamental issue here is that of *legitimacy*. Police officers take an oath of office in which they swear to serve the public at large; they are neither narrowly nor tentatively employed. Although some officers clearly do not choose to follow the oath as earnestly as others, most are likely to take the oath seriously as a commitment to public service over self-interested behavior.⁵⁶ Few private security agents are bound by solemn vows to serve the public.⁵⁷ Such a commitment may not only serve the public more effectively, it also may produce the side benefits of contributing to the building of character.

Strengths and weaknesses of civilianization

Police departments have become increasingly reliant on civilians to perform critical tasks as the needs of these departments have become increasingly diverse and specialized. Certain positions have lent themselves especially to civilianization: telephone call taking and patrol dispatch, crime scene specialists and criminalists, lab technicians, specialists in computers and information systems, lawyers, behavioral scientists, administrators, database specialists and clerks, and planning and budgeting specialists. We have noted that civilians are generally less costly and sometimes more effective than sworn officers in the same positions.

Variation in the extent to which different departments rely on civilians is substantial (Reaves and Goldberg 1998). Some of these differences may be warranted according to the unique needs of the department, the skills of the sworn officers, local labor market conditions, and other factors. Differences from one department to the next may be attributable to other factors as well, such as the strength of police unionization in the area and the quality and reputation of the civil service system in the jurisdiction.

Prospective Policies and Reforms

A host of reforms have been proposed to minimize the potentially harmful aspects of privatization and public monopolization. These include licensing and bonding arrangements for the private security industry; community-oriented and problem-oriented strategies and accreditation for law enforcement agencies; and the use of civil remedies for harms in both the public safety and private security sectors.

Dubious prospects

Many of the contemporary prescriptions for improving public safety are clearly questionable. Cries for substantially more police are simultaneously among the most popular and most dubious of the recent solutions proposed for dealing with the problem of crime. Borne largely of the widespread public misperception that the risk of being victimized by serious crime is much higher than it really is—an illusion that few politicians have shown the courage to dispel—these cries have led to such extraordinary measures as a \$13 billion allocation of Federal funds for police under the Violent Crime Control and Law Enforcement Act of 1994. The funds have been tied in principle to the expansion of community policing activities, but the link is tenuous and difficult for the Federal Government to monitor and enforce. Complaints that the allocations of these funds are more closely related to political pork than to the expansion of specific community policing interventions have not been effectively refuted; much of the Federal bounty goes to relatively well-financed, low-crime areas. It is not uncommon for a police department to enlist a consultant from a nearby university or think tank to help fashion a proposal that suggests a substantive awareness of community policing, and then to use the funds to finance whatever activity the police department actually cares to support. In flagrant cases the grant may not be renewed, but throughout the recent history of such largesse, attempts to recover the spent funds have been extremely rare.

A second dubious claim is based on skepticism of the market economy: that the profit motive of the private security industry is generally incompatible with the goals of policing—reduced crime and disorder, increased public safety (see, for example, Shearing and Stenning 1981).⁵⁸ What this argument lacks is a coherent justification, moral or otherwise, for the alleged incompatibility. How is it that the pursuit of satisfying the public's demand for security is inferior when done for profit than when done through government? Can market imperfections in the delivery of such services—especially, inequitable distribution of police resources—be effectively dealt with? Do the social costs of those imperfections exceed the costs associated with inefficiencies that accompany monopoly in

the governmental delivery of those services? Why is the activity of satisfying demands for security any less worthy of profit than that of, say, satisfying the demand for food, housing, clothing, or health care? Can the prospect of profit be viewed as benign compensation for the commitment of scarce capital resources and risk of financial loss and bankruptcy not faced by the public sector?

Need for public-private cooperation

There are, on the other hand, several promising avenues for improving policing generally and for responding to the demands raised by a burgeoning private security industry. One is in the area of coordination between public police and private security agents. Extrapolating data from the 1990s suggests the presence of some 800,000 sworn police officers and perhaps 2.5 million contract guards and proprietary security forces by the year 2000. Given the vast coordination problems even among the 19,000 police departments in the United States, can we really expect personnel to learn to work effectively with one another across the ostensibly greater public-private divide?

The opportunities for mutual gains from improved coordination for both police and private security agencies are substantial, especially in the sharing of investigative expertise and intelligence information. Several promising developments suggest that an enlightened approach to cooperation between public and private police has already begun to take place in some quarters. In 1985, the New York Police Department (NYPD) formed a committee to look into the prospect of improved coordination with private security networks in the city. The result, the Area Police-Private Security Liaison Program, established a variety of working ties between the public and private domains:

1. The NYPD kept security directors informed about local crime trends and patterns, wanted persons, and lost and stolen property, information that was disseminated throughout the private security sector.
2. Private security directors, in turn, informed police of internal crimes, shared knowledge of plant and personnel protection, and advised the police of other pertinent onsite observations.
3. Police commanders and security directors met monthly, division managers met quarterly, and line police officers met informally at other times, often daily, with their private counterparts.
4. The NYPD routinely disseminated information about recent patterns of crime, along with sketches, photographs, and descriptions of active offenders.

These alliances appear to have improved working relations and mutual respect of the police and private security communities in New York. Several solved crimes have been attributed to these activities (Voelker 1991). In San Diego, coordination between police and store security personnel was found to smooth substantially the processing of shoplifting arrests in the mid-1980s (West 1993, 54). Similar cooperative efforts have been reported in Dallas, Chicago, Tacoma (Washington), and Montgomery County (Maryland) (Williams 1991, 476).

Special problems of coordination present themselves in volatile circumstances in which the potential for large-scale disorder exists. Examples include security maintenance at the Olympic Games and dealing with the aftermath of police brutality, as in the case of the 1992 Los Angeles riots and the 1980 Miami riots (Skolnick and Fyfe 1993).

Accreditation, bonding, and licensing

Many personnel working as private security agents and guards are inadequately screened, trained, and supervised to ensure effective police work. One solution to the need for improvements in the quality of both public and private policing services is to encourage accreditation in both domains. Precedents exist for both with the Commission on the Accreditation of Law Enforcement Agencies for police departments in the United States and the British Security Industry Association for the professionalization of the private security trade.

A related solution would be to require that private security firms carry general liability insurance, or that security personnel be bonded following a minimum level of training and certification, with the amount of training and size of bonding dependent on the degree of risk associated with the nature of the job.⁵⁹

Others have suggested the prospect of licensing private security firms (see, for example, Stewart 1985, 764). Most States currently license guard and patrol firms, and about half require the registration of guards (U.S. DOJ, Bureau of Justice Statistics 1988, 66). Jacobs (1983) has observed that existing licensing institutions are underresourced and ineffective; license revocations are extremely rare. He warns that more restrictive licensing provisions would impose costs that would be passed on to the consumer, making private security services even less accessible to poor citizens than they already are (Jacobs 1983, 1141). Economists have long noted that licensing arrangements juried by prevailing experts in the field, in the name of protecting consumers, typically do more to serve producers by restricting market entry.⁶⁰ The licensing solution thus presents a time-worn conundrum that transcends policing: Can licensing arrangements be devised that improve the quality of private services without making them less affordable?

Dealing with moonlighting

The solution to the moonlighting problem and the associated conflict of interest problems noted earlier is simple: Prohibit it. About one-fifth of all U.S. police departments already prohibit the practice, and others could join suit. At the very least, police departments should not allow their officers to wear their uniforms while employed outside, nor to use such departmental equipment as squad cars, weapons, and radios, nor to accept employment from liquor stores or from burlesque houses or other disreputable establishments.

Parapolice

One novel variant of civilianization is the creation of “parapolice” officers, modeled along the lines of the paramedic and paralegal practitioner in related domains. Parapolice have been used in a variety of routine, peripheral activities typically requiring direct service to citizens, such as helping victims of rape, domestic violence, and child abuse; in door-to-door community policing outreach programs; and in specific criminal investigation activities. Parapolice typically wear uniforms to gain acceptability in the community, but they are not authorized to use force; they carry no weapons (Skolnick and Fyfe 1993, 255–257). The parapolice option, a middle ground between the sworn officer and the civilian, may offer a bit of the best of both worlds in circumstances calling for a specialist: a highly competent, relatively inexpensive alternative who is not regarded as inferior to either the police or the public.

Inner-city redevelopment and public safety

The wholesale flight of businesses from inner cities that accelerated in the late 1960s and early 1970s was due primarily to the fears, risks, and extraordinary costs associated with the explosion of crime during that period. The prospect of a return of commerce to those areas depends no less on increased levels of protection, public and private. One would expect two developments to be critical for such protection: (1) that municipal police departments decentralize their operations so that sworn officers have the autonomy to identify the specific needs of each area for which they are responsible; and (2) that some substantial portion of the business development created, perhaps under some sort of enterprise zone arrangement,⁶¹ would consist of private security institutions—for-profit, nonprofit, and volunteer—to preserve and protect the return of wholesome living conditions in our urban centers. Such developments could be essential for the redevelopment of our inner cities, regardless of how the redevelopment is facilitated.

Other prospects exist to confront the problem of inner-city crime and the paucity of resources to deal with it. The inequitable distribution of private security

resources might be diminished if private citizens or institutions were to receive spending authority for security systems and guards, akin to food stamps and school voucher programs. It would be necessary, of course, to deal with potential abuses of such a proposal, including fraud and any negative effects on public policing, but such prospects certainly merit serious consideration.

Emergence of communitarian alternatives

One development that may bode well not only for policing but also for meeting many contemporary challenges is the emergence of communitarian alternatives to social problems. Spawned by the writings of Amitai Etzioni, Mary Ann Glendon, Jane Mansbridge, and others, the communitarian movement emphasizes limitations in both governmental and market solutions to many vexing issues of public policy; it explores solutions that blend the strengths of each major sector, including the building of partnerships between public and private groups and experimentation with the creative use of various forms of cooperation (Etzioni et al. 1991).

Centerpieces of the communitarian agenda include inducements to volunteer work, the emphasis of sense of responsibility and deemphasis of sense of rights, and wider use of informal social sanctions to induce ethical behavior: shame as a stick and positive reinforcements as carrots to encourage community-minded behavior. The communitarian manifesto holds that “our first and foremost purpose is to *affirm the moral commitments of parents, young persons, neighbors, and citizens*. . . . If communities are to function well, most members most of the time must discharge their responsibilities because they are committed to do so, not because they fear lawsuits, penalties or jails” (Etzioni 1993, 266; emphasis in the original).⁶²

Although these notions do not resolve questions about the optimal mix of public and private solutions to problems of crime and community order, they do suggest a common-sense framework for addressing such matters. Public and private solutions to specific crime problems may occasionally ignore larger community interests, but if they are not complemented by systematic and purposeful activities that build community participation they will do little to achieve larger crime prevention and order maintenance goals. The police will be more effective when they have succeeded in building positive ties to the community, including private security agents working for individuals and institutions within the community. They can work to encourage citizens to protect themselves through crime prevention and to provide information to the police to facilitate the solving of crimes. Private security agents are responsible primarily to those who pay for their services. One cannot expect these agents to take

the lead in community building. It is not unreasonable, however, to ask their patrons to be mindful of the external benefits and costs of the behaviors of these security agents; if they are not, court litigation may fill the void.⁶³

Conclusion: Critical Issues and Promising Directions

Where should policing go from here? What does the future hold for the future of privatization and civilianization? What are the most critical concerns about the direction of current trends? What policies can serve to minimize the harms associated with current and future practices? In particular, what should be done in areas where the need for improvement is greatest, in high-crime settings?

If we have learned anything, it is that certain questions—such as whether privatization and civilianization are good or bad and whether we need more or less privatization and civilianization of policing—are too simplistic and sweeping to warrant serious answers. These issues are more effectively approached by focusing more precisely on how various forms of privatization, civilianization, and use of sworn officers used in a variety of roles can better serve the public.

This much is clear: The notion that either our corps of sworn police officers or the expanding array of private security agents alone is uniquely equipped to protect society and maintain order without the other has no credible support. Neither the public nor the private sector is endowed with attributes that ensure that policing in either domain will be automatically superior in every respect to the alternative. Neither has revealed the capacity to respond effectively to the variety of social trends that characterize our contemporary landscape, trends that suggest the inevitability of more crime and disorder in many segments of society—changing demographics, increased use of guns by adolescents, the decline of family, expanded exposure of youth to violence, and vast disparities in education and wealth. The public and private sectors alike have demonstrated extraordinary accomplishments, as well as more than ample capacities for ineffectiveness, waste, preferential treatment, and corruption.

Recent trends in policing and private security are likely to continue for some time to come, in spite of questions about their appropriateness to emerging social problems. As we enter the 21st century, with substantial increases imminent both in the absolute and relative size of the population in the crime-prone ages of 15 to 24, it is doubtful that each major segment of our society can be served adequately by current methods of policing: sworn, civilian, and private. As society changes, so must policing.

Acceptable solutions to satisfying the public's needs for security are bound to consist of a widely varied mix of public and private alternatives: sworn officers serving in a variety of roles, civilians working as specialists in police departments, private firms hired under contract by police departments and municipal governments to serve well-defined security and support needs, subsidies for poor people to have access to resources that make their environments safer, security guards and specialists hired to protect commercial interests, citizens serving voluntarily to protect their communities (typically in coordination with the police), and citizens augmenting and substituting public protection with a range of goods and services to protect private property and provide personal protection. Such a panoply of options working simultaneously is virtually certain to serve to fill gaps in service that more limited alternatives cannot accomplish.

Debate over the appropriate mix of options, a mix that adequately satisfies the extraordinary variety of the public's security needs, has been too often contaminated by deep faith in either governmental or market solutions, combined with equally deep suspicion of the other sector.⁶⁴ A more coherent and effective resolution is likely to result from thoughtful consideration of the extent to which each option contributes to each aspect of our need for security—in terms of how effective, how equitable, how economical, how legitimate, and how much it permits freedom of choice. If a single question can be asked about privatization and civilianization, it is this: How best can the public's need for protection against crime be served? Related questions include: Under what circumstances and for what tasks are the police best equipped to deal with the public's need to be protected against crime? Under what circumstances and for what tasks are civilians best equipped? Under what circumstances and for what tasks are private security personnel best equipped? How can these arrangements be effectively and fairly financed?

The great contemporary challenge confronting public safety in the United States is not primarily about whether privatization and civilianization are good things. It is about how best to serve the public's need for protection against crime generally and, in particular, how to shape and coordinate our resources and energies to secure the safety of those quarters of society that are least able to afford effective security, public or private. Wealthy communities can afford to take care of themselves both publicly and privately, and they do so. Poor people, especially minorities living in areas with the highest concentrations of crime, cannot. Sworn police officers must be made available in sufficient numbers and with effective systems of accountability to ensure that those areas are adequately served and protected.

Scholars can help in several ways. Much more research is needed on the effectiveness and costs of sworn officers, civilians, and private alternatives operating

in basic roles to prevent and respond to crime. Research is needed as well to assess more thoroughly how alternative systems of accountability, both formal and informal, that aim to improve efficiency, effectiveness, and integrity actually enhance the ability of police to accomplish their primary mission, to serve and protect the public. And research is needed to assess more thoroughly the extent of disparities in service by sociodemographic status, region, and other factors.

The 1980s were marked by intense suspicion of the ability of governments to respond adequately to public needs and often blind faith in market solutions. The 1990s have witnessed a search for more eclectic solutions to matters of public and private policy, approaches that emphasize voluntarism and greater cooperation among institutions in the public and private sectors. The popularity of the community policing strategies in municipal police departments in cities throughout the democratic world is a hopeful manifestation of this enlightened spirit of partnership. Such approaches to maintaining domestic peace and order appear to be more open to diverse and flexible approaches to problems of public safety, ones that may be both more effective and more humane. This trend is likely to induce a healthier debate and, in turn, produce superior solutions for the coming millennium.

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Notes

1. Laband and Sophocleus (1992) estimate total private-sector spending on protection against crime at \$300 billion annually, about three times that spent on the entire public criminal justice system.
2. Bittner's distinction follows Max Weber's (1954) characterization of the state as the institution that holds a monopoly of legitimate use of violence in the area under its control.
3. Cunningham and Taylor (1985) found specific policing tasks to be performed more efficiently by less costly private security agents: guarding public buildings, enforcing parking regulations, and maintaining court security. Similarly, Benson (1998) reported substantial improvements in the recovery of bad checks after the Kentwood (Michigan) Police Department contracted out the investigation of bad checks to private agents.
4. While only 4 percent of all sworn officers served in technical support positions nationwide in 1993, more than one-third of all sworn officers in the Long Beach and Dallas Police Departments served in such positions (Reaves and Smith 1995, ix, 13, 22).

5. Some police departments, including those in Baltimore, Glendale (California), Houston, Miami, New York, Peoria, and San Diego, make extensive use of civilians in field operations (Reaves and Smith 1995, 25–34).

6. In 1993, the median number of training hours per new officer ranged from 640 (16 weeks) for municipal police departments to 800 (20 weeks) for State police agencies (Reaves and Smith 1995, ix).

7. Reaves and Goldberg (1998, 3) report civilians at more than 25 percent of all full-time personnel in police departments with more than 1,000 officers in 1996, and at less than 15 percent of full-time personnel in departments of all other sizes.

8. Trivia: “Pinkerton’s agents” is the answer to Paul Newman’s question, “Who are those guys?” asked as his character, Butch Cassidy, was fleeing from an especially persistent band of pursuers in the movie “Butch Cassidy and the Sundance Kid.”

9. The post of commissioner was officially created in 1901.

10. Manning (1999, 453) describes the continuing use of effectiveness measures as a triumph of rhetoric over substance and, more fundamentally, a triumph of managerial economics over public administration:

These changes in policing, especially the metaphoric tendency whereby policing is conceived as an economic institution, are part of the overall movement toward privatization of control, reduction of government supervision in favor of the market and private governments, and the use of the media and the market to substitute symbolic imagery for direct forceful authority. The present appeal to market forces for reform, analogous to deregulation, is a retrograde step with regard to civic control over police command and police accountability.

11. Patrick V. Murphy, New York City Police Commissioner in the early 1970s, referred to this distance as “stranger policing . . . the occupation of conquered territory by an alien army.” Murphy elaborated that under stranger policing, “it is permissible for officers to hide in their radio cars with windows rolled up, communicating not with the community but only with each other, the dispatchers at headquarters, and their own private thoughts” (Deakin 1988, 231).

12. Much of this was a product of increased administrative demands and more time in court. Savas (1982, 24) observes, however, that much was due to effective union pressure; while the New York Police Department grew from 16,000 to 24,000 officers over a recent 25-year period, the total hours worked actually declined due largely to increases in leave and vacation time.

13. Akerlof and Yellin (1994) have noted that the police have mostly alienated inner-city residents and that gangs have been more successful than the police in winning over the hearts and minds of many urban minority communities. Akerlof and Yellin’s work is significant for providing a coherent theoretical framework for community policing.

14. Judith Martin's (1996, 55–56) observation is instructive:

Between them, etiquette and law divide the task of regulating social conduct in the interest of community harmony, with the law addressing grave conflicts, such as those threatening life or property, and administering serious punishments, while etiquette seeks to forestall such conflicts, relying on voluntary compliance with its restraints. . . . [T]he danger of attempting to expand the dominion of the law to take over the function of etiquette—to deal with such violations as students calling one another nasty names, or protesters doing provocative things with flags—is that it may compromise our constitutional rights. For all its strictness, a generally understood community standard of etiquette is more flexible than the law and, because it depends on voluntary compliance, less threatening. . . . That we cannot live peacefully in communities without etiquette, using only the law to prevent or resolve conflicts in everyday life, has become increasingly obvious to the public.

15. Services include citizen foot patrols and block watches, escort services for senior citizens and university women, citizen-band radio automobile patrols, and radio-alert networks for taxis, buses, and commercial vehicles.

16. Court security, prisoner custody, computer and communications system maintenance, training, laboratory services, radio dispatching, video surveillance, and traffic and parking control are among these services.

17. Colby (1995, 121–122) has reported that municipalities in Los Angeles County and Cook County (Chicago) have also contracted with their respective county sheriff's departments for policing services at lower costs.

18. Senna and Siegel (1993, 234) report such results for Reminderville, Ohio; Elliott (1991, 62) reports similar results for Oro Valley, Arizona, and Kalamazoo, Michigan. Walsh and Donovan (1989, 187) report increased levels of safety, reduced levels of fear, and improved quality of life with private security services over public police services for Starrett City, a residential community of 46 high-rise buildings in Brooklyn, New York. "Substantial savings" were reported in *Urban Innovation Abroad* (1980) following the contracting of police services in some 30 villages and townships in Switzerland. Hilke's 1992 survey of more than 100 studies of privatization generally found cost reductions in the 20- to 50-percent range.

19. As with policing, prisoners were held in private facilities in England and elsewhere in Europe until the 19th century (McDonald 1992, 379).

20. Vice President Gore's sentiments are not unprecedented. The 1955 Office of Management and Budget Circular A-76 states that "it has been and continues to be the general policy of the government to rely on competitive private enterprise to supply products and services it needs."

21. Similar trends have been reported in England and Wales (Jones, Newburn, and Smith 1994, 169).
22. The Congressional Budget Office has estimated that \$1 billion could be saved over a 5-year period by replacing the construction of new public housing with a system of vouchers; an official with the U.S. Department of Housing and Urban Development estimates that the vouchers would also expand by some 300,000 units the stock of housing options available to current public housing tenants (Hage, Cohen, and Black 1995, 44).
23. Privatization has been stimulated by government withdrawals from, or breakdowns in, other sectors as well. Education is a conspicuous example.
24. Gross domestic product in the United States was \$6.74 trillion in 1994, 67.3 percent of which consisted of private consumption expenditures; \$1.41 trillion (18.6 percent) was consumed by the government sector and \$1.12 trillion (14.7 percent) consisted of gross domestic investment (*Encyclopedia Britannica: 1999 Book of the Year 1999*, 736).
25. Examples include a faction of Oakland's Black Panthers that sought to create armed private security services to the community in the late 1960s and men loyal to Louis Farrakhan in Washington, D.C., in the mid-1990s. See Akerlof and Yellin (1994) for a discussion of the issues associated with the competition between police departments and gangs for control of inner-city communities.
26. The law stipulates that private persons are authorized to make arrests only in the case of felonies that occur in their presence (Jacobs, 1983, 1140). More generally, the Supreme Court has not acted to constrain State and local governments from delegating powers to private agents since 1920 (McDonald, 1992, 406); it allowed the Federal Government to delegate broad powers to private actors in its decision in *Carter v. Carter Coal Company* (298 U.S. 238 [1936]).
27. Nalla and Newman (1991) have noted, in a similar vein, that comparisons of private and public personnel are flawed by definitional questions: Which categories of private security personnel should be included? Which categories of police personnel? Sworn officers only? They argue that the inclusion of State and Federal tax collectors and regulators in the public police numbers produces less divergent assessments.
28. Demsetz (1970) argues that indivisibility of benefits need not impede the private production and delivery of public goods, leaving nonexcludability as the sole distinguishing characteristic of public goods.
29. Ironically, private security systems may signal that particular locations have more valuable property to protect, hence residents with such systems may be *more* prone to break-ins than neighbors without clear evidence of having such systems (Hui-wen and Png 1994, 96; Lacroix and Marceau 1995, 72).
30. The police impose external diseconomies as well, as when innocent people are harmed in car chases. External diseconomies imposed by both types of police may be

partly offset by external economies. One may feel safer when his or her neighborhood is known to have protected itself, or when a police precinct is just around the corner.

31. Miethe (1991) reports finding that homes are unaffected one way or the other by the existence of an immediate neighbor's alarm system.

32. Hakim and Buck (1991) have estimated that about 95 percent of all alarm activations are false. Alarms accounted for some 15 percent of all dispatches of squad cars in New York City in 1981; 98 percent of those calls were false (Cunningham and Taylor 1985).

33. Flusty (1994, 34, 36), focusing on declining esthetics in Los Angeles, puts it more dramatically:

Expanding private encroachment into the public realm is catering to, and exacerbating, paranoid demands by gradually decomposing communities into fortified agglomerations of proprietary spaces. In the process, sections of the city have become a patchwork of contiguous interdictory spaces, subjecting citizens' mobility and permissible range of behavior to ever more restrictive oversight and control. The cumulative spatial and aesthetic effects of paranoid privatization are already being manifested across broad landscapes, turning the streets into prickly space hemmed in by crusty and slippery edges. . . . In short, Los Angeles is undergoing the invention and installation, component by component, of physical infrastructure engendering electronically linked islands of privilege embedded in a police state matrix.

34. Hakim, Rengert, and Shachmurove (1996) report that the benefits to a small township in 1990 exceeded the costs by a "conservative estimate" of more than \$200 per installed home security system.

35. Hakim, Rengert, and Shachmurove (1996) estimate the average 1996 cost of each false alarm in Tredyffrin Township, in Southeastern Pennsylvania, at about \$70.

36. The sacred vow of service is akin to the relationship of medieval knights to the empires they served. See Wambaugh's *The Blue Knight* (1972) for further parallels. One particularly significant difference is that knights were sworn primarily to their kings rather than to the empire.

37. The notion did not originate with John Adams. The following is from Aristotle:

A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all. (1943, 55)

38. Reiss (1988) estimates that some 20 percent of all police departments prohibit moonlighting.

39. Cory (1979, 40) also reports results of a 1975 study of Cleveland: Between 20 and 35 percent of the local police officers were found to work second jobs in private security.

40. Thanks to James Lynch for this point.

41. Landes and Posner (1975, 32), focusing on efficiency rather than equity and choice, have argued that society tends to rely on public enforcement more in cases where the cost of enforcing an individual claim is high relative to the value of the claim, and that, in general, these matters tend to sort themselves out automatically: “[S]ociety has left enforcement to the private sector in areas where private enforcement is clearly optimal.”

42. Privatization that grants exclusive rights to a particular security agent is less likely to yield gains in efficiency than other types of privatization, since a primary purpose of privatization is to derive the benefits of competition. Replacing government monopoly with private monopoly fails by this fundamental standard.

43. Johnston (1992, 55) observes that many public police agencies protect not only ineffective sworn officers but large, often inefficient, civilian staffs as well.

44. Because governmental accounting convention treats the full cost of a capital outlay as an expenditure in the year incurred rather than as an investment whose cost is spread over the life of the asset, the public sector tends to underinvest in capital resources. Public resources are inefficiently allocated also in year-end use-it-or-lose-it spending binges of authorized government budgets.

45. Although systematic evidence of actual successes has not yet been well documented, community policing aims specifically to overcome this problem in large municipal police departments. A prominent example of a specific, well-defined goal of private security is that of corporate loss prevention. A company’s director of security or loss prevention is typically held accountable to a straightforward bottom-line criterion: The reduction in theft and safety losses to the company should exceed the marginal costs associated with those reductions to an extent that exceeds the company’s standard rate of return on investments (Becker 1995, 655–656).

46. Sherman (1995) notes that public police once exercised trespass powers illegally, especially in small communities where offenders could be run out of town; they rarely do so today.

47. Many police departments exploit such economies by contracting out specific services, often to multiple private contractors.

48. McCrie (1988) notes that among some 13,500 private security firms in the United States, no single firm controls as much as 10 percent of the market.

49. However, the reverse may hold when the services of private agents are contracted by public authorities. Under *West v. Atkins* (487 U.S. 42 [1988], 55), private parties may become state actors when their activities violating constitutional rights are authorized, encouraged, or approved by the government. Moreover, public servants receive certain constitutional immunities against civil suits not generally available to private agents (Rosenbloom 1998, 6–7). Rosenbloom (pp. 4–15) argues that such asymmetry may have a chilling effect on the willingness of private agents to act on behalf of the state.

50. Manning (1999, 99) summarizes these considerations in identifying one of the postulates of the police culture as follows: "The legal system is untrustworthy; policemen make the best decisions about guilt or innocence."

51. Nozick (1974, 12) has observed that the "morally objectionable" transactions that give rise to overly aggressive private protection providers may thus induce a return to the state's monopoly control over protection.

52. The same problem has been known in the hiring of public officers as well, as in the case of the notorious hiring binge of the District of Columbia's Metropolitan Police Department in 1989-90.

53. Private security agencies have two strong incentives *not* to arm their employees: heightened liability risks and higher insurance premiums when their guards are armed. One of the largest private security firms, Guardsmark, estimated that just 3 percent of its uniformed personnel were armed in 1985 (Cunningham and Taylor 1985, 20).

54. Kakalik and Wildhorn (1977) found that most of the security guards they sampled were unaware that their arrest powers were no greater than those of an ordinary citizen. Most had received less than 2 days of training prior to taking responsibility in their assigned positions.

55. Arthur Kellermann and colleagues (1993) report that the likelihood of death due to either homicide, accidental or otherwise, or suicide is on the order of four times higher in homes with guns than in homes without guns, other factors held constant.

56. Skolnick and Fyfe (1993, xvi) make the point effectively:

Cops are not supposed to be security guards on the public payroll who, like bouncers in a rough-and-tumble bar, are on hand to mete out punishment as they see fit. Rather, in a free society, especially in the United States, where police derive their authority from law and take an oath to support the Constitution, they are obliged to acknowledge the law's moral force and to be constrained by it. Any sensible and reflective police officer will understand that when a cop reaches above the law to use more force or coercion than is necessary to subdue a suspect, he or she undermines the very source of police authority.

57. This is not to suggest that private security agents have generally lower levels of commitment to service. Many bank guards, Brink's and Wells Fargo drivers, and other private security agents have given their lives in the service of protecting others.

58. Shearing (1992, 425) adds to these notions the spectre of "giant corporations . . . sites of governance" operating in global markets that "challeng(e) the boundaries of states and the very notion of the state as a basis for political organization." In a similar vein, Flusty (1994, 38) asserts, "As with most private enterprises, supranational corporations (SNCs) are autocratic organizations accountable to profitability and, at most, to select shareholders."

A related claim is that society would be better off if police resources were shifted from the prevention and control of street crime to that of white-collar crime. Although such claims are often supported by utilitarian arguments that the costs of white-collar crime are much greater than those associated with street crime, they appear to be borne not so much of utilitarian concerns as they are of an egalitarian concern that it is fundamentally unjust for public resources to target street offenders while crimes committed by the more affluent are largely ignored. Posner (1972, 376–379) observes that fewer of these crimes would go unpunished if government restrictions against private enforcement were relaxed.

59. Cunningham and Taylor (1985) note that several States already require that security firms carry general liability insurance or bonding insurance.

60. Adam Smith ([1776] 1937, 128) observed more than 200 years ago: “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”

61. The enterprise zone concept is a proposal for improving the quality of life in our inner cities. Popularized by former Representative Jack Kemp in 1980 (R–N.Y.), the basic idea is to use the market economy to restore vibrancy to areas that once thrived commercially and culturally, through two primary vehicles: tax credits to facilitate capital investments and the elimination of regulations that needlessly restrict commerce in poor areas. The concept has been supported by both ends of the political spectrum, from former President Ronald Reagan to Harlem Democrat Charles Rangel. Its success depends, perhaps more than anything else, on stable social organization (Sviridoff 1994).

62. Etzioni (1988, 12) views deontology—importance of duty—as the essential philosophical foundation of communitarianism.

63. Buerger and Mazerolle (1998) have proposed a variant of communitarian policing that they call “third-party policing,” focusing on the places that community guardians control. The central idea is to promote collective responses to persuade or coerce nonoffenders to act outside their routine activities to make crimes more difficult to commit.

64. Drucker (1995, 61) observes that the amount or size of government is not the central issue:

We need *effective government*. . . . For this, however, we need something we do not have: a theory of what government can do. No major political thinker—at least not since Machiavelli, almost 500 years ago—has addressed this question. All political theory, from Locke on through *The Federalist Papers* and down to the articles published by today’s liberals and conservatives, deals with the process of government: with constitutions, with power and its limitations, with methods and organizations. None deals with the substance. None asks what the proper functions of government might be and could be. None asks what results government should be held accountable for.

References

- Akerlof, George, and Janet Yellin. 1994. Gang behavior, law enforcement, and community values. In *Values and public policy*, edited by Henry J. Aaron, Thomas E. Mann, and Timothy Taylor. Washington, D.C.: Brookings Institution.
- Aristotle. 1943. *Politics*. Modern Library.
- Ayres, Ian, and Steven D. Levitt. 1998. Measuring positive externalities from unobservable victim precaution: An empirical analysis of LoJack. *Quarterly Journal of Economics* 113:43–77.
- Bayley, David H. 1983. Police: History. In *Encyclopedia of crime and justice*, edited by Sanford H. Kadish. Vol. 3. New York: Macmillan and Free Press.
- Bayley, David H., and Clifford D. Shearing. 1996. The future of policing. *Law & Society Review* 30:585–606.
- Becker, Donald C. 1995. Private security. In *The encyclopedia of police science*. 2d ed. Edited by William G. Bailey. New York: Garland Publishing.
- Benson, Bruce L. 1998. *To serve and protect: Privatization and community in criminal justice*. New York: New York University Press.
- Bittner, Egon. 1980. *The functions of the police in modern society: A review of background factors, current practices, and possible role models*. Cambridge, Massachusetts: Oelgeschlager, Gunn, and Hain.
- . 1974. Florence Nightingale in pursuit of Willie Sutton: A theory of police. In *The potential for reform of criminal justice*, edited by Herbert Jacob. Beverly Hills: Sage Publications.
- Brantingham, Patricia L., and Paul J. Brantingham, eds. 1990. *Environmental criminology*. Prospect Heights, Illinois: Waveland Press.
- Bronick, Matthew J. 1989. *The Federal Bureau of Prisons' experience with privatization*. Washington, D.C.: U.S. Department of Justice, Federal Bureau of Prisons.
- Brown, Lee P. 1989. *Community policing: A practical guide for police officials*. Perspectives on policing no. 12, NCJ 118001. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Buerger, Michael E., and Lorraine Green Mazerolle. 1998. Third-party policing: A theoretical analysis of an emerging trend. *Justice Quarterly* 15:301–327.
- Clarke, Ronald V. 1992. *Situational crime prevention: Successful case studies*. New York: Harrow and Heston.

- Colby, Peter W. 1995. Contract police. In *The encyclopedia of police science*. 2d ed. Edited by William G. Bailey. New York: Garland Publishing.
- Cory, Bruce. 1979. Police for hire: Fear pays a dividend to those who guard. *Police* 2 (September): 39–45.
- Crank, John P. 1989. Civilianization in small and medium police departments in Illinois, 1973–1986. *Journal of Criminal Justice* 17:167–178.
- Cunningham, William C., John Strauchs, and Clifford Van Meter. 1991. *Private security: Patterns and trends*. Research in Brief, NCJ 127594. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- . 1990. *The Hallcrest report II: Private security trends, 1970–2000*. Boston: Butterworth-Heinemann.
- Cunningham, William C., and Todd H. Taylor. 1985. *The Hallcrest report: Private security and police in America*. Portland, Oregon: Chancellor Press.
- Davis, Melissa, Richard Lundman, and Ramiro Martinez, Jr. 1991. Private corporate justice: Store police, shoplifters, and civil recovery. *Social Problems* 38:395–408.
- Deakin, Thomas J. 1988. *Police professionalism: The renaissance of American law enforcement*. Springfield, Illinois: Charles C. Thomas.
- Demsetz, Harold. 1970. The private production of public goods. *Journal of Law and Economics* 13 (October): 293–306.
- Dentzer, Suzan. 1996. Social security: Hot summer sequel. *U.S. News & World Report*, 8 July, 49.
- Drucker, Peter F. 1995. Really reinventing government. *Atlantic Monthly* (February): 49–61.
- . 1988. The non-profits' quiet revolution. *Wall Street Journal*, 8 September.
- Economist*. 1997. Policing for profit: Welcome to the new world of private security. 19 April.
- Elliott, Nicholas. 1991. The growth of privatized policing. *Freeman* 41 (February): 61–63.
- Encyclopaedia Britannica: 1999 book of the year*. 1999. Chicago: Encyclopaedia Britannica.
- Etzioni, Amitai. 1993. *The spirit of community*. New York: Crown Publishers.
- . 1988. *The moral dimension*. New York: Free Press.

- Etzioni, Amitai, et al. (30 signatories). 1991. The responsive communitarian platform: Rights and responsibilities. Unpublished document.
- Fielding, P. 1991. *The police and social conflict: Rhetoric and reality*. London and Atlantic Highlands, New Jersey: Athlone Press.
- Fixler, Philip E., Robert W. Poole, Jr. 1992. Can police be privatized? In *Privatizing the United States justice system: Police, adjudication, and corrections services from the private sector*, edited by Gary W. Bowman, Simon Hakim, and Paul Seidenstat. Jefferson, North Carolina: McFarland & Company.
- Flusty, Steven. 1994. *The proliferation of interdictory space and the erosion of spatial justice*. Los Angeles: Los Angeles Forum for Architecture and Urban Design.
- Forst, Brian, and Peter K. Manning. 1999. *The privatization of policing: Two views*. Washington, D.C.: Georgetown University Press.
- Fyfe, Nicholas R. 1995. Policing the city. *Urban Studies* 32 (May): 759–778.
- Gergen, David. 1996. Our most valued right. *U.S. News & World Report*, 24 June, 72.
- Gest, Ted. 1995. Street crime: People fight back. *U.S. News & World Report*, 15 April.
- Gore, Albert. 1995. *Common sense government works better and costs less*. Washington, D.C.: National Performance Review.
- . 1993. *From red tape to results: Creating a government that works better and costs less*. Washington, D.C.: National Performance Review.
- Green, Gion. 1981. *Introduction to security*. 2d ed. Boston: Butterworth-Heinemann.
- Grossman, S., and Q. Hart. 1983. An analysis of the principal-agent problem. *Econometrica* 51:7–45
- Guyot, Dorothy. 1979. Bending granite: Attempts to change the rank structure of American police departments. *Journal of Police Science and Administration* 7:253–284. Reprinted in Carl B. Klockars, ed., *Thinking about police: Contemporary readings* (New York: McGraw-Hill, 1983), 400–422.
- Hage, David, Warren Cohen, and Robert F. Black. 1995. Reversing the tide: Washington turns to privatization to help reduce the budget deficit. *U.S. News & World Report*, 3 April, 42–46.
- Hakim, Simon, and Andrew J. Buck. 1991. *Residential security: The Hakim-Buck study on suburban alarm effectiveness*. Philadelphia: Temple University Press.

- Hakim, Simon, George F. Rengert, and Yochanan Shachmurove. 1996. Estimation of net benefits of residential electronic security. *Justice Quarterly* 13 (March): 153–170.
- Harring, S. 1981. Taylorization of police work: Prospects for the 1980s. *Insurgent Sociologist* 10:25–32.
- Hart, J.W. 1951. *The British police*. London: Allen and Unwin.
- Heininger, Bruce L., and J. Urbanek. 1983. Civilianization of the American police: 1970–1980. *Journal of Police Science and Administration* 11:200–205.
- Hilke, John. 1992. *Competition in government financed services*. New York: Praeger.
- Hui-wen, Koo, and I.P.L. Png. 1994. Private security: Deterrent or diversion? *International Review of Law and Economics* 14:87–101.
- Jacobs, James B. 1983. Police: Private police and security forces. In *Encyclopedia of crime and justice*, edited by Sanford H. Kadish. Vol. 3. New York: Macmillan and Free Press.
- Johnston, Les. 1992. *The rebirth of private policing*. London: Routledge.
- Jones, Trevor, Tim Newburn, and David J. Smith. 1994. *Democracy & policing*. London: Policy Studies Institute.
- Kakalik, James S., and Sorrell Wildhorn. 1977. *The private police: Security and danger*. New York: Crane, Russak & Company.
- Kellermann, Arthur L., et al. 1993. Gun ownership as a risk factor for homicide in the home. *New England Journal of Medicine* 329 (7 October): 1084–1091.
- Kelling, George, and Catherine Coles. 1996. *Fixing broken windows: Restoring order in American cities*. New York: Free Press.
- Kelling, George, Antony Pate, David Dieckman, and Charles Brown. 1974. *The Kansas City preventive patrol experiment: A summary report*. Washington, D.C.: Police Foundation.
- Klockars, Carl. 1995. The Dirty Harry problem. In *The police and society: Touchstone readings*, edited by Victor E. Kappeler. Prospect Heights, Illinois: Waveland Press.
- . 1985. *The idea of police*. Newbury Park, California: Sage Publications.
- Laband, David, and John P. Sophocleus. 1992. An estimate of resource expenditures on transfer activities in the United States. *Quarterly Journal of Economics* 107:959–983.
- Lacroix, Guy, and Nicolas Marceau. 1995. Private protection against crime. *Journal of Urban Economics* 37:72–88.

- Landes, William M., and Richard A. Posner. 1975. The private enforcement of law. *Journal of Legal Studies* 1:1–46.
- Lopez-de-Silanes, Florencio, Andrei Shleifer, and R. Vishny. 1995. Privatization in the United States. Working paper number 5113. Cambridge, Massachusetts: National Bureau of Economic Research.
- Maguire, K., and R.J. Flanagan, eds. 1991. *Sourcebook of criminal justice statistics: 1990*. NCJ 130580. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Mangan, Terence J., and Michael G. Shanahan. 1990. Public law enforcement/private security: A new partnership? *FBI Law Enforcement Bulletin* 59 (January): 18–22.
- Manning, Peter K. 1999. Economic rhetoric and policing reform. In *The police and society: Touchstone readings*. 2nd ed. Edited by Victor E. Kappeler. Prospect Heights, Illinois: Waveland Press.
- . 1995. The police: Mandate, strategies, and appearances. In *The police and society: Touchstone readings*, edited by Victor E. Kappeler. Prospect Heights, Illinois: Waveland Press.
- . 1977. *Police work: The social organization of policing*. Cambridge, Massachusetts: MIT Press.
- Martin, Judith. 1996. Who killed modern manners? *Responsive Community* 6 (Spring): 50–57.
- McCrie, R.D. 1988. The development of the U.S. security industry. *The private security industry: Issues and trends*. Special issue, edited by I.A. Lipman. *Annals of the American Academy of Political and Social Science* 498 (July): 23–33.
- McDonald, Douglas C. 1992. Private penal institutions. In *Crime and justice: A review of research*, edited by Michael Tonry. Vol. 16. Chicago: University of Chicago Press.
- Miethe, Terance D. 1991. Citizen-based crime control activity and victimization risks: An examination of displacement and free-rider effects. *Criminology* 29:419–440.
- Monkonnen, Eric H. 1992. History of urban police. In *Modern policing*, edited by Norval Morris and Michael Tonry. Vol. 15 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.
- Moran, James. 1995. Privatizing criminal justice. Paper presented at the Ninth Annual Futures Conference on Privatization in Criminal Justice: Public and Private Partnerships, 13–15 March, University of Illinois at Chicago.

- Nalla, Mahesh K., and Graeme R. Newman. 1991. Public versus private control: A reassessment. *Journal of Criminal Justice* 19:537–547.
- Newman, Barry. 1997. Dutch are invading JFK arrivals building and none too soon. *Wall Street Journal*, 13 May.
- Nozick, Robert. 1974. *Anarchy, state, and utopia*. Oxford: Blackwell.
- Office of International Criminal Justice. 1995. Readings. Collection of papers presented at the Ninth Annual Futures Conference on Privatization in Criminal Justice: Public and Private Partnerships, 13–15 March, University of Illinois at Chicago.
- Office of Management and Budget. 1955. Circular A–76. Washington, D.C.
- Pate, Antony M., Mary Ann Wycoff, Wesley G. Skogan, and Lawrence W. Sherman. 1986. *Reducing fear of crime in Houston and Newark: A summary report*. Washington, D.C.: Police Foundation.
- Police Review*. 1989. (13 January).
- Poole, Robert W., Jr. 1978. *Cutting back city hall*. New York: Free Press.
- Posner, Richard A. 1981. *The economics of justice*. Cambridge: Harvard University Press.
- . 1972. *Economic analysis of law*. Boston: Little, Brown and Company.
- Radzinowicz, Leon. 1948–68. *History of the English criminal law, volumes 1–4*. New York: Macmillan.
- Rau, C. 1989. Security industry faces a control crisis. *Age*, 16 October.
- Reaves, Brian A., and Andrew L. Goldberg. 1998. *Census of State and local law enforcement agencies, 1996*. Bulletin, NCJ 164618. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Reaves, Brian A., and Pheny Z. Smith. 1995. *Law enforcement management and administrative statistics, 1993: Data for individual State and local agencies with 100 or more officers*. NCJ 148825. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Reiss, Albert. 1988. *Private employment of public police*. Issues and Practices, NCJ 105192. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Reynolds, Morgan O. 1994. *Using the private sector to deter crime*. Dallas: National Center for Policy Analysis.
- Ringel, Cheryl. 1997. *Criminal victimization 1996*. National Crime Victimization Survey, NCJ 165812. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Ritter, Joseph A., and Lowell J. Taylor. 1997. Economic models of employee motivation. *Federal Reserve Bank of St. Louis Review* 79 (September–October): 3–21.

Rosenbloom, David H. 1998. Constitutional problems for the new public management in the United States. In *Current public policy issues: The 1998 annals*, edited by Khi Thai and Rosalyn Y. Carter. Boca Raton, Florida: PrAcademics Press.

Ross, S. 1973. The economic theory of agency: The principal's problem. *American Economic Review* 63:134–139.

Savas, E.S. 1987. *Privatization: The key to better government*. Chatham, New Jersey: Chatham House.

———. 1982. *Privatizing the public sector*. Chatham, New Jersey: Chatham House.

Schwartz, Alfred I., Alease M. Vaughn, John D. Waller, and Joseph S. Wholey. 1975. *Employing civilians for police work*. Paper no. 5012–03–1. Washington, D.C.: Urban Institute.

Senna, Joseph J., and Larry J. Siegel. 1993. *Introduction to criminal justice*. 6th ed. Minneapolis: West Publishing Company.

Shearing, Clifford D. 1992. The relation between public and private policing. In *Modern policing*, edited by Norval Morris and Michael Tonry. Vol. 15 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.

Shearing, Clifford D., and Philip Stenning. 1987. *Private policing*. Beverly Hills: Sage Publications.

———. 1981. Modern private security: Its growth and implications. In *Crime and justice: An annual review of research*, edited by Norval Morris and Michael Tonry. Vol. 3. Chicago: University of Chicago Press.

Sherman, Lawrence W. 1995. The police. In *Crime*, edited by James Q. Wilson and Joan Petersilia. San Francisco: ICS Press.

Shernock, Stan K. 1988. The differential significance of sworn status and organizational position in the civilianization of the police communications division. *Journal of Police Science and Administration* 16: 288–302.

Skogan, Wesley. 1990. *Disorder and decline: Crime and the spiral of decay in American neighborhoods*. New York: Free Press.

Skolnick, Jerome H. 1994. *Justice without trial: Law enforcement in democratic society*. 3d ed. New York: Macmillan.

Skolnick, Jerome H., and James J. Fyfe. 1993. *Above the law: Police and the excessive use of force*. New York: Free Press.

- Smith, Adam. [1776] 1937. *An inquiry into the nature and causes of the wealth of nations*. New York: Modern Library.
- Sparrow, Malcolm K., Mark H. Moore, and David M. Kennedy. 1990. *Beyond 911: A new era for policing*. New York: Basic Books.
- Stewart, James K. 1985. Public safety and private police. *Public Administration Review* 45 (November): 758–765.
- Stiglitz, Joseph E. 1989. Principal and agent. In *Allocation, information, and markets*, edited by John Eatwell, Murray Milgate, and Peter Newman. New York: W.W. Norton. First published in *The new Palgrave: A dictionary of economics*, edited by John Eatwell, Murray Milgate, and Peter Newman (New York: Macmillan, 1987), 241–253.
- Sviridoff, Mitchell. 1994. The seeds of urban revival. *Public Interest* 114 (Winter): 82–103.
- Toch, Hans. 1997. The democratization of policing in the United States: 1895–1973. *Police Forum* 7 (April): 1–8.
- Toronto Police Department. 1990. *1990 environmental assessment and force goals and objectives for 1991*.
- Trojanowicz, Robert. 1982. *An evaluation of the Neighborhood Foot Patrol Program in Flint, Michigan*. East Lansing: Michigan State University.
- Urban Innovation Abroad*. 1980. Private firms take over public functions: Germany, Switzerland. 4 (September): 1.
- U.S. Department of Justice, Bureau of Justice Statistics. 1990, 1993, 1997. *Law enforcement management and administrative statistics (LEMAS): Data for individual State and local agencies with 100 or more officers*. Washington, D.C.
- . 1988. *Report to the Nation on crime and justice*. 2d ed. NCJ 105506. Washington, D.C.
- U.S. Department of Justice, Federal Bureau of Investigation. 1966. *Crime in the United States, 1965*. Uniform Crime Reports. Washington, D.C.
- Voelker, Anthony M. 1991. NYPD's APPL program: A new partnership. *FBI Law Enforcement Bulletin* (February): 1–4.
- Vollmer, August. [1936] 1971. *The police and modern society*. Montclair, New Jersey: Patterson Smith.
- Walker, Samuel. 1977. *A critical history of police reform: The emergence of professionalism*. Lexington, Massachusetts: Lexington Books.

Walsh, William F., and Edwin J. Donovan. 1989. Private security and community policing: Evaluation and comment. *Journal of Criminal Justice* 17:187–197.

Wambaugh, Joseph. 1972. *The blue knight*. Boston: Little, Brown and Company.

Washington Post. 1996. Editorial, Private probes for public jobs. 7 July.

Weber, Max. 1954. *Max Weber on law in economy and society*, edited by Max Rheinstein. Cambridge: Harvard University Press.

West, Marty L. 1993. Get a piece of the privatization pie. *Security Management* (March): 54–60.

Williams, Hubert. 1991. External resources. In *Local government police management*, edited by William A. Geller. Washington, D.C.: International City Management Association.

Wilson, James Q. 1968. *Varieties of police behavior: The management of law and order in eight communities*. Cambridge: Harvard University Press.

Wilson, James Q., and George Kelling. 1982. Broken windows. *Atlantic Monthly* (March): 29–38.

Wilson, Orlando W. 1938. *Municipal police administration*. Chicago: International City Managers' Association.

Wilson, William Julius. 1987. *The truly disadvantaged: The inner city, the underclass, and public policy*. Chicago: University of Chicago Press.

The Changing Boundaries Between Federal and Local Law Enforcement

by Daniel C. Richman

This chapter addresses the development of Federal criminal law over the last century, from a small group of statutes protecting direct Federal interests to a vast body of law that has effectively eliminated the distinction between Federal crime and the conduct traditionally prosecuted by State and local authorities. Although the overlap between these hitherto separate spheres now seems virtually complete, the chapter argues that any account based only on substantive law would be misleading because it fails to consider potent political and institutional limitations on Federal powers. The relatively small size of the Federal enforcement apparatus appears to reflect Congress' belief that the precise boundaries of responsibility should be set not through substantive Federal legislation but through explicit or tacit negotiation among enforcement agencies. This negotiation process is in part shaped by the decentralized nature of Federal prosecutorial authority, which tends to put members of the local power structure into gatekeeper positions, but perhaps even more shaped by informational resources available only to State and local authorities. After examining these restraints, the chapter concludes by discussing the consequences of a system in which the boundaries between Federal prosecutions and State and local prosecutions are set by the enforcers themselves and not by Congress.

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At the beginning of the 20th century, had one asked a knowledgeable observer to explain the relationship between the Federal law enforcement system and the administration of criminal justice by State and local authorities, he could quickly sketch out some clear boundaries: Federal enforcement agencies, such as they were, protected the basic interests of the Federal Government. The Secret Service fought counterfeiters and, after the assassination of President McKinley, protected the President. Post Office agents guarded the mails and targeted those who would misuse them. U.S. Marshals protected court officials and performed sundry other tasks at the behest of the relatively new Department of Justice (DOJ) (established in 1870) and local U.S. Attorney's Offices. Other agencies looked to Federal revenue collection interests and patrolled federally controlled territory. And—save for occasional emergencies—that was about it. Everything else—ranging from street crime to large-scale financial frauds—not only fell within the province of State and local authorities, but was an exclusive province.

If there is a boundary clearly separating Federal from State and local criminal enforcement concerns in 2000, it is one not amenable to any categorical description.

Flash forward to the beginning of the 21st century. Some things are not that different. The Federal enforcement bureaucracy is still quite small, at least when compared with State and local authorities. In 1996, for example, there were only 74,493 Federal officers, compared with 663,535 full-time State and local officers (36,813 in New York City alone) (Maguire and Pastore 1998, 39; Reaves 1998). But explaining the boundary that separates Federal enforcement concerns from State and local is a daunting task indeed. The more one knows, the harder it gets. Federal agents still seek out counterfeiters. But they also target violent gangs and gun-toting felons of all sorts, work drug cases against street sellers as

well as international smugglers, investigate corruption and abuse of authority at every level of government, prosecute insider trading, and pursue terrorists. Until recently, about the only area of criminal enforcement that seemed immune from Federal activity was domestic violence. Then came the Violence Against Women Act of 1994, which allowed for the Federal prosecution of “[a] person who travels across a State line . . . with the intent to injure, harass, or intimidate that person’s spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner.”

If there is a boundary clearly separating Federal from State and local criminal enforcement concerns in 2000, it is one not amenable to any categorical description. That does not mean, however, that there is no such boundary—or, to be

more precise, *boundaries*, since patterns of enforcement differ across the country. The thesis of this essay is that what has most changed during the 20th century is not the existence vel non of a distinction between Federal and State criminal justice concerns but the process by which such lines are defined. After sketching (with a rather broad brush) the story of the change from legislative initiative to executive discretion, I will explore the consequences and critiques of this institutional shift.

One might quibble with just about every generalization in the piece, many of which are quite impressionistic. The hope, however, is that its broad thematic focus will challenge readers to engage in a critical debate that, for better or worse, is now more a matter of public policy than constitutionality.

The Growth of Federal Criminal Jurisdiction

The story of the changing boundary between Federal criminal enforcement and State and local enforcement during the past century is, in part, one of substantive law. The pace at which Congress has declared various activities already illegal under State law to be Federal crimes has increased at a spectacular rate since 1900. Indeed, “[m]ore than 40% of the Federal criminal provisions enacted since the Civil War have been enacted since 1970” (Task Force on the Federalization of Criminal Law 1998, 7). The conceptual roots of this legislative frenzy, however, might be found in early 20th-century developments.

Mindful of the Constitution’s failure to give the Federal Government general police powers, Congress, for most of the 19th century, limited itself to targeting activity that injured or interfered with the Federal Government itself, its property, or its programs. “Except in those areas where federal jurisdiction was exclusive (the District of Columbia and the federal territories) federal law did not reach crimes against individuals, . . . such as murder, rape, arson, robbery, and fraud.” These “were the exclusive concern of the states” (Beale 1996, 39–40). Nonetheless, after the Civil War, Congress looked somewhat beyond direct Federal interests to the general welfare of citizens, passing criminal civil rights provisions as part of Reconstruction (see Civil Rights Act of April 9, 1866; Enforcement Act of May 31, 1870; Ku Klux Klan Act of April 20, 1871),¹ and prohibiting the use of the United States mails to promote illegal lotteries (Act of July 27, 1868).² The lottery law was the precursor of a more sweeping mail fraud statute in 1872, which targeted any “scheme or artifice to defraud” effected through the use of the mails (Post Office Act of 1872).

Although the U.S. Supreme Court significantly limited the scope of the civil rights statutes (*United States v. Harris*, 106 U.S. 629 [1883]; *United States v. Cruikshank*, 92 U.S. 542 [1875]; Lawrence 1993, 2113), it joined with Congress to expand the reach of the 1872 mail fraud provision and its successors. Thus, in 1896, when a defendant claimed that the statute, as amended in 1889, reached only what would have involved “false pretenses” under the common law (and thus did not extend to mere promises as to the future), the Court broadly rejected the argument. The statute, it held, “includes everything designed to defraud

If local enforcers could not pursue malefactors over State lines, and evil could not be contained within such lines, what could be more natural than giving the Federal Government, with its constitutional authority to regulate interstate commerce, a gap-filling role?

by representations as to the past or present, or suggestions and promises as to the future” (*Durland v. United States*, 161 U.S. 306, 313 [1896]). Far from bridling at this vast expansion of Federal criminal jurisdiction, which now reached a broad range of criminal activity hitherto in the exclusive province of the States, Congress responded in 1909 by specifically ratifying the Court’s decision (Offenses Against the Postal Service 1909).

While the potential scope of the mail fraud statute was enormous (allowing it to become one of the most flexible tools in the modern Federal prosecutorial arsenal) (Rakoff 1980), the provision did not necessarily mark a huge departure from the limited notions of Federal power that prevailed in the 19th century. The postal establishment, after all, was a Federal instrumentality by virtue of an explicit constitutional grant (U.S. Constitution, art. 1, sec. 8), and one might naturally expect that the Federal Government bore some responsibility for misuses of

this interstate network for fraudulent purposes (Brickey 1995, 1135, 1140). Even when the desire to prevent obstruction of the mails was asserted as an excuse for Federal intervention in turn-of-the-century labor wars (Lukas 1998, 149, 311), at least the fiction of a limited Federal role was maintained. With the beginning of the 20th century, however, came a new focus on inappropriate uses not just of an interstate Federal instrumentality but of interstate commerce in general.

Recognizing the challenge that Americans’ increasing mobility presented to State enforcement efforts, which were limited by the territorial basis of each State’s jurisdiction and the limited nature of State enforcement assets, Congress responded with Federal criminal statutes that targeted the crossing of State lines for particular illegal purposes. Some of these statutes, like the 1919 Dyer Act (National Motor Vehicle Theft Act 1919), which prohibited the transporta-

tion of a stolen motor vehicle across a State line, were clearly economic in their concerns. But many had a decidedly moral focus, like the 1910 White Slave Traffic Act (also known as the Mann Act), which prohibited the transportation of a woman over State lines “for the purpose of prostitution or debauchery, or for any other immoral purpose” (Langum 1994); the 1913 provision, which made it a Federal offense to bring liquor into a dry State (Webb-Kenyon Act 1913); and the 1914 Harrison Narcotic Drug Act (Quinn and McLaughlin 1973), which established a comprehensive regulatory scheme for narcotic drugs, backed with criminal sanctions.

The passage of these statutes marked an important transition phase in the evolution of Federal criminal law. Congress was no longer concerned simply with the protection and misuse of Federal assets. Instead, Federal legislators showed that they were as committed as their State brethren to placing government power at the service of the moral crusades of the day, and as susceptible as their brethren to the political rewards of moral condemnation through criminalization. But these new statutes were ostensibly quite limited in form, showing no general desire to encroach into areas of traditional State concern. If local enforcers could not pursue malefactors over State lines, and evil could not be contained within such lines, what could be more natural than giving the Federal Government, with its constitutional authority to regulate interstate commerce, a gap-filling role? This indeed was the Supreme Court’s reasoning, as it found these statutes to be constitutional exercises of Congress’ powers under the Commerce Clause (*Brooks v. United States*, 267 U.S. 432 [1925] [upholding Dyer Act]; *Hoke v. United States*, 227 U.S. 308 [1913] [upholding Mann Act]).

The readiness of Congress to enlist Federal criminal statutes in the service of national moral crusades reached an early high point in 1919, with the ratification of the 18th amendment and the passage of the Volstead Act (National Prohibition Act 1919). However, while Prohibition put Federal enforcement agents on the front lines, attacking bootleggers and moonshiners where local police could not, or simply would not, go (Boudin 1943, 261, 273–274), the overlap between State penal laws and Federal criminal law remained quite limited, a function of comparatively well-circumscribed legislative initiatives. This would soon change.

Between the 1920s and the late 1960s, a number of developments occurred that vastly changed prevailing understandings about what the sphere of Federal authority ought to be. Some of these were waves of concern over criminal activity that seemed beyond the capabilities of local enforcers. White slavers, highway gangsters, big-city racketeers—the menace varied over time. But each galvanized the media, citizen groups, and ultimately legislators to call for Federal action (Potter 1998). Not only did each have interstate dimensions that

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made State processes insufficient to combat it, but there were also fears that local enforcers were not as keen to proceed even where they could. Fears that immigrants were playing a disproportionate role in some of these criminal threats made Federal intervention seem particularly natural, given the Federal Government's plenary power over immigration.

There were more specific outrages as well, like the kidnaping of Charles Lindbergh's son in March 1932. The aviator's prominence (and the fact that this was not the first celebrity abduction of the era) immediately made the crime a matter of national concern. One paper called it "a challenge to the whole order of the nation" (Powers 1987, 175). President Hoover responded tepidly. He asked the director of DOJ's small "Bureau of Investigation," J. Edgar Hoover, to coordinate Federal assistance, but his administration stressed that "it was not in favor of using the case as an excuse for extending Federal authority in the area of law enforcement" (Powers 1987, 175). "Organized crime," the Attorney General believed, was primarily a

local problem (Cummings and McFarland 1937, 478). Congress thought differently. Only a Federal kidnaping statute, one congressman argued, would avoid the problem of "brave officers stopped at State line because of red tape [or] professional jealousy." A statute was passed in May, a week after the body of the baby was found (Potter 1998, 112).

Perceptions of national crime problems, and congressional receptivity to ameliorative measures, occurred against a broader backdrop of expanding political views of the Federal Government's role in our constitutional system, and of expanding doctrinal understandings of how far Congress' Commerce Clause powers could go. Indeed, the distinction between what was local and what was of Federal concern often seemed to collapse under pressure from New Deal programs. Thus, when a farmer complained that the Federal Government could not constitutionally regulate how much wheat he harvested for his own use on his small farm, the Supreme Court upheld the regulation, recognizing the aggregate effect that all such activities might have on commerce (*Wickard v. Filburn*, 317 U.S. 111 [1942]). Further doctrinal pressure on the Commerce Clause later came in the 1960s, when it was used as a basis for civil rights legislation. If, as the Supreme Court soon held (*Katzenbach v. McClung*, 379 U.S. 294 [1964]), the commerce power could be used to prohibit racial dis-

crimination at local restaurants—based on the theories that discrimination discouraged travel by African-Americans and affected interstate purchases of restaurant supplies—that same power could also support any number of forays against criminal activity with equal, if not greater, economic effects. By 1971, the Court would have no difficulty upholding a Federal loansharking statute that allowed the prosecution of even the most localized extortionate credit transactions (*Perez v. United States*, 402 U.S. 146 [1971]). Citing the civil rights cases, it found a constitutionally adequate connection between the “class of activities regulated” and interstate commerce (*Perez v. United States*, 402 U.S. 153–154 [1971]).

The combination of the political demand for Federal criminal intervention and the erosion of constitutional limitations on such enactments proved a potent one, leading to a steady progression of statutes targeting criminal behavior that had long been the exclusive province of State and local enforcers. Between January and June 1934, 105 bills were introduced in Congress that were “designed to close the gaps in existing Federal laws and render more difficult the activities of predatory criminal gangs of the [“Machine Gun”] Kelly and Dillinger types” (U.S. Senate 1934). Many of these bills passed in 1934, including the National Stolen Property Act (barring the transportation of stolen property in interstate commerce), the National Firearms Act, the Fugitive Felon Act (prohibiting interstate flight to avoid prosecution for enumerated violent felonies), and the Federal Bank Robbery Act (provisions making it a Federal crime to rob a national bank). That same year, Congress also passed the Anti-Racketeering Act of 1934,³ which allowed Federal prosecution of the urban gangsters thought to have a stranglehold on various industries.

Once legislators began to think of Federal criminal jurisdiction not as protecting certain discrete areas of particular Federal concern but as supplementing local enforcement efforts—supporting local exertions, and compensating for local inadequacies or corruption—Congress found more and more occasions for Federal intervention. One hallmark of this intervention came to be broadly drafted statutes that laid the groundwork for the elimination of all conceptional boundaries between Federal and State criminal law. Thus, the 1946 Hobbs Act, intended to cure certain perceived deficiencies in the Anti-Racketeering Act of 1934, broadly targeted any effort that “obstructs, delays, or affects commerce . . . by robbery or extortion,” with “extortion” defined as “the obtaining of property by another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right.” This provision allowed Federal prosecution of the extortionate rings preying on urban businessmen. But its open language—and judicial deference to the plain meaning of such language (*United States v. Culbert*, 435 U.S. 371 [1978]; Kahan 1996, 469, 480–481)—has also allowed its use against corrupt Federal, State,

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and local officials (Hardy 1995, 409), and even robbers of grocery stores (*United States v. Farmer*, 73 F.3d 836 [8th Cir. 1996]) and restaurants (*United States v. Bolton*, 68 F.3d 396 [10th Cir. 1995]).

A new wave of legislation came in the 1960s and early 1970s, in response to fears that State and local authorities were not up to the task of fighting organized crime, whose tentacles had become a favorite topic of congressional inquiries (Marion 1994, 28). Perhaps the most sweeping measure passed during this period was the Travel Act, which allowed for Federal prosecution of those who traveled in interstate or foreign commerce, or used "any facility in interstate or foreign commerce, including the mail, with intent to (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, . . . any unlawful activity." "Unlawful activity," for purposes of the Act, included narcotics, prostitution, extortion,

or bribery offenses "in violation of the laws of the State in which they are committed or of the United States" (Travel Act 1961). Given that virtually any criminal scheme involving prostitution, bribery, or extortion will inevitably require the minimal travel or use of the mails that the statute demands, the Travel Act explicitly allowed Federal intervention into a broad class of cases hitherto pursued only by State and local authorities. The Supreme Court was untroubled, though. It noted that the provision "reflect[ed] a clear and deliberate intent on the part of Congress to alter the federal-state balance in order to reinforce state law enforcement" (*Perrin v. United States*, 444 U.S. 37, 50 [1979]). But because the Act demanded the showing of an interstate nexus, it easily passed constitutional muster. Another weapon given to Federal prosecutors in this area was the Racketeer Influenced and Corrupt Organizations ("RICO") Act of 1970, which, according to the Court, Congress passed "knowing that it would alter somewhat the role of the federal government in the war against organized crime and that the alteration would entail prosecutions involving acts of racketeering that are also crimes under state law" (*United States v. Turkette*, 452 U.S. 576, 587 [1981]). Under RICO, the requisite commerce nexus may come not only from a criminal act itself but from the motives and associations of the person committing the act. Thus, what would otherwise be a State court murder, over which there was no Federal jurisdiction, could now be prosecuted as a Federal RICO violation, with the murder charged as

part of a “pattern of racketeering,” committed by someone trying to advance or maintain his position in some legal or illegal enterprise “engaged in, or the activities of which affect interstate or foreign commerce.”

During this period, any limits the Supreme Court put on the expansion of Federal criminal jurisdiction tended to be more of form than of substance. Thus, when interpreting 1968 legislation making it illegal for a convicted felon to possess a firearm, the Court read a demand for “some interstate commerce nexus” into the statute, noting that “Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States” (*United States v. Bass*, 404 U.S. 336, 349 [1971]). The Court soon made clear, however, that it would not take much for the prosecution to prove this nexus. All Congress had required, the Court decided in a subsequent case, was that a firearm “have [sic] been, at some time, in interstate commerce” (*Scarborough v. United States*, 431 U.S. 563, 575 [1977]). Because just about every gun has traveled in commerce at some point, the element has become a mere formality in most trials (Richman 1997, 939, 944 n. 14; Clymer 1997, 643, 663–667).

Although the criminal statutes on the books by the mid-1970s thus went far in the direction of eliminating the conceptual distinction between Federal and State crimes, the last quarter century has been marked not by a diminution of congressional interest in this area, but by, if anything, an increase (Task Force on the Federalization of Criminal Law 1998, 8). Spurred by the need to show themselves “tough” on crime, and secure in the knowledge that the executive branch, not the legislative, takes the political heat for inappropriate prosecutions, Congress has engaged in an orgy of criminal lawmaking, the primary purpose of which often seems merely symbolic. (Beckett 1997, 31–43; Windlesham 1992, 182; Richman 1999, 757, 771–772). Even crimes zealously pursued by local authorities have led to calls for Federal legislation. After a widely publicized Maryland case in which the victim of an auto theft was dragged to her death, for example, Congress passed a Federal carjacking statute in 1992 (18 U.S.C. § 2119; Richman 1999, 773). The brutal murder of an African-American by alleged racists led to the introduction of Federal hate crime legislation in 1998, even though State authorities had already charged the perpetrators with capital murder (Camia 1998; Hohler 1998; Jacobs and Potter 1998). And the murder of a gay college student sparked calls for the extension of hate crime legislation to crimes based on sexual orientation, gender, and disability (Brooke 1998; Associated Press 1999).

By one estimate, 1,000 bills dealing with criminal statutes were introduced in the 105th Congress by the end of July 1998 (Task Force on the Federalization of Criminal Law 1998, 11). This number, of course, includes legislation in, for

instance, the narcotics area, where, for better or worse, the need for Federal intervention has generally been presumed. But the recent focus on evils like hate crimes and domestic violence has moved Federal criminal law far into the last bastion of exclusive State jurisdiction—noneconomically motivated violent crime. There still is some criminal activity hard to reach under Federal law. Murders or sex crimes that are not part of some broader pattern of racketeering and do not involve any interstate travel or the use of the mails or any facility in interstate commerce may escape Federal prosecution. The absence of jurisdictional overlap in these cases, however, seems almost an anomaly, a vestige of long-abandoned understandings about spheres of authority.

In 1995, after decades of acquiescence in the erosion of the Federal-State divide, the Supreme Court appeared to balk. In *United States v. Lopez* (514 U.S. 549 [1995]), the Court, by a narrow majority, held that Congress had exceeded its Commerce Clause powers when it enacted the Gun-Free School Zones Act of 1990, which made it a Federal offense “for any individual knowingly to possess a firearm” in a school zone. For all the attention given to this apparent volte-face (Fried 1995, 13, 34–45; Moulton 1999, 849) and to Chief Justice Rehnquist’s assertion of the need to preserve the “distinction between what is truly national and what is truly local,” however, *Lopez* may well prove little more than a speed bump in the road toward the virtually complete federalization of criminal law.⁴ After all, once the statute was revised to require a jury to find that a defendant’s gun had, at some point, moved in interstate commerce—an element that would nearly always be satisfied—its constitutionality appeared unassailable under well-settled precedents.

Responsibility for the effective elimination of the boundary between Federal and State substantive law does not, of course, rest only with the legislative and judicial branches. The statutes discussed here would not have become law absent presidential signature, and administration support generally has been far greater than that. Moreover, DOJ prosecutors have at times been spectacularly creative in devising legal theories to extend the range of congressional enactments. The legislators who enacted the Federal mail fraud statute, for example, probably did not imagine that the provision would be used to prosecute a limitless variety of breaches of fiduciary duty, including official corruption (charged as defrauding the public of the “intangible right” to good government) and insider securities trading (charged as the misappropriation of confidential information) (Coffee 1988, 121; Williams 1990, 137). Such prosecutorial initiatives have done much to inject Federal authority into traditionally local spheres (Ruff 1977, 1171).

Whatever the causes, this much is clear: As we begin the new century, the distinction between Federal and State law is effectively dead, *at least as a matter*

of substantive law. Federal criminal statutes may look a little different from State penal law. There will be mailing or wire elements, or demands that some interstate nexus be demonstrated. But if a Federal prosecutor would like to bring Federal charges against someone who has violated a State penal law, odds are that there will be a Federal statute that can be used. And if a Federal agency wants to investigate some apparently antisocial conduct, it will probably be able to cite a potential Federal violation as a basis for its inquiry.

Negotiated Boundaries

Does the beginning of the new century herald the end of the boundary between Federal and State criminal enforcement that was so clear at the beginning of the past century? If one were to focus only on substantive Federal law, the overlap between the two systems would indeed seem virtually complete. An account based solely on substantive law would, however, be quite misleading, for although the statutory and constitutional constraints on Federal “intrusions” may be slight, the political and institutional limitations are very real, and quite powerful. Their nature makes it more difficult to define the boundary they create—indeed, boundaries can vary greatly across jurisdictions and over time—but they are boundaries just the same.

The principal constraint on the Federal enforcement bureaucracy is its size. To be sure, this bureaucracy has grown significantly over time, with enforcement agencies created or subdivided to address new legislative concerns. With the passage of the Mann Act, for example, came the appointment of the Commissioner for the Suppression of the White Slave Trade, with a large staff (Cummings and McFarland 1937, 381–382). To enforce Prohibition, Congress established the Bureau of Prohibition, initially staffed by 1,550 agents (Potter 1998, 13). An ever-increasing number of assignments spurred the growth of what soon became known as the Federal Bureau of Investigation (FBI), from a handful of agents in 1908 to a force of 10,389 by 1996 (Reaves 1998). Federal gun-control initiatives helped spark the creation, in 1972, of the Bureau of Alcohol, Tobacco and Firearms (ATF), carved out from the Internal Revenue Service. And Federal efforts to stem narcotics trafficking and use led to the creation, first, of a Treasury Department Bureau of Narcotics in 1930, and, ultimately, the DOJ’s Drug Enforcement Administration, which had nearly 3,000 agents by 1996.

For all this growth, however, the Federal enforcement apparatus is still quite small, both when compared with the network of State and local agencies and when compared with the number of crimes committed that potentially could be charged federally. This resource disparity ought not to be viewed as some

species of unfunded mandate. Rather, it reflects Congress' belief that, whatever the potential scope of enforcement activity authorized by its substantive law-making, primary responsibility for fighting crime still remains with the States. It also appears to reflect Congress' belief that the precise boundaries of Federal and State responsibility should be set, not through substantive Federal legislation, but through explicit or tacit negotiation among enforcement agencies.

This is not to say that Congress' role in this negotiation process is limited to setting it in motion by creating a gap between Federal jurisdiction and Federal resources. Bound to State officials by common constituencies, and often by political party (*Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 [1985]; Kramer 1994, 1485), Federal legislators can do much to promote coordination between Federal enforcers and their State and local counterparts. Sometimes legislators will intervene directly to prevent Federal enforcers from intruding into territory that State authorities have staked out. The Lindbergh abduction may have galvanized Congress into passing Federal kidnaping legislation, but when Federal agents from J. Edgar Hoover's Bureau of Investigation appeared to be unduly injecting themselves into the inquiry, both New Jersey senators complained to the Attorney General. Federal activity in the case virtually ceased soon thereafter (Potter 1998, 114–115). This pattern has continued. Even as they have assiduously expanded Federal enforcement authority in the past half-century, legislators have frequently used budget and oversight hearings to prod Federal agencies into cooperating with local authorities (Wilson 1978, 196–197; Kramer 1994, 1545; Hsu 1999).

Legislators can influence the negotiation of Federal-State boundaries not just through direct intervention but by exercising substantial control over who the Federal negotiators will be. Here is where the decentralized nature of authority in DOJ plays a critical role. The huge majority of Federal prosecutions are brought not by the Department's litigating units in Washington but by the 94 U.S. Attorney's Offices scattered around the country. These offices (to varying degrees) have considerable independence from Washington, an independence that Congress has done much to protect in recent years (Richman 1999, 806–810).

Although, as a formal matter, the U.S. Attorneys are appointed by the President and are subordinate to the Attorney General, one or more members of the congressional delegation representing each district generally play a substantial role in the selection process (Eisenstein 1978, 35–53; Bell and Meador 1993, 247). Appointees, usually drawn from the local power structure, will likely be quite responsive to local concerns and to the interests of local enforcement authorities (Richman 1999, 785). Although U.S. Attorneys do not have hierarchical

control over the Federal agencies that usually initiate criminal investigations, they do have gatekeeping power. Their control over access to Federal court—and to certain investigative measures like wiretaps and grand jury subpoena—gives them a powerful voice in the setting of Federal enforcement priorities.

For all these institutional arrangements, however, perhaps the main reason why Federal enforcers either stay out of the core State enforcement areas like violent crime or venture into them only with the acquiescence or approval of State authorities is that they generally will lack the informational resources to pursue offenses in these areas without State assistance. When going after organized criminal groups, like Mafia families or drug-trafficking networks, Federal enforcers can develop their own informants and work their way up (Wilson 1978, 61–88). Federal agents can similarly develop information sources in certain areas of special Federal concern, like the securities markets, diplomatic communities, or Federal contracting communities. These will also be areas in which citizens will be prone to bring their complaints to Federal authorities. When agents seek to investigate “more episodic criminal activity,” however, like murders, rapes, and street robberies, they generally must rely on help from local police departments, “the only entities whose tentacles reach every street corner” (Richman 1999, 786). Federal carjacking legislation may offend some traditional notions of the Federal-State boundary, but the FBI, which formed a special carjacking unit in 1992 (*New York Times* 1992), probably will not pursue a particular carjacker, or target carjacking generally, without help from the cops who know the local bad guys and the community. Even somewhat more organized targets like street gangs are generally too loose-knit to be taken down by the Bureau without extensive local cooperation (Mydens 1992).

What, then, does this “negotiated” boundary, which cannot be found in statute books, look like? In some respects, it still reflects the traditional notions of Federal jurisdiction that Congress often seems to ignore in its substantive law-making. Federal enforcers still take primary responsibility for Federal program fraud, egregious Federal regulatory violations, counterfeiting, international drug smuggling, national security offenses, and other such crimes. Informants and complainants know to go to Federal agencies first in these cases, and Federal agencies know that they may be held politically responsible for failing to pursue such matters vigorously. Beyond this sphere, in the areas traditionally policed by the States, the line between what goes federally and what is left “stateside” will generally be a function of several factors.

While Federal enforcers in the field will not necessarily notice the creation of a new criminal offense, they will respond to an administration’s national enforcement initiatives. In recent years, many of these initiatives have reflected the

public's (and Congress') concern with violent crime. Thus, in April 1991, with much fanfare, Attorney General Thornburgh announced "Project Triggerlock," a plan to use Federal firearms statutes—particularly the one making it a crime for a convicted felon to have a gun—to target violent offenders around the country. To this end, Federal prosecutors were advised to screen all local police force arrests of felons who had been armed when apprehended (Richman 1997, 985–996). The Clinton administration has continued to stake out this territory with its Anti-Violent Crime Initiative, announced in 1994, whose goal—inevitable in the present climate, but revolutionary when viewed in a broader historical context—was flat out to "reduc[e] violent crime in America" (U.S. DOJ, Office of the Attorney General 1999, I–1). The administration's organizational goals have been equally ambitious. Under this initiative, a former official recently explained:

[E]ach U.S. attorney, in coordination with every law enforcement agency at every level, is responsible for identifying the crime problems in the district and developing a strategy for bringing all tools and resources to bear on those problems. (Fois 1999, 28)

Although the priorities of Federal enforcement agencies will, of course, be affected by the agenda set by an administration's political leadership, agencies can have their own agendas as well. Sorting out the two is difficult when looking at recent Federal moves into traditional local territory because of the considerable congruence between administration and agency goals. When, in 1992, the FBI redeployed 300 of its agents from foreign counterintelligence activities to units focusing on violent crimes, particularly by street gangs, was it acceding to Attorney General William P. Barr's priorities or was it trying to show its continued vitality in the wake of the Cold War's end (Johnston 1992a, 1992b)? Probably both. And it is similarly hard to determine the degree to which ATF's recent focus on violent street criminals and the extraordinary extent of that agency's cooperation with local authorities should be seen as efforts to gain political protection from gun lobby attacks (Vizzard 1997, 89).

The decentralization of Federal prosecutorial authority means that programs will be developed at the local level as well. When Rudolph Giuliani was U.S. Attorney in Manhattan, he spearheaded a "Federal Day" initiative: One day a week, in a designated area, New York City police officers would bring their drug arrests to Federal prosecutors (Labaton 1989), thus, as an appellate court complained, converting "garden-variety state law drug offenses into federal offenses" (*United States v. Aguilar*, 779 F.2d 123, 125 [2d Cir. 1985]). More recently, the focus has been on violent crime. In the "Boston Gun Project," Federal prosecutors have worked with Federal and local authorities to get some of the worst offenders off the streets (Kennedy 1997, 449–484). In New York

City, Federal prosecutors have worked with the police to target violent gangs for Federal racketeering prosecutions (Glazer 1999, 573, 601–602; Jones et al. 1999, 657). And in Richmond, Virginia, “Operation Exile” has been using Federal gun laws to reduce street violence. A committee of representatives from the U.S. Attorney’s Office, the Commonwealth attorney’s office, the Richmond Police, and ATF now meet regularly to decide whether particular cases should be taken federally or not (Johnson 1999).

Pressure for Federal involvement in particular cases or classes of cases traditionally handled locally will also come from the local authorities themselves. State enforcers are well aware that their Federal counterparts can often devote more resources to a case—buy money, electronic surveillance, witness protection programs, and prosecutorial support for investigations—and that Federal prosecutions generally result in higher sentences, particularly in violent crime cases (Clymer 1997, 668–675; Jeffries and Gleeson 1995, 1095; Richman 1999, 783). Without the political obligations of State authorities to maintain order within a territorial jurisdiction and to prosecute every provable serious offense, Federal agencies are largely free to invest strategically in the cases they do take. And local officials will often be able to tap this strategic reserve (U.S. General Accounting Office 1996, 2–3, 6).⁵ Explaining how his agency decided whether to take a case federally or stateside, the head of the Richmond police detective division noted: “[I]t’s like buying a car: we’re going to the place we feel we can get the best deal. We shop around” (Bonner 1998, 905, 930).

It may seem somewhat anomalous to describe the product of all these forces as a “boundary.” Yet in every jurisdiction, enforcers of all stripes have a pretty good idea of what kind of cases should go federally, and what should go stateside—a division of labor that can vary over time. Bank robberies, for example, were once the quintessential Federal case, high priorities for the FBI’s war on crime in the mid-1930s (Potter 1998, 139). By the early 1980s, however, State and local police were handling a large proportion of bank robberies without any FBI involvement, and many more with FBI collaboration (Geller and Morris 1992, 231, 240).

The story of the relationships between Federal agencies and State and local authorities has of course not been one of consistent harmony and collaboration. And there has been significant variation across Federal agencies in their readiness to coordinate with their State and local counterparts. The politically

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beleaguered ATF, for example, was far quicker to court support from local enforcers with assistance and shared credit than the self-confident FBI, which, in the 1950s and 1960s, took the position that it could not work closely with local departments that it might have to investigate (Vizzard 1997, 89; Geller and Morris 1992, 247 n. 8, 262). More recently, however, even the FBI has worked hard to establish “a more trusting and respectful relationship” with non-Federal agencies (Geller and Morris 1992, 263).

One does not want to be Panglossian here. There is friction from time to time. These are the turf wars that make for such great news stories. Given the degree of statutory overlap between the State and Federal systems, and the absence of any formal division of authority, however, what is remarkable is not the occurrence of such disputes but their relative infrequency. Indeed, the bitterness usually reflects one or both sides’ belief that some *modus vivendi* has been violated. Outsiders may not always know what this arrangement is, as it appears in no statutory code or manual, but it exists just the same. And enforcers are generally comfortable with it (Geller and Morris 1992, 312–313; Moohr 1997, 1127, 1130; Brickey 1995, 1165–1166 n. 70).⁶

One observer recently declared that, “piece by piece,” the Clinton administration and Congress are building “a robust national police system,” with the FBI “at the center.” “For many years,” he wrote:

[F]ederal law enforcement police power was spread among several competing agencies. Now, important assets of the nation’s local, state and federal law enforcement agencies are being combined with those of the intelligence community and parts of the military—creating an integrated system whose powers of investigation, intelligence collection, and electronic surveillance will be unprecedented. In the future, few crime-fighting tasks will be too small for some FBI involvement and none will be too large. (McGee 1997)

Although this description is a bit overstated, it highlights the degree of coordination that we have come to expect from enforcement agencies at all levels as we enter the new century.

The Costs of Negotiated Boundaries

What, then, could be wrong with this arrangement? Why is it that the Chief Justice of the United States (Rehnquist 1998, 57–58; 1992, 1, 3), the Judicial Conference of the United States (1995, 21–28), a prominent American Bar Association committee (Task Force on the Federalization of Criminal Law

1998), numerous scholars (Ashdown 1996, 789; Beale 1996; Brickey 1995; Clymer 1997), and even some legislators (Leahy 1999, 202) have decried the “overfederalization” of criminal law? Is it out of an attachment to 19th-century notions of federalism or to a doctrinal belief that Commerce Clause power has some limits? Have they failed to appreciate that boundaries, however diverse and negotiated, still divide State from Federal spheres? These theories have some explanatory power.⁷ Yet even someone with no *a priori* vision of what is “really” a Federal crime could be fairly dissatisfied with the current scheme for a number of reasons.

That a State’s enforcers are largely satisfied with the allocation of Federal and State authority in the criminal area does not necessarily mean that the interests of that State’s citizens have been advanced. Sometimes, it is hard to tell. When, for example, a local police force, instead of using State forfeiture procedures that benefit the State’s general treasury, turns seized assets over to Federal authorities because Federal “equitable sharing” provisions reward the police force directly, should we rejoice in this interagency cooperation or condemn the force’s self-interested circumvention of State law (Rasmussen and Benson 1994, 132–139; Blumenson and Nilsen 1998, 106–108)? And what are we to make of cases that State enforcers refer for Federal prosecution because Federal rules of evidence allow the admission of evidence that some State rule would exclude? Why should State officials be free to nullify State legislators’ decision to establish supraconstitutional barriers to conviction (Jones et al. 1999, 673)?

If, given the choice, a State’s citizenry would adopt the substance of a particular Federal rule, the ability of State enforcement authorities to freely circumvent the State rule will not offend the electorate, but will inappropriately permit State legislators to avoid facing the political costs of their enactments (or inertia). If, on the other hand, those enactments actually reflect the citizenry’s preferences, then State enforcement officials ought not have the freedom to nullify them. Either way, a system of low-visibility negotiated boundaries diminishes the accountability of the system’s actors. Similarly, although responsibility for street crime and most other traditionally local offenses has not wholly shifted to the relatively small Federal enforcement bureaucracy and never will, the possibility of Federal intervention will often allow State enforcers to evade accountability for failing to prosecute a particular case or class of cases (Friedman 1997, 317, 394–397; Richman 1999, 783–784).⁸ The pressure on State governments to develop capabilities for ferreting out and prosecuting instances of local corruption, for example, has probably been substantially diminished by the readiness of Federal enforcers to pursue these cases.

These questions become even harder once one recognizes that a State's enforcement community is not monolithic either. The local police department that brings a high-profile murder or kidnaping case to the U.S. Attorney's Office to take advantage of more lenient evidentiary rules may have much to gain and little to lose. Federal prosecutors, welcoming such cases, will take pains to ensure that the police, and perhaps the mayor, receive full credit for their investigative success. But the local district attorney's office, which otherwise would have gotten the case, may feel quite aggrieved. Even if a local prosecutor is brought in to take part in the proceedings as a "Special Assistant U.S. Attorney," the Federal venue will generally ensure that the Federal prosecutors receive top billing. As a rule, then, local police agencies are probably going to be keener on Federal intervention than local prosecutors. And their readiness to "go Federal" will give the police new leverage in their dealings with the local prosecutor, changing the terms of what traditionally was a bilateral monopoly. The possibility of Federal intervention may therefore tend to reduce the degree to which local prosecutors—who generally are elected officials—can constrain appointed police officials. Those officials will still be politically accountable, generally through the mayor who appointed them. But a degree of accountability will have been lost, particularly if the mayor's mandate does not significantly rest on his on his criminal justice policies.

Another problem with a system in which effective boundaries are negotiated by enforcers, instead of set by statute, is that enforcers are less apt to internalize the costs that their arrangements impose on the Federal court system. Noting the comparatively small size of the Federal judiciary, critics of creeping criminal federalization have argued that "the increasing criminal caseload threatens to impair the quality of justice meted out in criminal cases and significantly impairs Federal judges' ability to perform their core constitutional functions in civil cases" (Beale 1995, 979, 983; Brickey 1995, 1168–1169). At first blush, these critics can be faulted for assuming that fewer Federal cases would be brought if Federal statutory jurisdiction were curtailed. Conceivably, Federal enforcers would respond by filling the same amount of court time by bringing more interstate auto theft or federally insured bank embezzlement cases, or by bringing more sophisticated white-collar cases (Little 1995, 1029, 1046).⁹ The critics may well be right to assume, however, that in the absence of legislatively popular forays into the violent crime area, Federal agencies would be funded at lower levels.

The freedom of enforcers to decide, as part of a broader program or on an ad hoc basis, when a case that would ordinarily get prosecuted in State court should go Federal has also led to significant horizontal inequities among defendants. Some might find it hard to say that a defendant who is charged in

Federal court with a Federal crime, convicted, and sentenced accordingly has a fair grievance merely because a similar offender prosecuted in State court received a lighter sentence. After all, there is probably a third offender who, because of resource constraints, has not been prosecuted by anyone. His existence hardly challenges the fairness of either proceeding. We never get to meet this third offender, however. And the stark contrast between the sentences of the first two defendants, particularly when enforcers made the forum selection decision with little or no administrative direction or judicial oversight, raises troubling questions about the fairness of the system (Clymer 1997; Beale 1995, 996). Fairness questions have also arisen when overlapping jurisdiction (coupled with “dual sovereignty” double jeopardy doctrine) has allowed Federal enforcers to bring charges against a defendant previously acquitted in a State case based on the same conduct (Richman 1996, 1181, 1190).

Toward New Boundaries?

The recent history of Federal activity in areas of traditional State criminal enforcement has not been one only of expanding criminal jurisdiction. Congress has also used its spending powers to make inroads into State lawmaking processes, albeit indirectly, by conditioning funding grants on State adoption of particular penal policies.

The idea of Federal grants to State and local law enforcement authorities is, of course, not particularly new. In the early 1970s, Congress provided funds through the Law Enforcement Assistance Administration, and such funding continued even after that agency went out of business in 1982 (Omnibus Crime Control and Safe Streets Act of 1968; Marion 1994, 166–167). And such programs have multiplied. The Violent Crime Control and Law Enforcement Act of 1994 (Crime Act) (Beale 1995, 1009), for example, passed with the strong support of the Clinton administration, earmarked monies to put more local police on the streets and to fund community-based justice programs.

Increasingly, however, such aid has come with strings attached. In order to advance a policy of “truth in sentencing,” the 1994 Crime Act offered grants to States to construct, expand, or operate prisons that house violent offenders on the condition that a State require “that persons convicted of violent crimes serve not less than 85 percent of the sentence imposed,” or on other evidence of the severity of State sentences imposed on violent offenders (Truth in Sentencing Incentive Grants 1994). Megan’s Law, passed in 1996, conditions Federal grants on a State’s establishment of systems for notifying a community that a convicted sex offender plans to locate there on release from prison. And juvenile justice legislation proposed in 1997—yet to be enacted—would offer

Given the contingency of Federal interests, the primary goal ought to be a deliberative process in which politically accountable actors establish the boundaries of Federal-State interaction.

Federal grants as a means of spurring States to adopt laws or policies that would ensure, among other things, that juveniles over 15 (14 in the Senate version) who commit serious violent crimes could be prosecuted as adults (U.S. House 1997; U.S. Senate 1997).

At first glance, explicit legislative efforts to alter the balance between State and Federal authority in the criminal area seem more troubling than the negotiation of boundaries that has occurred among enforcement officials in the shared space created by expanded Federal criminal jurisdiction. The problem is not one of constitutional doctrine. Although the Supreme Court, citing the 10th amendment, has condemned

Federal efforts to “commandeer” State officials (*Printz v. United States*, 117 S. Ct. 2365, 2384 [1997]), it has interpreted the Spending Clause to allow Congress considerable freedom to impose legislative changes on the States, so long as those changes are framed as qualifications for needed grants (*New York v. United States*, 505 U.S. 144, 186–88 [1992]; *South Dakota v. Dole*, 483 U.S. 203 [1987]). Congress is thus on far safer constitutional ground when it acts under the Spending Clause than when it exercises its Commerce Clause powers. But the extent of the Federal imposition still seems severe. Under political and financial pressure to accept Federal funds, States do not merely have to sit down with Federal authorities. They actually have to change their laws (if they have not already passed such provisions), trading away one of the most fundamental aspects of sovereignty—the power to structure one’s own penal system—for the proverbial “mess of porridge.”

To be sure, the money offered is probably not large enough to buy off States outright. The funds dangled by the 1994 Crime Act, for instance, probably do not offset the costs in correctional spending that the Act’s sentencing reforms will likely occasion (Reitz 1996, 118). But the fact remains that these Federal statutes have been explicitly framed to put intense political pressure on States in an area where their legislative sovereignty has hitherto been treated as virtually sacred. And a recent survey of State officials by the U.S. General Accounting Office shows the effects of such pressure. In fiscal 1997, 27 States received Federal truth-in-sentencing grants, having passed sentencing legislation satisfying the requirements of the 1994 Crime Act. In 11 of these States, according to officials, the availability of Federal grants had played a role, “although not necessarily a major or decisive one,” in the passage of the requisite legislation. In four States, the Federal monies were said to have played a

“key” role (U.S. General Accounting Office 1998). Surely, one can argue, these incentive grants mark a new high water mark for Federal interference.

One can turn this point on its head, however. How does one define a “Federal interest” after all? To be sure, the Federal Government has traditionally left violent crime to State processes. Yet there is a considerable degree of historical contingency to this story, and it is not at all clear (to me, at least) that violent crime is any less worthy of Federal attention than, say, credit card fraud, bank robberies, even counterfeiting. “[O]ne person’s concept of a ‘strong federal interest’ might well be another person’s idea of a ‘trivial local crime’” (Little 1995, 1074).

Given the contingency of Federal interests, the primary goal ought to be a deliberative process in which politically accountable actors establish the boundaries of Federal-State interaction. Whatever one’s views of the merits of the 1994 truth-in-sentencing legislation, consideration of that provision did require representatives to confront this boundary issue, and the legislation’s passage clearly memorialized Congress’ choice.¹⁰ In contrast, the steady expansion of Federal criminal jurisdiction has frequently occurred without substantial consideration of this issue, with legislators sweeping issues of boundary drawing under the rug by vaguely alluding to the need for broad prosecutorial discretion.

Sometimes Federal enforcers have bridled at these expansions of their powers. The current FBI Director, Louis Freeh, for example, successfully opposed an amendment to the 1994 Crime Act that would have made virtually every State crime committed with a gun into a Federal offense (Brickey 1995, 1169 n. 183). Generally, though, the executive branch has been quite willing to accept these broad grants of authority. As two Clinton administration officials explained:

[L]aw enforcement agencies are generally better situated than Congress to apprise the investigative demands of particular cases and, more generally, the circumstances in which federal prosecution is appropriate. . . . The Constitution authorizes Congress to act, and we have suggested that it should act, even though it intends the jurisdiction authorized to be exercised in only a small percentage of cases. The exercise of prosecutorial discretion, then, becomes the most important and effective brake on the federalization of crime. (Gorelick and Litman 1995, 967, 972–973)

Under this framework, the officials noted, “[I]t falls to the Department, in cooperation with state and local counterparts, to target for prosecution only those few cases in which federal prosecution is the most effective way to bring criminal justice resources to bear on our nation’s law enforcement problems” (Gorelick and Litman 1995, 978).

To the extent that the public fails to appreciate the limits of Federal resources, legislators may also find themselves under increasing pressure from Federal enforcement agencies. The more that legislators seek political gain through substantive criminal lawmaking, the greater the risk that their constituents will expect prosecutions to be brought under the new statutes.

Realistically, it is inevitable that Federal enforcers will exercise enormous discretion. Legislative specificity has high opportunity costs in the criminal area, and, as affirmative matter, there is broad support for delegating enforcers the flexibility to respond to regional diversity and the myriad forms of criminal conduct (Lynch 1998, 2117, 2138; Richman 1999, 810). But some sort of balance between delegation and accountability needs to be struck, and, in recent years, all too little thought has been given to accountability. When Federal-State boundary issues are negotiated by enforcers from the involved jurisdictions, the resulting arrangements are not only of far lower visibility than legislative enactments, but they are also prone to self-dealing by the enforcers. State agencies are well positioned to check Federal initiatives that they deem inappropriately intrusive. But if State enforcers' approval or acquiescence stems from a desire to circumvent State limits on their authority, or to avoid responsibilities imposed on them by State law, the negotiation process becomes a kind of political shell game.

Federal negotiators can have their own self-serving motives as well. Some are personal. Prosecutors with local political ambitions may seek to enhance their

name recognition by going after the grisly murders that seem to dominate tabloid coverage of the criminal justice system. Those seeking mere financial gain may look for the best vehicles for displaying their talents to potential future clients in the private sector. And prosecutors may simply feel the visceral allure of violent cases to break the monotony of a white-collar diet.

Federal enforcers can also be spurred by a desire to advance their own agency's interests (and thereby indirectly advance their own). An agency's targeting decisions may be influenced by the expressed preferences of key figures in the appropriation process, or a belief that tabloid headlines can translate into appropriation dollars. A politically weak agency may avoid pursuing cases against classes of defendants with the wherewithal to make their cries of "foul" heard in the political process.¹¹

It may well be that the particular equilibrium between Federal and State criminal authority that now exists is exactly the right one from the perspective of

citizens as well as enforcers. The challenge for Congress in the 21st century, however, is to make more of an effort to determine whether this is so and to move the process of boundary setting back into the substantive lawmaking sphere. There, citizens might hear more about the deficiencies and needs of their local police forces, prosecutors, and legislators. If no such problems are identified, congressional silence in this regard might expose the emptiness of the Federal gesture.

Why would Congress ever take up the reins and have these debates? Why would legislators ever want to take on more responsibility for articulating the appropriate Federal role in law enforcement? If the analysis is based solely on self-interest, they do not seem to have any pressing reason to do so, as yet. But perhaps there may be some grounds for cautious optimism. At the very least, efforts to educate the public on the limits of Federal enforcement resources and the responsibilities of State and local enforcers will help reduce the actual or perceived political gains that legislators obtain by proposing and passing new criminal statutes. Much ink has been spilled to this end, but the project is worthwhile.

Evidence that recent critiques have had some effect on Congress can be found in recent appropriations legislation that, while proposing new Federal hate crime provisions, recognizes the need for more transparency, and perhaps even more accountability, in Federal enforcement decisions. The 1999 legislation (U.S. House 1999; U.S. Senate 1999) (later vetoed by the President) mandates that any prosecution under these provisions proceed only upon certification by a high-ranking DOJ official that he or his designee:

has consulted with State or local law enforcement officials regarding the prosecution and determined that—

(i) the State does not have jurisdiction or refuses to assume jurisdiction;

(ii) the State has requested that the Federal Government assume jurisdiction; or

(iii) actions by State and local law enforcement officials have or are likely to leave demonstratively unindicted the Federal interest in eradicating bias-motivated violence.

To be sure, measures like this still provide ample room for enforcer manipulation, and leave open the question of who should speak for the “State” in such matters. But they are a move in the right direction.

To the extent that the public fails to appreciate the limits of Federal resources, legislators may also find themselves under increasing pressure from Federal enforcement agencies. The more that legislators seek political gain through substantive criminal lawmaking, the greater the risk that their constituents will expect prosecutions to be brought under the new statutes. So far, these expectations appear quite limited. When a carjacking occurs, or the use of a gun by a prior felon, or a domestic violence crime with some interstate nexus, there generally will not be an immediate outcry for Federal involvement. Assumptions that State and local enforcers bear primary responsibility for street crimes are quite robust and do not seem likely to change over time. Public perceptions of what is appropriately “Federal” can evolve, however. One has only to look at the frequency, since the Rodney King beating trial, with which abuse-of-force allegations against local police officers have been accompanied by calls for Federal intervention. Federal enforcement agencies, as a general matter, are more insulated from political pressure than their State and local counterparts. But they are not immune. And the more Federal criminal statutes are perceived as imposing responsibility, instead of merely conferring authority, the harder Federal enforcers will strive to ensure that such responsibilities are more narrowly tailored to their capabilities and preferences. Under this admittedly sanguine analysis, the recent legislative trend might, over time, be self-correcting.

Notes

1. These statutes are the predecessors of current criminal civil rights provisions. See 18 U.S.C. §§ 241–242.
2. The constitutionality of this Act was upheld in *Ex parte Jackson* (96 U.S. 727 [1877]).
3. The Anti-Racketeering Act of 1934 was created to “protect trade and commerce against interference by violence, threats, coercion, or intimidation.”
4. The Supreme Court will shed light on this matter in *United States v. Morrison*, 120 S. Ct. 11 (1999), granting *certiorari* in *Brzonkala v. Virginia Polytechnic Institute and State University*, 169 F. 3d 820 (4th Cir. 1999) (constitutionality of Violence Against Women Act’s civil provision), and *Jones v. United States*, 120 S. Ct. 494 (1999), granting *certiorari* in *United States v. Jones*, 178 F. 3d 479 (7th Cir. 1999) (application of Federal arson statute to arson of private residence).
5. Local law enforcement officers report that the chief benefits of Federal involvement are overtime pay, staff resources, office space, wiretaps, equipment, money for informants and drug/gun purchases, and Federal prosecution of cases.

6. Geller and Morris discuss finding those in the system content with current Federal-State division of policing authority, while Moohr finds that when speaking in a collective voice, State officials will periodically express concern about the extent of Federal intrusion.

7. "The federalization phenomenon is inconsistent with the traditional notion that prevention of crime and law enforcement in this country are basically state functions" (Task Force on the Federalization of Criminal Law 1998, 2).

8. Accountability is diminished when citizens cannot easily determine which level of government is responsible for a particular regulatory decision (*New York v. United States*, 505 U.S. 144, 169 [1992]).

9. Little suggests that recent judicial workload complaints may really reflect a "substantive bias against drug and gun cases," and not docket size per se.

10. "While this [spending] approach does not identify the line between the issues that should be left to the state and those that should be subject to a uniform national policy, it disentangles these issues from the separate question of the appropriate jurisdiction of the federal courts" (Beale 1995, 1010).

11. William H. Webster (1999) notes the Criminal Investigation Division's recent focus on narcotics and organized crime cases, at the expense of tax enforcement.

References

Act of July 27, 1868. Ch. 246, 15 Stat. 194.

Anti-Racketeering Act of 1934. U.S. Public Law 73-376. 48 Stat. 979.

Ashdown, Gerald G. 1996. Federalism, federalization, and the politics of crime. *West Virginia Law Review* 98 (Spring): 789-813.

Associated Press. 1999. Clinton seeks to broaden criteria for laws on hate crimes. *Boston Globe* 7 April.

Beale, Sara Sun. 1996. Federalizing crime: Assessing the impact on the Federal courts. *Annals of the American Academy of Political and Social Science* 543 (January): 39-51.

———. 1995. Too many and yet too few: New principles to define the proper limits for Federal criminal jurisdiction. *Hastings Law Journal* 46 (April): 979-1018.

Beckett, Katherine. 1997. *Making crime pay: Law and order in contemporary American politics*. New York: Oxford University Press.

Bell, Griffin B., and Daniel J. Meador. 1993. Appointing United States Attorneys. *Journal of Law and Politics* 9 (Winter): 247-255.

- Blumenson, Eric, and Eva Nilsen. 1998. Policing for profit: The drug war's hidden economic agenda. *University of Chicago Law Review* 65 (Winter): 35–114.
- Bonner, Charles D. 1998. The federalization of crime: Too much of a good thing? *University of Richmond Law Review* 32 (May): 905–938.
- Boudin, Louis B. 1943. The place of the Anti-Racketeering Act in our constitutional-legal system. *Cornell Law Quarterly* 28 (March): 261–285.
- Brickey, Kathleen F. 1995. Criminal mischief: The federalization of American criminal law. *Hastings Law Journal* 46 (April): 1135–1174.
- Brooke, James. 1998. Gay man dies from attack, fanning outrage and debate. *New York Times*, 13 October.
- Camia, Catalina. 1998. Bill seeks to strengthen U.S. hate crimes law; Killing in Jasper motivates Democrats' push. *Dallas Morning News*, 17 June.
- Civil Rights Act of April 9, 1866. Ch. 31, § 1, 14 Stat. 27, 27.
- Clymer, Steven D. 1997. Unequal justice: The federalization of criminal law. *Southern California Law Review* 70 (March): 643–739.
- Coffee, John C., Jr. 1988. Hush!: The criminal status of confidential information after *McNally* and *Carpenter* and the enduring problem of overcriminalization. *American Criminal Law Review* 26 (Summer): 121–154.
- Cummings, Homer, and Carl McFarland. 1937. *Federal justice: Chapters in the history of justice and the Federal executive*. New York: Macmillan.
- Eisenstein, James. 1978. *Counsel for the United States: U.S. Attorneys in the political and legal systems*. Baltimore: Johns Hopkins University Press.
- Enforcement Act of May 31, 1870. Ch. 114, § 18, 16 Stat. 140, 144.
- Federal Bank Robbery Act. 1934. U.S. Public Law 73–235. 48 Stat. 783 (now codified at 18 U.S.C. § 2113).
- Fois, Andrew. 1999. Complaints about federalization of crime overlook the value of Uncle Sam's aid. *Legal Times*, 1 February.
- Fried, Charles. 1995. Foreword: Revolutions? *Harvard Law Review* 109 (November): 13–77.
- Friedman, Barry. 1997. Valuing federalism. *Minnesota Law Review* 82 (December): 317–412.
- Fugitive Felon Act. 1934. U.S. Public Law 73–233. 48 Stat. 782.

Geller, William A., and Norval Morris. 1992. Relations between Federal and local police. In *Modern policing*, edited by Michael Tonry and Norval Morris. Vol. 15 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.

Glazer, Elizabeth. 1999. Thinking strategically: How Federal prosecutors can reduce violent crime. *Fordham Urban Law Journal* 26 (March): 573–606.

Gorelick, Jamie S., and Harry Litman. 1995. Prosecutorial discretion and the federalization debate. *Hastings Law Journal* 46 (April): 967–978.

Hardy, Peter D. 1995. The emerging role of the quid pro quo requirement in public corruption prosecutions under the Hobbs Act. *Michigan Journal of Law Reform* 28 (Winter): 409–457.

Harrison Narcotic Drug Act. 1914. U.S. Public Law 63–223. 38 Stat. 785.

Hohler, Bob. 1998. After Texas killing, new hate-crime law urged. *Boston Globe*, 6 July.

Hsu, Spenser S. 1999. GOP senators rap Clinton record on gun prosecutions. *Washington Post*, 23 March.

Jacobs, James, and Kimberly Potter. 1998. *Hate crimes: Criminal law and identity politics*. New York: Oxford University Press.

Jeffries, John C., and John Gleeson. 1995. The federalization of organized crime: Advantages of Federal prosecution. *Hastings Law Journal* 46 (April): 1095–1134.

Johnson, Carrie. 1999. Virginia exile puts more teeth into law; Prosecutors can choose harshest jurisdiction. *Richmond Times Dispatch*, 25 June.

Johnston, David. 1992a. F.B.I. to shift from cold war to crime war. *New York Times*, 9 January.

———. 1992b. Washington talk: F.B.I. shifts its course after cold war thaw. *New York Times*, 13 January.

Jones, Barbara S. (moderator), Zachary W. Carter, Elizabeth Glazer, Philip B. Heymann, Robert S. Litt, and David A. Sklansky. Panel Discussion. 1999. The Prosecutor's role in light of expanding Federal criminal jurisdiction. *Fordham Urban Law Journal* 26 (March): 657–677.

Judicial Conference of the United States, Committee on Long Range Planning. 1995. *Long range plan for the Federal courts*. Washington, D.C.

Kahan, Dan M. 1996. Is *Chevron* relevant to Federal criminal law? *Harvard Law Review* 110 (December): 469–521.

- Kennedy, David. 1997. Pulling levers: Chronic offenders, high-crime settings, and a theory of prevention. *Valparaiso Law Review* 31 (Spring): 449–484.
- Kramer, Larry. 1994. Understanding federalism. *Vanderbilt Law Review* 47 (October): 1485–1561.
- Ku Klux Klan Act of April 20, 1871. Ch. 22, § 2, 17 Stat. 13.
- Labaton, Stephen. 1989. New tactics in the war on drugs tilt scales of justice off balance. *New York Times*, 29 December.
- Langum, David J. 1994. *Crossing over the line: Legislating morality and the Mann Act*. Chicago: University of Chicago Press.
- Lawrence, Frederick M. 1993. Civil rights and criminal wrongs: The mens rea of Federal civil rights crimes. *Tulane Law Review* 67 (June): 2113–2229.
- Leahy, Patrick. 1999. Restraining congressional impulse to federalize more local crime laws. *Federal Sentencing Reporter* 11 (January/February): 202.
- Little, Rory K. 1995. Myths and principles of federalization. *Hastings Law Journal* 46 (April): 1029–1085.
- Lukas, J. Anthony. 1998. *Big trouble*. New York: Touchstone.
- Lynch, Gerard E. 1998. Our administrative system of criminal justice. *Fordham Law Review* 66 (May): 2117–2151.
- Maguire, Kathleen, and Ann L. Pastore. 1998. *Sourcebook of criminal justice statistics—1997*. NCJ 171147. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Marion, Nancy E. 1994. *A history of Federal crime control initiatives, 1960–1993*. Praeger Series in Criminology and Crime Control Policy. Westport, Connecticut: Praeger.
- McGee, Jim. 1997. The rise of the FBI. *Washington Post*, 20 July.
- Megan's Law. 1996. U.S. Public Law 104–145. 110 Stat. 1345 (codified at 42 U.S.C. § 14071).
- Moohr, Geraldine Szott. 1997. The Federal interest in criminal law. *Syracuse Law Review* 47:1127–1181.
- Moulton, H. Geoffrey, Jr. 1999. The Quixotic search for a judicially enforceable federalism. *Minnesota Law Review* 83 (April): 849–925.
- Mydens, Seth. 1992. FBI setting sights on street gangs. *New York Times*, 24 May.

- National Firearms Act. 1934. Act of June 26, 1934, U.S. Public Law 73-474. 48 Stat. 1236.
- National Motor Vehicle Theft Act. 1919. U.S. Public Law 66-70. 41 Stat. 324.
- National Prohibition Act. 1919. U. S. Public Law 66-66. 41 Stat. 305.
- National Stolen Property Act. 1934. U.S. Public Law 73-246. 48 Stat. 794.
- New York Times*. 1992. FBI forms unit to battle carjacking. 16 September.
- Offenses Against the Postal Service. 1909. U.S. Public Law 60-350. 35 Stat. 1123, 1130.
- Omnibus Crime Control and Safe Streets Act of 1968. U.S. Public Law 90-351. §§ 101, 520, 82 Stat. 197.
- Post Office Act of 1872. Ch. 335, 17 Stat. 320 (1873). 8 June.
- Potter, Claire Bond. 1998. *War on crime: Bandits, G-men, and the politics of mass culture*. New Brunswick, New Jersey: Rutgers University Press.
- Powers, Richard Gid. 1987. *Secrecy and power: The life of J. Edgar Hoover*. New York: Free Press.
- Quinn, Thomas M., and Gerald T. McLaughlin. 1973. The evolution of Federal drug control legislation. *Catholic University Law Review* 22 (Spring): 586-627.
- Racketeer Influenced and Corrupt Organizations Act of 1970. Title IX of the Organized Crime Control Act of 1970. U.S. Public Law 91-452, 84 Stat. 922, 941 (codified at 18 U.S.C. §§ 1961-1968).
- Rakoff, Jed S. 1980. The Federal mail fraud statute (part I). *Duquesne Law Review* 18 (Summer): 771-822.
- Rasmussen, David W., and Bruce L. Benson. 1994. *The economic anatomy of a drug war: Criminal justice in the commons*. Lanham, Maryland: Rowman & Littlefield.
- Reaves, Brian A. 1998. *Federal law enforcement officers, 1996*. NCJ 164617. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Rehnquist, William H. 1998. Remarks to the American Law Institute, May 11, 1998. In *American Law Institute, 75th Annual Meeting Proceedings*. Philadelphia: American Law Institute.
- . 1992. 1991 year-end report of the Federal judiciary. *Third Branch* (January): 1, 3.

- Reitz, Kevin R. 1996. Federal influence in State cases: Sentencing, prosecution, and procedure: The Federal role in sentencing law and policy. *Annals of the American Academy of Political and Social Science* 543 (January): 116–127.
- Richman, Daniel C. 1999. Federal criminal law, congressional delegation, and enforcement discretion. *University of California, Los Angeles Law Review* 46 (February): 757–814.
- . 1997. *Old Chief v. United States*: Stipulating away prosecutorial accountability? *Virginia Law Review* 83 (August): 939–990.
- . 1996. Bargaining about future jeopardy. *Vanderbilt Law Review* 49 (October): 1181–1237.
- Ruff, Charles F.C. 1977. Federal prosecution of local corruption: A case study in the making of law enforcement policy. *Georgetown Law Journal* 65 (June): 1171–1228.
- Task Force on the Federalization of Criminal Law, American Bar Association, Criminal Justice Section. 1998. *The federalization of criminal law*. Washington, D.C.: American Bar Association, Criminal Justice Section.
- Travel Act. 1961. U.S. Public Law 87–228. 75 Stat. 498 (1961) (codified, as amended, at 18 U.S.C. § 1952).
- Truth in Sentencing Incentive Grants. 1994. U.S. Public Law 103–322. § 20102, 108 Stat. 1796, 1814–1817.
- U.S. Department of Justice, Office of the Attorney General. 1999. *Fiscal year 1998 annual accountability report*. Washington, D.C.
- U.S. General Accounting Office, General Government Division. 1998. Truth in sentencing: Availability of Federal grants influenced laws in some States. Doc. no. GAO/GGD–98–42. Washington, D.C.
- U.S. General Accounting Office. 1996. *Violent crime: Federal law enforcement assistance in fighting Los Angeles gang violence*. Report to the Attorney General. Doc. no. GAO/GGD–96–150. Washington, D.C.
- U.S. House. 1999. Title IX, sec. 904. 106th Cong., 1st sess., H.R. 2670. 5 August.
- . 1997. Juvenile Crime Control Act of 1997. 105th Cong., 1st sess., H.R. 3. 8 May.
- U.S. Senate. 1999. 106th Cong., 1st sess., S. 1217. 22 July.
- . 1997. 105th Cong., 1st sess., S. 10. 21 January.
- . 1934. 73rd Cong., 2d sess., S. Rep. no. 1440.

Violence Against Women Act of 1994. U.S. Public Law 103-322. 108 Stat. 1926 (codified in part at 18 U.S.C. § 2261).

Violent Crime Control and Law Enforcement Act of 1994. U.S. Public Law 103-322. §§ 31701-31702, 108 Stat. 1890.

Vizzard, William J. 1997. *In the cross fire: A political history of the Bureau of Alcohol, Tobacco and Firearms*. Boulder, Colorado: Lynne Rienner Publishers.

Webb-Kenyon Act. 1913. U.S. Public Law 62-398. ch. 90, 37 Stat. 699. 1 March.

Webster, William, H. 1999. *Review of the Internal Revenue Service's Criminal Investigation Division*. Washington, D.C.: U.S. Department of the Treasury, Internal Revenue Service.

White Slave Traffic Act. 1910. U.S. Public Law 61-277. 36 Stat. 825 (now codified at 18 U.S.C. §§ 2421-2424).

Williams, Gregory Howard. 1990. Good government by prosecutorial decree: The use and abuse of mail fraud. *Arizona Law Review* 32:137-171.

Wilson, James Q. 1978. *The investigators: Managing FBI and narcotics agents*. New York: Basic Books.

Windlesham, Lord. 1992. *Responses to crime: Legislating with the tide*. New York: Oxford University Press.

The Governance of Corrections: Implications of the Changing Interface of Courts and Corrections

by Christopher E. Smith

Judicial decisions established legal standards for prison conditions and the treatment of prisoners. Prisoners used the litigation process to seek judicial enforcement of these rights-based standards that restricted the autonomy previously enjoyed by correctional officials. Judicial intervention into corrections transformed corrections by pushing all correctional institutions to become professionalized, bureaucratic organizations with formal procedures and legal norms. During the 1980s and 1990s, however, the U.S. Supreme Court and Congress used their authority to force a deceleration of Federal judges' involvement in correctional management. Court decisions and legislation narrowed the definitions of prisoners' rights, required greater judicial deference to correctional administrators, and limited both prisoners' effective utilization of civil rights litigation and Federal judges' remedial authority. Despite these developments, the routinization of institutional procedures under the supervision of trained correctional administrators should preserve the changes initiated by court decisions. Moreover, the threat of future litigation continues to protect against the abandonment of correctional standards. The future interface of courts and corrections depends largely on developments

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affecting correctional law and shaping the environment of corrections. The growth in prison populations and correctional personnel, the introduction of new technologies, and the privatization of corrections are likely to produce new issues that will attract judicial attention throughout the litigation process.

Beginning in the 1960s, a new connection between courts and corrections reshaped aspects of both institutional segments despite being unrelated to their sequential proximity. Throughout the United States, judges in both Federal and State courts asserted the authority to examine whether the conditions and practices in correctional institutions comport with constitutional standards for the protection of offenders' rights. The use of litigation as a tool for seeking civil rights for African-Americans, especially in areas such as school desegregation, voting rights, and housing discrimination, provided a model for policy activists pursuing the expansion and protection of constitutional rights for others in society who lacked the political power to effect change through traditional legislative lobbying and voter mobilization. Because convicted offenders constitute a politically powerless minority spurned by American society, individual prisoners and advocates for prisoners' rights looked to the courts as the law- and policy-producing forum most accessible and receptive to claims of right. Over a relatively brief timespan, from the mid-1960s to the mid-1980s, court decisions played a catalytic role in altering correctional policies and practices. Judicial intervention in prison administration was often controversial and spawned reactions by legislatures and the U.S. Supreme Court. These reactions limited the prospects for further judicial intervention, but they did not undo the significant alterations in policies and procedures that were set into motion by prior court decisions affecting corrections.

With the new century, correctional administration is in many respects markedly different than it was just a few decades ago. Judicial decisions imposed specific requirements for policy and practices within correctional institutions. Moreover, administrators' heightened sensitivity to inmates' constitutional rights and the threat of litigation affects decisionmaking concerning the training and supervision of correctional personnel.

Prisoner litigation has affected courts as well as corrections. The receptivity of courts to legal actions filed by or on behalf of convicted offenders permits prisoners to pursue claims, legal and otherwise, through judicial processes. The influx of prisoners' cases in recent decades has added to the caseload burdens of judicial institutions that also have experienced increased workload demands concerning a variety of issues unrelated to criminal justice. Because corrections is affected by factors independent of judicial action, such as the exponential growth in prison populations since 1980 due to changes in sentencing policies, uncertainty exists concerning the future impact of courts on corrections (and vice versa). If growing prison populations produce deleterious

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effects on conditions of confinement, avenues remain open for litigation that could reinitiate judicial intervention into and supervision of correctional administration. At the same time, the rapidly growing population of potential prisoner-litigants creates the possibility of increasing caseload burdens that may impede courts' ability to fulfill effectively their responsibilities for processing legal cases.

However, as this paper discusses in detail, developments during the 1990s affecting the constitutional doctrines and statutes governing judges' authority to supervise correctional practices will limit the potential for a return to aggressive and pervasive judicial intervention into prisons. Similarly, legal developments in the 1990s made the courts less accessible to prisoner-litigants. The ultimate impact of these limitations on the potential for future judicial policymaking in corrections will depend on developments affecting the environment of corrections and the effectiveness of existing policies and practices—many of which were judicially influenced—in responding to these developments.

Origins of Federal Judicial Intervention

Prior to the 1960s, 20th-century prisons and jails typically were closed institutions under the control of administrators who had significant discretion for developing and employing various techniques, including violence, for maintaining offenders' obedience and institutional order. Legislative bodies granted significant autonomy to such institutions. Elected officials manifested concerns about minimizing the expense of operating such institutions and ensuring that security and order were maintained. Although pioneering penitentiaries of the 19th century, such as those in Pennsylvania and New York, emphasized idealized visions of programmatic organization and design, most 20th-century prisons emphasized secure custody without emphasizing particular objectives for programs, standards of confinement, or legal protections for offenders. As a result, there was limited supervision and accountability regarding conditions of confinement and correctional practices employed by prison administrators. If correctional institutions absorbed the sentenced offenders sent to them by the courts, kept those offenders under control, and limited expenditures to meet the expectations of elected officials, there was little reason for governors or legislators to devote attention to the operation of such institutions.

Individual and regional variations existed in prison management with, for example, some States emphasizing agricultural productivity and profitability as primary objectives. These States, primarily in the South, minimized public expenditures on corrections by forcing prisoners to work under harsh conditions in agricultural labor, renting prisoners to local businessowners as laborers,

and using prisoner-on-prisoner violence as the mechanism to ensure their obedience and productivity. Such primary objectives raise questions about who was responsible for maintaining security and order as well about the techniques employed to achieve the institutions' goals. Many of these institutions had relatively few paid staff members. Instead, prisoners handled administrative tasks, including guarding cell-blocks, supervising inmate labor, and enforcing discipline. Supervisory prisoners often could employ weapons, sometimes including firearms, to enforce order, and they received special privileges in return for their service to the institution. They gained opportunities to exploit other prisoners through shakedowns, bribes, and their control of the prison economy. They were also positioned to use their authority to physically abuse the prisoners under their supervision and control (see, e.g., Crouch and Marquart 1989, 85).

In an environment of institutional autonomy, minimized expenditures, and limited objectives that were directed at either secure custody or agricultural productivity, correctional personnel typically had minimal qualifications and training. Positions as correctional officers were low-wage jobs for people with limited education and skills. As long as correctional officers were capable of enforcing order, including the use of physical force, they were considered qualified. Within institutions, administrators often either worked their way up through the ranks or received patronage appointments through connections to elected officials and correctional administrators.

Prior to the 1960s, the correctional environment presented a serious risk to offenders that they would be deprived of basic human needs (e.g., health care, food, shelter) and would be the target of violence. Although a few State courts intervened to stop abuses at specific institutions (Wallace 1997), courts are generally regarded as taking a hands-off approach to corrections prior to the 1960s (Branham and Krantz 1997). The existence of State court decisions that sought to prevent inhumane treatment in a few correctional institutions indicates that not all institutions managed to close themselves off from judicial scrutiny. Most institutions, however, remained autonomous and untouched by judicial scrutiny or intervention. Because State judges were usually elected officials or otherwise dependent on local politics for their appointments and reappointments,

The Hull decision provided the foundational element for prisoners' right of access to the courts. By restraining correctional officials from limiting prisoners' ability to submit pleadings to the Court, the U.S. Supreme Court opened the avenue by which prisoners and their advocates eventually gained judicial assistance in altering correctional policies and practices.

they faced significant disincentives and risks if they contemplated decisions that could arouse political controversy or public opposition. Moreover, even if judges were interested in addressing problematic conditions and practices in correctional institutions—and there is little indication that many judges were so inclined—there were few legal bases for deciding in favor of prisoners' claims. Judges generally deferred to the expertise and authority of correctional officials in claims about improper correctional practices.

Unlike State judges, whose close connections to and dependence on State and local politics made their independence suspect, Federal judges enjoy protected tenure in office. Because they are appointed by the President and removable only through cumbersome impeachment processes, Federal judges' protected tenure positions them to make independent and potentially controversial decisions. Prior to the 1960s, however, Federal judges possessed limited authority to examine cases from prisoners in State correctional institutions.

The 14th amendment protects individuals against actions by State and local governments that violate due process and equal protection. The precise contours of the rights embodied in these vague terms developed through U.S. Supreme Court decisions during the 20th century. Beginning in 1925, the Court began to declare that specific rights within the Bill of Rights, such as freedoms of speech, press, and religion, were included in the right to due process in the 14th amendment and therefore protected against adverse actions by State and local government officials. This process of incorporating rights into the 14th amendment's due process clause continued through the 1960s, but it was not until the final years of this process that the protection of constitutional rights by Federal judges began to affect prisons' policies and practices.

Several key U.S. Supreme Court decisions set the stage for the Federal judicial intervention in prisons that began in the mid-1960s. In *Ex parte Hull* (312 U.S. 546 [1941]), the Court forbade prison officials to screen or intercept habeas corpus petitions that prisoners sought to file in Federal courts. The *Hull* decision provided the foundational element for prisoners' right of access to the courts. By restraining correctional officials from limiting prisoners' ability to submit pleadings to the Court, the U.S. Supreme Court opened the avenue by which prisoners and their advocates eventually gained judicial assistance in altering correctional policies and practices.

The eighth amendment's prohibition against cruel and unusual punishment eventually became the basis for the judicial decisions that most significantly altered correctional officials' authority to operate prisons as they saw fit. The words of the amendment make no reference to prisons, and, indeed, the words do not even convey any definition of the policies, practices, and conditions in any con-

text that may constitute rights violations. By defining the term “cruel and unusual punishment” in *Trop v. Dulles* (356 U.S. 86 [1958]), the U.S. Supreme Court opened the way for Federal judges to use the eighth amendment to supervise and remedy perceived constitutional violations in correctional institutions. In *Trop*, a case concerning a World War II soldier who lost his American citizenship after being convicted of desertion, the High Court declared that the cruel and unusual punishment clause must be interpreted flexibly in light of changing societal standards. In the words of Chief Justice Earl Warren, “[T]he words of the [eighth] Amendment are not precise, and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society” (p. 100). Because of the eighth amendment’s vague language, Malcolm Feeley and Edward Rubin (1998) characterized it as a “grant of jurisdiction” rather than an amendment that gives meaningful guidance to judicial decisionmakers about its proper interpretation. In effect, *Trop*’s endorsement of a broad, flexible constitutional interpretation gave Federal judges significant discretionary authority over how to interpret and apply their grant of power under the eighth amendment.

In 1962, Federal judges gained the possibility of applying interpretations of the eighth amendment to State criminal justice institutions and processes when the Court decided in *Robinson v. California* (370 U.S. 660 [1962]) that the constitutional protection against cruel and unusual punishment applied to State and local actions through the due process clause of the 14th amendment. The case concerned the constitutionality of a narcotics law, but it served to enable Federal judges to apply the eighth amendment to States in various contexts, which eventually came to include prisons.

A fourth key Supreme Court decision came in *Cooper v. Pate* (378 U.S. 546 [1964]), in which the Justices decided that prisoners could file civil rights actions under title 42, section 1983, of the United States Code. Section 1983 enables individuals to file lawsuits against State and local government officials for violating their Federal constitutional rights. Such lawsuits may produce judicial orders commanding government officials to change their policies and practices. These lawsuits also can provide the basis for monetary awards to litigants who demonstrate that their rights were violated. By declaring that State prisoners and local jail detainees could use the Federal civil rights statute as the basis for filing lawsuits, the Court provided a vehicle through which incarcerated individuals could challenge correctional practices and the conditions of confinement within institutions.

The Court’s opinions provided the necessary elements for judicial decisions affecting corrections: a vehicle for litigation challenging correctional administration (section 1983), access to the courts (*Ex parte Hull* and later decisions),

and a legal basis for judges' intervention in corrections (the eighth amendment and other elements of the Bill of Rights incorporated into the due process clause of the 14th amendment). In the 1960s, individual judges in the lower Federal courts began to consider claims from prisoners and use those claims as a basis for scrutinizing corrections. Most notably, a Federal district court in Arkansas considered prisoners' challenges to conditions and practices within State prisons. State officials initially cooperated in changing some aspects of prison conditions, but the litigation eventually led to judicial decisions barring the use of corporal punishment (*Talley v. Stephens* (247 F. Supp. 683 [E.D. Ark. 1965]) and *Jackson v. Bishop* (404 F. 2d 371 [8th Cir. 1968])) and generating the Court's endorsement of the authority of lower Federal courts to remedy unconstitutional conditions of confinement within correctional institutions (*Hutto v. Finney* (437 U.S. 678 [1978])). Emulating the litigation strategy employed to advance racial equality through judicial enforcement of constitutional rights, prisoners and prisoner advocates throughout the country recognized and pursued the opportunity to seek Federal judicial assistance in altering the practices and conditions in correctional institutions. In the late 1960s, these efforts produced further gains for prisoners' legal protections by, for example, gaining a Supreme Court decision that barred racial segregation and discrimination within prisons on the grounds that they violated the right to equal protection (*Lee v. Washington* (390 U.S. 333 [1968])). The Court also declared that prison officials could not bar prisoners from helping each other prepare legal filings unless the prison provided an alternative means of legal assistance (*Johnson v. Avery* (393 U.S. 482 [1969])).

Prison Reform Litigation in the 1970s and 1980s

During the 1970s, prison reform lawsuits drew the attention of Federal judges across the Nation. These lawsuits challenged a variety of practices and conditions. Prisoners sought vindication of various constitutional rights, including those concerning religious practices, access to legal materials, disciplinary proceedings, and living conditions. As lower court judges issued rulings addressing these matters, appeals by disappointed parties pushed prison reform litigation to higher courts so that the U.S. Supreme Court and Federal appellate courts eventually clarified many issues and provided guidance to Federal district judges about the contours of constitutional protections possessed by incarcerated individuals. In *Wolff v. McDonnell* (418 U.S. 539 [1974]), for example, the U.S. Supreme Court provided guidance about the due process rights possessed by prisoners facing prison disciplinary proceedings. Minimum standards for medical care emerged from *Estelle v. Gamble* (429 U.S. 97 [1976]), when the Court announced that prison officials vio-

late the eighth amendment prohibition on cruel and unusual punishments if they are deliberately indifferent to the serious medical needs of prisoners. In *Procunier v. Martinez* (416 U.S. 396 [1974]), the Court found that excessive censorship of prisoners' outgoing mail violated the first amendment rights of people outside the prison to whom letters were addressed. The results of such decisions forced concrete, albeit comparatively inexpensive, changes in practices within institutions that did not already have proper disciplinary hearing procedures, medical staff and procedures, and procedures for appropriately handling prisoners' incoming and outgoing correspondence.

The Court's decisions establishing that the equal protection clause covered sex discrimination as well as racial discrimination provided a basis for litigation asserting that correctional institutions for women improperly lacked facilities and programs equivalent to those provided for male prisoners (see, e.g., *Craig v. Boren* (429 U.S. 190 [1976])). These lawsuits provided a basis for judicial interventions that led to the establishment of broader educational, vocational, and other programs at women's prisons.

Although the Court decided only a small number of cases concerning prisoners' rights and correctional management, its endorsement of constitutional protections for incarcerated individuals permitted lower court judges to consider a wide array of issues while feeling confident that the general enterprise of judicial supervision and intervention in corrections enjoyed support from Federal appellate courts. The appellate courts did not endorse every district court decision, but it was quite clear that the judiciary's perspective on the scope and legitimacy of prisoners' rights had changed drastically since the hands-off era of the early 1960s.

The Court and lower courts rapidly identified constitutional protections possessed by incarcerated individuals, but it should be noted that these protections are limited in number and scope. A consistent theme in judicial decisions affecting corrections is the paramount need for institutions to maintain order, security, and safety. Many correctional officials may argue that specific judicial decisions placed inadequate emphasis on order and security. This assessment is a matter of personal judgment about which reasonable people may differ. It seems quite clear, however, that whether judges accurately anticipated the consequences of their decisions for order and security, they did not dismiss these considerations as central priorities for correctional institutions. Judges consistently balanced the scope of prisoners' rights against the institutions' interests. Thus, prisoners gained recognition of their particular religious practices and access to legal materials—rights that generally can be exercised without disrupting order and security. By contrast, prisoners' fourth amendment protections against unreasonable searches and seizures are necessarily almost nonexistent

(except with respect to some aspects of intrusive and humiliating body cavity searches) because of the judicially recognized need to permit correctional officials to search for weapons and other contraband.

The most dramatic and expensive judicial interventions into corrections came through decisions applying the eighth amendment. Two Court decisions in the 1970s confirmed for lower court judges that the eighth amendment provides a permissible basis for judicial decisions commanding correctional officials to change policies and conditions within their institutions. When the Court interpreted the eighth amendment in such a way as to establish prisoners' limited right to medical care in *Estelle v. Gamble* (429 U.S. 97 [1976]), the Court made it clear that the cruel and unusual punishment clause was applicable to conditions of habitability within correctional institutions and not just to measures formally inflicted as specific punishments for criminal behavior or institutional rule violations (e.g., isolation, corporal punishment, denial of privileges). Moreover, the Court's decision in *Hutto v. Finney* (437 U.S. 678 [1978]) concerning the Arkansas prison system clearly endorsed district judges' authority to issue remedial orders directed at conditions of confinement within correctional institutions.

With the apparent support of the Nation's highest court, Federal judges throughout the country continued to examine conditions in correctional institutions. Although litigation that spurred judicial intervention was typically initiated by individual prisoners or prisoner advocates within the legal profession, some judges, as documented by Feeley and Rubin (1998, 81), actively shaped the litigation process by recruiting lawyers with special expertise to present the prisoners' claims in the most effective manner. Lawsuits challenging conditions of confinement resulted in litigation that frequently dragged on for years and involved judges in the day-to-day details of correctional management. In one of the most famous cases, for example, Judge Frank Johnson assumed significant control over Alabama's prisons and issued detailed remedial orders requiring, among other things, a specific minimum living space for each prisoner, a certain number of bathing opportunities per week, and a certain number of toilets per cellblock (*Pugh v. Locke* (406 F. Supp. 318 [M.D. Ala. 1976]); see also Yackle 1989). Critics pointed to Johnson and others as examples of judges who had exceeded their legitimate authority by interfering with the operations of government agencies under the supervision of elected officials (see, e.g., Cripe 1990). However, Johnson and other judges were confronted with prisons in which legislators, governors, and correctional officials failed to provide working toilets, heat, nutritious food free of insects and rodents, toothpaste and other items necessary for personal hygiene, and, most strikingly, protection against rape, robbery, and other violent predatory activities by fellow inmates,

including those entrusted with maintaining order and security at some institutions (*Pugh v. Locke* (406 F. Supp. 318 [M.D. Ala. 1976])). Judge Johnson acted to reform Alabama's prisons after cataloging the details of "the rampant violence and jungle atmosphere existing throughout Alabama's penal institutions" and noting that "[o]ne expert witness, a United States public health officer . . . testified at trial that he found these facilities wholly unfit for human habitation according to virtually every criterion used by public health inspectors" (*Pugh v. Locke* (406 F. Supp. 323, 325 [M.D. Ala. 1976])).

Although judges found prisons in numerous States had specific problems requiring remedial orders, many of the most extensive and intrusive judicial orders were directed at States such as Alabama, Arkansas, and Texas that had fostered myriad multidimensional problems because of their reliance on agricultural prison labor, prisoner "trusties" as guards, and minimal expenditures of public funds. According to Feeley and Rubin (1998), the core development generated by judicial policymaking in prisons was the transformation of these Southern prisons, with their plantation-style structure, into modern penal institutions with professional management, paid custodial staff, and adherence to national standards for policies and practices.

When Federal judges intervened in public schools to end racial segregation, they confronted a significant resource allocation issue. Often, schools to which African-American children had been assigned did not receive an equitable share of resources until judicially ordered school desegregation plans sent white students to those schools. Conversely, many African-American students did not enjoy the benefits of equitable resources until they were sent to previously all-white schools.

By contrast, judicial reform of correctional institutions faced a different resource problem. Rather than an inequitable distribution of resources among institutions, there was simply a lack of the resources necessary to implement and maintain the policies and conditions that judges viewed as required by the eighth amendment. The lack of public expenditures on corrections was most stark in the Southern States that sought to make prisons nearly self-supporting through prison labor and the employment of relatively few paid staff. The minimal funding for corrections in other States also produced constitutional deficiencies in conditions and programs. It was not easy for judges to issue orders requiring specific changes and automatically expect that those changes would take place in compliance with the judicial order. The forced alteration of conditions within correctional institutions can require significant expenditures while simultaneously generating vocal political opposition from elected officials and members of the public who perceive upgrading prison conditions as coddling

criminals. Thus, the actual role of judges in prison reform litigation was often quite different from the traditional conception of judges as detached officers presiding over formal adversarial proceedings in a courtroom. In Colin Diver's (1979) well-known characterization of judges involved in institutional reform litigation as following either an adjudicative model or a political bargaining model, the course of prison reform litigation necessarily assumed attributes of the political bargaining model. To effectuate reform, judges were forced to be creative in pressuring and negotiating with State officials over lengthy periods. Depending on the case, the process of pushing, accommodating, and pushing officials again might have consumed more than a decade before fundamental changes were implemented and institutionalized. Several States, including Alabama, acknowledged that conditions within their prisons fell short of constitutional standards. Even in the aftermath of such admissions, which sometimes produced consent decrees rather than a complete adjudication of issues, deficiencies were not automatically and instantaneously remedied because of the need to agree on appropriate corrective measures and the difficulties involved in gaining necessary resource allocations from State legislatures.

Contrary to the image of judicial processes involving formal legal combat between adversarial parties, there is often significant cooperation between judges and correctional officials. Many correctional administrators recognized deficiencies in their own institutions. However, they had no mechanism to obtain needed funding from legislatures composed of representatives responding to perceptions about the public's desire for low taxes and harsh prisons rather than to entreaties from correctional professionals wanting to attain appropriate standards for conditions and programs within their institutions. These correctional officials often welcomed and assisted with prison reform litigation because they saw judicial intervention as the means by which they would finally be able gain the resources necessary for fulfilling their own vision of a proper, effective correctional institution.

In addition to behind-the-scenes assistance from correctional administrators, judges also relied on other available mechanisms for creatively remedying deficiencies and monitoring the process of implementing mandated reforms. In Alabama, Judge Johnson appointed the Human Rights Committee for the Alabama Prison System, a citizens' committee charged with overseeing the implementation of reforms (*Pugh v. Locke* (406 F. Supp. 318 [M.D. Ala. 1976])). In other States, judges appointed "special masters" or "compliance coordinators" to monitor institutional responses to judicial orders and ensure that States properly implemented reforms (see, e.g., Chilton and Talarico 1990). Other judges mandated that the State's attorneys and the prisoners' attorneys meet with the judge in a series of regular conferences that continued from the

initiation of litigation all the way through the lengthy implementation process. At such conferences, the judge could facilitate negotiations between the parties and hear feedback from each side about the feasibility, desirability, and consequences of various remedial measures. It was even possible for judicial officers to preempt litigation by sponsoring and facilitating discussions between prisoner advocates and those correctional administrators who agreed on the existence of specific problems but who wanted to work informally toward a remedy without arousing the opposition of elected officials who might use public statements against correctional reform as a means to seek electoral support (Smith 1990).

Consequences of Reform Litigation

Judicial reform of corrections produced a variety of consequences for correctional institutions as well as for the people who work and are confined in those institutions (see Jacobs 1997). Some of those consequences were intended by the judges whose orders or oversight of negotiations shaped the reforms. Other consequences were unanticipated, and their emergence produced new issues for correctional officials.

Prison litigation affected the allocation of government expenditures in many States. These expenditures fell into two categories. First, litigation is an expensive process, especially when it is complex and requires numerous pretrial proceedings and motions, expert witnesses, and several years of attorneys' time and effort. Although State governments can, relative to other litigants, economize by using salaried attorneys already on the payroll, the use of these attorneys on prison reform cases takes some (or all) of their time away from States' other needs for legal counsel. Moreover, under the Civil Rights Attorneys' Fees Awards Act of 1976 (U.S. Public Law 94-559, 90 Stat. 2641, 42 U.S.C. § 1988), judges could order States to pay the fees for the prisoners' attorneys when the prisoners prevailed in establishing that their constitutional rights had been violated. These fees could amount to hundreds of thousands of dollars for litigation stretching over several years. In addition, when States indemnify their officials who have been named as defendants in section 1983 lawsuits, the States will pay any monetary judgments against those officials when the court finds that monetary damages are an appropriate remedy for constitutional violations.

Although litigation expenses can be significant, they may pale in comparison to the second category of expenses—the millions of dollars that many States may spend in order to bring their correctional institutions into compliance with

judges' interpretations of the eighth amendment (Feeley 1989). States built new prisons or substantially renovated old prisons in order to upgrade plumbing and heating systems, improve housing areas, and provide adequate space for prisoners. In addition, many States hired and trained hundreds of new staff members to take over security and maintenance functions previously handled by prisoner "trusties."

Prison reform litigation established specific rights for incarcerated individuals and thereby diminished the ability of government officials to operate prisons and jails in any manner they wished. Prisoners gained limited rights related to religion, due process, access to the courts, conditions of confinement, and other matters. The establishment of these rights effectively imposed national standards on prisons throughout the country. Correctional institutions could no longer operate quietly, according to the whims and predilections of individual wardens. States could no longer run prisons and jails according to their own values and for their own convenience. Instead, judicial decisions provided minimum standards for living conditions and disciplinary processes—standards that could be monitored and enforced through the litigation process.

Judicial action contributed to making prisons both more professional and more bureaucratic. Because courts ordered prisons to stop relying on prisoners to maintain order and supervise prison work details, correctional institutions were forced to hire additional staff. These staff members entered a new world of corrections in which they needed to learn about rules and regulations instead of relying solely on their own discretionary applications of brute force and coercion to maintain order. To comply with judicially imposed standards, State departments of corrections and individual prisons and jails created policies and procedures to cover every anticipated situation in which institutional practices might collide with a prisoner's constitutional rights. Institutions created detailed regulations to give prisoners notice of rules and procedures governing discipline, visitors, correspondence, and other matters. These regulations also provided guidelines to instruct correctional staff about proper procedures to follow in each situation. The development of policy- and rule-based governance moved correctional institutions away from the old management style that was often based on ad hoc rules developed at the warden's discretion and enforced through coercive measures, including violence.

Under the new regime, judicial decisions limited officials' use of force to specific situations involving self-defense, defense of third parties, last-resort measures to enforce rules, and the prevention of crimes and escapes (Palmer 1997). The removal of the traditional means of prisoner control, namely discretionary employment of force, meant that correctional officers needed to be

trained to utilize planning, communication skills, psychology, and other tools of modern management in order to control difficult populations. The staff members' development of such skills required the introduction of training programs that contributed to the professionalization of prison management. Departments of corrections turned increasingly to college-educated administrators rather than managers who had worked their way up from the custodial staff or gained political appointments to correctional posts. Educated professionals were viewed as better equipped to fulfill judicially imposed standards, develop proper policies and regulations, design training programs, and supervise expanding staff within prisons. Correctional administration became a profession that used theories of management and social science research to develop effective policies and programs. This professionalization of corrections developed partly in response to higher education's increased emphasis on criminal justice and public administration, but it was further enhanced by the requirements for institutional performance dictated by judges through prison reform litigation.

The threat of litigation and judicial intervention pushed institutions to develop grievance procedures. If prisons could implement their own mechanisms for investigating and addressing prisoners' complaints concerning rights and other matters, they create the possibility that some legal actions could be prevented. Although many prisoners view institutional grievance procedures with great suspicion, it is possible for such procedures to gain a measure of legitimacy and acceptance if the individuals in charge—whether ombudsmen, hearing officers, or assistant wardens—earned credibility in the eyes of the complainants. Congress sought to encourage the development of institutional grievance procedures through the Civil Rights of Institutionalized Persons Act (CRIPA) of 1980 and apparently hoped that prisoner litigation would decrease as more institutions made effective procedures available to prisoners.

Judicial intervention in prisons and the development of defined rights for prisoners raised incarcerated individuals' expectations about their legal entitlements and the willingness of the courts to protect their rights. Prisoners no longer passively endured the policies and practices governing their lives in correctional institutions. Instead, they had the possibility of challenging policies and practices through the judicial process. As indicated by the 95-percent rate of case dismissals prior to pretrial hearings for prisoners' civil rights lawsuits (Hanson and Daley 1995), many prisoners apparently have little ability to accurately identify and effectively present claims that judges can recognize and vindicate through the judicial process. However, even if prisoners do not understand the definitions of their rights and the difficulties involved in successfully pursuing claims in the Federal courts, their belief in the existence of their rights and the

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accessibility of the courts to them can encourage greater assertiveness and challenges to authority. Moreover, prisoners are well aware that correctional officials cannot freely use force against them or deprive them of privileges without valid justifications and adherence to proper procedures. Thus, prisoners' heightened expectations and increased willingness to question the actions of staff members can make it more difficult to control the attitudes, statements, and behavior of incarcerated individuals. In fact, some researchers have reported increases in prison violence as an immediate consequence of judicial intervention because prisoners become less fearful of and deferential to correctional officers and because officers have less discretionary authority to choose the means to enforce rules and maintain discipline (Crouch and Marquart 1989).

Because of officers' loss of discretionary authority, the increased assertiveness of prisoners in demanding legal protections, and the pressures of administering increasingly detailed rules and regulations, there are

risks that the new order established within prisons as a result of judicial intervention may adversely affect staff morale. Certainly, a well-run institution need not necessarily experience morale problems among staff. However, in specific institutional contexts, correctional officers may suffer significant stress because of their limited options for dealing with uncooperative prisoners and the prospect of being sued by prisoners if they take actions that violate prisoners' expectations about protected rights. Prior to judicial intervention, many correctional officers could use physical force with impunity whenever they believed that a prisoner should be disciplined or intimidated. After prison reform, officers faced the prospect of criminal charges and civil lawsuits for improperly employing force to control prisoners. Even if correctional officers receive legal representation and indemnification from the State, they run the risk of significant inconveniences if they must sit for depositions, attend pretrial hearings, and face the prospect of cross-examination on the witness stand in the event that a case makes it to trial. Officers also can worry about unlikely worst-case scenarios that may weigh heavily on some officers' minds. In the back of their minds, officers in many States must realize that the government will not indemnify them in all circumstances. Thus, if an assistant attorney general determines that an officer violated a prisoner's rights intentionally or maliciously, the officer faces the possibility of assuming personal responsibility for litigation costs

and the risk of losing his or her home, life savings, or even more if the court case produces a judgment against him or her. Such concerns cannot be taken lightly by correctional officers, whose compensation is typically relatively modest.

An additional consequence of judicial action affecting prisoners' rights has been the influx of prisoners' cases in the Federal courts. Although prisoners' filings have not increased at the same dramatic rate as increases in prison populations since 1980, they have steadily increased. There were 12,395 civil rights cases filed in Federal courts by State prisoners in 1980. By 1996, that number had climbed to 39,996 (Scalia 1997, 4). As a result, the Federal judiciary points to the steady flow of prisoners' cases as a justification for seeking increased resources from Congress. In addition, there are risks that prisoners' cases do not receive sufficiently careful consideration in some courts. Because such cases are seldom successful and are filed by individuals who have been spurned by society, prisoners' cases may be presumed to be frivolous by the law clerks, U.S. magistrates, and district judges responsible for reading and evaluating petitions filed by prisoners. Unless a district judge conscientiously emphasizes the importance of prisoner cases and provides adequate supervision of subordinates, personnel who assist judges may reflexively recommend dismissal of such cases in assembly-line fashion (Smith 1988). There is a risk that dismissal recommendations can be produced without judicial subordinates adequately examining whether the petitions, which often are poorly prepared by uneducated prisoners, actually contain the elements of a potentially valid claim.

Deceleration of Judicial Policymaking in Prisons

Prison reform litigation and the implementation of judicially initiated reforms continued in the 1980s and 1990s. Prisoners continued to file legal actions under section 1983 asserting that correctional policies and practices had violated their constitutional rights. Some of these lawsuits concerned specific rights violations affecting a single prisoner. Other cases concerned widespread policies and practices in a correctional institution or a State's entire correctional system. Although judges continued to review prisoners' petitions and provide remedies when prisoners established the existence of unconstitutional actions or conditions, the pace and scope of judicial reforms began to diminish. Several factors contributed to the deceleration of judicial policymaking, including external influences stemming from political and institutional reactions to developments in prison reform litigation during the 1970s and 1980s.

In the judicial hierarchy, appellate courts determine the range of freedom of lower court judges in making decisions and implementing remedies. If Federal district judges' decisions are out of line with higher courts' conceptions of legal definitions and judicial propriety, the lower court decisions can be overturned on appeal. Appellate courts also shape the legal doctrines that establish precedents for lower courts to follow. District judges cannot freely base their decisions on interpretations of constitutional provisions and statutes that are contrary to the interpretations pronounced by the U.S. Supreme Court and circuit courts of appeals. District judges are aware of the risk that their decisions may be overturned. If their decisions concern areas of law in which higher courts have not yet developed doctrine and precedents, such as prisoners' rights, they may move forward in shaping the law themselves with the hope that appellate judges will support their efforts. However, if precedents and controlling doctrines have been established, then district judges are forced to follow even those precedents with which they disagree unless they are willing to use their own judicial resources by openly inviting a higher court to overturn their decisions. The U.S. district judge's opinion in *Falzerano v. Collier* (535 F. Supp. 800 [D.N.J. 1982]) provides a good example within prison litigation of the effects of limitations imposed on lower court judges by appellate decisions. In *Falzerano*, the district judge criticized legal doctrines developed by the U.S. Supreme Court that granted prisoners access to law libraries but did not guarantee them assistance from legal professionals when they sought to fulfill their right of access to the courts. According to the judge,

In this court's view, access to the fullest law library anywhere is a useless and meaningless gesture in terms of the great mass of prisoners. . . . To expect untrained laymen to work with entirely unfamiliar books, whose content they cannot understand, may be worthy of Lewis Carroll, but hardly satisfies the substance of constitutional duty. Access to full law libraries makes about as much sense as furnishing medical services through books like "Brain Surgery Self-Taught," or "How to Remove Your Own Appendix," along with scalpels, drills, hemostats, sponges, and sutures. (p. 803)

Although the judge castigated the existing doctrine, he ultimately followed the Court's precedents. Appellate courts cannot control lower courts in an absolute sense because they do not have the resources to review all trial court decisions and because not all lower court decisions are appealed. Appellate courts can, however, assert significant influence over decisions by trial court judges by threatening to overturn decisions on appeal. Moreover, appellate courts' influence is enhanced through the acceptance by many lower court judges of a perceived judicial obligation to respect and obey precedents established by higher courts—even when they disagree with those precedents.

U.S. district judges in the 1960s and 1970s who looked to the U.S. Supreme Court for cues about how to handle prison litigation could readily perceive that they enjoyed significant freedom to intervene and remedy problematic conditions of confinement and other constitutional rights violations in correctional institutions. Warren Court Justices had defined “cruel and unusual punishment” broadly and flexibly (*Trop v. Dulles* (356 U.S. 86 [1958])). They had incorporated the 8th amendment into the due process clause of the 14th amendment so that Federal courts could stop State and local government officials from taking any actions that would violate the constitutional prohibition against cruel and unusual punishments (*Robinson v. California* (370 U.S. 660 [1962])). They had permitted prisoners to file civil rights lawsuits under section 1983 (*Cooper v. Pate* (378 U.S. 546 [1964])). During the initial years of the Burger Court, the Justices—several of whom were holdovers from the Warren Court—supported the authority of lower court judges to examine conditions of confinement in prisons and use the eighth amendment as a means to create and enforce minimum standards for living conditions and medical care (*Estelle v. Gamble* (429 U.S. 97 [1976]); *Hutto v. Finney* (437 U.S. 678 [1978])). The Warren Court’s decisions affecting criminal justice generally tended to broadly define and protect the rights of individuals and create clear rules to limit the authority of criminal justice officials to use discretion in developing policies and practices. The Burger Court appeared to continue this trend with respect to prison litigation during most of the 1970s, so district judges intervened extensively in corrections with little fear that the Supreme Court would overturn their decisions.

The Supreme Court’s decision in Bell v. Wolfish is often regarded as an important signal to the lower courts that there would be no further expansion of constitutional rights for incarcerated individuals.

Beginning in the late 1970s and continuing through the 1990s, the Court’s orientation toward prison litigation changed. Instead of continually endorsing the identification of broad new rights for incarcerated individuals, the Justices began to place limits on the district judges’ efforts to intervene in correctional institutions. The Court’s new orientation was partly attributable to changes in its composition. By 1981, six Warren Court Justices had retired and been replaced by appointees of Presidents Nixon, Ford, and Reagan—Republicans who were critical of Federal judicial decisions in the 1960s and 1970s that expanded rights for criminal suspects and offenders. In general, the new Justices were less inclined than their predecessors to support broad constitutional rights in criminal justice. Instead, they manifested greater concern for

providing criminal justice officials with flexibility, discretionary authority, and autonomy in developing policies and practices. These new Justices also came to the Court at a time when significant public commentary and academic criticism focused on the Federal judiciary's allegedly excessive judicial activism in shaping various areas of public policy, including broadening criminal justice rights and ordering the desegregation of school systems in the North (see, e.g., Graglia 1976; Horowitz 1977; Morgan 1984). These criticisms stemmed from and contributed to a political backlash against the courts by elected officials who opposed the Federal judiciary's active role in public policy.

By the 1980s, many of the worst conditions in State prison systems had begun to be corrected. Some States increased expenditures on corrections and made improvements because they were ordered to do so by judges. In other States, governors and State legislators could observe the course of litigation elsewhere and reacted by negotiating consent decrees or taking action on their own to remedy perceived deficiencies in prison conditions. In addition, correctional officials were positioned to persuade elected officials of the need to improve prisons and jails to avoid the risk of expensive litigation. In effect, judicial intervention provided leverage for correctional administrators to seek the resources they needed to upgrade and professionalize their institutions.

The Court's contribution to the reduction of the judiciary's role in shaping correctional policies and practices appeared in two forms. In the first form, the Justices issued decisions indicating that they were unwilling to expand further the definitions of constitutional rights possessed by incarcerated individuals. From the 1960s through the 1970s, Federal courts steadily expanded the definitions of prisoners' rights with respect to issues such as religion and access to the courts as well as to eighth amendment conditions of confinement. The expansion of recognized rights for prisoners provided both obligations and opportunities for Federal judges to scrutinize policies and practices in corrections. By limiting the expansion of prisoners' rights, the Court defined the minimum standards that prisons and jails must fulfill and simultaneously limited the bases for judicial intervention. In the second form, the Justices imposed more direct limitations on the authority of Federal judges to intervene in and maintain control over corrections. These limitations developed from decisions defining the standards to be applied by judges before ordering remedies. The Justices also permitted greater flexibility in the reconsideration of consent decrees.

The Supreme Court's decision in *Bell v. Wolfish* (441 U.S. 520 [1979]) is often regarded as an important signal to the lower courts that there would be no further expansion of constitutional rights for incarcerated individuals. At the time of the decision, the title of a scholarly article—"The Cry of *Wolfish* in the Federal

Courts: The Future of Federal Judicial Intervention in Prison Administration”—captured the notion that the Supreme Court had begun to send a new message to Federal judges about the permissibility and extent of their continued involvement in prison reform litigation (Robbins 1980). *Bell v. Wolfish* concerned conditions and practices at the Federal Metropolitan Correctional Center in New York. The facility housed pretrial detainees, who alleged the existence of unconstitutional overcrowding and who challenged practices concerning searches and access to books and packages. Justice William Rehnquist’s majority opinion for the divided Court rejected the court of appeals’ application of a “compelling necessity” test that would have required the government to provide significant justifications for policies and practices that limited the liberty of detainees. Instead, Rehnquist announced that judges should apply a “rational basis” test that gave correctional officials substantial flexibility and discretionary authority in determining policies and practices. According to Rehnquist, “If a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment’” (p. 539) and thereby violate the due process rights of pretrial detainees.

After announcing the test, Rehnquist was deferential to the government’s claimed concerns about institutional security. Among the practices approved by the Court (over the vociferous objections of Justice Thurgood Marshall) was body cavity inspections of detainees who had contact visits, performed without suspicion of wrongdoing—even when those detainees wore difficult-to-remove, one-piece jumpsuits, were under constant observation by staff, and thus were extremely unlikely to be smuggling contraband in body cavities. Because the Court’s apparent deference to correctional officials in *Bell v. Wolfish* limited the defined rights of *presumptively innocent pretrial detainees*, it was not surprising that observers, including lower court judges, might infer the expectation of parallel limitations for the rights of demonstrably guilty convicted offenders in prisons.

The Supreme Court addressed the rights of convicted offenders in *Rhodes v. Chapman* (452 U.S. 337 [1981]). The *Rhodes* case involved a claim that placing two prisoners in cells designed to house one prisoner amounted to overcrowding in violation of the eighth amendment prohibition on cruel and unusual punishment. The Court rejected this claim, noting that to avoid eighth amendment violations, prison “[c]onditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment” (p. 346). The Court did not regard two prisoners to a cell as a violation of either aspect of eighth amendment standards. After analyzing and rejecting the prisoners’ claim, Justice Lewis Powell’s opinion included an additional comment that was regarded as a message warning lower

court judges to be less assertive in intervening in correctional institutions. Powell wrote in *Rhodes v. Chapman* (452 U.S. 352 [1981]):

In discharging this oversight responsibility, however, courts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system.

In light of the Court's prior adoption in *Bell v. Wolfish* of a legal standard deferential to the decisions of correctional officials, Powell's comment appeared to reiterate the Court's desire for a new, less intrusive approach to prison litigation. The potential implications of Powell's warning were so obvious that Justice William Brennan attempted to counteract the Court's apparent message by writing a concurring opinion in which he said, "I write separately, however, to emphasize that today's decision should in no way be construed as a retreat from careful judicial scrutiny of prison conditions. . . ." (*Rhodes v. Chapman* (452 U.S. 353 [1981])). Whether the Court's decision in *Rhodes* constituted a "retreat from careful judicial scrutiny of prison conditions," as feared by Brennan, it certainly seemed to tell lower court judges to "go no farther than you have already gone" in identifying and protecting prisoners' rights.

During the 1980s, the Court's inclination to encourage increased judicial deference to correctional officials appeared in decisions addressing the definitions of and legal standards for protecting various specific rights for prisoners. In *Whitley v. Albers* (475 U.S. 312 [1986]), the Court examined an alleged eighth amendment violation for excessive use of force in which a prisoner was shot by correctional officers who were quelling a disturbance and attempting to free a hostage. The wounded prisoner was not involved in the disturbance and was attempting to run to his cell to stay out of the way of correctional officers entering the cellblock when a shotgun blast hit him in the legs and caused serious injuries. In determining the legal standard to apply when prisoners assert a constitutional claim of excessive use of force, the deeply divided Court concluded that prisoners must show that the force was used "maliciously and sadistically for the very purpose of causing harm" (pp. 320-321). This difficult-to-prove standard required prisoners to establish that the officers had a specific, unlawful intent in using force that caused injury. Such a standard gives correctional officials much more flexibility in the use of force than the four dissenters' preferred approach of looking for "unnecessary and wanton infliction of pain" without regard to the existence of a specific intent to cause harm.

In *O'Lone v. Estate of Shabazz* (482 U.S. 342 [1987]), the Court applied a deferential approach to the issue of prisoners' first amendment right to the free

exercise of religion. In *O'Lone*, Muslim prisoners on a work detail outside the prison wanted to return to the prison at midday on Friday for a weekly prayer service. They asserted that they possessed a constitutional right to participate in the religious service. A sharply divided Court rejected their claim and adopted a legal standard deferential to correctional officials' asserted interests in institutional security and efficient management. According to Chief Justice Rehnquist's majority opinion, "We have determined that prison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that applied to alleged infringements of fundamental constitutional rights [for people outside of prisons]" (p. 349). Again, the Court's approach gave correctional officials greater administrative flexibility and discretionary authority in the development of institutional policies and practices.

The trend in Supreme Court decisions limiting lower court judges' authority to intervene in prisons significantly affected eighth amendment conditions-of-confinement claims after *Wilson v. Seiter* (501 U.S. 294 [1991]). *Wilson* involved myriad claims about alleged unconstitutional conditions in an Ohio prison. The lawsuit alleged overcrowding, excessive noise, inadequate heating, unsanitary dining facilities, and other improper conditions. In rejecting these claims, a five-member majority opinion enunciated a new legal standard for judges to follow in evaluating eighth amendment claims. Justice Antonin Scalia's opinion for the Court concluded that determinations of unconstitutional conditions of confinement must rest on a finding that correctional officials were "deliberately indifferent" to the development and existence of inadequate conditions. In asserting the primacy of this subjective test, Scalia relied on precedents concerning medical care (*Estelle v. Gamble*) and excessive use of force (*Whitley v. Albers*). Strangely, Scalia did not emphasize the Court's precedents addressing conditions of confinement (*Hutto v. Finney*; *Rhodes v. Chapman*)—precedents that appeared to emphasize an objective evaluation of whether prison conditions constitute "wanton and unnecessary infliction of pain." After *Wilson*, prisoners were required to prove the intent of correctional officials in permitting poor prison conditions to develop. It was no longer adequate to merely establish the existence of conditions falling below standards for human habitation. Because it is difficult to prove intent, especially when correctional officials might assert that inadequate resources or factors other than their own "deliberate indifference" produced the challenged conditions, it became much more difficult for prisoners to provide sufficient evidence to justify remedial intervention by Federal judges.

The Court reinforced and clarified its subjective test for eighth amendment violations in *Farmer v. Brennan* (114 S. Ct. 1970 [1994]). Farmer was a transsexual male prisoner who "project[ed] feminine characteristics" and had attempted

to use hormone treatment and (unsuccessful) surgery to undertake an anatomical transformation from male to female to match his psychological gender identification. He was serving time in Federal prison for credit card fraud. Because of his prison disciplinary record, he was transferred to a high-security men's prison where he was allegedly beaten and raped. He sued under the eighth amendment, claiming that prison officials were deliberately indifferent to the physical threats he faced in a high-security prison population because they should have known that a transsexual prisoner who "project[s] feminine characteristics" was a likely target of sexual assaults when placed among violent offenders. In effect, Farmer's attorney argued for an objective test of "deliberate indifference" by urging the Court to hold prison officials liable for what a reasonable correctional administrator should have known about the risks in light of the available facts. The Court, however, rejected this argument and adopted a more difficult-to-prove, subjective test of "deliberate indifference." According to Justice David Souter's majority opinion (*Farmer v. Brennan* (114 S. Ct. 1979 [1994])):

[A] prison official cannot be found liable for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

In other words, prisoners bear a significant and specific burden of proof concerning prison officials' knowledge and intent in order to successfully assert eighth amendment claims.

In *Rufo v. Inmates of Suffolk County Jail* (502 U.S. 367 [1992]), the Court granted more flexibility to correctional officials wanting to challenge consent decrees. Massachusetts officials had entered into a consent decree intended to remedy constitutional deficiencies at the Suffolk County Jail in Boston. The consent decree included a provision for single-occupancy cells. However, the jail population's growth outstripped projections so that officials sought to have the consent decree modified to permit double occupancy. The Court rejected the lower court's requirement that officials demonstrate a "grievous wrong" to modify consent decrees. Instead, the Court said that consent decrees can be modified in institutional reform litigation when there is a significant change in the facts or law affecting the case.

Many correctional officials had long argued that consent decrees imposed unreasonable burdens because they could not be readily adjusted to account for changing circumstances or because they were the product of agreements made by departing correctional officials and governors who did not bear the burden

of fulfilling the continuing and arguably excessive requirements for compliance (Cripe 1990, 275). In *Rufo*, the Supreme Court took a step toward alleviating correctional officials' concerns, but, in the eyes of critics, this step came at the expense of judges' authority to maintain oversight of the implementation of reforms. Moreover, critics feared that the decision would encourage correctional officials to stall during the implementation phase of consent decrees with the knowledge that the changing environment of corrections would likely provide an eventual justification for seeking alteration of the decree.

The Court's decision in *Lewis v. Casey* (116 S. Ct. 2174 [1996]) limited the likelihood that Federal judges could order prisons to provide legal assistance and specific legal resources for prisoners seeking to prepare civil rights lawsuits and habeas corpus petitions. Under the doctrine established in *Bounds v. Smith* (430 U.S. 817 [1977]), prisons bore the obligation of providing prisoners with access to a law library or assistance from people trained in law to fulfill the prisoners' right of access to the courts. Because the sixth amendment right to counsel does not apply to prisoners' civil rights lawsuits (or to habeas corpus petitions), prisoners must generally prepare and present their own lawsuits alleging that correctional policies and practices violate their constitutional rights. Some prisoners may receive representation from civil rights organizations or prisoner advocacy groups, and a few prisoners may possess the resources to retain counsel. Most prisoners, however, are on their own and must proceed as *pro se* litigators. Although effective *pro se* litigation is extremely difficult for anyone (including a highly educated person) who lacks professional training in legal research and trial advocacy, it is virtually impossible for prisoners who are illiterate, mentally disabled, mentally ill, not fluent in English, or otherwise hindered by limitations that impede their ability to read, comprehend, and present legal arguments.

To address the difficulties faced by prisoners with special, identifiable limitations on their ability to utilize a law library, some Federal judges ordered State prisons to provide extra legal assistance (e.g., trained paralegals) for the benefit of these prisoners. Other judges closely scrutinized the policies and procedures of prison law libraries and issued orders designed to ensure that prisoners in administrative segregation, on death row, and in other special confinement settings had adequate access to materials from the prison law library. In *Lewis v. Casey*, the State of Arizona challenged a U.S. district judge's order specifying in minute detail the times that prison libraries were to be kept open, the number of hours each prisoner was entitled to use the library, the direct assistance by lawyers and paralegals to be provided to illiterate prisoners, and other aspects of the prison system's policies affecting prisoners' right of access to the courts. The U.S. Supreme Court rejected the district court order and criticized the district judge on several grounds: "fail[ing] to accord adequate deference to the

judgment of prison authorities,” issuing an order that was “inordinately—indeed, wildly—intrusive,” and developing an order through a process that “failed to give adequate consideration to the views of state prison authorities” (*Lewis v. Casey* (116 S. Ct. 2185 [1996])).

In addition, Justice Scalia’s majority opinion emphasized the need for prisoners to demonstrate an “actual injury” to have legal standing to challenge a prison’s policies concerning access to law libraries and legal assistance. Thus, district judges are not permitted to issue remedial orders concerning prisoners’ right of access to the courts unless prisoners can prove that prison policies have harmed their right in some concrete fashion. Although the concepts of “actual injury” and standing as the proper person to initiate a lawsuit are important in many areas of law, they potentially pose special problems when applied to prisoners’ right of access to the courts. For example, is an illiterate prisoner required to draft and successfully file in court a complaint alleging that he or she possesses literacy skills that are too inadequate to permit him or her to draft and file a complaint successfully? In the “catch-22” situation that appears to emerge from *Lewis v. Casey*, it would seem that only prisoners who are incapable of using law libraries have suffered an actual injury, yet their inability to use the law library would presumably prevent them from being able to demonstrate that injury to a court to seek a judicial remedy for the violation of their right of access to the courts. Although the ultimate consequences of *Lewis v. Casey* remain to be seen, the decision seems to provide an additional impediment for some prisoners who may want to file lawsuits alleging violations of constitutional rights within correctional institutions.

The Court’s opinion in *Lewis v. Casey* provides a strong, clear message that lower court judges should show deference to the judgment of prison authorities and that they should avoid imposing intrusive remedial orders. This message is far different from the messages conveyed by the Court’s decisions prior to 1979, in which the Justices endorsed and encouraged active judicial scrutiny of alleged rights violations in correctional institutions. By the late 1990s, the Court had clearly limited Federal judges’ authority to impose remedial orders and maintain consent decrees affecting the policies and practices at prisons and jails. Moreover, the Court had arguably reduced the scope of prisoners’ rights affecting religion, access to the courts, and conditions of confinement and thereby relaxed the requirements imposed on correctional administrators for maintaining compliance with constitutional standards.

The Court was not alone in decelerating judicial intervention in prisons. Congress also acted to limit the authority of Federal judges. Congress sought to limit the ability of Federal judges to intervene in prison operations as well as

the number of prisoner cases filed in the Federal courts. Federal judges had complained since the 1960s about the burdensome nature of the caseload of prisoners' filings. In fact, the growth of prisoners' cases was used as a justification for the creation of the office of the U.S. Magistrate Judge, a judicial officer who assists Federal district judges and, in many districts, specializes in evaluating prisoners' claims (Smith 1990; Seron 1985). Many legislative proposals to limit Federal judges' authority over prisoners' cases initially focused on habeas corpus petitions (Yackle 1993) but eventually also addressed prisoners' civil rights lawsuits. Although there was widespread criticism of Federal judges' involvement in prisons, Congress did not act until the 1990s. In 1994, a provision of the Violent Crime Control and Law Enforcement Act required individual prisoners to prove that crowded conditions violated their eighth amendment rights before Federal judges could order remedies for prison overcrowding (Call and Cole 1996). In other words, judges were not to reach a general conclusion that prison overcrowding was in violation of the eighth amendment. First, a prisoner needed to prove that the conditions produced by population pressures on the prison's capacity caused specific violations of that prisoner's eighth amendment rights.

The Prison Litigation Reform Act (PLRA) of 1996 took broader aim at judges' authority and prisoners' access to the courts. PLRA attempted to limit the remedial authority of Federal judges by requiring that prospective relief granted in prison cases "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right" (18 U.S.C. § 3626(a)(1)). The law required preliminary injunctive relief to be similarly narrow and, moreover, mandated that such injunctive relief would automatically expire after 90 days unless the court made findings that satisfied the requirements for prospective relief under PLRA. PLRA limited judges' ability to issue prisoner release orders as a means to combat prison overcrowding. Prisoner release orders can only be issued after "clear and convincing" evidence is presented to a special three-judge district court that crowding is the primary source of a Federal rights violation and that nothing other than the release of prisoners can remedy the violation. Congress also mandated that judicial orders in prisoner cases terminate after 2 years unless the court makes additional findings to justify the continuing necessity of the court-ordered relief. In addition, PLRA sought to limit and control Federal judges' use of special masters in prison reform cases by mandating both parties' involvement in the selection—and veto—of potential special masters and by requiring such special masters to receive compensation from the court's budget rather than from the State's department of corrections (Solano 1997).

With respect to prisoners' access to the courts, PLRA made it more difficult for prisoners to have filing fees waived by requiring partial payments and extended-time payments from their prison account. Moreover, prisoners who have had three civil rights lawsuits previously dismissed as "frivolous, malicious, or fail[ing] to state a claim" are barred from filing any more civil rights actions unless they are under "imminent danger of serious physical injury" (28 U.S.C. § 1915(g)). Frivolous lawsuits typically are defined as those dismissed for deficiencies in the definition of the legal claim or for allegations based on an inappropriate factual situation rather than for asserting a contrived or imaginary grievance (Fradella 1998). For example, a prisoner may complain of genuine discomfort when a prison doctor prescribes only aspirin for a painful skin rash, yet such incomplete medical treatment would not violate the limited constitutional right against correctional officials' deliberate indifference to medical needs. In effect, Congress increased the cost to prisoners of filing lawsuits over alleged rights violations in prisons. Prisoners must use their own financial resources, no matter how modest, to initiate the case, and each case filed poses a risk that it will effectively "use up" one of the finite opportunities available for individual prisoners to raise rights claims not based on a risk of serious physical injury. Although the initial litigation concerning PLRA caused confusion as courts struggled to interpret the statute (Bennett and del Carmen 1997), presumably the new rules imposed by PLRA will ultimately deter some prisoners from filing cases that they would have previously submitted for consideration by a Federal court. Indeed, in the year following implementation of PLRA's new requirements, the Federal district courts experienced a drop in prisoners' civil rights lawsuits despite the continued growth in the number of potential claimants committed to incarceration (Administrative Offices of the U.S. Courts 1998, 1999).

Except for the decline in prisoner civil rights lawsuits, the specific consequences of PLRA are still developing and have not been studied systematically. Comments from States' assistant attorneys general responsible for defending against prisoners' lawsuits provide early anecdotal evidence that PLRA is substantially fulfilling congressional intentions.¹ State's attorneys note significant declines in prisoner civil rights lawsuits but observe that those cases that survive initial dismissal often involve complex issues that require significant defense efforts on their part. States have succeeded in employing PLRA to terminate consent decrees. Such terminations can be easier when new judges have no vested interest in protecting the judicial interventions in corrections undertaken by their predecessors. Some attorneys perceive that judges are reluctant to intervene with formal judicial orders in corrections because PLRA's sunset provisions limit the duration of orders and require new presentations of proof

to maintain judicial supervision. Thus, some judges increasingly push for and facilitate private settlements between prisoner-claimants and the State instead of imposing judicial orders and consent decrees of the sort limited by PLRA.

As PLRA pushes prisoners to seek alternative means to raise claims that previously would have been filed in Federal courts, there can be increases in complaints filed under institutional grievance procedures. Some prisoners try to develop creative ways to present their constitutional claims through habeas corpus petitions. Others attempt to file their claims in State courts. However, the State court alternative is increasingly less available, as State legislatures have emulated Congress in enacting statutes to limit prisoners' opportunities to file civil rights lawsuits. For example, under Georgia's Prisoner Litigation Reform Act of 1996, prisoners who cannot pay filing fees have their inmate accounts frozen, and all moneys deposited in those accounts must be forwarded to the clerk of courts until the filing fees are fully paid. Moreover, the Georgia statute imposes a fine amounting to 50 percent of the prisoner's inmate account for filing a false or malicious claim, delaying judicial proceedings, providing false evidence, or abusing the discovery process. The payment of past due court costs and fees can become a condition for parole eligibility, thus making Georgia prisoners think long and hard before filing civil rights cases in State court (Georgia Code, §§ 42-12-4 and 42-12-7). Similarly, other States, such as Michigan and Florida, have statutes that emulate PLRA by imposing greater burdens on prisoner-claimants for filing fees and court costs. Initial experience with PLRA and State laws indicates that trial courts may vary in their diligence in ensuring that inmate account records are carefully checked before indigency status is granted and filing fees are waived.

Feeley and Rubin (1998, 383) argue that Congress' actions merely validated rather than counteracted the impact of Federal courts on correctional institutions' policies and practices. In their study of prison litigation, they conclude that Federal legislation went no further than the Court had already gone in limiting Federal judges' authority over prison litigation. Moreover, they note that Congress did not act until after courts no longer needed to be controlled because the most significant constitutional problems in prisons had already been remedied and judges less frequently found themselves issuing orders affecting the daily operations of correctional institutions. Although Feeley and Rubin's retrospective assessment of Federal legislation may accurately describe the established impact and systemic acceptance of the consequences of judicial intervention, it should be noted that PLRA remains an impediment to judicial intervention if developments in the environment of corrections produce circumstances in which claimants seek to raise new constitutional issues.

The actual level of judicial activity affecting corrections will depend heavily on two important factors: the state of the laws governing corrections and developments affecting the environment of corrections.

The overall deceleration of judicial intervention in prisons stemmed from Supreme Court decisions limiting judges' authority and opportunities to identify rights violations and impose remedies. Congress reinforced the Court's actions by formalizing limitations on Federal judges through statutes enacted in the 1990s. Whereas these institutional responses to two decades of prisoner litigation were important as limiting factors, judicial intervention also slowed because much had already been accomplished through the litigation processes initiated in the 1960s, 1970s, and 1980s. Judges and correctional administrators used their influence to push legislators to provide sufficient resources to permit prisons and jails to achieve minimum constitutional standards for conditions and practices. In addition, because of the difficult and protracted nature of

prison litigation, many judges sought ways to limit their own involvement in developing and implementing remedies. Instead of issuing detailed orders about myriad aspects of correctional conditions and practices, these judges came to prefer a more restrained role in which they merely identified unconstitutional conditions that must be remedied. The judges then required correctional officials to develop their own remedies under the court's supervision. In effect, the judge could employ an interactive process involving pressure and negotiations to push officials to develop and implement feasible solutions to the problems identified through the litigation process. As the constitutional problems presented to judges became less frequently egregious and systemic, there was less need for judges to scrutinize, monitor, and control various aspects of prison operations. Thus, prisoner litigation continued through the 1990s, but it often was focused on narrower issues and involved less intrusive judicial action than the systemwide institutional reform cases undertaken in the 1970s and 1980s.

The Posttransformation Era in Correctional Reform

Prisoner litigation from the 1960s through the 1980s contributed to significant changes in the policies and practices of correctional institutions. Not all of these changes are attributable to judicial decisions because the professionalization of correctional administration produced a new breed of prison manager who sought to introduce American Correctional Association (ACA)-based and other national standards for governing prisons and jails. Although judges cannot claim credit (or garner blame) for all reforms that occurred, reforms not

attributable to judicial action occurred in the shadow of litigation. The threat of judicial action prodded legislators to act when pushed by correctional officials. In addition, correctional officials could use litigation processes to introduce their own ideas about reform, either by informally advising and supplying information to judges or by formally submitting proposals for consent decrees and suggestions for feasible judicial orders. The actions undertaken by judges and correctional officials transformed American corrections. In some States, correctional institutions were literally remade into new entities by shifting from plantation-style organizations that relied on minimal public expenditures and significant prisoner labor to secure and professionally staffed facilities that emphasize custody and prisoner programs (Feeley and Rubin 1998, 367). In other instances, the transformation was less apparent because institutional organization did not seem to change. However, transformation did occur in these institutions because of the intrusion of legal norms and court-mandated minimum standards for conditions and procedures. Instead of vesting nearly unlimited power in the discretionary commands of wardens and correctional officers, judicial intervention pushed institutions to develop policies, procedures, and training that cover nearly every aspect of prison management—from food quality and preparation to disciplinary procedures and use of force. From the 1960s onward, prisons were transformed into bureaucratic institutions governed by formal rules and professional management principles.

The establishment of minimum standards, professional policies and practices, and significant changes in organization and authority has not eliminated the possibility of further judicial impacts on correctional management. The courts remain available as a forum for the pursuit of grievances. The nature and likelihood of judicial intervention have changed as a result of the transformative developments in corrections, the Court's new orientation toward judicial intervention in corrections, and the political reactions resulting in legislative limitations on Federal judges and prisoner-litigants. However, the litigation process remains available as a familiar avenue for seeking reform, and section 1983 still provides a vehicle for asserting constitutional violations claims through that process. The actual level of judicial activity affecting corrections will depend heavily on two important factors: the state of the laws governing corrections and developments affecting the environment of corrections.

State of the laws

As detailed in prior sections of this paper, the Court's decisions have halted further movement toward broadening the definitions of prisoners' constitutional rights. The Court has not eliminated the rights developed during the 1960s and 1970s. Instead, it has narrowed the contours of those rights and made it more

difficult for prisoners to prove that their rights have been violated. The Court's decisions have, in effect, stabilized the legal expectations and diminished the judicial pressures imposed on correctional administrators. Barring significant changes in the Supreme Court's composition, correctional administrators have no reason to fear that the Federal judiciary will impose unexpected new rules for them to follow. With respect to constitutional law, corrections has reached a point of relatively stable standards and expectations. Correctional officials can rely on the current stability in legal standards to develop policies, practices, and staff training that fulfill institutional obligations for achieving the goals of corrections while respecting the recognized constitutional protections possessed by prisoners.

The fact that correctional officials have little reason to fear the imposition of new constitutional standards does not mean that they can ignore the threat of judicial action that will hold them accountable for standards and practices within their institutions. In other words, the relaxation of Federal judicial standards and scrutiny over corrections should not be misperceived as a complete withdrawal of judicial authority or abdication of judicial responsibility. The Court has clarified constitutional rights in a fashion favorable to correctional officials, thereby making it more difficult for prisoners to allege and prove the existence of constitutional rights violations. However, section 1983 remains viable and available as a mechanism for judicial intervention that will hold correctional officials accountable for constitutional rights violations, especially if those violations result in injuries, health damage, or death.

Research indicates that police executives are more concerned about the risk of expensive jury verdicts in civil rights lawsuits impacting their departments than about the possibility that the Court's decisions will impose new constitutional requirements on their policies and practices (Smith and Hurst 1997). Although correctional officials' perceptions about legal threats have not been studied in a comparable fashion, sheriffs and local jail administrators have every reason to share the same fears as police executives. If they use excessive force or otherwise violate the rights of detainees, they face the prospect of significant jury verdicts, including millions of dollars in awards, through section 1983 litigation. For example, a Federal court jury in Michigan awarded \$13 million to the family of a man who died in custody at the Lansing City Jail (Martin 1998). Such awards can impose significant costs on local taxpayers when juries impose liability at levels that exceed a municipality's insurance coverage. The imposition of such costs can lead to significant political backlash against responsible officials, especially when budget cuts or tax increases are required to pay the judgment. Moreover, such cases can also expose correctional officials to the risk of personal liability if they are not indemnified by their employer.

State correctional officials may have less reason to fear the threat of successful lawsuits. When such officials are indemnified, they are represented by the State's attorneys and the State pays any judgment. Individual adverse judgments have less impact on State governments because they can be paid from a larger budget and, in effect, the financial burden can be spread among taxpayers across the State.

The fact that administrators in State prisons may have less reason to fear litigation does not mean that they are free to ignore the threat of legal action. If prisoners' allegations are supported by sufficient evidence to avoid dismissal in the early stages of litigation, the litigation process itself begins to impose costs on the correctional institution. Administrators and staff members will be called to sit for depositions and answer interrogatories as part of the pretrial discovery process. If the case proceeds to trial, institutional staffing will be affected by the need for personnel to appear in court as witnesses. Moreover, correctional administrators are accountable to officials in centralized State correctional departments. The State officials' assessments of the causes of the litigation may adversely affect institutional managers' prospects for promotions and favorable performance reviews.

Thus, the threat of judicial intervention continues to exist and place limits on the range of decisions and actions correctional officials are permitted to undertake. Because of the relative stability and clarity in constitutional standards, the most significant threat that deters abusive behavior and standards violations by correctional officials may have shifted from judges, who previously intervened in prison management, to the sometimes unpredictable jurors in civil rights lawsuits. This threat is most significant in cases concerning physical injuries or damage to prisoners' health.

The threat of adverse jury verdicts depends on the continued existence of constitutional standards defining rights for incarcerated individuals. Shifts in the Supreme Court's composition could disrupt the recent doctrinal trends toward stable standards favoring judicial deference to correctional administrators' decisions about policies and practices. Because several of the Court's cases narrowing the scope of prisoners' rights and placing greater burdens on prisoner-litigants involved divisions among the Justices concerning the appropriate reasoning and constitutional standards (e.g., *Wilson v. Seiter*; *O'Lone v. Estate of Shabazz*), it is possible that changes in the Court's composition will lead to broadened rights and increased expectations and standards for correctional institutions. Advocates for prisoners will continue to develop constitutional arguments for new bases of judicial protection for incarcerated individuals, such as the recent argument that institutional toleration of sexual harassment

by male prisoners against other male prisoners should constitute a violation of the eighth amendment (Robertson 1999). Alternatively, it is also possible that changes in the Court's composition could lead to a further diminution of the rights of incarcerated individuals. This alternative is particularly intriguing because two of the Court's youngest Justices, Clarence Thomas and Antonin Scalia, who presumably may remain on the Court for several decades, strongly advocate significant reductions in constitutional protections for prisoners. If they should be joined by at least three like-minded newcomers on the Court, the possibility exists that bases for judicial supervision and lawsuits, especially with respect to the eighth amendment, may be eliminated entirely.

By relying on an original intent approach to constitutional interpretation, Justice Thomas, joined by Justice Scalia, has indicated that the eighth amendment does not apply to conditions and practices in prisons. They argue, in effect, that the eighth amendment prohibition on cruel and unusual punishment applies to the sentence announced by the judge in court but not to the conditions under which the sentence is carried out. According to Thomas, "The text and history of the Eighth Amendment, together with *pre-Estelle* [*v. Gamble*] precedent, raise substantial doubt in my mind that the Eighth Amendment proscribes a prison deprivation that is not inflicted as part of the sentence" (*Helling v. McKinney* (133 S. Ct. 2475, 2485 [1993] [Thomas, J., dissenting])). If the Thomas-Scalia interpretation of the eighth amendment had prevailed throughout the 20th century, lower Federal judges would have had no basis for intervening to change conditions in correctional institutions even when those conditions fell below established public health standards for human habitability.

Thomas also advocates the narrowest possible definition of prisoners' right of access to the courts. Thomas believes that correctional officials cannot prevent prisoners from mailing letters to the court. He does not believe, however, that correctional officials must provide law libraries or even pencils and paper as part of a broader right of access to the courts. In Thomas' words, "That right . . . is a right not to be arbitrarily prevented from lodging a claimed violation of a federal right in a federal court. . . . There is no basis in history or tradition for the proposition that the State's constitutional obligation is any broader" (*Lewis v. Casey* (116 S. Ct. 2174, 2195 [1996] [Thomas, J., concurring])). If Thomas were to gain additional votes to support his positions, there might be significant reductions in the level of constitutional protections for incarcerated individuals, both because of the withdrawal of eighth amendment rights and because of the risk that prisoners would no longer have access to the legal resources necessary for the preparation of legal claims. A shift in favor of Thomas' perspective would not necessarily reduce legal protections in all prisons, because current practices and standards may have become so thoroughly institutionalized that

administrators would continue to employ them even if they were not constitutionally obligated to do so. However, if administrators were to face choices about resource allocations, even institutionalized practices may subside when, for example, money currently spent on the maintenance of an up-to-date law library is shifted to another purpose because the courts cease to insist that the law library be maintained to meet specific standards. Such developments depend on either a change in the Court's composition or changes in the decisionmaking patterns of Justices who currently do not agree with Thomas. Thus, it is uncertain whether law and policy will ever move in this direction.

As indicated by the foregoing discussion, the Court currently treats constitutional law concerning corrections as relatively settled, stable, and oriented toward correctional managers' interest in emphasizing order, security, and administrative efficiency. Although the Court's actions effectively limit the potential for Federal judges to intervene in prisons in the name of constitutional rights, there are several other bases for judicial intervention that may have continuing impacts on correctional institutions: (1) legal actions for application to the correctional context of statutes enacted to address issues outside of corrections, (2) legal actions to force correctional officials to obey their States' laws and their own policies and procedures, and (3) legal actions based on State constitutions and statutes.

Prisoners will continue to initiate legal actions to ask judges to apply statutory rights and privileges for the benefit of incarcerated individuals, even if the statutes in question were not enacted with prisoners specifically in mind. For example, in 1998, the Court decided in *Pennsylvania Department of Corrections v. Yeskey* (118 S. Ct. 1708 [1998]) that the Federal Americans With Disabilities Act (ADA) included coverage for prisoners who, like other people with disabilities, cannot be excluded from governmental programs because of their disabilities. In the case in question, because of his high blood pressure, Yeskey was denied entry into a prison boot camp that might have facilitated an accelerated release from custody. The Court said that ADA's requirements applied to prisoners because the statute clearly covered State governments without providing any exclusion for State departments of corrections. The Court's decision was unanimous and, moreover, was written by Justice Scalia, one of the Justices most active in seeking to limit the scope of recognized legal protections for incarcerated individuals. However, because of the clarity of the statutory language, Scalia and Thomas joined the other Justices in applying the legislation to prisoners.

Other kinds of statutes may also provide opportunities for similar judicial impacts on correctional policies and practices. In the wake of the Court's invalidation in 1997 of the Federal Religious Freedom Restoration Act (*City of*

Boerne v. Flores (117 S. Ct. 2157 [1997])), a statute intended to limit the ability of governments to implement laws and policies that interfere with the free exercise of religion, many State legislatures have considered enacting their own statutes to protect free exercise of religion (Guest 1997). The Federal statute included protections for prisoners, so it is likely that courts will be called upon to examine State religious freedom statutes unless those statutes explicitly exclude correctional contexts from their coverage. With respect to the free exercise of religion, States are likely to self-consciously consider whether to provide statutory protections to prisoners because of their own experiences in dealing with the now-defunct Federal statute. However, the example helps to illustrate that there may be other kinds of statutory enactments at the Federal and State levels to provide unanticipated opportunities for prisoners to seek judicial assistance in applying the statutes to correctional institutions.

Opportunities always exist for prisoners to seek judicial orders to force correctional officials to obey State statutes and department regulations. If, for example, regulations promulgated by a department of corrections require that certain procedural steps occur in prison disciplinary processes and officials in one institution omit a step, the prisoner may seek to have the institutional officials comply with the regulations. Prisoners may be forced to exhaust administrative appeals processes before they can seek judicial action, but the threat of judicial intervention hangs over each situation and provides a source of pressure to encourage correctional officials to obey relevant laws and regulations. Because prisons were transformed into bureaucratic institutions as a result of judicial intervention and professionalization trends during the 1960s, 1970s, and 1980s, staff members in prisons and jails are responsible for knowing and adhering to many rules and regulations. Policies and procedures manuals in prisons often are so thick and detailed that it would be nearly impossible for most personnel to memorize and comprehend the nuances of every rule. Thus, it is inevitable that situations arise in which prisoners seek to force correctional personnel to comply with departmental regulations and institutional rules. Challenges to compliance by prisoners may be based on either intentional omissions or inadvertent oversights on the part of personnel. Prisoner challenges may also arise when there are disputes about how to interpret and apply statutes and rules in corrections.

Litigation based on State constitutions and statutes may provide an avenue for judicial intervention even as Federal judges appear less likely to utilize constitutional claims as the basis for issuing orders affecting prisons and jails. As the Court in the 1970s and 1980s became less receptive to all kinds of constitutional rights claims, not just those concerning prisoners, civil rights lawyers increasingly explored possibilities for using State court litigation as a means

to vindicate individuals' rights. State constitutions often contain different provisions than those in the U.S. Constitution. Moreover, State supreme courts frequently interpret their constitutions' provisions differently than the U.S. Supreme Court's interpretations of parallel provisions in the U.S. Constitution. Thus, the potential for interventions in corrections by State judges depends on the particular legal language and case precedents applicable within each State. Hypothetically, the potential for State court litigation concerning correctional issues may also be affected by the structure of State court systems, particularly the electoral accountability applied to elected State judges, who may be less willing than life-tenured Federal judges to apply judicial power in controversial circumstances on behalf of unpopular litigants. Moreover, because State governments feel burdened by prisoner litigation, there is a significant likelihood that State legislatures will act to limit opportunities for such litigation in State courts, especially if legislators perceive State judges as being increasingly receptive to prisoners' lawsuits. For example, the Michigan legislature in 1999 considered several bills modeled on the Federal PLRA that were proposed with the intention of limiting the number and nature of legal actions that could be filed in State courts by prisoners (Johnson 1999).

Developments affecting the environment of corrections

The most notable development affecting the environment of corrections is the continuing increase in prison populations. In 1979, at the moment when the Court began to decelerate Federal judicial intervention in corrections with its decision in *Bell v. Wolfish*, there were 301,470 convicted offenders incarcerated in Federal and State prisons (Maguire and Pastore 1998, table 6.35). By June 30, 1998, that number had grown exponentially to 1,210,034 (Gilliard 1999, 1). The 1998 figure represented a 4.8-percent increase over the total from 12 months earlier, and only the District of Columbia and three States (Idaho, Massachusetts, and Wyoming) failed to increase their prison populations between midyear 1997 and midyear 1998. Moreover, jails showed a 4.5-percent annual increase in their populations, for a total of 592,462 inmates. Thus, 1.8 million people were in custody in prisons and jails when the midyear census was conducted in 1998 (Gilliard 1999). These increases are generally attributed to increased severity in sentencing beginning in the 1980s, especially because prison populations continued to increase even as crime rates for many serious offenses decreased during the 1990s.

Rising prison and jail populations automatically increase the prospects for litigation because there are more potential litigants interacting daily with correctional personnel and more potential moments in which disputes can develop

about whether constitutional and statutory protections are being maintained. The potential for litigation is even greater because governments' efforts to build and expand correctional facilities have not kept pace with the growth in inmate populations. The Bureau of Justice Statistics reported that, as of December 31, 1997, "State prisons were operating at between 15 [percent] and 24 [percent] above capacity, while Federal prisons were operating at 19 [percent] above capacity" (U.S. Department of Justice 1999). Overcrowding increases the potential for conflicts between prisoners and for greater difficulties in maintaining order and security. As a result, there is a risk of lawsuits against correctional institutions for injuries suffered by prisoners at the hands of other prisoners because the law imposes obligations on correctional officials to maintain order and keep prisoners safe and healthy. There is also a risk that a tense environment and overtaxed resources will lead correctional personnel to "cut corners" on policies and procedures and otherwise overreact (or underreact) under pressure in their efforts to maintain order and ensure the safety of themselves and others.

The environment of correctional institutions imposes inherent difficulties and pressures upon staff. There is an ever-present (albeit not necessarily highly probable) threat of attack. There is the constant challenge of maintaining cooperation from and control over a difficult "clientele," among whom are people who lack self-control, suffer from mental illnesses that affect their behavior, or perceive few incentives to cooperate with the institutional goal of establishing order and security. These pressures may mount significantly when institutions operate above capacity. The risk of conflict is well illustrated by the testimony of Georgia correctional officer Ray McWhorter in a lawsuit alleging that correctional officials attacked and brutally beat prisoners at the behest of top officials from the State department of corrections:

We have put up with a lot. In the years I have been working, I have been spit at. I have had urine thrown on me. I have been kicked. I have been punched. When you are dealing with that over and over and over and you are trying to restrain yourself year after year, and all of a sudden they are saying "Get them, boys," well, hell, you go in there and you get them.
(Bragg 1997)

Because overcrowding can increase conflicts among prisoners and between prisoners and staff, the continuing expansion of prison and jail populations beyond institutional capacity creates an environment with the potential for litigation that will lead judges and juries to make judgments about the fulfillment of legal standards in the management of correctional institutions. In addition, scholars who studied the initial impacts of Supreme Court decisions and congressional legislation designed to limit Federal judicial authority concluded that

changes in the law had not stopped Federal district judges from looking closely at prison overcrowding (Call and Cole 1996; Call 1995).

Changes in the composition of prison populations may also provide a basis for litigation and judicial intervention. For example, rising numbers of women sentenced to incarceration increase the risks of claims alleging sexual abuse and assault, denial of proper medical care, and other issues that arise in women's prisons, especially when a majority of correctional officers are men (Collins 1997; Amnesty International 1999).

In another example, the deinstitutionalization movement in mental health led to the closing of many facilities that traditionally housed people with mental illnesses. Coinciding with cutbacks in mental health facilities and services in some jurisdictions has been an increase in the number of mentally ill people held in jails and prisons. In some States, county jails detain mentally ill people who have committed no crimes but are merely behaving strangely or waiting for a bed to become available at a mental hospital (Saul 1997). After Michigan shut down six hospitals serving the mentally ill in the early 1990s, the State prison system experienced a 23-percent increase between 1993 and 1997 in inmates who were formerly mental patients, a growth rate more than double the 11-percent rate for the prison population generally (Hornbeck 1997). An increase in inmates with special needs, especially in small county jails that are particularly ill-equipped to provide special resources or programs, increases the risk that these inmates will cause conflicts or be harmed in circumstances that could generate litigation.

Similarly, institutional responses to other demographic developments in prison populations, such as changing racial and ethnic compositions that have exacerbated racial tensions and problems with ethnicity-based gangs, may produce litigation on equal protection grounds or raise due process concerns when policies call for swift institutional intervention to preempt threats and conflicts within a prison's population. There are many projections being discussed about how the country's ethnic and racial composition will evolve to produce a white minority by the mid-21st century. Changes in the general population are likely to produce changes in the demographic composition of prison populations. New circumstances and conflicts produced by them and the institutional responses to them may create opportunities for litigation and judicial intervention.

Two elements that may have counter-vailing impacts on the prospects for litigation and judicial intervention are the institutionalization of standard policies and procedures and the systematic training of correctional personnel.

Two elements that may have countervailing impacts on the prospects for litigation and judicial intervention are the institutionalization of standard policies and procedures and the systematic training of correctional personnel. Judicial intervention and trends in professionalization since the 1960s have turned correctional institutions into bureaucracies permeated by the influence of legal norms (Jacobs 1977). Institutions need well-developed and clear policies to diminish the risk that staff will violate prisoners' rights or otherwise fail to comply with legal requirements imposed on correctional management. The existence of up-to-date written policies helps to protect State correctional officials' qualified immunity from civil rights lawsuits in cases alleging that correctional officers violated constitutional rights about which the officials should have known. Without the existence of written policies, correctional officials are at greater risk of violating and being found liable for the violation of prisoners' constitutional rights. Thus, State departments of corrections, county jails, and individual State prisons typically have thick policy manuals detailing the proper procedures for a wide range of predictable circumstances that may arise. The development of standards and policies has been guided and assisted by ACA, the American Jail Association, the U.S. Department of Justice, and other organizational entities that disseminate publications concerning research, standards, and model policies (see, e.g., Lauen 1997; American Correctional Association 1993, 1991).

Policy manuals provide guidance to correctional staff and help establish the expectations of both staff and prisoners about the rights of the incarcerated population and the obligations of institutional personnel. These policies are shaped by legal requirements drawn from court decisions and relevant statutes and regulations. As a result, policies about body cavity searches, the use of force, and other issues can direct correctional personnel to conform to the requirements of the law. The policies help establish routines of behavior that enhance order and security while reducing the risk that prisoners will be subjected to excessively arbitrary treatment. The policy-mandated routinization of body frisks and cell searches, for example, can diminish the potential perception that officers wield their search authority arbitrarily or for the purpose of harassing inmates. Well-developed policies also help diminish the risk that staff members will make inappropriate or uninformed discretionary judgments about how to deal with specific situations that may arise. Moreover, the establishment and routinization of policies based on existing legal standards may serve to keep those standards in place even if subsequent judicial decisions and statutory enactments reduce the scope of legal protections for prisoners and thereby permit a wider range of restrictive, discretionary practices by correctional officials. Unless there are specific resource utilization gains or other foreseeable benefits from changing policies, institutions may simply keep in place practices

that are familiar and effective even when those precise practices are no longer legally required. Depending on the nature of the policies and practices at issue, the risk of upheaval and uncertainty from changing established routines may be more undesirable than the thought that prisoners are receiving more extensive protections than those required by law.

The existence of written policies does not immunize correctional officials against civil rights litigation. Policy manuals are often so extensive and detailed that it is difficult to know, let alone understand, their entire contents. Thus, correctional administrators have a great incentive to train and retrain staff members about existing policies and procedures. Moreover, the failure to train staff properly is a recognized basis for finding a local government agency, such as a county jail, liable for constitutional rights violations by its officers (*City of Canton v. Harris* (489 U.S. 378 [1989])). The institutionalization of systematic training helps to alleviate the risk that actions taken by correctional staff will violate legal standards and produce litigation.

There are questions, however, about the extent to which various jurisdictions have developed and fully implemented training programs. It was not until 1999, for example, that the Mississippi legislature sought to require extensive training for all correctional personnel to reduce correctional agencies' exposure to the risk of lawsuits (*Corrections Digest* 1999c). Training for jail personnel may be especially problematic because its existence and content are often under the control of county sheriffs who emphasize law enforcement rather than correctional responsibilities. Some sheriffs may place newly hired people on jail duty for on-the-job training while they await the opportunity to become deputies with road patrol responsibilities (Kerle 1998). Inadequate training can create situations that could subsequently invite litigation.

Obviously, the existence of policies and training does not guarantee that correctional officials will properly respect legal protections for prisoners. Personnel training must be reinforced by effective supervision and accountability mechanisms. If there are inadequate supervision procedures or deficiencies in the recruitment and selection of correctional personnel, then high-quality training will have limited effectiveness in preventing situations that produce litigation and the prospect of judicial intervention.

An additional element of concern is the extent to which the penal harm philosophy may become incorporated into the daily decisions and actions of correctional personnel. As Clear (1994) discussed, many aspects of criminal punishment since the 1970s have moved beyond such limited goals as incapacitative custody and retributive loss of liberty to compound punishments of offenders by inflicting additional pain and discomfort. In corrections, the penal

harm philosophy may affect not only the length of sentences and conditions of confinement, but also the attitudes and actions of correctional personnel in their daily interactions with prisoners. Recent research documenting the extent to which medical personnel in corrections manifest the penal harm philosophy, which diminishes their concern for the quality of medical care provided to and the amount of pain experienced by prisoners, illuminates the risk that staff members' attitudes may counteract the intentions of policies and training and thereby produce situations that generate litigation (Vaughn and Smith 1999).

Increasing prison populations have led Federal and State governments to build new correctional institutions. From 1990 to 1995, for example, States opened 168 new correctional facilities and the Federal Government added 45 facilities (Stephan 1997, 1). The creation of new facilities to hold steadily increasing inmate populations necessarily requires the addition of new personnel. By 1995, there were 347,320 staff members employed at Federal and State correc-

Although judicial intervention in corrections is usually discussed in terms of prisoner litigation, future judicial decisions affecting correctional management may increasingly concern legal issues initiated by institutional personnel.

tional facilities, including 220,892 custody/security personnel whose jobs are devoted solely to maintaining order within institutions (Maguire and Pastore 1998, table 1.74). Because the healthy economy and employment rates of the 1990s created a relative abundance of job opportunities in some regions, there are risks that correctional departments may not have been positioned to be as thorough and selective as they wanted to be in screening and hiring personnel to staff new facilities. In addition, quick infusions of new personnel, especially in custody/security positions, can dilute the average levels of experience possessed by the officers in direct daily contact with prisoners. Because correctional officers, like other "street-level bureaucrats" carrying out rules and policies in difficult environments, must learn to be effective through on-the-job experience, an increase in newcomers may increase the risk of errors in judgment and inadvertent (or intentional) rule violations

that produce conflict and the potential for litigation. If any departments of corrections are forced to lower their hiring standards or are unable to screen applicants thoroughly amid the pressure to find and train new staff quickly, these risks may be exacerbated.

The problems of hiring new personnel are illustrated by the situation in Texas in 1999. The rapid expansion in the number of Texas prisons, along with the favorable economy, made it difficult for the State to recruit and retain person-

nel. In fact, the State reportedly lowered its hiring qualifications and shortened training to combat staff shortages. As a result, more than 40 percent of Texas correctional personnel had less than 3 years of experience (*Corrections Digest* 1999f). The difficulties involved in properly hiring and training staff may produce problems that spawn litigation and judicial scrutiny. This problem is especially troubling in light of the increasing range and sophistication of responsibilities of correctional officers. Effective officers need comprehensive knowledge of law, policies, procedures, and new technologies in addition to skills in interpersonal communication and psychology (Josi and Sechrest 1998).

The growing numbers of correctional personnel also increase the likelihood of judicial interventions initiated by staff members seeking to challenge the nature or application of rules and regulations affecting employees. In the difficult and pressure-filled workplace environment within correctional institutions, staff members may want to challenge regulations affecting their working conditions, such as institutional rules concerning searches and disciplinary procedures aimed at employees (see, e.g., Associated Press Wire Service 1998) or the inadequacy of safety equipment and procedures (*Corrections Digest* 1999d).

The special requirements of correctional occupations also may produce conflicts that could lead to litigation. For example, male correctional officers who belong to religions that expect men to grow beards may find their religious practices in conflict with institutional rules requiring officers to be clean shaven so that gas masks fit properly (Schneider 1995). In addition, the influx of female correctional personnel—who numbered 100,659 in 1995, including 41,857 custody/security officers—increases the likelihood of legal actions concerning employment discrimination and workplace sexual harassment. For example, if correctional institutions impose limitations on female officers' authority to search male prisoners or supervise their living quarters and shower areas, there are risks that those limitations will be challenged in court as impediments to equal employment opportunity (Bennett 1995). Although judicial intervention in corrections is usually discussed in terms of prisoner litigation, future judicial decisions affecting correctional management may increasingly concern legal issues initiated by institutional personnel.

New strategic or technological innovations can provide a source of litigation that invites judicial scrutiny of correctional practices and procedures. The remote-controlled REACT (Remote Electronically Activated Control Technology) stun belt, for example, which delivers 50,000 volts of electricity at the push of a button to prisoners being transported to court and elsewhere, is reportedly used by 25 State departments of corrections and 100 counties across the country. As a result of its use on a jail inmate who interrupted a judge during a sentencing hearing, it became the subject of a lawsuit (Canto 1998). Some future

innovations may merely be efforts to return to past practices that appeal to the public's perceived desire to punish in harsh or specialized ways. Thus, there has been talk in recent years of a return to corporal punishment as a criminal sanction. In another example, Alabama's rediscovery in the 1990s of the practice of shackling prisoners outdoors to an iron bar was barred after a legal challenge because of testimony indicating that the prisoners suffered pain and were not given proper access to drinking water and sanitation facilities (Southern Poverty Law Center 1997). As innovations in devices and techniques to control prisoners are developed, it seems likely that they will face eighth amendment challenges in court if they inflict physical pain or excessive psychological harm.

Technological innovations may also face challenges from correctional personnel. The development of new search technology, such as electronic drug detectors that identify particle traces of narcotics on clothing, will undoubtedly produce litigation when applied against correctional officers who may claim that the devices made erroneous readings or that the particles came from inadvertent contact with other people's clothing (Penn 1997). Similarly, opportunities for judicial intervention will emerge from the application of new technologies to prison visitors. There are already controversies about prison systems that require certain visitors to submit to x-ray-based devices to detect the presence of weapons and other contraband. Because exposure to x-ray radiation may be harmful to people's health, especially if the machine malfunctions or if the visitors are especially vulnerable because of pregnancy or other medical conditions, there is a basis for initiating legal challenges. It is difficult to predict what new technologies will emerge and how they will be used, but it is relatively easy to anticipate that some applications of new technologies will be challenged in court by prisoners, correctional personnel, and prison visitors.

Another development affecting the potential for litigation and judicial intervention in corrections is the operation of private prisons. By the end of 1997, private correctional facilities existed in 30 States and held more than 60,000 prisoners (Maguire and Pastore 1998, tables 1.77, 1.78). Additional facilities continue to be built as various State and local jurisdictions utilize this private-sector option for handling burgeoning prison and jail populations. These facilities are obligated to fulfill legal standards concerning the treatment of and living standards for prisoners. Because they are privately managed and necessarily emphasize cost-effective policies and practices to enhance profitability, there are risks that their policies and practices based on these priorities may be a source of new litigation and judicial scrutiny. In addition, opening new facilities and hiring new staff without the professional experience and supportive infrastructure of a State department of corrections may pose additional risks of problems that will produce litigation.

Some private facilities have experienced problems, such as escapes from private facilities in Texas by convicted murderers and sex offenders sent to serve sentences from other States (Thompson 1996). The first private prison in Ohio agreed to a \$1.6 million settlement in 1999 because, within 2 years after opening, 6 prisoners reportedly died while under prison medical care, 20 prisoners were stabbed, 2 prisoners were murdered, and the Federal Government criticized the institution for its harsh and humiliating search procedures (*Corrections Digest* 1999c). Also during 1999, correctional officers in a private facility in New Mexico reportedly covered up their involvement in an assault on a prisoner, and an employee of a private prison in Tennessee helped a confessed murderer to escape (*Corrections Digest* 1999a, 1999b). When correctional facilities fail so dramatically in fulfilling their custody and security obligations, they invite lawsuits by members of the public as well as by prisoners.

Private correctional facilities and their staff members are especially vulnerable to civil rights lawsuits because the Court determined that employees of private prisons do not benefit from the qualified immunity bestowed by the law upon governmental correctional personnel through section 1983 litigation (*Richardson v. McKnight* (117 S. Ct. 2100 [1997])). As cost-conscious institutions whose continued existence may depend on demonstrating satisfactory performance in the eyes of State and local officials, private correctional institutions have especially strong incentives to avoid problems that will produce litigation and judicial scrutiny. Thus, the threat of lawsuits and possible judicial intervention may have an especially powerful impact on private correctional managers' efforts and effectiveness in complying with legal standards.

The expense of providing facilities for mushrooming prison populations has encouraged consideration of alternative punishments. Thousands of offenders have been placed in alternative settings of confinement and supervision, including boot camps, electronic monitoring, home detention, day reporting centers, and community-based programs. In addition, 3.9 million offenders were on probation and parole at the end of 1997 (U.S. Department of Justice 1998). This figure represents an increase of 110,000 offenders over the prior year. The growing number of convicted offenders under confinement and supervision in contexts other than traditional custodial incarceration provides an additional population that can initiate litigation. Moreover, because many of these offenders have contact with or opportunities for contact with the public, any problems caused by interactions between offenders and citizens, including criminal acts committed by sentenced offenders while under correctional supervision, may provide a source for additional lawsuits and judicial scrutiny of correctional policies and practices. Inevitably, courts will be called on to clarify

how established legal standards and constitutional rights apply to new or different correctional contexts. For example, in 1998, the Court addressed the applicability of the exclusionary rule when government officials seek to use improperly obtained evidence at parole revocation hearings (*Pennsylvania Board of Probation and Parole v. Scott* (118 S. Ct. 2014 [1998])).

Some State responses to the expense of expanded prisons will simply amount to burden shifting from States to counties and cities. For example, States may reduce mandated sentence lengths and thereby increase the number of offenders serving sentences in county jails rather than State prisons. The jails may not have adequate funds, equipment, and staff training for handling larger numbers of offenders, and conditions and practices in increasingly overburdened jails may produce new litigation. Although litigation will lead judges to scrutinize specific aspects of nonincarcerative and other alternative sentences, their decisions in these cases seem much less likely to impose major changes on correctional policies and practices than did court decisions in the institutional reform cases of the 1960s, 1970s, and 1980s.

Conclusion

The courts have played an integral role in shaping modern correctional institutions and correctional practices. Judicial decisions established legal standards for prison conditions and the treatment of prisoners. Moreover, judicial processes provided an avenue by which prisoners could employ litigation to force correctional officials to comply with developing legal standards. These developments coincided with judicial decisions affecting policies and practices throughout the criminal justice system as judges followed the patterns established by the Warren Court and defined individuals' constitutional rights more clearly and broadly. The veritable explosion of prisoner litigation and judicial intervention into corrections during the 1960s, 1970s, and 1980s transformed corrections by forcing an end to regional differences in the organization of institutions and by pushing all correctional institutions to become professionalized, bureaucratic organizations with formal procedures and legal norms. These changes were largely beneficial. Although they did not extinguish opportunities for abusive behavior by correctional officials, the changes in law labeled such behavior—which was previously overt and officially encouraged in many institutions—as unacceptable and remediable under the law. The development of standards and procedures created greater predictability in the expectations for and behavior of staff and prisoners, thereby reducing opportunities for unbridled discretion and unremediable inflictions of pain or deprivations of basic human needs.

During the 1980s and 1990s, the U.S. Supreme Court and Congress used their authority to force a deceleration of Federal judges' involvement in correctional management. Supreme Court decisions and Federal legislation narrowed the definitions of prisoners' rights, required greater judicial deference to correctional administrators, and limited both prisoners' effective utilization of civil rights litigation and Federal judges' remedial authority. These new directions did not negate all of the rules and practices developed during the Court's interventionist years; however, they clearly signaled that judicial and legislative decision-makers believed that the formalization of correctional procedures and the professionalization of correctional officials had progressed sufficiently to permit a relaxation of judicial scrutiny. Moreover, political and governmental trends advancing the enhancement of federalism and the diminution of judicial control over various public policy issues during the 1980s and 1990s reinforced the changing boundaries of courts and corrections. Because of widespread dissatisfaction at the State and local levels with many policy declarations from the Federal Government, the political values advancing the decentralization of policymaking and public administration are likely to perpetuate these boundary changes unless new problems emerge that are perceived as requiring nationwide remedial initiatives. As a result, the interventionist years in which courts played a significant hand in producing major changes in correctional systems throughout the Nation can probably be regarded as a unique era that is unlikely to be reproduced in the foreseeable future.

A simple causal model that characterized judicial intervention and supervision as the sole forces for transforming corrections and maintaining desirable changes in institutions' policies and practices would necessarily raise fears that the deceleration in Federal judicial intervention might mean a return to the abusive practices and inhumane conditions of the past. However, the transformation of corrections did not rest solely on judicial action. The rise of professional public administrators and the application of management theories and social sciences research in corrections also shaped the transformation of policies and practices. The continued presence of professionally trained administrators and their utilization of modern management principles provide sources for the maintenance of policies and procedures developed during the transformative period beginning in the 1960s and lasting through the 1980s. In addition, standardization and routinization of policies and systematic staff training may operate to preserve and reinforce practices that comply with established legal norms. Moreover, the deceleration of judicial intervention led by the Court and Congress cannot be accurately characterized as an end to judicial authority over corrections. Legal standards have been established, and courts retain the authority to examine and enforce those standards. Thus, it is neither inevitable nor even probable that correctional institutions will return to the problematic practices and conditions of their pretransformative decades.

From the prisoners' perspective, does the current state of affairs ensure that rights will be protected and proper procedures will be followed within the professionalized, bureaucratic environment of contemporary corrections? Of course not. There are opportunities for legal standards to be violated in circumstances in which prisoners are unable to provide sufficient evidence to prove what transpired. Litigation is an awkward, expensive, time-consuming, and unwieldy process that cannot be utilized quickly, easily, or flawlessly as a means to vindicate rights and uphold legal standards. In many respects, prisoners' interests in appropriate daily treatment may be better served by the standardization and routinization of policies and practices compliant with laws and regulations rather than by reliance on the prospect of litigation to remedy individual rights violations. If the potential threat of litigation motivates correctional administrators to develop proper policies and provide effective training, supervision, and accountability mechanisms for employees, then the most significant role for courts may be in casting a shadow over corrections as a perceived source of possible authoritative intervention—even if actual successful litigation by prisoners is infrequent or unlikely.

The future interface between courts and corrections depends largely on developments affecting the laws governing correctional institutions and shaping the environment of corrections. There are prisoner advocates and academics who call for expanded definitions of prisoners' rights and increased bases for judicial supervision of and intervention in correctional management. Conversely, there are others, including Supreme Court Justices Thomas and Scalia, who call for further diminution of prisoners' rights and increased limitations on the ability of Federal judges to hear prisoners' civil rights cases and impose judicial orders upon prisons and jails. Although it is difficult to predict how future political and social developments in American society will affect the composition and viewpoints of the Court and Congress, for the foreseeable future, it appears that the laws affecting corrections have reached a point of relative stability. It is acknowledged that prisoners possess specific rights concerning religion, access to the courts, conditions of confinement, and a limited list of other rights. The definitions of these rights are relatively narrow, and the balances struck between prisoners' rights and institutional interests in security and order tend to favor the preservation of policies and practices developed by correctional administrators. Prisoners are less able to demand legal resources and freely file legal actions, but the courthouse door has not been closed to prisoners' filings, and judges retain authority to examine whether institutions are upholding constitutional and statutory standards.

A continuing role for courts, either directly through litigation and court orders or indirectly through the threat of possible judicial intervention, is assured by

visible, predictable developments affecting the environment of corrections. The growth in prison populations, prison personnel, innovative strategies and technologies, private prisons, and alternative sanctioning methods will produce litigation that draws judicial attention to correctional policies and practices. This litigation may increasingly concern either employee issues or narrow prisoners' rights questions rather than efforts to significantly alter conditions of confinement. The deceleration in judicial intervention does not necessarily translate into a reduction in the judicial system's prisoner litigation cases. Continued increases in prison populations are projected to produce increases in prisoners' cases filed in Federal courts (Cheesman, Hanson, and Ostrom 1998). One unknown factor that will affect the nature and extent of judicial involvement in correctional cases is the uncertain capacity of heavily burdened courts to carefully review and consider increasing numbers of cases from prisoners without an infusion of new resources.

The most difficult questions concerning the future interface of courts and corrections concern unpredictable developments that could affect the environment of corrections. In light of the contemporary penchant for significant incarcerative sanctions during an era of declining crime rates, what would happen if the United States experienced a dramatic increase in crime rates? Moreover, what if this increase in crime rates coincided with a significant downturn in the national economy so that government budgets had fewer resources to spend on corrections? Would incarceration rates increase in a manner that would significantly outstrip prison capacity at a moment when governments could not afford to maintain minimum conditions and amenities within correctional institutions? Such a hypothetically plausible scenario could sorely test both correctional administrators' commitment to professional standards and the power of standardization and routinization as means to maintain standards. Courts would inevitably be called on to examine alleged problematic conditions and practices in prisons. There may be questions about whether the Court and Congress went too far during the 1990s in limiting the remedial authority of Federal judges in prison cases. Law is adaptable and malleable, however, especially in the hands of judges, so the opportunity could undoubtedly be created to permit judges to issue orders addressing problems in corrections.

The real uncertainty about judicial action would probably concern social and political values possessed and applied by the judiciary. Are the judicially developed standards for correctional institutions so thoroughly established from litigation during the latter decades of the 20th century that judges would intervene and push Federal, State, and local governments to uphold standards for conditions and practices? Alternatively, could a sense of crisis concerning the crime problem permeate the thinking of judges and thereby attract judicial

decisionmakers to the arguments of Justices Thomas and Scalia about the inapplicability of the eighth amendment to questions about the conditions of confinement in correctional institutions? This approach would constitute a withdrawal of judicial scrutiny and involvement from many areas of prison operations. Such speculative questions cannot readily be answered, but they help to illustrate the uncertainties involved in predicting the future impact of courts on corrections.

Courts and corrections seem inextricably linked together because of the established avenues for prisoners (e.g., section 1983 litigation) and prison employees to seek judicial consideration of challenged conditions and policies in correctional institutions. Despite the deceleration of judicial intervention in the posttransformative era of corrections, current developments affecting the environment of corrections ensure that courts will continue to be called on to examine specific aspects of correctional management. The actual nature and extent of future judicial impact on corrections necessarily depends on the course of developments shaping correctional law and the environment of corrections from which legal issues spring.

Note

1. Based on author's conversations with assistant attorneys general from several States.

References

Administrative Office of the U.S. Courts. 1999. Legislation has mixed effect on petitions. *Third Branch* 31 (4): 8.

———. 1998. Five-year retrospective takes stock. *Third Branch* 30 (12): 2.

American Correctional Association. 1993. *Standards for the administration of correctional agencies (central office)*. Laurel, Maryland: American Correctional Association.

———. 1991. *Guidelines for the development of policies and procedures: Adult correctional institutions*. Laurel, Maryland: American Correctional Association.

Amnesty International. 1999. Not part of my sentence: Amnesty [International] seeks to halt abuses against women in U.S. prisons. *Amnesty Action* (Spring): 1, 9.

Associated Press Wire Service. 1998. Prison officers call State's discipline system too strict. *Lansing State Journal*, 15 April.

Bennett, Katherine. 1995. Constitutional issues in cross-gender searches and visual observation of nude inmates by opposite-sex officers: A battle between and within the sexes. *Prison Journal* 75:90–112.

- Bennett, Katherine, and Rolando V. del Carmen. 1997. A review and analysis of Prison Litigation Reform Act court decisions. *Prison Journal* 77:405–455.
- Bragg, Rick. 1997. Prison chief encouraged brutality, witnesses reported. *New York Times*, 1 July.
- Branham, Lynn S., and Sheldon Krantz. 1997. *Cases and materials on the law of sentencing, corrections, and prisoners' rights*. 5th ed. St. Paul: West Publishing Company.
- Call, Jack E. 1995. Prison overcrowding cases in the aftermath of *Wilson v. Seiter*. *Prison Journal* 75:390–405.
- Call, Jack E., and Richard Cole. 1996. Assessing the possible impact of the Violent Crime Control Act of 1994 on prison and jail overcrowding suits. *Prison Journal* 76:91–106.
- Canto, Minerva. 1998. Federal Government investigates use of stun belt. *Lansing State Journal*, 17 August.
- Cheesman, Fred, II, Roger A. Hanson, and Brian J. Ostrom. 1998. To augur well: Future prison population and prisoner litigation. Paper prepared for presentation at the National Center for State Courts, 20 May, at the Federal Judicial Center, Washington, D.C.
- Chilton, Bradley S., and Susette M. Talarico. 1990. Politics and constitutional interpretation in prison reform litigation: The case of *Guthrie v. Evans*. In *Courts, corrections, and the Constitution: The impact of judicial intervention on prisons and jails*, edited by John J. DiIulio, Jr. New York: Oxford University Press.
- Clear, Todd. 1994. *Harm in American penology: Offenders, victims, and their communities*. Albany: State University of New York Press.
- Collins, Catherine Fisher. 1997. *The imprisonment of African American women*. Jefferson, North Carolina: McFarland & Company.
- Corrections Digest*. 1999a. Jail memo results in Federal complaint. *Corrections Digest* 30 (March 12): 10.
- . 1999b. New officer helps inmate escape. *Corrections Digest* 30 (March 12): 10.
- . 1999c. Officer training legislated. *Corrections Digest* 30 (April 2): 7.
- . 1999d. Out-of-date equipment criticized. *Corrections Digest* 30 (March 12): 9.
- . 1999e. Private prison settles. *Corrections Digest* 30 (March 12): 5.
- . 1999f. Texas has hard time finding officers. *Corrections Digest* 30 (April 9): 3–4.

Cripe, Clair A. 1990. Courts, corrections, and the Constitution: A practitioner's view. In *Courts, corrections, and the Constitution: The impact of judicial intervention on prisons and jails*, edited by John J. DiIulio, Jr. New York: Oxford University Press.

Crouch, Ben M., and James Marquart. 1989. *An appeal to justice: Litigated reform of Texas prisons*. Austin: University of Texas Press.

Diver, Colin. 1979. The judge as political pawnbroker: Superintending structural changes in public institutions. *Virginia Law Review* 65:43–106.

Feeley, Malcolm. 1989. The significance of prison conditions cases: Budgets and regions. *Law & Society Review* 23:273–282.

Feeley, Malcolm M., and Edward L. Rubin. 1998. *Judicial policy making and the modern state: How the courts reformed America's prisons*. New York: Cambridge University Press.

Fradella, Henry F. 1998. A typology of the frivolous: Varying meanings of frivolity in section 1983 prisoner civil rights litigation. *Prison Journal* 78:465–491.

Gilliard, Darrell K. 1999. *Prison and jail inmates at midyear 1998*. Bulletin, NCJ 173414. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Graglia, Lino. 1976. *Disaster by decree*. Ithaca, New York: Cornell University Press.

Guest, Greta. 1997. House panel approves bill to shield religious freedom. *Lansing State Journal*, 3 July.

Hanson, Roger A., and Henry W.K. Daley. 1995. *Challenging the conditions of prisons and jails: A report on section 1983 litigation*. NCJ 151652. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Hornbeck, Mark. 1997. Mentally ill flood prisons. *Detroit News*, 4 December.

Horowitz, Donald. 1977. *The courts and social policy*. Washington, D.C.: Brookings Institution.

Jacobs, James B. 1997. The prisoners' rights movement and its impacts. In *Correctional contexts: Contemporary and classical readings*, edited by James W. Marquart and Jonathan R. Sorensen. Los Angeles: Roxbury Publishing Company.

———. 1977. *Stateville: The penitentiary in mass society*. Chicago: University of Chicago Press.

Johnson, Malcolm. 1999. Senate measures look to cut frivolous prisoner lawsuits. *Lansing State Journal*, 26 April.

- Josi, Don A., and Dale K. Sechrest. 1998. *The changing career of the correctional officer: Policy implications for the 21st century*. Boston: Butterworth-Heinemann.
- Kerle, Kenneth. 1998. *American jails: Looking to the future*. Boston: Butterworth-Heinemann.
- Lauen, Roger J. 1997. *Positive approaches to corrections: Research, policy, and practice*. Lanham, Maryland: American Correctional Association.
- Maguire, Kathleen, and Ann L. Pastore, eds. 1998. *Sourcebook of criminal justice statistics 1997*. NCJ 171147. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Martin, Tim. 1998. \$13,000,000. *Lansing State Journal*, 16 April.
- Morgan, Richard E. 1984. *Disabling America: The "rights industry" in our time*. New York: Basic Books.
- Palmer, John W. 1997. *Constitutional rights of prisoners*. 5th ed. Cincinnati: Anderson Publishing Company.
- Penn, Ivan. 1997. Vacuum to keep prisons drug-free. *Lansing State Journal*, 20 October.
- Robbins, Ira. 1980. The cry of *Wolfish* in the Federal courts: The future of Federal judicial intervention in prison administration. *Journal of Criminal Law and Criminology* 71:211–225.
- Robertson, James E. 1999. Cruel and unusual punishment in United States prisons: Sexual harassment among male inmates. *American Criminal Law Review* 36:1–51.
- Saul, Stephanie. 1997. Mental patients dumped. *Lansing State Journal*, 1 June.
- Scalia, John. 1997. *Prisoner petitions in the Federal courts, 1980–96*. NCJ 164615. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Schneider, John. 1995. Razor or ax? *Lansing State Journal*, 29 August.
- Seron, Carroll. 1985. *The roles of magistrates: Nine case studies*. Washington, D.C.: Federal Judicial Center.
- Smith, Christopher E. 1990. *United States magistrates in the Federal courts: Subordinate judges*. New York: Praeger.
- . 1988. United States magistrates and the processing of prisoner litigation. *Federal Probation* 52 (December): 13–18.

Smith, Christopher E., and John Hurst. 1997. The forms of judicial policymaking: Civil liability and criminal justice policy. *Justice System Journal* 19:341–354.

Solano, Ricardo, Jr. 1997. Is Congress handcuffing our courts? *Seton Hall Law Review* 28:282–311.

Southern Poverty Law Center. 1997. “Painful and torturous punishment” must be abolished. *SPLC Report* (March): 1.

Stephan, James J. 1997. Census of State and Federal correctional facilities, 1995. Executive Summary, NCJ 166582. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

Thompson, Joan. 1996. Laws lag behind booming private prison industry. *Boston Globe*, 5 November.

U.S. Department of Justice, Bureau of Justice Statistics. 1999. Prison statistics: Summary findings. Retrieved 16 November 1999 from the World Wide Web: <http://www.ojp.usdoj.gov/bjs/prisons.htm>.

———. 1998. Nation’s probation and parole population reached new high last year. 16 August. Retrieved 16 November 1999 from the World Wide Web: <http://www.ojp.usdoj.gov/bjs/pub/press/papp97.pr>.

Vaughn, Michael S., and Linda G. Smith. 1999. Practicing penal harm medicine in the United States: Prisoners’ voices from jail. *Justice Quarterly* 16:175–230.

Wallace, Donald H. 1997. Prisoners’ rights: Historical views. In *Correctional contexts: Contemporary and classical readings*, edited by James W. Marquart and Jonathan R. Sorensen. Los Angeles: Roxbury Publishing Company.

Yackle, Larry W. 1993. The habeas hagnoscope. *Southern California University Law Review* 66:2353–2354.

———. 1989. *Reform and regret: The story of Federal judicial involvement in the Alabama prison system*. New York: Oxford University Press.

Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice

by Jeffrey A. Butts and Ojmarrh Mitchell

Changes in juvenile law and juvenile court procedure are slowly dismantling the jurisdictional border between juvenile and criminal justice. Juvenile courts across the United States are increasingly similar to criminal courts in their method as well as in their general atmosphere. State and Federal laws are being changed to send a growing number of young offenders to criminal court where they can be tried as if they were adults. The two court systems appear to be moving toward complete convergence. Policymakers and practitioners need to be aware of the factors leading to this convergence and they should understand the effects it may have on offenders, victims, and the general community. This chapter reviews the origins of juvenile justice in the United States, summarizes the legislative and policy changes that are effectively dismantling the juvenile-criminal border, and examines research on the impact of such policies. The discussion concludes with a review of issues that should be prominent in any debate about the future viability of the juvenile-criminal boundary.

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Much of the American public and a growing number of policymakers appear to believe that the original concept of juvenile justice was flawed.¹ Public criticism of the juvenile court intensified during the last two decades of the 20th century, and many States began to abandon those aspects of juvenile justice that were once distinctly different from the criminal (adult) justice system. Many reforms were enacted in an attempt to strengthen the Nation's response to juvenile offenders, but the reforms did not curb public criticism of the juvenile court or juvenile correctional programs. In fact, repeated reforms may have further weakened the juvenile justice system and encouraged the public to view juvenile justice as something less than real justice.

Beginning with the 1899 opening of the first juvenile court in Chicago, the juvenile justice system was designed to be quite different from the criminal justice system. Juvenile courts emphasized an individualized approach. The disposition of each case was supposed to address the unique circumstances of the offender rather than simply matching sentences to offenses. The primary mission of a juvenile court was to investigate the factors that caused youths to go astray and then devise a package of sanctions and services that would set them back on the right track. The flexibility to fulfill this mission was provided by a lower standard of due process in juvenile court. Juvenile laws were separate from State criminal codes. Young offenders were brought into juvenile court for acts of "delinquency" rather than crimes. There were fewer formalities in order to free judges to intervene in whatever fashion they deemed appropriate based on factors such as the youth's family background, school performance, or anything else the judge thought to be relevant.

Criminal courts, on the other hand, emphasized due process and proportionate retribution. The goal of the criminal justice system was to determine an offender's guilt or innocence as fairly and expeditiously as possible. Detailed investigations of the offender's individual circumstances were unnecessary. The primary mission of the criminal court was to express the community's disapproval of illegal behavior with an appropriate amount of punishment for every conviction.

The clear demarcation between juvenile justice and criminal justice did not survive the juvenile court's first century. By the 1980s, there was widespread dissatisfaction with both the means and the ends of traditional juvenile justice. As with other social reform efforts, it is difficult to say whether frustration with juvenile justice was borne of faulty conceptualization or poor execution. The direction taken by justice policy, however, was unmistakable. Juvenile courts began to adopt the values and orientation of criminal courts. Many States altered their laws to reduce the confidentiality of juvenile court proceedings and juvenile court records. Most States increased the legal formalities used in juvenile

court and shifted the focus of the juvenile justice process away from individualized intervention. Instead, juvenile courts and juvenile justice agencies began to focus on public safety and offender accountability. In addition, nearly all States enacted laws to send more youths to criminal court where they could be tried and punished as adults. In the span of a single century the American justice system had enthusiastically embraced and then largely rejected the concept of using a different legal system for crimes committed by the young.

The Origins of Juvenile Justice

The founding principles of American juvenile justice were derived largely from English common law, the system of precedents formed by accumulating centuries of individual court judgments. The idea that children should be held to a lower standard of criminal responsibility had a long history in English law. Children were seen as less than fully developed morally and emotionally. Thus, they could not be held accountable for illegal behaviors. At least since the 13th century, English courts exempted children from otherwise deserved sentences after finding they were “too young for punishment” (Watkins 1998, 15).

Implementation of this general principle, however, was not always reliable. The age of criminal responsibility was difficult to fix, in part because judges could not always be sure of a child’s true age. Civil registration of births was not customary in England until the 17th century and not required until the early 19th century, making exact age distinctions difficult. Even if courts believed a child was under the age of criminal responsibility, lenience was not guaranteed, especially if there was evidence that the child tried to conceal the crime. In 1338, one court hanged an English child under the age of 7 because he had attempted to hide from the authorities after killing a playmate. The court ruled that his effort to avoid detection proved he knew the difference between right and wrong, a critical distinction in legal thinking of the time. Another English court sentenced a 9-year-old to death in 1488 because the boy attributed his blood-stained clothes to a nosebleed, proving to the court that he knew it was wrong to have killed another child (Watkins 1998, 12–13).

By the 16th century, English courts generally set age 14 as the beginning of criminal responsibility (Polier 1989, 38). The English system of common law eventually settled on the idea that children younger than 7 were by definition incapable of criminal responsibility. Children between the ages of 7 and 13 were presumed not responsible but this presumption could be reversed with evidence of criminal intent and culpability. Upon reaching age 14, all children were fully responsible for their behavior. Even this framework, however, did not guarantee fair and proportionate treatment for children. In 1835, one

English court imposed a death sentence on a 9-year-old accused of stealing a small bottle of ink from a broken shop window (Polier 1989, 38).

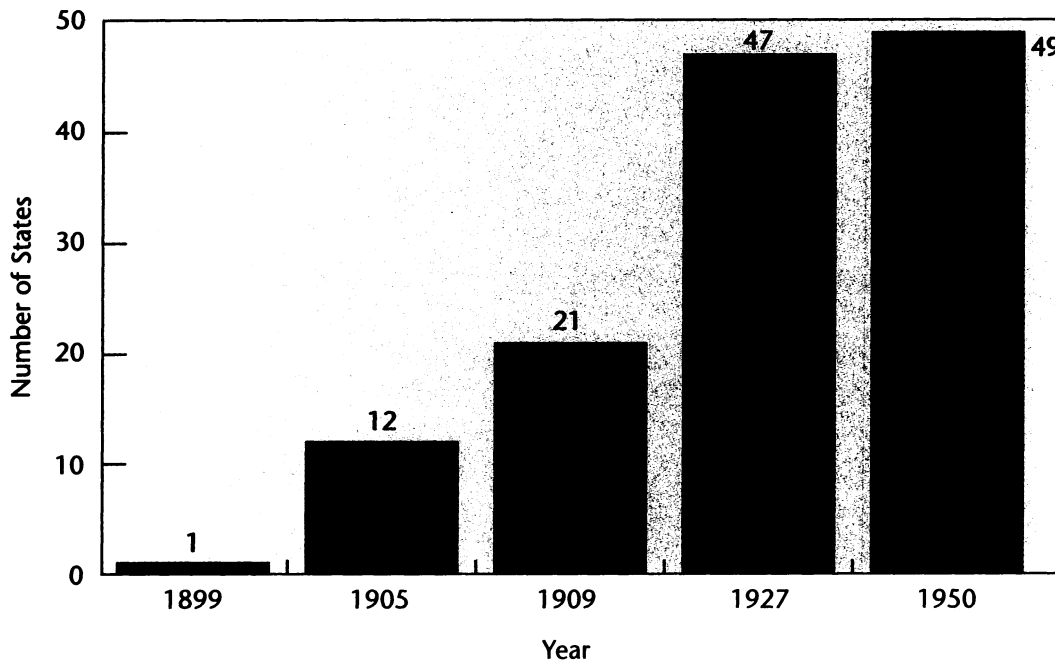
The American juvenile court movement

Despite the ambiguities of English law on the question of criminal responsibility, English traditions were influential in molding the ideas of the American social reformers who established the world's first juvenile court in Chicago. State legislators in Illinois sparked the juvenile court movement by passing the Juvenile Court Act of 1899. The juvenile court law was shaped by 70 years of correctional reforms and innovative court practices in other States. For instance, New York courts had been holding trials for young defendants on separate days from trials involving adults for nearly 30 years. Illinois, however, was the first to establish a truly separate juvenile court with noncriminal jurisdiction over law violations by children (Rothman 1980; Watkins 1998).

The Juvenile Court Act of 1899 gave Illinois juvenile courts legal responsibility for any child age 15 or younger who had violated the "law of this State or any city or village ordinance" (Watkins 1998, 43). As other States began to establish juvenile courts, the upper limit of juvenile court jurisdiction was often increased to age 16 or 17. In fact, as of 1997, Illinois juvenile courts had responsibility for lawbreakers age 16 and younger (Griffin, Torbet, and Szymanski 1998, A-26). The juvenile court concept proved to be very popular (see exhibit 1). Within 5 years of the opening of Chicago's court, 11 States had established juvenile courts with legislation similar to that of Illinois. By 1927, all but two States (Maine and Wyoming) had implemented juvenile courts. By 1950, every State had joined the juvenile court movement, and the number of cases handled by juvenile courts began to grow significantly (see exhibit 2).

Juvenile courts were given an unprecedented degree of power over the lives of poor and destitute children as well as those committing crimes in the streets of the Nation's growing cities. It was not unprecedented for the justice system to intervene with children. Courts had been doing that for centuries. What was new about the juvenile court was its authority to use coercive, state-sponsored intervention *outside* the criminal law. The juvenile court's authority came from civil law, much like the government's power of involuntary hospitalization for the mentally ill. The juvenile court's quasi-civil jurisdiction allowed it to take custody of young people charged with a wide array of criminal and noncriminal behaviors, from vagrancy and running away to stealing and acts of violence. The court embodied an entirely new motive for justice system intervention, to resolve problems rather than punish wrongdoing. In 1909, Judge Julian Mack of the Chicago juvenile court explained that the purpose of his court was not to ask whether a boy had committed a "special wrong" but rather "what is he, how has

Exhibit 1. States with separate juvenile courts, 1899–1950



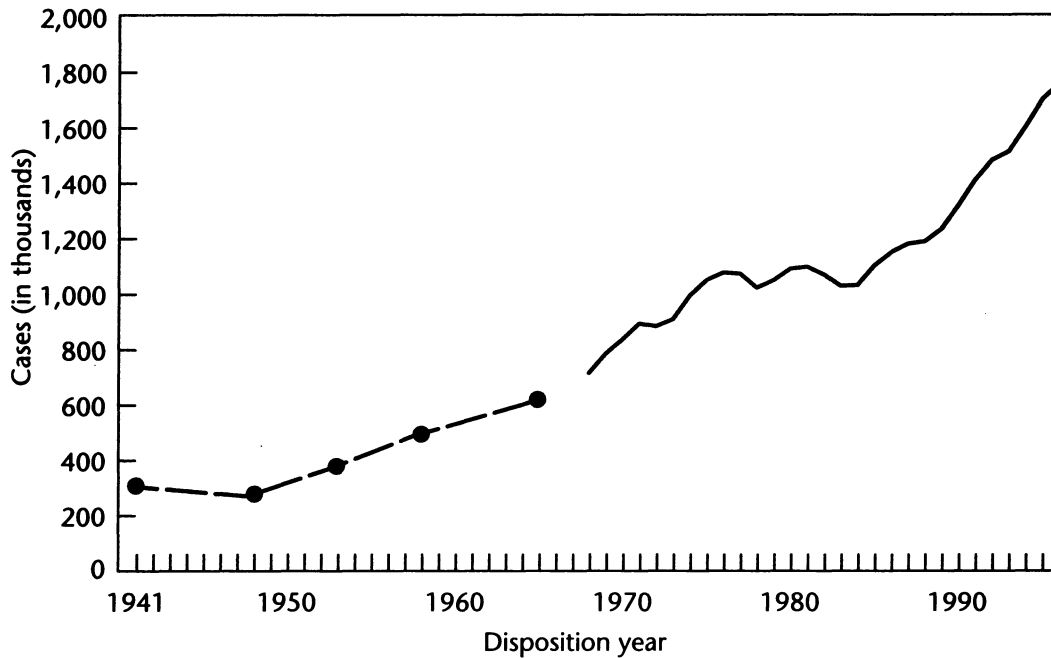
Note: Illinois was the first State to establish a separate juvenile court in 1899. By 1905, 11 more States had adopted juvenile courts: California, Colorado, Indiana, Iowa, Maryland, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. Juvenile courts were established nationwide, including Washington, D.C., by 1950.

Source: Watkins 1998, 45.

be become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career?" (Mack 1909).

The juvenile court's legal authority was drawn rather loosely from concepts in English law. The most important of these was *parens patriae*, or roughly, "nation as parent." *Parens patriae* suggested that the government had an obligation and a duty to look after the interests of children when natural parents were unable to do so. Long before the concept was discovered by American reformers, England's Chancery Courts had been invoking *parens patriae* to take temporary custody of land and property that would eventually revert to the orphaned children of wealthy families (Polier 1989, 2). In the mid-1800s, some American courts had also used *parens patriae* as a justification for placing recalcitrant children in "houses of refuge," an early form of poorhouse and reformatory (Bernard 1992). With a little creative interpretation, America's juvenile court advocates argued that *parens patriae* should allow the government to take charge of any child who was destitute, neglected, or ill-behaved.

Exhibit 2. Delinquency cases handled by U.S. juvenile courts, 1941–96



Note: Data from 1941 to 1968 are not continuous. Years represented are 1941, 1948, 1953, 1958, 1965, and 1968.

Sources: 1941–65: Manfredi 1998, 35; 1968–86: Butts 1997b; 1987–96: Stahl 1998.

The Progressive Era reformers who founded the juvenile court were also inspired by 19th-century intellectual developments in correctional techniques and the new field of social science. Juvenile court reformers were especially taken with the views of positivism that then dominated the social sciences (Feld 1999, 57). Positivism suggested that social problems such as crime and poverty were caused by factors that could be identified and corrected with the proper scientific methods. Positivism gave reformers the faith and confidence to intervene. *Parens patriae* gave them the power.

Part social services, part law enforcement

Although most contemporary accounts portray founders of the juvenile court as do-gooders and middle-class meddlers, early proponents of juvenile courts were as interested in crime control as they were in social reform (Platt 1977). Before the development of juvenile courts, young thieves and muggers appeared in criminal court alongside adult defendants. Judges and jurors frequently found young people innocent or simply released them, especially when youths were charged with nonviolent offenses and appeared socially immature. Acquittal was

preferable to sending such youngsters to prison. After years of frustration with the criminal court's inability to sanction young offenders, police and prosecutors began to press for a separate juvenile court that would consider the illegal behavior of young people on its own terms (Schlossman 1977).

As their deliberations were defined as quasi-civil, juvenile courts were not required to abide by the constitutional restrictions applied to criminal prosecutions. Early juvenile courts did not have to contend with defense attorneys, appeals, or formal evidentiary procedures. Prosecutors were required to prove juvenile charges based only on a "preponderance of the evidence" rather than the far stricter standard of "beyond a reasonable doubt." In recognition of their distinct legal standing, juvenile courts developed a new vocabulary. Youths appearing in juvenile court were "delinquents" rather than defendants. They were "adjudicated" instead of being found guilty. Final decisions were "dispositions" rather than sentences. Youths held overnight were "detained" in a juvenile detention center, not jailed.

This quasi-civil legal authority endowed the juvenile court with broad discretion to intervene. Juvenile court judges were free to develop individualized and sometimes creative dispositions for young offenders. Contemporary debates often omit this feature of the juvenile court concept, but it is a critical factor in explaining why the juvenile court idea was as popular with judges and police officers as it was with social reformers. Some scholars have noted that the caseloads of early juvenile courts were dominated by minor offenses and noncriminal youths (Fox 1970). To some, this may suggest that juvenile courts were never designed to handle serious offenders. Such an analysis, however, focuses on the proportion of serious offenses among the total caseload of early juvenile courts, and it overlooks the fact that juvenile courts began as multipurpose social service centers. The juvenile court represented one of the first organized efforts to address the needs of ill-behaved, unsupervised, and neglected children outside the orphanage or the poorhouse. It is not surprising that their caseloads included large numbers of noncriminal and nonserious offenders.

Historians have found that serious offenders were always part of the juvenile court's workload (Rothman 1980). In fact, some prosecutors and police departments altered their procedures in order to send larger numbers of serious offenders to the new juvenile courts rather than keeping them in adult court. For instance, the District of Columbia enacted its first juvenile court law in 1906 and originally limited the court's jurisdiction to misdemeanors. Felony charges remained in criminal court. Prosecutors soon became frustrated that misdemeanor cases received relatively stiff sanctions in juvenile court while felony charges were often dropped because grand juries refused to return indictments against young offenders in adult court. In response, prosecutors

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began to modify the offenses they charged against young offenders in order to send more of them to juvenile court. A charge of felony auto theft, for example, might be reduced to the misdemeanor offense of “operating a vehicle without a permit.” A study submitted to Congress in the 1920s estimated that more than half of the so-called misdemeanors handled in the District of Columbia juvenile court were actually downgraded felonies (U.S. Senate 1927, 47).

The juvenile court movement spread rapidly across the United States because it offered a new approach to handling young offenders who were often ignored in the crowded chaos of criminal court. Police and prosecutors saw the juvenile court as a way to avoid bureaucratic delays and to ensure that more young offenders were sanctioned for their crimes. Social reformers valued the new court because it was informal and personal, allowing the legal process to attend to the unique circumstances of every youth. Judges could speak with each youth brought before the court. Probation officers could make a thorough investigation of each offender’s home life. Due process protections for accused youths were unnecessary because the juvenile court itself was devoted to their best interests.

An early study of the District of Columbia juvenile court noted that the Washington legal establishment supported the development of a juvenile court for several reasons. Among these were the:

unsatisfactory atmosphere and environment of the old police court, which could be avoided only by a children’s court located elsewhere; the fact that judges wearied with the “harassing cases of drunks, disorderlies,” and the like, could not bring to the consideration of children’s cases a calm, sympathetic attitude; a condition under which judges, presiding at alternate sessions of the court could not keep track of individual offenders or know even the court history of each case; the fact that judges handling a variety of cases could not find time to make a special study of child psychology and the special problems of a children’s court. (U.S. Senate 1927, 35–36)

Reform and Retreat

Unfortunately, the informality that was so highly valued by reformers also made the juvenile court vulnerable as a legal institution. As soon as juvenile courts began to spread across the United States in the early 1900s, State and local governments began to improvise variations on the Chicago opus. A variety of court

structures and procedural approaches began to develop as each jurisdiction fit the general concept of the juvenile court into its own legal and organizational culture (Rothman 1980; Sutton 1988). One State might have required its juvenile courts to follow procedures resembling those of the criminal courts, including jury trials, evidentiary motions, or formal sentencing investigations. Another State might have asked only that juvenile court judges follow their conscience in making court dispositions, a degree of discretion not found in adult trial courts. Since juveniles were not legally at risk of a criminal trial, there were fewer restrictions on the methods used in juvenile courts.

This was both the best and the worst aspect of the juvenile court. The informality and flexibility in juvenile court provided conscientious judges with the freedom to intervene in the lives of troubled youths. If a youth's circumstances seemed to pose merely the risk of future criminal behavior, the court was empowered to act. Judges could order a combative or emotionally disturbed youth into a group home or shelter, even if there was only vague evidence that the youth had actually committed an offense. This provided thoughtful and compassionate judges with profound and often effective discretion.

The same freedom, however, could be abused. The length and severity of juvenile court intervention did not have to be proportional to the seriousness or dangerousness of a youth's behavior. A juvenile could be adjudicated and placed in secure confinement for relatively innocuous offenses, including swearing, smoking tobacco, and even adolescent sexual behaviors (Schlossman and Wallach 1978). If so inclined, a juvenile court judge was free to impose his or her private views of morality on young and sometimes relatively innocent youths. Even worse, the judge could punish juvenile behavior more severely when it occurred in unfamiliar cultural or racial settings (Feld 1999).

Within a few decades of the juvenile court's founding, some observers began to wonder whether the idealism of the Progressives had been excessive. Juvenile courts, especially those in urban areas, began to exhibit the worst features of criminal courts. Caseloads swelled, courtrooms fell into disrepair, and staff became disenchanting and disinterested. One juvenile court judge from New York, Justine Wise Polier, noted that by the middle of the 20th century, the juvenile court was "bowed down by disabilities imposed by law and custom on all institutions for the poor." She compared the juvenile court's hurried ambiance with the "disposition of the dead during a plague" (Polier 1989, 4).

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By the 1930s and 1940s, “youth charged with offenses sat for hours in airless waiting rooms. Noisy verbal and physical battles had to be broken up by court attendants. The hard benches on which everyone was forced to sit and the atmosphere, like that in lower criminal courts, resembled bullpens more than a court for human beings” (Polier 1989, 4).

Increasingly bureaucratic and overburdened, the juvenile court system started to attract the attention of youth advocates and civil rights lawyers. During the 1950s, legal activists began to challenge the sweeping discretion given to juvenile court judges. One influential law review article published in 1957 questioned whether juvenile courts were entirely benevolent, arguing that “an adjudication of delinquency, in itself, is harmful and should not be capriciously imposed” (Paulsen 1957, 547, 569). Another article charged juvenile courts with violating important principles of equal protection and argued that “rehabilitation may be substituted for punishment, but a star chamber cannot be substituted for a trial” (Beemsterboer 1960, 464). Reform was clearly in the offing when Chief Justice Earl Warren noted in a 1964 speech to the National Council of Juvenile Court Judges that controversies over due process in the juvenile court would be resolved as soon as the “proper” case came before the U.S. Supreme Court (Manfredi 1998, 52). The proper case arrived soon thereafter from the State of Arizona.

Constitutional domestication of the juvenile court

The American juvenile justice system changed suddenly and dramatically in 1967 when the U.S. Supreme Court announced its decision in *In re Gault* (387 U.S. 1 [1967]). A few years earlier, an Arizona juvenile court judge had institutionalized 15-year-old Gerald Gault for making a mildly obscene telephone call. He was accused of asking a female neighbor several strange and obviously adolescent questions, of which the most offensive were, “Are your cherries ripe today?” and “Do you have big bombers?” (Bernard 1992, 114). Based on the neighbor’s complaint, Gerald and a friend were picked up by the local Sheriff. The court did not bother to notify Gerald’s family that he was in custody. It never heard testimony from the victim in the case, and it never established whether Gerald or his friend had actually made the call. Gerald was committed to a State institution for delinquent boys for the “period of his minority,” or 3 years. If he had been an adult, his sentence would likely have been a small fine.

The Supreme Court’s reaction to Gault’s appeal was strong and far reaching. In any delinquency proceeding in which confinement was a possible outcome, the Court ruled, youths should have the right to notice of charges against them and the right to cross-examine prosecution witnesses, the right to assistance of counsel, and the protection against self-incrimination. The Court based its ruling on the fact that Gerald Gault had clearly been *punished* by the juvenile

court and not *treated*. The opinion also explicitly rejected the doctrine of *parens patriae* as the founding principle of juvenile justice. The Court described the meaning of *parens patriae* as “murky” and characterized its “historic credentials” as “of dubious relevance.” “The constitutional and theoretical basis for this peculiar system is—to say the least—debatable” (Bernard 1992, 116, quoting from the *Gault* opinion).

Gault was one of a series of juvenile justice cases decided by the Supreme Court in the 1960s and 1970s. Together, the cases imposed significant procedural restrictions on U.S. juvenile courts. By the 1980s, juvenile courts had been “constitutionally domesticated” (Feld 1999, 79). Juveniles charged with law violations had far more due process protections, although they were still denied the Federal rights of bail, jury trial, and speedy trial. Juvenile courts were required to follow a higher standard of evidence (“reasonable doubt” rather than “preponderance”) and juvenile adjudications were considered equivalent to criminal convictions in evaluating double jeopardy claims (Bernard 1992, 108–134).

The consequences of constitutional domestication may not have been fully appreciated by reformers and youth advocates. As Justice Stewart warned in his dissent to *Gault*, the introduction of greater due process for juveniles may have had the unintended consequence of encouraging States to make their juvenile courts more like criminal courts:

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court’s long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by hanging. The sentence was executed. It was all very constitutional. (Justice Stewart dissenting, *In re Gault*, 387 U.S. 1, 79–80 [1967])

When juveniles are transferred to adult court, they lose their status as minor children and become legally culpable for their behavior. Transfer is often used for juveniles charged with serious and violent offenses. At least half of the youths transferred to the adult court system, however, have committed lesser offenses such as property and drug law violations.

Legislative and Policy Initiatives

Justice Stewart's comments seemed all too prescient as the 20th century ended. For 30 years following the *Gault* decision, State legislatures across the United States continued the due process reforms endorsed by the Supreme Court. Using various tactics, lawmakers greatly limited the discretion of juvenile court judges and made the juvenile court process more evidence driven and formalized. They also sent far more juveniles directly to criminal court, effectively abolishing the juvenile court's jurisdiction over many categories of young offenders. The purposes and procedures of juvenile justice became increasingly similar to those of criminal justice. In effect, State governments (often echoing the tone of Federal policies) were slowly beginning to dismantle the legal and procedural border between juvenile justice and criminal justice. The following sections describe the policy initiatives used to accomplish this task.

Criminal court transfer

No single issue in juvenile justice has captured the attention of the public or of policymakers like criminal court transfer. Conflicts over the transfer issue represent the clearest and most direct dispute over the juvenile-criminal boundary. It is the same conflict that ensnared English courts for hundreds of years prior to the founding of the juvenile court, i.e., at what age should children be held responsible for illegal behavior, and what exceptions should be permitted? When juveniles are transferred to adult court, they lose their status as minor children and become legally culpable for their behavior. Transfer is often used for juveniles charged with serious and violent offenses. At least half of the youths transferred to the adult court system, however, have committed lesser offenses such as property and drug law violations.

The boundary between juvenile and adult court was always somewhat permeable. Some States began to transfer juveniles to adult court as early as the 1920s (e.g., Arkansas, California, Colorado, Florida, Georgia, Kentucky, North Carolina, Ohio, Oregon, and Tennessee); others permitted transfers since at least the 1940s (e.g., Delaware, Indiana, Maryland, Michigan, Nevada, New Hampshire, New Mexico, Rhode Island, South Carolina, and Utah) (Feld 1987). In the last two decades of the 20th century, however, lawmakers enacted new and expanded transfer mechanisms on an almost annual basis. Moreover, there was an increase in laws that moved entire classes of young offenders into criminal court without the involvement of juvenile court judges. Judicial authority in transfer decisions was diminished while the role of prosecutors and legislatures increased. Nonjudicial mechanisms, in fact, accounted for the vast majority of juvenile transfers during the 1990s.

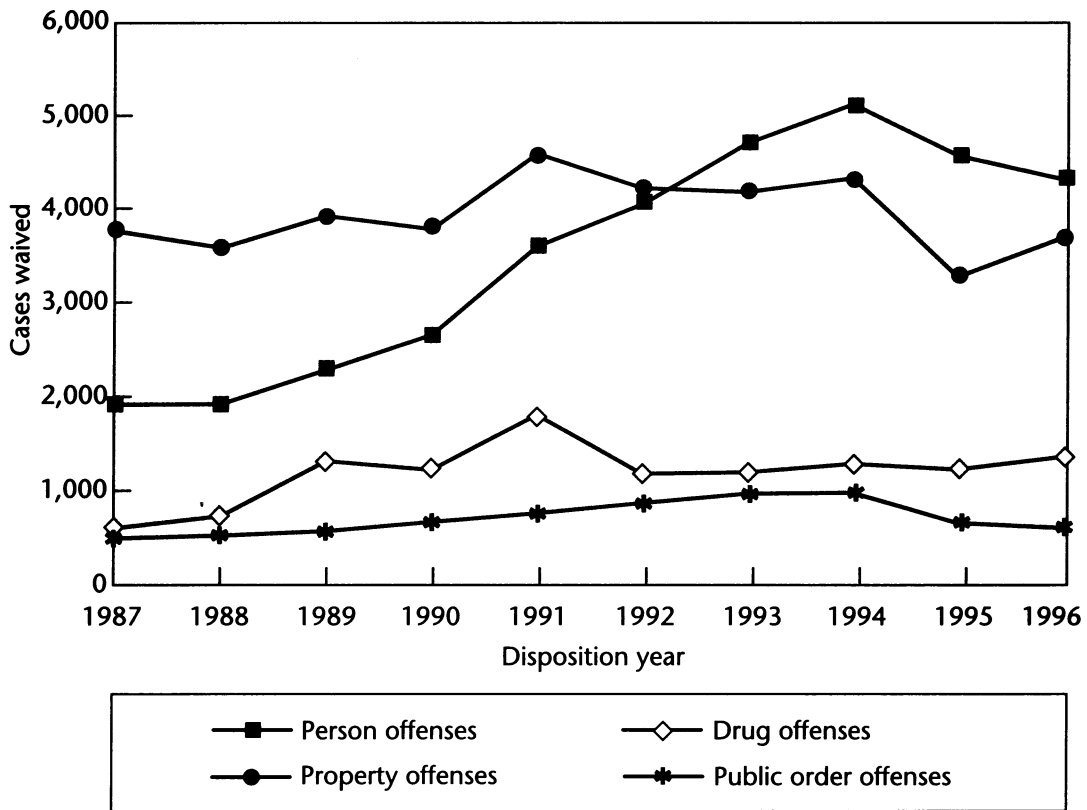
Discretionary judicial waiver

The most traditional method of transferring juveniles to criminal court was discretionary judicial waiver. Judicial waiver laws allow a juvenile court judge to transfer a delinquency case to criminal court, often after establishing that the case meets certain criteria. Waiver proceedings are usually initiated by the prosecutor, who bears the burden of proof during transfer proceedings. Although the criteria for waiver vary by State, the provisions are typically based on those outlined by the U.S. Supreme Court in *Kent v. United States* (383 U.S. 541 [1966]). The *Kent* decision suggested that juvenile court judges should evaluate waiver petitions by considering the offender's age, instant offense, criminal history, perceived amenability to rehabilitation, and threat to the public, as well as the prosecutorial merit of the case.

In 1960, only half the States had statutory provisions for judicial waiver (Feld 1987). During the 1990s alone, virtually all States either enacted new waiver laws or expanded their existing waiver policies. For instance, Alabama, Idaho, Iowa, and Minnesota enacted laws that allow judicial waiver in any case involving a youthful offender at least 14 years of age. By 1997, all but five States (Connecticut, Massachusetts, Nebraska, New Mexico, and New York) and the District of Columbia allowed discretionary judicial waiver (Torbet and Szymanski 1998). From 1992 to 1997, 11 States lowered the age limit for waiver in at least some cases, 17 States made additional offenses eligible for waiver, and 6 States added or adjusted their criminal history provisions for discretionary waiver (Torbet et al. 1996; Torbet and Szymanski 1998).

The expansion of discretionary judicial waiver laws may have helped produce a 47-percent increase in the national number of judicially waived cases between 1987 and 1996 (Stahl 1999). During this period, the number of waived cases increased to approximately 10,000 a year, with an increase of 124 percent for drug offenses and 125 percent for person offenses. The largest share of cases waived by judges prior to 1992 involved property offenses. In 1987, for example, property offenses accounted for 55 percent of all waived cases nationwide (Stahl 1999). At that time, the probability of judicial waiver for formally charged property offenses (1.2 percent) was nearly as high as the chance of waiver in cases involving person offenses (1.9 percent) or drug offenses (1.6 percent). By 1996, only 0.8 percent of property offense cases were waived by juvenile court judges. Similarly, the chances of waiver for drug offenders fell to 1.2 percent. Thus, by 1996, judicially waived cases were more likely to involve offenses against persons (43 percent) than they were to involve either drug offenses (14 percent) or property offenses (37 percent) (see exhibit 3).

Exhibit 3. Cases judicially waived to criminal court, 1987-96



Note: Juvenile court judges waived between 1 percent and 2 percent of formally charged delinquency cases from 1987 to 1996. The number of cases waived to criminal court grew more than 70 percent between 1987 and 1994, from 6,800 to 11,700 cases annually. By 1996, the number of waived cases had declined to 10,000. Most of the increase in waived cases between 1987 and 1996 was due to the larger number of cases involving offenses against persons.

Source: Stahl 1999.

Presumptive judicial waiver

The dominant trend among State transfer laws during the 1990s was a reduction in the role of judges and a greater reliance on prosecutors. For instance, many States enacted policies that made judicial waiver “presumptive” and shifted the burden of proof from the prosecutor to the juvenile. Presumptive waiver provisions typically require a defense attorney to show proof that a youth is amenable to juvenile court disposition. Otherwise, the juvenile will be transferred to criminal court. North Dakota, for example, adopted a policy that required judges to waive any juvenile age 14 and older with two or more previous felonies and accused of committing a serious offense, unless the youth could prove he or she was amenable to rehabilitation in juvenile court (Griffin,

Torbet, and Szymanski 1998, A-57). New Jersey enacted a law that required juvenile courts only to find probable cause that public safety interests necessitated the transfer of certain juveniles age 14 and older unless the juvenile was able to argue otherwise (Griffin, Torbet, and Szymanski 1998, A-53).

There is no national information on the number of juveniles affected by these policies, but the popularity of presumptive waiver among State lawmakers certainly grew during the 1990s. Between 1992 and 1997 alone, 11 States passed new presumptive waiver provisions. Altogether, 14 States (Arizona, Arkansas, Colorado, Florida, Georgia, Louisiana, Massachusetts, Michigan, Montana, Nebraska, Oklahoma, Vermont, Virginia, and Wyoming) and the District of Columbia were known to have presumptive waiver laws by the end of the 1990s (Torbet and Szymanski 1998, 4).

Mandatory judicial waiver

Although presumptive waiver policies allow juveniles to rebut the presumption of their nonamenability to juvenile court treatment and avoid being transferred to criminal court, mandatory waiver laws provide no such escape. The juvenile court's only role in mandatory waiver proceedings is to ascertain if a particular offender meets the statutory criteria for waiver. If the juvenile meets the criteria, the juvenile court judge is left with no choice but to transfer jurisdiction of the case to criminal court. Connecticut's mandatory waiver provision, for instance, states that a defense attorney cannot make any motion or argument in opposition to criminal court transfer (Griffin, Torbet, and Szymanski 1998, 4).

There are no national data on the volume or impact of mandatory transfers, but they became far more common during the 1990s after being quite rare as recently as the 1970s. By 1997, 14 States (Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Virginia, and West Virginia) had enacted some form of mandatory judicial waiver (Torbet and Szymanski 1998). Typically, the criteria for mandatory transfer specified that juveniles who met various age, offense, and criminal history requirements must be transferred to criminal court. South Carolina law, for example, required juvenile court judges to transfer jurisdiction of any case involving a youth age 14 or older if the youth had been adjudicated for two or more previous offenses and was accused of an offense punishable by a sentence of at least 10 years (Griffin, Torbet, and Szymanski 1998, A-68). Indiana legislators passed a law that requires a juvenile court judge to waive *any* juvenile with a prior adjudication who is charged with a felony, regardless of the youth's age (Griffin, Torbet, and Szymanski

1998, A-28). The Indiana law used mandatory waiver to create a policy for juvenile offenders that could be described as “two strikes and you’re an adult.”

Statutory exclusion from juvenile court jurisdiction

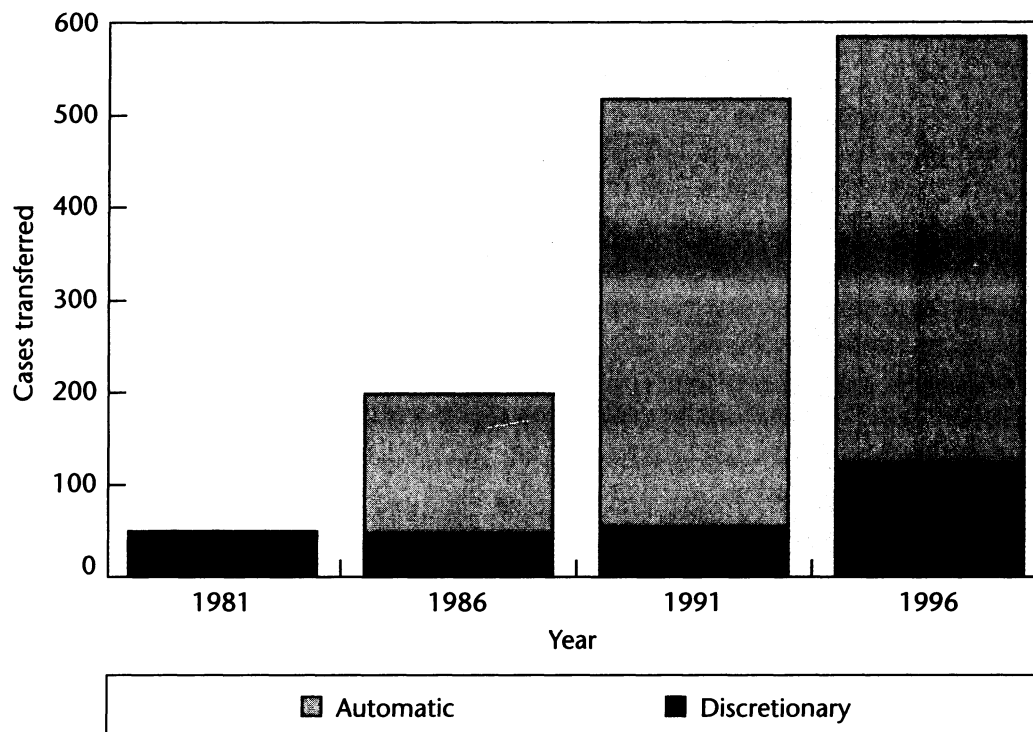
The concerted expansion of judicial waiver laws and the increasingly nondiscretionary quality of transfer policies helped to weaken the border between juvenile court and criminal court during the last decades of the 20th century. Judicial waiver, however, had been available since the early days of the juvenile court movement. Other, more recent mechanisms contributed even more to the deterioration of the juvenile-adult boundary. One such mechanism that became widespread during the last years of the 20th century was statutory exclusion, known in some States as “automatic transfer.”

Statutory exclusion laws mandate that certain young offenders are transferred automatically to criminal court once they are charged with certain offenses. Judicial involvement in the transfer decision is unnecessary. If a youth is at least a certain age and charged by the prosecutor with a certain offense, State law places the case directly in the criminal court’s jurisdiction. Once a youth is charged with an offense statutorily excluded from juvenile court jurisdiction, the case simply bypasses juvenile court and is prosecuted in criminal court using the same procedures that would be employed in any other criminal case.

Statutory exclusion provisions vary by jurisdiction, but the criteria most commonly used to exclude cases automatically from juvenile court are combinations of age, offense, and prior record. As of 1997, for example, Georgia excluded all juveniles age 13 and older from juvenile court if they were charged with one of several violent offenses such as murder, voluntary manslaughter, rape, or armed robbery with a firearm (Griffin, Torbet, and Szymanski 1998, A-22). Arizona automatically excluded juveniles charged with any felony if the youth had been adjudicated for two or more prior felony offenses (Griffin, Torbet, and Szymanski 1998, A-8).

The popularity of statutory exclusion laws increased significantly in the 1990s. As of 1997, 28 States statutorily excluded at least some juveniles charged with certain offenses. Two States (Arizona and Minnesota) enacted new statutory exclusion provisions between 1992 and 1997, while 26 States expanded their existing statutory exclusion provisions either by lowering age limits, adding to the list of applicable offenses, or both (Torbet and Szymanski 1998, 5). Illinois lawmakers, for example, repeatedly expanded their automatic transfer statutes during the 1980s and 1990s. By 1996, the number of juveniles affected by statutory exclusion laws in Illinois far exceeded the number affected by judicial waiver (see exhibit 4).

Exhibit 4. Delinquency cases transferred to criminal court in Illinois, 1981–96



Note: A series of laws expanded the use of automatic transfer in Illinois, helping to increase the number of youths transferred to adult courts statewide.

1982: Automatic transfer statute enacted. Applied to youths age 15 and older charged with murder, rape, armed robbery, and some sexual assaults.

1985: Statute expanded to include juveniles age 15 and older charged with committing drug or weapons violations within 1,000 feet of a school.

1990: Statute expanded to include juveniles charged with felonies committed “in furtherance of gang activity.”

1990: Statute expanded to include juveniles age 15 and older charged with committing drug violations within 1,000 feet of public housing.

1995: “Presumptive waiver” provision added, reducing prosecutor discretion to transfer or not to transfer certain cases.

Sources: Urban Institute analysis of data from the Administrative Office of the Illinois Courts, *Probation and court services statistical report*, Springfield, Illinois: Administrative Office of the Courts; Clarke 1996, 3–21.

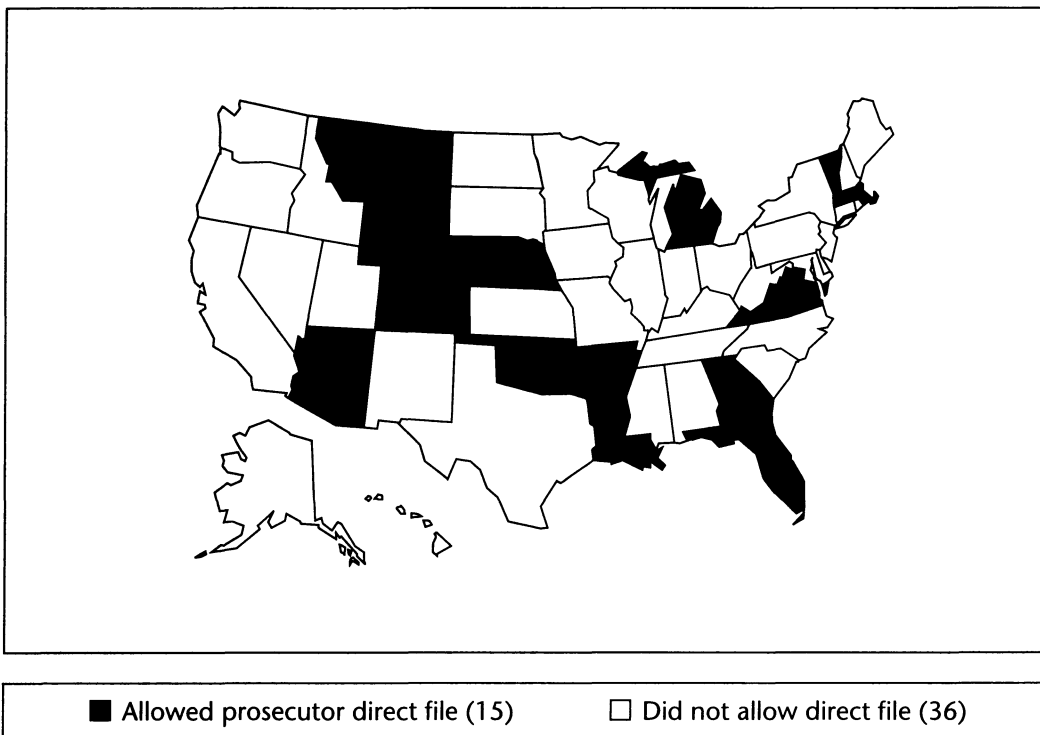
Prosecutor direct filing in criminal court

Direct file, also known as concurrent jurisdiction or prosecutor discretion, is another increasingly prominent form of criminal court transfer. Direct file laws give prosecutors the discretion to prosecute juveniles either in juvenile or adult

court. Judges cannot review such actions because the charging decisions of prosecutors are considered an executive function (Leeper 1991). Direct file statutes give jurisdiction over certain categories of young offenders to both the juvenile court and the criminal court. Prosecutors are free to decide in which forum a youth should face prosecution. It could be argued that other transfer mechanisms provide prosecutors with comparable powers. Prosecutor charges, for example, are often needed to trigger mandatory judicial waiver. Mandatory waivers, however, require at least some action by juvenile court judges. Direct file policies give prosecutors total independence.

The popularity of direct file provisions grew significantly during the 1980s and 1990s. In 1982, only eight States had direct file statutes (Hutzler 1982). As of 1997, 14 States and the District of Columbia had such provisions (see exhibit 5). Colorado's direct file statute, for example, was written to be very inclusive. Prosecutors were authorized to proceed in criminal court or juvenile court against any youth age 14 or older who was charged with a wide array of felony offenses, as well as any youth conspiring or attempting to commit such offenses

Exhibit 5. States (including the District of Columbia) with prosecutor direct file juvenile justice laws, 1997

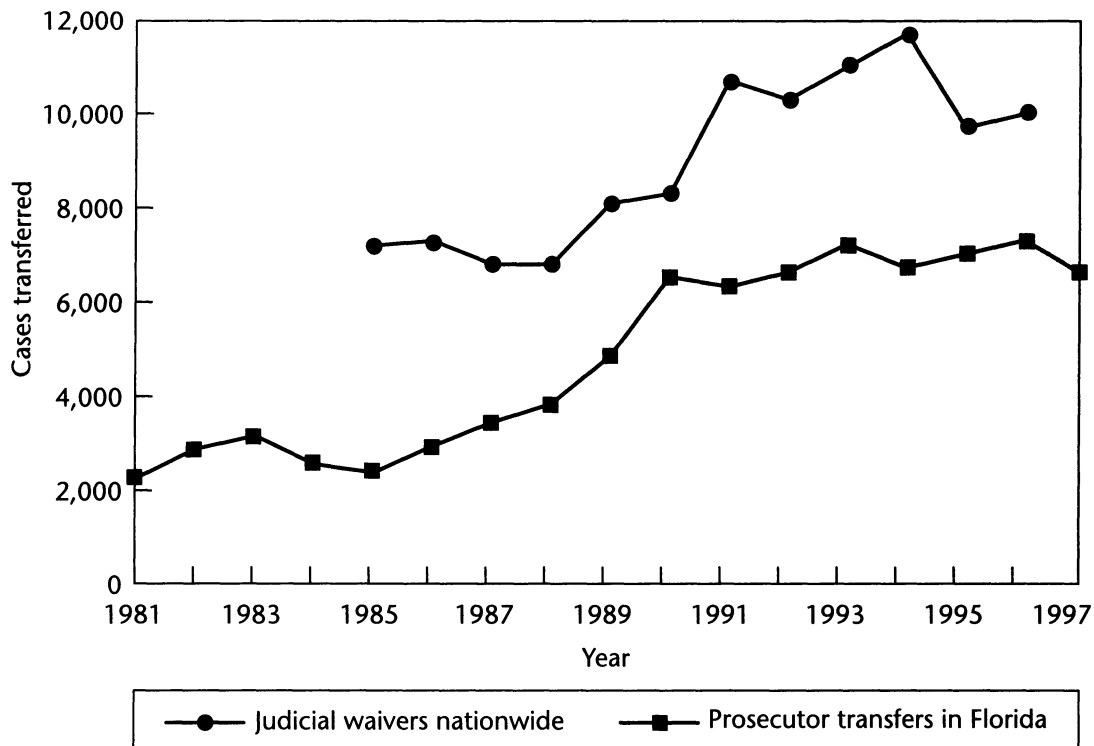


Source: Torbet and Szymanski 1998, 4.

(Griffin, Torbet, and Szymanski 1998, A-14). Louisiana adopted a direct file law that gave prosecutors discretion to file criminal charges against any youth age 15 and older who was charged with a second drug felony, a second charge of aggravated burglary, or virtually any of the Federal Bureau of Investigation's Violent Crime Index offenses (Griffin, Torbet, and Szymanski 1998, A-34).

National data about the volume of prosecutor transfers do not exist. In States that provide for such transfers, however, they are likely to greatly outnumber judicial waivers. The State of Florida significantly expanded its direct file statute in 1981, giving State's attorneys more discretion to file criminal charges against offenders younger than 18. Within a decade, the number of transfers to criminal court tripled, and transfers by prosecutors soon outnumbered judicial waivers by a margin of six to one (Snyder and Sickmund 1995, 156). In 1982, one study estimated that prosecutors nationwide transferred 2,000 cases annually (Hamparian et al. 1982). By the mid-1990s, Florida prosecutors alone transferred more than 7,000 criminal cases involving offenders under the age of 18 (see exhibit 6).

Exhibit 6. Prosecutor transfers in Florida and judicial waivers nationwide



Sources: Urban Institute analysis of data from *Profile of delinquency cases and youths referred*, Bureau of Research and Data, Florida Department of Juvenile Justice; Snyder et al. 1998.

Reductions in the age of juvenile court jurisdiction

The most straightforward method of increasing the number of young offenders sent to criminal court is simply to lower the upper age of original juvenile court jurisdiction. One change in State law sends a whole cohort of arguably “juvenile” offenders into the auspices of the criminal court, regardless of other factors. Lowering the upper age of original juvenile court jurisdiction is often omitted in discussions of juvenile transfer mechanisms, but this method is most likely responsible for the largest number of youths who actually appear in criminal court. As of 1997, 10 States (Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin) excluded all 17-year-olds from their juvenile courts by designating the age of juvenile court jurisdiction as 16 or younger; three States (Connecticut, New York, and North Carolina) excluded all 16-year-olds as well (Griffin, Torbet, and Szymanski 1998, A5–A85).

The number of youths affected by age exclusion laws is likely to be considerable, although no national data on the issue exist. The National Center for Juvenile Justice (NCJJ) estimated that there were 176,000 law violations committed in 1991 by youths under age 18 that were ineligible for juvenile court because State laws excluded 16- and 17-year-olds from the juvenile court (Snyder, Sickmund, and Poe-Yamagata 1995, 155). The NCJJ estimate was produced by applying the 1991 per-capita rate of law violations handled by juvenile courts nationwide (according to *Juvenile Court Statistics*, a Federal reporting series) to the relevant youth populations of each State in which 16- or 17-year-olds were defined as adults for the purposes of criminal prosecution.

The same method can be used to estimate the number of youths excluded from juvenile courts just 5 years later in 1996. According to *Juvenile Court Statistics*, the national rate of law violations handled by juvenile courts in 1996 was 119.8 cases for every 1,000 16-year-olds and 119 cases for every 1,000 17-year-olds in the U.S. population (Stahl 1999). According to the U.S. Census Bureau, there were 380,875 16-year-olds residing in Connecticut, New York, and North Carolina in 1996, and nearly 1.5 million 17-year-olds in these States and the other 10 States that excluded 17-year-olds from juvenile court (see U.S. Bureau of the Census 1999). Using the same method employed by NCJJ for 1991, this analysis suggests that there were as many as 220,000 law violations committed in 1996 by youths younger than 18 who were legally ineligible for juvenile court because of legislative age limits. If only half of these cases actually went forward for criminal court processing, they would still far exceed the number of juveniles ending up in adult court by all other methods combined.

Based on the number of youths affected, it is clear that the actions of State legislators “transferred” far more juveniles to adult court than did either judges or

prosecutors. Lowering the upper age of juvenile court jurisdiction allows States to maintain a boundary between juvenile and criminal court while reducing its actual significance. In 1996, more than 40 percent of the delinquency cases handled by juvenile courts nationwide involved youths age 16 or older (Snyder et al. 1998). When States reduce the upper age of juvenile court jurisdiction (as New Hampshire and Wisconsin did in 1996), they likely remove most of their serious and chronic young offenders from juvenile court. This may reduce conflict over the role of the juvenile court in handling serious offenders, but it also eliminates opportunities for the juvenile justice system to intervene aggressively in less serious cases.

Blended sentencing

Transferring juveniles to the adult court system is the most widely recognized method of reducing the significance of the juvenile-criminal border, but it is certainly not the only method. During the last two decades of the 20th century, State lawmakers began to experiment with an array of new policy options for young offenders. For example, some States gave judges the power to “blend” criminal court sentences with juvenile court dispositions (Torbet and Szymanski 1998, 6). Instead of choosing between sentencing a youth in juvenile or adult court, judges can draw on both systems. Blended sentencing policies were devised primarily to provide longer terms of incarceration for juveniles, but they also helped to blur the distinction between juvenile justice and adult justice.

Most States that enacted blended sentencing laws did so by choosing from three basic types of sentencing schemes. The first type of blended sentencing gives either juvenile court judges or criminal court judges the discretion to place youthful offenders with either juvenile or adult correctional agencies, based on the offender’s characteristics and the resources of the particular jurisdiction. Florida passed a blended sentencing law that allowed both juvenile and criminal court judges to sentence juveniles to either the juvenile or adult correctional system (Torbet et al. 1996, 14). Judges were required to consider a statutorily defined set of criteria to determine the appropriateness of the two systems. Should the judge determine the juvenile system was the most appropriate for a particular case, the juvenile was found delinquent and sentenced to the juvenile correctional system. If not, the juvenile was found criminally guilty of the offense and sentenced to the adult Department of Corrections. As of 1995, nine States (California, Colorado, Florida, Idaho, Michigan, New Mexico, Oklahoma, Virginia, and West Virginia) had enacted this form of blended sentencing (Torbet et al. 1996).

A second blended sentencing system allows juvenile court judges to impose sentences that sequentially confine offenders to juvenile and adult correctional facilities. Youthful offenders are confined in juvenile facilities until they reach maturity and then transferred into adult correctional facilities to serve the remainder of their sentences. Five States (Colorado, Massachusetts, Rhode Island, South Carolina, and Texas) had adopted this model of blended sentencing by the mid-1990s (Torbet et al. 1996, 13).

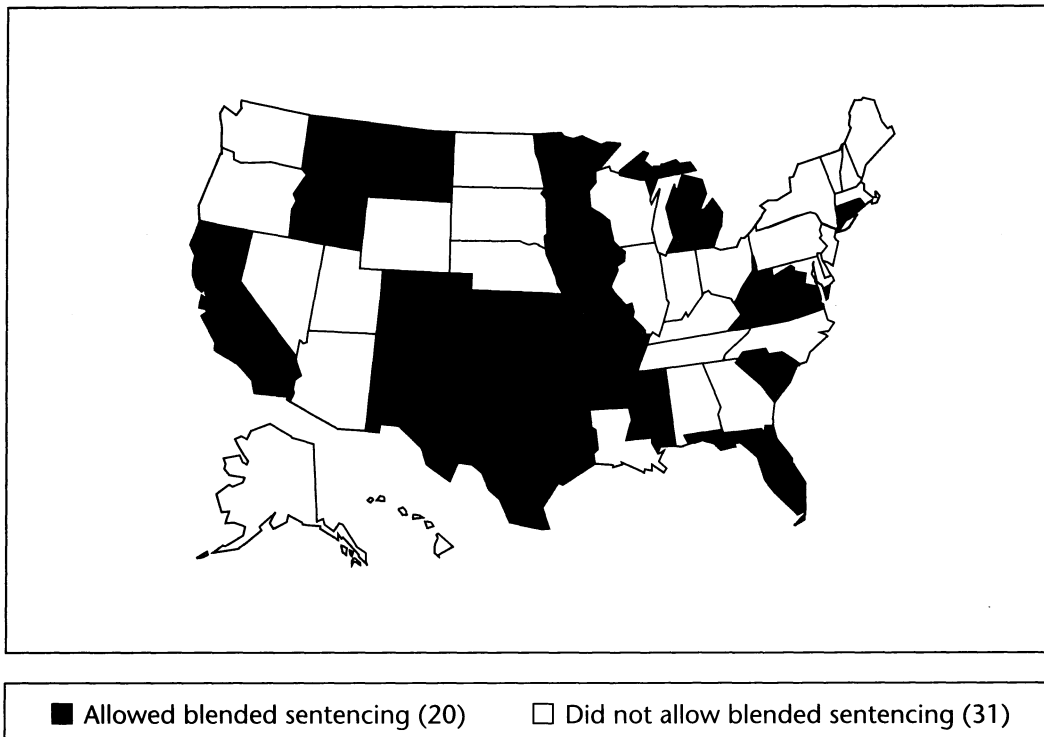
A third blended sentencing model allows judges to impose sanctions on youthful offenders in both the juvenile and adult correctional systems simultaneously. Upon completion of the juvenile justice sanction, the adult portion of the sanction is suspended, contingent on the offender's compliance with the particular conditions of disposition. Eight States (Arkansas, Connecticut, Iowa, Kansas, Minnesota, Montana, Missouri, and Virginia) employed this sentencing option as of 1995 (Torbet et al. 1996, 14).

The underlying purpose of all of these sentencing options is to increase the range of punishment available for juvenile offenders regardless of whether the charges are initially processed in the juvenile court or the criminal court. Increasing the variety of sentencing options available may reduce the resistance of court officials to handle very young offenders in the adult system since juveniles are not subject to immediate confinement with adults. They also allow juvenile court judges to draw on the traditionally richer treatment and supervision resources available in the juvenile justice system without having to sacrifice the lengthy periods of incarceration once available only in the criminal court system. Blended sentencing was virtually unheard of in the juvenile justice system until the 1990s. By 1997, there were 20 States employing one or more blended sentencing schemes (Torbet et al. 1996, 13; Torbet and Szymanski 1998, 6) (see exhibit 7).

Mandatory minimum sentences/sentencing guidelines

Sentencing guidelines and mandatory minimum policies for juveniles also began to proliferate during the 1990s. As of 1997, 17 States and the District of Columbia had enacted some type of mandatory minimum sentence provisions for at least some juvenile offenders (Torbet et al. 1996, 14; Torbet and Szymanski 1998, 7–8) (see exhibit 8). Typically, sentencing guidelines applied only in cases involving violent or serious juvenile offenders as defined by statute. Massachusetts adopted a law that required juveniles at least 14 years of age who were found responsible for first-degree murder to serve a sentence of at least 15 years in a correctional facility; juveniles found responsible for second-degree murder were required to serve at least 10 years (Torbet et al. 1996, 15). Some jurisdictions applied sentencing guidelines to young offenders

Exhibit 7. States (including the District of Columbia) with juvenile justice blended sentencing options, 1997

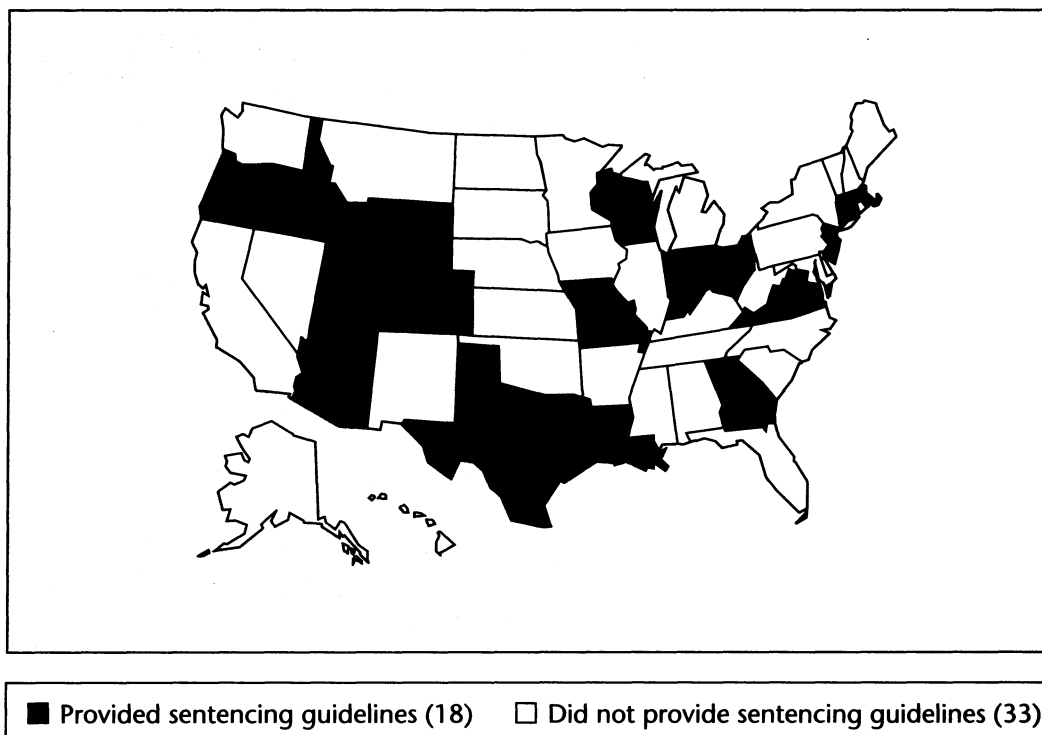


Sources: Torbet et al. 1996, 13; Torbet and Szymanski 1998, 6.

by first requiring that they be tried in criminal court, but others (e.g., Arizona, Utah, and Wyoming) enacted formal sentencing guidelines that applied to juvenile delinquency cases handled by juvenile court judges. These laws required juvenile court dispositions to be consistent with a predefined sentencing menu largely based on the youth's most recent offense and prior record.

Concerns about unstructured, disparate, and even arbitrary sentencing practices for adults have led to the widespread use of sentencing guidelines and mandatory minimum policies in criminal courts during the last three decades of the 20th century (Tonry 1996). States may have started to apply these policies to the juvenile justice system for many of the same reasons. The use of structured sentencing, however, fundamentally contradicts the basic premise of juvenile justice by making sentence length proportional to the severity of an offense rather than basing court outcomes on the characteristics and life problems of an offender. Sentencing guidelines made the juvenile justice process even more similar to criminal justice and thus further diminished the importance of the juvenile-criminal border.

Exhibit 8. States (including the District of Columbia) with sentencing guidelines or mandatory minimum sentences for youths, 1997



Sources: Torbet et al. 1996, 14; Torbet and Szymanski 1998, 7-8.

Reduced confidentiality

Almost all juvenile court proceedings and records were completely confidential as recently as the 1960s. Confidentiality was an integral part of the traditional juvenile justice model, based on the theory that designating a juvenile as a law violator and then releasing that information to the public would stigmatize a young person in the community. This stigma would then encourage the juvenile to adopt a deviant self-image and reduce any likelihood of rehabilitation within the juvenile justice system (e.g., Schur 1971). As juvenile justice policy became more contentious during the 1980s and 1990s, support for confidentiality protections began to erode. Practical issues such as jurisdictional information sharing and greater media interest in juvenile court proceedings began to win out over confidentiality. Most States began to open their juvenile court proceedings and arrest records to the public and to the media.

By 1997, 30 States had enacted provisions to allow open hearings in at least some juvenile cases (Torbet and Szymanski 1998, 10). Typically, these laws pertained to cases in which a juvenile was alleged to have committed a serious or

violent offense or if the juvenile had a certain number of previous juvenile court adjudications. Forty-two States had enacted legislation authorizing the release and publication of the names and addresses of alleged juvenile offenders in at least some cases. Similarly, 48 States allowed the disclosure of juvenile court records to at least one of the following: the public, victims, schools, and/or law enforcement agencies. States also began to allow more juveniles to be fingerprinted and photographed for later identification by law enforcement. In fact, only four States did not allow juvenile fingerprints to be included in criminal history records (Maine, New Hampshire, Rhode Island, and Wisconsin), and only five States did not allow juveniles to be photographed (Maine, Nebraska, Rhode Island, West Virginia, and Wisconsin) (Torbet and Szymanski 1998, 10).

Not only have juvenile court documents become less confidential, they have also become more permanent. Traditionally, juvenile court records were sealed after the court's jurisdiction over a youth had expired. These records were often expunged or destroyed after a period of time had passed as long as the juvenile was not convicted of subsequent criminal behavior. Once a juvenile court record was expunged, it was as if the adjudication had never occurred, freeing ex-offenders to deny ever having a police record.

During the 1990s, many States adopted laws that either required juvenile records to remain open longer or prevented the sealing or destruction of juvenile records altogether, typically those involving violent or serious felonies. Florida required that records regarding juveniles considered habitual offenders must be retained until the offender's 26th birthday (Torbet et al. 1996, 42). North Carolina passed a law preventing authorities from expunging records of juveniles who had committed certain serious offenses (Torbet et al. 1996, 45). By 1997, 25 States had enacted laws restricting the sealing and/or expunging of juvenile records (Torbet and Szymanski 1998, 10).

Use of juvenile records in criminal court

Finally, one of the more significant departures from a traditional system of juvenile justice was the idea that juvenile court records should follow young adults into criminal court. By allowing criminal court judges to consider a defendant's prior juvenile court record at the time of sentencing, States were altering the terms of the agreement that allowed the juvenile court system to exist in the first place. Juvenile law was essentially a covenant between accused juveniles and the State. Young offenders agreed to receive less due process in juvenile court in exchange for a more informal, nonstigmatizing, and nonpermanent disposition. The Supreme Court relied on this covenant when it withheld full legal rights from young people facing juvenile court adjudication.

In 1971, the Supreme Court halted the due process revolution it helped to inspire only 4 years earlier with the *Gault* opinion. The Court ruled in *McKeiver v. Pennsylvania* that juvenile courts were not constitutionally obligated to offer jury trials to accused juvenile offenders (403 U.S. 528 [1971]). The majority opinion in *McKeiver* expressed a fear that imposing juries on the juvenile court might “effectively end the idealistic prospect of an intimate, informal protective proceeding” (p. 545). The Court also maintained that “equating the adjudicative phase of the juvenile proceeding with a criminal trial ignores the aspects of fairness, concern, sympathy, and paternal attention inherent in the juvenile court system” (p. 550). Whether such an atmosphere could be found in actual juvenile courts was debatable even in the 1970s. By the 1990s, however, the emergence of policies that permitted juvenile court records to enhance the severity of criminal court sentences made the issue moot. Defendants could now be imprisoned for many years as a direct result of adjudications in juvenile court.

As of 1997, all 50 States and the District of Columbia had enacted statutes or court rules allowing this practice or they had case law that sanctioned it (Sanborn 1998, 209). Juvenile offense histories were used to enhance criminal court sanctions in at least three ways: as criminal history points in sentencing guideline systems; as aggravating factors considered during sentencing; or as “strikes” in jurisdictions with “three strikes” legislation (Sanborn 1998, 210). Criminal court sentencing guidelines in 13 jurisdictions assigned offenders criminal history points or criminal history categories based on prior juvenile adjudications. Two jurisdictions (North Carolina and Tennessee) allowed prior juvenile adjudications to count as aggravating factors in their guideline systems, and six nonguideline jurisdictions (Alaska, Colorado, Illinois, Indiana, New Jersey, and Ohio) permitted consideration of juvenile adjudications as aggravating factors in at least some cases (Sanborn 1998). For example, Illinois and Indiana allowed juvenile offense histories to serve as sufficient grounds for increasing sentence length or imposing consecutive sentences. Three States (California, Louisiana, and Texas) allowed juvenile adjudications to serve as the first and second strikes against adult offenders. Thus, offenders with two prior juvenile court adjudications could face life in prison if their first appearance in criminal court resulted in conviction for a strike offense.

Research Findings

The broad popularity of sentencing guidelines, blended sentencing, and using juvenile court adjudications to enhance criminal court sentences were all unmistakable signs that State lawmakers were beginning to abandon the traditional concept of juvenile justice. Juvenile justice interventions that once targeted the depth of an offender’s troubles were now clearly focused on the gravity

of the offender's behavior. Whereas the adequacy of an intervention was once evaluated by its intensity, it would now be judged principally by its duration. By the end of the century, the direction being taken by juvenile justice policy was clear. The States were slowly dismantling the boundary between their juvenile justice and criminal justice systems. Efforts to do away with the boundary seemed to begin almost as soon as the original juvenile courts were founded in the early 20th century, but the Supreme Court's *Gault* decision in 1967 helped accelerate the process.

As lawmakers reinvented the goals and procedures of juvenile courts to make them more like those of criminal courts, they also became increasingly interested in new provisions for transferring some juveniles to adult court. At first, transfer policies focused on a few exceptional cases, such as the most violent offenders and those with lengthy arrest records. Soon, however, transfers were expanded to include drug offenders, juveniles accused of weapon charges, and even many property offenders. States first attempted merely to increase the number of youths waived to criminal court. Later, the procedural difficulties involved in judicial waiver became burdensome and states began to experiment with other methods of exposing more juveniles to the criminal court process, such as legislative exclusion, prosecutor direct file, and blended sentencing.

Why did policymakers turn so instinctively to the criminal court? Most simply assumed that juvenile offenders tried in criminal court would receive more certain and severe punishment. Researchers began to examine this assumption seriously during the 1980s and 1990s. Surprisingly, there were few studies before 1980 that assessed the actual outcomes of criminal court transfer (see reviews in Howell 1997, 88–111; Feld 1998b). Several researchers had examined the decisionmaking processes leading up to transfer, and there was an ample literature about the characteristics of juveniles who were most likely to be transferred. Few researchers, however, had been able to track groups of offenders into the adult system to test whether actual outcomes met the expectations of policymakers.

Targets of transfer

Researchers who analyzed the characteristics of juveniles most likely to be transferred into criminal court generally identified two distinct but overlapping groups (Snyder and Sickmund 1999, 179–182). First, there were the chronic offenders with long histories of arrest and juvenile court involvement. Chronic offenders were especially likely to be transferred as they neared the upper age limit of the juvenile court's jurisdiction. Second, there were the (far fewer) juveniles charged with serious person offenses. Even a single serious offense such as homicide, forcible rape, or armed robbery was usually sufficient to place a youth

at high risk of being transferred. Youths in this second group could be virtually any age, especially if the offense involved serious injuries to a victim.

One study sponsored by the Federal juvenile justice office, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), found that waiver requests by Utah prosecutors were nearly always approved (87 percent) in cases where a youth used a weapon to injure a victim (Snyder, Sickmund, and Poe-Yamagata 1999). The same study found that waiver requests were very likely to be approved (81 percent) in cases involving offenders with five or more prior cases in juvenile court. The same researchers found that South Carolina youths with five or more prior arrests were significantly more likely to be waived than juveniles with fewer prior arrests. South Carolina judges approved 82 percent of waiver requests for youths with virtually no offense histories if they were charged with serious violent offenses. Similar findings emerged from other research on transfer (Feld 1999; Howell 1997; U.S. General Accounting Office 1995). Clearly, the probability of criminal court transfer was affected by the length of an offender's law-violating career and the severity of his or her most recent offense.

Court outcomes

As policymakers worked throughout the 1980s and 1990s to expand the pool of juveniles eligible for transfer, researchers began to ask whether criminal court sanctions were in fact more punitive or applied more consistently than those available in juvenile court. The premise that criminal court handling necessarily yielded severe sentences was questioned as early as 1982 by research showing that half of transferred youths received no term of incarceration following a criminal conviction. Hamparian and colleagues (1982) analyzed 1978 data from a multi-State study and found that although the vast majority (91 percent) of juveniles tried in criminal court were convicted, more than half of the convictions resulted in probation, fines, or other nonincarcerative sanctions. Slightly less than half (46 percent) of judicial transfers and 39 percent of prosecutor direct files ended in sentences that involved any term of incarceration (Hamparian et al. 1982).

Another study examined a cohort of 214 youths transferred to criminal court in an unnamed Western State in 1980 and 1981 (Bortner 1986). The results showed that 96 percent of all transferred youths were convicted; 32 percent of the convictions resulted in either jail or prison. Heuser (1984) studied a sample of youths transferred to Oregon criminal courts and found that 81 percent were convicted while 54 percent of the convicted youths were given a term of incarceration. More recently, McNulty (1996) found that 92 percent of transferred cases resulted in convictions, but 43 percent of those transferred received a

sentence involving incarceration and 49 percent received probation. Similarly, Fagan (1995, 1996) found that up to 60 percent of transferred youths were found guilty in criminal court but more than half of those convicted received sentences not involving incarceration.

These findings were supported by a study from the Florida Department of Juvenile Justice (Bureau of Data and Research 1999). The agency's analysis of criminal court dispositions for transferred cases showed that only 17 percent of cases sent to adult court actually resulted in admissions to prison and 13 percent resulted in some jail time. Of all transferred cases in Florida (approximately 6,000 per year), the vast majority resulted in either probation (54 percent), acquittal or dismissal (15 percent), or pretrial diversion (1 percent).

Of course, analyzing the rate of incarceration for transferred juveniles does not fully address the concerns of policymakers. The underlying question is, "Compared with what?" Even if criminal court transfer cannot guarantee a serious sentence, does it at least improve the odds of one? Also, does criminal court handling increase the chances that a youthful offender will receive a more lengthy term of incarceration? A few studies have examined these issues by comparing youths retained in juvenile court with youths transferred to criminal court. The results generally indicate that young offenders convicted of violent crimes in criminal court receive sanctions that are more punitive, while nonviolent youths receive similar (or even lighter) sentences than they would likely have received in juvenile court.

In a particularly effective study, Fagan (1995, 1996) compared a sample of youths retained in northern New Jersey's juvenile court system with a sample of youths excluded from southeastern New York's juvenile court system. Both samples were composed of offenders age 15 or 16, charged with a burglary or robbery offense in 1981-82. In New York, the youths were prosecuted in criminal court because they were already statutorily excluded from juvenile court. In New Jersey, offenders of the same age and charged with similar offenses were usually handled in juvenile court. The samples were selected at random from two New Jersey counties and two New York counties and then matched on a number of legal and social measures. Researchers followed each sample for 4 years.

The results of the Fagan study suggested that offenders charged with robbery may have been punished more often and incarcerated more often in criminal court, but burglary offenders were punished similarly in either court (Fagan 1995, 248). Robbery offenders in criminal court were found guilty more often (57 percent) than their matched counterparts in juvenile court (46 percent). Likewise, among offenders found guilty of robbery, those handled in criminal

court were significantly more likely to be incarcerated (46 percent) than were cases processed in juvenile court (18 percent). In contrast, offenders charged with burglary in criminal court were no more likely to be convicted or incarcerated than the matched sample of youths charged in juvenile courts. Moreover, for offenders incarcerated for either robbery or burglary, the duration of incarceration was not significantly different by court type. Both types of offenders received indeterminate sentences with a range of approximately 11 to 32 months (Fagan 1995, 249).

Podkopacz and Feld (1996) used data from Minnesota to compare dispositions for youths in juvenile court and criminal court. The results suggested that youths convicted in criminal court were much more likely to be sentenced to confinement (85 percent) than were youths handled in juvenile court (63 percent), even after controlling for the seriousness of offenses. Youths convicted of offenses carrying presumptive terms of incarceration (e.g., violent offenses), received much longer sentences from the criminal court (roughly 4 years) than from the juvenile court (approximately 9 months). The relationship reversed, however, for youths convicted of nonpresumptive offenses (usually property). Youths adjudicated for these offenses in juvenile court were sentenced to longer periods of incarceration (about 6 months) than were youths convicted in criminal court (about 4.5 months).

Together, studies of transfer outcomes suggest that conviction rates for transferred youths may vary from 60 to 90 percent, with 30 to 60 percent of convictions resulting in at least some incarceration. In other words, the odds of incarceration might vary from a low of 2 to a high of 5 or 6 incarcerations for every 10 transfers. The most recent research suggests that the odds of incarceration for transferred youths are contingent on the offenses involved in each case. Youths convicted of violent offenses are more likely to be incarcerated if they are handled in criminal court. Youths charged with property and drug offenses, on the other hand, tend to receive sentences in criminal court that are no more (and sometimes less) severe than the dispositions usually imposed by juvenile court.

Youth outcomes

Court sanctions, of course, are a means to an end. Policymakers who advocate transfer argue that greater use of the adult court will provide more severe sanctions and thus a more effective deterrent to crime, either among youths actually transferred (specific deterrence) or among other potential offenders (general deterrence). Either effect is difficult to measure, and the few studies that have tried to do so have generally found little to no effect from criminal court transfer. In a study of the specific deterrent effects of transfer, for example, Fagan (1995)

found that youths convicted of robbery in adult court reoffended more quickly and more frequently than those adjudicated in juvenile court. Most of the youths in both robbery groups reoffended during the followup period, but time until rearrest for robbery offenders sentenced in juvenile court was 50 percent longer than for robbery offenders sentenced in criminal court. Approximately 81 percent of burglars in both courts were rearrested during the study, and no significant differences were found in time to rearrest when burglars adjudicated in juvenile court were compared with those convicted in adult court.

Another often-cited study analyzed matched samples of youths in Florida and found similar results (Bishop et al. 1996; Winner et al. 1997). The study matched retained and transferred youths on seven criteria: most serious offense, number of counts in current case, number of prior referrals to juvenile court, most serious prior offense, age, gender, and race. All youths in the study entered the justice system during 1987, and their subsequent offending was followed through 1994. The Florida researchers concluded that criminal court transfer was “more likely to aggravate recidivism than to stem it” (Winner et al. 1997, 558–559). Half of the youths in both samples were rearrested and multivariate analyses revealed that transferred and retained youths had similar patterns of reoffending, although some property offenders convicted in criminal court had a lower rate of rearrest than their counterparts retained in juvenile court. Transferred youths generally reoffended more quickly than did youths retained in the juvenile justice system, but the prevalence of recidivism for retained youths eventually caught up to the level of transferred youths. Among the youths who recidivated, transferred youths tended to reoffend more often and more quickly. Other analyses have found similar results. For example, Podkopacz and Feld (1996) found that transferred youths in Minnesota were more likely than nontransferred youths to reoffend (58 percent versus 42 percent over 24 months at large).

Researchers investigating the general deterrent effect of juvenile transfer laws failed to find clear associations between transfer and public safety. Singer (1996) as well as Singer and McDowall (1988) examined the impact of New York State

If expanded criminal court transfer policies do increase public safety, researchers have yet to find clear evidence of that effect. Some studies find that transfer increases the certainty and severity of sanctions for the most serious and violent youths sent to criminal court, but these cases represent about one-third of transferred juveniles. In most nonviolent cases young offenders receive sentences comparable to what they might have received from a juvenile court.

laws that automatically transferred any juvenile from ages 13 to 15 who committed one of several violent offenses (murder, robbery, serious assaults, etc.). The law required such juveniles to serve relatively long sentences in secure facilities. (Recall that New York already handled all youths 16 and older in criminal court.) Under the new policy, juveniles as young as age 13 who were convicted of second-degree murder were mandated to a sentence of not less than 5 years in a secure facility. Offenders age 14 and older and convicted of various other violent offenses were required to serve similarly long mandatory minimum sentences.

To evaluate the general deterrent effect of the new law, Singer used interrupted time series and regression models to compare monthly arrest rates for youths affected by the law with two groups of youths not affected. Philadelphia juveniles comprised the first comparison group. For the second group, Singer chose New York youths ages 16 to 18 and thus not eligible for juvenile court. The analysis suggested the new law had no consistent or significant effects on juvenile violence. In most instances where arrest rates appeared to fall after enactment of the policy, the effect was not consistent across the State of New York. Rates may have dropped for some offenses in upstate New York but not in New York City (or vice versa), raising doubts about the influence of the statewide policy. Where arrest rates did drop in New York City, there were usually comparable declines in Philadelphia, where transfer laws had not changed substantially. According to Singer, the results indicated that “a switch in legal setting and an increase in the severity of punishment does not necessarily lead to a reduction in violent juvenile crime” (Singer 1996, 164).

A study in Georgia also failed to detect a significant difference in the rate of juvenile offending following enactment of expanded transfer provisions, suggesting that the broader use of criminal court transfer did not have a general deterrent effect (Risler, Sweatman, and Nackerud 1998). The same conclusion was reached by Jensen and Metsger (1994) who compared changes in juvenile violence in Idaho, which had recently expanded its transfer laws, to crime in Montana, which had not changed its laws. The analysis failed to find a significant difference in rates of violence following the implementation of Idaho’s broader transfer provisions.

The bottom line on transfer effects

The consensus appears to be that increasing the use of criminal court for young offenders does not ensure conviction for youths handled in adult court and does not guarantee incarceration even for those youths who are convicted. If expanded criminal court transfer policies do increase public safety, researchers have yet to find clear evidence of that effect. Some studies find that transfer increas-

es the certainty and severity of sanctions for the most serious and violent youths sent to criminal court, but these cases represent about one-third of transferred juveniles. In most nonviolent cases (perhaps half of transferred youths), young offenders receive sentences comparable to what they might have received from a juvenile court. Some juveniles (about one-fifth of transferred cases) actually get more lenient treatment in criminal court because they are convicted of lesser offenses or the charges against them are dismissed.

Critics of the available research on transfer point out that many studies are not well designed and fail to account for all of the factors that go into actual transfer decisions (Snyder and Sickmund 1999, 182). These criticisms have merit in some cases. Research that compares one group of youths chosen for transfer with another group of youths retained in juvenile court is undoubtedly affected by selection bias. Judges and prosecutors who elect to transfer certain juveniles to criminal court must base their decisions on some criteria of dangerousness and/or amenability, even if those criteria are unmeasured impressions or gut instincts. Youths transferred to criminal court, therefore, may be systematically different from youths retained in juvenile court, despite researchers' efforts to match transferred and nontransferred samples using objective criteria.

The "selection bias" argument, however, cannot explain why youths who are statutorily defined as adults in one jurisdiction are no less likely to recidivate than youths defined as juveniles in another jurisdiction. The Fagan (1995, 1996) study compared youths handled in the criminal courts of New York with similar youths handled by New Jersey juvenile courts. There were no case-specific decisions by judges or prosecutors. The two groups were handled differently as a matter of State law. Similarly, selection bias cannot explain the finding that transfer policies have no measurable effect on general deterrence or on aggregate arrest rates.

One explanation for the inability of researchers to document the effects of criminal court transfer may be that policies designed to expand the use of transfer are never implemented exactly as legislators hope they will be. A number of researchers have pointed out that the justice system is a complex network of individual decisions, and the network often responds in ways not anticipated by reform-minded legislators (Emerson 1991; Singer 1996; Zimring 1991). For example, Singer (1996, 97–151) provides a convincing case that the juvenile justice system is "loosely coupled." There are so many centers of discretion in the juvenile justice system that the decisions of any individual or group are at best an imperfect reflection of the decisions and priorities of others. Police do not refer every arrested youth for prosecution. Prosecutors do not charge every young offender referred by police. Judges do not adjudicate every offender charged by prosecutors. According to Singer, loose coupling creates a justice system in

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which individual case processing decisions are structured by interorganizational negotiations, thus reducing the chances that a single policy initiative will have a consistent effect on crime. Ironically, loose coupling also tends to increase the system's need for potent symbols of uniformity such as criminal court transfer.

Singer's organizational explanation for the relative ineffectiveness of criminal court transfer was supported by the findings of a 1999 study funded by OJJDP (Snyder and Sickmund 1999). Researchers in Pennsylvania studied nearly 500 court cases that were automatically excluded from that State's juvenile courts by a 1996 law that transferred youths age

15 and older if they were charged with certain violent offenses (robbery, aggravated assault, etc.) and had either committed the offense with a weapon or were previously adjudicated for an excluded crime. Prior to 1996, Pennsylvania had relied largely on judicial waivers to send serious juvenile offenders to criminal court. The new law automatically transferred many juveniles who were routinely waived by judges, but it also targeted youths who would have been unlikely candidates for waiver (i.e., very young offenders, females, and those with limited arrest records). Researchers used data from three counties to track court outcomes for 473 juveniles that met the new criteria for automatic exclusion from juvenile court. Each case was followed through several stages of prosecution and trial.

In half of the cases targeted for exclusion, criminal courts either declined to prosecute or sent the youth back to juvenile court using "de-certification" procedures (Snyder and Sickmund 1999, 180). Nearly one-fifth (19 percent) of the excluded cases were dismissed during preliminary hearings; 31 percent were returned to juvenile court. Even when cases were approved for criminal prosecution, more than half ended in dismissal, probation, or other sentences not involving incarceration. The youths least likely to be convicted and incarcerated by criminal courts were similar to the youths who were least likely to have been waived under the pre-1996 judicial waiver system. They tended to be younger, less likely to use weapons, and less likely to have an extensive prior offense history. Thus, in the end, Pennsylvania's new law appeared to achieve little.

Like many of their counterparts across the United States, Pennsylvania lawmakers sought to expand the use of adult court for young offenders, but their method of accomplishing that goal swept many younger and less serious offenders into criminal court. The system adapted to the policy by dismissing more cases prior

to trial, sending more youths back to juvenile court, and imposing community-based sentences on many of the remaining youths. In terms of public safety, the results were comparable. The transferred youths who actually ended up in jail or prison were basically the same type of youths who were traditionally waived to criminal court prior to 1996. Before the new law came into effect, juvenile court judges waived fewer cases, but in most of the cases they waived (77 percent), the youths were incarcerated (Snyder and Sickmund 1999, 181). Of all the youths who were automatically excluded by the new law, only 19 percent were incarcerated following criminal court convictions.

As a crime control policy, criminal court transfer may symbolize toughness more than it actually delivers toughness. Moreover, the symbol may have a high price. Sending more juveniles to adult court may not result in significantly more punishment for more offenders, but it may mean longer pretrial delays, more pretrial incarceration with few services to address youth problems, greater population management problems in prisons and jails, and greater exposure of youths to adult inmates (Howell 1997, 109; Snyder and Sickmund 1999, 180). Fagan (1996, 100–101) concluded as much after reviewing long-term outcomes for youths tried as adults with those retained in juvenile court:

By neither public safety nor punishment (or just deserts) standards can claims be made that the criminal justice system affords greater accountability for adolescent felony offenders or protection for the public. If criminalization is intended to instill accountability, its effects are diluted by the lengthier case processing time. If it is intended to protect the public by making incarceration more certain and terms lengthier, it fails also on this count. While these processes may have symbolic value to the public, they seem to offer little substantive advantage in the legal response to adolescent crimes. It is only for the earlier accumulation of a criminal record, leading to lengthier terms and more severe punishments for subsequent offenses, that there is a marginal gain in the relocation of adolescent crimes to the criminal court.

Juvenile probation officers, prosecutors, and judges openly embrace the goals of retribution and incapacitation, just as in the adult system. Policymakers, the media, and many juvenile justice professionals sometimes do not even bother with the euphemisms of juvenile justice. Delinquency offenses are simply called crimes. Trial is an easy synonym for an adjudication hearing.

The increasing use of the criminal court for young offenders may have also contributed to the perception that juvenile justice is somehow deficient and that any serious attempt to control crime must involve a criminal trial. In combination with other policy changes, such as reduced confidentiality, sentencing guidelines, and policies that use juvenile adjudications to enhance criminal sentences, the increased use of transfer during the 1980s and 1990s may have helped to facilitate the erosion of legal and procedural barriers that once separated juvenile justice and criminal justice.

Juvenile Justice in the 21st Century

There can be little remaining doubt that the boundary between juvenile justice and criminal justice has become less meaningful than originally envisioned by the founders of the juvenile court. All 50 States and the District of Columbia continue to operate separate juvenile courts, but many youths are ineligible for juvenile court and those that remain experience a juvenile court process that is far more criminalized (Feld 1993). Juvenile court procedures are more complex and evidence driven; delinquency cases are more likely to be formally charged by prosecutors instead of being handled informally by juvenile probation workers (Butts 1997a; Shine and Price 1992). Juvenile court dispositions are increasingly governed by offense severity rather than by youth troubles (Bazemore and Umbreit 1995; Feld 1998a). Defense attorneys are expected to defend juvenile clients more vigorously since adjudication may lead to severe sanctions (Puritz et al. 1995; Sanborn 1998). Juvenile probation officers, prosecutors, and judges openly embrace the goals of retribution and incapacitation, just as in the adult system. Policymakers, the media, and many juvenile justice professionals sometimes do not even bother with the euphemisms of juvenile justice. Delinquency offenses are simply called crimes. Trial is an easy synonym for an adjudication hearing. Secure facilities are often called youth prisons. In short, the similarities of the juvenile and adult justice systems are becoming greater than the differences between them.

Some elements of the juvenile-criminal border, however, remain in place. Constitutional protections for juveniles failed to keep up with the criminalization of juvenile justice. The underlying premise of the juvenile justice system has always been that youths accused of delinquency need fewer due process rights because the juvenile court is designed to help rather than punish. Most of the legislative and policy initiatives that increased the punishment orientation of juvenile courts occurred during the 1980s and 1990s. Yet the last significant enhancements to the constitutional rights of juveniles occurred during the 1960s and 1970s. In the majority of States, juveniles still have no right to jury trial, no guarantee of bail consideration, and no right to a speedy trial (Butts and Sanborn 1999; Sanborn 1993).

Efforts to rework the juvenile justice system are unlikely to diminish in the coming decades. In March 2000, 62 percent of California voters endorsed sweeping changes in the State's juvenile justice system by passing Proposition 21, the Gang Violence and Juvenile Crime Prevention Act. The law reduced confidentiality in the juvenile court, limited the use of probation for young offenders, and increased the power of prosecutors to send juveniles to adult court and put them in adult prisons. Public support for the measure was undiminished by projections that it would increase operational costs in the California juvenile justice system by \$500 million annually (Nieves 2000). National political leaders call for additional reforms and openly chastise the juvenile court. One U.S. Senator described the juvenile justice system as "ancient, archaic, and broken down" (Domenici 1997, S5898). Another Senator admitted that he could see why "State legislatures around this country are proposing bills to get rid of the juvenile justice system altogether" (Wyden 1997, S2341). The issue is no longer *whether* the boundary between juvenile and criminal justice should be changed, but how much and how fast it should be changed.

What next?

The crux of the debate is how the legal system should respond to crime by young people, and whether that response requires a completely separate court, with noncriminal jurisdiction that is not governed by criminal procedure. This debate tends to polarize around two extremes. One extreme says that the reforms of the 1980s and 1990s were ill-conceived. This position suggests that the traditional juvenile court should be fully restored, including its expanded powers of intervention, lessened due process burden, and a greater emphasis on prevention and rehabilitation. The other extreme holds that the juvenile court ideal never existed in reality and that juvenile courts never offered more than a *mirage* of treatment within a constitutionally defective process. According to this view, juvenile courts should simply be abolished.

As each policy reform from the 1980s and 1990s added to the punitive power of juvenile courts, the arguments of the abolitionists (best represented by Feld 1998a) became harder to avoid. The research basis for a separate juvenile court was significantly undermined by the criminalization of juvenile justice (see exhibit 9), and the growing similarity of juvenile and criminal justice makes the constitutional bargain that gave birth to the juvenile court increasingly untenable. It was already becoming difficult to believe in the traditional

Policymakers may need to devise a "third way," a new system of youth justice that does not rely on an all-or-nothing, juvenile-versus-adult dichotomy.

Exhibit 9. Implications of research for the continued existence of separate courts for adolescent offenders

Reasons for keeping the juvenile court separate	Consensus of research evidence	Verdict for juvenile court
Children and adolescents do not possess adult powers of reason and are not fully responsible for their behavior.	Children begin to exhibit adultlike reason several years before the upper age of juvenile court jurisdiction. A juvenile court based on this premise alone would most likely extend only through ages 12 or 13.	Abolish
The criminal behavior of young offenders is less serious than that of adults.	Offenders generally do not escalate the severity of their criminal behavior with age. Adult courts also handle a wide range of behaviors, including large numbers of minor crimes.	Abolish
Young people are more malleable than adults and respond better to intervention.	Individual differences in treatment amenability emerge between ages 8 and 10 and do not appear to change substantially after age 10.	Abolish
Separate courts help maintain support for separate correctional facilities. Young offenders are isolated from corrupting and possibly predatory older inmates.	Separate correctional facilities for young offenders are possible regardless of which court imposes sentence. Research has <i>not</i> found adult facilities to be significantly more crime inducing than juvenile facilities, but juveniles have a higher risk of victimization if incarcerated with adult inmates.	Possibly retain
Separate juvenile courts help reserve a share of treatment and supervision resources specifically for young offenders.	The same argument could apply to other groups of offenders. By itself, this is inadequate justification for a separate legal jurisdiction for young offenders.	Abolish
Juvenile courts prevent the stigma of criminal conviction, thus preserving the life chances of youths who can stay out of further trouble after one or two early mistakes.	As long as juvenile court is less stigmatizing, this is a clear benefit of separate courts. Of course, the same argument could apply to adult defendants who remain crime free for several years.	Retain
<p>Source: Based in part on Hirschi and Gottfredson 1993, 262–271.</p>		

juvenile court in 1971 when the Supreme Court denied juveniles the right to jury trial by lauding the “fairness, concern, sympathy, and paternal attention inherent in the juvenile court system” (*McKeiver v. Pennsylvania*, 403 U.S. 528, 550 [1971]). By the end of the 20th century, it was impossible to recognize most juvenile courts in the Court’s description.

State and Federal policymakers who found themselves trapped between two extremes tried to fashion a middle ground. They maintained the juvenile court as an institution while transforming its mission and methods. Unfortunately, this approach created a system that critics say protects neither the public safety nor youth rights. The juvenile justice system may be tougher, but juvenile courts in turn are more attentive to detail and more cautious in deciding adjudications. The entire process moves more deliberately and less creatively. Decades of reform may have increased the severity of the juvenile court process for some offenders, but they reduced the juvenile court’s ability to provide individualized and comprehensive interventions for the majority of young offenders.

Conflicts over the juvenile-criminal border have become a corrosive distraction for policymakers, practitioners, and the public. Public safety proponents are unduly focused on increasing the use of criminal court transfer, regardless of the actual effects of transfer. Youth advocates have painted themselves into a corner, forced to concede ever-larger portions of the juvenile court caseload to criminal courts in order to retain discretion over the youthful offenders who remain. Meanwhile, growing numbers of youths as young as 14 years of age are being tried and sentenced in criminal courts that are often not prepared to create specialized procedures and programs to address the problems of developing adolescents. Practitioners find it difficult to create innovative solutions because they are caught up in the struggle over who controls the juvenile-criminal boundary.

Youth justice and alternative court dockets

Policymakers may need to devise a “third way,” a new system of youth justice that does not rely on an all-or-nothing, juvenile-versus-adult dichotomy. Some advocates of juvenile court abolition have recommended that policymakers consider an “integrated” criminal system in which youthfulness is included as a

Courts that are asked to handle cases involving 13-year-old sex offenders and 14-year-old drug dealers require innovative methods at the charging, investigation, and factfinding stages of the court process, not only at disposition and sentencing.

mitigating factor in the sentencing phase of criminal trials (Feld 1998a). This approach, however, seems to fall short as an alternative process. Courts that are asked to handle cases involving 13-year-old sex offenders and 14-year-old drug dealers require innovative methods at the charging, investigation, and factfinding stages of the court process, not only at disposition and sentencing.

Other critics of the current system have proposed that courts need more boundaries rather than fewer. Springer (1991, 413) suggests that the current delinquency jurisdiction could be divided into two branches, one for “real children” and another for adolescents older than age 14 or 15. The children’s branch could operate as the juvenile court was originally designed, with fewer procedural formalities and a mission of prevention and rehabilitation. The branch for older offenders would operate more like a criminal court and be free to impose harsh dispositions for purely retributive purposes. This plan may solve some problems, but it would encourage policymakers to continue to be distracted by transfers across boundaries rather than focusing their energies on creating a single, more effective process for all offenders.

Others observers have proposed a different approach that essentially combines Feld’s abolitionist ideals with the more practical divide-and-conquer strategy of Springer. Butts and Harrell (1998) suggest that policymakers consider an integrated court structure that would no longer depend on the politically untenable premise that acts of “delinquency” are different from “crimes.” Designing an integrated court structure, however, would require more than simply moving all youths into the existing criminal court process. An integrated process would have to recognize that adolescents are not adults, that the factors bringing youths to court require special consideration, and that the entire court process should involve an individualized, problem-solving approach rather than simply fact finding and sentencing.

One way to begin designing such an integrated court structure could be to draw on the innovations emerging from drug courts and other specialized courts, including gun courts and domestic violence courts. During the 1990s, criminal court systems around the country began experimenting with specialized dockets to promote more effective criminal justice interventions. Specialized courts were not intended to replace the criminal court, but they offer what in many cases may be a more effective strategy than the traditional criminal court for reducing crime among selected types of offenders. Many alternative courts have incorporated the following values and case-handling methods that are similar to those developed by the original juvenile courts (Butts and Harrell 1998):

- Treatment and rehabilitation programs are individually matched to offender characteristics.

- Judges personally supervise treatment agreements with offenders and monitor their compliance.
- The court uses a combination of immediate penalties and rewards that are contingent on offender behavior.
- The entire process relies heavily on community-based programs for delivering services and sanctions.

A coordinated set of specialized dockets for young offenders could offer an effective means of responding to the wide variety of cases now seen in juvenile court, but without the politically provocative all-or-nothing boundary between juvenile and criminal justice. Instead of focusing on a single transfer decision, prosecutors, judges and policymakers could channel youthful offenders into a range of courts, each of which is designed to provide a different combination of treatment, supervision, restorative justice, and public safety. Policymakers could use this new array of courts to build an integrated youth justice system rather than continue battling over the forced choice of juvenile versus criminal jurisdiction.

After 30 years, the direction of juvenile justice policy appears unlikely to reverse. Eventually, the justice system may need to adapt to a new environment in which all criminal matters are referred to a single system, regardless of the offender's age.

Conclusion

At the close of the 20th century, policymakers throughout the United States have greatly dissolved the border between juvenile and criminal justice. Young people who violate the law are no longer guaranteed special consideration from the legal system. Some form of juvenile court still exists in every State, but the purposes and procedures of juvenile courts are becoming indistinguishable from those of criminal courts. After 30 years, the direction of juvenile justice policy appears unlikely to reverse. Eventually, the justice system may need to adapt to a new environment in which all criminal matters are referred to a single system, regardless of the offender's age. Of course, children and adolescents will always be cognitively, emotionally, and socially different from adults. Abolishing the legal boundary between juvenile and criminal court does not eliminate all the challenges faced by courts in responding to youth crime. As criminal courts begin to handle even more of the 14- and 15-year-olds who were once the responsibility of juvenile courts, judges and prosecutors will need to devise special procedures and programs for youths. Trial procedures for adolescents may

need to be more attuned to the social environment of young offenders. Youths may require specially designed pretrial investigations, speedier case movement, and a wider array of sentencing options. A new youth justice system will have to be devised that can handle all types of young offenders promptly and effectively, even if the legal distinction between crime and delinquency no longer applies. Considerable work will be necessary to design and implement such a system. Unfortunately, this work is being neglected while researchers, practitioners, and elected officials continue to focus on the implications of transfers across a boundary that is rapidly becoming less meaningful.

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Note

1. We use the term "juvenile justice" to refer to the policies and activities of law enforcement and the courts in handling law violations by youths under the age of criminal jurisdiction (usually age 17 and younger). We use the term "juvenile justice system" to refer to these agencies as well as to the other agencies that respond to juvenile offenders once the court process is completed (probation, corrections, etc.). This discussion of the juvenile court refers only to its responsibilities for young offenders and does not apply to the court's involvement in other matters involving children and youths (status offenses, abuse and neglect, child custody matters, etc.).

References

- Bazemore, Gordon, and Mark Umbreit. 1995. Rethinking the sanctioning function in juvenile court: Retributive or restorative responses to youth crime. *Crime & Delinquency* 41 (3): 296–316.
- Beemsterboer, Mathew J. 1960. The juvenile court—Benevolence in the star chamber. *Journal of Criminal Law, Criminology, and Police Science* 50:464. Quoted in Christopher P. Manfredi, *The Supreme Court and juvenile justice* (Lawrence: University Press of Kansas, 1998), 39.
- Bernard, Thomas J. 1992. *The cycle of juvenile justice*. New York: Oxford University Press.
- Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce, and Lawrence Winner. 1996. The transfer of juveniles to criminal court: Does it make a difference? *Crime & Delinquency* 42:171–191.

Bortner, M.A. 1986. Traditional rhetoric, organization realities: Remand of juveniles to adult court. *Crime & Delinquency* 32:53-73.

Bureau of Data and Research. 1999. Dispositions of cases transferred to adult court: Report of the Classification Work Group, Florida Department of Juvenile Justice. Retrieved 17 March 2000 from the World Wide Web: <http://www.djj.state.fl.us/RnD/presentations/ClassificationOct99.htm>.

Butts, Jeffrey A. 1997a. Juvenile court processing of delinquency cases, 1985-1994. OJJDP Fact Sheet, FS-9757. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

———. 1997b. The National Juvenile Court Data Archive: Collecting data since 1927. OJJDP Fact Sheet, FS-9766. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Butts, Jeffrey A., and Adele V. Harrell. 1998. Delinquents or criminals: Policy options for young offenders. Crime Policy Report. Washington, D.C.: Urban Institute.

Butts, Jeffrey A., and Joseph B. Sanborn, Jr. 1999. Is juvenile justice just too slow? *Judicature* 83:16-24.

Clarke, Elizabeth E. 1996. A case for reinventing juvenile transfer: The record of transfer of juvenile offenders to criminal court in Cook County, Illinois. *Juvenile and Family Court Journal* 47:3-21.

Domenici, Peter. 1997. Senator Domenici of New Mexico, floor speech. S. 10, 105th Cong., 1st sess. *Congressional Record*, 18 June, vol. 143, no. 85.

Emerson, Robert M. 1991. Case processing and interorganizational knowledge: Detecting the "real reasons" for referrals. *Social Problems* 38:198-211.

Fagan, Jeffrey. 1996. The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. *Law & Policy* 18:77-113.

———. 1995. Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. In *Sourcebook on serious, violent, and chronic juvenile offenders*, edited by James C. Howell, Barry Krisberg, J. David Hawkins, and John J. Wilson. Thousand Oaks, California: Sage Publications.

Feld, Barry C. 1999. Bad kids—Race and the transformation of the juvenile court. New York: Oxford University Press.

———. 1998a. Abolish the juvenile court: Youthfulness, criminal responsibility, and sentencing policy. *Journal of Criminal Law and Criminology* 88:68-136.

- . 1998b. Juvenile and criminal justice systems' responses. In *Youth violence*, edited by M. Tonry and M. Moore. Vol. 24 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.
- . 1993. Criminalizing the American juvenile court. In *Crime and justice: A review of research*, edited by M. Tonry. Vol. 17. Chicago: University of Chicago Press.
- . 1987. The juvenile court meets the principle of the offense: Legislative changes in juvenile waiver statutes. *Journal of Criminal Law and Criminology* 78:471–533.
- Fox, Sanford J. 1970. Juvenile justice reform: An historical perspective. *Stanford Law Review* 22:1187–1239.
- Griffin, Patrick, Patricia Torbet, and Linda Szymanski. 1998. *Trying juveniles as adults in criminal court: An analysis of State transfer provisions*. OJJDP Report, NCJ 172836. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Hamparian, Donna M., L. Estep, S. Muntean, R. Prestino, R. Swisher, P. Wallace, and J.L. White. 1982. *Youth in adult courts: Between two worlds*. Major Issues in Juvenile Justice Training and Information, NCJ 80823. Washington D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Heuser, James Paul. 1984. *A statistical study of juveniles arrested for serious felony crime in Oregon and "remanded" to adult criminal court*. Salem: Oregon Department of Justice, Crime Analysis Center.
- Hirschi, Travis, and Michael Gottfredson. 1993. Rethinking the juvenile justice system. *Crime & Delinquency* 39:262–271.
- Howell, James C. 1997. *Juvenile justice and youth violence*. Thousand Oaks, California: Sage Publications.
- Hutzler, J. 1982. Canon to the left, canon to the right: Can the juvenile court survive? *Today's Delinquent* 1. Referenced in Patricia Torbet, Richard Gable, Hunter Hurst IV, Imogene Montgomery, Linda Szymanski, and Douglas Thomas, *State responses to serious and violent juvenile crime*, Research Report, NCJ 161565 (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996), 4.
- Jensen, Eric L., and Linda K. Metsger. 1994. A test of the deterrent effect of legislative waiver on violent juvenile crime. *Crime & Delinquency* 40:96–104.
- Leeper, June L. 1991. Recent issues in juvenile jurisdictional waiver hearings. *Journal of Juvenile Law* 12:35–46.
- Mack, Julian. 1909. The juvenile court. *Harvard Law Review* 23 (104): 119–120.
- Manfredi, Christopher P. 1998. *The Supreme Court and juvenile justice*. Lawrence: University Press of Kansas.

- McNulty, Elizabeth W. 1996. The transfer of juvenile offenders to adult court: Panacea or problem? *Law & Policy* 18:61–75.
- Mennel, Robert M. 1973. *Thorns and thistles: Juvenile delinquents in the United States 1825–1940*. Hanover, New Hampshire: University Press of New England.
- Nieves, Evelyn. 2000. The 2000 campaign: California; Those opposed to 2 initiatives had little chance from start. *New York Times*, 9 March, national ed.
- Paulsen, Monrad. 1957. Fairness to the juvenile offender. *Minnesota Law Review* 41:547, 569. Quoted in Christopher P. Manfredi, *The Supreme Court and juvenile justice* (Lawrence: University Press of Kansas, 1998), 38.
- Platt, Anthony M. 1977. *The child savers: The invention of delinquency*. Chicago: University of Chicago Press.
- Podkopacz, Marcy R., and Barry C. Feld. 1996. The end of the line: An empirical study of judicial waiver. *Journal of Criminal Law and Criminology* 86:449–492.
- Polier, Justine Wise. 1989. *Juvenile justice in double jeopardy: The distanced community and vengeful retribution*. Mahwah, New Jersey: Lawrence Erlbaum Associates.
- Poulos, Tammy Meredith, and Stan Orchowsky. 1994. Serious juvenile offenders: Predicting the probability of transfer of criminal court. *Crime & Delinquency* 40:3–17.
- Puritz, Patricia, Sue Burrell, Robert Schwartz, Mark Soler, and Loren Warboys. 1995. *A call for justice: An assessment of access to counsel and quality of representation in delinquency proceedings*. Washington, D.C.: American Bar Association, in collaboration with the Youth Law Center, the Juvenile Law Center, and the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Risler, Edwin A., Tim Sweatman, and Larry Nackerud. 1998. Evaluating the Georgia legislative waiver's effectiveness in deterring juvenile crime. *Research in Social Work Practice* 8:657–667.
- Rothman, David J. 1980. *Conscience and convenience: The asylum and its alternatives in progressive America*. Glenview, Illinois: Scott, Foresman and Company.
- Sanborn, Joseph B., Jr. 1998. Second-class justice, first-class punishment: The use of juvenile records in sentencing adults. *Judicature* 81 (5): 206–213.
- . 1993. The right to a public jury trial: A need for today's juvenile court. *Judicature* 76:230–238.
- Schlossman, Steven L. 1977. *Love and the American delinquent*. Chicago: University of Chicago Press.

Schlossman, Steven L., and Stephanie Wallach. 1978. The crime of precocious sexuality: Female juvenile delinquency in the Progressive Era. *Harvard Educational Review* 48:65-94.

Schur, Edwin M. 1971. *Labeling deviant behavior: Its sociological implications*. New York: Harper & Row.

Shine, James, and Dwight Price. 1992. Prosecutors and juvenile justice: New roles and perspectives. In *Juvenile justice and public policy: Toward a national agenda*, edited by I.M. Schwartz. New York: Lexington Books.

Singer, Simon I. 1996. *Recriminalizing delinquency: Violent juvenile crime and juvenile justice reform*. Cambridge: Cambridge University Press.

Singer, Simon I., and David McDowall. 1988. Criminalizing delinquency: The deterrent effects of the New York juvenile offender law. *Law & Society Review* 22:521-535.

Snyder, Howard, Terrence Finnegan, Anne Stahl, and Rowen Poole. 1998. *Easy access to juvenile court statistics: 1987-1996* (data presentation and analysis package). Pittsburgh: National Center for Juvenile Justice (producer). Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (distributor).

Snyder, Howard, and Melissa Sickmund. 1999. *Juvenile offenders and victims: 1999 National Report*. Report, NCJ 178257. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

———. 1995. *Juvenile offenders and victims: A national report*. NCJ 153569. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Snyder, Howard, Melissa Sickmund, and Eileen Poe-Yamagata. 1999. *The conversion of juvenile delinquents to adult criminals: Four studies of juvenile transfers to criminal court in the 1990s*. Pittsburgh: National Center for Juvenile Justice.

Springer, Charles E. 1991. Rehabilitating the juvenile court. *Notre Dame Journal of Law, Ethics & Public Policy* 5:397-420.

Stahl, Anne L. 1999. *Offenders in juvenile court, 1996*. Juvenile Justice Bulletin, NCJ 175719. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Sutton, John R. 1988. *Stubborn children: Controlling delinquency in the United States*. Berkeley: University of California Press.

Tonry, Michael. 1996. *Sentencing matters*. New York: Oxford University Press.

Torbet, Patricia, and Linda Szymanski. 1998. *State legislative responses to violent juvenile crime: 1996-97 update*. Juvenile Justice Bulletin, NCJ 172835. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Torbet, Patricia, Richard Gable, Hunter Hurst IV, Imogene Montgomery, Linda Szymanski, and Douglas Thomas. 1996. *State responses to serious and violent juvenile crime*. Research Report, NCJ 161565. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

U.S. Bureau of the Census. 1999. Population estimates for the U.S. and States by single year of age and sex: July 1, 1996. Doc. no. ST-98-12. Retrieved 8 February 2000 from the World Wide Web: <http://www.census.gov/population/estimates/state/stats/ag9698.txt>.

U.S. General Accounting Office. 1995. *Juvenile justice: Juveniles processed in criminal court and case dispositions*. Washington, D.C.

U.S. Senate. [1927] 1974. *Message from the President of the United States, transmitting a letter from the judge of the Juvenile Court of the District of Columbia, submitting a report covering the work of the Juvenile Court during the period from July 1, 1906 to June 30, 1926*. Reprinted in *Metropolitan America*. New York: Arno Press.

Watkins, John C., Jr. 1998. *The juvenile justice century*. Durham, North Carolina: Carolina Academic Press.

Winner, Lawrence, Lon Lanza-Kaduce, Donna M. Bishop, and Charles E. Frazier. 1997. The transfer of juveniles to criminal court: Reexamining recidivism over the long term. *Crime & Delinquency* 43:548-563.

Wyden, Ron. 1997. Senator Wyden of Oregon, floor speech. S. 10, 105th Cong., 1st Sess. *Congressional Record*, 17 March, vol. 143, no. 34.

Zimring, Franklin E. 1991. The treatment of hard cases in American juvenile justice: In defense of discretionary waiver. *Notre Dame Journal of Law, Ethics & Public Policy* 5:267-280.

The Changing Boundaries of the Criminal Justice System: Redefining the Problem and the Response in Domestic Violence

By Alissa Pollitz Worden

Domestic violence, particularly male violence against female partners, has been the focus of tremendous public and policy attention over the past two decades. It is now conventional wisdom that traditional criminal justice responses reflected indifference and even resistance to defining such incidents as crime, but as society's values and beliefs about the acceptability of such violence have changed, expectations for criminal justice responses have evolved as well. This chapter examines what we have learned about boundary changes in criminal justice, across three domains: law, local criminal justice practices and policies, and the role of the Federal Government in promoting innovations. The conclusions suggest that while, in many respects, challenges to criminal justice boundaries on this topic reflect ongoing debates in other areas of crime policy, the outcomes of these debates have yet to be settled.

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By the mid-1980s, the traditional criminal justice response to domestic violence victims and offenders had been challenged in the context of emerging definitions of the problem and recommendations for workable solutions. Police officers less commonly tagged domestic violence incidents as “family beefs” and researchers no longer routinely referred to such cases as “disputes” or “disturbances.” These subtle shifts in language reflected changes in social understandings of the causes of family violence, and changes in attitudes about when, and to what extent, society was responsible for intervening in it. However, it would be premature to state that these shifts in beliefs and attitudes have coalesced into a social consensus about what domestic violence is, what to do about it, and who should do it. Therefore, we will begin the new century in a climate of unsettled understandings and heightened expectations about society’s response to domestic violence.

This essay will briefly document the scope and prevalence of domestic violence, and document the changes in society’s definition of the problem that prompted people to challenge the utility of conventional criminal justice responses, as a backdrop to a more focused assessment of the ways in which criminal justice agents have reacted to these challenges, and with what effects. Estimates of the scope of domestic violence vary tremendously, in part due to differing definitions of the problem and different strategies for measuring incidence. Practitioners’ and researchers’ diagnoses of the cause of violence have shaped their recommendations for solutions, and on this topic interested con-

stituencies have brought differing philosophies, experiences, problem definitions, and assumptions to the debate over what should change, and how.

Some observers believe that the courts will be the next focus of research and also the most challenging institution to reform.

As a result, the boundaries of criminal justice have been challenged and redrawn along several dimensions, and over the next decade these boundaries will almost certainly be subject to continued renegotiation. The first of these dimensions involves issues of law and legal definitions—where shall society draw the lines between criminal and noncriminal behavior, and how will the criminal justice system adapt to relocations of those lines as we learn more about the causes of, and effective responses to, violence? As concern

about victim safety is expressed through policies and practices, will these require changes in traditional notions of due process and defendant rights? To what extent will decisions made in criminal justice venues be judged relevant to other legal matters, such as divorce, child visitation, and custody decisions? States have experimented with new laws, sometimes establishing new offenses specifically applicable to domestic violence cases, sometimes constructing new

legal categories that can be utilized to control some domestic violence offenders, such as antistalking laws (Graham et al. 1996), sometimes revisiting common law conventions such as the marital rape exemption (Horney and Spohn 1991).

Second, the boundaries of criminal justice intervention are established by local agency practices and policies and, therefore, as policymakers, practitioners, and researchers recognize the limitations of conventional practices, they will continue to redefine goals and recommend innovations that will shift the traditional boundaries of criminal justice responsibility and jurisdiction at the community level. These changes involve offenders, victims, and communities themselves, and are occurring through more rigorous enforcement of the law as well as through creation of new responsibilities for criminal justice agents.

Criminal justice agencies have been challenged to overcome a long history of indifference to domestic violence through more aggressive and consistent use of such conventional crime-fighting activities as arrest, prosecution, sanctioning, and supervision. At the local agency level, for example, police departments have rewritten arrest policies, creating special provisions for family violence situations, and many police departments have integrated victim advocates into their training on the topic. Prosecutors likewise have experimented with “no drop” prosecution policies, and a few have experimented with innovative pretrial diversion programs for domestic violence cases. So far, criminal courts and correctional agencies have faced fewer expectations about redefining their responses to domestic violence, although some observers believe that the courts will be the next focus of research and also the most challenging institution to reform. The “criminalization of domestic violence” has both symbolic and instrumental justifications (Fagan 1996). Criminal processing of people who assault family members reaffirms social disapproval of violence, and it also, at least in theory, subjects violent people to interventions that might deter, incapacitate, or rehabilitate them.

Criminal processing also potentially provides a measure of safety to a category of victims who are particularly vulnerable and accessible to offenders. Victim advocates, policymakers, and some criminal justice officials have expanded their objectives beyond recidivism reduction to include improving supportive responses to victims and constructing more comprehensive strategies for improving victim safety. These innovations call for collaboration between traditional criminal justice agencies and other agencies whose primary focus is victim advocacy and service provision. This sort of collaboration creates new channels for communication, accountability, and sometimes compromise of traditional priorities or practices. These expectations have produced many partnerships, task forces, and coalitions, some of which are almost universally lauded as models, most of which remain unevaluated, and many of which probably emerged, flourished

briefly, and then faded quietly into local history. However, despite a decade of enthusiasm for coordinated community-level interventions focused on domestic violence, we still know little about the conditions that favor true coordination of activities, the goals and objectives most amenable to such efforts, and the effectiveness of such activities in the short, medium, and long runs (Chalk and King 1998).

In addition, criminal justice agents frequently are invited to participate in efforts aimed at changing community attitudes toward violence—objectives that are outside the scope of traditional criminal justice operations, but that nonetheless require the participation and cooperation of criminal justice for realization. Examples include attempts to incorporate domestic violence responses into community policing efforts and involvement in public education campaigns (Davis, Smith, and Nickles 1998). As expectations rise about the comprehensiveness of interventions, criminal justice agents have been faced with new constituencies, partnerships, resource requests, and evaluation standards.

Finally, the boundaries of criminal justice agencies have been redrawn, at least in a preliminary way, through the leadership of policymakers at the State and Federal levels. Through the Violence Against Women Act and subsequent legislation and appropriations, congressional and Justice Department leadership prioritized domestic violence, rapidly establishing programmatic support for particular State and local innovations, and investing significantly in research on the topic. Over the past few years, the National Institute of Justice has realigned its own boundaries to some extent, through partnering with other Federal agencies (such as the Centers for Disease Control and Prevention and the U.S. Department of Health and Human Services) and creation of special organizational units (such as the Violence Against Women Grants Office) in recognizing the importance of multidisciplinary strategies for innovation as well as research. It remains to be seen whether this leadership will have a lasting effect on local criminal justice practices and policies, but there are probably few other domains of criminal justice policy that have been subject to such rapid and extensive Federal attention.

In summary, the social imperative to respond to domestic violence has called into question the traditional boundaries of criminal justice across dimensions of law, local practice and policy, and federalism. Many reforms and innovations have been adopted in a piecemeal, experimental fashion as local agencies have cautiously stepped over familiar lines to implement more ambitious objectives. Increasingly, State and Federal leaders exhort criminal justice agencies to integrate themselves into community networks. Mapping the scope and diversity of these changes would be a challenging task; predicting their durability and efficacy would be impossible. However, a tremendous amount of research has been

conducted—some descriptive, some theoretical—on this broad topic, and so, drawing on this research, this chapter aims at somewhat more modest and related objectives:

- Documenting the state of our knowledge about the prevalence and character of domestic violence.
- Examining the evolution of problem definitions in the domains of political climate, public opinion, law, and institutions.
- Evaluating the standard paradigm of criminal justice practice—what one might think of as the “starting boundaries” for this essay—against these evolving definitions of the problem, and examining the adaptations and changes that police, prosecutors, and the courts have undertaken to better suit practices to new understandings of problems.
- Focusing specifically on the emerging “new paradigm” of criminal justice intervention in domestic violence, which requires integration into community networks and activities that historically have had limited or no relevance to professional criminal justice.

Public opinion surveys reveal that most respondents know at least one person who has been victimized by a violent partner.

The Prevalence and Character of Domestic Violence

Statistics on the frequency and character of domestic violence are easy to find but difficult to interpret. No matter who reports the numbers, they are shocking and, ultimately, numbing: The National Crime Victimization Survey reported that, in 1996, women experienced more than 800,000 physical assault victimizations at the hands of an intimate (Greenfeld et al. 1998); two out of three of the more than 1 million women who reported being stalked during a 12-month period were stalked by partners or former partners (U.S. Department of Justice [DOJ], Violence Against Women Grants Office [VAWGO] 1998); the National Family Violence Surveys reported an annual rate of 116 violent acts by intimate partners per 1,000 women, with one-third of those acts constituting severe violence (Straus and Gelles 1990). In many circumstances, physical violence represents the tip of an iceberg of threatening, abusive, and controlling behaviors, many of which would be considered criminal if they occurred between strangers or nonfamily acquaintances.

There is good reason to believe that victims of violence underreport, not only to authorities but to survey researchers as well, so published estimates probably

underestimate the incidence of violence (see, for example, Abel and Suh 1987), although some evidence suggests that incidents of lethal partner violence are declining slightly (tracking with similar changes in other crime rates; see Greenfeld et al. 1998). However, physical violence and abusive relationships are not far from most Americans' experience. Public opinion surveys reveal that most respondents know at least one person who has been victimized by a violent partner (Klein et al. 1997; Worden, Beery, and Carlson 1998). While experts continue to debate the exact magnitude of the problem, they agree on the message that emerges from virtually all attempts at measurement: Domestic violence is common, often chronic, and difficult to detect.

Our understanding of the scope, as well as the prevalence, of domestic violence is open for debate as well. While the primary focus of this essay is violence between adult partners, broader definitions would encompass all incidents of violence among family members, including child maltreatment, violence among siblings and other family members, elder abuse, and dating violence (see Chalk and King 1998; Gondolf 1988a; Burt et al. 1996). Because these different forms of violence are dealt with by somewhat different constellations of social services and criminal justice agents, and because they are not commonly attributed to the same sets of causes, the term "domestic violence" is most commonly used to refer to physical violence among adults who are, or formerly were, involved in romantic or marital relationships.

The following sections address problematic issues in defining domestic violence, with some observations on their implications for criminal justice responses. As working definitions have emerged from changing social and legal contexts, it has become clear that the construction of official definitions affects the consistency of responses, and possibly even researchers' evaluations of the effectiveness of responses. Further, despite the priority placed on domestic violence in many policy circles, we do not know how thoroughly or enthusiastically local criminal justice officials have embraced broader definitions of violence, much less the policy prescriptions that have accompanied them.

Dimensions of the definition of "domestic violence": Unresolved issues

Society's descriptions of and explanations for domestic violence have changed rapidly over the past three decades. The phrase "domestic violence" is arresting in part because it connotes a seeming contradiction—violence is unacceptable aggressive behavior, out of place in the sanctity of home. However, the current visibility of domestic violence as a social and legal problem almost obscures the simple historical fact that the term itself is of recent vintage (Schechter 1982). Much of the behavior that would be labeled "domestic violence" today

would fall well within the range of acceptable, if not recommended, behaviors that male household heads might have engaged in a few decades ago (Pleck 1987; Dobash and Dobash 1979). Families were both socially and legally constructed to give husbands dominance over other members, as well as responsibility for other members' behavior within the community, rendering wives' social and legal status much more similar to that of their children than their spouses. Today, American legislators and jurists ponder where to draw the line between criminal child abuse, child maltreatment that might justify removal of children from a home, and physical violence that constitutes legally acceptable forms of discipline. A century ago, lawmakers and judges addressed similar issues in determining whether a husband's physical assault constituted criminal assault, abuse sufficient to constitute grounds for divorce, or "normal" (albeit not necessarily admirable) correction of a misbehaving wife.

In the 1960s, researchers who studied families began to take notice of incidents of family violence, but largely in the context of understanding dysfunctional families. Violence was seen by researchers and many practitioners as a symptom of unhealthy or overly stressed relationships. The target of intervention, and the unit of analysis for research, became the family unit or the marital relationship; violence was understood as an unhealthy means of dealing with normal marital conflict and, hence, effective responses would improve conflict resolution skills within couples (Gondolf 1988a). While criminal justice researchers had little reason to participate in this research—the behavior in question was quite clearly socially defined as something other than crime—to the extent that criminal justice practitioners were obliged to intervene in domestic incidents, they adopted this perspective. For example, in the 1960s, progressive police departments adopted training protocols designed to improve officers' onscene mediation skills, and departmental policies instructed officers to actively discourage complainants from requesting arrest of perpetrators, in the interests of preserving the family's privacy and prospects for preservation (Bard and Zacker 1971). What little we know about prosecutors' and courts' responses to typical domestic violence incidents suggests that police policies of disengagement resulted in extremely infrequent prosecution and adjudication.

The emergence of shelters for battered women marked the beginning of a community-level movement to redefine battered women as crime victims, and to reevaluate common family-based explanations for men's violent behavior (Davis, Hagen, and Early 1994; Miller, Cohen, and Wiersema 1996; Pirog-Good and Stets-Kealey 1985; Schechter 1982; Pence 1983). This movement, which was sparked and sustained largely by volunteers, functioned at the grassroots level with little if any formal coordination from larger policymaking bodies. It directed attention toward the asymmetrical nature of partner violence—women appeared far more often as the victims of physical violence—

and argued that traditional family structure and gender roles, not normal stress and interpersonal conflict, accounted for men's violence toward wives. Defined this way, the problem of domestic violence seemed to call for short-term remedies such as helping abused women escape from violence and exit violent relationships, as well as longer term solutions such as reorienting gender roles toward greater equality and revising legal structures, such as marriage, to deinstitutionalize patriarchal social patterns (Schechter 1982; Zorza 1992). The battered women's movement was successful in contributing to a social redefinition of family violence, which was mirrored in emerging research on violence: The family models of violence were challenged by models that located the causes of violence in men's sense of cultural and legal entitlement and control, and this challenge gradually but inevitably led to demands that the legal system take responsibility for recognizing and treating partner violence as criminal behavior.

However, settling on a distinction between family violence and partner violence that allowed for differing explanations and social responses has not resolved all definitional problems. First, not all violence that occurs within the context of relationships is perpetuated by men against women, although experts agree that most serious violence—which is to say, more dangerous acts and acts that cause more physical damage—is committed overwhelmingly by men (Chalk and King 1998). The debate among researchers over the symmetry of marital violence is reflected in some practitioners' beliefs that domestic violence is commonly a situation of "mutual combat" (Straus 1993). Second, research indicates, not surprisingly, that much and perhaps most violence that occurs within adult relationships happens among couples who are dating, or perhaps cohabiting, but not legally married (Erez 1986; Worden et al. 1997; Straus 1993), and a significant amount of stalking and violent behavior occurs subsequent to the breakup of a relationship or legal separation or dissolution of a marriage (U.S. DOJ, VAWGO 1998). Third, violence occurs within same-sex adult relationships as frequently as in heterosexual couples (Greenfeld et al. 1998), but criminal justice officials have been reticent about acknowledging and reacting to this fact. This is hardly surprising, given American society's unwillingness to acknowledge such relationships as legitimate or familial, and the fact that nonheterosexual relationships are tantamount to illegal in some jurisdictions anyway.

Fourth, research on the causes and histories of violent relationships has revealed that physical violence is often only one of a number of abusive strategies that are used to control partners. Others, which may precede or co-occur, or even substitute for physical assault, include verbal abuse, psychological abuse, control of finances and economic opportunities, property damage, and threats, including threats about children the couple may have (Hart 1993; Campbell and Soeken 1999; Fernandez, Iwamoto, and Muscat 1997). Some of

these behaviors would be illegal in other contexts, but others remain outside the ordinary reach of criminal law and criminal justice. Arriving at a criminal justice definition of domestic violence that acknowledges the place of these actions in violent relationships is difficult.

At this point in the evolution of policy and research, these definitional issues are on the table, but they are unresolved in many sectors. For example, the Violence Against Women Act promotes research and program innovations on behalf of abused and assaulted women. Legislatures in some States, such as New York, have created special legal protections for abused family members, but family is defined in terms of marital and blood relationships, excluding other partner relationships. Police department policies that instruct officers to identify and arrest “primary physical aggressors” in cases of mutual allegations are grounded in the assumption that violent incidents involving partners have aggressors and victims, not combative couples. Crafting and enforcing laws that intervene when victims feel at high risk, but before they are assaulted or injured—for instance, laws that permit issuing orders of protection on the strength of allegations of threats—requires compromises with traditional ideas about individual liberty and due process. These examples illustrate an important point: It is difficult, perhaps impossible, to create policies or programs without implicitly adopting a definition of domestic violence that carries some significant assumptions about the nature and causes of violence and the limits of victims’ entitlements to different forms of legal protection.

A note of caution: Consensus and confusion among researchers and practitioners

The definition of domestic violence adopted for this essay is threatening or injurious physical, psychological, verbal, or economic behavior directed toward an adult romantic partner, regardless of marital status, and including both ongoing and terminated relationships. Because most violence in such relationships is perpetrated by men against female partners or ex-partners, that will be the primary focus of policy and research discussed here. This definition approximates those used by most researchers who are attempting to explain the causes of violence against women and the efficacy of interventions aimed at domestic violence.

However, although policymakers and spokespeople for battered women, and probably most researchers, would have few quarrels with this definition, it would be imprudent to assume that practitioners universally share it, much less the accompanying sense of urgency about finding and implementing effective responses that criminalize perpetrators. While at higher levels of policy there is consensus on these matters, there is some evidence that the people responsible for initiating and implementing criminal justice responses may hold different

views about the nature of domestic violence; they may be skeptical about the asymmetry of violent behavior, inclined to apply restrictive interpretations of criminal law for the legal purposes of arrest and prosecution (Johnson, Sigler, and Crowley 1994), tolerant of physical aggression that could be rationalized as punishment for women's marital failings (Saunders 1995), and inclined to define marital violence as a civil matter for divorce courts to resolve, not a criminal matter (Crowley, Sigler, and Johnson 1990). While research on practitioner attitudes is surprisingly limited, it suggests that practitioners hold diverse attitudes, although those attitudes are subject to change through both experience and training (Campbell and Johnson 1997; Campbell 1995; Dolon, Hendricks, and Meagher 1986; Buchanan and Perry 1985). McCord (1992) reminds us that local practitioners' attitudes may be critical to their receptivity to change in the prioritization or the processing of domestic violence.

Further, even when practitioners see domestic violence as a high-priority criminal justice problem, the proliferation of research literature, policy recommendations, program innovations, and regulations have complicated the task of crafting and implementing good practices and policies. Criminal justice agents have been encouraged to partner with victim services programs and, in some jurisdictions, such partnerships and collaborations have been highly regarded, quite long lived, and replicated (see, for example, Pence 1983; Balos and Trotzky 1988). However, there is little to guide local criminal justice agents in learning how to initiate or sustain such partnerships, even in the face of program incentives to do so (see Burt et al. 1996). Model policies disseminated by policy advocates often call for programs and resources that are out of the reach of many communities, but do not offer prioritization or guidance to communities that might be able to adopt some, but not all, of the recommended components (see, for example, American Bar Association Committee on Domestic Violence 1994; National Council of Juvenile and Family Court Judges 1994; Witwer and Crawford 1995).

Finally, settling on good responses is complicated by the fact that much research on criminal justice interventions, as reported in later sections of this essay, produces qualified findings that are difficult to translate into practice recommendations. The most familiar example of this problem involves arrest policies. Widespread adoption of presumptive and mandatory arrest policies followed publication of the results of the Minneapolis Domestic Violence Experiment (Sherman and Berk 1984a, 1984b; and see Sherman and Cohn 1989; Meeker and Binder 1990; Binder and Meeker 1992), but more methodologically sophisticated replications that cast doubt on the generalizability of those findings were met with resistance, disregard, or puzzlement. Likewise, "no drop" prosecutorial policies appear to correct for traditional expectations that victims take responsibility for filing charges, but research on victim motivations and needs casts doubt on the utility of such practices (Ford et al. 1996; Ford and Regoli 1993;

Ford 1991). It has now become commonplace that ethnic, cultural, and demographic differences in populations merit different strategies and approaches (Maguigan 1995; Yick and Agbayani-Siewert 1997), although still little is known about what those differences are and how criminal justice agents can legally and fairly take such differences into account.

In summary, researchers now know that incidents of domestic violence, by almost any definition, are a common type of crime. Perhaps in part because physical violence within families is so common, and also because society has historically placed a high value on family privacy and male autonomy, society generally and criminal justice specifically have resisted criminalizing acts of family violence (see Straus 1993). Although this has changed rapidly over the past two decades, greater knowledge about the causes of violence and behavior patterns of abusers has forced policymakers and practitioners to confront difficult questions about how to conceptualize domestic violence for the purposes of settling on acceptable intervention strategies.

Changes in Problem Definition: Political Climate, Public Opinion, Law, and Institutions

The conditions that permitted and promoted reconsideration of society's definition of and reaction to domestic violence are complex. These changes, and the circumstances that contributed to them, include broad changes in political climate, shifts in public opinion, corresponding adjustments in law, and recasting of institutional priorities and practices. There is a great deal to be learned about the durability and replicability of policy change in this area, and about the conditions under which the boundaries of criminal justice can be redrawn. As members of a system that must balance the competing values of protecting society against safeguarding the rights of the accused, criminal justice agents tend to strongly resist changes that destabilize the equilibrium achieved through local practices and policies (Feeley 1983). Therefore, for innovations to take root at the local level, justifications for them must be compelling and not inconsistent with organizational goals. Reforming criminal justice to unlock and extend its boundaries has not been without conflict and debates over priorities, many of which remain unresolved.

Political climate

An understanding of the location and relocation of criminal justice boundaries around the problem of domestic violence must begin with an understanding of previous generations' responses. For centuries, the physical assaults of wives by

their husbands was socially and legally defined as outside the scope of criminal law, a judgment that was occasionally challenged but routinely reinforced by most courts, in the context not of criminal charges, but rather civil divorce claims of extreme cruelty. These cases are familiar to students of domestic violence: *Bradley v. State* (1 Miss. 156 [1824]) affirmed men's role as family disciplinarian; *State v. Oliver* (70 N.C. 60, 61–62 [1879]) reasserted that criminal law had no relevance to husbands' assaults in the absence of permanent injury or cruel and dangerous violence. Even when State legislatures established the criminality of wife assault, they often created a special offense for that purpose and justified the sanctions as protection for a particularly vulnerable class of victims (Hart 1991; Buzawa and Buzawa 1996). Long after wife assault was finally formally defined as a criminal matter, many States continued to define sexual assault as criminal only when the complaining party was not the perpetrator's wife; some States still maintain this dual standard (see Zorza 1992; Denno 1994; Ryan 1996). Against this long historical record, it is likely that future historians will find the recent evolution of law and criminal justice practice in the field of domestic violence both rapid and remarkable.

However, historians may have a difficult time deciding which factors put domestic violence on the criminal justice agenda and which factors were responsible for keeping it there. The abolitionist movement of the early 1800s was the first successful American challenge to a legal system that promoted and protected dramatically different social statuses. During the later 1800s, social and economic shifts that involved family structure, including evolving common law about property ownership, may have played an overlooked role in justifying full citizenship for women and the potential for equal standing in the courts. Likewise, the evolution of family law signaled society's willingness, if not enthusiasm, to make judgments about individuals' abilities to perform particular family roles (Friedman 1985). The women's movement of the early 20th century challenged barriers to women's political rights, and some of these same reformers argued for greater social concern about women and children's economic welfare. Reformers legitimized a longstanding norm of ascribing women's and children's poverty and distress to negligent husbands through policies such as Aid to Families with Dependent Children. These historic shifts foreshadowed the women's movement of the 1960s and 1970s, which has produced dramatic economic, legal, and social changes in women's roles and opportunities.

In the absence of this historical background, the battered women's movement would have been an improbable success. However, the emergence of grassroots advocacy organizations in many communities resulted in the creation of shelters and, eventually, other victim services; institutionalization of victim advocacy programs contributed to receptive environments for other kinds of change

(Loseke 1991). In a few communities, leaders of these organizations successfully established a small number of visible and enduring experiments in criminal justice and victim services responses to domestic violence (Pence 1983; Hart 1993; Fritz 1986). The aggregation of some of these efforts to State-level coalitions established a platform from which policy recommendations and lobbying could be launched.

By the 1980s, two significant changes in the criminal justice policy environment gained momentum. The “victims’ rights” movement began as a grassroots effort to recognize, support, and protect crime victims, and has produced a range of innovations and programs that reflect those goals, such as crime victims’ compensation boards and local victim advocacy operations. The victims’ rights movement became an easy target for politicians seeking to capitalize on public sympathy (McCoy 1993). Although it has neither encompassed nor paralleled the battered women’s movement, it is probably responsible for greater public concern about the plights of crime victims of all sorts.

Second, the increasing punitiveness of American criminal justice policies at many levels is thought by some to reflect higher levels of fear and retributive feelings on the part of the public. While these attitudes probably primarily reflect feelings about stranger rather than domestic crime, they signal a general receptiveness to greater use of the criminal justice system (Sherman and Cohn 1989). These changes in the political environment may have been neither necessary nor sufficient for the increasing visibility of domestic violence as a criminal justice issue, but historians may conclude that they were important contributing factors. By 1984, the Attorney General’s Task Force on Family Violence prioritized domestic violence as a major problem facing American women (Mederer, Rich, and Gelles 1989), thereby creating national-level attention to the issue.

Public opinion

Recent research reports that Americans express high levels of disapproval of domestic violence and, further, that they define domestic violence quite broadly (Klein et al. 1997; Johnson and Sigler 1995). Although conventional wisdom holds that Americans’ attitudes toward domestic violence have evolved over the past three decades as the issue has gained more media attention, even early studies found little generalized acceptance of physical violence within marriage (e.g., Stark and McEvoy 1970; Dibble and Straus 1980; Sigler 1989). To the extent that one can discern differences in opinions over time, it appears that, compared with 20 years ago, at the present time fewer people express willingness to excuse or justify physical violence in the face of hypothesized provocations on the part of women (e.g., Greenblat 1983; Stark and McEvoy 1970; Klein et al. 1997; Worden, Beery, and Carlson 1998), and more people endorse

criminal justice and other official responses to domestic violence (Johnson and Sigler 1995), although Americans remain ambivalent about the efficacy of criminal justice reactions (Stalans 1996).

It is important to note that it is possible that changes in public tolerance of wife abuse came about more as a result of the redefinition of women as men's legal equals than as a consequence of some broader social rejection of physical violence among family members. The American public probably never enthusiastically endorsed physical abuse of women as normal family behavior; men's entitlement to control family members was respected, although violent tactics for doing so were probably considered distasteful and unacceptable to many. In short, while there is limited evidence one way or the other on the stability of domestic violence incidence rates over the past decades, the growing visibility and public discourse surrounding the issue may have contributed to changes in moral assessments, and the recognition of women's social and legal equality has eroded the traditional justification for their partners' violence toward them.

Law

Following legal changes that redefined spouse assault as a crime in the late 1800s, there were relatively few changes in State laws governing domestic violence until the 1970s. Over the past two decades, however, legislatures have enacted many innovative laws and courts have established new rulings that expand the scope and responsibilities of criminal justice agencies in domestic violence.

In a comprehensive review of the criminalization of domestic violence, Fagan (1996) reported that by 1980, 47 States had passed domestic violence legislation covering a range of reforms, including warrantless arrest for misdemeanor assault, changes in the conditions under which protection orders could be obtained, and recognition of special legal defenses for battered women who killed their partners. This trend began in Pennsylvania and Washington, D.C., where, by 1976, warrantless arrest legislation was in place; by 1977, Oregon became the first State to construct a mandatory arrest law (Zorza 1992). By 1994, 16 States and Territories mandated misdemeanor arrests in domestic violence incidents and 34 had legislation that pronounced arrest to be a preferred practice (Burt et al. 1996). Civil protection orders, at one time available only pending divorce, were the subject of legislation that expanded their availability in the 1970s as well (Hart 1991).

Civil litigation that sought to redefine the scope of police responsibility to domestic violence victims may have played an equally significant role in reorienting police practice and behavior. On a number of grounds, including equal

protection, sex discrimination, and claims of implied promise of protection, attorneys argued that existing police norms of nonengagement failed to protect victims at appropriate levels. Many of these cases were resolved through agreements rather than verdicts, but the valence of decisions was in the direction of greater police responsibility, and resulted in local policy changes that were emulated by other police administrators (see *Scott v. Hart*, U.S. Dist. Ct. for the Northern Dist. of Calif. C76-2395 [1976]; *Bruno v. Codd*, 47 N.Y. 2d 582, 393 N.E. 2d 976, 419 N.Y.S. 2d 901 [1979]; *Thurman v. City of Torrington*, 595 F. Supp. 1521 [1984]). The trend in these cases, often settled in Federal court, was in the direction of increasing police responsibility for victims, particularly victims who had previously sought police help—a significant adjustment to traditional police discretion in domestic cases.

More recent legal innovations include primary aggressor identification requirements in arrest cases, as a corrective to the practice of arresting both parties when cross-complaints are filed, and stalking laws that create new offense categories that criminalize repetitive, patterned harassment, behaviors that, assessed one by one, would be unlikely to rise to the level of enforcement and sanctions. Although stalking captured national attention in the highly publicized cases of celebrities pursued by obsessive fans, in reality the vast majority of cases that fit into these legal categories involve partner relationships, many of which had been terminated by the victim (U.S. DOJ, VAWGO 1998). Such legislation has symbolic value, of course; whether it has instrumental value in achieving the goals of victim protection and offender apprehension remains to be seen.

At the Federal level, during the late 1970s, the Law Enforcement Assistance Administration funded a number of programs that supported shelters, special prosecution units, treatment programs, mediation units, and civil legal interventions (Fagan 1996), reflecting the beginnings of a Federal commitment to a community-based rather than exclusively law enforcement response to domestic violence. Fifteen years later, the Violence Against Women Act (Title IV of the Violent Crime Control and Law Enforcement Act of 1994) provided significant financial support on a formula basis to States and localities for enhancing criminal justice responses to domestic violence. Among the many goals of the legislation were reducing the burdens of criminal justice processing on women, enhancing arrest rates for domestic violence, improving prosecution strategies, and improving victim services (Burt et al. 1996). Again, the intent was to promote a vision of intervention that extended outside traditional criminal justice boundaries by recommending and often requiring partnerships among victim services and criminal justice agencies and encouraging collaboration of both of these constituencies with evaluation researchers.

Institutions

At State and especially Federal levels, changes in law were accompanied by creation of institutional structures for implementing and monitoring changes in the definition of domestic violence and the recommended criminal justice response. Although in many States responsibility for licensing and regulating shelters was already in the hands of departments of social services, and many States also had in place criminal justice administrative units that tracked policy and collected data from localities, domestic violence agencies proliferated during the 1980s (Davis, Hagen, and Early 1994). At the present time, their responsibilities encompass health care issues and community prevention efforts as well as criminal justice and victim services, consistent with emerging views that effective responses will not be limited to criminal justice interventions. Their tasks tend to include training, technical assistance, and sometimes administration of State and Federal programmatic funds; their relationships with now-universal State coalitions against domestic violence are generally mutually supportive.

At the Federal level, the U.S. Department of Justice, particularly its Violence Against Women Office, has established partnerships with other Federal agencies and organizations, such as the Centers for Disease Control and Prevention and the National Institutes of Health, to promote coordination of programming and research on domestic violence (Rosenberg et al. 1997; Witwer and Crawford 1995); this is a resurrection, in a sense, of similar efforts in the 1980s (see Mickish and Schoen 1988; Fagan et al. 1984). The intellectual history of these collaborations has yet to be written, of course, but they clearly represent efforts to cast domestic violence as a problem of both public health and criminal justice constituencies. Some initiatives arising from these agencies have specific objectives, such as grants aimed at increasing arrest rates in local jurisdictions, or establishing database tracking systems, or establishing risk factors for domestic violence in specific populations (see Burt et al. 1999). Others have more generalized goals, such as synthesizing research across disciplines for dissemination to practitioners. Because researchers and practitioners in these diverse fields bring different theoretical perspectives, practical experiences, and ethical concerns to any discussion of domestic violence, the long-term objective in these efforts to merge these areas of expertise and practice will inevitably require uncommonly candid exchanges of perspectives, establishment of domains of agreement, and compromise of traditional boundaries between these sectors (Chalk and King 1998; Gondolf, Yllo, and Campbell 1997; Murphy and O'Leary 1994).

Summary

To understand how the boundaries of criminal justice have been adjusted to accommodate contemporary (and future) problem definitions and proposals for responses, an understanding of the complex and unusual historical and social background of the issue is critical. A century ago, "domestic violence" did not really exist as a legal or social construct. Most members of the public probably made a casual (and empirically inaccurate) distinction between "wife beaters" who chronically assaulted their partners, and "normal violence" that might have been considered either a predictable consequence of some people's family life or a morally justifiable action taken by men to reinforce their position of power within the family. The language of court cases seems to suggest that public distaste for law enforcement involvement in these cases outweighed distaste for physically abusive men. A convergence of changes in women's legal and social status, and the public's concern about crime, probably contributed to a political and social climate of disapproval of domestic violence and an increased interest in criminalization of partner abuse. Victim advocates, adopting roles as catalysts and monitors of legal changes, continued to participate as some of these changes became institutionalized into model policies, programs, and recommendations.

But it would be inaccurate to paint a history of these changes without including sketches of the controversies that have marked them. Some observers express continuing concern that the criminal justice process cannot be adjusted to serve victims' needs, at least as long as reform that runs in the direction of strong uniform enforcement policies is endorsed (Loseke 1991; Ford et al. 1996; Feder 1998). Meanwhile, others argue that submitting policy choices to instrumental criteria is inappropriate in a criminal justice policy environment that seldom requires proof of measurable effectiveness to justify continuation in any other domain of criminal law and practice (Frisch 1992). More generally, discussions of social objectives in domestic violence interventions are seldom consensual; beyond general agreement that less violence would be better, and growing consensus that victim safety and offender accountability can be compatible goals, there is little theory or evidence guiding researchers and policymakers toward concrete intermediate objectives (McCord 1992). Ideally, research provides useful information for assessing and improving interventions. However, researchers and practitioners must recognize that studies often rely on outcomes such as recidivism that are imperfectly measured and may be theoretically unrelated to the purpose of the intervention itself (Gondolf, Yllo, and Campbell 1997; Binder and Meeker 1988).

Changing the Boundaries of Criminal Justice: Reexamining Paradigms, Problem Assessment, and Responses

Local criminal justice systems are fragmented and, for this reason, efforts to change their practices tend to begin at the agency level and to focus on core tasks and functions. It is not surprising, therefore, that discretionary decisions such as arrest were the first targets of change, followed by recommendations that prosecutors produce more charging decisions and courts generate more orders of protection. Behind these reform recommendations was the realization that many misdemeanor cases dropped out of the criminal process at various points as officials made discretionary decisions for organizational as well as legal reasons. Over the past decade, coordination of criminal justice responses, with the goal of retaining cases in the system, has become the core element of some innovators, which not only extends the scope of ordinary criminal justice functions, but potentially creates new responsibilities and constituencies.

Evaluating these innovations is extremely challenging, for simple reasons. Some reforms have been adopted for symbolic reasons, others because they seem to promise deterrence of future violence; still others are aimed at incapacitation and rehabilitation of offenders. Reforms aimed at improving victims' plights are typically initiated by victim advocates, and less commonly initiated by criminal justice agents, although the latter's cooperation is frequently solicited in such efforts. These goals, although laudable in theory, are not necessarily compatible. Furthermore, the general theories of deviance underlying these interventions have not been subjected to refinement in the context of domestic violence, nor have they been systematically tested and found valid. Furthermore, implementation of many of these changes has been uneven and inconsistent, and has occurred in differing environments, so drawing conclusions about their effectiveness may be premature.

The following sections describe core features of the contemporary criminal justice process that create challenges for addressing domestic violence. The sections then review what researchers have learned about specific innovations in policing, prosecution, courts, and corrections. Finally, we turn to a consideration of current recommendations to open up the boundaries of criminal justice to coordinated community responses.

The limitations of the criminal justice paradigm

The paradigm of criminal processing is an imperfect and problematic vehicle for processing domestic violence, for a number of reasons. First, criminal justice is reactive, not proactive; since victims of domestic violence often do not

report incidents to police (Dutton 1988; Langan and Innes 1986; Bachman and Saltzman 1995; but also see Wilder et al. 1985; Sullivan, Tan et al. 1992), only a small percentage of victims come to the attention of legal authorities. Second, the legal process is organized around discrete incidents, and official investment in incidents is shaped by their legal seriousness and probabilities of conviction—but domestic violence typically involves multiple incidents, sometimes of escalating seriousness, with little physical evidence and few witnesses. Third, because the overwhelming majority of incidents that come to the attention of police are charged, if at all, at the misdemeanor level (Worden and McLean 1998), and because of the high rates of attrition in these cases, offenders may not accumulate criminal histories that might influence officials' future estimates of dangerousness and need for control; as a result, the tools that might be appropriate for controlling offenders are not legally applicable to many cases.

In addition, the adversarial nature of the criminal process presupposes that “both sides” are committed to winning “their cases,” and that victims seek public conviction and punishment. Victims of domestic violence have diverse motivations for seeking criminal justice intervention (Ford 1991; Ford and Regoli 1993). The adversarial process also presupposes financial and personal independence of the parties, but many victims of domestic violence are interdependent with (and sometimes dependent on) their abusers on one or both of these dimensions. Finally, in many cases, victims face collateral legal issues, such as custody and visitation of children, that may be settled simultaneously, but in a different venue from criminal charges.

This pessimistic assessment can be modified somewhat as one recognizes established as well as emerging trends in policing and adjudication that are compatible with boundary challenges. Community policing and problem-oriented policing direct attention to problems, not discrete incidents; community prosecution and community courts likewise attempt to adopt people and problems, not cases, as a focus. This trend toward understanding a discrete criminal incident in its broader social context—and addressing the context as well as punishing the behavior—is quite compatible with calls for comprehensive community interventions that incorporate the police as participants in problem solving.

Adaptations and changes in criminal justice agencies: Police, prosecutors, courts, and corrections

Practical changes in criminal justice policy and practice began with the police and, therefore, judging simply from the volume of research published on the topic, one might conclude that hopes for system change have been pinned largely on law enforcement. A more accurate assessment would be that assessments and recommendations began with police, since they are seen as gatekeepers of

the criminal process, but policy advocates have sequentially turned their attention to prosecutors, courts, and corrections.

The police

For decades, allegations of violence within families, when reported to police, were casually classified as “family trouble,” an appellation that clearly located these situations outside the realm of police business. Police effectively drew a boundary around what they considered legitimate work (“real crime”) and dealt with all other incidents that came to their attention at their own discretion (Black and Reiss 1967). Not only were family situations pronounced to be distasteful and complicated for officers, but police were also taught that they faced unusually high levels of danger and risk in domestic situations (Parnas 1967; Garner and Clemmer 1986), even in the absence of empirical evidence of this risk (see Sherman 1986). The emergence of crisis intervention strategies in the 1960s (Bard and Zacker 1971; Buchanan and Perry 1985) represented an early attempt to adopt a more consistent and, by the standards of the time, constructive police response by training officers to act as emergency family counselors, mediating the “disputes” that presumably precipitated the violence.

Researchers have left almost no evidence of the efficacy of these efforts, but the fact that this approach squarely located blame for the violence with the couple, not the violent individual, and the fact that officers seldom received more than a few hours training, would lead one to conclude that, despite good intentions, it produced little benefit to victims and probably little change in offenders (Buzawa and Buzawa 1993). A dramatic shift in recommended police practice was initiated in the early 1980s, when the Minneapolis spouse assault arrest experiment was published amidst unusual publicity for a social science report (Sherman and Berk 1984a) and became ammunition for those advocating more frequent arrests in misdemeanor-level domestic incidents.

The arguments in favor of strong arrest policies are by now familiar, although the evidence that supports those arguments remains inconclusive. Policies that mandated or presumed arrest would, it was hoped, clarify the police role, correcting decades of indifference or hostility masked by legal discretion (Buel 1988). Strong arrest policies, some thought, would empower victims, some of whom were so fearful of abusive partners that they could not reasonably be expected to insist on arrest themselves (Stark 1993). But most proponents of arrest policies adopted the theoretical perspective of the Minneapolis researchers: Arrest, as a form of legal sanction and control, would deter future violence more effectively than milder forms of police intervention.

This theory was subjected to thoughtful conceptual consideration by some (Humphreys and Humphreys 1985), and rigorous empirical tests by others (Williams and Hawkins 1992). Those analyses produced some cause for optimism that, under some conditions, arrest might carry sufficiently high social costs to inhibit offenders' future violence. The fact that these conditions did not obtain in most of the Spouse Assault Replication Program (SARP) experiments (or in Minneapolis, for that matter) may account for the inconclusiveness of the empirical results. These results, which have been subjected to intensive scrutiny and comparative review (e.g., Sherman, Smith et al. 1992; Schmidt and Sherman 1993; Gelles 1993; Garner, Fagan, and Maxwell 1995), suggest that arrest may be associated with desistance among employed and married suspects, but that arrest may have a criminogenic effect on people with fewer stakes in conformity. However, these findings were not consistent across experiments. An important but often overlooked issue is the fact that these experiments utilized somewhat different intervention options as comparisons, so at best one can draw inferences about the effect of arrest relative to, for example, onscene "mediation," separation of parties, or warnings about future arrests. Unfortunately, this point is lost in most discussions about the efficacy of arrest.

A careful reconsideration of the application of a specific deterrence theory in the context of actual domestic violence caseloads offers some clues to interpret these findings. Some commentators observe that the initial focus on offender behavior might have been misplaced from the outset; since recidivism measures relied heavily on victim reports (through official contacts with the police and through interviews), one might reasonably model the outcome variables as victim choices to report, not offender behavior (Lerman 1992; Bowman 1992). Even under experimental conditions, police did not always arrest when expected. Further, the efficacy of arrest was compared in all experiments with one or more alternative police actions, so the appropriate, but rarely asked, question is really about whether arrest deters more or less than the alternatives tried, some of which involved actions that might have been interpreted in different ways by different parties. Some of the authors of these replications have observed that arrest is itself an ambiguous sanction, since most offenders in the studies had prior arrest records already, and in most jurisdictions had no reason to expect any punitive sanctions to result from arrest (Hirschel, Hutchinson, and Dean 1992).

The most visible policy consequence of the arrest debate, of course, is the creation of mandatory arrest and presumptive arrest laws. These laws appear to remove police officers' discretion in making arrests, although research suggests that the content and interpretation of such rules vary tremendously (see Ferraro 1989; Reidinger 1989; Worden 2000). Leaving aside the issue of how arrest

affects offenders, if at all, researchers report uneven compliance with attempts to increase arrest rates through local and State policy (Ferraro 1989; Lawrenz, Lembo, and Schade 1988; Mignon and Holmes 1995). Mandatory arrest laws raise problems of implementation that are potentially alarming, if seldom documented. For example, Martin (1997) reported that one in three cases that resulted in arrest in Connecticut following adoption of a mandatory arrest statute involved “dual arrest”—arrest of both parties on cross-complaints of misdemeanor-level behavior. A more insidious (but hard to document) problem in mandatory arrest jurisdictions is the possibility that officers might communicate an intention to arrest both victim and offender if they are called back to the scene of a violent incident, deterring victims from seeking help.

A synopsis of the arrest research suggests that arrest does not necessarily reduce violence in the short run, that encouraging higher rates of arrest is a difficult project, and that arrest policies may have unintended consequences for victims. These observations led one of the original researchers in the Minneapolis experiment to conclude that mandatory arrest laws should be repealed and replaced with “structured police discretion” and specialized units to target chronic offenders (Schmidt and Sherman 1993). However, these concerns have not stemmed the enthusiasm and overgeneralization of some researchers and practitioners, who continue to assert that arrest is the most effective remedy for domestic violence (e.g., Eigenberg and Moriarty 1990; Bourg and Stock 1994).

With so much attention focused on the issue of arrest, we have learned relatively little about the impact of other police actions. The SARP studies have provided some evidence that postarrest detention may have a short-term deterrent effect on offenders (Sherman et al. 1991), and that offenders who flee the scene before police arrive may be inhibited from future violence by the issuing of warrants (whether they are executed or not) (Dunford 1990; Dunford, Huizinga, and Elliot 1990). Little is known, however, about other low-visibility police decisions that might have significant impacts on case processing and victim safety, including the quality of report writing (Berk, Berk, and Rauma 1980; but see Fleury et al. 1998), issuance of referrals (Finn and Stalans 1995), and even style of interaction on the scene. This is due in large part, no doubt, to the lack of official records on these activities, the difficulties of gathering data using other methodologies, and the fact that police themselves usually generate the records that constitute the data source for evaluation.

It is likely that future research on police intervention in domestic cases will examine these low-visibility decisions as well as systematically evaluate other innovations, such as specialized domestic violence units and training protocols and enforcement of protection orders. At this point in time, our expectations

about police behavior, our empirical understanding of the limits of their roles, and our investment in innovative strategies are at different points of progression. We have become more realistic about the limits of what police can do as we have learned more about violent offenders; in particular, we are increasingly realistic about what police can and cannot do to effect change in offender behavior. Other targets of change, as diverse as police attitudes, reporting practices, case tracking and management, and referrals, have been the focus of investments in training and technology, but since the objectives of these innovations are often vaguely specified and the innovations themselves are rapidly undertaken, evaluation research on these activities remains scarce and hard to access. For example, while a number of studies have documented diversity in officers' attitudes about domestic violence (e.g., Homant and Kennedy 1985; Dolon, Hendricks, and Meagher 1986; Breci and Simons 1987; Friday, Metzgar, and Walters 1991; Belknap 1995; Stalans and Finn 1995), there has been little effort to synthesize this knowledge into purposeful curricula, or to utilize this information to inform innovations. The next decade will probably bring either a continuation of this pattern or, if we are fortunate, a thoughtful and informed reassessment of policy goals, and subsequent refocusing of resources and research around those objectives.

Prosecutors

Paralleling the traditional police response to domestic violence, prosecutors historically have taken minimal action on the few domestic violence incidents that come to their attention. Authors of early studies of prosecutorial discretion in these cases remarked on the infrequency of formal action (Parnas 1967; Field and Field 1973; Davis and Smith 1982; Ford and Regoli 1993; Schmidt and Steury 1989; Fagan 1989). This is not surprising, given that research reporting the correlates of charging and prosecution reveals that domestic violence cases appear to be subjected to the same sort of triage that prosecutors use in most other cases. The same legal and evidentiary variables are associated with action in domestic and nondomestic types of cases—statutory seriousness, prior record of offender, the use of weapons, documented injuries, and other physical evidence (Rauma 1984; Schmidt and Steury 1989). Other than injury, these characteristics are not common in the caseload of domestic incidents, so even recent studies report rates of case attrition through prosecutorial charge dropping of almost 50 percent (e.g., Davis, Smith, and Nickles 1998); even higher attrition rates were reported in the SARP studies (Garner, Fagan, and Maxwell 1995).

Interestingly, despite suggestive evidence that prosecutors' decisions in these cases are influenced by conventional legal criteria, the debate over improving prosecutorial responses has focused almost exclusively on the role of victims in

initiating, sustaining, or withdrawing charges. Ellis (1984) reported that prosecutors believe victims are ambivalent about participating in prosecution, a belief that seemingly predisposes them to anticipate withdrawal of cooperation or even recanting of allegations. Underlying this concern is the presumption that a cooperating victim is essential to the objectives of prosecution, which is in turn based on the assumption that the objective of prosecution is conviction.

This latter assumption has been a matter of controversy, especially among criminal justice practitioners and victim advocates. Even the frequently used term “uncooperative victims” implies that victims ought to share prosecutors’ objective of conviction; an implied corollary is that victims who fail to cooperate forfeit their entitlement to the benefits of the legal system (Stanko 1982). Researchers and victim advocates have questioned both assumptions. First, some argue that prosecution could, and ought to, encompass a wider array of objectives, including victim safety (which might be promoted by the offender’s legal entanglement, independent of the ultimate outcome), communicating to offenders the unacceptability of the violent act, and investing victims with greater power and agency in dealing with violent partners (Fields 1978; Lerman 1981; Mickish and Schoen 1988). The first two of these objectives are not inconsistent with the aims of criminal justice generally, although the last of these, in particular, challenges conventional prosecutorial roles and boundaries.

The most significant research bearing on this question is studies of victim motivations and self-defined needs. Ford (1991) reports that, contrary to stereotypes, victims seldom withdraw from prosecution because of second thoughts about their romantic relationships; instead, they engage the legal system for practical reasons—protection from violence, attempts to get help for abusive partners, attempts to enforce collection of child support, or the need to recover property—and tend to withdraw from prosecution after those objectives are achieved (see also McLeod 1983; Ford and Burke 1987; Snyder and Scheer 1981). Contrary to the criminal justice paradigm, victims seldom seek public confrontation or punishment for their abusive partners (Lerman 1981). More recent research indicates that while victims who seek safety in shelters often want their partner arrested, their primary concerns are about economic survival, coping with aftereffects of violence, and securing safety for themselves and their children (Sullivan, Basta et al. 1992). These motivations are not unique to domestic violence victims; complainants in other misdemeanor matters involving family members and acquaintances turn to the courts for legal protection after other help systems have failed (Merry 1990).

Paradoxically, then, prosecutors cast victims in a role more akin to that of a civil court plaintiff than a criminal court victim in relying on their continued involvement to justify sustaining a case; yet, seemingly, they are frustrated that

victims behave in precisely the ways civil court plaintiffs might be expected to and, as it turns out, for some of the same pragmatic and rational reasons. The most widely debated policy response to the high drop rate has been initiated by prosecutors themselves, clearly in part as a remedy to the presumed ambivalence and unreliability of victims. Prosecutors began to experiment with no-drop policies in the early 1980s (Ford and Regoli 1993), ostensibly to release victims from formal responsibility for pursuing charges. No-drop policies have been the subject of both optimism and pessimism (Corsilles 1994; Ferraro and Pope 1993; Goolkasian 1986b), although some advocates may be as interested in limiting prosecutorial discretion as in reducing pressure on victims. Skeptics suggest that the effect, if not the intent, of no-drop policies is to legitimize prosecutors' early case-screening decisions by culling complainants who are committed to prosecution early in the process, and to protect prosecutors' investments in case development at later stages if victims start to waver in their commitments. At the extreme, some prosecutors maintain that they would subpoena reluctant victims to testify to ensure the conviction of a batterer.

No-drop policies have not been evaluated frequently (but see Ford and Regoli 1993), so we cannot conclude that they have the effect of extending the scope of prosecutorial work in domestic violence, or the nearly opposite effect of reinforcing the legal paradigm and deterring victims from initiating or pursuing complaints. Other innovations likewise have not been subject to assessment, although there are some useful descriptions and commentaries on them. For example, pretrial diversion and mediation systems, considered progressive innovations during the 1970s, were subject to the same criticisms that were leveled at police crisis intervention training, insofar as they located the cause of domestic violence in conflictual relationships, and simply used the criminal justice process as a point of entry for marital therapy (Reynolds 1988; Eisenberg and Micklow 1977).

Prosecutors have undertaken other strategies but, as is the case with police, it is not always clear what the objectives of these innovations are, and there have been few systematic evaluations of their intended or unintended consequences. It is difficult to draw accurate and generalizable inferences about prosecutorial motivations and organizational objectives, and the political realities of organizational change are sometimes awkward to reconcile with the optimistic and victim-centered goals that led to change. For example, adoption of victim advocacy programs within prosecutors' offices streamlines case processing and may increase victim retention in the legal process, but may also risk co-opting advocates to serve prosecutors' needs (see Cahn and Lerman 1991; Davis, Kunreuther, and Connick 1984).

Data on variables of critical importance to evaluations, such as victims' preferences about outcomes or reasons for dropping charges, are seldom recorded (but see Erez and Belknap 1998), making it hard to test hypotheses about the real effects of policies or programs. Further, the broader context of prosecutorial workload is often overlooked in discussions on improving responses to domestic violence. For example, current enthusiasm about "evidence-based prosecution"—the practice of building cases without relying on victim testimony—holds promise for taking pressure off victims and, obviously, is standard practice in felony prosecutions. However, it remains to be seen whether prosecutors will acquire the resources or inclination to adopt such a labor-intensive strategy with misdemeanor domestic violence cases. Likewise, specialized units and comprehensive training are recommended in model policy statements (e.g., Hart n.d.), but the structure and scope of such units are beyond the means of many prosecutors' offices.

The courts and corrections

The process of adjudication and disposition of domestic violence cases has received relatively little attention until recently, for the same reasons that prosecution did: High levels of case attrition provided few research opportunities to study the efficacy of any sort of court actions. In many jurisdictions, the

criminal courts have not welcomed the typical sorts of domestic violence cases, which involve misdemeanors, frequently with no witnesses and inconclusive physical evidence, and have seen them as the proper business for family or divorce courts.

Because so few cases proceed to conviction, and because the statutory range and available resources for sentencing in these cases are limited, the greatest promise for effective court action may reside in the intermediate decisions made between arrest and final disposition.

As higher arrest rates and raised expectations about prosecutorial actions have directed more cases into the courts, however, researchers and policymakers have taken greater interest in court processes. The hope for offender deterrence that motivated research and innovation in police departments emerges in a few studies of courts as well, in the form of analyses of the effect of sentences on rearrest. However, these studies, consistent with other research on domestic violence, yield inconclusive findings. Carlson and Nidey (1995) evaluated a 2-day statutory mandatory minimum sentence for aggravated misdemeanors, and found that although the number of jail sentences indeed went up for this charge, even more dramatic impacts were uncovered in assessing patterns of charging, guilty pleas, time to

disposition, and impact on victims. These authors concluded that this innovation made defendants and their lawyers less amenable to guilty pleas, and resulted in greater demands on victim participation to sustain prosecution. However, Thistlewaite, Wooldredge, and Gibbs (1998), comparing probation and jail with less controlling sentences in domestic cases, found that more severe forms of sentencing (although not the duration of such sentences) had a negative effect on rearrest, although, at odds with studies of the possible deterrent effect of arrest, there was no evidence that defendants' sociodemographic characteristics conditioned this effect.

Because so few cases proceed to conviction (Dutton 1995a), and because the statutory range and available resources for sentencing in these cases are limited, the greatest promise for effective court action may reside in the intermediate decisions made between arrest and final disposition. These decisions include pretrial detention, preliminary hearings, and issuance of orders of protection, both temporary and permanent. Virtually no studies have examined the impact of pretrial detention on subsequent behavior, or on victim actions or perceptions. However, from a deterrence perspective, it is reasonable to hypothesize that brief incarceration might be particularly effective in leading some types of offenders to rethink their invulnerability to sanctions.

Likewise, little attention has been given to judges' behavior in the courtroom or to opportunities to communicate with offenders informally. Goolkasian (1986b) observed that judges varied in the messages they sent to defendants; subtle cues that victims did not have the court's support were thought to have much less salutary effects than stern messages issued publicly. Although it has not been subject to systematic test, which would require observational data, judges' demeanor and orientation, as well as their official decisions, may affect offenders' and victims' beliefs about the illegality and unacceptability of abuse. In one study, judges were found to behave differently within the same jurisdiction, suggesting that judicial attitudes and values may affect judgments (Quarm and Schwartz 1985).

The most thoroughly studied aspect of court processing is the issuance and enforcement of orders of protection. In many jurisdictions, the most common or only available form of protective order is a civil order, tantamount to an injunction; the conditions that may be attached to this order are wide ranging. In other places such as New York State, criminal court orders, which typically

Victims seek orders of protection for the same practical reasons that they pursue prosecution following a violent incident: They are seeking protection in the wake of serious threats, threats to children, or actual abuse.

carry more severe penalties for violation, are available and are used more commonly than civil orders (Worden 2000). Research on orders of protection has addressed several questions: Why do victims seek them? Under what conditions are they granted? How effective are they? Could their effectiveness be increased?

Victims seek orders of protection for the same practical reasons that they pursue prosecution following a violent incident: They are seeking protection in the wake of serious threats, threats to their children, or actual abuse (Kaci 1992; Fischer and Rose 1995). The decision to seek orders is unrelated to the gravity of immediately preceding violence, a finding that contributes to the portrait of victims as rational and motivated individuals seeking to construct protective barriers against violent partners. Many believe the orders will help them (Finn 1991), a fact that has led some commentators to fear for victims' false sense of safety in jurisdictions where orders are not easy to enforce (Grau, Fagan, and Wexler 1984; Zorza 1992; Klein 1996; Finn and Colson 1990; Harrell, Smith, and Newmark 1993).

Just as victims often withdraw from prosecution, they often opt not to seek permanent orders of protection after temporary orders expire (Harrell, Smith, and Newmark 1993; Gondolf et al. 1994). Explanations for this tend to mirror those offered for withdrawal from prosecution, although research has not explored the impact of the higher legal standards that must be met in most jurisdictions to sustain permanent orders. It is possible that the interpretation and implementation of law itself, and not just victims' second thoughts, contribute to this pattern.

The efficacy of protection orders is difficult to measure. Measured by victim perceptions and satisfaction, it appears that, in some jurisdictions at least, victims find protection orders helpful in documenting abuse to other authorities and in sending a message to violent partners, although they were less optimistic about the likelihood of orders of protection being enforced if police were called on to do so (Harrell, Smith, and Newmark 1993). In general, Keilitz (1994), in reviewing studies of the effectiveness of protection orders, concluded that they were most likely to protect victims from further abuse if they were written very specifically, were comprehensive in their terms and conditions, were easy to obtain, and were integrated into victims' access to social and victim services. Even so, however, she notes that severe violence is more likely if an offender had a previous history of violent behavior, children were involved, and the offender had been arrested previously and expressed resistance to legal action at the court hearing (see also Grau, Fagan, and Wexler 1984; Chaudhri and Daly 1996; Harrell, Smith, and Newmark 1993). These observations suggest that, like some other interventions, protective orders may have a restraining effect only on less violent and persistent abusers.

Like most other criminal justice interventions, evaluations of the efficacy of orders of protection are limited by their uneven enforcement. Statutory changes in many States give law enforcement more motivation and latitude in arresting offenders accused of violating orders, but we have yet to learn whether these changes translate into changes in actual practice (see Zlotnick 1995).

Given the high level of concerns about children's safety among women who seek protective orders, it is important to note that in one of the few studies that assessed the relationship between protective orders and subsequent custody decisions, there was no evidence that victims who successfully sought such orders had a greater chance of procuring sole custody of children than other victims (Keilitz 1994). More generally, one of the most challenging issues facing the legal system—and one that has only recently attracted the attention of researchers—is the award of custody and visitation rights in cases in which domestic violence has been documented.

For many decades, partner violence was relevant to family law decisions only to the extent that “extreme cruelty” was legitimate grounds for divorce (albeit grounds that were difficult to prove to evidentiary standards). However, this was an era during which mothers had a high probability of being granted physical custody of small children in divorce proceedings. As the family law movement toward joint custody has created a legal presumption that the best interests of children are served by shared legal custody, victim advocates express concern that victims of partner violence risk exposing their children to unsupervised visits and shared custody with abusive ex-spouses, and exposing themselves to the potential for continuing manipulation and control through week-to-week negotiation of visitation, dropoffs, and decisions about children's lives. This may be one of the most important, but challenging, boundary issues facing criminal justice and the legal system more generally (see Ford et al. 1996). The criminalization of domestic violence has created a zone of shared responsibility between criminal and civil courts, a zone that remains difficult to map. By 1995, for example, 44 States required civil court judges deciding custody and visitation matters to consider histories of domestic violence (Hart 1996), although legislation thus far does not guide judges in how to weigh this information. At the root of this unresolved issue, one which judges themselves find highly problematic (Harrell, Smith, and Newmark 1993), is an empirical as well as a normative question: To what extent can, and should, abusive adults be required to forfeit traditional parental rights upon proof that they have been violent toward another custodial adult?

The criminalization of domestic violence has created a zone of shared responsibility between criminal and civil courts, a zone that remains difficult to map.

Future research must address the issue of shifting boundaries between civil and criminal courtwork in the area of domestic violence; over the past decades, the criminal courts have come to be seen by many as the most appropriate venue for responding to violence, but increasingly we realize that we can no more safely compartmentalize partner violence in the criminal courtroom than we could, years ago, in the family court. A few jurisdictions are experimenting with specialized domestic violence courts designed to respond to these complex problems on a case-by-case basis, and to incorporate other features (such as victim advocacy) to enhance victim safety and ensure that offenders do not elude accountability (see Buzawa, Hotaling, and Klein 1998; Hilton 1993; Fagan 1996). However, to date we know little about these experiments; even if they prove successful, the models that might operate successfully in urban areas may be hard to transplant to other sorts of communities (see Feder 1998).

Finally, the courts have been challenged to reconsider their traditional scope of activities as they have been encouraged to incorporate mandatory treatment of batterers into their pretrial and postconviction menu of interventions. While to some extent in the past, courts (and other criminal justice officials) recommended or even required mediation-style marriage counseling as a remedy for domestic violence, a policy that probably shares roots with statutes that require or provide mediation services as part of divorce proceedings (see Fritz 1986; Treuhart 1993; Lerman 1984; Chandler 1990), almost half the States now statutorily forbid this recommendation as part of a domestic violence disposition. Counseling programs are housed in an extremely diverse array of settings, including the nonprofit sector, private therapists, and, perhaps most commonly, domestic violence programs themselves. Although a review of research on the effectiveness of the many treatment models and settings is beyond the scope of this essay (but see Saunders 1996; Gondolf 1999; Tolman and Edleson 1995; Austin and Dankwort 1999; Gondolf 1997), the promise of effecting change at the individual level is highly appealing to many practitioners, so attempts to encourage judicial forays into this sector are likely to continue.

The policy and research agendas for courts and corrections remain even more inconclusive than those for law enforcement and prosecutors. Again, straightforward recommendations that more cases be retained in the system have been the focus of many innovations, but beyond a small number of studies of model programs, there is little reason to believe that retention rates have risen. Moreover, the boundaries of the courts' roles in domestic violence is the subject of much more complex debates as well—debates that cannot be readily resolved by current research.

First, society's portrait of the batterer has changed; the stereotypic short-tempered man who lashes out when stressed, angry, unemployed, or drunk has been

replaced by more complex pictures—highly controlling men whose violence is one of many strategies of dominance; psychologically damaged men whose overdependence leads them to abuse partners; men who justify their attacks because they believe they are entitled, even obliged, to dominate wives and girlfriends. Reasonably, early theorizing about simple deterrence has given way to both optimism and pessimism about effecting long-term attitudinal and behavioral changes. Judges are now faced with more cases and expectations that they will deploy their sentencing power, discretion, and expertise to address the causes of violent behavior.

Second, like prosecutors and police, judges must measure their investments in domestic violence cases against the backdrop of court caseloads, where priority is usually placed on felonies and on offenders with felony records. Some remedies, like specialized domestic violence courts, seem to offer a solution that prioritizes these cases, but they remain virtually unevaluated.

Third, judges' own attitudes about family violence shape their receptivity to innovation, but remarkably little is known about judges' attitudes, or those of key court staff (like clerks), whose day-to-day practices may have important impacts on victims as well as offenders. Judges are more organizationally autonomous than police, and more politically insulated than prosecutors, so while many observers advocate greater judicial training, we have not yet reached consensus on what the content or target of that training should be, or how it can be comprehensively delivered to receptive audiences.

Finally, unlike prosecutors, police, and correctional officials, judges may believe they cannot be recruited into combating domestic violence without compromising their impartial role, a role that requires protection of defendants' rights as a matter of individual case practice and court policy. Proposals that appear to raise this concern may be evaluated against traditional due process standards, and may also be measured against accepted practices in nondomestic cases.

Although the issues of corrections have recently reached the research agenda in the area of criminal justice and, in fact, been the topic of interest and experimentation among experts in social services and mental health for more than a decade, it would be premature to state that there is any emerging consensus on appropriate or effective interventions. In fact, it is probably true that the vast majority of defendants in domestic violence cases, even those who are convicted, leave the courthouse with no sanction, and there is almost no research that informs us about the criteria that judges use to decide who, among the many, are selected for meaningful sanctions. Fines, stayed jail sentences, and restitution probably constitute the modal punishments meted out. While spokespeople

in policy circles debate the virtues of much more intensive interventions, the reality is that most offenders do not encounter much from the sentencing process.

To the extent that corrections seems to be a point of intervention for offenders, most attention today is focused on batterers' intervention programs or other sorts of counseling programs. Some victim advocates have been wary of attempts to integrate rehabilitative programs for offenders into community intervention plans, seeing these programs as resource intensive and potentially competitive with scarce funding sources that might be used to assist victims—a reasonable concern. However, some programs seem to have demonstrated some success; at this point the most appropriate assessment would be that as we learn more about battering behavior, experts will be better equipped to decide what types of offenders might benefit from treatment, and policies will have to be designed to reflect those professional judgments (see Healey, Smith, and O'Sullivan 1998). Even when such judgments are possible, however, hard choices will still have to be made about resources.

The New Paradigm of Coordinated Response: Integrating Criminal Justice and Community Networks

The foregoing review of specific innovations highlights some of the ways in which recommended remedies require that criminal justice agents rethink traditional ways of defining problems, prioritizing work, establishing standards, and claiming success. Most of these innovations were adopted initially as modifications of routine practices, many were adopted at the behest of victim advocates, and many began as explicit challenges to boundaries that criminal justice agents had established for themselves.

Community coordination efforts almost invariably entail challenges to criminal justice boundaries. The objectives may require agencies to prioritize domestic violence in new ways.

A handful of well-known experiments, such as the Duluth Domestic Abuse Intervention Project, have highlighted the potential for successful integration of these innovations into communitywide initiatives. The promotion of this type of community model of intervention is now widely heralded as the best hope for improving social responses to domestic violence. That optimism is reflected in Federal support for law enforcement–victim services partnerships, specialized domestic violence courts that are formally linked to

other community organizations and service providers, and models for policy development that include diverse constituencies.

The optimism about community coordination is so widespread that only rather seldom are researchers challenged or invited to examine the structure and consequences of coordination efforts. Coordination attempts, which may take the form of agency partnerships, local task forces, and communitywide coalitions, vary in their leadership patterns, resources, and durability. Because, by definition, community initiatives are unique to locales, they appear to resist systematic evaluation. However, the investment that has been made in promoting this approach and the many experiments of this sort that are now under way invite observation, evaluation, and comparison, toward the long-term end of learning what features of communities make them amenable to these sorts of boundary-minimizing strategies, what sorts of outcomes are achievable through these efforts, and what, if any, costs they impose on communities, criminal justice agencies, and the people who are processed by them.

The objectives of activities subsumed under the general term "community coordination" varies (Hart 1996). Focused problem solving between two or three agencies might be aimed at a specific goal; for example, a shelter for battered women might collaborate with a police department to improve victims' access to help through referrals and transportation. A criminal justice task force might undertake a systemwide assessment and make recommendations for policy change. A coordinated intervention project may take on a specific mission, such as increasing offender accountability through the criminal justice process, and establish a centralized office to oversee such efforts (e.g., Pence 1983). A community coalition in which criminal justice might play a supporting but not central role might adopt long-term objectives of prevention through activities with multiple public and private organizations.

Evaluation research on these kinds of efforts is scarce; a recent comprehensive review of evaluation research on family violence concluded that, by accepted scientific standards, no evaluation of these sorts of projects had yet been completed (Chalk and King 1998). Of course, broad and long-term goals cannot be assessed in the short run (O'Conner 1995; Brown 1995), and even projects with limited aims may not achieve measurable success. Increasingly, stated objectives include improved outcomes for victims, but accessing, assessing, and incorporating information about victim experiences and perceptions remain challenging.

In summary, community coordination efforts almost invariably entail challenges to criminal justice boundaries. The objectives may require agencies to prioritize domestic violence in new ways, and may create expectations of responsiveness

and shared decisionmaking with groups outside the criminal justice system. Traditional domains of discretion may be challenged; key activities, such as training, may be ceded to outsiders as well. Practitioners may be expected to embrace norms, values, and beliefs about victims and offenders that are unfamiliar and perhaps inconsistent with organizational traditions. It is far too early to say how successful these efforts will be, either in meeting short-term objectives such as securing cooperation and interdependence, or in achieving long-term goals, such as making victims safer, holding offenders accountable, reducing violence, or changing society's values.

Conclusions

The boundaries of criminal justice are defined in part by substantive and procedural law, the products of legislatures and courts. They are defined as well, although these lines are harder to map, by local customs, practices, and policy. Further, although criminal justice remains overwhelmingly a matter of State policy, definitions of crime and justice are sometimes reshaped by Federal Government initiatives through symbolic policies and resource incentives.

On the topic of domestic violence, the traditional boundaries of criminal justice—the rules and expectations about what officials can, should, and should not do—have been challenged, stretched, and occasionally reinforced. At the present time, the most honest assessment of the state of these changes is that a better, more complete essay on this topic will probably be written in 20 years. Likewise, by studying the history of domestic violence reforms, future observers may learn valuable lessons about the elasticity of these boundaries under conditions of social change.

This essay is an attempt to document the evolution of politics, policy, practice, and research on this topic at a particular point in history, and to place those observations in perspective—a particularly challenging task on a topic about which research is highly multidisciplinary, sometimes balkanized, and subject to philosophical and sometimes ideological controversies. In projecting how these controversies and challenges ultimately will be settled, it may be instructive to assess where they fall in the context of broader contemporary questions, as well as longstanding dilemmas, surrounding criminal justice.

Perhaps the most important example of an enduring dilemma is the problem of sorting out civil law from criminal law in many cases involving domestic violence. A century ago, jurists settled this issue with what they probably thought was reason and finality: Women's status as subordinate family members in male-run households trumped their status as crime victims or claimants for

protection by the legal system. More enlightened practices in family courts during the past few decades still prioritized women's roles as mothers and wives, but allowed for the possibility that physically abusive behavior called for formal action; divorce laws, in word and in practice, ceased to require proof of extreme cruelty to dissolve relationships without stigma.

It is clear today, however, that these changes were insufficient to address the problems facing women who lived with, and often had children with, abusive partners. Victims are still faced with painful problems and choices that belong in part to both civil and criminal law; so where, and how, to redraw boundaries around these jurisdictions—or whether to attempt to empower both to address victims' claims simultaneously, as in the case of New York's concurrent jurisdiction provisions—remains a critical but unsettled issue.

Determining these legal boundaries remains problematic because, despite considerable evolution in public values and beliefs, society remains ambivalent about the appropriateness of labeling domestic violence as unambiguously criminal behavior. However, future analysts are likely to observe that the problems and challenges currently confronting criminal justice on the issue of domestic violence are consistent with some broader trends and debates about mainstream criminal justice, although they are not always cast in the same terms. For example, traditional legal definitions of criminal behavior and standards of evidence have been challenged as inadequate for describing the nature and magnitude of harm inflicted, resulting in the construction of new offense categories and enhancements of penalties. This parallels "get tough" trends in other areas, such as drug and firearms law and the law of sexual assault (Horney and Spohn 1991), but it remains to be seen whether the spirit of these changes will be incorporated into practice. In particular, strict liability standards (such as felony charges for violations of stay-away orders) may raise questions about issues of intent and harm that will not readily be resolved.

Likewise, ongoing debates about reducing criminal justice officials' discretion through mandatory arrest, prosecution, and sentencing policy proposals are not new to criminal justice, but research yields little evidence that such mandates make much difference in local practices, although these mandates may be adopted for important symbolic reasons.

Innovations aimed at offenders follow two tracks: efforts to retain offenders in the system and efforts to increase penalties, consistent with a more generally expressed view that offenders should be held accountable for their acts. As a society, we are still undecided about which paradigms of punishment are acceptable, affordable, and effective, and this is true for domestic violence offenders as well as others. A decade ago, policies were designed around deterrence

assumptions; at present, rehabilitative efforts seem more promising, if more expensive, and the emerging trend is in the direction of primary prevention. While offenders are believed to be responsible for wrong behavior, few expect that such behavior will change without intervention. Interestingly, proposals to routinely impose arrest, conviction, mandatory counseling, and supervision on large numbers of people who currently would have ended up with dismissals or minor sanctions, would, if implemented, constitute a rather dramatic example of net widening—increasing the number of people and the intensity of interventions imposed on them. While the debate about net widening has often revolved around incarceration and felony matters (see Palumbo, Clifford, and Snyder-Joy 1992), the potential for increased resource demands and criminal justice involvement in offenders' lives is significant at the lower court and probation levels as well. It is likely that this debate ultimately will be settled not just on the basis of knowledge about the efficacy of interventions, but also on the basis of criminal justice system responses to demands placed on it.

Another shift in criminal justice priorities over the past two decades has been increasing attention to victims of crime. This concern has manifested itself in crime victims' compensation boards, opportunities for victim input at sentencing hearings, and public interest in the fates and legacies of particularly tragic victims. This is the stuff of which popular policies and political campaigns are readily made, and it is likely to continue. Paralleling this trend, victims of domestic violence have become the focus of considerable attention, concern, and program development, materializing in such forms as victim advocacy liaisons in police departments, training of criminal justice officials around victim safety issues, and expectations that survivors of domestic violence will be included in policymaking and planning at the local, State, and national levels.

To a large extent, the focus on domestic violence victims arose independent of the more general national interest in crime victims, and was created by grassroots organizations devoted to helping victims, not reforming criminal justice. However, the same pattern is emerging for domestic violence, sexual assault, and child abuse victims—their victimizations are no longer portrayed as shameful secrets or bad experiences to which they unwittingly contributed; rather, they have been “legitimized” as victims. The New York City Police Department's (NYPD's) current recruitment campaign includes television advertisements featuring a domestic violence victim speaking eloquently about the help offered her by NYPD officers; a prominent tobacco company advertises that its pro bono work includes a program to help get domestic violence victims back on their feet. Similar media representations of victims of drunk driving and child abuse have been used for several years. Apparently, domestic violence victims now make good press and good imagery.

In this changing social context—and given the lack of resources, knowledge, and optimism about changing offender behavior and the fact that most domestic violence incidents are classified as misdemeanors—one might say it is easier for criminal justice officials to see the victim in a domestic violence scenario than it is to see a criminal. As one seasoned misdemeanor court judge recently observed, “These women are victims, no doubt about it. But these men who beat their wives? They’re not your criminals” (interview with author, June 1998). To the extent that criminal justice officials find it difficult or impractical to reconcile their profile of violent offenders with the steady stream of people who are violent with family members, they may find it much easier and more promising to focus their efforts on protecting and sheltering victims from repeat attacks. Safety plans, orders of protection, electronic signaling devices, 911 cell phones, and identification protection protocols may be recognized by future commentators as classic examples of target hardening.

Two more examples of general trends in criminal justice are visible in the area of domestic violence policy and practice as well. The first is an increasing emphasis on the community as the point of origin for change, both within criminal justice and across its boundaries. Of course, the community has always been the place where criminal justice decisions were made, by design; but it is easy to lose sight of this fact in the wake of the many other sustained reform efforts that have begun at the State or Federal level (such as sentencing guidelines and the war on drugs). However, contemporary discussions about community criminal justice are not so much about the autonomy of local systems, but about the permeability of local agencies to other community groups and constituencies, a trend most visibly illustrated by the community policing movement, but also by court-watching programs, community prosecution initiatives, and engagement of local police departments in community education programs (such as D.A.R.E.[®]). Domestic violence is an arena in which community groups have long waited for access and input into criminal justice decisionmaking, so the proliferation of task forces, coalitions, and partnerships is not surprising.

Future observers will probably notice, however, that the emphasis on community-based responses to domestic violence may have been prompted by many local advocates, but recently it also has been heavily promoted by Federal Government policies and resource decisions. Just as community policing has been sponsored

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as a desirable innovation by Federal authorities, the availability, structure, and requirements of Federal grant programs prioritizes "community based" initiatives that include noncriminal justice actors. While Federal criminal law may have little to say about domestic violence (and most other criminal law issues), Federal funding policy may have a great deal to do with the legitimacy and utilization of particular strategies.

In short, challenges to criminal justice boundaries around the topic of domestic violence mirror, in some ways, ongoing questions about the capacities and limits of the criminal process in other domains as well; trends such as statutory reform, debates over sentencing rationales, net widening, redefining victimization, community coordination, and federalization permeate discussions of many criminal justice issues. Policymakers and researchers seldom have the opportunity to reflect on the commonalities of these historical trends; it is work enough to stay current with proliferating ideological debates, policy innovations, experiments, and research findings. It is probably safe to conclude that criminal justice will not be reinvented around the problem of domestic violence.

However, the high incidence rate, the high recidivism rate, our growing understanding of the complexity and intractability of causes, and the mounting evidence of tremendous costs to victims contribute not only to a turbulent policy environment but also to a sense of urgency about making changes. Therefore, a final observation must be that the pace of innovation in this area is much faster than the pace of research, evaluation, and informed discussion about what the criminal justice response should or should not look like. The problem does not lend itself to analysis, for some familiar reasons. Programs with short-term funding are often subject to evaluation of performance on outcome measures that could only reasonably be expected to change in the long term. The focus of much current interest, coordinated community intervention projects, is by definition the peculiar products of local resources, leadership, and values, so documenting their absolute or relative effectiveness along any dimensions defies most standards of social science research design. Moreover, while it is seldom called into question, the priority placed on finding out "what works" distracts us from the simple observation that, in most domains of criminal justice, we do not require evidence of effectiveness along measurable dimensions to justify policies (and often specific programs).

Meanwhile, what we have learned about criminal justice responses to domestic violence is sobering. Despite public attention and the tireless efforts of victim advocates, there is little empirical reason to believe that most communities respond to these cases in ways much different from past practices of indifference. A natural tendency to look optimistically at model projects has obscured

the need for research on broader samples of communities, their problems, and their experiences. Researchers have few incentives to study failures but many communities have begun task forces or coalitions, only to have them fade into obscurity; understanding why such efforts fail might be as informative as studying why a few others seem to succeed. This observation alone reinforces a fundamental truth about criminal justice: The boundaries that society imposes on it, and those it draws around itself, are easily challenged and criticized, and they are frequently the subject of experiments, political pressure, and inducements. However, they are equally resistant to many attempts to impose change. It is likely that the final analysis of contemporary changes in domestic violence responses will inform us, albeit perhaps not in the ways we hope or expect, about the conditions under which such changes may be accomplished.

References

- Abel, E.M., and E.K. Suh. 1987. Use of police services by battered women. *Social Work* 32:526–528.
- Albonetti, Celeste A. 1987. Prosecutorial discretion: The effects of uncertainty. *Law & Society Review* 21 (2): 291–313.
- American Bar Association Committee on Domestic Violence. 1994. *Model code on domestic and family violence*. Retrieved 2 February 2000 from the World Wide Web: www.abanet.org/domviol/code.html.
- Austin, J.B., and J. Dankwort. 1999. Standards for batterer programs: A review and analysis. *Journal of Interpersonal Violence* 14 (2): 152–168.
- Bachman, R., and L.E. Saltzman. 1995. *Violence against women: Estimates from the redesigned survey*. Special Report, NCJ 154348. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Balos, B., and K. Trotzky. 1988. Enforcement of the Domestic Abuse Act in Minnesota: A preliminary study. *Law and Inequality: A Journal of Theory and Practice* (July): 83–125.
- Bard, Morton. 1970. *Training police as specialists in family crisis intervention*. NCJ 50. Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration.
- Bard, Morton, and Joseph Zacker. 1971. The prevention of family violence: Dilemmas of community interaction. *Journal of Marriage and the Family* 33:677–682.
- Belknap, J. 1995. Law enforcement officers' attitudes about the appropriate responses to woman battering. *International Review of Victimology* 4:47–62.

Berk, R.A., S.F. Berk, and D. Rauma. 1980. Bringing the cop back in: A study of efforts to make the criminal justice system more responsive to incidents of family violence. *Social Science Research* 9:193–213.

Binder, A., and J.W. Meeker. 1992. Implications for the failure to replicate the Minneapolis experimental findings. *American Sociological Review* 58:886–888.

———. 1988. Experiments as reforms. *Journal of Criminal Justice* 16 (4): 347–358.

Black, Donald, and Albert J. Reiss, Jr. 1967. Patterns of behavior in police and citizen transactions. In *Studies of crime and law enforcement in major metropolitan areas*. President's Commission on Law Enforcement and the Administration of Justice, field surveys III, vol. 2. Washington, D.C.: U.S. Government Printing Office.

Bourg, S., and H. Stock. 1994. A review of domestic violence arrest statistics in a police department using a pro-arrest policy: Are pro-arrest policies enough? *Journal of Family Violence* 9 (2): 177–189.

Bowman, C.G. 1992. The arrest experiments: A feminist critique. *Journal of Criminal Law and Criminology* 83 (1): 201–208.

Breci, M., and R. Simons. 1987. An examination of organizational and individual factors that influence police response to domestic disturbance. *Journal of Police Science and Administration* 15 (2): 93–104.

Brown, P. 1995. The role of the evaluator in CCIs. In *New approaches to evaluating community initiatives*, edited by J. Connell, A. Kubisch, L. Schorr, and C.H. Weiss. Washington, D.C.: Aspen Institute.

Buchanan, D.R., and P.A. Perry. 1985. Attitudes of police recruits towards domestic disturbance: An evaluation of family crisis intervention training. *Journal of Criminal Justice* 13 (6): 561–572.

Buel, S.M. 1988. Mandatory arrest for domestic violence. *Harvard Women's Law Journal* 11:213–226.

Burt, M., L. Newmark, M. Norris, D. Dyer, and A. Harrell. 1996. *The Violence Against Women Act of 1994: Evaluation of the STOP Block Grants to combat violence against women*. Washington, D.C.: Urban Institute.

Burt, M., L. Newmark, M. Norris, L. Jacobs, and A. Harrell. 1999. *1998 annual report: Evaluation of the STOP Formula Grants under the Violence Against Women Act of 1994*. Grant no. 95-WT-NX-005. Washington D.C.: Urban Institute.

Buzawa, E., and C. Buzawa. 1996. *Domestic violence: The criminal justice response*. Thousand Oaks, California: Sage Publications.

- . 1993. The impact of arrest on domestic violence. *American Behavioral Scientist* 36 (5): 558–574.
- Buzawa, E., G. Hotaling, and A. Klein. 1998. The response to domestic violence in a model court: Some initial findings and implications. *Behavioral Science and the Law* 16 (2): 185–206.
- Cahn, N.R., and L.G. Lerman. 1991. Prosecuting women abuse. In *Woman battering: Policy responses*, edited by M. Steinman. Cincinnati: Anderson Publishing Company.
- Campbell, J.C., and K.L. Soeken. 1999. Women's responses to battering over time: An analysis over time. *Journal of Interpersonal Violence* 14 (1): 21–40.
- Campbell, R. 1995. The role of work experience and individual beliefs in police officers' perceptions of date rape: An integration of quantitative and qualitative methods. *American Journal of Community Psychology* 23:249–277.
- Campbell, R., and C.R. Johnson. 1997. Police officers' perceptions of rape: Is there consistency between State law and individual beliefs? *Journal of Interpersonal Violence* 12:255–275.
- Carlson, C., and F.J. Nidey. 1995. Mandatory penalties, victim cooperation, and the judicial processing of domestic abuse assault cases. *Crime & Delinquency* 41 (1): 132–139.
- Chalk, R., and P. King. 1998. *Violence in families: Assessing prevention and treatment programs*. Washington, D.C.: National Academy Press.
- Chandler, D.B. 1990. Violence, fear, and communication: The variable impact of domestic violence on mediation. *Mediation Quarterly* 7 (4): 331–346.
- Chaudhri, M., and K. Daly. 1996. Do restraining orders help? *Domestic violence: The criminal justice response*. 2d ed. Edited by E.S. Buzawa and C. Buzawa. Thousand Oaks, California: Sage Publications.
- Corsilles, A. 1994. No-drop cases in the prosecution of domestic violence cases: Guarantee to action or dangerous solution? *Fordham Law Review* 63 (3): 853–881.
- Crowley, J.E., R.T. Sigler, and I.M. Johnson. 1990. Variations across agency types to perceptions of seriousness of family abuse. *Journal of Criminal Justice* 18 (6): 519–531.
- Davis, L.V., J.L. Hagen, and T.J. Early. 1994. Social services for battered women: Are they adequate, accessible, and appropriate? *Social Work* 39 (6): 695–704.
- Davis, R.C., F. Kunreuther, and E. Connick. 1984. Expanding the victim's role in the criminal court dispositional process: The results of an experiment. *Journal of Criminal Law and Criminology* 75 (2): 491–505.

- Davis, R.C., B.E. Smith, and L.B. Nickles. 1998. The deterrent effect of prosecuting domestic violence misdemeanors. *Crime & Delinquency* 44 (3): 434–442.
- Davis, Robert C., and Barbara Smith. 1982. Crimes between acquaintances: The response of the criminal courts. *Victimology: An International Journal* 8:175–187.
- Denno, D.W. 1994. Gender, crime, and the criminal law defense. *Journal of Criminal Law and Criminology* 85 (1): 80–180.
- Dibble, U., and M.A. Straus. 1980. Some social structural determinants of inconsistency between attitudes and behavior: The case of family violence. *Journal of Marriage and the Family* 42:71–80.
- Dobash, R.E., and R. Dobash. 1979. *Violence against wives*. New York: Free Press.
- Dolon, R., J. Hendricks, and S. Meagher. 1986. Police practices and attitudes toward domestic violence. *Journal of Police Science and Administration* 14 (3): 187–192.
- Dunford, F.W. 1990. System initiated warrants for suspects of misdemeanor domestic assault: A pilot study. *Justice Quarterly* 7:631–653.
- Dunford, F.W., D. Huizinga, and D.S. Elliot. 1990. The role of arrest in domestic assault: The Omaha police experiment. *Criminology* 28 (2): 183–206.
- Dutton, D.G. 1995a. *The domestic assault of women*. 2d ed. Boston: Allyn and Bacon.
- . 1995b. Trauma symptoms and PTSD-like profiles in perpetrators of intimate abuse. *Journal of Traumatic Stress* 8 (2): 299–316.
- . 1988. *The domestic assault of women: Psychological and criminal justice perspectives*. Boston: Allyn and Bacon.
- Eigenberg, H., and L. Moriarty. 1990. Domestic violence and law enforcement in Texas: Examining police officers' awareness of State legislation. *Journal of Interpersonal Violence* 6 (1): 102–109.
- Eisenberg, S., and P. Micklow. 1977. The assaulted wife—catch-22 revisited. *Women's Rights Law Reporter* 3:138–139.
- Ellis, J.E. 1984. Prosecutorial discretion to charge in cases of spousal assault: A dialogue. *Journal of Criminal Law and Criminology* 75 (1): 56–102.
- Erez, E. 1986. Intimacy, violence, and the police. *Human Relations* 39 (3): 265–281. Cited in D. Elliott, Criminal justice procedures in family violence crimes, in *Family violence*, edited by L. Ohlin and M. Tonry (Chicago: University of Chicago Press, 1989, vol. 11 of *Crime and justice: A review of research*), 443.

Erez, E., and J. Belknap. 1998. In their own words: Battered women's assessment of the criminal processing system's responses. *Violence and Victims* 13 (3): 251–268.

Fagan, J. 1996. Contributions of research to criminal justice policy on wife assault. In *Family violence: Research and public policy issues*, edited by D.J. Besharov. Washington, D.C.: American Enterprise Institute Press.

Fagan, J. 1989. Cessation of family violence: Deterrence and dissuasion. In *Family violence*, edited by L. Ohlin and M. Tonry. Vol. 11 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.

Fagan, J., E. Friedman, S. Wexler, and V.O. Lewis. 1984. *Final report: National family violence evaluation*. Grant no. 80–JN–AX–004. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Feder, L. 1998. Police handling of domestic violence and police response in a pro-arrest jurisdiction. *Crime & Delinquency* 44 (2): 335–349.

Feeley, M.M. 1983. *Court reform on trial: Why simple solutions fail*. New York: Basic Books.

Fernandez, M., K. Iwamoto, and B. Muscat. 1997. Dependency and severity of abuse: Impact on women's persistence in utilizing the court system as protection against domestic violence. *Women and Criminal Justice* 9 (1): 39–63.

Ferraro, K.J. 1989. Policing woman battering. *Social Problems* 36 (1): 61–74.

Ferraro, K.J., and L. Pope. 1993. Irreconcilable differences: Battered women, police, and the law. In *Legal responses to wife assault: Current trends and evaluation*, edited by N.Z. Hilton. Newbury Park, California: Sage Publications.

Field, M., and H. Field. 1973. Marital violence and the criminal justice process: Neither justice nor peace. *Social Service Review* 42 (2): 221–240.

Fields, M. 1978. Wife beating: Government intervention, policies, and practices. In *Battered women: Issues of public policy*. Washington, D.C.: U.S. Commission on Civil Rights.

Finn, M.A., and L.J. Stalans. 1995. Police referrals to shelters and mental health treatment: Examining their decisions in domestic assault cases. *Crime & Delinquency* 41:467–480.

Finn, P. 1991. Civil protection orders: A flawed opportunity for intervention. In *Woman battering: Policy responses*, edited by M. Steinman. Cincinnati: Anderson Publishing Company.

Finn, P., and S. Colson. 1990. *Civil protection orders: Legislation, current court practice, and enforcement*. NCJ 123263. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Fischer, K., and M. Rose. 1995. When "enough is enough": Battered women's decision making around court orders of protection. *Crime & Delinquency* 41 (4): 414-429.

Fleury, R.E., C.M. Sullivan, D.I. Bybee, and W.S. Davidson. 1998. What happened depends on whom you ask: A comparison of police records and victim reports regarding arrests for woman battering. *Journal of Criminal Justice* 26 (1): 53-59.

Ford, D.A. 1991. Prosecution as a victim power source: A note on empowering women in their violent conjugal relationships. *Law & Society Review* 25 (2): 313-334.

Ford, D.A., and M.J. Burke. 1987. Victim initiated criminal complaints for wife battery: An assessment of motives. Paper presented at the Third National Conference for Family Violence Researchers, Durham, New Hampshire.

Ford, D.A., and M.J. Regoli. 1993. *The Indianapolis Domestic Violence Prosecution Experiment*. Final Report, NIJ Grant no. 86-IJ-CX-0012. Indianapolis: Indiana University; and Washington, D.C.: U.S. Department of Justice, National Institute of Justice, and U.S. Department of Health and Human Services, National Institute of Mental Health.

Ford, D.A., R. Reichard, S. Goldsmith, and M.J. Regoli. 1996. Future directions for criminal justice policy on domestic violence. In *Do arrests and restraining orders work?*, edited by E. Buzawa and C. Buzawa. Thousand Oaks, California: Sage Publications.

Friday, P., S. Metzgar, and D. Walters. 1991. Policing domestic violence: Perceptions, experience, and reality. *Criminal Justice Review* 16 (2): 198-213.

Friedman, L.M. 1985. *A history of American law*. 2d ed. New York: Simon & Schuster.

Frisch, L.A. 1992. Research that succeeds, policies that fail. *Journal of Criminal Law and Criminology* 83 (1): 209-216.

Fritz, A. 1986. The Minnesota Domestic Abuse Act: Family court jurisdiction over family violence. Symposium on family law. *Hamline Law Review* 9:525-556.

Garner, J., and E. Clemmer. 1986. *Danger to police in domestic disturbances: A new look*. Research in Brief, NCJ 102634. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Garner, J., J. Fagan, and C. Maxwell. 1995. Published findings from the Spouse Assault Replication Program: A critical review. *Journal of Quantitative Criminology* 11 (1): 3-28.

Gelles, R. 1993. Constraints against family violence: How well do they work? *American Behavioral Scientist* 36 (5): 575-586.

- Gondolf, E.W. 1999. A comparison of four batterer intervention systems: Do court referral, program length, and services matter? *Journal of Interpersonal Violence* 14:41–61.
- . 1997. Batterer programs: What we know and need to know. *Journal of Interpersonal Violence* 12 (1): 83–98.
- . 1990. An exploratory survey of court mandated batterer programs. *Response to the Victimization of Women and Children* 13 (3): 7–11.
- . 1988a. The state of the debate: A review essay on woman battering. *Response* 11 (3): 3–8.
- . 1988b. Who are those guys? Toward a behavioral typology of batterers. *Violence and Victims* 3 (3): 187–203.
- Gondolf, E.W., J. McWilliams, B. Hart, and J. Stuehling. 1994. Court response to civil protection orders. *Journal of Interpersonal Violence* 9 (4): 503–517.
- Gondolf, E.W., K. Yllo, and J. Campbell. 1997. Collaboration between researchers and advocates. In *Out of the darkness: Contemporary perspectives on family violence*, edited by G.K. Kantor and J.L. Jasinski. Thousand Oaks, California: Sage Publications.
- Goolkasian, G. 1986a. *Confronting domestic violence: A guide for criminal justice agencies*. Issues and Practices, NCJ 101680. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- . 1986b. *Confronting domestic violence: The role of criminal court judges*. Research in Brief, NCJ 102833. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Graham, M., J. Herson, A. Pritchett, and P. Schwartz, eds. 1996. *Domestic violence, stalking and anti-stalking legislation: An annual report to Congress under the Violence Against Women Act*. NIJ Research Report, NCJ 160943. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Grau, J., J. Fagan, and S. Wexler. 1984. Restraining orders for battered women: Issues of access and efficacy. *Women and Politics* 4:13–28.
- Greenblat, C.S. 1983. A hit is a hit . . . Or is it? In *The dark side of families: Current family violence research*, edited by D. Finkelhor, R.J. Gelles, G.T. Hotaling, and M.A. Straus. Beverly Hills: Sage Publications.
- Greenfeld, L.A., M.R. Rand, D. Craven, P.A. Klaus, C.A. Perkins, C. Ringel, G. Warchol, C. Maston, and J.A. Fox. 1998. *Violence by intimates: Analysis of data on crimes by current or former spouses, boyfriends, and girlfriends*. NCJ 167237. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.

- Harrell, A., B. Smith, and L. Newmark. 1993. *Court processing and the effects of restraining orders for domestic violence victims*. Washington, D.C.: Urban Institute.
- Hart, B. 1993. Battered women and the criminal justice system. *American Behavioral Scientist* 36 (5): 624–638.
- Hart, B.J. 1996. Battered women and the criminal justice system. In *Do arrests and restraining orders work?*, edited by E. Buzawa and C. Buzawa. Thousand Oaks, California: Sage Publications.
- . 1991. The legal road to freedom. Retrieved 13 March 2000 from the World Wide Web: <http://www.mincava.umn.edu/hart/legalro.htm>.
- . N.d. *Victim issues*. Retrieved 3 March 2000 from the World Wide Web: <http://www.mincava.umn.edu/hart/victim.htm>.
- Healey, K., C. Smith, and C. O'Sullivan. 1998. *Batterer intervention: Program approaches and criminal justice strategies*. Issues and Practices, NCJ 168638. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Hilton, N.Z. 1993. *Legal responses to wife assault: Current trends and evaluation*. Newbury Park, California: Sage Publications.
- Hirschel, J.D., and I.W. Hutchinson III. 1992. Female spouse abuse and the police response: The Charlotte, North Carolina, experiment. *Journal of Criminal Law and Criminology* 83 (1): 73–119.
- Hirschel, J.D., I.W. Hutchinson III, and C.W. Dean. 1992. The failure of arrest to deter spouse abuse. *Journal of Research in Crime and Delinquency* 29 (1): 7–33.
- Homant, R.J., and D.B. Kennedy. 1985. Police perceptions of spouse abuse: A comparison of male and female officers. *Journal of Criminal Justice* 13 (1): 29–47.
- Horney, J., and C. Spohn. 1991. Rape law reform and instrumental change in six urban jurisdictions. *Law & Society Review* 25 (1): 115–153.
- Humphreys, J.C., and W.O. Humphreys. 1985. Mandatory arrest: A means of primary and secondary prevention of abuse of female partners. *Victimology* 10:267–280.
- Johnson, I.M., and R.T. Sigler. 1995. Community attitudes: A study of definitions and punishment of spouse abusers and child abusers. *Journal of Criminal Justice* 23 (5): 477–487.
- Johnson, I.M., R.T. Sigler, and J.E. Crowley. 1994. Domestic violence: A comparative study of perceptions and attitudes toward domestic abuse cases among social service and criminal justice professionals. *Journal of Criminal Justice* 22 (3): 237–248.

- Kaci, J.H. 1992. A study of protective orders issued under California's Domestic Violence Prevention Act. *Criminal Justice Review* 17 (1): 61-76.
- Keilitz, S. 1994. Civil protection orders: A viable justice system tool for deterring domestic violence. *Violence and Victims* 9 (1): 79-84.
- Klein, A. 1997. Batterers' treatment. *National Bulletin on Domestic Violence Prevention* 3:1-3.
- Klein, A.R. 1998. Re-abuse in a population of court restrained male batterers: Why restraining orders don't work. In *Legal interventions in family violence: Research findings and policy implications*. American Bar Association, Criminal Justice Section, Commission on Domestic Violence. Research Report, NCJ 171666. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- . 1996. Re-Abuse in a population of court-restrained male batterers: Why restraining orders don't work. In *Do arrests and restraining orders work?*, edited by E.S. Buzawa and C. Buzawa. Thousand Oaks, California: Sage Publications.
- Klein, E., J. Campbell, E. Soler, and M. Ghez. 1997. *Ending domestic violence: Changing public perceptions/halting the epidemic*. Newbury Park, California: Sage Publications.
- Langan, P.A., and C.A. Innes. 1986. *Preventing violence against women*. Special Report, NCJ 102037. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Lawrenz, F., J.F. Lembo, and T. Schade. 1988. Time series analysis of the effect of a domestic violence directive on the number of arrests per day. *Journal of Criminal Justice* 16 (6): 493-498.
- Lerman, L.G. 1992. The decontextualization of domestic violence. *Journal of Criminal Law and Criminology* 83 (1): 217-240.
- . 1984. Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women. *Harvard Women's Law Journal* 7 (1): 57-113.
- . 1981. *Prosecution for spouse abuse: Innovations in criminal justice response*. Washington, D.C.: Center for Women Policy Studies.
- Loseke, D.R. 1991. Changing the boundaries of crime: The battered women's social movement and the definition of wife abuse as criminal activity. *Criminal Justice Review* 16 (2): 249-262.
- Maguigan, H. 1995. Cultural evidence and male violence: Are feminist and multicultural reformers on a collisions course in criminal courts? *NYU Law Review* 71:36-99.

- Martin, M.E. 1997. Double your trouble: Dual arrest in family violence. *Journal of Family Violence* 12 (2): 139–157.
- McCord, Joan. 1992. Deterrence of domestic violence: A critical review of the research. *Journal of Research in Crime and Delinquency* 29:229–239.
- McCoy, C. 1993. *Politics and plea-bargaining: Victim's rights in California*. Philadelphia: University of Pennsylvania Press.
- McLeod, M. 1983. Victim non-cooperation in the prosecution of domestic violence assault: A research note. *Criminology* 21 (3): 395–416.
- Mederer, H.J., J. Rich, and J. Gelles. 1989. Compassion or control: Intervention in cases of wife abuse. *Journal of Interpersonal Violence* 4 (1): 25–43.
- Meeker, J.W., and A. Binder. 1990. Experiments as reform: The impact of the “Minneapolis Experiment” on police policy. *Journal of Police Sciences and Administration* 17 (2): 147–153.
- Merry, S.E. 1990. *Getting justice and getting even*. Chicago: University of Chicago Press.
- Mickish, J., and K. Schoen. 1988. Domestic violence: Developing and maintaining an effective policy. *Prosecutor* 21 (3): 15–20.
- Mignon, S.I., and W.M. Holmes. 1995. Police response to mandatory arrest laws. *Crime & Delinquency* 41 (4): 430–442.
- Miller, T., M. Cohen, and B. Wiersema. 1996. *Victim costs and consequences: A new look*. Research Report, NCJ 155282. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Murphy, C., and D.K. O’Leary. 1994. Research paradigms, values, and spouse abuse. *Journal of Interpersonal Violence* 9 (2): 207–223.
- Myers, M.A., and J. Hagan. 1979. Private and public trouble: Prosecution and the allocation of court resources. *Social Problems* 26 (4): 439–451.
- National Council of Juvenile and Family Court Judges. 1994. *Model code on domestic and family violence*. Reno, Nevada: National Council of Juvenile and Family Court Judges.
- O’Conner, A. 1995. Evaluating CCIs: A view from history. In *New approaches to evaluating community initiatives*, edited by A. Kubisch, C.H. Weiss, L.B. Schorr, and J.P. Connell. Washington, D.C.: Aspen Institute.

Palumbo, D.J., M. Clifford, and Z.K. Snyder-Joy. 1992. From net widening to intermediate sanctions. In *Smart sentencing: The emergence of intermediate sanctions*, edited by J. Byrne, A.J. Lurigio, and J. Petersilia. Newbury Park, California: Sage Publications.

Parnas, R.I. 1973. Prosecutorial and judicial handling of family violence. *Criminal Law Bulletin* 9:733–769.

———. 1967. The police response to the domestic disturbance. *Wisconsin Law Review* 31:914–960.

Pence, E. 1983. The Duluth Domestic Abuse Intervention Project. *Hamline Law Review* 6: 247–275.

Pirog-Good, M., and J. Stets-Kealey. 1985. Male batterers and battering prevention programs: A national survey. *Response to the Victimization of Women and Children* 8 (3): 8–12.

Pleck, E. 1987. *Domestic tyranny: The making of American social policy against family violence from colonial times to the present*. New York: Oxford University Press.

Quarm, D., and M. Schwartz. 1985. Domestic violence in criminal court: An examination of new legislation in Ohio. *Women and Politics* 4 (3): 29–46.

Rauma, D. 1984. Going for the gold: Prosecutorial decision-making in cases of wife assault. *Social Science Research* 13 (4): 321–351.

Reidinger, P. 1989. Unequal protection: Do the police ignore domestic violence? *American Bar Association Journal* (March): 102–103.

Reynolds, D.E. 1988. The use of pre-trial diversion programs in spouse abuse cases: A new solution to an old problem. *Ohio State Journal in Dispute Resolution* 2:415–436.

Rosenberg, M.L., M.A. Fenley, D. Johnson, and L. Short. 1997. Bridging prevention and practice: Public health and family violence. *Academic Medicine* 72 (1): S13–S18.

Ryan, R.M. 1996. The sex right: A legal history of the marital rape exemption. *Law and Social Inquiry* 20 (4): 941–1004.

Saunders, D.G. 1996. Feminist-cognitive-behavioral and process-psychodynamic treatments for men who batter: Interactions of abuser traits and treatment models. *Violence and Victims* 11 (4): 393–414.

———. 1995. Prediction of wife assault. In *Assessing dangerousness: Violence by sexual offenders, batterers, and child abusers*, edited by J. Campbell. Vol. 8 of *Interpersonal violence: The practice*. Thousand Oaks, California: Sage Publications.

———. 1992. A typology of men who batter: Three types derived from cluster analysis. *American Journal of Orthopsychiatry* 62: 264–275.

- Schechter, S. 1982. Toward an analysis of violence against women in the family. In *Women and male violence*. Boston: South End Press.
- Schmidt, J., and E.H. Steury. 1989. Prosecutorial discretion in filing charges in domestic violence cases. *Criminology* 27: 487–510.
- Schmidt, J.D., and L.W. Sherman. 1993. Does arrest deter domestic violence? *American Behavioral Scientist* 36: 601–609.
- Sherman, L. 1986. *Domestic violence*. NCJ 100736. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Sherman, L.W., and R.A. Berk. 1984a. *The Minneapolis Domestic Violence Experiment*. Washington, D.C.: Police Foundation.
- . 1984b. The specific deterrent effects of arrest for domestic assault. *American Sociological Review* 49 (2): 261–272.
- Sherman, L.W., and E.G. Cohn. 1989. The impact of research on legal policy: The Minneapolis Domestic Violence Experiment. *Law & Society Review* 23 (1): 117–144.
- Sherman, L.W., J.D. Schmidt, D.P. Rogan, P.R. Gartin, E.G. Cohn, D.J. Collins, and A.R. Bacich. 1991. From initial deterrence to long-term escalation: Short custody arrest for poverty ghetto domestic violence. *Criminology* 29 (4): 821–850.
- Sherman, L.W., J.D. Schmidt, D.P. Rogan, D.A. Smith, P.A. Gartin, E.G. Cohn, D.J. Collins, and A.R. Bacich. 1992. The variable effects of arrest on criminal careers: The Milwaukee Domestic Violence Experiment. *Journal of Criminal Law and Criminology* 83 (1): 137–169.
- Sherman, L.W., D.A. Smith, J.D. Schmidt, and D.P. Rogan. 1992. Crime, punishment, and stake in conformity: Legal and informal control of domestic violence. *American Sociological Review* 57 (5): 680–690.
- Sigler, R.T. 1989. *Domestic violence in context*. Lexington, Massachusetts: D.C. Heath.
- Snyder, D., and N. Scheer. 1981. Predicting disposition following brief residence at a shelter for battered women. *American Journal of Community Psychology* 9 (5): 559–566.
- Stalans, L.J. 1996. Family harmony or individual protection? Public recommendations about how police can handle domestic violence situations. *American Behavioral Scientist* 39: 433–448.
- Stalans, L.J., and M.A. Finn. 1995. How novice and experienced officers interpret wife assaults: Normative and efficiency frames. *Law & Society Review* 29 (2): 287–321.

- Stanko, E.A. 1982. Would you believe this woman? Prosecutorial screening for “credible” witnesses and a problem of justice. In *Judge, lawyer, victim, thief: Women, gender roles, and criminal justice*, edited by N. Rafter and E. Stanko. Boston: Northeastern University Press.
- Stark, E. 1993. Mandatory arrest of batterers: A reply to its critics. *American Behavioral Scientist* 36 (5): 651–680.
- Stark, R., and J. McEvoy. 1970. Middle class violence. *Psychology Today* 4 (6): 107–112.
- Straus, M.A. 1993. Identifying offenders in criminal justice research on domestic assault. *American Behavioral Scientist* 36 (5): 587–600.
- Straus, M.A., and R.J. Gelles. 1990. *Physical violence in American families: Risk factors and adaptations to violence in 8,145 families*. New Brunswick, New Jersey: Transaction Publishers.
- Sullivan, C.M., J. Basta, C. Tan, and W.S. Davidson II. 1992. After the crisis: A needs assessment of women leaving a domestic violence shelter. *Violence and Victims* 7 (3): 267–275.
- Sullivan, C.M., C. Tan, J. Basta, M.H. Rumptz, and W.S. Davidson II. 1992. An advocacy intervention program for women with abusive partners: Initial evaluation. *American Journal of Community Psychology* 20 (3): 309–332.
- Thistlewaite, A., J. Wooldredge, and D. Gibbs. 1998. Severity of dispositions and domestic violence recidivism. *Crime & Delinquency* 44 (3): 388–398.
- Tolman, R.M., and J.L. Edleson. 1995. Intervention for men who batter. A research review. In *Understanding partner violence: Prevalence, causes, consequences, and solutions*, edited by S.M. Stith and M.A. Straus. Minneapolis: National Council on Family Relations.
- Treuhart, M. 1993. In harm’s way? Family mediation and the role of attorney advocate. *Golden Gate University Law Review* 23 (3): 717–795.
- U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. 1993. *Injury control in the 1990’s*. Atlanta.
- U.S. Department of Justice, Violence Against Women Grants Office. 1998. *Stalking and domestic violence: The third annual report to Congress under the Violence Against Women Act*. NCJ 172204. Washington, D.C.
- Wilder, S.C., P. Pahl, T. Young, J. Shenk, J. Mork-O’Brien, K. Kerston, and R. Ryan. 1985. The Washington State Domestic Violence Act: An evaluation project. *Response* (Summer): 13–16.

Williams, K. and R. Hawkins. 1992. Wife assaults, costs of arrest, and the deterrence process. *Journal of Crime and Delinquency Research* 29:292–310.

Witwer, M., and C.A. Crawford. 1995. *A coordinated approach to reducing family violence: Conference highlights*. Research Report, NCJ 155184. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, and the American Medical Association.

Worden, A. 2000. Models of community coordination in partner violence cases. Final report (draft), grant no. NIJ 95–WT–NX–0006, submitted to the U.S. Department of Justice, National Institute of Justice, February.

Worden, A.P., T. Beery, and B. Carlson. 1998. Public perceptions about domestic violence: Preliminary findings from a pilot study. Paper presented at the 1998 Annual Meeting of the American Society of Criminology, 15 November, Washington, D.C.

Worden, A.P., D. Hall, Jennifer A. Wallis, and S. Phillips. 1997. Adjudication of domestic violence: Examining relationships between intermediate court decisions and recidivism. Paper presented at the 1997 Annual Meeting of the American Society of Criminology, 11 November, San Diego.

Worden, A.P., and S.J. McLean. 1998. The victim's role in pre-trial decisions: Seeking warrants and protective orders in partner violence cases. Paper presented at the 1998 Annual Meeting of the American Society of Criminology, 15 November, Washington, D.C.

Yick, A.G., and P. Agbayani-Siewert. 1997. Perceptions of domestic violence in a Chinese American community. *Journal of Interpersonal Violence* 12 (6): 832–846.

Zlotnick, D.M. 1995. Empowering the battered woman: The use of criminal contempt sanctions to enforce civil protection orders. *Ohio State Law Journal* 56:1153–1215.

Zorza, J. 1992. The criminal law of misdemeanor domestic violence, 1970–1990. *Journal of Criminal Law and Criminology* 83 (1): 46–72.

The Internationalization of Criminal Justice

by Richard H. Ward

At the turn of the century, international implications for America's criminal justice system have never been greater. As the country's social, economic, and technological climate continue to undergo major changes, globalization is also producing new challenges for criminal justice practitioners and researchers. Among the more significant aspects of this change, which are addressed in this chapter, are the international dimensions of crime, the impact of legal and illegal immigration, transnational organized crime, technological influences on global criminality, and the influence of a more diversified American culture. In this changing environment, the American criminal justice system—largely police, courts, and corrections—is facing and adapting to new forms of criminality, a growing recognition of the importance of international cooperation, threats on America's borders, and the proliferation of new types of crime.

America's response to globalization in the criminal justice arena will necessitate major changes in both law and policy, placing greater emphasis on the education and training of practitioners at all levels of government. In addition to culture and language, tomorrow's criminal justice practitioner must have a broader understanding of the legal systems of other countries and respect for the customs and practices of immigrants, as well as an increasing number of international visitors. In this regard, a new century brings both challenge as well as opportunity.

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For most Americans, the image of international crime resembles a Rorschach test more than a clear picture with definite boundaries and an explicit meaning. For some, their perceptions are formed largely on what geographic region of the country they live in, perhaps in a border area in Texas or California or a large city such as New York, San Francisco, or Chicago, where immigrant groups have become a common part of the landscape. For others, international crime is viewed through the prism of terrorism or organized criminal activity. And in immigrant communities throughout the United States, it may well be linked to the few criminals who prey on their neighborhoods. To the law enforcement community, particularly at the local level, global crime is frequently linked to illegal aliens.

For a variety of reasons, international crime in the United States is also linked to the global economy, and the desire of immigrants to flee from poverty,

Traditional boundaries have given way in many cases to crimes in cyberspace, to problems associated with culture and language, and to the changing infrastructure and concepts of neighborhood safety in cities and towns across America.

oppression, or ethnic conflict. Today, the world's richest nations, with 20 percent of the population, account for 86 percent of the income. The richest countries account for 91 percent of Internet users, control 82 percent of exports, and maintain 74 percent of all telephone lines (Langworth 1999). As the gap widens between rich nations and poor nations, growing migration throughout the world endangers the social structure of many countries and in others places new challenges on public order. Despite the enviable position of being one of the richest countries in the world, the United States faces a broad range of international issues, not the least of which is the impact of criminal activity.

Despite some perceptions that immigrants account for a large proportion of crime, much of the global crime in America is committed by a relatively small percentage of the immigrant population, legal and illegal. Nevertheless, such perceptions have led to a growing number of hate crimes and other retaliatory attacks by those who are not willing to accept what may be termed the changing face of America. In some measure, the problem is compounded by a criminal justice system that is only beginning to cope with international crime as the century draws to a close.

The movement of millions of people throughout the world represents a major problem of global concern, and it is one compounded by past and future advances in technology, communication, and transportation. It would be foolhardy to claim that the shrinking global structure has not had a strong impact

on criminal activity, one that will certainly influence not only the everyday lives of Americans but also the relationships between countries. And the actions taken by the Federal Government as well as by State and local governments will certainly determine the future of crime in the next century. The global crime problem, then, must be recognized as having a more local dimension, which involves a kaleidoscope of changing images and new forms of criminal activity. With this has also come a host of new terms and activities, most of which were unknown or unheard of less than a decade or so ago.

Cybercrime, narcoterrorism, body part sales, Internet pornography, hacking, and so-called “date rape” drugs are relatively recent additions to America’s lexicon. Although drug trafficking is certainly not new to America, the methods and means of delivery have changed, as well as many of the actors and countries involved. The exploitation of women and children has become a global problem of immense proportion. Novel forms of fraud, money laundering, and high-tech crime have impacted the legal system. The need for new laws becomes problematical in an environment that is only now beginning to understand the difficulties of managing criminal justice operations that may involve numerous countries as well as individuals who travel and communicate across vague jurisdictional boundaries. Traditional boundaries have given way in many cases to crimes in cyberspace, to problems associated with culture and language, and to the changing infrastructure and concepts of neighborhood safety in cities and towns across America.

Private security officers now outnumber sworn police officers; gated communities and buildings are designed to protect, even isolate, the haves from the have-nots. The exploitation of immigrant labor, the conflict between racial and ethnic groups, and a growing dependence on various forms of terrorism represent commonplace issues at the dawn of a new millennium.

In a world where global communication makes it possible for the media to communicate events as they happen into our living rooms, there is all too often a misperception of reality. In an open and democratic society, opinions are frequently formed on the basis of one-minute television spots, or the words of Web sites that reach millions instantaneously. Disinformation, or the fuzzy interpretation of events, also contributes to perceptions carried by the populace into the community. The results may well be catastrophic to those who become the focus of attention. Riots in Los Angeles and other cities in the 1990s underscored the plight of Korean shopkeepers and other immigrants who became the victims of rioters. The bombing of the World Trade Center and the Gulf War saw retaliation against Arab immigrants and Arab-Americans on America’s streets.

At the dawn of the next millennium, and looking back over the past century, perhaps no single phenomenon is of greater significance to criminal justice in America than the international dimensions of crime and justice.

From another perspective, the freedom of movement and fragmentation of the American criminal justice system has allowed ethnic as well as domestic gangs and drug traffickers to operate freely across borders. A new range of fraudulent activities has fostered the development of law enforcement task forces specializing in Asian, Russian, and Nigerian criminal operations. And the influence of international organized crime has necessitated a global law enforcement response. Tomorrow's criminal justice community must adapt to a broad range of changes that will involve a global perspective. From the cop on the beat to the U.S. Supreme Court, the internationalization of crime will have an influence.

A national survey of public opinion by the Chicago Council on Foreign Relations in 1999 found that 53 percent of the public feel that there will be more bloodshed and violence in the next century, with terrorism being the most critical threat. In addition, 54 percent of the public and 87 percent of leaders believe that globalization is mostly good for the United States.¹

Speaking at an international conference in Budapest in 1998, Jeremy Travis, Director of the National Institute of Justice, said:

With diminution of national borders, criminal activity that might have formerly been confined to national limits now spills from one country to another. Organized crime can now reach from Russia to New York City, from Thailand to California. Women in Ukraine lured by offers of a better future, find themselves captives to a life of prostitution in Israel. Electronic financial transactions move the proceeds of drug transactions from one country to another in a split second. The same technology that makes our Internet communications possible provides the vehicle for a new phenomenon known as cybercrime.

At the dawn of the next millennium, and looking back over the past century, perhaps no single phenomenon is of greater significance to criminal justice in America than the international dimensions of crime and justice. In a relatively short period of time, the world has changed dramatically, and the physical boundaries that separated countries have given way to a global economy, instantaneous communication, and the ability to span the globe in less than a day. With these events have come numerous changes that profoundly affect the rule of law and the criminal justice system in the United States as well in other countries:

- The trade in illegal Chinese immigrants seeking entry into the United States has created international organized crime rings.²
- Reported cases of illegal immigrant women being “sold” or forced into prostitution have increased in recent years (see, for example, Navarro 1998).
- Illegal aliens have increasingly become involved in credit card fraud and counterfeit documents (Henican 1999).
- More than half of the more than 50,000 illegal immigrants in local jails are incarcerated for drug-related violations (Maguire and Pastore 1998, 506).
- In September 1995, an Anaheim, California, police officer was seriously wounded in a gunfight with an undocumented immigrant who had been deported twice previously (Zemel 1998).
- In Raleigh, North Carolina, two white men yelled racial epithets and beat to death a Chinese man they thought was Vietnamese (Weiss 1993).
- In 1998, U.S. Customs agents broke a child pornography ring on the Internet that reached more than 200 people in 47 countries, including the United States (Weinschenk 1998).
- In 1999, a suspected Mexican serial killer eluded police for months before being apprehended, despite being picked up earlier on a number of occasions by Border Patrol agents who were unaware that he was a wanted suspect.
- A deranged white supremacist went on a shooting rampage in Illinois and Indiana, shooting nine people and killing two, one of whom was a Korean immigrant.
- In New York, Federal agents broke an international drug smuggling ring that used Hasidic Jews as couriers to carry “ecstasy pills” made in Amsterdam (*Chicago Tribune* 1999c).

These are but a few of such cases that have made headlines over the past decade. As the world enters a new century, there is every indication that America will face an expanding number of criminal activities that have roots in other countries. The world is indeed becoming a smaller place, and the mobility of criminals goes far beyond American borders.

Over the past decade, changes in technology, transportation, and communication have been recognized by governmental agencies as major contributors to the globalization of crime:

Apart from the national security objectives, the most important factor contributing to the internationalization of both crime and law enforcement was the growing ease of international transactions as a consequence of developments in technology. Increasingly, rapid and accessible jet travel permitted both criminals and police to travel easily and quickly almost anywhere in the world. Advances in telecommunications allowed criminals to conspire and commit crimes transnationally even as the same advances facilitated transnational exchange of information and coordination of joint investigations among law enforcement agents. (Nadelman 1993, 105)

International dependency comes even closer to home when one views current ethnic gang activity. The old-style Mafia organization of Sicilian origin seems to have lost much of its control, thanks to good law enforcement with an ability to understand and infiltrate such organizations. However, ethnic groupings have emerged that present new challenges that law enforcement is not yet prepared to meet:

- Chinese gangs import more than 100,000 slave labor immigrants annually.
- Russian gangs trade in anything profitable, from bootleg gasoline to nuclear material.
- Jamaican gangs ruthlessly engage in the arms and drug trades.
- Albanian gangs excel in burglary.

There are also Japanese, Cambodian, Filipino, Samoan, and other ethnic gangs. American criminal justice is only beginning to search for solutions to problems generated by such groups (Fields and Moore 1996, ix).

In less than a decade, the number of Federal law enforcement agencies operating abroad on cases involving the United States—usually in cooperation with other countries—has escalated (Nadelman 1993, 3). Criminal activity by immigrants, both legal and illegal, has grown considerably (Finckenauer and Waring 1998). Despite media interpretations of large-scale organized crime, the vast majority of criminal activity is committed by individuals or small groups whose relationship to a broad-scale criminal conspiracy is weak at best. And whereas much of the influence of international-related crime traditionally has been a Federal problem, the past decade has seen a growing involvement of local law enforcement and State courts.

Recognizing the future threat of global crime, the U.S. Government adopted an International Crime Control Strategy (ICCS) in 1998 to provide “a framework for integrating all facets of the Federal Government response to international

crime” (The White House, Office of the Press Secretary 1998).

One result of this phenomenon has been the establishment of joint task forces, usually involving Federal, State, and local criminal justice agencies. In addition to task forces of the Federal Bureau of Investigation (FBI), other agencies have mounted programs that include State and local representatives. Among these are the Drug Enforcement Administration (DEA); the Bureau of Alcohol, Tobacco and Firearms (ATF); the Immigration and Naturalization Service (INS); the U.S. Department of the Treasury (Secret Service); U.S. Customs Service; the U.S. Department of Justice (DOJ); and the U.S. Department of State. The primary goal of such task forces is to develop cooperative working relationships among various levels of government in combating international criminal activity in the United States.

Increasingly, the task force concept has begun to change the way law enforcement operates in the United States. In addition to the advantage of rapid transportation and communication, today’s criminal may find shelter in one of the many ethnic or racially segregated communities that now dot America’s landscape. It is not unusual for a criminal to travel some distance to commit a crime, and those involved in more serious crimes will sometimes return to their native countries.

The globalization of crime has also increased levels of cooperation with police officers from other countries, many of whom are participating in joint training programs with their local U.S. counterparts. For example, the Cop-to-Cop program of the Office of International Criminal Justice at the University of Illinois at Chicago is sponsored by the State Department to facilitate training exchanges with police officers from other countries. Russian and Polish police officials have been part of an intensive long-range effort in cooperation with the Illinois State Police and the Chicago Police Department to exchange ideas and information about combating urban crime.

Visits by American law enforcement officers to other countries also provide a better understanding of cultural and legal system differences, which contributes to a better understanding when working with immigrants and foreign visitors to the United States.

Perhaps the biggest problem lies in providing a safe haven for the vast majority of immigrants who are making a positive contribution in their new environment but who are often the major targets of the relatively few newcomers who choose crime as a way of life.

Despite efforts to recruit even second- and third-generation children of immigrant families, ethnic minorities are still underrepresented in police departments and the criminal justice system.

DOJ's Office of Justice Programs (OJP) sponsors a 2-day training program run by the International Association of Chiefs of Police (IACP) and INS. As of October 1995, 879 attendees from 430 agencies have participated (U.S. DOJ, Bureau of Justice Assistance [BJA] 1995).

As the number of immigrants to America has multiplied in the latter part of the century (most from Latin America and Asia), local law enforcement, the courts, and corrections have also witnessed new forms of crime in a growing number of ethnic communities. Perhaps the biggest problem lies in providing a safe haven for the vast majority of immigrants

who are making a positive contribution in their new environment but who are often the major targets of the relatively few newcomers who choose crime as a way of life. Many of America's immigrants bring with them fears of totalitarian governments where the law was corrupt and a focus of concern and to be avoided at all costs. They may be fearful of ethnic street gangs operating in their communities and reluctant to trust the police when they are victimized.

Despite efforts to recruit even second- and third-generation children of immigrant families, ethnic minorities are still underrepresented in police departments and the criminal justice system. This problem is compounded by the fact that, like most Americans today, most law enforcement personnel are barely familiar with the cultural and socioeconomic differences of other countries. Few police officers, for example, are fluent in a second language, and most have never traveled abroad.

To some degree, this is likely to change in the decades ahead as educational institutions place greater emphasis on internationalization, but the immediate future brings with it many challenges in an ever-shrinking world. Rapid advances in communications, technology, and travel, and the emergence of new forms of criminal activity, have set the stage for the next century.

International-Related Crime in the United States

Much of the crime in the United States today has some link to the international community. Perhaps the most significant influence, touching virtually all segments of American society, has been drug trafficking and drug abuse. Illegal drugs tax the public in many ways, not the least of which is the underground

economy that runs into billions of dollars each year. Additionally, the psychological, emotional, and physical influences of drugs touch the lives of millions of Americans and contribute significantly to street crime. This will be a continuing problem in the years ahead.

International-related crime is a serious and potent threat to the American people at home and abroad. Drug and firearms trafficking, terrorism, money laundering, counterfeiting, illegal alien smuggling, trafficking in women and children, advance fee scams, credit card fraud, auto theft, economic espionage, intellectual property theft, computer hacking, and public corruption are all linked to international criminal activity, and all have a direct impact on the security and prosperity of the American people.

At the local level, most large cities have begun to adjust to a large influx of immigrants, and issues of language and culture are becoming critical. For example, in New York, nearly 30 percent of the population is foreign born; in Chicago, some 50 different languages are spoken. Miami's population is largely Hispanic; San Francisco has a large Asian population; Detroit has a large Muslim population; and New York and Los Angeles have large numbers of Russian immigrants. In many cities, there are joint task forces of local, State, and Federal criminal justice personnel assigned to the investigation of ethnic-related crimes. Asian gangs, Russian organized crime, Nigerian credit card and drug rings, and Latin American cartels control much of the drug trafficking. These and other organized criminal groups have extensive international connections and their criminal activities range from insurance fraud to murder for hire.

It is estimated that there are 300,000 foreign criminals in the United States, many of whom are free on probation. Federal prisons reportedly hold 30,000, and State prisons hold another 85,000. Most of them have been convicted of drug-related violations (B. Newman 1999).

The Administrator of DEA, in remarks before the Senate Caucus on International Narcotics Control, pointed out that "[m]ost Americans are unaware of the vast damage that has been caused to their communities by international drug trafficking syndicates." In particular, he stressed the violence associated with drug traffickers from Mexico and Colombia and their impact on local communities in the United States (Constantine 1999).

Less than a decade ago, international drug trafficking was a serious problem in fewer than a half-dozen geographic areas in the United States. In 1990, for example, the High Intensity Drug Trafficking Areas (HIDTA) program focused on five areas. By 1998, the number had grown to 20 (U.S. General Accounting Office [GAO] 1998b, 2).

Illegal immigration

Although little is known about the overall impact of illegal immigration and cross-border criminality, some percentage of criminal activity is directly related to these issues. The vast majority of those who immigrate to the United States make a positive contribution as law-abiding citizens. However, the country has witnessed new trends in ethnic crime, wherein immigrants are both the victims and perpetrators of crime. The crimes committed, the difficulty of investigation and prosecution—as well as identification—are having a profound effect on the American criminal justice system.

The problem is not new:

The smuggling of illegal immigrants across the U.S. border began in 1882. Shortly after Federal law excluded the immigration of Chinese, the smuggling of Chinese immigrants began, as did the manufacturing of fraudulent documents to accompany them. In 1973, the smuggling of illegal immigrants across the U.S.-Mexican border was a thriving business estimated at \$125 million a year. By 1997, the Mexican border was described as a “free-fire zone,” with human beings being bought and sold in a kind of slave trade. One Los Angeles smuggling operation was making \$120,000 a trip packing up to 45 immigrants in a panel truck. (McDonald 1997a, 10)

The Bureau of Justice Statistics (BJS) notes that the majority of persons entering the country illegally are returned to their country of origin without being referred to the criminal justice system. The number of noncitizens processed in the Federal criminal justice system increased an average of 10 percent annually from 1984 to 1994. In 1984, 3,462 noncitizens were prosecuted in Federal district courts, and by 1994, the number had risen to 10,000. During this same period, the number of noncitizen inmates increased from 4,088 to 18,929. About 55 percent were in the United States legally (U.S. DOJ, BJS 1996). (See exhibit 1.)

Even when illegal aliens are apprehended, there are likely to be difficulties associated with deportation. For example:

Up to 100,000 Chinese aliens are smuggled into the United States each year [as of 1995]. Even if caught, many citizens of the People’s Republic of China (PRC) can avoid deportation under a presidential executive order that grants asylum from “birth-control persecution,” Beijing’s one-child-per-family policy. (Bolz 1995, 147)

Exhibit 1. Noncitizens serving sentences in Federal prisons, 1984–94

Most serious offense of conviction	1984	1985	1986	1987	1988	1989
Total*	4,088	5,561	6,966	7,851	8,871	10,658
Violent offenses	290	298	329	349	338	313
Property offenses	228	357	483	507	497	509
Fraudulent	144	245	327	363	369	376
Other	84	112	156	144	128	133
Drug offenses	2,270	3,111	4,099	4,978	5,948	7,647
Public order offenses	1,251	1,740	2,003	1,967	2,049	2,125
Regulatory	69	82	95	118	109	96
Other	1,182	1,658	1,908	1,849	1,940	2,029
Immigration	872	1,275	1,469	1,345	1,363	1,542

Most serious offense of conviction (cont.)	1990	1991	1992	1993	1994
Total*	12,349	14,046	16,117	18,218	18,929
Violent offenses	298	270	295	316	343
Property offenses	541	592	622	622	658
Fraudulent	411	459	482	479	522
Other	130	133	140	143	136
Drug offenses	9,284	10,817	12,706	14,012	14,226
Public order offenses	2,154	2,285	2,431	3,197	3,614
Regulatory	104	110	100	108	95
Other	2,050	2,175	2,331	3,089	3,519
Immigration	1,515	1,549	1,568	2,188	2,478

* Includes cases for which the offense category could not be determined. Totals do not reflect the sum of each column because some noncitizens committed more than one offense.

Note: The primary source of these data is the U.S. Department of Justice, Bureau of Justice Statistics, Federal Justice Statistics Program (FJSP) database. The FJSP database is constructed from source files provided by the Executive Office for United States Attorneys, the Administrative Office of the United States Courts, the U.S. Sentencing Commission, and the Federal Bureau of Prisons. Data presented above are from the U.S. Department of Justice, Federal Bureau of Prisons, SENTRY System annual data file. Data represent the Federal prison population on December 31.

Source: Maguire and Pastore 1998, 506, table 6.53.

Many illegal immigrants from Asia, the Middle East, and Latin America find jobs in sweatshops, in restaurants, on farms, as domestic servants, or in occupations where few questions are asked by employers, who are often seeking to hire cheap labor. The number of Russian women entering the United States, both legally and illegally, has increased dramatically in recent years.

While no precise figures exist on the number of foreign women who enter the United States via trafficking networks, press reports of the exploitation of migrant women as domestic servants, laborers and prostitutes have become increasingly widespread. . . . Some women are trafficked into the United States on fiancée, student, or business visas. Most, however, enter the country with tourist visas which they then overstay. (Caldwell et al. 1997, 47)

In areas with large immigrant communities, political pressure is frequently applied to discourage immigration authorities and law enforcement from “searching out” illegals.

Chinese Triads have taken over the smuggling of illegal immigrants from smaller “mom and pop” organizations as an increasingly attractive alternative to drug trafficking because it promises multibillion dollar profits without the same severe penalties if caught. Earnings from illegal immigrant trade are estimated to total \$3.2 billion per year, yet it is punishable in the United States by a maximum sentence of only five years in jail. Most who are convicted under current laws are sentenced to less than six months. (Bolz 1995, 147)

A 1993 Bureau of Justice Statistics report noted that about 4 percent of State prison inmates were not U.S. citizens, and 80 percent of this group came from Latin America or the West Indies. Incarceration rates were higher in El Paso, Texas, and San Diego, California, and indicated that 12 to 15 percent of felony arrestees were illegal aliens. In 1992, immigrants accounted for 12 percent of the prison population; most had been arrested for violent crimes or drug violations (Yeager 1996). According to one estimate, there were between 4.6 and 5.4 million illegal immigrants in the United States, and the increase between 1992 and 1996 was approximately 275,000 per year.³ In 1997, there were 12,495 illegal immigrants identified in Federal and State prisons (U.S. GAO 1998c). In 1996, INS identified 1,649,986 deportable aliens in the United States. The number of aliens deported from the United States grew from 16,720 in 1981 to 50,064 in 1996. Of particular significance has been the number of persons deported in connection with a conviction for criminal or narcotics violations: from 310 in 1981 to 32,869 in 1996.⁴

Available data on convictions in Federal courts in 1995 indicate that 9,233 (25 percent) of 36,767 offenders were non-U.S. citizens. Non-U.S. citizens tended to be much less involved in violent offenses and were most likely to be involved in drug, property, or public order offenses. About one-third were convicted of misdemeanors (Maguire and Pastore 1998, 393).

By 1999, an estimated 21,000 illegal immigrants were entering the United States every month. The U.S. Border Patrol, with a little more than 8,000 agents, is understaffed and ill-equipped to cope with the problem (see exhibit 2):

[A] recent study (1999) by the University of Texas has found that 16,133 agents are needed just to patrol the Southwest border. The Office of National Drug Control Policy reports that 16,100 border control agents are needed on the Southwest border merely to control drug smuggling there. And the Association of Chief Patrol Agents, a professional group, reports that the nation must have a “duty force of 20,000 Border Patrol Agents” to control all U.S. Borders. (Gribbin 1999a)

Organized crime

One of the most significant changes in criminality has been the emergence of new forms of organized crime. FBI Director Louis Freeh, in commenting on Russian organized crime, notes that:

[T]he United States is presented with a well-organized, well-funded, sophisticated, and often brutal criminal conspiracy. Russian criminal elements have engaged in extortion and sophisticated fraud schemes and have purchased, with laundered money, legitimate U.S. businesses and real estate. U.S. law enforcement thus faces a growing problem that requires a major commitment of resources to combat—all of which in the end is paid by the American Taxpayer. (Center for Strategic and International Studies [CSIS] 1997, 19)

Russian organized crime groups have reportedly been involved in “bootleg-gasoline tax-evasion schemes,” which were previously run by Turkish and Greek immigrants. Nigerian criminals are involved in immigration and citizenship fraud, bank and credit card fraud, welfare fraud, insurance fraud, and drug trafficking. According to one estimate, 75 percent of the 100,000 Nigerians in the United States in 1993 were involved in criminal activity (Brimelow 1996, 186).

The appearance of well-organized ethnic gangs, many of them more vicious and lethal than their American counterparts (see, for example, English 1995; Osterburg and Ward 2000, 623–666), has had a profound effect on major cities throughout the United States. South American-related drug gangs, Asian groups

Exhibit 2. Aliens deported from the United States, 1981–96

Fiscal year	Total	Reason for deportation				
		Conviction for criminal or narcotics violation	Related to criminal or narcotics violation	Entered without inspection	Violation of nonimmigrant status	Other
1981	16,720	310	54	13,601	1,959	796
1982	14,518	413	64	11,554	1,796	691
1983	18,232	863	93	14,318	1,958	1,000
1984	17,607	981	80	14,082	1,702	762
1985	21,358	1,551	151	16,957	1,916	783
1986	22,314	1,708	165	17,812	1,865	764
1987	22,342	4,111	274	15,833	1,273	851
1988	23,136	5,474	308	15,337	996	1,021
1989	30,449	7,028	342	20,648	1,249	1,182
1990	26,235	10,617	297	13,203	1,128	990
1991	28,923	15,538	476	10,919	974	1,016
1992	38,527	22,383	690	13,462	864	1,128
1993	37,238	25,188	409	10,395	536	710
1994	39,623	28,257	296	9,980	477	613
1995	41,819	29,145	247	11,390	433	604
1996	50,064	32,869	156	15,835	481	723
1981–96	449,105	186,436	4,102	225,326	19,607	13,634

Note: "Aliens deported" refers to those aliens required to leave the country under formal orders of deportation. "Other" includes those entering without valid entry documents, those who have been previously arrested or deported, children under 16 years of age unaccompanied by a parent, and persons facilitating alien entry for gain. The definition by which aliens were categorized as criminal aliens changed in 1990; therefore, data for years prior to 1990 are not directly comparable.

Source: Maguire and Pastore 1998, 374, table 4.46. Table provided to *Sourcebook* staff by the U.S. Department of Justice, Immigration and Naturalization Service.

trafficking in human beings, and African and Middle Eastern groups involved in money laundering, credit card fraud, and financial crimes are but a few of the new forms of enterprise crime that have emerged. In one case, a Nigerian immigrant used 17 aliases in a credit card scheme that touched at least 8 States (Henican 1999). In another case, a multiagency task force arrested a Mexican woman who had bilked hundreds, perhaps thousands, of illegal immigrants over a 10-year period, charging from \$300 to \$2,000 for legal residency permits that

she never delivered (Cleeland 1998). And in yet another case, 5 Chinese immigrants were arrested for smuggling as many as 1,000 undocumented Chinese into the United States, charging fees of \$30,000 per person (DeStefano and Gordy 1994). In another case, Federal officials broke a ring providing counterfeited entry visas to Egyptians (Associated Press 1993).

Louis F. Nardi, Director of the Smuggling/Criminal Organizations Branch of INS, in testimony before a congressional subcommittee in 1999, said:

The number and sophistication of alien smuggling organizations have increased dramatically in the past three years and pose a threat not only to our border enforcement activities but to our national security as well. . . . Alien smuggling organizations operate internationally with near immunity.

Transshipment of people and goods by organized criminal enterprises, in which they are moved first to another country and then into the United States, is becoming more common. According to the *BBC News*, Italy is a common departure point for children victimized by Asian organized crime syndicates, which send them for pedophile exploitation to Europe and the United States (Shannon 1999, 131).

Auto theft and transshipment to other countries have also increased significantly. Global organized crime rings have a well-oiled network that, if organized as a legitimate company, would make them the 56th largest corporation in the United States (Williams 1999, 233).

In addition to these types of organized criminal activity, ethnic street gangs have been credited with an untold number of more traditional types of crime, including murder, robbery, burglary, extortion, and assault.

Technology and crime

In the past decade, new forms of white-collar crime associated with advanced technology in communications and computerization have spawned the term "cybercrime." Cybercrime has virtually eliminated borders. Today it is possible to plan a crime in one country, carry it out in another, and move funds to one or more other countries, all from a personal computer.

As banks and other financial institutions grow more dependent on the Internet, the telecommunications network, and other information systems for their daily operations, they become more attractive targets for criminal activity. In 1999, a computer virus called Melissa impacted computers around the world. Criminal groups, such as narcotraffickers, may also attack computer systems to disrupt law enforcement operations or to obtain inside information (CSIS 1998, 7).

Crimes against businesses and the American economy have greatly increased. Black market activity, copyright and patent infringement, fraud, counterfeiting, and other forms of international crime have posed new challenges for both criminal justice and the private security sector.

Money laundering

International crime has also fostered a major growth in the illegal movement of currency, or money laundering, that now involves billions of dollars a year. Title 18 of the U.S. Code, 1956, addresses the international movement of currency or monetary instruments to and from the United States for unlawful purposes. Drug traffickers, persons involved in large-scale fraud schemes, and other criminals dealing in large sums of cash have used a variety of schemes to move illegal money to so-called legitimate businesses. Title 18 of the U.S. Code, 1956 and 1957 (Money Laundering Control Act of 1986), lists 150 violations of Federal law related to money laundering. They include counterfeiting, embezzlement, extortion, fraud, racketeering, transportation for illegal sexual activity, support for terrorism, drug trafficking, obscenity, obstruction of justice, kidnaping and hostage-taking, mail fraud, and the murder of a U.S. law enforcement officer, foreign official, official guest, or internationally protected person (Madinger and Zalopany 1999, 41–60).

A cliché in criminal investigations is “follow the money.” It is estimated that more than \$200 billion a year is laundered by drug barons. Much of this is done today through electronic transfers. The methodology of this form of criminal activity represents a major challenge for criminal investigators, further supporting the notion that criminal investigation in the future will require new levels of expertise. Banking laws in the United States provide a high degree of exposure on the transfer of large sums of money, but the vast amount of funds moved each day (approximately 700,000 wire transfers worth billions) makes monitoring difficult (Fazey 1999, 18). Regarding these transactions, the countries listed as areas of primary concern are Australia, China, Cyprus, Hong Kong, India, Indonesia, Israel, Japan, Lebanon, Pakistan, Singapore, Thailand, Turkey, and United Arab Emirates. The countries listed as areas of concern are Korea, Malaysia, Nepal, the Philippines, and Vietnam (Carroll 2000).

The FBI’s Racketeering Records Analysis Unit works with local, State, and Federal agencies to combat money laundering, among other crimes. Staffed with cryptoanalysts, the unit examines records, reports, and other information that might serve as proof of illegal activities. The unit includes a drug section and a gambling section.

Money laundering techniques have become increasingly complex:

Money laundering begins with the placement of the criminal proceeds in the legitimate financial system. Care must be taken to not raise suspicion about the size or source of the initial deposit. Large deposits are broken down into multiple smaller deposits and placed in several different financial institutions: a process known as structuring or “smurfing.” Criminal profits can also be mingled with the deposits of a legitimate business and represented as income from that business. Often, when there are large volumes of cash to be laundered, the money will first be physically smuggled to a destination free of money laundering safeguards in the banking system, in order to facilitate easy placement. Smuggled cash can be carried personally, sent by courier, swallowed, or stowed inside hollow merchandise for shipment. Illicit profits can also be converted into other financial instruments, exchanged for higher denomination bills, or used to buy goods. Non-traditional financial institutions like casinos, check cashing and postal services, currency exchanges, and precious metals brokers are often used for that purpose [U.S. Department of the Treasury 1992]. The wealth is then transported to another jurisdiction in the form of money orders, traveler’s checks, and luxury items to be sold or redeemed and deposited.⁵

Following the seizure of more than \$18 million in cash at a warehouse, a Federal money laundering case was brought in Brooklyn, New York. Most of the evidence was circumstantial, but FBI analysis of the records seized showed that more than \$44 million in illicit drug funds had been laundered over a 2-year period. The examiner testified that some of the documents also bore notations of cocaine transactions. All the defendants were convicted as a result of the testimony (Gibbons 1999, 9).

The Financial Crimes Enforcement Network (FinCEN), operated by the U.S. Department of the Treasury, maintains a sophisticated database on illegal financial crimes. It provides multisource intelligence and an analytical network supporting law enforcement in the detection, investigation, and prosecution of financial crimes.

Immigration and culture—the diversification of America

The cultural and ethnic diversity of America has changed dramatically in the past 20 years. Job opportunities and a strong economy have drawn an increasing number of immigrants. Most first-generation immigrants maintain strong ties with their countries of origin. Although the majority of immigrants have

been law abiding, a criminal element also arrived, which the criminal justice system is only beginning to understand.

Estimates of the number of illegal immigrants in the United States vary considerably, but there are probably 4 to 6 million people, with the largest group (more than 1.3 million), coming from Mexico. As of 1996, most illegal immigrants were in California (2 million), Texas (700,000), New York (410,000), Florida (350,000), Illinois (220,000), New Jersey (130,000), and Arizona (115,000) (McDonald 1997b, 1-3).

For the criminal justice community, immigrant families may present specific problems, not the least of which are cultural and language barriers. As Sutherland and Cressey (1970, 211) noted a generation ago:

A special problem of training and discipline appears in the migrant family. Parents who were effective in training their children in the communities of Europe . . . often find themselves incompetent in the slum areas of the large American city. The rules for living are different, and the community control agencies are different.

In a study of German and non-German suspects by Chilton, Teske, and Arnold (1995, 339), the authors note, "in broad theoretical terms, it appears that any group of people occupying a marginal position in a society will be more likely to encounter the criminal justice system than groups with fewer disadvantages."

In his landmark study of Chinese crime groups in the United States, Ko-lin Chin (1990, 97) points out:

When young immigrants fall behind in school or suffer ridicule from native born students, they drop out. And when they cannot bring their problems to their parents because the parents are either working long hours or are themselves poorly educated, young dropouts seek support and understanding from peers with similar problems. Finding comfort with them, they hang around coffee shops or arcade stores within the community. Or they may start hanging around the gambling clubs to run errands for the house and the gamblers. Their association with the adult groups is a crucial turning point for them; they are transformed from detached and alienated delinquents to paraprofessional criminals.

Trafficking in women for prostitution is a growing problem throughout the world. Although research on the subject in the United States is lacking, several studies in Europe and Asia cite a statistic of hundreds of thousands of women being forced or sold into prostitution each year. Women from the Russian Federation, Ukraine, and other parts of the former Soviet Union have been

trafficked to Australia, Dubai, Israel, Macau, and the United States (Williams 1999, 223).

How will the Nation's criminal justice system cope with certain types of crime and the victimization of specific immigrant groups? What are the needs of immigrant groups with starkly different cultural backgrounds? How does cultural diversity impact the selection and training of personnel in the justice system, and how can these various groups increase their representation in the criminal justice structure? A Chicago Council on Foreign Relations survey found that 57 percent of the American public view large numbers of immigrants as a critical threat, as opposed to 18 percent of the leaders. And 57 percent of the public views controlling illegal immigration as a "very important goal," whereas only 21 percent of leaders felt the same way (Rielly 1999, 38).

In this regard, it is important to understand the historical development of criminal justice in the United States and how previous immigrant groups were integrated into the system.

New York City, with a population of 7.6 million, hosts more than 2.7 million immigrants, or more than 36 percent of the population (compared with 19 percent in 1970). Most of New York's immigrants come from the Dominican Republic and the People's Republic of China. The new immigrants also represent a major change from those in 1930, most of whom arrived from Europe (Sontag and Dugger 1998).

The American Criminal Justice Response

Americans spend billions of dollars annually on cocaine and heroin, all of which originates abroad; there were 123 terrorist attacks against U.S. targets worldwide, including 108 bombings and eight kidnappings; each year, approximately one billion dollars worth of U.S. stolen cars are smuggled out of this country; annually, U.S. companies lose up to \$23 billion from the illegal duplication and piracy of films, compact discs, computer software, pharmaceutical and textile products, while U.S. credit card companies suffer losses of hundreds of millions of dollars from international fraud; and several hundred U.S. companies and other organizations have already suffered computer attacks in 1998, resulting in millions of dollars of losses and significant threats to our safety and security. (The White House 1998)

The impact of illegal immigration on the American criminal justice system has been significant, touching communities throughout the United States.

United States participation in Interpol has contributed to the evolution of international law enforcement by providing a relatively quick and efficient link among the police agencies of most governments.

The escalation in crimes by aliens has placed added demands on State and local law enforcement personnel. Effective identification of aliens involved in crime requires familiarity with fraudulent documentation. Proper arrest procedures must be carried out, and complex notification and reporting requirements must be satisfied; otherwise, dangerous aliens can escape prosecution and deportation (U.S. DOJ, BJA 1995).

Law enforcement

Internationalization has affected every level of policing, from the street cop to Federal agents. Today, law enforcement agents from the FBI, DEA, Customs, and INS have extensive ties with other countries and have assigned personnel abroad. American agents are

empowered by U.S. law to conduct investigations overseas when an American is a victim. Numerous American embassies now have individuals with law enforcement backgrounds assigned to their staffs, and a growing number of other countries now assign law enforcement personnel to their embassies and consulates in the United States. However, it is also important to recognize that American law enforcement officers operating abroad do not possess police powers in other countries. Title 22, Section 2291 (c) of the Foreign Assistance Act, entitled Participation in Foreign Police Actions, also known as the Mansfield Amendment, establishes the parameters of authority when working on foreign soil.⁶

The FBI operates an International Law Enforcement Academy in Budapest, Hungary, and numerous foreign officers are trained in academies and universities throughout the United States. In universities, courses in comparative criminal justice have become a part of the curriculum. Professional associations, such as the Association of Asian Crime Investigators and the International Association for the Study of Organized Crime, have furthered cooperation and expanded the ability to conduct cross-border investigations. Although most of these activities are handled by Federal agencies, there has been increased activity at the State level with the establishment of National Central Bureau (NCB) offices of the International Criminal Police Organization (Interpol) in many American States.

Expansion of the Interpol network throughout the United States has helped facilitate the efforts of local law enforcement in cases that may have an international connection. NCBs are located in each of Interpol's 178 participating

countries. In the United States, there are 50 USNCB State Bureau Offices that serve as liaisons. USNCB, located in Washington, D.C., “houses individuals detailed from all of the major federal criminal investigative agencies, as well as numerous other professional personnel” (Imhoff and Cutler 1998, 10–16). Personnel from State or local law enforcement agencies staff most of the State Bureau Offices.

United States participation in Interpol has contributed to the evolution of international law enforcement by providing a relatively quick and efficient link among the police agencies of most governments. This has increased the capability of city, State, and Federal law enforcement agencies to deal with the challenges posed by transnational crime. Interpol is primarily responsible for the increasing difficulty that fugitives face in finding a haven where they can remain undetected (Nadelman 1993, 184). Interpol maintains a Web site at <http://www.interpol.int>.

The communications Sub-Directorate handles requests for information from member countries. In 1997, almost 25 percent of requests involved drugs or organized crime, and 34 percent involved crimes against minors (see exhibit 3). In some measure, these figures illustrate not only the growing impact of transnational criminality but also increasing concern with international organized crime.

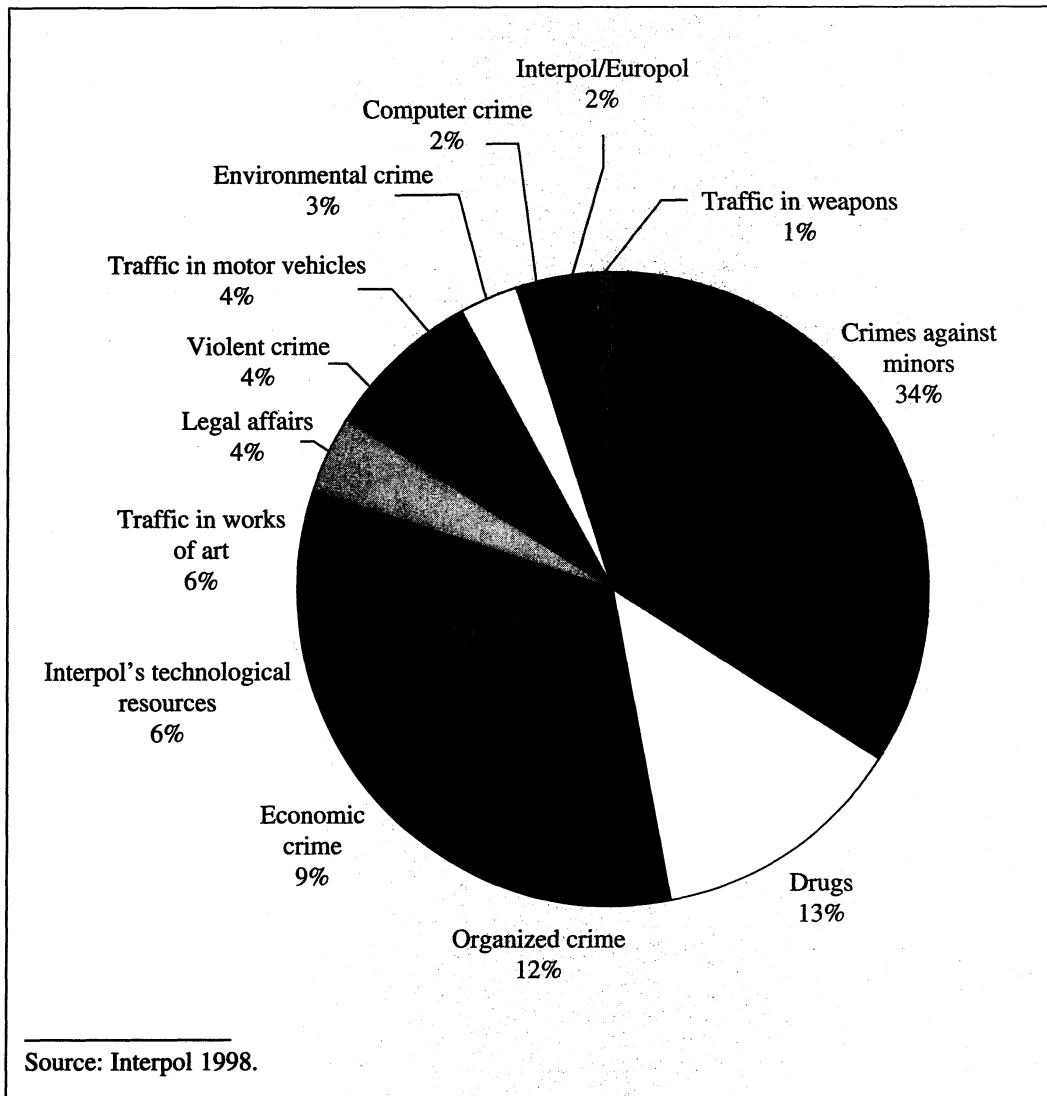
In attempting to understand the difficulties associated with international cooperation, it is important to recognize that conventions, treaties, and agreements may vary considerably between signers, and, of course, not all countries are signatories to them. Issues involving cross-border investigations, extradition, individual rules of law, and the definitions of crime must be considered.

Local cooperation

In addition to nine divisions and four offices at FBI headquarters in Washington, D.C., there are 56 field offices and nearly 400 satellite offices (known as resident agencies) in the United States. Currently, there are approximately 25 foreign liaison posts headed by a legal attaché or legal liaison officer. These offices work with Americans abroad and local authorities on criminal cases within the Bureau’s jurisdiction (U.S. DOJ, FBI 1996, 5–6).

A significant trend in the United States has been the establishment of joint operational task forces that involve local, State, and Federal officers working together on specific types of crimes, many of which have an international dimension. Perhaps the most widely known of these efforts are the Terrorism Task Forces, initiated by the FBI in the 1970s to cope with the growing threat of domestic and international terrorism.⁷

Exhibit 3. Sources of requests received by Interpol's Communications Sub-Directorate



ATF task forces in major cities include local law enforcement officers as part of efforts to curtail arms trafficking and to identify, through tracing efforts, firearms used in crimes domestically and abroad. ATF's National Tracing Center, located in Falling Waters, West Virginia, houses records of more than 100 million firearms and is an unparalleled resource to criminal investigators. In addition to including State and local officers in cooperative efforts, ATF provides support to local government in a variety of ways, including four National Response Teams that provide postblast and fire reconstruction investigators, forensic chemists, bomb technicians, and explosive and accelerant detection canines (Kiernan 1999). By necessity, this capability has expanded to the international arena to

provide origin and cause determinations and postblast expertise, when requested by a U.S. ambassador. Since its inception in 1992, the International Response Team has been deployed more than 15 times to locations including Argentina, South Korea, Sri Lanka, and Surinam. An INS task force works with local agencies to combat so-called “distraction theft,” in which illegal aliens create a distraction to focus attention away from actual theft (Chu 1994).

Regional Drug Intelligence Squads operate in eight geographic regions in the United States that have been identified as transshipment centers for illegal drugs. These squads, in cooperation with other Federal agencies and local law enforcement, focus on major drug trafficking organizations, using RICO statutes. Of particular importance has been a move to develop better communication and cooperation among law enforcement groups.

The International Association of Organized Crime Investigators was formed as a means of furthering communication and cooperation among law enforcement officials in the United States and abroad. An annual meeting held in the United States brings together police from around the world to address emerging trends. The International Association for the Study of Organized Crime is another group that focuses on research and developments related to global crime.

Dangerous drugs

In addition to HIDTAs monitored by the Office of National Drug Control Policy, DEA sponsors a number of programs and projects designed to assist State and local law enforcement officers throughout the United States. DEA maintains 79 offices in 56 countries that are designed to support domestic investigations through foreign liaison and training. Organized Crime Drug Enforcement Task Forces combine Federal, State, and local law enforcement efforts against organized crime and drug-related violent crime. A program known as Mobile Enforcement Teams is designed to support community-based policing in the United States, making a difference in neighborhoods throughout the Nation (U.S. DOJ, DEA 1999, 7, 8). A number of joint projects involving ATF and local police have proven effective. “ATF has long held that the task force approach, which pools the talents and resources of the participating agencies, ensures the most comprehensive and effective investigation of incidents involving concurrent jurisdiction” (Kiernan 1999).

During the past two decades, most of the illegal cocaine coming into the United States was controlled by drug cartels in Colombia. However, Mexican drug cartels have now taken over much of the distribution in the country. The Mexican cartels have developed an expanded and sophisticated distribution system that reaches into the heartland of America.

According to DEA, the Mexican and Colombian drug cartels consist of groups of independent organizations that work together on various levels—supply, distribution, and trafficking—for purposes of efficiency. These groups operate and fund a complex organizational infrastructure involving thousands of employees. Many of the relationships involve family members, but there are indications that this has changed in recent years as a result of investigative successes.

The cartels are characterized by extreme violence, corruption of officials, and even the destabilization of governments. Thousands of people in Colombia, Mexico, Peru, and other countries have been murdered in local drug wars, and many homicides in the United States are attributed in large measure to drug trafficking. A number of American law enforcement officials have been killed by drug dealers.

It is estimated that drug networks now exist in every major American city. DEA defines a Class I drug trafficker as a group with five or more members that smuggles at least four kilograms of cocaine or its equivalent into the United States in a 1-month period. As an example of the size and scope of such operations, consider that in 1988, DEA identified some 174 such Class I networks operating in Chicago alone. The FBI during the same year identified more than 200 such groups operating in Florida.

The extensive cartel network provides high-priced lawyers, modern equipment (e.g., radios, cellular phones, airplanes, helicopters), funds for bribing officials, and a broad range of weaponry. The cartel is noted for killing informants, or “turnarounds,” and will go to any length to protect the leadership.

In some countries, such as Colombia and Peru, trafficking is controlled by terrorist groups, which gives rise to the term “narcoterrorism.” Money laundering is a critical component of the cartels’ operations. The sums, which are measured in billions of dollars, defy imagination. The introduction of new banking laws and other legislation designed to stop such illegal transactions has had relatively little impact; the cartels’ sophisticated accountants, in cooperation with unscrupulous bankers and “legitimate” businesses, have made it difficult to detect various types of fraud or illegal money transfers.

In the United States, the reach of Mexican drug traffickers is extensive:

Eager to create ambitious distribution points, the cartels are successfully targeting traditionally God-fearing communities like Cheyenne and Casper, Wyoming—and other cities in Kansas, Nebraska and Iowa—and are bringing with them the drugs that long have plagued larger urban centers such as Los Angeles. . . . The upsurge in drugs has prompted a keen awareness in places like Cheyenne that law enforcement must act decisively

to reverse the trend. Already, police here are taking Spanish language training, and federal prosecutors have recently put away a Mexican national working as a major drug primo in Wyoming. . . . In 1993 "meth" [methamphetamines] accounted for only 18 percent of Wyoming's drug-related arrests. So far this year [1997], the figure is 46 percent. (Serrano 1997)

Cooperative efforts between local police and DEA have become commonplace in most larger cities, but a scarcity of personnel frequently makes it difficult to provide assistance to many rural communities. This is particularly troublesome in the area of drug trafficking, where intelligence and cooperation are critical to successful interdiction efforts.

Controlling the borders

The U.S. Border Patrol, the INS agency responsible for coping with the large influx of illegal aliens, finds itself in the unenviable position of trying to curtail what some view as a monumental problem. The relatively low rate of pay, intensive and difficult training, a Spanish language requirement, and poor equipment have made recruiting difficult.

Some of the problems associated with investigating cross-border crime are highlighted by the case of a suspected Mexican serial killer who had been apprehended and released numerous times for illegal border crossings. Communication with local, State and Federal officials not only proved difficult, but the lack of a computer connection with the FBI's databank, in which the suspect was listed, made it possible for him to slip from the hands of the Border Patrol on numerous occasions.

In recent years, the INS budget more than doubled, from \$1.5 billion to \$3.8 billion, and the work force increased from 17,163 to 28,000, which included 5,000 Border Patrol agents. Increased attention to border control in El Paso and San Diego resulted in a shift by illegal aliens to other locations, which resulted in "a dramatic increase in the number of complaints from ranchers, farmers, local law enforcement agencies, and providers of social services that have been impacted by these shifts in illegal immigration patterns" (Gribbin 1999). Of particular concern is what officials describe as a growing number of gang members and drug dealers.

Gangs

Immigration, legal and illegal, has also fostered a growing number of street gangs that display many of the characteristics of traditional organized crime. Jamaican street gangs in New York and Chicago have had violent confrontations with police. Chinese and Vietnamese gangs operate in a number of major

cities. Russian street gangs in California are reportedly involved in major car theft rings. Mexican street gangs in Chicago and several other cities have emerged as a major problem for local police. Many of the so-called immigrant gangs are involved in turf wars, and one outgrowth over the past decade has been an increase in violent crime and drive-by shootings.

Asian gangs may include members of many ethnic groups, particularly when they are young; individuals then join specific ethnic gangs as they grow older. These gangs frequently substitute as surrogate families, and members' loyalty to the gang transcends other loyalties. They tend to be mobile, often moving from an Asian neighborhood in one city to another. Consequently, the development of networks to carry out criminal activities makes individual identification and apprehension difficult. These gangs are likely to be well armed and have a propensity for violence.

Triad societies have a long history in China, dating back more than 100 years. With the rise to power of the Chinese Communists, many of the triads migrated to Taiwan and Hong Kong. When the Chinese government took over Hong Kong, the triads expanded their operations, and in some cases moved their operational bases to other countries such as Australia and England. A triad—which refers to the relationship between heaven, earth, and humankind—engages in a sophisticated set of rituals; the number three (3) represents an important symbol and source of identification. For example, each member is assigned a number, divisible by three. Most triad activity in the United States is related to trafficking in illegal immigrants, and this multibillion dollar business has led to other crimes, such as prostitution, sweatshops, and victimization of legal immigrants (Osterburg and Ward 2000, 633).

Vietnamese gangs (Viet-Ching), many of which have a relatively sophisticated organized crime structure, are involved in large currency transfers, computer chip and other forms of high-tech theft, and auto theft rings that transfer vehicles to Vietnam. Street gangs are involved in violent home invasions, kidnapping, and extortion. "Some gang members are on the road almost all of the time; some have no permanent home and shift from motel to motel" (Daye 1997, 244–245).

Author T.J. English (1995, 287), in discussing the influence of two Vietnamese gangs, describes the difficulty of investigating Asian gang activity, adding:

Not only that, but the BTK [Born to Kill] and Green Dragons were part of a larger criminal conspiracy currently in its prime—a complex multi-layered underworld with pockets of influence throughout the United States and much of the world. Domestically, they represented an aspect

of contemporary organized crime that the media and the public have yet to fully acknowledge.

Jamaican "Posses" are estimated to have as many as 10,000 members operating in at least 40 gangs in Canada, the Caribbean, Great Britain, and the United States. They are thought to have committed more than 2,000 murders since 1985. Involved primarily in drug dealing and firearms trafficking, the Posses are active in a wide variety of criminal activities, including burglaries, robberies, fraud, and auto theft. These violent gangs are considered one of the fastest growing criminal enterprise groups in the United States. According to one estimate, they control 40 percent of the crack cocaine distributed in the country (Abadinsky 1997, 255).

The Posses originated in Kingston, Jamaica, and while they sometimes cooperate with one another, there is also some degree of rivalry and little loyalty among members. They operate throughout the United States and are frequently confused with the Rastafarians, a Jamaican group whose members smoke marijuana as part of their religious practice. Although some Rastafarians are Posse members, there is not thought to be a strong linkage between the Rastafarians and the Posses. The two groups, however, use similar methods to smuggle marijuana.

The Posses' leadership is not as stable as that of the Colombian cartels and several other groups, perhaps due more to law enforcement pressure and unstable organization than to other factors. Leaders tend to be Jamaican nationals who have legal status in the United States. About 70 percent of the street-level members are illegal aliens. INS reports that there is no shortage of potential recruits in Jamaica.

The law enforcement response has been the formation of joint task forces and special units within police departments. The Violent Crime Unit of the West Palm Beach Police Department worked with INS to arrest and deport members of the Miami Boys, a Jamaican and Haitian gang involved in home invasions, drug trafficking, robberies, assaults, and firearms violations (Chu 1994).

The ATF Gang Resistance Education and Training program is an educational, school-based gang prevention program that trains local police officers to help teenagers avoid violence and gang membership.

The International Association of Asian Crime Investigators, an organization composed of law enforcement practitioners at all levels of government, publishes a newsletter and other information on Asian gangs operating in the United States.

Electronic and cybercrime

The growing impact of computer-related crime has no geographic boundaries. More and more the criminal justice community in the United States is faced with electronic and cybercriminal activity that has its roots in the global community. Law enforcement, at virtually every level, is ill-prepared to cope with the fast-growing problems associated with cybercrime. "In fact, law enforcement's electronic capabilities are 5 to 10 years behind the transnational crime curve. Budget constrained government agencies average about 49 months to order, acquire, and install new computer systems versus about 9 months in the private sector" (CSIS 1998, xiv).

The range of crimes and criminal activity on the Internet is growing exponentially, affecting government agencies, large businesses, small businesses, and the millions of computer users who frequent the Internet. A 1998 survey of intellectual property losses by the American Society for Industrial Security indicated that U.S. companies' annual misappropriations, usually by trusted employees, may amount to more than \$250 billion. They report that penetration of information and communications systems is the fastest growing threat (Swartwood and Heffernan 1998, 7).

Internet scams are also proliferating. Almost 100,000 investors were lured to a Web site touting a high-tech start-up with revolutionary Internet devices, a partnership with Microsoft, and an International Public Offering (IPO) with the Security and Exchange Commission (SEC)—all phony. But the imaginative perpetrator pulled in \$190,000, including \$10,000 wired from Hong Kong. Soon 14 million will have on-line trading accounts and millions more are surfing the 'Net for stock tips. Slick looking ghost sites, perfect replicas of legitimate logos, are clever Ponzi schemes. The SEC's Internet cyberforce scans the Web for scams and investigates 100-odd complaints each day. (CSIS 1998, xiii)

The U.S. Customs CyberSmuggling Center helped break a child pornography case that reached into 47 countries, including the United States. In 1998, in cooperation with police officers in 13 countries and the United States, armed with warrants, officers "found thousands and thousands of videotapes and CD-ROMs full of the most vile and disgusting children's pornography, incest, and bestiality ever seen. They discovered computers connected in a series with other computers that handled the large volume of pedophilia transmitted to the ring on a daily basis. . . . Also retrieved were digitally encrypted graphic files using encryption software that had originally been developed by the KGB" (Weinschenk 1998, 18-20).

One of the fastest growing types of electronic crime is software piracy, costing manufacturers millions of dollars each year. Foreign nationals in the United States and abroad carry out many of the illegal software and electronic duplication activities. What may appear to a patrol officer as a minor violation will often involve a major network of criminal activity that knows no borders.

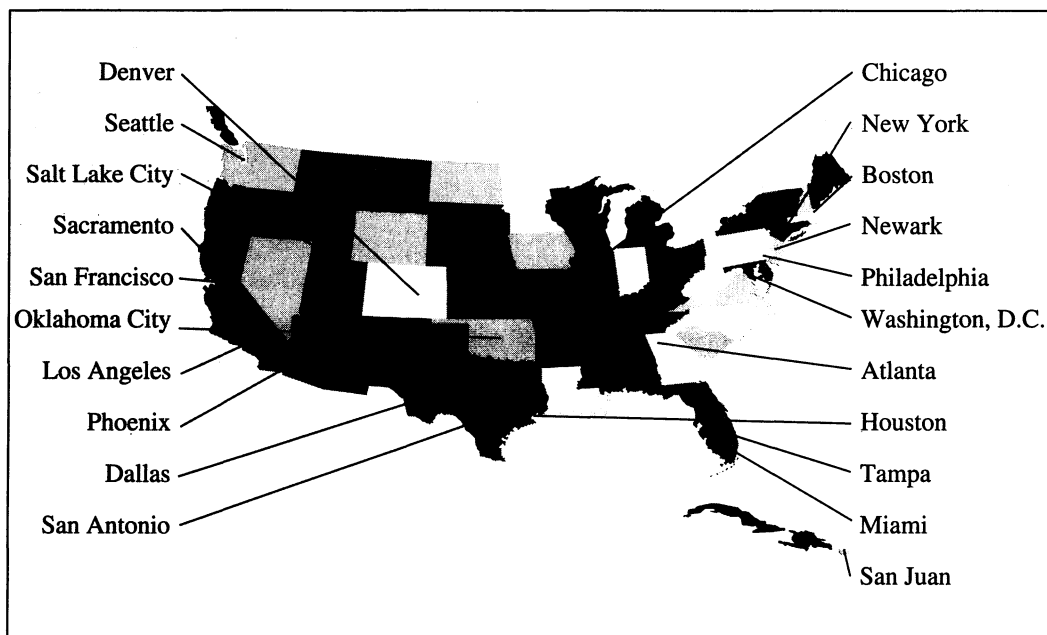
The Internet has also become a major source of communication for hate groups, using the medium on a global level to spread extremist and hate material online. "The Internet helps bring distant, isolated groups and individuals of the domestic and international far-fringe together in an online community that reinforces their beliefs and can aid recruitment efforts" (Hoffman 1997, 72). The rapidly growing use of high-technology communications by hatemongers also presents major constitutional issues with regard to free speech and anonymity and a distinct challenge for the global criminal justice community, where laws are frequently different.

Terrorism

One of the most significant developments impacting local law enforcement in the United States over the past decade has been the specter of terrorism. The 1993 World Trade Center bombing in New York City made the threat of international terrorism on America's shores a reality. Although cooperation between Federal and local law enforcement officials has a 20-year history, most investigations focused on either domestic groups or foreign individuals attempting to influence politics abroad.⁸ Task forces that include Federal, State, and local officers have conducted most of these investigations (see exhibit 4). However, America's influence on global politics and the growing concern over weapons of mass destruction have prompted greater reliance on local law enforcement in developing strategies to cope with the threat of terrorism.

The threat of a chemical or biological attack in the United States is a major concern. Presidential Decision Directive 39, referred to as the U.S. Policy on Counter-terrorism, "[d]irected a number of measures to reduce the Nation's vulnerability to terrorism, to deter and respond to terrorist acts, and to strengthen capabilities to prevent and manage consequences of terrorist use of nuclear, biological and chemical weapons of mass destruction" (Federal Emergency Management Agency 1997).

Historically, the lead investigative agency with responsibility for investigating terrorist acts in the United States and abroad is the FBI. However, as the threat of terrorism increased, other Federal agencies have come to play an increasing role, and domestic investigations have increasingly involved State and local law enforcement agencies. In 1999, there were 21 Terrorism Task Forces

Exhibit 4. Terrorism task forces in the United States

throughout the United States, consisting of Federal agents and State and local law enforcement officers, working together with other elements of the criminal justice system to investigate and prosecute a broad range of criminal activities that fall under the umbrella of terrorism. The number of task forces is expected to increase in the next decade.

The Defense Against Weapons of Mass Destruction Act of 1996, known as the Nunn-Lugar-Domenici Domestic Preparedness Program, was implemented in 1997 to respond to local needs. The program calls for “technical training of local ‘first responders’ to enable them to react appropriately to a nuclear, biological, or chemical attack. Thus, policemen, firefighters, and medical personnel in the 120 largest cities are to receive training from specialists knowledgeable in the dangers and effect of these weapons” (Henry L. Stimson Center 1999).

In his turn-of-the-century budget, President William Clinton proposed a \$10 billion allotment to address “terrorists and terrorist-emerging tools,” \$1.4 billion for infrastructure protection, and \$230 million for bioterrorism programs at the U.S. Department of Health and Human Services (Monterey Institute of International Studies 1999).

In the United States, the FBI defines two types of terrorism. International terrorism generally involves direction by a foreign government, whereas domestic terrorism involves a group of two or more people whose terrorist activities are

directed at elements of our government or population, without foreign direction. The FBI further identifies three broad categories of domestic terrorism: left-wing groups, generally striving to bring about armed revolution; right-wing groups, which follow a racist or antisemitic philosophy that advocates the supremacy of the white race; and special interest groups, which focus on issues such as abortion, animal rights, or the environment.

The Presidential Commission on Critical Infrastructure in 1996 concluded that the United States is not well prepared to cope with infrastructure attacks by terrorists. The commission identified five areas that require improvement: (1) information and communications; (2) banking and finance; (3) energy, including electrical power, oil, and gas; (4) physical distribution; and (5) vital human services (Hill 1998, 51).

William Dyson (1999), a retired FBI agent and founder of the Chicago Terrorism Task Force, points out that training of local police in this area has intensified in the past few years. Other terrorism experts indicate that it is just a matter of time before the United States experiences “an act of terrorism involving a chemical, biological or nuclear weapon of mass destruction.” The “First Responder Program” aims to familiarize local emergency personnel with actions to be taken when an incident does occur (Hulse 1999).

The United States, as the most powerful country in the world, attracts hostility and vengeance among a growing number of internationals who vent their feelings through violence and terrorism. In many countries, Americans are now targets of crime, which has resulted in legislation that carries law enforcement jurisdiction beyond our borders. The recent bombings in Africa saw American law enforcement dispatched to the scene regardless of borders. Kidnaping and violent crimes against American business representatives and tourists have an impact on the economies of the United States and other countries.

And despite the fact that the cold war has ended, the threat from hostile countries remains. Although national security investigations are in the realm of the FBI, it is apparent that the dangers posed by international espionage are very real. The Chinese espionage case in 1999 illustrated the importance of public and government vigilance in preventing the theft of military secrets. In this regard, it is important to note that spy networks may involve Americans as well as foreigners.

Other terrorism experts indicate that it is just a matter of time before the United States experiences “an act of terrorism involving a chemical, biological or nuclear weapon of mass destruction.”

The Walker spy case of the 1980s involved an espionage ring that provided so much information on military secrets “that a special building had to be built in Moscow to house the analysts who worked on the material” (Hunter 1999, 202).

The threat of domestic and international terrorism is viewed as one of the most serious concerns facing the United States in the next century. No longer are America’s shores immune from the deranged acts of individuals or small groups or the actions of hostile nations.

Arms trafficking

The proliferation of firearms on American streets is a cause for national concern. Many of the weapons used by street gangs and international criminals originate abroad. As early as 1991, former FBI Director William Sessions warned of the role that Asian crime syndicates were playing in arms smuggling and other criminal activities. “The most serious new threat,” he said, “comes from Chinese criminals who a few years ago were small and disorganized. Today, backed by violent street gangs, they are rapidly expanding operations outside the Asian community” (*Chicago Tribune* 1999b).

Many American-made weapons are purchased abroad and then illegally smuggled back into the country.

A 1996 “sting” operation by ATF and Customs resulted in the seizure of more than 2,000 fully automatic rifles being smuggled into the United States, allegedly by representatives of a Chinese arms manufacturer. ATF agents posing as Mafia gun runners arrested seven suspects, including resident aliens and Chinese-Americans. Touted as the largest seizure of smuggled foreign-made weapons in the United States to date, officials said that the weapons were destined for street gangs across America (*New York Times News Service* 1996; Adams 1996).

Russian émigrés have also been involved in arms smuggling and the sale of illicit munitions and strategic materials (see, for example, Finckenauer and Waring 1998, 110, 141, 158).

The arms trafficking industry involves domestic- as well as foreign-made weapons. In addition to firearms bought and sold in the United States, many American-made weapons are purchased abroad and then illegally smuggled back into the country. In the United States, unscrupulous gun dealers are often willing to sell firearms to street gangs and other individuals of dubious credibility. Because the availability of weapons has been a major source of concern,

lawsuits designed to remove firearms from the streets were launched in 1999 by a number of American cities and the National Association for the Advancement of Colored People.

In one case, a Vietnamese street gang was able to purchase “a small cache of handguns at a pawnshop in Braselton, Georgia.” The only identification required was a driver’s license and one other form of identification. They were later used in a robbery in which the store owner was shot (English 1995, 104–108).

ATF has an extensive program designed to curtail the influx of foreign-made weapons and American-made weapons that are smuggled back into the country. ATF’s National Tracing Center, the world’s only facility with the capability to trace the history of firearms, maintains transaction records on more than 100 million firearms. It is estimated, however, that there are at least 200 million firearms in the country. Given the high use of firearms, and their use by domestic as well as international criminals, there is every indication that this problem will continue well into the next century. One ICCS initiative, the OAS (Organization of American States) Treaty Against Illicit Trafficking in Firearms, called for “a hemispheric convention to combat the illicit manufacturing of and trafficking in firearms, ammunition and explosives” (The White House 1998).

Victimization

Because of experiences in their native countries, many immigrants have a fear of law enforcement; they are reluctant to report crimes and to cooperate with police. Community policing programs have recognized this situation and recruitment of officers with language skills and cultural awareness training have become priorities in many Federal agencies and State and local police departments. These developments bring a new focus to the role of law enforcement in a changing world.

A wide range of predators victimize illegal immigrants. Guides and organized gangsters have robbed, raped, and killed them; abandoned them in the desert; tossed them overboard at sea or out of speeding cars under hot pursuit; or forced them to work in sweatshops or prostitution rings to pay off the cost of the trip. Bandits prey upon them during their journeys. Xenophobes and hatemongers terrorize them. Some employers cheat them of their earnings. The fact that illegal immigration is a crime makes the immigrants particularly vulnerable because they are unlikely to seek the protection of the law. (McDonald 1997b, 4)

Chin (1990) points out that Chinese gangs prey largely on their own communities. In addition to guarding gambling dens, they are involved in extortion of businesses, robberies, prostitution, drug trafficking, and gang violence.⁹ Additionally, undocumented Chinese immigrants are frequently held in so-called "safe houses" on arrival in the United States. Females are frequently gang raped, forced to participate in sex games, or forced into prostitution. One New York estimate indicated that there could be as many as 200 to 300 houses holding newcomers. Many of the immigrants are held and forced to work in sweatshops until they have paid off loans for transportation, which can cost in excess of \$30,000.¹⁰

Young women from Mexico, lured into the United States on the pretext of having jobs waiting, have been forced into prostitution. In 1998, 16 people were arrested for operating a smuggling ring that charged immigrants \$2,000 to cross the border. The women were then forced into brothels in Florida and South Carolina. This was not an isolated incident, according to authorities, who said that there had been at least 10 such cases between 1995 and 1998.¹¹

In 1998, five members of a Mexican family in Vera Cruz were charged with running a prostitution ring in Florida, Texas, and Mexico, with girls as young as 13. Investigators reported that "young Mexican women were promised jobs and a new start in the United States but instead found themselves enslaved in a prostitution ring." Brothels run by the family catered exclusively to migrant workers, and 23 women were taken into custody at several sites. Women were frequently moved from one brothel to another, having been told that they would have to work off a \$2,000 "smuggling fee" (Pacenti 1998).

Spousal abuse of illegal immigrants also represents a uniquely new problem for local law enforcement. "Advocates for immigrants say spousal abuse has long been one of the most critical and widespread problems endured by women who do not have legal residency in the United States but are married to someone who does" (Thompson 1999, 31). Besides the possibility of deportation, women also fear losing custody of their children.

The U.S. Customs Service is responsible for the enforcement of the provisions of Title 19, U.S. Code, Section 1397, which prohibits the importation of goods manufactured or produced with forced or bonded child labor. As part of a wide-ranging initiative, Customs established a Forced Labor Command Center to direct enforcement and liaison efforts associated with these regulations (Kelly 1999).

The problem of assisting victims in such enterprises to free themselves from unscrupulous and criminal organizations falls largely on local law enforcement,

who are generally in the best position to uncover such activities. Unfortunately, at every level of government, the number of law enforcement officers who speak foreign languages is sorely limited. In some instances, second-generation children of immigrants represent the best hope for expanding law enforcement's language base.

Another area of concern to local law enforcement is the proliferation of hate crimes. According to FBI statistics, there were 812 such incidents involving ethnicity or national origin reported in 1995, with the number rising to 1,102 in 1997. Most of the reported incidents were against Hispanics.¹²

Property and violent crimes

For the most part, and with the exception of gang activity, the number of noncitizens prosecuted in U.S. district courts for violent crimes and property offenses is relatively low. In 1994, there were 144 offenders prosecuted for violent crimes and 1,378 prosecuted for property offenses, most of which involved fraud (U.S. DOJ, BJS 1996, 5). However, it should be noted that most property and violent crimes are not Federal offenses, and these figures do not represent the number of noncitizens prosecuted in State courts. As noted earlier, the number of persons deported in connection with convictions for criminal or narcotics violations rose from 310 in 1981 to 32,869 in 1996.

The arrest in 1999 of Angel Maturino Resendez, in connection with a string of serial murders, is a rare example of a crime spree perpetrated by an illegal alien. Known as the "railroad killer," Resendez was linked to at least nine murders. He had entered the United States illegally on numerous occasions, despite being deported at least three times by INS. Although listed in its computerized identification system, he was not identified as a fugitive who had committed various crimes dating back to 1976 and served 11 years in Mexican jails (Suro and Branigan 1999).

In addition to traditional property crimes such as theft and burglary, the expanding criminal activity in the theft and sale of cultural property, art, animals, and illegal plants has an international dimension that impacts local investigations. For example, in the United States, trafficking in animals is worth \$1.2 billion a year (Williams 1999).

The courts, the judiciary, and the rule of law

Of particular concern to criminal justice are the criminal aliens residing in the United States and the type and extent of their criminal activity. Programs to remove criminal aliens were stepped up in the late 1990s, making it easier to

deport persons convicted of a crime. However, in most cases, convicted aliens must serve their sentences prior to deportation. Congressional legislation in the form of amendments to the Immigration and Nationality Act “wipes away almost any chance potential deportees identified in prison ever had to argue that they should be allowed to stay. For while criminal court judges weigh the pluses and minuses of crimes and their circumstances, immigration judges now have no such discretion” (B. Newman 1999).

INS’ Institutional Hearing Program is designed to facilitate deportation procedures. This program has had some success in identifying criminal aliens before they are released from custody and disappear back into the American mainstream.

Globalization has had a profound impact on the American legal system, not the least of which has been growing concern and controversy over criminal justice processes and the concept of extraterritoriality. Undoubtedly, the lack of an international criminal court has had a detrimental impact on the ability of nations to cope with growing global criminal activity. American opposition to the establishment of such a court is rooted in concern for abuses and has resulted in a growing number of bilateral and multilateral agreements between the United States and other countries. How effective such agreements will be in coping with growing rates of crime across borders is an important consideration worthy of serious study. The issue goes beyond extradition: Agreements on the rule of law among countries with vastly different political, cultural, economic, and legal structures will become increasingly important.

Additionally, prosecutors are now often seeking evidence from abroad in connection with cases in American courts. The internationalization of law enforcement has created a greater need for cooperation. Although largely addressed in Federal courts, this need has also affected State courts (Nadelman 1993, 317–318).

Memorandums of Understanding (MOUs) are being developed between Federal and local prosecutors, as well as law enforcement agencies, which provide for a greater degree of cooperation in those areas that may involve multiple jurisdictions.

An International Criminal Court was established by a United Nations diplomatic conference in 1998, but the United States was not a signatory to its establishment. This court has jurisdiction over “the most serious crimes of concern to the international community as a whole, such as genocide, crimes against humanity and war crimes” (International Scientific and Professional Advisory Council 1999). The court has little or no jurisdiction over most transnational criminal activity. Thus, an individual who commits a crime involving the United States and another country is usually handled through treaties, conventions, bilateral and multilateral agreements, and MOUs.

A comparative study of institutionalization rates of various groups from 1980 to 1990, focusing on 18- to 40-year-old males, found that immigrants were less likely to be institutionalized than native-born Americans. Native-born blacks were more than twice as likely to be incarcerated as immigrant blacks, and Asian immigrants were less likely to be arrested than white non-Hispanic immigrants. The author noted, "Since youth crime is strongly related to the criminality of family members, this lower imprisonment rate might mean lower criminality by immigrants' children" (Francis 1998).

In the United States, the growing number of immigrants will continue to impact the legal system. The number of translators required in the courts has already grown dramatically. Beyond language barriers, many of those involved in the criminal justice process are unfamiliar with the system and come from cultures whose norms and traditions often conflict with traditional American judicial models.

Corrections

With more inmates from foreign countries, the correctional systems of the United States are experiencing change. Correctional officials face language and cultural differences and new religious and dietary requirements among the inmate population. In many prisons, internationals have bonded together, either for protection or in a rapidly growing immigrant gang population behind the walls.

In 1993, criminal aliens accounted for more than 25 percent of the Federal prison population (Brimelow 1996, 182). The number of noncitizens serving time in Federal prisons grew from 4,088 in 1984 to 18,829 in 1994. The largest increase involved drug offenses, where the number rose from 2,270 in 1984 to 14,226 in 1994 (Maguire and Pastore 1998, 506). In 1998, there were 34,151 non-U.S. citizen Federal prisoners, representing 27.8 percent of the population (U.S. DOJ, BJS 1999, 503). In 1995, it was estimated that there were 56,000 deportable aliens in State prisons. The State of Georgia, working with INS, arranged to have paroled offenders deported (Pettys 1995).

The Violent Crime Control and Law Enforcement Act of 1994 (Crime Act) marked a major change in efforts to reduce illegal immigration, deter employment of illegals, and improve the support of crimefighting capabilities of State and local law enforcement. It also authorized funds to reimburse States and localities for the cost of incarcerating illegal aliens (McDonald 1997b, 6).

Cooperation between INS and local officials with regard to undocumented aliens in jails and prisons is increasing, but not without controversy. In defending a cooperative program between INS and the Anaheim Detention Facility to identify illegal immigrants who were arrested for other crimes, an Anaheim

City Council member, in a letter to the editor, wrote: "This program has been a major success in reducing crime in Anaheim by undocumented immigrant criminals, especially career or repeat offenders. The issue was never undocumented immigrants, but criminals who were thwarting the justice system by manipulating the process" (Zemel 1998).

In 1996, largely due to pressure from States, the Federal Government stepped up efforts to deport criminal aliens, establishing 70 criminal deportation courts in the United States.

In some States, convicted criminals are offered early parole if an offender volunteers for deportation. In New York, where more than 10 percent of the prison population are aliens, there were about 4,500 hearings and 1,000 actual deportations in 1998. In 1996, the U.S. Department of Justice (in accord with the Crime Act) began to reimburse State and local prisons for housing illegal immigrant offenders. The cost to the Federal Government in 1997 and 1998 topped \$500 million (B. Newman 1999; see also McDonald 1997b, 6).

Critics of this effort to deport criminal aliens argue that aliens are not well represented by legal counsel and often do not understand that an agreement to deportation means they cannot ever apply for reentry. Others argue that many of those deported have been convicted of minor crimes, and the lack of flexibility in the system gives judges no leeway for extenuating circumstances.

In America's prisons, ethnic gangs have become a major problem for correctional officials. The Mexican gang La Eme ("M" in Spanish, which in this case refers to the Mexican Mafia) had its beginnings behind the walls of a California prison in 1957 and today is described as controlling "drugs, gambling, extortion and prostitution throughout the California penal system" (Stone 1999, 13).

The increasing number of alien criminals in U.S. prison systems has necessitated a number of major changes, particularly in dealing with violent inmates. As Maghan (1999, 7) notes:

Inmate violence is multidimensional. It involves inmate-on-inmate attacks (including rape) and group conflict. Group conflict can erupt in large-scale conflicts (intergang or interracial), or it can manifest itself in individual acts of violence by members of one group against members of another over an extended time period. . . . Moreover, inmate hostility is manifested against institutional operations and sabotage of systems like food and plumbing. Violence against staff and hostage taking are a constant threat.

A growing number of Americans are now in the prisons of other countries. Embassy staffs are generally not well prepared to assist Americans who have relatives in foreign prisons. Again, the differences in the legal systems of other countries have an impact on the American criminal justice system because many of these foreign cases are related to criminal activity in the United States.

In addition to increased costs in correctional facilities, the impact on probation and parole organizations must be recognized. Many observers feel that, without increased attention to foreign-born probationers and parolees, the problem will grow considerably worse in the next decade because most probation and parole officers are ill-equipped to cope with language and cultural differences.

International Cooperative Efforts

The growth and impact of international cooperation

Global crime has focused greater attention on international organizations such as the United Nations and Interpol. The Office for Drug Control and Crime Prevention of the United Nations has been upgraded to divisional status and now encompasses the former Crime Prevention and Criminal Justice Branch.

Recognizing the importance of international cooperation in conducting research, the National Institute of Justice has established an international unit. The Bureau of Justice Statistics' Web site includes extensive descriptive information about the criminal justice systems of other countries (see <http://www.ojp.usdoj.gov/bjs>).

The American role on the international scene in criminal justice will continue to expand. What roles will international organizations and American public and private organizations play in helping to foster cooperation, exchange information, and support multilateral agreements and conventions? The United States already offers extensive training programs abroad through ATF, DEA, FBI, and Customs. INS has instituted the Law Enforcement Support Center to improve the process of identifying criminal aliens. Universities throughout the United States are accepting increasing

Growing cooperation between countries has furthered the ability of America's police and prosecutors to bring more cases to the courts. Treaties and other international agreements, many in the form of bilateral or multilateral arrangements, have broadened the reach of law enforcement.

numbers of criminal justice students from abroad. The number of conferences devoted to international crime problems is expanding.

Growing cooperation between countries has furthered the ability of America's police and prosecutors to bring more cases to the courts. Treaties and other international agreements, many in the form of bilateral or multilateral arrangements, have broadened the reach of law enforcement. For example, there are treaties concerning narcotic drugs with approximately 175 countries, and more than 200 countries are involved in judicial procedure arrangements with the United States. Many of these treaties have long histories and have been revised over time. For example, an international agreement for the suppression of "white slave" traffic (trafficking in women and children) was first signed in Paris in 1904 and implemented by the United States in 1908. Currently, about 100 countries have signed this agreement.

More recent is the Convention on Terrorism. Initiated in 1973 by the United Nations and implemented by the United States in 1976, it is a convention "to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance." A convention on the prevention and punishment of crimes against internationally protected persons, including diplomats, was also adopted by the United Nations in 1973 and implemented in the United States in 1977. An international convention against the taking of hostages, adopted in 1979, came into force in the United States in 1985 (U.S. Department of State 1999).

Despite these improvements, a great many problems remain:

The use of diplomacy to settle international criminal cases has not been effective and must be reconsidered. Cooperative legal relations with the PRC [People's Republic of China], for example, were soured when a defendant sent to testify in the United States claimed political asylum and, under American immigration law, was not permitted to return to China. (Bolz 1995, 147)

In the private sector, multinational corporations have taken a critical interest in international crime. They are faced with a broad range of international criminal activity in America and overseas: In addition to crimes against their business operations, their employees are being victimized. In response, many companies have initiated and expanded training programs related to criminal activities with an international dimension. A number of multinational companies now have their own intelligence units, which focus on everything from employee protection to theft and fraud activities.

The rapidity of communication and travel has fostered cooperation on an international scale. Much of this cooperation has come about as a result of the Internet, and some discussion of this phenomenon is important to understanding the future of criminal justice.

Criminal Justice at the Dawn of a New Century

What is the future of international crime and the impact of criminal activity by undocumented aliens and legal immigrants? In what ways must the justice system adjust? What are the roles of government, policymakers, law enforcement, the courts, corrections, and the public at large? Despite a growing recognition of the influence of globalization, the American criminal justice system is not well prepared, and much needs to be done.

In many ways, the greatest problem in dealing with global influences is at local levels of government, where most personnel working in the justice system are not familiar with issues that may impact their communities. A lack of foreign language skills, unfamiliarity with immigration laws, erroneous perceptions of other cultures, and lack of information about new forms of crime with international dimensions all contribute to an ineffective approach to social control.

It should also be remembered that the vast majority of immigrants arriving in the United States make meaningful and important contributions. Not only are most honest and hard working, but they are also likely to be prime targets for the illegal activities of those few who, in particular immigrant groups, prey on their neighbors.

Matthew Yeager (1996), a Canadian criminologist who has done research on immigrants and criminality, notes:

In Canada, the United States and Australia, the criminality of first-generation immigrants has been less than that for the native-born. . . . Thus, it is not ethnicity or immigration status which predispose people to criminality, but the domestic characteristics of the host country—including the manner in which it processes and criminalizes behavior.

Local police officers in many large- and medium-sized cities find a growing number of ethnic communities, many of which bring their own perceptions of law and order. In many instances, it may be two or three generations before the children of immigrant families are represented in police departments. The inability of police to speak foreign languages, and the problems associated

with communicating with foreign-born citizens, severely curtails community policing activities. Many newly arrived immigrants and businesspeople are fearful of cooperating with police. As Chin (1990, 109) points out, "The lack of knowledge about the [Chinese] gangs by local precincts [in New York City] also contributes to the rapid increase in extortion." The problem is further compounded by the ability of alien criminals to move easily from one jurisdiction to another, or even to flee the country. A number of murders throughout the United States have been carried out by imported "hit men," or individuals who returned to their country of origin. "At least sixty-five murders and attempted murders in the United States have involved Soviets and Soviet émigrés since 1981 and . . . have indications of organized crime involvement" (New York State Organized Crime Task Force et al. 1996). Most local investigators are not well versed in the investigation of criminal activities that have an international dimension.

When police are able to identify a suspect or make an arrest, the problem of prosecution may also be vexing where such issues as language, victim cooperation, and jurisdiction are concerned. Even when there is cooperation between prosecutors and foreign law enforcement officials, problems can arise. In the so-called "goldfish case," in which drugs were concealed in goldfish being shipped from China to the United States, cooperative Chinese authorities permitted an arrested and convicted criminal to be brought to the United States to testify against his partners. The individual claimed asylum, saying he would be executed if sent back to China, and a judge refused to return him. The case, which dragged on for years, severely strained relations between police officials in China and the United States. Also, the lack of extradition treaties with some countries has hampered prosecutions in cases ranging from terrorist acts to murder.

The large number of undocumented aliens and immigrants who are in jails, prisons, and penitentiaries for nonimmigration-related crime has also had an impact on America's correctional system. In addition to routine management issues, such as different food and religious requirements for some inmates, the growing influence of ethnic gangs may well require major changes in the country's correctional management system (see, for example, Maghan and Kelly 1989).

In response to the threat of international crime, the U.S. Government's ICCS has identified 8 broad goals and 30 implementing objectives to "combat international crime aggressively and substantially reduce its impact on the daily lives of Americans" (The White House 1998). The eight goals are as follows:

1. Expand the first line of defense beyond U.S. borders by (a) preventing acts of international crime planned abroad before they occur, (b) using all available laws to prosecute select criminal acts committed abroad, and (c) intensifying activities of law enforcement, diplomatic, and consular personnel abroad.

2. Protect U.S. borders by (a) enhancing our land border inspection, detection, and monitoring capabilities, (b) improving the effectiveness of maritime and air smuggling interdiction efforts, (c) seeking new, stiffer criminal penalties for smuggling activities, and (d) targeting enforcement and prosecutorial resources more effectively against smuggling crimes and organizations.
3. Deny safe haven to international criminals by (a) negotiating new international agreements to create a seamless web for the prompt location, arrest, and extradition of international fugitives, (b) implementing strengthened immigration laws that prevent international criminals entering the United States and provide for their prompt expulsion when appropriate, and (c) promoting increased cooperation with foreign law enforcement authorities.
4. Counter international financial crime by (a) combating money laundering and strengthening enforcement efforts to reduce inbound and outbound movements of criminal proceeds; (b) seizing the assets of international criminals; (c) enhancing bilateral and multilateral cooperation against all financial crime; and (d) targeting offshore centers of international fraud, counterfeiting, electronic access device schemes, and other financial crimes.
5. Prevent criminal exploitation of international trade by (a) interdicting illegal technology exports, (b) preventing unfair and predatory trade practices in violation of U.S. law, (c) protecting intellectual property rights, (d) countering industrial theft and economic espionage of U.S. trade secrets, and (e) enforcing import restrictions on certain harmful substances, dangerous organisms, and protected species.
6. Respond to emerging international crime threats by (a) disrupting new activities of international organized crime groups, (b) enhancing intelligence efforts against criminal enterprises, (c) reducing trafficking in human beings and crimes against children, (d) increasing enforcement efforts against high-tech and computer-related crime, and (e) continuing to identify and counter the vulnerability of critical infrastructures and new technologies in high-tech areas.
7. Foster international cooperation and the rule of law by (a) establishing international standards, goals, and objectives to combat international crime and by actively encouraging compliance; (b) improving bilateral cooperation with foreign governments and law enforcement authorities; and (c) strengthening the rule of law as the foundation for democratic government and free markets to reduce societies' vulnerability to criminal exploitation.
8. Optimize the full range of U.S. efforts by (a) enhancing executive branch policy and operational coordination mechanisms to assess the risks of

criminal threats and integrate strategies, goals, and objectives to combat those threats, (b) mobilizing and incorporating the private sector into U.S. Government efforts, and (c) developing measures of effectiveness to assess progress over time.

Despite these goals, the overall response to the internationalization of crime in the United States leaves much to be desired. The evidence leads one to conclude that traditional boundaries of the criminal justice system in America will continue to change dramatically in the next millennium. The greatest impact will be on local criminal justice systems. This portends the need for change, particularly in the areas of human resources; legal initiatives; criminal intelligence; and cooperation and coordination among criminal justice entities, the private sector, and other governments.

Greater diversification of the work force, new training and education models, greater awareness of cultural and religious differences, and greater cooperation domestically and internationally will require tomorrow's criminal justice professional to adapt significantly to a new world order. Greater emphasis must be placed on language skills, familiarization with the legal systems of other countries, and the role local governments and business enterprises must play in combating international-related crime at the grassroots level.

Awareness training for law enforcement officers concerning international-related crime must also expand considerably. The Bureau of Justice Assistance, for example, has provided funding to IACP to provide tuition-free training to police, in cooperation with INS. This training includes:

- An overview of fraudulent documentation commonly used by illegal aliens.
- When and how to contact INS about a criminal alien arrested by State or local police.
- Tactical considerations and recommendations for responding to criminal aliens.
- Prosecution and deportation as a two-part process.
- An overview of alien criminal gangs and organizations.
- INS priorities for investigation, arrest, and deportation of criminal aliens. (U.S. DOJ, BJA 1995)

Rapid advances in technology, communication, and transportation will necessitate the introduction of new laws and legal procedures. Undoubtedly, many of these changes will involve constitutional issues related to civil rights, freedom

of expression, and jurisdictional boundaries. Indeed, a paradox of more internationalization may well be a lessening of individual rights and the autonomy of local governments. Crimes that have traditionally been handled at the State level, such as stolen vehicles and fraud, may have both interstate and international ramifications.

Virtually every report on the internationalization of crime stresses the importance of improving the capability of law enforcement at almost every level to gather criminal intelligence. This is underscored by a need for greater cooperation between the business sector and law enforcement. International crime necessitates the use of technology to identify and monitor the activities of individuals and groups involved in everything from street crime to complex illegal enterprise activities.

Given the fragmentation of the criminal justice system at virtually every level of government and the vast number of police departments (most fewer than 50 officers), the need for cooperation and coordination becomes critical. Although most international crime appears to be focused on major cities, there is every indication that suburban and rural communities are facing new threats, from the emergence of street gangs to crimes against the business community. This is also complicated by a lack of language skills among Americans, which makes it possible for some criminals to operate virtually undetected in their native languages. With the possible exception of Spanish, there are few in the American criminal justice system who speak foreign languages, particularly Russian, Chinese (Mandarin, Cantonese, and Fukianese), Arabic, or Eastern European and African languages.

Ultimately, the American criminal justice system must adapt to the fact that a changing world will require integrating of the sons and daughters of the many law-abiding immigrants into the practitioner ranks. Such an effort will also necessitate greater cooperation with other countries, many of which are suffering similar crime problems.

In the past decade, the United States has made significant progress in training and educating criminal justice personnel from abroad, but little has been done to familiarize American criminal justice practitioners with other systems. The U.S. Department of Justice has taken some steps in this regard. Reports comparing crime in other countries with those in the United States represent a first step (see, for example, Taylor and Bennett 1999). The National Institute of Justice has sponsored a number of joint studies and established an office for international programs in 1998. The Bureau of Justice Statistics publishes the *World Factbook of Criminal Justice Systems* on its Web site and, in cooperation with the United Nations and other countries, manages the International

Statistics Program. This program seeks “to improve the international collection of statistics on crime and criminal justice systems so that cross-national comparisons can be made between crime trends in the United States and in other countries” (Price-Grear 1998).

Undoubtedly, the global influence on crime in the United States will grow in the next millennium. The Chicago Council on Foreign Relations national survey found that more than 50 percent of respondents identified the following areas as being “very important” goals of the United States:

- Preventing the spread of nuclear weapons (82 percent of the public and 85 percent of the leaders).
- Stopping the flow of illegal drugs into the United States (81 percent of the public and 57 percent of the leaders).
- Combating international terrorism (79 percent of the public and 74 percent of the leaders).
- Controlling and reducing illegal immigration (81 percent of the public and 57 percent of the leaders) (Rielly 1999, 16).

Although much crime will be attributed to illegal immigrants, the growing numbers of visitors and tourists will also represent an important consideration. There are also those who may never set foot on American soil but nonetheless may be involved in forms of criminal activity in the country. With its growing economy and status as a superpower, the United States has great opportunities as well as challenges. Crime is a relatively small component of global change. As the United States enters a new century, our crime control strategies must become more effective against international crime, within the broader context of opportunities for positive change in a free society.

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Notes

1. The survey involved personal interviews with a stratified, systematic, random sample of 1,507 men and women 18 years of age or older and 379 telephone interviews that included Americans in senior positions in government, education, business, and the private sector with knowledge of international affairs (Rielly 1999, 3–5).
2. In 1996, Federal authorities in Boston indicted 3 men for trying to smuggle more than 100 Chinese people into the United States. Over a 4-year period, more than 40 ships

were detected trying to smuggle Chinese into the country. In June 1993, the *Golden Venture*, a small Panamanian ship carrying almost 300 illegal Chinese immigrants, ran aground off a beach in New York. Each person had paid between \$15,000 and \$35,000 for passage to the “promised land” of the United States. Ten of the passengers died trying to swim to shore, and the rest were taken into custody by police and immigration officials. One immigrant told authorities he had paid \$38,000 for the trip. (*Minneapolis Star Tribune* 1996; see also Bolz 1995 and *Chicago Tribune* 1999a).

3. This number includes illegal immigrants who entered the United States legally and overstayed their visas (estimated 2.1 million) and those who entered without permission (estimated 2.9 million) (U.S. GAO 1998c).

4. Additionally, the number of persons deported for reasons related to criminal or narcotics violations rose from 54 in 1981 to 156 in 1996 (see Maguire and Pastore 1998, 374).

5. The layering stage in the money laundering process involves a series of financial transactions in which the money is “moved” to generate distance from its original source. Once established in the conventional banking sector, the funds can be passed by electronic or wire transfer through a combination of front companies, banks, and shell corporations operating in financial tax havens. The goal is to obfuscate the trail of the money and ensure that any efforts to trace its origin are hindered by bank secrecy laws (Carroll 2000).

6. “A recent well-known example demonstrating this fact involves the FBI investigation of the bombing of the American Embassies in Tanzania and Kenya. Drug Enforcement Administration agents posted overseas conduct investigation of international drug trafficking organizations on a continual basis. In both these instances, however, U.S. agents are carrying out these investigations under the authority and in collaboration with the host government” (May 1999).

7. Currently, there are approximately 700 task forces operating in the United States. In 1982, FBI Director William H. Webster included counterterrorism as a national priority (see U.S. DOJ, FBI 1997).

8. A major exception involved investigation of the FALN (Fuerzas Armadas de Liberación Nacional), a violent separatist Puerto Rican group.

9. A police estimate is that 80 to 90 percent of Asian businesses pay one or more gangs regularly or occasionally (see Chin 1990, 104–117).

10. For a chilling account of the torture and brutality facing many Chinese illegal immigrants in the United States, see Chin 1997, 169–195.

11. In another case, Mexican immigrants who were deaf were forced to peddle trinkets in New York subways. In Los Angeles, 70 Thai women were held in a garment factory, some as long as 7 years, to pay off their debts (see Navarro 1998).

12. For further information, see the FBI Web site at <http://www.fbi.gov>.

References

- Abadinsky, Howard. 1997. *Organized crime*. 5th ed. Chicago: Nelson-Hall.
- Adams, Jane. 1996. US foils major smuggling operation: Chinese gunrunners caught in sting. *Chicago Tribune*, 24 May.
- Alvarez, Fred, and Scott Hadly. 1997. Wider INS targeting of jails urged; Crime rep Gallegly says Ventura County has caught so many illegal immigrant felons that screening should be used nationwide. *Los Angeles Times*, 4 November.
- Associated Press. 1993. Feds crack ring selling bogus visas. *Newsday*, 11 September.
- Blum, Vanessa. 1998. 21 charged with operating ring smuggling thousands into U.S. *Chicago Tribune*, 21 November.
- Bolz, Jennifer. 1995. Chinese organized crime and illegal alien trafficking: Humans as a commodity. *Asian Affairs: An American Review* 22 (September): 147.
- Bradley, Barbara, Linda Wertheimer, and Robert Siegel. 1997. Deportation of legal immigrants. All Things Considered (National Public Radio), 27 August.
- Bright, Jon. 1992. *Crime prevention in America: A British perspective*. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.
- Brimelow, Peter. 1996. *Alien nation: Common sense about America's immigration disaster*. New York: HarperCollins Publishers.
- Caldwell, Gillian, Steve Galster, Jyothi Kanics, and Nadia Steinzor. 1997. Capitalizing on transition economics: The role of the Russian mafiya in trafficking women for forced prostitution. In *Illegal immigration and commercial sex: The new slave trade*. Special issue. Vol. 3, no. 4, of *Transnational organized crime*, edited by Phil Williams. London: Frank Cass Publishers.
- Campagna, Darryl. 1998. Sex list helping deport convicted immigrants. *Chicago Tribune*, 6 November.
- Capaldi, Nicholas, ed. 1997. *Immigration: Debating the issues*. New York: Prometheus Books.
- Carroll, Lisa. 2000. *Alternative remittance systems: Distinguishing sub-systems of ethnic money laundering in Interpol member countries on the Asian continent*. Lyons, France: International Criminal Police Organization.
- Center for Strategic and International Studies, Global Organized Crime Project. 1998. *Cybercrime . . . cyberterrorism . . . cyberwarfare . . . averting an electronic Waterloo*. Washington, D.C.: Center for Strategic and International Studies.

———. 1997. *Russian organized crime: A report of the Global Organized Crime Task Force*. Washington, D.C.: Center for Strategic and International Studies.

Chicago Tribune. 1999a. Canada: Ship seized with 100 Chinese immigrants. 22 July.

———. 1999b. FBI says Asian gangs join US arms, drug trade. 4 October.

———. 1999c. 7 accused of using Hasidics in drug runs. 23 July.

Chilton, Roland, Raymond Teske, and Harold Arnold. 1995. Ethnicity, race, and crime: German and non-German suspects 1960–1990. In *Ethnicity, race, and crime: Perspectives across time and place*, edited by Darnell Hawkins. Albany: State University of New York Press.

Chin, Ko-lin. 1997. Safe house or hell house? Experiences of newly arrived undocumented Chinese. In *Human smuggling: Chinese migrant trafficking and the challenge to America's immigration tradition*, edited by Paul J. Smith. Washington, D.C.: Center for Strategic and International Studies.

———. 1990. *Chinese subculture and criminality: Non-traditional crime groups in America*. Westport, Connecticut: Greenwood Press.

Chu, Jeannette L. 1994. Alien smuggling. *Police Chief* 61 (June): 20–33.

Cleeland, Nancy. 1998. California and the West; Immigrant task force arrests 1; Crime: Woman is accused of operating 10 year scam that bilked numerous people who sought her help obtaining legal U.S. residency. *Los Angeles Times*, 14 May.

Constantine, Thomas A. 1999. United States and Mexico counterdrug efforts. Remarks before the Senate Caucus on International Narcotics Control, 24 February.

Corchado, Alfredo. 1996. Playing for keeps along the border: Immigrant smuggler, U.S. agent try to match wits in an old game. *Dallas Morning News*, 14 August.

Das, Dilip. 1993. *Policing in six countries around the world*. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.

Daye, Douglas. 1997. *A law enforcement sourcebook of Asian crime and culture: Tactics and mindsets*. Boca Raton, Florida: CRC Press.

DeStefano, Anthony M., and Molly Gordy. 1994. Raids smash alien smuggling network. *Newsday*, 7 April.

Dyson, William. 1999. Interviews with author, February and March.

English, T.J. 1995. *Born to kill: America's most notorious Vietnamese gang, and the changing face of organized crime*. New York: William Morrow & Company.

- Fazey, Ian Hamilton. 1999. Combating money laundering. *Crime and Justice International* 15 (July/August): 17–18.
- Federal Emergency Management Agency. 1997. *Terrorism incident annex*. Washington, D.C.
- Fields, Charles B., and Richter H. Moore, Jr. 1996. *Comparative criminal justice: Traditional and nontraditional systems of law and control*. Prospect Heights, Illinois: Waveland Press.
- Finckenauer, James O., and Elin J. Waring. 1998. *Russian Mafia in America: Immigration, culture, and crime*. Boston: Northeastern University Press.
- Francis, David R. 1998. Recent immigrants less likely to go to prison than natives. *NBER [National Bureau of Economic Research] Digest* (January). Retrieved 5 April 2000 from the World Wide Web: <http://www.nber.org/digest/jan98/w6067.html>.
- Gibbons, Sarah. 1999. Casting an analytical eye gets results. *Jane's International Police Review* (July/August): 9.
- Gribbin, August. 1999a. Border Patrol too small to stop influx of illegals. *Washington Times*, 14–20 June, national weekly edition.
- . 1999b. INS struggles to cope with criminal aliens; Agency faulted in worsening problem. *Washington Times*, 22 February.
- Hawkins, Darnell, ed. 1995. *Ethnicity, race, and crime: Perspectives across time and place*. Albany: State University of New York Press.
- Henican, Ellis. 1999. Charge 'em/"Gentlemen bandits" accused of vast credit-card scams. *Newsday*, 15 November.
- Henry L. Stimson Center. 1999. U.S. bureaucracy reorganizes to grapple with chem/bio terrorism. *CBW Chronicle* (January). Retrieved 5 April 2000 from the World Wide Web: <http://www.stimson.org/cwc/domprep.htm>.
- Hill, Sean. 1998. Infrastructure at risk from terrorist threat. In *Terrorism and the new world order*, edited by Cindy Moors and Richard Ward. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.
- Hoffman, David. 1997. *High-tech hate: Extremist use of the Internet*. New York: Anti-Defamation League.
- Hunter, Robert W. 1999. *Spy hunter: Inside the FBI investigation of the Walker espionage case*. Annapolis, Maryland: Naval Institute Press.
- Hulse, Carl. 1999. Readyng emergency teams for terrorist attacks. *New York Times*, 3 July.

- Imhoff, John J., and Stephen P. Cutler. 1998. Interpol: Extending law enforcement's reach around the world. *FBI Law Enforcement Bulletin* (December): 10–16.
- International Scientific and Professional Advisory Council (ISPAC). 1999. The International Criminal Court: Background, jurisdiction, and composition. *ISPAC Newsletter* (April). Saudi Arabia.
- Kelly, Raymond W., Commissioner, U.S. Customs. 1999. Letter to author, 21 May.
- . 1998. Statement before the Senate Committee on Finance. 3 September.
- Kelly, Robert J., ed. 1993. *Bias crime: American law enforcement and legal responses*. Rev. 2d ed. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.
- Kiernan, Kathleen, Division Head, Chicago Office of the Bureau of Alcohol, Tobacco and Firearms. 1999. Interview with author, 30 March.
- Kolendar, William B. 1978. Remarks regarding illegal aliens. In *The police yearbook 1978*. Gaithersburg, Maryland: International Association of Chiefs of Police. Cited in William F. McDonald, Illegal immigration: Emerging local, State, and Federal partnerships, *National Institute of Justice Journal* 232 (June 1997), 10.
- Langworth, R.C. 1999. A “grotesque” gap. *Chicago Tribune*, 12 July.
- Madinger, John, and Sidney Zalopany. 1999. *Money laundering: A guide for investigators*. Boca Raton, Florida: CRC Press.
- Maghan, Jess. 1999. Dangerous inmates: Maximum security incarceration in the State prison systems of the United States. Reprint. *Aggression and violent behavior* 4 (1): 1–12.
- Maghan, Jess, and Robert J. Kelly. 1989. Terrorism and corrections: The incarcerated radical. In *International terrorism: The decade ahead*, edited by Jane Buckwalter. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.
- Maguire, Kathleen, and Ann L. Pastore, eds. 1998. *Sourcebook of criminal justice statistics—1997*. NCJ 171147. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- May, David, Staff Coordinator, Drug Enforcement Administration. 1999. Letter from author, 3 June.
- McDonald, William F. 1997a. Illegal immigration: Crime ramifications and control (the American experience). In *Crime and law enforcement in the global village*, edited by William F. McDonald. Cincinnati: Anderson Publishing Company. Cited in William F. McDonald, Illegal immigration: Emerging local, State, and Federal partnerships, *National Institute of Justice Journal* 232 (June 1997), 10.

———. 1997b. Illegal immigration: Emerging local, State, and Federal partnerships. *National Institute of Justice Journal* 232 (June): 2–10.

Minneapolis Star Tribune. 1996. Plan to smuggle 100 Chinese to U.S. foiled: 3 men charged. 9 October.

Monterey Institute of International Studies. 1999. Agency structures for terrorism response. Chemical and Biological Weapons Resource Page, Center for Nonproliferation Studies. Retrieved 8 December 1999 from the World Wide Web: <http://cns.miiis.edu/research/cbw/response.htm>.

Nadelman, Ethan A. 1993. *Cops across borders: The internationalization of U.S. criminal law enforcement*. University Park: Pennsylvania State University Press.

Nardi, Louis F. 1999. Alien smuggling and visa overstays. Testimony before the U.S. House Committee on the Judiciary, Subcommittee on Immigration and Claims, 18 March.

Navarro, Mireya. 1998. Group forced illegal aliens into prostitution, U.S. says. *New York Times*, 24 April.

Nelson, Jack. 1998. As crime spans globe, Interpol is catching up. *Los Angeles Times*, 4 January, home edition.

New York State Organized Crime Task Force, New York State Commission of Investigation, New Jersey State Commission of Investigation, and Pennsylvania Crime Commission. 1996. *An analysis of Russian emigre crime in the tri-state region*: New York State Organized Crime Task Force. Cited in James O. Finckenauer and Elin J. Waring, *Russian Mafia in America: Immigration, culture, and crime* (Boston: Northeastern University Press, 1998), 220–226.

New York Times News Service. 1996. US hunts Chinese gun smugglers. *Chicago Tribune*, 23 May.

Newman, Barry. 1999. Slender mercies: For criminal aliens the deportation boot is a very swift kick. *Wall Street Journal*, 9 July.

Newman, Graeme, ed. 1999. *Global report on crime and justice*. New York: United Nations Office for Drug Control and Crime Prevention, Oxford University Press.

Newsday. 1999. Smuggling ring is broken/3 city men indicted in Chinese aliens case. 9 October.

Obejas, Archy. 1998. *Strangers among us: How Latino immigration is transforming America*. New York: A.A. Knopf.

Osterburg, James W., and Richard H. Ward. 2000. *Criminal investigation: A method for reconstructing the past*. 3d ed. Cincinnati: Anderson Publishing Company.

- Pacenti, John. 1998. Mexican family in US accused in prostitution ring. Associated Press, 25 February.
- Perlman, Shirley E. 1995. Deported/The No. 1 priority for State, INS: Criminal aliens. *Newsday*, 11 May.
- Pettys, Dick. 1995. Georgia-aliens. Associated Press Wire Service, 6 June.
- Price-Grear, Lisa. 1998. *Bureau of Justice Statistics fiscal year 1998: At a glance*. NCJ 169285. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics.
- Rielly, John E., ed. 1999. *American public opinion and U.S. foreign policy 1999*. Chicago: Chicago Council on Foreign Relations.
- Salcedo, Michele. 1996. Deport criminals/Rudy applauds Border Patrol solution. *Newsday*, 16 October.
- Serrano, Richard A. 1997. Mexican drug cartels target U.S. heartland. *Los Angeles Times*, 10 December.
- Shannon, Sarah. 1999. Prostitution and the mafia: The involvement of organized crime in the global sex trade. In *Illegal immigration and commercial sex: The new slave trade*. Special issue. Vol. 3, no. 4, of *Transnational organized crime*, edited by Phil Williams. London: Frank Cass Publishers.
- Smith, Paul J., ed. 1997. *Human smuggling: Chinese migrant trafficking and the challenge to America's immigration tradition*. Washington, D.C.: Center for Strategic and International Studies.
- Sontag, Deborah, and Celia W. Dugger. 1998. The new immigrant tide: A shuttle between worlds. *New York Times*, 19 July.
- Stone, Michelle. 1999. La Eme gang emerging as organized crime threat. *Crime and Justice International* 15 (26) (March): 13.
- Suro, Roberto, and William Branigan. 1999. Alleged railside killer surrenders in Texas. *Washington Post*, 14 July.
- Sutherland, Edwin H., and Donald R. Cressey. 1970. *Criminology*. 8th ed. Philadelphia: J.B. Lippincott.
- Swartwood, Dan T., and Richard J. Heffernan. 1998. *ASIS trends in intellectual property loss survey report*. 4th ed. Alexandria, Virginia: American Society for Industrial Security.
- Taylor, Bruce, and Trevor Bennett. 1999. *Comparing drug use rates of detained arrestees in the United States and England*. Research Report, NCJ 175052. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Terrill, Richard J. 1999. *World criminal justice systems: A survey*. 4th ed. Cincinnati: Anderson Publishing Company.

Thompson, Ginger. 1999. Battered immigrant women face second threat: Deportation. *New York Times*, 18 April.

Travis, Jeremy. 1998. Policing in transition. Plenary address at the Fourth Biennial Conference: International Perspectives on Crime, Justice, and Public Order, 21 June, Budapest, Hungary.

U.S. Department of Justice, Bureau of Justice Assistance. 1995. *Training local law enforcement officers in criminal activities involving illegal aliens*. Fact Sheet, FS 000109. Washington, D.C.

U.S. Department of Justice, Bureau of Justice Statistics. 1999. *Sourcebook of criminal justice statistics CD-ROM: 1994–1998 annual editions*. NCJ 178912. Washington, D.C.

———. 1996. *Noncitizens in the Federal criminal justice system, 1984–1994*. Special Report, NCJ 160934. Washington, D.C.

U.S. Department of Justice, Drug Enforcement Administration. 1999. *DEA Factsheet*. Washington, D.C.

U.S. Department of Justice, Federal Bureau of Investigation. 1997. *A short history of the FBI*. Washington, D.C.

———. 1996. *FBI facts and figures*. Washington, D.C.

U.S. Department of State, Office of the Legal Adviser, Treaty Affairs. 1999. *Treaties in force: A list of treaties and other international agreements of the United States in force as of January 1, 1997*. Washington, D.C.

U.S. Department of the Treasury, Financial Crimes Enforcement Network. 1992. *An assessment of narcotics related money laundering* [redacted version]. Vienna, Virginia. Cited in Lisa Carroll, *Alternative remittance systems: Distinguishing sub-systems of ethnic money laundering in Interpol member countries on the Asian continent* (Lyons, France: International Criminal Police Organization, 2000).

U.S. General Accounting Office. 1999. *Department of Justice: Major management challenges and program risks*. Washington, D.C.

———. 1998a. *Criminal aliens: INS's efforts to remove imprisoned aliens continue to need improvement*. Washington, D.C.

———. 1998b. *Drug control: Information on High Intensity Drug Trafficking Areas Program*. Washington, D.C.

———. 1998c. *Immigration statistics: Information gaps, quality issues limit utility of Federal data to policymakers*. Washington, D.C.

———. 1997. *Illegal immigration: Southwest border strategy results inconclusive; More evaluation needed*. Washington, D.C.

———. 1995. *Law Enforcement Support Center: Name-based systems limit ability to identify arrested aliens*. Washington, D.C.

Washington Transcript Service. 1998. Hearing on FBI, INS, and DEA budgets. Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the Senate Appropriations Committee on FY 99 Budget Requests. 3 March.

Weinschenk, Gene. 1998. Customs smashed child pornography ring. *Customs Today* 33 (4) (Fall): 18–20.

Weiss, Joan C. 1993. Ethnoviolence: Impact upon and response of victims and the community. In *Bias crime: American law enforcement and legal responses*, edited by Robert J. Kelly. Rev. 2d ed. Chicago: University of Illinois at Chicago, Office of International Criminal Justice.

The White House, Office of the Press Secretary. 1998. International crime control strategy. Press release. Washington, D.C., 12 May.

Williams, Phil. 1999. Emerging issues: Transnational crime and its control. Cited in Graeme Newman, ed., *Global report on crime and justice* (New York: United Nations Office for Drug Control and Crime Prevention, Oxford University Press), 233.

Williams, Phil, ed. 1999. *Illegal immigration and commercial sex: The new slave trade*. Special issue. Vol. 3, no. 4 of *Transnational organized crime*. London: Frank Cass Publishers.

Yeager, Matthew G. 1996. Immigrants and criminality: A meta survey. 31 January. Retrieved 8 December 1999 from the World Wide Web: <http://www.achilles.net/~cco/heart/yeager/art-1.htm>.

Zemel, Bob. 1998. Letter to the editor. *Los Angeles Times*, 27 September.

Community Justice: A Conceptual Framework

by David R. Karp and Todd R. Clear

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as a goal. Recent initiatives include community crime prevention, community policing, community defense, community prosecution, community courts, and restorative justice sanctioning systems. These approaches share a common core in that they address community-level outcomes by focusing on short- and long-term problem solving, restoring victims and communities, strengthening normative standards, and effectively reintegrating offenders. In this chapter, we begin with a discussion of the broadest purpose of the model, the “community justice ideal,” and describe recent innovations in policing, adjudication, and corrections. We then describe five core elements of community justice that distinguish it from traditional criminal justice practices. In “Principles of Community Justice,” we outline the philosophy of community justice by describing seven basic principles and how they are illustrated in some recent initiatives. In “An Integrity Model of Community Justice,” we define the specific processes and outcomes that characterize the community justice model. We describe this as an “integrity model” because it provides a yardstick by which particular initiatives can be evaluated. In the final section, we outline some current challenges to the implementation of community justice initiatives. These include questions about individual rights and due process, the limits of community control, community mobilization and representation, and funding for new practices.

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Emerging Community Justice

Among justice professionals, there is growing interest in a new concept of justice often referred to as “community justice.” The term denotes a vision of justice practices with particular concern for the way crime and justice affect community life. This concern has led to a community justice movement that embraces a number of criminal justice approaches, including community crime prevention (Bennett 1998), community policing (Goldstein 1990), community defense (Stone 1996), community prosecution (Boland 1998), community courts (Rottman 1996), and restorative justice sanctioning systems (Bazemore 1998). It is easy to think, then, that community justice is composed of loosely related, innovative projects and programs such as these, all of which operate at the community level.

Yet these disparate approaches share a common core, in that they address community-level outcomes by focusing on short- and long-term problem solving, restoring victims and communities, strengthening normative standards, and effectively reintegrating offenders. Together, these diverse initiatives can be seen at a new and emerging view of justice at the community level. The

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concept of community justice can be seen as a challenge to traditional criminal justice practices and concepts that draw distinct boundaries between the role of the State and the role of communities in the justice process. In a community justice model, priority is given to the community, enhancing its responsibility for social control while building its capacity to achieve this and other outcomes relevant to the quality of community life.

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as a goal. Community justice is rooted in the actions that citizens, community organizations, and the criminal justice system can take to control crime and social disorder. Its central focus is community-level outcomes,

shifting the emphasis from individual incidents to systemic patterns, from individual conscience to social mores, and from individual goods to the common good. Typically, community justice is perceived as a partnership between the formal criminal justice system and the community, but communities often autonomously engage in activities that directly or indirectly address crime.

Community justice shares with restorative justice a concern for victims, and it prioritizes the types of offender sanctioning that require restitution to victims and reparations to the community. Like restorative justice, community justice models reject punishment as a sanctioning philosophy. Restorative requirements are viewed not as punishment but as obligations assumed through membership in a community. Community justice, however, is more broadly conceived of than restorative justice, attending to crime prevention as well as offender sanctioning. In addition, community justice focuses explicitly on the location of justice activities at the local level and concentrates on community outcomes.

Our purpose in this chapter is to articulate the assumptions, aims, and difficulties of community justice. In the spirit of a new century, we seek to articulate the concept of community justice as an ideal type, although we recognize the limitations of current practices. We ask fundamental questions about the mission and purposes of criminal justice and how a community justice model can be distinguished from the traditional business of law enforcement and criminal punishment.

In this chapter, we begin with a discussion of the broadest purpose of the model, “the community justice ideal,” and describe recent innovations in policing, adjudication, and corrections. We then describe five core elements of community justice that distinguish it from traditional criminal justice practices. In “Principles of Community Justice,” we outline the philosophy of community justice by describing seven basic principles and how they are illustrated in some recent initiatives. In “An Integrity Model of Community Justice,” we define the specific processes and outcomes that characterize the community justice model. We describe this as an “integrity model” because it provides a yardstick by which particular initiatives can be evaluated. In the final section, we outline some current challenges to the implementation of community justice initiatives. These include questions about individual rights and due process, the limits of community control, community mobilization and representation, and funding for new practices.

The community justice ideal

One of the attractions of community justice is that it moves away from the tired debate between conservatives and liberals about whether “getting tough” makes sense. Community justice focuses on promoting public safety and the quality of community life, and this is something to which adherents of both liberal and conservative views can subscribe. The community justice ideal is for the agents of criminal justice to tailor their work so that its main purpose is to enhance community living, especially by reducing the inequalities of ghetto life, the indignities of disorder, the agony of criminal victimization, and the paralysis

of fear. This ethic has begun to take hold in each of the three main components of criminal justice: police, courts, and corrections.

Policing

In a very short time, policing has shifted from a detached professional model to an involved community model. Although community policing has been adopted by a majority of police departments across the country (Peak and Glensor 1996, 68), there has been much variation in both the definition and the practice of community policing. Underlying the various approaches are the dual strategies of problem solving and community involvement (Goldstein 1990; Skolnick and Bayley 1988; Bayley 1994; Skogan 1997), a change that represents a shift toward the identification and resolution of the causes of criminal incidents from the on quick reaction to a particular incident. The concern for community involvement has led to an increased emphasis on addressing social disorder, such as public drinking, panhandling, graffiti, prostitution, and so on, because of widespread community concern over these problems (Skogan 1990; Kelling and Coles 1996). More profoundly, community involvement means sharing the responsibility for social control with community members.

These community strategies are redefining police work. Line officers are seen less as bureaucrats caught in autocratic organizations and more as innovators whose knowledge of the world at the line level gives them a special expertise in problem solving. Arrest rates and 911 calls are decreasingly used as indicators of success; they are being replaced by citizen satisfaction with police services, direct solutions to citizen-articulated problems, and, of course, reductions in criminal victimizations. Police are learning to divest themselves of the “we-they” syndrome that dominates the “thin blue line” tradition; instead, police see residents as potential partners in making localities better places to live.

Adjudicating

The court system has demonstrated a number of recent innovations in defense services (Stone 1996), prosecution (Boland 1998), and reorganization of courts into various community models (Rottman 1996). For example, community prosecution attempts to integrate the legal services of a prosecutor’s office into neighborhoods troubled by crime. Neighborhood-based prosecutors find that residents are not solely concerned about serious crimes; they also care deeply about disorder, petty disturbance, and overall quality of neighborhood life. The role of neighborhood district attorneys shifts from the automatic invocation of the adversarial system of prosecution to the systematic resolution of crime and disorder problems. Community courts represent another approach to the adjudication process. Variations of the community court model, such as teen courts,

drug courts, and family violence courts, specialize in particular issues in order to develop more comprehensive solutions. The underlying assumption of community courts is that communities are deeply affected by the sentencing process yet are rarely consulted and involved in judicial outcomes.

Correcting

Community justice has been slowest to arrive in the correctional field. Perhaps this is because the existing term, "community corrections," gives the impression of community justice. Under traditional approaches to this field, corrections enters the community, but the community never makes it into corrections. Nevertheless, several new projects have emerged that seek correctional results that restore victims and offenders (Van Ness and Strong 1997; Galaway and Hudson 1996), while also involving citizens in setting sanctions and evaluating correctional priorities. A recent publication by the American Probation and Parole Association (1996) highlights nearly 20 examples of community/citizen partnerships with correctional agencies. For example, in Vermont, citizen volunteers serve on local boards that work with victims and offenders to negotiate reparative agreements (Karp 1999; Perry and Gorczyk 1997).

The aforementioned illustrates the localized, dynamic, variable strategies that are replacing the centralized, standardized, expert model that has been the object of most professional development in recent years. However, it is important to emphasize that these changes are a spontaneous adaptation of the system to its lack of credibility and effectiveness, and they are undertaken by some elements of the justice system, often in isolation of others. It is not yet a coherent practice, a systematic theory, or grounded in a particular tradition of cumulative empirical research. Our aim is to describe what we see as the community justice ideal, which represents a compilation of the best elements of the community justice movement.

Five elements of community justice

Community justice can be identified by its five core elements. Community justice explicitly focuses on (1) neighborhoods, (2) problem solving, (3) decentralization of authority and accountability, (4) community quality of life, and (5) citizen participation.

1. Community justice operates at the neighborhood level.

Criminal law jurisdictions are defined by political boundaries (States, municipalities, and governments), but from the point of view of community life, these legal perimeters are often without meaning. Both Lubbock and El Paso implement

Texas criminal law, but the nature of community life in these towns, which are hundreds of miles apart, is quite different when it comes to crime and its control. Operationally, this means thinking in terms of *blocks* of space, not cities, counties, or States. Under the community justice ideal, criminal justice activities will be tied to these delimited localities and will be free to adapt to particular manifestations of community life there.

2. Community justice is problem solving.

Traditional criminal law is defined as a contest between the accused and the state. Under community justice, crime is not a contest to be won but a series of problems to be solved. The emphasis is placed on both the public safety problems that need to be solved in order to improve community life and the potential consequences of the means taken to solve those problems. Problem-solving approaches are different from the conflict paradigm in that they rely on information, deliberation, and mutual interest for a resolution. The belief is that citizens share a set of values and concerns, and with proper information and order, a way out of the problem can be found.

Community-level information is used in three problem-oriented ways. First, geospecific information organizes places into priorities (Taylor and Harrell 1996). High-crime locations receive greater attention and greater investment of local resources, for not only is the problem more difficult, but the potential payoff in improved quality of life is greater. Second, residents' concerns and desires are a source of program information. They tell justice workers which factors residents see as most closely tied to quality-of-community-life problems (Kelling 1992). Third, information translates into targets that can be used to evaluate the success of a given strategy for confronting crime (Sherman et al. 1997).

3. Community justice decentralizes authority and accountability.

Traditionally, criminal justice management is hierarchical; at each level of the organization, a worker reports to an immediate superior, who in turn reports to the next level. Community justice approaches have nontraditional organizational alignments. Staff may report to citizen groups in addition to professional superiors. Managers in one organization (for example, policing) may be "matrixed" with managers of another organization (for example, probation or prosecution) in order to improve coordination and increase cross-fertilization of ideas and action. For example, in Boston's Operation Nightlight, police officers and probation officers are partnered in their outreach to ex-offenders living in the community (Corbett, Fitzgerald, and Jordan 1996). The communication channels

under such inventive organizational structures are complicated. Lateral information sharing and short-term, ad hoc problem-solving groups may be dominant modes of work.

The spirit of innovation requires a transformation of the justice profession from hidebound antagonisms among citizens and across agencies to interconnected processes of problem identification, information gathering, intervention design, and evaluation. For example, new line authority in community policing often enables the cop on the beat to do much more than exercise enforcement powers. He or she is often able to organize community anticrime campaigns, mediate ongoing disputes, and coordinate the solution to problems by collaborating with workers from other agencies. Whether a social worker places an at-risk youth in a drug treatment program or a transportation planner alters traffic flow through a highly visible drug market or “bazaar,” the solution to any particular public safety problem will nearly always require organizational integration.

4. Community justice gives priority to a community's quality of life.

Traditional criminal justice concerns itself with individuals accused of crimes and—somewhat more recently—their victims. The processes and outcomes the system applies to those individuals produce justice. Community justice understands these as important but subservient to a more significant aim: to improve the quality of community life. One of the lessons of neighborhood prosecution initiatives has been the acute need among inner-city residents for legal assistance that goes well beyond the prosecution of serious crimes (Boland 1998). Because an offender has been convicted and punished—and even when the specific crime victim is fully satisfied with the penalty—it cannot be assumed that justice prevails in its broadest meaning. Under the theory of community justice, the aim of crime-related processes is not merely to change the circumstances of offenders and victims but to strengthen the capacity of communities for self-regulation (Bursik and Grasmick 1993) and realization of the collective aims of welfare—what others have called “collective efficacy” (Sampson, Raudenbush, and Earls 1997). Justice, then, is not exclusively the experience of individuals around their particular criminal cases; it is also a collective experience in everyday life (Kelling and Coles 1996).

At least two challenges are posed by this concern for justice as an aspect of community life. First, communities are composed of diverse individuals and layers of competing interests. To find ways to put justice practices into action such that diversity is recognized and fostered is not an easy task. As the harmfulness of crime to community life becomes apparent, the temptation grows to

adopt zero-tolerance approaches to crime that treat fellow citizens as a kind of enemy. How the aim of quality of life can be held high, without excluding certain community members from the vision, is a profound challenge to advocates of community justice. Second, the social fact of extraordinary inequality has meant that those communities most damaged by severe levels of crime are least capable of mobilizing resources to deal with it. Community justice, to be a meaningful vision, must include strategies for enhancing the capacity of these already hard-pressed local areas.

5. Community justice involves citizens in the justice process.

A variety of roles exists for citizens in community justice initiatives, but every role involves the capacity of the citizen to influence the local practice of justice. The least involved citizen may influence practices by attending and participating in meetings in which issues of crime and order are discussed. Others may volunteer their time to work on particular projects, provide support to victims, assist offenders in their reintegration back into the community, and carry out community crime prevention activities. Still others will take more formal roles as members of advisory boards, such as Austin's Community Justice Council (Earle 1996), to provide more structured input into community justice practices.

The shift toward citizen participation is grounded in two important insights. First, formal social control by police and the courts is a thin layer in a much thicker foundation of institutions and cultural practices that produce social order. The thin blue line is buttressed by the important work of families, schools, churches, civic organizations, and others in the creation of law-abiding citizens and safe public spaces. Second, the shift toward citizen participation is grounded in the basic recognition that community members are citizens in a democratic society. It is assumed that citizens in a democracy actively work toward the welfare of the whole society and do not just look out for themselves. Our past failures in part result from a false assumption that the onus of public safety falls entirely on the criminal justice system.

The aforesaid elements represent responses to changes in crime and community life. They call for a justice system that is more attuned to the need to improve the quality of community life in America. They also contain the seeds of safer communities and more responsible community members. The vision promoted by these changes is of an increasingly relevant and purposeful set of justice practices carried out in close cooperation with citizens affected by those practices.

Principles of Community Justice

Next we articulate seven principles of democratic and egalitarian community justice. These serve as our guideposts in the assessment of community justice in practice. For each principle, we provide an example of its implementation.

Democratic principles

Three democratic principles refer to community justice responses to criminal incidents. The microlevel focus taken here attends to the democratic participation of citizens in the justice process. We describe the rights and responsibilities of various stakeholders: offenders, victims, onlookers, community institutional representatives, and criminal justice practitioners. Our view is that all parties have unique and important roles to play in the pursuit of a just resolution to criminal incidents. This democratic outlook emphasizes civic participation in the criminal justice process according to three overarching principles: norm affirmation, restoration, and public safety.

In Vermont's reparative board program, community volunteers serve on boards that meet with adult offenders to negotiate terms of reparation to victims and to the community.

Norm affirmation

When a community responds to a criminal incident, it seeks not merely to restore credibility to the community's conception of the moral order by reaffirming that individuals are accountable for their violations of community life, but also to symbolically affirm community norms for others who have not disobeyed them. A fundamental principle of democratic community justice is the reaffirmation of standards that have been brought into dispute by the criminal incident. Norm affirmation is more than an intuitive recognition of right from wrong; it is a conscious process that articulates behavioral standards and provides justification for them.

In Vermont's reparative board program, community volunteers serve on boards that meet with adult offenders to negotiate terms of reparation to victims and to the community. It is an approach that mobilizes community members to respond to crime by enabling them to clarify and enforce appropriate standards of behavior. By removing the sanctioning process from the courtroom to the informal problem-solving setting of the community boardroom, offenders are forced to confront their community peers directly. The harmful consequences of the crime are made plain, and the community representatives are given a strong voice in the process of communicating normative standards. Community

justice initiatives seek to affirm local standards of behavior. Hence, the reparative boards are given a fair degree of autonomy and discretion in what is to be communicated. The Vermont reparative boards are an attempt to give a role to the community in many aspects of the sanctioning process, but especially to provide them a forum for affirming local norms of conduct.

Restoration

Restoration as a principle of sanctioning has gained much attention recently (Bazemore and Umbreit 1994; Braithwaite 1997; Van Ness and Strong 1997). In essence, this view takes exception to retributive sanctioning that punishes offenders without holding them accountable for making amends to victims

The goal of restorative justice is repairing the damage done by the offense rather than inflicting proportionate harm on the offender.

and the community at large. The idea underlying the pursuit of restoration is that crime has wrought harm and this needs rectification, preferably through restoration rather than reciprocal imposition of more harm (Clear 1994). The goal of restorative justice is repairing the damage done by the offense rather than inflicting proportionate harm on the offender (Bazemore and Umbreit 1995).

The basic “family group conference” model, which originated in New Zealand (Maxwell and Morris 1994) and is increasingly used in the United States (Immarigeon 1996; McCold and Stahr 1996), is a diversionary program most often used for youthful offenders arrested for relatively minor crimes. A major experiment is currently being undertaken with juvenile offenders and drunk drivers in Australia (Sherman and Strang 1997), following a positively evaluated juvenile conferencing project (Moore and O’Connell 1994).

The Australian model, often called the “Wagga Wagga” model to distinguish it from the New Zealand design, employs police officers as the facilitators of a conference between victims, offenders, and “onlookers” (typically, supporters of the victim and offender). The explicit goals of a family group conference are to ensure that the offender understands the seriousness of the crime and takes responsibility for making amends; to provide a forum for the victim to participate in the sanctioning process and obtain recompense; to provide a meaningful role for police and other community institutions’ facilitation of the justice process; and to provide opportunities for rehabilitation and community service. Unlike Vermont’s reparative boards, the emphasis is on victim-offender mediation and problem solving rather than on the affirmation of local norms.

Public safety

The third principle of a community justice approach to criminal incidents is public safety: the assurance that offenders will not cause additional harm to community members. This is particularly important for the processes of victim healing and reducing community fear of crime. The quality of community life is in part predicated on the confidence its members have in crossing public spaces and safely engaging other community members. Conviction of an offense undoubtedly makes people suspicious of the offender's future intentions. A community-oriented response to a criminal incident must address stakeholders' concerns about offenders' potential recidivism. Moreover, it requires an active campaign to reassure the community of its safety through concrete steps to enhance formal and informal controls.

An example of the public safety principle is Boston's Operation Cease Fire (Kennedy 1997). The strategy uses data widely available to the criminal justice system—in particular, the facts that a few offenders account for a substantial proportion of all crime and that these offenders are often concentrated in a geographic space. These factors suggest that public safety can be increased substantially by focusing institutional resolve on gang offenders.

Two basic strategies underlie Operation Cease Fire. First, interagency collaboration helps to identify individuals and gangs at risk for violence. Participating agencies regularly meet to strategize and share information critical to the identification of gang members who would be targeted, thereby increasing the effectiveness of investigation and developing a repertoire of interventions and sanctions. Moreover, the agencies work together to strengthen the tone of seriousness regarding intervention. The coordinated effort enables the project to focus its intervention strategy on the most violence-prone areas. Second, the operation is based on increasing deterrent effects through swift and certain sanctioning and overcoming traditional weaknesses in these critical domains. This is achieved through a variety of means. When a violent act is committed, the various agencies can, at their discretion, not only arrest suspects, but also shut down drug markets, strictly enforce probation restrictions, make disorder arrests, deal more strictly with cases in adjudication, deploy Federal enforcement power, and so on.

The Cease Fire strategy appears to have been quite successful; its implementation coincided with a dramatic drop in Boston gang violence (Kennedy 1997). The success of the strategy is predicated on the capacity of the system to track the activities of individuals at great risk for offending. Although the criminal justice system typically ignores supervision in the community and only punishes offenders severely after the fact, Operation Cease Fire points to the real possibility of prevention through deterrence. The strategy is unique in how it uses

the aggressive enforcement powers of the criminal justice system and applies them as a prevention strategy.

Egalitarian principles

Here we consider four principles that frame a community justice approach to criminogenic neighborhood conditions. This expands the community justice model from the milieu of criminal justice to the broader context of social conditions that place individuals at risk for a number of social problems, such as drug abuse, unemployment, school failure, and teenage and out-of-wedlock childbearing. Our aim is to broaden the community justice approach beyond the typical reaction to particular incidents (even a considerably different reaction than previously described). Instead, we focus on proactive and preventive measures. The four principles are meant to orient community justice approaches toward egalitarian concerns for equality, inclusion, mutuality, and stewardship.

Equality

The pursuit of social equality is grounded in the moral concern that opportunity is unevenly distributed across society. Researchers have expressed particular concern for the inequalities that result from racial segregation (Massey and Denton 1993) and concentrated poverty (Sampson and Wilson 1995). Communities hard hit by crime are nearly always the same communities that suffer extreme levels of poverty and disorganization, and these communities are also likely to lack the resources to address their crime problems. A community justice approach to inequality begins by considering a community's capacity for responding to crime and the institutional resources it has available to provide directly for the community welfare. The aim is to increase the community's capacity to leverage extra local resources on its own behalf (Bursik and Grasmick 1993) in order to enhance the capacity of indigenous resources.

A good example of a program that adheres to the equality principle is the Community Building Initiative (Chavis, Lee, and Merchinsky 1997). This project is sponsored by the Local Initiatives Support Corporation (LISC), which was established by the Ford Foundation to facilitate the development of community development corporations (CDCs). CDCs are neighborhood organizations generally set up to revitalize urban neighborhoods by renovating housing and addressing local social problems. The Community Building Initiative provides funding, training, and other capacity-building support to CDCs in a number of U.S. cities. The project is meant to assist CDCs in their efforts to engage residents in neighborhood development activities and to create linkages between CDCs and public and private institutions capable of supporting local housing development and other community facility projects.

The Community Building Initiative brings technical assistance to local CDCs, promotes collaboration among CDCs, and fosters connections between CDCs and public agencies and private investors. As a result, CDCs develop action plans and engage community residents, local social service providers, and outside collaborators in community-building activities. Specific activities can vary greatly depending on the local will. For example, Chavis, Lee, and Merchlinsky (1997) report a number of projects, such as organizing block or tenant associations, creating community leadership development programs, organizing to close drug houses, developing community gardens, and developing programs to involve parents in schools. The specific initiative that they evaluated helped foster linkages with external organizations—through CDC outreach—by bringing health care services to the local neighborhood through partnerships with area hospitals and universities. There were also efforts to bring criminal justice resources from the city government to the local community through partnerships with various criminal justice agencies.

Inclusion

The principle of inclusion asserts that communal membership is not cheaply bought or sold. Much of the pressure for longer prison sentences is predicated on a “kinds of people” perspective on crime: The world can be cleanly divided into good people and bad people, and the sooner the bad people are removed from the public domain, the better. A community justice approach favors public safety but rejects the simplistic claim that removal of the “bad guys” is the core strategy for solving community safety problems. Residents existing on the margins of community life are potential resources for community development. The challenge is not to isolate as many dubious residents as possible but to find ways to include as many community members as possible in efforts to improve community quality of life.

One community justice effort has been the formation of drug courts to facilitate the treatment of substance abusers (Roberts, Brophy, and Cooper 1997). Given the close linkage between substance abuse and crime (Belenko and Dumanovsky 1993) and the minimal effect of incarceration without treatment to reduce substance use (U.S. Department of Justice 1995), drug courts have sought a way to provide treatment while keeping nonviolent offenders in the community. Thus, the drug court movement has not focused on violent offenders or drug dealers; rather, it has focused on offenders (typically charged with felonies) identified with substance abuse problems.

Drug courts are an important example of the inclusion principle because they indicate a shift in perspective that accepts substance abusers as troubled members of the community in need of help, rather than considering them social

misfits in need of exile through incarceration. Community justice initiatives that adhere to the inclusion principle, therefore, seek to keep offenders from being cast out by implementing institutional changes that manage their reintegration into the community. Drug courts accomplish this by:

- Specializing in the particular legal and social concerns of drug offenders.
- Collaborating with treatment agencies and community organizations.
- Educating and training judges, prosecutors, defenders, and other criminal justice practitioners in substance abuse and treatment modalities, and also educating and training treatment providers about criminal justice procedures and concerns.
- Centralizing case management and followup of offenders, which facilitates rational sanctioning and treatment procedures of supervision and evaluation.

Mutuality

As an ethical minimum, community justice stands for peaceful coexistence of self-interested actors and, more importantly, cooperation in the pursuit of mutually beneficial ends. On the one hand, this entails incentives for prosocial behavior: performing community service, joining a community crime prevention campaign, socializing and supervising youths, and so on. On the other hand, the mutuality principle endorses disincentives for antisocial behavior: holding offenders accountable for the damage they have caused, increasing the risks of criminal detection, making criminal targets less vulnerable, or reducing the rewards of criminal behavior. The mutuality principle helps counteract the rational incentives that underlie much criminal activity, in particular the perception by offenders that no one cares enough to intervene. The best approaches alter criminal incentives without increasing coercion in society; freedom is preserved, but the attractiveness of criminality is diminished.

Crime prevention through environmental design (CPTED) is based on the observation that certain characteristics of places facilitate crime; many types of places do not seem to be criminogenic, but others frequently are, such as convenience stores or taverns (Eck 1997). A good example of the mutuality principle in action was the 1995 renovation of Bryant Park in Midtown Manhattan (MacDonald 1996). Prior to the renovation, the park was a well-known haven for drug dealers; robberies, assaults, and shootings were common. Today, the tree-lined open space is crowded with picnickers and Frisbee™ throwers. The difference was the result of a substantial beautification and maintenance project that combined landscaping, sanitation, and security. In essence, park planners

availed themselves of a variety of CPTED strategies that made the park attractive to community members but not conducive to criminal activity.

Bryant Park exemplifies the mutuality principle for a second reason that goes beyond its physical transformation. Its reclamation is the result of an increasingly common partnership of proximate commercial establishments known as business improvement districts (BIDs). In New York, the Bryant Park BID levied taxes from local businesses and corporations, and the funds were used to enhance public spaces, reduce disorder, and, from the perspective of the merchant, increase the commercial viability of the area. Under New York law, BIDs are formed voluntarily, by agreement of the local businesses; however, after a BID's formation, compliance with the taxation becomes mandatory. BIDs are a structural mechanism for enjoining private interests to secure public goods. The mechanism relies on shared self-interest: The businesses had an economic incentive to make neighborhood improvements they knew the city could not afford (or to which it would not otherwise commit). Both CPTED strategies and BIDs are predicated on altering the incentive structure, making crime less rewarding to the rational actor.

Stewardship

Stewardship is a principle that calls on citizens to view themselves as responsible for the welfare of the larger community, not merely in response to their own immediate interests but also to the needs and interests of others, particularly those who are disadvantaged or vulnerable. It is the community justice principle that advocates civic participation at all levels of the criminal justice process. Who is to be the "community" in community justice, if not its residents? The point is not simply to enhance the legitimacy of the system in the eyes of the public; it is, more fundamentally, to promote democratic citizenship.

Stewardship is also a resource-building idea. The goods that serve the collective community need to be well maintained and strengthened, and the resulting benefits need to be spread widely among the members of the community. Structures are to be maintained in good working order; public places are to be kept clean, attractive, and accessible. The community acts as manager of its own living space and benefits from living in a clean, well-functioning area. The management of public goods is by no means automatic in a highly individualistic society, given the typical conflicts between public and private interests (Bellah et al. 1991). Thus, stewardship is a principle to be cultivated among community members.

In Austin, Texas, stewardship is illustrated by the activities of the Community Justice Council, a decisionmaking body composed of 10 elected officials, including prosecutors, legislators, city council and school board members, and

judges. The council is responsible for developing community justice plans for Austin and Travis County. The council is closely linked to and advised by the Community Justice Task Force, which has 15 appointed officials, including the chief of the Austin Police Department, the superintendent of Austin's school system, and the directors of the juvenile and adult probation departments. Finally, the council is advised by the Neighborhood Protection Action Committee, which includes 25 citizen activists selected for representation by local neighborhoods.

The formal coordination of criminal justice agencies, social service agencies, and community groups enables the council to devise plans that are both comprehensive and appropriate for the needs and interests of local communities. For example, one of the major efforts of the council has been the creation of the Community Justice Center, which is a community correctional facility located in a troubled neighborhood and built on community justice principles. The collective work in developing this center ranged from site selection and facility design to the composition of programs and services aimed at offender reintegration.

The strength of the Community Justice Council is that it provides an organizational structure for citizens to exercise a voice in criminal justice planning. This is not merely an opportunity to sound an opinion in a neighborhood meeting; it is also an opportunity to work collaboratively and substantively with representatives from numerous public agencies in the production of policy and programs. Moreover, the council is guided by a philosophical mission that invites participants to reflect on the wider goals of criminal justice and to seek means to accomplish them. In this sense, the council cultivates stewardship because it displaces consideration of narrow, short-term interests in favor of the long-term general welfare of the community.

An Integrity Model of Community Justice

The preceding section emphasized general principles underlying the community justice ideal. This section delineates an integrity model that identifies the central process and outcome dimensions of community justice.

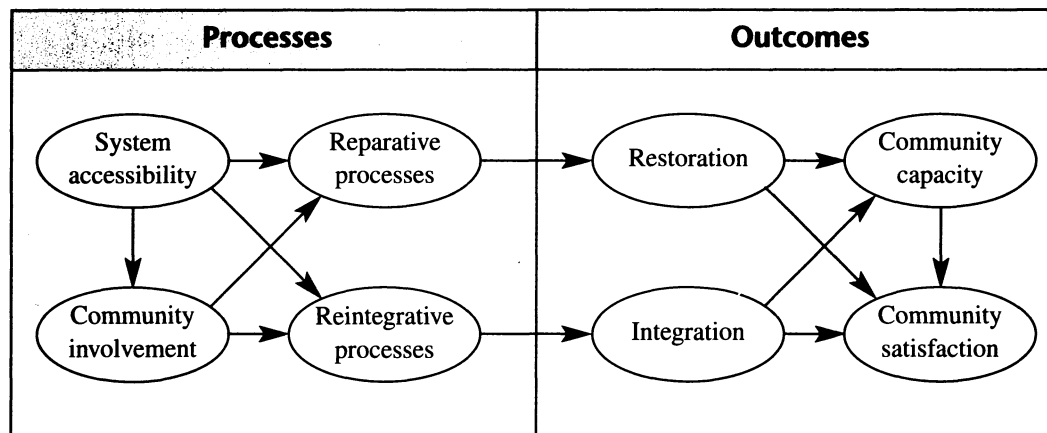
Typically, a small domain of concerns conceptualizes criminal justice outcomes. In the contemporary get-tough era, these are almost exclusively crime control variables: crime rates for areas and recidivism rates for individuals. This domain is sometimes broadened with broken windows concerns for disorder rates and their potential link to serious crime rates (Kelling and Coles 1996). Nevertheless, the focus of these is essentially crime control. In more liberal times, the domain of outcomes included justice concerns such as race bias in

court processing and offender rights protections such as Miranda. Outcome domains have also included treatment and rehabilitation concerns. We use a different approach by conceptualizing justice outcomes from the perspective of community life. This perspective broadens the scope of criminal justice interests without dismissing concerns for individual rights or social order. In particular, the integrity model developed here emphasizes *restoration* of the community in response to the damaging consequences of crime and *social integration* of marginalized individuals, particularly offenders and victims. These twin foci of restoration and reintegration distinguish community justice from traditional or procedural justice approaches as well as from atavistic versions of local justice originating in either vigilantism or racial discrimination.

The integrity model presented here is not a causal model. Community involvement, for example, is not predicted to lead automatically to a reparative process. Indeed, one great concern raised by critics of the community justice movement is that communities will advocate narrowly retributive responses to crime, even suspending traditional procedural protections of alleged offenders. The integrity model illustrates the conceptual organization of community justice: what system and community processes are necessary to achieve desired community justice goals and how each dimension is meant to facilitate the next. It provides a grounded way to evaluate the programmatic elements of community justice initiatives. A given community justice strategy that deviates from the integrity model can be seen as a programmatic failure to express a principled community justice process. That is, a program might profess a commitment to community justice but undertake and succeed at something quite different—something that, whatever its potential merits, we would not call community justice. Methodologically, the integrity model speaks to the problem of construct validity rather than to the problem of reliability. The question is basic: Is what we observe community justice? Once this question is answered, we will be in a position to ask whether particular processes are predictive of community justice outcomes. The purpose here is to establish a framework that defines core features of community justice and to develop a set of theoretical and empirical indicators for assessing the extent to which initiatives in the field conform to the theoretical model.

The integrity model is divided into two domains (see exhibit 1). First, we posit four process-oriented categories: system accessibility, community involvement, reparative processes, and reintegrative processes. Because this movement appears to be guided by efforts of criminal justice practitioners to include the community, system accessibility is conceptualized as an antecedent factor. Coupled with community involvement, the community justice model initiates concurrent reparative and reintegrative programmatic agendas.

Exhibit 1. Community justice integrity model



The second domain refers to intended outcomes of the community model. Restoration and social integration serve two important community goals. First, they facilitate community capacity, or the ability of communities to solve future problems and provide collective goods. This is consistent with the premise of social disorganization theory that effective communities are able to realize common values (Bursik 1988; Kornhauser 1978). Second, restoration and social integration affect community satisfaction, such that community members feel a strong measure of public safety (Miethe 1995), believe that justice is served in response to violations of the normative/legal order (Tyler 1990), and have a strong sense of community (McMillan and Chavis 1986). Thus, community quality of life is emphasized in this criminal justice model.

The processes of community justice

A description of the integrity of community justice begins with its process components. These functions of community justice initiatives are areas of activity for community justice workers and their partners. We define them as core concerns around which programs can be designed and developed. The four are described as follows.

System accessibility

The recent movement in community justice is propelled by the search among criminal justice practitioners to find new approaches to community safety and community satisfaction with the justice process. Police chiefs embrace community policing practices, such as foot patrols, citizen surveys, and problem solving (Skogan 1997); public defenders create new services at the local level, such as the Neighborhood Defender Service of Harlem (Stone 1996); prosecutors

devise new strategic priorities, such as the creation of resident-driven search warrants in Portland (Boland 1998); community courts specialize in quality-of-life issues, such as the Midtown Community Court in Manhattan (Rottman 1996); and correctional departments hire staff to develop community justice solutions, such as a restorative justice planner in Minnesota (Pranis 1996) and reparative board coordinators in Vermont (Karp 1999). Is there a common philosophical underpinning to these various criminal justice system initiatives? Foremost, it appears that such efforts represent an explicit concern for making the system more accessible to community residents. This may be especially true in three domains.

First, community justice efforts appear to take seriously the location of the criminal justice process. To what extent, for example, are agencies physically accessible? How far is it that a crime victim would need to travel to participate in the justice process? The storefront community police stations may be axiomatic of this strategy of accessibility.

Second, community justice is concerned with flexibility in the delivery of services. Line staff, for example, are meant to have the authority to respond immediately and creatively to residents' concerns as they are raised. Both the range of services by an agency and its mode of delivery is deemed flexible in response to perceived needs, changing conditions, and/or efficiencies that can result from collaborations and problem solving. Accessibility is engendered by the responsiveness of agencies and their staff to local problems in a timely, productive, and energetic manner.

Third, community justice initiatives enhance accessibility through their informality. Rejecting the impersonal authority of the court setting, sanctioning processes—such as the reparative board hearings of Vermont or the family group conferencing models arriving from Australia and New Zealand—disclose the personal relations of criminal disputes. The shift is consistent with Gilligan's (1982) contrast between the "logic of justice" and the "ethic of care" in moral decisionmaking. Accessibility is enhanced by an atmosphere of personal respect, sensitivity, and consideration as well as a facilitation process that emphasizes good communication, consensus, and conflict resolution.

Community involvement

Making the system accessible to the public is a precondition for initiating reparative and reintegrative justice processes. It sets the parameters for deliberation based on local priorities, egalitarian principles, and responsiveness rather than rulebound coercion or single interest usurpation. Most important, accessibility is designed to enlist community members in a process typically controlled by

Community justice is likely to be most successful when those involved in the justice process are directly related to the incident. As their link to the incident diminishes, so too may the impact of their participation.

State agents. Community involvement is grounded in a basic understanding of democratic process: Decisionmaking is devolved, citizenship is valued, and residents are invested and empowered (Barber 1984). Community involvement is emphasized in efforts to identify relevant parties, recruit participants, and offer a significant determining role for community members in exchange for participation.

Community justice begins with a process of defining immediate parties to criminal incidents and/or criminogenic situations. The community justice process is concerned foremost with victims and offenders. Indeed, a major movement in community justice over the past two decades has been victim-offender mediation (Umbreit 1994). More recently, the notion of relevant parties has expanded to include supporters of

victims, such as family and friends, and supporters of offenders, such as family members and others who share a concern for both the offenders and conformity to the law. Family group conferences (Braithwaite and Mugford 1994; Hudson et al. 1996) are organized by bringing such groups together in a problem-solving session following a criminal incident. The community question is partly resolved by the immediacy of the salience of the incident and finding persons directly linked to the incident by participation or close personal ties. Recent concern over the damaging effects of social and physical disorder on neighborhoods (Kelling and Coles 1996; Skogan 1990) expands the number of relevant parties to include those indirectly affected by criminal incidents because of the fear the incidents engender, possibly causing community residents to withdraw from community life (Miethe 1995). One hypothesis regarding the definition of community is that community justice is likely to be most successful when those involved in the justice process are directly related to the incident. As their link to the incident diminishes, so too may the impact of their participation.

Once relevant parties have been identified, recruitment for participation is necessary. Community justice tries to avoid coercion whenever possible. Often, even offenders are given a choice about the nature of their involvement. For example, they may be offered the option of participation in a family group conference or proceeding with traditional court adjudication. Victim participation is often viewed as highly desirable, and one question about implementation may be how much they are pressured to participate in a voluntary justice process. This second dimension of community involvement, therefore, revolves around processes of recruitment and the nature of participation. How are they recruited? How much do they participate?

A third dimension of community involvement reflects the relative efficacy of community participants in the justice process. This dimension reflects the community partnership with the criminal justice system. Even if the community's involvement is extensive, it may also be superficial and unimportant to justice outcomes. Such would be the case when agencies develop community justice initiatives as strategies of public relations rather than as a true commitment to power sharing. Community volunteers are at a technical and political disadvantage against professional criminal justice staff, and attendance to this imbalance is a critical dimension of evaluation (Crawford 1995). To what extent are decisionmaking processes democratic and inclusive of community members? What authority is given to community groups to develop their own agendas and complete them? What resources and other supports are given to these groups? What formal agreements are established in community/justice agency collaborations? What arrangements are made for contingencies in the event that agreements are abrogated or unfulfilled? If power is devolved from the system to the community, another central issue is the development of new systems of accountability. Are citizens subject to the same rules as agency employees? When community groups are unsuccessful or irresponsible (for example, racially discriminatory), how are they held accountable, if at all?

Reparative processes

The reparative process is grounded in the problem-solving model common to community policing. Rather than emphasizing strict adherence to precedence and procedure, the focus is continually cast on the problems caused by crime and the problems that cause crime. When harmful conditions and criminal damage is identified, a decisionmaking process is undertaken to rectify this harm. Unlike traditional just deserts philosophies, emphasis is not placed on imposing proportional costs on offenders for the harm they have wrought. Nevertheless, offenders are believed to be in debt to both victims and the community. Holding offenders accountable in a manner that facilitates their making amends is a critical part of the community justice process. Traditional punishment that is not directly constructive is outside the community justice model. However, both incapacitation (to ensure public safety) and potentially onerous work may be requirements of both the reparative and reintegrative processes.

The reparative process is defined by two categories: an identification process that delineates reparative tasks and an implementation process that facilitates the completion of these tasks. Reparative decisionmaking is often done in a negotiation process that includes offenders and victims. Victims have an important role in specifying how they have been harmed by the criminal incident and what they might need to be healed. Monetary restitution might be only one of a

long list of needs, and even though offenders may have an important contribution to make, they may not be the appropriate or only parties to take responsibility for reparations. In Vermont, reparative boards negotiate contracts with offenders, in large part to identify appropriate reparative tasks. When an offender signs a contract, he or she commits to fulfilling its terms as the condition for completing probation.

The term “reparation” is generally used in conjunction with a sanctioning process. However, it is equally applicable to problem solving and prevention-oriented needs and tasks. Hence, reparative sanctioning is theoretically similar to problem-oriented policing in its focus on rectifying specific community problems. The crucial element is an overt decisionmaking process that identifies a problem or harm and articulates a reasoned strategy for resolving the problem or fixing the damage. The problem, for example, might be subway graffiti, with a solution crafted by affected parties, including commuters, transit authorities, and police, as was the case in New York (Kelling and Coles 1996).

Once a reparative need and solution have been identified, carrying out this solution requires a considerable organizational effort. Typically, solutions transcend the compartmentalized responsibilities of individual staff or agencies, and it is necessary to organize a collaborative team (Schorr 1997). When offenders are assigned community service tasks, they may need training in addition to supervision. What efforts are made to create reparative opportunities is itself a subject for evaluation. One element of this is the amount of time and effort agency staff or community volunteers commit to building reparative opportunities that are relevant to the identified need, as opposed to relying on default service opportunities already in place but poorly linked to the problem-solving process. For example, offenders picking up trash along a highway may be relevant for litterbugs but would do little as redress for the consequences of a burglary or assault.

Reintegrative processes

The twin goals of community justice are restoration of victims and communities and social integration of marginal community members, particularly withdrawn victims and antisocial offenders. Reintegrative processes, like defining the relevant community and specifying problems to solve, require an initial identification process that articulates local behavioral standards and establishes consensus around them. What does it mean to be “integrated” into conventional social life? Without a specification of behavioral norms, community justice processes can quickly devolve into a tyranny of the majority in which stultifying conformity is demanded without reflection on why social control processes are necessary. Integration is an ambiguous concept, for it necessarily adjudicates

toleration for individual expression, with expectations for communal self-sacrifice. In a society premised on basic freedoms, community justice processes need to be conscientiously specific and justifiable. One approach, advocated by Kelling and Coles (1996), is to generate, through consensus processes, lists of appropriate and inappropriate behaviors, such as conduct in parks, on sidewalks, or in subway stations. The result, therefore, is a focus on problem behaviors rather than on types of persons, such as homeless people, who are often targets of social control or order maintenance activities. This ensures a focus on behavior that generates clearly identified harms to community members rather than on behavior or lifestyles that may be ideologically controversial.

Reintegrative processes begin with *norm affirmation* strategies. The object is not to ignore significant normative dissensus where it exists, such as possession of small amounts of marijuana or the permissibility of panhandling. Instead, the focus is on identifying criminal harm by disclosing the consequences of particular, sometimes aggregated, behaviors on community residents. The basic question is to determine what harm is caused by a particular behavior, thereby justifying its regulation. Given that criminal behavior violates normative expectations, criminal incidents become an important moment for communal reflection on the purpose of the norm and the need for consensus in its observation. In Vermont, for example, an explicit purpose of the reparative board hearing is to restate local behavioral standards. This is strengthened by the presence of victims who clearly express the justification for the norm by virtue of their victimization, and it is strengthened by board members who are not impersonal representatives of the State but volunteers who have a clear stake in the viability of their community. In this norm affirmation process, it is hoped that the offender will gain a greater understanding of the rationale for the norm and express both remorse for the violation and a commitment to follow the norm in the future.

The reintegrative process is also explicitly concerned with public safety, particularly the supervision of offenders in the community. Whether or not offenders are incarcerated, the sanctioning process generally concludes with the return of the offender to the community. However, this transition has been relatively weak in traditional justice practices. Community justice, which is primarily concerned with the quality of community life, pays much closer attention. A first step in the process is the determination of offender risk. Instruments such as the Levels of Service Inventory (Andrews and Bonta 1996) and the Risk and Protective Factors Scale (Hawkins, Arthur, and Catalano 1995) are used to assess the likelihood of recidivism. Considerations include prior offending, types of offenses, individual characteristics of the offender, and assessment of offender compliance with sanctioning processes, such as completion of reparative agreements. Risk then determines the level of supervision necessary.

Reintegrative considerations must include determinations of who is responsible for supervision, what form it will take, and how long it will continue.

Another approach to reintegration is the development of support networks for offenders and victims. Because of the acute vulnerability of crime victims (Farrell 1995; Pease and Laycock 1996) to further victimization, support mechanisms are crucial for victims' full reintegration in the aftermath of a crime. Part of this entails an examination of a victim's social ties to the community, such as family, friends, coworkers, and neighbors—people who can be called on to provide extra attention in the crisis period following the crime. In Great Britain, this has been described as building "cocoon" around the victim (Farrell 1995). When possible, victim services may be offered to facilitate the cultivation of social ties or to provide direct support to isolated victims. Offenders are also in need of social support, and an examination and development of their social ties is necessary. In addition to overcoming offender isolation, it is also important to offset criminal social ties with conventional ties.

In linking microlevel and macrolevel crime problems, restoration becomes an overarching goal of community improvement over status quo conditions: When victims have been harmed, they are to be healed; when property has been damaged, it is to be fixed; when disorder undermines community-level functioning, order needs to be restored; when institutional failure creates conditions that foster crime, institutional investment is indicated.

A final aspect of the reintegrative process is the creation of programs for *competency development*. What skills do victims and offenders need for effective reintegration? How can these skills be promoted? What programs are offered to develop skills? For victims, these may include strategies of self-protection. For offenders, programming may focus on education, job training, drug treatment, family planning and parenting, or money management. A specific approach to competency development may be the use of mentoring or regular home visits that both impart skills and offer supervision and social support (Sherman 1997).

The outcomes of community justice

The dimensions described in the preceding section pertain to community justice processes, or the means for achieving community justice goals. Together, these processes should foster a set of important community justice outcomes—the operationalized meaning of community justice as a collective experience. We

next describe these four outcomes, focusing on measures that are directly relevant to the quality of community life.

Restoration

A concern for restoration links two conceptual domains of justice, a micro-macro domain and a reaction-versus-prevention domain. Restorative justice typically highlights the needs of crime victims and their general exclusion from the justice process. The community justice model not only prioritizes the needs of crime victims, it also locates them in the context of communal membership. Thus, community justice focuses on the needs of particular parties to criminal incidents (offenders, victims, onlookers) and attends to the relationships between community members, restoring damaged social ties. This provides one macrolevel focus for community justice. A second macrolevel focus refers specifically to harm done to the community as a result of crime. Such harm ranges from the tangible effects (e.g., damage to public spaces) to less tangible effects (e.g., fear of crime).

In linking microlevel and macrolevel crime problems, restoration becomes an overarching goal of community improvement over status quo conditions: When victims have been harmed, they are to be healed; when property has been damaged, it is to be fixed; when disorder undermines community-level functioning, order needs to be restored; when institutional failure, such as joblessness, poor schools, family disruption, or inadequate housing, creates conditions that foster crime, institutional investment is indicated. Thus, restoration is a response to identifiable problems in the community that need resolution—problems of both individual community members and the community as a whole.

The goal of restoration also links a second important domain: reactive versus proactive crime prevention. In linking the response to a crime incident and crime prevention activities, restoration strengthens a community's response to crime and the causes of crime. Because individuals and communities suffer from both, restorative outcomes address individual community members in need of help and structural conditions in need of repair. Conceptually, restoration is synonymous with problem solving in community policing. When there

Two arenas of compensation are important. First, victims may be restored by receiving restitution, particularly in the form of monetary compensation and property replacement or repair. Second, victims may be offered services to aid in their recovery from the crime, including medical, mental health, and other relevant social services.

is a problem that is a result of a crime or that can lead to a crime, fixing the problem becomes the focus of the intervention.

One important indicator of community justice is restoration of crime victims. Identifying the extent of harm to victims that is caused by crime is a first step in identifying how they can be compensated. Two arenas of compensation are important. First, victims may be restored by receiving restitution, particularly in the form of monetary compensation and property replacement or repair. Second, victims may be offered services to aid in their recovery from the crime, including medical, mental health, and other relevant social services. Although victims may choose not to avail themselves of these services, they would be made available under a community justice model. Although these services would be offered, and often used, it is also understood that some harms are so profound that full recovery cannot be assumed. Typically, the burden of restitution will fall on the offender, but alternative compensation models in which compensation is offered by the community have also been proposed (Wright 1992). Victim services, however, generally require a commitment by the community to provide these as a public good.

A second critical focus of community justice is restoration of the community. In this case, restoration applies to both reparations for criminal damage to the community and problem-solving efforts to reduce criminogenic conditions. Incident-driven community restoration generally includes community service by offenders to offset their harm. Typically, the link between the offense and the community service, however, has been weak. Under a community justice model, every effort would be made to make the service relevant to the harm. For example, in Vermont, one drunk driver was required to provide hospital care for another drunk driver who was badly hurt in his own accident. In New York, graffiti artists have been required to scrub and repaint affected property. In Texas, burglars provided labor for the installation of target-hardening devices in victims' homes (though not necessarily, or even ideally, the same homes that the offender had burglarized).

Restoration is a broad concept that also includes restorative efforts aimed at preventing future criminal harm in the community by targeting specific criminogenic conditions. The trajectory in this integrity model follows from community identification of a community problem thought to be linked with crime, such as social disorder, concentrated poverty, or family disruption. This dimension reflects *criminogenic problem solving*. For example, public drinking or unsupervised congregations of youths on street corners may create the conditions for violent crime. More generally, according to the broken windows model (Wilson and Kelling 1982), disorder may foster a normative environment that invites criminality. The unfixed broken window may serve as data on the

strength of local social controls. Thus, order maintenance may be prioritized as a strategy of prevention, a means of restoring order by reducing criminogenic conditions. Other strategies may focus on the manipulation of criminal opportunities in particular settings (Clarke 1995), including economic, educational, or housing development (Sampson 1995), or family support situation (Hirschi 1995).

Integration

Integration is the second broad-based goal of community justice. Community justice is an inclusive perspective about the nature of community. Marginalized members are not shunned, displaced, or exiled. Instead, every effort is made to enlist their participation and provide protection of their rights as citizens and also to make claims on their responsibilities for prosocial contributions to the collective good and curbs on antisocial activities. The model is responsive to criminal incidents in its focus on reintegrating victims and offenders. It also looks forward by emphasizing the need for greater commitment, attachment, and democratic participation in community life. There are several indicators of the social integration of victims and offenders. These are particularly relevant to community justice efforts that respond to crime incidents. Additional indicators of integration that may be incorporated in the future pertain to marginalized community members (and marginalized communities) such as at-risk youths or racial minorities.

First, integration may be indicated by the establishment of *normative consensus*. For example, do offenders come to agree that their behavior was harmful to the victim and to the community? Do the various stakeholders agree on the extent of the harm? Second, integration may be observed by considering the extent of *victim inclusion*. This refers to victims' engagement in community life. Have they withdrawn from participation as a result of the crime? Did community justice efforts redevelop their social ties? To what extent do victims engage in self-protective measures that reduce the likelihood of further victimization? Similarly, to what extent has the community made an effort to insulate them from further harm?

Three additional indicators refer to the integration of offenders: recidivism, inclusion, and competency. First, to what extent has the offender refrained from criminal activity? Has the offender complied with a sanctioning agreement? Second, to what extent has the offender become a fully participating member of the community? Is there a shift in the social bonds away from his or her criminal ties and toward conventional ties? Is the offender perceived by other community members as a social pariah? Have the stigmatizing consequences of the offender status been reduced? Is there an issue of racial integration, perhaps in

Community capacity is reflected in the vitality of local institutions such as families, schools, churches, health and municipal services, and commerce. It is also reflected in the ability of community members to enforce mutually agreed on behavioral standards.

the form of undue suspicion, surveillance, and prosecution of minority offenders, or in terms of discrimination, such as in the housing or labor markets, that prevents full community participation? Finally, have offender competencies been improved as a result of the community justice process, making reintegration more likely? Has the offender attained a new educational level, participated in job training, gained employment, or, more fundamentally, participated in civic activities such as voting or volunteering?

Community capacity

The penultimate objective of the community justice model is the development of community capacity, which refers to the ability of the community to realize common values or to provide collective goods.

Community justice must result not only in just outcomes but also in an increase in a community's ability to solve its own problems. Thus, community justice is a means of achieving criminal justice and a strategy for community building. Community capacity is reflected in the vitality of local institutions such as families, schools, churches, health and municipal services, and commerce. It is also reflected in the ability of community members to enforce mutually agreed on behavioral standards.

One indication of community capacity is the extent to which community members are effectively socialized into the culture of the community. In large part, socialization is not a private phenomenon but the work of local institutions and individual community members fulfilling expected institutional roles such as parent or teacher (Bellah et al. 1991). These roles are certainly creatively and variously performed, but their scripts are derived from enduring cultural practices that transcend individuals. To what extent has the community justice process strengthened these community institutions and facilitated their role in the socialization process? More clearly observable is the community's ability to deliver needed services to its members. In community justice, service availability is especially important for competency development (which facilitates reintegration) and restoration.

Community capacity is also indicated by the citizen participation recruitment pool. Is there a roster of volunteers in the community or various networks that facilitate grassroots mobilization? To what extent will volunteers commit their

time and energy? Equally important is the capacity of the community to leverage resources for its development? Can it mount fundraising campaigns at the local level and garner resources from political institutions (e.g., city or State governments), foundations, or through coalitions or collaboratives with external partners? Does the community have the skills, political influence, or technical assistance needed to secure funding for the provision of desired public goods?

In addition to a community's institutional strength, community capacity may also be evident in the ability of community members to enforce local normative standards. Do bystanders intervene when trouble starts on a street corner? Do neighbors admonish inappropriate behavior by youths? A community that can effectively exercise informal social control may be less reliant on the formal controls of the police to intervene in minor disturbances. Police officers, in any case, are unlikely to perform such order maintenance activities without strong inducement, leaving a vacuum in which disorder continues to grow.

Community satisfaction

Community justice is concerned with citizens' perceptions of the justice system and their experience of community. Although the other three outcome categories specify objective characteristics, the satisfaction category identifies subjective ends. The basic hypothesis is that public sentiment matters and can at times act quite independently of objective indicators, coloring not only public opinion about the justice system but also community identity and attachment. Community justice is ultimately rooted in the experience of community life and the perception of citizens that their own sacrifices for the sake of the general welfare are reasonably rewarded by the community's provision of public goods. Among the most important returns are three subjective perceptions: a sense of safety, a sense of justice, and a sense of community.

A sense of public safety is a basic requirement of community life. When people feel a sense of vulnerability, their attitudes about social life will be affected, as may their behavioral response to social conditions. Fear of crime is quite common in American society, particularly among women, older persons, minority groups, and urban residents (Miethe 1995). Fear of crime is also negatively associated with community social and psychological ties (Perkins and Taylor 1996). To what extent has a community justice approach reduced fear of crime? To what extent has it increased residents' freedom of mobility through their neighborhoods, particularly at night? To what extent do residents report fear, competently assess risk of victimization, and alter their behavior in response to crime fears?

A community justice approach aims to improve citizen satisfaction with the justice system and arrive at a more general sense of justice in the community. This is a multidimensional concept. First, is there evidence of completion in the justice sequence, such as expressions of remorse by offenders and forgiveness by victims, or do cases linger without resolution by the stakeholders? Second, do community members believe offenders are held accountable for their crimes? Third, are citizens satisfied with the normative environment? Do they believe there is consensus on behavioral standards? Do they feel as if they have sufficient opportunity to express their own normative expectations? Fourth, do residents express concerns over rights protection? Are they worried about the prosecution of innocent individuals, of unfairly targeting minorities, or of an excessive reach by the system? Fifth, do citizens ascribe legitimacy to the justice system? Do they perceive it as fair, effective, and responsive to their concerns?

Finally, community justice is a community-building enterprise, and the outcomes of this approach should be an increased sense of community by its members. Based on McMillan and Chavis' (1986) theory, a sense of community is strong when citizens respond favorably to four criteria. First, they believe the community meets their most basic needs: They can find food, clothing, shelter, health care, and so on. Second, citizens feel a sense of membership, or a sense of belonging, in the larger social entity. Third, citizens believe their own contributions to the community make a difference, that they have a sense of influence or efficacy. Fourth, citizens feel an emotional connection to others in the community that bridges their isolation and inspires their commitment to the community because it is grounded in empathy and personal relationships. To what extent, then, does a community justice process increase these dimensions of community satisfaction?

Current Issues in Community Justice

The integrity model sets high standards for an appropriate community justice practice, and it sets equally high standards for community justice achievements. The model is grounded in the idea that criminal justice agencies must make themselves accessible to the community, and the community must take an active role in the justice process. It emphasizes strategies that repair damage or solve problems in order to restore communities. Community justice also values strategies that integrate marginal members at risk for criminal behavior or criminal victimization. Ultimately, the success of community justice is predicated on the development of community capacity and community satisfaction. To achieve these ends, community activists and justice agencies must struggle to overcome numerous barriers in the implementation process. In this final section, we consider some of the issues that pose significant challenges.

From due process to due consideration

Contemporary judicial process is grounded in a set of procedural practices that attempt to protect the rights of the accused. Within this individualistic framework, it was inevitable that conflicts of rights would appear. Some now ask, “But what of the rights of victims?” Others, thinking about the neighborhood-level effects of crime, have asked, “But what of the community’s right to live in peace and safety?” From a legal perspective, such questions are not logically parallel to the protections afforded to the accused, given their prosecution by the State. But from the perspective of community justice, the questions are not irrelevant. They speak less to procedural justice than to a broader concern for justice that is captured in substance as well as in process.

The view of justice proposed here is a very different one from the procedural ideal of justice in traditional Western jurisprudence. Rather than an adversarial contest between the State and an accused citizen, the idea of community justice concentrates on a problem-solving process designed to restore safety to the places people live. Under such an ideal, rights are not procedural; instead, they are substantive. Whereas an adversarial ideal extends rights of due process, a problem-solving ideal extends rights of due consideration. The elements of due process are well known: timely notice, physical presence, counsel, permission to confront the other side, and an opportunity to be heard. What would a set of rights to “due consideration” contain?

A right to due consideration based on problem solving becomes an obligation to consider as important a range of needs and interests of victims, offenders, and the communities in which they live. In contrast to an adversarial ceremony designed to demonstrate legal guilt, in which strict rules apply to the admissibility of evidence and the weight it receives, “consideration” permits parties to the process to offer whatever understandings they believe are necessary to resolve the problem. The problem in terms of community justice is expressed as a series of questions and interests:

- What is needed to restore the victim?
- What is needed to ensure the community’s future safety?
- What is needed to foster the offender’s return to constructive community life?

This does not mean an end to traditional procedural rights. Neither victims nor accused parties should be coerced into a problem-solving process they believe cannot apply to them. A defendant who claims innocence must be able to force the accusers to prove guilt. A victim should not be forced to engage in interaction with an admitted victimizer when this will only produce more pain and

suffering on the victim's part. Communities should not be forced to consider embracing offenders who show no willingness to address the problems that make them dangerous to others. It may take repeated efforts on the part of community justice practitioners to pave the way for an interactive, problem-solving process.

In reality, however, full-blown trials are comparatively rare events. Most criminal cases are concluded when the offender enters a guilty plea. For the vast majority of offenders who admit their guilt, community justice activities could begin with the entry of a guilty plea. After the offender has taken public responsibility for having committed the offense, a series of information-gathering activities can address these questions:

- What is the victim's loss, and how can that loss be compensated?
- What is the offender's risk, and how can that risk be managed and reduced?
- How can the community be equipped to become safe in the face of crime, especially in this offender's presence?
- What actions on the part of the offender can publicly symbolize atonement for the crime?

Facts and opinions related to these questions are reviewed by all parties, and a proposed plan is assembled that will meet the needs of the parties. If the plan is agreed to by the victim, offender, and community, it takes the form of a written sentencing recommendation that is submitted to the judge by the community justice panel. The business of the community justice panel would more closely resemble that of an administrative law tribunal than a criminal trial, and broad exploration of the various parties' needs would be undertaken.

A similar process could follow a conviction at trial, but it would face two additional obstacles. First, the task of promoting confidence in the offender's sincerity is undermined by the trial, in which the offender's claim of innocence is found hollow. Second, the victim's belief that a safe and meaningful outcome to the crime is possible is made more problematic by the offender forcing the system to prove its case. Thus, when a criminal trial results in a finding of guilt, a greater burden rests on the offender to find ways to convince a community justice panel that a new adjustment and a sense of personal responsibility is around the corner.

In this model of due consideration, one issue must be carefully considered. Should there be equality before the law? That is, should each person guilty of the same offense be sanctioned in the same (or, at least, equivalent) way? Under a model of due consideration, more variables are in play than simply the nature

of the offense. For example, the harm of a particular offense may have been more severe for one victim than another, perhaps materially, perhaps emotionally. An offense may have a greater impact on the quality of community life, given the particular circumstances of one neighborhood compared with another. Because the justice process demands consideration of such impacts, the offense alone is an insufficient basis for comparison. We argue that some variation in offender sanctioning is not only inevitable under a community justice model but also desirable. The most important criteria are that the justice process meets the needs of the parties involved and that the sanction is clearly tied to identified harms caused by the offense.

Thus, community justice would neither require replacing the existing justice system nor invalidate any existing procedural rights of offenders and victims. Instead, a new process would be inserted that would, upon the establishment of guilt, attempt to broadly arrange a sanction that is procedurally fair and substantively adequate to meeting the needs of the victim, the offender, and the community.

Limits of community control

With increased authority, it is possible that communities will exercise that authority in ways that conflict with broader values of the culture; for example, with vigilantism or discrimination. When power is informal, how may actors (and communities) be held accountable? This problem is especially acute for autonomous community crime prevention efforts because they lack the formal oversight of criminal justice agencies.

We can illustrate these issues by describing a late 1980s police crackdown on prostitution in New Haven, Connecticut's, well-known red light district. One of its unfortunate effects was to displace the sex trade to the surrounding residential neighborhoods, including Edgewood Park, a racially and economically heterogeneous neighborhood. There, prostitutes began their work early in the morning, targeting those heading to work, and continued through the day and into the night. Used condoms littered the playgrounds, and school children waited for buses adjacent to prostitutes waiting for johns. In response, community members organized a campaign to reduce prostitution (Bass 1992).

When neighbors saw a car circling a block or picking up a prostitute, they took down the license plate number and traced the registration through the Department of Motor Vehicles (DMV). They quickly discovered most johns were not from Edgewood Park and came from other neighborhoods. Neighbors sent a letter to the car owner's address advising the owner that the car had been seen "cruising" the neighborhood. The letters detailed the community's campaign against

prostitution and urged recipients to be careful about whom they lent the car to in the future. The group also posted fliers around the neighborhood that noted the “john of the week” and reprinted the john’s name, address, and phone number, based on information obtained from DMV. After some johns complained they were receiving anonymous, threatening phone calls, the group stopped including phone numbers on the fliers.

This community action raises important questions regarding the application of informal control. First, what should be the relationship between the community and the formal justice system? The Edgewood group operated completely autonomously. Obviously, this independence from a formal justice institution has implications for oversight. In other situations, autonomous community groups have been charged with racism (Skogan 1988) and vigilantism (Weisburd 1988). For example, all-Jewish citizen patrols in Brooklyn’s Crown Heights have been known to target blacks, in some cases exercising summary justice on the street (Mitchell 1992). Also, when community members involve themselves directly with criminals, they place themselves at risk, probably without the necessary preparation. What, if any, situations are inappropriate for citizen groups to handle? Under a community justice model, community action is undertaken in collaboration with justice agencies. Typically, police departments work with citizen groups to train, supervise, and assist in the management of citizen patrols. Partnerships have problems (see the next section), but they are vital for community oversight.

Second, to what extent does a community effort represent the entire community? Informal actions by the Edgewood association were undertaken on behalf of the community. To what extent were they consistent with local normative standards? By definition, community actions are designed to tighten local standards and increase their enforcement. Community members thereby claim that what was once acceptable is no longer tolerable. But did the Edgewood group go through some democratic process that enabled community members to clarify their standards and identify appropriate methods of normative enforcement? Such norm affirmation processes are necessary to ensure that special interests in the community do not impose their moral will on those who have legitimate questions about the harmfulness of the sanctioned behavior. The distinction between a communitarian approach, which is consistent with the community justice ideal, and a socially conservative approach is the emphasis placed on democratic processes that ensure the opportunity to deliberate and disagree about communal priorities before informal social controls are introduced.

Third, are the rights of alleged offenders being violated? Clearly, the Edgewood campaign sanctioned individuals who were not formally convicted of any offense. There was no due process, no opportunity to profess innocence, no

opportunity to contest the community's norms. It was certainly possible that a misread license plate would lead to the targeting of innocent people. Police need more justification than "circling the neighborhood" to arrest a john: Should community groups be held to a lesser standard of evidence? What other protections are necessary to protect the innocent from informal sanctions by the community? The criminal justice system has its formal power fairly consolidated and has traditionally emphasized a procedural model to ensure fairness. Community justice advocates decentralization of this power, in part to increase the system's legitimacy in the eyes of the public, but more importantly to increase the effectiveness of local-level collective action. In so doing, community action and autonomy raise the specter of radical militias and the Ku Klux Klan. Community justice, as we have described it, specifies a framework and a set of values that could not result in such communal formations.

Voluntarism and democratic representation

Crime control is a public good. In principle, we would like to reduce crime rather than increase it, but we also would like to reduce the costs (time, effort, and money) of fighting crime rather than increase them. The best strategy for individuals is, therefore, to ride on the crime prevention efforts of others. Unfortunately, when we all depend on others to do the work, nothing gets done. Self-interest overwhelms the public good. One question is: How can we get people to participate in crime control activities when it is not in their immediate self-interest to do so? Furthermore, given the disincentives to participation, it is not likely that volunteers are a random sample of the community. They are more likely to represent special interests. Is this problematic, and if so, how can fair representation be ensured?

Some collective efforts require enormous commitments and provide little return. Davis and Lurigio (1996) have observed that antidrug campaigns of the late 1980s and 1990s have been far more successful than other earlier crime prevention campaigns. This may be because drug sales take place in stationary, visible settings, whereas burglaries and robberies, for example, occur anywhere. Community surveillance is considerably easier in antidrug efforts because the targets are easily found. Washington, D.C.'s, citizen patrol, the Orange Hats, for instance, have targeted one street corner as the focal point of its efforts (Goldsmith-Hirsch 1998). Conducting cost-benefit analyses can resolve long-standing arguments about the likelihood of participation by certain income groups in crime prevention campaigns. Some have argued that those who need to organize the most are the least likely to do so (Dubow and Podolefsky 1982; Skogan 1988). Yet antidrug efforts in disorganized communities do seem to occur when the potential benefits and the efficiency of crime prevention efforts sufficiently outweigh their costs.

Some communities are better organized than are others at the outset. They have strong local institutions (for example, schools, churches, civic associations) and viable communication networks that quickly spread the word that a community campaign is under way. The predecessor to the Orange Hats patrol, for example, was a neighborhood watch program organized in conjunction with the police, and this effort created a local network with a block captain (Goldsmith-Hirsch 1998). Community capacity is often dependent on the social organization of communities (Chavis et al. 1993). To what extent do poverty, inequality, mobility, heterogeneity, urban density, family disruption, and other macrolevel variables have an effect on the stake an individual has in the community? To what extent does this stake, in turn, affect mobilization? Owners, for example, are more likely to be mobilized than renters (Skogan 1988). Thus, the ratio of owners to renters and other such macrolevel characteristics may be important predictors of mobilization. However, the same factors that make an area difficult to mobilize are also likely to identify it as in greater need of community justice efforts because of higher crime and related problems.

Even when mobilization is successful, it is important to consider who is being mobilized. Grinc's (1998) evaluation of a community policing program implies that many individuals and interests are typically underrepresented in crime prevention efforts. This may be a result of fear of retaliation from offenders or the historically poor relationship between the community and the police. It may result from perceptions of low efficacy, in part because community members do not have clearly defined roles with regard to crime prevention and in part because of experience with prior failed collective actions. Underrepresentation may also result from both intergroup tension manifest in the homogeneous and competitive organization of local groups in heterogeneous communities (Skogan 1988) and intragroup conflicts that arise between leaders and group members (Grinc 1998).

In collaborations between law enforcement agencies and private citizens or community organizations, community agendas are often sidelined because of clear power imbalances. Crawford (1995) argues that community representatives do not have the professional expertise to compete with their formal criminal justice partners. Accordingly, various interests are excluded even in ostensibly democratic participation efforts. This may occur because of informal and biased leadership or advisory position selection processes that systematically exclude problematic individuals, groups, or perspectives. The result is not simply a violation of democratic values but a failure to meet the needs of disadvantaged and marginalized groups whose views and concerns are excluded from the table. Such power processes may partly explain the persistence of crime in low-resource communities. Not only is it harder to compete for scarce development and public safety resources, but those that are delivered have so many strings attached to them that community empowerment is undermined.

With each newly established source of informal social controls, community capacity will grow. As we have argued, these forms of control tend to be self-regenerating: One strong community group can plant a seed that grows into greater levels of mobilization. As these stronger community controls grow, they will tend to supplant the official agencies and develop their own agendas for improving community quality of life. The downward spiral of devastation can be changed into an upward cycle of empowerment.

Funding new practices

We have argued that communities struggling with crime problems are typically beset by crumbling institutional infrastructure. These are the same communities that are bereft of the resources that might be needed to undertake innovative community justice efforts. In the face of limited institutional strength, community justice strategies require a kind of bootstrapping of resources. Where can we look to find these resources?

There is, of course, sufficient money spent on traditional justice to fund the work of a community justice operation. A great deal of money is now spent on punishment—\$31 billion in 1992 (U.S. Department of Justice 1997). Moreover, a community justice initiative need not be costly compared with contemporary expenditures. A few professional community workers can galvanize community efforts toward safer communities by building on residents' strengths and focusing official agency efforts toward strategies that strengthen the communities in which their clients live. A community justice initiative can be paid for by diverting dollars from less effective, contemporary expenditures to more effective, community-oriented initiatives.

This can be stated in stark dollar terms. The average prison commitment (about 2 years) in the United States is also a \$40,000 commitment of public funds. Each year, roughly 650,000 convicted offenders are incarcerated (Maguire and Pastore 1998). Redirection of just a handful of these decisions can alter the calculus of public protection.

The mathematics are particularly compelling at the community level. In Washington, D.C., for example—an area much larger than a community—5,700 residents are sentenced to prison in a given year (District of Columbia Department of Corrections 1997). At an average cost of \$40,000 per sentence, a community that is willing to retain a mere five offenders in a given year has \$200,000 to use to improve its community safety. This is enough money to fully fund a small community development office. It is not radical to think there are five offenders who could safely remain in the community instead of spending the 2 years in prison they would ordinarily serve.

The question is: How can those moneys be redirected from current justice efforts toward community justice efforts? The current system has many vested interests, not the least of which is a prison-industrial complex that has grown increasingly dependent on high incarceration rates to make profits and to economically sustain rural communities in which the State prison provides the only jobs in town (Irwin and Austin 1997). It is unlikely to think that these vested interests will easily or readily change their priorities to a community justice agenda.

A community justice thought experiment

There is much to be done in communities that suffer heavily from crime: buildings to be refurbished, roads to be repaved, elderly to be transported to day-living facilities, and so forth. These communities cannot afford to purchase these services because they are filled with people who are destitute and cannot afford to pay the manpower costs. By the same token, offenders—especially those wasting away in prisons—are an untapped labor resource. Community organization initiatives could put offenders to work repairing the neighborhoods victimized by their crimes. This work is valuable for these communities in two ways. First, dollars that would be devoted only to the objective of removing offenders from their neighborhoods would be allowed to remain in those localities. Second, entrenched problems in those communities would be attacked through the labor of residents who are also offenders.

Our ideal envisages a professional group that identifies local problems requiring manpower—such as renovation of buildings or assistance to children and elderly residents—and mobilizes those resources to address those problems. A new local agency devoted to the problems would develop work and service projects that the area needs and that can be provided by offenders. It would assess applicant offenders to see what part, if any, they could have in community development. It would then develop and manage the projects necessary to implement the vision of community justice.

The community justice group would also work closely with criminal justice agencies as they provide supervision and services to offenders living in the community. Community mentors would work with juvenile offenders, and adult community sponsors would provide similar supports for convicted adults and their families. Residents would also be partners in crime prevention efforts that emphasize the renewal of public space and voluntary public service. The local community justice activity would have the oversight of a residential board of advisers with whom criminal justice and social service officials would work closely on quality-of-life problems arising from crime and justice activities.

Slowly and deliberately, informal social control capacity would grow, and the local area's reliance on external controls from State efforts would wane.

There are many ways such an approach could be funded. Community corrections acts have attempted, with some success, to achieve these aims. Many attempts have been made to divert offenders from prison, some of them successful. What makes this description different?

In most models of sentencing reform, offenders are treated at best as irrelevant, at worst as antithetical to community safety. A community justice model recognizes reality: Offenders are community residents, and their capacity not only to live crime free in communities but also to contribute to community life is central to the quality of life in a community. If offenders are filtered through incarceration experiences only to return antagonistically to the communities from which they came, little progress is possible on the agenda of community safety and, ultimately, quality of life. But if offenders can be redirected to contribute to community life—especially in the most deeply disadvantaged communities in America—then the calculus of community safety and quality of life is recomputed to include them as potential positive forces.

But this will require a fiscal realization of their contribution, and this fiscal reality relates to both the community and the victim—their fiscal interests—not just that of the offender. Imagine, for example, that:

- For each crime, the offender, the victim, and a community board each receive a “voucher” that can be used to purchase a community justice process in place of the criminal justice process.
- The alternative process can be used *only* if both the offender and the victim purchase it (this will make them have coincidence of interests instead of adversarial interests).
- A percentage of all moneys that would be spent on the incarceration of the offender will remain in the community to be used as the community sees fit, on any community enhancement project.

This would create an incentive for all members to participate in a process that recovers community. It would also redirect investment in crime control toward community development. In the case of Washington, D.C., for example, a diversion of 50 percent of offenders from incarceration each year (roughly equivalent to the percentage of nonviolent offenders sentenced to prison) would net \$114 million for community justice activities.

Summary

It has been our purpose to describe the elements of the emerging community justice movement not as a series of programs or projects but as a point of view about what justice means and how it is produced. We first described how community justice initiatives are “bubbling up” in the traditional criminal justice functions of policing, adjudicating, and correcting. We then described a strategic vision of justice that has as its primary aim the enrichment of community life through a focus on the way crime interferes with community life. Our argument has identified seven key values of a community justice philosophy. They are:

- Norm affirmation.
- Restoration.
- Public safety.
- Equality.
- Inclusion.
- Mutuality.
- Stewardship.

In support of these values, we propose an integrity model of community justice. This model identifies core processes and critical outcomes that separate the community justice approach from the criminal justice approach. Our view is that an integrity model can inform the design and implementation phases of community justice initiatives, broadening and deepening their contribution to the aim of widely sharing the experience of justice.

Finally, we turn our attention to several important problems of the community justice movement: legal rights, accountability, voluntary participation, and funding. We note that the challenges to community justice are daunting. However, as we envision the possibilities, we are encouraged by the successful efforts already under way in the emerging vision of the justice ideal.

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References

- American Probation and Parole Association. 1996. Restoring hope through community partnerships: The real deal in crime control. *Perspectives* 20:40–42.
- Andrews, Don, and James Bonta. 1996. *The level of supervision inventory—revised*. Toronto: Multi-Health Systems.
- Barber, Benjamin. 1984. *Strong democracy*. Berkeley: University of California Press.
- Bass, Carole. 1992. Colleagues go to the mat over campaign to out “johns.” *Connecticut Law Tribune*, 20 April.
- Bayley, David H. 1994. *Police for the future*. New York: Oxford University Press.
- Bazemore, G. 1998. The “community” in community justice: Issues, themes, and questions for the new neighborhood sanctioning models. In *Community justice: An emerging field*, edited by David R. Karp. Lanham, Maryland: Rowman & Littlefield.
- Bazemore, Gordon, and Mark Umbreit. 1995. Rethinking the sanctioning function in juvenile court: Retributive or restorative responses to youth crime. *Crime and Delinquency* 41:296–316.
- . 1994. *Balanced and restorative justice*. Program Summary, NCJ 149727. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Belenko, Steven, and Tamara Dumanovsky. 1993. *Special drug courts*. Program Brief, NCJ 144531. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.
- Bellah, Robert N., Richard Madsen, William M. Sullivan, Ann Swidler, and Steven M. Tipton. 1991. *The good society*. Berkeley: University of California Press.
- Bennett, Susan F. 1998. Community organizations and crime. In *Community justice: An emerging field*, edited by David R. Karp. Lanham, Maryland: Rowman & Littlefield.
- Boland, Barbara. 1998. Community prosecution: Portland’s experience. In *Community justice: An emerging field*, edited by David R. Karp. Lanham, Maryland: Rowman & Littlefield.
- Braithwaite, John. 1997. One future direction: Restorative justice. In *Second National Outlook Symposium: Violent crime, property crime and public policy*. Canberra: Australian Institute of Criminology.
- Braithwaite, John, and Stephen Mugford. 1994. Conditions of successful reintegration ceremonies. *British Journal of Criminology* 34:139–171.
- Bursik, Robert J. 1988. Social disorganization and theories of crime and delinquency: Problems and Prospects. *Criminology* 26:519–551.

- Bursik, Robert J., and Harold G. Grasmick. 1993. *Neighborhoods and crime: The dimensions of effective community control*. New York: Lexington Books.
- Chavis, David M., Kien Lee, and Suzanne Merchlinsky. 1997. *National cross-site evaluation of the community building initiative*. Bethesda, Maryland: Cosmos, Inc.
- Chavis, David M., Paul W. Speer, Ira Resnick, and Allison Zippay. 1993. Building community capacity to address alcohol and drug abuse: Getting to the heart of the problem. In *Drugs and the community*, edited by R.C. Davis, A.J. Lurigio, and D.P. Rosenbaum. Springfield, Illinois: Charles C. Thomas.
- Clarke, Ronald V. 1995. Situational crime prevention. In *Building a safer society: Strategic approaches to crime prevention*, edited by M. Tonry and D.P. Farrington. Vol. 19 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.
- Clear, Todd R. 1994. *Harm in American penology*. Albany: State University of New York Press.
- Corbett, Ronald P., Bernard L. Fitzgerald, and James Jordan. 1996. Operation Night Light: An emerging model for police-probation partnership. In *Invitation to change: Better government competition on public safety*, edited by L. Brown and K. Ciffolillo. Boston: Pioneer Institute for Public Policy Research.
- Crawford, Adam. 1995. Appeals to community and crime prevention. *Crime, Law, and Social Change* 22:97-126.
- Davis, Robert C., and Arthur J. Lurigio. 1996. *Fighting back: Neighborhood antidrug strategies*. Thousand Oaks, California: Sage Publications.
- District of Columbia Department of Corrections. Office of Planning and Program Development. 1997. Washington, D.C.
- Dubow, Fred, and Aaron Podolefsky. 1982. Citizen participation in community crime prevention. *Human Organization* 41:307-314.
- Earle, Ronald. 1996. Community justice: The Austin experience. *Texas Probation* 11:6-11.
- Eck, John. 1997. Preventing crime at places. In *Preventing crime: What works, what doesn't, what's promising: A report to the United States Congress*, edited by L.W. Sherman, D. Gottfredson, D. MacKenzie, J. Eck, P. Reuter, and S. Bushway. Research Report, NCJ 165366. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Farrell, Graham. 1995. Preventing repeat victimization. In *Building a safer society: Strategic approaches to crime prevention*, edited by M. Tonry and D.P. Farrington. Vol. 19 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.

- Galaway, Burt, and Joe Hudson. 1996. *Restorative justice: International perspectives*. Monsey, New York: Criminal Justice Press.
- Gilligan, Carol. 1982. *In a different voice: Psychological theory and women's development*. Cambridge: Harvard University Press.
- Goldsmith-Hirsch, Suzanne. 1998. The Takoma Orange Hats: Fighting crime and building community in Washington, D.C. In *Community justice: An emerging field*, edited by David R. Karp. Lanham, Maryland: Rowman & Littlefield.
- Goldstein, Herman. 1990. *Problem-oriented policing*. New York: McGraw-Hill.
- Grinc, Randolph M. 1998. "Angels in marble": Problems in stimulating community involvement in community policing. In *Community justice: An emerging field*, edited by David R. Karp. Lanham, Maryland: Rowman & Littlefield.
- Hawkins, J. David, Michael W. Arthur, and Richard F. Catalano. 1995. Preventing substance abuse. In *Building a safer society: Strategic approaches to crime prevention*, edited by M. Tonry and D.P. Farrington. Vol. 19 of *Crime and justice: A review of research*. Chicago: University of Chicago Press.
- Hirschi, Travis. 1995. The family. In *Crime*, edited by J.Q. Wilson and J. Petersilia. San Francisco: Institute for Contemporary Studies.
- Hudson, Joe, Allison Morris, Gabrielle Maxwell, and Burt Galaway, eds. 1996. *Family group conferences*. Monsey, New York: Criminal Justice Press.
- Immarigeon, Russ. 1996. Family group conferences in Canada and the United States: An overview. In *Family group conferences*, edited by J. Hudson, A. Morris, G. Maxwell, and B. Galaway. Monsey, New York: Criminal Justice Press.
- Irwin, John, and James Austin. 1997. *It's about time: America's imprisonment binge*. Belmont, California: Wadsworth Publishing Company.
- Karp, David R. 1999. The offender/community encounter: An exploration of the Vermont reparative boards. In *Community justice: A national assessment*, edited by Todd R. Clear and David R. Karp. New York: Edna McConnell Clark Foundation.
- Kelling, George. 1992. Measuring what matters: A new way of thinking about crime and public order. *City Journal* (Spring): 21-33.
- Kelling, George L., and Catherine M. Coles. 1996. *Fixing broken windows*. New York: Free Press.
- Kennedy, David M. 1997. Pulling levers: Chronic offenders, high-crime settings, and a theory of prevention. *Valparaiso University Law Review* 31:449-484.
- Kornhauser, Ruth Rosner. 1978. *Social sources of delinquency: An appraisal of analytic models*. Chicago: University of Chicago Press.

- MacDonald, Heather. 1996. BIDs really work. *City Journal* (Spring): 29–42.
- Maguire, Kathleen, and Ann L. Pastore, eds. 1998. *Sourcebook of criminal justice statistics*. Retrieved 4 May 1999 from the World Wide Web: <http://www.albany.edu/sourcebook>.
- Massey, Douglas S., and Nancy A. Denton. 1993. *American apartheid*. Cambridge: Harvard University Press.
- Maxwell, Gabrielle, and Allison Morris. 1994. The New Zealand model of family group conferences. In *Family conferencing and juvenile justice*, edited by C. Alder and J. Wundersitz. Canberra: Australian Institute of Criminology.
- McCold, Paul, and John Stahr. 1996. Bethlehem Police Family Group Conferencing Project. In *American Society of Criminology annual meeting*. Chicago: American Society of Criminology.
- McMillan, David W., and David M. Chavis. 1986. Sense of community: A definition and theory. *Journal of Community Psychology* 14:6–23.
- Miethe, Terance D. 1995. Fear and withdrawal from urban life. *Annals of the American Academy of Political and Social Science* 539:14–27.
- Mitchell, Alison. 1992. In an often violent city, a not-so-simple beating. *New York Times*, 6 December, late edition-final.
- Moore, David B., and Terry A. O’Connell. 1994. Family conferencing in Wagga Wagga: A communitarian model of justice. In *Family conferencing and juvenile justice*, edited by C. Alder and J. Wundersitz. Canberra: Australian Institute of Criminology.
- Peak, Kenneth J., and Ronald W. Glensor. 1996. *Community policing and problem solving*. Upper Saddle River, New Jersey: Prentice Hall.
- Pease, Ken and Gloria Laycock. 1996. *Revictimization: Reducing the heat on hot victims*. Research in Action, NCJ 162951. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Perkins, Douglas D., and Ralph B. Taylor. 1996. Ecological assessments of community disorder: Their relationship to fear of crime and theoretical implications. *American Journal of Community Psychology* 24:63–107.
- Perry, John G., and John F. Gorczyk. 1997. Restructuring corrections: Using market research in Vermont. *Corrections Management Quarterly* 1:26–35.
- Pranis, Kay. 1996. A State initiative toward restorative justice: The Minnesota experience. In *Restorative justice: International perspectives*, edited by B. Galaway and J. Hudson. Monsey, New York: Criminal Justice Press.

Roberts, Marilyn, Jennifer Brophy, and Caroline Cooper. 1997. The juvenile drug court movement. Fact Sheet, FS-9759. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Rottman, David B. 1996. Community courts: Prospects and limits. *National Institute of Justice Journal* 231:46-51.

Sampson, Robert J. 1995. The community. In *Crime*, edited by J.Q. Wilson and J. Petersilia. San Francisco: Institute for Contemporary Studies.

Sampson, Robert J., and William Julius Wilson. 1995. Toward a theory of race, crime, and urban inequality. In *Crime and inequality*, edited by J. Hagan and R.D. Peterson. Stanford: Stanford University Press.

Sampson, Robert J., Stephen W. Raudenbush, and Felton Earls. 1997. Neighborhoods and violent crime: A multilevel study of collective efficacy. *Science* 277:918-924.

Schorr, Lisbeth B. 1997. *Common purpose: Strengthening families and neighborhoods to rebuild America*. New York: Doubleday.

Sherman, Lawrence W. 1997. Family-based crime prevention. In *Preventing crime: What works, what doesn't, what's promising: A report to the United States Congress*, edited by Lawrence W. Sherman, Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway. Research Report, NCJ 165366. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Sherman, Lawrence W., and Heather Strang. 1997. Canberra's police get shaming right. Canberra: Australian National University.

Sherman, Lawrence W., Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway. 1997. *Preventing crime: What works, what doesn't, what's promising: A report to the United States Congress*. Research Report, NCJ 165366. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Skogan, Wesley G. 1997. *Community policing, Chicago style*. New York: Oxford University Press.

———. *Disorder and decline: Crime and the spiral of decay in American neighborhoods*. New York: Free Press.

———. 1988. Community organizations and crime. In *Crime and justice: A review of research*, edited by M. Tonry and N. Morris. Vol. 10. Chicago: University of Chicago Press.

Skolnick, Jerome H. and David H. Bayley. 1988. Theme and variation in community policing. In *Crime and justice: A review of research*, edited by M. Tonry and N. Morris. Vol. 10. Chicago: University of Chicago Press.

Stone, Christopher. 1996. Community defense and the challenge of community justice. *National Institute of Justice Journal* 231:41-45.

Taylor, Ralph B. and Adele V. Harrell. 1996. *Physical environment and crime*. Research Report, NCJ 157311. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Tyler, Tom R. 1990. *Why people obey the law*. New Haven: Yale University Press.

Umbreit, Mark S. 1994. *Victim meets offender: The impact of restorative justice and mediation*. Monsey, New York: Criminal Justice Press.

U.S. Department of Justice. Bureau of Justice Statistics. 1997. *Justice expenditure and employment extracts, 1992*. Report, NCJ 148821. Washington, D.C.

U.S. Department of Justice. Office of Justice Programs. 1995. Drug Courts Program Office Fact Sheet. Washington, D.C.

Van Ness, Daniel, and Karen Heetderks Strong. 1997. *Restoring justice*. Cincinnati: Anderson Publishing Company.

Weisburd, David. 1988. Vigilantism as community social control: Developing a quantitative criminological model. *Journal of Quantitative Criminology* 4:137-153.

Wilson, James Q., and George L. Kelling. 1982. Broken windows. *Atlantic Monthly* (March): 29-38.

Wright, Martin. 1992. Victim-offender mediation as a step towards a restorative system of justice. In *Restorative justice on trial*, edited by H. Messmer and H.-U. Otto. Dordrecht, The Netherlands: Kluwer Academic Publishers.

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The National Institute of Justice (NIJ), a component of the Office of Justice Programs, is the research agency of the U.S. Department of Justice. Created by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, NIJ is authorized to support research, evaluation, and demonstration programs; development of technology; and both national and international information dissemination. Specific mandates of the Act direct NIJ to:

- Sponsor special projects and research and development programs that will improve and strengthen the criminal justice system and reduce or prevent crime.
- Conduct national demonstration projects that employ innovative or promising approaches for improving criminal justice.
- Develop new technologies to fight crime and improve criminal justice.
- Evaluate the effectiveness of criminal justice programs and identify programs that promise to be successful if continued or repeated.
- Recommend actions that can be taken by Federal, State, and local governments as well as by private organizations to improve criminal justice.
- Carry out research on criminal behavior.
- Develop new methods of crime prevention and reduction of crime and delinquency.

In recent years, NIJ has greatly expanded its initiatives, the result of the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Act), partnerships with other Federal agencies and private foundations, advances in technology, and a new international focus. Examples of these new initiatives include:

- Exploring key issues in community policing, violence against women, violence within the family, sentencing reforms, and specialized courts such as drug courts.
- Developing dual-use technologies to support national defense and local law enforcement needs.
- Establishing four regional National Law Enforcement and Corrections Technology Centers and a Border Research and Technology Center.
- Strengthening NIJ's links with the international community through participation in the United Nations network of criminological institutes, the U.N. Criminal Justice Information Network, and the NIJ International Center.
- Improving the online capability of NIJ's criminal justice information clearinghouse.
- Establishing the ADAM (Arrestee Drug Abuse Monitoring) program—formerly the Drug Use Forecasting (DUF) program—to increase the number of drug-testing sites and study drug-related crime.

The Institute Director establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice, and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals and researchers in the continuing search for answers that inform public policymaking in crime and justice.

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